CITY OF SANTA CLARA

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CITY COUNCIL MEETING

AGENDA

A complete agenda packet with back-up reports is available at either City Library beginning Saturday before the Tuesday meeting or at the City Clerk's Office on weekdays. A complete agenda packet is also available at the City Council meeting and on the City's website.

December 13, 2011

SPECIAL ANNOUNCEMENTS

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REGULAR MEETING
7:00 PM in the City Hall Council Chambers

APPEAL OF HEARING DECISIONS OF THE CITY COUNCIL MUST BE MADE TO THE SUPERIOR COURT WITHIN 90 CALENDAR DAYS OF FINAL ACTION. BECAUSE OF THE AGENDA PROVISION FOR RECONSIDERATION, FINAL ACTION IS DEEMED TO OCCUR AT THE END OF THE NEXT REGULAR MEETING PURSUANT TO CITY COUNCIL POLICY (P&P 042). (CODE OF CIVIL PROCEDURE SECTION 1094.6)

5:30 PM
Closed Session
Council Conference Room

Conference with Real Property Negotiator
Pursuant to Government Code Section 54956.8
Property: APN 104-43-051; APN 104-43-052; APN 104-43-030;
APN 104-42-014; and APN 104-42-019;
Negotiating Party(ies): Cedar Fair and the San Francisco 49ers;
City Negotiator: Jennifer Sparacino, City Manager (or her designee);
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property
(provisions, price and terms of payment)
and
Conference with Real Property Negotiator
Pursuant to Government Code Section 54956.8
Property: APN 104-43-030
Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers
City Negotiator: Jennifer Sparacino, City Manager (or her designee)

Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property
(provisions, price and terms of payment)
and
Conference with Agency Labor Negotiator
Pursuant to Government Code Section 54957.6
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Employee Organization(s):
Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2 - Santa Clara Police Officer's Association
Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245
Unit #4 - City of Santa Clara Professional Engineers
Units #5, 7 & 8 - City of Santa Clara Employees Association
Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101
Unit #9 - Miscellaneous Unclassified Management Employees
Unit #9A - Unclassified Police Management Employees
Unit #9B - Unclassified Fire Management Employees
Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA)

1. PLEDGE OF ALLEGIANCE AND INVOCATION PRAYER:

2. ROLL CALL:

3. APPROVAL OF MINUTES:

A. November 15, 2011.

B. November 29, 2011 - Special Meeting.

4. CONTINUANCE/EXCEPTIONS:

5. SPECIAL ORDER OF BUSINESS:

A. placeholder

6. UNFINISHED BUSINESS:

A. Possible Reconsideration of Actions Taken at Immediately Preceding Meeting. (See Summary of Actions for potential reconsideration, which is attached to the posted Agenda and is in the Agenda Packet Binder in the Council Chambers.)

B. Proposed San Francisco 49ers Stadium

1. **Joint City Council and Santa Clara Stadium Authority Public**

Hearing
Adoption of a Stadium Authority Resolution approving the Disposition and Development Agreement (DDA) with the 49ers Stadium, LLC.

2. **Joint City Council and Santa Clara Stadium Authority Public Hearing**
Adoption of a Stadium Authority Resolution approving a Joinder Agreement in that certain Commitment Letter dated November 4, 2011 and that certain Engagement Letter dated November 4, 2011, an Indemnification Contribution Agreement and the Summary of StadCo Obligations as part of the Preliminary Financing Plan for Construction of the Proposed 49ers Stadium.
3. Informational Memo: Withdrawal of request for the consideration to approve or disapprove the proposed transfer of ownership of the Great America Theme Park Lease from the current lessee, Cedar Fair, LP., to the proposed lessee, JMA Ventures, LLC, or an affiliate of JMA Ventures.

7. CONSENT CALENDAR:

[Items listed on the CONSENT CALENDAR are considered routine and will be adopted by one motion. There will be no separate discussion of the items on the CONSENT CALENDAR unless discussion is requested by a member of the Council, staff, or public. If so requested, that item will be removed from the CONSENT CALENDAR and considered under CONSENT ITEMS PULLED FOR DISCUSSION.]

A. Departmental Reports

1. Approval to allow Captain Michael Sellers to exceed the maximum vacation accrual into 2012.
2. Approval and authorization to publish the February 2012 *Mission City SCENES*.
3. Note and file the Departmental Activity Report for the month of October 2011.
4. Approval for the use of City Electric forces for the installation of facilities at 1745 Walsh Avenue and for one feeder at Walsh Substation.
5. Acceptance of the Monthly Financial Status Reports for July 2011 as presented.
6. Acceptance of the Monthly Financial Status Reports for August 2011 as presented.
7. Acceptance of the work performed by Granite Rock Company dba Pavex Construction Division on South of Forest Neighborhood Street Improvements - Phases II and III and authorization to record the Notice of Completion with the County Recorder.
8. Acceptance of the public improvements performed by Redwood City Electric for Site 7053, EP 12,823, APN 216-29-109 & 092 located at 2972 Stender Way and authorization to record the Notice of Completion with the County Recorder.
9. Approval to delegate authority to the City Manager to approve

project related actions for the property located at 2500 De La Cruz Boulevard from December 14, 2011 to January 10, 2012.

B. Agreements

1. Approval of an Agreement and Covenant Running with the Land [Deferment of Public Improvements (Public Sidewalk)] (Along Santa Frontage of Property) with Coresite Coronado Stender, LLC to defer the installation of City standard sidewalk along a portion of 2972 Stender Way and authorization to record the Agreement with the County Recorder (APN 216-26-109; SC 18,508).
2. Approval of an Agreement for the Performance of Services with Brenntag Pacific, Inc., in an amount not to exceed $250,000, for bulk chemicals for the Donald Von Raesfeld (DVR) Power Plant.
3. Approval of Amendment No. 3 to Call No. 10-1 for Professional Services with Willdan Energy Solutions dba Intergy Corporation, at no additional cost to the City, to extend the term of the Call for the Retrocommissioning of City Facilities Third Party Energy Efficiency Program through June 30, 2012.

C. Reports for Information and Possible Action

1. Status Update on the Fiscal Year 2010-11 Audit and Comprehensive Annual Financial Report.
2. 2011 Annual Report/2012 City Calendar.
3. Addition of City Attorney Reports as Sub-item to Closed Session Matters.

D. Minutes to Note and File

1. International Exchange Commission - November 1, 2011.
2. Cultural Advisory Commission - November 7, 2011.

E. Routine Written Petitions for Approval

8. ITEMS SET FOR HEARING:

[Planning Commission items not being appealed, or which are not related to an appeal, will be heard under BOARDS AND COMMISSIONS FOR ACTION.] If you challenge a City Council land use decision in court, you may be limited to raising only those issues you or someone else raised at this hearing before the City Council or in written correspondence delivered to the City at, or prior to, the City Council hearing on the matter. (California Government Code Section 65009)

A. Adoption of a Resolution approving the issuance by the California Statewide Communities Development Authority (CA Communities) of Multi-Family Housing Revenue Bonds for the 2525 El Camino Real Senior Apartment Project.

9. WRITTEN PETITION:

A. Lee Ganey, 4272 Davis Street: Request for a Special Permit to allow the operation of Special Food Services Sales for business clientele and to-go customers. Staff Recommendation: Deny the Special Permit request because the sale of Special food Services does not conform to the current zoning of the property (PLN2011-08923).

10. BIDS AND PROPOSALS:

A. Award the contract for the Removal of Barriers to the Physically Challenged Fiscal Year 2011-12 project to Weber Tractor Service, in the amount of $152,190, and authorization to execute change orders up to 45% of the contract price or an amount not to exceed $68,486.

11. BOARDS AND COMMISSIONS FOR ACTION:

12. CONSENT ITEMS PULLED FOR DISCUSSION:

13. PUBLIC PRESENTATIONS:

This item is reserved for persons to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City. The law does not permit Council action on, or extended discussion of, any item not on the agenda except under special circumstances. The Council, or staff, may briefly respond to statements made or questions posed, and the Council may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on forms available by the door in the Council Chambers.

14. REPORTS FOR COUNCIL ACTION:

A. Approval of the reduction in furlough hours by 24 hours for the December 2011 to December 2012 Memorandum of Understanding (MOU) year for the following Bargaining Units: Unit #4 - City of Santa Clara Professional Engineers; Unit #5,7,8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #2 - Santa Clara Police Officer's Association and Unit #9A - Unclassified Police Management Employees and 48 hours (Suppression/Sift Employees) and 24 hours (for the non-shift 40 hours per week employees) for December 2011 to December 2012 MOU year for Unit #9B - Unclassified Fire Management Employees and 48 hours for Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171.

15. BILLS AND CLAIMS/PROGRESS PAYMENTS:

(Lists are available in the Council Office and the City Clerk's Office.)

A. Approval of Bills and Claims and Progress Payments.

16. REPORTS OF COUNCILORS AND SPECIAL COUNCIL COMMITTEES:

A. Reports regarding conference attendance, if any.

17. CITY MANAGER REPORTS:

18. CLOSED SESSION MATTERS:

A. Set January 10, 2012 at 5:30 pm for a Closed Session in the Council Conference Room for a Conference with Real Property Negotiator; pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator; pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); and Conference with Agency Labor Negotiator; pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit # 9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA).

19. ADJOURNMENT:

A. To Tuesday evening, **January 10, 2012** at 6:00 pm for interviews to fill vacancies on the Historical and Landmarks Commission and the International Exchange Commission in the lobby reception area adjacent to the City Clerk's Office and to 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

12/13/11

CLOSED SESSION NOTICE

City of Santa Clara, California

5:30PM

The **CITY COUNCIL OF THE CITY OF SANTA CLARA** will meet in closed session on **Tuesday, December 13, 2011,** at **5:30 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to Gov. Code § 54956.8
Property: APN: 104-43-051; APN: 104-43-052; APN: 104-43-030; APN: 104-42-014; and, APN: 104-42-019
Negotiating Party(ies): Cedar Fair and The San Francisco 49ers
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price, and terms of payment)

☒ **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to Gov. Code § 54956.8
Property: APN: 104-43-030
Negotiating Party(ies): Santa Clara Stadium Authority and The San Francisco 49ers
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

☒ **CONFERENCE WITH AGENCY LABOR NEGOTIATOR**
Pursuant to Gov. Code § 54957.6
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Employee Organization(s):
Unit #1 – Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2 – Santa Clara Police Officer's Association
Unit #3 – IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4 – City of Santa Clara Professional Engineers
Units #5, 7 & 8 – City of Santa Clara Employees Association
Unit #6 – AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9 – Miscellaneous Unclassified Management Employees
Unit #9A – Unclassified Police Management Employees
Unit #9B – Unclassified Fire Management Employees
Unit #10 – PSNSEA (Public Safety Non-Sworn Employees Association)

Date: December 7, 2011

RICHARD E. NOSKY, JR.
City Attorney

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12/13/11 3A

MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA FOR MEETING HELD ON TUESDAY EVENING, NOVEMBER 15, 2011

The City Council of the City of Santa Clara met at 5:00 pm, on the above-mentioned date, for a Closed Session in the Council Conference Room for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); and for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014 and APN 104-42-019 Negotiating Party(ies): Cedar Fair and JMA Ventures, LLC; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment). The Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA) was not held.

The Council then met at 7:05 pm for the regular scheduled meeting in the City Hall Council Chambers. The meeting was opened with the recitation of the Pledge of Allegiance and the reading of an Invocation Prayer.

2A. Present: Council Members Lisa M. Gillmor, Will Kennedy, Patrick Kolstad, Patricia M. Mahan, Jamie McLeod and Kevin Moore and Mayor Jamie L. Matthews.

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Staff present: City Manager, Assistant City Manager, Director of Planning and Inspection, Director of Public Works/City Engineer, City Attorney and City Clerk/Auditor.

3A. **MOTION** was made by Kennedy, seconded and unanimously carried with Mahan abstaining (not present at the meeting), that the **Minutes** for the meeting of **October 11, 2011** be adopted as written.

3B. **MOTION** was made by Kennedy, seconded and unanimously carried with Mahan abstaining (not present at the meeting), that the **Minutes** for the meeting of **October 11, 2011 - Special Meeting** be adopted as written.

4A. As an item of Continuance/Exceptions, the Council proceeded to consider rescheduling to January 24, 2012 the interviews to fill one vacancy for the full term ending June 30, 2015 and one vacancy for the partial term ending June 30, 2013 on the Senior Advisory Commission. In response to Council questions, the City Manager reviewed outreach efforts. **MOTION** was made by Moore, seconded and unanimously carried, that, per the City Clerk/Auditor's memo (11/10/11), the Council **reschedule** to January 24, 2012 at 6:00 pm the **interviews** to fill one vacancy for the full term ending June 30, 2015 and one vacancy for the partial term ending June 30, 2013 on the **Senior Advisory Commission** and **set** January 18, 2012 at 5:00 pm as the deadline for the receipt of applications.

4B. **MOTION** was made by Gillmor, seconded and unanimously carried, that, per the City Clerk/Auditor's memo (11/10/11), the Council **reschedule** to February 14, 2012 at 6:00 pm the **interviews** to fill one vacancy for the full term ending June 30, 2015 on the **Housing Rehabilitation Loan Committee** and **set** February 8, 2012 at 5:00 pm as the deadline for the receipt of applications.

5A. As a Special Order of Business, the Council proceeded with the presentation of the **November 2011 "Idea of the Month" Employee Suggestion Award** and Certificate of Recognition to **Carolyn McAllister** and **Judy Dawson**, Parks and Recreation Department, for their efforts in simplifying the **Senior Center registration card renewal process**. The City Manager reviewed the Senior Staff Aide's memo (11/08/11). The Mayor, on behalf of the Council, presented Ms. McAllister and Ms. Dawson with Certificates of Recognition and photographs were taken.

5B. Also as a Special Order of Business, the Mayor/Chairperson opened a joint Council/Redevelopment Agency (Agency)/Santa Clara Stadium Authority (Stadium Authority) meeting to consider setting December 6, 2011 for the consideration to approve or disapprove

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the proposed transfer of ownership of the California Great America Theme Park lease from the current lessee, Cedar Fair Entertainment Company, to the proposed lessee, JMA Ventures, LLC, or an affiliate of JMA. **MOTION** was made by Gillmor, seconded and unanimously carried, that, per the Director of Finance/ Redevelopment Agency Treasurer's memo (11/10/11), the Council **set December 6, 2011** for the consideration to approve or disapprove the **proposed transfer of ownership** of the **California Great America Theme Park** lease from the current lessee, **Cedar Fair Entertainment Company**, to the proposed lessee, **JMA Ventures, LLC**, or an affiliate of JMA and that the Agency **note and file** the Informational Memo regarding setting December 6, 2011 for Council consideration to approve or disapprove the proposed transfer of ownership of the California Great America Theme Park lease from the current lessee, Cedar Fair Entertainment Company to the proposed lessee, JMA Ventures, LLC or an affiliate of JMA.

6B.1 As an item of Unfinished Business, the Council/Redevelopment
6B.2 Agency (Agency)/Santa Clara Stadium Authority (Stadium Authority)
6B.3 proceeded to consider this evening's actions related to the **proposed San Francisco 49ers stadium** including, setting December 6, 2011 and December 8, 2011 at 7:00 pm for a "Committee of the Whole" study session to review the proposed Stadium Project Disposition and Development Agreement including the lease summary and preliminary finance plan and setting December 13, 2011 for a Public Hearing to consider the approval of the Stadium Project Disposition and Development Agreement; Informational Memo regarding the approval of the plans and specifications for the Stadium Site Preparation Project (Make Ready Work) (CE 11-12-11); and approval of the job description for Principal Planner, including setting the Control Point at $11,391 per month and adding this job description to the Conflict of Interest Code, Disclosure Category 1.

The Council/Agency/Stadium Authority proceeded to consider the Administrative Analyst to the City Manager's memo (11/08/11) regarding setting December 6, 2011 and December 8, 2011 at 7:00 pm for a "Committee of the Whole" study session to review the proposed Stadium Project Disposition and Development Agreement including the lease summary and preliminary finance plan and setting December 13, 2011 for a Public Hearing to consider the approval of the Stadium Project Disposition and Development Agreement. The City Manager/Executive Director answered Council/Agency/Stadium Authority questions. **MOTION** was made by Gillmor, seconded and unanimously carried, that, the Council/Agency/Stadium Authority **set December 6, 2011** and **December 8, 2011** at 7:00 pm for a **"Committee of the Whole" study session** to review the **proposed Stadium Project Disposition and Development**

Agreement including the **lease summary** and **preliminary finance plan** and **set December 13, 2011** for a **Public Hearing** to consider the approval of the **Stadium Project Disposition and Development Agreement**.

The Council/Agency/Stadium Authority proceeded to consider the Director of Public Works/City Engineer's memo (11/08/11) regarding the approval of **plans and specifications** for the **Stadium Site Preparation Project (Make Ready Work) (CE 11-12-11)**. The City Manager/Executive Director reviewed the memo and clarified that while the item has been presented to Council as information, the Stadium Authority has the following items for consideration later this evening: delegation of authority to the Executive Director for the Stadium Site Preparation Project (Make Ready Work) to award **construction contracts** to the lowest, responsive and responsible bidders; approval of **contract change orders** up to 15% of the contract amount; approval to **retain consultants** to **support construction** as appropriate; and direct the Executive Director to provide a report on actions taken on a bi-monthly basis. She then answered Council/Agency/Stadium Authority questions. **MOTION** was made by Gillmor, seconded and unanimously carried, that the Council/Agency **note and file** the Informational Memo regarding the approval of the plans and specifications for the Stadium Site Preparation Project (Make Ready Work) (CE 11-12-11). A Council/Agency/Stadium Authority discussion followed.

The Council proceeded to consider the Director of Human Resources memo (11/08/11). The City Manager reviewed the memo and answered Council questions. **MOTION** was made by Gillmor, seconded and unanimously carried, that the Council **approve** the **job description** for **Principal Planner**; **set** the Control Point at $11,391 per month; and **approve** the addition of this job description to the Conflict of Interest Code, Disclosure Category 1.

6C. Also as an item of Unfinished Business, the Council/ Redevelopment Agency (Agency) proceeded to consider the approval to **hold in abeyance** the **funding request** by the **Housing Trust of Santa Clara County** for **Fiscal Year 2011-12** funding until a ruling by the **California Supreme Court** on the **validity of AB 1X 26 and AB 1X 27** regarding the State of California's effort to eliminate redevelopment agencies and impose a payment obligation for continued agencies existence and approval to authorize the City Manager/Executive Director to prepare a **Funding Agreement** with the **Housing Trust of Santa Clara County** for Redevelopment Agency approval to commit $250,000 for affordable housing purposes if AB 1X 26 and AB 1X 27 are ruled to be invalid. The City Manager/Executive Director reviewed the Housing and Community

Services Division Manager's memo (11/04/11) and answered Council/Agency questions. Kevin Zwick, representing the Housing Trust of Santa Clara County, addressed the Council/Agency with general comments. **MOTION** was made by Gillmor, seconded and unanimously carried, that the Council/Agency **hold in abeyance** the funding request by the Housing Trust of Santa Clara County for Fiscal Year 2011-12 funding until a ruling by the California Supreme Court on the validity of AB 1X 26 and AB 1X 27 regarding the State of California's effort to eliminate redevelopment agencies and impose a payment obligation for continued agencies existence and **authorize** the City Manager/Executive Director to prepare a Funding Agreement with the Housing Trust of Santa Clara County for Redevelopment Agency approval to commit $250,000 for affordable housing purposes if AB 1X 26 and AB 1X 27 are ruled to be invalid.

6D. Also as a an item of Unfinished Business, the Council proceeded to consider the Director of Electric Utility's memo (11/07/11) regarding the approval to delegate authority to the City Manager to approve bid documents, solicit bids, award Public Work contracts, approve change orders up to 15% of the original contract price and award **Procurement Agreements** for **Public Works Contracts and Material Purchase Agreements** associated with **Mission Substation Construction**. The City Manager reviewed the memo and answered Council questions. **MOTION** was made by Moore, seconded and unanimously carried, that the Council **delegate** authority to the City Manager to approve bid documents, solicit bids, award Public Work contracts, approve change orders up to 15% of the original contract price and award Procurement Agreements for Public Works Contracts and Material Purchase Agreements associated with Mission Substation Construction.

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7A.1 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Senior Staff Aide's memo (10/31/11), the Council **approve** and authorize the publication of the **January 2012** ***Mission City SCENES***.

7A.2 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Acting Assistant City Manager's memo (11/07/11), the Council **accept** the **donation** from **Applied Materials**, in the amount of $5,000, for the underwriting of the **updating and reprinting** of the **Ulistac Natural Area Visitors Guide** and **authorize** the transmission of a letter of appreciation signed by the Mayor and the City Manager.

7A.3 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the City Manager's memo (11/03/11), the Council **note and file** the **Departmental Activity Report** for the month of **September 2011**.

7A.4 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Parks and Recreation's memo (11/07/11), the Council **accept** the **donation** from **Santa Clara Sporting Club**, in the amount of $2,000, to help support the **2011 and 2012 Wade Brummal Foundation** and **authorize** the transmission of a letter of appreciation signed by the Mayor and City Manager.

7A.5 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Parks and Recreation's memo (11/07/11), the Council **accept** the **donation** from **John H. Mc Creight**, in the amount of $336, to help support the **Thursday night dances** at the **Senior Center** and **authorize** the transmission of a letter of appreciation signed by the Mayor and City Manager.

7A.7 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Electric Utility's memo (10/03/11), the Council **approve** the use of **City Electric forces** for the **installation of facilities** at **3695 Flora Vista Avenue** and three feeders at **Walsh Substation**.

7A.8 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Housing and Community Services Division Manager's memo (11/02/11), the Council **approve**, and authorize the City Manager, to publish the **Notice of Availability** of **Community Development Block Grant (CDBG)** and **Home Investment Partnerships (HOME) Act Funding** in appropriate media and distribute the 2012-2013 application form and instructions.

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7A.9 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (11/08/11), the Council **approve** the **appointment** of **James Lucas** and **Edwin Maurer** to the **Bicycle Advisory Committee** for the terms expiring December 31, 2014.

7B.1 **MOTION** was made by McLeod, seconded and unanimously carried with Mahan abstaining (residence within 500 feet of subject property), that, per the Director of Planning and Inspection's memo (10/31/11), the Council **approve**, and authorize the City Manager to execute, an **Historic Property Preservation Agreement (Mills Act Contract)** with **James P. Collins** and **Perviz Tharani** for the property located at **1141 Main Street** (PLN2011-08856).

7B.2 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Planning and Inspection and City Attorney's memo (10/18/11), the Council **approve**, and authorize the City Manager to execute, a **Legal Services Agreement** with **Meyers, Nave, Riback, Silver & Wilson**, in an amount not to exceed $70,000, to provide **legal consultation** and **peer review** for the **zoning code**.

7B.3 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (11/08/11), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 1** with **Mark Thomas & Company, Inc.**, in the amount of $50,000 for a total amount not to exceed $248,542, for the **San Tomas Aquino Spur Trail Project** from **Cabrillo Avenue to El Camino Real** and **authorize** the City Manager to make minor, non-substantive modifications, if necessary (CE 11-12-03).

7B.4 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Public Works/City Engineer's memo (11/08/11), the Council **approve**, and authorize the City Manager to execute, an **Agreement for Design Professional Services** with **Alta Planning + Design**, in an amount not to exceed $412,740, for the **Vehicle Emissions Reductions Based at Schools (VERBS) Non-Infrastructure Program Fiscal Year 2011-13** and **authorize** the City Manager to make minor, non-substantive modifications, if necessary.

7B.5 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Electric Utility's memo (10/28/11), the Council **approve**, and authorize the City Manager to execute, **Call No. 11-2** for **Professional Services** with **Willdan Energy Solutions dba Intergy Corporation**, in an amount not to exceed $150,000, for the **Data Center Airflow Optimization Third Party Energy Efficiency Program**.

7B.6 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Electric Utility's memo (10/28/11), the Council **approve**, and authorize the City Manager to execute, an **Agreement for the Performance of Services** with **Hill Brothers Chemical Company**, in an amount not to exceed $150,000, for **bulk ammonia hydroxide 19%** for the **Donald Von Raesfeld (DVR) Power Plant**.

7B.7 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Acting Director of Streets and Automotive Services' memo (10/26/11), the Council **approve**, and authorize the City Manager to execute, an **Agreement for the Performance of Services** with **Bond Blacktop, Inc.**, in the amount of $213,600.21, for the **2011 Various City Streets Surface Reseal Project** and **authorize** the City Manager to execute change orders up to 10% of the agreement amount or $21,400.

7B.8 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Electric Utility's memo (10/28/11), the Council **approve**, and authorize the City Manager to execute, an **Agreement for the Performance of Services** with **Bay City Boiler & Engineering Co., Inc.**, in an amount not to exceed $100,000, to provide **high pressure steam maintenance** and repair to the **boilers** at the **generation facilities**.

7C.1 **MOTION** was made by McLeod, seconded and unanimously carried,
7C.3 that the Council **note and file** the following Informational Memos:
7C.4 City Council Committee List for Council Review (Executive Assistant to the Mayor and City Council - 11/09/11); Follow-up to the October 11, 2011 Presentation on the Silicon Valley Power (SVP) MeterConnect Program Regarding Wi-Fi System Expectations (Director of Electric Utility - 11/07/11); and Response to Kirk Vartan regarding the Bay Area Research and Extension Center (BAREC) Development Project at 90 N. Winchester Boulevard (City Manager - 11/07/11).

7D.1 **MOTION** was made by McLeod, seconded and unanimously carried, that the Council **note and file** the **Minutes** of the **Charter Review Committee** for the meeting of **September 22, 2011**.

7D.2 **MOTION** was made by McLeod, seconded and unanimously carried, that the Council **note and file** the **Minutes** of the **Charter Review Committee** for the meeting of **September 29, 2011**.

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7D.3 **MOTION** was made by McLeod, seconded and unanimously carried, that the Council **note and file** the **Minutes** of the **Historical and Landmarks Commission** for the meeting of **September 1, 2011** (Director of Planning and Inspection - 11/08/11).

7D.4 **MOTION** was made by McLeod, seconded and unanimously carried with Mahan abstaining (residence within 500 feet of one of the discussed projects), that the Council **note and file** the **Minutes** of the **Historical and Landmarks Commission** for the meeting of **October 6, 2011** (Director of Planning and Inspection - 11/08/11).

7D.5 **MOTION** was made by McLeod, seconded and unanimously carried, that the Council **note and file** the **Minutes** of the **Parks and Recreation Commission** for the meeting of **September 20, 2011**.

7D.6 **MOTION** was made by McLeod, seconded and unanimously carried, that the Council **note and file** the amended **Minutes** of the **Charter Review Committee** for the meeting of **September 1, 2011**.

7E.1 **MOTION** was made by McLeod, seconded and unanimously carried, that, per the Director of Planning and Inspection's memo (11/08/11), the Council **approve** the **Special Permit Request** submitted by **Santa Clara First Baptist Church - 3111 Benton Street**, to allow an **Outdoor Christmas Pageant** from December 8, 2011 through December 12, 2011, subject to conditions (PLN2011-08912).

8A. PUBLIC HEARING: The Mayor declared the public hearing open to obtain Citizen's views of the **Housing and Community Needs** for the **Fiscal Year 2012-13 Annual Plan** for the use of **Federal Community Development Block Grant (CDBG)** and **Home Investment Partnerships Act (HOME) Entitlement Funds**. The City Manager reviewed the Housing and Community Services Division Manager's memo (11/03/11). Colleen Hudgen, representing Live Oak Adult Day Services, Wanda Hale, representing Long Term Care Ombudsman, Georgia Bacil, representing Senior Adults Legal Assistance, Donna Marencia, representing Heart of the Valley - Services for Seniors (provided handout), Teresa O'Neill, representing St. Justin Community Ministry, and Rachelle Gann, representing Community Technology Alliance, addressed the Council with comments. With no further public input, **MOTION** was made by Gillmor, seconded and unanimously carried, that the Council **close** the public hearing. A Council discussion followed. **MOTION** was then made by Mahan, seconded and unanimously carried, that the Council **note and file** the citizen's views of the Housing and Community Needs for the Fiscal Year 2012-13 Annual Plan for the use of Federal Community Development Block Grant (CDBG) and Home Investment Partnerships Act (HOME)

Entitlement Funds. The Council duly noted and filed the letter received from Santa Clara Methodist Retirement Foundation, Inc (11/15/11).

8B.1 PUBLIC HEARING: The Mayor declared the public hearing open for consideration of the **proposed Senior Housing Project** located at **2525 El Camino Real**, including the adoption of a Resolution adopting the **Mitigated Negative Declaration (MND)** and **Mitigation Monitoring and Reporting Program (MMRP)**; adoption of a Resolution **rezoning** the property from Thoroughfare Commercial (CT) to Planned Development (PD) to allow the development of a **48-senior housing project** with **34 on-site parking spaces** and **site improvements** in conjunction with demolition of the existing commercial buildings, subject to conditions; adoption of a Resolution approving the **Tentative Parcel Map** for the proposed development on a 43,504 square foot lot, subject to conditions; and approval to refer the project design to the Architectural Committee for review and approval [CEQ2011-01122 / SCH#2011092007, PLN2011-08732, PLN2011-08748]. The City Manager introduced the item. The Director of Planning and Inspection reviewed his memo (11/08/11) and gave an electronic presentation, which included an overview of the proposal, affordable housing needs/commitments, California Environmental Quality Act (CEQA) issues, applicable General Plan policies, the project site plan, parking comparisons and renderings of the project. The Director of Planning and Inspection then answered Council questions and Council comments were made. The project applicant, Derek Allen - ROEM Development Corporation, addressed the Council with comments regarding the project and answered Council questions. The following people addressed the Council with comments of concern: Lorraine Kelley, Rosemary Grow (provided handout), Louis Rubalsara and Kevin Park. With no further public input, **MOTION** was made by Gillmor, seconded and unanimously carried (Mahan absent), that the Council **close** the public hearing. The City Manager, Director of Planning and Inspection, Director of Public Works/City Engineer and Mr. Allen answered questions that arose during public comment and additional Council questions. Further Council comments were made. **MOTION** was then made by Kolstad, seconded and unanimously carried (Mahan absent), that the Council **adopt Resolution No. 11-7886** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ADOPTING THE MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE SENIOR HOUSING PROJECT LOCATED AT 2525 EL CAMINO REAL, SANTA CLARA" which adopts the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP), as amended to include the Clipper Card as a transit pass option on an ongoing basis and the preparation and implementation of a parking management plan within the Conditions of Approval; **Resolution No. 11-7887** entitled, "A RESOLUTION OF THE CITY OF

SANTA CLARA, CALIFORNIA, REZONING THE PROPERTY LOCATED AT 2525 EL CAMINO REAL, SANTA CLARA FROM THOROUGHFARE COMMERCIAL (CT) TO PLANNED DEVELOPMENT (PD)" which rezones the property from Thoroughfare Commercial (CT) to Planned Development (PD) to allow the development of a 48-senior housing project with 34 on-site parking spaces and site improvements in conjunction with demolition of the existing commercial buildings, subject to conditions; **Resolution No. 11-7888** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE TENTATIVE PARCEL MAP FOR THE PROPERTY LOCATED AT 2525 EL CAMINO REAL, SANTA CLARA" which approves the Tentative Parcel Map for the proposed development on a 43,504 square foot lot, subject to conditions; and **refer** the project design to the Architectural Committee for review and approval [CEQ2011-01122 / SCH#2011092007, PLN2011-08732, PLN2011-08748]. The Council duly noted and filed the letter received from Santa Clara Housing Action Coalition (11/14/11).

MOTION was made by Gillmor, seconded and unanimously carried (Mahan absent), that the Council **excuse** Vice-Mayor Mahan from the remainder of the meeting.

8B.2 PUBLIC HEARING: The Mayor declared the hearing open for consideration of setting **December 13, 2011** for a **Public Hearing** to comply with the **Tax Equity and Fiscal Responsibility Act** for consideration of **Tax-Exempt Financing** issued by **California Statewide Communities Development Authority**. With no public input, **MOTION** was made by McLeod, seconded and unanimously carried (Mahan absent), that the Council **close** the public hearing. **MOTION** was then made by McLeod, seconded and unanimously carried (Mahan absent), that, per the Housing Community Services Division Manager's memo (11/04/11), the Council **set** December 13, 2011 for a Public Hearing to comply with the Tax Equity and Fiscal Responsibility Act for consideration of Tax-Exempt Financing issued by California Statewide Communities Development Authority and **authorize** the City Manager to publish the Notice of Public Hearing.

8B.3 **MOTION** was made by McLeod, seconded and unanimously carried (Mahan absent), that, per the Director of Planning and Inspection's memo (11/08/11), the Council **note and file** the **Informational Memo** regarding staff's **responses to questions** and comments from citizens regarding the **2525 El Camino Real, ROEM Senior Housing Project**.

10. 7C.2 The Council proceeded to consider the **Informational Memo** regarding options for **Internet Outreach** for **Community Input** to **Council Decision Making** and Creation of Policies to Support its Use - Trial Use of **Peak Democracy**. The City Manager reviewed the

Acting Assistant City Manager/Director of Information Technology's memo (10/14/11). **MOTION** was made by Kennedy, seconded and unanimously carried (Mahan absent), that the Council **note and file** the Informational Memo regarding options for Internet Outreach for Community Input to Council Decision Making and Creation of Policies to Support its Use - Trial Use of Peak Democracy.

10. 7A.6 The Council proceeded to consider the adoption of **Ordinance No. 1893** amending Section 10.05.470 (**Use of Streets for Storage and Vehicles Prohibited**) of Chapter 10.05 (**Motor Vehicle and Traffic Regulations**) of Title 10 (**Vehicles and Traffic**) of the City Code to **define substantial movement of a vehicle**. The City Manager reviewed the City Attorney's memo (11/18/11). **MOTION** was made by Gillmor, seconded and unanimously carried (Mahan absent), that the Council **adopt Ordinance No. 1893** entitled, "AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING SECTION 10.05.470 ('USE OF STREETS FOR STORAGE OF VEHICLES PROHIBITED') OF CHAPTER 10.05 ('MOTOR VEHICLE AND TRAFFIC REGULATIONS') OF TITLE 10 ('VEHICLES AND TRAFFIC') OF 'THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA' TO DEFINE SUBSTANTIAL MOVEMENT OF A VEHICLE" which amends Section 10.05.470 (Use of Streets for Storage and Vehicles Prohibited) of Chapter 10.05 (Motor Vehicle and Traffic Regulations) of Title 10 (Vehicles and Traffic) of the City Code to define substantial movement of a vehicle.

11. Under Public Presentations, Steve Chessin addressed the Council with general comments regarding the Charter Review Committee and proportional representation systems.

Natasha Humphries and Rahman Humphries-Hodge addressed the Council with comments regarding Boy Scout Troop 64 and the proposed San Francisco 49ers stadium.

Kevin Park addressed the Council with comments of concern regarding the tree removal at 900 Kiely Boulevard (former Kaiser Hospital site) for the Gallery at Central Park Project - PR II Kiely Boulevard LLC/Fairfield Residential, LLC (provided handout).

12A. **MOTION** was made by Kennedy, seconded and unanimously carried (Mahan absent), that, per the City Librarian's memo (11/02/11), the Council **accept California State Library, Library and Technology Act (LSTA) grant funds**, in the amount of $79,372, for the **Santa Clara City Library's Project Basic Employment Skills Training (BEST)** (account 112-1231-55580-(G)CSL07) and **approve** appropriation of the grant funds as follows: a) $31,311 to Library, As Needed Salaries (account 112-1231-87020-(G)CSL07) for as-needed library staff services for implementing Project BEST; b) $1,750 to the Library, Office Supplies (account 112-1231-87500-

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(G)CSL07) for supplies for the implementation of Project BEST; c) $7,500 to Library, Printing, Binding and Books (account 112-1231-87580-(G)CSL07) for resources to assist jobseekers; d) $33,811 to Library, Contractual Services (account 112-1231-87870-(G)CSL07) for the services of the Project Coordinator, a Career Counselor and presenters of workshops for job seekers; and e)$5,000 to the Library, Advertising and Community Promotion (account 112-1231-87710-(G)CSL07) for costs related to publicizing the services the library offers through Project BEST; and **approve** unexpended appropriations to be re-appropriated each fiscal year over the life of the grant.

12B. **MOTION** was made by Gillmor, seconded and unanimously carried (Mahan absent), that, per the Director of Finance's memo (11/08/11), the Council **approve** a **transfer**, in the amount of $3,000,000, to the **General Contingency Reserve** for **Working Capital (Emergency Reserve)** (account 063-44421) from **General Fund Operating Cash** (account 001-12010) and a transfer, in the amount of $3,938,111 (account 063-44422) to the General Contingency Reserve for Capital Projects from General Fund Operating Cash, effective June 3, 2011.

13A. **MOTION** was made by Kennedy, seconded and unanimously carried (Mahan absent), that the Council **approve** the **Bills and Claims** and **Progress Payments**.

14. Mayor Matthews made comments regarding attendance at local events, including: South of Forest Neighborhood Association (SOFNA) Walking Trail; Groundbreaking ceremony for the Presidio El Camino Apartment Project (1410-1456 El Camino Real) and Grand opening of the Microsoft Store at Valley Fair Mall.

Council Member Gillmor made comments regarding attendance at the grand opening for K1 Speed Indoor Go Kart Racing.

Council Member Moore made comments regarding attendance at local events, including: California's Great America media event for Global Winter Wonderland and Singing for a Greener Tomorrow at the Santa Clara Convention Center.

Council Member Kennedy made comments regarding the Veterans Day Ceremony at Central Park, dedicated in memory of Tom Sparacino.

Council Member McLeod made comments regarding the zoning code update process and noted that the City's tree lighting ceremony is on December 2, 2011 at 6:00 pm and the Holiday Historic Home Tour is December 2-3, 2011.

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15. The City Manager noted that later this evening the Santa Clara Stadium Authority will consider items regarding the Stadium Site Preparation Project (Make Ready Work) for the proposed San Francisco 49ers stadium including the plans and specifications for the first phase of the project.

16. The City Attorney reported that earlier in the evening the Council met at 5:00 pm for a Closed Session in the Council Conference Room for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; and for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014 and APN 104-42-019 Negotiating Party(ies): Cedar Fair and JMA Ventures, LLC; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action. The Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA) was not held.

16A. **MOTION** was made by Moore, seconded and unanimously carried (Mahan absent), that per the City Attorney's request, the Council **set November 16, 2011** at 5:30 pm for a Closed Session in the

Building Inspection - Permit Center Conference Room (West Wing of City Hall) for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and JMA Ventures, LLC; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); and for a Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit # 9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA).

MOTION was made by McLeod, seconded and unanimously carried (Mahan absent), that, per the City Attorney's memo (11/07/11), the Council **set December 6, 2011** at 5:30 pm for a **Closed Session** in the Council Conference Room for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority

and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and JMA Ventures, LLC; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); and for a Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA).

17A. **MOTION** was made by McLeod, seconded and unanimously carried (Mahan absent), that there being no further business, the meeting was adjourned at 9:48 pm **In Memory** of **Robert Gruhlke** (longtime Santa Clara resident and husband to former Senior Advisory Commissioner, Bessie Vizzusi-Gruhlke) and **William George** (native Santa Claran and resident), to Wednesday evening, **November 16, 2011** at 5:30 pm for a Closed Session in the Building Inspection - Permit Center Conference Room (West Wing of City Hall) and to Tuesday evening, **December 6, 2011** at 5:30 pm for a Closed Session in the Council Conference Room and at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

ATTEST: _____
City Clerk

APPROVE: _____
Mayor

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12/13/11

3B

MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA FOR SPECIAL MEETING HELD ON TUESDAY EVENING, NOVEMBER 29, 2011

The City Council of the City of Santa Clara met at 5:31 pm, on the above-mentioned date, for a special meeting in the City Hall Council Chambers.

Present: Council Members Lisa M. Gillmor, Patrick Kolstad, Patricia M. Mahan, Jamie McLeod and Kevin Moore and Mayor Jamie L. Matthews. Absent: Council Member Will Kennedy (excused).

Staff present: City Manager, City Attorney and Assistant City Clerk.

1. **MOTION** was made by Kolstad, seconded and unanimously carried (Kennedy absent), that, per the Executive Assistant to the Mayor and City Council's memo (11/28/11), the Council **excuse** Council Member Kennedy from attendance at this evening's meeting.

2. Under Public Presentations, James Rowen addressed the Council with comments regarding the proposed San Francisco 49ers stadium.

3A. **MOTION** was made by Mahan, seconded and unanimously carried (Kennedy absent), that the Council **recess** at 5:34 pm to a Closed Session in the Building Inspection - Permit Center Conference Room (West Wing of City Hall) for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and JMA Ventures, LLC; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); and Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or

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her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA).

The Council reconvened at 7:04 pm in the City Hall Council Chambers.

The City Attorney stated that the Council met in Closed Session in the Building Inspection - Permit Center Conference Room (West Wing of City Hall) for a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014; and APN 104-42-019; Negotiating Party(ies): Cedar Fair and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/ Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-030; Negotiating Party(ies): Santa Clara Stadium Authority and the San Francisco 49ers; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/ Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; a Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-43-051; APN 104-43-052; APN 104-43-030; APN 104-42-014 and APN 104-42-019; Negotiating Party(ies): Cedar Fair and JMA Ventures, LLC; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and that there was no reportable action; and for a Conference with Agency Labor Negotiator pursuant to Government Code Section 54957.6; City Negotiator: Jennifer Sparacino, City Manager (or her designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - International Brotherhood of Electrical Workers (IBEW) Local 1245; Unit #4 - City of Santa Clara Professional Engineers; Units #5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - American Federation of

State, County and Municipal Employees (AFSCME) Local 101; Unit #9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit #10 - Public Safety Non-Sworn Employees Association (PSNSEA) and that there was no reportable action. He also noted that there were no reportable actions for the Closed Sessions held on November 2, 2011, November 7, 2011, November 8, 2011 and November 16, 2011.

4A. **MOTION** was made by Mahan, seconded and unanimously carried (Kennedy absent), that there being no further business, the Council adjourn the special meeting at 7:05 pm to Tuesday evening, **December 6, 2011** at 5:30 pm for a Closed Session in the Council Conference Room and at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

ATTEST: _____
City Clerk

APPROVE: _____
Mayor

DRAFT

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B-1/4B-1 SA

Santa Clara All-America City 2001

Date: December 8, 2011

To: City Manager/Executive Director for Council Information/Stadium Authority Action

From: Administrative Analyst to the City Manager

Subject: Adoption of Resolution to Approve the Disposition and Development Agreement between the 49ers Stadium, LLC and Santa Clara Stadium Authority

EXECUTIVE SUMMARY:

Measure J passed by the voters in June 2010 authorized the City to move forward with the development of the Stadium subject to certain binding requirements to safeguard the City's general fund and enterprise funds. Since the adoption of Measure J several actions have been taken towards the development of the Stadium. These have included the approval of land use entitlements for the Stadium, the approval of several predevelopment agreements between the Stadium Authority and the 49ers Stadium, LLC ("StadCo") that provided funding for design and engineering work, the approval of a Naming Rights Marketing Agreement to begin the process of marketing Naming Rights, the approval of a marketing agreement with Legends to begin the sale of Stadium Builders Licenses ("SBLs") and the approval of a preopening services agreement with Volume Services, Inc. to provide preopening concessionaire services. Most recently, the Stadium Authority Board authorized the Executive Director to circulate requests for bids for the Stadium Site Preparation Project ("Make-Ready Work") preparing the Stadium Site and to award bids for the Mission Substation. The Stadium Authority is being asked to consider approval of the Disposition and Development Agreement between the Stadium Authority and StadCo, as well as a separate action to consider approval of a preliminary financing plan. The discussion section of this report provides an overall summary of the DDA and related documents.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Completion of the DDA, Stadium Lease Summary and an extensive list of related supporting documents is a major step toward completing a final financing plan and commencing construction of the Stadium. A series of Study Sessions have been held over the past five years through the evolution of the proposed 49ers Stadium Project to inform the Council/Stadium Authority and the community of progress to date. The December 6 and December 8, 2011 Study Sessions on the DDA and preliminary financing plan have demonstrated, as previously outlined in the Stadium update in June 2011, that while the approach to financing and operating the Stadium has been modified in certain details since the June 2009 Term Sheet, the modifications remain consistent with the requirements of the Term Sheet and Measure J.

ECONOMIC/FISCAL IMPACT:

The proposed DDA and related documents provide a feasible method of financing the development and operations of the Stadium that conform to the requirements of Measure J. Total cost of the Stadium is now estimated at $1.02 billion. NFL financing, Redevelopment Agency (RDA) contribution, and other revenues generated during construction from sources described herein are expected to pay a portion of the construction costs. The balance will come from the Stadium Authority incurring construction finance debt of up to $850 million. A consortium of lenders consisting of Goldman Sachs, U.S. Bank and Merrill Lynch, Pierce, Fenner & Smith/Bank of America ("Construction Lenders") is committing to providing the necessary construction financing. It is estimated that the Stadium Authority will obtain approximately $450 million from the Construction Lenders and $400 million on a subordinated basis from StadCo. Construction loan debt will then

be refinanced into long term debt that is expected to be lower than the construction debt because of Stadium revenues during construction. Stadium Authority revenues, including SBLs, Naming Rights, ticket surcharges, Community Facilities District ("CFD"), and the portion of non-NFL event net revenues not paid to the City as Ground Rent, as well as Facility Rent from StadCo (now estimated at about $30 million per year, up from $5 million at the time of the Term Sheet) will be available to pay the Stadium Authority debt service. The exact amount of the Facility Rent will be set to ensure that when combined with the Stadium Authority revenues, there are sufficient funds to pay all of the Stadium Authority's obligations, including its priority obligation of ground rent (base and performance) due to the City and the Stadium Authority operating expenses. Additionally, protections are built into the transaction to ensure that the Stadium Authority has the resources for debt repayment.

No City general funds or enterprise funds will be committed to repayment of Stadium Authority debt and the City's interest in the land will not be subordinated to any debt. The Stadium Authority's obligation to pay the base rent and performance rent required under the Ground Lease between the City and the Stadium Authority will be paid prior to payment of debt service to ensure that the City receives the projected fair market rent required under Measure J.

RECOMMENDATION:
That the Stadium Authority adopt the resolution to approve the Disposition and Development Agreement between the 49ers Stadium, LLC and Santa Clara Stadium Authority.

APPROVED:

Pamela J. Morrison
Administrative Analyst to the City Manager

Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:
1) ***Resolution to Approve Disposition and Development Agreement between 49ers Stadium, LLC and Santa Clara Stadium Authority***

I:\AGENDA REPORTS\2011\12.13.11 Resolution approving Stadium DDA.doc

DISCUSSION:

I. **DDA**

After the adoption of Measure J, staff and the 49ers began negotiating the terms of the DDA between the Stadium Authority and StadCo, based on the conceptual framework contained in the Term Sheet. The DDA is designed to provide the process for the completion of the design work on the Stadium and to set forth the overall financing structure of the Stadium. The DDA governs the parties' obligations until completion of construction of the Stadium, after which time the Stadium Lease will govern the parties' responsibilities and roles during operation of the Stadium.

A. Stadium Lease and Ground Lease

The DDA sets forth the conditions that must be met before the City enters into the Ground Lease with the Stadium Authority, the Stadium Authority enters into the Stadium Lease with StadCo, and the Stadium financing closes. In total there are over 30 conditions that must be met before the Stadium Lease is entered into, the financing is closed and construction of the Stadium commences. These conditions include requirements that the Stadium Authority and StadCo agree on the terms for the following agreements prior to the close of the financing: 1) a non-relocation agreement requiring the Team to play its home games in the Stadium for the term of the Stadium Lease; 2) a public safety agreement providing for reimbursement to the City for costs associated with public safety at the Stadium; and 3) a preliminary parking plan for the Stadium. Each of these agreements, as well as others will be presented to the Stadium Authority for approval prior to closing on the financing and the leases.

Under the terms of the DDA, the closing on the financing will not occur until the City and the Stadium Authority enter into a Ground Lease, leasing the Stadium site to the Stadium Authority. The Ground Lease must conform to the terms of Measure J and will have an initial term of 40 years with five four-year options to renew. Rent under the Ground Lease will be in accordance with the Term Sheet and will include a base rent starting at $180,000 per year and increasing to $1 million per year in the 11th year of the Ground Lease. Additionally, the City will receive performance rent equal to 50% of the net Non-NFL Event revenue.

The DDA also includes a summary of the proposed Stadium Lease. The Stadium Lease Summary, which is described in more detail below, provides the general framework for Stadium operations once construction is complete. However, because the Stadium Lease is a 40-year document, there are still significant issues that need to be negotiated. Over the next few months staff and StadCo will continue to negotiate the Stadium Lease consistent with the terms in the Stadium Lease Summary. The final Stadium Lease will require the Stadium Authority Board approval prior to the close of the financing.

B. Stadium Construction

The DDA also provides the overall framework for the Stadium construction. The DDA includes as an exhibit a form of a Design Build Agreement to be entered into with the general contractor. It is expected that the Stadium Authority will consider approval of the Design Build Agreement substantially in the form of the agreement attached to the DDA prior the close of the financing. Additionally, the Stadium Authority is expected to consider approval of a Construction Agency Agreement appointing StadCo as the Stadium Authority's construction agent to oversee construction of the Stadium. A form of the Construction Agency Agreement is also attached to the

DDA. Final approval of the Construction Agency Agreement by the Stadium Authority Board will occur at the same time as the approval of the Design Build Agreement.

C. Finance Plan Overview

The DDA includes as an attachment a preliminary development budget and preliminary financing plan for the Stadium. Prior to entering into the Stadium Lease and closing on the financing, an updated budget based on more detailed drawings and receipt of bids from subcontractors for a significant portion of the construction work will be approved. Additionally, a final Finance Plan consistent with the provisions set forth in the DDA will be presented to the Stadium Authority. The Finance Plan will identify and describe all funding sources to fund Stadium development costs, including StadCo's commitment to pay for cost overruns. The Finance Plan will, in all events, be consistent with the requirements of Measure J, including the prohibition on the use of the City's general or enterprise funds for development of the Stadium and the limits on the contributions of RDA and CFD funds.

The DDA describes the overall financing proposed for the Stadium development. Financing for the Stadium will come from a variety of sources including 1) the RDA contribution during construction and the advances made by StadCo against the RDA and CFD contributions; 2) proceeds from Naming Rights; 3) proceeds from the SBLs; 4) a loan or loans from the Construction Lenders; and 5) subordinated loans/advances from StadCo as described below.

D. Development Budget and Construction Funding Sources

The preliminary development budget attached to the DDA estimates that the total costs for the development of the Stadium will be approximately $1.02 billion. NFL financing, RDA contribution, and other revenues generated during construction from sources described herein are estimated to cover some portion of the construction costs, currently estimated to be in the range of $170 million or 17% of that cost. The remaining up to $850 million in construction costs will be paid for either with the proceeds of loans from the Construction Lenders and from StadCo or with revenues generated during construction.

Expected funding from SBLs, Naming Rights, and other sources will not be fully available when construction on the Stadium starts; therefore, the Stadium Authority needs the option to borrow funds up to the full amount necessary to construct the Stadium. The actual amount drawn on the construction loans may be less than the full amount available depending upon receipts from SBLs, Naming Rights and other sources of revenues.

The loan from the Construction Lenders ("Stadium Authority Construction Loan") to the Stadium Authority is expected to be in the range of $450 million and will be secured by the Stadium Authority's leasehold interest in the Stadium Site and the Stadium Authority's receipt of SBLs, Naming Rights and other revenue. The Stadium Authority Construction Loan principal and interest will mature not later than September 1, 2015.

StadCo is also expected to make a subordinated loan to the Stadium Authority of approximately $400 million to cover the construction costs not covered by the loan from Construction Lenders ("StadCo Subordinated Loan/Advance"). The StadCo Subordinated Loan/Advance is expected to have terms similar to the Stadium Authority Construction Loan but may be payable over about 25 years from Stadium completion. If the StadCo Subordinated Loan/Advance has a shorter term it is expected that StadCo will replace the StadCo Subordinated Loan/Advance with a longer term loan having a term of about 25 years at the time that the Stadium Authority

obtains long term financing replacing the Stadium Authority Construction Loan. Ground rent to the City, debt to Construction Lenders, and Stadium operating expenses would all have priority over re-payment of the StadCo Subordinated Loan/Advance. StadCo expects to obtain the funds needed to make the StadCo Subordinated Loan/Advance to the Stadium Authority primarily by borrowing from the same Construction Lenders providing the Stadium Authority Construction Loan.

It should also be noted that approximately $150 million of the $1.02 billion development costs will relate to tenant improvements within the Stadium and will be paid directly by StadCo.

E. Cost Overruns

As provided in the Term Sheet and Measure J, as a condition of close on the Stadium Lease and the financing, StadCo and the Stadium Authority will enter into an agreement requiring StadCo to pay any increases in the development costs related to construction of the Stadium that exceed the development costs in the approved final development budget.

F. Agency and CFD Funds

The above estimates assume that the RDA up-front investment will be approximately $10 million of the $40 million maximum commitment. The remaining RDA contribution will be advanced by StadCo to the Stadium Authority, to be repaid by the Stadium Authority as the Stadium Authority receives tax increment from the RDA, if available. Similarly, the proceeds from the CFD will not be available during construction so StadCo will advance the $35 million maximum CFD contribution during construction to be repaid from CFD bond proceeds and CFD revenues.

G. Reimbursement for City and Agency Costs

Predevelopment costs incurred by the City after execution of the Term Sheet will be reimbursed as part of the construction funding. Costs incurred by the RDA since the feasibility study are considered part of the $40 million of RDA funds committed to the project and will reduce the total amount of StadCo advance of RDA funds.

H. Long Term Financing

The Stadium Authority expects to obtain long term financing to pay off the remaining balance on the Stadium Authority Construction Loan (as that balance is reduced by revenues received during the construction period from Naming Rights, Stadium Builders Licenses, and other sources). Long term financing is expected to be in the form of a bond issue, loans from private lenders, or a combination of the two. Long term financing may also be used to pay down a portion of the StadCo Subordinated Loan/Advance, although it is anticipated that a significant portion will remain in place after completion of the Stadium and be repaid over about 25 years.

To assure the Construction Lenders that the Stadium Authority Construction Loan will be fully repaid, StadCo has agreed to purchase the portion of the Stadium Authority Construction Loan outstanding at maturity if the loan has not been fully repaid from SBL, Naming Rights or other revenues, or with long term loan proceeds.

Both the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance financing will be repaid from Stadium Authority revenues received during operations of the Stadium. These revenues will include

revenues received from Stadium events, Naming Rights, SBLs, NFL Ticket Surcharge and Facility Rent received from StadCo pursuant to the Stadium Lease. The Facility Rent, which was projected to be $5 million in the Term Sheet, is now expected to be in the range of $30 million annually in order to cover the costs of operation of the Stadium as well as debt service payments on the long term debt. The exact amount of the Facility Rent is anticipated to be determined prior to start of operations and will be set such that, when added to the other sources of Stadium Authority revenue, the total Stadium Authority revenue will be projected to be sufficient to pay all the City's Ground Rent, the estimated debt service and operating expenses of the Stadium Authority, including any required payments on the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance.

For both the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance, repayments will be made only after the payment of the Stadium's operating and management costs, including payment to the City of both the base rent and the participation rent required under the Ground Lease between the City and the Stadium Authority.

II. Stadium Lease Summary

When the Finance Plan is approved, and all other conditions to Closing have been satisfied, the Closing will occur, at which time the City will lease the Stadium site to the Stadium Authority and the Stadium Authority will enter into the Stadium Lease with StadCo. Following the Closing, the Stadium Authority will commence construction of the Stadium.

The Stadium Lease will lay out the specific provisions relating to how the Stadium will be operated following completion of construction. The Stadium Lease will have an initial term of 40 years with options for StadCo to renew the lease for a potential of 20 additional years. The Stadium Lease will be finalized at approximately the same time as the approval of the final Financing Plan. The DDA includes a Lease Summary that outlines the key principles of the Stadium Lease as follows:

A. Structure of Lease

StadCo will lease and be responsible for operating the Stadium during the six months of the year from August 1 to January 31, which includes all 49ers home games ("the NFL Season"). During the remaining six months of the year (the "Off Season"), the Stadium Authority will be responsible for the operations of the Stadium. As discussed below, the Stadium Authority expects to contract with a management company to oversee the day-to-day management of the Stadium.

B. Responsibility for Operating Expenses and Debt Service

This proposed lease structure will minimize the Stadium Authority's liability for expenses resulting from NFL Events. During the NFL Season, the Stadium Lease will be operated on a "triple net" basis. In the commercial real estate market, the term "triple net" means that the tenant, and not the landlord, is responsible for the payment of operating expenses. This approach is intended to significantly reduce the Stadium Authority's responsibility for operating expenses.

During the Off Season, the Stadium Authority will retain revenues from 50 % of the Non-NFL Events (under the Ground Lease 50% of the net Non-NFL Event revenue is paid to the City as ground rent) and will be responsible for operating expenses of the Stadium. Subject to approval by StadCo and the payment of certain

costs, the Stadium Authority will also have the ability to schedule Non-NFL Events in the Stadium during the NFL Season.

C. Annual Stadium Authority Revenue

The Stadium Authority will have numerous sources of funds to pay its debt service and operating expenses. These include funds from the sales of SBLs and Naming Rights, NFL Ticket Surcharge, income from Non-NFL Events, and the Facility Rent from StadCo.

D. Facility Rent and Potential Adjustment

The Facility Rent will be set such that, when added to the other sources of Stadium Authority revenue, the total Stadium Authority revenue will be projected to be sufficient to pay all the estimated debt service and operating expenses of the Stadium Authority, including any required payments on the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance.

It is expected that the Facility Rent payable by StadCo to the Stadium Authority in the first ten to fifteen years of the Lease will be significantly higher than the minimum Facility Rent of $5 million contemplated under the Term Sheet and will be in the range of $30 million per year.

The Stadium Lease will provide the Stadium Authority and StadCo with the option of adjusting the rent to a fair market rent based on appraisals effective in the 32nd year of the Lease. If the fair market rent reset results in a rent increase to StadCo of more than 20%, then StadCo would have the option to terminate the Stadium Lease. In the event StadCo elected to terminate the Stadium Lease, the Stadium Authority could 1) allow the lease to terminate; 2) exercise its rights to convert the lease to a 12-month triple net lease, as described below; or 3) withdraw the rent increase, in which case the lease will not terminate.

E. Management Agreement and Line of Credit

49ers Stadium Management Company (ManagementCo) will be responsible for management of the Stadium on a year-round basis. ManagementCo will be an entity related to both the 49ers and StadCo. The year-round management of the Stadium by a single entity will allow for a more efficient, cost effective and consistent control over concessionaires, maintenance operations and booking events at the Stadium. The terms and conditions of the Management Agreement will be negotiated in the coming months and subject to the approval of the Stadium Authority Board. As part of the Management Agreement, ManagementCo will provide the Stadium Authority with a Line of Credit that will be available in the event Stadium operating expenses, including debt service, exceeds Stadium revenues. The Line of Credit will have a maximum amount of $25 million. The Stadium Authority can draw on the line of credit at any time Stadium revenues are insufficient to pay all expenses including debt service on the Stadium Authority long term debt and the StadCo Subordinated Loan/Advance.

F. Stadium Authority Debt Obligations and Protections

As a protection to the Stadium Authority, the Stadium Lease will allow the Stadium Authority one or more opportunities during the term of the Stadium Lease to convert the Stadium Lease to a 12-month triple net lease (referred to as "Put Rights"). If the Stadium Authority were to elect this option, the Stadium Authority would no longer be responsible for the payment of all operating expenses of the Stadium. In addition, if the Stadium

Authority were to elect the 12-month triple net option, the Stadium Authority would be relieved of the obligation to pay the balance of the StadCo Subordinated Loan/Advance and any amounts outstanding on the line of credit from ManagementCo, and the long term Stadium Authority debt would either be assigned to StadCo or StadCo would continue to pay a Facility Rent so that the Stadium Authority would have sufficient funds to pay the required debt service. The Stadium Authority can exercise its Put Rights to convert the Stadium Lease to a 12-month triple net lease 1) anytime during year 13 of the lease with the lease converting to a 12-month triple net in year 15; 2) at any time that the outstanding balance on the Line of Credit exceeds $20 million; 3) at any time after year 13 that the outstanding balance on the line of credit exceeds $10 million for 24 consecutive months; 4) if the market rent reset process results in a reduced rent; or 5) if as a result of the market rent reset, StadCo gives a notice of termination.

G. Other Stadium Lease Provisions

The Stadium Lease will also cover maintenance and capital repair obligations of the parties, operations of the Stadium, allocation of operating costs, capital expenditure reserves and use of excess revenues. The Stadium Authority Board will be asked to approve the final Stadium Lease prior to execution.

III. Next Steps

A. Subsequent Approvals

The approval of the DDA, and in a separate action approval of the preliminary finance plan documents, is a significant step toward commencement of construction of the Stadium and represents the parties' commitment to proceed diligently and with best efforts to complete the steps required for the Closing, including reaching final agreement on the Stadium Lease, approval of a final Finance Plan and closing on the financing commitments.

If the Stadium Authority Board approves the DDA on December 13, 2011, there are a variety of subsequent actions that the Stadium Authority Board is expected to consider in the coming months, including:

1. Approval of the Final Finance Plan and Final Development Budget
2. Approval of the Final Stadium Lease
3. Approval by the City Council and the Stadium Authority of the Ground Lease for the Stadium site
4. Approval of a non-relocation agreement(s) between the Stadium Authority, the City and the Team requiring the Team to play home games at the Stadium for the term of the Lease
5. Approval of the Design Build Agreement for construction of the Stadium
6. Approval of a Construction Agency Agreement with StadCo providing for StadCo to oversee the construction of the Stadium
7. Approval of a Public Safety Agreement

RESOLUTION NO. _____ (STADIUM AUTHORITY)

A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT WITH THE FORTY NINERS STADIUM, LLC AND MAKING CERTAIN FINDINGS RELATED THERETO

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

WHEREAS, the Santa Clara Stadium Authority ("Authority"), a joint exercise of powers entity, created through Government Code Section 6500 *et seq.*, composed of the City of Santa Clara, the Santa Clara Redevelopment Agency and the Bayshore North Project Enhancement Authority, is engaged in various activities designed to lead to the development of a 68,500 seat stadium suitable for professional football ("Stadium Project") on a property located in the Bayshore North Redevelopment Project Area at Tasman and Centennial Drive ("Stadium Site");

WHEREAS, the City of Santa Clara owns the Stadium Site and intends to lease the Stadium Site to the Authority pursuant to the terms of a Ground Lease to be entered into between the City and the Authority;

WHEREAS, the Authority desires to enter into a Disposition and Development Agreement ("DDA") with Forty Niners Stadium, LLC ("StadCo") providing for the Authority to lease the Stadium to StadCo pursuant to the terms of a Stadium Lease and providing for the development and financing of the Stadium Project;

WHEREAS, StadCo is an affiliate of the San Francisco Forty Niners, Limited ("Team"), a member of the NFL. The Team is expected to sublease the Stadium from StadCo and play its home games in the Stadium;

WHEREAS, the construction of the Stadium Project will further the goals of the City of creating an entertainment destination in the Bayshore North Area and will provide significant economic benefits to the City and its residents and businesses;

WHEREAS, as further described in the attached Staff Report, the Stadium Project has previously undergone environmental review pursuant to the California Environmental Quality Act ("CEQA") and was considered as part of the project Environmental Impact Report certified for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (the "Stadium EIR"); and

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

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

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The Stadium Authority hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the Stadium EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the DDA with respect to the Stadium Project considered in the Stadium EIR. The Stadium Authority further specifically finds that there have <u>not</u> been any of the following occurrences since the approval of the Stadium EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the DDA:

A. There have not been substantial changes in the project analyzed in the Stadium EIR which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program;

B. There have not been substantial changes with respect to the circumstances under which the project analyzed in the Stadium EIR will be undertaken which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program; and

C. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the Stadium EIR and the Mitigation Monitoring Program which is relevant to the approval of the Stadium EIR and the Mitigation Monitoring Program as it relates to the Predevelopment Agreement.

3. The Stadium Authority hereby approves the DDA, which consists of the DDA and Exhibits A through O, and authorizes the Executive Director to enter into and execute the DDA on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Authority signatory, such determination to be conclusively deemed to have been made by the execution of the DDA by the Authority signatory. The Executive Director is authorized to implement the DDA and take all further actions and execute all other documents which are necessary or appropriate to carry out the DDA.

4. The Executive Director is hereby authorized and directed to file a Notice of Determination with respect to the DDA in accordance with the applicable provisions of CEQA.

5. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution and the DDA.

6. The Authority Secretary shall certify to the adoption of this Resolution.

7. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Board of the Santa Clara Stadium Authority hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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

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

AYES: BOARD MEMBER:

NOES: BOARD MEMBER:

ABSENT: BOARD MEMBER:

ABSTAINED: BOARD MEMBER:

ATTEST: _____

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

Attachments incorporated by reference:
1. Disposition and Development Agreement between 49ers Stadium, LLC and Santa Clara Stadium Authority

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DISPOSITION AND DEVELOPMENT AGREEMENT
(STADIUM LEASE)

BY AND BETWEEN THE

SANTA CLARA STADIUM AUTHORITY

AND

FORTY NINERS STADIUM, LLC

DATED AS OF DECEMBER 13, 2011

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DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE) (this "Agreement") is made as of December 13, 2011, by and between the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code sections 6500 *et seq.* ("Stadium Authority") and Forty Niners Stadium, LLC, a Delaware limited liability company ("StadCo)", with reference to the following facts, purposes, and understandings. All initially capitalized terms used herein are referenced in Article 1 and, except as otherwise stated, are either defined therein or elsewhere in this Agreement as specified in Article 1.

RECITALS

A. On June 8, 2010, the voters of the City approved Measure J, which endorses the construction, operation and maintenance of a Stadium suitable for the exhibition of professional football games and other events.

B. The Stadium Authority is a joint exercise of powers entity, created through Government Code sections 6500 *et seq.* originally formed by the City and the Agency, and currently comprised of, the City, the Agency and the Bayshore North Project Enhancement Authority pursuant to the Joint Powers Agreement for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.

C. StadCo is an Affiliate of the Team. The Team is a member club of the NFL. Subject to the terms of the Team Sublease, the Team will play its home games in the Stadium. The Stadium will also be used for events other than NFL Games such as other sporting events, concerts and civic events and to provide additional meeting spaces that can be used in conjunction with the City's Convention Center.

D. The City owns the Stadium Site depicted on the Site Plan attached as Exhibit A. The Stadium Site is located within the Redevelopment Project Area. The Stadium Authority intends to lease the Stadium Site from the City subject to the terms of the Ground Lease to be entered into concurrently with the Stadium Lease.

E. Upon satisfaction or waiver of the conditions to Close of Escrow set forth in Article 3 of this Agreement, the Stadium Authority and StadCo intend to enter into the Stadium Lease, a summary of which is set forth in Exhibit B.

F. Concurrently upon entering into the Stadium Lease, StadCo shall enter into the Team Sublease with the Team.

G. Concurrently upon entering into the Team Sublease, the Team shall enter into the Non-Relocation Agreement with the Stadium Authority and the City.

H. The construction of the Stadium will further the goals of the City of creating an entertainment destination in the Redevelopment Project Area, and will provide significant economic benefits to the City and its residents and businesses.

I. Pursuant to CEQA, the City (in its capacity as "lead agency") has prepared, reviewed, and certified that certain Final Environmental Impact Report. The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

J. On February 22, 2011, the Stadium Authority and the Agency entered into the Cooperation Agreement to Assist Publicly-Owned Stadium, and the parties re-executed such agreement with clarifying amendments on February 28, 2011 (collectively, the "Cooperation Agreement"), pursuant to which the Agency agreed to assist the Stadium Authority in funding the Development Costs of the Project.

K. On March 21, 2011, the Stadium Authority, the Agency and StadCo entered into the Predevelopment Funding Agreement ("Predevelopment Funding Agreement"), pursuant to which the parties thereto established a process for the reimbursement for payment of certain predevelopment costs relating to the Make-Ready Work from Net Tax Increment.

L. On April 5, 2011, the Stadium Authority and StadCo entered into the Naming Rights Marketing Agreement ("Naming Rights Marketing Agreement") pursuant to which the Stadium Authority granted StadCo the exclusive right and responsibility to market the Stadium Naming Rights on behalf of the Stadium Authority.

M. On July 5, 2011, the Stadium Authority and StadCo entered into the Agreement Regarding Stadium Design ("Stadium Design Agreement"), pursuant to which the Stadium Authority authorized StadCo to proceed with Design Development Documents and other Stadium design work on behalf of the Stadium Authority in advance of the execution of this Agreement, and to more specifically provide for the reimbursement of StadCo for certain Stadium design costs from the Development Fund. The Stadium Design Agreement is superseded by this Agreement and is hereby terminated and shall be of no further force or effect as of the Effective Date.

N. On July 15, 2011, the Stadium Authority and StadCo entered into the Stadium Marketing and Loan Agreement, pursuant to which StadCo agrees to supervise Legends' performance under the Legends SBL Agreement, coordinate the SBL marketing program with StadCo's marketing of Suites at the Stadium, and loan the Stadium Authority amounts due to Legends under the Legends SBL Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

"Action or Proceeding" means any proceeding, arbitration or other alternative resolution process, Governmental Authority investigation, hearing, audit, appeal, administrative proceeding

or judicial proceeding, including (a) litigation (including trial and appellate litigation, bankruptcy litigation, administrative proceedings, and hearings at all levels); (b) action by any Party to enforce any rights and remedies under, or to terminate, this Agreement; or (c) appraisal, arbitration, or mediation process or proceeding, whether or not identified as adversarial.

"Advance Documentation" means legal documentation, such as a loan agreement, promissory note and security agreement, evidencing the amount and repayment terms of any StadCo Advance, in form approved by the Stadium Authority and the parties thereto.

"Advance Interest Rate" means annual compound interest applied to the StadCo Advances at an annual fixed rate equal to the lower of the rate on 30-year BB-rated corporate bonds (determined as set forth in the Advance Documentation) or eight and one-half percent (8½%).

"Affiliate" means any Person which directly or indirectly through one or more intermediaries, (a) Controls, or (b) is Controlled by, or (c) is under Common Control with, another Person.

"Agency" means the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic.

"Agency Administrative Costs" is defined in the Cooperation Agreement.

"Agency Contribution" means funds that have been or will be contributed or pledged to the Project by the Agency pursuant to the Cooperation Agreement and the Predevelopment Funding Agreement, which includes the Agency Upfront Contribution.

"Agency Upfront Contribution" is defined in Section 8.1(a).

"Agreement" means this Disposition and Development Agreement (Stadium Lease).

"A.L.T.A." means American Land Title Association.

"Architect" means Howard, Needles, Tammen, & Bergendoff California Architects, P.C., a California corporation.

"Assumption Agreement" is defined in Section 18.6.

"Attorneys' Fees and Costs" means any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

"Board" means the governing body of the Stadium Authority.

"Building Permit" means a demolition, grading, excavation, foundation or other building permit issued by the City for the construction of the Stadium.

"Business Day" means any day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Santa Clara County, California.

"CEQA" means the California Environmental Quality Act enacted by Public Resources Code, Section 21000, et seq., together with the implementing guidelines set forth in California Code of Regulations, title 14, Section 15000 et seq., as each may be amended from time to time.

"Certificate of Completion" is described in Section 14.1 and substantially in the form of the attached Exhibit D.

"CFD" is defined in Section 10.1.

"CFD Bonds" is defined in Section 10.2.

"CFD Infrastructure" means the public facilities to be financed by CFD Bonds proceeds and constructed by the Stadium Authority as described in the CFD Reimbursement Agreement.

"CFD Reimbursement Agreement" means that agreement entered into by and between the CFD and the Stadium Authority pursuant to which, among other things, the CFD shall pay or reimburse the costs of the CFD Infrastructure.

"CFD Tax" is defined in Section 10.1.

"City" means the City of Santa Clara, a municipal corporation.

"Close of Escrow" means the close of escrow for the execution of the Stadium Lease by the Stadium Authority and StadCo as provided in Article 12.

"Commencement Date" is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

"Commencement of Construction" means the commencement of physical work by the Design-Build Contractor in the construction of the Project under a Building Permit in accordance with this Agreement. Commencement of Construction shall not include the construction of the Make-Ready Work.

"Common Control" means that two or more Persons are Controlled by the same other Person.

"Complete", "Completed" or "Completion" is defined in Section 14.1(c).

"Concession Operating Agreement" means the agreement, a form of which is attached as an exhibit to the Pre-Opening Services Contract, to be entered into by the Concessionaire and

ManagementCo pursuant to which the Concessionaire will provide concession services to the Stadium.

"Concessionaire" means Volume Services, Inc., or such other Person selected pursuant to the Stadium Lease to provide concession services to the Stadium.

"Consequential Damages" means any indirect damages, including, but not limited to, special, incidental, consequential or exemplary damages.

"Construction Agency Agreement" means the agreement, substantially in the form of Exhibit M attached to this Agreement, to be entered into by the Stadium Authority and the Construction Agent pursuant to which the Construction Agent will direct and manage the design and construction of the Stadium.

"Construction Agent" means StadCo, or its Affiliate approved by the Stadium Authority, acting in its capacity as construction agent under the Construction Agency Agreement.

"Construction Contract" means any of the Design-Build Agreement, a Separate Construction Contract or the Make-Ready Work Construction Contract. "Construction Contracts" means more than one Construction Contract.

"Control" means (a) direct or indirect management or control of the managing member or members in the case of a limited liability company; (b) direct or indirect management or control of the managing general partner or general partners in the case of a partnership, and (c) (i) boards of directors that overlap by more than fifty percent (50%) of their directors, or (ii) direct or indirect control of a majority of the directors in the case of a corporation. Controlled has a correlative meaning.

"Convention Center" means the Santa Clara Trade and Convention Center Complex.

"Cooperation Agreement" is defined in Recital J.

"Cost Overrun Commitment" means the written agreement acceptable to the Stadium Authority to be delivered at Close of Escrow pursuant to which StadCo commits to pay each Cost Overrun.

"Cost Overrun" is defined in Section 6.5.

"Deferred Items" is defined in Section 14.1(b).

"Deferred Maturity Date" is defined in Section 8.5

"Design-Build Agreement" means the contract or contracts for the design and construction of the Project to be entered into by the Stadium Authority with the Design-Build Contractor, substantially in the form of the attached Exhibit C.

"Design-Build Contractor" means TDJV or such other general contractor as approved by the Stadium Authority.

"Design Development Documents" means the drawings and narrative documents delineating structural dimensions, site features and elevations, the building core, materials and colors, and landscaping. The Design Development Documents shall fix and describe all design features, as well as the size, character, and quality of the entire Project as to architectural, structural systems.

"Development Costs" means costs incurred by the Stadium Authority in connection with the site preparation, design, entitlement, construction, marketing, financing, and development of the Improvements, consistent with the Scope of Development and this Agreement, subject to the limitations set forth herein.

(a) Included Items. Subject to the deductions and exclusions set forth in subsection (b) below, Stadium Development Costs shall consist of the following:

(i) Pre-DDA Costs. The Parties agree that the Pre-DDA Costs constitute Development Costs.

(ii) Pre-Development Costs. Predevelopment costs and closing costs in connection with the Close of Escrow incurred by the Stadium Authority from the Effective Date to and including the Close of Escrow, on account of the following, in accordance with the approved Final Development Budget, including, without duplication, but not limited to:

(1) fees and expenses for design, architectural and engineering, preconstruction and project management services, construction staking, materials testing, inspection, consulting and other similar professional services, including, without limitation, StadCo's Stadium Design Work Product purchase price as described in Section 5.16 of this Agreement;

(2) costs of marketing of Stadium Naming Rights and SBLs, including costs initially paid by StadCo and reimbursed by the Stadium Authority; and

(3) Make-Ready Work costs, including reimbursement by the Stadium Authority to StadCo of the Make-Ready Deposit other than the Initial Make-Ready Work Funds.

(iii) Post-Closing Costs. All "direct" and "indirect" costs of development of the Improvements incurred by the Stadium Authority, including, without duplication, amounts paid or payable from and after the Close of Escrow until the date of the first Stadium Event in the Stadium and completion of the Deferred Items, in accordance with the Final Development Budget:

(1) amounts due to the Design-Build Contractor under the Design-Build Agreement, and any Separate Contractor under a Separate Construction Contract;

(2) investigation and remediation of Hazardous Materials required by any Governmental Authority;

(3) costs of insurance premiums in accordance with the approved Insurance Program;

(4) promotional, marketing and advertising expenses for Non-NFL Events incurred prior to the Commencement Date;

(5) financing costs in connection with loans or other financing methods, including (A) interest and other charges on secured or unsecured construction financing and on line of credit and gap financing and other types of credit; standby fees, hedging fees, bond insurance premiums, discounts, fees for letters of credit, accommodation fees, contingency fees, guarantee fees and all other fees and payments however denominated and commissions in connection with such financing, and (B) other costs incurred in connection with the creation and implementation of such financing, such as brokers' fees, legal fees, appraisers' fees and trustees' fees and expenses in connection with any of the foregoing, but excluding repayment of any portion of the principal amount borrowed;

(6) accounting, legal fees and expenses and costs of consultants and Stadium Authority staff (whether staff is directly employed by the Stadium Authority or through a contract for services with the City or other entity) incurred with respect to periods prior to Completion or in connection with the initial leasing or financing of the Improvements and included in the approved Final Development Budget;

(7) capital expenditures required for public safety for the first year of Stadium operations, including the cost of equipment that is reasonably necessary for dedicated use at the Stadium only;

(8) Make-Ready Work costs; and

(9) costs of marketing of Stadium Naming Rights and SBLs, including costs initially paid by StadCo and reimbursed by the Stadium Authority; and

(b) Excluded Items. Notwithstanding the foregoing, any costs incurred to design or construct Tenant Improvements and any costs not included in the Final Development Budget shall be excluded from the calculation of Development Costs.

"Development Fees" means the development fees to be paid to the City in connection with the construction of the Project as set forth in the attached Exhibit E.

"Development Fund" is defined in Section 6.4.

"Effective Date" is defined in Section 20.28.

"Eligible CFD Expenditures" means expenditures from CFD Bonds proceeds and the CFD Tax revenue authorized by the Mello-Roos Act.

"Entitlements" means, collectively, any zoning approvals, conditional use permit and any other discretionary approvals or permits required by any Regulatory Agency for the Commencement of Construction of the Project, including but not limited to a planned development zoning amendment, the vacation of Centennial Boulevard south of Tasman Boulevard. "Entitlements" do not include the Building Permit.

"Environmentally Dangerous Area" is defined in Section 12.7.

"Escrow" is defined in Section 12.1.

"Executive Director" means the Executive Director of the Stadium Authority.

"Extended Close of Escrow" is defined in Section 12.5(b).

"Facility Rent" shall mean the fixed rent for the Stadium paid to the Stadium Authority by StadCo, as described in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

"Final Construction Documents" means the construction documents based on the GMP Set, approved by the City in connection with the issuance of the Building Permit.

"Final Development Budget" means the budget approved by the Stadium Authority pursuant to Section 6.2(c) setting forth the estimated Development Costs.

"Final Environmental Impact Report" means that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project dated December 8, 2009, for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing culminating in the adoption of Resolution No. 09 7679 on December 8, 2009.

"Final Financing Plan" means the detailed plan approved by the Stadium Authority pursuant to Section 6.3 identifying the funding sources for the payment of the Total Development Costs set forth in the Final Development Budget.

"Fiscal Year" means each twelve month period, commencing on July 1st and ending on June 30th of each calendar year.

"Force Majeure" is defined in Section 20.8(a).

"Funding Agreement" means that agreement to be entered into by and among the Stadium Authority, StadCo, and any lender providing financing for the development of the Stadium identified in the Final Financing Plan, governing the deposit and disbursement of the funds for the payment of Total Development Costs set forth in the Final Development Budget.

"GMP" means the guaranteed maximum price determined pursuant to the Design-Build Agreement.

"GMP Set" means the drawings, specifications and other documents that form the basis for the Initial Guaranteed Maximum Price established pursuant to the Design-Build Agreement, which documents shall fix and describe all design features, including, sustainable design features, as well as the size, character, and quality of the entire Stadium as to architectural, civil and structural components and mechanical, electrical, plumbing and fire protection systems, structural dimensions, elevations, materials and colors, landscaping, and other features reasonably required by the Stadium Authority, all of the foregoing as reasonably required to

define the scope of the Design-Build Contractor's obligations under the Design-Build Agreement.

"Governmental Authority" means any federal, state, local or foreign governmental entity, authority or agency, Regulatory Authority, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under applicable laws or by agreement of the Parties with an interest in such dispute.

"Ground Lease" means that certain ground lease between the City and the Stadium Authority for the ground lease of the Stadium Site to the Stadium Authority by the City.

"Ground Lease Non-Disturbance Agreement" is defined in Section 3.6.

"Hazardous Materials" is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

"Improvement Agreement" is defined in Section 4.5.

"Improvements" means all physical construction on and off the Stadium Site as described in the Scope of Development (including, but not limited to the Stadium and CFD Infrastructure).

"Initial Guaranteed Maximum Price" or "IGMP" means the initial guaranteed maximum price determined pursuant to the Design-Build Agreement.

"Initial Make-Ready Work Funds" is defined in the Section 4.4.

"Insurance Program" is defined in Section 13.3.

"Joint Escrow Instructions" is defined in Section 12.1.

"Joint Powers Agreement" is the agreement dated as of February 22, 2011, which agreement establishes the Stadium Authority, originally entered into by and between the City and the Agency, as subsequently amended by that certain First Amendment to the Joint Exercise of Powers Agreement dated June 28, 2011 to add the Bayshore North Project Enhancement Authority as a party, and as it may be amended from time to time subject to the terms of Section 2.4 of this Agreement.

"Law" means federal, state or local law, ordinance, rule, regulation or order of any Governmental or quasi-Governmental Authority, or any license, permit or other governmental approval.

"LEED" is defined in Section 5.4.

"LEED Accredited Professional" means a person certified as such by the U.S. Green Building Council.

"Legal Holiday" means any day, other than a Saturday or Sunday, on which the City's administrative offices are closed for business.

"Legends" means Legends Premium Sales, LLC.

"Line of Credit Agreement" means the agreement between the Stadium Authority and ManagementCo described in Section 16.2 and which incorporates the terms of the Line of Credit Agreement Summary.

"Line of Credit Agreement Summary" means the summary of material terms of the Line of Credit Agreement set forth in the attached Exhibit O.

"Litigation Force Majeure" is defined in Section 20.8(b).

"Logical Evolution" is defined in Section 5.5.

"Loss" is defined in Section 12.7(b).

"Make-Ready Deposit" is defined in Section 4.4.

"Make-Ready Work" means work in the area of the Stadium Site required to prepare the Stadium Site for construction and to satisfy conditions to the Subdivision Map, as generally described in the Predevelopment Funding Agreement and as more specifically set forth in the Make-Ready Work Construction Contract and the Improvement Agreement.

"Make-Ready Work Agency Agreement" means the agreement to be entered into by the Stadium Authority and the Make-Ready Work Construction Agent pursuant to which StadCo will direct and manage the construction of the Make-Ready Work as described in Section 4.2(f).

"Make-Ready Work Construction Agent" means StadCo, or its Affiliate approved by the Stadium Authority, acting in its capacity as construction agent under the Make-Ready Work Agency Agreement.

"Make-Ready Work Construction Contract" is defined in Section 4.2(h).

"Make-Ready Work Contractor" means the general contractor that enters into one or more contracts approved by the Stadium Authority and StadCo for the construction of the Make-Ready Work.

"Make-Ready Work License" means an encroachment permit or license agreement granted to the Stadium Authority by the City authorizing access to City property as necessary to construct the Make-Ready Work.

"ManagementCo" is defined in Section 16.1.

"Maturity Date" is defined in Section 7.4.

"Mello-Roos Act" is defined in Section 10.1.

"Memorandum of Agreement" means the memorandum of this Agreement suitable for recordation in the Official Records, and substantially in the form of Exhibit K.

"Memorandum of Ground Lease" means the memorandum of the Ground Lease suitable for recordation in the Official Records.

"Memorandum of Stadium Lease" means the memorandum of the Stadium Lease suitable for recordation in the Official Records.

"Memorandum of Team Sublease" means the memorandum of Team sublease suitable for recordation in the Official Records.

"Mitigation Measures and Conditions of Approval" means those mitigation measures relating to the Project as described in the attached Exhibit L, and any other relevant conditions imposed through the Entitlements.

"Mortgagee" means a Tenant Mortgagee or Landlord Mortgagee, as applicable, as each such term is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

"Naming Rights Marketing Agreement" is defined in Recital L.

"Net Tax Increment" means Tax Increment, generated in the Redevelopment Project Area for the then current Fiscal Year net of the following amounts: (a) amounts required to be set aside in the Low and Moderate Income Housing Fund pursuant to California Health & Safety Code Section 33334.3; (b) existing debt service payments on the 1992 North Bayshore Redevelopment Project Area Tax Allocation Bonds, the 1999 North Bayshore Redevelopment Project Area Tax Allocation Bonds, the 2002 North Bayshore Redevelopment Project Area Tax Allocation Bonds, and the 2003 North Bayshore Redevelopment Project Area Tax Allocation Bonds, (c) payments on the following City/Agency Reimbursement Agreements: Reimbursement Agreement dated as of July 1988, Reimbursement Agreement dated as of March 1, 1989, Reimbursement Agreement dated as of June 30, 1998; Reimbursement Agreement dated as of 2002, (d) pass-through payments to local taxing agencies as required by Health & Safety Code Section 33607.5, Health & Safety Code Section 33676 or any successor legislation (e) other State mandated payments, including, without limitation, the County of Santa Clara Administration Fee, as appropriate, payments to the Education Revenue Augmentation Fund and Supplemental Education Revenue Augmentation Fund (or such successor replacement funds as may be enacted), but not including any State-mandated payments to taxing entities made directly or indirectly by any successor entity to the Agency, (f) debt service payments on the 2011 North Bayshore Redevelopment Project Area Tax Allocation Bonds; and (g) Agency Administrative Costs, escalated by four percent (4%) annually, commencing on July 1, 2009 and continuing on each July 1st thereafter.

"NFL" means the National Football League.

"NFL Events" is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

"NFL Games" is defined in the Lease Summary or following execution by the Parties, the Stadium Lease.

"Non-NFL Events" is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

"Non-Relocation Agreement" means an agreement, or the agreements, among the City, the Stadium Authority and the Team pursuant to which the Team will commit, conditioned on the Completion of the Stadium, to play in the Stadium not less than one preseason game each year (so long as there are at least two scheduled preseason home games in that year) and all of its regular season and post-season home games for the forty (40) years term of the Stadium Lease and the Team Sublease, except as may be prescribed by the NFL or as may otherwise agreed upon by the Team, 49ers Stadium Company and the Stadium Authority (for example, during reconstruction in the event of a casualty).

"Official Records" means, with reference to the recordation of documents, the Official Records of the County of Santa Clara.

"Outside Closing Date" means December 31, 2014, subject to extension pursuant to Section 3.1(c) of this Agreement.

"Party" means the Stadium Authority or StadCo, as applicable.

"Permitted Exceptions" means the exceptions to title with respect to the Stadium Site set forth in the attached Exhibit F.

"Person" or "Persons" means any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

"Pre-DDA Costs" means Development Costs, originally incurred on behalf of the Stadium Authority prior to the execution of this Agreement, by StadCo, the City, the Agency and the Stadium Authority, which are included in the Preliminary Development Budget and shall be included in the Final Development Budget.

"Pre-Opening Services Contract" means the Pre-Opening Services Contract-Concessions dated as of July 5, 2011, by and between the Stadium Authority, StadCo and the Concessionaire.

"Predevelopment Funding Agreement" is defined in Recital K.

"Preliminary Development Budget" means the preliminary development budget attached as Exhibit G.

"Preliminary Financing Plan" means the preliminary Financing Plan attached as Exhibit H.

"Premises" is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

"Procurement Plan" means the Subcontractor Selection and Procurement Plan approved by the Board on July 5, 2011, as the same may be amended from time to time, or any substitute subcontracting competitive bid process adopted by the Board pursuant to California Government Code Section 6532.

"Professional Efforts" means the degree of care and skill and effort expected of managers supervising and managing the design, development and construction of comparable stadium projects consistent with sound business practices.

"Project" means the development of the Improvements.

"Project Documents" means the Schematic Design Drawings, the Design Development Documents, the GMP Set, the Construction Documents, the Make-Ready Work plans and specifications, and the Separate Contract plans and specifications.

"Public Records Act" is defined in Section 20.26.

"Public Safety Agreement" means the agreement entered into among the Stadium Authority, StadCo and the City pursuant to which the City will be reimbursed for public safety costs, which obligation shall bind StadCo as tenant, or any subsequent tenant, under the Stadium Lease, all as more specifically set forth in the Ground Lease and the Stadium Lease.

"Public Works Director" means the City employee designated by the City as the Public Works Director.

"Records" is defined in Section 15.1.

"Redevelopment Plan" means the Redevelopment Plan for the Bayshore North Project dated August 22, 1973, adopted by the City Council of the City of Santa Clara on December 28, 1973, as such plan has been amended from time to time.

"Redevelopment Project Area" means that certain Bayshore North Redevelopment Project Area established by the Agency pursuant to the Redevelopment Plan, as such area has been amended from time to time.

"Regulatory Agency" means any governmental agency or political subdivision having jurisdiction over the Stadium Site or construction of the Improvements.

"Related Agreements" means the Ground Lease, the Stadium Lease, the Team Sublease and the Stadium Authority Financing Documents.

"Released Parties" is defined in Section 12.7(b).

"Rent Schedule" means a schedule of the Facility Rent that would be payable by StadCo each year during the term of the Stadium Lease. The Rent Schedule will include a formula or standard for the determination or adjustment of the Facility Rent as of the closing of the Takeout Financing such that the Facility Rent, together with other amounts payable by StadCo under the Stadium Lease and other revenues of the Stadium Authority will provide the Stadium Authority

with funds required to pay rent payable by the Stadium Authority under the Ground Lease, the Stadium Authority's operating and maintenance expenses of the Stadium and debt service on the Takeout Financing.

"Responsible Party" and "Responsible Parties" are defined in Section 13.2.

"Responsible Party Contract" and "Responsible Party Contracts" are defined in Section 13.2.

"SBL Revenue" means all revenues from the sale of SBLs.

"Schedule of Performance" means the schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of a leasehold interest in the Premises to StadCo and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit I.

"Schematic Design Drawings" means the schematic drawings for the Stadium previously submitted to the City, excerpts from which were approved by the City Council on November 9, 2010, by its Resolution No. 10-7784.

"Scope of Development" means the narrative description of the Project attached as Exhibit J.

"Security Financing Interest" means any mortgage, deed of trust, or other reasonable method of security.

"Separate Construction Contract" means a construction contract entered into by the Stadium Authority (or, with respect to Tenant Improvements, by StadCo) and a Separate Contractor pursuant to this Agreement for construction of one or more components of the Separate Construction Work.

"Separate Contractor" means a contractor performing Separate Construction Work pursuant to a Separate Construction Contract.

"Separate Construction Work" is defined in Section 5.12.

"Site Plan" means the map attached to this Agreement as Exhibit A.

"StadCo" means Forty Niners Stadium, LLC, a Delaware limited liability company.

"StadCo Advances" means collectively StadCo Agency Advance and the StadCo CFD Advance.

"StadCo Agency Advance" is defined in Section 8.2.

"StadCo CFD Advance" is defined in Section 8.3.

"StadCo Design Professionals" means design professionals, other than the Architect, retained by StadCo to perform Stadium design work, including the preparation of the Schematic

Design Drawings, the Design Development Documents, the GMP Set and the plans and specifications for the Make-Ready Work.

"StadCo Event of Default" is defined in Section 19.3(a).

"StadCo Purchase Commitment" is defined in Section 8.5.

"StadCo's Stadium Design Work Product" means StadCo's right, title and interest in the Schematic Design Drawings, the Design Development Documents and the GMP Set, and any other permits, entitlements or work products relating to the Stadium design, including, but not limited to the Final Environmental Impact Report, the Pre-Opening Services Contract and the Stadium design related preconstruction services provided by TDJV.

"Stadium" means a stadium to be constructed on the Stadium Site suitable for NFL games, with a permanent seating capacity of up to 68,500 seats (with the possibility for expansion to approximately 75,000 seats for larger events such as an NFL Super Bowl), landscaping and infrastructure, all as more fully set forth in the Scope of Development.

"Stadium Authority" means the Stadium Authority of Santa Clara, a joint exercise of powers entity, created through Government Code sections 6500 *et seq.*.

"Stadium Authority Event of Default" is defined in Section 19.2(a).

"Stadium Authority Exclusive Facilities" is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

"Stadium Authority Financing" means any financing by the Stadium Authority the proceeds of which are used to fund the Development Costs of the Stadium, as more particularly described in the Final Financing Plan, including without limitation, the proceeds of the Subordinated Loan or any other financing used to pay Development Costs that is supported by a pledge by the Stadium Authority of Stadium Naming Rights Revenue, SBL Revenue, and/or rent payable under the Stadium Lease and/or any other revenues of the Stadium Authority.

"Stadium Authority Financing Documents" means the documents entered into by the Stadium Authority to document a Stadium Authority Financing, including indentures, loan agreements, promissory notes, and security agreements.

"Stadium Authority Sources" means all funding sources available to the Stadium Authority to pay Development Costs, as and to the extent set forth in the Final Financing Plan. Stadium Authority Sources will include the proceeds of the Stadium Authority Financing and, to the extent available to pay Development Costs, may also include the Agency Contribution, CFD reimbursements, StadCo Advances, Stadium Naming Rights Revenue, SBL Revenue, and/or rent payable under the Stadium Lease.

"Stadium Builders Licenses" and "SBLs" means licenses issued to patrons by the Stadium Authority for the right to purchase season tickets for the Team's home games at the Stadium and a preferential right to purchase tickets for Non-NFL Events.

"Stadium Design Agreement" is defined in Recital M.

"Stadium Events" is defined in the Stadium Lease Summary, or following execution by the Parties, the Stadium Lease.

"Stadium Lease" means the lease agreement between the Stadium Authority and StadCo, which incorporates the terms of the Stadium Lease Summary in substantial form.

"Stadium Lease Non-Disturbance Agreement" is defined in Section 3.6.

"Stadium Lease Summary" means the summary of material terms of the Stadium Lease set forth in the attached Exhibit B.

"Stadium Management Agreement" means the agreement entered into between the Stadium Authority, StadCo and ManagementCo which shall describe the rights and obligations of the parties thereto with respect to each other in connection with the management and operation of the Stadium.

"Stadium Naming Rights" means the right of a Person to designate the name of the Stadium, and certain attendant rights, including, without limitation, such signage, access and other Stadium-related rights.

"Stadium Naming Rights Agreement" means an agreement to be entered into by and between the Stadium Authority and one or more Persons with respect to the sale of the Stadium Naming Rights.

"Stadium Naming Rights Revenue" means all revenues from the sale of Stadium Naming Rights pursuant to the Stadium Naming Rights Agreement.

"Stadium Site" means the premises, including the land upon which the Stadium shall be located, that shall be leased from the City to the Stadium Authority under the Ground Lease, as generally depicted in the Site Plan.

"State" means the State of California.

"Subdivision Map" means that certain final map of the Stadium Site based on the preliminary parcel map approved by the City.

"Subordinated Loan" means the loan to the Stadium Authority by StadCo as further described in Section 8.4.

"Subordinated Loan Documents" shall mean the documents executed by the Stadium Authority and StadCo evidencing the Subordinated Loan, including without limitation, a promissory note, loan agreement and such other documents as may be reasonably required to effectuate the Subordinated Loan.

"Substantial Completion" is defined in the Design-Build Agreement.

"Suites" is defined in the Lease Summary, or following execution by the Parties, the Stadium Lease.

"Summary of Parking Rights" means the Summary of Parking Rights on City Owned Properties, attached as Exhibit N, summarizing the rights of the Stadium Authority and StadCo to use certain publicly-owned parking parcels for parking, which rights shall be appurtenant to the interests of the Stadium Authority under the Ground Lease and the interest of StadCo under the Stadium Lease.

"Takeout Financing" means a financing by the Stadium Authority to extend, renew, replace, refund or refinance any Stadium Authority Financing.

"Tax Increment" means that portion of taxes levied upon taxable property in the Redevelopment Project Area which is allocated to and paid into a special fund of the Agency pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Community Redevelopment Law and Section 16 of Article XVI of the Constitution of the State of California, including all subventions or payment in lieu of business inventory subventions received by the Agency.

"TDJV" means Turner/Devcon Joint Venture, which is a joint venture of Turner Construction and Devcon Construction.

"Team" means the San Francisco Forty Niners, Limited, a California limited partnership.

"Team Make-Ready Work License" is defined in Section 4.2(b).

"Team Sublease" means the sublease between StadCo and the Team for the subleasing of the Stadium by the Team.

"Tenant Improvements" means improvements within the Stadium that are designated pursuant to the Stadium Lease to be owned by, and constructed at the cost of StadCo or its subtenants.

"Tenant Improvement Costs" means the costs incurred by StadCo in connection with the design, construction, marketing, financing, and development of the Tenant Improvements.

"Term" is defined in Section 2.1.

"Title Company" means Chicago Title Company, or any other Title Company selected by the Parties to issue the title policies and administer the Escrow as required by this Agreement.

"Title Defect" is defined in Section 12.5(b).

"TOT" means the transient occupancy tax imposed by the City on hotel occupancy in the City.

"Total Development Costs" means the sum of Development Costs and Tenant Improvement Costs.

"Total Development Costs Statement" is defined in the Construction Agency Agreement.

"Training Facility " means the premises under the Training Facility Lease, including the Team's headquarters and training facility at 4949 Centennial Boulevard, Santa Clara, California.

"Training Facility Lease " means that certain Lease Agreement between the Team and the City for the Training Facility originally entered into as of February 12, 1987, as amended.

"Training Facility Lease Amendment" means an amendment to the Training Facility Lease, in form satisfactory to the Team and the City, extending its term to be co-terminus with the Stadium Lease, adjusting the leased premises to exclude certain property included in the Stadium Site, and modifying other non-economic terms to be coordinated with the Stadium Lease.

"Transfer" is defined in Section 18.1.

"Wrap-Up" is defined in Section 13.3.

ARTICLE 2.
GENERAL

Section 2.1. Term. The term of this Agreement shall commence on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, shall terminate on the later of the recordation of the Certificate of Completion pursuant to Section 14.1, or the closing of the Takeout Financing (the "Term").

Section 2.2. Relationship of this Agreement to Stadium Lease. This Agreement addresses, among other matters, the conditions to the Close of Escrow and the delivery of the Stadium Lease to StadCo from the Stadium Authority, the general scope of the Stadium Authority's obligations to design and construct the Project, and the obligations of the Parties relating to the financing for development of the Project. If the conditions to the Close of Escrow set forth in Article 3 are satisfied, then upon Close of Escrow, the Stadium Authority will enter into the Stadium Lease with StadCo and develop the Project. Before the Completion of the Project this Agreement shall control in the event of any inconsistencies between this Agreement and the Stadium Lease. From and after the Completion of the Project, the Stadium Lease will govern the rights and obligations of the Stadium Authority and StadCo with respect to the use and occupancy of the Premises.

Section 2.3. Relationship of this Agreement and Stadium Lease to Ground Lease. The Ground Lease will govern the rights and obligations of the City and the Stadium Authority with respect to the use and occupancy of the Stadium Site. The terms of the Stadium Lease shall be subject to the terms of the Ground Lease. The Stadium Authority shall not enter into any amendment of the Ground Lease without the prior written consent of StadCo. It shall be reasonable for StadCo to withhold such consent if any proposed amendment to the Ground Lease could either reduce the rights or increase the obligations of the Stadium Authority, StadCo or the Team with respect to the Project or the Stadium Site. The provisions of this Section 2.3 shall survive the termination of this Agreement.

Section 2.4. Joint Powers Agreement. The Stadium Authority covenants that during the Term, the Joint Powers Agreement shall not be amended to materially decrease the authority of the Stadium Authority thereunder, to permit the Stadium Authority to engage in any activities other than those required to develop and operate the Stadium as required or permitted in accordance with the terms of this Agreement, the Stadium Lease and the other documents contemplated by this Agreement, and shall not be terminated without the prior written consent of StadCo, which consent may be conditioned or withheld in the sole and absolute discretion of StadCo.

ARTICLE 3.
PRECONDITIONS TO CLOSE OF ESCROW AND COMMENCEMENT OF STADIUM CONSTRUCTION

Section 3.1. Conditions Precedent to the Commencement of Construction and Close of Escrow. As conditions precedent to the Commencement of Construction of the Stadium and the Close of Escrow for the conveyance of a leasehold interest in the Premises to StadCo, the conditions set forth in this Article 3 must be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 20.8 and as further described in Sections 3.1 (a) and (b) below) or, if no time is so specified, on or before the Close of Escrow.

(a) Mutual Benefit. The conditions set forth in Sections 3.2 through 3.19, and 3.22-3.28 are intended for the mutual benefit of the Stadium Authority and StadCo, and if any such condition is not satisfied on or before the date scheduled for the Close of Escrow, either Party shall have the right, in its sole discretion, to (i) waive in writing the condition in question, (ii) subject to the terms of Section 3.1(c), extend the date scheduled for the Close of Escrow for a reasonable period of time specified by, and at the option of the Party that would receive the benefit of any such condition if satisfied, to allow such condition to be satisfied, or (iii) if not satisfied by the Outside Closing Date, terminate this Agreement upon written notice to the other Party. Upon any termination of this Agreement pursuant to the terms of this Section 3.1(a), the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

(b) Sole Benefit. The conditions precedent set forth in Sections 3.20, 3.29, 3.31 and 3.33 are for the sole benefit of, and may only be waived in writing by, the Stadium Authority. The conditions precedent set forth in Sections 3.21, 3.30, 3.32 and 3.34 are for the sole benefit of, and may only be waived in writing by, StadCo. If a condition precedent for the sole benefit of a Party has not been satisfied or waived on or before the date scheduled for the Close of Escrow, such Party shall have the right, in its sole discretion, to (i) waive in writing the condition in question, (ii) subject to the terms of Section 3.1(c), extend the date scheduled for the Close of Escrow for a reasonable period of time specified by, and at the option of the Party that would receive the benefit of any such condition if satisfied, to allow such condition to be satisfied, or (iii) if not satisfied by the Outside Closing Date, terminate this Agreement upon written notice to the other Party. Upon any termination of this Agreement pursuant to the terms of this Section 3.1(b), the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

(c) Outside Closing Date. Upon no less than ten (10) days' prior written notice, and upon its payment to the Stadium Authority of [Five Hundred Thousand Dollars ($500,000)], StadCo shall have the right, to be exercised in its sole and absolute discretion, to extend the Outside Closing Date to a date on or before December 31, 2015. If the Close of Escrow has not occurred on or before the Outside Closing Date, as it may have been extended in accordance with the prior sentence, either Party may terminate this Agreement effective upon written notice to the other Party, and upon such termination, the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

Section 3.2. Ground Lease. The Ground Lease has been duly executed by the City and the Stadium Authority and each party thereto has deposited its executed counterpart of the Ground Lease into Escrow.

Section 3.3. Stadium Lease. The Parties have agreed upon and executed the final form of Stadium Lease and each party thereto has deposited its executed counterpart of the Stadium Lease into Escrow.

Section 3.4. Team Sublease. The Team Sublease has been duly executed by StadCo and the Team and has been deposited into Escrow by StadCo.

Section 3.5. Non-Relocation Agreement. The Non-Relocation Agreement has been duly executed by the Stadium Authority and the Team and each party thereto has deposited its counterpart of the Non-Relocation Agreement into Escrow.

Section 3.6. Non-Disturbance And Attornment Agreements. A separate non-disturbance and attornment agreement has been duly executed by the City and StadCo ("Ground Lease Non-Disturbance Agreement"), and the Stadium Authority and the Team ("Stadium Lease Non-Disturbance Agreement"), and each of the parties thereto has deposited its executed counterpart of the Ground Lease Non-Disturbance Agreement and the Stadium Lease Non-Disturbance Agreement, as applicable, into Escrow.

Section 3.7. Public Safety Agreement. The Public Safety Agreement has been duly executed by the Stadium Authority, StadCo and the City, and each party thereto has deposited its counterpart of the Public Safety Agreement into Escrow.

Section 3.8. Approval of Stadium Design. The Stadium Authority and StadCo have approved the GMP Set.

Section 3.9. Design-Build Agreement. The Stadium Authority, the Design-Build Contractor and StadCo, as Construction Agent, have entered into the Design-Build Agreement, the Initial Guaranteed Maximum Price has been established pursuant to the Design-Build Agreement, the amount of the Initial Guaranteed Maximum Price is consistent with the Final Development Budget, and the Design-Build Agreement is in full force and effect.

Section 3.10. Construction Agency Agreement. The Stadium Authority and StadCo have entered into the Construction Agency Agreement, and such Construction Agency Agreement is in full force and effect.

Section 3.11. Approval of Final Development Budget. The Stadium Authority and StadCo have approved the Final Development Budget for the construction of the Stadium.

Section 3.12. Approval of Final Financing Plan. The Stadium Authority and StadCo have approved the Final Financing Plan as described in Article 7.

Section 3.13. Parking Plan. The Stadium Authority and StadCo have approved the Preliminary Parking Plan.

Section 3.14. Entitlements. All Entitlements shall have been issued or approved.

Section 3.15. Construction Financing. The conditions of Section 7.2 have been satisfied and such Stadium Authority Financing is ready to close simultaneously with the Close of Escrow.

Section 3.16. Funding Agreement. The Stadium Authority, StadCo and the construction lender(s) have approved and duly executed the Funding Agreement and each such party has deposited into Escrow its executed counterpart of the Funding Agreement.

Section 3.17. Payment and Performance Bonds. The payment and performance bonds described in the Design-Build Agreement Summary and required to be delivered to the Stadium Authority have been approved by the Stadium Authority and StadCo.

Section 3.18. Subdivision Map. The Subdivision Map has been recorded.

Section 3.19. Great America Theme Park. The Stadium Authority has concluded, in its sole discretion, that the provisions of this Agreement and the Related Agreements are consistent with the terms of the ground lease for the Great America Theme Park.

Section 3.20. Stadium Authority Title Policy. The Title Company shall be prepared to issue to the Stadium Authority the title insurance policy required by Section 12.6(b) to be delivered to the Stadium Authority.

Section 3.21. StadCo Title Policy. The Title Company shall be prepared to issue to StadCo the title insurance policy required by Section 12.6(a) to be delivered to StadCo.

Section 3.22. Advance Documentation. Each of the CFD, the Stadium Authority and StadCo, as applicable, has duly executed and deposited into escrow its counterpart of the Advance Documentation.

Section 3.23. Cost Overrun Commitment. The Stadium Authority and StadCo have approved and duly executed the Cost Overrun Commitment and each Party has deposited into Escrow its executed counterpart of the Cost Overrun Commitment.

Section 3.24. Financing Plan Conditions. Any conditions established in the Final Financing Plan required thereunder to be satisfied or waived on or before the Close of Escrow have been satisfied or waived.

Section 3.25. Training Facility Lease. The Training Facility Lease Amendment has been duly executed by the Team and the City.

Section 3.26. Line of Credit Agreement. The Stadium Authority and ManagementCo have entered into [the Line of Credit Agreement].

Section 3.27. Insurance. The Stadium Authority and StadCo have approved the Insurance Program, and the insurance policies that are required under the Insurance Program to be in place at Commencement of Construction are in full force and effect.

Section 3.28. CFD Reimbursement Agreement. The CFD, the Stadium Authority and StadCo have entered into the CFD Reimbursement Agreement.

Section 3.29. No Default StadCo. No condition, event or act exists which would constitute a StadCo Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a StadCo Event of Default.

Section 3.30. No Default Stadium Authority. No condition, event or act exists which would constitute a Stadium Authority Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Stadium Authority Event of Default.

Section 3.31. No Litigation StadCo. No existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency exists affecting StadCo or the Stadium Site that would, if adversely determined, adversely affect the Stadium Site or StadCo's or the Stadium Authority's ability to perform their obligations under this Agreement, or StadCo's ability to manage the development of the Stadium, as reasonably determined by the Stadium Authority.

Section 3.32. No Litigation City and Stadium Authority. No existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency exists affecting the City, the Agency, the Stadium Authority or the Stadium Site that would, if adversely determined, adversely affect, in the reasonable judgment of StadCo, the Stadium Site or the ability of any party to perform its obligations under this Agreement or the Related Agreements, or the Stadium Authority's ability to develop and operate the Stadium.

Section 3.33. StadCo Representations and Warranties. The representations and warranties of StadCo as set forth in Section 20.1 of this Agreement remain true and correct.

Section 3.34. Stadium Authority Representations and Warranties. The representations and warranties of the Stadium Authority as set forth in Section 20.2 of this Agreement remain true and correct.

ARTICLE 4.
CONSTRUCTION OF MAKE-READY WORK

Section 4.1. Make-Ready Work. Pursuant to the Predevelopment Funding Agreement, StadCo is preparing design documents for the Make-Ready Work, which documents are subject to the Stadium Authority's approval. Subject to the conditions set forth in Section 4.2 of this

Agreement, the Stadium Authority will commence the Make-Ready Work prior to the Close of Escrow in accordance with the terms of this Agreement. The Parties shall cooperate and use good faith efforts to satisfy the conditions in Section 4.2 of this Agreement so as to allow commencement of the Make-Ready Work in January, 2012.

Section 4.2. Conditions to Commencement of Make-Ready Work. The conditions set forth in this Section 4.2 are intended for the mutual benefit of the Stadium Authority and StadCo, and if any such condition is not satisfied, each Party shall have the right, in its sole discretion, to waive in writing the condition in question.

(a) Make-Ready Work License. The Stadium Authority has obtained the Make-Ready Work License from the City.

(b) Team Make-Ready Work License. The Team has (i) issued a license to the Stadium Authority and StadCo, ("Team Make-Ready Work License"), in a form reasonably acceptable to the Stadium Authority and StadCo, to allow access to the Training Facility land as necessary to perform the Make-Ready Work, and (ii) the City, as landlord under the Training Facility Lease, has approved the Make-Ready Work.

(c) Final Plans and Specifications for Make-Ready Work. The Stadium Authority and StadCo shall have approved the final plans and specifications for the Make-Ready Work.

(d) Cost Estimate. StadCo shall have submitted to the Stadium Authority, and the Stadium Authority shall have reasonably approved, the estimated budget for the Make-Ready Work to be submitted pursuant to Section 2.3 of the Predevelopment Funding Agreement. The estimated budget shall include all hard and soft costs items necessary to meet City standards for acceptance of the Completed Make-Ready Work by the City in accordance with the City Subdivision and Planning Codes, and any applicable Mitigation Measures and Conditions of Approval for the Stadium or the Make-Ready Work.

(e) Additional Funds Deposit. StadCo shall have delivered the Make-Ready Deposit if required pursuant to Section 4.4 of this Agreement.

(f) Make-Ready Work Agency Agreement. The Stadium Authority and StadCo shall have entered into the Make-Ready Work Agency Agreement, which among other things, shall provide that despite any termination of this Agreement, the Make-Ready Work Agency Agreement shall not terminate until the Make-Ready Work is Complete, unless otherwise terminated in accordance with its terms.

(g) Improvement Agreement. The Stadium Authority shall have entered into the Improvement Agreement with the City pursuant to Section 4.5 of this Agreement.

(h) Award of Make-Ready Work Construction Contract. The Stadium Authority shall have awarded a lump sum construction contract on terms satisfactory to StadCo for the construction of the Make-Ready Work (the "Make-Ready Work Construction Contract") pursuant to Section 4.3 of this Agreement.

(i) Payment and Performance Bonds. The Make-Ready Work Contractor shall have provided payment and performance bonds for the full amount of the Make-Ready Work.

(j) Permits and Approvals. All permits and approvals required by any Regulatory Agency to commence construction of the Make-Ready Work shall have been obtained.

Section 4.3. Competitive Bidding. The Stadium Authority shall competitively bid the Make-Ready Work Construction Contract and, if determined to be appropriate, shall award the Make-Ready Work Construction Contract to the lowest responsive and responsible bidder, all in a manner generally consistent with the City's standard process for bidding public works projects. Prior to issuance of any bid packages, the Stadium Authority shall provide the City's Public Works Director with a copy of the bid package as well as the proposed process for soliciting bids and selecting contractors, all of which documents and process shall be subject to the prior approval of StadCo. No bid package shall be issued or bids awarded until the City's Public Works Director has approved the bid package. Promptly following StadCo's request, the Stadium Authority shall submit to StadCo all bid documents and all documents relating to the contractor and subcontractor selection process.

Section 4.4. Make-Ready Work Funding. If the Make-Ready Work commences prior to Close of Escrow, StadCo shall advance to the Stadium Authority prior to the commencement of construction an amount equal to the contract amount due under the Make-Ready Work Construction Contract plus fifteen percent (15%) (the "Make-Ready Deposit"). Prior to the date of this Agreement and pursuant to the Predevelopment Funding Agreement, the Stadium Authority has advanced funds to StadCo in the amount of Four Million Dollars ($4,000,000) to fund preliminary design, permitting and construction for the Make-Ready Work ("Initial Make-Ready Work Funds"), and these funds may be used by StadCo to fund the Make-Ready Deposit. Amounts in excess of the Initial Make-Ready Work Funds advanced by StadCo to fund the Make-Ready Deposit will be reimbursed to StadCo by the Stadium Authority, in accordance with the Funding Agreement and the Final Development Budget. In the event the Close of Escrow does not occur, any funds advanced by StadCo in excess of the Initial Make-Ready Work Funds advanced by StadCo to fund the Make-Ready Deposit shall be repaid by the Stadium Authority, but only from funds other than funds of the Stadium Authority that (a) were received by the Stadium Authority from the Agency, (b) are required to pay other costs incurred by the Stadium Authority in furtherance of the Stadium Project that are included in the budget approved by the Board, and (c) the Stadium Authority cannot, consistent with applicable Law and its other contractual covenants, use to pay for Make-Ready Work costs. The provisions of this Section 4.4 shall survive the termination of this Agreement.

Section 4.5. Improvement Agreement and Security. Certain components of the Make-Ready Work are required as conditions to approval of the Subdivision Map. Prior to the commencement of the Make-Ready Work, the Stadium Authority shall enter into an improvement agreement with the City pursuant to Section 17.05.650 of the Municipal Code of the City, the form of which shall be subject to StadCo's reasonable approval, providing for the completion of those components of the Make-Ready Work (the "Improvement Agreement"). As and to the extent required by the Improvement Agreement, the Make-Ready Deposit shall be

deposited by the Stadium Authority with the City or a responsible escrow agent or trust company to provide for any security required under Section 17.05.660 of the Municipal Code of the City for the Make-Ready Work that is subject to the Improvement Agreement.

Section 4.6. Compliance with Approvals and Applicable Law. Prior to the Close of Escrow, StadCo shall supervise the Make-Ready Work in accordance with the Make-Ready Work Agency Agreement. From and after the Close of Escrow, StadCo, as Construction Agent, shall supervise the Make-Ready Work under the Construction Agency Agreement. In its capacity under, and in accordance with, each of the Make-Ready Work Agency Agreement and the Construction Agency Agreement, as applicable, StadCo shall use Professional Efforts to cause the Make-Ready Work to be performed in compliance with the requirements of the Make-Ready Work License, other third party approvals, if any, and all applicable Laws now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 et seq., of the California Labor Code).

Section 4.7. Acceptance of Make-Ready Work. Upon completion of the Make-Ready Work and its acceptance by the City, the Make-Ready Work License shall terminate, and the Parties will cause the Team Make-Ready Work License to terminate. As a condition of acceptance of the Make-Ready Work, the Stadium Authority shall cause the contractor responsible for constructing the Make-Ready Work to provide to the City a warranty for all Make-Ready Work items, which warranty shall not expire any sooner than the one year anniversary date for the Completion of the Stadium.

Section 4.8. Assignment of Work Product. Prior to the issuance of bid documents for the Make-Ready Work, StadCo shall assign to the Stadium Authority, pursuant to a form of assignment prepared by StadCo and approved by the Stadium Authority, and the Stadium Authority shall accept assignment from StadCo, all of StadCo's right, title and interest in the permits and entitlements or work products obtained or created in connection with the Make-Ready Work.

ARTICLE 5.
DESIGN AND ENTITLEMENTS

Section 5.1. Cooperation. The Stadium Authority and StadCo agree to cooperate and coordinate with each other in connection with the Stadium Authority's ongoing efforts to develop the Stadium, including, without limitation, with respect to the Stadium design work. The Parties acknowledge that such cooperation and coordination is necessary in order to timely develop the Stadium Project.

Section 5.2. Design Development. Prior to the date of this Agreement, StadCo retained the Architect and StadCo Design Professionals to prepare design documents for the Stadium, including the Schematic Design Drawings and Design Development Documents, anticipating that the costs it incurred in doing so would be considered Development Costs and reimbursed out of the Development Fund if the Stadium Authority proceeded with development of the Stadium. StadCo's agreement with the Architect and with StadCo Design Professionals shall expressly provide that StadCo shall have the right to transfer and assign to the Stadium Authority all of its right, title and interest in the Schematic Design Drawings, the Design

Development Documents, the GMP Set, and other work product prepared by the Architect or StadCo Design Professionals for the Stadium Project. StadCo has submitted to the Stadium Authority, a statement of the costs for the Design Development Documents incurred as of the date the Predevelopment Funding Agreement and an estimated budget for the completion of the Design Development Documents. The budget approved pursuant to the Predevelopment Funding Agreement shall be incorporated into the Final Development Budget.

Section 5.3. Design Consistent with Scope of Development and Schematic Design Drawings. The Scope of Development and the Schematic Design Drawings shall establish the baseline design standards from which, and consistent with which, StadCo, in consultation with the Stadium Authority, shall cause the Architect and StadCo Design Professionals to prepare the Design Development Documents and the GMP Set.

Section 5.4. LEED Certification. The Stadium has been registered with the U.S. Green Building Council for Leadership in Energy and Environmental Design ("LEED") certification. The Architect shall submit or cause to be submitted to the Stadium Authority a preliminary LEED checklist signed by a LEED Accredited Professional demonstrating the credits StadCo intends to attain for the Stadium in order to meet the point requirements for LEED certification. The Stadium Authority and StadCo shall cooperate to obtain LEED certification for the Project.

Section 5.5. Submittal and Review of Design Development Documents. Within the time period set forth in the Schedule of Performance, StadCo shall submit the Design Development Documents to the Stadium Authority for review and approval. The Design Development Documents shall, as appropriate, provide for compliance with the relevant Mitigation Measures and Conditions of Approval. The purpose of the Stadium Authority's review of the Design Development Documents is to ensure consistency with the Scope of Development and Schematic Design Drawings, the provisions of this Agreement, and conformance to the Redevelopment Plan. The Stadium Authority shall be required to approve the Design Development Documents provided that the Design Development Documents meet the requirements of this Section 5.5 and are a Logical Evolution of the Schematic Design Drawings. For purposes of this Article 5, "Logical Evolution" means a refinement or amplification of the prior phase of drawings approved by the Stadium Authority into drawings and design material which flow reasonably therefrom, and which reflect architectural and engineering design consistent with such industries' standards and practices and applicable code requirements.

Section 5.6. Submittal and Review of GMP Set. Within the time periods set forth in the Schedule of Performance, StadCo shall submit the GMP Set to the Stadium Authority for review and approval. The purpose of the Stadium Authority's review of the GMP Set is to ensure that the GMP Set is generally consistent in all material respects with the Scope of Development, the Design Development Documents, the provisions of this Agreement, the Mitigation Measures and Conditions of Approval, and conformance to the Redevelopment Plan. The Stadium Authority shall be required to approve the GMP Set provided that the GMP Set meets the requirements set forth in this Section 5.6 and is a Logical Evolution of the Design Development Documents.

Section 5.7. Approval Process. The Stadium Authority shall approve or disapprove submittals under this Article 5 within thirty (30) days of receipt of the submittal from StadCo.

The failure of the Stadium Authority to approve or disapprove such submittals within thirty (30) days shall be deemed to be an approval of such submittals. In the event the Stadium Authority disapproves a submittal pursuant to the terms of this Article 5, the Stadium Authority shall submit a list of reasons for such disapproval to StadCo, together with its notice of disapproval. Upon receipt of such a list, StadCo shall submit a revised submittal the later of (a) the date set forth in the Schedule of Performance for such submittal or (b) twenty (20) Business Days after receipt of such list. Upon the Stadium Authority's receipt of a revised submittal, the Stadium Authority shall have fifteen (15) Business Days to approve or disapprove of the revised design. The Stadium Authority's failure to approve or disapprove the revised submittal within fifteen (15) Business Days shall be deemed to be an approval of such change. The times for approval of the submittals included in the Schedule of Performance shall be automatically adjusted to reflect time for StadCo to make resubmittals, if required to obtain Stadium Authority approval, as allowed by this Section 5.7.

Section 5.8. Construction Oversight Working Group. StadCo shall meet with the Executive Director, on a schedule to be agreed upon by the Parties, to review and discuss the evolution of the design documents through the development of the Final Construction Documents. StadCo shall consult with the Executive Director regarding the progress of the design documents at each meeting and shall report on any material alterations or issues encountered by StadCo, the Architect, StadCo Design Professionals, as applicable, or the Design-Build Contractor in the design process since the previously held meeting.

Section 5.9. Concessionaire. Prior to the date of this Agreement, the Stadium Authority, StadCo and the Concessionaire entered into the Pre-Opening Services Contract, pursuant to which the Stadium Authority selected Concessionaire to act in the capacity of the pre-opening concessionaire to provide assistance to the Stadium Authority in the design and location of concession spaces within the Stadium. The Pre-Opening Services Contract includes a form of Concession Operating Agreement as an exhibit to the Pre-Opening Services Contract with the intent that the Concessionaire would execute a form of the Concession Operating Agreement with the ManagementCo at or around the date of Completion. StadCo, on behalf of the Stadium Authority, shall coordinate and supervise the Concessionaire in the Concessionaire's performance of the Pre-Opening Services Contract. StadCo and the Stadium Authority acknowledge that the Concessionaire, the Architect, other design professionals, and other Persons designated by the Stadium Authority and StadCo will need to collaborate in order for the Design Development Documents to accurately incorporate the design and location needs of the Concessionaire for the concession areas of the Stadium Project. StadCo shall coordinate the necessary exchange of information between the Concessionaire, the Architect and others referenced in this Section 5.9 to facilitate such collaboration.

Section 5.10. Preconstruction Services. Prior to the date of this Agreement, StadCo engaged TDJV to perform certain preconstruction services, including among other things, to participate in the development of the Design Development Documents. Consistent with the Procurement Plan, TDJV may issue prequalification and bid documents and select design/build subcontractors for the Project. The subcontractors selected through the Procurement Plan may participate in the development of the Design Development Documents as part of TDJV's preconstruction services. The Stadium Authority shall have no obligation to TDJV or to such

selected subcontractors unless and until the Stadium Authority enters into the Design-Build Agreement with TDJV.

Section 5.11. Design-Build Contractor.

(a) Entry into Design-Build Agreement. Subject to the satisfactory completion of preconstruction services, StadCo expects to recommend TDJV as the Design-Build Contractor. Within the time specified in the Schedule of Performance, the Stadium Authority will consider approving and executing the Design-Build Agreement with the recommended Design-Build Contractor; provided, however, that (i) the award of the Design-Build Agreement shall be subject to compliance with California Government Code Section 6532, and (ii) StadCo shall be responsible to pay, on the Stadium Authority's behalf, any payments due to the Design-Build Contractor under the Design-Build Agreement from its effective date until the Close of Escrow, at which time, the Stadium Authority shall become responsible to pay the costs due to the Design-Build Contractor under the Design-Build Agreement. Amounts advanced by StadCo to fund the costs due to the Design-Build Contractor under the Design-Build Agreement will be reimbursed to StadCo by the Stadium Authority, in accordance with the Funding Agreement and the Final Development Budget. In the event the Close of Escrow does not occur, any such funds advanced by StadCo shall be repaid by the Stadium Authority, but only from funds other than funds of the Stadium Authority that (1) were received by the Stadium Authority from the Agency, (2) are required to pay other costs incurred by the Stadium Authority in furtherance of the Stadium Project that are included in the budget approved by the Board, and (3 the Stadium Authority cannot, consistent with applicable Law and its other contractual covenants, use to pay for Development Costs. The provisions of this Section 5.11(a) shall survive the termination of this Agreement.

(b) Establishment of GMP. The Stadium Authority shall not issue the notice to proceed until the IGMP has been established and the Close of Escrow has occurred. Within ninety (90) days of the Close of Escrow, the GMP shall be established pursuant to the provisions of the Design-Build Agreement and the Construction Agency Agreement. As provided in Section 6.4, the Funding Agreement shall include limitations, satisfactory to the Stadium Authority and consistent with the Final Financing Plan, on draws on any Stadium Authority financing prior to the establishment of the GMP.

Section 5.12. Separate Construction Work. The Parties acknowledge that certain components of the Improvements, including certain infrastructure (such as the pedestrian bridges across San Tomas Creek) and certain Tenant Improvements, are expected to be excluded from the scope of work under the Design-Build Agreement and the Make-Ready Construction Contract (the "Separate Construction Work") and constructed by Separate Contractors. Plans and Specifications for any Separate Construction Work shall be submitted to the Stadium Authority for review, and it shall be subject to the Stadium Authority's approval pursuant to the process set forth in Section 5.7. Any and all Separate Contractors shall be directed and managed by the Construction Agent, and any Separate Construction Contracts shall contain provisions consistent with the Design-Build Agreement requiring coordination with the work of the Design-Build Contractor. Any Separate Construction Contract entered into by the Stadium Authority shall be competitively bid and, if determined to be appropriate, awarded to the lowest responsive and responsible bidder, all in a manner generally consistent with the City's standard process for

bidding public works projects. The Stadium Authority shall obtain StadCo's approval of the bid documents prior to issuing the bid documents, and promptly following StadCo's request, the Stadium Authority shall submit to StadCo all bid documents and all documents relating to the selection process for the Separate Contractors and their subcontractors.

Section 5.13. Construction Agency Agreement. Simultaneously with the execution of the Design-Build Agreement, the Stadium Authority and StadCo shall enter into the Construction Agency Agreement in substantially the form attached hereto as Exhibit M.

Section 5.14. Entitlements and Additional Permits and Approvals. Within the time period specified in the Schedule of Performance, StadCo and the Stadium Authority shall work cooperatively and use commercially reasonable efforts to identify, prepare and submit, the required applications and supporting documents to applicable government agencies to obtain the Entitlements and a Building Permit as necessary to allow for the commencement of construction of the Make-Ready Work, and with respect to the other Improvements, the Commencement of Construction. All applications for such permits and approvals shall be consistent with the Project Documents, as applicable, and shall be subject to approval by the Stadium Authority before submission to the applicable government agency. StadCo acknowledges that execution of this Agreement by the Stadium Authority does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the lawful exercise of discretion by the City in the permit, allocation or approval process otherwise required under applicable Law. Each Party shall provide reasonable assistance to the other in their efforts to secure such permits and approvals.

Section 5.15. Subdivision of the Stadium Site. StadCo and the Stadium Authority shall work cooperatively and use commercially reasonable efforts to prepare and submit the required applications and supporting documents to the City to obtain approval from the City of the recordation of the Subdivision Map at the Close of Escrow.

Section 5.16. Stadium Authority's Purchase of StadCo's Stadium Design Work Product. At the Close of Escrow, StadCo shall assign to the Stadium Authority, in a form reasonably approved by the Stadium Authority, and the Stadium Authority shall purchase from StadCo, all of StadCo's Stadium Design Work Product, excluding any of StadCo's Stadium Design Work Product relating to the Tenant Improvements, for a purchase price equal to the lesser of (i) the actual costs incurred by StadCo for such work and (ii) the amount for such work set forth in the Final Development Budget. Such purchase price shall be payable to StadCo from the Development Fund in accordance with the Funding Agreement and the Final Development Budget.

ARTICLE 6.
DEVELOPMENT BUDGET AND FINANCING PLAN

Section 6.1. Budget and Financing Plan Overview. The Parties have agreed on a Preliminary Development Budget and Preliminary Financing Plan, although it is recognized that both are preliminary and will be further developed and refined as described in this Article 6. In conjunction with the preparation of Design Development Documents and GMP Set, as described in Article 5 above, StadCo will have lead responsibility for refining cost estimates and

developing the Final Development Budget. The Stadium Authority and StadCo shall work cooperatively to develop a Final Financing Plan. As further set forth in this Article 6, the Stadium Authority's approval of the Final Development Budget and Final Financing Plan constitute conditions to the Close of Escrow. The Executive Director may, in her sole discretion, present any matter contained in this Article 6 to the Board for its approval or disapproval.

Section 6.2. Development Budget.

(a) Preliminary Development Budget Update. The Preliminary Development Budget is intended to represent a summary of Total Development Costs using preliminary cost estimates for the development of the Improvements based on the Scope of Development and the Schematic Design Drawings. The Preliminary Development Budget shall provide the basis for preliminary cost estimates for the development of the Stadium. Within ninety (90) days following the Stadium Authority's approval of the Design Development Documents, unless by that time StadCo has submitted a Final Development Budget pursuant to Section 6.2(b), StadCo shall submit to the Stadium Authority an update to the Preliminary Development Budget based on the Design Development Documents. Such update to the Preliminary Development Budget shall include reasonably detailed information, including, but not limited to the designation of which items qualify as Eligible CFD Expenditures, and shall be based on the previously submitted Preliminary Development Budget. Such update to the Preliminary Development Budget shall also include any new line items required as a result of changes to the design of the Stadium and shall contain updated construction cost estimates that are reasonable and consistent with the level of the drawings submitted by StadCo in accordance with Article 5. StadCo shall include reasonable supporting documents with such proposed update to the Preliminary Development Budget.

(b) Submission of Final Development Budget. Within the time period specified in the Schedule of Performance, StadCo shall submit the Final Development Budget to the Stadium Authority for the Stadium Authority's review and approval. The Final Development Budget shall be substantially in the form of the Preliminary Development Budget. The Final Development Budget shall include the estimated Total Development Costs based on the GMP Set, including, without limitation, the Make-Ready Work costs and Tenant Improvement Costs. The Final Development Budget shall also include an equitable allocation of costs between Development Costs and Tenant Improvement Costs.

(c) Final Development Budget Approval Procedure. The Stadium Authority shall review the Final Development Budget and shall approve the Final Development Budget if it reasonably determines that the Final Development Budget contains a reasonable projection of the Total Development Costs, as evidenced by the IGMP established pursuant to the Design Build Agreement, as well as provisions for other Development Costs and Tenant Improvement Costs not covered by the Design-Build Agreement, and the Final Development Budget is consistent with the Final Financing Plan. The Stadium Authority shall approve or disapprove the Final Development Budget within thirty (30) days of receipt. If the Stadium Authority conditionally approves the Final Development Budget, the conditions shall be stated in writing and a time shall be stated therein for satisfying the conditions. Any disapproval of the Final Development Budget shall be in writing and shall contain a detailed explanation of (i) the reason(s) for such disapproval, and (ii) the additional information StadCo would need to submit to obtain approval.

Promptly following any disapproval of the Final Development Budget, the Stadium Authority and StadCo shall meet and confer to attempt to resolve the dispute. In connection with such disputes, both StadCo and the Stadium Authority agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to both Parties.

(d) Changes in Final Development Budget. After the Close of Escrow, adjustments may be made to the Final Development Budget, with any such adjustment subject to the approval of the Parties and, to the extent required by the Funding Agreement, any other parties to the Funding Agreement, provided that (i) approval of any increase in budgeted Tenant Improvement Costs will be conditioned on the commitment of StadCo to pay such costs, and (ii) approval of any increase in budgeted Development Cost will be conditioned on the commitment of payment by a dedicated funding source, which may be a third party (such as a naming rights sponsor's commitment to pay costs attributable to changes in Project Documents requested by such naming rights sponsor) or the Cost Overrun Commitment.

Section 6.3. Financing Plan.

(a) Development of Final Financing Plan. The Preliminary Financing Plan attached hereto as Exhibit H provides a general description of the expected amounts and timing of each of the sources of funding for the estimate of Total Development Costs set forth in the Preliminary Development Budget. Based on the Preliminary Financing Plan, the Stadium Authority and StadCo will use good faith efforts, working cooperatively, to develop a Final Financing Plan that is fiscally prudent, consistent with the requirements of Measure J and this Agreement, and that provides funding sufficient for the Stadium Authority to pay all Development Costs and for StadCo to pay all Tenant Improvement Costs. The Final Financing Plan shall be prepared by StadCo, in consultation with a working group composed of the Executive Director, representatives of StadCo, and financial advisors selected by the Stadium Authority and StadCo, and shall be submitted to the Stadium Authority for review and approval as provided in this Section 6.3. The working group shall meet on a schedule to be agreed upon by the Parties, to review and discuss the evolution of the Financing Plan.

(b) Requirements of Final Financing Plan. The Final Financing Plan shall include: (i) a description of the amounts and sources of Stadium Authority funds sufficient to pay all estimated Development Costs; (ii) a description of the timing, type and expected terms of any Stadium Authority Financing, consistent with the requirements of Article 7 of this Agreement; (iii) a description of the timing, type and expected terms of any StadCo Advances and/or Subordinated Loan, consistent with the requirements of Article 8 of this Agreement; (iv) evidence reasonably satisfactory to the Stadium Authority, that all conditions to the disbursement of Stadium Authority Financing will be satisfied prior to the time the funds will be needed to pay Development Costs; (v) evidence reasonably satisfactory to the Stadium Authority that StadCo (either separately or together with its Affiliates) has, or as of the Close of Escrow will have, access to sufficient funds available to pay for all Tenant Improvement Costs, and to fund any StadCo Advances and/or Subordinated Loan provided in the Final Financing Plan; (vi) the Rent Schedule and a description of any surcharges on tickets to NFL Games proposed to be imposed through the Stadium Lease; (vii) where required by legal restrictions on the use of funds, the proposed use of each source of funding for the construction of the Stadium; (viii) a description of the anticipated timing for the disbursement of funds identified in the Final

Financing Plan, and (ix) a general description of the expected timing, structure and terms of any Takeout Financing.

(c) Final Financing Plan Approval Procedure. Within the time period specified in the Schedule of Performance, the Parties shall make a good faith effort to mutually finalize and approve the Final Financing Plan. The Final Financing Plan shall provide, to the reasonable satisfaction of both the Stadium Authority and StadCo, that (i) the contemplated Stadium Authority Sources will be available and will provide sufficient funds for development of the Project consistent with the terms of this Agreement and the approved Final Development Budget, (ii) the proposed use of the funds comply with the requirements of the applicable funding source, (iii) the Rent Schedule provides for Facility Rent that, together with other amounts payable by StadCo under the Stadium Lease and other revenues of the Stadium Authority, will provide the Stadium Authority with funds required to pay the rent payable by the Stadium Authority under the Ground Lease, the Stadium Authority's operating and maintenance expenses of the Stadium and debt service on any Stadium Authority Financing, (iv) Takeout Financing, on terms and with a structure that can be issued with an investment grade credit rating, is expected to be available, and (v) the Final Financing Plan is consistent with the requirements of Measure J. If the Parties cannot develop a mutually acceptable Final Financing Plan by the time set forth in the Schedule of Performance, the Stadium Authority and StadCo shall meet and confer to attempt to resolve the dispute. In connection with such dispute, both StadCo and the Stadium Authority agree to use their best effort to reach a solution expeditiously that is mutually satisfactory to both parties.

Section 6.4. Funding Agreement. At or prior to the Close of Escrow, the Stadium Authority, StadCo, the CFD and each lender identified in the Final Financing Plan shall enter into the Funding Agreement which will set forth the terms and conditions for the use and disbursement of the funds set forth in the Final Financing Plan. The Funding Agreement shall be consistent with the Final Financing Plan and the terms of this Agreement and shall include limitations satisfactory to the Stadium Authority on draws on any Stadium Authority Financing prior to the establishment of the GMP. The Funding Agreement shall require the establishment of one or more accounts into which all funds identified in the Final Financing Plan to pay Development Costs shall be deposited, and from which such funds shall be disbursed (collectively, the "Development Fund"). The Funding Agreement shall also describe records maintenance, accounting, audit and other relevant procedures with which the parties to the Funding Agreement shall comply.

Section 6.5. Construction Cost Overrun. StadCo will be responsible to pay the amount, if any, by which the total, actual Development Costs incurred by the Stadium Authority exceed the amount of such costs set forth in the approved Final Development Budget (a "Cost Overrun"). Prior to the Close of Escrow, StadCo and the Stadium Authority shall negotiate and approve the form of the Cost Overrun Commitment.

ARTICLE 7.
STADIUM AUTHORITY FINANCING

Section 7.1. Stadium Authority Financing. Consistent with the Final Financing Plan, the Stadium Authority, in consultation with StadCo, shall make a good faith effort to negotiate

and execute Stadium Authority Financing Documents reasonably acceptable to the Stadium Authority and StadCo for all Stadium Authority Financings identified in the Final Financing Plan. The Stadium Authority Financing Documents shall expressly provide that no lender or bondholder under such documents shall have any recourse to the City or the Agency general funds or operating revenues or to the City enterprise funds, and any recourse shall be solely against the Stadium Authority and/or any Stadium Authority Source pledged to secure such financing. The Stadium Authority makes no representation as to the amount of funds from one or more of the Stadium Authority Financings that will be available to pay Development Costs.

Section 7.2. Conditions to Stadium Authority Financing. The conditions set forth in this Section 7.2 must be met prior to the Stadium Authority's consummation of any Stadium Authority Financing, unless waived in writing by the parties with approval rights over the applicable condition:

(a) The conditions to the Close of Escrow set forth in Article 3 shall have been satisfied or waived.

(b) As applicable, the Stadium Authority's legal counsel shall be irrevocably prepared to issue an opinion letter in a form acceptable to the Stadium Authority's lenders, and approved by the Stadium Authority in its reasonable discretion, stating, among other things, that the Stadium Authority Financing Documents constitute the valid and binding obligations of the Stadium Authority, enforceable against the Stadium Authority, and the Stadium Authority Financing Documents have been duly executed and delivered by, and constitute the valid and binding obligation of, the Stadium Authority enforceable against the Stadium Authority and that such Stadium Authority Financing does not constitute a debt of the City or the Agency.

(c) The Stadium Authority and StadCo shall have approved the projected amount of proceeds to be realized from such funds.

(d) The Stadium Authority and StadCo shall have approved, each in its sole discretion, the final form of all Stadium Authority Financing Documents required for each Stadium Authority Financing, which documents shall comply with the provisions of Section 7.1, hereof.

(e) The Stadium Authority and StadCo shall have approved, each in its sole discretion, the final form of Funding Agreement pursuant to Section 6.4 hereof.

(f) No condition, event or act exists which would constitute a StadCo Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a StadCo Event of Default.

(g) No existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency exists affecting the Stadium Authority or StadCo that would, if adversely determined, adversely affect the Stadium Authority Financing.

Section 7.3. No Right to Obligate Other Party. No Party to this Agreement shall have the right to obligate the other party to satisfy, or be obligated to satisfy, the debt of the other Party without the express written consent of the Party obligated to satisfy such debt.

Section 7.4. Takeout Financing. Subject to the provisions of Section 8.5 below, the Stadium Authority, in consultation with StadCo, shall make good faith efforts to enter into the Takeout Financing consistent with the Final Financing Plan prior to the maturity date of the Stadium Authority Financing (the "Maturity Date"). The terms of the Takeout Financing shall be subject to the reasonable approval of StadCo, and shall be structured with the goal of achieving an investment grade credit rating. No lender or bondholder under any Takeout Financing shall have any recourse to the City or the Agency general funds or operating revenues or to the City enterprise funds, and any recourse shall be solely against the Stadium Authority and/or any Stadium Authority Source pledged to secure such financing. Consistent with the Rent Schedule adopted as part of the Final Financing Plan, and incorporated into the Stadium Lease as of the Close of Escrow, the Facility Rent under the Stadium Lease shall be determined or adjusted so as to provide to the Stadium Authority, together with other amounts payable by StadCo under the Stadium Lease and other revenues of the Stadium Authority, funds required to pay the rent payable by the Stadium Authority under the Ground Lease, the Stadium Authority's operating and maintenance expenses of the Stadium and debt service on any Takeout Financing.

ARTICLE 8.
STADCO ADVANCES

Section 8.1. Prior Agreements.

(a) Cooperation Agreement. Prior to the date of this Agreement, the Stadium Authority and the Agency entered into the Cooperation Agreement. Pursuant to Section 3.2 of the Cooperation Agreement, the Agency agreed to contribute a total of Forty Million Dollars ($40,000,000) (exclusive of debt service and other financing costs) toward Development Costs. In addition, the Agency agreed pursuant to Section 3.1 of the Cooperation Agreement to pay to the City, on behalf of the Stadium Authority one-half (½) of the Development Fees in the amount of One Million Six Hundred Thousand Dollars ($1,600,000). Under the Predevelopment Funding Agreement, the Stadium Authority acknowledges receipt of such development fee funds from the Agency. Pursuant to Section 3.2(b) of the Cooperation Agreement, the Agency has contributed Four Million Dollars ($4,000,000) of available funds to the Stadium Authority and has already funded Three Million Fifty-Three Thousand Three Hundred Eighty Dollars ($3,053,380) in Pre-DDA Costs, totaling Seven Million Fifty-Three Thousand Three Hundred Eighty Dollars ($7,053,380) in advanced funds. As of the date hereof, the Agency holds another approximately Two Million Six Hundred Ninety Seven Thousand Dollars ($2,697,000) of proceeds from the Agency's 2011 Tax Allocation Bonds issuance which also constitute available funds under Section 3.2(a) of the Cooperation Agreement that the Parties expect will be contributed to the Stadium Authority to pay for Development Costs pursuant to the Final Financing Plan and the Funding Agreement together with the Four Million Dollars ($4,000,000) previously contributed will bring the total Agency contribution to approximately Nine Million Seven Hundred Fifty Thousand Three Hundred Eighty Dollars ($9,750,380) (collectively, the "Agency Upfront Contribution").

(b) Predevelopment Funding Agreement. Pursuant to the Predevelopment Funding Agreement, the Stadium Authority has advanced the Initial Make-Ready Work Funds to StadCo in the amount of Four Million Dollars ($4,000,000) to fund preliminary design and construction for the Make-Ready Work after payment of certain Stadium Authority costs.

Section 8.2. StadCo Agency Advance. To assist the Stadium Authority in funding the construction costs of the Project, StadCo may advance to the Stadium Authority an amount up to approximately Thirty Million Two Hundred Forty-Nine Thousand Six Hundred Twenty Dollars ($30,249,620), the approximate difference between the maximum Agency investment of Forty Million Dollars ($40,000,000) and the Agency Upfront Contribution (the "StadCo Agency Advance"). The outstanding principal balance of the StadCo Agency Advance will accrue interest at the Advance Interest Rate. The amount and timing of the StadCo Agency Advance shall be specified in the Final Financing Plan. The StadCo Agency Advance, including interest at the Advance Interest Rate, will be repayable by the Stadium Authority solely from Net Tax Increment received by the Stadium Authority from the Agency pursuant to the Cooperation Agreement and the Predevelopment Funding Agreement. Upon the expiration of the Agency's ability to collect Tax Increment from the Redevelopment Project Area, any principal or interest amount of the StadCo Agency Advance still outstanding shall no longer be a debt of the Stadium Authority or the Agency.

Section 8.3. StadCo CFD Advance. In accordance with the Final Financing Plan, StadCo may advance to the CFD the difference between the maximum CFD contribution to Development Costs of Thirty Five Million Dollars ($35,000,000) and the total proceeds of any CFD Bonds that have then been issued (the "StadCo CFD Advance"). The outstanding principal balance of the StadCo CFD Advance will accrue interest at the Advance Interest Rate. As part of the Final Financing Plan, the Parties shall determine the timing for the issuance of the CFD Bonds. The StadCo CFD Advance shall be evidenced by Advance Documentation, entered into by and between the CFD and StadCo. The StadCo CFD Advance, including interest incurred at the Advance Interest Rate, will be repayable only from the net proceeds of CFD Bonds and from CFD Tax (as reduced by CFD administrative expenses permitted in accordance with the CFD formation documents), and only to the extent such revenues exceed debt service and reserves, if required, on and for any outstanding CFD Bonds.

Section 8.4. StadCo Subordinated Loan Commitment. As generally described in the Summary of StadCo Loan included as part of the Preliminary Financing Plan, and as will be further described in accordance with the Financing Plan, it is expected that StadCo will make, subject to conditions, a Subordinated Loan to the Stadium Authority, in a form reasonably approved by the Stadium Authority. Prior to the Close of Escrow, the Stadium Authority and StadCo shall agree on the form of the Subordinated Loan Documents. StadCo acknowledges that StadCo's right to receive payments under the Subordinated Loan Documents will be subordinated to the rights of the lenders providing funds to the Stadium Authority through the various Stadium Authority Financings and as such StadCo agrees to execute any and all subordination agreements reasonably requested by the Stadium Authority's lenders to evidence such subordination.

Section 8.5. StadCo's Purchase Commitment. The Preliminary Financing Plan contemplates that StadCo would, under certain circumstances, be required to purchase on the Maturity Date of the Stadium Authority Financing all or a portion of the Stadium Authority Financing then outstanding on terms and under conditions to be agreed upon among StadCo, the Stadium Authority, and the lenders (the "StadCo Purchase Commitment"). The Stadium Authority Financing Documents shall provide that if StadCo purchases all or a portion of the Stadium Authority Financing pursuant to the StadCo Purchase Commitment (the "StadCo

Interim Loan"), the Stadium Authority's obligation to repay the principal of the StadCo Interim Loan will be forborne by StadCo until (a) the third anniversary of the Maturity Date, or (b) if earlier, the date on which the StadCo Interim Loan has been fully refinanced (either such date, as applicable, the "Deferred Maturity Date"). During the period that begins on the Maturity Date and ends on the Deferred Maturity Date, (x) interest on such StadCo Interim Loan will be payable by the Stadium Authority, and (y) as of the Maturity Date, an interim Facility Rent shall be determined, and shall be payable under the Stadium Lease, so as to provide to the Stadium Authority, together with other amounts payable by StadCo under the Stadium Lease and other revenues of the Stadium Authority, funds required to pay the rent payable by the Stadium Authority under the Ground Lease, the Stadium Authority's operating and maintenance expenses of the Stadium and debt service on the StadCo Interim Loan as well as any outstanding StadCo Authority Financing or Takeout Financing.

Section 8.6. StadCo's Encumbrance of Stadium Lease. StadCo may place Security Financing Interests on StadCo's leasehold interest in the Premises, and its interest in this Agreement and other Project-related documents entered into in connection with this Agreement. Such permitted security instruments and related interests may not encumber the City's fee interest or the Stadium Authority's leasehold interest in the Stadium Site and no Stadium Authority revenues, City or Agency general funds or assets or operating revenues or City enterprise funds may be encumbered thereby. Any financing secured by StadCo's leasehold interest obtained by StadCo shall be obtained from one or more lenders and shall be used prior to Completion to fund the Subordinated Loan, Tenant Improvements Costs, the StadCo Agency Advance, the StadCo CFD Advance and other costs connected with the Project. Not later than the date set forth in the Schedule of Performance, StadCo shall submit to the Stadium Authority for review and approval the final form of loan documents for each loan in which StadCo is a party and that is secured by StadCo's leasehold interest and is consistent with the Final Financing Plan. The Stadium Authority's review and approval of the loan documents described in the immediately foregoing sentence shall be limited to a determination, in the exercise of the Stadium Authority's reasonable judgment, that the loan documents are consistent with the provisions of this Agreement, Final Financing Plan, the Funding Agreement and the previously approved loan commitment(s). The recourse of any lender of any construction or permanent financing obtained by StadCo shall be limited such that no City, Agency or Stadium Authority funds, assets, or operating revenues or City enterprise funds will be used as collateral. For other sources of StadCo funds described in the Final Financing Plan that are not loans, StadCo shall provide to the Stadium Authority for its review and approval, evidence, reasonably satisfactory to the Stadium Authority, that such funds shall be available as of the Close of Escrow to pay Development Costs. The Stadium Authority's review and approval of the evidence of funding shall be limited to a determination, in the exercise of the Stadium Authority's reasonable judgment, that the evidence of funding is consistent with the provisions of this Agreement, Final Financing Plan, and the Funding Agreement

ARTICLE 9.
NAMING RIGHTS AND SBLS

Section 9.1. Naming Rights. Stadium Naming Rights matters, including, without limitation, marketing thereof and the requirements of the Stadium Naming Rights Agreement are governed by the terms of the Naming Rights Marketing Agreement. All Stadium Naming Rights Revenue derived from the sale of Naming Rights shall be the property of the Stadium Authority. StadCo's costs incurred on behalf of the Stadium Authority in connection with marketing the Naming Rights, as set forth in the budget approved by the Executive Director pursuant to the terms of the Stadium Naming Rights Agreement, shall be included in the Final Development Budget and shall reimbursed from the Development Fund in accordance with the Final Financing Plan and the Funding Agreement.

Section 9.2. Stadium Builders Licenses. As owner of the Stadium, the Stadium Authority possesses the sole and exclusive right to sell, license, or otherwise transfer SBLs and similar instruments and rights with respect to any and all seats located in the Stadium. Prior to the date of this Agreement, the Stadium Authority and Legends entered into that certain Agreement for Stadium Builders License Sales and Related Services dated as of July 5, 2011, pursuant to which the Legends was engaged as the Stadium Authority's sole contractor for the marketing and sales of SBLs and related services. Proceeds from the sale of SBLs shall be collected solely for the account and benefit of the Stadium Authority. Such proceeds shall not be collected for the benefit of the StadCo, nor shall they be treated for any purpose as such, nor shall they be used to defray or otherwise satisfy any obligation of the StadCo with respect to the financing of the Stadium. Each SBL shall provide that the recourse of the holder of the SBL in the event of a failure to complete construction of the Stadium shall be limited to the termination of the SBL and the refund of any funds advanced by the holder of the SBL.

ARTICLE 10.
MELLO-ROOS FINANCING

Section 10.1. Creation of the CFD. The City has created that certain City of Santa Clara Community Facilities District No. 2010-1 (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act"), to finance and pay for Eligible CFD Expenditures. Currently, the CFD includes eight (8) hotels in the vicinity of the Stadium Site. As more specifically set forth in the Resolution No. 10-7727 creating the CFD, the CFD will impose an annual special tax on each hotel property within the CFD (the "CFD Tax").

Section 10.2. CFD Bonds. Prior to the Close of Escrow, the CFD, StadCo and the Stadium Authority shall enter into the CFD Reimbursement Agreement. The CFD Reimbursement Agreement shall require the CFD to issue bonds secured by and paid from the CFD Tax (the "CFD Bonds"), and in accordance with the CFD Reimbursement Agreement, the Stadium Authority shall cause the CFD to endeavor to generate maximum CFD Bonds proceeds up to Thirty-Five Million Dollars ($35,000,000) in net proceeds subject to fiscal prudence and consistent with the City's financial policies. In accordance with the Final Financing Plan, the CFD Reimbursement Agreement shall provide that the CFD use the proceeds of the CFD Bonds to reimburse the CFD formation costs, the CFD Bonds issuance costs and to reimburse the Stadium Authority for the cost of the development of the CFD Infrastructure to be paid by the

CFD Bonds. The CFD Reimbursement Agreement shall also provide that in the event StadCo makes a StadCo CFD Advance as described in Section 8.3, the CFD will pay to the Stadium Authority for reimbursement to StadCo, first from the net proceeds of the CFD Bonds until such proceeds are exhausted, then annually from available CFD revenue after any required payments on the CFD Bonds for the applicable tax year, all CFD Taxes received which shall first be applied against all interest accrued on the StadCo CFD Advance, and the balance shall be applied against the principal of the StadCo CFD Advance until all principal is repaid. The CFD Reimbursement Agreement shall provide that if the CFD has fully paid the debt service on the CFD Bonds and has fully reimbursed the Stadium Authority for the cost of development of the CFD Infrastructure to be paid by the CFD Bonds and the Stadium Authority has fully repaid StadCo any StadCo CFD Advance, plus interest thereon at the Advance Interest Rate, then prior to the expiration of the term of the CFD, the Stadium Authority may use any remaining proceeds from the CFD Tax for Eligible CFD Expenditures. The Stadium Authority shall obtain and disburse the proceeds of the CFD Bonds and the CFD Tax in accordance with the terms of this Agreement and the CFD Reimbursement Agreement. The foregoing obligations of the Stadium Authority shall survive the termination of this Agreement.

Section 10.3. TOT Credit. The Parties acknowledge that the documents establishing the CFD provide that if the CFD has fully repaid the Mello-Roos Act bonds and StadCo CFD Advance plus interest thereon at the Advance Interest Rate, prior to the expiration of the term of the CFD, and the City has increased the TOT from its current rate of nine and one-half percent (9½%) at any time during the term of the CFD, then, for the remaining term of the CFD, each hotel in the CFD may offset against its CFD payment an amount equal to the amount by which the City TOT paid by such hotel exceeds the current rate of nine and one-half percent (9½%). Nothing in this Section 10.3 is intended to restrict the City's ability to increase the TOT from time to time.

ARTICLE 11.
LEASES

Section 11.1. Ground Lease. Within the time period specified in the Schedule of Performance, the Stadium, the City and StadCo shall agree on the final form of the Stadium Ground Lease. The purpose of StadCo's review shall be to determine that the terms of the Ground Lease comply with the terms of Measure J, that the Ground Lease grants leasehold rights to the Stadium Authority consistent with the rights granted to StadCo under the Stadium Lease and that the terms of the Ground Lease are not in conflict with the terms of the Stadium Lease.

Section 11.2. Stadium Lease. Within the time period specified in the Schedule of Performance, the Stadium Authority and StadCo shall agree on the final form of the Stadium Lease. The Stadium Lease shall incorporate each of the provisions of the Stadium Lease Summary, substantially in the form attached with no material deviations from the attached provisions, unless mutually agreed upon by the Parties.

Section 11.3. Team Sublease. Within the time period specified in the Schedule of Performance, StadCo shall submit the Team Sublease to the Stadium Authority for the Stadium Authority's review and approval. The Stadium Authority's review shall be for the purpose of determining that the Team Sublease meets the requirements in this Agreement.

Section 11.4. Training Facility Lease. Within the time period specified in the Schedule of Performance, StadCo shall cause the Team to negotiate with the City to amend the lease between the Team and the City for the Team's headquarters and training facility at 4949 Centennial Boulevard, which amendment among other things is intended to extend the term of the Team's lease to be co-terminus with the Stadium Lease, reduce the size of the premises under such lease to exclude property included in the Stadium Site, in accordance with the Subdivision Map, and coordinate the non-economic terms of such lease with the Stadium Lease.

ARTICLE 12.
DISPOSITION OF STADIUM LEASE

Section 12.1. Opening Escrow. To accomplish the conveyance of the leasehold interest in the Premises to StadCo pursuant to the Stadium Lease, StadCo shall establish an escrow ("Escrow") with the Title Company no later than the date set forth in the Schedule of Performance. By the date set forth in the Schedule of Performance, the Parties shall prepare, execute and deliver to the Title Company joint written instructions that are consistent with this Agreement ("Joint Escrow Instructions").

Section 12.2. Deposit of Documents. Within ten (10) Business Days following the satisfaction or waiver of all of the conditions set forth in Article 3 above as mutually determined by the Parties, excepting only the satisfaction of conditions requiring execution and deposit into Escrow of those documents that will not become effective until the Close of Escrow, the Parties shall duly execute and acknowledge, as necessary, and deposit into Escrow with the Title Company any and all documents and funds necessary to effectuate the Close of Escrow, including the original counterparts of the Ground Lease, the Stadium Lease and all other agreements, instruments, or documents required under this Agreement. Each such agreement, instrument and document shall be in recordable form if it is to be recorded.

Section 12.3. Close of Escrow. The Joint Escrow Instructions shall require that provided that all of the conditions set forth in Article 3 above have been satisfied or waived and all of the documents and funds described forth in Section 12.2 above have been deposited into Escrow, Title Company shall do all of the following:

(a) Complete the blank spaces in the documents referred to in Section 12.2 above (and all other documents required to be submitted prior to Close of Escrow) with the recording date and tract map information, if available, and other such information as may be specified in the Joint Escrow Instructions by the Parties;

(b) Attach thereto final and accurate legal descriptions consistent with the title policies required under this Agreement; and

(c) Cause to be recorded in the Official Records, the following documents:

(i) The Memorandum of Ground Lease;

(ii) The Memorandum of Agreement;

(iii) The Memorandum of Stadium Lease;

(iv) The Memorandum of Team Sublease; and

(v) Such other documents specified in the Joint Escrow Instructions, if any.

The date on which the Title Company records all of the above items pursuant to the Joint Escrow Instructions shall be the "Close of Escrow." The Close of Escrow shall occur no later than the Outside Closing Date.

Section 12.4. Closing Costs and Prorations. Subject to the terms of Section 12.6, StadCo shall pay to the Title Company all title insurance premiums and endorsement charges and all escrow fees in connection with the conveyance of the Premises to StadCo. Ad valorem taxes and assessments, if any, shall be prorated as of the Close of Escrow. Any such taxes and assessments, including supplemental taxes and escaped assessments, levied, assessed or imposed for any period up to the Close of Escrow shall be borne by the Stadium Authority, all of which shall be a Development Cost.

Section 12.5. Condition of Title to the Premises.

(a) Permitted Exceptions. The Stadium Authority shall convey the Premises to StadCo free of all liens, encumbrances, clouds, conditions, assessments, taxes, easements, occupancy or possession by others and rights of occupancy and possession by others, except the Permitted Exceptions.

(b) Title Defect. The Stadium Authority will not intentionally alter, or consent to the alteration by the City of, the condition of title existing as of the Effective Date, except for the documents and transactions contemplated hereunder, including without limitation the authorization for the Make-Ready Work. If on the date scheduled for the Close of Escrow, there exists on the Premises any liens, encumbrances, clouds, conditions, assessments, taxes, easements, occupancy and possession by others or rights of occupancy and possession other than those of StadCo, or any other matter which is not a Permitted Exception or an encumbrance otherwise agreed to by StadCo (each of the foregoing, a "Title Defect"), the Stadium Authority will have up to ninety (90) days following the scheduled date for the Close of Escrow to remove the Title Defect, which time period may be extended for up to an additional ninety (90) days at the option of StadCo, or extended for such longer period mutually agreed upon by the Stadium Authority and StadCo; provided that such extension period does not go beyond the Outside Closing Date. The Stadium Authority shall cooperate with StadCo to extend the Close of Escrow in order to permit the removal of any Title Defect (the "Extended Close of Escrow"); provided that the Extended Close of Escrow does not extend beyond the Outside Closing Date.

(c) Remedies With Respect to Uncured Title Defects. If at the date specified for the Extended Close of Escrow, or such later date mutually agreed upon by the Stadium Authority and StadCo, a Title Defect still exists, StadCo may by written notice to the Stadium Authority either (i) terminate this Agreement or (ii) accept delivery of the Premises under the Stadium Lease. If StadCo accepts delivery, the Title Defect will be deemed waived but solely with respect to any action by StadCo against the Stadium Authority and the City. If StadCo does not accept delivery and fails to terminate this Agreement within seven (7) days after the date

specified for the Extended Close of Escrow, or any extension provided above, the Stadium Authority may terminate this Agreement upon three (3) days' written notice to StadCo. If the Agreement is terminated under this Section, the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

Section 12.6. Title Insurance. The Joint Escrow Instructions will provide that concurrently with the Close of Escrow, the Title Company shall issue and deliver the following title insurance policies:

(a) StadCo Title Insurance. An A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as StadCo may request, in an amount designated by StadCo which is satisfactory to the Title Company, insuring that the leasehold estate in the Premises is vested in StadCo subject only to the Permitted Exceptions, and with such endorsements as may be requested by StadCo, all at the sole cost and expense of StadCo; and

(b) Stadium Authority Title Insurance. An A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as the Stadium Authority may request, in an amount designated by the Stadium Authority which is satisfactory to the Title Company, insuring that the Stadium Authority's leasehold estate in the Stadium Site is vested in the Stadium Authority subject only to the Permitted Title Exceptions which are applicable to such leasehold interest, and with such endorsements as may be requested by the Stadium Authority, all at the sole cost and expense of StadCo; provided that the cost to StadCo for such policy (including the endorsements) is not in excess of the cost of the title policy in Section 12.6(a), in which case, the Stadium Authority shall pay any excess amount.

(c) Lender(s) Title Insurance. An A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as any of the Stadium Authority's or StadCo's leasehold lenders may request, in an amount designated by each such lender which is satisfactory to the Title Company, insuring that the each such lender's lien in leasehold estate in the Stadium Site or Premises is vested in such leasehold lender, subject only to the Permitted Title Exceptions, and with such endorsements as may be requested by each such lender.

Section 12.7. Condition of the Stadium Site.

(a) "As Is" Conveyance. STADCO SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SUBJECT TO THE PROVISIONS OF SECTION 12.5(a), THE STADIUM AUTHORITY'S INTEREST IN THE STADIUM SITE WILL BE DELIVERED PURSUANT TO THE GROUND LEASE ON AN "AS IS, WITH ALL FAULTS" BASIS AND THAT STADCO IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY OR STADIUM AUTHORITY AS TO ANY MATTERS CONCERNING THE STADIUM SITE, INCLUDING WITHOUT LIMITATION: (i) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE

STADIUM SITE (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (ii) THE STADIUM SITE'S, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE STADIUM SITE FOR ANY PARTICULAR PURPOSE, (iii) THE ZONING OR OTHER LEGAL STATUS OF THE STADIUM SITE OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE STADIUM SITE, (iv) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE STADIUM SITE OR THE ADJOINING OR NEIGHBORING PROPERTIES, (v) THE CONDITION OF TITLE TO THE STADIUM SITE AND (vi) WHETHER THE STADIUM SITE IS LOCATED IN ANY OF THE FOLLOWING AREAS, EACH OF WHICH, AND COLLECTIVELY, SHALL BE REFERRED TO AS AN "ENVIRONMENTALLY DANGEROUS AREA": AN AREA WHICH IS DESIGNATED BY ANY FEDERAL, STATE OR LOCAL AGENCY AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA. STADCO ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE STADIUM SITE AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE STADIUM SITE. STADCO UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE STADIUM SITE'S LOCATION IN ANY ENVIRONMENTALLY DANGEROUS AREA. NOTWITHSTANDING ANY OF THE FOREGOING, OR THE REMAINDER OF THIS SECTION 12.7 TO THE CONTRARY, THE STADIUM AUTHORITY'S CONVEYANCE OF STADCO'S LEASEHOLD INTEREST PURSUANT TO THE STADIUM LEASE SHALL NOT RELEASE THE STADIUM AUTHORITY FROM ITS OBLIGATIONS UNDER SECTION 13.1 OF THIS AGREEMENT.

(b) StadCo's Release of the Stadium Authority. StadCo, on behalf of itself and anyone claiming by, through or under StadCo, hereby waives its right to recover from and fully and irrevocably releases the Stadium Authority, the City, and their council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that StadCo may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action (collectively, "Loss") arising from or related to (i) the condition, valuation, salability or utility of the Stadium Site or its suitability for any purpose whatsoever, (ii) any presence of hazardous materials on the Stadium Site occurring prior to the delivery of StadCo's leasehold interest in the Premises pursuant to the Stadium Lease, except if caused by the gross negligence or intentional misconduct of a Released Party, and (iii) any information furnished in good faith by the Released Parties regarding the physical condition of the Stadium Site.

(c) Scope of Release. The release set forth in Section 12.7(b) hereof includes claims of which StadCo is presently unaware or which StadCo does not presently suspect to exist which, if known by StadCo, would materially affect StadCo's release of the Released Parties.

StadCo specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by Law, StadCo agrees, represents and warrants that StadCo realizes and acknowledges that factual matters now unknown to StadCo may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and StadCo further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that StadCo nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, StadCo, on behalf of itself and anyone claiming by, through or under StadCo, hereby assumes the above-mentioned risks and hereby expressly waives any right StadCo and anyone claiming by, through or under StadCo, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

StadCo's Initials: JEY

(d) The provisions of this Section 12.7 shall survive the termination of this Agreement.

ARTICLE 13.
CONSTRUCTION OF THE STADIUM

Section 13.1. Commencement and Completion of Construction. Following the Close of Escrow, pursuant to the terms of the Design-Build Agreement, and through the Construction Agent, the Stadium Authority shall cause the Design-Build Contractor to:

(a) commence and diligently prosecute to Completion the construction of the Project in accordance with the terms of this Agreement and within the time set forth in the Schedule of Performance; and

(b) construct the Project (i) pursuant to the Design-Build Agreement, which among other things, shall require the Design-Build Contractor to deliver payment and performance bonds, pay prevailing rates of wages and comply with local sales and use tax law, and (ii) in accordance with the GMP Set, the approved Final Construction Documents, and the terms and conditions of all applicable City and other Governmental Authority approvals.

Section 13.2. Limitation of Liability.

(a) Notwithstanding the provisions of Section 19.2(b), the Stadium Authority's liability to StadCo for Project construction defects or the failure to comply with the requirements of Section 13.1 arising from or in connection with the failure of the Design-Build Contractor, or other design professionals, the Make-Ready Work Contractor, any Separate

Contractor, other contractors or subcontractors in connection with the construction of the Project (each a "Responsible Party" and collectively, the "Responsible Parties") to comply with their obligations under the Design-Build Agreement or any other contract with the Stadium Authority or contract pursuant to which the Stadium Authority has rights to enforce obligations of any such Responsible Party (each such contract, a "Responsible Party Contract" , and collectively, the "Responsible Party Contracts") shall be limited to the following: (a) funds obtained from each such Responsible Party and its surety in connection with the Stadium Authority's diligent enforcement of such Responsible Party's Responsible Party Contract, including, without limitation the enforcement of all warranties in connection with the Responsible Party Contracts; (b) at the request of StadCo, the conveyance, transfer and assignment to StadCo of the non-exclusive right to enforce jointly or severally (i) any and all respective obligations of any Person under any Responsible Party Contract, including, but not limited to any and all representations, covenants and warranties thereunder; and (ii) any and all rights the Stadium Authority may have under the Design-Build Agreement and any other Responsible Party Contract identified by StadCo to require the Design-Build Contractor or applicable Responsible Party to correct, or pay for the correction of, any such non-compliance; (c) at the request of StadCo, cooperation, consultation and coordination with StadCo in either Party's prosecution of claims under the Design-Build Agreement or any Responsible Party Contract; and (d) the Stadium Authority's prompt notification of StadCo in writing of any default by any Person under a Responsible Party Contract and of the remedy or course of action sought by the Stadium Authority or to be taken by the Stadium Authority in response to such default. The provisions of this Section 13.2(a) shall survive the termination of this Agreement.

(b) At StadCo's recommendation, the Design-Build Agreement may provide that the Design-Build Contractor would be entitled, in certain circumstances, to an incentive fee if the work under the Design-Build Agreement is Substantially Completed (as defined in the Design-Build Agreement) prior to July 31 of the calendar year in which the Stadium is scheduled to be Substantially Completed. Substantial Completion by July 31 will allow StadCo to prepare the Stadium for the upcoming NFL Season, and to assure that the Stadium is available for the NFL pre-season and regular season games. As substantially all of the benefits resulting from the Design-Build Contractor achieving Substantial Completion between August 1 of the calendar year in which the Stadium is scheduled to be Substantially Completed and January 31 of the following year would accrue to StadCo and the Team, StadCo agrees that if such incentive fee is payable to the Design-Build Contractor, StadCo will pay to the Stadium Authority, prior to the date any incentive fee is due to the Design-Build Contractor, an amount equal to such incentive fee as bonus rent under the Stadium Lease.

(c) At StadCo's recommendation, the Design-Build Agreement provides that the Design-Build Contractor would be responsible, in certain circumstances, for liquidated damages if the work under the Design-Build Agreement is not Substantially Completed by the date required under the Design-Build Agreement, including liquidated damages for each San Francisco 49ers NFL regular season home game originally scheduled by the NFL that is not played because the work was not Substantially Complete. Without limiting the generality of Section 13.2(a) above, StadCo and the Stadium Authority agree that substantially all of the damages resulting from the failure of the Design-Build Contractor to achieve Substantial Completion between August 1 of the calendar year in which the Stadium is scheduled to be Substantially Completed and January 31 of the following year will be suffered by StadCo and the

Team, and in compensation for such damages, the Stadium Authority, upon StadCo's request, shall assign to StadCo any and all such liquidated damages received by the Stadium Authority from the Design-Build Contractor and any and all rights or claims to receive such liquidated damages from the Design-Build Contractor.

Section 13.3. Insurance. Prior to the Close of Escrow, the Stadium Authority and StadCo, working with the Stadium Authority's insurance brokerage firm, shall develop a comprehensive owner's insurance program that will cover the insurance needs of the Project (the "Insurance Program"). The Insurance Program may include, but not be limited to: Worker's Compensation, Employer's Liability, Commercial General Liability, Excess Coverage (all of the foregoing to be secured on a wrap-up ("Wrap-Up") basis), Builder's Risk (or Inland Marine) Property Insurance (including in transit property coverage), Professional Liability Insurance (including Owners Protective Professional Insurance), environmental coverage such as clean-up, cost cap or pollution and remediation legal liability insurance, and such other policies and coverages deemed appropriate by the Stadium Authority and StadCo. StadCo, the Design-Build Contractor and its eligible subcontractors, the Separate Contractors and their eligible subcontractors, and other eligible contractors of the Stadium Authority shall participate in the Insurance Program in accordance with the terms thereof, as may be incorporated, or further specified in the Design-Build Agreement or other Project-related agreements with the Stadium Authority or Construction Agent, as applicable.

(a) StadCo shall cause the design professionals preparing StadCo's Stadium Design Work Product to procure and maintain appropriate levels of insurance coverage, and the Construction Agent and StadCo shall comply with the insurance coverage required by any other agreements entered into between StadCo and either the Stadium Authority, or the City with respect to the Stadium Site, including, without limitation, the Construction Agency Agreement.

(b) From the Close of Escrow, until Completion, the Construction Agent, on behalf of the Stadium Authority, shall use Professional Efforts to cause the Design-Build Contractor and its subcontractors, the Separate Contractors and their subcontractors and applicable consultants to participate in any Wrap-Up put in place by the Stadium Authority pursuant to the Insurance Program and to procure and maintain at least the type and level of insurance coverage set forth in the Design-Build Agreement. Notwithstanding any of the foregoing to the contrary, contractors and subcontractors performing Make-Ready Work shall not be subject to the Insurance Program, but shall maintain insurance as provided in the Make-Ready Work Construction Contract.

(c) After the Completion, StadCo and the Stadium Authority shall obtain and maintain insurance as shall be set forth in the Stadium Lease.

ARTICLE 14.
CERTIFICATE OF COMPLETION

Section 14.1. Certificate of Completion.

(a) Issuance Process.

(i) After the Completion of construction of the Improvements in accordance with all the provisions of this Agreement, either Party may make a written request to conduct a final inspection of the Completed Improvements and for the Parties to jointly execute and issue a Certificate of Completion. The Party in receipt of such request shall act upon such request within thirty (30) days of receipt.

(ii) The issuance of the Certificate of Completion shall not relieve StadCo, or any other Person from any and all requirements or conditions of any approval or permit of any Regulatory Agency required for occupancy of the Stadium. StadCo shall comply with all such requirements or conditions separately.

(iii) The issuance of the Certificate of Completion shall not relieve the Parties from their obligations that expressly survive the expiration or termination of this Agreement, including, without limitation, Stadium Authority's obligations to obtain Stadium Authority Financing in accordance with Sections 7.1 and 7.2 of this Agreement.

(b) Deferred Items. If there remain minor items of incomplete work not impacting Substantial Completion and to be completed and/or corrected after Substantial Completion in accordance with the terms of the Construction Contracts, as applicable (collectively, "Deferred Items"), the Parties may mutually agree to issue the Certificate of Completion upon if they are satisfied that adequate provision has been made for completion of all of the Deferred Items under the respective Construction Contracts and that such Deferred Items will be diligently pursued to final completion.

(c) Definition of Completed and Completion. For purposes of the Parties' issuance of the Certificate of Completion in accordance with the provisions of Section 14.1(a) above, "Complete", "Completed" and "Completion" mean

(i) with respect to the Improvements subject to the Design-Build Agreement, Substantial Completion, as defined in the Design-Build Agreement, by Design-Build Contractor of all aspects of the Improvements and Final Construction Documents and this Agreement and following the release of the Retention, as defined in the Design-Build Agreement, to the Design-Build Contractor (other than funds reserved for Deferred Items);

(ii) with respect to the Separate Construction Contracts, completion of all Separate Construction Work by the applicable Separate Contractor in accordance with the plans and specifications and final construction documents approved by the Parties; and

(iii) with respect to the Make-Ready Work, completion by the Make-Ready Work Contractor in accordance with the approved Make-Ready Work plans and

specifications and acceptance by the City of those portions of the Make-Ready Work to be dedicated to the City.

Section 14.2. Form and Effect of Certificate.

(a) Form of Certificate. The Certificate of Completion will be in a form that permits it to be recorded in the Official Records. For purposes of this Agreement, the Certificate of Completion will be a conclusive determination of Completion of the Improvements (except for completion of Deferred Items).

(b) Effect. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of occupancy to be issued by the City, which is separately required for occupancy, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Design-Build Contractor or Separate Contractor as applicable, regarding prevailing wages required in the applicable Construction Contracts, or to any holder of a deed of trust securing money loaned to finance the Project or any portion thereof.

Section 14.3. Failure to Issue. If either Party refuses or fails to execute the Certificate of Completion after an inspection requested by the other Party, such refusing or failing Party shall provide the requesting Party with a written statement specifying the reasons for such refusal or failure to execute the Certificate of Completion and identifying the items that require completion or requirements that must be satisfied in order to issue the Certificate of Completion. The Stadium Authority agrees through the respective Construction Agency Agreement and Make-Ready Work Agency Agreement, to cause the Design-Build Contractor, Separate Contractors and Make-Ready Work Contractor as applicable, to correct, pursuant to the terms of the applicable Construction Contracts, all construction defects or items that fail to comply with the Project Documents or plans and specifications and final construction documents identified by StadCo, and the Stadium Authority shall enforce its rights in connection therewith under such agreements against the Make-Ready Work Contractor, Design-Build Contractor and the Separate Contractors. The immediately preceding sentence shall survive the termination of this Agreement.

Section 14.4. Early Occupancy. Nothing in this Article 14 is intended to limit StadCo's right to early occupancy of the Premises as authorized by the Stadium Lease.

ARTICLE 15.
ACCOUNTING; AUDIT RIGHTS

Section 15.1. Accounting. Pursuant to the terms of this Agreement, the Stadium Authority is responsible for the payment of Development Costs, and StadCo is responsible for the payment of Tenant Improvement Costs. StadCo, as Construction Agent, shall maintain complete and accurate books and records of the Total Development Costs in accordance with generally accepted accounting principles consistently applied, or in another auditable form approved by the Parties in advance and in writing ("Records"), and the Stadium Authority shall cooperate with the Construction Agent to provide documents and information reasonably requested by Construction Agent to comply with the foregoing obligations.

Section 15.2. Audit Rights. Within ninety (90) days after receipt of the Total Development Costs Statement or inspection of other Records, if a Party disputes any matters set forth in such Records, a Party shall have the right to retain an independent certified public accountant to audit such Records and the Party subject to the audit agrees to cooperate with the auditor in its conduct of the audit. The report of the auditor and the auditor's determination of the amount, payment or reimbursement of Total Development Costs shall be final and binding on the Parties except in the case of fraud, corruption or undue influence. The cost of the audit shall be paid by the requesting Party. The provisions of this Article 15 shall survive the termination of this Agreement.

ARTICLE 16.
STADIUM MANAGEMENT AGREEMENT

Section 16.1. Stadium Management Agreement. Prior to the Close of Escrow, the Stadium Authority and StadCo shall agree on the final form of the Stadium Management Agreement. The Parties anticipate that StadCo will create an Affiliate to enter into the Stadium Management Agreement ("ManagementCo"), subject to the Stadium Authority's approval of the organizational documents, staffing, and capitalization of ManagementCo at the Close of Escrow. Except as otherwise agreed in the Stadium Management Agreement, the Stadium Management Agreement shall be on terms consistent with the following:

(a) Management Services. ManagementCo shall be responsible for the day-to day operation of the Stadium on behalf of StadCo and the Stadium Authority, pursuant to an annual operations plan approved by the Stadium Authority, including management and oversight of the maintenance and repair of the Stadium, marketing activities with respect to Non-NFL Events, concession and parking operations of the Stadium, development of budgets and capital plans, and maintenance of books and records.

(b) Term. The initial term of the Stadium Management Agreement shall continue for a period of twenty-five (25) years from the Commencement Date, and thereafter shall be subject to extension, at the option of the Stadium Authority, for the balance of the term of the Stadium Lease.

(c) Third Party Contracts. ManagementCo shall have the right and obligation, in accordance with standards and processes set forth in the Stadium Management Agreement, to enter into third party contracts relating to the operation and maintenance of the Stadium in order to provide services to the Stadium on a year-round basis, including, without limitation, the Concession Operating Agreement and agreement for parking operations.

Section 16.2. Line of Credit. As a condition of the Close of Escrow, the Stadium Authority shall have entered into an agreement with ManagementCo, in a form and amount reasonably satisfactory to the Stadium Authority, pursuant to which ManagementCo commits to loan funds to the Stadium Authority at the request of the Stadium Authority in accordance with the Line of Credit Agreement Summary. The Line of Credit Agreement shall incorporate in substantial form the material terms as set forth in the Line of Credit Agreement Summary.

ARTICLE 17.
STADIUM PARKING

Section 17.1. Publicly-Owned Parking. Pursuant to the Ground Lease, the Stadium Authority and StadCo will have the rights described in the Summary of Parking Rights.

Section 17.2. Parking Plan. Prior to the Close of Escrow, StadCo shall submit to the Stadium Authority, for its reasonable review and approval, a preliminary plan to provide a sufficient number of parking spaces to meet the NFL game-day parking requirements (the "Preliminary Parking Plan"). The Preliminary Parking Plan shall demonstrate reasonable progress toward securing required parking spaces by identifying as many of the approximately 21,000 parking spaces needed for NFL game-day parking as can be identified by the time of submission. In addition to the spaces on publicly owned property described in the Summary of Parking Rights, the Preliminary Parking Plan shall describe the number and location of private parking spaces expected to be available, along with reasonable evidence, such as a letter of intent between StadCo and the Person with legal rights to allow the use of such parking spaces for NFL Events, that such spaces will be available, subject to obtaining an off-site parking permit pursuant to Chapter 18.86 of the Santa Clara Municipal Code.

ARTICLE 18.
ASSIGNMENT AND TRANSFERS

Section 18.1. Definitions. As used in this Article 18, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any transfer in any other mode or form, of or with respect to StadCo's interest in this Agreement, or any valid, duly executed contract or agreement to do any of the same; or

(b) Any direct or indirect sale, assignment or conveyance, or any transfer in any other mode or form, of any ownership interest in StadCo that results in the Team no longer Controlling StadCo.

Section 18.2. Any Purpose of Restrictions on Transfer. The qualifications and identity of StadCo are of particular concern to the Stadium Authority, in view of the importance of the redevelopment of the Stadium Site to the general welfare of the community. It is because of the qualifications and identity of StadCo that the Stadium Authority is entering into this Agreement with StadCo and that Transfers are permitted only as provided in this Agreement.

Section 18.3. Prohibited Transfers. The limitations on Transfers set forth in this Article 18 shall apply from the Effective Date until the termination of this Agreement. Except as expressly permitted in this Agreement, StadCo represents and agrees that StadCo has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the Stadium Authority, which may be granted in the sole discretion of the Stadium Authority. Any Transfer made in contravention of this Section 18.3 shall be void and shall be deemed to be a default under this Agreement, whether or not StadCo knew of or participated in such Transfer.

Section 18.4. Permitted Transfers. Notwithstanding the provisions of Section 18.3, the following Transfers shall be permitted without prior consent of Stadium Authority (subject to satisfaction of the applicable conditions of Section 18.5):

(a) Any Transfer related to an encumbrance of StadCo's leasehold interest in the Premises approved by the Stadium Authority pursuant to Section 8.6.

(b) Any Transfer directly resulting from the foreclosure of or the granting of a deed in lieu of foreclosure of an encumbrance of StadCo's leasehold interest in the Premises approved by the Stadium Authority pursuant to Section 8.6.

(c) Any Transfer to an Affiliate of the Team.

(d) Any Transfer otherwise approved by the Stadium Authority.

Section 18.5. Permitted Transfers Conditions. As a condition of any direct Transfer of an interest in this Agreement pursuant to Section 18.4(c) or (d) above, the transferee must concurrently assume the obligations of StadCo under this Agreement and the Stadium Lease. As a condition of a Transfer described in Section 18.4(c), the Stadium Authority may require review and approval of the transferee's organizational documents for the purposes of determining that such Transfer does not result in a change in Control of StadCo by the Team.

Section 18.6. Effectuation of Transfers. Other than as permitted in Section 18.4, no Transfer of a direct interest in this Agreement shall be permitted without the prior approval of the Stadium Authority, which may be withheld in its sole discretion. Other than as permitted in Section 18.4, no Transfer shall be approved unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the Stadium Authority and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The Stadium Authority shall grant or deny approval of a proposed Transfer within forty-five (45) days of receipt by the Stadium Authority of StadCo's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not Stadium Authority approval is required) shall be in writing executed by StadCo and the assignee or transferee, which written agreement shall name the Stadium Authority as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the Stadium Authority within seven (7) Business Days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify Stadium Authority with respect to the Project, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee.

ARTICLE 19.
DEFAULT AND REMEDIES

Section 19.1. Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 19.2. Default of Stadium Authority.

(a) Event of Default. Following expiration of the applicable notice and cure period as set forth in subsection (b) below, each of the following events constitutes a "Stadium Authority Event of Default" and a basis for StadCo to take action against the Stadium Authority:

(i) The Stadium Authority fails to convey the leasehold in the Premises to StadCo as provided in this Agreement and StadCo is otherwise entitled by this Agreement to such conveyance.

(ii) The Stadium Authority breaches any other provision of this Agreement.

(iii) The Stadium Authority defaults under the Stadium Lease and has not cured such default within the applicable time period contained therein.

(iv) The Stadium Authority: (1) files for bankruptcy, dissolution, or reorganization, or fails to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing; (2) makes a general assignment for the benefit of creditors; (3) applies for the appointment of a receiver, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing; (4) becomes insolvent; or (5) fails, is unable or admits in writing to its inability to pay its debts as they become due.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, StadCo shall first notify the Stadium Authority in writing of its purported breach or failure to make a payment required by this Agreement, giving the Stadium Authority fifteen (15) days from receipt of such notice and (60) days from receipt of such notice to cure any other breach or failure. In the event the Stadium Authority does not then cure the payment default within such fifteen (15) day-period, or such other default within such sixty (60)-day period (or, if the default is not reasonably susceptible of cure within such sixty (60)-day period, the Stadium Authority fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion within a reasonable time not to exceed one hundred twenty (120) days from receipt of the default notice), then StadCo shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies:

(i) terminating this Agreement upon thirty (30) days prior written notice to the Stadium Authority;

(ii) instituting an action for specific performance;

(iii) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for a Stadium Authority Event of Default occurring after the Close of Escrow; or

(iv) seeking any other remedy available at law or in equity (excluding punitive damages and Consequential Damages). If StadCo elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 19.3. Default of StadCo.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "StadCo Event of Default" and a basis for the Stadium Authority to take action against StadCo:

(i) StadCo fails to make any payment required to be made by StadCo under this Agreement.

(ii) StadCo Transfers in violation of the terms of Article 18.

(iii) StadCo defaults under the Stadium Lease and has not cured such default within the applicable time period contained therein, subject, to the rights of any tenant mortgagee under the Stadium Lease.

(iv) StadCo:

(1) files for bankruptcy, dissolution, or reorganization, or fails to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing;

(2) makes a general assignment for the benefit of creditors;

(3) applies for the appointment of a receiver, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or one hundred eighty (180) days after the filing;

(4) becomes insolvent; or

(5) fails, is unable, or admits in writing to its inability, to pay its debts as they become due.

(v) StadCo breaches any other provision of this Agreement.

(vi) A default under the Non-Relocation Agreement that is not cured within the time periods set forth therein

(vii) StadCo, or an Affiliate, defaults under the Subordinate Loan Documents and such default is not cured within the time periods set forth therein.

(viii) StadCo, or an Affiliate, defaults under the Construction Agency Agreement and such default is not cured within the time periods set forth therein.

(b) Notice and Cure Procedure. Upon the occurrence of any of the above-described events, the Stadium Authority shall first notify StadCo in writing of its purported breach or failure, giving StadCo ten (10) days from receipt of such notice to cure a failure to make a payment required by this Agreement and thirty (30) days from receipt of such notice to cure any other breach or failure. Except as provided in the Stadium Lease with respect to permitted Mortgagees, in the event StadCo does not then cure the payment default within such ten (10) day period, or such other default within such thirty (30)-day period (or, if the default is not reasonably susceptible to cure within such thirty (30)-day period, StadCo fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion within a reasonable time not to exceed sixty (60) days from receipt of the default notice), then the Stadium Authority shall be entitled to any rights afforded it at law or in equity by pursuing any or all of the following remedies:

(i) terminating this Agreement upon thirty (30) days' prior written notice to StadCo;

(ii) instituting an action for specific performance;

(iii) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for a StadCo Event of Default occurring after the Close of Escrow; or

(iv) seeking any other remedy available at law or in equity (excluding punitive damages and Consequential Damages). If the Stadium Authority elects to terminate this Agreement the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 19.4. Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default. No waiver made by one Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to any such obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

ARTICLE 20.
GENERAL PROVISIONS

Section 20.1. StadCo Representations and Warranties. As an inducement to the Stadium Authority to enter into this Agreement, StadCo hereby represents and warrants to the Stadium Authority as of the Effective Date (except with respect to (g)) and as of the Close of Escrow, as follows:

(a) Power and Authority. Each individual executing and delivering this Agreement on behalf StadCo hereby represents to the other Party that such individual has all requisite power and authority to execute and deliver the same and to bind StadCo hereunder.

(b) Organization. StadCo is a limited liability company, duly organized and validly existing under the laws of the State of Delaware, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. StadCo is qualified to do business in the State of California.

(c) Authorization. StadCo has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of the Agreement. No consent to the execution and delivery of this Agreement by StadCo or the performance by StadCo of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been given.

(d) Enforceable. Upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of StadCo, enforceable against StadCo in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(e) No Conflict. The execution, delivery and performance of this Agreement by StadCo does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the formation documents of StadCo, (ii) any applicable Law binding upon or applicable to StadCo, or (iii) any material agreements to which StadCo is a party that are materially related to the development or operation of the Stadium, including, but not limited to a loan agreement.

(f) No Litigation. Unless otherwise disclosed in writing to the Stadium Authority prior to the date of this Agreement and prior to the Close of Escrow, as applicable, to StadCo's actual knowledge, there is no existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency affecting StadCo that would, if adversely determined, materially and adversely affect StadCo's ability to perform its obligations under this Agreement or to manage the development of, and if StadCo or an Affiliate enters into an agreement with the Stadium Authority to operate the Stadium, the operation of, the Stadium. For the purpose of this subsection (f), StadCo's actual knowledge means the actual knowledge of each of John Edward York and Larry MacNeil.

(g) No Material Adverse Change. There has been no material adverse change in the financial condition of StadCo since the Effective Date which would materially and adversely affect StadCo's ability to perform its obligations under this Agreement, or to participate in the development and operation of the Stadium in accordance with the terms of this Agreement.

Section 20.2. Stadium Authority Representations and Warranties. As an inducement to StadCo to enter into this Agreement, the Stadium Authority represents and warrants to StadCo as of the Effective Date (except with respect to (g)) and the Close of Escrow as follows:

(a) Power and Authority. Each individual executing and delivering this Agreement on behalf the Stadium Authority hereby represents to the other Party that such individual has all requisite power and authority to execute and deliver the same and to bind the Stadium Authority hereunder.

(b) Organization. The Stadium Authority is a joint exercise of powers entity, created through Government Code sections 6500 *et seq*., duly formed and validly existing under the laws of the State of California, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(c) Authorization. The Stadium Authority has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of the Agreement. No consent to the execution and delivery of this Agreement by StadCo or the performance by StadCo of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been given.

(d) Enforceable. This Agreement shall constitute a legal, valid and binding obligation of the Stadium Authority, enforceable against the Stadium Authority in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(e) No Conflict. The execution, delivery and performance of this Agreement by the Stadium Authority does not and will not conflict with, or constitute a violation or breach of, or constitute a default under or violation of (i) the Joint Powers Agreement or any other formation documents of the Stadium Authority, (ii) any applicable Law binding upon or applicable to the Stadium Authority, or (iii) any material agreements to which the Stadium Authority is a party, that is materially related to the development or operation of the Project, including but not limited to the Ground Lease.

(f) No Litigation. Unless otherwise disclosed in writing to StadCo, to the Stadium Authority's actual knowledge, there is no existing, pending or threatened litigation, suit, Action or Proceeding before any court or administrative agency affecting the Stadium Authority or the Stadium Site that would, if adversely determined, materially and adversely affect the Stadium Authority or the Stadium Site or the Stadium Authority's ability to perform its obligations under this Agreement or to develop and operate the Project. For the purpose of this subsection (f), the Stadium Authority's actual knowledge means the actual knowledge of the Executive Director.

(g) No Material Adverse Change. To the best of the Stadium Authority's knowledge, there has been no material adverse change in the financial condition or bonding capacity of the Stadium Authority since the date of this Agreement which would materially and adversely affect the Stadium Authority's ability to perform its obligations under this Agreement or to develop and operate the Stadium.

Section 20.3. StadCo's Termination of Agreement. Notwithstanding any provision of this Agreement to the contrary, if, prior to the Close of Escrow, StadCo determines that one or more conditions to the Close of Escrow will not timely be met following the good faith effort to satisfy such condition by StadCo and/or the Stadium Authority, StadCo may give notice of such determination to the Stadium Authority, specifying in reasonably sufficient detail the basis for StadCo's determination. Following the delivery of such notice, the Parties shall cooperate to minimize the costs incurred by either Party in connection with this Agreement. Over the ninety (90) days following delivery of such notice, the Parties shall meet at least weekly to explore and consider in good faith approaches to satisfying the conditions to the Close of Escrow. If, at the conclusion of such ninety (90)-day period, it remains StadCo's good faith determination that the conditions to the Close of Escrow will not timely be met, StadCo shall have the right to terminate this Agreement by delivering a notice of termination to the Stadium Authority. If the Agreement is terminated under this Section, any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party, and the Parties shall have no further obligations to each other with respect to this Agreement, except to the extent this Agreement expressly provides that an obligation survives termination hereof.

Section 20.4. Notices, Demands and Communications.

(a) General Notice. All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Agreement shall be given in writing to such Party at the address set forth below, or at such other address as such Party shall designate by written notice to the other Party to this Agreement and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by facsimile (with confirmation of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (1) three (3) Business Days after posting if mailed as provided, (2) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, or (3) in the case of facsimile (with confirmation of such notice), when sent, so long as it was received during normal business hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties to whom notice hereunder must be given, by delivering to the other Party five (5) days' notice thereof setting forth the address(es) for each such additional party.

Stadium Authority:

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Jennifer Sparacino, Executive Director

with copies to:

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Richard E. Nosky, Jr., Authority General Counsel

StadCo:

Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attention: John Edward York, President

with copies to:

Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attention: Larry MacNeil, CFO

and

Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attention: Jack Hill, Project Executive

and

Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Attention: Harry O'Brien

(b) NFL Notice. If any Party delivers any notice pursuant to Article 19 or Section 20.3 of this Agreement, such Party shall also contemporaneously deliver a copy of such notice to the NFL at 280 Park Avenue, New York, NY 10017, Attention: Treasurer. The NFL shall have the right at any time and from time to time to change such address for notice by giving all Parties at least five (5) days prior written notice of such change of address.

Section 20.5. Stadium Authority Approval. Whenever this Agreement calls for Stadium Authority approval, consent, or waiver, the written approval, consent, or waiver of the Executive Director, or his or her designee, shall constitute the approval, consent, or waiver of the Stadium Authority, without further authorization required from the Board. The Stadium Authority hereby authorizes the Executive Director, or his or her designee, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Stadium Authority.

Section 20.6. No Personal Liability. No member, official, councilmember, commissioner, partner, employee, shareholder, member, manager, director or agent of any Party or the City shall be personally liable to any other Party, the City or any of their successors-in-interest, in the event of any default or breach by any Party or for any amount which may become due to such Party or on any obligation under the terms of this Agreement.

Section 20.7. Submittals and Approvals. Various submittals are required or may be provided by the StadCo pursuant to this Agreement. As expressly provided by this Agreement, the Stadium Authority shall approve or disapprove certain of StadCo's submittals within a certain timeframe or else such submittal shall be deemed approved by the Stadium Authority. Notwithstanding the provisions for deemed approval, no matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

> NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION __ OF THE DDA THAT FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN _____ (___) DAYS SHALL BE DEEMED AN APPROVAL.

Section 20.8. Enforced Delay.

(a) Force Majeure. No Party hereunder, nor its successor-in-interest, shall be deemed to be in default with respect to an obligation under this Agreement where an enforced delay in the performance of such obligation is primarily due to war; insurrection; strikes and substantial interruption of work because of labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; acts or the failure to act of any public or governmental agency or entity relating to the issuance of permits or other regulatory approvals, and moratoriums in the issuance of permits or approvals applicable to the Stadium Site or the Improvements; delays of contractors and subcontractors due to any of these causes; the unanticipated presence of hazardous materials or other concealed conditions on the Stadium Site that would materially and adversely hinder the construction of the Project (including archeological finds); inability to obtain materials or reasonably acceptable substitute materials; Litigation Force Majeure (provided that the Party seeking to claim the occurrence of a Litigation Force Majeure proceeds with due diligence to defend such Action or Proceeding or takes other appropriate measures to resolve any dispute that is the subject of such Action or Proceeding); or other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the enforced delay; provided that the Party requesting an extension of time under this Section 20.8 has given notice to the other Parties promptly following knowledge of the enforced delay, but in no event later than thirty (30) days after the commencement of such enforced delay. For purposes of this Section 20.8, a cause shall be beyond the control of the Party whose performance would otherwise be due only if and to the extent such cause would prevent or hinder the performance of an obligation by any reasonable person similarly situated and shall not apply to causes peculiar to the Party claiming the benefit of this Section 20.8 (such as a failure to order materials in a timely fashion).

(b) Litigation Force Majeure. "Litigation Force Majeure" means any Action or Proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party, (i) which seeks to challenge the validity of any action taken by the City, the Stadium Authority or the Agency in connection with the Project, including the City's approval execution and delivery of the Ground Lease and the Stadium Authority's approval, execution and delivery of this Agreement or the Stadium Authority's approval, execution and delivery of the Stadium Lease and its performance hereunder and thereunder, as applicable, or other action by the City, the Stadium Authority or the Agency approving the execution and delivery of any Project-related documents, or any findings upon which any of the foregoing are predicated, or (ii) which seeks to challenge the validity of any other governmental permit or approval required in connection with construction of the Project. Performance by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the Party whose performance is delayed has become final and unappealable. Under no circumstances shall the delay attributable to an event of Litigation Force Majeure extend beyond three (3) years unless the Parties expressly waive such limitation. The Parties shall each proceed with due diligence and shall cooperate with one another to defend the Action or Proceeding or take other measures to resolve the dispute that is the subject of such Action or Proceeding.

Section 20.9. Inspection of Books and Records. The Stadium Authority has the right at all reasonable times during customary business hours and upon two (2) Business Days' prior written notice to inspect (but not copy, unless such information is public record) the books and records of StadCo pertaining to its obligations under this Agreement; provided that, the Stadium Authority shall, to the maximum extent allowed by applicable Law, keep strictly confidential any such information which StadCo determines is proprietary. StadCo also has the right at all reasonable times during customary business hours and upon two (2) Business Days' prior written notice to inspect the books, records and all other documentation of the Stadium Authority which legally may be disclosed pertaining to its obligations under this Agreement. The provisions of this Section 20.9 shall survive the termination of this Agreement for two (2) years after such termination.

Section 20.10. Table of Contents; Headings. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

Section 20.11. Governing Law. This Agreement and the actions of the Parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of California (excluding principles of conflict of laws).

Section 20.12. Severability. If any term or provision of this Agreement, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to

the fullest extent permitted by applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 20.13. Legal Actions. Except as otherwise expressly provided in this Agreement, if either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

(a) In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the Stadium Authority to enter into this Agreement or perform its obligations hereunder, either the Stadium Authority or StadCo may defend such action. Upon commencement of any such action, the Stadium Authority and StadCo shall meet in good faith and seek to establish a mutually acceptable method of defending such action, and the Stadium Authority shall defend such action if requested by StadCo.

(b) Subject to the agreement of the Parties contained in this Agreement regarding alternative procedures for dispute resolution, any Action or Proceeding against any Party arising out of or relating to this Agreement or any transaction contemplated hereby or any judgment entered by any court in respect thereof may be brought in any federal or state court located in the County of Santa Clara, California, and each Party hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such Action or Proceeding. Each Party irrevocably agrees not to assert any objection that it may ever have to the location of venue of any such Action or Proceeding in any federal or state court in the County of Santa Clara, California, and any claim that any such Action or Proceeding brought in any such court has been brought in an inconvenient forum. Subject to the agreement of the Parties contained in this Agreement regarding alternative procedures for dispute resolution, each Party agrees not to bring any Action or Proceeding against the other Party arising out of or relating to this Agreement or any transaction contemplated hereby except in a federal or state court located in the County of Santa Clara, California. The provisions of this Section 20.13 shall survive the termination of this Agreement.

Section 20.14. Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 20.15. Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth herein.

Section 20.16. Discretion Retained By City. The Stadium Authority's execution of this Agreement in no way limits the lawful exercise by the City in the otherwise required permit and approval process.

Section 20.17. Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together constitute one and the same Agreement. All signatures need not be on the same counterpart.

Section 20.18. Amendments. The Parties may amend this Agreement only by means of a writing signed by all Parties.

Section 20.19. Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 20.20. Indemnity. To the extent permitted by law, and subject to the indemnification obligations under the Construction Agency Agreement and the Design-Build Agreement, StadCo undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, their respective commissioners, council members, officers, employees, agents, and successors (the "Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to StadCo's acts or omissions in its performance under this Agreement, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties.

Section 20.21. No Presumption against Drafter. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including, but not limited to California Civil Code Section 1654).

Section 20.22. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Stadium Authority, the Agency and StadCo, subject to the limitations on assignment set forth in Article 18, including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Where each term "Stadium Authority" or "StadCo" is used in this Agreement, it means and includes the respective successors and assigns.

Section 20.23. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

Section 20.24. Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., Santa Clara, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday or Legal Holiday is deemed extended to the next Business Day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not Business Days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each required completion date in the Schedule of Performance.

Section 20.25. Further Assurances. The Parties shall execute, acknowledge and deliver, after the date hereof, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the Parties shall reasonably request of each other in order to fulfill the intent of this Agreement and the transactions contemplated thereby. The Parties understand and acknowledge that the actual amounts of the potential revenue streams that are planned to be used to finance the development of the Stadium, as generally described in this Agreement, and the specific requirements of the various bond underwriters and lenders that will provide financing in the future, are uncertain at this point in time and that no Party has committed to any specific amount to be raised from these funding sources nor has any Party made any representation that it will be financially feasible to capitalize these funding sources. In recognition of these facts, the Parties acknowledge that it is critical to maintain flexibility in the approach to financing of the Stadium construction, subject in all events to the limitations on the investment of the City, Agency and CFD as set forth herein.

Section 20.26. Public Records Act Request. If any Person requests the Stadium Authority or any of its Affiliates, or agents to disclose any information of a confidential, proprietary or trade secret nature with respect to StadCo or StadCo's activities in connection with the Project under the California Public Records Act (California Government Code Section 6250, et seq.) or equivalent or successor statute (the "Public Records Act"), then, prior to making any such disclosure, the Stadium Authority shall give notice to StadCo prior to any required disclosure and, subject to the time periods imposed by the Public Records Act for responses to public record requests, shall give StadCo a reasonable opportunity to interpose an objection or to seek a protective order, subject to the time limitations. Each Party shall also cooperate with each other and use reasonable efforts to promptly identify any applicable exemptions from disclosure under the Public Records Act. If a legal action is filed against the Stadium Authority seeking to compel disclosure of any such information of a confidential, proprietary or trade secret nature with respect to StadCo or StadCo's activities in connection with the Project, the Stadium Authority shall give prompt notice of the filing of such action to StadCo and StadCo shall defend and indemnify the Stadium Authority from all costs and expenses of such defense, including reasonable attorney fees of the Stadium Authority or attorneys' fees awarded by a court arising out of such action. The provisions of this Section 20.26 shall survive the termination of this Agreement.

Section 20.27. Cooperation with Lenders. At the request of lenders under any Stadium Authority Financing or any financing permitted by Section 8.6 of this Agreement obtained by StadCo, the Parties shall reasonably cooperate to revise provisions of this Agreement to coordinate with the documents for such financings provided that the requested revisions do not materially alter the Parties rights or obligations under this Agreement, as reasonably determined by each Party.

Section 20.28. Effectiveness of Agreement. This Agreement is dated and shall become effective on the date the Parties duly execute and deliver this Agreement following approval of this Agreement by the Board in its sole and absolute discretion. The Effective Date of this Agreement will be inserted on Page 1 of this Agreement by the Stadium Authority with the prior approval of StadCo. Where used in this Agreement or in any of its exhibits, references to the "date of this Agreement," the "Agreement date" or the "Effective Date" means the Effective Date determined as set forth above and shown on Page 1 of this Agreement.

In Witness Whereof the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first above written.

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

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Stadium Authority Counsel

JENNIFER SPARACINO
Executive Director

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 249-7846

ATTEST:

ROD DIRIDON, JR.
Secretary

"STADIUM AUTHORITY"

FORTY NINERS STADIUM, LLC
a Delaware limited liability company

JOHN EDWARD YORK
President
4949 Centennial Boulevard
Santa Clara, CA 95054
Telephone: (408) 562-4949
Fax Number: (408) 727-4937

"STADCO"

EXHIBIT A

SITE PLAN

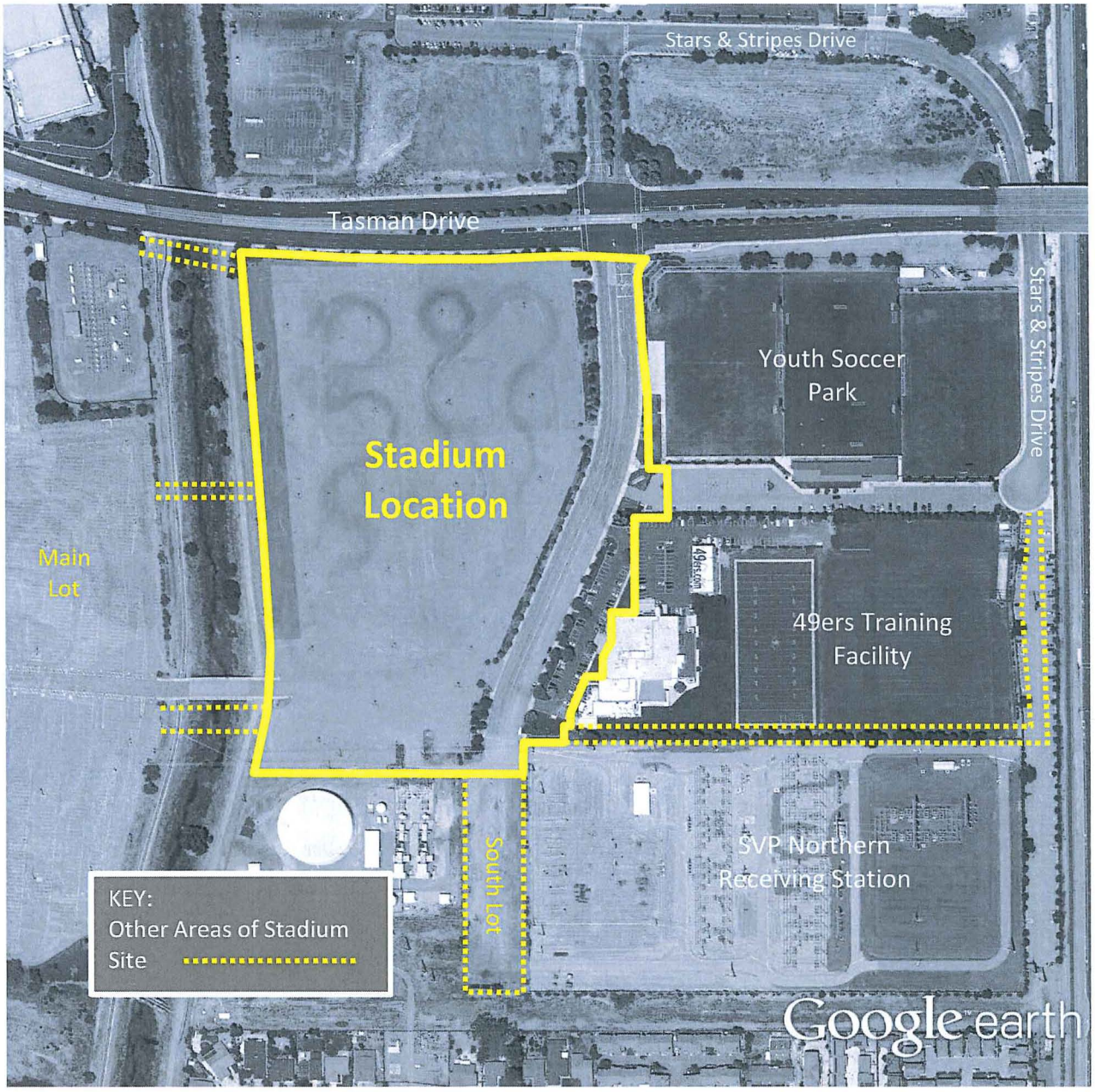

EXHIBIT B

SUMMARY OF STADIUM LEASE AGREEMENT

BY AND BETWEEN THE

SANTA CLARA STADIUM AUTHORITY

AND THE

FORTY NINERS STADIUM, LLC

DATED AS OF DECEMBER ___, 2011

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SUMMARY OF STADIUM LEASE AGREEMENT

THIS STADIUM LEASE AGREEMENT SUMMARY ("**Lease Summary**") sets forth certain of the principal terms and conditions upon which the STADIUM AUTHORITY OF SANTA CLARA, a California joint powers authority (the "**Stadium Authority**" or "**Landlord**"), and the FORTY NINERS STADIUM, LLC, a Delaware limited liability company ("**Tenant**"), intend to enter into the Stadium Lease, subject to the terms and conditions of the Disposition and Development Agreement (Stadium Lease) dated as of December ___, 2011 (the "**DDA**"), to which this Lease Summary is attached. Tenant and Landlord collectively are sometimes referred to herein as the "**Parties**," and each of Tenant and Landlord individually is sometimes referred to as a "**Party**." Unless the context otherwise requires, capitalized terms used in this Lease Summary have the meanings set forth on **Exhibit A** attached hereto or otherwise assigned to them in this Lease Summary. The rules set forth on **Exhibit B** attached hereto shall be followed when construing words used in this Lease Summary.

ARTICLE 1
LEASE

1.1 **Lease of the Premises**. As shall be more particularly described in the Stadium Lease, Landlord shall lease to Tenant, and Tenant shall lease from Landlord, on an exclusive basis during such portions of each Lease Year as are more particularly described in ARTICLE 4 below, the following (which, collectively, shall constitute the "**Premises**"):

(a) The Stadium and the Stadium Ancillary Property, including Tenant's Exclusive Facilities, but excluding the Stadium Authority Exclusive Facilities;

(b) Tenant's Parking Spaces;

(c) The Stadium Personal Property; and

(d) All air rights and air space above the Stadium and the Stadium Site.

1.2 **Lease Year**. As further described below, each Lease Year is divided into two seasons: the Tenant Season and the Stadium Authority Season.

1.2.1 **Tenant Season**. As used in this Lease Summary, **"Tenant Season"** means that period during each Lease Year commencing on August 1 and ending on January 31 (subject to extension in any Lease Year if an NFL Game (whether pre-season, regular season or post-season) in the Stadium is scheduled by the NFL before August 1 or after January 31); provided, however, that if the Stadium Authority exercises the Stadium Authority Put Right as provided in ARTICLE 5, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term (including any Extension Terms), the Tenant Season shall mean the entirety of the Lease Year.

1.2.2 **Stadium Authority Season**. As used in this Lease Summary, "**Stadium Authority Season**" means that period during each Lease Year that does not constitute the Tenant

Season (*i.e.,* February 1 through July 31), subject to extension of the Tenant Season as described above.

1.3 **Appurtenant Rights**. In addition to the lease of the Premises as described in Paragraph 1.1, Tenant shall have the following appurtenant rights:

1.3.1 **Tenant Season**. Landlord shall grant to Tenant the following rights during the Tenant Season:

(a) At all times during the Tenant Season, on an exclusive basis (subject to the rights of access to and egress by the City of Santa Clara (the "**City**") from the City's Utility Parcels (as shall be depicted on the Site Plan to be attached to the Stadium Lease (the "**Site Plan**")), the right to use the South Parking Lot (as shall be depicted on the Site Plan) for parking, staging of vehicles and equipment and for other purposes that Tenant deems reasonably necessary in connection with the Permitted Uses;

(b) At all times during the Tenant Season, on a non-exclusive basis, rights-of-way for ingress and egress over and across the South Access Road and VTA Lot (each, as shall be depicted on the Site Plan); provided, however, that, during the Tenant Season, the Stadium Authority shall only permit third-party access over the South Access Road to allow the City's access to and egress from the City's Utility Parcels and to allow Public Safety personnel access to Stadium [***Note: This right to be granted to the Stadium Authority in the Ground Lease***]; and

(c) During each Exclusive Game Day Period, the right to use, on an exclusive basis, the Required NFL Security Area (i.e., bridges over San Tomas Aquino Creek (the "**Bridges**"), the landing area for the Bridges in the Great America Lot, etc.); provided, however, that Tenant's right to use the Bridges shall be subject to a Real Property License Agreement to be entered into by the Stadium Authority and the Santa Clara Valley Water District and an agreement between the Stadium Authority and the owner of the Great America Lot. The Required NFL Security Area is shown on the Site Plan.

1.3.2 **Stadium Authority Season**. Landlord shall grant to Tenant the following rights during the Stadium Authority Season:

(a) At all times during the Stadium Authority Season, on a non-exclusive basis (except as may be expressly provided in the Stadium Lease Documents), uninterrupted rights-of-way for access to and egress from Tenant's Exclusive Facilities, Tenant's Parking Spaces, the Practice Facilities (as shall be depicted on the Site Plan) and Stadium Signage Areas (as shall be depicted on the Site Plan), including rights-of-way for ingress and egress over and across the South Access Road and VTA Lot; and [***Note: Tenant's right to use approximately 50 spaces in the South Lot shall be addressed in the Ground Lease.***]

(b) Subject to prior scheduling with the Stadium Manager, the right to use the South Parking Lot, on an exclusive basis, for parking, staging of vehicles and equipment and for other purposes that Tenant deems reasonably necessary for NFL Events or Tenant Incidental Uses (as defined in Paragraph 4.3.2 below) conducted or occurring during the Stadium Authority Season.

1.3.3 **Year Round – Game Day and Other NFL Event Day Parking**. Subject to the terms, covenants and conditions to be set forth in the Stadium Public Parking Agreement, on an exclusive basis, (a) for NFL Games, the NFL Game Public Parking Spaces and, (b) for other NFL Events, such number of parking spaces on the Public Parking Parcels as the Stadium Authority and Tenant shall agree are necessary based on the size of such NFL Event (but not more than the NFL Game Public Parking Spaces).

1.3.4 **Year Round – Stadium Operations Areas**. Subject to the terms, covenants, conditions and agreements as shall be set forth in the Stadium Lease, on a non-exclusive basis, the right to use the Stadium Operations Areas (as shall be depicted on the Site Plan), such as storage areas for Tenant's maintenance equipment, to the extent that Tenant deems reasonably necessary in connection with the Permitted Uses.

1.4 **Likeness of Stadium**. Without limiting the foregoing provisions of this ARTICLE 1, the Stadium Authority shall, subject to the Stadium Naming Rights Agreement, grant to Tenant during the Lease Term an exclusive license to use for commercial purposes the name, image and likeness of the Stadium, or parts thereof, in connection with the operation of the Franchise and the marketing of Stadium replicas, apparel, novelty items, and similar items bearing the Stadium name, image or likeness; provided, however, that the Stadium Authority shall have the right, subject to Tenant's reasonable approval, to use the name, image and likeness of the Stadium for purposes that are not revenue-generating to the Stadium Authority, provided that (a) Tenant may withhold such approval if such use by the Stadium Authority would cause Tenant to be in violation of any Advertising and Sponsorship Contract or, in Tenant's reasonable judgment, would not be consistent with the reputation of the Team, and (b) in no event shall the Stadium Authority have the right to use the logos or Marks of Tenant, the Team or any Second Team for any purposes without Tenant's approval, which may be granted or withheld in its sole discretion. The image of the Stadium shall not constitute logos or Marks of Tenant, the Team or any Second Team.

1.5 **Delivery of Possession and Acceptance; Covenant of Quiet Enjoyment**.

1.5.1 **Delivery of Possession and Acceptance**. On the Commencement Date, Landlord will deliver to Tenant (a) exclusive possession and occupancy of Tenant's Exclusive Facilities and the Tenant's Parking Spaces, and (b) possession and occupancy of the remainder of the Premises if and when required under the terms of the Stadium Lease Documents. When so delivered, the Premises shall be subject only to the Permitted Encumbrances, any Encumbrances arising by, through or under Tenant and such other terms and conditions as shall be agreed upon by Landlord and Tenant in the Stadium Lease Documents. Tenant shall have the right to obtain a title insurance policy insuring its Leasehold Estate at Tenant's expense. Landlord shall not permit or allow any renewal, modification, extension, amendment or supplement of any Permitted Encumbrance without the prior written approval of Tenant, which approval will not be unreasonably withheld.

1.5.2 **Covenant of Quiet Enjoyment.** Landlord shall covenant for the Lease Term that Tenant, upon paying the Rent and upon keeping, observing and performing the terms, covenants and conditions of the Stadium Lease Documents to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use, and enjoy Tenant's Exclusive

Facilities and Tenant's Parking Spaces at all times, and the remainder of the Premises at such times as are set forth in this Lease Summary, without ejection or interference by or from Landlord or any other Person (other than Persons claiming by, through or under Tenant), subject only to Encumbrances arising by, through or under Tenant, and the Permitted Encumbrances; provided, however, that, with respect to the air rights and air space above the Premises, the covenant of quiet enjoyment contained in this Paragraph 1.5.2 shall only apply to the extent that Landlord has the right and power to make such covenant as of the Effective Date or hereafter.

1.6 **Leasehold Priority**. Landlord covenants that the Leasehold Estate shall be senior and prior to any Lien or other Encumbrance (other than the Permitted Encumbrances and any other Encumbrances arising by, through or under Tenant or permitted in the Stadium Lease Documents). Further, Landlord agrees that all other tenants and users of the Premises whose rights are granted after the Effective Date shall expressly subordinate their rights in the Premises to the rights of Tenant as set forth in the Stadium Lease Documents pursuant to a written statement in the lease, contract, license or other agreement entered into between such tenant or user and Landlord. This Paragraph does not extend to any Liens or other Encumbrances arising by, through or under Tenant or its agents acting in such capacity. Tenant acknowledges that Permitted Encumbrances include "Takeout Financing" (as defined in the DDA), and the parties agree that the Stadium Lease shall contain recognition, non-disturbance, subordination and attornment provisions to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

1.7 **Relationship of Stadium Lease to DDA**. The Stadium Lease shall describe the rights and obligations of Tenant and Landlord during the Lease Term, provided that the Stadium Lease shall be subject to the provisions of the DDA until the Completion of the Improvements in accordance with the DDA. Until the Commencement Date, the DDA will govern the development of the Stadium in the event of any inconsistency between the Stadium Lease and the DDA. From and after the Commencement Date, the Stadium Lease will govern the rights and obligations of the Parties with respect to the Premises. The recordation of a Certificate of Completion (as defined in the DDA) shall conclusively establish, for the purposes of the Stadium Lease, that all requirements of the DDA relating to the construction and completion of the Stadium have been waived by Tenant or satisfied by Landlord, and that the DDA is no longer applicable as it applies to Landlord's obligation to construct the Stadium. If at such time, there exist any Deferred Items (as defined in the DDA), the Stadium Authority shall be responsible, subject to the provisions of the Construction Agency Agreement, for completing such Deferred Items in a timely and workerlike fashion.

1.8 **Early Occupancy**. Prior to the Commencement Date (the "**Early Occupancy Period**"), Tenant and other Tenant Parties shall be permitted to enter the Premises for the purpose of installing Tenant's Personal Property and otherwise readying the Stadium, including Tenant's Exclusive Facilities, for the initial Stadium Events and Tenant Incidental Uses, provided that (a) prior to Tenant's entry in the Premises, Tenant shall furnish to Landlord certificates of insurance reasonably satisfactory to Landlord evidencing Tenant's compliance with the insurance requirements of the Stadium Lease; and (b) Tenant's work in the Premises prior to the Commencement Date shall comply with the requirements of ARTICLE 11 below. In addition, if legal occupancy of Tenant's Exclusive Facilities, including the Stadium Commercial Areas, is permitted prior to the Commencement Date, then Tenant shall have the right to use such Tenant's

Exclusive Facilities for the Permitted Uses prior to the Commencement Date. Tenant shall not be entitled to host NFL Games or other NFL Events in the Stadium during the Early Occupancy Period. Tenant's occupancy of the Premises during the Early Occupancy Period shall be subject to all of the terms, covenants and conditions of the Design-Build Agreement (as that term is defined in the DDA) and the Stadium Lease, including, without limitation, Tenant's O&M Obligations and Tenant's indemnity obligations to be set forth in the Stadium Lease, except that the amount and timing of Tenant's payment of Facility Rent and Shared Stadium Expenses during the Early Occupancy Period shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

ARTICLE 2
TERM

2.1 **Initial Lease Term**. The terms and provisions of the Stadium Lease shall be effective as of the date of the Stadium Lease, provided that, except as set forth in the Construction Agency Agreement and except as provided in Paragraph 1.8 above and Paragraph 6.5 below, Tenant shall have no obligations with respect to the Premises until the Commencement Date. The Stadium Lease shall be for an initial term of forty (40) years (the "**Initial Term**" or "**Initial Lease Term**"), beginning on the first day following the Substantial Completion Date (the "**Commencement Date**") and ending on the day immediately preceding the fortieth (40th) anniversary of the Commencement Date (the "**Lease Expiration Date**"), unless the Stadium Lease is sooner terminated or extended as hereinafter provided. The Commencement Date shall constitute the first day of the first Lease Year. Following the Substantial Completion Date, Landlord and Tenant shall execute and deliver a memorandum confirming the date on which the Commencement Date occurred, provided that failure of the Parties to execute such memorandum shall not delay or modify the Commencement Date or affect the rights or obligations of the Parties under the Stadium Lease.

2.2 **Options to Extend Term**. Subject to the provisions of this Paragraph 2.2, Tenant shall have the option to extend the Lease Term for five (5) additional successive periods of four (4) years each (each, an "**Extension Term**"); provided, however, that if the Lease Expiration Date occurs between September 1 in any year and the end of the NFL Football Season commencing in such year, then Tenant shall have an additional option to extend the Lease Term for an interim period (the "**Interim Extension Term**"), which shall commence on the day immediately following the original Lease Expiration Date and expire on the next following June 30. Tenant may exercise such options to extend (each, an "**Extension Option**" and, collectively, the "**Extension Options**") by giving written notice to Landlord of the exercise of the Extension Option ("**Option Notice**") not later than one (1) year prior to the Lease Expiration Date (as the same may have previously been extended). The Option Notice must include reasonable evidence that the Team Sublease shall be concurrently extended for the applicable Extension Term and that the Non-Relocation Agreement remains in full force and effect. No Extension Term may commence unless at the time of the commencement of the Extension Term the Team Sublease has been concurrently extended for the applicable Extension Term and the Non-Relocation Agreement remains in full force and effect. Subject to the restrictions and limitations on assignment of the Stadium Lease as shall be negotiated in good faith by the Stadium Authority and Tenant, Tenant may transfer the remaining Extension Options to an assignee of its entire interest in the Stadium Lease. In addition, Tenant may at any time, or from

time to time, assign the Extension Options, or any of them, as additional security for any Tenant Mortgage permitted under the Stadium Lease, and Landlord shall recognize any Extension Option exercised by a Tenant Mortgagee in accordance with the provisions of the Stadium Lease. Time is of the essence with respect to the date of delivery for each and every Option Notice. The Initial Term and any Extension Terms are herein, collectively, referred to as the "**Term**" or "**Lease Term**".

ARTICLE 3
STADIUM DESIGN AND CONSTRUCTION

Prior to the Commencement Date, Landlord shall construct the Stadium subject to, and in accordance with, the terms, covenants and conditions set forth in the DDA, Construction Agency Agreement and the Design-Build Agreement.

ARTICLE 4
USE

4.1 **Operation of an NFL Franchise**. Subject to the terms and conditions set forth in this ARTICLE 4, Tenant shall have the right during the time specified in this ARTICLE 4 to use and occupy the Premises for the operation of an NFL Franchise or, in the event of a Second Team, NFL Franchises, including, without limitation, (a) the exhibition, production, presentation and broadcasting (or other transmission) of NFL Games, NFL Events, Tenant Incidental Uses and activities related thereto, including training, practices and football exhibitions, (b) subject to the provisions of ARTICLE 15 and ARTICLE 21 below, the hosting of the Super Bowl, Pro Bowl or other League Events, (c) the hosting of promotional activities and events, meetings, community and public relations events, (d) the exhibition of Advertising and marketing of NFL Games, NFL Events and Tenant Incidental Uses, (e) Suite licensing and, subject to the rights of the holders of SBLs pursuant to the SBL Agreement, sales of Tickets, and (f) fantasy camps and any and all other activities which, from time to time, are customarily conducted by or are related to the operation of the business of an NFL Franchise or to any NFL Events or Tenant Incidental Uses, all as more particularly described in this ARTICLE 4 (collectively, the "**Permitted Uses**").

4.2 **Tenant's Permitted Uses – Tenant Season**. During each Tenant Season during the Lease Term, Tenant shall have the sole and exclusive right to use, occupy, possess, enjoy and control the Premises for the purposes described in Paragraph 4.1 above and, without limiting the generality thereof, for the following purposes:

4.2.1 **Exhibition of NFL Games**. Preparing for and playing or hosting NFL or other professional football games ("**NFL Games**") and as Tenant may deem necessary in connection therewith, including practice or warm up sessions for the Team (or Second Team) and its opponent, and the installation of related equipment, including advertising and media equipment. In addition, (a) Tenant may stage activities attendant to any NFL Game on the Premises and/or, subject to limitations to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease, the Stadium Authority Parking Facilities and (b) subject to the Mitigation Measures and Conditions of Approval and all Applicable Laws, Tenant's guests and invitees shall be permitted to cook and otherwise prepare and consume food and beverages in the Stadium Authority Parking Facilities (*i.e.*, tailgating). Without in any way

limiting the foregoing, it is expressly acknowledged and agreed that a pre-game, half-time or post-game show on a Game Day, shall not constitute a Non-NFL Event.

4.2.2 **NFL Events**. In addition to NFL Games, hosting community relations, promotional and corporate partner private events and other events related to the promotion or operation of the Team and, if applicable, a Second Team, such as open houses, fan appreciation nights and other marketing events (together with NFL Games, "**NFL Events**"). In addition, in connection with NFL Events, attendees shall be entitled to tailgate as and to the extent provided in Paragraph 4.2.1 above with regard to NFL Games.

4.2.3 **Non-NFL Events**. If the Stadium Authority exercises the Stadium Authority Put Right as provided in ARTICLE 5 below, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, attendees of Non-NFL Events (as defined in Paragraph 4.6.1 below) shall be entitled to tailgate as and to the extent provided in Paragraph 4.2.1 above with regard to NFL Games. For purposes of this Agreement, "**Tenant Events**" shall mean NFL Events and if the Stadium Authority exercises the Stadium Authority Put Right as provided in ARTICLE 5 below, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, Non-NFL Events.

4.2.4 **Parking for Tenant Events**. Parking in the Stadium Parking Areas for Tenant Events, subject to the provisions of Paragraph 7.4 hereof.

4.3 **Tenant's Permitted Uses – Year Round**.

4.3.1 **Tenant's Exclusive Facilities**.

(a) For the full twelve (12) months of each Lease Year during the Lease Term, including during each Stadium Authority Season, Tenant shall have the right to use and operate Tenant's Exclusive Facilities, including (i) the Stadium Commercial Areas, including the Team Store and the Hall of Fame (as shall be depicted on the Site Plan), the revenues from which shall constitute Tenant Revenue as provided in ARTICLE 13 below, (ii) administrative space (as shall be depicted on the Site Plan) for use by Tenant, the Team, any Second Team or any Tenant Parties, (iii) the Stadium Ticket Office (as shall be depicted on the Site Plan), provided that Tenant shall cooperate with the Stadium Authority to permit the Stadium Authority's use of the Stadium Ticket Office in connection with Non-NFL Events, subject to Tenant's reasonable security requirements, (iv) locker rooms and related training space, (v) the Stadium Video Facilities, (vi) the Owners' Club, including the Team Suite, and (vii) the Suite Tower, including all Suites, but excluding the Stadium Conference Facilities and Premium Stadium Areas located in the Suite Tower (each as shall be depicted on the Site Plan). Tenant will have the exclusive use of Tenant's Exclusive Facilities, the Tenant's Parking Spaces, and the Intellectual Property Rights attendant thereto, at all times during the Lease Term, subject only to the provisions of the Stadium Lease Documents. In addition, subject to the "O&M Rules" for the Stadium adopted by the Stadium Authority and approved by Tenant from time to time ("**Stadium Rules and Regulations**"), Tenant shall have uninterrupted access to such areas of the Stadium and Stadium Ancillary Property (including ingress and egress), on a year-round basis, including during Non-NFL Events and Civic Events, as shall be reasonably necessary to use and enjoy the Tenant's Exclusive Facilities and the Tenant's Parking Spaces as permitted under the

Stadium Lease. In furtherance thereof, without charge other than payment of the Facility Rent, Tenant shall be entitled to a reasonable number of credentials necessary for Tenant, the Tenant Parties and the Owners' Club Licensees to gain access to Tenant's Exclusive Facilities during Non-NFL Events and Civic Events; provided, however, that, other than the Owners' Club Licensees, the licensee of a Suite may access the Stadium during Non-NFL Events and Civic Events only as permitted pursuant Paragraph 4.7.2 below. The Stadium Authority shall have no right to use Tenant's Exclusive Facilities in connection with any Non-NFL Events or Civic Events.

(b) Tenant will be responsible for staffing the Stadium Video Facilities and may impose and retain reasonable charges for video production services provided to other users. It is contemplated that the video boards controls will be located in the Stadium Video Facilities. Tenant will be responsible for providing the operator(s) for such controls. Tenant will make such operator(s) available for Non-NFL Events, at reasonable rates to be approved by Tenant and the Stadium Authority or promoter of the Non-NFL Event; or if reasonably requested by the Stadium Authority, Tenant will permit the Stadium Authority, itself, or the promoter to provide its own (appropriately trained) operator(s) for such Non-NFL Event without charge by Tenant.

4.3.2 **Tenant Incidental Uses**. At all times during the Lease Term, including during each Stadium Authority Season, subject to the provisions of the Stadium Lease Documents, the Stadium Rules and Regulations, and Scheduling with the Stadium Manager, (a) Tenant and the Team (and, if applicable, any Second Team) shall have the right to use and occupy any and all portions of the Stadium (exclusive of the Stadium Authority Exclusive Facilities) for (i) meetings and events related to the promotion or operation of the Team's Franchise (or Second Team's Franchise, as the case may be), including marketing events, meetings with current or potential corporate partners and sponsors, meetings with current or potential Ticket holders, executive meetings and conferences, cheerleader practices and tryouts, and the filming of commercials, television shows and in-Stadium videos, (ii) private meetings, conferences, parties and other similar small events sponsored or initiated by the Tenant or the Team (or, if applicable, any Second Team) for their shareholders, officers, directors, members, managers and their respective friends and family members, and (iii) tours of the Hall of Fame, which also may include tours of the Stadium; (b) subject to the provisions of Paragraph 4.6.4 below, Suite licensees shall have the right, by, through and under Tenant's rights in the Stadium Lease Documents, to use and occupy their respective Suites, and such Suite licensees, as well as current or potential corporate partners and sponsors of Tenant, the Team (and, if applicable, any Second Team), shall have the right (by, through and under Tenant's rights in the Stadium Lease Documents) to use and occupy the Stadium Conference Facilities and the Premium Stadium Areas, including any "Stadium Club", "Club Seating Lounge", or similar restaurant and bar facilities in the Premium Stadium Areas from time to time, and (c) Tenant and the Team (and, if applicable, any Second Team) shall have the right to use and occupy any and all portions of the Premises for any other purposes incidental to the promotion or operation of their Franchise(s) (collectively, "**Tenant Incidental Uses**"). Subject only to the rights of Landlord to conduct Non-NFL Events and Civic Events at the Stadium previously Scheduled for the same time, Tenant and the Team (and, if applicable, any Second Team), shall, with prior Scheduling through the Stadium Manager pursuant to the Stadium Rules and Regulations, be entitled to use (and permit the use of) the Premises for any such Tenant Incidental Uses at any time on a year-round

basis during the Lease Term and without charge, other than the reimbursement of Landlord's actual and reasonable expenses (including Utilities) directly caused by such use and occupancy.

4.3.3 **Advertising and Sponsorship Rights**. At all times during the Lease Term, including during each Stadium Authority Season, Tenant, the Team or any Affiliates of Tenant or the Team shall have the right to use portions of the Stadium and Stadium Ancillary Property for Tenant Identification Signage and Signage in connection with the sale of Advertising and Sponsorship Rights, subject to, and in accordance with, the terms, covenants and conditions set forth in ARTICLE 15 below.

4.3.4 **Stadium Commercial Areas**. At all times during the Lease Term, including during each Stadium Authority Season, Tenant shall have the right to use the Stadium Commercial Areas for purposes consistent with and complementary to a professional football stadium; and, further, Tenant shall have the right to sublease the Stadium Commercial Areas, or any portion thereof, for such purposes without the approval of the Stadium Authority, except as shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease. All revenues, proceeds and receipts from any sublease of the Stadium Commercial Areas shall be Tenant Revenue. All expenses of operating and Maintaining the Stadium Commercial Areas shall be borne by Tenant (or, at Tenant's election, the subtenants of the Stadium Commercial Areas), subject to the terms and conditions set forth in Paragraph 7.1.1(b) below with respect to Capital Repairs. Without limiting the foregoing, Tenant shall not, without the Stadium Authority's prior approval, permit any of the Stadium Commercial Areas to be used: (a) for any immoral, improper or unlawful purpose; (b) in a manner to cause the Stadium Authority to be in violation of the Stadium Naming Rights Agreement; (c) in a manner which diminishes the value or appearance of the Stadium; (d) in a manner which is inappropriate to the location and configuration of the Stadium Commercial Areas; (e) by a lessee whose character or reputation is not consistent with the quality of the Stadium; or (f) in a manner that is likely to impair the dignity, reputation or character of the Stadium.

4.3.5 **Other Permitted Uses**. The Permitted Uses, also include the following:

(a) Use and operation of Tenant's or its contractor's studio and related facilities for radio, television, internet, cable, satellite and any other broadcast and entertainment media within the Premises during NFL Games, other NFL Events and Tenant Incidental Uses, including Tenant's or its contractor's support and production facilities, transmission equipment, antennas and other transceivers, and related facilities and equipment primarily for the broadcast, production or other transmission of NFL Games, other NFL Events and Tenant Incidental Uses, and activities related thereto, and for the creation of commercials, television shows consistent with and complementary to a professional football team, in-Stadium and in-game videos, including the right to sublease or license such studio or related facilities to a third party which may or may not be an Affiliate of Tenant for all or a portion of such purposes, and, without limiting any other provision hereof, all revenues, proceeds and receipts therefrom shall be Tenant Revenue;

(b) The sole and exclusive right to broadcast, disseminate, reproduce or transmit by telephone, movies, radio, television, tape, disk, cassette, cable, satellite, dish,

direct beam, pay television broadcasts, internet distributions, or any or other method of reproduction or otherwise, all or any part of the NFL Games, other NFL Events and Tenant Incidental Uses, and activities related thereto, including pre-game, half-time and post-game features or events and any and all visual or oral communications relating thereto, and, without limiting any other provision hereof, all revenues, proceeds and receipts therefrom shall be Tenant Revenue;

(c) Storage of Maintenance and other equipment and supplies owned or leased by Tenant and used in connection with the operation of the Premises and all other Permitted Uses; and

(d) Other uses reasonably related or incidental to any of the other Permitted Uses.

4.4 **Stadium Authority Season NFL Events – Subject to Scheduling Coordination**. During the Stadium Authority Season, Tenant and the Team (and, if applicable, a Second Team) shall, subject to the provisions of the Stadium Lease Documents, have the right to conduct NFL Events (other than NFL Games), provided that, if any such NFL Event is to occur outside of the Tenant Season, then Tenant and the Team (and, if applicable, a Second Team) shall coordinate the Scheduling of such NFL Events with the Stadium Authority to avoid conflict with Non-NFL Events and Civic Events.

4.4.1 **Exclusive Use for Professional Football Games**.

(a) As part of the consideration for the Stadium Lease Documents, and notwithstanding any provision of the Stadium Lease Documents to the contrary, the Parties agree that Tenant shall have the sole and exclusive right to host and exhibit professional football games in the Stadium, including the Super Bowl and Pro Bowl Games and other similar League Events; and Landlord agrees that it will not enter into a lease or other contractual arrangement with any other Person for, or that allows the exhibition of professional football games during the Lease Term, without Tenant's express written approval, which approval may be withheld in Tenant's sole and absolute discretion. Nothing contained in this Paragraph 4.4.1, however, shall affect Tenant's right, in its sole and absolute discretion, to permit the Team or a Second Team to exhibit professional football games in the Stadium, subject to, and in accordance with, the terms, covenants and conditions relating to subleases of the Premises as shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease. For purposes of the Stadium Lease, "**professional football games**" shall mean the type of American football regularly played in the United States between member teams within a professional football association such as the NFL, the Canadian Football League, the United Football League, and any other similar league or leagues now or hereafter organized, and including any teams without league affiliation playing a comparable style and brand of professional American football. As used in the Stadium Lease, the term "**NFL Games**" shall, notwithstanding the specific reference to the NFL, mean "professional football games" as above defined. The hereinabove stated provisions of this Paragraph 4.4.1 shall constitute restrictive covenants which run with and bind Premises, including the Stadium, during the entire Lease Term. Tenant shall be deemed the beneficiary of the aforesaid restrictive covenants.

(b) Notwithstanding anything to the contrary contained in the Stadium Lease Documents, Landlord agrees that Tenant shall, in addition to all other available rights and remedies, have the right to obtain an injunction prohibiting any such violation.

(c) In connection with the rights granted to Tenant in this Paragraph 4.4.1, Landlord acknowledges and agrees that monetary damages could not be calculated to compensate Tenant for any violation by Landlord of the covenants, duties and obligations contained in this Paragraph 4.4.1. Accordingly, Landlord agrees that (i) Tenant may restrain or enjoin any violation as provided above in this Paragraph 4.4.1 or threatened violation of any covenant, duty or obligation contained in this Paragraph 4.4.1 without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in this Paragraph 4.4.1 the balance of hardships would weigh in favor of entry of injunctive relief, (iii) Tenant may enforce any such covenant, duty or obligation contained in this Paragraph 4.4.1 through specific performance if so awarded pursuant to the Dispute Resolution Procedures, and (iv) Tenant may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Paragraph 4.4.1 on an interim basis pending the outcome of the applicable Dispute or Controversy in connection with this Paragraph 4.4.1 pursuant to the Dispute Resolution Procedures. Landlord further agrees and irrevocably stipulates that the rights of Tenant to injunctive relief pursuant to this Paragraph 4.4.1 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any Bankruptcy Proceeding involving Landlord or any Landlord Affiliate.

4.5 **Reserved Rights**. Subject to the terms of the Stadium Lease Documents to the contrary, Tenant reserves the sole and exclusive right, power and authority, for itself and on behalf of the Team and any Second Team, to operate the NFL Franchise or NFL Franchises in the Stadium. In addition, subject to the terms of the Stadium Lease Documents, Tenant shall also have such discretion in the use, operation, and control of (a) the Premises during the Tenant Season, (b) the portion of the Premises Scheduled for an NFL Event or used by Tenant for Tenant's Incidental Use during the Stadium Authority Season, and (c) Tenant's Exclusive Facilities and Tenant's Parking Spaces at all times during the Lease Term, as Tenant may reasonably deem necessary to fully recognize the benefits and perform efficiently its responsibilities under the Stadium Lease Documents, but subject to the terms thereof.

4.6 **Stadium Authority's Uses**.

4.6.1 **Non-NFL Events**. The Stadium Authority will have the right to conduct events in the Stadium, such as concerts and sporting events other than NFL Games ("**Non-NFL Events**") pursuant to a plan and schedule established each year in consultation with Tenant (the "**Annual Non-NFL Event Plan**"); provided, however, that, as more particularly described in Paragraph 4.8 below, the Stadium Authority recognizes and agrees that, during the Tenant Season, Tenant, the Team, any Second Team and all NFL Events will have Scheduling priority over all Non-NFL Events and Civic Events in the Stadium, including Scheduling priority necessary to accommodate any "flexible scheduling" of NFL Events that may be imposed by the

NFL from time to time. In recognition of the fact that the types of Non-NFL Events conducted in the Stadium could be perceived as a reflection of the quality and brand of Tenant and the Team, the Annual Non-NFL Event Plan will be subject to the mutual approval of Tenant and the Stadium Authority in accordance with the provisions of Paragraph 4.8.3 below. In no event shall the Stadium Authority have any right to use Tenant's Exclusive Facilities or any Suites in connection with any Non-NFL Events.

4.6.2 **Civic Events and the Community Room**. Subject to the Scheduling priority for Stadium Events and Tenant Incidental Uses described in Paragraph 4.8 below, the Stadium Authority may Schedule civic or other non-revenue generating events in the Stadium that are not included in the Annual Non-NFL Event Plan ("**Civic Events**"), including provision of meeting space in the Community Room and Stadium Conference Facilities (each as shall be depicted on the Site Plan) for community groups and non-profits. In no event shall the Stadium Authority have any right to use Tenant's Exclusive Facilities or any Suites in connection with any Civic Events. Further, the first Civic Event in the Stadium shall not occur until after the first Non-NFL Event or NFL Event for which Tickets are sold.

4.6.3 **Stadium Authority Event Expenses**. Without limiting the provisions of Paragraph 7.1.1 below, the Stadium Authority shall pay all costs and expenses of operating and Maintaining the Premises to the extent such costs and expenses are directly attributable to Stadium Authority Events ("**Stadium Authority Event Expenses**"), including (a) costs of ticketing, security, traffic control, crowd control and Playing Field preparation, and (b) to the extent not covered by the proceeds of insurance carried by the Parties, costs of repairing damage to the Premises to the extent directly attributable to a Stadium Authority Event. Stadium Authority Event Expenses shall also include the administrative and marketing expenses related to obtaining Stadium Authority Events. In no event will any Stadium Authority Event Expenses constitute Shared Stadium Expenses and no Shared Stadium Expenses will be allocated to Stadium Authority Event Expenses. The Stadium Authority shall be entitled to all revenues attributable to Stadium Authority Events, and such revenues shall constitute Stadium Authority Revenue.

4.6.4 **Stadium Authority Offices**. Notwithstanding the occurrence of the Tenant Season Expansion Date, the Stadium Authority shall have the right to use the Stadium Authority administrative offices ("**Stadium Administrative Offices**"), as generally depicted on the Site Plan, to conduct and manage the operations of the Stadium. Any change in the design, configuration or location of the Stadium Administrative Offices shall require the Parties' mutual approval. All costs of operating and maintaining the Stadium Administrative Offices shall be borne by the Stadium Authority, subject to payment from the Stadium Capital Expenditure Reserve in accordance with the Annual Stadium Capital Expenditure Plan adopted pursuant to the terms of the Stadium Lease.

4.7 **Premium Seating Licensees and Premium Stadium Area Uses**.

4.7.1 **Marketing of Suites**. At all times during the Lease Term, Tenant shall have the sole and exclusive right to market and license the Suites in the Stadium, which shall allow the Suite licensees to purchase Tickets and parking passes to all Stadium Events, including Non-NFL Events. The Suites shall be available to Suite licensees at all times during the Lease

Term pursuant to the terms of the applicable Suite license agreements for the viewing of such Stadium Events. The maximum Ticket price charged by the Stadium Authority or any promoter or other sponsor of any Non-NFL Event to Suite licensees shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

4.7.2 **Non-Event Suite and Premium Stadium Areas Access**.

(a) Subject to the Stadium's Scheduling procedures and the Stadium Rules and Regulations regarding Stadium access to be agreed between Landlord and Tenant from time to time, Tenant may permit each licensee of a Suite, in addition to the right to use its Suite, the Stadium Conference Facilities and Premium Stadium Areas (each as shall be depicted on the Site Plan) for the Team's NFL Home Games and other NFL Events, the right to use such portions of the Stadium at any time on a year-round basis during the normal operating hours of the Stadium, provided that: (i) no Stadium Authority Event is being held anytime during (or immediately prior to or immediately following) such use of the Stadium (except that such condition shall not apply to Owners' Club Licensees, who shall have access to the Owners' Club during Stadium Authority Events as provided in Paragraph 4.3.1), and (ii) Tenant or such licensee shall pay (1) with regard to the use of its Suite, all operating costs and expenses directly resulting from such use (including, without limitation, the costs of food, beverage, technical assistance, copying and other services), and (2) with regard to the use of the Stadium Conference Facilities and Premium Stadium Areas, all operating costs and expenses directly resulting from such use, plus a reasonable usage fee. Any such payments, by a Suite licensee pertaining to the use of the Stadium Conference Facilities or Premium Stadium Areas shall constitute Stadium Authority Revenue. Along with access to its Suite, the Stadium Conference Facilities or the Premium Stadium Areas pursuant to this Paragraph, each Suite licensee shall have reasonably free access to such other areas of the Stadium as are necessary to gain access to its Suite, the Stadium Conference Facilities or the Premium Stadium Areas.

(b) Subject to the Stadium's Scheduling procedures and the Stadium Rules and Regulations regarding Stadium access to be agreed between Landlord and Tenant from time to time, Tenant may permit current or potential corporate partners or sponsors of Tenant, the Team (or, if applicable, any Second Team) or the Stadium to use the Stadium Conference Facilities and Premium Stadium Areas for a conference, meeting or other business purposes (subject to Applicable Laws) at any time on a year-round basis during the normal operating hours of the Stadium, provided that (i) no Stadium Authority Event is being held anytime during (or immediately prior to or immediately following) such use of the Stadium, and, (ii) for any such use during the Stadium Authority Season, Tenant or such corporate partners or sponsors shall pay all operating costs and expenses (including, without limitation, the costs of food, beverage, technical assistance, copying and other services) directly resulting from such use, plus a reasonable usage fee. Any such payments by a corporate partner or sponsor pertaining to the use of the Stadium Conference Facilities or Premium Stadium Areas during the Tenant Season shall constitute Tenant Revenue; otherwise, such payments by a corporate partner or sponsor shall constitute Stadium Authority Revenue. Along with access to the Stadium Conference Facilities or the Premium Stadium Areas pursuant to this Paragraph, each corporate partner or sponsor shall have reasonably free access to such other areas of the Stadium as are necessary to gain access to the Stadium Conference Facilities or the Premium Stadium Areas

(which access shall be subject to reasonable rules and regulations as shall be more particularly described in the Stadium Lease Documents).

4.8 **Event Scheduling Procedure**.

4.8.1 **NFL Games**. For each Tenant Season, including pre-season, regular season and post-season NFL Games, Tenant shall have absolute and unconditional first priority preferential scheduling of the Premises for the purpose of playing or conducting NFL Games and other NFL Events, subject to the provisions set forth below. Prior to the adoption of the final schedule of league games by the NFL for any NFL Football Season, the Premises shall be Scheduled for NFL Games for all days of each Tenant Season. Within ten (10) Business Days following Tenant's receipt of such final schedule of NFL games for any NFL Football Season, Tenant shall notify Landlord thereof, and all Game Days which are not listed on such schedule as days for NFL Games or potential post-season games in which the Team (or any Second Team) could participate shall be released for other Scheduling by Landlord in accordance with the Stadium Lease Documents and shall not be considered Game Days for purposes of the Stadium Lease and the Stadium Lease Documents; provided, however, that any such Scheduling of other events in the Stadium during the NFL Football Season must be approved in in Tenant's sole and absolute discretion and must accommodate any "flexible scheduling" of NFL Events that may be imposed by the NFL from time to time. Game Days for potential post-season NFL Games during the NFL Football Season shall be released for other Scheduling by Landlord only if, as and when the Team (and any Second Team) is mathematically eliminated from the playoffs. If any Scheduled NFL Game in the Stadium is postponed or canceled, Tenant shall have the right to Schedule such NFL Game on another date within such NFL Football Season on which no conflicting Non-NFL Event or Civic Event is then Scheduled in the Stadium.

4.8.2 **Other NFL Events**. Subject to the provisions of the Stadium Lease Documents and the Scheduling priority of Non-NFL Events as described in Paragraph 4.8.3 below, Tenant shall have the right to Schedule the Premises for NFL Events (other than NFL Games) at any time during the Lease Year.

4.8.3 **Non-NFL Events**. For each Stadium Authority Season, the Stadium Authority shall have absolute and unconditional first priority preferential scheduling of the Stadium for the purpose of conducting Non-NFL Events and Civic Events; provided, however, that, in recognition of the fact that the types of Non-NFL Events conducted in the Stadium could be perceived as a reflection of the quality and brand of Tenant and the Team, the Annual Non-NFL Event Plan will be subject to the mutual approval of Tenant and the Stadium Authority. Without limiting the foregoing, Tenant shall have the right to disapprove any Non-NFL Event that, in Tenant's reasonable judgment, shall (a) cause Tenant to be in violation of any Advertising and Sponsorship Contract; (b) diminish the value or appearance of the Stadium; (c) be conducted by an operator, promoter or sponsor whose character or reputation is not consistent with the quality of the Stadium or the reputation of the Team; (d) likely impair the dignity, reputation or character of the Stadium, Tenant or the Team, or (e) be inconsistent with or prohibited by NFL Rules and Regulations. In addition, any Non-NFL Event that could, in Tenant's sole judgment, have an adverse impact on the Playing Field or any other component of the Stadium or Stadium Ancillary Property shall not be Scheduled during the Tenant Season, unless Tenant agrees, in

Tenant's sole judgment, that there will be sufficient time to return the Stadium and the Stadium Ancillary Property to their normal condition for the next NFL Game.

4.8.4 **Civic Events**. Subject to Tenant's Scheduling priority for NFL Games as provided in Paragraph 4.8.1 above and subject specifically to any previously Scheduled NFL Games, NFL Events or Tenant Incidental Uses, the Stadium Authority shall have the right to Schedule and conduct Civic Events in the Stadium; provided, however, that no Civic Event shall (a) be permitted in the Stadium if such Civic Event would, in Tenant's reasonable judgment, (i) cause Tenant to be in violation of any Advertising and Sponsorship Contract; (ii) diminish the value or appearance of the Stadium; (iii) be conducted by an operator, promoter or sponsor whose character or reputation is not consistent with the quality of the Stadium or the reputation of the Team; (iv) likely impair the dignity, reputation or character of the Stadium, Tenant or the Team; or (v) be inconsistent with or prohibited by NFL Rules and Regulations. In addition, any Civic Event Scheduled during the NFL Football Season that could, in Tenant's sole judgment, have an adverse impact on the Playing Field or any other component of the Stadium or Stadium Ancillary Property shall not be Scheduled during the Tenant Season, unless Tenant agrees, in Tenant's sole judgment, that there will be sufficient time to return the Stadium and the Stadium Ancillary Property to their normal condition for the next NFL Game.

4.9 **Prohibited Uses**. Tenant shall not use, or permit the use of, the Premises for any other or additional purposes that are not a Permitted Use without first obtaining the consent of Landlord, which consent shall not be unreasonably withheld.

4.10 **Compliance with Applicable Laws**.

4.10.1 **Tenant's Obligations**. Tenant shall, throughout the Lease Term, use and occupy the Premises for the Permitted Uses in compliance with all Applicable Laws; provided, however, that, except for changes or alterations required to be made to the Tenant Improvements (for which Tenant shall be responsible pursuant to this Paragraph), any change or alterations required to be performed in or to the Premises to comply with Applicable Laws shall be performed by Landlord pursuant to Paragraph 4.10.2 below (or by Tenant pursuant to Paragraph 4.10.3 below). Tenant shall have the right to contest the validity or application of any such Applicable Laws (a "**Compliance Contest**"), and if Tenant promptly so contests while preventing the imposition of any Liens on the Premises, then Tenant may postpone compliance with such Applicable Laws during such Compliance Contest, provided that such Compliance Contest is prosecuted with diligence, except that Tenant shall not so postpone compliance therewith in such a manner as to, or subject Landlord to any liability or prosecution for a criminal act or cause the Premises to be condemned or vacated.

4.10.2 **Landlord's Obligations**. Except as expressly Tenant's responsibility pursuant to Paragraph 4.10.1 above, Landlord shall, throughout the Lease Term (subject to the provisions of Paragraph 5.2.3 below, if the Stadium Authority exercises the Stadium Authority Put Right), within the time periods permitted by Applicable Laws, comply or cause compliance with all Applicable Laws relating to the lease, operation, maintenance, repair, use and occupancy of the Premises and, without limiting the foregoing, if any changes or alterations to the Premises, the South Parking Lot, including the cooling tower or other similar improvements located thereon that serve the Stadium, the South Access Road or the Bridges are required in order for

the Premises, the South Parking Lot, the South Access Road or the Bridges to comply with Applicable Laws ("**Compliance Work**"), then, subject to the Procurement Guidelines and, except for changes or alterations required to be made to the Tenant Improvements (for which Tenant shall be responsible pursuant to Paragraph 4.10.1), Landlord shall perform (or cause to be performed) such changes or alterations to the Premises, the South Parking Lot, the South Access Road or the Bridges, as the case may be. Unless such compliance arises from any Civic Event, Landlord shall pay for the Compliance Work by applying funds from the Stadium Capital Expenditure Reserve and Operating Expense Reserve. If funds in the Stadium Capital Expenditure Reserve and Operating Expense Reserve are insufficient the reasonable remaining cost of such compliance shall be a Shared Stadium Expense. Landlord shall, however, have the right, with reasonable prior notice to Tenant, to engage in a Compliance Contest, and if Landlord promptly so contests while preventing the imposition of any Liens on the Premises, then Landlord may postpone compliance with such Applicable Laws during such Compliance Contest, provided that such Compliance Contest is prosecuted with diligence, except that Landlord shall not postpone compliance if doing so would impair the structural integrity of the Premises or the Bridges or materially limit any right of Tenant under the Stadium Lease Documents or subject Tenant to any liability or prosecution for a criminal act or cause the Premises to be condemned or vacated.

4.10.3 **Tenant's Right to Perform**. Notwithstanding the provisions of Paragraph 4.10.2 above, Tenant may, at its option, upon at least five (5) days' prior written notice to Landlord (except in the event of an Emergency, in which event only such notice as is reasonably practicable shall be required), perform on Landlord's behalf any or all of the Compliance Work (a) to the extent the cost thereof would constitute a Shared Stadium Expense or be funded by the Stadium Capital Expenditure Reserve or Operating Expense Reserve and (b) provided that Landlord has not notified Tenant of any pending Compliance Contest with respect to such Compliance Work. Tenant reimbursement process shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

ARTICLE 5
STADIUM AUTHORITY PUT RIGHT

5.1 **Stadium Authority Put Right**. The Stadium Authority may elect to expand the Tenant Season to consist of the entire Lease Year, from July 1 through the next succeeding June 30 (the "**Stadium Authority Put Right**"), by delivering written notice to Tenant within the time periods set forth in this Paragraph 5.1 below (the "**Stadium Authority Put Notice**"). The expansion of the Tenant Season shall be effective as of the applicable "Tenant Season Expansion Date" (as more particularly defined in this Paragraph 5.1 below), as set forth below. Effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, including any Extension Terms, the Tenant Season shall consist of the entire Lease Year, from July 1 through the next succeeding June 30.

5.1.1 **Unconditional Stadium Authority Put Right**. The Stadium Authority shall have an unconditional right to exercise the Stadium Authority Put Right by delivering the Stadium Authority Put Notice to Tenant not sooner than the expiration of Lease Year 12, nor later than the expiration of Lease Year 13. If the Stadium Authority exercises its put right

pursuant to this Paragraph 5.1.1 the Tenant Season Expansion Date shall be the first day of Lease Year 15.

5.1.2 **Management Company Revolving Loan**. If, at the end of each calendar month for twenty-four (24) consecutive months, the outstanding balance of the Management Company Revolving Loan exceeds Ten Million Dollars ($10,000,000.00), then, so long as the end of such 24-month period occurs after the expiration of Lease Year 13, the Stadium Authority may exercise the Stadium Authority Put Right within ninety (90) days after the end of any such 24-month period, in which event the Tenant Season Expansion Date shall be the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice; provided, however, that if delivery of the Stadium Authority Put Notice occurs between January 1 and June 30 of any calendar year, then the Tenant Season Expansion Date shall, at Tenant's option, occur either at the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice or upon the commencement of the next following Lease Year.

5.1.3 **Management Company Revolving Loan in Excess of Twenty Million Dollars**. If, at the end of any calendar month, the outstanding balance of the Management Company Revolving Loan exceeds Twenty Million Dollars ($20,000,000.00), then the Stadium Authority may exercise the Stadium Authority Put Right within ninety (90) days after the end of any such calendar month, in which event the Tenant Season Expansion Date shall be the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice; provided, however, that if delivery of the Stadium Authority Put Notice occurs between January 1 and June 30 of any calendar year, then the Tenant Season Expansion Date shall, at Tenant's option, occur either at the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice or upon the commencement of the next following Lease Year.

5.1.4 **No Market Rent Election**. If neither Party makes the Market Rent Election before the Market Rent Deadline, as provided in Paragraph 6.2 below, or if following a Market Rent Election by either Party prior to the Market Rent Deadline, the Stadium Authority elects to have the original Facility Rent apply as provided in Paragraph 6.2.4(c), then, by delivery of the Stadium Authority Put Notice to Tenant not later than the expiration of Lease Year 31, the Stadium Authority shall have the right to exercise the Stadium Authority Put Right, regardless of whether there is an outstanding balance on the Management Company Revolving Loan, in which event the Tenant Season Expansion Date shall be the commencement of Lease Year 32.

5.1.5 **Market Rent Reset**. If either Party makes a Market Rent Election prior to the Market Rent Deadline and the Facility Rent would be reduced as provided in Paragraph 6.2.2(c), then the Stadium Authority shall have the right to exercise the Stadium Authority Put Right within six (6) months after determination of the Market Rent by delivery of the Stadium Authority Put Notice, in which event the Tenant Season Expansion Date shall be the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice; provided, however, that if delivery of the Stadium Authority Put Notice occurs between January 1 and June 30 of any calendar year, then the Tenant Season Expansion Date shall, at Tenant's option, occur either at the commencement of the Lease Year immediately following

delivery of the Stadium Authority Put Notice or upon the commencement of the next following Lease Year.

5.1.6 **Tenant's Market Reset Termination**. If, as provided in Paragraph 6.2.4, Tenant delivers Tenant's Market Reset Termination Notice, then, within six (6) months after receipt thereof, the Stadium Authority shall have the right to exercise the Stadium Authority Put Right by delivery of the Stadium Authority Put Notice, in which event the Tenant Season Expansion Date shall be the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice; provided, however, that if delivery of the Stadium Authority Put Notice occurs between January 1 and June 30 of any calendar year, then the Tenant Season Expansion Date shall, at Tenant's option, occur either at the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice or upon the commencement of the next following Lease Year.

5.1.7 **First Extension Option**. If Tenant exercises the first Extension Option pursuant to Paragraph 2.2 above, then, within six (6) months after the Stadium Authority's receipt of the Option Notice, the Stadium Authority shall have the right to exercise the Stadium Authority Put Right by delivery of the Stadium Authority Put Notice, in which event the Tenant Season Expansion Date shall be the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice; provided, however, that if delivery of the Stadium Authority Put Notice occurs between January 1 and June 30 of any calendar year, then the Tenant Season Expansion Date shall, at Tenant's option, occur either at the commencement of the Lease Year immediately following delivery of the Stadium Authority Put Notice or upon the commencement of the next following Lease Year.

5.2 **Stadium Authority Put Right – Terms and Conditions**. If the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1 above, then the following shall apply:

5.2.1 **Tenant's Put Right Payment**. On the applicable Tenant Season Expansion Date, Tenant shall pay to the Stadium Authority the following ("**Tenant's Put Right Payment**"): (a) the sum of (i) the then outstanding balance, if any, of the Management Company Revolving Loan, plus (ii) the then outstanding balance, if any, of the Subordinated Loan, less (b) the then outstanding balances, if any, of the Stadium Capital Expenditure Reserve and Operating Expense Reserve. The Parties agree that Tenant's Put Right Payment may be made by causing all of the Stadium Authority's any remaining outstanding indebtedness under the Management Company Revolving Loan and Subordinated Loan (after the Stadium Authority's disbursement of the then outstanding balance, if any, of the Stadium Capital Expenditure Reserve and Operating Expense Reserve in repayment of such indebtedness, as shall be required in the Line of Credit Agreement and the Subordinated Loan documents) to be canceled and written off. If funds remain in the Stadium Capital Expenditure Reserve or Operating Expense Reserve as of the Tenant Season Expansion Date (i.e., after the Stadium Authority's disbursement of amounts in the Stadium Capital Expenditure Reserve and Operating Expense Reserve as may be necessary to pay off the Management Company Revolving Loan and Subordinated Loan), those funds shall, as of the Tenant Season Expansion Date, be distributed in the following order: (i) first, to fund the cost of performing any identified deferred maintenance and Capital Repairs; (ii) second, to pay to Tenant the amount of the Unamortized Prepaid Rent as of the Tenant

Season Expansion Date; and (iii) third, any remaining portion of such funds shall be deposited in the Stadium Capital Expenditure Reserve. If, as of the Tenant Season Expansion Date, there is no outstanding balance on the Management Company Revolving Loan or the Subordinated Loan, then Tenant's Put Right Payment shall equal Zero Dollars ($0.00) and disbursement from the Stadium Capital Expenditure Reserve and Operating Expense Reserve shall be in accordance with the immediately preceding sentence.

5.2.2 **Non-NFL Event Revenue**. Effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, (a) Tenant shall have the exclusive right to conduct Non-NFL Events in the Stadium, (b) the term "Tenant Events" hereunder shall mean NFL Events and Non-NFL Events, (c) all Non-NFL Event Revenue shall constitute Tenant Revenue and (d) notwithstanding the provisions of Paragraph 4.6.3 above, Tenant shall pay all Non-NFL Event Expenses.

5.2.3 **Maintenance and Repair Obligations**. Effective as of the Tenant Season Expansion Date, the Maintenance and Repair Obligations of Tenant shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

ARTICLE 6
RENT

6.1 **Facility Rent.** Subject to adjustment as provided in Paragraphs 6.2 through Paragraph 6.4, for each Lease Year in the Initial Term, Tenant shall pay to Landlord, as fixed rent for the Stadium, an amount to be set forth in the Stadium Lease ("**Facility Rent**"). A schedule of the Facility Rent payable by Tenant for each Lease Year in the Initial Term shall be included in the Final Financing Plan, and shall include a formula or standard for the determination or adjustment of the Facility Rent as of the closing of the Takeout Financing such that the Facility Rent, together with other amounts payable by Tenant under the Stadium Lease and other revenues of the Stadium Authority will provide the Stadium Authority with funds required to pay the rent payable by the Stadium Authority under the Ground Lease, the Stadium Authority's operating and maintenance expenses of the Stadium and scheduled debt service on the Takeout Financing. The timing of Tenant's payment of Facility Rent for each Lease Year shall be reasonably determined by Landlord and Tenant based on the projected revenue requirements for the operation of the Stadium as set forth in the Annual Stadium Authority Budget for such Lease Year, as the Annual Stadium Authority Budget may be modified from time to time. In the event the Lease Term ends on a day other than June 30th of any calendar year, then Facility Rent for such fractional Lease Year shall be computed by dividing the annual Facility Rent by 365 (or 366, if the year in question is a leap year), and multiplying the per-diem rental rate so computed by the number of days in such fractional Lease Year.

6.2 **Lease Year 25 Market Rate Adjustment**.

6.2.1 **Definitions**. The following defined terms are used in this Paragraph 6.2:

(a) "**Constant Rent**" means the amount of constant level rent, calculated consistent with Internal Revenue Code Section 467; and

(b) "**Unamortized Prepaid Rent**" means the amount, at any point in time during the Term of the Stadium Lease, of the unamortized portion of the prepaid Facility Rent, calculated consistent with Internal Revenue Code Section 467.

6.2.2 **Market Rent Election**. Subject to the provisions of Paragraph 6.4 below, which shall, notwithstanding the provisions of this Paragraph 6.2, apply if the Stadium Authority exercises the Stadium Authority Put Right, either Party may, not sooner than the expiration of Lease Year 24, nor later than the expiration of Lease Year 25 ("**Market Rent Deadline**"), by notice to the other Party, elect to have the fair market rent ("**Market Rent**") for the Premises determined by an appraisal process to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease ("**Market Rent Election**"). If either Party makes a Market Rent Election prior to the Market Rent Deadline, then, effective as of the commencement of Lease Year 32, and continuing for the remainder of the Initial Lease Term (or, if applicable, until the Tenant Season Expansion Date), the Facility Rent shall, subject to the provisions of Paragraph 6.2.4 below, be calculated as follows:

(a) If the Market Rent is greater than the Constant Rent, then the Facility Rent will be increased by the difference between the Market Rent and the Constant Rent.

(b) If the Market Rent is less than the Constant Rent, but greater than the Facility Rent, then no adjustment to the Facility Rent will be made and the Facility Rent for the Initial Term will remain as provided in Paragraph 6.1 above.

(c) If the Market Rent is less than the Facility Rent, then the Facility Rent will be reduced to an amount equal to the Market Rent.

If neither Party makes the Market Rent Election before the Market Rent Deadline, then there shall be no adjustment to the Facility Rent for the remainder of the Initial Term, except as provided in Paragraph 6.4 below.

6.2.3 **Determination of Market Rent**. In determining the Market Rent, the appraiser(s) making the determination shall analyze and take into account such factors as shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

6.2.4 **Rent Reset – Tenant's Termination Right**. If the Facility Rent would be increased through the Market Rent reset process described in Paragraph 6.2.2 by more than twenty (20%) of the Facility Rent for any Lease Year remaining in the Initial Term, then Tenant shall have the right to terminate the Stadium Lease effective on the last day of Lease Year 32 ("**Market Reset Termination Date**"), by providing a notice to the Stadium Authority ("**Tenant's Market Reset Termination Notice**") not later than six (6) months following the determination of the Market Rent. If Tenant delivers Tenant's Market Reset Termination Notice, then the Stadium Authority shall, within six (6) months following receipt of Tenant's Market Reset Termination Notice, elect one of the following:

(a) Allow the Stadium Lease to terminate as provided above (i.e., effective on the last day of Lease Year 32), in which event (i) notwithstanding the provisions of Paragraph 10.7 or Paragraph 20.2.2, Tenant shall have no obligation to demolish

the Stadium; and (ii) upon the Market Reset Termination Date, the Stadium Authority shall pay the following ("**Stadium Authority Reset Termination Payment**"): (1) to 49ers Management Company, Inc. ("**49ers Management Company**") pursuant to the Line of Credit Agreement, the then outstanding balance, if any, of the Management Company Revolving Loan, and (2) to Tenant the sum of the following: (A) the then outstanding balance, if any, of the Subordinated Loan, plus (B) the amount of the Unamortized Prepaid Rent as of the Market Reset Termination Date. The Stadium Authority shall use funds in the Stadium Capital Expenditure Reserve and Operating Expense Reserve to pay the Stadium Authority Reset Termination Payment. If funds remain in the Stadium Capital Expenditure Reserve or Operating Expense Reserve after payment of the Stadium Authority Reset Termination Payment, those funds shall be retained by the Stadium Authority.

(b) Exercise the Stadium Authority Put Right.

(c) Notify Tenant that the original Facility Rent will continue to apply and that there will be no termination of the Stadium Lease and no Market Rent reset.

6.3 **Extension Terms**. Notwithstanding the provisions of Paragraph 6.1 above, if the Stadium Authority does not exercise the Stadium Authority Put Right, then the following shall apply: (a) prior to the expiration of Lease Year 33, the Market Rent for the first four-year Extension Term ("**Extension Term Market Rent**") shall be determined pursuant to an appraisal process to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease; and (b) if Tenant exercises any Extension Option hereunder, then, except as expressly provided in the Stadium Lease, all of the terms, covenants and conditions of the Stadium Lease shall continue in full force and effect during the applicable Extension Term, except that the Facility Rent payable by Tenant during the first four-year Extension Term and each succeeding Extension Term shall equal the Extension Term Market Rent, which shall not increase during the Extension Term(s). Facility Rent for the Interim Extension Term will equal the Facility Rent for the preceding Lease Year (prorated for the partial calendar year) as increased by the amount of the increase in the annual Fixed Ground Rent (as that term shall be defined in the Ground Lease) payable to the City by the Stadium Authority pursuant to the Ground Lease.

6.4 **Tenant Season Expansion Date - Facility Rent Adjustment**. Notwithstanding the foregoing provisions of this ARTICLE 6, effective as of the Tenant Season Expansion Date, if applicable, and continuing through the remainder of the Lease Term, including any Extension Terms, the Facility Rent payable by Tenant for each Lease Year shall be adjusted to equal the following portions of the rent payable to the City for such Lease Year under the Ground Lease; provided, however, that if Tenant cannot for any reason assume all of the Permitted Landlord Financing outstanding as of the Tenant Season Expansion Date, then, in addition to the following portions of the rent payable to the City for such Lease Year under the Ground Lease, the Facility Rent shall also include an amount sufficient to pay scheduled debt service on the Permitted Landlord Financing that is not assumed by Tenant:

6.4.1 **Fixed Ground Rent**. The amount of Fixed Ground Rent payable to the City pursuant to the Ground Lease for such Lease Year (including the increase in Fixed Ground

Rent to be specified in the Ground Lease in the event that a Second Team plays and hosts NFL Home Games in the Stadium), which amounts shall be set forth in the Stadium Lease; plus

6.4.2 **Performance Based Rent**. The amount of Performance-Based Rent (as that term shall be defined in the Ground Lease) payable to the City pursuant to the Ground Lease for such Lease Year, which amount shall equal the greater of (i) Zero Dollars ($0.00), or (ii) the following: (1) fifty percent (50%) of the Net Income from Non-NFL Events for such Lease Year, less (2) the sum of the Performance-Based Rent Credits (as defined in Paragraph 6.4.3 below) applicable to such Lease Year. Effective as of the Tenant Season Expansion Date, Tenant shall assume all of the Stadium Authority's reporting and related obligations to the City relating to Net Income from Non-NFL Events as shall be set forth in the Ground Lease, and the City shall continue to have such audit rights relating to Net Income from Non-NFL Events as shall be set forth in the Ground Lease.

6.4.3 **Performance Based Rent Credits**. For purposes of the Stadium Lease, the "**Performance-Based Rent Credits**" applicable to any Lease Year shall equal the sum of the following:

(a) Fifty percent (50%) of the Fixed Ground Rent (including the increase in Fixed Ground Rent specified in the Ground Lease in the event that a Second Team plays and hosts NFL Home Games in the Stadium) payable for such Lease Year, plus

(b) The amount by which, if any, the Public Safety Costs attributable to NFL Games in such Lease Year exceed the Public Safety Costs Threshold for such Lease Year, and are paid by Tenant to the City as provided in Paragraph 7.4.5 below ("**Credited Public Safety Costs**"), plus

(c) Following expiration of the Redevelopment Agency's ability to collect tax increment in the Redevelopment Project Area pursuant to Applicable Laws, the portion of property tax revenue actually received by the City for such Lease Year on account of all possessory interests in the Stadium, plus

(d) Any Permitted Credits Carry-forward (as defined below) applicable to such Lease Year.

As used herein, the "**Permitted Credits Carry-forward**" applicable to any Lease Year means the total amount, if any, of the Performance-Based Rent Credits listed in clauses (a), (b) and (c) of this Paragraph 6.4.3 above that have not previously been applied in the calculation of Performance-Based Rent in the preceding five (5) Lease Years. Performance-Based Rent Credits listed in clauses (a), (b) and (c) of this Paragraph 6.4.3 above, if not used within the Lease Year incurred or the next five (5) succeeding Lease Years, shall expire and shall not be included within Permitted Credits Carry-forward thereafter.

6.5 **Advance Payment of Facility Rent**. As provided in the Ground Lease, at the request of the City, the Stadium Authority will advance to the City, as prepayment of the Fixed Ground Rent, the amount of Three Hundred Ninety Five Thousand Dollars ($395,000.00). Upon the later to occur of (a) thirty (30) days following the request of the Stadium Authority, or (b) six (6) months prior to the Commencement Date (as then estimated in the Schedule for

Performance), Tenant will advance to the Stadium Authority Three Hundred Ninety Five Thousand Dollars ($395,000.00), which amount shall constitute prepayment of Facility Rent.

6.6 **Interest on Delinquent Rent**. If any installment of Facility Rent is not paid within ten (10) days following the date it is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount shall bear interest from the date of such notice or demand until paid at an annual interest rate (the "**Default Rate**") equal to the lesser of (a) ten percent (10%) or (b) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the Effective Date of the Stadium Lease, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law. Payment of interest shall not excuse or cure any default by Tenant.

6.7 **Additional Rent**. Except as otherwise provided in the Stadium Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of the Stadium Lease, whether foreseen or unforeseen, which are payable by Tenant to Landlord pursuant to the Stadium Lease, including without limitation, Tenant's obligation to pay a share of Shared Stadium Expenses, shall be deemed Additional Rent ("**Additional Rent**"). Landlord shall have the same rights, powers and remedies, whether provided by law or in the Stadium Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Facility Rent.

ARTICLE 7
STADIUM OPERATIONS

7.1 **Operation, Maintenance and Repair Obligations**.

7.1.1 **Stadium Authority's Obligations**.

(a) The Stadium Authority shall, during each Stadium Authority Season (as to the entire Premises, excluding Tenant's Exclusive Facilities) and throughout the Lease Term (as to the Stadium Authority's Exclusive Facilities, the South Parking Lot, the South Access Road and the Bridges), at its sole cost and expense (but subject to reimbursement by Tenant if a Shared Stadium Expense pursuant to ARTICLE 8), operate and Maintain the Premises (excluding Tenant's Exclusive Facilities), the South Parking Lot, the South Access Road and the Bridges, or cause the Premises (excluding Tenant's Exclusive Facilities), the South Parking Lot, the South Access Road and the Bridges, to be operated and Maintained, in the condition required by the Stadium Operation and Maintenance Plan (the "**Required Condition**"), which shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease. Notwithstanding the foregoing, Tenant shall pay all costs and expenses of operating and Maintaining the Premises, the South Parking Lot, the South Access Road and the Bridges to the extent such costs and expenses are directly attributable to Tenant Events, including (a) costs of ticketing, security, traffic control, crowd control and Playing Field preparation, and (b) to the extent not covered by the proceeds of insurance carried by the Parties, costs of repairing damage to the Premises to the extent directly attributable to a

Tenant Event ("**Tenant Event Expenses**"). In no event will any Tenant Event Expenses constitute Shared Stadium Expenses.

(b) In addition to the foregoing, except for Capital Repairs required to be made to the Tenant Improvements, if at any time during the Lease Year, including during the Tenant Season, any Capital Repairs are required to be performed in or to the Premises, the South Parking Lot, the South Access Road or the Bridges, then, subject to the Procurement Guidelines, Landlord shall perform (or cause to be performed) such Capital Repairs and, unless such Capital Repairs arise directly from any Stadium Authority Event, the reasonable cost of such Capital Repairs shall be paid from funds available in the Stadium Capital Expenditure Reserve and Operating Expense Reserve. The reasonable cost of such Capital Repairs not paid from the Stadium Capital Expenditure Reserve or Operating Expense Reserve shall be a Shared Stadium Expense as and to the extent provided in ARTICLE 8.

7.1.2 **Tenant's Obligations**. During each Tenant Season (as to the entire Premises, excluding the Stadium Authority's Exclusive Facilities) and throughout the Lease Term (as to Tenant's Exclusive Facilities), Tenant shall, at its sole cost and expense, operate and Maintain the Premises (excluding the Stadium Authority's Exclusive Facilities), or cause the Premises (excluding the Stadium Authority's Exclusive Facilities) to be operated and Maintained, in the Required Condition; provided, however, that, (a) the Stadium Authority shall be responsible for Stadium Authority Event Expenses relating to Stadium Authority Events occurring during the Tenant Season. Tenant's obligations under this Paragraph (collectively, "**Tenant's O&M Obligations**") shall exclude (i) Capital Repairs required to be performed in or to the Premises (which shall be the Stadium Authority's responsibility pursuant to Paragraph 7.1.1) above, except for Capital Repairs required to be made to the Tenant Improvements; (ii) Casualty Repair Work; and (iii) Condemnation Repair Work. Tenant's O&M Obligations shall be subject to the terms and conditions set forth in Paragraph 5.2.3 above (i.e., conditions and limitations applicable following the Tenant Season Expansion Date, if the Stadium Authority Put Right is exercised) and Paragraph 7.4.5 below (i.e., relating to Public Safety Costs).

7.2 **Stadium Management Company**. At all times during the Lease Term, the Stadium Authority and Tenant shall employ 49ers Management Company or another stadium manager that satisfies the Required Management Standards ("**Stadium Manager**") to oversee the day-to-day operations and Maintenance of the Stadium. The Stadium Authority and Tenant will employ the 49ers Management Company as the initial Stadium Manager. Without limiting the foregoing, the Stadium Manager shall be responsible for preparing the Stadium Operation and Maintenance Plan, including the Annual Shared Stadium Expense Budget, Annual Public Safety Budget and the Capital Expenditure Plan, which shall be presented annually to the Stadium Authority and Tenant for their consideration and approval as described below. Tenant and the Stadium Authority shall cooperate in good faith to select any alternative Stadium Manager and work together to solicit and select any alternative Stadium Manager and to negotiate the Stadium Management Agreement. Further, Landlord and Tenant shall each be entitled to (a) participate in the determination of the criteria for, and selection of, the Stadium Manager and (b) attend, and participate in, all meetings and negotiations with any prospective Stadium Manager. Landlord and Tenant shall each approve the Stadium Manager and the Stadium Management Agreement, which approval shall not be unreasonably withheld.

7.3 **Concessions**.

7.3.1 **Concession Rights**.

(a) Subject to the provisions of this Paragraph 7.3, the Parties shall have the exclusive joint right and responsibility to license all Concession Rights for, and effect the Concession Operations within, the Stadium Complex and, in connection with certain Stadium Events as is more particularly described in the Summary of Parking Rights on City-Owned Parcels attached to the DDA as **Exhibit O** ("**Summary of Parking Rights**"), the Stadium Authority Parking Facilities; provided, however, that, subject to the terms and conditions of the Concession Agreement from time to time, Tenant shall have the right, by Notice to the Stadium Authority, (i) to license separately from the remainder of the Stadium Complex, on an exclusive basis, the Concession Rights for, and effect the Concession Operations within, Tenant's Exclusive Facilities, or portions thereof, including the Owners' Club; or (ii) to license directly, on an exclusive basis, the Concession Rights, and effect the Concession Operations, within certain portions of the Stadium Complex or for certain Tenant Events as Tenant may elect from time to time ("**Tenant's Exclusive Concession Rights**"). In addition to Tenant's Exclusive Concession Rights, the Stadium Authority shall grant to Tenant exclusive licenses with respect to Branding Rights, Pourage Rights, Service Rights, and certain other Exclusivity Rights as shall be more particularly set forth in the Stadium Lease Documents. Neither Landlord nor Tenant shall allow any Person to, nor will Landlord or Tenant, license or sell any Consumable or Non-Consumable Concessions in the Stadium Complex, except as provided in the Stadium Lease or as may be mutually agreed to by the Parties.

(b) Tenant shall have the primary right and responsibility from time to time to (i) solicit and select one or more Concessionaires who shall operate and be responsible for all Concession Operations within the Stadium Complex at all times during the Term of the Stadium Lease; (ii) negotiate agreements with Concessionaires with regard to the Concession Rights (each, a "**Concession Agreement**"), and (iii) subject to the Capital Expenditure Plan and ARTICLE 11 below relating to Alterations, make changes to the location of Concession Facilities within the Stadium Complex from time to time. Following the selection of a Concessionaire as provided herein, and the negotiation of any Concession Agreement, subject to Tenant's Exclusive Concession Rights set forth above, the Stadium Authority and Tenant shall, either directly or through the Stadium Manager, enter into and administer such Concession Agreement. Landlord shall have the right to reasonably approve any Concession Agreement. The initial Concession Agreement(s) for the Stadium shall be attached as an Exhibit to the Stadium Lease.

(c) Without limiting Tenant's rights set forth in Paragraphs 7.3.1(a) and (b) above, (i) Tenant shall meet regularly with the Stadium Authority to provide updates regarding the progress in identifying the Concessionaire(s), and to receive input from the Stadium Authority regarding the process for selection, the terms and conditions of such Concession Agreements and the location of Concession Facilities; and (ii) the Stadium Authority shall be entitled to (1) participate with Tenant in the determination of the criteria for, and selection of, all Concessionaires which shall be generally consistent with the selection criteria used for approval of previous Concessionaires, and (2) attend, and participate in, all meetings and negotiations with Tenant and any prospective Concessionaire. Except as expressly provided

above, the Concessionaires selected by Tenant hereunder shall be used exclusively for the Concession Operations in the Stadium Complex at all Stadium Events. Landlord and Tenant shall comply with all provisions of any Concession Agreement then approved by the Parties, including, but not limited to, any exclusivities or priorities granted to Concessionaire(s).

7.3.2 **Concession Revenue**. All Concession Revenue shall be Tenant Revenue if received from (a) Concession Operations within Tenant's Exclusive Facilities, (b) Concession Operations during the Tenant Season (excluding in connection with Stadium Authority Events during the Tenant Season), or (c) Concession Operations in connection with NFL Events during the Stadium Authority Season; and, as shall be provided in the Concession Agreements, shall be paid to Tenant by the Concessionaires either directly or through the Stadium Manager. All Concession Revenue shall be Stadium Authority Revenue if received from (i) Concession Operations during the Stadium Authority Season (excluding those within Tenant's Exclusive Facilities during Stadium Authority Events and Concession Operations in connection with NFL Events) or (ii) Concession Operations in connection with Stadium Authority Events during the Tenant Season; and, as shall be provided in the Concession Agreements, shall be paid to the Stadium Authority by the Concessionaires either directly or through the Stadium Manager.

7.3.3 **General Requirements**. Landlord and Tenant shall, and shall cause the Concessionaires to, at all times comply with all Applicable Laws, and shall procure any and all permits or licenses required by any Governmental Authority, relating to the Concession Rights and Concession Operations. Each Concession Agreement shall provide that, at all times during the Term of the Stadium Lease, Landlord and Tenant shall cause a representative of the Concessionaire to be made available to the Parties as part of the Concession Operations in order to handle any problems which may arise with regard thereto. The Stadium Authority shall honor all Branding Rights, Pourage Rights, Service Rights and Exclusivity Rights in its operation of the Stadium and Stadium Ancillary Property.

7.4 **Stadium Parking**. Subject to, and in accordance with terms and conditions set forth in this Paragraph 7.4, (a) the Stadium Authority shall be responsible for managing and operating the parking for the Stadium for Stadium Authority Events; and (b) Tenant shall be responsible for managing and operating the parking for the Stadium for NFL Events. Stadium parking for Stadium Events shall be located on the Public Parking Parcels and on private lots in commercial areas that contract with the Stadium Authority, Tenant or, at the discretion of the Stadium Authority (as to Stadium Authority Events) or Tenant (as to NFL Events), the Stadium Manager, to provide parking.

7.4.1 **Stadium Parking Plan**.

(a) **Draft NFL Parking Plan**. Prior to each Lease Year, Tenant shall deliver to the Stadium Authority a Stadium Parking Plan addressing NFL Events for such Lease Year ("**NFL Parking Plan**") that complies with the requirements of the TMOP and the Mitigation Measures and Conditions of Approval. Tenant shall comply with the requirements of the TMOP and the Mitigation Measures and Conditions of Approval with respect to NFL Events. Parking may be provided through a combination of NFL Game Public Parking Spaces and NFL Game Private Parking Spaces, and shall include accessible parking meeting the requirements, including path of travel requirements, of Title 24 of the California Code of Regulations and the

Americans with Disabilities Act (ADA). If the parking to be provided pursuant to the NFL Parking Plan as described above would not comply with all requirements of the TMOP and the Mitigation Measures and Conditions of Approval, the NFL Parking Plan shall include enhancements of the TMOP designed to provide alternative transportation options or enhanced transit services to accommodate the projected attendance at such NFL Games, as more particularly described in the Mitigation Measures and Conditions of Approval. The NFL Parking Plan shall be subject to the approval of the City Director of Planning and Inspection.

(b) **Private Parking – NFL Events**. Tenant shall, for each Lease Year, solicit commitments from private parking lot owners for the use of NFL Game Private Parking Spaces during all or certain NFL Events as may be required under the NFL Parking Plan. NFL Game Private Parking Spaces located on non-City owned properties shall require that the parking lot owner obtain an Off-Site Parking Permit pursuant to Chapter 18.86 of the Santa Clara Municipal Code ("**Off-Site Parking Permit**"), and may provide for the sharing of revenue between Tenant and the parking lot owner. At the request of either Party, the other party shall cooperate in the solicitation of private parking lot owners for the use of parking spaces for all or certain NFL Events and Non-NFL Events, and if reasonable to do so, shall contract for such spaces jointly or through the Stadium Manager.

(c) **Non-NFL Event Parking Plan**. Prior to the Tenant Season Expansion Date, Landlord shall have the sole responsibility to comply with the requirements of the TMOP and the Mitigation Measures and Conditions of Approval with respect to Non-NFL Events. Effective as of the Tenant Season Expansion Date (if the Stadium Authority Put Right is exercised) and continuing through the remainder of the Lease Term, Tenant shall include, with the NFL Parking Plan delivered to the Stadium Authority, a Stadium Parking Plan addressing Non-NFL Events for each Lease Year (which, together with the NFL Parking Plan, shall constitute the "**Stadium Parking Plan**" for the particular Lease Year). The Stadium Parking Plan shall comply with the requirements of the TMOP and the Mitigation Measures and Conditions of Approval.

(d) **NFL Game Public Parking Spaces**. The terms and conditions pursuant to which Tenant shall have the right to use the NFL Game Public Parking Spaces will be subject to a parking agreement to be entered into by the Stadium Authority and Tenant ("**Public Parcel Parking Agreement**"), the material provisions of which are set forth in the Summary of Parking Rights.

7.4.2 **Stadium Parking Operator**. The Stadium Authority shall have the right, from time to time, to employ a third-party operator to manage and operate the Stadium Parking Areas for Stadium Authority Events; and Tenant shall have the right, from time to time, to employ a third-party operator to manage and operate the Stadium Parking Areas for NFL Events. As with Concessions and Stadium Management, the Parties shall negotiate in good faith in connection with the Stadium Lease whether to provide for a single Stadium Parking Operator to be engaged year-round and, if so, the process for soliciting and selecting the Stadium Parking Operator and negotiating the Stadium Parking Management Agreement.

7.4.3 **Tenant's Parking Spaces**. At all times during the Lease Term, but subject to certain rules and restrictions applicable to the Exclusive Game Day Period as shall be

negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease, Tenant shall have the sole and exclusive right to Tenant's Parking Spaces at no cost or charge, for the use of Tenant, any Tenant Transferee, including the Team or any Second Team, any Tenant Affiliate and their respective officers, directors, employees, agents, contractors and invitees.

7.4.4 **Stadium Authority Parking Spaces**. At all times during the Lease Term, the Stadium Authority shall have the sole and exclusive right to the Stadium Authority's Parking Spaces for use by the Stadium Authority, its officers, directors, employees, agents, contractors and invitees.

7.4.5 **Complimentary Parking**. Tenant shall have the right to issue complimentary parking passes, with in and out privileges (the "**Complimentary Parking Passes**"), to any Ticket holder, Suite licensee, employee or other invitee, attendee or guest that it deems appropriate or necessary for any Tenant Event or Tenant Incidental Use, and to Owners' Club Licensees for all Stadium Events, including Non-NFL Events; and the holders of the Complimentary Parking Passes may enter the Stadium Parking Areas at any locations that the general public shall be entitled to enter the Stadium Parking Areas. Subject to the provisions of the Public Parcel Parking Agreement, any vehicles entering the Stadium Parking Areas for such an Event and presenting a Complimentary Parking Pass shall not be subject to a parking charge of any kind.

7.5 **Police, Traffic and Emergency Services**.

7.5.1 **Public Safety Plan**. The Stadium Authority shall be responsible for coordinating with the City the traffic management, security and public safety at all Stadium Authority Events, and Tenant shall be responsible for coordinating with the City the traffic management, security and public safety at all Tenant Events, in all cases subject to, and in accordance with, the Public Safety Plan and the annual Stadium Operation and Maintenance Plan. The initial Public Safety Plan adopted by the City and the Stadium Authority, in consultation with the City's Chief of Police, Tenant and NFL Rules and Regulations, shall be attached as an Exhibit to the Stadium Lease. The Stadium Authority and the City (including, without limitation, its Chief of Police), in consultation with Tenant, shall update the Public Safety Plan as needed from time to time.

7.5.2 **Public Safety Costs**.

(a) As shall be more particularly provided in the Public Safety Plan, for each Lease Year, Tenant shall reimburse the City the amount by which (i) the Public Safety Costs (as defined below) attributable to NFL Games during such Lease Year, including a fair share of Public Safety Capital Expenditures attributable to such Tenant Events, exceeds (ii) the fees received by the City during such Lease Year from the holders of Off-Site Parking Permits that are attributable to Tenant Events. For purposes hereof, "**Public Safety Costs**" means, for each Lease Year, the actual and reasonable costs of police, traffic control, fire, emergency services and similar services that are incurred by the City in implementing the Public Safety Plan during such Lease Year, including Public Safety Capital Expenditures.

(b) As part of the adoption of the Annual Shared Stadium Expense Budget for each Lease Year the City, the Stadium Authority and Tenant shall, in accordance with public safety allocation guidelines to be described in the Public Safety Plan, attempt to reach agreement on (i) the types and amounts of Public Safety Costs to be reimbursed by Tenant and the Stadium Authority to the City for such Lease Year and (ii) the fair share of Public Safety Capital Expenditures attributable to the Tenant Events to be conducted at the Stadium during such Lease Year. Without limiting the foregoing, such allocation guidelines shall address the types of capital expenditures required for public safety in the operation of the Stadium, whether such capital expenditures shall be included in Public Safety Costs by amortization or deposits to a sinking fund, and the methods and criterion for allocating such capital expenditures among Stadium Events. As provided in Paragraph 7.5.2 above, if the City, the Stadium Authority and Tenant are unable to agree on the foregoing allocation among Stadium Events, such dispute shall be resolved by Expedited ADR. Public Safety Costs attributable to Tenant Events shall be paid by Tenant directly to the City, subject to the provisions of Paragraph 7.5.3 below. In addition, as provided in Paragraph 7.5.2, if, following the adoption of the Annual Shared Stadium Expense Budget for any Lease Year, there occurs an Emergency or other circumstances not reasonably foreseeable at the time the Stadium Operation and Maintenance Plan for such Lease Year was adopted, and, as a result, the Stadium Authority provides an Increased Expense Proposal to Tenant with modifications to the allocation of Public Safety Costs among the Stadium Events to be conducted at the Stadium during such Lease Year, then the City, the Stadium Authority and Tenant shall attempt to reach agreement on the foregoing allocation among Stadium Events. If the City, the Stadium Authority and Tenant are unable to agree on the foregoing allocation among Stadium Events, such dispute shall be resolved by Expedited ADR.

7.5.3 **Public Safety Costs Threshold**.

(a) If the amount of Public Safety Costs, including Public Safety Capital Expenditures (whether funded from the Stadium Capital Expenditure Reserve or otherwise), attributable to NFL Games for any Lease Year (which shall, in the case of Public Safety Capital Expenditures, include only the amortization thereof applicable to such Lease Year) exceed the Public Safety Costs Threshold applicable to such Lease Year, then, subject to the provisions of Paragraph 7.5.5 below, the amount by which such Public Safety Costs exceed the Public Safety Costs Threshold shall (i) constitute Credited Public Safety Costs and shall be included among the Performance-Based Rent Credits for purposes of determining the amount of Performance-Based Rent payable by the Stadium Authority for such Lease Year pursuant to the Ground Lease (and, following the Tenant Season Expansion Date if the Stadium Authority Put Right is exercised, the Performance-Based Rent payable by Tenant for such Lease Year in accordance with Paragraph 6.4 above); and (ii) the Rent payable by Tenant for such Lease Year pursuant to the Stadium Lease shall be reduced by the lesser of the following (the "**Public Safety Costs Threshold Credit**"): (1) the amount of Credited Public Safety Costs for such Lease Year plus any Credited Public Safety Costs included among the Permitted Credits Carry-forward for the particular Lease Year or (2) fifty percent (50%) of the Net Income from Non-NFL Events for such Lease Year. If, for any reason, such a reduction in the Rent payable by Tenant is not permitted by any Permitted Landlord Financing or otherwise, the Stadium Authority shall pay to Tenant the Public Safety Costs Threshold Credit in accordance with terms and conditions to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

(b) For the first Lease Year, the "**Public Safety Costs Threshold**" shall equal the product of (i) One Hundred Seventy Thousand Dollars ($170,000.00) (the "**Per Game Factor**") multiplied by (ii) the total number of pre-season, regular season and post-season NFL Games played at the Stadium during that Lease Year. For example, if there were ten (10) NFL Home Games during the first Lease Year, the Public Safety Costs Threshold for that Lease Year shall equal One Million Seven Hundred Thousand Dollars ($1,700,000.00). For each Lease Year thereafter, the Per Game Factor referenced above shall be increased by four percent (4%) per Lease Year, subject to adjustment as provided in Paragraph 7.5.6(b) below.

7.5.4 **Possible Adjustment of Public Safety Costs Threshold**.

(a) If the NFL mandates specific new or expanded security measures that substantially increase Public Safety Costs in connection with NFL Games, and the reasonable cost of such new or expanded measures will cause the Public Safety Costs Threshold to be exceeded, then, at the request of the City, the Public Safety Costs Threshold shall be increased so that such new or expanded measures will not cause the Public Safety Costs Threshold to be exceeded. If the Stadium Authority, Tenant and the City are unable to agree on the amount of such increase, such dispute shall be resolved by Expedited ADR.

(b) If due to unanticipated circumstances other than new or expanded security measures mandated by the NFL, Public Safety Costs for NFL Games exceed the Public Safety Costs Threshold over any three (3) consecutive Lease Years, then, at the request of the City in accordance with the Public Safety Plan, the Stadium Authority, Tenant and the City will engage in good faith negotiations with respect to possible increase in the Public Safety Costs Threshold; provided, however, that Tenant will not be obligated to agree to any increase in the Public Safety Costs Threshold pursuant to this Paragraph 7.5.4(b), and the issue shall not be subject to Expedited ADR. Any such increase in the Public Safety Costs Threshold shall be subject to Tenant's approval, which may be granted or withheld in Tenant's sole discretion.

7.5.5 **Public Safety Costs Outside Threshold**.

(a) **Special Events Unit**. In the year prior to the Commencement Date and during the first Lease Year, Tenant shall reimburse the City for the actual total compensation of a police lieutenant and sergeant to establish a special events unit and to develop procedures and protocols for the implementation of the Public Safety Plan, as well as agreements with surrounding jurisdictions (the "**Special Events Unit**"), up to a maximum of Five Hundred Thousand Dollars ($500,000.00) per Lease Year.

(b) **Barricades and Radios**. Tenant shall be responsible, at no cost to the Stadium Authority, for the rental cost from third parties of barricades and radios used for public safety purposes in connection with NFL Events (and, following the Tenant Season Expansion Date if the Stadium Authority Put Right is exercised, Non-NFL Events) and the cost of such rental shall not be subject to the Public Safety Costs Threshold.

(c) **Police Escorts or Additional Security**. Any police escorts or additional security requested for the Team or visiting team players shall be the responsibility of Tenant and, to the extent provided by the City, Tenant shall reimburse (or cause to be

reimbursed) the costs of same directly to the City. Such costs shall not be subject to the Public Safety Costs Threshold.

7.5.6 **Second Team**. If a Second Team plays and hosts NFL Home Games in the Stadium (other than during a Temporary Second Team Occupancy), then the following provisions shall apply:

(a) During each of the first two (2) Lease Years that the Second Team plays and hosts NFL Home Games in the Stadium, Tenant shall reimburse the City for the actual total compensation of a police lieutenant and sergeant to update procedures and protocols in the Public Safety Plan, as well as agreements with surrounding jurisdictions, up to a maximum of Two Hundred Fifty Thousand Dollars ($250,000.00) per Lease Year. The amount of such reimbursement shall not be included in Public Safety Costs nor be subject to the Public Safety Costs Threshold. Whether and to what extent Tenant shall reimburse the City for such amounts if the Second Team begins to play and host NFL Home Games in the Stadium prior to the commencement of the third (3rd) Lease Year shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

(b) Commencing in the Lease Year immediately following the Lease Year that the Second Team begins playing its NFL Home Games in the Stadium, the Per Game Factor above shall be increased by six percent (6%) per year, rather than four (4%) per year.

7.6 **Complimentary Admissions**. Tenant and the Team or Second Team, as the case may be, shall have the right to provide complimentary Tickets (whether for Premium Seating or seating elsewhere in the Stadium) for any NFL Game in the Stadium, and such complimentary Tickets shall not be subject to the NFL Ticket Surcharge or City of Santa Clara Senior and Youth Program Fee. All such complimentary Tickets to NFL Games may include Complimentary Parking Passes.

7.7 **Utilities**.

7.7.1 **Required Utilities**. Subject to Tenant's obligation to reimburse Landlord for Tenant Event Expenses as provided in Paragraph 7.1.1(a)7.1.1(a) above and the provisions of Paragraph 7.7.2 below, during the Lease Term, the Stadium Authority shall furnish, at its expense, all Utilities necessary for the operation of the Stadium and Stadium Authority Parking Facilities for the conduct of Stadium Events ("**Required Utilities**"). Tenant shall have the right to modify the Required Utilities from time to time during the Lease Term, in which event any changes or alterations required to be made to the Stadium or Stadium Parking Areas to facilitate such Required Utilities shall be performed in accordance with the Alterations provisions of the Stadium Lease to be negotiated in good faith by the Stadium Authority and Tenant. Landlord shall pay the cost of any tap fees, special equipment, line extension, or other hookup charges of any kind relating to any of the Utilities, and such fees and charges shall constitute Shared Stadium Expenses under the Stadium Lease. Landlord agrees that the rates and other terms for the Utilities shall not be in excess of the actual cost of the Utilities to Landlord. Notwithstanding the foregoing in this Paragraph to the contrary, Tenant shall be solely responsible for obtaining service at the point of consumption of, and for the payment of all charges (including deposits), programming fees and service charges, for Tenant's use of telephone service and cable television

service at the Premises, provided that no hookup charges shall be imposed by the Stadium Authority for this purpose.

7.7.2 **Utilities Costs**. During the Tenant Season, Tenant shall, at its sole cost and expense, pay all charges for Utilities used or consumed in or on the Premises (exclusive of any Utilities used or consumed in the Stadium Authority's Exclusive Facilities and exclusive of any Utilities relating to Stadium Authority Events occurring during the Tenant Season). During the Stadium Authority Season, the Stadium Authority shall, at its sole cost and expense, pay all charges for Utilities used or consumed in or on the Premises (exclusive of any Utilities used or consumed in Tenant's Exclusive Facilities and exclusive of any Utilities relating to Tenant Events occurring during the Stadium Authority Season). If any Utilities are not separately metered to the Parties' Exclusive Facilities or as may be necessary to determine the amount of Utilities used or consumed during particular Stadium Events, then the Stadium Authority shall, based on guidelines to be agreed upon by the Stadium Authority and Tenant in the Stadium Operation and Maintenance Plan, reasonably allocate the cost of such Utilities to the Parties' Exclusive Facilities or to such Stadium Events, as applicable.

7.7.3 **Landlord's Covenants Regarding Utilities**. Landlord covenants and agrees as follows regarding Utilities at the Premises:

(a) Tenant shall have the right to review and approve the Utility service metering plans for the Premises (including maintenance, calibration, auditing and calculating corrections), and Tenant shall have the right to participate in negotiation of key Utility service provider agreements;

(b) Landlord shall use reasonable efforts to insure that the provider of the Utility service in question shall have adequate capacity to provide the necessary Utilities to the Premises for the term of such agreement, unless the provider of such Utilities is selected by Tenant and such provider refuses to contract to provide such Utilities on a firm and uninterruptable basis; and

(c) The agreement to provide the Utility service in question shall provide that such Utility service be provided on a firm and uninterruptable basis, unless the provider of such Utilities is selected by Tenant and such provider refuses to contract to provide such Utilities on a firm and uninterruptable basis.

7.7.4 **Utilities Interruption**. Except for Tenant's right of abatement and termination as shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease and except as provided elsewhere in this Paragraph 7.7, Landlord shall incur no liability to Tenant on account of any interruption or stoppage of any Utilities to the Premises if such interruption or stoppage is beyond the reasonable control of Landlord, provided Landlord immediately commences reasonable efforts, in good faith to (a) mitigate the effects of such interruption or stoppage and (b) restore full service of any of such Utilities. For purposes of the preceding sentence (without limiting the meaning of the phrase "beyond the reasonable control of Landlord"), it shall not be deemed that any such interruption or stoppage was beyond the "reasonable control of Landlord" if (i) the principal reason for such interruption or stoppage was the failure or refusal of Landlord to pay a monetary sum (unless the

Stadium Lease requires Tenant to pay such sum and Tenant has failed to pay such sum) or (ii) such interruption of or stoppage was caused by (1) the negligent or willful act or omission of Landlord, or its contractors, subcontractors, laborers or materialmen or (2) the failure of Landlord to enter into a contract or agreement for providing such Utility with (A) a provider with adequate capacity to provide any of such Utilities, unless the provider of such Utilities is selected by Tenant and (B) a requirement in such contract or agreement that such Utilities be provided on a firm and uninterruptable basis, unless the provider of such Utilities is selected by Tenant and such provider refuses to agree to provide such Utilities on a firm and uninterruptable basis.

7.7.5 **Approval of Utility Providers**. Tenant shall have the right to approve, from time to time, the providers of utility services servicing Tenant's Exclusive Facilities provided, however, that Silicon Valley Power ("**SVP**") shall be the exclusive provider of electrical service to the Stadium, so long as SVP is a Landlord Affiliate. Should SVP at any time not be the exclusive power provider for the citizens and businesses in the City of Santa Clara, Landlord and Tenant will negotiate in good faith an agreement with SVP or an alternative provider, subject to terms and conditions to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

7.8 **Stadium Contracts**.

7.8.1 **Enforcement of Contracts**. Landlord agrees that Tenant is (and will cause Tenant to be named) a third-party beneficiary of all Stadium Contracts and any other agreements (not otherwise constituting a Stadium Contract) with third parties for the design, construction, supply, alteration, improvement, Maintenance or renewal of any portion of the Stadium Site for which the costs incurred by the Stadium Authority shall be Shared Stadium Expenses or funded by the Stadium Capital Expenditure Reserve (such agreements and the being referred to herein, collectively, as the "**Enforceable Contracts**"), and Landlord shall convey, transfer and assign to Tenant as of the Commencement Date, the non-exclusive right to enforce, jointly or severally, any and all of the respective obligations of any Person under any such Enforceable Contracts during the Lease Term, including, but not limited to, any and all representations, covenants and warranties thereunder, provided, that Tenant's right to enforce any of the Enforceable Contracts during the Lease Term shall be limited to claims arising thereunder after the Commencement Date for which Tenant has liability under the Stadium Lease, unless an uncured Landlord Default shall exist, in which event such Tenant's rights shall not be so limited. However, Tenant shall have no obligation whatsoever to enforce any of the Enforceable Contracts. Tenant's right to enforce the respective obligations of any Person under any Enforceable Contract is independent of and separate from the rights of Landlord to enforce the same and shall in no manner limit or reduce the rights of Landlord to enforce the same. The Parties covenant and agree that each will cooperate with the other in enforcing any of the terms of such Enforceable Contracts, and to promptly notify the other in writing of any default by any Person under any Enforceable Contract and of the remedy or course of action sought by it or to be taken by it in response to such default.

7.8.2 **Warranty Prosecution**. Additionally, the Parties agree to cooperate with each other in prosecuting any and all claims under any and all of the Enforceable Contracts (each "**Warranty/Other Claim**"). All recoveries from any such Warranty/Other Claims shall be applied, first, to the costs of collection, second, on a proportional basis to Landlord and Tenant to

reimburse Landlord or Tenant, as the case may be, for the cost and expenses incurred by such Party in order to (a) replace or supplement any of the goods, equipment or services to be provided under the Enforceable Contract or (b) repair, restore, renew or replace any part of the Stadium Site (including the Premises) as to which such Warranty/Other Claim relates; and third, any remaining amounts shall be deposited into the Stadium Capital Expenditure Reserve. Any such deposits into the Stadium Capital Expenditure Reserve shall not reduce nor offset the Landlord's obligation to make or cause to be made deposits into the Stadium Capital Expenditure Reserve as otherwise required pursuant to the terms of the Stadium Lease.

ARTICLE 8
SHARED STADIUM EXPENSES

8.1 **Definition of Shared Stadium Expenses**. As used in the Stadium Lease, "**Shared Stadium Expenses**" shall mean only the following costs paid by the Stadium Authority in operating, managing and Maintaining the Premises, the South Parking Lot, the South Access Road and the Bridges. Shared Stadium Expenses shall not include Tenant Event Expenses, Stadium Authority Event Expenses, Stadium Authority Discretionary Expenses or the expenses enumerated in Paragraph 8.2 below. Shared Stadium Expenses shall be more particularly described in the Stadium Operation and Maintenance Plan, Annual Shared Stadium Expense Budget, and Public Safety Plan, and shall include the following:

8.1.1 **Insurance Expenses**. Expenses for liability, casualty, property and other insurance coverages carried by the Stadium Authority relating to the Premises, the South Parking Lot, the South Access Road and the Bridges; provided, however, that any extraordinary insurance expenses relating directly to a Tenant Event shall constitute Tenant Event Expenses, and any such insurance expenses relating directly to a Stadium Authority Event shall constitute Stadium Authority Event Expenses.

8.1.2 **Capital Repairs and Capital Expenditures**. The costs and expenses of any Capital Repairs or other Capital Expenditures, including any depreciation or amortization thereof, as and to the extent not funded by the Stadium Capital Expenditure Reserve or Operating Expense Reserve; provided, however, that whether, and to what extent, any Capital Repairs or other Capital Expenditures that have a useful life that extends beyond the Lease Expiration Date shall be included in Shared Stadium Expenses shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

8.1.3 **Stadium Management Fees**. Management fees paid to the Stadium Manager pursuant to the Stadium Management Agreement, excluding (a) incentive fees of any kind paid by the Stadium Authority or Tenant in connection with Stadium Events and (b) administrative and marketing expenses related to obtaining Stadium Authority Events.

8.1.4 **Other Specified Shared Expenses**. Any other costs or expenses that are specifically described in this Lease Summary as constituting Shared Stadium Expenses.

8.2 **Other Excluded Expenses**. Without in any way limiting Tenant's rights set forth in Paragraph 8.5.1 above, Shared Stadium Expenses shall exclude the following:

8.2.1 **Utilities Expenses.** Charges for Utilities used or consumed in or on the Premises, which shall be payable by Tenant and the Stadium Authority pursuant to Paragraph 7.7 above.

8.2.2 **Debt Service.** Debt service paid by the Stadium Authority of any kind, including debt service on, and any other repayments of, the Management Company Revolving Loan or the Subordinated Loan.

8.2.3 **Other Excluded Expenses.** Any other costs or expenses specifically excluded from Shared Stadium Expenses in the Stadium Lease, including Tenant Event Expenses, Stadium Authority Event Expenses and Stadium Authority Discretionary Expenses.

8.3 **Payment of Shared Stadium Expenses**.

8.3.1 **Proportionate Share**. The Stadium Authority and the Tenant shall negotiate in good faith a mechanism for allocating each Party's proportionate share of Shared Stadium Expenses for inclusion in the Stadium Lease.

8.3.2 **Tenant's Estimated Payments.** As more particularly described in Paragraph 8.5.1 below, the Annual Stadium Authority Budget for each Lease Year shall specify the estimated Tenant's proportionate share ("**Tenant's Estimated Share**") of the estimated amount of Shared Stadium Expenses ("**Estimated Shared Stadium Expenses**") for such Lease Year. Tenant shall pay Tenant's Estimated Share of Estimated Shared Stadium Expenses for each Lease Year periodically based on the monthly revenue requirements for the operation of the Stadium as set forth in the Annual Stadium Authority Budget, as the Annual Stadium Authority Budget may be modified from time to time pursuant to Paragraph 8.5.2 below.

8.3.3 **Annual Statement of Stadium Operations.** Within ninety (90) days following each Lease Year, Landlord shall furnish (or cause the Stadium Manager to furnish) to Tenant a statement for such Lease Year ("**Annual Statement of Stadium Operations**"), prepared by a qualified, third-party independent certified public accountant selected by Landlord and approved by Tenant, of the following: Stadium Authority Revenue, Tenant's proportionate share, Shared Stadium Expenses, the amount of Tenant's payments for Estimated Shared Stadium Expenses, Stadium Authority Expenses, the cost of Capital Repairs, Net Income from Non-NFL Events, and distributions to and from the Operating Expense Reserve and Stadium Capital Expenditure Reserve. If the Annual Statement of Stadium Operations indicates that Tenant's proportionate share of Shared Stadium Expenses for the preceding Lease Year exceeds Tenant's payments for Estimated Shared Stadium Expenses for such Lease Year, then Tenant shall pay Landlord the deficiency within thirty (30) days after Tenant's receipt of the Annual Statement of Stadium Operations. If the Annual Statement of Stadium Operations indicates that Tenant's payments for Estimated Shared Stadium Expenses for the preceding Lease Year exceeds Tenant's proportionate share of Shared Stadium Expenses for such Lease Year, then the amount of such excess shall be credited against Tenant's proportionate share of Shared Stadium Expenses for the next succeeding Lease Year (or, following the Expiration Date or any earlier termination of the Stadium Lease) shall be refunded to Tenant by the Stadium Authority within thirty (30) days of delivery of the Annual Statement of Stadium Operations.

8.3.4 **Taxes Having Disproportionate Impact.** If, at any time following the Effective Date, any new or amended local Tax or other Imposition are imposed by the City, the Landlord or any Landlord Affiliate and paid or collected by the Stadium Authority, Tenant, the Team or a Second Team which disproportionately impact the Stadium Authority, the Team, any Second Team or NFL Events ("**Disproportionate Taxes**"), Tenant will be entitled to a credit against its obligation to pay Shared Stadium Expenses under the Stadium Lease equal to the amount of any such Disproportionate Taxes. ***[Note: This credit will need to flow to Line of Credit Agreement so that Stadium Authority receives a credit against rent in Master Lease.]*** Disproportionate Taxes shall include any Stadium Admissions Tax, Impositions levied on any motor vehicles parking for Stadium Events and any new or amended local Tax that derive more than a certain percentage of its revenue from the Stadium Authority, Tenant, the Team or any Second Team; provided, however, that Disproportionate Taxes shall exclude the fees received by the City each Lease Year from the holders of Off-Site Parking Permits for Stadium Events. The percentage of revenue described above and a more specific definition of Disproportionate Taxes shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

8.4 **Accounting Matters**.

8.4.1 **Records**. Landlord shall maintain (or cause the Stadium Manager to maintain) complete and accurate books and records relating to the operations of the Stadium, including all Stadium Authority Revenue, the number of Stadium Attendees for Stadium Events, Shared Stadium Expenses, Stadium Authority Expenses, Net Income from Non-NFL Events, the cost of Capital Repairs and distributions to and from the Operating Expense Reserve and Stadium Capital Expenditure Reserve (collectively, "**Stadium Records**"), in accordance with generally accepted accounting and management practices, consistently applied.

8.4.2 **Inspection and Audit**. Within one hundred eighty (180) days following Tenant's receipt of any Annual Statement of Stadium Operations, Tenant or its representative, which representative must be a qualified, third-party independent certified public accountant, shall have the right to examine the Stadium Records ("**Audit**") at any time during normal Business Hours, upon written notice to Landlord, delivered at least ten (10) Business Days in advance. If it is determined as the result of Tenant's Audit that Tenant's proportionate share of Shared Stadium Expenses for any Lease Year were overstated, and Landlord does not disagree with such determination, then Landlord shall reimburse Tenant for the amount of such overstatement. If, however, Landlord disagrees with such determination, then Landlord shall be entitled to arrange for a second audit ("**Second Audit**") by a qualified, independent third-party certified public accountant reasonably acceptable to Tenant. If it is determined as the result of any such Second Audit that Tenant's proportionate share of Shared Stadium Expenses for any Lease Year were overstated, then Landlord shall reimburse Tenant for the amount of such overstatement.

8.5 **Annual Shared Stadium Expense Budget**.

8.5.1 **Adoption of the Annual Shared Stadium Expense Budget**. As part of the Annual Stadium Authority Budget, an annual budget for Shared Stadium Expenses (the "**Annual Shared Stadium Expense Budget**") shall be adopted annually by the Stadium

Authority and Tenant in accordance with the provisions of this Paragraph 8.5.1. Prior to each Lease Year, the Stadium Authority shall cause the Stadium Manager to deliver to the Stadium Authority and Tenant, for review and comment, a detailed draft budget of Shared Stadium Expenses for such Lease Year ("**Draft Budget**"), together with a good faith and reasonable projection of Shared Stadium Expenses over the succeeding five (5) year period. Within forty-five (45) days following the Parties' receipt of the Draft Budget ("**Budget Comment Period**"), each Party shall provide comments to the Draft Budget and, specifically, Tenant shall specify whether any of the line items included in the Draft Budget should be excluded from Shared Stadium Expenses and whether, and to the extent, the amount of any agreed-upon line items should be reduced, all of the foregoing to be based on Tenant's reasonable business judgment consistent with the requirement that the Premises, the South Parking Lot, the South Access Road and the Bridges be Maintained in the Required Condition and, as to Public Safety Costs, consistent with the requirements of the Public Safety Plan. If the Stadium Authority or Tenant disapprove all or any portion of the Draft Budget, their comments shall describe with reasonable specificity the basis for such disapproval and, if applicable, the changes that would be necessary to resolve their objections. If the Stadium Authority and Tenant cannot agree on the Draft Budget, then the Parties will meet and confer in a good faith effort to resolve such disagreement in accordance with dispute resolution procedures to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease (the "**Dispute Resolution Procedures**"). If, for any reason, such disagreement is not resolved within thirty (30) days following the Budget Comment Period, then either Party may submit the dispute to non-binding mediation in accordance with the Dispute Resolution Procedures. If, following any such non-binding mediation, the Parties cannot agree on the amount for a specific line item or whether one or more line items should be included in the Annual Shared Stadium Expense Budget, then, if and to the extent the disagreement involves Public Safety Costs, either Party may submit the dispute to an expedited alternative dispute resolution process to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease ("**Expedited ADR**"). The process for resolving such a disagreement in all other circumstances shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease. If, following the resolution of any such disagreement between the Stadium Authority and Tenant with respect to Shared Stadium Expenses, any of the line items included in the Draft Budget are excluded from Shared Stadium Expenses or any of the agreed-upon line items are reduced, then the Stadium Authority and Tenant agree that, as so adjusted, the Annual Shared Stadium Expense Budget shall be deemed to be consistent with the requirement that the Premises, the South Parking Lot, the South Access Road and the Bridges be Maintained in the Required Condition and, as to Public Safety Costs, consistent with the requirements of the Public Safety Plan.

8.5.2 **Amendments to Stadium Operation and Maintenance Plan**. From time to time during each Lease Year in connection with an Emergency or other circumstances not reasonably foreseeable at the time the Stadium Operation and Maintenance Plan for such Lease Year was adopted, the Stadium Authority shall have the right to propose additional Shared Stadium Expenses by delivering to Tenant, for Tenant's review and comment, a detailed description thereof ("**Increased Expense Proposal**") in accordance with the following:

(a) If the additional Shared Stadium Expenses are necessitated by circumstances not reasonably foreseeable at the time the Stadium Operation and Maintenance

Plan was adopted (but not an Emergency), then the Stadium Authority shall deliver the Increased Expense Proposal to Tenant at least thirty (30) days before incurring any costs or expenses that the Stadium Authority desires to constitute Shared Stadium Expenses. Within twenty (20) days following Tenant's receipt of the Increased Expense Proposal, Tenant shall provide comments thereto, in which event the process for Tenant's approval of the Increased Expense Proposal, and whether any of the costs or expenses included therein shall constitute Shared Stadium Expenses, shall be the same as is set forth in Paragraph 8.5.1 above with respect to the adoption of the Annual Shared Stadium Expense Budget.

(b) If the Increased Expense Proposal is necessitated by an Emergency (as determined in good faith by the Stadium Authority), then (i) the Stadium Authority shall deliver the Increased Expense Proposal to Tenant as soon as reasonably practicable, but not necessarily before incurring costs or expenses that the Stadium Authority desires to constitute Shared Stadium Expenses; and (ii) Tenant agrees that any such costs or expenses that are necessitated by an Emergency shall constitute Shared Stadium Expenses.

ARTICLE 9
TAXES AND OTHER IMPOSITIONS

9.1 **Payment of Possessory Interest Taxes and Other Impositions**.

9.1.1 **Payment of Possessory Interest Taxes**. Tenant shall pay or cause to be paid, prior to delinquency, all Taxes assessed on account of the possessory interest held by Tenant, the Team, any Second Team or any Third-Party Tenant. If Applicable Laws permit such Taxes to be paid in installments, Tenant shall have the right to do so.

9.1.2 **Tenant's Right to Contest Impositions and Liens**. Tenant shall have the right, at its sole cost and expense, to contest the amount, validity or applicability, in whole or in part, of any Imposition or other Lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any Lien, charge or encumbrance arising from work performed or materials provided to Tenant, or any Tenant Transferee or other Person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence.

9.2 **Impositions on Tenant's Personal Property**. Throughout the Lease Term, Tenant shall pay, or cause to be paid, all Taxes and other Impositions levied on, or payable with respect to, Tenant's Personal Property that is owned by Tenant or that is used by Tenant and is not part of the Premises. Tenant shall pay all such Taxes and other Impositions directly to the taxing authority or other payee thereof.

ARTICLE 10
CAPITAL REPAIRS AND REPLACEMENTS

10.1 **Stadium Capital Expenditure Reserve**. Landlord shall (a) establish and maintain the Stadium Capital Expenditure Reserve Account for the purpose of holding, applying, investing and transferring the Stadium Capital Expenditure Reserve, and (b) hold and disburse the funds required to be deposited in the Stadium Capital Expenditure Reserve, all in accordance with the Capital Expenditure Plan to be adopted annually by the Stadium Authority and Tenant.

The Parties acknowledge that a security interest in the Stadium Capital Expenditure Reserve Account and the Stadium Capital Expenditure Reserve may be granted by the Stadium Authority in connection with the Financing Plan.

10.2 **Capital Expenditure Reserve Deposits**. The Stadium Authority will deposit, or cause to be deposited, amounts into the Stadium Capital Expenditure Reserve to be negotiated in good faith by the Stadium Authority and the Tenant in connection with the Stadium Lease. The Capital Expenditure Reserve shall be maintained in a separate account and not co-mingled with any other Stadium Authority funds.

10.3 **Use of Stadium Capital Expenditure Reserve**. In addition to the other uses permitted hereunder, the Stadium Capital Expenditure Reserve shall be used by the Stadium Authority for Capital Repairs and other Capital Expenditures (including periodic updating of the Stadium) in accordance with an approved Capital Expenditure Plan and the provisions of this ARTICLE 10, and, except as shall be provided in the Final Financing Plan (as defined in the DDA), may not be pledged, mortgaged, encumbered or otherwise used as security for any debt without Tenant's prior consent. The Stadium Authority shall reimburse to the Stadium Capital Expenditure Reserve any amounts used therefrom for any Capital Repairs or other Capital Expenditures to the extent that the Stadium Authority receives funds from any source (including, but not limited to, Insurance Proceeds and recovery from third parties) to reimburse it for costs and expenses incurred in the performance of such Capital Repairs or other Capital Expenditures.

10.4 **Plan Preparation and Approval**.

10.4.1 **Draft Capital Expenditure Plan**. The Capital Expenditure Plan shall be adopted annually by the Stadium Authority as part of the Stadium Operation and Maintenance Plan, subject to the mutual approval of the Stadium Authority and Tenant. Prior to each Lease Year, the Stadium Manager shall deliver to the Stadium Authority and Tenant, for review and comment, a detailed draft projection of Capital Expenditures for such Lease Year, as well as a five (5) year projection of anticipated Capital Expenditures ("**Draft Capital Expenditure Plan**"). The Draft Capital Expenditure Plan (a) shall contain the Stadium Manager's proposed Capital Repairs to be made to the Premises during the upcoming Lease Year, (b) shall describe in reasonable detail any material discrepancies between the Stadium Manager's proposed Capital Expenditures for such Lease Year and the five (5) year projection of anticipated Capital Expenditures included in the previous year's Capital Expenditure Plan, and (c) shall include any Capital Expenditures for public safety that the Stadium Manager proposes be made consistent with the then approved Public Safety Plan. Within forty-five (45) days following the Parties' receipt of the Draft Capital Expenditure Plan ("**Capital Plan Comment Period**"), each Party shall provide comments to the Draft Capital Expenditure Plan based on their respective reasonable business judgment consistent with the requirement that the Premises be Maintained in the Required Condition and, as to Public Safety Costs, consistent with the requirements of the Public Safety Plan. If either Party disapproves all or any portion of the Draft Capital Expenditure Plan, their comments shall describe with reasonable specificity the basis for such disapproval and the changes that would be necessary to resolve their objections. If the Stadium Authority and Tenant cannot agree on the Draft Capital Expenditure Plan for the applicable Lease Year, then the Parties will meet and confer in a good faith effort to resolve such disagreement in accordance with the Dispute Resolution Procedures. If, for any reason, such

disagreement is not resolved within thirty (30) days following the Capital Plan Comment Period, then either Party may submit the dispute to non-binding mediation in accordance with the Dispute Resolution Procedures and, in the case of any disagreement over Public Safety Costs, to Expedited ADR. In the event that, following any such non-binding mediation or otherwise, the Parties cannot agree on the Draft Capital Expenditure Plan, then, except for Public Safety Costs (which shall be governed by the Expedited ADR resolution), the five (5) year projection of anticipated Capital Expenditures included in the previous year's Capital Expenditure Plan shall govern; provided, however, that if Tenant requires that any Capital Repairs or other Capital Expenditures be performed or otherwise incurred as a result of NFL Rules and Regulations or any other NFL requirement, such Capital Repairs or other Capital Expenditures shall be included in the Capital Expenditure Plan.

10.4.2 **Draft Cap Ex Plan Addendum**. From time to time during each Lease Year in connection with an Emergency or other circumstances not reasonably foreseeable at the time the Capital Expenditure Plan for such Lease Year was adopted, Tenant (in the case of Tenant Alterations) and the Stadium Authority (in all other cases) shall have the right to propose modifications to the Capital Expenditure Plan by delivering to the other Party for review and comment a detailed Draft Cap Ex Plan Addendum ("**Draft Cap Ex Plan Addendum**") in accordance with the following:

(a) If the Draft Cap Ex Plan Addendum is necessitated by circumstances not reasonably foreseeable at the time the Capital Expenditure Plan was adopted (but not an Emergency), then the Stadium Authority shall deliver the Draft Cap Ex Plan Addendum to Tenant at least thirty (30) days before incurring any Capital Expenditures. Within twenty (20) days following Tenant's receipt of the Draft Cap Ex Plan Addendum, Tenant shall provide comments thereto, in which event the process for Tenant's approval of the Draft Cap Ex Plan Addendum shall be the same as is set forth in Paragraph 10.4.1 above with respect to the adoption of the Capital Expenditure Plan.

(b) If the Draft Cap Ex Plan Addendum is necessitated by an Emergency (as determined in good faith by the Stadium Authority), then (i) the Stadium Authority shall deliver the Draft Cap Ex Plan Addendum to Tenant as soon as reasonably practicable, but not necessarily before incurring the required Capital Expenditures; and (ii) Tenant agrees that any such Capital Expenditures that are necessitated by an Emergency shall be approved by Tenant.

10.5 **Stadium Authority Discretionary Expenses**. Any Capital Expenditures included by the Stadium Authority in any Capital Expenditure Plan that are not approved by Tenant (or resolved by Expedited ADR) pursuant to the provisions of Paragraph 10.4.1 or Paragraph 10.4.2 above, shall constitute Stadium Authority Discretionary Expenses, which the Stadium Authority agrees must be paid for by the Stadium Authority Discretionary Fund or another funding source reasonably approved by Tenant, or must not be incurred.

10.6 **Emergency Repairs**. In the event that, at any time, the Stadium Authority reasonably determines that a Capital Repair is necessary to eliminate or ameliorate an Emergency, the Stadium Authority may commence such Capital Repair without the prior written approval of Tenant, provided that the Stadium Authority shall provide Tenant with notice prior

to the commencement of such Capital Repairs (or, if prior notice is not practicable, then notice as soon as is reasonably practicable).

10.7 **End of Term**. Upon the Lease Expiration Date or any earlier termination of the Stadium Lease, the Stadium Authority shall be entitled to retain any then remaining Stadium Capital Expenditure Reserve and Operating Expense Reserve (collectively, "**End of Term Reserves**"), provided, however, that, if the Stadium Authority elects to have Tenant demolish the Stadium as provided in Paragraph 20.2.2 below, then the Stadium Authority shall disburse such End of Term Reserves to Tenant to fund the Demolition Work on a customary "progress payment" basis as the Demolition Work progresses. [***Note: The Stadium Authority's obligations to pay the outstanding balance of the Management Company Revolving Loan at the end of the Term shall be addressed in the Line of Credit Agreement.***]

10.8 **Stadium Authority Put Right; Demolition Reserve**. If the Stadium Authority exercises the Stadium Authority Put Right as provided in ARTICLE 5, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, neither Tenant nor the Stadium Authority shall have any obligation to fund the Stadium Capital Expenditure Reserve; provided, however, that Tenant shall have the obligation to fund a reserve for Demolition Work in the final years of the Lease Term upon such terms and conditions as shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

ARTICLE 11
ALTERATIONS

The Parties' rights and obligations as they relate to changes or alterations to the Premises during the Lease Term ("**Alterations**") shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

ARTICLE 12
STADIUM AUTHORITY REVENUE

During the Lease Term, the Stadium Authority will be entitled to and will receive all "**Stadium Authority Revenue**", which means, for each Lease Year, (a) all revenue from operation of the Stadium during the Stadium Authority Season, excluding Tenant Revenue, (b) the Facility Rent paid by Tenant for such Lease Year and (c) such additional types of revenue as are set forth in this ARTICLE 12 below.

12.1 **Ticket Surcharges**.

12.1.1 **NFL Ticket Surcharge**. Tenant shall collect, on the Stadium Authority's behalf, a surcharge on the price of admission to all NFL Games occurring at the Stadium (the "**NFL Ticket Surcharge**"), and the Net NFL Ticket Surcharge Proceeds shall constitute Stadium Authority Revenue in the Lease Year received by the Stadium Authority. The NFL Ticket Surcharge shall, as more particularly described in the Final Financing Plan, equal a percentage of the price of all Tickets sold for NFL Games in a particular Lease Year (excluding the amount of the premium attached to the sale of Tickets for Premium Seating). The rate of the NFL Ticket Surcharge will initially be set by the Stadium Authority and Tenant in accordance with the Final

Financing Plan, and, as more particularly described in the Final Financing Plan, the NFL Ticket Surcharge will terminate upon a date to be agreed upon by the Parties in the Final Financing Plan.

12.1.2 **Non-NFL Event Ticket Surcharge**. The Stadium Authority (or, if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1, then, effective as of the Tenant Season Expansion Date, Tenant) will impose, and will require the promoter or sponsor of any Non-NFL Events to collect on its behalf, a surcharge of Four Dollars ($4) per ticket to all Non-NFL Events (the "**Non-NFL Ticket Surcharge**"). Except as expressly provided below in this Paragraph 12.1.2, the proceeds of the Non-NFL Ticket Surcharge will be excluded from Non-NFL Event Revenue. One-half (1/2) of the proceeds of the Non-NFL Ticket Surcharge will be included in Stadium Authority Revenue in the Lease Year received by the Stadium Authority, but shall not constitute Non-NFL Event Revenue. The other one-half (1/2) of the proceeds of the Non-NFL Ticket Surcharge will be deposited in the Stadium Authority Discretionary Fund. In the event that the Unallocated Amount (as defined below in this Paragraph) of the Stadium Authority Discretionary Fund at any time exceeds One Million Dollars ($1,000,000.00), then, in consultation with the Stadium Manager, the Stadium Authority will determine if adequate provision has been made, such as through a sinking fund, for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan; and, if not, the Stadium Authority will reserve funds in the Stadium Authority Discretionary Fund for such purpose. If the remaining balance in the Stadium Authority Discretionary Fund still exceeds One Million Dollars ($1,000,000) after adequate provision has been made for replacement of and upgrades to capital improvements contemplated under the Public Safety Plan, then up to one-half (1/2) of such excess may, upon at least twenty (20) days' prior notice to Tenant, be transferred in the discretion of the Stadium Authority from the Stadium Authority Discretionary Fund to the City's General Fund, in which event an equal amount to that transferred to the City's General Fund will be transferred from the Stadium Authority Discretionary Fund to the Stadium Authority's operating fund and will be included in Stadium Authority Revenue in the Lease Year transferred. The amount so included in Stadium Authority Revenue will be available to pay Stadium Authority Expenses. As used herein, the "**Unallocated Amount**" of the Stadium Authority Discretionary Fund means, from time to time during the Term, the portion of the Stadium Authority Discretionary Fund, if any, that is not then allocated to pay the costs of a Scheduled Civic Event or other Stadium Authority Discretionary Expenses included in the then approved Annual Stadium Authority Budget or for Emergency expenses.

12.2 **City of Santa Clara Senior and Youth Program Fee**. During the Lease Term, Tenant shall collect, on the Stadium Authority's behalf, a fee on each Ticket for NFL Games in the Stadium (excluding Complimentary Tickets) equal to thirty five cents ($0.35) per ticket (the "**City of Santa Clara Senior and Youth Program Fee**"). In accordance with the Ground Lease, the Stadium Authority is required to pay the City the annual proceeds from the City of Santa Clara Senior and Youth Program Fee, up to a maximum amount of Two Hundred Fifty Thousand Dollars ($250,000.00) per Lease Year. The annual proceeds from the City of Santa Clara Senior and Youth Program Fee, to the extent such proceeds exceed Two Hundred Fifty Thousand Dollars ($250,000.00) per Lease Year, shall constitute Stadium Authority Revenue in the Lease Year received by the Stadium Authority.

12.3 **Stadium Naming Rights Revenue**. As provided in Paragraph 15.1 below, the Stadium Authority shall market and sell the Stadium Naming Rights, and shall, prior to the Tenant Season Expansion Date, be entitled to all Stadium Naming Rights Revenue in accordance with the Stadium Naming Rights Agreement. Following the Tenant Season Expansion Date (if the Stadium Authority Put Right is exercised), the Stadium Authority shall assign to Tenant all of the Stadium Authority's rights to Stadium Naming Rights Revenue under any then existing Stadium Naming Rights Agreement, and Tenant shall market and sell the Stadium Naming Rights, and shall be entitled to all Stadium Naming Rights Revenue. The amount of Stadium Naming Rights Revenue received by the Stadium Authority in any Lease Year shall constitute Stadium Authority Revenue for such Lease Year. The Parties acknowledge, and any Stadium Naming Rights Agreement shall provide, that the Stadium Naming Rights Sponsor may also enter into a separate contract with Tenant, the Team or a Second Team for Advertising and Sponsorship Rights, the Stadium Authority shall have no interest in, nor any right to revenue from, any such separate contracts, and revenue under such separate contract (i.e., NFL Advertising and Sponsorship Revenue) shall be Tenant Revenue, which, as provided herein, is excluded from Stadium Authority Revenue. Further, Stadium Naming Rights Revenue shall not include any revenue from the sale of Stadium Components Sponsorship Rights, which the Parties also acknowledge shall be Tenant Revenue.

12.4 **SBLs Revenue**. As provided in the DDA and the Final Financing Plan, the Stadium Authority shall market and sell SBLs, and shall be entitled to all Net Revenues from the sale of SBLs; provided, however, that Tenant shall have the right to administer, on behalf of the Stadium Authority, any subsequent transfer or resale of SBLs in accordance with the SBL Agreement. All Net Revenues from the sale of SBLs shall constitute Stadium Authority Revenue in the Lease Year received by the Stadium Authority, except to the extent such amounts are included in the Stadium Authority Construction Sources. Except for the SBLs in accordance with the SBL Agreement, the Stadium Authority shall have no right to market or sell any personal seat licenses, Tickets or any other rights of admission to NFL Events in the Stadium without Tenant's prior written approval, which approval may be granted or withheld in Tenant's sole discretion.

12.5 **Net Hotel CFD Revenue**. As shall be more particularly described in the Final Financing Plan, all Net Hotel CFD Revenue shall constitute Stadium Authority Revenue in the Lease Year received by the Stadium Authority.

12.6 **Stadium Authority Parking Revenue**. As shall be more particularly described in the Stadium Parking Plan, Stadium Authority Revenue shall include in the Lease Year received by the Stadium Authority the following (collectively, "**Stadium Authority Parking Revenue**"): (a) all Net Revenues from the operation of the Stadium Authority Parking Facilities for Stadium Authority Events, and (b) all revenue sharing or parking surcharge revenues received by the Stadium Authority for Stadium Authority Events from contracts with private parking lot owners in the vicinity of the Stadium.

12.7 **Stadium Authority Concession Revenue**. Stadium Authority Revenue shall include in the Lease Year received by the Stadium Authority the following (collectively, "**Stadium Authority Concession Revenue**"): Net Revenues from Concessionaires engaged in the sale of food, beverages and other goods in the Stadium or on Stadium Authority Parking

Facilities during the Stadium Authority Season (excluding during Tenant Events) and during Stadium Authority Events occurring during the Tenant Season; provided, however, that (a) Stadium Authority Concession Revenue does not include any of the following, which shall constitute Tenant Revenue: (i) revenues from retail activities associated with the Stadium Commercial Areas; (ii) Tenant Service Revenue; or (iii) NFL Advertising and Sponsorship Revenue; and (b) as shall be more particularly described in the Final Financing Plan, the Stadium Authority, subject to Tenant's approval, may use any upfront payment(s) made by the Concessionaires or other vendors for the Stadium as part of the Stadium Authority Construction Sources, in which event such upfront payments shall not constitute Stadium Authority Concession Revenue.

12.8 **Non-NFL Event Revenue**. Stadium Authority Revenue for each Lease Year shall include all Non-NFL Event Revenue for such Lease Year, including (a) all Net Revenues from the sale of Tickets for Non-NFL Events conducted during such Lease Year, and (b) all Net Revenues received by the Stadium Authority from the promoter or other sponsor of any Non-NFL Event conducted during such Lease Year, including such amounts paid by the promoter or other sponsor for the right to use and occupy the Stadium for such Non-NFL Event; provided, however, that (i) Tenant shall have the sole and exclusive right to market and authorize the right to occupy Suites for Non-NFL Events upon purchase of Tickets for such Non-NFL Events, and the premium charged, if any, by Tenant to occupy such Suites for Non-NFL Events shall constitute Tenant Revenue; and (ii) if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1 above, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, all Non-NFL Event Revenue shall constitute Tenant Revenue. "**Non-NFL Event Revenue**" for any Lease Year means the total revenue received by the Stadium Authority (or, following the Tenant Season Expansion Date, Tenant) from Non-NFL Events conducted during such Lease Year. In addition to the amounts specified in clauses (a) and (b) of this Paragraph 12.8, and without otherwise limiting the foregoing, Non-NFL Event Revenue includes (i) all Concession Revenue from Non-NFL Events, (ii) all Non-NFL Event Advertising Revenue, (iii) all Stadium Authority Parking Revenue from Non-NFL Events, and (iv) if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, Tenant Parking Revenue from Non-NFL Events.

12.9 **Non-NFL Event Advertising Revenue**. Stadium Authority Revenue shall include in the Lease Year received by the Stadium Authority all Net Revenues received from the sale of Non-NFL Event Advertising Rights ("**Non-NFL Event Advertising Revenue**"); provided, however, that if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1 above, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, all Non-NFL Event Advertising Revenue shall constitute Tenant Revenue.

12.10 **Other Stadium Authority Revenue**. Stadium Authority Revenue shall also include amounts received by the Stadium Authority as reimbursements of past, present or future Stadium Authority Expenses, such as insurance proceeds or similar amounts paid by third parties, if not previously taken into account to reduce Stadium Authority Expenses. The Stadium Authority and Tenant further acknowledge and agree that the foregoing provisions of this

ARTICLE 12 are not intended to constitute an exclusive listing of all of the possible types of Stadium Authority Revenue and that all revenue from operation of the Stadium, excluding Tenant Revenue, shall constitute Stadium Authority Revenue.

ARTICLE 13
TENANT REVENUE

13.1 **Exclusive Rights to Tenant Revenue**. Tenant shall be entitled to, and shall be granted the sole and exclusive right to contract for, collect, receive and retain Tenant Revenue, with full right and power to assign such rights to the Team, any Second Team, their Affiliates or any Tenant Mortgagee, in accordance with the Stadium Lease Documents.

13.2 **Definition of Tenant Revenue**. As used herein, and as more particularly described in this ARTICLE 13, "**Tenant Revenue**" means, in addition to any and all other revenue designated in this Lease Summary as Tenant Revenue (including Non-NFL Event Revenue following the Tenant Season Expansion Date, if the Stadium Authority Put Right is exercised), the following: (a) all NFL Events Revenue, including NFL Ticket Revenue and Tenant Service Revenue, (b) Premium Seating Revenue, (c) all NFL Advertising and Sponsorship Revenue, (d) all Team Concession Revenue, (e) all gross income and revenue from Tenant's Incidental Uses, (f) all revenues received by Tenant from the use of the Stadium Commercial Areas, including revenue from subleases of the Stadium Commercial Areas; and (g) except as expressly provided herein, all gross income and revenues, royalties, license fees, receipts and other consideration of whatever kind or nature realized by, from or in connection with the operation of the Franchise or, in the case of any Second Team, Franchises, whether or not arising from activities in or at the Stadium Complex, including all revenue from NFL Broadcast Rights, Intellectual Property Rights and Domain Name Rights. Tenant Revenue shall exclude any Stadium Authority Revenue, as defined in ARTICLE 12 above.

13.3 **NFL Events Revenue**. As used herein, "**NFL Events Revenue**" means all gross income and revenues, royalties, license fees, receipts and other consideration of whatever kind or nature arising directly or indirectly out of NFL Events, including, without limitation, the following:

13.3.1 **Ticket Revenue**. All gross income and revenue, exclusive of the amount of the NFL Ticket Surcharge and the City of Santa Clara Senior and Youth Program Fee, from the sale of tickets to NFL Games or other NFL Events ("**NFL Ticket Revenue**");

13.3.2 **Tenant Service Revenue**. All gross income and revenue from the delivery of services, rental of any equipment, goods or devices, or the use of technology at or in connection with any NFL Events at the Stadium or provided by Tenant, the Team, any Second Team or their Affiliates (collectively, "**Tenant Service Revenue**"); and

13.3.3 **Television, Radio and Other Broadcast Revenue**. All revenue derived from NFL Broadcast Rights.

13.4 **Premium Seating Revenue**. All gross income and revenue from the sale of the rights to occupy Suites or other Premium Seating for NFL Events, plus the premium received, if

any, by Tenant from the sale of the rights to occupy Suites or other Premium Seating for Non-NFL Events ("**Premium Seating Revenue**").

13.5 **NFL Advertising and Sponsorship Revenue**. All gross income and revenue, except for Stadium Naming Rights Revenue, from Advertising and Sponsorship Rights ("**NFL Advertising and Sponsorship Revenue**"). NFL Advertising and Sponsorship Revenue shall not include any Non-NFL Event Advertising Revenue.

13.6 **Tenant Parking Revenue**. As shall be more particularly described in the Stadium Parking Plan, Tenant Revenue shall include in the Lease Year received by the Tenant all revenue sharing or parking surcharge revenues received by the Tenant for Tenant Events from contracts with the Stadium Authority or private parking lot owners in the vicinity of the Stadium ("**Tenant Parking Revenue**").

13.7 **Tenant's Affiliates**. In addition to Tenant's rights with respect to Transfers as shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease, Tenant reserves the right to assign all or any portion of its rights to Tenant Revenue, or any portion thereof, to an Affiliate of Tenant, the Team or any Second Team. On behalf of each such Affiliate, Tenant reserves the right for such Affiliate (or if not so assigned, for themselves) to form a joint venture or other entity wholly owned, directly or indirectly, by Tenant, the Team or any Second Team or its Affiliates to pursue and enjoy all rights relating to Tenant Revenue, including Advertising and Sponsorship Rights and Broadcast Rights, granted or reserved to Tenant hereunder. Any such assignment to an Affiliate of Tenant, the Team or any Second Team or joint venture or other entity shall not relieve Tenant from its liabilities and obligations hereunder. Except as provided in this Paragraph or pursuant to Tenant's rights with respect to Transfers as shall be set forth in the Stadium Lease, Tenant shall not assign any rights to Tenant Revenue to any Person who is not an Affiliate of Tenant, the Team or any Second Team or that is not a joint venture or other entity wholly owned, directly or indirectly, by Tenant, the Team or any Second Team.

ARTICLE 14
USE OF EXCESS REVENUES

If Stadium Authority Revenue exceeds Stadium Authority Expenses for any Lease Year prior to the Tenant Season Expansion Date, such excess revenues ("**Excess Revenues**") shall be distributed in accordance with terms and conditions to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

ARTICLE 15
STADIUM SIGNAGE, ADVERTISING AND SPONSORSHIPS

15.1 **Stadium Naming Rights**. Subject to, and in accordance with terms and conditions set forth in the DDA (as to the initial sale of Stadium Naming Rights) and as shall be more particularly set forth in the Stadium Lease (as to any subsequent sales of Stadium Naming Rights), the Stadium Authority, in consultation with Tenant, shall market and sell the Stadium Naming Rights and shall enter into a Stadium Naming Rights Agreement. The Stadium Authority shall receive all Stadium Naming Rights Revenue. The Stadium Authority shall

continue to receive Stadium Naming Rights Revenue even after any such financing secured by Stadium Naming Rights Revenue is repaid. As provided in Paragraph 12.3 above, Paragraph 15.3.1 below, and the Intangible Property License Agreement, the Parties acknowledge, and any Stadium Naming Rights Agreement shall provide, that the Stadium Naming Rights Sponsor may also enter into separate contracts with Tenant, the Team or any Second Team for Advertising and Sponsorship Rights and Stadium Components Sponsorship Rights, the Stadium Authority shall have no interest in, nor any right to revenue from, any such separate contracts, and all revenue under such contracts shall constitute Tenant Revenue.

15.2 **Stadium Components Sponsorship Rights**. As shall be more particularly described in the Intangible Property License Agreement, Tenant or, at Tenant's sole option, the Team or any Second Team, shall, without limiting Tenant's rights set forth in Paragraph 15.3.1 below, be entitled to, and shall be granted the full and exclusive right to contract for, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with the sale of Stadium Components Sponsorship Rights. All Signage attendant to the Stadium Components Sponsorship Rights shall, subject to compliance with all Applicable Laws, appear at appropriate places in, at, or on the Stadium and related improvements as reasonably determined by Tenant. To the extent not in conflict with the Stadium Naming Rights Agreement, the Stadium Authority shall comply with all commercially reasonable requirements of the agreements entered into by Tenant, the Team or any Second Team for Stadium Components Sponsorship Rights, including, for example, employing the applicable sponsor's logo or name on all Stadium Authority and Stadium-related descriptions and advertisements that depict or reference the Stadium Components, prohibition of so-called "blocking technology" whereby Signage may be obscured, altered or replaced, and such other applicable elements typically included in a naming rights sponsorship; provided, however, that limitations and conditions on the Stadium Authority's obligation to comply with such requirements shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

15.3 **Advertising and Sponsorships**.

15.3.1 **Advertising and Sponsorship Rights**. Tenant shall have the sole and exclusive right to sell and shall retain on an exclusive basis, and Landlord shall grant to Tenant, on an exclusive basis, all of the rights to the full use and enjoyment of, and to control and contract with respect to, any Advertising and Sponsorships Rights in, on or from the Premises on a year round basis; provided, however, that Tenant may assign, in whole or in part, such Advertising and Sponsorship Rights to the Team, and Second Team or their respective Affiliates in connection with the Team Sublease or any Second Team Sublease. Advertising and Sponsorship Rights shall include (a) the sale of Stadium Components Sponsorship Rights and (b) the sale of promotional displays, kiosks or similar facilities in or on the Stadium Complex and, subject to terms and conditions to be set forth in the Stadium Public Parking Agreement, on Stadium Authority Parking Facilities. Advertising and Sponsorship Rights shall exclude Stadium Naming Rights and Non-NFL Event Advertising Rights. All Signage attendant to the Advertising and Sponsorship Rights shall, subject to compliance with all Applicable Laws, appear at appropriate places in, at, or on the Stadium and related improvements as reasonably determined by Tenant. As shall be provided in the Ground Lease, the City shall agree, for the benefit of the Stadium Authority and Tenant, that no property owned or controlled by the City

within the area designated on the Site Plan will be used to display advertisements or be used for promotional activities during days of NFL Events that conflict with Advertising and Sponsorship Contracts or the rights of Concessionaires, provided that the foregoing will not apply to any City advertising or similar contracts that pre-date such Advertising and Sponsorship Contracts. Notwithstanding the foregoing, the Stadium Authority and Tenant acknowledge that the Convention Center may schedule events on NFL Game Days with entities that may conflict with Advertising and Sponsorship Contracts as long as any exterior advertising is limited to standard welcoming signage.

15.3.2 **Non-NFL Event Advertising Rights**. The Stadium Authority shall have the sole and exclusive right to sell and shall retain on an exclusive basis all Non-NFL Event Advertising Rights; provided, however, that the Stadium Authority agrees not to engage in or authorize at any time, including during Non-NFL Events, any advertising or promotional activities in or around the Stadium or on Stadium Authority Parking Facilities that conflict with the terms of NFL Advertising and Sponsorship Contracts, provided that the foregoing will not apply to any Stadium Authority advertising or similar contracts that pre-date such NFL Advertising and Sponsorship Contracts. The Stadium Authority will not enter into contracts for Non-NFL Event Advertising Rights having a term of longer than three (3) years without Tenant's prior written approval. Without limiting the foregoing, the Stadium Authority shall not permit any advertising or promotional events or activities in or around the Stadium or on Stadium Authority Parking Facilities that interfere with or obscure the visibility of any Signage placed on the Stadium or on Stadium Authority Parking Facilities by Tenant, the Team, any Second Team or any of their respective corporate partners or sponsors pursuant to Paragraph 15.2 or Paragraph 15.3.1. Notwithstanding the foregoing, if the Stadium Authority exercises the Stadium Authority Put Right, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, Tenant shall have, in addition to the Advertising and Sponsorship Rights, the sole and exclusive right to sell, and shall retain on an exclusive basis, all Non-NFL Event Advertising Rights, and all Net Revenues received by Tenant from the sale of Non-NFL Event Advertising Rights shall constitute Non-NFL Event Revenue.

15.4 **Directional and Other Stadium Signage**. Except as provided in this Paragraph 15.4 and in Paragraph 15.3.2, or with the approval of the Tenant, which approval may be granted or withheld in Tenant's sole discretion, Landlord shall not place or permit any signage, advertising or promotional activities in or around the Stadium or on Stadium Authority Parking Facilities.

15.4.1 **Directional and Informational Signage**. The Stadium Authority shall be responsible for installing, maintaining, repairing, removing and replacing from time to time, at Landlord's sole cost and expense (but subject to reimbursement by Tenant as a Shared Stadium Expense), directional and informational signage on the Stadium Site consistent with the Stadium Operation and Maintenance Plan or as otherwise shall be approved by Tenant, which approval shall not be unreasonably withheld.

15.4.2 **Tenant Identification Signage**. Upon Tenant's request from time to time, Landlord shall install signage on the exterior of the Stadium identifying the Stadium as the home of Tenant (e.g., "Home of the San Francisco 49ers") and, if applicable, a Second Team. Any

such signage shall be subject to Landlord's approval, which shall not be withheld so long as the signage is consistent with the Stadium Signage Plan; and, otherwise, shall not be unreasonably withheld.

ARTICLE 16
ASSIGNMENT AND SUBLETTING

The Parties' rights and obligations as they relate to sales, assignments, transfers, subleases, pledges, mortgages and encumbrances of the Stadium Lease or the Leasehold Estate (each, a "**Transfer**") shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease; provided, however, that, without limiting any other Transfers that may be permitted without the Stadium Authority's consent as shall be set forth in the Stadium Lease, the following Transfers by Tenant shall be permitted without prior consent of the Stadium Authority, provided that no uncured default by Tenant shall then exist for which Landlord has delivered notice to Tenant:

16.1 **Team Sublease**. Any sublease or license of the Premises, or any portion thereof, to an Affiliate of Tenant for the purpose of the exhibition, presentation or broadcasting (or other transmission) of (a) NFL Games, or (b) any other NFL Events (a "**Team Sublease**"); and, provided, further, that any such Team Sublease is subject and subordinate to the Stadium Lease Documents. Without limiting the foregoing, Tenant shall, concurrently with the mutual execution and delivery of the Stadium Lease, sublease the Premises to the Team upon the terms, covenants and conditions to be set forth in the Team Sublease, which shall be attached as an Exhibit to the Stadium Lease.

16.2 **Second NFL Team**. Subject to the provisions of ARTICLE 17 below, any sublease or license of the Premises, or any portion thereof, to a Franchise (or an Affiliate of a Franchise) that is not an Affiliate of Tenant (a "**Second Team**") for the purpose of the exhibition, presentation or broadcasting (or other transmission) of (a) NFL Games, or (b) any other NFL Events (a "**Second Team Sublease**"); and provided, further, that any such Second Team Sublease shall be subject and subordinate to the Stadium Lease Documents. Without limiting the foregoing provisions of this Paragraph 16.2, Tenant shall have the right, in connection with any Team Sublease or Second Team Sublease, to assign any or all of its rights (but not its obligations) under the Stadium Lease to the Team or, to the extent not in conflict, any Second Team, in whole or in part, including the Scheduling Priority and the right to sell Advertising and Sponsorship Rights.

16.3 **Subleases of Stadium Commercial Areas**. Subject to the provisions of Paragraph 4.3.4 above, Tenant shall have the right to sublease the Stadium Commercial Areas, or any portion thereof, for purposes consistent with and complementary to a professional football stadium, and all revenues, proceeds and receipts therefrom shall be Tenant Revenue. Without limiting the foregoing, Tenant shall not, without the Stadium Authority's prior approval, permit any of the Stadium Commercial Areas to be used: (a) for any immoral, improper or unlawful purpose; (b) in a manner to cause the Stadium Authority to be in violation of the Stadium Naming Rights Agreement; (c) in a manner which diminishes the value or appearance of the Stadium; (d) in a manner which is inappropriate to the location and configuration of the Stadium Commercial Areas; (e) by a lessee whose character or reputation is not consistent with the

quality of the Stadium; or (f) in a manner that is likely to impair the dignity, reputation or character of the Stadium.

ARTICLE 17
PERMITTED SUBLEASE – SECOND NFL TEAM

As shall be provided in the Stadium Lease, a Second Team Sublease shall constitute a Permitted Transfer, subject to the terms and conditions set forth in this ARTICLE 17.

17.1 **Second NFL Team Conditions.**

17.1.1 **Repayment of Upfront Investment**. Prior to the date that a Second Team plays and hosts its first NFL Home Game in the Stadium, the Agency shall receive an amount equal to the Agency Upfront Investment, plus all the tax increment previously paid to Tenant as payment on the principal amount of the StadCo Agency Advance.

17.1.2 **Agency Relieved of StadCo Agency Advance**. From and after the date that a Second Team plays and hosts its first NFL Home Game in the Stadium, Tenant shall, as shall be more particularly described in the Final Financing Plan, cause a third party to assume all of the Agency's obligations to pay principal and interest of any outstanding StadCo Agency Advance, such that the Agency shall be released from such obligations.

17.1.3 **Additional Facility Rent**. Commencing in the first Lease Year that a Second Team plays and hosts NFL Home Games in the Stadium, and continuing during the Lease Term, (a) the Stadium Authority shall pay to the City for each such Lease Year an additional amount of Fixed Ground Rent as is set forth below ("**Additional Fixed Ground Rent**"), and (b) the Facility Rent payable by Tenant under the Stadium Lease shall increase for each such Lease Year by the amount of such Additional Fixed Ground Rent. For purposes of the foregoing, the Additional Fixed Ground Rent shall equal, for the first ten (10) Lease Years that the Second Team plays and hosts NFL Home Games in the Stadium, One Million Dollars ($1,000,000) per year. Beginning in the eleventh (11th) Lease Year that the Second Team plays and hosts NFL Home Games in the Stadium, the Additional Fixed Ground Rent shall increase to One Million One Hundred Thousand Dollars ($1,100,000) per year, and such amount will, provided the Second Team continues to play and host NFL Home Games in the Stadium, increase by One Hundred Thousand Dollars ($100,000) every five (5) years thereafter during the Initial Term. For each Extension Term, the Additional Fixed Ground Rent will increase by Eighty Thousand Dollars ($80,000).

17.1.4 **Reimbursement of Developer Fees**. Prior to the date that a Second Team plays and hosts its first NFL Home Game in the Stadium, Tenant shall pay to the Stadium Authority an amount equal to the share of the Development Fees paid by the Agency, and the Stadium Authority may pay such amount to the City as additional rent under the Ground Lease.

17.1.5 **Capital Expenditures**. Without limiting the provisions of ARTICLE 10 above, Tenant shall be responsible for the cost of all additional Capital Expenditures required to accommodate a Second Team Sublease; provided, however, that (a) nothing contained herein shall restrict Tenant from requiring reimbursement of any such costs or expenses from the Second Team pursuant to the Second Team Sublease; and (b) except for Capital Expenditures

relating to Tenant Improvements, the Stadium Authority shall use the Stadium Capital Expenditure Reserve for such Capital Expenditures in accordance with an approved Capital Expenditure Plan and the provisions of Paragraph 10.3 above.

17.1.6 **Additional Capital Expenditure Reserve Deposit**. As shall be further negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease, for each Lease Year that a Second Team plays and hosts NFL Home Games in the Stadium, Tenant will deposit, or cause to be deposited, the Second Team Capital Reserve Deposit into the Stadium Capital Expenditure Reserve Account.

17.1.7 **Public Safety Costs**. As more particularly described in Paragraph 7.5.6 above, if a Second Team plays and hosts NFL Home Games in the Stadium (other than during a Temporary Second Team Occupancy), then (a) Tenant may be required to reimburse the City for additional compensation to the Special Events Unit to update procedures and protocols for the implementation of the Public Safety Plan, as well as agreements with surrounding jurisdictions, the amount of such reimbursement shall not be subject to the Public Safety Costs Threshold; and (b) commencing in the Lease Year immediately following the Lease Year that the Second Team begins playing its NFL Home Games in the Stadium, the Per Game Factor shall be increased by six percent (6%) per year, rather than four (4%) per year.

17.2 **Temporary Second Team Occupancy**. Notwithstanding the provisions of Paragraph 17.1 above to the contrary, in the event that a Second Team plays and hosts NFL Home Games in the Stadium for a temporary period ("**Temporary Second Team Occupancy**") not to exceed two (2) NFL Football Seasons ("**Second Team Temporary Occupancy Period**"), then the provisions of Paragraphs 17.1.1, 17.1.2, 17.1.4, 17.1.6 and 17.1.7 above shall not apply; provided, however, that the Second Team Temporary Occupancy Period may extended for up to one (1) additional NFL Football Season if required solely to accommodate delays in the construction or reconstruction of the Second Team's stadium.

17.3 **Recognition, Non-Disturbance and Attornment Agreement**. Concurrently with the mutual execution and delivery of any Second Team Sublease, the City, the Stadium Authority, Tenant and the Second Team shall execute and deliver to each other a Non-Disturbance Agreement in a form reasonably acceptable to the Parties, and Tenant or the Second Team may file the same in the Official Records of Santa Clara County, California.

ARTICLE 18
OWNERSHIP OF LEASED PREMISES

Fee title to the Stadium Site shall be and remain in the City, subject to the Permitted Encumbrances, but the City's rights and powers with respect thereto are subject to the terms and limitations of the Stadium Lease and the City-Tenant Recognition, Non-Disturbance and Attornment Agreement. Leasehold title to the Premises shall be and remain in Landlord pursuant to the Ground Lease, but Landlord's rights and powers with respect thereto are subject to the terms and limitations of the Stadium Lease. All of Tenant's Personal Property installed on, affixed to or placed or used in the operation of the Premises, throughout the Lease Term shall be and remain the property of Tenant, the Team or any Second Team, as the case may be, at all times and shall not be considered part of the Premises.

ARTICLE 19
NON-RELOCATION

Concurrently with the Parties' execution and delivery of the Stadium Lease, the Stadium Authority shall execute and deliver, and Tenant shall cause the Team to execute and deliver, the Non-Relocation Agreement.

ARTICLE 20
SURRENDER OF POSSESSION

20.1 **Surrender Requirements**. Tenant shall, on the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to Landlord (a) the Premises, including all leasehold improvements, free of subtenancies claiming by, through or under Tenant, and, as to Tenant's Exclusive Facilities, in a reasonably clean condition and free of debris, (b) any Stadium Personal Property in Tenant's possession paid for by Landlord or paid for out of the Stadium Capital Expenditure Reserve or the Insurance Fund and all replacements of and substitutions therefor, and (c) all keys for the Premises in Tenant's possession. Upon such Lease Expiration Date, Tenant shall assign, without warranty or recourse, to Landlord all of its right, title and interest in and to any Enforceable Contracts, subject to Tenant's rights with respect to any claims pending thereunder.

20.2 **Removal of Personal Property**.

20.2.1 **Tenant's Obligation to Remove**. All of Tenant's Personal Property that is not part of the Premises shall be removed by Tenant within sixty (60) days after the Lease Expiration Date, provided that Tenant shall promptly repair any damage to the Premises caused by such removal.

20.2.2 **Landlord's Right to Remove**. Any of Tenant's Personal Property which remains in the Premises sixty (60) days after the Lease Expiration Date may, at the option of Landlord, be deemed to have been abandoned by Tenant and may either be retained by Landlord as its Property or be disposed of, without accountability, in such manner as Landlord may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Interest Rate from the date such costs were incurred until reimbursed by Tenant.

20.3 **Demolition**.

20.3.1 **Demolition Work**. Notwithstanding the provisions of Paragraph 20.1 above, upon written notice from the Stadium Authority (a "**Demolition Notice**"), Tenant shall, following the Lease Expiration Date or earlier termination of the Stadium Lease, raze the then-existing Stadium and other improvements located on the Stadium Site (or such portion thereof as designated by the Stadium Authority), excluding any subsurface portion of the Stadium Site, shall clear the same from the Stadium Site, including all rubble and debris resulting from the same, shall fill all holes, excavations and indentations resulting from any such razing and removal activities, with properly compacted backfill material containing no Hazardous Materials, and shall grade the surface of the Stadium Site to provide a reasonably clean and level appearance (collectively, the "**Demolition Work**"). The Stadium Authority shall

have the right to deliver a Demolition Notice not later than the following: (a) with respect to expiration of the Term of the Stadium Lease, at any time not later than three (3) years prior to such expiration, or (b) with respect to any earlier termination of the Stadium Lease, at any time prior to a deadline after any such earlier termination that shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease. Prior to commencing any Demolition Work, Tenant shall submit complete plans and specifications for such work to the Stadium Authority for its review and reasonable approval, which shall not be unreasonably withheld, and obtain any permits required by Applicable Laws. Notwithstanding the foregoing provisions of this Paragraph 20.3.1, Tenant shall have no obligation to perform any Demolition Work if the Stadium Lease is terminated by reason of Tenant's delivery of Tenant's Market Reset Termination Notice pursuant to Paragraph 6.2.4 above.

20.3.2 **Timing of Demolition; Use of Stadium Capital Expenditure Reserve**. If Tenant is required to perform the Demolition Work pursuant to the Stadium Lease, then Tenant shall use commercially reasonable efforts to commence such Demolition Work within one (1) year after the later of the date of the Demolition Notice or the termination of the Stadium Lease, and shall diligently pursue the Demolition Work to completion as soon as reasonably practical. As provided in Paragraph 10.7 above, the Stadium Authority shall fund the cost of the Demolition Work, including the costs of required permits and any required environmental review, out of the remaining End of Term Reserves, and shall disburse such End of Term Reserves to Tenant to fund the Demolition Work on a customary "progress payment" basis as the Demolition Work progresses. Tenant shall be responsible for all costs of the Demolition Work if, and to the extent, such costs exceed the End of Term Reserves, plus any condemnation or Insurance Proceeds paid in connection with a casualty or condemnation that results in an early termination of the Stadium Lease. If Tenant does not complete the Demolition Work prior to the Lease Expiration Date or any earlier termination of the Stadium Lease, then all of Tenant's obligations under the Stadium Lease, excluding the payment of Facility Rent and Tenant's proportionate share of Shared Stadium Expenses, shall continue in full force and effect during the period between the Lease Expiration Date or any earlier termination of this Lease and the date upon which Tenant completes the Demolition Work and surrenders the Premises to the Stadium Authority as required hereunder. Tenant's performance of the Demolition Work pursuant to this Paragraph 20.3 shall in no event constitute a Holding Over or otherwise require that Tenant make any Holdover Payments.

20.3.3 **Demolition Fund.** Stadium Authority and Tenant shall negotiate in good faith the timing and process for creating a demolition reserve to be funded directly or indirectly by Tenant for use in the event the Stadium Authority elects to require Tenant to demolish the Stadium.

ARTICLE 21
SUPER BOWL OR PRO BOWL

If the Stadium is selected by the NFL as the host facility for a Super Bowl, Pro Bowl or other League Event, Tenant shall have the right to permit the NFL to utilize the Premises for such purposes in accordance with the terms of an agreement to be entered into among Tenant, the Stadium Authority and the NFL, but in all events subject to the terms of the Stadium Lease Documents. Upon Tenant's request, the Stadium Authority and the City (as more particularly

provided in the Ground Lease) shall reasonably cooperate with Tenant in marketing the Stadium to the NFL for selection as the host facility for a Super Bowl, Pro Bowl or other League Event.

ARTICLE 22
OTHER LEASE PROVISIONS

In addition to the terms, covenants and conditions set forth above, the Stadium Lease shall also include other provisions to be negotiated in good faith by the Stadium Authority and Tenant, including provisions relating to (a) Insurance and Indemnification, (b) Damage and Destruction, (c) Eminent Domain, (d) Defaults and Remedies, (e) Dispute Resolution, and (f) Permitted Fee, Stadium Authority and Tenant Financings, (g) Hazardous Materials, (h) Access Rights, and (i) other Miscellaneous Issues.

EXHIBIT A
TO STADIUM LEASE

DEFINITIONS

"**49ers Management Company**" has the meaning set forth in Paragraph 6.2.4(a) of the Lease Summary.

"**Acceptable Bank**" means a domestic bank or financial institution mutually agreed to by Landlord and Tenant.

"**Additional Fixed Ground Rent**" has the meaning set forth in Paragraph 17.1.3 of the Lease Summary.

"**Additional Rent**" has the meaning set forth in Paragraph 6.7 of the Lease Summary.

"**Advertising and Sponsorship Contracts**" means contracts, licenses, sublicenses or other agreements entered into by Tenant, the Team or any Second Team granting advertisers or sponsors Advertising and Sponsorships Rights in, on or from the Premises.

"**Advertising and Sponsorship Rights**" means, collectively, all advertising, sponsorship and promotional activity, Signage, messages and displays of every kind and nature, whether now existing or developed in the future, including, without limitation, permanent, non-permanent and transitory Signage or advertising displayed on permanent or non-permanent advertising panels or on structures, portions of the Stadium, fixtures or equipment (such as Scoreboard advertising and canopy advertising); audio or video public address advertising and message board advertising; programs; electronic insertion and other forms of virtual signage; advertising on or in schedules, admission tickets and yearbooks; all other print and display advertising; promotional events sponsored by advertisers; advertising display items worn or carried by concessionaires or personnel (such as ushers and ticket takers) engaged in the operation of any Stadium Event; and logos, slogans or other forms of advertising affixed to or included with such items, including, but not limited to: cups, hats, T-shirts; advertising of Concessions (including menu boards and point of purchase concession advertising within the Stadium); Broadcast Rights; Telecommunications Rights; Domain Name Rights; and advertising through other concession, promotional or premium items. "Advertising and Sponsorship Rights" shall include Stadium Components Sponsorship Rights, Branding Rights, Service Rights, and Pourage Rights. "Advertising and Sponsorship Rights" shall exclude Naming Rights and Non-NFL Event Advertising Rights.

"**Affiliate**" of any Person means any Person which directly or indirectly through one or more intermediaries, (a) Controls, or (b) is Controlled by, or (c) is under Common Control with, another Person.

"**Agency Upfront Investment**" means the amount of the Agency's investment toward the construction of the Stadium, which shall not exceed a total of Forty Million Dollars ($40,000,000) (exclusive of debt service and other financing costs and exclusive of payments to the City for Development Fees), as shall more particularly be described in the Final Financing Plan.

"**Annual Capital Reserve Amount**" means, for the first Lease Year, the sum of Two Million Dollars ($2,000,000.00). For the second and each succeeding Lease Year, the Annual Capital Reserve Amount shall increase by three percent (3%).

"**Annual Non-NFL Event Plan**" has the meaning set forth in Paragraph 4.6.1 of the Lease Summary.

"**Annual Stadium Authority Budget**" means the annual budget of the Stadium Authority, which shall include the Annual Shared Stadium Expense Budget.

"**Annual Shared Stadium Expense Budget**" has the meaning set forth in Paragraph 8.5.1 of the Lease Summary.

"**Annual Statement of Stadium Operations**" has the meaning set forth in Paragraph 8.4.1 of the Lease Summary.

"**Applicable Laws**" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order, whether now or hereafter existing, of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority, whether now or hereafter existing.

"**Audit**" has the meaning set forth in Paragraph 8.4.2 of the Lease Summary.

"**Bankruptcy Proceeding**" means any bankruptcy, composition, insolvency, reorganization, or similar proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any other or successor federal or state bankruptcy, insolvency, reorganization, moratorium, or similar law for the relief of debtors, including any assignment for the benefit of creditors and any adversary proceeding, proceedings for the appointment of a receiver or trustee, or similar proceeding.

"**Branding Rights**" means the exclusive right to designate those products and retail rights that may be sold, displayed or delivered on an exclusive or non-exclusive basis to, at or in the area in question and excludes Pourage Rights and Service Rights.

"**Bridges**" has the meaning set forth in Paragraph 1.3.1(c) of the Lease Summary.

"**Broadcast Rights**" means any and all of the rights to the full and exclusive use and enjoyment of, and to control, lease, license, grant concessions with respect to, sell, benefit and enter into agreements with respect to, all radio, television, computer network and other electronic broadcasting, film or tape reproductions, closed circuit, cable or pay television or radio rights and similar rights by whatever methods, means or process, now existing or hereafter developed, for preserving, transmitting, disseminating or reproducing for hearing or viewing (a) NFL Games, NFL Events or Tenant Incidental Uses or (b) other Tenant-related activities at or near the Premises (including inside or outside the Premises), including broadcast (analog, digital or HDTV), terrestrial cable, microwave, multipoint distribution services (MDS), multichannel MDS (MMDS), satellite television systems (STV) satellite master antenna televisions systems (SMATV), fiber optic, the World Wide Web, Internet, computer network, computer on-line applications, direct broadcast satellite (DBS), local MDS (LMDS), Narrow and Broadband

Services, transmission directly to so-called "backyard" TV receive-only (TVRO) receiving dishes, any video dialtone system, open video system (OVS), DPS, Pay-Per-View, radio, and by means of any similar or dissimilar electronic, analog, digital or other form of distribution means now known or hereafter invented.

"**Budget Comment Period**" has the meaning set forth in Paragraph 8.5.1 of the Lease Summary.

"**Business Day**" means any day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Santa Clara County, California.

"**Business Hours**" means 9:00 a.m. through 5:00 p.m. on Business Days.

"**Capital Expenditure**" means the cost of items considered capital repairs, capital replacements, capital improvements or capital equipment pursuant to GAAP and shall include the rental cost of items which if purchased, rather than rented, would constitute a Capital Expenditure.

"**Capital Expenditure Plan**" shall mean the plan for the expenditures from the Stadium Capital Expenditure Reserve approved by the Stadium Authority and Tenant on an annual basis.

"**Capital Plan Comment Period**" has the meaning set forth in Paragraph 10.4.1 of the Lease Summary.

"**Capital Repair**" means any work (including all labor, supplies, materials and equipment) reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or other component of the Premises, the South Parking Lot, the South Access Road or the Bridges if such work is necessitated by:

(a) Any defects (whether latent or patent) in design or construction of the Premises, or in the installation of any Property in or on the Premises;

(b) Physical Obsolescence (including replacement necessitated by repeated breakdown of a component of the Premises despite efforts to repair or restore it short of such replacement); or

(c) Modifications required by Applicable Laws.

The term "**Capital Repair**" shall not include (i) Maintenance, (ii) Casualty Repair Work, (iii) Condemnation Repair Work and (iv) the portion of any contract for the performance of any the foregoing in clauses (i), (ii) and (iii) of this sentence.

"**Casualty Repair Work**" means the repair, restoration, replacement or rebuilding, including temporary repairs for the protection of property pending the completion of any such work, remediation of hazards and restoration of the Premises to a safe condition or any demolition and debris removal required, undertaken in the event of a Casualty (as that term shall be defined in the Stadium Lease) pursuant to the terms of the Stadium Lease.

"**City**" has the meaning set forth in Paragraph 1.3.1(b) of the Lease Summary.

"**City of Santa Clara Senior and Youth Program Fee**" has the meaning set forth in Paragraph 12.2 of the Lease Summary.

"**City-Tenant Recognition, Non-Disturbance and Attornment Agreement**" means that certain Recognition, Non-Disturbance and Attornment Agreement dated as of the Effective Date by and among Landlord, Tenant and the City, as the same may be amended, supplemented, modified, renewed or extended from time to time.

"**Civic Events**" has the meaning set forth in Paragraph 4.6.2 of the Lease Summary.

"**Club Facilities**" means the private club facilities in the Stadium as shall be depicted on the Site Plan; provided, however, that Tenant may, at any time and from time to time relocate, redesign, reconfigure, expand or reduce, or otherwise modify the Club Facilities.

"**Club Seats**" means those premium seats in the Stadium accessible through the Club Facilities.

"**Commencement Date**" has the meaning set forth in Paragraph 2.1.

"**Comparable Facilities**" means one or more stadiums in which NFL Games are played and events (such as concerts, family shows, conventions and other public events) are held that are comparable in size to the Stadium and are located in the United States; provided, however, that, to the extent the subject matter of the Stadium Lease relates to or is affected by whether or not the Stadium or comparable stadium is air-conditioned, open air or has a retractable roof, the term "Comparable Facilities" shall mean and refer to any such comparable stadium that is open air with no retractable roof.

"**Comparable Users**" shall mean and refer to (a) professional football teams franchised by the NFL; and (b) other customary users of Comparable Facilities, such as promoters of concerts, family shows, conventions and other public events customarily held in Comparable Facilities.

"**Compliance Contest**" has the meaning set forth in Paragraph 4.10.1 of the Lease Summary.

"**Compliance Work**" has the meaning set forth in Paragraph 4.10.2 of the Lease Summary.

"**Complimentary Parking Passes**" has the meaning set forth in Paragraph 7.4.5 of the Lease Summary.

"**Concession Agreement**" has the meaning set forth in Paragraph 7.3.1 of the Lease Summary.

"**Concession Facilities**" means any concession stands, vendors commissaries, carts, kiosks, condiment stands, novelty stands, portable specialty carts, food courts, and other permanent or temporary structures for Concessions or at which Concessions shall be prepared, stored, served or offered or distributed for sale.

"**Concession Operations**" means the exercise and operation of all Concession Rights within the Stadium Complex or portions of the Stadium Complex, as the case may be.

"**Concession Revenue**" means all Net Revenues received from Concessionaires engaged in the sale of food, beverages and other goods in the Stadium or on Stadium Authority Parking Facilities.

"**Concession Rights**" means, collectively, the right to license, sell, display, distribute, and store all Concessions within the Stadium or portions of the Stadium, as the case may be. Subject to the provisions of Paragraph 7.3 of the Lease Summary, the Concession Rights shall include the right to assemble, stage, display, operate, locate or store Concession Facilities.

"**Concessionaire(s)**" means any Person(s) operating the Concession Operations.

"**Concessions**" means, collectively, any and all Consumable Concessions and Non-Consumable Concessions, but shall exclude Pourage Rights, Service Rights, and Branding Rights.

"**Condemnation Repair Work**" means the repairs, alterations or restoration, including temporary repairs for the protection of Persons or property pending the completion of any part thereof, undertaken in the event of a Condemnation Action (as that term shall be defined in the Stadium Lease) pursuant to the terms of the Stadium Lease.

"**Constant Rent**" has the meaning set forth in Paragraph 6.2.1(a) of the Lease Summary.

"**Construction Agency Agreement**" has the meaning set forth in the DDA.

"**Consumable Concessions**" means, in the Stadium Complex, collectively, the sale and service of food and beverages, the sale and service of alcoholic beverages (subject to procurement of all necessary licenses and permits required by any Governmental Authority), catering and banquet sales and services (including, but not limited to, catering service with respect to any Suites), all the foregoing related to Stadium Events.

"**Control**" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by more than fifty percent (50%) of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation. Controlled has a correlative meaning.

"**Controlling Person**" of any Person means any individual that directly or indirectly controls such Person.

"**Credited Public Safety Costs**" has the meaning set forth in Paragraph 6.4.3(b) of the Lease Summary.

"**DDA**" has the meaning set forth in the first Paragraph of the Lease Summary.

"**Default**" shall have the meaning to be set forth in the Stadium Lease.

"**Default Rate**" has the meaning set forth in Paragraph 6.6 of the Lease Summary.

"**Demolition Notice**" has the meaning set forth in Paragraph 20.3.1 of the Lease Summary.

"**Demolition Work**" has the meaning set forth in Paragraph 20.3.1 of the Lease Summary.

"**Design Criteria**" shall have the meaning to be set forth in the Construction Agency Agreement.

"**Development Fees**" has the meaning set forth in the DDA.

"**Disproportionate Taxes**" has the meaning set forth in Paragraph 8.3.4 of the Lease Summary.

"**Dispute or Controversy**" means any dispute, controversy or claim between the Parties that arises under the Stadium Lease Documents or is connected with or related in any way to the Stadium Lease Documents or any right, duty or obligation arising therefrom or the relationship of the Parties thereunder.

"**Dispute Resolution Procedures**" has the meaning set forth in Paragraph 8.5.1 of the Lease Summary.

"**Domain Name Rights**" means any and all of the rights of Tenant to register and maintain a website or equivalent electronic information distribution system relating to professional football games, NFL Events, and/or other activities of Tenant at or near the Stadium Complex, including the rights to register and maintain a domain name or its equivalent for electronic access to such a website or system.

"**Draft Budget**" has the meaning set forth in Paragraph 8.5.1 of the Lease Summary.

"**Draft Cap Ex Plan Addendum**" has the meaning set forth in Paragraph 10.4.2 of the Lease Summary.

"**Draft Capital Expenditure Plan**" has the meaning set forth in Paragraph 10.4.1 of the Lease Summary.

"**Early Occupancy Period**" has the meaning set forth in Paragraph 1.8 of the Lease Summary.

"**Effective Date**" shall mean the effective date of the Stadium Lease, as defined in the Stadium Lease.

"**Emergency**" means any circumstance in which Tenant or Landlord in good faith believes that immediate action is required in order to safeguard lives, property or the environment.

"**Encumbrance(s)**" means any defects in, easements, covenants, conditions or restrictions affecting, or liens or other encumbrances on, the title to the Premises or otherwise affecting Tenant's rights hereunder.

"**End of Term Reserves**" has the meaning set forth in Paragraph 10.7 of the Lease Summary.

"**Enforceable Contracts**" has the meaning set forth in Paragraph 7.8.1 of the Lease Summary.

"**Environmental Law**" means any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

"**Estate**" means any of the Fee Estate, the Landlord's Estate or the Leasehold Estate.

"**Estimated Shared Stadium Expenses**" has the meaning set forth in Paragraph 8.3.2 of the Lease Summary.

"**Excess Revenues**" has the meaning set forth in ARTICLE 14 of the Lease Summary.

"**Exclusive Game Day Period**" means the period of time beginning forty-eight (48) hours prior to the scheduled start time of each NFL Game to be played in the Stadium, and ending twenty-four (24) hours following the completion of each NFL Game played in the Stadium; provided, however, that if the Stadium Authority exercises the Stadium Authority Put Right as provided in ARTICLE 5 of the Lease Summary, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, the Exclusive Game Day Period shall also include the period of time beginning forty-eight (48) hours prior to the scheduled start time of any Ticketed Non-NFL Event in the Stadium, and ending twenty-four (24) hours following the completion of each Ticketed Non-NFL Event in the Stadium.

"**Exclusivity Right(s)**" means any exclusive right, of whatever kind or nature that any Party has a right to grant under the terms of the Stadium Lease Documents that is included in (a) any Advertising and Sponsorship Rights, Naming Rights, Signage rights, or Concession Rights, and (b) the rights granted to the Team under the Team Sublease. Exclusivity Rights are subject to change, from time to time, during the Lease Term.

"**Excusable Landlord Delay**" means any delay by Landlord in achieving any deadlines for performance of obligations under the Stadium Lease, which is caused by or attributable to (but only to the extent of) (a) Force Majeure, (b) failure of Tenant to perform (or delay by Tenant in performing) any of its material obligations under the Stadium Lease within the time or by the date established by or pursuant hereunder for performance thereof, (c) negligence or willful misconduct by Tenant, any Tenant Transferee, including the Team or any Second Team, or any of their respective officers, directors, employees, agents, contractors or invitees, (d) any direct or indirect action or omission by or attributable to Tenant or any Tenant Transferee, including the

Team or any Second Team (including, but not limited to, acts or omissions of any Person employed by Tenant or any Tenant Transferee, including the Team or any Second Team or of any agent, contractor or subcontractor of such Persons) which unreasonably and materially interferes with or delays Landlord's performance of its obligations under the Stadium Lease, or (e) any unreasonable delay by Tenant in approving or consenting or in refusing to approve or consent to any matter that requires the approval or consent of Tenant under the Stadium Lease unless permitted hereunder. Notwithstanding the foregoing, "Excusable Landlord Delay" shall not include economic hardship or inability to pay debts or other monetary obligations in a timely manner.

"**Excusable Tenant Delay**" means any Tenant Delay which is caused by or attributable to (but only to the extent of) (a) Force Majeure, (b) failure by Landlord to perform (or delay by Landlord in performing) any of its material obligations under the Stadium Lease within the time or by the date established by or pursuant to the Stadium Lease for performance thereof, (c) negligence or willful misconduct by Landlord or any Landlord Affiliate or any Third Party Tenants, or any of their respective officers, directors, employees, agents, contractors or invitees, (d) any direct or indirect action or omission by or attributable to Landlord or any Landlord Affiliate (including, but not limited to acts or omissions of any Person employed by Landlord or any Landlord Affiliate or, unless a Tenant Affiliate, the Stadium Manager, or of any agent, contractor or subcontractor of such Persons) which unreasonably interferes with or delays Tenant's performance of its obligations hereunder, or (e) any unreasonable delay by Landlord in approving or consenting or in refusing to approve or consent to any matter that requires the approval or consent of Landlord under the Stadium Lease. Notwithstanding the foregoing, "Excusable Tenant Delay" shall not include economic hardship or inability to pay debts or other monetary obligations in a timely manner.

"**Expedited ADR**" has the meaning set forth in Paragraph 8.5.1 of the Lease Summary.

"**Extension Option(s)**" has the meaning set forth in Paragraph 2.2 of the Lease Summary.

"**Extension Term**" has the meaning set forth in Paragraph 2.2 of the Lease Summary.

"**Extension Term Market Rent**" has the meaning set forth in Paragraph 6.3 of the Lease Summary.

"**Facility Rent**" has the meaning set forth in Paragraph 6.1 of the Lease Summary.

"**Fee Estate**" means City's fee interest in the Premises, subject to the interest of Landlord under the Ground Lease and the interest of Tenant under the Stadium Lease.

"**Fee Mortgage**" means a Mortgage that encumbers the Fee Estate.

"**Final Financing Plan**" has the meaning set forth in the DDA.

"**Fixed Ground Rent**" has the meaning set forth in Paragraph 6.4.1 of the Lease Summary.

"**Force Majeure**" means an occurrence, including any of the following, for the period of time, if any, that the performance of a Party's material obligations under the Stadium Lease is actually,

materially, and reasonably delayed or prevented thereby: acts of God; acts of the public enemy; the confiscation or seizure by any Governmental Authority; insurrections; wars or war-like action (whether actual and pending or expected); arrests or other restraints of government (civil or military); blockades; embargoes; strikes, labor unrest, labor disputes or unavailability of labor or materials (any of which are not caused by a Party's or, in the case of Landlord, the Stadium Manager's work force); lock-outs (not caused or implemented by a Party or, in the case of Landlord, the Stadium Manager); epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; wash-outs; explosions; any delays occasioned by arbitration actions and proceedings under the Dispute Resolution Procedures specified in the Stadium Lease; civil disturbance or disobedience; riot; sabotage; terrorism, threats of sabotage or terrorism; or any other cause, whether of the kind herein enumerated or otherwise, that is not within the reasonable anticipation or control of the Party claiming the right to delay performance on account of such occurrence and which, in any event, is not a result of the negligence or willful misconduct of the Party claiming the right to delay performance on account of such occurrence. As to Landlord, actions of the City or any Landlord Affiliate shall not be considered actions of a Governmental Authority for purposes of Force Majeure. Notwithstanding the foregoing, "Force Majeure" shall not include economic hardship or inability to pay debts or other monetary obligations in a timely manner.

"**Franchise**" means the franchise for the Team and, if applicable, a Second Team issued by the NFL.

"**GAAP**" shall mean generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants or in statements of the Financial Accounting Standards Board or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a "consistent basis" when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

"**Game Day**" means any day on which an NFL Home Game is Scheduled.

"**Governmental Authority**" means any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under Applicable Laws or by agreement of the Parties with an interest in such dispute.

"**Ground Lease**" means the ground lease to be entered into concurrently with the Stadium Lease by the Stadium Authority and the City, pursuant to which the Stadium Authority shall lease the Stadium Site from the City.

"**Groundskeeping Services**" means all services necessary to maintain the Playing Field in the condition required for the playing of NFL Games, including (a) readying the Playing Field each year for the upcoming NFL Football Season and regular maintenance of the Playing Field during the NFL Football Season, including watering, mowing, seeding, fertilizing and resodding; (b) preparing the surface of and marking lines on the Playing Field (including side lines and end

zone markings and mid-field and end zone decorations) and installing in proper position and removing field equipment and the like for each NFL Game; (c) leasing or otherwise obtaining special equipment and supplies including field covers, including a removable tarpaulin with related equipment and systems, for use in connection with preparing or maintaining the surface of the Playing Field; (d) preparation, conversion or restoration of the surface of the Playing Field for an NFL Game following any Stadium Event; (e) repairing any damage to or destruction of the surface of the Playing Field; and (f) providing, repairing, maintaining and replacing all lawnmowing equipment, material handling equipment and other similar equipment necessary or advisable for the proper operation or maintenance of the Playing Field.

"**Hazardous Materials**" means (a) any substance, emission or material now or hereafter defined as, listed as or specified in, any Environmental Law as a "regulated substance," "hazardous substance," "toxic substance," "pesticide," "hazardous waste," "hazardous material" or any similar or like classification or categorization under any Environmental Law, including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, (b) any products or substances containing petroleum, asbestos, polychlorinated biphenyls or (c) any substance, emission or material determined to be hazardous or harmful.

"**Holding Over**" means the holding over or possession by Tenant of the Premises after the Lease Expiration Date without the consent of Landlord.

"**Holdover Payments**" means the Rent payable by Tenant during the period of any Holding Over.

"**Impositions**" means all real estate Taxes, all personal property Taxes and all possessory interest Taxes, all use and occupancy Taxes, all excises, assessments, and levies, general and special, ordinary and extraordinary, foreseen and unforeseen (including assessments for public improvements and betterment, and any mass transit, park, child care and art contributions, assessments or fees), that are, with respect to the Stadium Lease, the Premises or any portion thereof, assessed, levied, charged, confirmed or imposed upon or with respect to or becoming payable out of or becoming a lien on the Leasehold Estate or the Premises, or the appurtenances thereto, or for any use or occupation of the Premises, or such franchises, licenses and permits as may be appurtenant or related to the use of the Premises, this transaction or any documents to which Landlord is a party.

"**Increased Expense Proposal**" has the meaning set forth in Paragraph 8.5.2 of the Lease Summary.

"**Initial Lease Term**" or "**Initial Term**" has the meaning set forth in Paragraph 2.1 of the Lease Summary.

"**Insurance Account**" means a separate depository account maintained by Landlord at an Acceptable Bank under the terms of the Stadium Lease for the purpose of holding, applying, investing and transferring the Insurance Fund.

"**Insurance Fund**" means the segregated fund established for the Insurance Proceeds and held in the Insurance Account.

"**Insurance Proceeds**" means insurance proceeds paid pursuant to the policies of insurance for loss of or damage to the Premises.

"**Intangible Property License Agreement**" means the Intangible Property License Agreement, which shall be attached as an Exhibit to the Stadium Lease, as the same may thereafter be amended by the mutual approval of Landlord and Tenant.

"**Intellectual Property Rights**" means any licenses, permits, franchises, trade secrets, intellectual property rights, trademarks, patents or copyrights relating to the usage of any product, process, method, substance, material or technology necessary for the use, operation, maintenance and enjoyment of the Premises.

"**Landlord**" has the meaning set forth in the introductory Paragraph of the Lease Summary.

"**Landlord Affiliate**" means the City, the Redevelopment Agency and any entity created by the City or Landlord in which the City or Landlord has the power to appoint the board of directors or the legal authority to control the actions of such entity.

"**Landlord Mortgage**" means a Mortgage that encumbers the Landlord's Estate.

"**Landlord Mortgagee**" means the holder of a Landlord Mortgage, and its successors and assigns, provided that Tenant has received Notice of its name and address and a copy of its Landlord Mortgage.

"**Landlord's Estate**" means the leasehold interest of Landlord under the Ground Lease, together with Landlord's interest in the Stadium Lease, or any renewal, replacement, or other lease of the Premises.

"**League Events**" means the Super Bowl, the Pro Bowl Game and any other similar football exhibitions or events sponsored by the NFL that are typically hosted by different franchises from year to year. Except to the extent expressly provided to the contrary, League Events shall constitute NFL Games for purposes of the Stadium Lease.

"**Lease Expiration Date**" has the meaning set forth in Paragraph 2.1 of the Lease Summary.

"**Lease Term**" has the meaning set forth in Paragraph 2.2 of the Lease Summary.

"**Lease Year**" means each consecutive twelve (12) month period during the Lease Term, beginning on the Commencement Date; provided, however, that, (a) if the Commencement Date occurs on or after July 1st of any calendar year, then the first (1st) Lease Year shall begin on the Commencement Date, and end on the next following June 30th; (b) if the Commencement Date occurs on a date preceding July 1st of any calendar year, then the first (1st) Lease Year shall begin on July 1st of such calendar year, and Tenant's use of the Premises prior to July 1st shall be subject to the terms and conditions of a license agreement, in a form acceptable to Tenant and the Stadium Authority, to allow Tenant access and use of the Premises; and (c) the last Lease Year shall end on the Lease Expiration Date or any earlier termination of the Stadium Lease.

"**Leasehold Estate**" means the leasehold estate in the Premises and all improvements and fixtures owned by Landlord, if any, granted to Tenant under the Stadium Lease and all other rights, title and interest granted to Tenant under the Stadium Lease.

"**Legal Holiday**" means any day, other than a Saturday or Sunday, on which the City's administrative offices are closed for business.

"**Lien**" means, with respect to any property, any mortgage, lien, pledge, charge or security interest, and with respect to the Premises and the Stadium, the term Lien shall also include any liens for taxes or assessments, builder, mechanic, warehouseman, materialman, contractor, workman, or repairman lien or other similar liens, including, but not limited to Mechanic's Liens.

"**Line of Credit Agreement**" has the meaning set forth in the DDA.

"**Maintain**" and "**Maintenance**" means all work (including all labor, supplies, materials and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures (including, but not limited to, media plug-ins and cable and all wiring attendant thereto), equipment, furnishings, and improvements that form any part of the Premises (including, but not limited to, machinery, pipes, plumbing, wiring, gas and electric fittings, elevators, escalators, showers, toilets and restroom facilities, first aid facilities, spectator and other seating, access to the Stadium or any other component of the Premises) in order to preserve such items in the Required Condition. Maintenance shall include, but not be limited to, the following: (a) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (b) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting, and sound systems, including field equipment; (c) ongoing trash removal; (d) regular maintenance procedures for heating, ventilating and air-conditioning, plumbing, electrical and structural systems and vertical lift systems (e.g., escalators and elevators), such as periodic cleaning of the Premises, lubrication, and changing air filters and lights; (e) painting of a routine, regular and predictable nature; (f) cleaning, including restocking of hand soap, hand towels and toilet paper, prior to, during and following, and necessary as a direct result of, all Stadium Events; (g) Groundskeeping Services; (h) changing of light bulbs, ballasts, fuses and circuit breakers, as they burn out; (i) replacement of all Playing Field light bulbs as may be or become necessary for proper lighting of the Playing Field and the seating area around the Playing Field, both for day games and night games; (j) all renewals and replacements of equipment parts and components, that are not Capital Repairs, as may be necessary to maintain the Stadium and the Landlord's Property in the Required Condition; and (k) any other work of a routine, regular and generally predictable nature that is necessary to keep the Premises and the Stadium Authority Parking Facilities in the Required Condition. Maintenance shall also include any work reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or other component of the Premises that has become dysfunctional as a result of a Party's failure to perform its maintenance obligations under the Stadium Lease or a Party's negligence or other breach of its obligations under the Stadium Lease.

"**Market Rent**" has the meaning set forth in Paragraph 6.2.2 of the Lease Summary.

"**Market Rent Deadline**" has the meaning set forth in Paragraph 6.2.2 of the Lease Summary.

"**Market Rent Election**" has the meaning set forth in Paragraph 6.2.2 of the Lease Summary.

"**Market Reset Termination Date**" has the meaning set forth in Paragraph 6.2.4 of the Lease Summary.

"**Marks**" means any and all trademarks, service marks, names, symbols, words, logos, designs, slogans, emblems, mottos, and brand or team designations (and any combination thereof) in any tangible medium used or hereafter developed.

"**Mitigation Measures and Conditions of Approval**" has the meaning set forth in the DDA.

"**Mortgage**" means any mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant a lien or otherwise encumber or create an interest in real property as security for any obligation, as the same may be increased, decreased, amended, modified, renewed, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. A participation interest in a Mortgage (or partial assignment of the secured loan) does not itself constitute a Mortgage. The term "Mortgage" includes Fee Mortgages, Landlord Mortgages and Tenant Mortgages.

"**Net Hotel CFD Revenue**" means, for each Lease Year, the revenue from CFD Taxes (as that term is defined in the DDA) for such Lease Year, minus any debt payments made during such Lease Year pursuant to the CFD Reimbursement Agreement (as that term is defined in the DDA).

"**Net Income from Non-NFL Events**" means, for each Lease Year, the Non-NFL Event Revenue for such Lease Year, minus the Non-NFL Event Expenses for such Lease Year.

"**Net NFL Ticket Surcharge Proceeds**" are (a) the proceeds received by the Stadium Authority from the NFL Ticket Surcharge, less (b) if the Stadium Authority issues bonds or enters into other financing arrangements to fund the initial construction of the Stadium that are secured by and paid from the annual revenue derived from the NFL Ticket Surcharge ("**NFL Ticket Surcharge Financing**"), the portion of such proceeds that are not needed to pay debt service or costs of the NFL Ticket Surcharge Financing, including releases from NFL Ticket Surcharge bond reserves, if any.

"**Net Revenues**" shall mean the gross revenues from the sale of the particular item, less deductions for the following, but only to the extent directly related to the sale of the particular item: (a) reasonable operating expenses, (b) reasonable costs and expenses incurred in connection with marketing and selling the particular item, including commissions, (c) in the case of the sales of SBLs, the cost of any benefits granted to the holders of SBLs, such as complimentary food and beverage, and (d) applicable Taxes.

"**NFL**" means the National Football League, a not-for-profit association having its chief executive office currently located at 280 Park Avenue, New York, New York 10017 and any successor thereto.

"**NFL Advertising and Sponsorship Revenue**" has the meaning set forth in Paragraph 13.5 of the Lease Summary.

"**NFL Broadcast Rights**" means Broadcast Rights relating to NFL Games and other NFL Events and activities related thereto, including Tenant Incidental Uses, training, practices and football exhibitions.

"**NFL Event Expenses**" means the direct costs and expenses of any NFL Event, and all incremental costs and expenses attributable to NFL Events.

"**NFL Events**" has the meaning set forth in Paragraph 4.2.2 of the Lease Summary.

"**NFL Events Revenue**" has the meaning set forth in Paragraph 13.3 of the Lease Summary.

"**NFL Football Season**" means that period of time commencing on the day that the Team (or, if applicable, any Second Team) hosts its first NFL Game in the Stadium in any season scheduled by the NFL, and ending on the day of the Team's (or, if applicable, any Second Team's) last NFL Game in the Stadium (including post-season play, if any) in such season.

"**NFL Game Private Parking Spaces**" means the Private Parking Facilities to which Tenant has rights from time to time to use for NFL Home Games.

"**NFL Game Public Parking Spaces**" means the parking spaces owned or controlled by the Stadium Authority from time to time that Tenant shall be permitted to use for NFL Home Games, as more particularly described in the Summary of Parking Rights.

"**NFL Games**" means NFL or other professional football games, as more particularly described in Paragraphs 4.2.1 and 4.4.1 of the Lease Summary.

"**NFL Home Games**" means NFL Games played in the Stadium in which the Team or any Second Team is the home team.

"**NFL Parking Plan**" has the meaning set forth in Paragraph 7.4.1(a) of the Lease Summary.

"**NFL Rules and Regulations**" means the Constitution and Bylaws of the NFL, the Articles of Association and Bylaws of the NFL Management Council, any amendments to any such document, any interpretations of any such document issued from time to time by the NFL Commissioner, and all other applicable rules, resolutions or policies as the NFL, the NFL Management Council, or the NFL Commissioner may issue from time to time.

"**NFL Ticket Revenue**" has the meaning set forth in Paragraph 13.3.1 of the Lease Summary.

"**NFL Ticket Surcharge**" has the meaning set forth in Paragraph 12.1.1 of the Lease Summary.

"**NFL Ticket Surcharge Financing**" has the meaning set forth above.

"**Non-Consumable Concessions**" means the sale in or from the Stadium Complex, of souvenirs, apparel and merchandise (including, without limitation, NFL novelties and licensed items) and other non-edible items, goods, services, equipment and wares.

"**Non-Disturbance Agreement**" means a Recognition, Non-Disturbance and Attornment Agreement, in a form to be set forth as an Exhibit to the Stadium Lease, modified as necessary during the Lease Term in Tenant's or any Tenant Mortgagee's reasonable judgment to reflect the parties and the nature and circumstances of the Estates that such Non-Disturbance Agreement affects.

"**Non-NFL Event Advertising Revenue**" has the meaning set forth in Paragraph 12.9 of the Lease Summary.

"**Non-NFL Event Advertising Rights**" means transient electronic advertising on the areas of the Stadium scoreboards to be identified on an Exhibit to the Stadium Lease, as the same may be amended by agreement of the Parties from time to time, that is purchased exclusively for and displayed exclusively during Non-NFL Events, as well as promotional events and activities occurring exclusively during Non-NFL Events.

"**Non-NFL Event Expenses**" means the direct costs and expenses of any Non-NFL Event, all incremental costs and expenses of operating, managing and Maintaining the Premises that are attributable to Non-NFL Events, including the administrative and marketing expenses related to obtaining Non-NFL Events, and such amounts of Stadium overhead as shall be approved by the Stadium Authority and Tenant pursuant to terms and conditions to be negotiated in good faith in connection with the Stadium Lease.

"**Non-NFL Event Revenue**" has the meaning set forth in Paragraph 12.8 of the Lease Summary.

"**Non-NFL Events**" has the meaning set forth in Paragraph 4.6.1 of the Lease Summary.

"**Non-NFL Ticket Surcharge**" has the meaning set forth in Paragraph 5.2.2 of the Lease Summary.

"**Non-Relocation Agreement**" has the meaning set forth in the DDA.

"**Notice**" means any approval, consent, demand, designation, request, election, or other notice that any party gives regarding the Stadium Lease, including, but not limited to, one relating to any Default, alleged Default, Event of Default, or termination (or alleged termination) of the Stadium Lease, that any party gives regarding the Stadium Lease.

"**Off-Site Parking Permit**" has the meaning set forth in Paragraph 7.4.1(b) of the Lease Summary.

"**Operating Expense Reserve**" means an amount to be retained by the Stadium Authority from Stadium Authority Revenue that shall be used to fund certain Stadium Authority Expenses, as

shall be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease.

"**Option Notice**" has the meaning set forth in Paragraph 2.2 of the Lease Summary.

"**Owners' Club**" means the Suites, including the Team Suite, and related Club Facilities as shall be depicted on the Site Plan, which shall be available for the exclusive use of Tenant, the Team, any Second Team and their respective invitees; provided, however, that Tenant may, at any time and from time to time, relocate, redesign, reconfigure, expand or reduce, or otherwise modify the Owners' Club.

"**Owners' Club Licensees**" means the licensees of the Suites located in the Owners' Club and their invitees.

"**Parties**" or "**Party**" has the meaning set forth in the introductory Paragraph of the Lease Summary.

"**Per Game Factor**" has the meaning set forth in Paragraph 7.5.3(b) of the Lease Summary.

"**Performance-Based Rent**" has the meaning set forth in Paragraph 6.4.2 of the Lease Summary.

"**Performance-Based Rent Credits**" has the meaning set forth in Paragraph 6.4.3 of the Lease Summary.

"**Permitted Credits Carry-forward**" has the meaning set forth in Paragraph 6.4.3 of the Lease Summary.

"**Permitted Encumbrances**" means those Encumbrances set forth on **Exhibit G** attached to the DDA. In addition, Permitted Encumbrances includes (i) the Permitted Landlord Financing, and (ii) any utility easements granted to third parties after the Effective Date, in the ordinary course of business, to service the Premises, provided that such easements do not adversely affect the rights of Tenant under the Stadium Lease, or the intended use of the Premises. Except as approved by Tenant, Permitted Encumbrances shall not include any renewals, modifications, extensions, amendments or supplements to any of the Encumbrances set forth on **Exhibit G** attached to the DDA.

"**Permitted Landlord Financing**" means the Stadium Authority Financing and Takeout Financing, each as defined in the DDA.

"**Permitted Uses**" has the meaning set forth in Paragraph 4.1 of the Lease Summary.

"**Person**" means any individual (including an individual acting as a trustee of a trust), partnership, corporation, limited liability company, unincorporated association, joint venture or other entity or association, the United States, any State or political subdivision thereof, any municipal government, or any agency or subdivision of any one or more of the foregoing.

"**Physical Obsolescence**" and "**Physically Obsolete**" means any equipment, fixture, furnishing, facility, surface, structure or any other component of the Premises that does not comply with

Applicable Laws or has become dysfunctional due to defects in design, materials or workmanship or ordinary wear and tear other than as a result of a Party's failure to perform its Maintenance obligations under the Stadium Lease or a Party's negligence or other breach of its obligations under the Stadium Lease. For purposes of determining Physical Obsolescence or Physically Obsolete, any equipment, fixture, furnishing, facility, surface, structure or any other component shall be deemed dysfunctional if such equipment, fixture, furnishing, facility, surface, structure or any other component has deteriorated to a degree that cannot be remedied through Maintenance.

"**Playing Field**" means the area within the Stadium upon which NFL Games are played, including the area between the end zones, the area within each end zone, and the area lying outside the side lines and end zones, as shall be delineated on an Exhibit to the Stadium Lease, as same may be removed, replaced or covered for other Stadium Events and meeting the requirements of NFL Rules and Regulations therefor.

"**Pourage Rights**" means the exclusive right in accordance with Applicable Laws to designate on an exclusive or non-exclusive basis the provider of beverage brands to, at or in the area in question.

"**Premises**" has the meaning set forth in Paragraph 1.1 of the Lease Summary.

"**Premium Seating**" means the Suites, Club Seats and any other type of preferred location seating available at the Stadium, including Playing Field passes.

"**Premium Seating Revenue**" has the meaning set forth in Paragraph 13.4 of the Lease Summary.

"**Premium Stadium Areas**" means the club and other premium areas of the Stadium, as shall be depicted on the Stadium Plans and generally depicted on the Site Plan; provided, however, that Tenant may, at any time and from time to time, with the approval of the Stadium Authority, which approval shall not be unreasonably withheld, conditioned or delayed as provided in ARTICLE 11 of the Lease Summary, relocate, redesign, reconfigure, expand or reduce, or otherwise modify the Premium Stadium Areas.

"**Private Parking Facilities**" means the private parking lots that contract with Tenant or the Stadium Authority to provide parking for Stadium Events.

"**Procurement Guidelines**" means the guidelines for the Parties' procurement of services relating to the operation and management of the Stadium, as shall be set forth in the Stadium Lease Documents.

"**Public Parking Parcels**" means the parcels owned by the City or the Agency to be used for parking for Stadium Events, as described in the Summary depicted on an Exhibit attached to the DDA, and (b) any land now or hereafter acquired or leased by Landlord, the City or a City Affiliate, in each instance for the purpose of satisfying the parking requirements of Landlord to Tenant under the Stadium Lease Documents or any other agreement between Landlord and Tenant, all of which land shall be located within the boundary to be set forth in the Stadium Lease. The identity of the Public Parking Parcels may change from time to time, so long as such

land is located within the boundaries set out herein and the location of which is reasonably acceptable to Tenant. All of the land described in clauses (a) and (b) above shall be improved and used for parking.

"**Public Safety Capital Expenditures**" means reasonable capital expenditures required for public safety for operation of the Stadium.

"**Public Safety Costs**" means the actual and reasonable costs of police, traffic control, fire, emergency services and similar services attributable to Stadium Events incurred by the City in implementing the Public Safety Plan, including the fair share of Public Safety Capital Expenditures as described in Paragraph 7.5.2 of the Lease Summary.

"**Public Safety Costs Threshold**" has the meaning set forth in Paragraph 7.5.3(b) of the Lease Summary.

"**Public Safety Plan**" means the public safety plan to be adopted by the City and the Stadium Authority from time to time, in consultation with the City's Chief of Police and Tenant, describing procedures for traffic management, security and public safety at NFL Games and other large events at the Stadium, include procedures for police and fire personnel stationed in and around the Stadium, as well as private security. The initial Public Safety Plan for the Stadium shall be attached as an Exhibit to the Stadium Lease.

"**Rent**" means the Facility Rent and Tenant's proportionate share of the Shared Stadium Expenses.

"**Required Condition**" has the meaning set forth in Paragraph 7.1.1 of the Lease Summary.

"**Required Management Standards**" shall mean and refer to the satisfaction of all of the following requirements with respect to any Person: (a) that such Person shall have nationally-recognized expertise in the management and operation of Comparable Facilities operated for Comparable Users; (b) that such Person shall have sufficient experienced on-site personnel necessary to manage and operate the Stadium and, if applicable, the Stadium Parking Areas, in the Required Condition consistent with other Comparable Facilities operated for Comparable Users; and (c) that such Person has the financial ability to meet its obligations.

"**Required Utilities**" has the meaning set forth in Paragraph 7.7.1 of the Lease Summary.

"**Management Company Revolving Loan**" means the Revolving Loan to be provided by the Stadium Manager, as more particularly described in the Line of Credit Agreement Summary, which is attached to the DDA as **Exhibit P**.

"**SBL Agreement**" means the agreement pursuant to which a Person is entitled to a Stadium Builder's License.

"**SBLs**" and "**Stadium Builders Licenses**" means the licenses issued to Persons pursuant to the SBL Agreement for the right to purchase season tickets for NFL Games in the Stadium in which the Team is the home team, and a preferential right to purchase Tickets for Non-NFL Events.

"**Scheduled**" and other forms of that term when used in reference to an NFL Game, NFL Event, Tenant Incidental Use, Non-NFL Event or Civic Event refers to the condition when an NFL Game, NFL Event, Tenant Incidental Use, Non-NFL Event or Civic Event has been scheduled with the Stadium Manager on a particular date at the Premises in accordance with the applicable terms of the Stadium Lease Documents.

"**Second Audit**" has the meaning set forth in Paragraph 8.4.2 of the Lease Summary.

"**Second Team**" has the meaning set forth in Paragraph 16.2 of the Lease Summary.

"**Second Team Capital Reserve Deposit**" means, for the first Lease Year in which a Second Team plays and hosts NFL Games in the Stadium as the home team, other than in connection with any Temporary Second Team Occupancy, the sum of One Million Dollars ($1,000,000.00). For the second and each succeeding Lease Year in which a Second Team plays and hosts NFL Games in the Stadium as the home team, the Second Team Capital Reserve Deposit shall increase by three percent (3%).

"**Second Team Sublease**" has the meaning set forth in Paragraph 16.2 of the Lease Summary.

"**Second Team Temporary Occupancy Period**" has the meaning set forth in Paragraph 17.2 of the Lease Summary.

"**Service Rights**" means the exclusive right to designate service rights to be provided on an exclusive or non-exclusive basis to, at or in the area in question.

"**Shared Stadium Expenses**" has the meaning set forth in Paragraph 8.1 of the Lease Summary.

"**Signage**" shall mean all signage and any and all other media (whether now existing or developed in the future) used for Advertising and Sponsorships or other marketing purposes in or on the Stadium Complex, including any signage or other media located in or on the Stadium, the Scoreboard, the video boards (including "JumboTron"-type screens), advertising signs, banners or displays, time clocks, message boards, billboards, public address announcements, and any other media (whether now existing or developed in the future) located in, on or upon the Stadium Complex through which a Person holding rights pursuant to an agreement with another advertises or markets or may advertise or market any products, services, events or any other items.

"**Special Events Unit**" has the meaning set forth in Paragraph 7.5.5(a) of the Lease Summary.

"**StadCo Agency Advance**" has the meaning set forth in the DDA.

"**Stadium**" means the approximately 68,500 seat stadium (with the possibility for expansion to approximately 75,000 seats for special events), which is to be constructed by Landlord within the Stadium Site in accordance with the Construction Agency Agreement. Any reference to Stadium shall include any part or portion thereof, unless the context otherwise requires.

"**Stadium Administrative Offices**" has the meaning set forth in Paragraph 4.6.4 of the Lease Summary.

"**Stadium Admissions Tax**" means any Taxes or other Impositions imposed on any Tickets sold as admission to any Stadium Event.

"**Stadium Ancillary Property**" means (a) all of the Adjacent Plaza Areas (as shall be depicted on the Site Plan), driveways, walkways and other access ways, curbs, fences and other barriers, directional and informational signage, ticket booths, light fixtures and landscaping located on the land leased by the Stadium Authority pursuant to the Ground Lease and (b) all other appurtenant fixtures, structures and improvements relating to such items described in the foregoing clause (a).

"**Stadium Authority**" has the meaning set forth in the introductory Paragraph of the Lease Summary.

"**Stadium Authority Concession Revenue**" has the meaning set forth in Paragraph 12.7 of the Lease Summary.

"**Stadium Authority Construction Sources**" means the sources of funds that the Stadium Authority shall use to pay costs to develop the Stadium either directly or as pledged sources of funds to repay Stadium construction financings undertaken by the Stadium Authority.

"**Stadium Authority Discretionary Expenses**" means the costs and expenses incurred by the Stadium Authority that are not either approved by Tenant as part of the Annual Shared Stadium Expense Budget or the Capital Expenditure Plan or approved (for purposes of availability of the Management Company Revolving Loan) by the Stadium Manager in the Line of Credit Agreement (or, in either case, resolved by Expedited ADR as provided in the Stadium Lease and Line of Credit Agreement), which costs and expenses must be paid for by the Stadium Authority Discretionary Fund or another funding source reasonably approved by the Stadium Manager, or must not be incurred.

"**Stadium Authority Discretionary Fund**" means the separate account, under the management and control of the Stadium Authority, which may be used by the Stadium Authority to pay Stadium Authority Discretionary Expenses.

"**Stadium Authority Event Expenses**" has the meaning set forth in Paragraph 4.6.3 of the Lease Summary.

"**Stadium Authority Events**" means, collectively, Non-NFL Events and Civic Events; provided, however, that if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 5.1 of the Lease Summary, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term, Stadium Authority Events shall mean only Civic Events.

"**Stadium Authority Exclusive Facilities**" means the Stadium Administrative Offices and other areas to be negotiated in good faith by the Stadium Authority and Tenant in connection with the Stadium Lease (e.g., police lock-up and control room), as the same may be modified by mutual agreement of the Parties.

"**Stadium Authority Expenses**" means, for each Lease Year, the sum of (a) the rent paid to the City during such Lease Year under the Ground Lease; (b) all costs and expenses paid by the Stadium Authority in operating, managing and Maintaining the Premises during such Lease Year, including (i) the amount of the Annual Capital Reserve Amount deposited by the Stadium Authority into the Stadium Capital Expenditure Reserve, (ii) the Stadium Authority's proportionate share of Shared Stadium Expenses and (iii) all amounts paid by the Stadium Authority to the Stadium Manager pursuant to the Stadium Management Agreement that are not otherwise included among the Shared Stadium Expenses, including any incentive fees relating to Stadium Authority Events; (c) all actual, out-of-pocket costs paid by the Stadium Authority in connection with Non-NFL Events during such Lease Year, including Public Safety Costs; (d) all amounts paid by the Stadium Authority during such Lease Year for scheduled debt service on the loans, bonds and other financing of the Stadium Authority permitted under the Stadium Lease, including scheduled debt service on the Management Company Revolving Loan and the Subordinated Loan; and (e) all required prepayments of the Management Company Revolving Loan. For purposes of determining the amount of Excess Revenues for any Lease Year, Stadium Authority Expenses shall exclude Stadium Authority Discretionary Expenses and costs and expenses paid by the Stadium Authority in connection with Civic Events.

"**Stadium Authority Parking Facilities**" means, collectively, the parking spaces situated from time to time on the Stadium Site (excluding Tenant's Parking Spaces) and on the Public Parking Parcels, including in any parking structure located thereon (i.e., surface lots and parking structures owned or controlled by the Stadium Authority), as more particularly described in the Summary of Parking Rights.

"**Stadium Authority Parking Revenue**" has the meaning set forth in Paragraph 12.6 of the Lease Summary.

"**Stadium Authority Parking Spaces**" means the parking spaces on the Stadium Site, as shall be determined in the Stadium Lease.

"**Stadium Authority Put Notice**" has the meaning set forth in Paragraph 5.1 of the Lease Summary.

"**Stadium Authority Put Right**" has the meaning set forth in Paragraph 5.1 of the Lease Summary.

"**Stadium Authority Reset Termination Payment**" has the meaning set forth in Paragraph 6.2.4(a) of the Lease Summary.

"**Stadium Authority Revenue**" has the meaning set forth in ARTICLE 12 of the Lease Summary.

"**Stadium Authority Season**" has the meaning set forth in Paragraph 1.3.2 of the Lease Summary.

"**Stadium Capital Expenditure Reserve**" means the segregated capital repair and replacement fund held in the Stadium Capital Expenditure Reserve Account.

"**Stadium Capital Expenditure Reserve Account**" means a separate depository account maintained by the Stadium Authority at an Acceptable Bank for the purpose of holding, applying, investing and transferring the Capital Expenditure Reserve Fund. The Capital Expenditure Reserve Account shall be separate from, and shall not be a part of, any other fund or account of the Stadium Authority.

"**Stadium Club**" has the meaning set forth in Paragraph 4.3.2 of the Lease Summary.

"**Stadium Commercial Areas**" means, collectively, the Team Store, the Hall of Fame and those portions of the Stadium to be leased to Third-Party Tenants from time to time. The Parties intend that, upon the Commencement Date, the Stadium Commercial Areas shall be the areas designated as Stadium Commercial Areas on the Site Plan. The Stadium Commercial Areas may be modified from time to time subject to the approval of Tenant and the Stadium Authority.

"**Stadium Complex**" means the Stadium and the Stadium Ancillary Property.

"**Stadium Components**" means the components of the Stadium, as distinct from the Stadium as a whole, including, without limitation, Stadium gates, levels, plazas, concession areas, scoreboards, locker rooms and seating areas.

"**Stadium Components Sponsorship Rights**" means all Advertising and Sponsorship Rights relating to the Stadium Components.

"**Stadium Components Sponsorship Rights Revenue**" means all Net Revenues from the sale of Stadium Components Sponsorship Rights.

"**Stadium Contracts**" means any service contract, equipment lease, maintenance and warranty contract or other material contract entered into by the Stadium Authority that relate to the Stadium or goods or services provided thereto.

"**Stadium Events**" means any NFL Game or other NFL Event, Non-NFL Event or Civic Event, but excluding Tenant Incidental Uses, in or on the Premises.

"**Stadium Lease Documents**" means the Stadium Lease and all other agreements entered into by the Parties from time to time in connection with the Stadium Lease, including the Stadium Operations Agreement, the Stadium Parking Plan, the Stadium Signage Plan, the TMOP, the Stadium Operation and Maintenance Plan, the Stadium Management Agreement, Line of Credit Agreement, and the Capital Expenditure Plan, as the same may be amended, supplemented, modified, renewed or extended from time to time.

"**Stadium Management Agreement**" means the agreement to be entered into by and between the Stadium Authority, Tenant and the Stadium Manager with respect to the operation and management of the Stadium.

"**Stadium Manager**" has the meaning set forth in Paragraph 7.2 of the Lease Summary.

"**Stadium Naming Rights**" means, subject to terms and conditions to be included in the Stadium Lease Documents, any and all of the rights to (a) assign and designate a Stadium name, (b) give

or designate attributions for the Stadium, (c) display such Stadium name or attributions, and any associated Marks, on or from the Stadium, (d) use, mark and associate the Stadium name with merchandise or services, and (e) from time to time change the Stadium name of or attributions for the Stadium. Stadium Naming Rights shall not include Stadium Components Sponsorship Rights or any Advertising and Sponsorship Rights.

"**Stadium Naming Rights Agreement**" means the agreement to be entered into by and between the Stadium Authority and one or more Persons with respect to the sale of the Stadium Naming Rights, which agreement shall be in form and substance acceptable to Tenant.

"**Stadium Naming Rights Revenue**" means all Net Revenues from the sale of Stadium Naming Rights pursuant to the Stadium Naming Rights Agreement. Stadium Naming Rights Revenue shall not include Stadium Components Sponsorship Rights Revenue, or any revenue from the sale of Advertising and Sponsorship Rights.

"**Stadium Naming Rights Sponsor**" means the Person or Persons who enter into the Stadium Naming Rights Agreement with the Stadium Authority.

"**Stadium Operation and Maintenance Plan**" means the operation and maintenance plan for the Stadium, as the same may be amended or supplemented by Landlord and Tenant from time to time, which shall be designed to achieve a safe and well-maintained Stadium, and shall include the standards for management and operation of the Stadium, including the required security, staffing and other required elements of hosting Stadium Events.

"**Stadium Parking Areas**" means the Stadium Authority Parking Facilities, Public Parking Parcels and Private Parking Facilities.

"**Stadium Parking Plan**" means, as described in Paragraph 7.4.1(c) of the Lease Summary, the parking plan for the Stadium, as the same shall be updated from time to time, which shall provide, in the reasonable judgment of the Stadium Authority and Tenant in accordance with the Mitigation Measures and Conditions of Approval, for a number of parking spaces or alternative transportation options sufficient to meet the parking and other transportation management requirements for the Stadium Events that are Scheduled for each Lease Year.

"**Stadium Personal Property**" means all furniture, fixtures, equipment, furnishings, machinery, and all other components and personal property owned by, or leased to, the Stadium Authority that is from time to time located on the Premises, together with all additions, alterations and replacements thereof (whether replaced by either Party), including all furniture, fixtures, equipment, furnishings, machinery, displays, Signage, Scoreboards and other personal property installed, affixed, attached or supplied to the Premises by the Stadium Authority pursuant to the terms of the Construction Agency Agreement and any additions, changes or alterations thereto or replacements or substitutions therefor. Stadium Personal Property does not include Tenant's Personal Property or any personal property owned or leased by any Third-Party Tenants (or sub-tenants or licensees of Tenant permitted under the Stadium Lease), licensees or invitees that may from time to time be brought onto the Premises.

"**Stadium Records**" has the meaning set forth in Paragraph 8.4 of the Lease Summary.

"**Stadium Rules and Regulations**" has the meaning set forth in Paragraph 4.3.1(a) of the Lease Summary.

"**Stadium Signage Plan**" means the signage plan for the Stadium, which shall be attached as an Exhibit to the Stadium Lease, as the same may, subject to Tenant's right to reasonably determine the location of Signage attendant to Advertising and Sponsorship Rights and Stadium Components Sponsorship Rights, as provided in Paragraphs 14.2 and 14.3 of the Lease Summary, thereafter be amended by the mutual approval of Landlord and Tenant.

"**Stadium Site**" has the meaning set forth in the DDA.

"**Stadium Video Facilities**" means the facilities located in the Stadium for the operation of, and the production of content for, the scoreboards, "ribbon" boards and other electronic screens and displays in and about the Premises.

"**Subordinated Loan**" has the meaning set forth in the DDA.

"**Substantial Completion Date**" has the meaning set forth in the Construction Agency Agreement.

"**Suites**" means the private, enclosed suites constructed within the Stadium from time to time.

"**Summary of Parking Rights**" has the meaning set forth in Paragraph 7.3.1(a) of the Lease Summary.

"**Tax**" means any tax, assessment, levy or similar charge.

"**Tenant Concession Revenue**" means Net Revenues received by Tenant from Concessionaires engaged in the sale of food, beverages and other goods in the Stadium or on Stadium Authority Parking Facilities during the Tenant Season or during NFL Events occurring during the Stadium Authority Season.

"**Team Store**" means the retail store(s) located in the Stadium designated as a "Team Store" from time to time by Tenant and the Stadium Authority, in which Tenant and the Team shall have the right to sell souvenirs, apparel and merchandise (including, without limitation, NFL novelties and licensed items) and other non-edible items, goods, services, equipment or wares relating to the Team or any Second Team. The Parties intend that, upon the Commencement Date, the Team Store shall be the retail store(s) shown on the Site Plan.

"**Team Sublease**" has the meaning set forth in Paragraph 16.1 of the Lease Summary.

"**Team Suite**" or "**Team Suites**" means the Suite or Suites designated from time to time by Tenant for use by the owner of the Team and any Second Team.

"**Telecommunications Products or Services**" means local and long-distance land line and wireless telephone services, yellow pages and directory services (including on-line and Internet based), network integration, inside wiring and cabling, fiber deployment, basic network infrastructure, public communications, pay telephones, calling cards (including prepaid), voice

mail, Internet services, programming, transmission of voice and data, interactive communications, virtual or enhancements of the same, land line and wireless video and data services, cable and wireless television services, paging services, home security services and telecommunications equipment and any other similar or related products or services.

"**Telecommunications Rights**" means any and all of the rights to the full use and enjoyment and to control, provide, conduct, lease, license, grant concessions with respect to and contract for, Telecommunication Products or Services to or for the Stadium, including the right to sell or license the right to provide Telecommunications Products or Services on an exclusive or nonexclusive basis.

"**Temporary Second Team Occupancy**" has the meaning set forth in Paragraph 17.2 of the Lease Summary.

"**Tenant**" has the meaning set forth in the introductory Paragraph of the Lease Summary.

"**Tenant Event Expenses**" has the meaning set forth in Paragraph 7.1.1(a) of the Lease Summary.

"**Tenant Events**" has the meaning set forth in Paragraphs 4.2.3 and 5.2.2 of the Lease Summary.

"**Tenant Incidental Uses**" has the meaning set forth in Paragraph 4.3.2 of the Lease Summary.

"**Tenant Mortgage**" means a Mortgage that encumbers the Stadium Lease and the Leasehold Estate created thereby.

"**Tenant Mortgagee**" means a holder of a Tenant Mortgage (and its successors and assigns), provided: (a) it is not an Affiliate of Tenant; and (b) Landlord has received notice of its name and address and a copy of its Tenant Mortgage.

"**Tenant Parking Revenue**" has the meaning set forth in Paragraph 13.6 of the Lease Summary.

"**Tenant Party**" or "**Tenant Parties**" means Tenant, the Team, any Second Team, any other Tenant Transferee, or any of their respective officers, directors, employees, agents, contractors or invitees.

"**Tenant Revenue**" has the meaning set forth in Paragraph 13.2 of the Lease Summary.

"**Tenant Season**" means that period during each Lease Year commencing on August 1 and ending on January 31 (subject to extension in any Lease Year if an NFL Game (whether pre-season, regular season or post-season) in the Stadium is scheduled by the NFL before August 1 or after January 31); provided, however, that if the Stadium Authority exercises the Stadium Authority Put Right as provided in Paragraph 4.10.3 of the Lease Summary, then, effective as of the Tenant Season Expansion Date, and continuing through the remainder of the Lease Term (including any Extension Terms), the Tenant Season shall mean the entirety of the Lease Year.

"**Tenant Season Expansion Date**" has the meaning set forth in Paragraph 4.10.3 of the Lease Summary.

"**Tenant Service Revenue**" has the meaning set forth in Paragraph 13.3.2 of the Lease Summary.

"**Tenant Transferee**" means any Person, including the Team or any Second Team, to whom Tenant Transfers all or any portion of its right, title or interest in the Premises.

"**Tenant's Estimated Share**" has the meaning set forth in Paragraph 8.3.2 of the Lease Summary.

"**Tenant's Exclusive Concession Rights**" has the meaning set forth in Paragraph 7.3.1(a) of the Lease Summary.

"**Tenant's Exclusive Facilities**" means (a) the Stadium Commercial Areas, including the Team Store and the Hall of Fame, (b) administrative space for use by Tenant, the Team, any Second Team or any Tenant Parties, (c) the Stadium Ticket Office, provided that Tenant shall cooperate with the Stadium Authority to permit the Stadium Authority's use of the Stadium Ticket Office in connection with Non-NFL Events, subject to Tenant's reasonable security requirements, (d) locker rooms and related training space, (e) the Stadium Video Facilities, (f) the Owners' Club, including the Team Suite, (g) the Suite Tower (as shall be depicted on the Site Plan), including all Suites; and (h) such other areas designated for the exclusive use of Tenant, the Team, any Second Team or other Tenant Parties within the Premises, all as shall be depicted on the Stadium Plans and on an Exhibit to the Stadium Lease; provided, however, that Tenant may, at any time and from time to time, with the approval of the Stadium Authority, which approval shall not be unreasonably withheld, conditioned or delayed as provided in ARTICLE 11 of the Stadium Lease, relocate, redesign, reconfigure, expand or reduce, or otherwise modify Tenant's Exclusive Facilities.

"**Tenant's Market Reset Termination Notice**" has the meaning set forth in Paragraph 6.2.4 of the Lease Summary.

"**Tenant's O&M Obligations**" has the meaning set forth in Paragraph 7.1.2 of the Lease Summary.

"**Tenant's Parking Spaces**" means [***thirty-nine (39) parking spaces***] as shall be further specified in the Stadium Lease. [***Note - 18 in front of the Stadium and 21 from the retail spaces***.]

"**Tenant's Personal Property**" means, collectively, the furniture, fixtures, equipment, furnishings, machinery and all other components and personal property owned by, or leased to, Tenant (other than that leased to Tenant under the Stadium Lease), the Team or any Second Team, together with all additions, alterations and replacements thereof.

"**Tenant's Put Right Payment**" has the meaning set forth in Paragraph 5.2.1 of the Lease Summary.

"**Term**" has the meaning set forth in Paragraph 2.2 of the Lease Summary.

"**Ticket**" means the ticket or other indicia by which admission to the Stadium and, in some cases, admission to a Suite or other Premium Seating or Premium Stadium Areas, for Stadium Events is permitted and controlled.

"**TMOP**" means the Traffic Management and Operation Plan to be entered into by the Stadium Authority and Tenant in connection with the Stadium Lease, as the same may be amended, supplemented, modified, renewed or extended from time to time in accordance with the terms thereof.

"**Transfer**" has the meaning set forth in ARTICLE 16 of the Lease Summary.

"**Unamortized Prepaid Rent**" has the meaning set forth in Paragraph 6.2.1(b) of the Lease Summary.

"**Utilities**" means water and sewer, gas, electricity, chilled water, telephone, cable, data lines and other utility services supplied to or used from time to time in the Premises.

"**Warranty/Other Claim**" has the meaning set forth in Paragraph 7.8.2 of the Lease Summary.

EXHIBIT B
TO STADIUM LEASE

RULES AS TO USAGE

(1) "Include," "includes" and "including" shall be deemed to be followed by "but not limited to" whether or not they are in fact followed by such words or words of like import.

(2) "Writing," "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Law defined or referred to in the Stadium Lease means such agreement or instrument or Applicable Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined in the Stadium Lease Documents by reference to any agreement, instrument or Applicable Law has such meaning whether or not such agreement, instrument or Governmental Rule is in effect.

(6) "Hereof," "herein," "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article," "Paragraph," "Subparagraph" or another subdivision or to an attachment are, unless the context otherwise requires, to an article, paragraph, subparagraph or subdivision of or an attachment to such agreement or instrument. All references to exhibits or attachments in any agreement or instrument that is governed by this **Exhibit B** are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in any agreement or instrument that is governed by this **Exhibit B** and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word "or" will have the inclusive meaning represented by the phrase "and/or."

(10) "Shall", "will" and "must" have equal force and effect.

(11) Unless otherwise specified, all references to a specific time of day shall be based upon Pacific Standard Time or Pacific Daylight Savings Time, as applicable on the date in question in Santa Clara, California.

(12) References to "$" or to "dollars" shall mean the lawful currency of the United States of America.

(13) The words "unreasonably withheld" shall mean unreasonably withheld, conditioned or delayed.

(14) Whenever the context may require, the singular form of nouns, pronouns and verbs shall include the plural, and vice versa.

EXHIBIT C

DESIGN-BUILD AGREEMENT

by and between

SANTA CLARA STADIUM AUTHORITY
as Owner

FORTY NINERS STADIUM, LLC
as Construction Agent

and

TURNER/DEVCON, A JOINT VENTURE
as Design-Builder

Dated as of _____, 2012

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DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT (this "Agreement") is made as of _____, 2012, by and between Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code ("Owner" or "Authority"), Forty Niners Stadium, LLC, a Delaware limited liability company ("49ers Company" or "Construction Agent"), and Turner/Devcon, a Joint Venture, a California joint venture, as design-builder ("Design-Builder"). Owner and Design-Builder agree as follows:

ARTICLE 1

GENERAL

1.1 Defined Terms.

1.1.1 In addition to other terms defined herein, as used in this Agreement, the following terms shall have the meanings indicated below:

"49ers Stadium Company" or "Construction Agent" shall mean Forty Niners Stadium, LLC, a Delaware limited liability company.

"ADA" means the Title III of the Americans with Disabilities Act and the regulations and guidelines issued thereunder by the United States Department of Justice concerning accessibility of places and public accommodations and commercial facilities.

"Adjacent Property" shall mean the land adjoining and surrounding the Site and Design-Builder's construction yard, including but not limited to streets, sidewalks, and buildings adjoining the Site, which also includes (a) the 49ers training facility, (b) the City of Santa Clara Youth Soccer Park, (c) Silicon Valley Power's Northern Receiving Station, (d) the City's adjacent water tanks and emergency generators, (e) Great America Theme Park's parking lots, (f) golf and tennis club adjacent to Design-Builder's construction yard, (g) the new City of Santa Clara garage being constructed adjacent to Design-Builder's construction yard, and (h) any bridge to be constructed over San Tomas Aquino Creek.

"Affiliate" of any specified person or entity means any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person or entity, or which is a director, officer, employee, or partner (limited or general) of such specified person or entity. For the purpose of this definition, "control", when used with respect to any specified person or entity, means the possession, direct or indirect, of the power to vote 5% or more of the securities having ordinary voting power for the election of directors or the power to direct or cause the direction of the management and policies of such person or entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" shall mean this Agreement between Design-Builder and Owner, including all Schedules and Exhibits attached hereto.

"Applicable Laws" or "applicable laws" means any applicable law, enactment, statute, code, ordinance, charter, resolution, order, rule, regulation, guideline, authorization, or other direction or requirement of any Governmental Authority enacted, adopted, promulgated, entered or issued (including, without limitation, the requirements of the ADA) applicable to the Project or the Work, whether in force on the Effective Date or enacted thereafter, but subject to the provisions of Section 5.1.2.

"As-Built Drawings" shall mean the Construction Drawings and Specifications revised to show the "as-built" condition of the Project and other changes made during the construction process.

"CEQA Findings, Development Permit and Required Mitigation Measures" shall mean (a) the CEQA Findings and Statement of Overriding Considerations for the Approval of General Plan Amendment #72 and Redevelopment Plan Amendment #20 Relating to the 49ers Santa Clara Stadium Project, dated as of March 2, 2010, 196 pages, (b) the Development Permit – 4900 Centennial Boulevard, File PLN2008-06947, dated as of November 30, 2010, 32 pages, (c) the Tentative Subdivision Map Permit – 4900 Centennial Boulevard, et al, PLN2008-08216, 31 pages, copies of which have been delivered to Design-Builder, (d) the mitigation measures and conditions of approval listed on **Exhibit W** attached hereto and made a part hereof, and (e) any additional requirements raised in future entitlements, which additional requirements shall be delivered by Owner to Design-Builder.

"CFD Funds" shall mean funds contributed by a Mello-Roos Community Facilities District to be formed by the City, which funds shall not exceed $35,000,000 (exclusive of debt service and other financing costs), and used to fund Subcontracts awarded to the lowest responsible bidder in a manner consistent with the Subcontractor Procurement Plan.

"Change Order" shall mean a written instrument signed by Owner and Design-Builder relating to a change in the Work, GMP and/or Construction Schedule.

"City" shall mean the City of Santa Clara.

"Claim" shall mean any claim, demand or assertion as a matter of right for a change in the GMP, extension of time or other relief with respect to any of the terms of the Contract Documents.

"Close of Escrow Notice" shall mean a written notice from Construction Agent to Design-Builder informing Design-Builder that the close of escrow under that certain Disposition and Development Agreement (Stadium Lease), dated as of _____, 2011, by and between Santa Clara Stadium Authority and Forty Niners Stadium, LLC, has occurred.

"Construction Agency Agreement" shall mean that certain Construction Agency Agreement, dated as of _____, by and between Santa Clara Stadium Authority, as Owner, and Forty Niners Stadium, LLC, as Construction Agent.

"Construction Agent's Project Representative" shall mean Jack Hill.

"Construction Change Directive" shall mean a written order by Owner to Design-Builder directing a change in the Work prior to final agreement on the adjustment, if any, to the Contract Sum or Contract Time.

"Construction Contingency" shall have the meaning set forth in Section 8.1.2 hereof.

"Construction Cost" shall mean the total cost to Owner of all elements of the Project designed or specified by Design Architect and Design-Builder's Architect, and shall include the Cost of the Work plus the Construction Contingency, and the Design-Builder's Architect's compensation. Construction Cost does not include the following: compensation of Design Architect or other Owner consultants, the cost of the land, rights-of-way costs, and other items not specifically contained within the Design-Builder's GMP, or financing costs.

"Construction Drawings and Specifications" shall mean the working drawings and specifications describing the size, character, design, construction, materials, finishes, structure and mechanical, electrical and other systems of the Project produced by Design-Builder's Architect pursuant to Section 5.1 hereof.

"Construction Drawings and Specifications Criteria" shall mean those criteria and standards set forth on **Exhibit B** attached hereto and made a part hereof.

"Construction Plan" shall mean a plan for construction of the Project that will include: (a) the construction staging plan setting forth construction scheduling, lay down areas and storage, trailer areas, trailer locations, priorities as to site use, ingress/egress and other similar site logistic matters for the Project and (b) procedures for the assignment of responsibilities for safety precautions and programs.

"Construction Schedule" shall mean a detailed and comprehensive schedule prepared by Design-Builder and consistent with all agreed upon milestone dates set forth in the Master Project Schedule, utilizing a critical path method (CPM) network that is in conformance with accepted industry standards for projects of this size, scope and complexity and that: (a) shows all major elements and phases of the Project with no activity having a duration greater than thirty (30) working days (including, without limitation, any Owner-provided design or construction, utility provider design or construction, Governmental Authority approvals and design or construction by any third party in connection with the Project); (b) breaks down each element or phase by trade; (c) shows duration of each task; (d) shows manpower for each trade or task that has a cost defined as within the Cost of the Work; (d) shows early and late start dates so that all "float" time will be accurately identified; and (e) otherwise is in a form satisfactory to Owner.

"Contract Documents" shall mean (a) this Agreement, (b) the GMP Documents, (c) the Construction Drawings and Specifications when approved by Owner, (d) the General Conditions, (e) any executed Change Orders, and (f) any duly executed amendments to any of the foregoing.

"Contract Sum" shall have the meaning set forth in Section 8.1.1 hereof.

"Contract Time" means the time allowed for the completion of the Project contemplated in this Agreement and the completion of each milestone or key phase or element of the Project.

"Cost of the Work" shall have the meaning set forth in Section 8.3.2 hereof.

"Day" or "day" shall mean a calendar day.

"Defective Work" shall mean any Work that does not comply with the requirements of the Contract Documents.

"Deficiency List" means, at any time, the list of incomplete Work and Work requiring repair or replacement prepared by Design-Builder, and approved by Owner, upon written notification from Design-Builder to Owner that a particular Subcontract is completed.

"Delay Liquidated Damages" shall have the meaning set forth in Section 6.2 hereof.

"Design Architect" shall mean Howard, Needles, Tammen & Bergendoff California Architects, P.C.

"Design Architect's Subconsultants" shall mean, collectively, those architectural and engineering consultants engaged by Design Architect as identified on **Exhibit A** attached hereto.

"Design-Builder" shall mean Turner/Devcon, a Joint Venture.

"Design-Builder's Architect" shall mean the registered architect/engineer engaged by Design-Builder to prepare the Construction Drawings and Specifications, which firm is Howard, Needles, Tammen and Bergendoff California Architects, P.C.

"Design-Builder's Fee" shall have the meaning set forth in set forth in Section 8.4.2 hereof.

"Design Development Documents" shall mean the drawings and specifications to be prepared by Design Architect based upon, and refining, the Schematic Design Documents, and illustrating the scope, relationship, forms size and appearance of the Project by means of plans, sections and elevations, typical construction details and equipment layout.

"Design Team" shall mean, collectively, Design Architect and Design Architect's Subconsultants.

"Effective Date" shall mean _____.

"Equipment" means all equipment, tools (other than small tools), machinery, implements, and other items used in connection with the temporary or permanent Work, but not incorporated into the permanent Work.

"Final Completion" or "finally complete" shall mean the stage in the progress of the Work when the Work is completed in accordance with the terms of the Contract Documents and Design-Builder has satisfied all of its other obligations under this Agreement and the Contract Documents, including, without limitation, (a) all Governmental Authorities have given final, written approval of the entire Project, (b) a final unconditional Certificate of Occupancy has been

issued by the appropriate Governmental Authorities, and (c) all Punch List items have been completed or corrected.

"Force Majeure" shall mean an act of God, fire, tornado, severe wind-driven rains or windstorms, hurricane, named storms, flood, earthquake, earth movement or subsidence when caused by natural forces only, explosion, war, terrorism, embargoes, civil disturbance or riot, industry-wide (and not Project-specific) labor strikes, unusually severe weather and delays in transportation that result from any of the foregoing listed causes.

"General Conditions of Construction" shall mean the General Conditions of the Contract for Construction, contained in **Exhibit C**, which shall govern all construction activities at the Project.

"General Conditions Work" shall mean the services to be provided by Design-Builder as identified on **Exhibit D** attached hereto.

"GMP" shall mean the guaranteed maximum price set forth in the GMP Amendment.

"GMP Amendment" shall mean an amendment to this Agreement, in the form of Amendment No.1 attached hereto as **Exhibit E**, to establish and memorialize the final GMP as part of this Agreement.

"GMP Documents" shall mean the GMP Drawings and Specifications, the Prose Statement, the GMP Qualifications and Assumptions and the other documents set forth in the GMP Amendment.

"GMP Drawings and Specifications" shall mean the Design Development Documents and such other drawings and specifications that satisfy the requirements of **Exhibit F** hereof.

"GMP Qualifications and Assumptions" shall mean the written statement of qualifications and assumptions prepared by Design-Builder, based upon the GMP Drawings and Specifications and Prose Statement and approved by the parties pursuant to Section 4.8 hereof.

"Governmental Authority" means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Project or the Site.

"Guaranteed Substantial Completion Date" means _____, as the same may be amended from time to time pursuant to the terms of this Agreement.

"Hazardous Materials" shall mean any hazardous waste, toxic substance, asbestos containing material, petroleum product, or related materials including, but not limited to, substances defined as "hazardous substances" or "toxic substances" under any Applicable Laws and any substance or material that under any Applicable Laws is regulated or listed as being hazardous or toxic.

"Identified Claims" shall mean claims that (a) have been asserted against Design-Builder or the Project and (b) have been identified in writing (both in terms of the nature of the claim and the potential amount) and supported with reasonable documentation detailing the underlying claim.

"IGMP" shall mean the initial guaranteed maximum price consisting of the estimated Cost of the Work, the Construction Contingency, and Design-Builder's Fee of the estimated Cost of the Work, which shall be based upon the documents set forth in Section 4.7.2 hereof and subject to adjustment as provided in the Contract Documents.

"Indemnitees" shall mean Owner, Forty Niners Stadium, LLC, City of Santa Clara, Team, other organizations indemnified by Design-Builder (which list shall be mutually agreed to by Owner and Design-Builder), and their respective officers, trustees, shareholders, public officials, members, partners, Affiliates and employees.

"Legal Requirements" shall mean all requirements and directives set forth in Applicable Laws.

"Lender" shall mean any bank, insurance company, trust, corporation, association, firm, partnership, person, or other entity that has loaned or agreed to lend or otherwise provide funds or credit enhancement to enable Owner to build the Project.

"Letter Agreement" shall mean the letter agreement, dated _____, 2011, by and between Construction Agent and Design-Builder authorizing the commencement of certain pre-construction and construction services set forth therein.

"Life Cycle Cost Analysis" shall mean an assessment on the capital and operational cost of a particular construction item, system or equipment during the estimated useful life of the permanent improvements comprising the Project.

"Master Project Schedule" shall mean a project schedule using a critical path method, prepared by Design-Builder, that identifies, coordinates and integrates the anticipated design and construction schedules, Owner's responsibilities, Government Authority reviews and other activities as are necessary for the timely completion of the Project.

"Materials" means all materials, supplies, appliances, equipment, fixtures and other items to be incorporated into the Work or consumed in connection with the Work.

"NFL" means the National Football League.

"NFL Season" means the football season established by the NFL, including the pre-season and post-season games to the extent that the San Francisco 49ers are participants.

"OCIP" or "CCIP" shall have the meaning set forth in Section 14.1 hereof.

"Owner" or "Authority" shall mean the Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code.

"Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams or other information furnished by Design-Builder or its Subcontractor to illustrate a material, product or system for some portion of the Work.

"Project" shall mean the design and construction of the San Francisco 49ers' new NFL stadium as described in the GMP Documents.

"Project Administration Forms" shall mean the pay applications, affidavits, lien waiver, change order and other forms contained in **Exhibit P** attached hereto.

"Project Closeout Documents" means the As-Built Drawings (mylar and computer generated on disk) all maintenance and operating manuals, all approved Shop Drawings, warranties, guarantees, training manuals and records.

"Project Development Team" shall mean, collectively, Owner, Construction Agent, Construction Agent's Project Representative, the Design Team, Design-Builder, and such members as may be selected by Owner from time to time.

"Project Documents" shall mean all drawings, specifications, report, studies and other documents furnished by Design-Builder, Design-Builder's Architect or any Subcontractor in connection with the Project.

"Project Report" shall mean the monthly report to be prepared by Design-Builder in the form approved by Owner pursuant to Section 5.7.4 hereof.

"Prose Statement" shall mean the detailed listing developed by Design Architect of all incomplete design elements contained in the final GMP Drawings and Specifications and Design Architect's statement of intended scope with respect to such incomplete elements.

"Project Transaction Documents" shall mean the Disposition and Development Agreement dated as of _____, 2011, between Owner and 49ers Stadium Company or similar development agreements relating to the development (including the design and construction) of the Project and those other documents list on **Exhibit U** attached hereto and made a part hereof.

"Punch List" shall mean the list prepared by Design-Builder and reviewed and approved by Owner containing minor items of incomplete Work not impacting Substantial Completion and to be completed and/or corrected after Substantial Completion.

"RDA Funds" shall mean funds contributed by the Redevelopment Agency of the City of Santa Clara, which funds shall not exceed $40,000,000 (exclusive of debt service and other financing costs), and used to fund Subcontracts awarded to the lowest responsible bidder in a manner consistent with the Subcontractor Procurement Plan.

"Samples" shall mean physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Values" shall mean the statement furnished by Design-Builder reflecting the portions of the Contract Sum allocated to the various portions of the Work and, when approved by Owner, used as the basis for reviewing Applications for Payment.

"Schematic Design Documents" shall mean the schematic design documents of the Project, to be prepared by Design Architect, illustrating the scale and relationship of the various Project components, which also contain square footage and volume calculations for the building interior spaces, building exterior spaces, as well as major architectural and interior finishes.

"Self-Performed Work" shall mean the following categories of Work in which a substantial portion thereof is performed directly by Design-Builder's own labor forces or the labor forces of any Affiliate of Design-Builder (including the joint venture partners of Design-Builder), and not through subcontracts or purchase orders with third party contractors or suppliers: Concrete Flat Work; Safety and Fall Protection; Rough Carpentry; Interior Millwork Installation; HM Frames; Hardware Procurement/Installation; Clean-up; and such other trades as Owner, in its sole discretion, may approve in advance of Subcontractor bidding of such trades.

"Separate Contractors" shall mean any persons or firms performing work for the Project that are under direct contract with Owner.

"Shop Drawings" means drawings, diagrams, illustrations, schedules, performance charts and other data specifically prepared for the Project by Design-Builder or any Subcontractor, manufacturer, supplier or distributor that illustrates how specific portions of the Work shall be fabricated and/or installed.

"Site" shall mean the area of land on which the Project is located and described on **Exhibit Q**.

"Sponsor-Related Work" shall have the meaning set forth in Section 5.3 hereof

"Subcontract" shall mean any subcontract or purchase order for the various categories of Work between Design-Builder and a Subcontractor.

"Subcontractor" shall mean a person or entity who has a direct contract with Design-Builder to perform any of the Work (including, without limitation, Equipment leases and Material purchase agreements) at the Site. The term Subcontractor includes Suppliers and Materialmen, but does not include any separate contractor of Owner or subcontractors of such separate contractors unless expressly assigned in writing to Design-Builder by Owner.

"Subcontractor Procurement Plan" shall mean the Subcontractor Selection and Procurement Plan for the Stadium attached hereto as **Exhibit T**.

"Submittals" means drawings, diagrams, illustrations, schedules, performance charts, and other data specifically prepared for the Project by Design-Builder or any Subcontractor, manufacturer, supplier or distributor, and if prepared by a Subcontractor, manufacturer, supplier or distributor, then reviewed by Design-Builder's Architect for conformance with the Contract Drawings and Specifications, which illustrate how specific portions of the Work shall be fabricated and/or installed.

"Substantial Completion" or "Substantially Complete" shall mean the Work (or separable areas, units or phases as provided in the Contract Documents) is complete in accordance with the Contract Documents, such that the Project is ready for opening to the general public and for use and enjoyment by Owner, the Team and their employees (it being understood that, without limitation of the foregoing, all suites, concessions and other income-generating areas and all areas serving the general public shall be operational and functional without material inconvenience, discomfort or substantial modification of intended operating plans), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work approved by Owner, in its sole discretion; permanent plumbing, heating, ventilating, air conditioning, security, advertising devices, food service components, audio systems, video systems, fire and safety systems, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; and other work performed to a similar state of essential and satisfactory completion. Notwithstanding the above, a minor amount of work, as determined by and at the sole discretion of Owner, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, or completion of Punch List or completion of minor exterior work that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as substantially complete. For purposes of determining the imposition of liquidated damages under Section 6.2 hereof or the earning of the incentive fee under Section 8.4.4 hereof, Substantial Completion shall be deemed to have occurred when (a) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities and (b) to the extent applicable, the NFL shall have completed an inspection of the Project and shall have given permission, in compliance with NFL facility standards, for playing NFL football at the Project; provided that the determination of Substantial Completion will not be denied if the foregoing items are withheld for reasons unrelated to Design-Builder's performance of the Work or its duties under the Contract Documents.

"Sub-subcontractor" shall mean any person or entity, including materialmen, suppliers and vendors, who has a direct contract with a Subcontractor to perform any of the Work.

"Supplier" or "Materialman" means a person or entity who has an agreement with Design-Builder or its Subcontractors or Sub-subcontractors to supply by sale or lease, directly or indirectly, any Materials or Equipment for the Work.

"Team" shall mean San Francisco Forty Niners, Limited or any successor owner of the NFL franchise known as the San Francisco 49ers.

"Value Engineering" means an analysis of the feasibility of alternative systems, equipment and materials to identify such alternative systems, equipment and materials of equivalent quality (including Life Cycle Cost Analysis), and having equivalent characteristics, to those specified in the Design Documents that can be fully specified, obtained and installed at a lower price or, in the sole judgment of Owner, more-desirable operating characteristics or greater functionality or any combination of these.

"Work" shall mean the construction, design and other services required by the Contract Documents, and includes the furnishing of all Material, labor, detailing, layout, Equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements of the Contract Documents and items reasonably inferable from and consistent with the Contract Documents for the proper execution and completion of the Contract, whether provided or to be provided by Design-Builder or a Subcontractor, or any other entity for whom Design-Builder is responsible, and whether or not performed or located on or off of the Site.

1.2 Other Terms.

1.2.1 Unless otherwise defined herein, terms in this Agreement that have well-known technical or construction industry meanings are used in the Agreement with such recognized meanings.

1.2.2 As the context may require, defined terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter pronouns shall each include the other.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 Appointment of Construction Agent.

2.1.1 Pursuant to the Construction Agency Agreement, the Authority has appointed the 49ers Stadium Company to act as the Authority's agent in all matters relating to this Design-Build Agreement. All references in this Design-Build Agreement to "Owner" shall be deemed to mean a reference to the Authority, as Owner, and 49ers Stadium Company acting solely in its capacity as Construction Agent to the Authority under the Construction Agency Agreement. All documents and communications to Owner shall be directed to the Construction Agent. In all actions taken pursuant to the Agreement, Construction Agent warrants that it will act within the scope of its agency relationship with the Authority. Design-Builder shall have the right to rely upon decisions and notices provided by Construction Agent. All covenants, obligations, warranties, guarantees, and indemnifications of Design-Builder are for the benefit of, and may be enforced by, the Authority and Construction Agent.

2.1.2 Until Construction Agent delivers to Design-Builder the Close of Escrow Notice, Design-Builder shall look solely to Construction Agent for payment of all pre-construction services and construction services under this Agreement and the Letter Agreement. Notwithstanding anything in this Agreement to the contrary, the Authority shall have no obligation to pay for any pre-construction services rendered until the Close of Escrow Notice has been delivered to Design-Builder, and Design-Builder waives any claim it may have against the Authority for such payment. In addition, notwithstanding anything in this Agreement to the contrary, the Construction Agent alone shall have the obligation to pay Design-Builder for construction services rendered until Construction Agent delivers to Design-Builder the Close of Escrow Notice. After Design-Builder receives the Close of Escrow Notice, the Authority shall be responsible for payments of the amounts due and owing under this Agreement.

2.2 Cooperation with Project Development Team and Owner.

2.2.1 Throughout the term of this Agreement, Design-Builder shall coordinate its services with Owner, Construction Agent's Project Representative, the Design Team and the other members of the Project Development Team and public agencies having jurisdiction over the Project. Owner may from time to time designate in writing other persons or entities as being part of the Project Development Team. Design-Builder recognizes that the design and planning phase of this Project will require significant, ongoing and active coordination.

2.2.2 Design-Builder agrees to meet with Owner and Design Architect, all as reasonably required during each of the design phases, to enable Design-Builder to perform such cost estimating, value engineering and scheduling functions as required hereunder. Design-Builder and Owner agree to use their best efforts to fully communicate and cooperate with each other and the Design Team during the design and construction of the Project.

2.2.3 Design-Builder acknowledges the critical public function of the Project and shall participate in meetings, as directed by Owner, with neighborhood groups and other parties having an interest in the Project.

2.2.4 It is acknowledged by Design-Builder that the Design Team and Owner shall have access at all reasonable times to the Work and all Project records and shall have the right to review (and copy) the same during normal business hours.

2.3 Design-Builder's Architect Services.

2.3.1 Design-Builder's Architect shall be the architect of record, although the parties acknowledge that Design Architect shall be credited as the design architect of the Project. Design-Builder's Architect shall be duly licensed to perform the services required by this Agreement and shall not be changed without the prior written approval of Owner.

2.3.2 Design-Builder acknowledges and agrees that the services of certain of Design Architect's Subconsultants on the Project shall be assigned to Design-Builder and/or Design-Builder's Architect for direct contracting agreements at Design-Builder's discretion in accordance with the chart set forth in **Exhibit A** and on such date(s) as determined by Owner and approved by Design-Builder, which approval shall not be unreasonably withheld. As part of any assignment, Owner, Design Architect and the applicable Subconsultant shall warrant and represent to Design-Builder or, as the case may be, Design-Builder's Architect, that there are no outstanding defaults under the assigned agreements and that there are no outstanding amounts due or payable at the time of assignment.

2.4 Project Partnering.

2.4.1 Design-Builder shall participate in multiple project facilitation processes involving all members of the Project Development Team. The project facilitation process shall be developed by Design-Builder, but shall be subject to the approval of Owner. Each participant shall bear its own cost and expense of attendance. Sessions will include major Subcontractors identified by the parties. Owner shall pay the costs of the facilitator and any rental for the facility where the partnering session will be held.

2.5 Project Transaction Documents.

2.5.1 To the extent that any terms of the Project Transaction Documents increase the obligations or liabilities of Design-Builder beyond those not already anticipated by this Agreement, then this Agreement shall be amended by Change Order with an equitable adjustment in the GMP and/or Construction Schedule, if appropriate, to reflect any such increase in Design-Builder's obligations or liabilities.

2.6 Conflict-of-Interest/Confidentiality.

2.6.1 Design-Builder covenants that, to its knowledge, no prior or present services Design-Builder provided to third parties conflicts with the interests of 49ers Stadium Company or Owner in a manner that would adversely affect the Project or its development, except as shall have been expressly disclosed in writing to, and consented by, 49ers Stadium Company and Owner, including any prior work performed by Design-Builder on behalf of 49ers Stadium Company and Owner. Design-Builder shall promptly notify 49ers Stadium Company and Owner of any potential conflict that may arise during the course of Design-Builder's services under this Agreement.

2.6.2 Design-Builder agrees to hold all information it obtains from or about Owner, other members of the Project Development Team and their respective Affiliates and parent companies (whether obtained directly from the such parties or through any agent, employee or consultant of such parties) in strictest confidence, not to use such information other than for the performance of its services under this Agreement, and to cause any of its employees, consultants or Subcontractors to whom such information is transmitted to be bound to the same obligation of confidentiality to which Design-Builder is bound. Design-Builder shall not communicate such information in any form to any third party without the prior written consent of Owner and 49ers Stadium Company, except as necessary to perform its contractual responsibilities, such as but not limited to, pre-proposal conferences and project procurement documents prepared by the Design-Builder. In the event of any violation of this provision, Owner or 49ers Stadium Company shall be entitled to preliminary and injunctive relief, without the necessity of showing irreparable harm, as well as to an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in an addition to any other rights or remedies to which Owner or 49ers Stadium Company may be entitled. The provisions of this Section survive termination of this Agreement. Confidential information does not include any information that:

2.6.2.1 was at the time of disclosure, or thereafter became, part of the public domain through no act or omission of the recipient;

2.6.2.2 became available to the recipient from a third party who did not acquire such information under an obligation of confidentiality either directly or indirectly from the disclosing party; or

2.6.2.3 is, in the opinion of the recipient's legal counsel, required to be disclosed by law; provided, however, the Team or Owner shall be given prior written notification of recipient's intent to so disclose any such proprietary information.

2.6.3 Design-Builder shall not communicate with any person affiliated with any print or broadcast media regarding the Project, and shall not publish any information relating to the Project, including its costs, status, funding, or development, without the prior written consent of Owner and 49ers Stadium Company. All media communications regarding the Project or this Agreement shall be made through [Larry MacNeil of 49ers Stadium Company or such other person as Construction Agent or Owner] shall designate in writing to Design-Builder. Design-Builder shall be responsible for compliance with the terms of this Section by its officers, directors, and employees. In its agreements with its Subcontractors and consultants, Design-Builder shall require compliance with the terms of this Section by the Subcontractors, consultants and their respective officers, directors, employees and subconsultants, and Design-Builder shall be jointly liable with them for any breach of this obligation.

2.7 Financing.

2.6.1 Design-Builder shall provide such assistance as Owner may request in connection with obtaining financing for the Project. Design-Builder agrees that it will make available to Owner, its Lenders, any bond trustees or rating agencies, information relating to the Project, including information relating to the construction progress and expenditures, as any Lenders or bond trustees may request. Design-Builder shall furnish such consents to assignments and certifications addressed to Owner, its Lenders and any bond trustees, as may be requested and as are commercially reasonable and customary for construction projects of similar size, scope and complexity as the Project. Design-Builder shall cooperate with the independent engineers, if any, of any Lenders or bond trustees. Owner shall endeavor to obtain from its lenders, and supply to Design-Builder, the proposed forms of such certificates and assignments as promptly as practicable.

2.8 Cooperation with Governmental Authorities.

2.8.1 Design-Builder agrees to work with, and cooperate with, any and all Governmental Authorities in the conduct of the Work and agrees to, at all times, accommodate all legal requirements of these authorities as they relate to schedule, means and methods. Design-Builder agrees to meet with Owner and these authorities to ascertain any requirements that may affect the sequence, timing, schedule or means and methods of construction and to fully include and recognize the requirements of these authorities in any and all of Design-Builder's scheduling, estimating and other work product required under the terms of this Agreement.

2.8.2 Design-Builder shall cooperate with the City to provide that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the Work are allocated directly to the City. In connection therewith, Design-Builder shall comply with the provisions of **Exhibit X** attached hereto.

2.9 Limitation of Authority.

2.9.1 Design-Builder shall not have any authority to bind Owner for the payment of any costs or expenses without the express prior written approval of Owner. Design-Builder shall have authority to act on behalf of Owner only to the extent provided herein. In the event of an emergency affecting the safety of persons, the Project or Adjacent Property, Design-Builder,

without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. Design-Builder's authority to act on behalf of Owner shall be modified only by an amendment in accordance with the terms hereof.

2.10 Representations.

2.10.1 Design-Builder warrants and represents to Owner that Design-Builder is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work; that Design-Builder is able to furnish the plant, tools, Materials, supplies, Equipment and labor, and is experienced in and competent to perform the Work; that Design-Builder is qualified to do the Work and is authorized to do business in the State of California; and that Design-Builder holds, or will obtain, a license, permit, or other special license to perform the Work, as and if required by Applicable Laws.

ARTICLE 3

STANDARD OF CARE; PERSONNEL

3.1 Standard of Care.

3.1.1 Design-Builder covenants with Owner to further Owner's interests in the Project by furnishing Design-Builder's best skill and judgment to Owner and the Project Development Team. Design-Builder shall furnish efficient business administration and supervision and shall furnish at all times an appropriate and adequate supply of workers and materials to complete the Project in an expeditious and economical manner consistent with the Contract Documents. Design-Builder shall perform its services under this Agreement and shall cause the entire Work described in the Contract Documents to be executed in accordance with the standard of care and skill for contractors, construction managers and design/engineering professionals experienced and specializing in the design, engineering, construction and construction management of new NFL stadia in major metropolitan areas in the United States.

3.2 Design-Builder's Personnel and Consultants.

3.2.1 Design-Builder shall assign sufficient numbers of duly qualified professional and technical personnel to the Project to the extent necessary to ensure that its obligations under this Agreement are timely carried out with respect to the performance of the Work. Such personnel shall include, without limitation, all of the personnel described in **Exhibit G** hereof, all of whom have been approved by Owner based upon information as to each person's background, experience and qualifications submitted to Owner by Design-Builder. The approval by Owner of any project personnel shall not relieve Design-Builder of any responsibility for such personnel. The personnel identified in **Exhibit G** hereof shall devote their full energies to the Project during the GMP Development and Construction Phases while employed by Design-Builder unless Owner gives prior written consent for such personnel to undertake other responsibilities, and such personnel will not be removed or replaced by Design-Builder without Owner's prior written consent unless said personnel becomes incapacitated or ceases to be employed by Design-Builder. Design-Builder shall promptly replace any personnel assigned to the Project at the instruction of Owner if Owner in its sole discretion determines that such removal would be in the

best interests of the Project. In no event shall the staffing of the Project reflected in **Exhibits D and G** (including the rates and duration of personnel) be changed or adjusted without Owner's prior written approval.

3.2.2 The firms identified on **Exhibit G**, or firms later added by amendment to this Agreement, are part of Design-Builder's design/engineering team and shall not be changed without the prior written approval of Owner. Design-Builder acknowledges that certain of the consultants in **Exhibit G** have previously provided design/engineering services to the Project and are pre-qualified by Owner to provide engineering/construction services. By pre-approving such consultants, Owner does not acquire any responsibility for the consultant or its qualifications. Design-Builder has investigated, for its own benefit, the reputation and qualifications of such firms and has satisfied itself of their ability to satisfactorily perform the work or services assigned.

3.2.2.1 The Design-Builder is not obligated to utilize the Design Architect's subconsultants as final Engineers of Record, with reasonable Owner approval.

3.2.3 Owner shall have the right to communicate directly with and obtain information from, but not direct the work of, Design-Builder's Architect. Under no circumstances shall any such communications or requests be deemed to relieve Design-Builder of its obligations under this Agreement.

3.3 City Contracting Requirements.

3.3.1 This is a prevailing wage project and Design-Builder shall comply with the requirements of Sections 1771 to 1781 of the California Labor Code regarding the payment of prevailing wage to all workers employed on the Project, including, without limitation, Section 1776 of the California Labor Code, as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and its Subcontractors' employees. Design-Builder shall post the applicable prevailing wage rates, which are on file in the City Clerk's Office, at the Site. No adjustments in the Contract Sum shall be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.

3.3.2 In the hiring of employees for the performance of Work, Design-Builder, its Subcontractors, and any person acting on behalf of Design-Builder or a Subcontractor, shall not, by reason of race, religion, national origin, age, sex, disability, War Veteran status, or color, discriminate against any citizen in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates. Design-Builder, its Subcontractors, and any person acting on behalf of Design-Builder or any Subcontractor shall not, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, religion, national origin, age, sex, disability, War Veteran status or color.

3.3.3 Design-Builder shall require its Subcontractors and all Sub-subcontractors and suppliers to comply with the terms of this Section 3.3.

3.3.4 The City has adopted ethical standards that govern contractors doing business with the City. Those standards are set forth on **Exhibit V**, attached hereto and made a part hereof, and shall apply to Design-Builder and this Agreement. Owner shall have the right to terminate this Agreement if Design-Builder engages in any of the acts that would permit termination of a contractor under the standards set forth on **Exhibit V**.

3.4 Investigation of Site and Adjacent Property.

3.4.1 By execution of this Agreement, Design-Builder represents that Design-Builder has visited the Site and become familiar with local conditions under which the Work is to be performed. By execution of this Agreement, Design-Builder represents and warrants that, to the extent reasonably practicable and observable, it has investigated and familiarized itself with all land adjoining and surrounding the Site, including but not limited to the Adjacent Property and the operations of the same and, to the extent reasonably practicable, has ascertained the materials and construction of the Adjacent Property, and Design-Builder shall be governed thereby for the necessary, thorough, safe and satisfactory execution of all Work called for in the Contract Documents. Design-Builder also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from the Geotechnical Soils Report and other environmental reports provided to the Design-Builder. Any failure of Design-Builder to take the actions described and acknowledged in this paragraph will not relieve Design-Builder from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owner.

ARTICLE 4

PRELIMINARY DESIGN PHASE

4.1 Programming and Planning.

4.1.1 Design-Builder has reviewed Owner's initial program and has found it adequate and achievable in terms of the anticipated Project budget and schedule requirements. Design-Builder shall continue to fully employ and bring to bear its extensive stadium construction experience, along with all appropriate estimating, scheduling and in-house peer review resources during the preconstruction phase consultation process.

4.1.2 Design-Builder acknowledges that certain "make ready" work on the Site and on the Adjacent Property (e.g., site preparation, site access, utility installation and infrastructure support) will be completed by Owner, the City and such other persons or entities as designated by Owner. Design-Builder shall cooperate and coordinate with such parties in devising a phasing plan in such a way as to assure a rational, logical and coherent sequencing of construction that minimizes any impact on Project and the work on the Adjacent Property.

4.2 Project Schedules.

4.2.1 A preliminary Master Schedule (the "Preliminary Schedule") is attached hereto as **Exhibit R**. The Preliminary Schedule contains only Project durations and is not date-specific. Concurrent with the delivery of its IGMP proposal, Design-Builder shall update, revise and

otherwise modify and deliver a Master Project Schedule substantially in accordance with the Preliminary Schedule for review and approval by Owner and Design Architect. The approved Master Project Schedule shall be updated by Design-Builder monthly throughout the duration of the Project.

4.2.2 Concurrent with the delivery of its GMP proposal, Design-Builder shall prepare and deliver a preliminary Construction Schedule and an updated Master Project Schedule, which shall be date-specific for each of the tasks contained therein, for Owner's review and acceptance. Design-Builder shall investigate and recommend a schedule for the purchase of materials and equipment requiring long lead time procurement, and shall coordinate the procurement schedule with the preparation of the Construction Schedule. The Construction Schedule shall be updated and distributed monthly throughout the duration of the Project to accurately reflect progress to date, remaining durations and any new or revised logic or activities. Design-Builder shall supply, on a monthly basis, graphic representation of the Construction Schedule, together with such reports as requested by Owner that are typically available through the use of industry standard software programs.

4.2.3 Design-Builder recognizes that it shall be asked to propose, review and/or evaluate various alternative schedules during the preconstruction phase and that this scheduling process is a part of Design-Builder's responsibilities. Design-Builder further agrees that it will use its best efforts to faithfully estimate any schedule-related impact on costs during the evaluation of any alternative schedules. Design-Builder shall also, as a part of the Work under this Agreement, provide various conceptual master planning schedules that are to include not only the Work covered under this Agreement, but also "other components" of the Project (*e.g.*, "make ready" work on the Site and on the Adjacent Property, off-site transportation improvements, off-site utility extensions, etc.) in order to allow Owner to plan the overall Project, including such other components or parts. Design-Builder shall, from time to time and as requested by Owner, update such Master Project Schedule to incorporate any such alternative schedules.

4.2.4 The monthly updates of the Master Project Schedule and Construction Schedule required under this Section 4.2 shall be included in the monthly Project Report referenced in Section 5.7.4 hereof.

4.3 Value Engineering.

4.3.1 Design-Builder will provide Value Engineering analysis on major construction components, such as, but not restricted to, mechanical system, exterior envelope, structural system, roof system, lighting and power service. The Value Engineering analysis will be summarized in report forms and distributed to Owner and Design Architect. Design-Builder will conduct a Value Engineering and analysis workshop during the Design Development phase of the Project to develop cost-saving ideas for the Project. The formal report will be prepared following the workshop and distributed to Design Architect and Owner. As part of this process, Design-Builder shall include experienced personnel from its other offices to offer Value Engineering suggestions. Design-Builder shall provide Owner with a written report identifying the persons who participated and setting forth the suggestions discussed.

4.4 Schematic Design Phase.

4.4.1 Design-Builder has received and reviewed the Schematic Design Documents prepared by Design Architect.

4.5 Design Development Phase.

4.5.1 Design-Builder shall review the Design Development Documents during their development by Design Architect. Design-Builder shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, Value Engineering analysis, costs of alternative designs or materials and possible economies. Design-Builder shall prepare and deliver to Owner a comprehensive written Value Engineering report within sixty (60) days of the end of the Design Development phase, and concurrent with the submission of the Design-Builder's IGMP proposal.

4.5.2 During the preparation of the Design Development Documents, Owner, Design Architect and Design-Builder shall meet bi-weekly (or as may otherwise be required) and Design Architect shall, at such meetings, notify Owner and Design-Builder of any material modifications in quantities or qualities from the documents previously issued by Design Architect. If there are any such material modifications, then Design-Builder shall update its Construction Cost estimate via a Budget Control Report. During the Design Development Phase, Design Architect, Design-Builder and Owner shall actively coordinate their efforts and cooperate with each other.

4.5.3 Design-Builder shall provide an analysis of the types and quantities of labor required for the Project and shall review the availability of appropriate categories of labor required for critical phases and shall make recommendations for and execute actions designed to minimize adverse effects of labor shortages.

4.6 Cost Estimates and IGMP/GMP.

4.6.1 Design-Builder has delivered to Owner and Design Architect a detailed estimate of the Construction Cost based on the Schematic Design Documents, shall deliver a detailed estimate of the Construction Cost, referred to as the IGMP based on the completed Design Development Documents and Subcontractor bids and proposals within sixty (60) days after the date Design-Builder receives the completed Design Development Documents. Within one hundred and twenty (120) days after the date Design-Builder receives the completed Design Development Documents, Design-Builder shall deliver its proposed GMP based on the completed Design Development Documents and additional Subcontractor bids and proposals that have been reviewed and analyzed by Design-Builder since the issuance of the IGMP. During preparation of the IGMP, and subsequent GMP, Design-Builder shall reasonably update its estimate via a Budget Control Report of the Construction Costs as design requirements become more detailed, and shall keep Owner informed of any changes from Design-Builder's estimate of Construction Cost that was rendered for the Schematic Design Documents.

4.6.2 In preparing the Construction Cost estimates and any updates thereto, Design-Builder shall use recognized and accepted cost estimating techniques in the construction industry. After preparing the Construction Cost estimates and updates, Design-Builder, Owner and Design

Architect will meet to review the updates and to compare them against the Construction Cost Limitation contained within this Agreement. In the event Design-Builder's update exceeds the Construction Cost Limitation, Design-Builder, Owner and Design Architect will discuss what revisions, if any, have to be made to the documents so that Design-Builder and Owner can establish a mutually acceptable IGMP and GMP.

4.6.3 Owner shall cause Design Architect to deliver the Design Development Documents, the Prose Statement and other IGMP documents listed in **Exhibit F** not later than _____. Design-Builder shall prepare and deliver to Owner the proposed IGMP, the GMP and the GMP Qualifications and Assumptions for Owner's review and approval on or before the respective dates set forth in the Master Project Schedule.

4.6.4 Design-Builder shall review the Design Development drawings and specifications during their development by Design Architect. Design-Builder shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials and possible economies.

4.6.5 During the preparation of the IGMP and GMP and Design-Builder's Assumptions and Qualifications, Owner, Design Team and Design-Builder shall meet bi-weekly and Design Architect shall, at such meetings, notify Owner and Design-Builder of any material modifications in quantities or qualities or other material changes that impact the cost or time of construction from the Design Development Documents previously issued by Design Architect. If there are any such material modifications, then Design-Builder shall update its Construction Cost estimate via a Budget Control Report.

4.6.6 Following the establishment of the IGMP and the GMP, as applicable, and during the development of the Construction Drawings and Specifications, if any member of the Project Development Team becomes aware of any facts that would cause the IGMP to exceed the Construction Cost Limitation or the GMP to exceed the IGMP(as accepted), then they shall give prompt written notice to all other Project Development Team members.

4.7 IGMP and GMP Documents; Construction Cost Limitation; Contingency.

4.7.1 Prior to issuance of the Design Development Documents drawings and specifications, Design-Builder and Owner shall arrive at a mutually acceptable methodology for estimating costs to assure that the IGMP and the GMP do not exceed the amount allocated for Construction Cost in Owner's Project budget, which is $_____ (the "Construction Cost Limitation"). The Construction Cost Limitation constitutes the fixed limit of Construction Cost available for all Work. Neither the IGMP nor the GMP can exceed the Construction Cost Limitation, and, accordingly, the Project Development Team shall work in good faith to achieve an IGMP and a subsequent GMP that complies with the Construction Cost Limitation. To that end and to the extent necessary, Design-Builder and the Design Architect shall use their best efforts to propose to Owner Value Engineering and other cost saving alternatives to cause the IGMP and GMP to be within the Construction Cost Limitation.

4.7.2 On or before the date set forth in the Master Project Schedule and within sixty (60) days following receipt of the Design Development Documents, Design-Builder shall deliver, for Owner's review and approval, the IGMP. Design-Builder represents to Owner that the IGMP shall be based upon bids or proposals from Subcontractors representing not less than 75% of the value of all subcontracted Work. The following documents, which form the basis of the IGMP, shall be attached to the IGMP. In addition, the following documents as submitted with the IGMP shall also be revised and updated and resubmitted with the GMP:

4.7.2.1 The Schedule of Values including a statement of the estimated Cost of the Work organized by trade categories, Construction Contingency, Value Engineering, Design-Builder's Fee, and any other items that comprise the total IGMP;

4.7.2.2 A list of Allowances included in the IGMP, and subsequent GMP;

4.7.2.3 A list of the IGMP Drawings and Specifications, and subsequent GMP (which shall be at least the level of detail set forth in for Design Development Documents);

4.7.2.4 The Construction Schedule upon which the IGMP, and subsequent GMP, is based; and

4.7.2.5 A list of the qualifications and assumptions made by Design-Builder in preparing the IGMP, and subsequent GMP.

4.7.3 If the IGMP submitted by Design-Builder exceeds the Construction Cost Limitation and Owner does not approve the IGMP, then Owner shall communicate to Design-Builder the amount by which the IGMP must be reduced and the Design-Builder and Design Architect shall propose to Owner Value Engineering and other cost saving alternatives to cause the IGMP to meet the Construction Cost Limitation.

4.7.4 Within fourteen (14) days after Owner receives the either the proposed IGMP or the revised/updated GMP and the applicable IGMP or GMP Qualifications and Assumptions, Design-Builder, Owner and Design Architect (along with Design Architect's Consultants) shall meet to reconcile any questions, discrepancies or disagreements relating to the IGMP or GMP proposal, as applicable, the IGMP or GMP Qualifications and Assumptions, as applicable, the Design Development Documents (as updated with additional information)drawings and specifications and/or the Prose Statement. The reconciliation shall be documented by an addendum to the IGMP or GMP Qualifications and Assumptions, as applicable, which shall be approved in writing by Owner, Design Architect and Design-Builder. Within seven (7) days after parties approve the IGMP or GMP addendum (if any), as applicable, Design-Builder shall submit to Owner, for Owner's approval, Design-Builder's proposed final IGMP or GMP, as applicable, based upon the Design Development Documents drawings and specifications, the approved IGMP or GMP Qualifications and Assumptions, as applicable, and the Prose Statement. Contingent upon Owner's approval of either an IGMP or the final GMP, the parties will enter into the IGMP or GMP Amendment, as applicable. If Owner disapproves of the proposed final IGMP or GMP, then Owner may terminate this Agreement without cause pursuant to Article 11 hereof.

4.7.5 It is the intent of this Agreement that allowances, assumptions, and clarifications that could lead to change orders after the GMP is established be held to a minimum.

4.7.6 Design-Builder acknowledges that the Project design will be incomplete at the time the GMP is established, but that Design-Builder will have had sufficient involvement with the Project to understand the program requirements and Project scope as expressed in the Design Development Documents. As Design-Builder has experience in the design and construction of NFL stadia, Design-Builder acknowledges that the GMP Documents describe only general design intent, and that it is Design-Builder's responsibility to prepare, using properly licensed design professionals as required by California law, final Construction Drawings and Specifications for the Project that reflect the design intent and all other matters reasonably inferable from the GMP Documents. Design-Builder shall cause Design-Builder's Architect to accept the GMP Documents as adequately describing the design intent, the program requirements and Project scope as expressed in the Design Development Documents. The Construction Drawings and Specifications prepared by Design-Builder's Architect will include additional or more fully developed plans, sections or details not included in the Design Development Documents. Design-Builder will make no claim against Owner for an increase in the GMP based upon such additional or more fully developed plans, sections or details (subject to compliance of approval of additional information reasonably in agreement with the Design-Builder's GMP Assumptions and Qualifications) or based upon any new understanding of the GMP Documents developed by Design-Builder subsequent to the parties' execution of the GMP Amendment.

4.7.7 The GMP, once established by the parties' mutual execution of the GMP Amendment, shall be revised only upon the issuance of a properly authorized Change Order. The GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the GMP Amendment. The GMP shall include a separately detailed breakout of the Costs of Design-Builder's General Conditions Work.

4.7.8 The IGMP and GMP shall contain an initial Construction Contingency as set forth in Section 8.1.2 hereof.

ARTICLE 5

FINAL DESIGN AND CONSTRUCTION PHASE

5.1 Construction Drawings and Specifications.

5.1.1 Upon execution of the GMP Amendment, Design-Builder shall cause Design-Builder's Architect to produce and deliver Construction Drawings and Specifications to Owner for review and comment. Notwithstanding any review or comment by Owner, Design-Builder shall be solely responsible for all design and other elements of the Work.

5.1.2 The Construction Drawings and Specifications shall comply with all Applicable Laws and the design requirements set forth in the CEQA Findings, Development Permit and Required Mitigation Measures. To the extent there are changes to Applicable Laws enacted after the date of acceptance of the GMP Amendment that materially affect the Work and that were not,

consistent with Design-Builder's standard of care hereunder, reasonably foreseeable by Design-Builder, Design-Builder shall be entitled to a Change Order for costs incurred and/or impact on the Construction Schedule to comply with such changes in Applicable Laws pursuant to the provisions of Article 15. To the extent Design-Builder anticipates any changes in Applicable Laws, it shall identify such anticipated changes to Owner and the parties shall agree upon an appropriate cause of action depending upon the likelihood of the change and the then current stage of the design documents.

5.1.3 The Construction Drawings and Specifications shall consist of those drawings necessary to describe the size and character of the Project and its design, construction, materials, finishes, fixtures, structures, and mechanical and electrical systems, all in a manner consistent with the approved GMP Documents and the Construction Drawings and Specifications Criteria.

5.1.4 Design-Builder's obligation to provide specific products, systems or items of equipment, as required or referred to in the Contract Documents, shall include the provision of all customary ancillary devices necessary for the installation or operation of the equipment. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition at the time of execution of the GMP Amendment shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (a) they do not supersede more stringent standards set out in the Contract Documents and (b) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

5.1.5 Design-Builder shall develop and submit to Owner and Design-Builder's construction plan that will include: (a) the construction staging plan setting forth construction scheduling, lay down areas and storage, trailer areas, trailer locations, priorities as to site use, ingress/egress and other similar site logistic matters for the Project and (b) procedures for the assignment of responsibilities for safety precautions and programs (collectively, the "Construction Plan"). The safety program developed by Design-Builder shall incorporate the safety programs to be implemented under the OCIP or CCIP, as the case may be.

5.1.6 Owner shall review the Construction Drawings and Specifications for conformance with the design concept expressed in the GMP Documents. Regardless of whether Owner reviews drawings, specifications or other documents prepared by Design-Builder, Design-Builder shall make no change in nor omit any of the Work shown or reasonably implied in the GMP Documents, unless Owner shall approve in writing such change or omission.

5.1.7 Design-Builder shall submit partially completed Construction Drawings and Specifications (concurrent with the completion of the 3 Design packages scheduled to be submitted to the City of Santa Clara on the following dates: (a) Foundations and Structural Frame –_____; (b) Stadium Shell and MEP/FP Design –_____; and (c) Interiors Finishes and Specialty Items –_____) and, with respect to each Design Bid Package noted above, the 100% complete design package, for review by Owner. These submittal reviews shall not be the basis for a postponement of the time for completion of the Construction Drawings and Specifications. The Owner will have thirty (30) days to review the Design Package for compliance and comments, to enable the Design-Builder and Design Team to incorporate concerns into the Construction Documents.

5.1.8 Failure to review the Construction Drawings and Specifications by Owner shall not relieve Design-Builder of its obligation to prepare the Construction Drawings and Specifications properly and completely in accordance with the terms of the Contract Documents. Should Owner discover any error or omission in the Construction Drawings and Specifications, such error or omission shall be brought promptly to Design-Builder's attention. In such event, Design-Builder shall complete, correct and/or modify the Construction Drawings and Specifications in question and shall resubmit such Construction Drawings and Specifications to Owner with no change in the GMP. Design-Builder shall correct, complete and resubmit the Construction Drawings and Specifications in a timely fashion so as not to adversely impact the Construction Schedule, but there shall be no extension of the dates in the milestone dates of the Master Project Schedule.

5.1.9 Design-Builder's design and construction shall fully take into account the results of any and all tests and investigations so that the Project will be structurally stable, suitable for Owner's intended purposes, and in compliance with all Applicable Laws and the GMP Documents. Construction Agent has provided to Design-Builder true and complete copies of any soil tests, geotechnical exploration reports, foundation reports and environmental reports relating to the Project that were in Construction Agent's possession at the commencement of the "Programming and Planning" phase identified in Section 4.1 hereof. With respect to such reports or recommendations that may be commissioned by, or prepared for, Design-Builder, Design-Builder shall provide to Construction Agent true and complete copies of any such reports or recommendations as soon as possible after Design-Builder receives such tests, reports or recommendations.

5.1.10 Design-Builder shall be responsible to implement any building department changes or revisions to Applicable Laws affecting the Construction Drawings and Specifications. To the extent such changes or revisions result in a material increase in Design-Builder's scope of services, Design-Builder may submit a claim under Article 16.

5.1.11 Owner shall have the right, after reasonable prior notice, to enter Design-Builder's Architect's office at any time during business hours to observe its work in progress.

5.2 Subcontract Bidding.

5.2.1 Design-Builder shall verify that all separation of the Project into subcontracts with the various trades is done in accordance with all Applicable Laws. Design-Builder shall assure that the Construction Drawings and Specifications provide that (a) the Work of the separate Subcontractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate trade, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction. Design-Builder shall assure that the Work under all Subcontracts, when aggregated, will be complete and sufficient for the entire construction of the Project. With Owner's prior consent, to be exercised in Owner's sole discretion upon Design-Builder's presentation of the benefits to the Project, and in accordance with the Subcontractor Procurement Plan attached hereto as **Exhibit T** and Senate Bill 43, Design-Builder may, prior to establishing the GMP, subcontract with design-assist or design-build subcontractors.

5.2.2 Design-Builder shall implement and follow the terms and conditions of the Subcontractor Procurement Plan and shall actively develop Subcontractors' interest in the Project. Design-Builder shall use good faith efforts to use local Santa Clara and Silicon Valley/Northern California subcontractors and workers when practical. Design-Builder shall establish subcontracting schedules and furnish to Owner in writing a list of prospective Subcontractors for each scope of work package. All Subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades, subject to the provisions of the Subcontractor Procurement Plan. Prior to Design-Builder soliciting subcontractor interest from potential subcontractors, Owner shall promptly reply to Design-Builder, stating whether Owner rejects any proposed Subcontractor on the list. Design-Builder shall not request proposals from, or contract with, any proposed Subcontractor that Owner has for reasonable cause rejected. By accepting prospective Subcontractors pursuant to this Section 5.2.2, Owner does not acquire any responsibility for the selection of such Subcontractor or its qualifications. After Design-Builder and Owner have agreed upon an acceptable list of prospective Subcontractors, all Subcontracts shall be awarded in accordance with the Subcontractor Procurement Plan attached hereto as **Exhibit T**.

5.2.3 For any Subcontractors not enrolled in the contractor default insurance program and whose Subcontract is in excess of $100,000 (or such lower amount that the Design-Builder determines appropriate for the Subcontractor in its sole discretion), such Subcontractor shall be required to furnish and maintain a performance and payment bond in the full amount of its Subcontract. Such bonds shall name Owner and Design-Builder as co-obligees thereunder. The bonds will be in the form of **Exhibit H** attached hereto. The bonds shall be written through a surety company (a) authorized to do business in the State of California, (b) having a rating of not less than "A," and Class size of "XIII" in the latest version of Best's Insurance Guide, published by a.m. Best & Company, and (c) is listed by the United States Treasury Department as acceptable for bonding Federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between the Subcontractor and the bonding agent or agency. The performance bonds shall cover all warranties and guarantees applicable to the subcontracted Work.

5.2.4 Not less than two (2) days before the bid opening date for each trade package, Design-Builder's initial Schedule of Values submitted with the GMP Amendment shall be revised for each trade package to reflect the most current estimate of the Construction Cost for each trade package. If the preferred proposal for a particular trade package exceeds by more than 5% the most recent estimate of Construction Cost for such trade package, then such trade package shall be rebid, unless Owner and Design-Builder otherwise reasonably agree. If the Subcontract proposal is reasonably in agreement with the revised Schedule of Values for the Work, Design-Builder may elect to award the Work and charge the proposal overage against any previous "Gain in Bids" or, if no previous "Gain in Bids" exists, the Construction Contingency. Any rebid shall not be the basis for an increase in the GMP or adjustment to the Construction Schedule.

5.2.5 Design-Builder's Architect is excluded from the requirements of Sections 5.2.1 through 5.2.4.

5.2.6 Subcontracts shall be awarded on a lump sum or guaranteed maximum price basis and no Subcontract shall be awarded on the basis of cost, plus a fee or time and materials, without the

prior written consent of Owner. Design-Builder will cause each Subcontract to contain each of the following:

5.2.6.1 an agreement that Owner, Construction Agent and the City (if required) are third-party beneficiaries of the Subcontract, entitled to enforce any rights thereunder for its benefit, and that Owner, Construction Agent and the City (if required) shall have the same rights and remedies vis-à-vis such Subcontractors that Design-Builder shall have, including, without limitation, the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by Owner, Construction Agent or the City (if required) resulting from any breach of such Subcontract by the Subcontractor, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and any error, omission or negligence of such Subcontractor in the performance of any of its obligations under such Subcontract;

5.2.6.2 a provision that Owner may, at reasonable times, contact, but not direct the work of, the Subcontractor to discuss, or obtain a written report of, the Subcontractor's services; provided that in no event, prior to any assignment of the Subcontract to Owner, shall the Subcontractor take instructions directly from Owner;

5.2.6.3 a requirement that the Subcontractor promptly disclose to Owner, the City (if required by the City acting in its capacity as building inspection agency) and Design-Builder any defect, omission, error or deficiency in the Construction Documents or the Work of which it has knowledge;

5.2.6.4 a provision that permits Design-Builder's rights and duties under the Subcontract to be assigned, at the same price, to Owner or Owner's designee after termination of this Agreement upon written notice thereof given by Owner to both Design-Builder and the Subcontractor;

5.2.6.5 a provision requiring the Subcontractor to maintain insurance in accordance with the Contract Documents;

5.2.6.6 a provision that the Subcontract shall be terminable for default or for convenience upon ten (10) days' written notice by Design-Builder, or, if the Subcontract has been assigned to Owner, by Owner;

5.2.6.7 a provision that neither Design-Builder nor such Subcontractor shall have the right to require arbitration of any disputes in those cases where Owner (or its assignee) is a party, except at the sole election of Owner (or its assignee);

5.2.6.8 a provision that Subcontractor shall promptly notify Owner of any default of Design-Builder under the Subcontract, whether as to payment or otherwise;

5.2.6.9 a provision that the Subcontractor comply with and pass down to Sub-Subcontractors the requirements of the General Conditions;

5.2.6.10 a provision that the Subcontractor will comply with the confidentiality provisions of Section 2.6 hereof; and

5.2.6.11 a provision that Subcontractor shall comply with all of the City contracting requirements as set forth in Section 3.3 hereof.

5.3 Sponsor-Related Work.

5.3.1 Owner and the Construction Agent shall identify certain portions of the Work that will be privately funded by 49ers Stadium Company, the Team and/or its sponsors ("Sponsor-Related Work"). The Sponsor-Related Work may require use of particular vendors or subcontractors for portions of the Work, and Owner, the Construction Agent, the Team and Design-Builder will cooperate with one another to identify as early as reasonably practicable such vendors or subcontractors and other requirements with respect to the Sponsor-Related Work. Any contracts or purchase orders executed in connection with the Sponsor-Related Work may, at the option of Owner and the Construction Agent, be assigned to Design-Builder, and the Parties shall execute an appropriate Change Order setting forth any required changes to the Work and the Contract Sum to reflect the addition and or deletion of Work as a result of the Sponsor-Related Work. The Authority shall have no liability to Design-Builder for Sponsor-Related Work as 49ers Stadium Company shall be solely responsible for payment of Sponsor-Related Work. Contracts or Purchase Orders that are to be assigned to Design-Builder shall be compliant with the Project Labor Agreement and vendors or contractors working under these Contracts or Purchase Orders shall comply with the Project Labor Agreement.

5.3.2 Design-Builder, as part of its obligation to provide overall coordination of the various portions of the Work, is responsible for the scheduling and coordination of the Sponsor-Related Work. Design-Builder to have reasonable review and approval of all assigned Sponsor-Related Work including, but not limited to, scope of work, plans and specifications, contract documents and agreements, including the compliance with the Project Labor Agreement. Design-Builder waives any Claim it may have against Owner, Construction Agent, 49ers Stadium Company, or the Team (a) relating to the Work to the extent that such Claim is based on a default or other unexcused failure on the part of Design-Builder to perform, schedule or coordinate the Sponsor-Related Work in accordance with the Contract Documents and (b) relating to the Sponsor-Related Work to the extent that such Claim is based on a default or other unexcused failure on the part of Design-Builder to perform, schedule or coordinate the Work in accordance with the Contract Documents.

5.4 Self-Performed Work.

5.4.1 To the extent permitted by Applicable Laws, Design-Builder or its Affiliates shall be permitted to propose on the categories of Self-Performed Work only. Design-Builder or its Affiliates shall be permitted to submit a sealed proposal for such Self-Performed Work pursuant to the competitive proposal procedures applicable to all subcontractors as described on **Exhibit T** attached hereto and made a part hereof; provided, however, that Design-Builder or its Affiliates must submit its proposal for Self-Performed Work one (1) day before the deadline for other subcontractors to submit their proposals. In such instance, the opening, review and advice with respect to award and/or rejection of such proposals shall be managed by Owner. In such instances, the following requirements shall also apply: (a) if Design-Builder or its Affiliates desire to propose on Self-Performed Work, then Design-Builder or its Affiliates shall review such Work (including the subcontracting packaging plan) with Owner prior to finalizing the

subcontracting package; (b) there shall be a strict separation of the personnel involved with subcontracting the Self-Performed Work and Design-Builder's other personnel involved in the Project, and Design-Builder shall, by written policy distributed to all affected personnel (a copy of which shall be distributed to Owner), strictly prohibit any communication prior to subcontracting award among personnel involved with the estimating, subcontracting, management or other services in connection with the Self-Performed Work and personnel working on other aspects of this Project pursuant to this Agreement (other than such communication as is permitted by all subcontractors); (c) if less than two other proposals from responsible subcontractors are submitted for Self-Performed Work, Owner, at its option, may disqualify Design-Builder or its Affiliates from award of the Self-Performed Work and, in Owner's discretion, may cause the subcontracting package to be re-proposed on; (d) Design-Builder shall not participate in the analysis and/or recommendations with respect to the award of the Subcontract for any Self-Performed Work, and all inquiries shall be forwarded to Owner; (e) Design-Builder shall not be permitted to use Construction Contingency for Self-Performed Work; (f) Design-Builder or its Affiliates shall not, in its proposal, use any of the General Conditions Work to support the Self-Performed Work or use the General Conditions Work for Self-Performed Work on any terms or conditions different from the terms or conditions on which such General Conditions Work are made available to all other subcontractors; and (g) the solicitation for proposals on Self-Performed Work shall specifically state that Design-Builder or its Affiliates shall have the right to submit a sealed proposal on Self-Performed Work.

5.4.2 If the foregoing procedures are not strictly followed, then Owner shall have the right to reject the proposal of Design-Builder or its Affiliates for Self-Performed Work. In addition, if the proposal by Design-Builder or its Affiliates for any Self-Performed Work is higher than the most recent estimate of the Cost of the Work for such Self-Performed Work, as of the day before the applicable proposal opening, then Owner shall have the right to reject Design-Builder's or its Affiliates' proposal. Any rejection of a proposal or required re-proposal under this Section shall not be the basis for an increase in the GMP or adjustment to the Project Schedule.

5.5 Assignment of Subcontracts.

5.5.1 Design-Builder hereby conditionally grants, transfers and assigns to Owner all the rights, title and interest of Design-Builder in, to and under any and all Subcontracts, which are now or hereafter entered into by Design-Builder in connection with the performance of the Work. The foregoing assignment shall be exercisable by Owner, at its election, in the event that Owner has exercised its right to terminate this Agreement in whole or in part or to take control of, or cause control to be taken of, the Work, or any portion thereof, provided that Owner pays Design-Builder for all undisputed amounts due under this Agreement for Work performed in accordance with the Contract Documents. Owner may reassign the Subcontracts to another design-builder, general contractor or any other person or entity, and such assignee may exercise Owner's rights in the Subcontracts. If Owner accepts assignment of Subcontracts, then Owner shall indemnify Design-Builder against any and all claims of Subcontractors that arise after the date of assignment.

5.5.2 Design-Builder agrees that each Subcontract entered into by Design-Builder in connection with the Work shall contain the consent of each Subcontractor to the foregoing assignment and the agreement of each such Subcontractor that, upon written notice from Owner

and the exercise by Owner of its rights under this Agreement or portion thereof applicable to the materials, equipment or services being furnished by such Subcontractor, such Subcontractor, as so requested by Owner, shall continue to perform all of such party's obligations, covenants and agreements under Subcontractor's Subcontract with Design-Builder for the benefit of Owner.

5.6 Project Labor Agreement.

5.6.1 Design-Builder shall enter into a Project Labor Agreement with Building and Construction Trades Councils of Santa Clara County and its Affiliates to govern labor relations for the Project and for purposes of establishing binding rules and methods for the efficient employment of workers and assignment of work, and the prompt settlement of all misunderstandings, disputes, grievances and jurisdictional problems that might arise during construction of the Project in order to ensure uninterrupted operations and maintenance of harmonious and peaceful labor relations for all parties to this Agreement. Such agreement, if any, shall be in a form and substance reasonably satisfactory to Construction Agent and Design-Builder shall follow and enforce the terms and conditions of such Project Labor Agreement (as the same may be modified and amended from time to time) for the benefit of the Project.

5.7 Meetings; Reports; Schedule Updates.

5.7.1 Design-Builder shall schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Design-Builder shall hold progress and coordination meetings with Owner at least bi-weekly throughout the construction period. Design-Builder shall have, at a minimum, monthly meetings with selected Subcontractors to review the following with each Subcontractor (as applicable): (a) actual construction progress as compared against Subcontractor's schedule, (b) status of major components of Subcontractor's Work, (c) progress made on critical activities of Subcontractor's Work, (d) explanation for any lack of work on any critical path items, (e) explanation of critical path activities to be performed in the subsequent thirty (30) to sixty (60)-day period, (f) status of major Materials and Equipment procurements, (g) explanation for any delays during the reporting period, (h) Subcontractor's current construction schedule, (i) design issues and progress, (j) permit processing issues and progress, (k) safety issues, and (l) quality control, testing and inspection issues. Design-Builder shall prepare and promptly distribute minutes of all meetings to Owner and to all other persons in attendance. Owner will be notified in writing sufficiently in advance and may, at its option, attend any meetings.

5.7.2 Design-Builder shall update and distribute, on a monthly basis, the Master Project Schedule and Construction Schedule incorporating the activities of Subcontractors and Sub-subcontractors on the Project, including processing of Shop Drawings and similar required Submittals and delivery of products requiring long lead time procurement and showing current conditions and revisions required by actual experience. Design-Builder shall include the Project occupancy requirements showing portions of the Project having occupancy priority, as directed by Owner. Design-Builder recognizes and acknowledges that Owner is relying on Design-Builder's experience and capabilities in the area of building construction. Furthermore, Owner will be providing certain components of the building in the form of furniture, fixtures, equipment and other items as determined by Owner that are not a part of the Work under this Agreement. Design-Builder agrees to use its considerable experience and expertise in advising Owner as to

appropriate ordering and delivery times, procurement sources and installations times. Design-Builder further agrees, as a part of its scheduling responsibilities, to include and incorporate any such Owner-furnished activities as a part of any and all of Design-Builder's schedules.

5.7.3 Design-Builder shall maintain the progress of all Work in accordance with the currently approved Construction Schedule. If at any time the Work is not proceeding in accordance with the critical path of the Construction Schedule, Owner shall have the right to require Design-Builder to take such measures and/or adopt such methods as may be necessary in Owner's opinion (including ordering Design-Builder to work overtime or extra shifts)to maintain adherence to the Construction Schedule, without any increase to the GMP; however, failure of Owner to require Design-Builder to take such measures shall not relieve Design-Builder of its obligations to adhere to the Construction Schedule.

5.7.4 Design-Builder shall submit to Owner a form of the monthly Project Report for use on the Project for Owner's review, comment and acceptance. Upon acceptance by Owner, the form of monthly Project Report shall establish the standard for detail required for the remainder of the Project. At a minimum, the monthly Project Report will contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Master Project Schedule and Construction Schedule; (d) progress photos (aerial and ground); (e) an executive summary; (f) a discussion of pending items and existing or anticipated problems, status of RFIs; (g) a safety and accident report; (h) information on each Subcontractor and each Subcontractor's work as well as the entire Project, showing percentages of completion and the number and amounts of Change Orders and relating such information to the Construction Schedule and the GMP; (i) a list of all Identified Claims, any threatened Claims and issues that, in the reasonable judgment of Design-Builder, may potentially become Claims; (j) status of Construction Contingency; and (k) such other relevant information as may be required by Owner from time to time. The Project Report shall be indexed, bound and tabulated in a manner acceptable to Owner. The Project Report shall be delivered by the 15th day of each month. Delivery of the Project Report shall be a condition precedent to payment of the next Application for Payment.

5.7.5 Design-Builder shall keep a daily log containing a record of weather, Subcontractor's Work on the Site, number of workers, Work accomplished, problems encountered, and other similar relevant data as Owner may require. This log shall be available to Owner at the jobsite and shall be distributed each day to Owner. Contractor shall each day enter the number of workers at the Project Site, classified by subcontract, into a spreadsheet in a format acceptable to Owner, and shall provide an updated, electronic copy of such spreadsheet weekly. The manpower data entered into the spreadsheet shall be current within one week of the weekly date of publication.

5.7.6 Design-Builder's Architect shall observe the Work and shall maintain an ongoing log of non-conforming Work and problematic Work that has been installed. The log shall record any items that have been noted as non-conforming by Governmental Authorities or Owner. Such log shall be continuously available and shall be included in Design-Builder's monthly Project Report.

5.7.7 Design-Builder shall maintain a log of (1) recordable OSHA incidents and (2) recordable lost-time accidents comparing the project's trade-by-trade experience to OSHA trade-by-trade

experience rates for California, all in a format that is acceptable to Owner. Such log shall be continuously available to Owner. If any Subcontractor obtains a monthly accident rate that exceeds the national average for that particular trade, Design-Builder shall promptly take measures to assure that such conduct (or the conditions causing such conduct) is abated and to notify Owner of the measures taken.

5.7.8 Prior to commencement of construction, Design-Builder shall prepare a quality control matrix, in a format approved by Owner, based upon the requirements of the Construction Drawings and Specifications and Applicable Laws and listing all testing, inspections and submittals relating to the Work with specific reference to the source of the requirement. Such matrix shall be updated as appropriate during the course of the Project. The maintenance of such matrix shall be part of Design-Builder's duties in connection with implementing the QM/QA Plan referenced in Section 5.10 hereof.

5.8 Construction.

5.8.1 Design-Builder shall develop and submit to Owner the Construction Plan not later than sixty (60) days prior to commencement of construction. The Construction Plan shall incorporate the requirements set forth in the CEQA Findings, Development Permit and Required Mitigation Measures.

5.8.2 Design-Builder, with the assistance of Owner, if required, shall assure that any required notices of commencement are properly filed before construction commences.

5.8.3 Design-Builder shall cause the Work to be performed in accordance with the requirements of the Contract Documents and all Applicable Laws. Design-Builder shall protect Owner against defects and deficiencies in the Work. Design-Builder shall perform all duties and services of the "Contractor" required under the General Conditions of Construction.

5.8.4 Design-Builder shall provide and update the schedules and reports required pursuant to Section 5.7 hereof. Design-Builder shall provide administrative, management and related services as required to coordinate, supervise and direct the performance of the Work by all Subcontractors with each other and with the activities and responsibilities of Owner to complete the Project in accordance with the Contract Documents. Design-Builder shall be responsible for implementing the Construction Plan. Design-Builder shall coordinate all aspects of the Project with all Governmental Authorities. Design-Builder shall be responsible for timely notification to, and coordination with, all utility companies in connection with all utility services to be provided to the Project. Design-Builder shall inform Owner at once when Owner's participation is required. Connections for utilities required for the Work are the responsibility of Design-Builder to the extent set forth in the GMP Documents.

5.8.5 Design-Builder shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. Design-Builder shall take all steps necessary and appropriate to enforce agreements with Subcontractors and Sub-subcontractors for the benefit of Owner. Design-Builder shall be responsible to Owner for acts and omissions of Design-Builder's employees, Subcontractors and their agents and employees, including, without limitation, Design-Builder's Architect and its agents and employees. Owner shall have the right

to communicate with, but not direct, any Subcontractors, Design Architect and Design-Builder's consultants and their respective employees. Owner shall at all times have complete access to all work product, files, communications, meeting minutes, telephone logs or websites relating to the Project, whether produced or created by Design-Builder, Design-Builder's Architect or any of their respective consultants or subcontractors.

5.8.6 Design-Builder shall promptly notify Owner of any default or potential default of a Subcontractor (including without limitation, its inability to maintain its schedule) and shall consult with Owner regarding available courses of action when the non-performing party will not take satisfactory corrective action. Design-Builder shall develop a system to allow Owner to identify potential problems that could result in change orders or claims by Subcontractors, and shall make recommendations for avoidance of claims and change orders.

5.8.7 Design-Builder shall provide and/or supervise the General Conditions Work. Design-Builder shall provide and maintain, in good order, office and conference space for the exclusive use of Owner and Construction Agent's Project Representative. Such space shall be in separate trailers immediately adjacent to Design-Builder's project trailer and shall conform to the following minimum specifications: at least 24' x 60' of air conditioned and heated office space, four private offices and restrooms, identifying signage, utility connections, sufficient furniture, drinking water, telephone, copying facilities, internet connections, janitorial services and security. The standard of the office area will be the same as that used by Design-Builder's on-site staff. Design-Builder shall provide copying services for Owner at the Project Site for incidental copying of Project documents. All of the foregoing shall be provided as a Cost of the Work, and not as an additional charge to Owner.

5.8.8 Design-Builder shall provide reasonable protection to prevent damage, injury or loss to (1) employees and other persons who may be affected by construction activities at the Project Site; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the Project Site, such as walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Design-Builder has overall responsibility for Project safety and shall implement the safety and fire prevention program on the Project developed by Design-Builder and the administrator of the OCIP as part of the Construction Plan and shall require all Subcontractors and Sub-subcontractors to adhere to such program. Design-Builder shall, with the OCIP administrator, review the safety programs of each of the Subcontractors and Sub-subcontractors and make appropriate recommendations regarding their implementation. As between Owner and Design-Builder, Design-Builder is responsible to Owner for any and all the safety issues relating to the Work on the Project. Design-Builder shall administer and manage the safety program. This will include, but not necessarily be limited to, review of the safety programs of each Subcontractor. Design-Builder shall monitor the establishment and execution of effective safety practices known to the industry, as applicable to Work on the Project, and the compliance with all applicable regulatory and advisory agency construction safety standards. Design-Builder's responsibility for review, monitoring and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractor's safety programs; notwithstanding Design-Builder's safety obligations to Owner, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its

own work and the activities of others' work in areas designated to be controlled by such Subcontractors.

5.8.9 Design-Builder shall be responsible to Owner for the adequacy of all construction means, methods, techniques and procedures employed in the performance of the Work, and for coordinating all portions of the Work. Design-Builder shall assure that the construction operations comply with the restrictions and requirements set forth in the CEQA Findings, Development Permit and Required Mitigation Measures and Applicable Laws.

5.8.10 Design-Builder shall keep the Project Site and surrounding areas free from accumulation of waste materials or rubbish caused by Design-Builder's operations. At the completion of the Work, Design-Builder shall remove from and about the Project Site and surrounding areas Design-Builder's tools, construction equipment, machinery, surplus materials, waste materials and rubbish. Design-Builder shall implement daily Site cleaning.

5.8.11 Design-Builder shall prepare, obtain and pay applicable fees (if any) for the general building permit and all necessary permits and approvals from authorities having jurisdiction over the Project.

5.8.12 Design-Builder shall coordinate all testing provided by others as required by the technical sections of the Specifications and/or Applicable Laws. Design-Builder shall keep an accurate record of all tests, inspections conducted, findings, and test reports.

5.8.13 Design-Builder shall develop, in conjunction with Owner, procedures acceptable to Owner for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes and Change Orders. Design-Builder shall cooperate with Owner to develop an "online" system to be used by Design-Builder and Owner to facilitate quick and accurate communications and to provide for an up-to-date submittal log accessible to the Project Development Team, which system shall be the ProLog Project Management software or such other system as approved by Owner. All requests for information by Design-Builder shall be submitted to Owner in good faith and shall contain Design-Builder's proposed solution to the request.

5.8.14 Design-Builder shall receive from each Subcontractor, review for conformance, approve or take other appropriate action and submit to Design-Builder's Architect for approval or "approval as noted" together with copies to Owner, such Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals as set forth in a submittal schedule agreed to by the parties. Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Owner's review thereof. Design-Builder (including Design-Builder's Architect and its consultants) shall stamp or take such other appropriate action with respect to all Shop Drawings, Product Data, Samples and other submittals to verify the review, approval or other action thereon. Design-Builder's stamp shall constitute its verification that the submitted item conforms with the Construction Drawings and Specifications and is coordinated with other related Work. In collaboration with Owner, Design-Builder shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples, mockups and other submittals, but in no event shall the time period for Owner's turn-around of a single submittal exceed seven (7) days after submittal,

except as may be otherwise agreed to by the parties in the submittal schedule. Owner's review of submittals by Design-Builder shall be limited to review of an initial submittal and two re-submittals for conformance with the design concepts expressed in the Construction Drawings and Specification. Design-Builder shall pay (without any increase in the GMP) for the reasonable costs and expenses incurred by Owner in connection with any re-submittals beyond the initial submittal and two re-submittals, including, without limitation, compensating Owner for additional services of its consultants rendered in connection with reviewing such re-submittals. Design-Builder shall provide informational copies of all submittals to Owner and other parties designated by Owner.

5.8.15 Design-Builder shall maintain at the Project Site (or such other place as approved by Owner), on a current basis: A record copy of all contracts (including this Agreement and all Subcontracts), Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; As-Built Drawings; the most recent Master Project Schedule and Construction Schedule; applicable handbooks; maintenance and operating manuals and instructions; all reports, meeting minutes and logs required in Section 5.7 hereof and other related documents that arise out of the contracts or the Work. The foregoing shall be organized and maintained using a comprehensive and understandable filing system. Design-Builder shall maintain a current roster of all Subcontractors who have or are working on the Project with names and telephone numbers of key personnel and shall deliver this list to Owner monthly. Design-Builder shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations. Design-Builder shall make all records available to Owner at all times. At the completion of the Project, Design-Builder shall deliver to Owner a reproducible set of As-Built Drawings, which shall be provided in hard copy. In addition, the Design-Builder shall provide an electronic copy of any Building Information Model/CADD documents (if any) and in an electronic format in such version of CADD as agreed to by Owner and Design-Builder.

5.8.16 Design-Builder shall perform comprehensive surveys of the concrete and steel components of the Project Structure verifying, to Owner's satisfaction that the structure has been built in complete conformance with all dimensional requirements of the Contract Documents and Applicable Laws.

5.8.17 Design-Builder shall arrange for delivery and on-site storage (in a commercially reasonable manner), protection and security for Owner-furnished/contractor-installed materials, systems and equipment identified in the GMP Documents. Off-site storage of Owner-furnished materials, systems and equipment shall be Owner's responsibility.

5.8.18 When Design-Builder considers the Work or a designated portion thereof substantially complete, Design-Builder shall prepare a draft of the Punch List for review and approval by Owner. The Punch List will be complete, detailed and thorough, and in a form and level of detail approved by Owner. Design-Builder shall promptly complete, or have completed, all items of incomplete Work and perform, or have performed, any corrective Work as required by the Punch List.

5.8.18.1 Design-Builder shall develop in conjunction with Owner a schedule setting forth anticipated dates for inspections of various portions of the Work by Owner in order to determine

Substantial Completion and Final Completion of the Work or designated portions thereof. It is anticipated that Owner shall make an initial visit and one re-inspection for each area of the Work designated on the schedule developed by Design-Builder and Owner. If, after making such re-inspections, Owner determines that the Work or such portion thereof is not substantially complete or finally complete (as the case may be) or that previously scheduled Punch List has not been completed, then Design-Builder shall pay (without any increase in the GMP) for the reasonable costs and expenses incurred by Owner in connection with any such additional inspections, including, without limitation, compensating Owner for additional services of its consultants rendered in connection with the performance of such additional inspections, to the extent such consultant expended more time for such inspections than initially budgeted and/or scheduled.

5.9 Testing.

5.9.1 Owner shall engage the services of an independent testing agency to verify compliance with the Applicable Laws and the testing requirements contained in the Contract Documents. The activities of Owner's testing laboratories are solely at the discretion of Owner and in no way shall relieve Design-Builder for maintaining the quality assurance control program required by Section 5.10 hereof. Owner's testing laboratories will perform independent inspections and tests, interpret and evaluate the results of such tests for compliance with the Contract Documents, record observations and submit reports. Design-Builder shall, regardless of whether such testing and inspection services are performed at the expense of Owner or Design-Builder, be responsible to:

5.9.1.1 notify Owner's testing laboratories and Owner at least two (2) days before installing Work to be tested;
5.9.1.2 furnish incidental or casual labor and facilities (*e.g.*, personnel hoisting) at the Site necessary to facilitate Owner's testing;
5.9.1.3 furnish samples and provide access to all materials and component parts of the Work as required for testing;
5.9.1.4 furnish storage facilities for the material test samples; and
5.9.1.5 furnish full and ample means of assistance for monitoring Design-Builder's quality assurance control program.

5.9.2 Design-Builder shall coordinate the activities of all entities conducting tests and shall cooperate fully with such agencies to facilitate all tests and inspections.

5.9.3 Testing by Owner shall be at Owner's cost and expense. If any test by Owner indicates Defective Work and Design-Builder disagrees with Owner's conclusions based on Owner's test, Owner shall have the right to require additional testing of the part of the Work in question. Such additional tests shall be paid for by Owner in the event such additional tests prove that no Defective Work exists. However, should such additional tests indicate Defective Work, Design-Builder shall, without adjustment to the GMP: (a) correct the Defective Work in accordance with the provisions of the Contract Documents and (b) pay all costs related to such additional tests.

5.9.4 When deemed necessary by Owner, and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Design-Builder shall furnish proof of conformance to Owner. Proof of conformance shall be in the form of (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standard or (3) such further reasonable proof as is required by Owner.

5.10 Quality Management.

5.10.1 Design-Builder shall develop and implement a comprehensive Construction Quality Management and Assurance Plan (the "QM/QA Plan"). The goal of the QM/QA Plan shall be to ensure that construction of the Work is in accordance with the requirements of the Contract Documents. The QM/QA Plan shall also ensure that appropriate procedures are implemented to verify and document compliance with the Contract Documents. The QM/QA Plan shall include, but shall not be limited to, the following: (a) allocation of quality control and assurance responsibilities to the various participants in the Project; (b) an inspection and testing plan for each critical component of the Work; (c) field monitoring and inspection reports, documenting the results of inspection; (d) audit plan to audit Subcontractor's quality control and assurance efforts; (e) identification and reporting procedures for non-conforming Work; and (f) tracking system to monitor correction of non-conforming Work.

5.10.2 As part of the QM/QA Plan, Design-Builder shall review the Work of Subcontractors to determine if the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and to determine if there are any defects and deficiencies in the Work. Design-Builder shall promptly bring all such defects and deficiencies to the attention of the applicable Subcontractor and Owner. Communications between Design-Builder and Subcontractors with regard to quality management and assurance shall not in any way be construed as releasing Design-Builder or its Subcontractors from performing their Work in accordance with the terms of the Contract Documents.

5.11 Substitutions.

5.11.1 When a particular manufacturer's product or process is specified for an item of Work, no substitution shall be made, and any substitution is unacceptable except as provided herein. However, if, in the judgment of Design-Builder, one of the conditions enumerated below exists with respect to any item so specified, Design-Builder may offer for Owner's consideration a substitute product or process other than that specified in the Contract Documents that completely fulfills the requirements of the Contract Documents ("Substitution"). Substitutions will only be considered if Design-Builder submits a written request to Owner and only under the following circumstances:

5.11.1.1 When the specified product or process is discontinued and not available from the manufacturer or supplier; and
5.11.1.2 When such Substitution, in the opinion of Owner, is otherwise in the best interests of Owner.

5.11.2 Requests for Substitutions of products or processes other than those specified in the Contract Documents shall be timely, fully documented in writing and will be accompanied by evidence about the proposed Substitution including: (a) quality and serviceability of the specified item; (b) changes in details and construction of related work; (c) design and artistic effect; and (d) any impact of the proposed substitution on the Project schedule or costs or cost of maintenance or expected service life. Each request for Substitution shall be accompanied by complete descriptive literature and performance data upon both the specified item and the proposed Substitution, plus any samples required by Owner. Design-Builder's submission of a request for Substitution shall be deemed its representation that the Substitution meets or exceeds the standards and qualities of the specified item being substituted (including, without limitation, scope and length of warranty or guaranty periods). Adjustments to the GMP, if any, shall be described in an accompanying request for a Change Order. Design-Builder shall furnish with its request such drawings, specifications, samples, performance data and other information as required to assist Owner in making its decision.

5.12 Use of Hazardous Materials.

5.12.1 Design-Builder shall not use, in connection with the Work, any Hazardous Materials in such manner as would violate any Applicable Laws or cause liability to Owner. The foregoing shall not be deemed to prohibit Design-Builder from using in the Work any item specified by name in the Construction Documents so long as such item is handled and used in accordance with all Applicable Laws.

5.13 Soils Management/Stormwater Management Plans.

5.13.1 Design-Builder shall comply with the applicable Soils Management Plan, the applicable Stormwater Management Plan for the Project and all items included in the CEQA Findings, Development Permit and Required Mitigation Measures.

5.14 Adjacent Property/Ongoing Operations.

5.14.1 Design-Builder shall provide reasonable protection to prevent damage, injury or loss to (1) employees and other persons who may be affected by construction activities at the Project Site; (2) the Work and materials and equipment to be incorporated therein; and (3) the Adjacent Property. Design-Builder further acknowledges and agrees that modifications or disruptions to the Work arising from ongoing operations at the Adjacent Property will be considered in preparing the Master Project Schedule and the overall management and coordination of the Work. Design-Builder shall manage and coordinate Subcontractors in order that the continued operations of the Adjacent Property do not become the basis for claims for damages or time extensions. Without limiting the generality of the foregoing, Design-Builder agrees as follows:

5.14.1.1 To use only those entrances or routes for the transportation of materials and access of workers to the Project Site and to otherwise comply with a comprehensive transportation management plan, all as jointly determined by Owner and Design-Builder prior to commencement of construction. Design-Builder acknowledges that some portions of the transportation management plan may be requirements of the City or other Governmental Authorities and Design-Builder agrees to abide by any such requirements;

5.14.1.2 To take customary construction precautions and erect such partitions, barricades, fencing, walkways and other devices and other installations as are reasonably necessary to separate areas where the Work is being performed from areas being used by respective patrons, tenants, employees, guests, licensees and invitees of the Team and owners of the Adjacent Property;

5.14.1.3 To cause, if required by the transportation management plan, or other governmental requirements, its employees and the employees of the Subcontractors and suppliers to park offsite; and

5.14.1.4 To coordinate, supervise and schedule all construction activities in accordance with this Agreement and the Contract Documents, including service interruptions, in advance and with the approval of Owner.

5.15 Checkout of Utilities; Training of Operating Personnel.

5.15.1 With Owner's maintenance personnel, Design-Builder shall coordinate, schedule and observe the checkout of utilities, operations of systems and equipment for readiness and the initial start-up, calibration and trial testing of such systems by the applicable Subcontractors, and suggested preventative maintenance logs. Design-Builder shall make certain that the applicable Subcontractor coordinate the training of Owner's maintenance personnel in accordance with the Contract Documents. During the first three events held in the stadium, Design-Builder shall have appropriate personnel "on call" to deal with major systems.

ARTICLE 6

TIME

6.1 Time is of the Essence.

6.1.1 Time is of the essence of this Agreement. Design-Builder shall cause the Work to meet the milestone dates and the dates for Substantial Completion and Final Completion set forth in the Master Project Schedule, as those dates may be amended from time to time pursuant to the terms of this Agreement. Milestone dates and Substantial Completion date established and shown in Master Project Schedule shall not be altered except in accordance with the terms of this Agreement.

6.1.2 Phased beneficial occupancy dates shall be established through mutual agreement between Owner and Design-Builder, and shall include areas such as, but not limited to: the ticket sales area, kitchen and commissary area, grounds keeping area, operations offices and locker facilities, and other similar areas in which beneficial occupancy would benefit Owner in gaining access to and training staff or serving patrons.

6.1.3 Owner shall provide Design-Builder a written notice to proceed and unencumbered access to the Project Site for commencement of construction on or before, but no later than _____. If Owner provides such written notice to proceed after _____, then Design-Builder shall have a day for day extension of the Guaranteed Substantial Completion Date described in Section 6.1.4.

6.1.4 The Guaranteed Substantial Completion Date for the Project shall be scheduled to occur not later than _____, unless such date is extended as set forth in Section 6.1.3, as that date may be amended from time to time pursuant to the terms of this Agreement.

6.1.5 Owner shall cause the Team to request, to the extent reasonably practicable, from the NFL that the first regular season home game of the Team's 2014 NFL Season not be scheduled prior to September _____.

6.2 Delay Liquidated Damages.

6.2.1 If the date of Substantial Completion of the Work occurs after the Guaranteed Substantial Completion Date (as such date may be extended pursuant to Section 6.1.3), then Design-Builder shall pay to Owner (by direct payment or offset from the Contract Sum) the following amounts: (a) $_____ for each San Francisco 49ers NFL regular season home game originally scheduled by the NFL that is not played because (i) a temporary certificate of occupancy has not been issued by the appropriate Governmental Authorities or (ii) to the extent applicable, the NFL has not given permission, in compliance with NFL facility standards, for playing NFL football at the Project (provided that liquidated damages will not be assessed if either of the determinations under the foregoing clauses (i) or (ii) are withheld for reasons unrelated to Design-Builder's performance of the Work or its duties under the Contract Documents); and (b) following the first San Francisco 49ers NFL Game, if the Design-Builder has not achieved Substantial Completion by that date, $_____ per day for each day after the first San Francisco 49ers NFL Game through and including the date when Substantial Completion of the Work actually occurs. All liquidated damages referenced in this Section 6.2.1 are collectively referred to herein as the "Delay Liquidated Damages." The Delay Liquidated Damages shall be payable upon demand at the time they accrue.

6.2.2 The Delay Liquidated Damages commence on the day after the Guaranteed Substantial Completion Date and shall accumulate until the date that Substantial Completion of the Work is achieved. The parties acknowledge and agree that because of the unique nature of the Project and the expense involved in playing in a substitute facility, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Design-Builder's failure to achieve Substantial Completion. It is understood and agreed by the parties that: (a) Owner shall be damaged by failure of Design-Builder to meet such obligations; (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (c) any sums that would be payable under Section 6.2.1 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and (d) such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any failure by Design-Builder to achieve Substantial Completion on or before the applicable Substantial Completion Date. The Delay Liquidated Damages are intended only to cover damages suffered by Owner as a result of delay and shall not be deemed to cover the cost of completion of the Work or damages resulting from Defective Work.

6.2.3 Notwithstanding anything in the Contract Documents to the contrary, the maximum amount of the cumulative Delay Liquidated Damages payable by Design-Builder under the Contract Documents shall not exceed _____ Dollars ($_____); provided,

however, that there shall be no maximum amount or overall cap on Delay Liquidated Damages if (a) Design-Builder abandons the Project or otherwise fails to use commercially reasonable efforts to prosecute the Work to Substantial Completion, and (b) Design-Builder's surety has failed to commence commercially reasonable efforts to prosecute the Work to Substantial Completion within ten (10) days after having been given notice of Design-Builder's abandonment or failure to prosecute the Work.

6.2.4 Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

6.2.4.1 damages (other than the Delay Liquidated Damages) incurred by Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

6.2.4.2 damages incurred by Design-Builder for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

6.3 Extensions of Time.

6.3.1 If the performance by Design-Builder of any obligation hereunder shall be delayed because of (a) events of Force Majeure, (b) by an act or neglect of Owner or any separate contractor employed by Owner, (c) by changes ordered in the Work or (d) by unforeseen conditions or unavoidable casualties beyond the control of Design-Builder, Subcontractors, Sub-Subcontractors or any other person or entity for whose acts they may responsible, then the time for the performance thereof (and, if applicable, the Guaranteed Substantial Completion Date) shall be extended as provided in this Agreement, provided that in each instance the conditions and requirements set forth in Article 15 are satisfied. No extension of time shall be granted to Design-Builder unless the delay affects the critical path of the Project and then only to the extent that the delay affects the critical path unless Design-Builder can demonstrate a greater impact to the Construction Schedule. No extension of time shall be granted for delays on account of, or resulting from, weather conditions unless Design-Builder demonstrates, by the presentation of statistical data, that such conditions were extraordinary for the period in question when comparing such to the weather of the past five (5) years as set forth in the U.S. National Oceanic and Atmosphere records for Santa Clara, California. Design-Builder shall not be granted any time extension due to Design-Builder's financial inability to perform.

6.4 Remedies for Failure to Prosecute Work.

6.4.1 If, in the reasonable judgment of Owner, Design-Builder shall (a) fail, refuse or neglect to supply a sufficiency of workers or to deliver the Materials or Equipment with such promptness as to prevent the delay in the progress of the Work, (b) fail in any respect to commence and diligently prosecute the Work and proceed to the point to which Design-Builder shall proceed in accordance with the Construction Schedule in order to achieve Substantial Completion in accordance with the Construction Schedule, (c) fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as herein specified in accordance with the Construction Schedule or (d) fail in the performance of any of the material covenants of the

Contract Documents, Owner shall have the right to direct Design-Builder to accelerate the Work to comply with the Construction Schedule, including, without limitation, providing additional labor or expediting deliveries of Materials, performing overtime, additional shifts or re-sequencing the Work without adjustment to the GMP. Owner shall, after having provided Design-Builder written notice and a reasonable opportunity to cure, and without waiving any other rights or remedies, have the right to withhold progress payments and supplement Design-Builder's forces with separate contractors and/or to seek other redress for Design-Builder's default.

ARTICLE 7

OWNER'S RESPONSIBILITIES

7.1 Construction Agent's Project Representative.

7.1.1 Construction Agent has designated Construction Agent's Project Representative as its agent and representative authorized to act on Construction Agent's behalf with respect to the Project. Construction Agent reserves the right to change its representative, and Construction Agent shall notify Design-Builder in writing within seven (7) days of such change. Construction Agent's Project Representative has no design or construction management responsibilities of any nature and none of the activities of Construction Agent's Project Representative supplant or conflict with any services or responsibilities customarily furnished by Design Architect and/or required of Design-Builder. All instructions by Construction Agent to Design-Builder relating to services performed by Design-Builder will be issued or made through Construction Agent's Project Representative in writing. All communications and submittals of Design-Builder to Construction Agent shall be issued or made through Construction Agent's Project Representative unless Construction Agent's Project Representative shall otherwise direct. Construction Agent's Project Representative shall have authority to establish procedures, consistent with this Agreement, to be followed by Design-Builder and Subcontractors.

7.1.2 Owner shall render approvals and decisions within the time frame set forth in this Agreement or any schedules approved by Owner or, in the absence thereof, with reasonable promptness to avoid delay in the orderly progress of Design-Builder's services and the Work of Design-Builder. It shall be Design-Builder's responsibility to timely advise Owner of all time requirements and restraints with respect to such approvals and decisions.

7.1.3 It is acknowledged and agreed that no provision of the Contract Documents that provides for any approval, review or similar participation by Owner or the City shall be construed or interpreted to limit Design-Builder's obligations and responsibilities pursuant to the Contract Documents.

7.1.4 Owner shall provide Design-Builder with reasonably satisfactory evidence of the individuals who are authorized to contractually bind Owner.

7.1.5 Owner represents and warrants that: (a) this Agreement constitutes a valid, legal and binding obligation of Owner, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium,

or other similar laws affecting creditors' rights generally; (b) there are no actions, suits or proceeding pending or, to Owner's knowledge, threatened against or affecting Owner before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of Owner to meet and carry out its obligations under this Agreement; and (c) the execution, delivery and performance by Owner of this Agreement has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

7.2 Hazardous Materials.

7.2.1 Owner shall provide a Project site that is entitled with all required public approvals and necessary easements and that does not contain Hazardous Materials above permitted levels of any Applicable Laws. Should Design-Builder encounter any Hazardous Materials at the Project Site, it shall take all necessary reasonable precautions and immediately notify Owner. Owner shall be responsible for the remediation of any such Hazardous Materials, all in accordance with Applicable Laws and pursuant to a schedule agreed to by the parties. Design-Builder shall be responsible for any Hazardous Materials brought to the Project by Design-Builder, its Subcontractors, Sub-subcontractors or any other person or entity for whose acts Design-Builder may be liable.

7.2.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design-Builder, Subcontractors and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the negligence of the party seeking indemnity.

7.2.3 If, without negligence on the part of Design-Builder, Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, Owner shall indemnify Design-Builder for all cost and expense thereby incurred.

7.2.4 If Design-Builder encounters such hazardous materials and must stop the work until abatement is completed, then the Contract Time and the GMP shall be adjusted to the extent of documented time and cost impacts.

7.3 Evidence of Financing.

7.3.1 Owner shall, within fourteen (14) days after closing of the Project financing, furnish to Design-Builder reasonably satisfactory evidence that financial arrangements have been made to fulfill the obligations of Owner under this Agreement. At Design-Builder's request, Owner shall furnish to Design-Builder reasonable evidence of financing on a periodic basis throughout the Project.

7.4 Work by Separate Contractors.

7.4.1 Owner reserves the right to hire Separate Contractors in connection with the Project. Design-Builder shall afford Separate Contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their services, and shall properly connect and coordinate the Work with the services of such Separate Contractors. With respect to each part of the Project as to which Owner may enter into separate contracts with Separate Contractors, Design-Builder shall, as part of the Work, cooperate with Owner and Separate Contractors in the scheduling and coordination of services to be performed by such Separate Contractor with the Work to be performed by Design-Builder or its Subcontractors. Design-Builder shall cooperate with Owner and all Separate Contractors, their subcontractors and any other entity involved in the performance of any separate services for the Project. In order to cause the Work and any separate services to be performed by Separate Contractors to be completed in an expeditious manner, Design-Builder agrees that it will use all reasonable efforts in order to ensure that such Separate Contractors have a reasonable opportunity to complete their services as and when required. Owner assumes responsibility for the failure of Separate Contractors that Owner has hired to perform their work properly, and shall require in any agreement it may have with a Separate Contractor that the Separate Contractor shall cooperate with Design-Builder and its Subcontractors in the performance of the Work. Owner shall require that any and all Separate Contractors comply with any applicable project labor agreement and comply with Design-Builder's safety program. Design-Builder acknowledges that the foregoing does not apply to "make ready" work on the Site and on the Adjacent Property (e.g., site preparation, site access, utility installation and infrastructure support) that will be completed by Owner, the City and such other persons or entities as designated by Owner. If Owner's Separate Contractors materially interfere with or cause damage to the Work, Design-Builder shall be entitled to make a claim pursuant to Article 16.

7.4.2 If any part of the Work depends upon the proper performance of work of any Separate Contractor, Design-Builder shall prior to proceeding with that portion of the Work, inspect and measure the work of the Separate Contractor and promptly report to Owner any apparent discrepancy or defects in such other work except for latent or concealed defects. Design-Builder's failure to inspect and make such report shall constitute an acceptance of the Separate Contractor's work as fit and proper for the proper execution of the Work, except for latent defects.

7.4.3 If Design-Builder causes damage to the Work or the property of Owner, Design-Builder shall promptly remedy such damage. If Design-Builder causes damage to the work or property of any Separate Contractor, Design-Builder shall promptly attempt to settle any resulting dispute or claim with such Separate Contractor. If a Separate Contractor or its subcontractor shall assert any claim against Owner on account of any damage or loss alleged to have been sustained as a result of the fault or negligence of Design-Builder, or by anyone for whom Design-Builder is responsible, Owner shall notify Design-Builder and Design-Builder shall indemnify Owner from and against any and all such claims, damages, losses and expenses, including attorneys' fees, arising from the assertion of any such claim.

7.4.4 If a dispute arises among Design-Builder, Separate Contractors and Owner as to the responsibility under the respective contracts for maintaining the Site and Adjacent Property free

from waste, materials and rubbish, Owner may clean up, or cause such clean up to be completed, and may allocate the cost among those responsible as Owner determines to be just.

7.4.5 Owner recognizes and accepts that the Preliminary Schedule is predicated upon Owner securing all material and legal agreements for the Site such that Design-Builder is provided an unencumbered notice to proceed pursuant to Section 6.1.3 hereof. Owner shall be responsible to meet those milestone dates identified in the Preliminary Schedule as being the responsibility of Owner. If such milestone dates cannot be met by Owner and the critical path of the Project has been adversely impacted, then Design-Builder shall be entitled to an extension of time and an increase in the GMP as reasonably justified under Section 6.3 and Article 15 hereof.

ARTICLE 8

PAYMENT

8.1 Contract Sum; Construction Contingency.

8.1.1 Except as otherwise provided herein, Owner, shall pay at the times and in the manner provided for in this Article 8, amounts constituting the Cost of the Work, Construction Contingency (to the extent used to pay any Cost of the Work) and Design-Builder's Fee (the Cost of the Work, Construction Contingency and Design-Builder's Fee are collectively referred to as the "Contract Sum"), which amount shall not exceed the GMP. Design-Builder shall be responsible for all costs in excess of the GMP.

8.1.1.1 Certain pre-construction services and Cost of the Work were previously authorized pursuant to the Letter Agreement and all payments made for such services pursuant to the Letter Agreement shall be credited against the Contract Sum.

8.1.2 The amount of the Construction Contingency shall be equal to the respective percentages of the Cost of the Work (actual plus estimated, but excluding Design-Builder's Architect's compensation from the calculation) specified below at the respective times specified below, and the amount of each reduction in the Construction Contingency shall be released to Owner, by deduct Change Order, at the respective times specified below:

8.1.2.1 at the signing of the GMP Amendment, ___% of the Cost of the Work (actual plus estimated);
8.1.2.2 upon buyout of ___% of the Work, ___% of the Cost of the Work (actual plus estimated);
8.1.2.3 at six (6) months prior to the scheduled date of Substantial Completion of the Work, ___% of the Cost of the Work (actual plus estimated) plus Identified Claims; and
8.1.2.4 at Substantial Completion until Final Completion, ___% of the actual and Cost of the Work (actual plus estimated) plus Identified Claims.

8.1.3 The Construction Contingency shall be increased or decreased, as the case may require, to reflect net savings or net losses resulting from the award of Subcontracts. The amount of the adjustment to the Construction Contingency shall be determined by subtracting the amount of each Subcontract at the time the Subcontract is entered into from the amount allocated by Design-Builder in the initial Schedule of Values of the Work approved by Owner to be

performed by such Subcontract. If the resulting product is a positive number, the Construction Contingency will be increased by such amount, and if the resulting product is a negative number, the Construction Contingency will be decreased by such amount. Provided that Design-Builder obtains the prior written approval of Owner, such approval shall not be unreasonably withheld, Design-Builder may expend funds from the Construction Contingency for Cost of the Work incurred for completion of the Project, including, without limitation, scope differences, Subcontractor defaults, overtime, acceleration, corrective Work, insurance deductibles (if applicable), design errors or omissions and errors in estimating. Owner shall approve any such requested expenditure, provided, however, that with respect to any contingency expenditure relating to a Subcontractor default, Design-Builder shall first demonstrate, to Owner's reasonable satisfaction, that Design-Builder has (or will) in good faith exercised reasonable steps to obtain performance by Subcontractor and/or Subcontractor's surety (or filed a claim against any applicable contractor default insurance policy). Any use of the funds in the Construction Contingency must be for permitted Cost of the Work and any recoveries pursuant to Section 8.3.6 hereof shall be used to replenish the Construction Contingency. There are no shared savings of the Construction Contingency under this Agreement and all unused Construction Contingency shall inure to the benefit of Owner.

8.1.3.1 Design-Builder shall show the status of the Construction Contingency in the monthly Project Report and shall review with Owner such status prior to the release dates above. Design-Builder and Owner shall meet and confer to analyze the Construction Contingency and determine methods of reducing such Construction Contingency for the benefit of Owner for use on the Project to implement scope changes to the Work or otherwise to make the Construction Contingency available for Owner's use. Design-Builder shall, in its discretion, use its best efforts to ascertain actual or known potential claims against it or actual or reasonably anticipated events that constitute permissible uses of the Construction Contingency.

8.1.3.2 Owner and Design-Builder shall, as part of finalizing the GMP Documents, identify in writing additions to the Project for pricing as add alternates and for later inclusion into the Project to be funded by Owner-initiated Change Orders from any available Construction Contingency. The schedule of add alternates shall specifically state the start dates for notification to proceed with the add alternate and the add alternate pricing shall remain valid through such dates.

8.1.3.3 Any expenditures of the Construction Contingency shall be evidenced by written authorization, such approval shall not be unreasonably withheld, signed by Owner and Design-Builder.

8.2 Allowances.

8.2.1 The GMP Amendment may contain allowances for items of Work that Owner agrees are not detailed enough for Design-Builder to provide a definitive price ("Allowances"). For these Allowances, Design-Builder may propose estimates of costs that are properly reimbursable as Costs of the Work. By inclusion of Allowance items in the GMP, Design-Builder represents to Owner that each such Allowance is a reasonable estimate, using Design-Builder's best skill and professional judgment based upon the typical cost for the Allowance item in other comparable NFL stadia and accounting for the unique features of this Project, its location, information

available and local labor rates. The Cost of the Work for any Allowance in the GMP shall include, without limitation, all labor, material, equipment, taxes, transportation, general conditions costs and all Subcontractor overhead and profit. To the extent any Allowance is inconsistent with the standards set forth above, Design-Builder shall provide to Owner a written explanation of the basis for the difference. The amounts listed in the GMP Amendment as Allowances represent the respective amounts that Owner will pay for the items listed therein unless changed as set forth below. Design-Builder shall develop a final price for portions of the Work covered by Allowances promptly after Owner has finalized its selection of items. Design-Builder shall give notice to Owner of the final amount. Owner thereafter shall promptly elect to either:

8.2.1.1 Issue a Change Order increasing the GMP by the amount agreed upon by Design-Builder and Owner to furnish or construct the Allowance item beyond the Allowance amount already included within the GMP, and the GMP shall only be increased or decreased by the amount of delta from actual cost and the allowance amount; and/or

8.2.1.2 Direct Design-Builder to undertake the redesign of the Allowance item or any other item of Work in such a manner that the Allowance item can be installed without the GMP being exceeded or the Construction Schedule being extended. If Owner elects to so redesign, Design-Builder agrees to cooperate with Owner in order to reduce the cost of constructing or furnishing the Allowance item or any other item of Work.

8.2.2 If the Cost of the Work of any Allowance item is less than the Allowance for that item, Design-Builder shall promptly notify Owner in writing and an appropriate Change Order shall be prepared reducing the GMP and a corresponding reduction in Design-Builder's Fee.

8.3 Cost of the Work.

8.3.1 Design-Builder shall be responsible for, and shall pay without reimbursement from Owner, all Cost of the Work in excess of the GMP, as may be adjusted by Change Order.

8.3.1.1 Notwithstanding anything in this Agreement to the contrary, the Authority shall have no obligation to pay for any pre-construction services rendered until Construction Agent delivers to Design-Builder the Close of Escrow Notice, and Design-Builder waives any claim it may have against the Authority for such payment. In addition, notwithstanding anything in this Agreement to the contrary, the Construction Agent alone shall have the obligation to pay Design-Builder for pre-construction services or construction services rendered until Construction Agent delivers to Design-Builder the Close of Escrow Notice. After Design-Builder receives the Close of Escrow Notice, the Authority shall be responsible for payments of the amounts due and owing under this Agreement.

8.3.2 Each cost described in this Section 8.3.2 shall be a reimbursable Cost of the Work, subject to the GMP. The following, to the extent incurred in connection with services rendered and Work performed hereunder, and only the items specifically and expressly described below, shall be "Cost of the Work":

8.3.2.1 Subcontracts: All costs incurred in connection with Work performed and Materials provided (including Self-Performed Work) pursuant to Subcontracts procured under the terms

and conditions of Section 5.2 hereof or later assigned to Design-Builder by Owner. All costs incurred in connection with other subcontracts for services provided in connection with the Project (including the fees and reimbursable expenses of Design-Builder's consultants, Design-Builder's Architect and its consultants).

8.3.2.2 Personnel Expenses:

(a) Actual wages paid by Design-Builder for labor in Design-Builder's direct employ under labor agreements covered by the Project Labor Agreement or revisions to the City's Wage Rate Schedule. Cost of the Work shall include benefits payable under collective bargaining agreements with respect to the wages described in the preceding sentence. Design-Builder shall provide Owner with a list of any off-site personnel whose services it proposes to charge as a portion of the Cost of the Work and to document, at Owner's request, at such intervals Owner may deem appropriate, the services related to the Project performed by such personnel. The wages and salary of any personnel not contained in the list provided to Owner shall not be a reimbursable Cost of the Work.

(b) Actual, direct salaries of the all staff engaged on the Project while on Site (or off site with Owner's approval) and performing services directly related to the Project to the extent of hours devoted to the Project pursuant to the Rate Schedule attached hereto as **Exhibit J**. If Design-Builder and Owner agree that the Cost of the Work can be decreased by reducing Design-Builder's staff without affecting the timely completion or quality of the Work or in any way diminishing the performance of all contract requirements, Design-Builder shall so decrease its staff. With respect to Design-Builder's employees described in this item (ii) of this Section 8.3.2.2, Cost of the Work shall include the pro rata portion of the cost of mandatory and customary contributions and benefits as required by law, any applicable collective bargaining agreement or the company-wide policy of Design-Builder related to the direct salaries of such employees, including employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, profit sharing, *per diem* allowances, bonuses, car allowances and similar benefits per the agreed upon rates contained within **Exhibit J**, Rate Schedule.

(c) Except with Owner's prior written approval and except for craft labor and hourly administrative workers (e.g., file clerks, clerks of record or similar functions), actual wages and direct salaries of employees to the extent directly employed in connection with the services or Work of Design-Builder shall not include any premium for overtime, holidays or shift differential work, but it shall include all straight time compensation (if any) actually paid for such work.

8.3.2.3 Equipment and Materials: The amounts Design-Builder paid for Equipment and Materials, whether for a permanent or temporary use, purchased by Design-Builder directly

relating to the Work, including transportation thereof, cost of inspection, testing, storage or handling, on a competitive or negotiated basis approved by Owner in accordance with reasonable procedures to be agreed upon by Owner. Design-Builder shall furnish Owner with all documentation required to enable Owner to obtain the benefit of all warranties and guarantees with respect to such Equipment and Materials. Compensation for materials stored off-site shall be subject to Owner's compliance with the requirements set forth in the Project Administration Forms.

8.3.2.4 Taxes: Sales or gross receipts tax, payroll taxes and state, county and municipal taxes, business and occupancy taxes, fees or other charges incurred as a direct consequence of the performance of the Work (but not franchise taxes or taxes based on income).

8.3.2.5 Rental Equipment and Tools: Rental charges of all necessary machinery, equipment and tools to the extent used at the Project Site directly in connection with the Work, including installation, repair and replacement, dismantling, removal, cost of lubrication, transportation and delivery costs thereof. With respect to Equipment owned by Design-Builder and rented to the Project, rental charges shall not exceed the market value of the machinery and Equipment at the time of their commitment to the Project and shall be consistent with the then-current prevailing rental cost of such equipment in Santa Clara, California, but in no event shall such rates exceed 80% of the published rates based upon the "Compilation of Nationally Averaged Rental Rates," most current edition, of the Associated Equipment Distributors unless otherwise agreed to in writing by Owner.

8.3.2.6 Equipment Operation, Maintenance and Repair: All costs for the operation, maintenance and repair of Design-Builder's Equipment or of Equipment rented from third parties that is used directly in connection with the Project, including (i) the cost of all preventive maintenance, fuel, oil, grease and other service to such equipment, and (ii) minor repairs wherein the parts necessary to effect repairs to such equipment cost $1,000 or less. Above normal maintenance, major repairs or the overhaul of equipment are not allowable as Cost of the Work.

8.3.2.7 Transportation: Except as hereinafter provided, all loading, unloading, freight, express, trucking and demurrage charges directly incurred for the Project, including costs of assembling, erecting, moving and dismantling construction equipment at the Project Site.

8.3.2.8 Applicable Laws: All costs of compliance with all Applicable Laws directly related to the Project, including, without limitation, permit fees, licenses, royalties, inspection and testing costs, tests, except any liability for payment of any citation or penalty imposed as the result of an act or omission by Design-Builder, any Subcontractor or their respective employees, licensees or agents.

8.3.2.9 Temporary Facilities, Supplies and Utilities: Costs of fuel, power, light and water used for performance of the Work at the Site, temporary fences, guard rails, scaffolding, hoists, temporary storage, temporary protection and repairs to adjacent property, office and sanitary facilities used in connection with the Work.

8.3.2.10 Expediting and Job-Related Travel/Living: Temporary living and travel to and from the Project Site and the home office and/or temporary living allowances of the personnel

required for the performance of the Work, in case it is necessary to locate any of such personnel at a distance different from the place in which the Work is located. Relocation expenses are subject to Owner's prior written approval, which shall not be unreasonably withheld. Air travel shall be reimbursed at coach fares. Meals and hotel expenses will be consistent with Design-Builder's corporate reimbursement policy.

8.3.2.11 Administrative Expenses. Cost of the Work shall include job-related expenses incurred such as rental of property for storage, job office or other purposes, rental of temporary office space and utility expenses associated with maintaining a temporary office complex, long distance telephone calls, office equipment, computers, software, supplies, furniture, telephone service at the Site, expressage, blueprinting or other reproduction expenses, postage, messenger service, progress photographs, fees, permits, surveys and rental deposits.

8.3.2.12 SIR/Deductibles: Self-insured retentions or deductibles incurred directly by Design-Builder in connection with recovery under the professional liability policy or the builder's risk policy of property insurance covering the Project, as set forth in Article 14.

8.3.2.13 Bonds/Insurance: Premium costs of any bonds, corporate guarantees of Design-Builder's performance (as may be agreed to by Owner), letters of credit or insurance required to be furnished by Design-Builder or any Subcontractor, specifically including, but not limited to, all costs incurred by Design-Builder complying with Article 14, Insurance and Bonds.

8.3.2.14 Cleaning: Cost of removal of waste material or rubbish from the Site.

8.3.2.15 Emergencies: Costs not reimbursed by insurance that are reasonably incurred due to any emergency affecting the safety of persons and/or property, provided that such emergency is not caused by the negligence or failure to fulfill a specific responsibility of Design-Builder to Owner set forth in the Contract Documents or the failure of Design-Builder's personnel to supervise adequately the Work of the subcontractors or suppliers or otherwise capable of being prevented through timely notice of an unsafe condition to Owner.

8.3.2.16 Casualty Losses: Costs reasonably incurred in connection with any casualty loss, including personal injury or property damage, affecting the Project, to the extent such costs are not compensated by insurance.

8.3.2.17 Legal Fees: Legal fees (with Owner's prior approval) incurred directly for the benefit of the Project other than fees incurred in connection with (i) negotiations of any agreement with Owner, and (ii) disputes between Owner and Design-Builder (including those incurred by Design-Builder under Article 10 hereof).

8.3.2.18 Corrective Work: The cost of correcting or replacing Work installed on the Project that is determined to be defective or not meeting the requirements of the Contract Documents and is not corrected or replaced by the Subcontractor responsible and the cost to repair or replace Work that is damaged during the construction process and is not repaired or replaced by the Subcontractor responsible for the damage if such Subcontractor can be identified. Work that is damaged by parties neither known nor reasonably discoverable shall be repaired or replaced and the cost of such repair or replacement shall be reimbursable as a Cost of the Work to the extent

not covered by insurance. Repair and corrective costs incurred in connection with warranty work shall be a Cost of the Work as provided in Article 9.

8.3.2.19 Losses, Expenses Not Compensated: Losses, expenses or damages, to the extent not compensated by insurance or otherwise (including settlements made with the approval of Owner), except to the extent any such loss or expense is caused by the failure on the part of the Executive Officers of Design-Builder, or its other representatives, employees or personnel charged with the supervision or direction of the Project as a whole, to exercise good faith or the standard of care normally exercised in the conduct of the business of Design-Builder.

8.3.2.20 Warranty Work: Any cost incurred by Design-Builder in complying with the two (2)-year guarantee and warranty period, including all costs incurred by Design-Builder in assuming the corrective action due to a Subcontractor becoming insolvent.

8.3.2.21 Miscellaneous Owner-Approved Cost Items: Miscellaneous expenditures not otherwise covered in this Section 8.3.2 that are incurred or payable in connection with the rendering of services or the performance of the Work and that are not excluded under Section 8.3.3 hereof, if in each instance Owner has approved in writing the cost thereof prior to Design-Builder incurring such expenses, which approval shall not be unreasonably withheld or delayed. These expenses may include those of a nature and character listed in **Exhibit D**.

8.3.3 Except as otherwise expressly agreed to by Owner in writing or otherwise permitted under Section 8.3.2 hereof, costs incurred in connection with the following shall not be Cost of the Work and no payment shall be made by Owner in connection therewith other than as part of Design-Builder's Fee:

8.3.3.1 The services and related expenses, except as otherwise provided in Section 8.3.2.2 above, of any officers or corporate office supervisory personnel of Design-Builder and of personnel in Design-Builder's human resources, accounting, legal, labor relations, insurance and tax departments and all other costs of doing business, services and related expenses required to maintain and operate Design-Builder's corporate offices and any established branch offices.

8.3.3.2 Overhead expense, general expenses and home office expense of Design-Builder and expenses related to any company-owned aircraft.

8.3.3.3 Expenses (including interest) of Design-Builder's capital employed for the Project.

8.3.3.4 Professional or business licenses of Design-Builder or any Subcontractor, architect, consultant, agent or other contractor of Design-Builder or expenses associated with any employee training or corporate meetings not specifically related to the Project.

8.3.3.5 Amounts required to be paid by Design-Builder for federal, state or local income or franchise taxes.

8.3.3.6 Penalties for Design-Builder's failure to comply with Applicable Laws and regulations except as such failure may relate to design errors or omissions or building code violations, the correction of which is reimbursable to the extent of any available Construction Contingency pursuant to Section 8.1.3 hereof.

8.3.3.7 Losses and expenses sustained by Design-Builder or Subcontractors not compensated by insurance or otherwise, if such losses and expenses are due to infidelity or dishonesty on the part of any employee of Design-Builder or its Subcontractors.

8.3.3.8 Costs incurred to the extent that such costs result in the GMP being exceeded.

8.3.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 8 or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

8.3.5 Whenever overtime, extra shift work or similar premium Work is used on the Project, Design-Builder shall give Owner prior notice thereof and Design-Builder shall, in any event, implement such Work in a cost efficient manner by employing extra shifts or additional crews before using overtime. Prior to implementation, Design-Builder shall present for Owner's review and approval a reasonable plan for scheduled premium time. Owner's review or approval of any plan shall not be deemed to imply that Design-Builder is entitled to an extension of time or an increase in the GMP.

8.3.6 Whenever Design-Builder has been paid, as a Cost of the Work, amounts that are recoverable from any other source (*e.g.*, a Subcontractor, an insurer or other third parties), Design-Builder shall diligently pursue such recovery and shall credit Owner with any amounts recovered.

8.3.7 The actual Cost of the Work shall be adjusted to reflect any and all discounts, including trade and cash discounts, rebates, refunds and other similar considerations, provided that Owner provides any funds when needed to obtain such considerations. Design-Builder shall provide Owner sufficient opportunity to furnish funds necessary to obtain such potential discounts, rebates or refunds within Owner's normal billing cycle. Such considerations shall accrue exclusively to the benefit of Owner, not Design-Builder, and Design-Builder agrees to use its best efforts to secure such considerations on behalf of Owner.

8.3.8 Amounts received from sales of surplus materials and equipment shall accrue to Owner, unless materials were contained within a lump sum bid amount, and Design-Builder shall make provisions so that they can be secured. Amounts that accrue to Owner in accordance with the foregoing provisions shall be credited to Owner as a deduction from the Cost of the Work.

8.3.9 Upon Substantial Completion, Design-Builder shall submit a list of any tools or equipment purchased for the Project that have been paid by Owner as a Cost of the Work. If Owner so elects, any tools or extra materials purchased for the Project that have been paid for by Owner as a Cost of the Work shall be returned to Owner at the end of the Project. If Owner elects not to take title to any such tools or equipment, then Owner shall be credited with the fair market value thereof as a deduction to the Cost of the Work.

8.4 Design-Builder's Fee.

8.4.1 Design-Builder shall be paid a fixed sum for pre-construction services, which shall be invoiced and paid on a monthly basis during pre-construction phase as set forth in the **Exhibit S**, Preconstruction Fee Payment Schedule.

8.4.2 In addition to the payments for pre-construction services, Design Builder shall be paid a fee ("Design Builder's Fee"), which shall be a fee of _____ percent (___%) of the Cost of the Work. In calculating Design Builder's Fee, the following Cost of the Work shall be excluded: Design-Builder's Architect's compensation, permit fees and the pre-construction services payments set forth in Section 8.4.1 hereof.

8.4.3 Payments on Design-Builder's Fee shall commence with the start of the Construction Phase, shall be billed to Owner monthly in proportion to the percentage of completion of the Work, and shall be paid monthly at the same time Owner pays Cost of the Work, as provided in Section 8.6 hereof.

8.4.4 If Design-Builder achieves Substantial Completion of the Work not later than _____, then Design-Builder shall earn an incentive fee of _____ Dollars ($_____). Payment of the incentive fee shall occur not later than sixty (60) days after achieving the incentive fee. If earned, the incentive fee shall be distributed by Design-Builder to workers and project personnel that performed services on the Project and Owner shall have the right to approve Design-Builder's plan for distributing the incentive fee, which approval shall not be unreasonably withheld.

8.5 Accounting Records/Right to Audit.

8.5.1 Owner will have the right, upon prior written notice to Design-Builder, to designate an independent auditor to audit from time to time all books, records, receipts, vouchers and other documentation relating to the rendering of services or performance of Work. Design-Builder shall cause such full and detailed files, records and accounts of expenditures for materials, equipment, employees and Subcontracts and the like and other costs of rendering services or performing Work hereunder to be kept as necessary, in the reasonable opinion of Owner, for the proper administration of the Contract Documents. Such records shall be kept on the basis of generally-accepted accounting principles and in accordance with the Contract Documents. Design-Builder will furnish Owner with statements of such expenditures, together with reasonable documentation to verify the expenditure on a monthly basis. Design-Builder shall give Owner access to all accounting records, receipts, vouchers and other documentation relating to the rendering of services or performance of Work hereunder from the Effective Date until the expiration of a period of five (5) years after Final Completion or such earlier date on which a final audit is completed by Owner. Until the expiration of five (5) years after Final Completion, Design-Builder will make available upon the written request of Owner or any of its duly authorized representatives, copies of any books, documents, records and other data of Design-Builder that are necessary to certify and audit the nature and extent of Cost of the Work incurred by Design-Builder in connection with the Project at Design-Builder's storage facility located at Iron Mountain Storage, 1350 West Grand Avenue, Oakland, CA 94607. In those situations where books, documents, records and other data have been generated from computerized data

(whether mainframe, mini-computer, or PC based computer systems), Owner shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.

8.5.1.1 If any audit or inspection by Owner discloses overpricing or overcharges (of any nature) to Owner in connection with charges or expenses submitted by Design-Builder, any Subcontractor, Sub-subcontractor, Supplier, or any other Person for whose acts Design-Builder may be liable pursuant to this Agreement, then Design-Builder shall reimburse, or shall cause such Person responsible for such overpricing or overcharges to reimburse, the same to Owner. If such overpricing or overcharges are in excess of one-half of one percent (0.5%) of the total contract billings for this Agreement, then the reasonable actual cost of the audit shall also be reimbursed to Owner. Any adjustments or payments that must be made as a result of an audit or inspection by Owner shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the audit to Design-Builder, subject, however, to Design-Builder's right to dispute such liability pursuant to the dispute resolution procedures of this Agreement.

8.5.2 Design-Builder acknowledges that RDA Funds or CFD Funds shall be used solely to fund Subcontracts that are awarded to the lowest responsible bidder in a manner consistent with the Subcontractor Procurement Plan. With Design-Builder's assistance, Owner shall identify the Subcontracts that will be funded by RDA Funds or CFD Funds so that Design-Builder can assure that such Subcontracts are awarded to the lowest responsible bidder in a manner consistent with the Subcontractor Procurement Plan. Design-Builder shall at all times separately allocate and account for the RDA Funds or CFD Funds and shall make available to Owner any and all Project information, documents, books, records and reports requested by Owner in order to substantiate compliance with the requirement that Subcontracts funded by RDA Funds or CFD Funds were awarded to the lowest responsible bidder in a manner consistent with the Subcontractor Procurement Plan.

8.5.3 Design-Builder acknowledges that, in addition to the separate allocation of RDA Funds and CFD Funds, Owner may require certain other costs to be separately allocated and accounted for (e.g., costs associated with portions of the Work that will be paid for and owned by the 49ers Stadium Company or another tenant of the stadium). Accordingly, Owner shall, with Design-Builder's assistance, identify the applicable Subcontracts and/or portions of the Work, and Design-Builder shall at all times separately allocate and account for costs associated therewith and shall make available to Owner any and all Project information, documents, books, records and reports requested by Owner in order to substantiate such allocations and accounting.

8.6 Progress Payments.

8.6.1 Design-Builder shall submit to Owner Applications for Payments for Work completed as set forth below. Owner shall make progress payments on account of the Contract Sum as provided below and elsewhere in the Contract Documents. Each Application shall be certified as true and correct by Design-Builder. Each Application for Payment shall also contain the certification of Design-Builder's Architect to Owner that the quality of the Work is in accordance with the Contract Documents and the Work has generally progressed to the percentage of

completion set forth in the Application. The form the Application for Payment and foregoing certification shall be as set forth in the Project Administration Forms.

8.6.2 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by Design-Builder and approved by Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that Design-Builder's Fee and the Construction Contingency shall be shown as separate line items. The schedule of values shall be prepared in such form, composition, level of detail and content, and supported by such data to substantiate its accuracy, as Owner may require. This schedule, unless objected to by Owner, shall be used as a basis for reviewing Design-Builder's Applications for Payment.

8.6.3 Applications for Payment shall show the actual percentage completion of each portion of the Work of each trade as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by Design-Builder on account of that portion of the Work for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the then current schedule of values. Applications for Payment shall also include a statement showing in detail the Cost of the Work completed, less retainage withheld under Section 8.6.6 hereof. A statement by Design-Builder certifying to the satisfactory completion of the Work for which claim is made shall accompany each Application for Payment.

8.6.4 Design-Builder shall furnish with each Application the following:

8.6.4.1 a partial waiver of claims and lien for itself effective through the date of the current application, as well as a similar waiver for each Subcontractor effective through the date of the prior application to the extent of payment received from Owner;

8.6.4.2 a statement listing (a) the names of all parties furnishing materials, labor or services in connection with the Work in excess of $25,000 in the current application, (b) the materials, labor or services to be furnished by each such party throughout their entire subcontract, (c) the amounts actually paid to date to each party furnishing materials, labor or services, and (d) the amounts due or to become due to each such party in the current application;

8.6.4.3 upon Owner's request, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by Owner to demonstrate that cash disbursements being made by Design-Builder on account of Cost of the Work equal or exceed (a) progress payments already received by Design-Builder less (b) an amount equal to the sum of (i) that portion of those payments attributable to Design-Builder's Fee, (ii) payrolls for the period covered by the present Application for Payment, and (iii) retainage provided in Section 8.6.6 hereof applicable to prior progress payments;

8.6.4.4 a statement by Design-Builder certifying that, to the best of its information and belief there are no Change Orders outstanding, no person or entity has a claim for payment or has asserted a claim for payment arising from or in connection with the Work, other than any claim

that has been fully paid and duly released or is included in the current Application for Payment, or, if Design-Builder knows or believes such a Change Order exists or that a claim has or may be asserted or made, the statement shall fully disclose the amount of the Change Order and/or disclose the claim by stating the name of the claimant or potential claimant, a description of the Work for which payment is claimed and the amount of such claim; and

8.6.4.5 the updated schedule of values showing all committed contracts and expenses of Design-Builder to date, and

8.6.4.6 the monthly Project Report, the updated Master Project Schedule and the updated Construction Schedule, all as required by Section 5.7 hereof.

8.6.4.7 The form of the lien waivers and affidavits shall be as set forth in the Project Administration Forms. Design-Builder shall obtain from each of its Subcontractors and make available as required or requested by Owner or Architect, a duly executed statement from each Subcontractor for whom payment is sought that provides the same information with regard to each such Subcontractor as is required for Design-Builder in this Section.

8.6.5 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. On or before the 25th day of each month, Design-Builder shall submit to and review with Owner a preliminary, draft version of Design-Builder's Application for Payment, together with the required supporting data (the "Pencil Draft"). On or before the 1st day of the following month, Design-Builder and Owner shall meet to review the Pencil Draft. Design-Builder shall revise the Pencil Draft in accordance with any objection or recommendation of Owner that is consistent with the requirements of the Contract Documents. Such revised Pencil Draft shall be resubmitted by Design-Builder to Owner as the Application for Payment due on or before the 5th day of the month immediately following the month in which the Pencil Draft was first submitted. Design-Builder shall also submit with each Application for Payment, a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of Owner in connection with any applicable Pencil Draft. On or before the 30th day of the month in which Owner receives the approved Application for Payment, Owner shall deliver to Design-Builder payment and Design-Builder shall, within the California statutory requirements from Design-Builder's receipt of payment from Owner, make available to each Subcontractor its payment for its respective application for payment. Notwithstanding the foregoing, Owner shall endeavor to have its lender reduce the above payment cycle to twenty (20)days. Notwithstanding anything herein to the contrary, all payments owed to Design-Builder under this Agreement have been deferred and will billed no sooner than the Application for Payment to be submitted on or about _____.

8.6.6 Except as hereinafter provided, Owner will retain 10% from all payments of the Contract Sum otherwise due and payable until 50% of the Work is in place (to be determined on a per trade category basis). There shall not, however, be retainage on Design-Builder's Fee, the fees of Design-Builder's Architect and its consultants or the Cost of the Work relating to the General Conditions Work items listed on **Exhibit D**. After 50% of the Work is in place (to be determined on a per trade category basis), Owner shall refrain from withholding additional retainage on future payments unless Owner determines that Design-Builder or any Subcontractor is not making satisfactory progress or that Design-Builder or any Subcontractor is in default

under any of the terms and provisions of the Contract Documents. If Owner determines that Design-Builder or any Subcontractor is not making satisfactory progress or that Design-Builder or any Subcontractor is otherwise in default under the terms of the Contract Documents, then Owner may continue or reinstate retainage of up to 10% of the Subcontracted Amount to the extent reasonably based upon the subject default. Upon written request of Design-Builder after satisfactory completion of the Work performed by a particular Subcontractor, Owner may, in its reasonable discretion, release from retainage a sum sufficient to increase the total payments to 100% of the cost of the portion of the Work performed by such Subcontractor. Within thirty (30) days after Substantial Completion of the Work, Owner will release all retainage less an amount equal to 150% of the amount determined by Owner for unsettled claims or liens, punchlist work or other incomplete Work. Thereafter, Owner shall pay Design-Builder monthly the amount retained for such items as each item is completed.

8.6.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

8.6.7.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values. Owner shall, upon reasonable explanation by Design-Builder, make payment for up to 80% of the estimated value of the Work authorized by a Construction Change Directive.

8.6.7.2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work or, if approved in advance by Owner, suitably stored off the Site at a location agreed upon in writing.

8.6.7.3 Add Design-Builder's Fee, computed in accordance with Section 8.4.2 hereof.

8.6.7.4 Subtract the aggregate of previous payments made by Owner.

8.6.7.5 Subtract the shortfall, if any, indicated in the documentation required by Section 8.6.4 hereof to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner in such documentation.

8.6.7.6 Subtract amounts, if any, for which Owner is entitled to withhold payment under the Contract Documents.

8.6.7.7 Subtract retainage in accordance with Section 8.6.6 hereof.

8.6.8 Payment for materials stored offsite shall be conditioned upon Design-Builder's compliance with the procedures and requirements set forth in the Project Administration Forms.

8.6.9 Payments due but unpaid shall bear interest from the date that is ten (10) days after the payment due date until such time payment is received by Design-Builder at the rate Owner is paying on its construction loan at the time or at the current "prime rate" as published in The Wall Street Journal, whichever is higher, plus two (2) points.

8.7 Final Payment.

8.7.1 Final payment shall not be due Design-Builder until it has furnished the following items to Owner:

8.7.1.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner, or the Project might be responsible or encumbered (less amounts withheld by Owner) have been paid or Design-Builder has made satisfactory arrangements for payment,

8.7.1.2 a certificate evidencing that any insurance required to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner,

8.7.1.3 a written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,

8.7.1.4 all warranties, guaranties, operations and maintenance manuals, and other documentation required by the commissioning procedures, all as required by the Contract Documents,

8.7.1.5 one reproducible copy of the As-Built Drawings and the other submittals required by the Contract Documents,

8.7.1.6 consent of surety, if any, to final payment,

8.7.1.7 a final waiver and release of mechanics' liens (conditioned upon receipt of payment) and other claims by the applicable Subcontractor in such form as set forth in the Project Administrative Forms, and

8.7.1.8 if required by Owner, other data establishing payment or satisfaction of obligations, to the extent and in such form as may reasonably be designated by Owner. Final payment shall not be due to Design-Builder until it provides all of the foregoing items. Acceptance of final payment shall constitute a waiver of Claims by Design-Builder except those previously made in writing and identified by Design-Builder as unsettled at the time of the final Application for Payment.

8.8 Owner's Right to Withhold.

8.8.1 Any provision hereof to the contrary notwithstanding, Owner may withhold partial payment to Design-Builder hereunder to the extent necessary to protect Owner or the Project for any one or more of the following reasons:

8.8.1.1 Design-Builder is in material default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.

8.8.1.2 Any of the Work is defective or is not performed in accordance with the Contract Documents.

8.8.1.3 Design-Builder or a Subcontractor has failed to make timely payments due to their respective subcontractors or others or for material or labor used in the performance of Work for which Owner has made payment.

8.8.2 If Owner, in its reasonable discretion, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, then no additional payments will be due hereunder unless and until Design-Builder, at no cost to Owner, performs (or causes to be performed) a sufficient portion of the Work so that the portion of the GMP then remaining unpaid is, in Owner's reasonable judgment, sufficient to complete the Work in accordance with the Contract Documents. Notwithstanding the foregoing, Design-Builder and each Subcontractor shall continue to diligently pursue the Work and Design-Builder shall make all undisputed payments due and owing to Subcontractors subject to terms and conditions under their respective Subcontracts.

8.8.3 No payment by Owner shall be construed as final acceptance or approval of any part of the Work. The presence of Owner (or its representatives) at the Site does not imply acceptance or approval of the Work.

8.9 Warranty of Title.

8.9.1 Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, regardless whether then incorporated in the Project, will pass to Owner, upon Design-Builder's receipt of payment, free and clear of all liens, claims, security interests or encumbrances.

8.10 Project Suspension or Abandonment.

8.10.1 If the Project is suspended or abandoned in whole or in part by Owner for more than one hundred twenty (120) days during the pre-construction phase of the Project, or more than ninety (90) days during the construction phase of the Project, then Design-Builder shall be compensated for all services performed prior to receipt of written notice from Owner of such suspension or abandonment, together with Cost of the Work then due, including retainage (in the case of abandonment), reasonable and actual demobilization costs and Design-Builder's Fee earned to the date of such suspension or abandonment. If the Project is resumed after being suspended beyond the applicable time periods set forth above, and Design-Builder is re-engaged by Owner, then Design-Builder's compensation shall be equitably adjusted (including any demobilization and remobilization costs), but there shall be no adjustment in the GMP if the suspension is less than the applicable time periods set forth above. If the Project is suspended beyond the applicable time periods set forth above and later resumed, Owner acknowledges that Design-Builder may not be able to provide continuity of all Project personnel listed in **Exhibit G** and referenced in Sections 3.2.1 and 3.2.2 hereof.

ARTICLE 9

WARRANTY/CORRECTION OF WORK

9.1 Design-Builder warrants and guarantees that all materials and equipment incorporated into the Project under this Agreement shall be of first quality and new unless otherwise specified,

and that all Work will be free from faults or defects in materials or workmanship, and in strict accordance with requirements of the Contract Documents; provided, however, that all design services shall be held to the standard of care set forth in Section 3.1.1 hereof. Design-Builder agrees to remove or correct without cost to Owner (as a Cost of the Work subject to the GMP) all Work performed by it under this Agreement that Owner reasonably finds to be defective in material or workmanship or not in conformance with the Contract Documents within a period of two (2) years from the date of Substantial Completion of the Project or such longer term as is set forth on **Exhibit K** with respect to designated portions of the Work listed in such exhibit. Design-Builder also agrees to remove or correct without cost to Owner (as a Cost of the Work subject to the GMP) any portions of the Work that may be damaged or destroyed by such defective Work or by the removal or correction of such defective Work.

9.2 If Owner does not require defective Work to be removed or corrected by Design-Builder, then an equitable deduction from the GMP shall be made by agreement between Design-Builder and Owner. Owner may withhold such sums as Owner deems just and reasonable from amounts, if any, due Design-Builder hereunder, until the amount of any such deduction is agreed upon by Owner and Design-Builder, which shall be no more than the amount of the costs that Design-Builder and its Subcontractors save in not performing the corrective Work. All such deductions from the GMP shall be evidenced by a Change Order, but no such deduction shall relieve Design-Builder for any other obligations under the Contract Documents.

9.3 If Design-Builder does not promptly and fully perform its obligations under Section 9.1 hereof following its receipt of written notice from Owner, then Owner may perform or cause such obligations to be performed at the cost and expense of Design-Builder (as a Cost of the Work subject to the GMP). The amount of such cost shall be deducted from the GMP by Change Order or, at Owner's option, shall be indebtedness of Design-Builder to Owner, payable on demand. At the request of Owner and within 24 hours of Design-Builder's receipt of written notice thereof, Design-Builder shall respond to and commence work on any safety issue or matter significantly impacting the ability of Owner or 49ers Stadium Company to utilize the Project.

9.4 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to any other obligation that Design-Builder might have under the Contract Documents. The establishment of any time period after the date of Substantial Completion relates only to the specific obligation of Design-Builder to correct the Work, and does not relate to the time within which Design-Builder's obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Design-Builder's liability with respect to its obligations.

9.5 The expiration of any warranty or guarantee or any obligation of Design-Builder to correct Work shall not relieve Design-Builder of the obligation to correct, at its own expense, any latent defect in the Work or deficiencies that are not readily ascertained, including, but not limited to, defective materials and workmanship, defects attributable to substitutions for specified materials, and substandard performance of any of the Work otherwise not in compliance with the Contract Documents.

9.6 Design-Builder shall collect all written guaranties, warranties, operations and maintenance manuals and equipment manuals from all Subcontractors and suppliers, and shall deliver them to Owner, in a single, organized set of binders, upon Substantial Completion of the Project.

9.7 All warranties arising from Design-Builder from this Article 9 and elsewhere in the Contract Documents shall run directly to Owner. All warranties and guarantees of Subcontractors, manufacturers or suppliers shall run directly to Design-Builder and Owner and shall otherwise be fully assignable to Owner's designee (including, without limitation, any owner or tenant of the Project). The warranties provided in this Article 9 shall be in addition to and not in limitation of any other warranty or remedy arising by law or by the Contract Documents. Design-Builder shall provide reasonable assistance to Owner in enforcement of long-term warranties or guaranties from manufacturers or suppliers. Design-Builder shall be reimbursed for such assistance as a Cost of the Work. Design-Builder acknowledges that its warranty obligations under this Article 9 hereof shall be separate from and in addition to all warranties provided by or through any Subcontractors.

9.8 The warranty of Design-Builder provided in this Section shall in no way limit or abridge the warranties of the suppliers of equipment and systems that are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Design-Builder shall take no action or fail to act in any way that results in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of Owner under such warranties. Design-Builder agrees to provide all notices required for the effectiveness of such warranties.

9.9 At ten (10) months and twenty-two (22) months after the date of Substantial Completion, Design-Builder and Design-Builder's Architect shall, together with Owner, inspect the Work to assure that it comports with the Contract Documents and all warranties and guarantees. Design-Builder shall promptly correct any deficiencies noted during such inspection. The parties acknowledge that reasonable wear and tear may be observed during such inspection, but that such reasonable wear and tear is not part of Design-Builder's warranty obligation.

9.10 Design-Builder agrees that all Work shall be warranted for two (2) years from the date of Substantial Completion of the Project, regardless of when such Subcontractors complete their individual portion of the Work or receive final payment.

9.11 Following the correction or replacement of any of the Work, Design-Builder shall correct any defects or deficiencies in the corrected or replaced materials and workmanship that are found within the longer of the balance of the initial two years warranty period or one (1) year after the date of correction or replacement, whichever is longer.

ARTICLE 10

INDEMNIFICATION

10.1 General.

10.1.1 To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless the Indemnitees, from and against any and all suits, claims, damages, losses, costs, settlements, arbitration awards, and expenses, including attorneys' fees, to the extent arising out of or resulting from (a) Design-Builder's breach of this Agreement, (b) any penalties or fines levied or assessed for violation of any Legal Requirement, or costs resulting therefrom, arising out of performance of the Work by Design-Builder, any Subcontractor or Sub-subcontractor, or any agent, servant or employee of any one or more of them or any other person or entity for whose acts Design-Builder may be liable or (c) the negligent act, omission or other tortious conduct of Design-Builder, any Subcontractor or Sub-subcontractor, or any agent, servant or employee of any one or more of them or any other person or entity for whose acts Design-Builder may be liable, provided that such suit, claim, damage, loss, cost, settlement, arbitration award or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). Should Design-Builder damage its work or work performed by Owner's forces, it shall immediately repair such damage at no cost to Owner and shall submit, as appropriate, an insurance claim.

10.2 Patent Indemnification.

10.2.1 Design-Builder shall indemnify, defend and hold harmless the Indemnities from and against any and all claims whatsoever arising from or in any manner related to an infringement of patents or the improper use of other proprietary rights that may occur in connection with the performance of the Work and the ownership or use of the equipment and materials excepting, however, those arising from particular products, systems, materials or equipment specified in writing by Owner.

10.3 Lien Indemnification.

10.3.1 Design-Builder shall indemnify, defend and hold harmless the Indemnitees from and against any and all suits, claims, damages, losses, costs, settlements, arbitration awards and expenses, including attorney's fees suffered, incurred or arising from mechanics' or materialmen's liens and any other claims for payment asserted against the Indemnitees, the Project, existing improvements on the Project Site, or any part thereof arising out of the Work, but only to the extent that Design-Builder paid all undisputed amounts that are due and payable.

10.3.2 Owner shall have the right to retain out of any payment due or thereafter to become due to Design-Builder 150% of the amount of any liens that have not been removed or bonded off, in order to protect Owner against the costs of such liens.

10.4 Defense.

10.4.1 Any defense to be provided by Design-Builder pursuant to any indemnification provision of this Agreement shall be by counsel approved by Owner, which approval shall not be

unreasonably withheld. To the extent any of the Indemnitees incurs costs or expenses to enforce this indemnification (including attorneys' fees and expenses), Design-Builder shall reimburse the Indemnitee for such costs and expenses.

ARTICLE 11

TERMINATION OF THE AGREEMENT AND DEVELOPER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS

11.1 Suspension and Termination by Design-Builder.

11.1.1 If Owner fails to pay within twenty (20) days after due any undisputed amounts that are due and owing to Design-Builder under this Agreement, then Design-Builder may, upon fourteen (14) days' written notice to Owner, during which time Owner fails to make such payment, suspend the Work. Thereafter, if Owner fails to pay Design-Builder any undisputed amounts due upon ten (10) days' written notice to Owner and Owner's continued failure to pay, Design-Builder may terminate this Agreement and recover from Owner payment for all Work executed and the portion of Design-Builder's Fee earned prior to the date of termination (based on the percentage of Work completed as of such date), all Cost of the Work actually and reasonably incurred by Design-Builder as a result of such termination. The foregoing payment shall be the exclusive recovery to Design-Builder and Design-Builder hereby waives any other right of recovery for damages by reason of termination, including, without limitation, anticipated profits or consequential damages.

11.2 Owner's Right to Perform Design-Builder's Obligations and Termination by Owner for Cause.

11.2.1 If Design-Builder fails to properly and timely perform any if its obligations under this Agreement, Owner may, after ten (10) days' written notice to Design-Builder and its Surety(ies), during which period Design-Builder fails to perform such obligations (including, without limitation, the obligation to maintain a clean and safe Project Site), without prejudice to and cumulative of any other remedy Owner may have, make good such deficiencies. No action taken hereunder by Owner shall be deemed a termination of this Agreement or relieve Design-Builder from any consequences or liabilities arising from such actions or omissions. All costs and expenses incurred by Owner in correcting such deficiencies shall be deducted from the GMP. If such costs and expenses exceed the unpaid balance of the GMP, Design-Builder shall be liable for such excess.

11.2.2 If Design-Builder is adjudged to be bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it fails to supply enough properly skilled workers or proper materials, or if it fails to make proper payment to Subcontractors or for materials or labor, or fails to comply with Applicable Laws, or if it otherwise breaches this Agreement, then, subject to the Surety(ies) rights, Owner may, without prejudice to any right or remedy and after giving Design-Builder and its Surety (ies) ten (10) days' written notice, during which period Design-Builder fails to cure the violation (or to take adequate steps to promptly correct or cure the problem), terminate the employment of Design-Builder and take possession of the Project Site and of all materials, equipment, tools,

construction equipment and machinery thereon owned by Design-Builder and may finish the Work by whatever reasonable method that Owner may deem expedient. In such case, Design-Builder shall not be entitled to receive any further payment until the Work is finished nor shall it be relieved from its obligations under this Agreement.

11.2.3 If Owner terminates this Agreement and then completes the Work, and the unpaid balance of the GMP exceeds the cost of finishing the Work, including Owner's additional costs, compensation for additional services of Owner's consultants, and all losses, actual damages, costs and expenses, including attorney's fees, sustained or incurred by reason of Design-Builder's failure to complete the Work, Owner shall pay Design-Builder only for the Work Design-Builder actually performed. If such cost to Owner to complete the Work exceeds such unpaid balance, then Design-Builder shall pay the difference to Owner upon demand. This obligation for payment shall survive the termination of this Agreement.

11.3 Termination For Convenience.

11.3.1 In addition to any other rights Owner may have at law or under this Agreement with respect to cancellation or termination, Owner may, without cause and in its sole discretion, terminate this Agreement in whole or in part, if Owner determines that a termination is appropriate for its convenience. Owner shall terminate by delivering to Design-Builder a notice of termination for convenience specifying the extent and the effective date of termination. Owner shall, upon Design-Builder executing such confirmatory assignments as Owner shall request, accept and assume all of Design-Builder's obligations under all such Subcontracts for which Owner has requested assignment that may accrue after the date of such termination and that Design-Builder has incurred in good faith in connection with the Work. Neither Design-Builder nor any Subcontractor, Sub-subcontractor, Supplier or Materialman shall be entitled to anticipated profits on Work unperformed or on materials or equipment unfurnished. Design-Builder shall be entitled to the following as termination expenses: Design-Builder's Fee earned to the effective date of termination, Cost of the Work performed through the effective date of termination and reasonable, documented demobilization costs. Design-Builder shall include a similar termination for convenience clause in each of its Subcontracts.

ARTICLE 12

SUCCESSORS AND ASSIGNS

12.1 Owner and Design-Builder, respectively, bind themselves, their partners, principals, successors, assigns and legal representatives to the other party to this Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

12.2 Design-Builder shall not assign or transfer any interest in this Agreement without the written consent of Owner.

12.3 Owner may assign this Agreement at any time with the consent of Design-Builder, which consent shall not be unreasonably withheld or delayed (provided that Design-Builder shall have no right of consent if Design-Builder is in default hereunder at the time consent to assignment is

requested, subject to any applicable notice and cure periods). Notwithstanding the foregoing, Owner shall be permitted, without the consent of Design-Builder, to assign any part or all of its rights and/or obligations under this Agreement to the Team, the 49ers Stadium Company or any Affiliate of the Team or the 49ers Stadium Company that will own, lease or operate any portion of the Project. In addition, any collateral assignment to lenders for the purposes of financing the Project shall not require the consent of Design-Builder.

ARTICLE 13

EXTENT OF AGREEMENT

13.1 Entire Agreement.

13.1.1 This Agreement represents the entire and integrated agreement between Owner and Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design-Builder.

13.2 Third Party Rights.

13.2.1 Nothing contained herein shall be deemed to give any third party other than Owner and Owner Affiliates any claim or right of action against Owner or Design-Builder that does not otherwise exist without regard to this Agreement. All covenants and indemnifications of Design-Builder, and all rights and interests granted by Design-Builder under this Agreement, are for the joint benefit of, and may be enforced by, the Forty Niners Stadium, LLC, and Owner. The parties acknowledge and agree that Owner, the Team, the Forty Niners Stadium, LLC, and any Affiliate of the Team or the Forty Niners Stadium, LLC, are intended third-party beneficiaries under this Agreement.

ARTICLE 14

INSURANCE/BONDS

14.1 General Liability/Workers' Compensation.

14.1.1 Until the implementation of either a contractor-controlled insurance program ("CCIP") or an owner-controlled insurance program (the "OCIP") (hereinafter referred to as the "Wrap-Up Program"), Design-Builder shall obtain, pay for and keep in force, the insurance required under **Exhibit L** attached hereto. Owner and Design-Builder shall jointly investigate the use of a Wrap-Up Program to provide coverages for general liability insurance, excess liability insurance and workers' compensation (including employers' liability) insurance for the Project with limits of liability consistent with those set forth on **Exhibit M** attached hereto. Prior to the commencement of construction (but no later than a date to be agreed to by the parties prior to the execution and delivery of the GMP Amendment), Owner shall obtain a firm quote or quotes for the cost of an OCIP based upon the coverages and limits of liability set forth on **Exhibit M**, and shall deliver a copy of such quote and the policy form to Design-Builder. Design-Builder shall propose to Owner a quote for providing a CCIP based upon the coverages and limits of liability

set forth on **Exhibit M**. Owner shall, in its discretion, select the Wrap-Up Program that it deems to be in its best interests.

14.1.2 The Wrap-Up Program selected by Owner shall cover Owner, Design-Builder, enrolled consultants of Design-Builder, enrolled Subcontractors, enrolled Sub-subcontractors, Design-Builder's Architect and its enrolled consultants involved in the Project. Design-Builder and all enrolled Subcontractors and Sub-subcontractors shall comply with all requirements of the Wrap-Up Program, including compliance with the terms of the Wrap-Up Program minimum safety standards, loss control requirements and all record keeping and reporting necessary for payroll, loss and other data. The GMP Amendment shall contain a detailed description of the Wrap-Up Program.

14.2 Bonds/Contractor Default Insurance.

14.2.1 Design-Builder shall submit to Owner an irrevocable performance and payment bond (the "Bond") for the Work issued by a surety company acceptable to Owner, as security for the proper and complete fulfillment of Design-Builder's obligations hereunder, as required under **Exhibit L** attached hereto.

14.2.2 Design-Builder may provide contractor default insurance ("CDI") in lieu of traditional bonding for the Project if Design-Builder's proposed cost of the CDI is reasonably competitive with the cost that would be charged for a similar program on a project of comparable size, scope and complexity as the Project, based on a feasibility study to be performed for Owner by a national insurance broker with current experience in the procurement of CDI. If comparable CDI programs are not commercially available in the marketplace for comparison purposes, then Design-Builder's CDI program may be implemented for the Project provided its cost is less than the cost of implementing a traditional bonding program for the Project, as reasonably determined by Owner. If bonds are required, then they shall satisfy the bonding requirements set forth in **Exhibit L** attached hereto. The premium cost for the CDI, to be charged as a Cost of the Work, shall not exceed $1.15 per $1,000 of the subcontract value of the Subcontractors enrolled in the CDI program.

14.2.3 Design-Builder shall, with the assistance of the insurance underwriter, implement the procedures for enrolling Subcontractors in the CDI program adopted by Owner. The GMP Amendment shall contain a detailed description of the CDI program for the Project and such program shall include limits of liabilities, deductibles, self-insured retentions, co-payment amounts and terms and conditions as are commercially available and typical for construction projects of the size, scope and complexity as the Project.

14.3 Builder's Risk.

14.3.1 Prior to the commencement of construction (but no later than a date to be agreed to by the parties prior to the execution and delivery of the GMP Amendment), Owner shall obtain a firm quote for the cost of builder's risk property insurance based upon agreed upon coverages and limits of liability, and shall deliver a copy of such quote to Design-Builder. Design-Builder may, within thirty (30) days after receiving the builder's risk quote, propose to Owner a quote for providing the builder's risk property insurance. Owner shall, in its discretion, select the Builder's

Risk Program that it deems to be in its best interests. If Owner's builder's risk policy is selected, Owner shall place and maintain, an "all-risk" or "special form" policy form of builder's risk insurance for the Project to be further described in the GMP Amendment. Design-Builder shall cause its Subcontractors to be responsible for a portion of the per claim deductible under the builder's risk policy in an amount to be agreed to by Owner and Design-Builder; otherwise Owner shall be responsible for the deductible. Owner and Design-Builder shall cooperate with each other and jointly adjust and settle any loss insured under the builder's risk insurance. Any loss shall be made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause, and Owner shall pay to Design-Builder its just share of insurance proceeds received by Owner. Design-Builder shall pay Subcontractors and Sub-subcontractors their just share of insurance proceeds received by Design-Builder, and by appropriate agreements, written if legally required for validity, shall require all Subcontractors and Sub-subcontractors to make payments to their sub-subcontractors in similar manner.

14.3.2 Both builder's risk insurance options (Owner-provided or Design-Builder-provided) shall contain a full waiver of subrogation. Sublimits for damage due to earthquake or flood will be based upon what is available at commercially reasonable rates in the market at the time of coverage placement.

14.4 Contractor Pollution Liability.

14.4.1 Prior to the commencement of construction (but no later than a date to be agreed to by the parties prior to the execution and delivery of the GMP Amendment), Owner shall obtain a firm quote for the cost of pollution liability (including mold) based upon agreed upon coverages and limits of liability, and shall deliver a copy of such quote to Design-Builder. Design-Builder may, within thirty (30) days after receiving the quote, propose to Owner a quote for providing the pollution liability insurance. Owner shall, in its discretion, select the pollution liability program that it deems to be in its best interests.

14.5 Errors and Omissions. **[OPEN]**

14.5.1 [Design-Builder shall purchase and maintain insurance to protect against claims arising out of the performance of professional services caused by negligent acts, errors or omissions of Design-Builder, Design-Builder's Architect and any other firm providing professional services for whom Design-Builder is legally liable. Design-Builder shall maintain professional liability insurance with minimum limits of $_____ per claim/annual aggregate and a per claim deductible not in excess of $_____, and shall require the Design-Builder's Architect to maintain professional liability insurance with minimum limits of $_____ per claim/annual aggregate and a per claim deductible not in excess of $_____. It is understood that the Parties shall explore an OPPI/CPPI policy as excess coverage above various professional liability policies of the architects, designers, engineers or other professional consultants providing professional services to the Project, and such OPPI/CPPI shall provide coverage to both Design-Builder and Owner. Design-Builder shall maintain such insurance in effect for a period of not less five (5) after the date of Substantial Completion. If such professional liability insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date of this Agreement. Design-Builder shall cause each of its professional consultants providing

design or engineering services to the Project to maintain separate professional liability insurance to protect against claims arising out of the performance of such services with such limits of liability as are customary for the services to be performed.]

14.5.2 [To the fullest extent permitted by law, and notwithstanding any term or condition of this Agreement to the contrary, except in the case of gross negligence or intentional misconduct, the liability of Design-Builder (and its parent, subsidiary and affiliated entities and its officers, directors, partners, and employees) to Owner, Construction Agent and any one claiming by, through or under them, for any and all claims, losses, costs, direct, indirect, or consequential damages whatsoever arising out of or resulting from professional errors and omissions in the performance of architectural and engineering services by Design-Builder, Design-Builder's Architect and their respective consultants and subconsultants (whether such claims are asserted in the context of negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied) shall not exceed the sum of the following: (a) _____ Dollars ($_____), plus (b) with respect to professional errors and omissions for which any of the consultants or subconsultants of Design-Builder or Design-Builder's Architect are responsible, (i) the amount of insurance proceeds available under the applicable professional liability policies of the respective consultants and subconsultants of Design-Builder or Design-Builder's Architect (taking into account erosion of limits under such policies) to the extent paid after commercially reasonable efforts by Design-Builder (or Design-Builder's Architect) in pursuing such claims against such consultants and subconsultants, and giving effect, as applicable, to adjudication of such claims by legal proceeding, determination of such claims by arbitration, or settlement of such claims subject to the reasonable approval of Owner, less (ii) all costs and expenses incurred by Design-Builder (or Design-Builder's Architect) in connection with pursuing such claims. Notwithstanding the foregoing, it is acknowledged that Delay Liquidated Damages, as provided in Section 6.2 hereof, are Owner's sole remedy with respect to damages suffered by Owner as a result of delay of Substantial Completion of the Work, and any Delay Liquidated Damages payable by Design-Builder pursuant to Section 6.2 hereof are not applied against the foregoing limitation, which is intended to apply to damage other than damages resulting from a delay of Substantial Completion.]

ARTICLE 15

CHANGES

15.1 Change Orders.

15.1.1 All Change Orders shall be executed in writing by Owner and Design-Builder, shall be in the form contained in the Project Administration Forms and shall contain full particulars of the changes, and any adjustments of the GMP, Guaranteed Substantial Completion Date and any other modification to this Agreement. Except as otherwise provided in Section 15.4 hereof, no changes to the scope of Work, Guaranteed Substantial Completion Date, and/or GMP shall be made except in accordance with a duly issued Change Order executed by both parties authorizing such changes. Except in the event of an emergency, Design-Builder acknowledges and agrees that it shall neither seek, nor be entitled to receive, payment for any extra or additional work, unless Design-Builder receives, prior to performing such work, a written direction to proceed with such extra or additional work, signed by Owner.

15.2 Changes Directed by Owner.

15.2.1 Owner may direct a change that would alter, add to or deduct from the scope of Work, by submitting to Design-Builder a written request setting forth in reasonable detail the nature of the requested change. If Design-Builder determines in good faith and demonstrates that such change directed by Owner will (a) increase or decrease Design-Builder's cost of performing the Work, (b) adversely affect or enhance Design-Builder's ability to meet the Guaranteed Substantial Completion Date, or (c) adversely affect Design-Builder's ability to comply with the warranties provided in this Agreement, then Design-Builder shall furnish Owner with the information specified in Section 15.4 hereof with respect to such changed Work. If Owner then elects to proceed with the changed Work, then it shall issue a Change Order to Design-Builder authorizing such modification as shall have been agreed to by Owner and Design-Builder.

15.3 Changes other than Owner-Directed Changes.

15.3.1 Notice. Design-Builder shall give timely written notice to Owner of any Claim for extension of time or any Claim for additional compensation, which notice shall, to the extent practicable, specify the length of delay in the Substantial Completion Date and, as applicable, the additional compensation claimed and shall substantiate the same to the reasonable satisfaction of Owner. Such notice shall be issued promptly but in no event later than within fourteen (14) days following actual knowledge of the event giving rise to the Claim by Design-Builder's project manager or any of Design-Builder's Senior Project Manager, Senior Project Engineer, Design Manager or General Superintendent. If it is impracticable to specify the length of such delay or amount of the Claim at the time the notice referred to in the preceding sentence is delivered, then Design-Builder shall provide Owner with periodic supplemental notices during the period over which the event continues. Such supplemental notices shall keep Owner informed of any change, development, progress or other relevant information concerning the event of which Design-Builder is aware. It is a condition precedent to the consideration or prosecution of any Claim that the foregoing procedures be strictly adhered to in each instance, and if Design-Builder fails to comply, Design-Builder shall be deemed to have waived such Claim.

15.3.2 Concealed or Unknown Conditions. If conditions are encountered at the Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) days after first observance of the conditions. Owner will promptly investigate such conditions and, if they differ materially and cause an increase in the cost of, or time required for, performance of any part of the Work, Design-Builder will be entitled to equitable adjustment in the GMP or Construction Schedule, or both. If Owner determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents and that no change is justified, then Owner shall so notify Design-Builder in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) days after Owner has given notice of its decision. If Owner and Design-Builder cannot agree on an adjustment in the GMP or Construction Schedule, the adjustment shall be submitted to dispute resolution as provided in this Agreement.

15.3.3 Owner Review of Request. If Owner accepts Design-Builder's finding as to an event of delay, then, subject to the provisions of Section 6.3 hereof, Owner shall issue a Change Order adjusting the Substantial Completion Date by extending the time for performance of Design-Builder's obligations under this Agreement for a period equal to the delay in completion of the Project or such time as Design-Builder shall demonstrate as reasonable in Owner's sole discretion. If Owner does not accept Design-Builder's findings, then the propriety of a Change Order for such event may be submitted to dispute resolution as provided in this Agreement.

15.3.4 Damage for Delays. Provided that notice is given pursuant to Section 15.3.1 hereof and all other conditions precedent to asserting a Claim under this Agreement are satisfied, Design-Builder (but not the affected Subcontractor) shall be entitled to reimbursement for actual Cost of the Work incurred in the field (but not home office overhead or profit) during any excusable delays caused by Owner or resulting from *Force Majeure*; otherwise, the only remedy available for delays, hindrances, obstructions or interferences with the Work shall be an extension of time as permitted pursuant to this Article 15. Design-Builder shall assure that a "damage for delay" clause is contained in each Subcontract in substantially the following form: "Subcontractor agrees that whether or not any delay shall be the basis for an extension of time, it shall have no claim or cause of action against Design-Builder or Owner for any increase in the Subcontract price hereunder, nor a claim or cause of action against Design-Builder or Owner for payment or allowance of any kind of damage, loss or expense resulting from delays, hindrances, obstructions or interferences with the Work required under this Subcontract Agreement, except that Subcontractor may be entitled to reimbursement for actual costs incurred in the field (but not home office overhead or profit) during any excusable delays caused by the acts or omissions of Owner."

15.3.5 Mitigation of Event. Design-Builder shall use its best efforts to remove, relieve and/or minimize the effect of any delay, whether caused by any event of Force Majeure or other causes. If, with the prior notice and consent of Owner, Design-Builder takes action to minimize delays that are not the fault of Design-Builder, the GMP shall be adjusted to reflect reimbursements of the costs incurred in taking such actions.

15.4 Performance of Changed Work. If the parties are unable to agree on the final adjustment to the GMP applicable to a Change Order, and if directed by Owner, then Design-Builder shall proceed to perform such changed Work so long as Design-Builder is paid on a time and materials basis in accordance with the pricing set forth in **Exhibit N** and provided that the scope of such work has been fully documented by a Change Order approved in writing by Owner. If the parties cannot ultimately reach an agreement, then either party may refer the issue to dispute resolution as provided in this Agreement.

15.4.1 Price and Schedule Adjustments for Change Order Work. The price of any Work ordered by a Change Order shall be calculated on the basis set forth in **Exhibit N** unless otherwise agreed by Owner and Design-Builder. Design-Builder shall, as soon as reasonably practical following a request therefor, furnish Owner with detailed estimates, quotations or costs to be used in determining the amount of any proposed adjustment to the GMP. Each Change Order incorporating the agreed GMP adjustment shall be accompanied by a modified payment schedule reflecting such adjustment and each Change Order incorporating the agreed extension of the

Substantial Completion Date shall be accompanied by a modified Construction Schedule reflecting such adjustment.

15.4.2 Constructive Acceleration. Notwithstanding anything in this Agreement to the contrary, if Design-Builder is entitled to an extension of time pursuant to this Agreement and has made a timely and proper Claim therefor, but Owner, nevertheless, requires Design-Builder to perform without a change in the date required for Substantial Completion of the Work with the result that Design-Builder is required to accelerate its performance of the Work, then the GMP shall be adjusted in accordance with this Article 15 to the extent of any increase in the reasonable direct costs incurred by Design-Builder as a result of such constructive acceleration, plus a profit and overhead as set forth in **Exhibit N**. In no event shall Design-Builder be entitled to any other compensation or recovery of any damages in connection with constructive acceleration, including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity claims, cumulative impact damages due to multiple change orders or similar remuneration. Design-Builder shall accelerate its Work in the most cost efficient manner by employing extra shifts or additional crews before using overtime. Owner shall have the right to approve Design-Builder's proposed manner of acceleration. If Owner requires that the Work be accelerated in lieu of an extension of time, it shall be on a best efforts basis and extension of time shall be given for any time not able to be recovered, and the GMP shall be adjusted to the extent of any increase in the reasonable direct costs incurred by Design-Builder.

15.5 Fast Track.

15.5.1 Design-Builder acknowledges that the Project may be constructed on a "fast track" phased basis and that proposals for some portions of the Work will be obtained before design of the overall Project is complete. Design-Builder represents that it has all requisite expertise in the "fast-track" method of construction and related "fast-tracking" practices and understands that said representation has served as a material inducement in Owner's selection of Design-Builder. Design-Builder hereby waives any and all Claims, rights and remedies it may otherwise have at law or in equity for claiming, or otherwise asserting, that it is entitled to extra compensation or damages of any kind, or to an extension to the Construction Schedule by reason, or as a result, of schedule changes or impacts (including the performance of "out-of-sequence" Work) necessitated to accommodate performance of the Work on a "fast-track" basis (and Design-Builder shall so provide in all Subcontracts). Design-Builder expressly recognizes that the "fast-track" method may require Design-Builder to prepare, issue and analyze bid packages in excess of the number ordinarily required under standard construction practices and hereby agrees to prepare, issue and analyze the same, if and as needed, in a timely manner.

ARTICLE 16

DISPUTE RESOLUTION

16.1 With respect to any Claim, prompt notice thereof shall be given pursuant to Section 15.3.1 hereof and a record thereof shall be made in the monthly Project Report as required under Section 5.7.4. At the next Project meeting following delivery of the notice under Section 15.3.1 hereof, Design-Builder and Owner shall reserve time at the end of such Project meeting to attempt to resolve such Claim at the field level through discussions between Design-

Builder's Senior Project Manager and Construction Agent's Project Representative. If a Claim cannot be resolved through Design-Builder's Senior Project Manager and Construction Agent's Project Representative within thirty (30) days after the initial attempt, then, Design-Builder's Senior Representatives (Michael O'Brien and Gary Filizetti) Owner's Senior Representative (Larry MacNeil and **_____ of the Stadium Authority]**) upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such Claim. Prior to any meetings between the parties, the parties shall exchange relevant information that will assist the parties in resolving their Claim. If a party intends to be accompanied at a meeting by an attorney, the other party shall be given at least ten (10) days' notice of such intention and may also be accompanied by an attorney.

16.2 If, after meeting, the Senior Representatives determine that the Claim cannot be resolved on terms satisfactory to both parties, the parties shall, within fourteen (14) days after the meeting of the Senior Representatives, submit the Claim to non-binding mediation administered jointly by the parties to the mediation and otherwise in accordance with the Construction Industry Claim Resolution Procedures of the American Arbitration Association (AAA) then in effect. Unless otherwise agreed by the parties, the parties shall select one of the pre-qualified mediators set forth in **Exhibit O** to mediate any Claim. Within seven (7) days after the selection of the mediator, the parties and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation and the procedures that will govern the mediation. The cost and expense of the mediator shall be equally shared by the parties and each party shall submit to the mediator any information or position papers that the mediator may request to assist in resolving the Claim. The parties will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator, will assert no claims against the mediator as a result of the mediation, and will hold the mediator harmless from claims by third parties arising out of or relating to the mediation provided for in this Section. Notwithstanding anything in the above to the contrary, if a Claim has not been resolved within one hundred twenty (120) days after the initial meeting between Design-Builder's project manager and Construction Agent's Project Representative, then either party may elect to proceed under Section 16.5 hereof.

16.3 Failure of either party to comply with the provisions of this Article 16 shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and shall constitute a waiver by such party of any Claim with respect to which it fails to comply with the provisions of this Article 16 in any material respect.

16.4 In the event of any dispute arising by or between Owner, and Design-Builder, including Design-Builder's Architect and Subcontractors, materialmen or suppliers, or any of them, each party shall continue to perform as required under the Contract Documents notwithstanding the existence of such dispute. In the event of such a dispute, Owner shall continue to pay Design-Builder as provided in the Contract Documents, excepting only such amount as may be disputed.

16.5 Unless the parties otherwise agree, if a Claim has not been settled or resolved within one hundred twenty (120) days after the initial meeting of Design-Builder's project manager and Construction Agent's Project Representative, then either party shall notify the other party of its intent to pursue the Claim further. Within fourteen (14) days after receipt or delivery (as the case

may be) of such notice, Owner shall send written notice to Design-Builder specifying whether any unresolved Claim shall be resolved by either (a) litigation in a court of competent jurisdiction set forth in Section 17.1 hereof or (b) binding arbitration, conducted through any nationally recognized arbitration provider, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then currently in effect. Any such election shall be in Owner's sole discretion. Upon such election, either party may then commence litigation or arbitration proceedings, as the case may be. All arbitration proceedings shall be held in the City. If Owner fails to send the above referenced written notice within the required fourteen (14)day period, Owner will be deemed to have elected to litigate the unresolved Claim.

16.6 A demand for arbitration shall be made within the time limits specified in this Article 16 and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations; provided, however, notwithstanding anything in the Contract Documents to the contrary, if any Claim has not been resolved to the mutual agreement of the parties within any applicable statute of limitation period, then either party may commence litigation on such Claim prior to the expiration of such period in order to preserve its rights.

16.7 Any arbitration arising out of or relating to this Agreement may include, by consolidation or joinder or in any other manner, other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The agreement to arbitrate under this Article 16 shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award of the arbitrators may be entered as a judgment in any court of competent jurisdiction.

16.8 In the event of any dispute between Owner and Design-Builder, the prevailing party in any arbitration or litigation shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or other amounts to which it may be entitled.

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.1 This Agreement shall be governed by the laws of the State of California without regard to principles of conflicts of law. Any litigation under this Agreement shall be brought in any court having proper jurisdiction that is located in the City, and all parties hereto consent to personal jurisdiction and venue in such court.

17.2 If any provision of this Agreement is held to be unenforceable, no other provision shall be affected thereby, and the remainder of the Agreement shall be interpreted as if it did not contain the unenforceable provision.

17.3 The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

17.4 Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the party giving such notice and shall be hand delivered or sent by overnight courier, messenger or registered letter, email or fax, to the other party at the address set forth below:

If delivered to Owner:

Santa Clara Stadium Authority
c/o Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 9 5054
Attention: Larry MacNeil, Vice President
Phone: 408-562-4986
Fax: 408-492-1749
Email: Larry.MacNeil@Niners.NFL.net

With a copy to:

(a) Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Executive Director
Phone: 408-615-2210
Fax: _____
Email: _____

[SA TO PROVIDE INFO FOR COPY TO SA ATTORNEY]

(b) Jack Hill
Forty Niners Stadium, LLC
4949 Centennial Blvd
Santa Clara, CA 95054
Phone: 650-207-9760
Fax: 408-562-4906
Email: Jack.Hill@Niners.NFL.net

(c) Project Management Consultants LLC
3900 Key Center
127 Public Square
Cleveland, OH 44114-1291
Attention: Jeffrey R. Appelbaum
Phone: 216-566-5548
Fax: 216-566-5800

Email: Jeff.Appelbaum@aboutPMC.com

(d) Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Attention: Harry O'Brien, Esq.
Phone: 415-772-5723
Fax: 415-276-6363
Email: HObrien@CoblentzLaw.com

If delivered to Design-Builder:

Turner Construction Co.
1111 Broadway, Suite 2100
Oakland, CA 94607
Attention: Michael E. O'Brien, Senior Vice President
Phone: 510-267-8100
Fax: 510-267-8200
Email: MOBrien@TCCo.com

With a copy to:

(a) Devcon Construction
690 Gibraltar Drive
Milpitas, CA 95035
Attention: Gary Filizetti, President
Phone: 408-942-8200
Fax: 408-262-2342
Email: GFilizetti@Devcon-Const.com

(b) Devcon Construction
690 Gibraltar Drive
Milpitas, CA 95035
Attention: Brett Sisney, Controller
Phone: 408-942-8200
Fax: 408-262-2342
Email: BSisney@Devcon-Const.com

(c) Turner Construction – Sports Group
3865 Wilson Boulevard, Suite 200
Arlington, VA 22203-1919
Attention: Dale K. Koger, Vice President
Phone: 703-841-7030
Fax: 703-841-4545
Email: DKoger@TCCo.com

Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice. Any notice given by fax shall also be deposited in regular U.S. mail (or more expedient delivery) no later than the next business day after the fax was sent.

17.5 All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference as if fully rewritten herein and are deemed to be an integral part of this Agreement.

17.6 Design-Builder is an independent contractor and shall not be deemed an agent, employee or partner of Owner. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Design-Builder and Owner.

17.7 This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

17.8 Except as otherwise provided herein, all rights and remedies provided in this Agreement are in addition to all other rights and remedies available at law or in equity.

17.9 Design-Builder and Owner each has full power and authority to enter into this Agreement and the persons signing on behalf of the respective parties hereto are authorized to do so.

17.10 Design-Builder shall not issue a press release, advertisement, publicity material, or similar matter or participate in a media interview concerning the Project without the prior consent in writing of Owner. Owner shall have the right to approve the exact content and timing of news releases, articles, advertisements or other information releases concerning the Project or this Agreement.

17.11 Each joint venturer of Design-Builder agrees and covenants that each is jointly and severally liable for the duties and obligations of Design-Builder under the Contract Documents.

ARTICLE 18

OWNERSHIP OF DOCUMENTS

18.1 All Project Documents (together with the design concepts therein) shall be the joint property of Design-Builder and Owner. Owner may use all Project Documents in connection with the design, construction, expansion, renovation, maintenance and marketing of the Project. Design-Builder may use any constituent parts of Project Documents on other projects, except for any unique or distinctive aesthetic components or effects that, taken independently or in combination, will produce a result that is substantially similar in appearance to the Project or to any significant or unique design components of the Project. In furtherance of the foregoing and subject to the use restrictions set forth above, Design-Builder, for itself and its consultants, hereby unconditionally and irrevocably transfer and assign to Owner a non-exclusive, royalty-free license to any and all design work product (including architectural and engineering) of Design-Builder and its consultants performed pursuant to this Agreement, including, without

limitation, all patents, copyrights, trademarks, service marks and other intellectual property rights. Design-Builder shall procure from its consultants (including Design-Builder's Architect) and Subcontractors such assignments or transfers of rights as necessary to effectuate the foregoing. In the event of any termination of Design-Builder under Article 11 of this Agreement, Design-Builder shall promptly deliver the Project Documents to Owner. Such materials shall be in a format as reasonably requested by Owner. Owner shall indemnify and hold Design-Builder and Design-Builder's Architect harmless from and against any costs, expenses or damages incurred or suffered by Design-Builder or Design-Builder's Architect arising out of (a) Owner's use of the Project Documents in a manner contrary to the use permitted under this Article 18 or (b) Owner's use of the Project Documents in connection with another project or expansion of this Project if Design-Builder and Design-Builder's Architect is not hired to work on such expansion, renovation or new project. Design Architect shall provide Design-Builder CADD Documents and Technical Specifications in an acceptable CADD format, along with all calculations and other pertinent data related to the design for use by either Design-Builder, its Subcontractors or Design-Builder's Architect.

[SIGNATURES ON NEXT PAGE]

This Agreement is entered into as of the date first above written, but effective as of the Effective Date.

OWNER:

SANTA CLARA STADIUM AUTHORITY

By:_____
Name:_____
Its:_____

CONSTRUCTION AGENT:

FORTY NINERS STADIUM, LLC

By:_____
Name:_____
Its:_____

DESIGN-BUILDER:

TURNER/DEVCON,
A JOINT VENTURE

By: Turner Construction Company

By:_____
Name: Michael O'Brien
Its: Senior Vice President

And By: Devcon Construction, Inc.

By:_____
Name: Gary Filizetti
Its: President

LIST OF EXHIBITS

EXHIBIT A	Design Architect's Subconsultants
EXHIBIT B	Construction Drawings Criteria
EXHIBIT C	General Conditions of the Contract for Construction
EXHIBIT D	Description of General Conditions Work
EXHIBIT E	Form of Amendment Establishing Guaranteed Maximum Price
EXHIBIT F	IGMP Drawings and Specifications Description and GMP Drawings and Specifications Criteria
EXHIBIT G	Design-Builder's Key Personnel and Consultants
EXHIBIT H	Form of Payment and Performance Bonds
EXHIBIT I	[NOT USED]
EXHIBIT J	Rate Schedule of Project Staff Reimbursable as a Cost of the Work
EXHIBIT K	List of Long-Term Warranty Requirements
EXHIBIT L	Schedule of Insurance and Bond Requirements
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EXHIBIT N	Change Order Pricing
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EXHIBIT P	Project Administration Forms
EXHIBIT Q	Description of Project Site
EXHIBIT R	Preliminary Schedule
EXHIBIT S	Preconstruction Payment Fee Schedule
EXHIBIT T	Subcontractor Selection and Procurement Plan
EXHIBIT U	Project Transaction Documents
EXHIBIT V	Ethical Standards For Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California
EXHIBIT W	Design/Construction Mitigation Measures and Conditions of Approval
EXHIBIT X	Provisions Relating to Construction Sales and Use Tax Allocations

EXHIBIT A

Design Architect's Subconsultants

[See attached]

EXHIBIT B

Construction Drawings Criteria

The Construction Drawings and Specifications are to be generated by Design-Builder's Architect as the "architect of record," utilizing the GMP Documents. The "architect of record" shall review Applicable Laws, including but not limited to building codes and ADA requirements, shall respond to the design intent of the GMP Documents. The Construction Drawings and Specifications shall be sealed and signed by the "architect of record" as required by the California State Law prior to submittal for the general building permit.

Architect of record is required to submit, for review and comment by the Developer, a "mock-up" set of Construction Drawings and Specifications with a Schedule and Detailed Work plan, for themselves and all consultants, including estimated man-hours prior to starting the Construction Drawings and Specification work.

The Construction Drawings and Specifications will contain:

Fully dimensioned floor plans and details.

Details at appropriate scale and quantity to define the design intent.

Schedules that present all elements of the Project as to type, quality and quantity.

A written verification that all disciplines have completed a coordination review utilizing a method mutually acceptable to Owner.

Full specifications using the Division format of the Construction Specifications Institute.

All specifications shall be in Microsoft Word format and shall be supplied electronically in addition to hard copy.

EXHIBIT C

General Conditions of the Contract for Construction

[To be provided by Design-Builder for Owner's review prior to execution of the GMP Amendment]

EXHIBIT D

Description of General Conditions Work

[NOTE: TDJV TO PROVIDE THE GENERAL REQUIREMENTS AND GENERAL CONDITIONS INCLUDED IN 100% SD ESTIMATE]

Cost Code	Description	Total
1501	**Staff Cost**	
	Staff Cost	
1501	**Staff Cost Activity Total**	
	Staff Cost	
1503	**QA/QC Field Engineering**	
	QC/QA	
	Roof QC/QA	
1503	**Field Engineering Activity Total**	
1504	**Security**	
	1 man; 7 days/week	
1504	**Security Activity Total**	
1505	**Jobsite Offices**	
	Office Rental	
	Setup Cost	
	Office Utilities	
	Supt Trailers/Orientation Trailer on site 2 wide	
1505	**Jobsite Offices Activity Total**	
1506	**Fences and Barricades**	
	Perimeter Fence	
	Concrete Barrier (if required)	
	Maintain Fence over and above Trade Maintenance	
1506	**Fences and Barricades Activity Total**	
1507	**Temporary Roads and Drainage**	
	Temporary Roads and Drainage	**Trade Cost**
	Maintain Building Pad	**Trade Cost**
	Maintain Roads	
1507	**Temporary Roads and Drainage Activity Total**	

Cost Code	Description	Total
1508	**Temporary Power, Light and Water**	
	Electrical Consumption	
	Gas Consumption	
	Water and Sewer Consumption	
	Electrical Setup Costs	
	Temporary Light Towers	
	Water and Sewer Setup Costs	**Trade Cost**
1508	**Temporary Power, Light and Water Activity Total**	
1510	**Janitorial**	
	Office Trailers	
1510	**Janitorial Activity Total**	
1511	**Protection**	
	Installation and Maintenance	**Trade Cost**
	Carpenter Supervision	
1511	**Protection Activity Total**	
1512	**Temporary Winter Heat**	
	Equipment Rental	**Trade Cost**
	Installation and Maintenance	
1512	**Temporary Winter Heat Activity Total**	
1513	**Miscellaneous Labor and Carpenters For GCs**	
	Laborer and Carpenter	
1513	**Miscellaneous Labor and Carpenters for GCs Activity Total**	
1514	**Cleanup**	
	Foreman Supervise Clean-up Program	
	Clean-up Program	**Trade Cost**
	Dumpsters	
	Disposable Tools/ Mini-Dumpsters	
1514	**Cleanup Activity Total**	
1515	**Final Cleanup**	
	Building Cleanup	**Trade Cost**
1515	**Final Cleanup Activity Total**	
1519	**Travel**	

Cost Code	Description	Total
1519	**Travel Activity Total**	
1522	**Telephone and Radios**	
	System	
	Service Units	
	Line Charges	
	Long Distance	
	Purchase Phone (Nextel)	
	Service Units	
	Nextel Usage	
	LD Nextel	
1522	**Telephone and Radios Activity Total**	
1523	**Reproduction**	
	Construction Doc Reproduction for design	
	Clarification issuance during Construction	
	Bid Packages	
	Construction Documents	
	Design Development Documents	
	Schematic documents	
	Miscellaneous Drawings/Sub Shop Drawings	
	Miscellaneous Manuals	
	Closeout Documents	
1523	**Reproduction Activity Total**	
1524	**Office Supplies and Services**	
	Copiers	
	Fax Machines	
	Copier Maintenance	
	Disposable Office Supplies	
1524	**Office Supplies and Services Activity Total**	
1525	**Drinking Water and Ice**	
1525	**Drinking Water and Ice Activity Total**	
1526	**Progress Photos**	
	Professional photos	
	Onsite	
	Cameras	
	Aerials	
	On Demand Photos	

Cost Code	Description	Total
1526	**Progress Photos Activity Total**	
1527	**Project Signs**	
	Include all directional signage and one project sign (8 x 24)	
1527	**Project Signs Activity Total**	
1528	**Fire Protection, First Aid and Safety**	
	Hard Hats, Safety Glasses, Orientation Supplies, Fire Extinguishers, etc.	
1528	**Fire Protection, First Aid and Safety Activity Total**	
1529	**Glass Cleaning**	
	Glass and Curtainwall Total	**Trade Cost**
1529	**Glass Cleaning Activity Total**	
1530	**Temporary Latrines**	
	Temporary Latrine Rental	
	Permanent Toilet Installation	
	Monthly Maintenance	
	Flushable Toilets for Workers	
	Replacement Costs	
1530	**Temporary Latrines Activity Total**	
1531	**Computer Hardware and Software**	
	Purchase Computers	
	Server	
	Software to Support Mail/Web	
	Printers	
	Plotter	
	Equipment Maintenance	
	Web Cam Installation	
	Miscellaneous Installation/Network	
	Software Purchase and Training	
1531	**Computer Hardware and Software Activity Total**	
1532	**Office Equipment and Furniture**	
	Initial Purchase	
	Filing Cabinets, Miscellaneous Office Equipment	
	Monthly Rentals	
1532	**Office Equipment and Furniture Activity Total**	

Cost Code	Description	Total
1533	**Existing Conditions Surveys**	
	Existing Conditions Surveys	
1533	**Existing Conditions Surveys Activity Total**	
1534	**Scaffold/Vertical Access**	
	Monthly Costs	**Trade Cost**
1534	**Scaffold/Vertical Access Activity Total**	
1535	**Ceremonies**	
	Ceremonies/Incentives	
1535	**Ceremonies Activity Total**	
1555	**Vehicle/Fuel/Maintenance**	
	Service, Lube and Fuel	
	Maintenance	
	Site Transportation	
1555	**Vehicle/Fuel/Maintenance Activity Total**	
1556	**Site Trucks**	
	Vehicles	
	Miscellaneous Rental	
1556	**Miscellaneous Site Trucks Activity Total**	
1560	**Outreach Activities**	
	Monthly Advertising	
	Meeting Cost	
	Outreach Advertising	
1560	**Advertising Activity Total**	
1561	**Legal and Professional Fees**	
	Legal and Professional Fees	
1561	**Legal and Professional Fees Activity Total**	
1562	**Special Consultants**	
	Special Consultants	
1562	**Special Consultants Activity Total**	
	General Requirements Subtotal	
1563	**Insurance**	
	Builder's Risk	

Cost Code	Description	Total
	Professional Liability	
	General Liability	
	Other	
1563	**Insurance Activity Total**	
1564	**Surety Bond or Alternative**	
1564	**Surety Bond or Alternative Total**	
Insurance and Surety Cost Subtotal		
Total General Conditions Cost		

[NOTE: Values to be as agreed as part of agreement on the GMP Amendment]

EXHIBIT E

Form of Amendment Establishing Guaranteed Maximum Price

[See attached]

AMENDMENT NO. 1 TO DESIGN-BUILD AGREEMENT

Pursuant to Section 4.9.2 of the Design-Build Agreement (the "Agreement") dated as of _____, between Santa Clara Stadium Authority ("Owner") and _____ ("Design-Builder"), Owner and Design-Builder desire to establish a GMP for the Work described in the Agreement. Therefore, Owner and Design-Builder agree as follows:

ARTICLE 1, GUARANTEED MAXIMUM PRICE

Design-Builder's GMP for the Work described in the Agreement (the "GMP"), including the Cost of the Work, Design-Builder's Fee and the Construction Contingency is _____ Dollars ($_____). The following Exhibits are a part of the Agreement as if each were physically incorporated therein:

EXHIBIT "A" GMP Breakdown (including list of General Conditions Work and Construction Contingency), dated _____, _____ pages. [Note: This document is to contain the same level of detail as the prior construction estimates.]

EXHIBIT "B" Allowance items, dated _____, _____ pages.

EXHIBIT "C" GMP Documents (including GMP Drawings and Specifications, Division 1 Specifications, Prose Statement and GMP Qualifications and Assumptions), dated _____, _____ pages.

EXHIBIT "D" Construction Schedule, dated _____, _____ pages.

EXHIBIT "E" List of Accepted Alternates and Alternates For Possible Future Inclusion, dated _____, _____ pages.

EXHIBIT "F" Unit Prices, dated _____, _____ pages.

EXHIBIT "G" Description of Insurance Program for the Project [note: this is to be a detailed description of the CCIP or OCIP; the CDI or bonding program; Professional Liability and Builder's Risk Insurance—it should include limits of liabilities, deductibles, self-insured retentions, co-payment amounts and terms and conditions].

ARTICLE 2, DATE OF SUBSTANTIAL COMPLETION

The date of Substantial Completion of the Work is _____. The date of Final Completion of the Work is _____. By execution of this Amendment, Design-Builder and Owner acknowledge that, as of the date of this Amendment, both parties are not aware of, and have not reserved, any Claims against the other party.

Capitalized words and phrases herein shall have the same meanings as are ascribed to such words in the Agreement. This Amendment is entered as of the ____ day of _____, 2012.

DEVELOPER:	DESIGN-BUILDER:
SANTA CLARA STADIUM AUTHORITY	TURNER/DEVCON, JV
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____

EXHIBIT F

IGMP Drawings and Specifications Description and GMP Drawings and Specifications Description

[NOTE: THIS EXHIBIT IS BEING DEVELOPED BY HNTB AND TDJV]

EXHIBIT G

Design-Builder's Key Personnel and Consultants

Name	Firm	Area
Robert Rayborn	Design-Builder	Co-Project Director
Willy Mautner	Design-Builder	Preconstruction Estimator / Design Management
David Masel	Design-Builder	Field Operations / General Superintendent
Jonathan Harvey	Design-Builder	co-Project Director
Tom Paci	Design-Builder	Sports Preconstruction Estimator
John Zawodny	Design-Builder	Design Coordination/Procurement
Robert Murelli	Design-Builder	Senior Estimator / Purchasing

EXHIBIT H

Form of Payment and Performance Bonds

[To be provided in connection with finalizing the contractor default insurance program]

EXHIBIT I

[NOT USED]

EXHIBIT J

Rate Schedule of Project Staff
Reimbursable as a Cost of the Work

Design-Builder represents to Owner that the rates set forth in this Rate Schedule represent only direct personnel expenses of the personnel listed. "Direct personnel expense" shall mean the direct salaries of the Design-Builder's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, employee retirement plans and similar contributions and benefits.

EXHIBIT K

List of Long-Term Warranty Requirements

[To be added]

EXHIBIT L

Schedule of Insurance and Bond Requirements

A. Insurance

1. Prior to the establishment of a Wrap-Up Program, Design-Builder shall carry insurance coverage for not less than the following limits, unless a greater amount is required by law:

(a) Workers' Compensation insurance with statutory limits or if no statutory limits exist, with minimum limits of $1,000,000 per occurrence. The Workers' Compensation insurance will conform to the laws of the state in which the Work is being performed. The Workers' Compensation policy will be primary insurance and non-contributing with respect to persons directly engaged in the performance of site work at the Project Site. Design-Builder shall provide a copy of any endorsement required to effectuate the same.

(b) Employer's Liability insurance with minimum limits of $2,000,000 for each employee for bodily injury by accident and for each employee for bodily injury by disease. An alternate employer endorsement shall issue showing Owner in the schedule as the alternate employer.

(c) Commercial General Liability ("CGL") insurance (excluding Automobile Liability), including liability for this Project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations (including Broad Form Property Damage), Medical Payments, Contractor's Protective, Bodily Injury, and Property Damage, with minimum limits of $1,000,000 per occurrence, $1,000,000 general annual aggregate, $1,000,000 products-completed operations aggregate, $1,000,000 personal and advertising injury per occurrence, and $50,000 medical expense. Design-Builder shall obtain an endorsement to each insurance policy to provide aggregate limits per location. Design-Builder shall cause each insurance company to delete any contractual liability exclusion with respect to the insurance, including insurance coverage for personal injury, hazards of explosion, collapse, fire, and underground property damage. The Products-Completed Operations coverage shall remain in force and effect for a period of ten (10) years following completion of the Work. CGL insurance shall be written on ISO occurrence for CG 00 01 12 07 (or a substitute form providing equivalent coverage). There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

(d) Umbrella/Excess Liability Insurance (excluding Automobile Liability), including coverage for bodily injury, personal injury and property damage liability, with minimum limits of $20,000,000 per occurrence and annual general aggregate for Design-Builder. Design-Builder shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less

broad than the liability coverages required herein, with the same inception and expiration dates as CGL insurance, and with coverage that "drops down" for exhausted aggregate limits under liability coverages in this Contract and to issue an endorsement with aggregate limits of insurance per location. There will be a three (3) year sunset clause for reporting of claims subsequent to the two (2) year completed operations period.

(e) Commercial/Business Automobile Liability insurance with minimum combined single limits of $2,000,000 per occurrence (bodily injury and property damage liability). Design-Builder shall cause each insurance company to provide coverage for liability arising out of the use or operation of owned, hired, leased and non-owned vehicles. The insurance shall apply to all operations of Design-Builder both on and away from the Project Site.

2. Design-Builder shall cause each insurance company (a) to issue the insurance on an occurrence basis, (b) to provide defense as an additional benefit and not within the limits of liability, except for pollution liability where the defense will be inside the limit of liability, (c) to issue an endorsement to all policies that the policies are primary and that the policies of Owner and each Additional Insured are excess, secondary and noncontributing, (d) to issue an endorsement to all policies to provide a waiver of subrogation in favor of Owner, (e) to issue an endorsement to all policies, except the workers' compensation insurance policies, to include each Additional Insured and its subsidiaries, affiliates, officers, directors, employees, and agents as such, (f) with respect to workers' compensation and employer's liability insurance, to obtain a stop gap endorsement for monopolistic states, and (g) to include in each insurance policy a provision that the insurance company or companies shall not cancel, non-renew, or change coverage from the requirements of the Contract Documents without providing at least thirty (30) days' advance written notice to Owner. The insurance company or companies shall not exclude from coverage the negligence, strict liability, or gross negligence, whether sole or otherwise, of the Additional Insureds. Design-Builder shall provide to Owner a certified copy of any and all insurance policies required in the Contract if Owner requests a copy.

3. Owner and its subsidiaries, affiliates, officers, directors and employees shall be included as additional insureds ("Additional Insureds") under the CGL and under the commercial umbrella liability policy, using ISO additional insured endorsement CG 20 10 10 93, or a substitute providing equivalent coverage, with changes requested by Owner.

4. Design-Builder shall provide to Owner and each Additional Insured before the Work is started and at least thirty (30) days prior to the expiration of a policy or policies of insurance in effect during the term of the Contract a certificate or certificates of insurance evidencing all required insurance in the Contract Documents and acceptable to Owner. All certificates, among other things, shall:

(a) Show the Additional Insureds, their respective subsidiaries and affiliates as a certificate holder and include the addresses thereon as set forth hereinabove.

(b) Show Design-Builder as the Named Insured.

(c) Have attached copies of all required endorsements to each insurance policy, and not contain the phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or representatives," or similar phrases and shall include the commitment that each insurance company shall issue each insurance policy to the named and Additional Insureds, that each policy is in full force and effect, and that each insurance company shall give to the named and Additional Insureds at least thirty (30) days' advance written notice, by certified mail, return receipt requested, in the event of cancellation, non-renewal, or change in coverage of any insurance policy.

5. All policies shall (a) be written by insurance companies with a Best's Rating of no less than "A-", or such lower rating as Owner, in its sole and exclusive discretion, may accept; and (b) apply separately to each named and Additional Insured against a whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Design-Builder shall cause each Subcontractor engaging in any inherently dangerous activities (e.g., blasting, demolition) to procure liability insurance specifically covering such activities, which insurance shall meet all the requirements set forth above (including adding the Additional Insureds as set forth above), in an amount of not less than $1,000,000 per claim/$2,000,000 annual general aggregate.

B. <u>Bond Requirements</u>

1. Design-Builder shall submit to Owner an irrevocable performance and payment bond (the "Bond") for the Work issued by a surety company acceptable to Owner, as security for the proper and complete fulfillment of Design-Builder's obligations hereunder, in an amount to be mutually agreed to by Owner and Design-Builder. It is understood that delivery of the bond shall not be required until the GMP is accepted, the Project is funded, and a notice to proceed is issued to Design-Builder such that the obligations of the sureties do not begin until after construction starts and those obligations are limited to the construction timeframe. The Bond shall cover the warranty obligations of Design-Builder. The Bond shall be in a form reasonably acceptable to Owner. The minimum requirement for approval of a surety shall be that the surety is listed by the United States Treasury Department as acceptable for bonding Federal projects and that the amount of the Bond is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between Design-Builder and the bonding agent or agency unless, after full disclosure to Owner of all facts Owner deems relevant, Owner consents to such affiliation. If the Contract Sum is increased by a duly executed Change Order, then the face amount of the Bond shall also increase and Owner shall pay the premium cost charged due to such increase.

EXHIBIT M

Wrap-Up Insurance Coverages and Limits

The following information is provided as an approximate indication of the proposed insurance program. Actual limits of liability, terms, conditions, cost and availability of insurance will be mutually agreed to between Owner and Design-Builder in conjunction with insurance underwriters, subject to their satisfactory due diligence review of a complete underwriting submission and meetings with the key project participants.

Coverage	Limits (Millions)	Deductible/ Self-Insured Retentions	Comments
Workers' Compensation/ Employers' Liability	▪ Statutory Limits ▪ $2M Each Occurrence and General Aggregate	▪ $250,000 Each Occurrence	Limits and sub-limits to be determined with underwriters; Deductible & SIR amounts to be determined with underwriters
Commercial General Liability	▪ $2M Each Occurrence ▪ $4M General Aggregate	▪ $250,000 Each Occurrence	Limits and sub-limits to be determined with underwriters; Deductible & SIR amounts to be determined with underwriters
Excess Liability (Project-Specific)	▪ $150M-$200M Each Occurrence ▪ $150M-$200M General Aggregate	▪ Excess of underlying EL & CGL	Limits and sub-limits to be determined with underwriters; Deductible & SIR amounts to be determined with underwriters
Contractor Pollution Liability (Project-Specific)	▪ $25M-$200M Each Loss ▪ $25M-$200M Term Aggregate	▪ $100,000 Each Loss	Limits and sub-limits to be determined with underwriters; Deductible & SIR amounts to be determined with underwriters

[Note: Earthquake Insurance shall be part of the Builder's Risk policy]

EXHIBIT N

Change Order Pricing

1. The increase or decrease in the GMP shall be determined in one of the following ways and, unless otherwise approved or directed by Owner, in the precedence of the order listed:

(a) by an accepted unit price proposed in the GMP Amendment and incorporated in the Agreement.

(b) by a lump sum cost acceptable to Owner, based on Design-Builder's detailed, itemized breakdown of the actual basic costs, with allowance for Design-Builder's profit and overhead, as provided for under Section 3 below.

(c) by mutually agreeable unit prices for the Work, with allowance for Design-Builder's profit and overhead, computed in a similar manner as provided for in Section 3 below.

(d) on the actual Cost of the Work, as determined by payroll records and paid receipts, plus allowances for Design-Builder's profit and overhead as set forth in Section 3 below.

2. Except for unit prices included in the GMP Amendment, and unless otherwise approved by Owner, for proposed changes in the Work Design-Builder shall submit an itemized list of quantities with the applicable unit cost and extended price for each, in such form and detail as required by Owner.

3. The amount that will be allowed to Design-Builder as the total for overhead, profit or other markup shall be _____% of the actual Cost of the Work relating to the change. With respect to Subcontract Work, the total allowed to the Subcontractor for overhead, profit or other markup shall not exceed ____% of the actual Cost of the Work relating to the change for each allowable tier. There shall be no more than two tiers of Subcontractors/Suppliers for any portion of the changed Work.

4. Material costs shall be at the actual costs to Design-Builder or Subcontractor. Upon request, Design-Builder (or Subcontractor) shall submit evidence to substantiate the costs. Materials shall be quoted at trade discount prices, with quantity discounts also applied where the quantities warrant. In any proposal with material credits, the credit shall be based on the actual contract cost for the material (including trade and quantity discounts) less than any charge actually incurred for handling or returning a material that has been delivered.

5. Except as set forth in Section 15.5 of the Agreement, the percentages allowed for overhead, profit or markup under Section 3 above shall be deemed to include: (1) field and office supervision and administration, including the field superintendent; (2) general insurance, except that listed as the labor burden; (3) use of small tools; (4) shop burden; (5) estimating and administrative costs; (6) indirect costs related to the Work, including impact costs resulting from the performance of cumulative Change Orders; and (7) any other costs

resulting from the change not expressly enumerated as a Cost of the Work, including general requirements that are directly attributable to the change shall be considered Cost of the Work (*e.g.*, protection, clean-up, reproduction and safety).

6. Except for changes based on unit prices included in the Agreement, costs changes shall be computed by determining the actual Cost of the Work to which the overhead may be added, then the profit figures may be added and finally adding any applicable sales tax on materials.

7. For changes involving extra cost by a Subcontractor and Design-Builder, the markup shall be applied directly to the Subcontractor's price with the overhead and profit figure applied only to the Work Design-Builder performs with its own forces.

8. For changes involving both extra and credit amounts, the overhead, profit or markup, as the case may be, shall be applied only to the net difference where the extra exceeds the credit.

9. For changes resulting in a net credit on the basic costs, an allowance for overhead, profit or markup on the net difference shall be credited to Owner using the percentages set forth in Section 3 above.

10. On changes where the value or extent of Work cannot be reasonable pre-determined or agreed upon, Owner may authorize Work to proceed on an agreed upon cost plus basis, not to exceed a pre-determined maximum amount. In such cases, the basic costs and mark-up for overhead, profit and markup will be in accordance with this Exhibit.

11. Unit prices proposed in the GMP Amendment are not subject to further profit, overhead or markup adjustments, nor the conditions of Sections 2 through 10 above. The GMP will be adjusted by the direct extension of the number of units and the unit cost price.

EXHIBIT O

List of Pre-Qualified Mediators

[To be agreed upon and attached]

EXHIBIT P

Project Administration Forms

[To be agreed to by the parties within sixty (60) days
after the parties' execution and delivery of this Agreement]

EXHIBIT Q

Description of Project Site

EXHIBIT R

Preliminary Schedule

[Include in Schedule, and specifically identify, all critical Owner-responsible milestone dates,, all preliminary "make ready" work, detailed design processes and permit processing. Schedule to include any and all schedule-related items from EXHIBIT W, Design/Construction and Mitigation Measures and Conditions of Approval]

EXHIBIT S

Preconstruction Payment Fee Schedule

The fixed preconstruction fee is $_____, of which $_____has previously been paid. The balance of the preconstruction fee shall be paid no later than _____, 2012. The fixed preconstruction fee includes all reimbursable expenses and Cost of the Work that Design-Builder may incur prior to establishment of the GMP and Owner's issuance of the notice to proceed with construction, and there shall be no separate reimbursement for any such cost or expense.

EXHIBIT T

Subcontractor Selection and Procurement Plan

I. INTRODUCTION

On June 8, 2010, the voters of the City of Santa Clara (the "City") approved Measure J, which endorses the construction, operation and maintenance of a stadium in the City suitable for NFL games (the "Stadium"). The Stadium Authority (the "Authority") is a joint powers authority formed by and comprised of the City and its Redevelopment Agency (the "Agency") for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.

Section 6532 of the California Government Code ("Section 6532") authorizes the Authority to award a sole source contract for the Stadium construction project to a qualified design-builder, and provides that, if the Authority awards such a design-build contract, then it must establish a competitive bid process pursuant to which the design-builder will be required to award subcontracts. This Subcontractor Selection and Procurement Plan ("Procurement Plan") sets forth the competitive bid process required by Section 6532. As used herein, the term "Design-Builder" refers to any design-build contractor that has been awarded, or would be eligible to be awarded, a design-build contract with the Authority (the "Design-Build Agreement") in accordance with the provisions of Section 6532.

The Authority has or will enter into a Stadium Predevelopment Management and Loan Agreement with Forty Niners Stadium, LLC ("Stadco") pursuant to which Stadco will engage in certain predevelopment work on behalf of the Stadium Authority, including retaining design professionals and contractors to perform design and pre-construction services relating to the Stadium.

The Authority's participation in the subcontractor selection process prior to the award of any Design-Build Agreement is solely for the purpose of confirming compliance with the requirements of Section 6532, so that the Authority can determine if a proposed Design-Builder is eligible for award of a Design-Build Agreement pursuant to Section 6532. The Authority shall have no liability or responsibility to any proposed Design-Builder, or to any subcontractors selected by any proposed Design-Builder, unless and until the Authority awards the Design-Build Agreement to such Design-Builder in accordance with the provisions of Section 6532, and then only to the extent provided in such agreement.

II. PROCESS

A. APPLICABILITY

This Procurement Plan applies to all subcontracts awarded, or to be awarded, by any Design-Builder, regardless of whether the subcontractor is selected before or after the award of the Design-Build Agreement. All subcontracts shall be awarded using either the lowest responsible bidder or by best value, as further described below. Subcontracts

awarded on the basis of best value shall not be funded, either through direct payment or reimbursement, using funds contributed by the Agency or by a community facilities district established under the Mello-Roos Community Facilities. Funds contributed by the Agency or a community facilities district may be used only to fund subcontracts awarded to the lowest responsible bidder in a manner consistent with the process applicable to the City under its charter. This Procurement Plan applies only to subcontracts awarded by Design-Builder and does not apply to the award of sub-subcontracts or other lower-tier subcontracts.

B. DESIGN–BID–BUILD TRADE PACKAGES

1. RDA/CFD Funded Trade Packages.

"RDA Funds" are funds contributed by the Agency, which funds shall not exceed $40,000,000 (exclusive of debt service and other financing costs), and "CFD Funds" are funds contributed by a Mello-Roos Community Facilities District formed by the City, which funds shall not exceed $35,000,000 (exclusive of debt service and other financing costs). RDA Funds or CFD Funds shall be used solely to fund subcontracts that are awarded to the lowest responsible bidder.

In consultation with the Authority and Stadco, Design-Builder shall identify trade packages proposed to be funded by RDA Funds or CFD Funds so that Design-Builder can assure that subcontracts for such trade packages are awarded to the lowest responsible bidder in a manner consistent with this Procurement Plan. Subcontract Bid Packages funded with RDA Funds or CFD Funds will be awarded based on the lowest responsible bidder, in a manner consistent with the process applicable to the City under its charter, as follows:

Design-Builder may require all subcontractors to pre-qualify to be eligible to bid or may elect to combine the subcontractor qualification requirements with the RFP process as part of a single solicitation. If pre-qualification is required, Design-Builder will develop a preliminary bid list to solicit interest from subcontractors, including local subcontractors, and a trade-specific Request for Qualifications (RFQ) will be prepared. Notice of the availability of the RFQ shall be made by publication in the City's official newspaper. The RFQ shall be distributed to potential subcontractors identified by Design-Builder on the preliminary bid list and to any licensed contractor or subcontractor requesting an RFQ within ten (10) days of publication of such notice.

The RFQ shall require information including, but not limited to, all of the following: (a) a listing of all members of the subcontractor's project team, including subconsultants; (b) evidence that the subcontractor's project team has completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the work; (c) the licenses, registrations, and credentials required for the construction work; (d) evidence that establishes that the subcontractor has the

capacity to obtain all required payment and performance bonding, commercial general liability insurance, and professional liability insurance; and
(e) information concerning any violations, debarments, disqualifications, bankruptcies or other claims of the types set forth in Section 20133(d)(3)(A)(v)-(xii) of the California Public Contracting Code.

In order to pre-qualify, the subcontractor must timely respond to the RFQ (an "RFQ Response"). Following the completion of the prequalification evaluation process, Design-Builder will submit to Stadco and the Authority's Director or her delegee ("Authority Staff") for approval the list of bidders found to be qualified, along with the reasons for disqualifying any respondent who submitted a timely RFQ Response. Placement of a subcontractor on the prequalified list does not guarantee that the bidder will be awarded a future contract, nor does it guarantee that a subcontractor will qualify for any subsequent bid package.

Any respondent that submitted a timely RFQ Response but was found to be either not responsive or not qualified shall be notified in writing by Design-Builder of that finding and the reasons for it. Within three (3) business days after receiving such notice, a non-qualified respondent may submit a written notice of appeal. The appeals and resolution process will be set forth in reasonable detail in the RFQ.

After Design-Builder has identified the pre-qualified subcontractors and obtained approval from Stadco and Authority Staff for issuance of a particular trade package, an RFP will be issued to each pre-qualified subcontractor on the approved list, with detailed design documents and other information necessary to enable the competing pre-qualified subcontractors to submit bids for the work. The RFP will state that the final selection of a subcontractor will follow the evaluation and selection criteria established in the RFP and that the basis of award will be lowest responsible bidder. If scope review interviews are required for the complexities of any particular trade bid packages, or for final determination of scope compliance, applicable rules and procedures will be incorporated into the RFP to ensure that any discussions or negotiations are conducted in good faith. Such rules and procedures shall be submitted to Stadco and Authority Staff for their approval prior to inclusion in the RFP.

Receipt of sealed bids will be documented in accordance with the process used by the City for its public works projects, and recorded in a trade specific bid tabulation sheet.

Should an apparent low bidder be found not to be responsible, it shall be notified in writing by Design-Builder of that finding and the reasons for it. Within three (3) business days after receiving such notice, such bidder may submit a written notice of appeal. The appeals and resolution process will be set forth in reasonable detail in the RFP and will be consistent with the City's usual public contracting procedures.

Design-Builder, with the consent and approval of Stadco and Authority Staff, reserves the right but shall not be required to: (a) waive or correct any irregularities in a response, proposal, submittal, or procedure, (b) reject any or all responses, (c) reissue an RFQ or RFP, (d) prior to the submission deadline, modify all or any portion of the requirements for content or format, and (d) stop the bidding or selection process.

The RDA funds and CFD Funds will be applied exclusively to subcontracts awarded to the lowest responsible bidder through the process described above.

2. Trade Packages Not Funded with RDA Funds or CFD Funds.

For subcontracts not funded with RDA or CFD funds, and excluding design-assist or design-build trade packages (discussed below), the process described in Section II.B.1, above, will be followed in all material respects, except that Design-Builder may award subcontracts on the basis of best value, as opposed to lowest responsible bidder.

If Design-Builder elects to award subcontracts by best value, as opposed to lowest responsible bidder, then the best value selection process described in Section C, below, will be followed in all material respects.

C. DESIGN-ASSIST, DESIGN-BUILD PACKAGES (BEST VALUE SELECTION)

In consultation with the Authority and Stadco, Design-Builder shall identify trade packages that will be bid on the basis of best value. These trade packages are anticipated to include most of the subcontracts that will require design-assist or design-build services. Subcontracts bid on a best value basis will not be paid from RDA Funds or CFD Funds. At the option of Design-Builder, and subject to the approval of Stadco and the Authority, such Subcontracts shall be awarded according to the best value selection process set forth herein, which will be comprised of the following steps:

(1) Pre-qualification (RFQ)
(2) Preparation of Design-Assist or Design-Build Trade Packages and Competitive Proposals (RFP)
(3) Scope Review / Compliance Interviews
(4) Final Scoring, Evaluation, Approval by Stadco & Authority, and Award

1. Pre-qualification.

Design-Builder may require all subcontractors to pre-qualify to be eligible to bid or may elect to combine the subcontractor qualification requirements with the RFP process as part of a single solicitation. If pre-qualification is required, Design-Builder will develop a preliminary bid list to solicit interest from subcontractors, including local subcontractors, and a trade-specific Request for Qualifications (RFQ) will be prepared. Notice of the availability of the RFQ shall

be made by publication in the City's official newspaper. The RFQ shall be distributed to potential subcontractors identified by Design-Builder on the preliminary bid list and to any licensed contractor or subcontractor requesting an RFQ within ten (10) days of publication of such notice.

The RFQ shall require information including, but not limited to, all of the following: (a) a listing of key members of the subcontractor's design-assist or design-build team, including key design subconsultants and other key subcontractors who will participate in the design-assist or design-build subcontract; (b) evidence that the members of the design-assist or design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction required of the particular trade; (c) the licenses, registrations, and credentials required for the design and construction work; (d) evidence that establishes that the subcontractor has the capacity to obtain all required payment and performance bonding, commercial general liability insurance, and professional liability insurance; (e) as appropriate for the particular bid package, evidence of experience and capability with Building Information Modeling (BIM) and 3-D modeling; and (f) information concerning any violations, debarments, disqualifications, bankruptcies or other claims or the types set forth in Section 201339(d)(3)(A)(v)-(xii) of the California Public Contracting Code.

In order to pre-qualify, the subcontractor must timely respond to the RFQ (an "RFQ Response"). Following the completion of the prequalification evaluation process, Design-Builder will submit to Stadco and Authority Staff for approval the list of bidders found to be qualified, along with the reasons for disqualifying any respondent who submitted a timely RFQ Response. Placement of a subcontractor on the prequalified list does not guarantee that the bidder will be awarded a future contract, nor does it guarantee that a subcontractor will qualify for any subsequent bid package.

Any respondent that submitted a timely RFQ Response but was found to be either not responsive or not qualified shall be notified in writing by Design-Builder of that finding and the reasons for it. Within three (3) business days after receiving such notice, a non-qualified respondent may submit a written notice of appeal. The appeals and resolution process will be set forth in reasonable detail in the RFQ.

The Design Builder, with the consent and approval of Stadco and Authority Staff, reserves the right, but not the requirement, to: (a) waive or correct any irregularities in a response, proposal, submittal, or procedure, (b) reject any or all responses, (c) reissue an RFQ or RFP, (d) prior to the submission deadline, modify all or any portion of the selection procedures, or requirements for content or format, and (d) stop the process.

2. Preparation of Design-Assist or Design-Build Trade Packages and Competitive Proposals.

In consultation with the Authority and Stadco, Design-Builder shall prepare, with the assistance of the Design Architect or Design-Builder's Architect (as the case may be), a set of documents setting forth the scope of the work under each design-assist or design-build trade package. The documents may include, without limitation, the size, type, and desired design character of the improvement, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the work (the "Design-Assist/Design-Build Package").

After Design-Builder has identified the pre-qualified subcontractors and obtained approval from Stadco and Authority Staff for issuance of a particular Design-Assist/Design-Build Package, Design-Builder shall issue an RFP to each pre-qualified subcontractor on the approved list. The RFP will include, at a minimum, (a) a form of the subcontract agreement containing the contract terms and conditions governing the work, (b) the Design-Assist/Design-Build Package, and (c) a proposed Project schedule. The RFP will state that the final selection of a subcontractor will follow the evaluation and selection criteria established in the RFP and that the award shall be made on the basis of best value, as defined in Section 20133 of the California Public Contracting Code.

The RFP will invite the pre-qualified firms to submit a competitive pricing proposal that will contain, at a minimum, their proposed cost for the work, their proposed fees (each separately listed) for design, pre-construction and construction services, itemized general conditions costs and individual staff billing rates.

If scope review interviews are required for the complexities of any particular Design-Assist/Design-Build Package, or for final determination of scope compliance, applicable rules and procedures to be observed will be incorporated into the RFP to ensure that any discussions or negotiations are conducted in good faith. Such rules and procedures shall be submitted to Stadco and Authority Staff for their approval prior to inclusion in the RFP.

Receipt of sealed RFP responses, including competitive pricing proposals, will be fully documented and opened in Stadco's and Authority Staff's presence.

The RFP will clearly set forth the significant evaluation factors, including cost or price and all non-price related factors, that Design-Builder reasonably expects to consider in evaluating proposals. Design-Builder will use a non-weighted evaluation system in which all evaluation factors other than cost or price will, when combined, be approximately equal in importance to cost or price.

All of the evaluation factors will be recorded in a trade specific bid tabulation sheet.

Based on the initial evaluation of the RFP responses, Design-Builder may select, with approval of the Stadco and Authority Staff, the three or more best value subcontractors for a detailed scope review and interview (described below).

3. Detailed Scope Review and Interview Assessment.

The highest ranking Subcontractors identified through the best value RFP process above may be invited for an interview and detailed scope review evaluation focused on the factors listed below, as well as other factors that may be deemed relevant to the selection process:

(a) Reconciling any trade package scope issues, including review and evaluation of contractor's assumptions, qualifications and clarifications, or voluntary alternates, if any;
(b) Understanding of coordination required with adjacent trades;
(c) Ability to perform all requirements of the trade scope within the time specified;
(d) Ability to provide future maintenance and services, if applicable;
(e) Subcontractor's proposals for cost reduction, value engineering, and constructability issues;
(f) Experience with projects of a similar scope, complexity, and volume;
(g) Specific examples of similar past performance, including any resulting litigation; and
(h) Subcontractor's understanding and demonstrated skill in execution of design responsibility, design-assist capability, 3-D coordination, Shop Drawing and product submittal (as appropriate for each trade).

Stadco and Authority Staff shall have the right to be present at all scope review meetings and interviews.

[Public Contract Code §20133 requires the award be based on objective criteria. Include process for scoring/re-scoring based on interviews]

4. Final Selection and Award.

Based on Design-Builder's evaluations pursuant to the process described above, Design-Builder shall make a preliminary selection of the subcontractor representing the best value. Design-Builder shall present its preliminary selection to Stadco and Authority Staff for their review and approval. The preliminary selection will be accompanied by a recommendation report that sets forth the reasons supporting the award, including Design-Builder's evaluation of all of the RFP / scope review / detail interview factors. Upon review and approval by Stadco and Authority Staff, Design-Builder shall award the applicable subcontract

to the subcontractor representing the best value. Any subcontractor that submitted a timely RFP response but was not awarded the applicable subcontract shall be notified in writing by Design-Builder of the firm to whom the award was made. Within three (3) business days after receiving such notice, the disappointed subcontractor may submit a written notice of appeal. The appeals and resolution process will be set forth in reasonable detail in the RFQ.

EXHIBIT U

Project Transaction Document

[To be added prior to the execution of the GMP Amendment]

EXHIBIT V

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

I. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of

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[1] For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

J. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

K. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City action to the Director of Water and Sewer Utilities by filing a written statement of dispute no later than three (3) days after the determination with the Director of Water and Sewer Utilities. The matter will be determined by the Director of Water and Sewer Utilities within five (5) days of submittal. Any decision by the Director of Water and Sewer Utilities shall be final.

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[4] Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

EXHIBIT W

NOTE: Applicant as referred to within this Exhibit W shall be defined as Forty Niners Stadium, LLC or, as the context requires, Design-Builder

Design/Construction Mitigation Measures and Conditions of Approval

A. Hydrology Mitigation Measures

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers). In addition, a tire wash system may be required.
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation.
- The project proponent will submit a copy of the draft SWPPP to the City of Santa Clara for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.

- When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control Board and the City of Santa Clara. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction storm water management plan is in place as described in the SWPPP for the site.

- As part of the mitigation for post-construction runoff impacts addressed in the SWPPP, the project will implement regular maintenance activities (i.e., sweeping, maintaining vegetative swales, litter control, and other activities as specified by the City) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Storm water catch basins will be stenciled to discourage illegal dumping.

B. Biology Mitigation Measures

- Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay area extends from February through August.

- If it is not possible to schedule demolition and construction between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than fourteen (14) days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than thirty (30) days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

C. Hazardous Materials Mitigation Measures

On-Site Soil Contamination from Agricultural Land Uses

- Prior to the issuance of grading permits, shallow soil samples shall be taken to determine the location of contaminated soils with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Santa Clara Fire Chief prior to initiation of work. Any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.

- A Site Management Plan (SMP) will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the City's Director of Planning and Inspection and the Santa Clara Fire Chief.

Asbestos

The proposed project will conform with the following regulatory programs and implement the following standard measures to reduce impacts due to the presence of ACMs:

- In conformance with state and local laws, a visual inspection/pre-disassemble survey, and possible sampling, shall be conducted prior to the dismantling of the substation to determine the presence of asbestos containing materials.

- All potentially friable ACMs shall be removed in accordance with NESGAP guidelines prior to dismantling that may disturb the materials. All dismantling activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from exposure to asbestos.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.

Lead-Based Paint

- In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of lead-based paint.

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or

coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.

Toxic Air Contaminants

- The proposed project will have to prepare an emergency response plan in coordination with first-responders and other emergency agencies. The plan will include an evacuation plan, medical response plan, and advance warning system, and will detail what parties are responsible for specific response actions. The plan will need to be approved by the City's Director of Planning and Inspection and the Santa Clara Fire Chief prior to issuance of occupancy permits.

D. Cultural Resources Mitigation Measures

- A qualified archaeologist will be on site to monitor the initial excavation of native soil once all pavement and engineered soil is removed from the project site. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required.

- In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 150-foot radius of the find will be stopped, the Director of Planning and Inspection will be notified, and the archaeologist will examine the find and make appropriate recommendations. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning and Inspection.

- In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

E. Transportation Mitigation Measures

- The improvements to mitigate the project impact at this intersection [(8) Great America Parkway and Mission College Boulevard] would consist of the addition of a third northbound left-turn lane, third westbound left-turn lane, a fourth southbound through lane, and a separate southbound right-turn lane. The improvements will require acquisition of right-of-way but will not impact existing buildings. The intersection improvements would improve intersection operating

levels to LOS E during both the early and standard weekday PM peak hours and will also mitigate project impacts. The proposed project will make a fair share contribution toward this intersection improvement.

- The improvement to mitigate the project impact at this intersection [(35) Lafayette Street and Yerba Buena Way] would be the signalization of the intersection. The intersection improvement would improve intersection operating levels to LOS C during the standard weekday p.m. peak hour, and will also mitigate project impacts. The proposed project will make a fair share contribution toward this intersection improvement.

- The improvement remaining for this intersection [(83) North First Street and Montague Expressway] is the widening of Montague Expressway to eight lanes as identified in the County's Expressway Study and in the North San Jose Development Policy. The widening to eight mixed-flow lanes (for part of the expressway length that would involve converting HOV lanes to mixed-flow) would improve intersection operating levels, but the intersection will continue to operate at LOS F, with or without project traffic. There are no further feasible improvements that can be made at the intersection.

  Developments in North San José are being assessed for the coast of implementing this improvement and others in the area. Recent development proposals outside North San José (e.g., in Milpitas and Santa Clara) have proposed to make fair share contributions to improvements at regional intersections where the development will have a significant impact. This improvement will reduce project impacts but not to a less than significant level. The proposed project will make a fair share contribution toward this intersection improvement.

- The only improvement remaining for this intersection [(84) Zanker Road and Montague Expressway] is the widening of Montague Expressway to eight lanes as identified in the County's Expressway Study and in the North San José Development Policy. The widening to eight mixed-flow lanes (for part of the expressway length that would involve concerting HOV lanes to mixed flow) would improve intersection operating levels, but the intersection will continue to operate at LOS F, with or without project traffic. There are no further feasible improvements that can be made at the intersection.

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- The improvement remaining for this intersection [(87) O'Toole Avenue and Montague Expressway] is the construction of a "square loop" intersection as

identified as part of the North San José Development Policy (NSJDP). The recommended mitigation measure would improve intersection operations to C for the typical peak hour and will also fully mitigate the project's impacts.

- Developments in North San José are being assessed for the cost of implementing this improvement and others in the area. Recent development proposals outside North San José (e.g., in Milpitas and Santa Clara) have proposed to make fair share contributions to improvements at regional intersections where the development will have a significant impact. The proposed project will make a fair share contribution toward this intersection improvement.

- The only improvement remaining for this intersection [(89) Trade Zone Boulevard and Montague Expressway] is the widening of Montague Expressway to eight lanes as identified in the County's Expressway Study and in the North San José Development Policy. The widening to eight mixed-flow lanes (for part of the expressway length that would involve concerting HOV lanes to mixed flow) would improve intersection operating levels, but the intersection will continue to operate at LOS F, with or without project traffic. There are no further feasible improvements that can be made at the intersection

- Developments in North San José are being assessed for the coast [sic] of implementing this improvement and others in the area. Recent development proposals outside North San José (e.g., in Milpitas and Santa Clara) have proposed to make fair share contributions to improvements at regional intersections where the development will have a significant impact. This improvement will reduce project impacts but not to a less than significant level. The proposed project will make a fair share contribution toward this intersection improvement.

- The planned improvement that would mitigate the project impact at this intersection [(115) Abbott Avenue and Calaveras Boulevard] would be the addition of a fourth westbound through lane. The City of Milpitas has plans to widen Calaveras Boulevard to eight lanes between Abbott Avenue and Milpitas Boulevard. A traffic impact fee has been implemented to fund the planned widening. Developments that impact intersections along this segment of Calaveras Boulevard are required to pay a fee of $2,500 per PM peak hour trip. The planned intersection improvement would improve operating levels to LOS D during the standard weekday p.m. peak hour and will fully mitigate project impacts. The proposed project will make a fair share contribution toward this intersection improvement.

- The City will require, as a condition of project approval, the preparation and implementation of a Transportation Management and Operations Plan (TMOP) and the formation of a working group to oversee the plan's implementation. The City of Santa Clara and the Valley Transportation Agency (which operates both the LRT and the countywide bus transit system in Santa Clara County) have agreed to form an ongoing multi-jurisdictional group that will address the detailed

planning needed to achieve the level of transit service assumed by the Draft TMP. Santa Clara City staff have agreed that a committee of City staff, VTA staff, and the 49ers organization will lay out the framework of the TMOP and the objectives of the program to accomplish the City's goals for this project. That framework will be attached to the PD zoning as a condition of project approval. The long term working group that will be created to prepare the TMOP will include the Stadium Authority, City of Santa Clara, VTA, and the adjacent cities that will help to implement the traffic control plan. The working group will also need to work closely with other transit providers, including ACE, Capitol Corridor, Caltrain, other County transit bus operators and charter bus operators. The TMOP will be completed for the opening of the stadium utilizing the most current roadway and transit data available at that time (estimated mid-2014), and will be updated annually as necessary.

F. Air Quality Mitigation Measures

- Bicycle amenities should be provided for the project. This would include secure bicycle parking for employees and attendees and safe bike lane connections.

- Enforce State law idling restrictions of trucks or buses and include signage indicating the restriction and associated fines.[1]

- Where appropriate, provide 110- and 220-volt electrical outlets at loading docks to or areas where media operations occur to eliminate any idling of trucks or generators to operate auxiliary equipment.

- Provide exterior electrical outlets to encourage use of electrical landscape equipment.

- Implement a landscape plan that provides shade trees along pedestrian pathways.

- Implement "Green Building" designs, such a Leadership in Energy and Environmental Design (LEED) into buildings to increase energy efficiency, which would reduce the future energy demand caused by the project, and therefore, reduce air pollutant emissions indirectly.

- The following dust control measures will be implemented during all construction phases:

  – Water all active construction areas at least twice daily and more often during windy periods.

[1]The EIR is ambiguous as to whether this mitigation measure was intended to apply during the construction phase (i.e.., to construction trucks), but a conservative assumption would be that it would be applied during both the construction and operational phases of the project. The dust control mitigation measures below include more specific construction-period requirements for idling of diesel equipment, including trucks.

– Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.

– Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.

– Sweep daily (preferably with water sweepers) all paved access roads on-site, parking areas and staging areas at construction sites.

– Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

– Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.

– Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).

– Limit traffic speeds on unpaved roads to 15 mph.

– Replant vegetation in disturbed areas as quickly as possible.

– Suspend construction activities on windy days that cause visible dust plumes that extend beyond the construction site.

– Idling time of all diesel powered construction equipment will be limited to five minutes (based on California Air Resources Board regulations) and/or alternative powered construction equipment (i.e., hybrid, compressed natural gas, bio-diesel, electric) will be used.

– All diesel powered construction equipment will be outfitted with add-on control devices such as diesel oxidation catalysts or particulate filters where possible.

– All contractors will be required to use equipment that meets the California Air Resources Board most recent certification standard for off-road heavy duty diesel engines.

- A Disturbance Coordinator will be designated by the applicant. The Coordinator shall be responsible for responding to any local complaints about construction activities. The Coordinator will determine the cause of the complaint and implement reasonable measures to correct the problem. A telephone number for the Coordinator will be clearly posted at the construction site and included in the notice sent to nearby properties regarding the construction schedule. This information will also be distributed to all residences and businesses within 750 feet of the project site.

- The project shall ensure that emissions from all off-road diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent

opacity (or Ringelmann 2.0) shall be repaired immediately. This measure means that equipment with continuous dark emissions is in violation of the requirement.

- Signs shall be posted that indicate diesel equipment standing idle for more than five minutes shall be turned off or operators would be subject to fines. This would include trucks waiting to deliver or receive soil, aggregate or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite.

- Reduce vehicle emissions. Properly tune and maintain equipment for low emissions.

G. Noise Mitigation Measures

The applicant will be required to develop a Construction Mitigation Plan that will schedule construction activities so as to minimize noise disturbances to sensitive land uses. The Construction Mitigation Plan will include but is not limited to the following:

- The holes for the piles will be pre-drilled.

- Pile driving shall be prohibited on weekends and holidays to minimize disturbances at the theme park, Golf and Tennis Club, and residences.

- Construction within 300 feet of any residentially zoned property shall only occur within designated time limits. Construction within 300 feet of any residence will only occur between the hours of 7:00 am to 6:00 p.m. on weekdays (other than holidays) and between 9:00 a.m. and 6:00 p.m. on any Saturday that is not a holiday. No construction will be permitted on Sundays or holidays.

- The contractors shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

- Contractors shall equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.

- Temporary noise barriers shall be used during grading and foundation work.

- Staging areas and construction material storage areas will be located as far away as possible from nearby residences.

- Unnecessary idling of internal combustion engines shall be prohibited.

- All nearby noise sensitive land uses within the area of impact shall be notified in writing of the construction schedule.

- A Disturbance Coordinator will be designated by the applicant. The Coordinator shall be responsible for responding to any local complaints about construction

noise. The Coordinator will determine the cause of the noise complaint and implement reasonable measures to correct the problem. A telephone number for the Coordinator will be clearly posted at the construction site and included in the notice sent to nearby properties regarding the construction schedule.

H. Energy Mitigation Measures

- The project shall be certified in accordance with the Leadership in Energy and Environmental Design (LEED) requirements, a nationally acceptable benchmark for the design, construction, and operation of high performance green buildings. The level of LEED certification will be at the discretion of the project applicant.

- The project shall exceed Title 24 energy requirements by 10 percent to the satisfaction of the Director of Silicon Valley Power.

- The project shall include a minimum of 27,000 square feet of green roofs.

- The project shall utilize local and regional building materials in order to reduce energy consumption associated with transporting materials over long distances.

- The project shall utilize building products that contain post-consumer recycled materials.

- Although there is not a formal Energy Star program for non-residential buildings, the stadium shall be constructed to meet the same standards as those that apply to the residential program to the extent feasible.

- The stadium shall include a photovoltaic (i.e., solar electric) system. The project proposes a minimum of 20,000 square feet of photovoltaic cells. (Note: The rule of thumb is that each square foot of photovoltaic cells produces 10 watts of power in bright sunlight.)

- Geothermal heat pumps should be installed to provide heating, cooling, and hot water. Geothermal heat pumps are generally more efficient and less expensive to operate and maintain than conventional systems. [Note: An Addendum to the FEIR was adopted in August 2010, which analyzed a modification of the project to comply meet this mitigation requirement by installing a 40 ton geothermal heat pump system supplemented with an 8,000 gallon thermal storage tank.]

I. Global Climate Change Mitigation Measures/Avoidance Measures

- The proposed project will be built to exceed the minimum LEED certification requirements.

- Offices and critical support features will be built above project flood levels or provide flood proofing.

- Construction contracts will include a provision encouraging the use of locally produced building materials to the extent feasible.

J. Engineering Conditions of Approval

E1. If relocation of an existing public facility (which does not include any investor owned utilities) becomes necessary due to a conflict with the applicant's new improvements, then the cost of said relocation shall be borne by the applicant. However, the applicant shall not be responsible for any costs associated with relocating the electrical substation equipment located on the Tasman Substation site to the Silicon Valley Power Northern Receiving Station and installation of associated electrical distribution equipment.

E2. The applicant shall obtain site clearance through the Engineering Department prior to issuance of building permits to the satisfaction of the Director of Public Works. Site clearance will require payment by the applicant of applicable permit processing and inspection fees legally required for a public building. Other requirements may be identified for compliance during the site clearance process.

E3. All work within the public right-of-way and/or public easement, which is to be performed by the applicant, the developer, the general contractor, and all subcontractors shall be included within one or more Encroachment Permit(s) issued by the Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of certificate of final occupancy to the satisfaction of the Director of Public Works.

E4. The applicant shall construct driveways in the public right-of-way to City commercial type standards, to the satisfaction of the Director of Public Works, prior to the issuance of the certificate of final occupancy. Any proposed non-standard driveway will require approval by the Director of Public Works and the developer's execution of an agreement to maintain the driveway.

E5. Visual obstructions over three feet in height are not permitted within the driver's sight triangle near driveways and corners in order to allow an unobstructed *view* of oncoming traffic.

E6. Unused driveways in the public right-of-way shall be replaced by the applicant with City standard curb, gutter, and sidewalk to the satisfaction of the Director of Public Works, prior to issuance of certificate of final occupancy.

E7. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced by the applicant (to the nearest score mark) in a manner acceptable to the Director of Public Works, prior to issuance of certificate of final occupancy. The extents of said repair

or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.

E8. The applicant shall provide a complete storm drain study for the 10-year and 100-year storm events prior to grading permit issuance, to the satisfaction of the Director of Public Works. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at applicant's expense.

E9. The sanitary sewer (SS) discharge information (i.e., building use and square footage, and average and peak sanitary sewer flows) submitted by the applicant was added to the City's Sanitary Sewer Hydraulic Model (SSHM). The SSHM output indicates that there is enough SS conveyance capacity in the modeled SS trunk system to accommodate the proposed development. The SSHM output may change based on pending development applications and future projects. The SSHM output does not guarantee or in any way reserve or hold SS conveyance capacity until applicant has Final Approval for the project. For purposes of this condition, "Final Approval" shall mean the final vote of the City Council necessary for the rezoning, architectural design, and tentative subdivision map to be approved, unless a legal challenge is brought to the Council decisions, in which case the Final Approval shall mean the final disposition of the legal challenge.

E10. The existing sanitary sewer (SS) mains serving the site not included in the Sanitary Sewer Hydraulic Model were monitored in the field by the applicant. The field monitoring information along with the SS discharge information submitted by the applicant were analyzed by the applicant's Civil Engineer who determined that said SS mains currently have enough conveyance capacity to accommodate the proposed development. The SS Flow Monitoring output may change based on pending development applications and future projects. The SS Flow Monitoring output does not guarantee or in any way reserve or hold SS conveyance capacity until applicant has Final Approval for the project. For the purposes of this condition, "Final Approval" shall mean the final vote of the City Council necessary for the rezoning, architectural design, and tentative subdivision map to be approved, unless a legal challenge is brought to the Council decisions, in which case the Final Approval shall mean the final disposition of the legal challenge.

E11. The applicant shall file a Final Subdivision Map to be recorded with the County of Santa Clara in order to create the legal parcels for proposed development prior to issuance of certificate of final occupancy. Final map shall be substantially in conformance with the Tentative Subdivision Map to the satisfaction of the Director of Public Works.

E12. Prior to the effective date of the resolution ordering vacation of existing easements and Centennial Boulevard street right-of-way, the applicant shall either (a) complete the relocation of utilities and provide access to all parcels

or (b) enter into a public improvement agreement pursuant to City Code section 17.05.650 for such relocation of utilities and provision of access secured in the form and amount set forth in City Code section 17.05.660, to the satisfaction of the Director of Public Works. Issuance of an encroachment permit(s) shall authorize the applicant to perform any work within the public right-of-way that is performed prior to the effective date of the resolution ordering vacation of existing easements and Centennial Boulevard street right-of-way. If work is to be performed pursuant to a public improvement agreement, that public improvement agreement shall require that the applicant provide continuous access to all parcels and complete the relocation of utilities and prior to taking existing utilities out of service.

E13. The applicant shall obtain permit approval from the Santa Clara Valley Water District prior to commencement of any work within the jurisdiction of the Santa Clara Valley Water District.

E14. In general, sanitary sewer (SS) and storm drain (SD) main lines should be designed such that all other parallel facilities have at least an eight-foot (8') clear distance of separation, unless otherwise allowed by the Director of Public Works. SS and SD pipelines that have large diameters or are deeper in elevation may require greater separation from other facilities. Other facilities may have minimum prescriptive clearances that are greater than these minimums. All facilities shall be shown on building permit plans, and constructed in compliance with the approved plans, to the satisfaction of the Director of Public Works.

E15. Traffic signal controller cabinets, surveillance cameras, traffic signal fiberoptic interconnection conduits and cables, and associated communications upgrades (or alternate communication technology proposed by the applicant if satisfactory to the Director of Public Works) shall be installed at specific intersections as defined in, and in order to facilitate the implementation of the Transportation Management and Operations Plan (TMOP), prior to the first event necessitating such improvements as determined by the TMOP. Specific intersections (which shall not include any intersections outside the area bounded by California State Route 237 to the north, United States Highway 101 to the south, Calabazas Creek to the west and the Guadalupe River to the east) will be identified in the TMOP. In addition, prior to the first event at the Stadium, a Traffic Management Center shall be constructed in the stadium and connected with City Hall Traffic Management Center, to the satisfaction of the Director of Public Works.

E16. Prior to any events at the stadium, the applicant shall contract with a Traffic Engineering Consulting firm to develop and implement traffic signal coordination plans to accommodate before and after event traffic, and the applicant shall pay all costs associated with development and implementation of the plans, to the satisfaction of the Director of Public Works. The scope of work for the Traffic Engineering Consulting firm shall be subject to the

approval of the Director of Public Works and the Transportation Management and Operations Plan (TMOP) working group.

E17. The applicant shall comply with all mitigation measures and improvements identified in the Mitigation Monitoring or Reporting Program, and Transportation Management and Operations Plan (TMOP) to the satisfaction of the Director of Public Works and the Director of Planning and Inspection.

E18. If required by the Transportation Management and Operations Plan (TMOP), the applicant shall utilize Changeable Message Signs/Informational Signs identified in the TMOP.

E19. Prior to the abandonment of Centennial Boulevard, the applicant shall deposit funds to the City sufficient to design and reconstruct the traffic signal at Tasman Drive/Centennial Boulevard to the satisfaction of the Director of Public Works, in order to accommodate the new alignment. As a part of this task, the applicant shall identify curb radius for southwest and southeast corners of Tasman/Centennial (should match existing) to the satisfaction of the Director of Public Works.

E20. Prior to issuance of certificate of final occupancy, if there are any corners at Tasman Drive/Centennial Boulevard that have curb ramps that are not compliant with current American with Disability Act (ADA) standards, the applicant shall reconstruct those curb ramps in a manner that is compliant with ADA requirements, to the satisfaction of the Director of Public Works.

E21. For events exceeding 25,000 attendees, the applicant shall provide a bicycle valet service that includes a dedicated, bicycle storage area with valet service for visitors, to the satisfaction of the Director of Public Works. Initially, the bicycle storage area shall provide enough space to house a minimum of 750 bicycles. The size of the bicycle valet area shall be adjusted, based upon demand, up to a maximum capacity of 1,250 bicycles.

E22. The applicant shall provide 50 Class I bicycle lockers and 30 Class II bicycle racks, consistent with Valley Transportation Authority (VTA) technical guidelines prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Public Works. A minimum of ten bicycle lockers shall be provided for employees. The remaining bicycle lockers shall be E-lockers, consistent with VTA requirements.

E23. The applicant shall design and install reconfigured driveways on Tasman Boulevard in front of the Stadium to be one-way (right turn in on western most and right turn out on eastern most) to the satisfaction of the Director of Public Works.

E24. The applicant shall design and install sidewalk completely around the new southern end of Centennial Boulevard south of Tasman Drive to the satisfaction of the Director of Public Works.

E25. The applicant shall provide street lighting along Centennial Drive from Tasman Drive Boulevard south onto the project site, and along pedestrian pathways on the project site per City standards. The applicant shall coordinate with Silicon Valley Power (SVP) on design of the lighting. All lighting shall be installed and operational prior to the first event at the Stadium, and installed to the satisfaction of the Director of Public Works and the Director of Electric Utility.

K. Fire Conditions of Approval

F1. The applicant shall submit a plan to the Fire Department for approval that designates the following, to the satisfaction of the Fire Chief, prior to building permit issuance for the super structure:

1. Fire apparatus access road around stadium which complies with the following:

   a) Minimum 20" width.

   b) Minimum 13'6" vertical clearance.

   c) Minimum turning 36-foot inside turning radius.

   d) Engineered to support 70,000 pounds.

2. Fire Apparatus staging area in the vicinity of the service entrance.

3. Staging areas for ambulances for game days.

4. Dead-end fire apparatus access roads that exceed 150-feet in length shall be provided with a 75-foot diameter vehicle turnaround or an approved hammerhead turnaround (incorporating the minimum 36-foot inside turning radius).

5. Adjacent private emergency access roads from lands adjoining a property required to have access shall not be considered unless such access is designated as a "shared Emergency Access Easement" (EAE.).

F2. The applicant shall provide fire apparatus access roads (public/private), to the satisfaction of the Fire Chief, which shall be established and maintained to within 150 feet of all exterior walls of any building prior to issuance of building permits for the construction of the super structure.

F3. The applicant shall provide emergency communication systems where adequate interior emergency radio communication is not possible. Emergency radio coverage acceptable to the fire code official shall also be installed

(SCMFEC 511.1). Communication systems shall be provided to the satisfaction of the Fire Chief prior to the first event at the stadium.

F4. The applicant shall submit building plans to be approved by the Fire Chief, prior to construction of the super structure, illustrating that buildings and structures with one or more passenger service elevators shall be provided with not less than one medical emergency service to all landings as follows (2007 CSC 3002.4a):

1. The elevator car shall be of such a size and arrangement to accommodate a 24-inch by 84-inch ambulance gurney or stretcher in the open horizontal position. The hoistway landing openings shall be provided with power-operated doors.

2. A minimum clear distance between walls or between walls and door excluding return panels not less than 80 inches by 54 inches, and minimum distance from wall to return panel not less than 51 inches with a 42 inch side slide door.

3. Shall be equipped with a key switch to recall the elevator non-stop to the main floor.

4. Medical emergency elevators shall be identified by the international symbol (Star of Life) for emergency medical services. The symbol shall not be less than 3 inches in size, permanently attached to each side of the hoistway doorframe on the portion of the frame at right angles to the hallway or landing area. Each symbol shall not be less than 78 inches and not more than 84 inches above the floor at the threshold.

F5. If underground fire service mains are required, the applicant shall submit separate plans, permit processing and inspection fees legally required for a public building, and fire flow calculations to the Fire Department for separate review and permit prior to building permit issuance for the super structure. Plans shall be to the satisfaction of the Fire Chief. Each parcel or building may require separate fire service. (Note: Stamped and wet signed civil drawings shall be submitted in conjunction with shop quality drawings by the installing "A" or "C-16" licensed contractor).

F6. If the development provides any combination of six (6) or more fire hydrants, fire sprinkler or standpipe services, it shall not be served by a dead end water main, but rather served by a looped service with two separate feeds containing fire department connections (FDCs), post indicator valves (PIVs) and private fire hydrants. The FDC and PIV shall be located on the street fronting each building. The FDC shall not supplement/charge/pressurize the private fire service main, but only the building's sprinkler/standpipe/wharf hydrant system it serves. The FDC shall be located within 50 feet of a fire hydrant, plus on

the same side of the road as the fire hydrant(s). If the project is subject to these requirements, the applicant shall submit plans illustrating compliance with stated requirements, to the satisfaction of the Fire Chief, prior to issuance of building permits for the super structure.

F7. In private underground piping systems, any dead end pipe, which supplies both sprinkler and hydrants, shall be not less than eight (8) inches in diameter.

F8. The applicant shall provide an automatic fire sprinkler system in accordance with the Fire Code, to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F9. A standpipe system shall be provided in accordance with the Fire Code, to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F10. An automatic fire pump shall be provided in accordance with the Fire Code, to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F11. At the time of building permit application for the super structure, the applicant shall submit a construction "Fire Safety Plan" to the Fire Department for review and approval prior to the first event at the stadium. The "Fire Safety Plan" shall address fire protection (i.e., access roads, water mains, on-site fire hydrants, fire extinguishers and standpipes) be installed and made serviceable prior to the time of construction. Include in the safety plan the location of fire extinguishers, fire hydrants (public and private), storage of combustible construction materials, propane tanks, and "NO SMOKING" signs. Plus the Safety plan shall address the how the following items will be used: temporary heating devices, temporary electrical wiring, cutting/welding and other open-flame devices. See "Standards for Construction site fire Safety" handout or website at www.unidocs.org/fire

F12. At the time of Building Permit application for the super structure, the applicant shall submit Civil Drawings that denote existing and proposed locations of fire hydrants, underground sectional valves, fire department connections and post indicator valves for fire department review and approval, to the satisfaction of the Fire Chief.

F13. Prior to combustible materials being brought onto the site, the applicant shall construct the approved fire apparatus access roads. These roads shall be built to the satisfaction of the Fire Chief, and shall be capable of supporting the imposed fire apparatus load (70,000 lbs.) and have a Fire Department approved all-weather driving surface.

F14. At no time shall the applicant allow construction materials to obstruct access roads, access to buildings, hydrants or fire appliances.

F15. The applicant shall not commence any construction that involves combustible materials in excess of 100 feet from the street until emergency access roads; underground fire service lines and permanent on-site hydrants are in service and have been tested, flushed and approved by the Fire Department to the satisfaction of the Fire Chief.

F16. During construction of a building and until permanent fire-extinguishers have been installed, portable fire extinguishers are required within 50 feet travel distance to any part of the building in accordance with California Fire Code and the Santa Clara Municipal Fire and Environmental Code, to the satisfaction of the Fire Chief.

F17. General Permit Storm Water Discharges Associated with Construction Activity-Water Quality through the State (order 99-08-DWQ) shall be adhered to regarding non-point source issues on construction sites (i.e., prevention of paints, debris, etc. from going down storm drains). The Permit is issued by the State Water Resources Control Board. Information regarding the permit can be found at www.waterboards.ca.gov/stormwtr/index.html.

F18. If the applicant utilizes Internal-combustion-powered construction equipment it shall be used as follows: (a) Equipment shall not be refueled while in operation, (b) Exhausts shall be piped to the outside of the building, or the applicant will be subject to administrative code enforcement.

F19. The applicant shall provide an on-site secondary water supply equal to the hydraulically calculated sprinkler demand, including the hose stream requirement, for high-rise portions, and the supply shall have duration of not less than 30 minutes in accordance with NFPA 13. The on-site secondary water supply shall meet the satisfaction of the Fire Chief.

F20. The applicant shall provide a smoke control system, in accordance with the Fire Code and to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F21. The applicant shall provide an emergency voice/alarm communication system to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy.

F22. The applicant shall provide a two-way fire department communications system for fire department use, to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy.

F23. The applicant shall provide a fire command center, to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy.

F24. The applicant shall provide a standby power system for standby power loads (elevators, power and lighting fire the fire command center, and ventilation and automatic fire detection equipment for smoke proof enclosures) to the

satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy. Note: If the standby system is a generator set inside a building, the system shall be located in a separate room enclosed with 2-hour fire barriers or horizontal assemblies, or both. System supervision with manual start and transfer features shall be provided at the fire command center.

F25. The applicant shall provide an Emergency power system to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy (exit signs and means of egress illumination, elevator car lighting, emergency voice/alarm communications systems, automatic fire detection systems, fire alarm systems, and fire pumps).

F26. Stairway doors other than the exit discharge doors shall be permitted to be locked from the stairway side. Stairway doors that are locked from the stairway side shall be capable of being unlocked simultaneously without unlatching upon a signal from the fire command center. Upon failure of electrical power to the locking mechanism the door shall unlock.

F27. The applicant shall provide a telephone or other two-way communications system connected to an approved constantly attended station at not less than every fifth floor in each required stairway where the doors to the stairway are locked. The system shall meet the satisfaction of the Fire Chief and be installed prior to the issuance of the certificate of occupancy.

F28. The applicant shall provide the high-rise building with a passive or active smoke control system or combination thereof in accordance with the California Fire Code and to the satisfaction of the Fire Chief. The system shall be installed prior to the issuance of the certificate of occupancy.

F29. The applicant shall provide project plans that illustrate that every exit enclosure in the high-rise building will be maintained to ensure to a reasonable degree that the system is capable of controlling smoke for the required duration (2007 CFC, 907.20). The exit enclosures shall be constructed to the satisfaction of the Fire Chief prior to the issuance of the certificate of occupancy.

F30. The applicant shall provide three medical stations within the stadium, which shall be constructed to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy. The submitted plans for the Fire Department's approval shall include a minimum of 3 medical stations, and more specifically:

1. The location of the medical stations.

2. The floor plan of each station including the beds, work spaces and storage.

F31. The applicant shall provide an Emergency Command Center to the satisfaction of the Fire Chief, prior to the issuance of the certificate of

occupancy. The applicant submitted plans for the Emergency Command Center shall include:

1. The location of the Emergency Command Center.

2. The floor plan including the work stations, equipment required by Fire Code, command table and storage.

F32. The Emergency Command Center can function as the fire command center required as part of the high-rise conditions as long as the conditions listed in Section 509 of the Fire Code are satisfied.

F33. The applicant should strategically place automatic emergency defibrillators throughout the stadium facility in order to ensure effective access and use by trained personnel. The Fire Chief can assist in preferred placement locations if these devices are included in the project plans.

L. Parks and Recreation Conditions of Approval

PR1. Prior to the abandonment of Centennial Boulevard south of Tasman Drive, the applicant shall record a final subdivision map with the Santa Clara County Clerk-Recorder that provides access and utility easements to the Youth Soccer Park Facility to the satisfaction of the Director of Public Works.

PR2. The applicant shall submit plans for review by the Director of Parks and Recreation, and final approval by the Director of Planning and Inspection regarding the relocation of the Youth Soccer Park entry gate, signage, fencing, utility boxes and drainage prior to reconstruction. The reconstruction design shall address and include all elements of the existing facility to be altered with the planned redesign of the facility and reduction in the number of existing parking spaces.

PR3. Prior to commencement of any work on the Planned Development Project Site that inhibits access to any parcel on the Overall Project Site, the applicant shall develop and submit a site Construction Management Plan to the satisfaction of the Director of Planning and Inspection that includes information regarding Youth Soccer Park security during construction, continuous access to the facility during construction, continuous utility service during construction, and public outreach.

PR4. The applicant shall provide the Director of Planning and Inspection with a Stadium construction schedule prior to commencement of any work on the Planned Development Project Site. The applicant shall notify the Director of Planning and Inspection of any changes to the Stadium construction schedule that would impact the Youth Soccer Park Facility no less than 72 hours in advance of any work subject to grading and/or building permits, in order to minimize impacts to the regular season use of the Youth Soccer Park, and to

mitigate dust and related impacts associated with the Youth Soccer Park entrance reconstruction.

PR5. If deemed necessary by the Director of Planning and Inspection, the applicant shall install fencing fabric along the existing Centennial Drive Youth Soccer Park fence to mitigate blowing dust onto the Youth Soccer Park fields within three (3) days of the Director's request.

PR6. The applicant or their representative shall monitor and mitigate construction effects on the Youth Soccer Park fields to the satisfaction of the Director of Planning and Inspection. If there is blown dust, debris or other impacts to the Youth Soccer Park soccer fields during construction, construction contractor shall clean the fields by providing/paying for cleaning equipment and staff with experience in removal of dust and debris from the Youth Soccer Park synthetic turf and grass fields to return them to playable condition within 24 hours of the impact, to the satisfaction of the Director of Planning and Inspection.

PR7. The applicant shall provide temporary directional signs to the satisfaction of the Director of Planning and Inspection, to direct Youth Soccer Park staff and users to the accessible entrance during project construction. Signage shall be posted on Tasman in both directions, in front of David's Banquet Facility and at the end of Stars & Stripes prior to any work requiring grading and/or building permit approvals.

PR8. If deemed necessary by the Director of Parks and Recreation, the applicant shall install new signs addressing parking and parking restrictions on the new Youth Soccer Park entrance gates at the southern terminus of Centennial Boulevard and on the eastern entrance to the Youth Soccer Park prior to the first event at the Stadium.

M. Planning and Inspection Conditions of Approval

P1. Prior to the issuance of the certificate of final occupancy, the applicant shall demonstrate to the satisfaction of the City Building Official that the site is independently served by all required facilities and utilities.

P2. The applicant shall grade and develop the site so that site drainage will comply with the Building Code and the State Storm Management (C.3) requirements, to the satisfaction of the City Building Official. Compliance with Building Code and C.3 requirements pertaining to site drainage shall be verified by the City Building Official prior to issuance of the certificate of final occupancy.

P3. Project building permit plan set submittals shall meet all site accessibilities (accessible path(s) from public transportation point(s)) to all accessible entrances and exits prior to issuance of building permits, to the satisfaction of the City Building Official.

P4. Project building permit plan set submittals shall meet building/facility accessibilities (provide handicap accessible access to all levels and to exit discharge as required, required number and arrangement of accessible seats, accessible toilet facilities and drinking fountains, etc.) prior to issuance of building permits, to the satisfaction of the City Building Official.

P5. The applicant shall propose site addressing (street number and street name), which shall be approved by the City Building Official, prior to issuance of the certificate of final occupancy.

P6. Project building permit plan set submittals shall include a Building Code Analysis that addresses the following items, to the satisfaction of the Building Official, prior to issuance of building permits:

a. Required Building Type of Construction
b. Required separation from property lines and from adjacent buildings
c. Allowable building area
d. Fire protection of exterior walls and openings
e. Exiting requirements including accessible means of egress
f. Emergency power for exit illumination
g. Required safe exit discharge (for quick and safe dispersal)

P7. The applicant, in conjunction with the working group responsible for oversight and implementation of the Transportation Management and Operations Plan (TMOP), shall comply with all provisions of the TMOP, to the satisfaction of the Director of Planning and Inspection and the Director of Public Works, prior to the first event at the stadium. The TMOP shall be reviewed annually and updated as necessary, to the satisfaction of the Director of Planning and Inspection.

P8. The applicant shall employ green building standards and materials in the site design and construction of the stadium project designed to meet United States Green Building Council Leadership in Energy and Environmental Design (LEED) certified standards, or equivalent, for new construction. Applicant shall provide the Director of Planning and Inspection with proof of LEED certification, or equivalent, within one year of the issuance of the certificate of final occupancy.

P9. The applicant shall provide certification from the project engineer that the drainage design for the subject property will prevent flood water intrusion in the event of a storm of 100-year return period. The applicant's engineer shall verify to the satisfaction of the City Building Official that the site will be protected from off-site water intrusion by designing the on-site grading and storm water collection system using the 100-year hydraulic grade line elevation provided by the City's Engineering Department or the Federal Flood Insurance Rate Map, whichever is more restrictive. Such certification shall be submitted to the City Building Official prior to issuance of building permits.

P10. The applicant shall submit a truck hauling route and schedule for demolition, soil, debris and material removal, and construction to the Director of Planning and Inspection for review and approval prior to the issuance of demolition and building permits.

P11. Construction activities shall be limited as follows:

a. No person shall engage or authorize others to engage in construction of any building or related road or walkway, pool or landscape improvement, or in construction operations related thereto, including delivery of construction materials, supplies, or improvements on or to the Planned Development Project Site if the site is within three hundred (300) feet of any residentially zoned property except within the hours of 7:00 a.m. to 6:00 p.m. following on weekdays other than holidays, Monday through Friday, inclusive; and within the hours of 9:00 a.m. to 6:00 p.m. following, inclusive, on any Saturday which is not a holiday.

b. Pile driving shall be prohibited on weekends and holidays.

P12. The applicant shall comply with the Mitigation Monitoring or Reporting Program for the 49ers Stadium project that was adopted by the City Council on March 9, 2010, as amended by the City Council from time to time.

P13. The applicant shall provide more detailed stormwater design information for City review and approval prior to the issuance of with the Building Permits for site grading, Generally, the information shall be consistent with the mitigation measures identified in the EIR, to the satisfaction of the Director of Planning and Inspection.

P14. The applicant shall include pollutant source control measures, such as application of "No Dumping" labels on storm drain inlets and regular parking lot sweeping and trash removal. The applicant shall not utilize pesticides in the bioretention areas, and shall minimize pesticide use in the other landscaped areas. These measures shall be detailed in the Stormwater Management Plan, which is a required component of the Stormwater Operations and Maintenance Agreement that shall be prepared to the satisfaction of the Director of Streets and Automotive Services, prior to the issuance of the certificate of final occupancy.

P15. The applicant shall exhibit compliance with the Water Efficient Landscape Ordinance (WELO), to the satisfaction of the Director of Planning and Inspection, prior to the issuance of the certificate of final occupancy.

P16. The applicant shall submit plans for the piles clearly illustrating whether the proposed piles will cross property lines. The piles utilized to construct the superstructure shall not cross property boundaries, unless the applicant secures approval of an encroachment permit, or records an easement, prior to the

issuance of building permits, to the satisfaction of the Director of Public Works.

P17. The applicant shall prepare a Construction Management Plan, to the satisfaction of the Director of Planning and Inspection, prior to issuance of any building permits for the project. The Construction Management Plan shall include, but not be limited to:

1. Public notices and community relations;
2. Project scheduling, site access and sequencing;
3. Safety program;
4. Construction administration; and
5. Environmental Compliance.

P21. Stadium field lighting system shall incorporate reflector controls to control spill light and glare to avoid or minimize impacts upon nearby residential properties (east and south), as described in the project EIR.

P23. In order to control noise, the stadium loudspeaker systems (permanent and temporary) shall be oriented in a manner consistent with Community Noise Analysis prepared by WJHW, dated May 27, 2010 for the proposed 49ers Stadium, in order to control noise impacts to adjacent residential neighborhoods. In accordance with Section 9.10.070(c) of the Santa Clara City Code, and the recommendations of this noise analysis, sound system levels shall be limited to 100 dBA for NFL games and other uses of the permanent speaker system, and not more than 105 dBA for temporary concert speaker systems as presented in the analysis. For sound system installations and modifications within the stadium site, the target for maximum sound level exposure in residential areas to the east and south shall be 60 dBA, in order to minimize noise impacts to sensitive receptors.

P24. The applicant shall obtain Valley Transportation Authority (VTA) approval to implement mid-block pedestrian crossing of the Light Rail tracks at vicinity of N/W stadium gate (west of Centennial Boulevard), prior to the construction of any such crossing. Use of crossing shall be limited to time and manner as permitted by Transportation Management and Operations Plan (TMOP).

P25. The applicant shall obtain City approvals/permits for redesign and restripe of Valley Transportation Authority (VTA) parking lot east of Training Facility. Applicant shall coordinate with and provide VTA with a City-approved schedule of work in and around this lot prior to commencement of work.

P26. The applicant, in concert with the City, shall negotiate any necessary changes and execute any these changes to the Valley Transportation Authority (VTA) Cooperative Agreement for Construction and Maintenance of the Great America Rail Station Improvements - Stars and Stripes Drive Extension Parking lot, prior to commencement of work, and/or use of the parking lot.

P27. The applicant shall obtain license of entry for City properties (stadium site, Stars and Stripes, Youth Soccer Park Facility, chip-seal lot)and permits, as required, prior to any work to the satisfaction of the City Manager.

P29. Prior to erection of any signage, the applicant shall obtain a Master Sign Program Permit (comprehensive sign program), to the satisfaction of the Director of Planning and Inspection. Exterior Stadium signage shall not exceed a maximum of 111,312 square feet.

P33. The following recommended Airport Land Use Commission conditions shall apply:

a. In accordance with ALUC Land Use Policy G-7, all proposed lighting shall be downward shrouded to avoid adverse light and glare impacts for aircraft landing and taking off at San Jose International Airport. The lighting shall be arrayed in such a manner that it cannot be mistaken for airport approach or runway lights by pilots.

b. Should the design of the lighting towers change, the following condition shall apply: All proposed stadium lighting towers shall conform to the Federal Aviation Regulations Part 77 Surfaces.

N. Police Conditions of Approval

PD1. The applicant shall provide an adequate number of antennas/repeaters to ensure radio communications within the Stadium, prior to the first event at the stadium, to the satisfaction of the Chief of Police.

PD2. The applicant shall provide a centralized command post within the Stadium prior to the first event at the stadium, to the satisfaction of the Chief of Police.

PD3. The applicant shall provide a temporary holding/processing facility within the Stadium prior to the first event at the stadium, to the satisfaction of the Chief of Police.

PD4. The applicant shall develop, continuously update as necessary, and fund the implementation of a Public Safety Plan that shall be prepared to the satisfaction of the City Manager, prior to the first event at the stadium. The Public Safety Plan shall describe procedures for traffic management, security and public safety at NFL Games, and other large non-NFL events at the Stadium, which will include police and fire personnel stationed in and around the Stadium, as well as private security.

PD5. The applicant shall facilitate the formation of a multi-jurisdictional Joint Powers Authority (JPA), mutual aid agreement, or similar mechanism prior to the first event at the stadium. The multijurisdictional group shall include representatives from the City of Santa Clara and neighboring jurisdictions' Police and Fire Departments.

PD6. The applicant shall provide a minimum illumination of one-foot candle in parking areas and in all common pedestrian or landscaped areas of the development. The illumination should be deployed in fixtures that are both weather and vandal resistant.

PD7. Address numbers should be a minimum of twelve (12) inches in height for commercial or industrial buildings. The numbers shall be illuminated during hours of darkness, and in a color that is contrasting to the background material. They shall be clearly visible from the street.

PD8. Any required enclosure fencing (trash area, utility equipment, etc.) if not see through, should have a six inches opening along the bottom for clear visibility. Any gates or access doors to these enclosures should be locked.

PD9. Exterior stairs should be open style and well lit.

PD10. Exterior elevators should be see through for maximum visibility. All elevators should be well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.

PD11. The Stadium should have a comprehensive internal security plan, tailored to the specific use. This should include, but not be limited to, employee security during working hours, after hours security, disaster preparation, etc. For retail uses, especially where cash is on hand, robbery and cash security protocols should be established.

PD12. All entrances to parking areas should be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code Section 22658(a) for guidance).

PD13. All exterior doors should be adequately illuminated at all hours with their own light source.

O. Silicon Valley Power (SVP) Conditions of Approval

EL1. Prior to submitting any project for SVP review, the applicant shall provide a site plan showing all existing utilities, structures, easements and trees. SVP will work with Applicant's Engineers on design of required substructures prior to issuance of Electric Permits.

EL2. Electric Department facilities include electric and fiber optic facilities. The applicant shall provide and install electric facilities per Santa Clara City Code Chapter 17.15.210, Property Developments, Municipal Utilities. Electric substructure facilities shall be installed prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility, to the satisfaction of the Director of Electric Utility (or designated representative).

EL3. The applicant shall install all new electric and fiber optic services underground. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department Standard UG-1000, latest version, and Santa Clara City Code Chapter 17.15.050. All new and relocated electric service shall be installed prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility, to the satisfaction of the Director of Electric Utility (or designated representative).

EL4. The applicant shall provide a "Load Survey" form showing all current and proposed electric loads, to the satisfaction of the Director of Electric Utility (or designated representative), prior to issuance of electric permit. Preliminary information from Applicant indicates they will require two (2)-12Kv primary feeders to serve an approximate demand of 9.0MVA.

EL5. The applicant shall own, maintain, and install underground service entrance conduits and conductors shall per [sic] City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G7, Rev. 2, to the satisfaction of the Director of Electric Utility (or designated representative), prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility.

EL6. The applicant shall grant to the City, without cost, all easements and/or right of way necessary for serving the project site and for the installation of utilities (Santa Clara City Code chapter 17.15.110), prior to commencement of any utility work, to the satisfaction of the Director of Public Works.

EL7. The applicant shall install electric meters and services disconnects in a group at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed. Work shall be completed prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility, to the satisfaction of the Director of Electric Utility (or designated representative).

EL8. If the project requires equipment pads, the applicant shall provide an area that is clear of all utilities, trees, walls, and other obstructions. This area includes a 5'-0" area away from the actual equipment pad. The area in front of the equipment may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" minimum wide walkway. Equipment pads must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck. All equipment pad locations shall be subject to the approval of the Director of Electric Utility (or designated representative).

EL9. The applicant shall submit a landscape plan illustrating that all trees, existing and proposed, will be a minimum of five (5) feet from any existing or

proposed Electric Department facilities. Existing trees in conflict with Electric Department facilities and easements will have to be removed. Trees shall not be planted in Public Utility Easements (PUE) or electric easements. The landscape plan shall be to the satisfaction of the Director of Planning and Inspection, and the Director of Streets and Automotive Department.

EL10. The applicant shall comply with all electric overhead conductor clearances in accordance with CPUC General Order 95 to the satisfaction of the Director of Electric Utility (or designated representative). A minimum of ten (10) feet of radial clearance must be maintained from any and all overhead electrical conductors. All surfaces accessible to vehicular traffic must maintain a minimum distance of thirty (30) feet vertical clearance to any and all overhead conductors.

EL11. Any relocation or rearrangement of existing electric and fiber optic facilities shall be at applicant's expense and shall meet the satisfaction of the Director of Electric Utility (or designated representative). Electric facilities includes, but are not limited to, underground conduits, manholes, splice boxes, cables, poles, conductors, anchors, down guys, fences, gates, equipment, and associated facilities.

EL12. The applicant shall pay Electric Load Increase fees in the amount of $833,400 prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility.

EL13. Prior to the installation of SVP conductors, equipment, or meters, the applicant shall provide SVP, in accordance with current SVP standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by SVP in the development of frontage and on-site property. Specific details will be provided by SVP to the Applicant in a Developer's Work Package after Applicant submits electric building permit drawings to the Permit Center. The applicant shall further install, own, and maintain, at their cost, the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City (Santa Clara City Code Chapter 17.15.210 (2)).

EL14. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Director Electric Utility (or designated representative). All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. No interconnection of a generation facility with SVP's electric system is allowed without written authorization from the Director of Electric Utility (or designated representative).

EL15. The applicant shall provide vehicular access across or through the project site to City property, including the Electric Department Gianera Power Plant and Northern Receiving Station (NRS). Vehicular access must accommodate vehicles with a sixty-two (62) foot wheel base and a minimum of a forty-five (45) foot turning radius in accordance with Department of Transportation requirements. Access easements shall be recorded prior issuance of the certificate of final occupancy, and meet the satisfaction of the Director of Public Works.

EL16. The applicant shall comply with Silicon Valley Power (SVP) standards pertaining to design, placement and connection of fiber facilities, and illustrate compliance on building permit plans. All work shall be completed in compliance with approved Building Plans, to the satisfaction of the Director of the Electric Utility.

P. Streets Conditions of Approval

ST1. Prior to issuance of the final building permit, the applicant shall submit a complete landscape and automatic irrigation plans for review and approval by the Director of Planning and Inspection, and the Director of the Streets and Automotive Services Department Plans are to include all existing trees with 4" or larger diameter (measured 54" above grade) on the project site and adjacent property if they may be impacted, proposed trees, existing storm water drainage facilities, proposed storm water drainage facilities, and proposed locations of solid waste containers. Trees are to be correctly labeled with specie name and correctly plotted as to exact location on the plans. Trees are to be noted as to whether they are proposed to be saved or removed. City tree preservation specifications are to be included on all plans where existing trees are to be saved during construction. A copy of these specifications can be obtained from the City Arborist City Arborist standard notes shall be placed on all landscape plans.

ST2. The applicant shall supply and install City street trees per City specifications; spacing, specie, and size (24" box minimum) to the satisfaction of the Director of Streets and Automotive Services Department, prior to issuance of the certificate of final occupancy. All proposed on-site trees shall receive final approval for specie, size, spacing and planting location from the City Arborist.

ST3. The applicant and/or their designee shall not cut City trees, or any part of City trees, including roots, without following city tree preservation specifications and securing approval and direct supervision from the City Arborist. If the applicant fails to follow City Tree Removal Permit requirements, they shall be subject to fines, and they will be required to pay all removal and replacement costs.

ST4. Per City of Santa Clara Policy and Procedure 33, Tree Removal on City Property, the applicant shall receive required public tree removal permits,

prior to removal of any public trees. Public tree removal permits are subject to review and approval by the City Arborist, and requested removals shall be approved in advance of removal by the City Arborist.

ST5. Existing mature trees identified by the City Arborist shall be maintained by the applicant where feasible. The applicant shall prepare a tree protection plan for any trees that are maintained on site for review and approval by the City Arborist prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site.

ST6. The applicant shall install landscaping and irrigation systems that meet City standard specifications, prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Planning and Inspection, and the Director of the Streets and Automotive Services Department.

ST7. Since this project involves disturbing a land area of one acre or more, the applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division, and the City Planning Division. A storm water pollution prevention plan is also required with the NOI, which shall meet the satisfaction of the Director of Streets and Automotive Services Department and the Director of Planning and Inspection.

ST8. Consistent with the mitigation measures contained in the Mitigation, Monitoring or Reporting Plan for the project, the applicant shall incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of building permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Director of Planning and Inspection for incorporation into construction drawings and specifications.

ST9. The applicant shall prepare an erosion control plan for approval by the Director of Planning and Inspection prior to the issuance of grading permits or building permits that involve substantial disturbance of ground area.

ST10. The applicant shall consider the use of pretreatment unit(s) to remove sediment, trash and/or gross pollutants upstream of any proposed media filters. If a pretreatment unit is proposed for inclusion as a component of the stormwater management plan the applicant shall include the unit on the project plans, and it shall be approved by the Director of Planning and Inspection.

ST11. All applicant proposed stormwater treatment vaults shall have internal treated distribution plumbing; no external folding racks are permitted. All

stormwater treatment vaults shall be shown on project plans and approved by the Director of Planning and Inspection.

ST12. Decorative water features such as fountains and ponds shall be designed and constructed to drain to sanitary sewer only, to the satisfaction of the Director of Public Works. No discharges from water features to the storm drain are permitted.

ST13. The proposed project triggers Stormwater Management (C.3) requirements; therefore, all post construction structural controls shall require the applicant to execute with the City a Stormwater Treatment Measures Inspection and Maintenance Agreement prior to the issuance of the certificate of final occupancy, to the satisfaction of the Director of Streets and Automotive Services Department.

ST14. The applicant shall comply with City Development Guidelines for Solid Waste Services as specified by development type. Proposed solid waste facilities shall be shown on project plans to the satisfaction of the Director of Streets and Automotive Services Department prior to issuance of building permits. All trash enclosures should be constructed to drain to the sanitary sewer.

ST15. The applicant shall comply with City Code Section 8.25.285 and recycle or divert at least fifty percent (50%) of materials generated for discards by the project during demolition and construction activities to the satisfaction of the Director of Planning and Inspection. No building, demolition or site development permit shall be issued unless and until applicant has submitted a construction and demolition debris materials check-off list. After completion of project, applicant shall submit a construction and demolition debris recycling report as stipulated by ordinance, or be subject to monetary, civil, and/or criminal penalties.

ST16. The applicant shall slurry seal and restripe any roadway damaged by construction to the satisfaction of the Director of Streets and Automotive Services, prior to issuance of the certificate of final occupancy.

ST17. The applicant is required to obtain solid waste collection services solely from the solid waste company designated by the City (currently Mission Trail Waste). Only the solid waste company designated by the City shall be permitted to charge fees for placing, transporting, and disposing or recycling materials from the site.

ST18. The applicant shall salvage all existing irrigation heads, valves, valve boxes, controllers and associated devices from the project site and deliver them to the Director of Streets and Automotive Services prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Streets and Automotive Services. Alternatively, the applicant shall inform the Director of

Streets and Automotive Services thirty (30) days in advance of any ground disturbing activities on the Overall Project Site so that City Staff can remove the irrigation devices prior to start of work.

ST19. The applicant shall salvage all existing light fixtures from the project site and deliver them to the Director of Streets and Automotive Services prior issuance of the certificate of final occupancy, to the satisfaction of the Director of Streets and Automotive Services. Alternatively, the applicant shall inform the Director of the Electric Utility thirty (30) days in advance of any ground disturbing activities on the Overall Project Site so that City Staff can remove the existing light fixtures prior to start of work.

Q. Water and Sewer Department Conditions of Approval

W1. It shall be the responsibility of the applicant to determine if there are any water wells on the property prior to issuance of grading permits. Unless the continued use of such well or wells is specifically permitted under City Code, and such well or wells can be demonstrated to meet all applicable sanitary standards and absent of contamination, the applicant shall seal the well or wells in accordance with the Standards promulgated by Santa Clara Valley Water District. A copy of the Destruction Permit issued by District, indicating that the well or wells have been properly sealed, shall be submitted to City as evidence thereof.

W2. Prior to issuance of plumbing permits for any outdoor irrigation, the applicant shall submit plans and calculations illustrating that all landscaping and irrigation systems meet water conservation requirements as per City's Rules and Regulations for Water Service. Plans and calculations shall be prepared to the satisfaction of the Director of Planning and Inspection.

W3. If the project requires pumping to maintain adequate water pressure for all uses including but not limited to fire, irrigation, and domestic uses from either recycled or potable water systems, the applicant shall be responsible for the design, installation, and maintenance of any such pumping system, to the satisfaction of the City Building Official.

W4. The applicant shall design and install independent water and sewer services. As such, said property shall not be connected to service lines from the adjacent properties, unless approved by the City Building Official. The systems shall be designed to the satisfaction of the Director of Water and Sewer Utilities.

W5. The applicant shall install a clean-out at the property line on all existing or proposed sanitary sewer lateral(s) to the satisfaction of the Director of Public Works, prior to the issuance of the certificate of final occupancy.

W6. The applicant shall provide landscape irrigation water by separate water service(s). The irrigation system shall be designed and constructed in

compliance with City's Rules and Regulations for recycled water use to the satisfaction of the Director of Water and Sewer Utilities, prior to the issuance of the certificate of final occupancy.

W7. Landscape irrigation, toilet flushing, and cooling water needs shall be provided by City's recycled water system. The applicant shall submit landscape irrigation and plumbing plans with utility plans to the Water and Utilities Department for review and approval by the City, and the State Department of Public Health, prior to issuance of plumbing permits for the recycled water system. The irrigation, plumbing and cooling tower piping plans must show all existing and proposed potable water piping.

W8. Decorative water features such as fountains and ponds shall be designed and constructed to include provisions for operating the system without City potable water supply. All decorative water features shall be capable of being physically disconnected from the source of potable water supply during City declared water conservation periods. Decorative water features may be permanently connected to City recycling water supply.

W9. The applicant shall illustrate on a landscape plan, to the satisfaction of the Director of Planning and Inspection, that all trees, existing and proposed, maintain a minimum of ten feet from any existing or proposed Water and Sewer Department facilities. If a City-approved Tree Root Barrier (TRB) is used, the TRB must be a minimum of five feet from existing and proposed Water and Sewer Department facilities, with the tree behind the TRB. Existing trees that conflict must be removed by developer. Trees shall not be planted in water or public utility easements.

W10. Any construction of new water and sewer facilities or relocation of existing Water and Sewer Utilities Department facilities shall be at applicant's expense, and completed to the satisfaction of the Director of Water and Sewer Utilities prior to the issuance of the certificate of final occupancy.

W11. The applicant shall install an approved sanitary sewer grease interceptor on the sanitary discharge line to the satisfaction of the San Jose/Santa Clara Water Pollution Control Plant, Industrial Waste Division. The applicant shall submit a letter from said division to verify compliance, prior to issuance of the certificate of final occupancy. In addition, the applicant shall secure arrangement to periodically have the grease removed and properly disposed of. Sewer rates will vary with type of discharge and sewer charges are a function of water use.

W12. The applicant shall install an approved backflow preventer on all water services including but not limited to any required fire service(s), domestic service(s), and recycled water service(s) connection at the applicants sole cost and expense, prior to issuance of certificate of final occupancy, to the satisfaction of the Director of Water and Sewer Utilities.

W13. The applicant shall install dual plumbing to implement domestic usage of recycled water for the proposed project prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Water and Sewer Utilities.

W14. The applicant shall contact the Water and Sewer Utilities Department Code Enforcement Officer for review and approval of the plans for irrigation, cooling towers and dual plumbing at the site. The plans shall be in compliance with recycled water rules and regulations and must also be approved by South Bay Water Recycling and the State Department of Public Health for the specified services prior to issuance of plumbing permits for the systems.

W15. If relocation of 16-inch Ductile Iron Pipe (DIP) pipeline is required adjacent to San Tomas Aquino Creek, the applicant shall be responsible for all cost's [sic] associated with the permitting, design and construction of the relocated pipeline and the abandonment of the existing pipeline. Work shall be completed prior to issuance of building permits, to the satisfaction of the Director of Water and Sewer Utilities.

W16. The applicant provided planting palette shall be consistent with the use of recycled water for irrigation purpose, and is subject to approval by the Director of Planning and Inspection prior to issuance of the certificate of final occupancy. Redwood trees and other salt sensitive landscaping are not compatible with recycled water based on the soil type in the area.

W17. Applicant prepared building permit plans shall include signage details for using recycled water for approved uses including but not limited to landscaping, toilet flushing and cooling towers, and shall be prepared to the satisfaction of the Director of Water and Sewer Utilities.

W18. The applicant is solely responsible for obtaining all necessary permits for construction or relocation of existing facilities including but not limited to those within the Santa Clara Valley Water District (SCVWD) property/easements. All permits necessary for construction or relocation of existing facilities shall be obtained prior to work commencing on these utilities.

W19. The applicant shall record utility easements for the proposed water and recycled water mains, and sewer lines on the project site prior to relocating any utilities, to the satisfaction of the Director of Public Works. In addition, the applicant shall record utility easements for the water services and all City owned appurtenances such as fire hydrants, fire services with backflow devices, water services with backflow devices and recycled water services prior to relocating any utilities, to the satisfaction of the Director of Public Works.

W20. The applicant shall provide isolation valves, air release valves, and other water appurtenances for the water and recycled water mains. At a minimum, main isolation valves shall be provided at all services, 90 degree bends, tees and every 500 feet. Valves shall be shown on project plans and installed prior to finalization of permits associated with the work to the satisfaction of the Director of Water and Sewer Utilities.

W21. The applicant shall provide bollards around the existing four inch water service on the south side of the property serving adjacent to the Silicon Valley Power (SVP) substation prior to issuance of certificate of final occupancy, to the satisfaction of the Director of Water and Sewer Utilities.

W22. The applicant shall be responsible for relocating or replacing the existing chain link fence on the south side of the property adjacent to the Water Department Facility, to the top of the proposed retaining wall to the satisfaction of the Director of Water and Sewer Utilities, prior to issuance of the certificate of final occupancy.

W23. The applicant shall place the existing 16 inch water main on the west side of the project site in casing where the proposed new bridge is crossing the water main to the satisfaction of the Director of Water and Sewer Utilities, prior to the finalization of the permit associated with the work.

W24. The applicant shall submit building plans that clearly designate fire hydrants as either public or private, to the satisfaction of the Director of Water and Sewer Utilities.

W25. Stormwater Management plans submitted with the building permit application shall clearly illustrate that stormwater drains away from the water tank site, to the satisfaction of the City Building Official.

W26. Building Permit Plans shall show all existing and proposed water and recycled water services for all parcels on the overall project site, to the satisfaction of the Director or [sic] Water and Sewer Utilities.

W27. The applicant shall provide load bearing calculations for the locations that show water main depths less than four feet, to the satisfaction of the Director of Water and Sewer Utilities.

EXHIBIT X

Provisions Relating to Construction Sales and Use Tax Allocations

Design-Builder shall comply with the provisions set forth in this Exhibit so that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder are allocated directly to the City of Santa Clara (the "City"). These provisions shall, as applicable, be followed by each Subcontractor with a Subcontract in excess of $5,000,000. In particular, Design-Builder shall:

1. Apply for a jobsite sub-permit with the California State Board of Equalization ("CBOE") prior to the purchase of any materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder (a "Jobsite Sub-Permit"). Design-Builder shall utilize an application substantially in the form attached as Attachment ___ for the foregoing purpose [TO BE PROVIDED]. Upon the request of Owner, Design-Builder shall furnish a copy of its application for Jobsite Sub-Permit. Promptly following Design-Builder's receipt of a Jobsite Sub-Permit from the CBOE, Design-Builder shall provide Owner and the City with a copy of such Jobsite Sub-Permit.

2. Provide the Owner and the City, upon the reasonable request of either, with:

(a) a list of any of Design-Builders' subcontractors providing services or materials in excess of $5,000,000 in connection with the work to be performed hereunder, which list shall include:

(i) Name of subcontractor;

(ii) Address and telephone number of headquarters or office;

(iii) Name and telephone number of contact person;

(iv) Estimated value of contract;

(v) Estimated completion date;

(vi) Scope of Work; and

(v) A copy of the Subcontract;

(b) Such additional information as may be reasonably requested in writing by the City to ensure compliance with the foregoing provisions.

EXHIBIT D

CERTIFICATE OF COMPLETION

RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO: Forty Niners Stadium, LLC 4949 Centennial Boulevard Santa Clara, CA 95054 Attention: Larry MacNeil, CFO	FOR RECORDER'S USE ONLY

APN: _____

CERTIFICATE OF COMPLETION

WHEREAS, the Santa Clara Stadium Authority, a California joint powers authority (the "**Stadium Authority**") and Forty Niners Stadium, LLC, a Delaware limited liability company ("**StadCo**") entered into that certain Disposition and Development Agreement (Stadium Lease) dated as of December ___, 2011 (the "**Agreement**"), a memorandum of which was recorded on _____, in the Santa Clara County Office of the Clerk-Recorder, as Document Number __ _____, setting forth obligations of the Stadium Authority to construct the Improvements in connection with the development of that certain real property situated in the City of Santa Clara, in the County of Santa Clara, State of California, which property is more particularly described in Exhibit A attached hereto and made a part hereof (the "**Stadium Site**"), and setting forth the terms and conditions under which the Stadium Authority and StadCo would enter into a lease of the Premises. Except as otherwise defined herein, capitalized terms shall have the meanings given them in the Agreement;

WHEREAS, by lease dated as of _____, 201_ (the "**Stadium Lease**"), a memorandum of which was recorded on _____, 201_, in the Santa Clara County Office of the Clerk-Recorder, as Document Number _____, the Stadium Authority did convey to StadCo (as Tenant thereunder) a leasehold interest in the Premises;

WHEREAS, the Stadium Authority and Stadco have conclusively determined that the construction obligations of the Stadium Authority as specified in the Agreement have been fully performed and the Improvements Completed in accordance therewith [***, except for certain Deferred Items (as defined in the Agreement)***]; and

WHEREAS, as stated in the Agreement, this Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of occupancy to be issued by the City of Santa Clara, which is separately required for occupancy, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Design-Build Contractor or Separate Contractor as applicable, regarding prevailing wages required in the applicable Construction Contracts, or to any holder of a deed of trust securing money loaned to finance the Project or any portion thereof.

NOW THEREFORE, as provided in the Agreement, and subject to the foregoing provisions hereof, the Stadium Authority and StadCo do hereby certify that such obligations and the Improvements have been fully performed and Completed as aforesaid [***insert the following only if the Takeout Financing has closed--*** and that the Agreement is hereby terminated and of no further force or effect, except as provided therein].

Nothing contained in this instrument shall modify in any way any provisions of the Stadium Lease.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly appointed representatives and this Certificate of Completion shall become effective as of the latest date below written.

APPROVED AS TO FORM:

_____

[INSERT NAME]
Stadium Authority General Counsel

ATTEST:

_____

ROD DIRIDON, JR.
Stadium Authority Secretary

Date: _____

SANTA CLARA STADIUM AUTHORITY, a California joint powers authority

_____

[INSERT NAME]
Executive Director

Date: _____

FORTY NINERS STADIUM, LLC,
a Delaware limited liability company

_____

[INSERT NAME]
[INSERT TITLE]

Date: _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer),
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer),
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer),
appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT A

LEGAL DESCRIPTION

STADIUM SITE

[To be attached prior to recordation]

EXHIBIT E

LIST OF DEVELOPMENT FEES

Water Main Fee:
Developer shall pay the City a water main fee for the existing water main along the Tasman Drive frontage of the property (Centennial frontage is considered satisfied). This fee shall be computed at the rate of $60 per foot of street frontage of the property. Based on the 926 feet of frontage of the property along Tasman Drive, the fee would be calculated as:
926 feet x $60/foot = **$55,560.00**.

Sanitary Sewer Conveyance Fee:
Developer shall pay the City a sanitary sewer outlet charge. The revenue from the sanitary sewer conveyance fee shall be used for the acquisition, construction, replacement and debt retirement of off-site sewerage facilities as described in Resolution No. 07-7415 - Exhibit A (Sanitary Sewer Capacity Assessment Study by RMC Water & Environment Inc.). Pursuant to said resolution, this fee shall be computed at the rate of $5.50 per gallon per day of the estimated sanitary sewer effluent. Based on the estimated effluent of 233,000 gallons per day from this development, the fee would be calculated as: 233,000 GPD x $5.50/GPD = **$1,281,500.00**.

Sanitary Sewer Connection Fee (Sewage Treatment Plant Expansion Connection Charge):
Developer shall pay the City a sanitary sewer connection fee to finance capital and debt retirement costs associated with the sewage treatment facilities which are allocated to unused or future capacity. The fee shall be computed at the rate of $4.30 per gallon per day of the estimated sanitary sewer effluent. Based on the estimated effluent of 233,000 gallons per day from this development, the fee would be calculated as: 233,000 GPD x $4.30/GPD = **$1,001,900.00**.

Street Lighting (UG over 10 Acres):
Developer shall pay the City a street lighting fee to cover the cost for the installation of electric facilities used to provide street lighting in and around the property development. The unit basis for the street lighting is the number of acres of development property. The developer is also responsible for providing and installing underground substructures (conduits, manholes, and splice boxes) required for the street light installation in accordance with Silicon Valley Power requirements. The street light fee is calculated by multiplying the number of acres of development by the current fee rate of $1,763.75. Based on the prorated acreage of the project of 9.93 acres, the fee would be calculated as: 9.93 acres X $1,763.75/acres = **$17,514.00** (rounded to nearest dollar).

Electric Load Development:
Developer shall pay the City an electric load development fee to cover the cost for the installation of electric facilities used to deliver electric energy to the new or upgraded development. The unit basis for the Load Development fee is the electric demand increase measured in Kilovolt Amperes (KVA). The developer is also responsible for providing and installing along the property public frontage all underground substructures (conduits, manholes, and splice boxes) required for current and future electric facility installation in accordance with Silicon Valley Power requirements. The Load Development fee is calculated by multiplying the

electric demand increase (KVA) by the current fee rate of $92.60. Based on the estimated demand increase (KVA) of 9,000 from this development, the fee would be calculated as: 9,000 KVA X $92.60/KVA = **$833,400**.

Public Works Engineering and Inspection Fee:
Developers shall pay an engineering and inspection fee, which includes all charges except overtime, for engineering and inspection services rendered by the City. The engineering and inspection fee shall be computed at the rate of eight percent (8%) of the total construction cost of all public works facilities and improvements (except water facilities), installed by the developer. The developer shall pay all payroll costs for engineering and inspection services requested by the developer outside of the regular City work hours. Such fees shall be due and payable upon demand of the City. Inasmuch as the cost of public works facilities and improvements to be installed by the developer is unknown at this time, **this fee is still to be determined**.

Water Engineering and Inspection Fee:
Developers shall pay a water engineering and inspection fee, which includes all charges except overtime, for water engineering and inspection services rendered by the City. The water engineering and inspection fee shall be computed at the rate of eight percent (8%) of the total construction cost of all water facilities (domestic, fire protection and recycled) and improvements installed by the developer. The developer shall pay all payroll costs for water engineering and inspection services requested by the developer outside of the regular City work hours. Such fees shall be due and payable upon demand of the City. Inasmuch as the cost of water facilities and improvements to be installed by the developer is unknown at this time, **this fee is still to be determined**.

Total Development Fees (excluding Engineering & Inspection Fees): $3,189,874.00

EXHIBIT F

PERMITTED EXCEPTIONS

1. A lien to secure payment of non-delinquent real estate taxes;
2. Matters created by or with the written consent of Stadco;
3. Matters approved in writing by Stadco;
4. The Redevelopment Plan;
5. The Memorandum of Agreement;
6. The Memorandum of Ground Lease; and
7. The Memorandum of Stadium Lease.

EXHIBIT G

PRELIMINARY DEVELOPMENT BUDGET

Stadium Construction	$789,000,000
Construction Contingency	79,000,000
	868,000,000
Site Work	31,000,000
Offsite Work	8,000,000
Insurance & Project Mgmt.	34,000,000
SCSA & City Costs	7,000,000
Design & Engineering	20,000,000
Permits, Fees & Inspection	18,000,000
Professional Fees & Audit	3,000,000
Marketing	31,000,000
Total Estimate	$1,020,000,000

EXHIBIT H

PRELIMINARY FINANCING PLAN

JOINDER OF SANTA CLARA STADIUM AUTHORITY

By executing this joinder (this "Joinder"), the undersigned, a California joint powers agency, hereby agrees, effective as of December 13, 2011, to be bound by all terms and conditions of the following agreements: (1) the Commitment Letter dated November 4, 2011 (inclusive of Annexes A, B and C attached thereto, the "Commitment Letter") among Stadium Funding Trust, a Delaware statutory trust (the "Borrower"), Forty Niners Stadium, LLC, a Delaware limited liability company (the "Company"), Goldman Sachs Bank USA ("Goldman Sachs"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), Bank of America, N.A. and U.S. Bank National Association ("U.S. Bank"), and (2) the Engagement Letter (Right of First Offer) dated November 4, 2011 (inclusive of Annex A attached thereto, the "ROFO Engagement Letter") among the Borrower, the Company, Goldman, Sachs & Co., MLPFS and U.S. Bank (the agreements identified in the preceding numbered clauses (1) and (2), collectively, the "Joined Agreements"), in each case, with the same force and effect as if originally named therein as a co-obligor of the Borrower and the Company. Without limiting the generality of the foregoing, the undersigned hereby agrees and acknowledges that it has all the rights, entitlements, duties and obligations of a co-obligor of the Borrower and the Company as set forth in the Joined Agreements, as the same are amended, if at all, concurrently with the execution and delivery of this Joinder.

The undersigned acknowledges that it has received and has had the opportunity to review the above-listed Joined Agreements together with, (A) if any, the amendments to the Commitment Letter set forth on *Annex A* hereto, as approved and agreed by the parties indicated thereon, and, (B) if any, the amendments to the ROFO Engagement Letter set forth on *Annex B* hereto, as approved and agreed by the parties indicated thereon. The undersigned represents and warrants that this Joinder has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

This Joinder shall be construed in accordance with and governed by the internal laws of the State of New York without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the undersigned has caused this Joinder to be executed and delivered as of the date first written above.

SANTA CLARA STADIUM AUTHORITY

By: _____
Name: Jennifer Sparacino
Title: Executive Director

Annex A

[amendments to the Commitment Letter as are reasonably necessary in connection with this Joinder; if there are "*none*," so indicate on this Annex A, without execution]

APPROVED AND AGREED AS OF _____, 2011:

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By:_____
Name:
Title:

Annex B

[amendments to the ROFO Engagement Letter as are reasonably necessary in connection with this Joinder; if there are "*none*," so indicate on this Annex B, without execution]

APPROVED AND AGREED AS OF _____, 2011:

GOLDMAN, SACHS & CO.

By: _____
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By:_____
Name:
Title:

Execution Copy

GOLDMAN SACHS
BANK USA
200 West Street
New York, New York
10282-2198

MERRILL LYNCH, PIERCE,
FENNER & SMITH
INCORPORATED
BANK OF AMERICA, N.A.
100 North Tryon Street
24th Floor
Charlotte, North Carolina
28255

U.S. BANK NATIONAL
ASSOCIATION
425 Walnut Street
Cincinnati, Ohio 45202

PERSONAL AND CONFIDENTIAL

November 4, 2011

Stadium Funding Trust
c/o Wilmington Trust, National Association, as Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001
Attention: Corporate Trust Administration

Forty Niners Stadium, LLC
4949 Centennial Blvd.
Santa Clara, California 95054
Attention: John Edward York, President

Commitment Letter

Ladies and Gentlemen:

Goldman Sachs Bank USA ("**Goldman Sachs**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**MLPFS**") and U.S. Bank National Association ("**U.S. Bank**" and together with Goldman Sachs and MLPFS, the "**Arrangers**" or "**we**") are pleased to confirm the arrangements under which (i) we are authorized by Stadium Funding Trust (the "**Borrower**"), a bankruptcy remote special purpose Delaware statutory trust, and Forty Niners Stadium, LLC (the "**Company**"), a special purpose Delaware limited liability company, to act as co-lead arrangers and joint bookrunners in connection with, (ii) Goldman Sachs is exclusively authorized by the Company and the Borrower to act as administrative agent and collateral agent in connection with, and (iii) Goldman Sachs, Bank of America, N.A. ("**BOA**" and together with the Arrangers, each a "**Commitment Party**" and collectively, the "**Commitment Parties**") and U.S. Bank commit to provide the financing for, certain transactions described herein, in each case on the terms and subject to the conditions set forth in this letter and the attached Annexes A, B and C hereto (collectively, this "**Commitment Letter**").

You have informed us that the Borrower was established exclusively for the purpose of entering into (i) an up to $850,000,000 senior secured multi-draw construction term loan facility having the terms set forth on Annex B (the "**Senior Secured Facility**"), and (ii) the Loans (as defined below). The Borrower intends to borrow funds under the Senior Secured Facility and (A) make a loan (the "**Authority Loan**") to the Santa Clara Stadium Authority (the "**Authority**"), a California joint powers agency formed exclusively for the purpose of financing, constructing and owning the Stadium Project (as defined below), to finance

costs of the development and construction of a new approximately 1.8 million square foot, 68,500 seat stadium (the "**Stadium**") and all related facilities and other improvements (collectively, including the Stadium, the "**Improvements**") on a site on the south side of Tasman Drive at Centennial Boulevard in Santa Clara, California (the "**Stadium Site**" and, together with the Improvements, the "**Stadium Project**") and for other permitted purposes and (B) make a loan to the Company (the "**Stadco Loan**" and together with the Authority Loan, the "**Loans**") to finance or refinance certain costs and expenses of the Improvements paid or payable by the Company and for other permitted purposes, all as more particularly described in Annex B. The Stadium and certain other Improvements and appurtenant rights will be leased by the Authority to the Company for the National Football League (the "NFL") season (including pre-season, regular season and post-season NFL games), during each year of the lease term, and in turn subleased by the Company to San Francisco Forty Niners, Limited (the "**Team**") for each such NFL season. The Company, a special purpose entity whose activities will be limited exclusively to (i) participation in the development and financing of the Stadium Project, (ii) leasing the Stadium from the Authority, and (iii) subleasing the Stadium, including to the Team, will, on and after the Closing Date (as defined in Annex B), be a bankruptcy remote (A) wholly-owned direct subsidiary of the Team or (B) sister entity of the Team with the identical ownership as the Team.

The Authority will use the proceeds of the Authority Loan, together with the proceeds received by the Authority from other sources, including the Stadco Advance (as defined below), and other available funds of the Authority, to pay costs and expenses of the design, development, construction and completion by the Scheduled Completion Date (as defined in Annex B) of the Improvements (the "**Authority Project Costs**"), fund interest and fees that become due under the Authority Loan during the construction of the Improvements, and pay all other fees, costs and expenses incurred or payable by the Authority in connection with the transactions described herein. The Company will use the proceeds of the Stadco Loan, together with the proceeds received by the Company from other sources, including the NFL Financing (as defined in Annex B), and other available funds of the Company, to finance or refinance certain costs and expenses of the Improvements paid or payable by the Company, fund interest and fees that become due under the Stadco Loan during the construction of the Improvements, advance funds to the Authority to be used by the Authority to pay Authority Project Costs (the "**Stadco Advance**"), and pay all other fees, costs and expenses incurred or payable by the Company in connection with the transactions described herein. The Stadco Advance will be a loan subordinate to the Authority Loan and repayable by the Authority pursuant to the terms set forth in a note of the Authority issued to the Company at or before the time the Stadco Advance is initially made.

1. Commitments; Titles and Roles.

Each Arranger severally agrees to act, and you hereby agree that, upon the Authority's joinder hereto, each such Arranger shall act, as a co-lead arranger and joint bookrunner in connection with the Senior Secured Facility. Goldman Sachs is pleased to confirm its agreement to act, and you hereby agree that, upon the Authority's joinder hereto, Goldman Sachs shall act, as administrative agent (the "**Administrative Agent**") and collateral agent (the "**Collateral Agent**") for the Senior Secured Facility. In addition, (a) Goldman Sachs is pleased to inform you of its commitment to provide up to $325,000,000 of the Senior Secured Facility, (b) BOA is pleased to inform you of its commitment to provide up to $325,000,000 of the Senior Secured Facility, and (c) U.S. Bank is pleased to inform you of its commitment to provide up to $200,000,000 of the Senior Secured Facility, in each case on the terms and subject to the conditions contained in this Commitment Letter and the Fee Letter (referred to below). Our fees for our commitment and for services related to the Senior Secured Facility are to be set forth in a separate fee letter (the "**Fee Letter**") to be entered into by the Company, the Borrower, the Authority, Goldman Sachs, MLPFS and U.S. Bank on or prior to the Closing Date. Goldman Sachs shall have "left side" designation and shall appear on the top left of any financing materials and all other offering or

marketing materials in respect of the Senior Secured Facility, and MLPFS shall appear to the immediate right of Goldman Sachs in any such financing materials, offering or marketing materials.

2. Conditions Precedent.

In addition to the conditions precedent described on Annexes B and C hereto, each Arranger's commitments and agreements are subject to there not having occurred, since March 31, 2011 (the date of the most recent audited financial statements furnished by the Team to the Arrangers), any event that has resulted in or could reasonably be expected to result in a material adverse change in or effect on (i) the general affairs, management, financial position or results of operations of the Borrower and the Authority, or (ii) the general affairs, management, financial position, shareholders' equity or results of operations of the Company and the Team and their respective subsidiaries (taken as a whole), in each case as determined by each Arranger in its reasonable discretion (each, a "**Material Adverse Change**"). Each Commitment Party's commitments and agreements are also subject to the execution and delivery of appropriate definitive loan documents relating to the Senior Secured Facility including, without limitation, credit agreements, security agreements, pledge agreements, leasehold mortgages, opinions of counsel and other related definitive documents (collectively, the "**Loan Documents**") that are substantially consistent with the terms set forth in this Commitment Letter and otherwise contain customary terms for similar financings acceptable to each Arranger and the Borrower, and the execution and delivery of appropriate definitive loan documents relating to the Authority Loan and the Stadco Loan, respectively, in each case acceptable to each Arranger, the Borrower, the Authority and the Company. Each Commitment Party's commitment is also conditioned upon and made subject to such Commitment Party not becoming aware after the date hereof of any new or inconsistent information or other matters not previously disclosed to such Commitment Party relating to the Borrower, the Authority, the Company, the Team or the Stadium Project or the transactions contemplated by this Commitment Letter which such Commitment Party, in its reasonable judgment, deems material and adverse relative to the information or other matters disclosed to each Arranger prior to the date hereof. Each Arranger's commitment is also conditioned upon and made subject to the Authority joining, pursuant to a joinder agreement in form and substance reasonably satisfactory to each Arranger, this Commitment Letter on or prior to December 15, 2011 and the Fee Letter on or prior to the Closing Date as a co-obligor of the Company and the Borrower, in each case with such amendments to the Commitment Letter and Fee Letter as are reasonably necessary in connection with such joinder but only as approved in writing by each Arranger (which approval shall not be unreasonably withheld or delayed). The Arrangers agree to cooperate with the Borrower and the Company and, upon its joinder hereto, the Authority in connection with obtaining necessary consents and approvals regarding the transactions described herein from the NFL, governmental bodies and other third parties.

3. Syndication

Goldman Sachs intends, and reserves the right, in consultation with the other Arrangers, to syndicate the Senior Secured Facility to the Lenders (as defined in Annex B), and you acknowledge and agree that the commencement of syndication shall occur in the discretion of Goldman Sachs, in consultation with the other Arrangers. Goldman Sachs, in consultation with the other Arrangers, will select the Lenders after consultation with the Borrower, the Authority and the Company. Goldman Sachs will lead the syndication, including determining, in consultation with the other Arrangers, the timing of all offers to potential Lenders, any title of agent or similar designations or roles awarded to any Lender and the acceptance of commitments, the amounts offered and the compensation provided to each Lender from the amounts to be paid to the Arrangers pursuant to the terms of this Commitment Letter and the Fee Letter. Goldman Sachs will determine the final commitment allocations in consultation with the other Arrangers, the Borrower, the Authority and the Company. The Company agrees to use all commercially reasonable efforts to ensure that Goldman Sachs' and the other Arrangers' syndication efforts benefit from the

existing lending relationships of the Team and its subsidiaries. Solely to facilitate an orderly and successful syndication of the Senior Secured Facility, you agree that, until the earlier of the termination of each syndication period as determined by Goldman Sachs, in consultation with the other Arrangers, and 90 days following the date of initial funding under the Senior Secured Facility, the Borrower, the Authority and the Company will not syndicate or issue, attempt to syndicate or issue, or announce or authorize the announcement of the syndication or issuance of, or engage in discussions concerning the syndication or issuance of, any debt facility or any debt security of the Borrower, the Authority, the Company or any of their respective subsidiaries or affiliates (other than the Senior Secured Facility and other indebtedness contemplated hereby to remain outstanding after the Closing Date), including any renewals or refinancings of any existing debt facility or debt security, without the prior written consent of Goldman Sachs. The Arrangers acknowledge and agree that for the purposes of this Commitment Letter, the Authority has no affiliates or subsidiaries.

The Borrower, the Company and, upon its joinder hereto, the Authority agree to cooperate with the Arrangers, and the Company agrees to cause the Team to cooperate with the Arrangers, in connection with (i) the preparation of one or more information packages for the Senior Secured Facility regarding the business, operations, financial projections and prospects of the Borrower, the Authority, the Company and the Team (collectively, the "**Confidential Information Memorandum**"), including, without limitation, all information relating to the transactions contemplated hereunder prepared by or on behalf of the Borrower, the Authority, the Company or the Team deemed reasonably necessary by the Arrangers to complete the syndication of the Senior Secured Facility, and (ii) the presentation of one or more information packages for the Senior Secured Facility acceptable in format and content to the Arrangers (collectively, the "**Lender Presentation**") in meetings and other communications with prospective Lenders or agents in connection with the syndication of the Senior Secured Facility (including, without limitation, direct contact between senior management and representatives, with appropriate seniority and expertise, of the Borrower, the Authority, the Company and the Team, with prospective Lenders and participation of such persons in meetings). The Borrower, the Company and, upon its joinder hereto, the Authority further agree that the commitments and agreements of the Arrangers hereunder are conditioned upon the Borrower's, the Authority's, the Company's and the Team's satisfaction of the requirements of the foregoing provisions of this paragraph by a date sufficient to afford the Arrangers a period of at least 30 consecutive days following the launch of the general syndication of the Senior Secured Facility to syndicate the Senior Secured Facility prior to the Closing Date; *provided* that such 30 consecutive day period shall (i) either conclude prior to December 19, 2011 or commence after January 3, 2012 and (ii) exclude November 23, 2011 through and including November 27, 2011. As more fully described below, each of the Borrower, the Authority and the Company will be responsible only for their respective contents of any such Confidential Information Memorandum and Lender Presentation relating to each such entity and all other information, documentation or materials delivered to the Arrangers in connection therewith (collectively, the "**Information**") and acknowledge that the Arrangers will be using and relying upon the Information without independent verification thereof. The Borrower, the Company and, upon its joinder hereto, the Authority agree that Information regarding the Senior Secured Facility and Information provided by the Borrower, the Company, the Authority, the Team or their respective representatives to the Arrangers in connection with the Senior Secured Facility (including, without limitation, draft and execution versions of the Loan Documents, the Authority Loan documents, the Stadco Loan documents, the Confidential Information Memorandum, the Lender Presentation, pro forma financial statements and feasibility studies) may be disseminated to potential Lenders and other persons through one or more internet sites (including an IntraLinks, SyndTrak or other electronic workspace (the "**Platform**")) created for purposes of syndicating the Senior Secured Facility or otherwise, in accordance with the Arrangers' standard syndication practices, and you acknowledge that no Arranger nor any of its affiliates will be responsible or liable to you or any other person or entity for damages arising from the use by others of any Information or other materials obtained on the Platform. Third-party access to the Information, including but not limited to Information with respect to the Team, whether such access be through the

Platform or otherwise, shall be conditioned upon each third party's acceptance of an affirmative obligation to maintain the confidentiality of the Information.

The Borrower, the Company and, upon its joinder hereto, the Authority acknowledge that certain of the Lenders may be "public side" Lenders that do not wish to receive MNPI (as defined below) (each, a **"Public Lender"**). At the request of the Arrangers, you agree to prepare an additional version of the Confidential Information Memorandum and the Lender Presentation to be used by Public Lenders that may contain MNPI. It is understood that in connection with your assistance described above, you will provide, and cause all other applicable persons to provide, authorization letters to the Arrangers authorizing the distribution of the Information to prospective Lenders and you agree that the Information distributed to prospective Public Lenders will contain a representation that (i) each of the Borrower, the Authority and the Company is not then the issuer of any debt or equity securities, (ii) such Confidential Information Memorandum and the Lender Presentation may contain MNPI, but do not contain financial projections and (iii) if the Borrower, the Authority or the Company is or becomes the issuer of any debt or equity securities issued pursuant to a public offering or Rule 144A or other private placement, or it is actively contemplating any such issuance of securities, in connection with (and prior to) the issuance of such securities, the Borrower, the Authority or the Company, as applicable, will publicly disclose (or otherwise disclose in an appropriate manner for the type of offering, including in the related prospectus or other offering document for the issuance of such securities) all information contained in such Confidential Information Memorandum or such Lender Presentation that constitutes MNPI at such time. **"MNPI"** means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or any of its respective affiliates or securities.

4. Information.

The Company represents and covenants that (i) all Information (other than financial projections) provided directly or indirectly by the Company or the Team to any Commitment Party, in its capacity as an Arranger or as a Lender, or to the other Lenders, in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and (ii) the financial projections that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Team or the Company have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that financial projections are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond your control, and are not a guarantee of financial performance; that no assurance can be given that any particular financial projections will be realized; and that actual results may differ from financial projections and such differences may be material. You agree that if at any time prior to the earlier of (i) 90 days following the Closing Date and (ii) the termination of each syndication of the Senior Secured Facility as determined by Goldman Sachs, in consultation with the other Arrangers, any of the representations in the preceding sentence would be incorrect in any material respect if such Information and financial projections were being furnished, and such representations were being made, at such time, then you will promptly supplement, or cause to be supplemented, such Information and financial projections so that such representations will be correct in all material respects under those circumstances.

The Borrower represents and covenants that (i) all Information (other than financial projections) provided directly or indirectly by the Borrower to any Commitment Party, in its capacity as an Arranger or as a Lender, or to the other Lenders, in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements

contained therein not misleading and (ii) the financial projections that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Borrower have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that financial projections are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and are not a guarantee of financial performance; that no assurance can be given that any particular financial projections will be realized; and that actual results may differ from financial projections and such differences may be material. The Borrower agrees that if at any time prior to the earlier of (i) 90 days following the Closing Date and (ii) the termination of each syndication of the Senior Secured Facility as determined by Goldman Sachs, in consultation with the other Arrangers, any of the representations in the preceding sentence would be incorrect in any material respect if such Information and financial projections were being furnished, and such representations were being made, at such time, then the Borrower will promptly supplement, or cause to be supplemented, such Information and financial projections so that such representations will be correct in all material respects under those circumstances.

Upon its joinder hereto, the Authority represents and covenants that (i) all Information (other than financial projections) provided on or prior to its joinder hereto and directly or indirectly by the Authority to any Commitment Party, in its capacity as an Arranger or as a Lender, or to the other Lenders, in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and (ii) the financial projections, if any, that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Authority (which, for the avoidance of doubt, do not and will not include any financial projections made available by or on behalf of the Team or the Company) have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that financial projections are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the Authority's control, and are not a guarantee of financial performance; that no assurance can be given that any particular financial projections will be realized; and that actual results may differ from financial projections and such differences may be material. Upon its joinder hereto, the Authority agrees that if at any time prior to the earlier of (i) 90 days following the Closing Date and (ii) the termination of each syndication of the Senior Secured Facility as determined by Goldman Sachs, in consultation with the other Arrangers, any of the representations in the preceding sentence would be incorrect in any material respect if such Information and financial projections were being furnished, and such representations were being made, at such time, then the Authority will promptly supplement, or cause to be supplemented, such Information and financial projections so that such representations will be correct in all material respects under those circumstances.

In arranging and syndicating the Senior Secured Facility, we will be entitled to use and rely on the Information and the financial projections without responsibility for independent verification thereof. We will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of the Borrower, the Authority, the Company or the Team or any other party or to advise or opine on any related solvency issues.

5. Indemnification and Related Matters.

In connection with arrangements such as this, it is the policy of each of our firms to receive indemnification. The Borrower, the Company and, upon its joinder hereto, the Authority agree to the

provisions with respect to our indemnity and other matters set forth in Annex A, which is incorporated by reference into this Commitment Letter.

6. Assignments.

This Commitment Letter may not be assigned by you without the prior written consent of each Arranger (and any purported assignment without such consent will be null and void), is intended to be solely for the benefit of the Arrangers and the other parties hereto and, except as set forth in Annex A hereto, is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. Notwithstanding the foregoing, the Company may, with the prior written consent of each Arranger (such consent not to be unreasonably withheld or delayed), assign all of its rights and obligations hereunder to a duly created and existing (i) affiliate established as a direct wholly-owned and controlled bankruptcy remote, single-purpose subsidiary of the Team or (ii) bankruptcy remote sister entity of the Team with the identical ownership as the Team, in each case to assume and carry out the business of the Company relating to the Stadium Project as described herein and the transactions contemplated hereby and by the Fee Letter, in which event such affiliate or sister entity shall thereafter be deemed to be the "Company" hereunder. Each Arranger may assign its commitments and agreements hereunder, in whole or in part, to any of its affiliates and, as provided above, to any Lender prior to the Closing Date. In addition, until the termination of the syndication of the Senior Secured Facility, as determined by Goldman Sachs, in consultation with the other Arrangers, each Arranger may, in consultation with the Borrower, the Authority and the Company, assign its commitments and agreements hereunder, in whole or in part, to additional arrangers or other Lenders. Any assignment by an Arranger to any potential Lender made prior to the Closing Date will not relieve such Arranger of its obligations set forth herein to fund that portion of the commitments so assigned unless such assignment was approved by the Borrower in writing (such approval not to be unreasonably withheld or delayed). Neither this Commitment Letter nor the Fee Letter may be amended or any term or provision hereof or thereof waived or otherwise modified except by an instrument in writing signed by each of the parties hereto or thereto, as applicable, and any term or provision hereof or thereof may be amended or waived only by a written agreement executed and delivered by all parties hereto or thereto.

7. Confidentiality.

Please note that this Commitment Letter, the Fee Letter and any written communications provided by, or oral discussions with, any Arranger in connection with this arrangement are exclusively for the information of the Borrower, the Company and, upon its joinder hereto, the Authority and may not be disclosed by you to any third party (other than the Company's, the Borrower's or the Authority's outside law firms or accounting firms, in each case who has been informed by you of the confidential nature of such advice and the terms of this letter and has agreed to treat such information confidentially) or circulated or referred to publicly without our prior written consent except, after providing written notice to each Arranger, pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative or legislative body or committee; *provided* that we hereby consent to your disclosure of (i) this Commitment Letter, the Fee Letter and such communications and discussions to the Borrower's, the Authority's, the Company's and the Team's respective officers, directors, agents and advisors who are directly involved in the consideration of the Senior Secured Facility and who have been informed by you of the confidential nature of such advice and this Commitment Letter and the Fee Letter and who have agreed to treat such information confidentially; (ii) this Commitment Letter, the Fee Letter and such communications and discussions to the NFL; (iii) this Commitment Letter and the Fee Letter as required by applicable law or compulsory legal process (in which case you agree to inform us promptly thereof); (iv) this Commitment Letter and the Fee Letter to the Authority to the extent necessary in connection with the joinder of the Authority hereunder, including without limitation in connection with the Authority's requisite processes as a joint powers agency of the State of California, of which we are

aware; and (v) the existence of this Commitment Letter and information about the Senior Secured Facility to market data collectors, similar services providers to the lending industry, and service providers to the Arrangers and the Lenders in connection with the administration and management of the Senior Secured Facility.

Each Arranger agrees that it will treat as confidential all information provided to it hereunder by or on behalf of you, the Team, the Authority or any of your or their respective subsidiaries or affiliates; *provided, however*, that nothing herein will prevent an Arranger from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding relating hereto, or otherwise as required by applicable law or compulsory legal process (in which case such person agrees to inform you promptly thereof to the extent not prohibited by law), (b) upon the request or demand of any regulatory authority purporting to have jurisdiction over such person or any of its affiliates, (c) to the extent that such information is publicly available or becomes publicly available other than by reason of improper disclosure by such person, (d) to such person's affiliates and their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other experts or agents who need to know such information, who have been informed by such person of the confidential nature of such information and who have agreed to treat such information confidentially, (e) to potential and prospective Lenders, participants and any direct or indirect contractual counterparties to any swap or derivative transaction relating to the Borrower or its obligations under the Senior Secured Facility, in each case, who are advised of the confidential nature of such information and who have agreed to treat such information confidentially, (f) to Moody's and S&P and other rating agencies or to market data collectors as determined by each Arranger; *provided* that such information is limited to Annex B and Annex C and is supplied only on a confidential basis, (g) received by such person on a non-confidential basis from a source (other than you, the Team, the Authority or any of your or their affiliates, advisors, members, directors, employees, agents or other representatives) not known by such person to be prohibited from disclosing such information to such person by a legal, contractual or fiduciary obligation, (h) to the extent that such information was already in an Arranger's possession (excluding any information in the possession of Goldman Sachs or its affiliates prior to the date hereof in connection with the Company's engagement of Goldman, Sachs & Co. pursuant to the engagement letter dated October 6, 2010) or is independently developed by an Arranger or (i) for purposes of establishing a "due diligence" defense. Each Arranger's obligation under this provision shall remain in effect until the earlier of (i) four years from the date hereof and (ii) the date the definitive Loan Documents are entered into by the Arrangers, at which time any confidentiality undertaking in the definitive Loan Documents shall supersede this provision.

8. Absence of Fiduciary Relationship; Affiliates; Etc.

As you know, each of the Arrangers is a full service financial institution engaged, either directly or through its respective affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services globally. In the ordinary course of their various business activities, each Arranger and funds or other entities in which such Arranger invests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, each Arranger may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of the Borrower, the Authority, the Company, the Team and/or other entities and persons which may (i) be involved in transactions arising from or relating to the arrangement contemplated by this Commitment

Letter or (ii) have other relationships with the Borrower, the Authority, the Company or the Team. In addition, each Arranger may provide investment banking, commercial banking, underwriting and financial advisory services to such other entities and persons. The arrangement contemplated by this Commitment Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph, and employees working on the financing contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefor. Although each Arranger in the course of such other activities and relationships may acquire information about the transaction contemplated by this Commitment Letter or other entities and persons which may be the subject of the financing contemplated by this Commitment Letter, such Arranger shall have no obligation to disclose such information, or the fact that such Arranger is in possession of such information, to the Borrower, the Authority or the Company or to use such information on the Borrower's, the Authority's or the Company's behalf.

No Arranger has assumed (A) an advisory responsibility in favor of the Borrower, the Authority, the Company, the Team or their respective equity holders or their respective affiliates with respect to the financing transactions contemplated hereby, (B) a fiduciary responsibility in favor of the Borrower, the Authority, the Company, the Team or their respective equity holders or their respective affiliates with respect to the transactions contemplated hereby, or in each case, the exercise of rights or remedies with respect thereto or the process leading thereto (irrespective of whether an Arranger has advised, is currently advising or will advise the Borrower, the Authority, the Company, the Team or their respective equity holders or their respective affiliates on other matters) or (C) any other obligation to the Borrower, the Authority, the Company or the Team except the obligations expressly set forth in this Commitment Letter and the Fee Letter.

You acknowledge that no Arranger nor any of its respective affiliates has an obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained or that may be obtained by them from any other person. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees that it will not claim that any Arranger has rendered advisory services of any nature or respect with respect to the financing transactions contemplated hereby.

Each Arranger may have economic interests that conflict with those of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates. You agree that each Arranger will act under this Commitment Letter as an independent contractor and that nothing in this Commitment Letter or the Fee Letter will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Arranger and the Borrower, the Company, their respective equity holders or their respective affiliates. You acknowledge and agree that the transactions contemplated by this Commitment Letter and the Fee Letter (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Arrangers, on the one hand, and the Borrower, the Authority and the Company, on the other, and in connection therewith and with the process leading thereto, (i) no Arranger has assumed an advisory or fiduciary responsibility in favor of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether an Arranger has advised, is currently advising or will advise the Borrower, the Authority, the Company, their respective equity holders or their respective affiliates on other matters) or any other obligation to the Borrower, the Authority or the Company except the obligations expressly set forth in this Commitment Letter and the Fee Letter and (ii) each Arranger is acting solely as a principal and not as the agent or fiduciary of the Borrower, the Authority, the Company, or their respective management, equity holders, affiliates, creditors or any other person. Each of the Borrower, the Company and, upon its joinder hereto, the Authority acknowledges and agrees that each such party has consulted its own legal and financial advisors to the extent it deemed

appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees that it will not claim that any Arranger has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, the Authority or the Company, in connection with such transactions or the process leading thereto. In addition, each Arranger may employ the services of its affiliates in providing services and/or performing its or their obligations hereunder and, subject to Section 7 hereof, may exchange with such affiliates information concerning the Borrower, the Authority, the Company and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded to such Arranger hereunder.

In addition, please note that no Arranger provides accounting, tax or legal advice. Notwithstanding anything herein to the contrary, the Borrower, the Authority and the Company (and each employee, representative or other agent of the Borrower, the Authority or the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Senior Secured Facility and all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, the Authority or the Company relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure will remain subject to the confidentiality provisions hereof (and the foregoing sentence will not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" means U.S. federal or state income tax treatment, and "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Commitment Letter but does not include information relating to the identity of the parties hereto or any of their respective affiliates.

9. Miscellaneous.

The obligations of each Arranger under this Commitment Letter and the Fee Letter are several and not joint, and no Arranger will be liable for the obligations of any other Arranger.

The Arrangers' commitments and agreements hereunder will terminate upon the first to occur of (i) a material breach by the Borrower, the Authority or the Company under this Commitment Letter or the Fee Letter and (ii) April 30, 2012, unless the closing of the Senior Secured Facility, on the terms and subject to the conditions contained herein, has been consummated on or before such date.

The provisions set forth under Sections 3, 4, 5 (including Annex A), 7 and 8 hereof and this Section 9 hereof and the provisions of the Fee Letter, to the extent provided therein, will remain in full force and effect regardless of whether definitive Loan Documents are executed and delivered. The provisions set forth in the Fee Letter and under Sections 5 (including Annex A), 7 and 8 hereof and this Section 9 will remain in full force and effect notwithstanding the expiration or termination of this Commitment Letter or the Arrangers' commitments and agreements hereunder.

It is expressly understood and agreed by the parties hereto that (a) this Commitment Letter is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Trustee of the Borrower, in the exercise of the powers and authority conferred and vested in it under that certain Trust Agreement dated as of November 4, 2011 among the Company, as depositor, BSCS 2011-4, Inc., as beneficiary, and Wilmington Trust, National Association, as owner trustee (the "**Trust Agreement**"), (b) each of the representations, undertakings and agreements herein made on the part of the Borrower is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose for binding only the Borrower, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association, individually or personally, to perform any covenant either express or implied

contained herein, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Borrower or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Borrower under this Commitment Letter or the other related documents.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority for itself and its affiliates agrees that any suit or proceeding arising in respect of this Commitment Letter or the Arrangers' commitments or agreements hereunder or the Fee Letter will be tried exclusively in any Federal court of the United States of America sitting in the Borough of Manhattan or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and the Borrower, the Authority and the Company agree to submit to the exclusive jurisdiction of, and to venue in, such court. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either an Arranger's commitments or agreements or any matter referred to in this Commitment Letter or the Fee Letter is hereby waived by the parties hereto. Each of the Borrower, the Authority and the Company for itself and its affiliates agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above shall be effective service of process against such party for any suit, action or proceeding brought in any such court. This Commitment Letter and the Fee Letter will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

Each Arranger hereby notifies the Borrower, the Authority and the Company that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**") such Arranger and each Lender may be required to obtain, verify and record information that identifies the Team, the Borrower, the Authority and the Company, which information includes the name and address of the Borrower and other information that will allow such Arranger and each Lender to identify the Team, the Borrower, the Authority and the Company in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective for each Arranger and each Lender.

This Commitment Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission or electronic transmission (in pdf format) will be effective as delivery of a manually executed counterpart hereof. This Commitment Letter and the Fee Letter are the only agreements that have been entered into among the parties hereto with respect to the Senior Secured Facility and set forth the entire understanding of the parties with respect thereto and supersede any prior written or oral agreements among the parties hereto with respect to the Senior Secured Facility.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to the Arrangers the enclosed copy of this Commitment Letter, on or before the close of business on November 4, 2011, whereupon this Commitment Letter will become a binding agreement between us. If this Commitment Letter has not been signed and returned as described in the preceding sentence by such date, this offer will terminate on such date.

[Remainder of page intentionally left blank]

We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

Robert Ehudin
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name: Wm. Elliott McCabe
Title: Managing Director

BANK OF AMERICA, N.A.

By: _____
Name: Madison B. Wyche, IV
Title: Director

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: William Mulvihill
Title: Vice President

ACCEPTED AND AGREED AS OF NOVEMBER 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By: _____
Name: Jacqueline E. Solone
Title: Banking Officer

FORTY NINERS STADIUM, LLC

By: _____
Name:
Title:

ACCEPTED AND AGREED AS OF NOVEMBER 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By: John Edward York
Name: John Edward York
Title: President

Annex A

In the event that any Commitment Party becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including shareholders, partners, members or other equity holders of the Borrower, the Authority or the Company in connection with or as a result of either this arrangement or any matter referred to in this Commitment Letter or the Fee Letter (together, the "Letters"), the Borrower, the Company and, upon its joinder hereto, the Authority jointly and severally agree to periodically reimburse each Commitment Party for its reasonable legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided, however, that if it is found by a final, non-appealable judgment of a court of competent jurisdiction in any such action, proceeding or investigation that any loss, claim, damage or liability of such Commitment Party has resulted from the gross negligence or willful misconduct of such Commitment Party in performing the services which are the subject of the Letters or in connection with any matter referred to herein, such Commitment Party shall repay such portion of the reimbursed amounts that is attributable to expenses incurred in relation to the act or omission of such Commitment Party which is the subject of such finding. The Borrower, the Company and, upon its joinder hereto, the Authority also agree to indemnify and hold each Commitment Party harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in the Letters (whether or not such investigation, litigation, claim or proceeding is brought by you, your equity holders or creditors or an indemnified person and whether or not any such indemnified person is otherwise a party thereto), except to the extent that such loss, claim, damage or liability has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Commitment Party in performing the services that are the subject of the Letters or in connection with any matter referred to herein. If for any reason the foregoing indemnification is unavailable to a Commitment Party or insufficient to hold it harmless, then the Authority, the Borrower and the Company shall contribute to the amount paid or payable by such Commitment Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Commitment Party on the other hand in the matters contemplated by the Letters as well as the relative fault of the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and such Commitment Party on the other hand with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Borrower, the Authority and the Company under this paragraph shall be in addition to any liability which the Borrower, the Authority and the Company may otherwise have, shall extend upon the same terms and conditions to any affiliate of a Commitment Party and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of such Commitment Party and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Borrower, the Authority, the Company, such Commitment Party, any such affiliate and any such person. The Borrower, the Company and, upon its joinder hereto, the Authority, also agree that neither any indemnified party nor any of such affiliates, partners, members, directors, agents, employees or controlling persons shall have any liability to the Borrower or the Company or any person asserting claims on behalf of or in right of the Borrower, the Authority or the Company or any other person in connection with or as a result of either this arrangement or any matter referred to in the Letters except in case of the Borrower, the Authority and the Company to the extent that any losses, claims, damages, liabilities or expenses incurred by the Borrower, the Authority or the Company or their respective affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnified party in performing the services that are the subject of the Letters or in connection with any matter referred to herein; provided, however, that in no event will such indemnified party or such other parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such indemnified party's or such other parties' activities related to the Letters. For a period of one year from the termination of this

letter, prior to entering into any agreement or arrangement with respect to, or effecting, any proposed sale, exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Borrower, the Authority or the Company set forth in this Annex A, the Company will notify each Commitment Party in writing thereof (if not previously so notified) and, if requested by any such Commitment Party, shall arrange in connection therewith alternative means of providing for the obligations of the Borrower, the Authority or the Company, as applicable, set forth in this paragraph, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions reasonably satisfactory to such Commitment Party; provided, however, that if any action, proceeding or investigation is pending at the end of such one year period for which a claim for indemnification, contribution or reimbursement under this agreement has been or may be made, the Borrower's, the Authority's and the Company's obligations pursuant to this sentence shall continue until such action, proceeding or investigation has been ultimately resolved. ***The provisions of this Annex A shall survive any termination or completion of the arrangements provided by the Letters.***

Annex B

Summary of the Senior Secured Facility

This Summary outlines certain terms of the Senior Secured Facility referred to in the Commitment Letter, of which this Annex B is a part. Certain capitalized terms used herein are defined in the Commitment Letter.

Borrower: Stadium Funding Trust, a statutory trust established under the laws of the State of Delaware (the "***Borrower***") exclusively for the purpose of borrowing funds from the Lenders (as defined below) under the Senior Secured Facility and making loans to the Loan Parties (as defined below) to finance the development and construction of the Stadium Project (as defined below).

Loan Parties: Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code (the "***Authority***"), formed exclusively for the purpose of financing, constructing and owning the Stadium Project, and Forty Niners Stadium, LLC ("***Stadco***" or the "***Company***"), a special purpose entity whose activities will be limited exclusively to (i) participating in the development and financing of the Stadium Project, (ii) leasing the Stadium (as defined below) from the Authority and (iii) subleasing the Stadium to San Francisco Forty Niners, Limited (the "***Team***," and together with Stadco, the "***Team Parties***"; and the Authority, together with Stadco, the "***Loan Parties***"). As of the Closing Date, Stadco will be a wholly-owned, direct subsidiary of the Team.

Stadium Project: The Authority intends to (i) develop, finance and construct an approximately 1.8 million square foot, 68,500 seat professional football stadium (the "***Stadium***"), and all related facilities and other improvements (collectively, including the Stadium, the "***Improvements***"), together with supporting infrastructure, on a site on the south side of Tasman Drive at Centennial Boulevard in Santa Clara, California (the "***Stadium Site***" and, together with the Improvements, the "***Stadium Project***"), and (ii) lease the Stadium and certain other Improvements and appurtenant rights to Stadco for the National Football League (the "***NFL***") season (including pre-season, regular season and post-season NFL games), during each year of the lease term. The scheduled completion date for the construction of the Improvements (the "***Scheduled Completion Date***") will be established to the reasonable satisfaction of each of the Co-Lead Arrangers, on or before the Closing Date.

Construction Monitor/ Independent Engineer: An independent engineering firm (the "***Construction Monitor***") selected by the Co-Lead Arrangers in consultation with the Borrower and the Company with responsibility for, among other things, (i) confirming that sufficient proceeds are available from the monies deposited in the construction account and amounts available from and under the Senior Secured Facility, the NFL Financing (as hereinafter

defined), and other sources to complete construction of the Improvements by the Scheduled Completion Date, (ii) reviewing and approving all material change orders and certifying that there are sufficient contingencies available to fund change orders (or, alternatively, requiring that additional monies be deposited into the construction account prior to signing a change order) and (iii) after the Closing of the Senior Secured Facility, reviewing and approving each construction invoice prior to a construction draw being made to pay a construction contractor.

NFL Financing: It will be a condition precedent to the Closing that the NFL shall have committed to provide at least $150 million to the Team Parties under the successor to its G-3 stadium financing program or otherwise (collectively, the "*NFL Financing*") to finance or refinance tenant improvements and other costs of the Stadium Project incurred by Stadco, pursuant to a legally binding commitment letter or similar documentation and on terms reasonably satisfactory to the Initial Lender (as defined below), in its sole discretion.

Purpose/Use of Proceeds: The proceeds of the Senior Secured Facility will be used to make (x) a loan to the Authority up to a maximum amount to be agreed (the "*Authority Loan*") and (y) a loan to Stadco up to a maximum amount to be agreed (the "*Stadco Loan*," and together with the Authority Loan, the "*Loans*"), which Loans shall not, in the aggregate, exceed $850,000,000.

The Authority will use the proceeds of the Authority Loan, together with the proceeds received by the Authority from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including, without limitation, the Stadco Advance (as defined below), and other available funds of the Authority, to (a) pay costs and expenses of the design, development, construction and completion of the Stadium Project by the Scheduled Completion Date (the "*Authority Project Costs*"), (b) fund interest and fees that become due under the Authority Loan during the construction of the Improvements, and (c) pay all other fees, costs and expenses incurred or payable by the Authority in connection with the transactions described herein. Stadco will use the proceeds of the Stadco Loan, together with the proceeds received by Stadco from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including, without limitation, the NFL Financing, and other available funds of Stadco, to (i) finance or refinance certain costs and expenses of the Improvements paid or payable by Stadco (the "*Stadco Project Costs*"), (ii) fund interest and fees that become due under the Stadco Loan during the construction of the Improvements, (iii) advance funds to the Authority up to a maximum amount to be agreed to be used by the Authority to pay Authority Project Costs (the "*Stadco Advance*"), and (iv) pay all other fees, costs and expenses incurred or payable by Stadco in connection with the transactions described herein. Authority Project Costs and Stadco Project Costs include certain amounts relating to prior advances that are to be reimbursed directly or indirectly to the Team on the Closing Date. The

	Stadco Advance will be a loan subordinate to the Authority Loan and repayable by the Authority pursuant to the terms set forth in a note of the Authority (the "*Authority Note*"), which Authority Note shall be issued to Stadco at or before the time the Stadco Advance is initially made.
Co-Lead Arrangers:	Goldman Sachs Bank USA ("*Goldman Sachs*"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("*MLPFS*") and U.S. Bank National Association ("*U.S. Bank*" and, collectively with Goldman Sachs and MLPFS, the "*Co-Lead Arrangers*").
Joint Bookrunners:	Goldman Sachs, MLPFS and U.S. Bank.
Administrative Agent:	Goldman Sachs (in its capacity as Administrative Agent under the Senior Secured Facility and the Loans, the "**Administrative Agent**").
Co-Syndication Agents:	Bank of America, N.A. ("*BOA*") and U.S. Bank.
Documentation Agent:	A financial institution selected by Goldman Sachs in consultation with the Co-Lead Arrangers.
Collateral Agent:	Goldman Sachs (in its capacity as Collateral Agent, the "*Collateral Agent*").
Initial Lenders:	Goldman Sachs, BOA, and U.S. Bank and/or one or more of their affiliates (each, an "*Initial Lender*" and, collectively, the "*Initial Lenders*"; the Initial Lenders together with any financial institutions selected by the Co-Lead Arrangers that shall become lenders pursuant to the terms of the definitive Loan Documents, the "*Lenders*").
Type and Amount of Senior Secured Facility:	An up to $850,000,000 senior secured multi-draw construction term loan.
Availability:	Multiple drawings may be made under the Senior Secured Facility in accordance with the provisions relating to Construction Draws set forth below to fund, as described herein, the Authority Loan and the Stadco Loan.
Maturity Date:	The Senior Secured Facility, the Authority Loan, and the Stadco Loan will mature on the earlier of (i) September 1, 2015 and (ii) the closing date of the final portion of takeout financings the proceeds of which, in the aggregate, together with any other funds available therefor, are sufficient to pay in full the outstanding amount of the Senior Secured Facility. The Stadco Advance may, in certain circumstances, mature after the Maturity Date of the Senior Secured Facility, the Authority Loan and the Stadco Loan.
Closing Date:	The date on which the Administrative Agent declares that all conditions precedent to the effectiveness of the Senior Secured Facility have

occurred (the "*Closing Date*"; and the closing of the Senior Secured Facility is referred to herein as the "*Closing*"). The Closing is anticipated to occur on or before April 30, 2012.

Amortization: No scheduled amortization will be required with respect to the Senior Secured Facility, the Authority Loan, the Stadco Loan or the Stadco Advance.

Interest Rate: All amounts outstanding under the Senior Secured Facility will bear interest, at the Borrower's option, as follows:

(i) the Base Rate plus 2.25% *per annum*; or

(ii) the reserve adjusted Eurodollar Rate plus 3.25% *per annum*.

As used herein, the terms "*Base Rate*" and "*reserve adjusted Eurodollar Rate*" will have meanings customary and appropriate for financings of this type, and the basis for calculating accrued interest and the interest periods for loans bearing interest at the reserve adjusted Eurodollar Rate will be customary and appropriate for financings of this type. In no event shall the Base Rate be less than the sum of (i) the one-month reserve adjusted Eurodollar Rate (after giving effect to any reserve adjusted Eurodollar Rate "floor") plus (ii) the difference between the applicable stated margin for reserve adjusted Eurodollar Rate loans and the applicable stated margin for Base Rate loans. After the occurrence and during the continuance of any payment, bankruptcy or financial covenant Event of Default, interest on amounts then outstanding will accrue at a rate equal to the rate then applicable thereto, or otherwise at a rate equal to the rate then applicable to loans bearing interest at the rate determined by reference to the Base Rate, in each case plus an additional two percentage points (2.00%) *per annum*. Such interest will be payable on demand.

All amounts outstanding under the Authority Loan and the Stadco Loan will bear interest at the same rate as that of the Senior Secured Facility.

Interest Payments: After the Closing Date, quarterly for loans bearing interest with reference to the Base Rate; except as set forth below, on the last day of selected interest periods (which will be one, two, three and six months) for loans bearing interest with reference to the reserve adjusted Eurodollar Rate (and at the end of every three months, in the case of interest periods of longer than three months); and upon prepayment, in each case payable in arrears and computed on the basis of a 360-day year (365/366 day year with respect to loans bearing interest with reference to the Base Rate).

Commitment Fees: Beginning after the Closing Date, the Borrower shall pay each Lender a commitment fee, payable in arrears on a quarterly basis, and passed through pro rata from the Authority and Stadco under the Authority

Loan documents and Stadco Loan documents, respectively, equal to (x) the Applicable Rate (as defined below) *multiplied by* (y) the aggregate amount of such Lender's undrawn commitments.

As used herein, the "*Applicable Rate*" means, for any day:

(a) if the aggregate amount of the Initial Lender's undrawn commitments under the Senior Secured Facility on such day is greater than zero but less than $325.0 million, 0.75%;

(b) if the aggregate amount of the Initial Lender's undrawn commitments under the Senior Secured Facility on such day is equal to or greater than $325.0 million but equal to or less than $625.0 million, 1.00%; and

(c) if the aggregate amount of the Initial Lender's undrawn commitments under the Senior Secured Facility on such day is greater than $625.0 million, 1.25%.

Voluntary Prepayments: The Senior Secured Facility may be prepaid in whole or in part without premium or penalty; *provided* that loans bearing interest with reference to the reserve adjusted Eurodollar Rate will be prepayable only on the last day of the related interest period unless the Borrower pays any related breakage costs.

Each of the Authority Loan and the Stadco Loan may be prepaid in whole or in part without premium or penalty; *provided* that loans bearing interest with reference to the reserve adjusted Eurodollar Rate will be prepayable only on the last day of the related interest period unless the applicable Loan Party pays any related breakage costs.

Mandatory Prepayments: The Borrower will be required to make mandatory prepayments from the proceeds of the following, to the extent such proceeds are not otherwise used or held for use in accordance with the definitive Loan Documents: (X)(A) any voluntary prepayments made by the Authority under the definitive Authority Loan documents and (B) any mandatory prepayments made by the Authority under the definitive Authority Loan documents from the proceeds of the following, to the extent such proceeds are not otherwise used or held for use under the definitive Authority Loan documents: (i) any cash advances to the Authority from Stadco made after the Closing Date in accordance with the Stadco Term Loan Commitment (as defined below), (ii) asset sales by the Authority, (iii) receipt of casualty or condemnation proceeds by the Authority, (iv) incurrence of indebtedness (other than the Stadco Advance) or execution of securitization transactions by the Authority, (v) receipt of additional public sector contributions by the Authority, (vi) receipt of proceeds from the sale or license of any stadium builder licenses, naming rights or other rights or assets owned by the Authority and related to the Stadium Project, (vii) receipt by the Authority of any liquidated damages under the Design-Build Agreement and any non-relocation agreement related to the Stadium Project, and (viii) receipt by

the Authority of any additional proceeds from the NFL (whether as a result of NFL Financing or otherwise) or upfront payments contributed to the Authority by another NFL team related to an additional franchise playing at the Stadium (which additional franchise will be permitted to play at the Stadium upon satisfaction by Stadco of its related obligations to the Authority under the Stadium Lease (defined below)); (Y)(A) any voluntary prepayments made by Stadco under the definitive Stadco Loan documents and (B) any mandatory prepayments made by Stadco under the definitive Stadco Loan documents[1] from the proceeds of the following, to the extent such proceeds are not otherwise used or held for use under the definitive Stadco Loan documents: (i) incurrence of indebtedness by Stadco, (ii) issuance of equity by Stadco, (iii) asset sales by Stadco, (iv) casualty or condemnation proceeds received by Stadco, (v) the sale or license by Stadco of luxury suites at the Stadium, (vi) any repayment of the Stadco Advance by the Authority, and (vii) receipt by Stadco of any additional proceeds from the NFL (whether as a result of NFL Financing or otherwise) or upfront payments contributed to Stadco by another NFL team related to an additional franchise playing at the Stadium (which additional franchise will be permitted to play at the Stadium upon satisfaction by Stadco of its related obligations to the Authority under the Stadium Lease); and (Z) incurrence of indebtedness. All mandatory prepayments by the Borrower will be applied to the Senior Secured Facility (including funded loans and loan commitments) without penalty or premium (except for breakage costs, if any).

Commitment Reduction Upon Application of Pledged Revenues

As and to the extent described in the definitive Loan Documents, Pledged Revenues directed by the Authority and Stadco, and approved by the Lenders, to be withdrawn from any Account (defined below) or otherwise applied to pay Stadium Project costs will reduce the commitment amount on a dollar for dollar basis provided such use of funds does not dilute annual cash flows to levels that adversely affect the operating profile for any takeout financing.

Lease Structure:

The Authority has entered into, or will enter into on or before the Closing Date, (i) a ground lease (the "*Ground Lease*"), pursuant to which the City of Santa Clara (the "*City*") will lease the Stadium Site to the Authority, and (ii) a lease (the "*Stadium Lease*"), pursuant to which the Authority will lease the Stadium to Stadco for the NFL season (including pre-season, regular season and post-season NFL games), during each year of the lease term. Under certain circumstances described in the Stadium Lease, the Authority may elect to extend Stadco's tenancy to the full 12 months of each year of the lease term following such election. In addition, Stadco has entered into, or will enter into on or before the Closing Date, a sublease with the Team (the

[1] Any mandatory prepayments required to be made under the terms of the Stadco Loan documents will be made from net cash proceeds after satisfaction of any resulting tax obligations.

"*Team Sublease*" and, collectively with the Ground Lease and the Stadium Lease, the "*Leases*"), pursuant to which Stadco will sublease the Stadium to the Team for its NFL games and other purposes. The Authority and Stadco will obtain all necessary consents for the collateral assignment of the Leases to the Borrower, which shall in turn collaterally assign its interests therein to the Collateral Agent, and the Borrower, the Authority, the Team Parties and the City shall enter into appropriate subordination and non-disturbance agreements with respect to the Leases.

The Team currently plays its NFL home games at Candlestick Park pursuant to a lease between the Team and the City of San Francisco (the "*Candlestick Lease*"). The Candlestick Lease is currently subject to early termination by the Team on May 31, 2015 pursuant to its terms. The Team intends to attempt to reach an agreement to terminate the Candlestick Lease in time to allow the Team to play all or substantially all of its NFL regular season home games at the Stadium commencing with the 2014 NFL season. The ability of the Team to play its NFL regular season home games at the Stadium commencing with the 2014 NFL season is not a condition precedent to the Closing.

In the first lease year of the Team Sublease, the Team will be required to pay as rent an amount equal to the higher of (i) the revenues of the Team allocable to Candlestick Park operations during such lease year (exclusive of Team specific revenues such as ticket and media revenues), if any, *less* the operating costs of the Team allocable to Candlestick Park operations during such lease year (exclusive of Team specific operating costs such as operating costs attributable to ticket and media and football operations, including without limitation, players' salaries, bonuses and other compensation), and (ii) the scheduled base rent payable by the Team under the Team Sublease for such lease year.

Stadco Obligations:

In accordance with the terms of the Stadium Lease, the Authority and Stadco will enter into an agreement (the "*Stadco Obligations Agreement*") pursuant to which Stadco will agree to make the Stadco Advance to the Authority, evidenced by the Authority Note, to finance a portion of the Authority Project Costs. Additionally, Stadco will agree under the Stadco Obligations Agreement, for the benefit of the Borrower, to (X) advance to the Authority, after the Closing Date and on or prior to the Maturity Date, funds up to an aggregate amount to be agreed, to finance or refinance certain costs and expenses of the Stadium Project paid or payable by the Authority (the "*Stadco Term Loan Commitment*") and (Y) purchase on the Maturity Date a portion of the Authority Loan (up to a maximum amount to be agreed) on terms and under conditions to be agreed among Stadco, the Authority, the Borrower and the Initial Lenders (the "*Stadco Purchase Commitment*"; and, together with the Stadco Term Loan Commitment, the "*Stadco Obligations*"). The Stadco Obligations shall, in the aggregate, equal the amount of the Authority Loan. Amounts advanced to the Authority pursuant to the Stadco Term Loan Commitment, if any, shall constitute a subordinate loan to be repaid by the Authority to Stadco over a term to

be agreed. To support Stadco's obligation to fulfill the Stadco Purchase Commitment, and the Stadco Term Loan Commitment, if any, (i) pursuant to Stadco's operating agreement, in the event Stadco does not then have available funds or access to financing sufficient to meet its obligation under the Stadco Purchase Commitment or the Stadco Term Loan Commitment, Stadco shall have the right to, and shall, make a capital call on the Team in the amount of any deficiency, and the Team shall be obligated to promptly fund such capital call, subject to any restrictions on the Team under the NFL Constitution or the NFL League-wide Credit Facility, and provided that the NFL waives the debt limit to which the Team is subject under the terms of the NFL Constitution so as to permit the aggregate Indebtedness (as defined in the NFL League-wide Credit Facility) of the Team, including such Team capital call obligation, to be up to 250% of the Team's Average Annual Allocated Revenue Amount under, and as defined in, the NFL League-wide Credit Facility; or (ii) the NFL shall agree under the NFL Consent Letter (as defined below) to seek a purchaser for (a) all assets of the Team and Stadco or (b) the Team and Stadco as a whole (*i.e.*, in the case of (a) and (b) the NFL shall be required to bundle the assets or equity (as applicable) of the Team and Stadco).

Lenders' Non-Relocation Agreement:

On the Closing Date, the Team will enter into a non-relocation agreement with the Collateral Agent, for the benefit of the Lenders (the "***Lenders' Non-Relocation Agreement***"), whereby the Team will agree to play all of its pre-season, regular season and post-season home games in the Stadium, except as otherwise provided therein (including, without limitation, any home games played, at the direction of the NFL, at a location other than the Stadium), following substantial completion thereof and until all loans and other obligations under the Senior Secured Facility have been indefeasibly paid and performed in full.

Security:

The Senior Secured Facility will be secured by all of the assets of the Borrower, including first priority security interests in the Loans and all payments made under the Loans and all of the collateral securing the Loans including all of the assets (including, without limitation, all personal, real and mixed property) of (a) the Authority (as borrower under the Authority Loan), including (i) subject to any limitations set forth in the definitive Authority Loan documents, all revenue from naming rights, stadium builders licenses, certain ticket surcharges, ticket sales and rent or license payments from non-NFL events and all other revenues accruing to the Authority from any source, including amounts paid or payable by Stadco to the Authority under the Stadco Obligations Agreement, the Stadium Lease, the Stadco Obligations or otherwise (collectively, the "***Authority Pledged Revenues***"), (ii) the Authority's interests in all agreements associated with events to be held at the Stadium, including, without limitation, all agreements relating to the use of the Stadium by a second NFL franchise, with the pledge by the Authority of the revenues received by it thereunder being on terms reasonably satisfactory to the Lenders, (iii) the Authority's interests in the Ground Lease and the Stadium Lease, the Disposition and

Development Agreement, the Project Management Agreement, the Non-Relocation Agreement, the Naming Rights Agreement, the Design-Build Agreement and other contracts related to the Stadium Project, (iv) all insurance proceeds received by the Authority, (v) all other funds, proceeds, disbursement rights, payment rights, and reimbursement rights, if any, related to the Stadium Project that may be advanced, distributed, disbursed, paid or reimbursed to the Authority, (vi) all other personal or mixed property of the Authority, and (vii) the Authority's leasehold and other interests in the Stadium Site and the Improvements; (b) Stadco (as borrower under the Stadco Loan), including, without limitation, (i) subject to any limitations set forth in the definitive Stadco Loan documents, revenues from luxury suites, club seats, advertising, sponsorships, concessions, merchandise, parking charges and all other revenues accruing to Stadco from any source, including amounts paid or payable by the Authority to Stadco under the Authority Note or otherwise and any net replacement revenues that are allocable to Stadco from compensation provided by the NFL for lost revenues resulting from the fact that the Team was required by the NFL to play a home football game at a location other than the Stadium (collectively, the "*Stadco Pledged Revenues*"; and, together with the Authority Pledged Revenues, the "*Pledged Revenues*"), and (ii) the Stadium Lease, the Team Sublease and other contracts related to the Stadium Project; and (c) the proceeds of the Loans, the Collateral Account, each of the other Accounts and all funds and proceeds deposited therein. Leasehold mortgages will be recorded in favor of the Borrower against the Authority's and Stadco's leasehold and other interests in the Stadium Site and the Improvements, which leasehold mortgages will be subsequently assigned by the Borrower to the Collateral Agent.

The Senior Secured Facility shall be further secured by (i) the Lenders' Non-Relocation Agreement; (ii) the Authority's interests in any and all property of Stadco as and to the extent pledged or purported to be pledged to the Authority as collateral for the Stadco Obligations, including, without limitation, (a) the Stadco Pledged Revenues, and (b) the Stadium Lease, the Team Sublease and other contracts related to the Stadium Project, which interests will be collaterally assigned by the Authority to the Borrower, and in turn collaterally assigned by the Borrower to the Collateral Agent; and (iii) Stadco's interests in any and all property of the Authority as and to the extent pledged or purported to be pledged to Stadco as collateral for the Stadco Advance, including, without limitation, (a) the Authority Pledged Revenues, and (b) the Authority's interests in the Ground Lease and the Stadium Lease, the Naming Rights Agreement and other contracts related to the Stadium Project, which interests will be collaterally assigned by Stadco to the Borrower, and in turn collaterally assigned by the Borrower to the Collateral Agent.

The Ground Lease, the Stadium Lease, the Team Sublease, the Design-Build Agreement, the Disposition and Development Agreement, the Project Management Agreement and all other contracts related to the

Stadium Project shall be collaterally assigned by the Authority and Stadco, as applicable, to the Borrower, which shall in turn collaterally assign all of such agreements and contracts to the Collateral Agent (on behalf of the Lenders) pursuant to documentation satisfactory to the Collateral Agent in form and substance. Appropriate UCC financing statements will be filed in favor of the Collateral Agent in Santa Clara County and in the Secretary of State's office of the States in which the Borrower, the Authority and Stadco are respectively formed, in each case, evidencing the security interests granted to the Collateral Agent (on behalf of the Lenders) in connection with the transactions contemplated by the Commitment Letter.

Any Arranger may accept deposits from (i) the Company or (ii) the Borrower or the Authority at the direction of the Company. All security arrangements relating to the Senior Secured Facility shall be in form, scope and substance satisfactory to the Collateral Agent and the Co-Lead Arrangers and shall be perfected on the Closing Date.

Representations and Warranties of the Borrower: The credit agreement for the Senior Secured Facility will contain such representations and warranties by the Borrower as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: due organization; requisite power and authority; qualification; due authorization, execution, delivery and enforceability of the Loan Documents to which the Borrower is a party; creation, perfection and priority of security interests; no conflicts; governmental consents; absence of material litigation; title to properties; no defaults under material agreements; absence of brokers or finders fees; solvency; compliance with laws; status as senior debt; full disclosure; and Patriot Act and other related matters.

Covenants of the Borrower: The credit agreement for the Senior Secured Facility will contain such financial, affirmative and negative covenants by the Borrower as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation:

- financial covenant: From and after the commencement of operations at the Stadium, the Borrower shall maintain (i) a pro forma debt service coverage ratio as of the end of each fiscal quarter of not less than 2.0:1.0 and (ii) an historical debt service coverage ratio as of the end of each fiscal quarter to be mutually agreed upon prior to the Closing.

- affirmative covenants: delivery of financial statements and other reports (including the identification of information as suitable for distribution to Public Lenders or Non-Public Lenders); maintenance of existence; payment of taxes and claims; maintenance of properties; maintenance of insurance; cooperation with syndication efforts; books and records; inspections; lender meetings; compliance with laws; compliance with

NFL rules and regulations; agreement to take direction from Lenders and/or the NFL, as applicable, upon a default; cash management and further assurances; and use of best efforts to work with the Authority and Stadco so as to arrange the Borrower's transaction structure and the operations of the Loan Parties in such a way that any takeout financings of the Senior Secured Facility achieve an investment grade credit rating, and including, in each case, exceptions and baskets to be mutually agreed upon; and

- negative covenants: limitations with respect to other indebtedness; liens; negative pledges; restrictions on junior payments (e.g., dividends, redemptions or voluntary payments on certain debt); investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; special purpose entity provisions; capital expenditures; conduct of business; amendments and waivers of organizational documents and other material agreements; and changes to fiscal year, and including, in each case, exceptions and baskets to be mutually agreed upon.

Events of Default in respect of the Borrower: The credit agreement for the Senior Secured Facility will include such events of default (and, as appropriate, grace periods) as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: failure to make payments when due, defaults under other agreements or instruments of indebtedness, certain events under hedging agreements, noncompliance with covenants, breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts, and impairment of security interests in collateral.

Representations and Warranties of the Authority: The credit agreement for the Authority Loan will contain such representations and warranties by the Authority as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: due organization; requisite power and authority; due authorization, execution, delivery and enforceability of the Loan Documents and Authority Loan documents to which the Authority is a party; creation, perfection and priority of security interests; no conflicts; governmental consents; absence of material litigation; title to properties; no defaults under material agreements; absence of brokers or finders fees; solvency; compliance with laws; status as senior debt; full disclosure; and Patriot Act and other related matters.

Covenants of the Authority: The credit agreement for the Authority Loan will contain such affirmative and negative covenants by the Authority as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation:

- affirmative covenants: delivery of financial statements and other reports (including the identification of information as suitable for distribution to Public Lenders or Non-Public Lenders); maintenance of existence; payment of taxes and claims; maintenance of properties; maintenance of insurance; cooperation with syndication efforts; books and records; inspections; lender meetings; compliance with laws; maintenance of the Design-Build Agreement in full force and effect; cash management and further assurances; and use of best efforts to work with the Borrower and Stadco so as to arrange the Borrower's transaction structure and the operations of the Loan Parties in such a way that any takeout financings of the Senior Secured Facility achieve an investment grade credit rating, and including, in each case, exceptions and baskets to be mutually agreed upon; and

- negative covenants: limitations with respect to other indebtedness, other than a line of credit provided to the Authority by the Stadium manager; liens; negative pledges; restrictions on junior payments (e.g., dividends, redemptions or voluntary payments on certain debt); investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; special purpose entity provisions; capital expenditures; conduct of business; amendments and waivers of organizational documents and other material agreements; junior indebtedness; and changes to fiscal year, and including, in each case, exceptions and baskets to be mutually agreed upon.

Events of Default in respect of the Authority: The credit agreement for the Authority Loan will include such events of default (and, as appropriate, grace periods) as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: failure to make payments when due, defaults under other agreements or instruments of indebtedness, certain events under hedging agreements, noncompliance with covenants, breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts, and impairment of security interests in collateral.

Representations and Warranties of Stadco: The credit agreement for the Stadco Loan will contain such representations and warranties by Stadco as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: due organization; requisite power and authority; qualification; equity interests and ownership; due authorization, execution, delivery and enforceability of the Loan Documents and Stadco Loan documents to which Stadco is a party; creation, perfection and priority of security interests; no conflicts; governmental consents; historical and projected financial condition; no material adverse change; no restricted junior payments; absence of material litigation; payment of taxes; title to properties; environmental matters; no defaults under material agreements;

Investment Company Act and margin stock matters; ERISA and other employee matters; absence of brokers or finders fees; solvency; compliance with laws; status as senior debt; full disclosure; and Patriot Act and other related matters.

Covenants of Stadco: The credit agreement for the Stadco Loan will contain such affirmative and negative covenants by Stadco as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation:

- affirmative covenants: delivery of financial statements and other reports (including the identification of information as suitable for distribution to Public Lenders or Non-Public Lenders); maintenance of existence; payment of taxes and claims; maintenance of properties; maintenance of insurance; cooperation with syndication efforts; books and records; inspections; lender meetings; compliance with laws; environmental matters; additional collateral and guarantors; maintenance of facility level ratings; maintenance of the Design-Build Agreement in full force and effect; cash management and further assurances; and use of best efforts to work with the Borrower and the Authority so as to arrange the Borrower's transaction structure and the operations of the Loan Parties in such a way that any takeout financings of the Senior Secured Facility achieve an investment grade credit rating, and including, in each case, exceptions and baskets to be mutually agreed upon; and

- negative covenants: limitations with respect to other indebtedness; liens; negative pledges; restrictions on junior payments (e.g., dividends, redemptions or voluntary payments on certain debt); restrictions on subsidiary distributions; investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; special purpose entity provisions; capital expenditures; transactions with affiliates; conduct of business; permitted activities of Stadco; amendments and waivers of organizational documents and other material agreements; junior indebtedness (such that the only junior indebtedness permitted is indebtedness incurred pursuant to the NFL Financing); and changes to fiscal year, and including, in each case, exceptions and baskets to be mutually agreed upon.

Events of Default in respect of Stadco: The credit agreement for the Stadco Loan will include such events of default (and, as appropriate, grace periods) as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: failure to make payments when due, defaults under other agreements or instruments of indebtedness, certain events under hedging agreements, noncompliance with covenants, breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts,

ERISA, impairment of security interests in collateral and "change of control" (to be defined in a mutually agreed upon manner).

Pledged Revenues Waterfall: All Pledged Revenues received shall be paid directly by Stadco, the Authority or the Borrower to one or more restricted deposit accounts subject to the exclusive control of the Collateral Agent (the "***Collateral Account***") on a daily basis. Commencing upon the receipt of any Pledged Revenues into the Collateral Account, the Collateral Agent shall transfer funds periodically from the Collateral Account to certain other restricted deposit accounts (which will be subject to the exclusive control of the Collateral Agent) (such accounts collectively, together with the Collateral Account, the "***Accounts***") in an order of priority to be set forth in the definitive Loan Documents (which will reflect the seniority of obligations of the Authority under the Ground Lease and will otherwise be in accordance with such terms and conditions as are usual and customary for project financings of this kind). Upon completion of construction, any excess amounts remaining after the transfers described above shall not be distributed but shall instead be used to permanently reduce the Senior Secured Facility so long as sufficient reserves have been established to fund the operating expenses of the Stadium for the then current NFL season.

Construction Draws: Advances under the Senior Secured Facility shall be made (after review and approval by the Construction Monitor) solely (X) to fund advances under the Authority Loan, which shall be applied solely to pay (i) Stadium Project costs, pursuant to the Construction Budget, no more frequently than monthly and pursuant to construction loan requisition and disbursement procedures and requirements established by the Collateral Agent, including retainage withheld in accordance with construction contract documents, loan balancing provisions, adequacy of funding and approval by the Construction Monitor of all requisitions, (ii) approved operating expenses pursuant to an approved operating budget at such times to be mutually agreed upon, (iii) interest and fees that become due under the Authority Loan, and (iv) all other fees, costs and expenses incurred or payable by the Authority under the Authority Loan; (Y) to fund advances under the Stadco Loan, which shall be applied solely to (i) finance or refinance certain Stadco Project Costs, (ii) advance funds in respect of the Stadco Advance evidenced by the Authority Note (subject to the restrictions described in clause (X)(i), above), (iii) pay interest and fees that become due under the Stadco Loan, and (iv) pay all other fees, costs and expenses incurred or payable by Stadco under the Authority Loan; and (Z) without duplication, to pay (i) interest and fees that become due under the Senior Secured Facility, and (ii) all other fees, costs and expenses incurred or payable by the Borrower under the Senior Secured Facility.

Conditions Precedent to Effectiveness of Senior Secured Facility: The Senior Secured Facility will be subject to customary closing conditions, including, without limitation, the conditions precedent

referred to in the Commitment Letter and listed on Annex C attached to the Commitment Letter.

Conditions Precedent to Each Borrowing:

Each borrowing under the Senior Secured Facility will be subject to conditions that are usual and customary for project financings of this kind and as otherwise agreed to by the Borrower and the Administrative Agent, including, without limitation: (i) accuracy of representations and warranties, and (ii) absence of any default or event of default. In addition, for each borrowing under the Senior Secured Facility, there shall have occurred a completion of a periodic inspection of the Stadium Project by the Construction Monitor and delivery of a certificate by the Construction Monitor to the Administrative Agent and the Co-Lead Arrangers, together with delivery by the Borrower and the Authority of certain certifications and written evidence in respect of the items and costs for which such borrowing is to be made.

Capitalized Interest:

Whenever any amount of interest and fees is due and payable under the Senior Secured Facility and (a) there are undrawn commitments under the Senior Secured Facility, the Administrative Agent will be entitled, in its sole discretion, to make, on behalf of the Borrower, a borrowing under the Senior Secured Facility, or (b) all of the commitments have been drawn, or during the continuance of any default or event of default under the definitive Loan Documents, the Administrative Agent will be entitled, in its sole discretion, to apply any funds on deposit in the Accounts that will be funded under the Pledged Revenues Waterfall, in each case, in the amount necessary to provide for the payment in full in cash of such unpaid amount as and when due, without the necessity of any further approval, authorization or other action of the Borrower, the Authority or Stadco.

Design-Build Agreement

On or prior to the Closing Date, (i) the Authority, Stadco, as construction agent, and Turner/Devcon, a joint venture (the "***Design-Builder***"), shall have entered into a design-build agreement (the "***Design-Build Agreement***") and shall have established an initial guaranteed maximum price for the construction of the Stadium, and (ii) the Design-Builder shall have obtained bids or proposals representing not less than 75% of all subcontracted project costs associated with the Stadium Project. Within 90 days following the Closing Date, the Authority, Stadco, as construction agent, and the Design-Builder shall enter into an amendment to the Design-Build Agreement establishing the guaranteed maximum price ("***GMP***") for the construction of the Stadium (exclusive of Stadco-controlled tenant improvements), which GMP shall (i) include all fees and other amounts payable to the Design-Builder and its affiliates and subcontractors, all costs and expenses for which the Design-Builder or any of its affiliates or subcontractors is entitled to reimbursement, and an appropriate contingency in an aggregate amount reasonably satisfactory to the Initial Lenders and (ii) not be greater than the initial guaranteed maximum price for the construction of the Stadium unless such excess is funded with cash (which may be advanced to the Authority by Stadco

as part of the Stadco Advance). The Design-Builder shall be responsible in certain circumstances to pay liquidated damages pursuant to the Design-Build Agreement. The Construction Monitor will be required to approve material change orders in accordance with provisions to be set forth in the definitive Loan Documents.

Stadco Obligation to Fund Cost Overruns: Pursuant to, and subject to the terms and conditions of, the Disposition and Development Agreement, Stadco is obligated to pay any amount by which the costs of the development and construction of the Stadium Project exceed the amounts available to the Authority to fund such costs.

NFL Rights: The Senior Secured Facility, the Security, the Authority Loan, the Stadco Loan, the Stadco Obligations, the Stadium Lease and the Team Sublease will be subject in all respects to the NFL Constitution, rules and regulations. The Collateral Agent, the Administrative Agent, the Co-Lead Arrangers, the Borrower, the Authority and the Team Parties will enter into a letter agreement with the NFL on the Closing Date (the "*NFL Consent Letter*") with respect to the Senior Secured Facility, the Security, the Authority Loan, the Stadco Loan, the Stadco Obligations, the Stadium Lease and the Team Sublease. The NFL Consent Letter will (i) impose certain restrictions on the ability of the Collateral Agent and the Lenders to exercise remedies under the Loan Documents, and (ii) permit the NFL under certain circumstances further described therein to seek a purchaser for (a) all assets of the Team and Stadco or (b) the Team and Stadco as a whole.

Assignments and Participations: The Lenders may assign all or any part of their respective shares of the Senior Secured Facility to their affiliates (other than natural persons) or one or more banks, financial institutions or other entities that are eligible assignees (to be defined in the Loan Documents) which, in the case of assignments with respect to the Senior Secured Facility (except in the case of assignments made by or to Goldman Sachs), are reasonably acceptable to the Administrative Agent, the Borrower, the Authority and Stadco, such consents not to be unreasonably withheld or delayed; *provided* that the Borrower, the Authority and Stadco shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within 5 business days after having received written notice thereof. Upon such assignment, such affiliate, bank, financial institution or entity will become a Lender for all purposes under the Loan Documents; *provided* that assignments made to affiliates and other Lenders will not be subject to the above described consent or minimum assignment amount requirements. A $3,500 processing fee will be required in connection with any such assignment, with exceptions to be agreed. The Lenders will also have the right to sell participations, without restriction, subject to customary limitations on voting rights, in their respective shares of the Senior Secured Facility.

Requisite Lenders:

Amendments and waivers will require the approval of Lenders (other than Defaulting Lenders (as such term will be defined in the definitive Loan Documents) holding more than 50% of total commitments or exposure under the Senior Secured Facility ("***Requisite Lenders***"), *provided* that, in addition to the approval of Requisite Lenders, the consent of each Lender directly and adversely affected thereby will be required with respect to matters relating to (a) increases in the commitment of such Lender, (b) reductions of principal, interest, fees or premium, (c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment (d) certain collateral issues and (e) the definition of Requisite Lenders.

Yield Protection:

The Senior Secured Facility will contain customary provisions (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, capital adequacy and capital requirements (or their interpretation), illegality, unavailability and other requirements of law and from the imposition of or changes in certain withholding or other taxes and (b) indemnifying the Lenders for "breakage costs" incurred in connection with, among other things, any prepayment of a Eurodollar Rate loan on a day other than the last day of an interest period with respect thereto. For all purposes of the Loan Documents, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case, pursuant to Basel III, shall be deemed introduced or adopted after the date of the Loan Documents. The Senior Secured Facility will provide that all payments are to be made free and clear of any taxes (other than franchise taxes and taxes on overall net income), imposts, assessments, withholdings or other deductions whatsoever. Lenders will furnish to the Administrative Agent appropriate certificates or other evidence of exemption from U.S. federal tax withholding.

Indemnity:

The Senior Secured Facility will provide customary and appropriate provisions relating to indemnity and related matters in a form reasonably satisfactory to the Co-Lead Arrangers, the Administrative Agent and the Lenders.

Governing Law and Jurisdiction:

The Senior Secured Facility will provide that the Borrower will submit to the exclusive jurisdiction and venue of the federal and state courts of the State of New York (except to the extent the Collateral Agent requires submission to any other jurisdiction in connection with the exercise of any rights under any security document or the enforcement of any judgment) and will waive any right to trial by jury. New York law will govern the Loan Documents, the Authority Loan documents and the Stadco Loan documents, except with respect to certain security documents where applicable local law is necessary for enforceability or perfection.

Counsel to the Co-Lead Arrangers, Administrative Agent and Collateral Agent: Winston & Strawn LLP.

The foregoing is intended to summarize certain basic terms of the Senior Secured Facility. It is not intended to be a definitive list of all of the requirements of the Lenders in connection with the Senior Secured Facility.

Annex C

Summary of Conditions Precedent to the Senior Secured Facility

This Summary of Conditions Precedent outlines certain of the conditions precedent to the Senior Secured Facility referred to in the Commitment Letter, of which this Annex C is a part. Certain capitalized terms used herein are defined in the Commitment Letter.

A. CONDITIONS PRECEDENT TO THE CLOSING OF THE SENIOR SECURED FACILITY

1. Concurrent Transactions: The Borrower shall agree to use the proceeds of the borrowings (collectively, the "**Borrowing**") to make the Authority Loan and the Stadco Loan. The Authority shall (i) agree to use the proceeds of the Authority Loan, together with the proceeds received by the Authority from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including, without limitation, the Stadco Advance, and other available funds of the Authority (all such proceeds and funds, collectively, the "**Authority Funds**"), to (A) pay costs and expenses of the design, development, construction and completion of the Stadium Project and (B) fund interest and fees that become due under the Authority Loan during the construction of the Improvements and (ii) use Authority Funds to pay all other fees, costs and expenses incurred or payable by the Borrower or the Authority in connection with the transactions described herein. The Company shall (i) agree to use the proceeds of the Stadco Loan, together with the proceeds received by the Company from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including without limitation the NFL Financing, and other available funds of the Company (all such proceeds and funds, collectively, the "**Company Funds**"), to (A) finance or refinance certain costs and expenses of the Improvements paid or payable by the Company, (B) fund interest and fees that become due under the Stadco Loan during the construction of the Improvements, and (C) make the Stadco Advance, and (ii) use Company Funds to pay all other fees, costs and expenses incurred or payable by the Borrower or the Company in connection with the transactions described herein. There will not exist any default or event of default under any of the Loan Documents, the definitive loan documents for the Authority Loan and the Stadco Loan, the Stadco Obligations Agreement, or under any other material indebtedness of the Borrower, the Authority, the Company, the Team or any of their respective subsidiaries. The Borrower, the Authority and the Company shall have obtained all requisite consents, including, without limitation those necessary under the NFL Consent Letter and the NFL Financing, to permit (i) the Borrowing under the Senior Secured Facility, and the borrowings under the Authority Loan and the Stadco Loan (ii) the obligation by the Team with respect to any capital call made on the Team by the Company as contemplated by the Commitment Letter, and (iii) the incurrence by the Company of the Stadco Obligations. The Authority and the Design-Builder shall have executed the Design-Build Agreement. The Company shall have obtained all necessary feasibility studies satisfactory to the Co-Lead Arrangers regarding market demand and revenue projections in respect of, among other things, stadium builders licenses, premium seating and sponsorship revenues. The amounts contained in the construction fund together with all amounts available from and under the Senior Secured Facility, the NFL Financing and any other sources reasonably satisfactory to each of the Co-Lead Arrangers shall be sufficient to complete construction of the Improvements by the Scheduled Completion Date.

2. Financial Statements. Each Co-Lead Arranger shall have received (i) pro forma financial statements for the Authority and Stadco, in form, scope and substance reasonably satisfactory to such Co-Lead Arranger and the Initial Lenders that demonstrate that the ratio of projected net revenues of the Borrower available for debt service to projected debt service is expected to be not less than 2.0:1.0 (based on assumptions satisfactory to each Co-Lead Arranger in respect of the

proposed takeout financings) and (ii) detailed financial information regarding sales to date of premium seating, stadium builders licenses and sponsorships, including comparisons as to projected sales and any necessary revisions to such projected sales.

3. Due Diligence. Each Co-Lead Arranger shall be satisfied, in its discretion, with the results of the due diligence performed with respect to (i) the general affairs, management, prospects, financial position, equity holders' equity or results of operations of the Borrower, the Company, the Team, the Authority and their respective subsidiaries and affiliates, and (ii) the tax, accounting, legal, environmental, regulatory and other issues relevant to the Borrower, the Company, the Team, the Authority, their respective subsidiaries and affiliates and the transactions contemplated by the Commitment Letter and (iii) the financial projections provided and the disclosure contained in the several feasibility studies and the reports (including market studies, pricing recommendations and projected revenues) prepared in respect of the Stadium Project and the insurance program established in respect thereof by the insurance consultant, the Construction Monitor and other third party consultants, in each case satisfactory to such Co-Lead Arranger.

4. Performance of Obligations. All costs, fees, expenses (including, without limitation, legal fees and expenses, title premiums, survey charges and recording taxes and fees) and other compensation contemplated by the Commitment Letter and the Fee Letter payable to each Co-Lead Arranger, the Administrative Agent or the Lenders shall have been paid to the extent due and the Borrower, the Authority and the Company shall have complied in all material respects with all of their other obligations under the Commitment Letter and the Fee Letter, on the Closing Date.

5. Environmental Matters. The Lenders shall have received Phase I and Phase II environmental reports and other information in form, scope and substance reasonably satisfactory to each Co-Lead Arranger concerning any environmental liabilities.

6. Customary Closing Documents. Each Co-Lead Arranger shall be satisfied that the Borrower, the Authority and the Company, as applicable, has complied with the following other customary closing conditions, including, without limitation: (i) the delivery of legal opinions (including, without limitation, non-consolidation opinions in respect of the Company (i.e., that it will not be consolidated with the Team upon a Team bankruptcy) and the Borrower (i.e., that it will not be consolidated with the Company or the Authority upon a Company or an Authority bankruptcy)), evidence to the reasonable satisfaction of the Co-Lead Arrangers that the Authority will not be consolidated with the City upon a City bankruptcy, corporate records and documents from public officials, lien searches and officer's certificates; (ii) evidence of authority; (iii) obtaining material third party and governmental consents necessary in connection with the transactions contemplated by the Commitment Letter, the financing contemplated thereby and the construction of the Improvements; (iv) absence of litigation affecting the transactions contemplated by the Commitment Letter and the financing contemplated thereby; (v) certified copies of the operating, partnership or similar agreements, as applicable, of each of the Borrower, the Authority and the Company; (vi) perfection of liens, pledges, and mortgages on the collateral securing the Senior Secured Facility, including, without limitation, all filings, recordations and searches necessary or desirable in connection with the security interest having been granted; (vii) delivery of the leasehold mortgages in respect of the Stadium Site and satisfactory commitments for title insurance in respect of such leasehold interests; (viii) evidence of insurance during construction of the Improvements and a final determination (to the satisfaction of each Co-Lead Arranger) of the insurance requirements applicable to the Stadium once it is open to the public, and a third party insurance consultant shall provide a report certifying that the insurance program for both (A) construction of the Improvements and (B) the period following its opening to the public) is

sufficient; and (ix) delivery of a solvency certificate from a responsible officer of each of the Borrower, the Authority and the Company in form and substance, and with supporting documentation, satisfactory to each Co-Lead Arranger, certifying that such party is solvent. Each Co-Lead Arranger will have received at least 10 days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act. Each Co-Lead Arranger shall be satisfied with the terms of the Loans, the Stadco Advance, the Authority Note, the Stadco Obligations, the Leases, the NFL Consent Letter and the Stadco operating agreement.

7. Rating for Takeout Financings. Each Co-Lead Arranger shall be satisfied that the Borrower, the Authority and the Company have established the transaction structure and operations of the Borrower in such a way that any takeout financing in respect of the Senior Secured Facility will achieve an investment grade rating.

8. Construction Program. The construction program designed for the Stadium Project shall be satisfactory in all respects to each Co-Lead Arranger and shall include all required public approvals, satisfactory environmental reviews and reports and all necessary building permits. The Design-Builder shall have demonstrated to the satisfaction of each Co-Lead Arranger sufficient financial resources to meet its obligations under the Design-Build Agreement. The Construction Monitor shall have delivered a report to each Co-Lead Arranger stating that the funds deposited into the construction fund at Closing, together with all monies available from and under the Senior Secured Facility, the NFL Financing and any other source are sufficient to complete construction of the Improvements by the Scheduled Completion Date. The Authority, the Company, as construction agent, and the Design-Builder, shall have entered into a design-build agreement and shall have established an initial guaranteed maximum price for the construction of the Stadium, and the Design-Builder shall have obtained bids or proposals representing not less than 75% of all subcontracted project costs associated with the Stadium Project.

9. NFL Approvals. Each Co-Lead Arranger shall have received from the NFL: (i) approval by the NFL owners of the financing contemplated by the transactions set out in the Commitment Letter, (ii) a debt limit waiver enabling the Team and Stadco to undertake their respective obligations as expressly contemplated by the Commitment Letter, (iii) the NFL Consent Letter and (iv) executed copies of all documents relating to the NFL Financing.

10. Formation and Organization of Borrower. The governing instrument, beneficial owners and trustee of the Borrower shall, in each case, be reasonably satisfactory to each of the Co-Lead Arrangers.

Execution Copy

GOLDMAN, SACHS & CO.
200 West Street
New York, New York
10282-2198

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
100 North Tryon Street
24th Floor
Charlotte, North Carolina
28255

U.S. BANK NATIONAL ASSOCIATION
425 Walnut Street
Cincinnati, Ohio 45202

PERSONAL AND CONFIDENTIAL

November 4, 2011

Stadium Funding Trust
c/o Wilmington Trust, National Association, as Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001
Attention: Corporate Trust Administration

Forty Niners Stadium, LLC
4949 Centennial Blvd.
Santa Clara, California 95054
Attention: John Edward York, President

Engagement Letter

Ladies and Gentlemen:

We refer to the commitment letter by and among Stadium Funding Trust (the "**Borrower**"), Forty Niners Stadium, LLC (the "**Company**"), Goldman Sachs Bank USA ("**GS Bank**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and U.S. Bank National Association dated the date hereof (the "**Commitment Letter**"), regarding the Senior Secured Facility to be made by the Lenders (as defined therein) to the Borrower in the aggregate principal amount of $850,000,000. Capitalized terms used herein without definitions have the meanings assigned to them in the Commitment Letter.

1. Retention Offer. Each of the Borrower and the Company and, upon its joinder hereto, Santa Clara Stadium Authority (the "**Authority**") hereby confirms that it offers to retain Goldman, Sachs & Co. ("**Goldman Sachs**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**MLPFS**") and U.S. Bank National Association ("**U.S. Bank**" and together with Goldman Sachs, and MLPFS, the "**Arrangers**"), or a designated affiliate of an Arranger, if any, to act in a senior role, in each case, for the Borrower, the Company, the Authority and for their respective affiliates in connection with (i) any underwritten offering, private placement or securitization of debt securities issued to refinance or takeout the Senior Secured Facility in connection with the Stadium Project (collectively, "**Permanent Securities**"), subject to the terms and conditions set forth in this Engagement Letter and the execution and delivery of an underwriting, purchase or placement agency agreement in customary form to be agreed upon (giving due regard to then current market conditions applicable to similar financings), and (ii) any bank loan or other debt financing (other than the Senior Secured Facility) not covered by clause (i) incurred to refinance or takeout the Senior Secured Facility or any other debt (other than any NFL Financing) incurred in

connection with the Stadium Project (collectively, the "**Permanent Loans**" and, together with the Permanent Securities, the "**Permanent Debt**"), subject to the terms and conditions set forth in this Engagement Letter and the execution and delivery of loan documentation in customary form to be agreed upon (giving due regard to then current market conditions applicable to similar financings). The Arrangers will have the right, but not the obligation, to act in such senior roles and may, in consultation with the Borrower, the Authority and the Company, form an underwriting syndicate, bank loan syndicate or selling group and/or appoint co-managers, co-agents, co-book-runners or co-lead arrangers in connection therewith. If any Arranger elects not to act in such senior roles, the Authority, the Borrower, the Company and/or their respective affiliates (together, the "**Debt Issuer**") shall be permitted to incur such Permanent Debt without such Arranger and without any further obligation to such Arranger hereunder with respect to such Permanent Debt.

Except as contemplated in the preceding paragraph, none of the Borrower, the Authority, the Company nor any of their respective subsidiaries will offer or sell any Permanent Securities to, or incur any Permanent Loans or borrow any similar debt from, any third party (other than the Arrangers) during the term of this engagement without the prior consent of each Arranger.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority acknowledges that this Engagement Letter is neither an expressed nor an implied commitment by the Arrangers, or any of their respective affiliates, to act in any capacity in any of the transactions described above, to provide or arrange any financing or to purchase or place any securities or loans, or to enter into any foreign exchange or commodities transaction, currency or interest rate swap, or other hedging or derivative transaction, which commitment or agreement, if any, will only exist if set forth in a separate agreement appropriate for such transaction. Each such separate agreement shall also include a customary undertaking by the Borrower, the Authority and the Company to cooperate (including an undertaking by the Company to use its commercially reasonable efforts to cause the Team to cooperate) with the Arrangers in respect of the placing or selling or arranging or obtaining of commitments in respect of the Permanent Securities or Permanent Loans, as applicable.

For the avoidance of doubt, the obligations of the Borrower, the Company and the Authority hereunder (other than Section 5 and Annex A hereto) are subject to the Authority joining this Engagement Letter as a co-obligor of the Borrower and the Company on or prior to December 15, 2011, with such amendments hereto as are reasonably necessary in connection with such joinder.

2. Fees and Expenses. The compensation for each Arranger's participation in any Permanent Debt transaction will be determined by reference to then-current market rates for such participation in similar roles in similar transactions for similar borrowers. In addition, each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees to reimburse each Arranger and its respective affiliates, if any, for their reasonable out of pocket fees and expenses in connection with any such transaction to which such Arranger and its respective affiliates, if any, is a party, including the fees and disbursements of the attorneys and advisors to such Arranger and its respective affiliates, if any, plus any sales, use or similar taxes (including additions to such taxes, if any) arising in connection with any matter referred to in this Engagement Letter; *provided, however*, that in the event that the Borrower, the Authority or the Company enters into an underwriting or purchase agreement for the sale of Permanent Securities in an underwritten offering and consummates such sale, the Arrangers will bear the fees and disbursements of its counsel, other than the customary Blue Sky and Financial Industry Regulatory Association, Inc. fees and expenses,

and expenses related to the preparation and production of underwriting or similar transaction documents, which fees and expenses will be borne by the Borrower, the Authority or the Company, as applicable.

3. Annex A. In connection with engagements such as this, it is the policy of each of our firms to receive indemnification. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees to the provisions with respect to our indemnity and other matters set forth in Annex A, which is incorporated by reference into this Engagement Letter.

4. Termination. This Engagement Letter may be terminated: (i) by the Authority (upon and after its joinder hereto), the Borrower and the Company at any time with or without cause (a) after the abandonment of the Stadium Project or the repayment in full of the Senior Secured Facility, (b) after expiration or termination by the Arrangers of the Commitment Letter prior to the funding of the Senior Secured Facility, (c) at the Maturity Date or (d) as to any Arranger in the event such Arranger or an affiliate thereof is obligated under the terms of the Commitment Letter to fund its respective loan under the Senior Secured Facility on the Closing Date and such Arranger fails to fund, or whose affiliate fails to fund, such loan; and (ii) by an Arranger, at any time with or without cause effective upon receipt of written notice to that effect. The obligations of the Authority (upon and after its joinder hereto), the Borrower and the Company under Sections 3, 5 and 6 herein will survive any such termination.

In entering into this Engagement Letter, the Arrangers have relied upon the commitments of the Borrower, the Company and, upon its joinder hereto, the Authority in Section 1 above (the "**Commitment**"). If, from the date hereof until the Maturity Date, any offering or placement of Permanent Securities or arrangement of Permanent Loans is consummated in which any Arranger was not approached to act in a senior role, in each case, in violation of Section 1 hereof, then the Authority (if it had joined hereunder), the Borrower and the Company will be deemed to be in breach of the Commitment and such Arranger will be entitled to liquidated damages from the Authority (if it had joined hereunder), the Borrower and the Company in the amount equal to the fee that such Arranger would have earned if such Arranger (or its designated affiliate) had been approached and had acted in such capacity during the term of this Engagement Letter for such breach of the Commitment, without proof of loss or damages. Such liquidated damages for the breach by the Authority (if it had joined hereunder), the Borrower and the Company of the Commitment will be the exclusive remedy of such Arranger and its respective affiliates with respect to a breach of Section 1.

Notwithstanding anything to the contrary contained in this Engagement Letter, the Debt Issuer shall be permitted to enter into no more than two financings related to single, specified revenue streams (*e.g.*, the securitization of the revenue stream arising from the naming rights associated with the Stadium Project), and the Arrangers shall not have the right (unless the Debt Issuer and the Arrangers agree otherwise) to act as an underwriter, initial purchaser, placement agent, book-runner and/or lead arranger in respect of such financings, or receive any fees in respect thereof.

5. Confidentiality. Please note that this Engagement Letter and any written communications provided by, or oral discussions with, any Arranger in connection with this arrangement are exclusively for the information of the Borrower, the Company and, upon its joinder hereto, the Authority and may not be disclosed by you to any third party (other than the Borrower's, the Company's and the Authority's outside law firms or accounting firms, in each case who has been informed by you of the confidential nature of such advice and the terms of this Engagement Letter and has agreed to treat such information confidentially) or circulated or referred to publicly without the Arrangers' prior written consent except,

after providing written notice to the Arrangers, pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative, regulatory or legislative body or committee; *provided* that the Borrower, the Authority and the Company shall have (a) promptly notified the Arrangers of the receipt of any such subpoena or order, (b) consulted with the Arrangers as to the advisability of taking steps to resist or narrow the scope of the disclosure contemplated thereby and (c) cooperated with the Arrangers in any efforts it may make to obtain an order or other reliable assurance that confidential treatment will be accorded to such advice and the terms of this Engagement Letter. However, we hereby consent to your disclosure of this Engagement Letter and such communications and discussions (i) to the Borrower's, the Authority's, the Company's and the Team's respective officers, directors, agents and advisors who are directly involved in the consideration of this Engagement Letter and who have been informed by you of the confidential nature of such advice and this Engagement Letter and who have agreed to treat such information confidentially; (ii) to the NFL; and (iii) to the extent necessary in connection with the joinder of the Authority hereunder, including without limitation in connection with the Authority's requisite processes as a joint powers agency of the State of California, of which we are aware. Notwithstanding anything herein to the contrary, you may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the offering and all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, the Authority, the Company or the Team relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure will remain subject to the confidentiality provisions hereof (and the foregoing sentence will not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the offering but does not include information relating to the identity of the issuer of the Senior Secured Facility, the issuer of any assets underlying the Senior Secured Facility, or any of their respective affiliates that are offering the Senior Secured Facility. Any information provided to the Arrangers under the terms of this Engagement Letter shall be provided to the Arrangers solely for the roles for which it was retained hereunder and shall not be deemed to have been given to the Arrangers or any affiliate of the Arrangers pursuant to the terms of any other agreement (including, without limitation, the Commitment Letter) or for any other purpose.

6. Miscellaneous. The Borrower, the Company and, upon its joinder hereto, the Authority may not assign any of their respective rights or be relieved of any of their respective obligations hereunder without the prior written consent of each Arranger. Notwithstanding the foregoing, the Company may, with the prior written consent of each Arranger (such consent not to be unreasonably withheld or delayed), assign all of its rights and obligations hereunder to a duly created and existing (i) affiliate established as a direct wholly-owned and controlled bankruptcy remote, single-purpose subsidiary of the Team or (ii) bankruptcy remote sister entity of the Team with the identical ownership as the Team, in each case to assume and carry out the business of the Company relating to the Stadium Project as described in the Commitment Letter and the transactions contemplated hereby, in which event such affiliate or sister entity shall thereafter be deemed to be the "Company" hereunder.

As you know, each of the Arrangers is a full service financial institution engaged, either directly or through its respective affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services

globally. In the ordinary course of their various business activities, each Arranger and funds or other entities in which such Arranger invests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, each Arranger may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of the Borrower, the Authority, the Company, the Team and/or other entities and persons which may (i) be involved in transactions arising from or relating to the engagement contemplated by this Engagement Letter or (ii) have other relationships with the Borrower, the Authority, the Company or the Team. In addition, each Arranger may provide investment banking, commercial banking, underwriting and financial advisory services to such other entities and persons. The engagement contemplated by this Engagement Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph, and employees working on the engagement contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefore. Although each Arranger in the course of such other activities and relationships may acquire information about the transaction contemplated by this Engagement Letter or other entities and persons which may be the subject of the engagement contemplated by this Engagement Letter, such Arranger shall have no obligation to disclose such information, or the fact that such Arranger is in possession of such information, to the Borrower, the Authority or the Company or to use such information on the Borrower's, the Authority's or the Company's behalf.

Each Arranger may have economic interests that conflict with those of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates. You agree that each Arranger will act under this Engagement Letter as an independent contractor and that nothing in this Engagement Letter or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Arranger and the Borrower, the Company, their respective equity holders or their respective affiliates. The Borrower, the Company and, upon its joinder hereto, the Authority acknowledge and agree that the transactions contemplated by this Engagement Letter (including the exercise of rights and remedies hereunder) are arm's-length commercial transactions between the Arrangers, on the one hand, and the Borrower, the Authority and the Company, on the other, and in connection therewith and with the process leading thereto, (i) no Arranger has assumed an advisory or fiduciary responsibility in favor of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether an Arranger has advised, is currently advising or will advise the Borrower, the Authority, the Company, their respective equity holders or their respective affiliates on other matters) or any other obligation to the Borrower, the Authority or the Company except the obligations expressly set forth in this Engagement Letter and (ii) each Arranger is acting solely as a principal and not as the agent or fiduciary of the Borrower, the Authority, the Company, or their respective management, equity holders, affiliates, creditors or any other person. Each of the Borrower, the Company and, upon its joinder hereto, the Authority acknowledges and agrees that each such party has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees that it will not claim that any Arranger has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower,

the Authority or the Company, in connection with such transactions or the process leading thereto. In addition, each Arranger may employ the services of its affiliates in providing services and/or performing its or their obligations hereunder and may exchange with such affiliates information concerning the Borrower, the Authority, the Company and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded to such Arranger hereunder. The Arrangers acknowledge and agree that for the purposes of this Engagement Letter, the Authority has no affiliates or subsidiaries.

In the event any portion of the financing for the Stadium Project involves the issuance of municipal securities, the Arrangers will not be acting in any financial advisory or municipal advisor (as defined in Section 15B of the Exchange Act of 1934, as amended) capacity to any municipal entity, including, without limitation, the Authority, or the Borrower or the Company. In such financing the Arrangers would be acting solely as an underwriter. The Borrower, the Authority and the Company should be aware that the primary role of an underwriter is to purchase, or arrange for the placement of, securities in an arm's-length commercial transaction between the issuer and the underwriter and that the underwriter has financial and other interests that differ from those of the issuer. Each of the Borrower, the Company and, upon its joinder hereto, the Authority hereby consents to our acting in the capacities described in this Engagement Letter and as an underwriter in connection with the financing of the Stadium Project. Any Arranger may employ the services of its affiliates in providing certain services hereunder and may exchange with such affiliates information concerning the Borrower, the Authority, the Company and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded the Arrangers hereunder. In addition, please note that the Arrangers do not provide accounting, tax or legal advice.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority recognizes that, in providing services pursuant to this Engagement Letter, the Arrangers will rely upon and assume the accuracy and completeness of all of the financial, accounting, tax and other information discussed with or reviewed by us for such purposes, and we do not assume responsibility for the accuracy or completeness thereof. The Arrangers will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of the Borrower, the Authority, the Company or any other party or to advise or opine on any related solvency issues. Except as set forth in Annex A hereto, nothing in this Engagement Letter is intended to confer upon any other person (including equity holders, employees or creditors of the Borrower, the Authority or the Company) any rights or remedies hereunder or by reason hereof.

It is expressly understood and agreed by the parties hereto that (a) this Engagement Letter is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Trustee of the Borrower, in the exercise of the powers and authority conferred and vested in it under the Trust Agreement, (b) each of the representations, undertakings and agreements herein made on the part of the Borrower is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose for binding only the Borrower, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association, individually or personally, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the

Borrower or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Borrower under this Engagement Letter or the other related documents.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees for itself and its affiliates that any suit or proceeding arising in respect to this Engagement Letter or our engagement will be tried exclusively in any Federal court of the United States of America sitting in the Borough of Manhattan or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees to submit to the exclusive jurisdiction of, and to venue in, such court. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either our engagement or any matter referred to in this Engagement Letter is hereby waived by the parties hereto. Each of the Borrower, the Company and, upon its joinder hereto, the Authority for itself and its affiliates agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above shall be effective service of process against such party for any suit, action or proceeding brought in any such court. This Engagement Letter will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

This Engagement Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Engagement Letter by facsimile transmission or electronic transmission (in PDF format) will be effective as delivery of a manually executed counterpart hereof.

[Remainder of page intentionally left blank]

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Engagement Letter, which will become a binding agreement upon our receipt. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN, SACHS & CO.

By: Goldman Sachs & Co.
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Engagement Letter, which will become a binding agreement upon our receipt. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN, SACHS & CO.

By: _____
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name: Nan Elliott McCabe
Title: Managing Director

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Engagement Letter, which will become a binding agreement upon our receipt. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN, SACHS & CO.

By:_____
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By:_____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By:_____
Name: William Malahyll
Title: Vice President

Confirmed as of November 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By: _____
Name:
Title: Jacqueline E. Solone
Banking Officer

FORTY NINERS STADIUM, LLC

By: _____
Name:
Title:

Confirmed as of November 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By: John Edward York
Name: John Edward York
Title: President

Annex A

In the event that any Arranger becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including shareholders, partners, members or other equity holders of the Borrower, the Authority or the Company in connection with or as a result of either this arrangement or any matter referred to in this Engagement Letter, the Borrower, the Company and, upon its joinder hereto, the Authority jointly and severally agree to periodically reimburse each Arranger for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided, however, that if it is found in any such action, proceeding or investigation that any loss, claim, damage or liability of such Arranger has resulted from the gross negligence or willful misconduct of such Arranger in performing the services which are the subject of this Engagement Letter or in connection with any matter referred to herein, such Arranger shall repay such portion of the reimbursed amounts that is attributable to expenses incurred in relation to the act or omission of such Arranger which is the subject of such finding. The Borrower, the Company and, upon its joinder hereto, the Authority also agree to indemnify and hold each Arranger harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in this Engagement Letter (whether or not such investigation, litigation, claim or proceeding is brought by you, your equity holders or creditors or an indemnified person and whether or not any such indemnified person is otherwise a party thereto), except to the extent that such loss, claim, damage or liability has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Arranger in performing the services that are the subject of this Engagement Letter or in connection with any matter referred to herein. If for any reason the foregoing indemnification is unavailable to an Arranger or insufficient to hold it harmless, then the Borrower, the Authority and the Company shall contribute to the amount paid or payable by such Arranger as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Arranger on the other hand in the matters contemplated by this Engagement Letter as well as the relative fault of the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and such Arranger with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Borrower, the Authority and the Company under this paragraph shall be in addition to any liability which the Borrower, the Authority and the Company may otherwise have, shall extend upon the same terms and conditions to any affiliate of any Arranger and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of such Arranger and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Borrower, the Authority, the Company, each Arranger, any such affiliate and any such person. The Borrower, the Company and, upon its joinder hereto, the Authority also agree that neither any indemnified party nor any of such affiliates, partners, members, directors, agents, employees or controlling persons shall have any liability to the Borrower, the Authority or the Company or any person asserting claims on behalf of or in right of the Borrower, the Authority or the Company or any other person in connection with or as a result of either this arrangement or any matter referred to in this Engagement Letter, except in the case of the Borrower, the Authority and the Company to the extent that any losses, claims, damages, liabilities or expenses incurred by the Borrower, the Authority or the Company or their respective affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnified party in performing the services that are the subject of this Engagement Letter or in connection with any matter referred to herein; provided, however, that in no event will such indemnified party or such other parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such indemnified party's or such other parties' activities relating to

this Engagement Letter. For a period of one year from the termination of this Engagement Letter, prior to entering into any agreement or arrangement with respect to, or effecting, any proposed sale, exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Borrower, the Authority or the Company set forth in this Annex A, the Company will notify each Arranger in writing thereof (if not previously so notified) and, if requested by any Arranger, shall arrange in connection therewith alternative means of providing for the obligations of the Borrower, the Authority or the Company, as applicable, set forth in this paragraph, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions reasonably satisfactory to such Arranger; provided, however, that if any action, proceeding or investigation is pending at the end of such one year period for which a claim for indemnification, contribution or reimbursement under this agreement has been or may be made, the Borrower's, the Authority's and the Company's obligations pursuant to this sentence shall continue until such action, proceeding or investigation has been ultimately resolved. The provisions of this Annex A shall survive any termination or completion of the engagement provided by this Engagement Letter.

INDEMNIFICATION CONTRIBUTION AGREEMENT

This **INDEMNIFICATION CONTRIBUTION AGREEMENT** (this "Agreement"), dated as of [December 13], 2011, is made by and among Forty Niners Stadium, LLC, a Delaware limited liability company (the "Company"), Stadium Funding Trust, a Delaware statutory trust (the "Borrower"), and Santa Clara Stadium Authority, a California joint powers agency (the "Authority" and, together with the Borrower and the Company, the "Parties").

RECITALS

A. The Parties are parties to: (1) the Commitment Letter dated November 4, 2011 (inclusive of Annexes A, B and C attached thereto, the "Commitment Letter") among the Parties, Goldman Sachs Bank USA ("Goldman Sachs"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), Bank of America, N.A. ("BOA") and U.S. Bank National Association ("U.S. Bank" and, together with Goldman Sachs, MLPFS and BOA, the "Commitment Indemnified Parties") and (2) the Engagement Letter (Right of First Offer) dated November 4, 2011 (inclusive of Annex A attached thereto, the "ROFO Engagement Letter") among the Parties, Goldman, Sachs & Co., MLPFS and U.S. Bank (only the latter three entities, the "ROFO Indemnified Parties"). The Commitment Letter and the ROFO Engagement Letter are referred to collectively herein as the "Applicable Agreements". Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided in the Applicable Agreements.

B. Each of the Applicable Agreements provides for a joint and several indemnity obligation of the Parties, and the Parties desire to have any and all indemnity claims brought against any Party under any of the Applicable Agreements treated in the manner hereinafter set forth.

AGREEMENT

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

1. **Indemnification Contribution; Limited Borrower and Authority Obligations.**

(a) (i) *Company Obligations*. Subject to the exclusions and limitations set forth below in this Section 1, including but not limited to the limited contribution obligations of the Borrower set forth in Section 1(a)(i) and of the Authority set forth in Section 1(a)(ii), and further subject to any limitations on liability applicable to the Company under the Applicable Agreements and under applicable law, the Company hereby agrees to bear such claims by (A) any Commitment Indemnified Party pursuant to Section 5 (incorporating Annex A) of the Commitment Letter and (B) any ROFO Indemnified Party pursuant to Section 3 (incorporating

Annex A) of the ROFO Engagement Letter (the amount of any claim, in each case, "Indemnifiable Damages"). Such obligations shall exist without regard to which Party or Parties the claim is made against.

(ii) *Borrower Obligation.* Subject to the exclusions set forth in this Section 1, and further subject to any limitations on liability applicable to the Borrower under the Applicable Agreements and under applicable law, the Borrower hereby agrees to contribute an amount sufficient to provide for payment of the Indemnifiable Damages (x) in whole, to the extent that the Indemnifiable Damages result solely from the action or inaction of the Borrower and (y) in part, in proportion to the Borrower's relative fault as determined among the Parties, to the extent that the Indemnifiable Damages result from the action or inaction of the Borrower and one or more of the other Parties. Such obligations shall exist without regard to which Party or Parties the claim is made against.

(iii) *Authority Obligation.* Subject to the exclusions set forth in this Section 1, and further subject to any limitations on liability applicable to the Authority under the Applicable Agreements and under applicable law, the Authority hereby agrees to contribute an amount sufficient to provide for payment of the Indemnifiable Damages (x) in whole, to the extent that the Indemnifiable Damages result solely from the action or inaction of the Authority and (y) in part, in proportion to the Authority's relative fault as determined among the Parties, to the extent that the Indemnifiable Damages result from the action or inaction of the Authority and one or more of the other Parties. Such obligations shall exist without regard to which Party or Parties the claim is made against.

(b) Notwithstanding anything in this Agreement to the contrary, a Party shall not have any obligation to bear any Indemnifiable Damages relating to, arising from, or in connection with (i) the breach by one or both of the other Parties of any representation or warranty regarding such other Parties set forth in either of the Applicable Agreements, if such representation and warranty was known by such other Parties to be untrue when made, or (ii) any claim that is based upon any fraudulent, grossly negligent or intentional misconduct (including the failure to act) by such other Parties.

(c) In the event that any Party initially pays more than its applicable share of Indemnifiable Damages, then the Parties shall make such payments to each other such that the net payments reflect their applicable, respective shares.

(d) In the event a Party shall have made payment of its applicable share of Indemnifiable Damages and, subsequent to such payment, there shall be the recovery or receipt of payment respecting the previously paid claim by any Party, the effect of which is to reduce the amount of funds previously paid with respect to such claim, whether by the recovery of insurance proceeds, third party indemnification or otherwise, then the aggregate amount so recovered or received shall be shared among the Parties, in proportion to their payments but in each case subject to the limitations of Sections 1(a)(ii) and (iii) hereof, and shall be paid to the other Parties within ten (10) days after the date upon which such amount shall be received.

2. Settlement of Claims.

Any Party who receives notice of a claim for Indemnifiable Damages from (a) a Commitment Indemnified Party pursuant to the Commitment Letter or (b) a ROFO Indemnified Party pursuant to the ROFO Engagement Letter shall give prompt written notice thereof and a copy of such notice to the other Parties. If a Party has an obligation for the payment of an indemnification contribution pursuant to Section 1(a) above, such Party shall cooperate with the other Parties in connection with the defense and settlement of the claims pursuant to the Applicable Agreement with respect to which such contribution obligation applies. No Party shall settle any such claim, or agree to settle any such claim, without the prior written consent of the other Parties, unless such settling Party waives its right to contribution hereunder against the other Parties, and any settlement made in violation of this restriction, without notice or the obligation of any party to perform any act, shall have the immediate and irrevocable effect of fully releasing and discharging such non-consenting Parties from any obligation to make payment hereunder with respect to the settled claims.

3. Authority; No Conflict.

Each Party represents and warrants to the other Parties that (i) it has full capacity and power to execute, deliver and perform this Agreement, (ii) this Agreement has been duly executed and delivered by such Party, and is enforceable against such Party in accordance with its terms, and (iii) the obligations of such Party hereunder do not and will not conflict with any law, rule or statute applicable to such Party or create a breach or default under any material agreement to which such Party is a party.

4. Binding Effect; Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding any provision to the contrary in this Agreement, no member, officer, official, councilmember, commissioner, partner, employee, shareholder, manager, director or agent (as applicable) of a Party shall be personally liable to any other Party (or any of their respective successors-in-interest) under Section 1(a) of this Agreement. No Party shall assign its obligations under this Agreement without the prior written consent of the other Parties.

It is expressly understood and agreed by the Parties that (a) this Agreement is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as trustee of the Borrower, in the exercise of the powers and authority conferred and vested in it under that certain Trust Agreement dated as of November 4, 2011 among the Company, as depositor, BSCS 2011-4, Inc., as beneficiary, and Wilmington Trust, National Association, as owner trustee (the "Trust Agreement"), (b) each of the representations, undertakings and agreements herein made on the part of the Borrower is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose for binding only the Borrower, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association, individually or personally, to perform any covenant either express or implied

contained herein, all such liability, if any, being expressly waived by the parties hereto and any person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any amount to be paid by the Borrower pursuant to the terms hereof or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Borrower hereunder.

5. Severability.

Each provision of this Agreement constitutes a separate and distinct undertaking, covenant and provision with respect to the Parties. In the event that one or more provisions of this Agreement are held illegal or unenforceable with respect to any Party, such provisions shall be deemed severed and the remaining provisions of this Agreement shall survive and remain fully enforceable against the Parties. The determination that any one or more provisions of this Agreement are illegal or unenforceable with respect to any Party shall not be construed to mean that any such provision is illegal or unenforceable with respect to the other Parties.

6. Construction.

This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of California without regard to principles of conflicts of laws. The captions in this Agreement are for convenience only and shall not be construed to limit or otherwise affect the meaning of any term or provision of this Agreement. Unless otherwise stated, section references refer to the sections of this Agreement.

7. Notices.

Any notice to be given to the Parties shall be made in writing and shall be addressed to the Parties at the addresses set forth on the signature page hereto, or at such other address provided in writing by a Party to the other Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association, not in its individual capacity but solely as Owner Trustee

By:_____
Name: _____
Its: _____

Address for Notices:
Stadium Funding Trust
c/o Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001
Attention: Corporate Trust Administration

FORTY NINERS STADIUM, LLC

By:_____
Name: _____
Its: _____

Address for Notices:
Forty Niners Stadium, LLC
4949 Centennial Blvd.
Santa Clara, California 95054
Attention: Chief Financial Officer

SANTA CLARA STADIUM AUTHORITY

By:_____
Name: _____
Its: _____

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

RECEIVED
DEC 08 2011
Office of the City Manager
City of Santa Clara

December 7, 2011

Jennifer Sparacino
Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95051

Re: Summary of Stadco Obligations

Dear Jennifer:

As you know, Forty Niners Stadium, LLC ("Stadco") has executed that certain Commitment Letter, dated November 4, 2011, among Stadco, the Stadium Funding Trust, Goldman Sachs Bank USA, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and U.S. Bank National Association (the "Commitment Letter"). On December 13, 2011, the Board of the Santa Clara Stadium Authority ("SCSA") is scheduled to consider approval of the SCSA's joinder to the Commitment Letter. In connection with its consideration of the joinder, the SCSA has asked that Stadco submit a summary description of the obligations to the SCSA that Stadco would undertake with respect to the financing described in the Commitment Letter. In response to that request, Stadco hereby submits for your consideration the attached "Summary of the Stadco Subordinated Loan, Stadco Obligations and SBL Disbursement Conditions" (the "Summary of Stadco Obligations").

The Summary of Stadco Obligations is intended as a companion to the Summary of the Senior Secured Facility attached as Annex B to the Commitment Letter, and is also intended to be attached, along with the Summary of the Senior Secured Facility, to the Disposition and Development Agreement ("DDA") as a part of the Preliminary Financing Plan. As described in the DDA and the Commitment Letter, the Senior Secured Facility and the Subordinated Loan and other obligations described in the Summary of Stadco Obligations are subject to a variety of conditions precedent and to the final negotiation, approval and execution of binding legal agreements.

Although much work remains to be done, the approval of the DDA and the SCSA's joinder to the Commitment Letter are exciting milestones for the project. As always, we appreciate the dedication of the SCSA staff and its consultants, and we look forward to continuing to work with you in the coming months.

Very truly yours,

Forty Niners Stadium, LLC

By: _____
Lawrence MacNeil

cc: Ronald E. Garrett

Summary of the StadCo Subordinated Loan, StadCo Obligations and SBL Disbursement Conditions

*This Summary outlines certain terms (i) of the StadCo Subordinated Loan, (ii) of the StadCo Term Loan Commitment, (iii) of the StadCo Purchase Commitment and (iv) under which SBL Proceeds are to be disbursed for the payment or reimbursement of Stadium Project construction costs. Capitalized terms used but not defined herein are defined in the Commitment Letter, dated November 4, 2011 (inclusive of Annexes A, B and C attached thereto, the "**Commitment Letter**"), among Forty Niners Stadium, LLC, a Delaware limited liability company, Stadium Funding Trust, a Delaware statutory trust ("**FinanceCo**"), Goldman Sachs Bank USA, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and U.S. Bank National Association.*

Parties; StadCo Obligations Agreement	
Authority:	Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code (the "***Authority***"), formed exclusively for the purpose of financing, constructing, owning and operating the Stadium Project.
StadCo:	Forty Niners Stadium, LLC ("***StadCo***"), a special purpose entity whose activities will be limited exclusively to (i) participating in the development and financing of the Stadium Project, (ii) leasing the Stadium from the Authority and (iii) subleasing the Stadium to San Francisco Forty Niners, Limited (the "***Team***"; and together with StadCo, the "***Team Parties***"). As of the Closing Date, StadCo will be a wholly-owned, direct subsidiary of the Team.
StadCo Obligations Agreement:	On or prior to the Closing Date, StadCo and the Authority will enter into an agreement (the "***StadCo Obligations Agreement***") pursuant to which, among other things, (i) StadCo will make the StadCo Subordinated Loan (as defined and further described below), (ii) StadCo will obligate itself under certain circumstances to purchase from FinanceCo all or a portion of the Authority Loan on the Maturity Date (defined below), and (iii) StadCo will be required on the Maturity Date to loan to the Authority funds in an amount further described below if the StadCo Subordinated Loan has then matured.
StadCo Subordinated Loan	
StadCo Subordinated Loan:	Beginning on or around the Closing Date, and until the GMP for the construction of the Stadium has been established (exclusive of StadCo-controlled tenant improvements), StadCo will apply, in accordance with the Funding Agreement (as defined in the Disposition and Development Agreement), the proceeds of the StadCo Loan (proceeds drawn during such period, the "***Initial Proceeds***") to the payment of certain financing and other costs payable or reimbursable during such period (including, without limitation, fees owed by FinanceCo to the Lenders with respect to the Senior Secured Facility). Thereafter, StadCo will loan to the Authority all or substantially all of the remaining proceeds of the

	StadCo Loan, which loan (such loan, together with other amounts loaned by StadCo to the Authority to pay or reimburse financing costs (including interest and fees) and Authority Project Costs (defined below), collectively, the "***StadCo Subordinated Loan***") is to be used by the Authority to pay or reimburse Authority Project Costs and to fund interest and fees that become due with respect to the StadCo Subordinated Loan during the construction of the Improvements. The StadCo Subordinated Loan will constitute a loan subordinate to the Authority Loan and will be evidenced by a note of the Authority (the "***Authority Note***") issued to StadCo on or before the Closing Date.
Amount:	Up to a maximum amount to be agreed and presently anticipated to be US$400 million.
Purpose/Use of Proceeds:	The Authority will use the proceeds of the StadCo Subordinated Loan to pay (i) costs and expenses of the design, development, construction and completion of the Stadium Project ("***Authority Project Costs***"), and (ii) interest and fees that become due with respect to the StadCo Subordinated Loan during the construction of the Improvements.
Maturity Date:	The StadCo Subordinated Loan is expected to mature either (i) on the maturity date of the Senior Secured Facility, the Authority Loan and the StadCo Loan (the "***Maturity Date***"), or (ii) at the end of an approximately 25-year term (the "***Long Term Maturity Date***"). If the StadCo Subordinated Loan is structured such that it matures on the Maturity Date, StadCo will make the StadCo Term Loan Commitment as described below. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, no StadCo Term Loan Commitment will be made.
Availability:	Multiple drawings may be made under the Authority Note.
Amortization:	No scheduled amortization will be required with respect to the StadCo Subordinated Loan during the construction of the Improvements. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, amortization will begin following the Maturity Date and will proceed on a schedule to be agreed upon which will fully amortize the StadCo Subordinated Loan over its term.
Interest Rate:	While the Authority Loan is outstanding, the StadCo Subordinated Loan will bear interest at the rate and on the terms applicable to the Authority Loan and the StadCo Loan. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, it is anticipated that, following the refinancing of the Authority Loan, the StadCo Subordinated Loan will automatically adjust to bear interest at the rate and on the terms applicable to the permanent financing incurred by the Authority to refund the

	Authority Loan.
Interest Payments:	After the Closing Date, while the Authority Loan is outstanding, interest on the StadCo Subordinated Loan will be payable on the schedule on which interest is payable on the Authority Loan. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, it is anticipated that, following the refinancing of the Authority Loan, interest on the StadCo Subordinated Loan will be payable on the schedule on which interest is payable on the permanent financing incurred by the Authority to refund the Authority Loan.
Voluntary Prepayments:	The StadCo Subordinated Loan may be prepaid in whole or in part without premium or penalty; *provided* that, while the Authority Loan is outstanding, if the StadCo Subordinated Loan then bears interest with reference to the reserve adjusted Eurodollar Rate, it will be prepayable only on the last day of the related interest period unless the Authority pays any related breakage costs; and *provided, further*, that if the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, the Authority shall be required to pay any breakage costs, premium or penalty, if any, payable by StadCo as a result of any such prepayment made after the refinancing of the Authority Loan.
Mandatory Prepayments:	The Authority will be required to make mandatory prepayments on the StadCo Subordinated Loan from designated revenues received by the Authority (i) subject to (A) any obligation to make payments to the City under the Ground Lease, (B) while the Authority Loan is outstanding, any obligation otherwise to use or hold revenues pursuant to the definitive Authority Loan documents, (C) any obligation otherwise to use or hold revenues pursuant to the definitive StadCo Obligations Agreement (including, without limitation, the obligation to apply such revenues to the payment of the Authority's operating and maintenance expenses and to the funding of reserves), and (D) if the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, any obligation otherwise to use or hold revenues pursuant to the definitive documents governing the permanent financing incurred by the Authority to refund the Authority Loan; and (ii) prior to any other distribution of such revenues to the City or to the Redevelopment Agency of the City of Santa Clara (the "***Agency***"), except for payments to the City and Agency required to be made as a condition to a sublease to a second NFL franchise. The Authority will be deemed to have made a mandatory prepayment of the StadCo Subordinated Loan upon the application by FinanceCo of Authority Pledged Revenues to the payment of the Senior Secured Facility under certain circumstances and to the extent described in the definitive Loan Documents.

Security:	Subject to any limitations described in the definitive documents, as security for the StadCo Subordinated Loan, StadCo will have a subordinate security interest in any and all property of the Authority that is pledged or purported to be pledged to FinanceCo as collateral for the Authority Loan, including, without limitation, (a) the Authority Pledged Revenues, and (b) the Authority's interests in the Ground Lease and the Stadium Lease, the Naming Rights Agreement and other contracts related to the Stadium Project.
StadCo Obligations	
StadCo Obligations:	Under the StadCo Obligations Agreement, StadCo will, for the benefit of the Authority and FinanceCo, make (a) the StadCo Term Loan Commitment[1] and (b) the StadCo Purchase Commitment (the StadCo Term Loan Commitment and the StadCo Purchase Commitment, collectively, the "***StadCo Obligations***").
Amount:	The amount of the StadCo Obligations will, in the aggregate, equal the amount of the Authority Loan outstanding from time to time. If the StadCo Term Loan Commitment is not required to be made because of the tenor of the StadCo Subordinated Loan, the amount of the StadCo Purchase Commitment will equal the amount of the Authority Loan outstanding from time to time. If the StadCo Term Loan Commitment is required to be made, the initial respective amounts of the StadCo Term Loan Commitment and the StadCo Purchase Commitment will be agreed upon among the Authority, StadCo, FinanceCo and the Initial Lenders prior to the Closing.
StadCo Term Loan Commitment:	If the StadCo Subordinated Loan is structured such that its maturity date is the Maturity Date, and consequently the StadCo Term Loan Commitment is made, StadCo will be required to loan to the Authority funds in an amount equal to the StadCo Term Loan Commitment by not later than the Maturity Date.
Purpose/Use of Proceeds of StadCo Term Loan Commitment:	To finance or refinance certain costs and expenses of the Stadium Project paid or payable by the Authority, including, without limitation, to refinance all or a portion of the Authority Loan.
Amortization:	If StadCo makes a term loan to the Authority pursuant to the StadCo Term Loan Commitment, amortization of that loan will begin following the Maturity Date and will proceed on a schedule to be agreed upon which will fully amortize the loan over its term.
StadCo Purchase Commitment:	StadCo will be required to purchase from FinanceCo on the Maturity Date all or a portion of the Authority Loan then outstanding on terms and under conditions to be agreed among StadCo, the Authority, FinanceCo and the Initial Lenders. The StadCo Purchase Commitment will be an obligation of StadCo subordinate to the

[1] If the Stadco Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, the Stadco Term Loan Commitment will not be made.

	StadCo Loan. The Authority's obligation to repay the principal of the Authority Loan purchased by StadCo pursuant to the StadCo Purchase Commitment will be forborne by StadCo until (i) the third anniversary of the Maturity Date, or (ii) if earlier, the date on which the Authority Loan has been fully refinanced (either such date, as applicable, the "***Deferred Maturity Date***"). During the period that begins on the Maturity Date and ends on the Deferred Maturity Date, interest on the Authority Loan will remain payable at the rate and on the terms applicable prior to the Maturity Date.
Mandatory Reduction of StadCo Obligations:	The aggregate amount of the StadCo Obligations will be reduced automatically to the extent that the amount of the Authority Loan outstanding from time to time is reduced.
Support for StadCo Obligations:	To support StadCo's obligation to fulfill the StadCo Purchase Commitment, and the StadCo Term Loan Commitment, if any, (i) pursuant to StadCo's operating agreement, in the event StadCo does not then have available funds or access to financing sufficient to meet its obligation under the StadCo Purchase Commitment or the StadCo Term Loan Commitment, StadCo shall have the right to, and shall, make a capital call on the Team in the amount of any deficiency, and the Team shall be obligated to promptly fund such capital call, subject to any restrictions on the Team under the NFL Constitution or the NFL League-wide Credit Facility, and provided that the NFL sufficiently waives the debt limit to which the Team is subject under the terms of the NFL Constitution; or (ii) the NFL shall agree under the NFL Consent Letter to seek a purchaser for (a) all assets of the Team and StadCo or (b) the Team and StadCo as a whole.
Security:	Subject to any limitations described in the definitive documents, as security for the StadCo Obligations, the Authority will have a subordinate security interest in any and all property of StadCo that is pledged or purported to be pledged to FinanceCo as collateral for the StadCo Loan, including, without limitation, (a) the StadCo Pledged Revenues, and (b) the Stadium Lease, the Team Sublease and other contracts related to the Stadium Project to which StadCo is a party.
SBL Proceeds	
Application of SBL Proceeds:	Proceeds received by the Authority from the sale or license of any stadium builder licenses ("***SBL Proceeds***") will be applied by the Authority to (1) the payment of Authority Project Costs, (2) the prepayment of the Authority Loan, or (3) the prepayment of the StadCo Subordinated Loan, in each case subject to the terms of the definitive Authority Loan documents and the definitive StadCo Obligations Agreement, and *provided* the Construction Loan Threshold (defined below) has been met or exceeded.

Construction Loan Threshold:	The Construction Loan Threshold will have been met only when (1) the Initial Proceeds shall have been applied by StadCo as described above under the heading "StadCo Subordinated Loan," (2) the proceeds of the NFL Financing shall have been applied by StadCo as contemplated in the Commitment Letter, and (3) at least US$200 million of proceeds of the Senior Secured Facility shall have been disbursed at the direction of FinanceCo to pay Authority Project Costs or StadCo Project Costs, not including any proceeds of the Senior Secured Facility loaned by FinanceCo to StadCo as part of the Initial Proceeds (the circumstances described in the foregoing clauses (1), (2) and (3), collectively, the "***Construction Loan Threshold***"). Until the Construction Loan Threshold has been met, all SBL Proceeds shall remain fully available to reimburse each purchaser of a stadium builder license as and to the extent required under the terms and conditions of such license.
NFL Rights:	The StadCo Obligations will be subject in all respects to the NFL Constitution, rules and regulations. The Collateral Agent, the Administrative Agent, the Co-Lead Arrangers, FinanceCo, the Authority and the Team Parties will enter into a letter agreement with the NFL on the Closing Date (the "***NFL Consent Letter***") with respect to the StadCo Obligations. The NFL Consent Letter will (i) impose certain restrictions on the ability of the Collateral Agent and the Lenders to exercise remedies under the Loan Documents, and (ii) permit the NFL under certain circumstances further described therein to seek a purchaser for (a) all assets of the Team and StadCo or (b) the Team and StadCo as a whole.

The foregoing is intended to summarize certain basic terms of the StadCo Subordinated Loan, the StadCo Term Loan Commitment and the StadCo Purchase Commitment and the terms and conditions under which SBL Proceeds are to be disbursed for the payment or reimbursement of Stadium Project construction costs. The foregoing is not intended to be a definitive, comprehensive or binding description of such terms.

EXHIBIT I

DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE) SCHEDULE OF PERFORMANCE

Several principles apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Agreement; (ii) parenthetical numbers are references to sections of the Agreement, as the dates described herein are not exhaustive of all dates described in the Agreement; (iii) the Target Dates provided herein are for informational purposes only and are not binding in any way on Stadco or the Stadium Authority; and (iv) in the event of an inconsistency between this Schedule of Performance and the Agreement, the Agreement shall prevail.

Action	Required Completion Date	Target Date
Open Escrow. Stadco shall establish an escrow with the Title Company. (§ 12.1)	No later than 5 Business Days following Effective Date.	
Submittal – Entitlements and Building Permit. Stadco and SA to identify, prepare, and submit the Entitlements and Building Permit applications to commence construction of Make-Ready Work and the Improvements. (§ 5.13)	Within sufficient time to allow for approval prior to dates for commencement of construction set forth in the Make-Ready Work Construction Contract and Design-Build Agreement, as applicable.	
Submittal – Design Development Documents. Stadco shall submit the Design Development Documents to the Stadium Authority for review and approval. (§ 5.5)	No later than 6 months prior to Outside Closing Date.	
Approval – Design Development Documents. (§§ 5.5 and 5.7)	Within 30 days after submittal (deemed approved if no approval or disapproval within this period).	
Resubmittal – Design Development Documents. Upon receipt of Stadium Authority's disapproval list, Stadco shall submit a revised submittal. (§ 5.7)	Within 20 Business Days after receipt of Stadium Authority's disapproval list.	

Action	Required Completion Date	Target Date
Approval – Design Development Documents Resubmittal. Upon the Stadium Authority's receipt of a revised submittal, the Stadium Authority shall approve or disapprove of the revised design. (Section 5.7)	Within 15 Business Days after receipt of Stadco's resubmittal (deemed approved if no approval or disapproval within this period).	
Submittal – Initial GMP Set. Stadco shall submit the GMP Set to the Stadium Authority for review and approval. (§ 5.6)	No later than 90 days prior to Outside Closing Date.	
Approval – Initial GMP Set. ((§§ 5.6 and 5.7)	Within 30 days after submittal (deemed approved if no approval or disapproval within this period).	
Resubmittal – Initial GMP Set. (§ 5.7)	Within 20 Business Days after receipt of Stadium Authority's disapproval list.	
Approval – Initial GMP Set Resubmittal. (§ 5.7)	Within 15 Business Days after receipt of Stadco's resubmittal. (deemed approved if no approval or disapproval within this period).	
Approval – Design-Build Agreement. Stadium Authority will consider approving the Design-Build Agreement. (§ 5.11)	Within 30 days after Stadco's Submission of Design-Build Agreement for approval.	
Submittal – Final Development Budget. Stadco shall submit the Final Development Budget to the Stadium Authority for the Stadium Authority's review and approval. (§ 6.2(b))	No later than 120 days prior to Outside Closing Date.	
Approval – Final Financing Plan. The Parties shall make a good faith effort to mutually finalize and approve the Final Financing Plan. (§ 6.3(c))	No later than 120 days prior to Outside Closing Date.	

Action	Required Completion Date	Target Date
Approval – Certain Closing Documents. Stadco and Stadium Authority and any other parties thereto have approved, executed and delivered into escrow the final forms of the: Ground Lease; Stadium Lease; Team Sublease; and Training Facility Lease Amendment. (Article 3)	No later than 10 days prior to Outside Closing Date.	
Approval – Remaining Closing Documents. Stadco and Stadium Authority and any other parties thereto have approved, executed and delivered into escrow all documents required for the Close of Escrow, including, without limitation, the final forms of the Ground Lease and Stadium Lease, Team Sublease and Training Facility Lease Amendment. (Article 3)	No later than 3 days prior to Outside Closing Date.	
Prepare – Joint Escrow Instructions. The Parties shall have prepared, executed and delivered Joint Escrow Instructions consistent with Agreement (§ 12.1)	No later than 3 days prior to Outside Closing Date.	
CLOSE OF ESCROW (§ 1.1)	Outside Closing Date: December 31, 2014, subject to extension to December 31, 2015 pursuant to Section 3.1(c) of the DDA.	
Commencement of Construction. (§ 13.1)	Within 120 days after Close of Escrow.	
Completion of Construction. (§ 13.1)	Within 36 months after Close of Escrow.	

EXHIBIT J

SCOPE OF DEVELOPMENT

I. General Overview

All capitalized terms herein shall have the meanings set forth in the Disposition and Development Agreement (Stadium Lease) entered into by and between the Santa Clara Stadium Authority, a California joint powers authority and Forty Niners Stadium, LLC, a Delaware limited liability company, to which this Scope of Development is attached and made a part thereof.

The proposed project consists of the design, construction and installation of: (a) on the Stadium Site, (i) an outdoor stadium suitable for NFL Games containing approximately 1.85 million square feet, and with a permanent seating capacity of up to approximately 68,500 seats, including all suite, club and general admission seating (with the possibility for expansion to approximately 75,000 seats for larger events such as an NFL Super Bowls) (the "Stadium"), (ii) a plaza surrounding the Stadium that provides a physical and visual transition from the offsite area to the Stadium Site, and (iii) building systems, utilities, infrastructure and other improvements for the Stadium Site (together with the Stadium, collectively, the "Stadium Project"); and (b) in the vicinity of the Stadium Site several infrastructure projects to facilitate the operation of the Stadium, generally described below (the "Ancillary Improvements"), all of which shall be consistent with the Schematic Design Drawings.

II. Stadium Structure

The Stadium structure will be designed using structural steel and concrete elements with portions of the exterior enclosed by metal panels and glass. The Stadium foundation system will consist of concrete piles and pile caps as well as isolated spread and strip concrete footings. The Stadium will be designed in accordance with the 2010 California Building Code, as adopted by the City of Santa Clara, as well as other applicable codes relating to stadiums. The maximum height of the Stadium shall be approximately 175 feet above the ground surface with light standards, speakers, catwalks, scoreboards and other miscellaneous items on top of the structure reaching a maximum height of 200 feet above the ground surface. The Stadium will consist of six levels on the east side, five levels on the north and south sides, and nine levels (referred to as the Suite Tower) on the west side. The event level of the Stadium (i.e., ground level) will include the playing field, locker rooms, main commissary and several kitchens, an area for part of a football hall of fame (the area for the other part of a football hall of fame will be located at the Plaza level), a Santa Clara Police Department temporary holding facility, facilities for grounds keeping staff, operations (including management, security, and janitorial), truck docks, and facilities for various other support functions. The event level will be constructed at approximately the existing site elevation. The box office, Team store, part of the football hall of fame, a fantasy football lounge and approximately 10,000 gross square feet of leasable 3rd-party tenant shell space that may be leased to other tenants by Stadco for retail commercial use will be located at the Plaza level along the northeast and east frontage of the building. Team offices and Team use areas will be located on the event level of the Stadium on the east side, and in a number of other areas throughout the Stadium, including near the locker rooms. Storage areas

and first aid rooms will be located throughout the Stadium. The Stadium will also include Stadium Authority administrative offices and a traffic control center. Facilities for members of the press, as well as TV and/or radio broadcast personnel, will be located at the level (referred to as the Press Level) on the top floor of the west side Suite Tower and on the event level.

III. Stadium Project Components

The Stadium Project shall include required demolition of existing paving and other structures on the Stadium Site, including improvements adjacent to and providing access to the area designated on the Site Plan as the Youth Soccer Park (the "Youth Soccer Park"), relocation of existing utilities (except those connecting the existing Tasman substation to Silicon Valley Power's Northern Receiving Station ("Northern Receiving Station")) and the installation of all building systems and other improvements necessary for the operation of the Stadium, including, but not limited to, those improvements referenced in section II above; all required concrete and steel structural support systems including metal decking and reinforcing steel; plumbing systems; roofing, including sub-roofs and approximately 27,000 sq ft of "green roof" area; electrical systems; lighting systems, including, building lighting, Stadium Site lighting, sports lighting and lighting control systems; audio systems; emergency (back-up) power supply systems; approximately 20,000 sq ft of photovoltaic panels; temperature control systems, including heating ventilating & air conditioning systems, and cooling towers; building management systems; communications systems, including, telephone system, wireless systems, scoreboards, graphics display systems, distributed TV systems, including cable television, and television production truck connections; lightning protection systems; ticketing systems; vertical transportation systems (including stairs, escalators, elevators and lifts); glass and aluminum curtain wall systems; other related systems and components; all utilities to the Stadium, including domestic water, reclaimed water, sanitary sewer, storm drainage, and natural gas; an approximately 40-ton ground source heat pump loop with an approximately 8,000 gallon storage tank; landscaping and irrigation, including a playing field drainage system; paving and hardscape, including fencing, curbs, gutters, sidewalks, entry gates, retaining walls, and ramps, including ramps compliant with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., as amended ("ADA"); ADA seating platforms and camera platforms; on-site Stadium parking stalls (including ADA stalls); signage, including, pavement markings, banners, advertising signs, wayfinding signs and monument signs; handrails; railings; louvers; canopies; wall framing and drywall; wall coverings; ceilings; floor coverings; caulking, insulation, waterproofing, and painting; doors; door hardware; athletic equipment, food service equipment; locker room equipment; furniture; medical equipment; security equipment; maintenance equipment; trash compactor and trash bailer.

IV. Ancillary Improvements

The Ancillary Improvements, at the locations depicted on Schedule 1, are generally described as follows:

1. Construct a sanitary sewer pump station to serve the Stadium at the northeast corner of the Team's training facility located at 4949 Centennial Boulevard ("49ers Training Facility");

2. Construct two Chip Seal parking lots between Tasman Drive and Stars and Stripes Drive;

3. Construct a game-day and large Stadium Event pedestrian crossing at Tasman Drive, after obtaining approval from the VTA;

4. Construct safety fencing on both sides of Valley Transportation Authority ("VTA") tracks along Tasman Drive between Centennial Blvd and Convention Center Circle, after obtaining approval from the VTA;

5. Widen sidewalk and install miscellaneous retaining walls along Tasman Drive between Great America Parkway and San Tomas Aquino Creek;

6. Construct one approximately 30'-wide pedestrian bridge south of the existing Tasman Drive bridge, one approximately 20'-wide pedestrian bridge at the mid-point of the Suite Tower, and one approximately 54'-wide pedestrian bridge south of the existing parking lot bridge over San Tomas Aquino Creek;

7. Thicken paving section within drive aisles of existing City-owned parking lot south of Stars and Stripes Drive and east of the 49ers Training Facility and provide new access gates to the 49ers Training Facility, the City's water storage tanks and the Northern Receiving Station Properties;

8. Construct new private access road South of the 49ers Training Facility and north of the Northern Receiving Station to provide access for (a) the stadium loading dock, (b) the Northern Receiving Station, (c) the south parking lot (see 9 below), (d) the City's water storage tanks (e) the City's emergency generators, and (f) a one approximately 10'-wide pedestrian access way along the northerly edge of the 49ers Training Facility providing access to the ACE/Capitol Corridor train station on Stars and Stripes Drive;

9. Construct new surface parking lot consisting of approximately 200 stalls on City's property south of the Stadium and west of the Northern Receiving Station; and

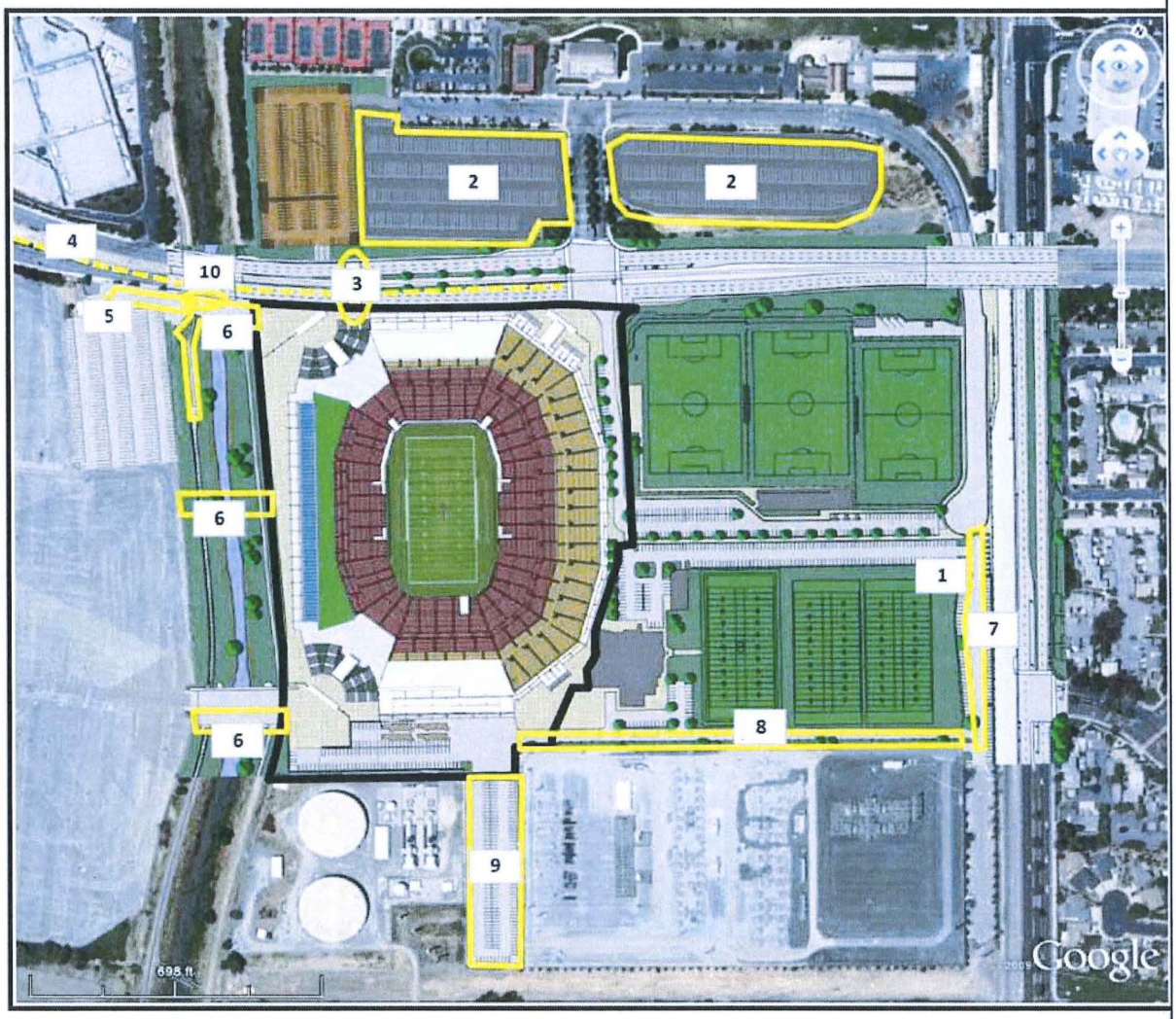
10. Install a new City of Santa Clara sign at existing Tasman Drive bridge over San Tomas Aquino Creek.

11. Install new utilities to service the Stadium and relocate certain existing utilities servicing the 49ers Training Facility and the Youth Soccer Park in conjunction with the Ancillary Improvements.

Note: Existing underground and overhead electrical connections (including all overhead poles, electrical lines and communications lines) between the existing Tasman Substation and the Northern Receiving Station will be removed by the City of Santa Clara as a part of the relocation of the Tasman Substation by Silicon Valley Power. The existing Tasman Substation is to be removed, decommissioned,

demolished and relocated to a different site by the City of Santa Clara as a separate project. The Tasman Substation site will be paved and striped as a parking lot by the City.

Schedule 1 - Ancillary Projects



Ancillary Improvements

1 - Sanitary Sewer Pump Station
2 - Chip seal parking lots
3 - Pedestrian crossing at Tasman
4 - Safety fence at VTA track (to Convention Center Drive)
5 - Sidewalk modifications at Tasman
6 - Pedestrian Bridges across San Tomas Aquino Creek
7 - Thickened paving section at VTA Parking Lot
8 - New access road to stadium
9 - South parking lot
10 - Santa Clara sign at Tasman
11 - Utilities Installation and Relocation*

*Depiction omitted due to multiple locations generally covering large areas in vicinity of Stadium Site and other Ancillary Improvements some of which locations underlay the other Ancillary Improvements.

EXHIBIT K

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE)

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

Forty Niners Stadium, LLC
4949 Centennial Boulevard
Santa Clara, CA 95054
Attention: Larry MacNeil, CFO

FOR RECORDER'S USE ONLY

APN: _____

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE)

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE) (this "**Memorandum**") dated for reference purposes as of _____, 2011, is by and between the SANTA CLARA STADIUM AUTHORITY, a California joint powers authority (the "**Stadium Authority**"), and FORTY NINERS STADIUM, LLC, a California limited liability company (the "**StadCo**").

1. Agreement. The Stadium Authority and StadCo have entered into a Disposition and Development Agreement (Stadium Lease) dated as of _____, 2011(the "**Agreement**"), under which the Stadium Authority agrees to: (i) lease from the City of Santa Clara real property in the City of Santa Clara, and obtain certain easement rights appurtenant thereto, as generally located within the area of land described in Exhibit A attached hereto, (the "**Stadium Site**"); (ii) construct improvements on and in the vicinity of the Stadium Site, including the Stadium, and (iii) lease the Premises to StadCo; and StadCo agrees to lease the Premises from the Stadium Authority, subject to the terms and conditions contained in the Agreement. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Agreement.

2. Term. The term of the Agreement will end on the later of the recordation of the Certificate of Completion pursuant to the Agreement, or the closing of the Takeout Financing. .

3. Notice. The parties have executed and recorded this Memorandum to give notice of the Agreement and their respective rights and obligations under the Agreement to all third parties. The Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Agreement, the Agreement shall control.

4. City's Consent. By its signature below, the City hereby consents to the recordation of this Memorandum and the resulting encumbrance of the Stadium Site herewith.

5. Counterparts. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have caused this Memorandum to be executed by their duly appointed representatives as of the date first above written.

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
Stadium Authority General Counsel

ATTEST:

_____
ROD DIRIDON, JR.
Stadium Authority Secretary

SANTA CLARA STADIUM AUTHORITY,
a California joint powers authority

_____
JENNIFER SPARACINO
Executive Director

FORTY NINERS STADIUM, LLC,
a Delaware limited liability company

_____
JOHN EDWARD YORK
President

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

_____
ROD DIRIDON, JR.
City Clerk

ACKNOWLEDGED AND CONSENTED TO BY:

CITY OF SANTA CLARA, a municipal corporation

By: _____
JAMIE L. MATTHEWS
Mayor

By: _____

JENNIFER SPARACINO
City Manager

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally

(insert name and title of the officer)

appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared_____
_____
_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT A

LEGAL DESCRIPTION OF STADIUM SITE

[To be attached prior to Close of Escrow]

EXHIBIT L

Mitigation Measures and Conditions of Approval (Design/Construction Period)

A. Hydrology Mitigation Measures (Source: Mitigation Monitoring or Reporting Program – 49ers Santa Clara Stadium Project, adopted March 1, 2010 ("MMRP"))

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.

- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.

- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.

- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers). In addition, a tire wash system may be required.

- Vegetation in disturbed areas shall be replanted as quickly as possible.

- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.

- A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation.

- The project proponent will submit a copy of the draft SWPPP to the City of Santa Clara for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.

- When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the Regional Water Quality Control

Board and the City of Santa Clara. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post construction storm water management plan is in place as described in the SWPPP for the site.

- As part of the mitigation for post-construction runoff impacts addressed in the SWPPP, the project will implement regular maintenance activities (i.e., sweeping, maintaining vegetative swales, litter control, and other activities as specified by the City) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Storm water catch basins will be stenciled to discourage illegal dumping.

B. Biological Mitigation Measures (Source: MMRP)

- Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay area extends from February through August.

- If it is not possible to schedule demolition and construction between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

C. Hazardous Materials Mitigation Measures (Source: MMRP)

On-Site Soil Contamination from Agricultural Land Uses

- Prior to the issuance of grading permits, shallow soil samples shall be taken to determine the location of contaminated soils with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Santa Clara Fire Chief prior to initiation of work. Any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.

- A Site Management Plan (SMP) will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be

encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region's reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the City's Director of Planning and Inspection and the Santa Clara Fire Chief.

Asbestos

The proposed project will conform with the following regulatory programs and implement the following standard measures to reduce impacts due to the presence of ACMs:

- In conformance with state and local laws, a visual inspection/pre-disassemble survey, and possible sampling, shall be conducted prior to the dismantling of the substation to determine the presence of asbestos containing materials.

- All potentially friable ACMs shall be removed in accordance with NESGAP guidelines prior to dismantling that may disturb the materials. All dismantling activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from exposure to asbestos.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.

Lead-Based Paint

- In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of lead-based paint.

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control.

- Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.

Toxic Air Contaminants

- The proposed project will have to prepare an emergency response plan in coordination with first-responders and other emergency agencies. The plan will include an evacuation plan, medical response plan, and advance warning system, and will detail what parties are responsible for specific response actions. The plan will need to be approved by the City's Director of Planning and Inspection and the Santa Clara Fire Chief prior to issuance of occupancy permits.

D. Cultural Resources Mitigation Measures (Source: MMRP)

- A qualified archaeologist will be on site to monitor the initial excavation of native soil once all pavement and engineered soil is removed from the project site. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required.

- In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 150-foot radius of the find will be stopped, the Director of Planning and Inspection will be notified, and the archaeologist will examine the find and make appropriate recommendations. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning and Inspection.

- In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

E. Transportation Mitigation Measures (Source: MMRP)

- Upon issuance by the City of a foundation permit for the construction of the Stadium, the proposed project will make a fair share contribution toward the improvements indentified in the MMRP at the following intersections: Great America Parkway/Mission College Boulevard, Lafayette Street/Yerba Buena Way, North First Street/Montague Expressway, Zanker Road/Montague Expressway, O'Toole Avenue/Montague Expressway, Trade Zone Boulevard/Montague Expressway, and Abbott Avenue and Calaveras Boulevard. .

- The City will require, as a condition of project approval, the preparation and implementation of a Transportation Management and Operations Plan (TMOP) and the formation of a working group to oversee the plan's implementation. The City of Santa Clara and the Valley Transportation Agency (which operates both the LRT and the countywide bus transit system in Santa Clara County) have agreed to form an ongoing multi-jurisdictional group that will address the detailed planning needed to achieve the level of transit service assumed by the Draft TMOP. Santa Clara City staff have agreed that a committee of City staff, VTA staff, and the 49ers organization will lay out the framework of the TMOP and the objectives of the program to accomplish the City's goals for this project. That framework will be attached to the PD zoning as a condition of project approval. The long term working group that will be created to prepare the TMOP will include the Stadium Authority, City of Santa Clara, VTA, and the adjacent cities that will help to implement the traffic control plan. The working group will also need to work closely with other transit providers, including ACE, Capitol Corridor, Caltrain, other County transit bus operators and charter bus operators. The TMOP will be completed for the opening of the stadium utilizing the most current roadway and transit data available at that time (estimated mid-2014), and will be updated annually as necessary.

F. Air Quality Mitigation Measures (Source: MMRP)

- Bicycle amenities should be provided for the project. This would include secure bicycle parking for employees and attendees and safe bike lane connections.

- Enforce State law idling restrictions of trucks or buses and include signage indicating the restriction and associated fines.

- Where appropriate, provide 110- and 220-volt electrical outlets at loading docks to or areas where media operations occur to eliminate any idling of trucks or generators to operate auxiliary equipment.

- Provide exterior electrical outlets to encourage use of electrical landscape equipment.

- Implement a landscape plan that provides shade trees along pedestrian pathways.

- Implement "Green Building" designs, such a Leadership in Energy and Environmental Design (LEED) into buildings to increase energy efficiency, which would reduce the future energy demand caused by the project, and therefore, reduce air pollutant emissions indirectly.

- The following dust control measures will be implemented during all construction phases:

  - Water all active construction areas at least twice daily and more often during windy periods.

- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.

- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.

- Sweep daily (preferably with water sweepers) all paved access roads on-site, parking areas and staging areas at construction sites.

- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.

- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).

- Limit traffic speeds on unpaved roads to 15 mph.

- Replant vegetation in disturbed areas as quickly as possible.

- Suspend construction activities on windy days that cause visible dust plumes that extend beyond the construction site.

- Idling time of all diesel powered construction equipment will be limited to five minutes (based on California Air Resources Board regulations) and/or alternative powered construction equipment (i.e., hybrid, compressed natural gas, bio-diesel, electric) will be used.

- All diesel powered construction equipment will be outfitted with add-on control devices such as diesel oxidation catalysts or particulate filters where possible.

- All contractors will be required to use equipment that meets the California Air Resources Board most recent certification standard for off-road heavy duty diesel engines.

- A Disturbance Coordinator will be designated by the applicant. The Coordinator shall be responsible for responding to any local complaints about construction activities. The Coordinator will determine the cause of the complaint and implement reasonable measures to correct the problem. A telephone number for the Coordinator will be clearly posted at the construction site and included in the notice sent to nearby properties regarding the construction schedule. This information will also be distributed to all residences and businesses within 750 feet of the project site.

- The project shall ensure that emissions from all off-road diesel powered equipment used on the project site do not exceed 40 percent opacity for more than

three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately. This measure means that equipment with continuous dark emissions is in violation of the requirement.

- Signs shall be posted that indicate diesel equipment standing idle for more than five minutes shall be turned off or operators would be subject to fines. This would include trucks waiting to deliver or receive soil, aggregate or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite.

- Reduce vehicle emissions. Properly tune and maintain equipment for low emissions.

G. Noise Mitigation Measures (Source: MMRP)

The applicant will be required to develop a Construction Mitigation Plan that will schedule construction activities so as to minimize noise disturbances to sensitive land uses. The Construction Mitigation Plan will include but is not limited to the following:

- The holes for the piles will be pre-drilled.

- Pile driving shall be prohibited on weekends and holidays to minimize disturbances at the theme park, Golf and Tennis Club, and residences.

- Construction within 300 feet of any residentially zoned property shall only occur within designated time limits. Construction within 300 feet of any residence will only occur between the hours of 7:00 am to 6:00 pm on weekdays (other than holidays) and between 9:00 am and 6:00 pm on any Saturday that is not a holiday. No construction will be permitted on Sundays or holidays.

- The contractors shall utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

- Contractors shall equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.

- Temporary noise barriers shall be used during grading and foundation work.

- Staging areas and construction material storage areas will be located as far away as possible from nearby residences.

- Unnecessary idling of internal combustion engines shall be prohibited.

- All nearby noise sensitive land uses within the area of impact shall be notified in writing of the construction schedule.

- A Disturbance Coordinator will be designated by the applicant. The Coordinator shall be responsible for responding to any local complaints about construction

noise. The Coordinator will determine the cause of the noise complaint and implement reasonable measures to correct the problem. A telephone number for the Coordinator will be clearly posted at the construction site and included in the notice sent to nearby properties regarding the construction schedule.

H. Energy Mitigation Measures (Source: MMRP)

- The project shall be certified in accordance with the Leadership in Energy and Environmental Design (LEED) requirements, a nationally acceptable benchmark for the design, construction, and operation of high performance green buildings. The level of LEED certification will be at the discretion of the project applicant.

- The project shall exceed Title 24 energy requirements by 10 percent to the satisfaction of the Director of Silicon Valley Power.

- The project shall include a minimum of 27,000 square feet of green roofs.

- The project shall utilize local and regional building materials in order to reduce energy consumption associated with transporting materials over long distances.

- The project shall, to the extent feasible and available, utilize building products that contain post-consumer recycled materials.

- Although there is not a formal EnergyStar program for non-residential buildings, the stadium shall be constructed to meet the same standards as those that apply to the residential program to the extent feasible.

- The stadium shall include a photovoltaic (i.e., solar electric) system. The project proposes a minimum of 20,000 square feet of photovoltaic cells. (Note: The rule of thumb is that each square foot of photovoltaic cells produces 10 watts of power in bright sunlight.)

- Geothermal heat pumps should be installed to provide heating, cooling, and hot water. Geothermal heat pumps are generally more efficient and less expensive to operate and maintain than conventional systems. [Note: An Addendum to the FEIR was adopted in August 2010, which analyzed a modification of the project to comply with this mitigation requirement by installing a 40 ton geothermal heat pump system supplemented with an 8,000 gallon thermal storage tank.]

I. Global Climate Change Mitigation Measures/Avoidance Measures (Source: MMRP)

- The proposed project will be built to exceed the minimum LEED certification requirements.

- Offices and critical support features will be built above project flood levels or provide flood proofing.

- Construction contracts will include a provision encouraging the use of locally produced building materials to the extent feasible.

J. Engineering Conditions of Approval (Source: Engineering Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

E1. If relocation of an existing public facility (which does not include any investor owned utilities) becomes necessary due to a conflict with the applicant's new improvements, then the cost of said relocation shall be borne by the applicant. However, the applicant shall not be responsible for any costs associated with relocating the electrical substation equipment located on the Tasman Substation site to the Silicon Valley Power Northern Receiving Station and installation of associated electrical distribution equipment.

E2. The applicant shall obtain site clearance through the Engineering Department prior to issuance of building permits to the satisfaction of the Director of Public Works. Site clearance will require payment by the applicant of applicable permit processing and inspection fees legally required for a public building. Other requirements may be identified for compliance during the site clearance process.

E3. All work within the public right-of-way and/or public easement, which is to be performed by the applicant, the developer, the general contractor, and all subcontractors shall be included within one or more Encroachment Permit(s) issued by the Engineering Department. Issuance of the Encroachment Permit and payment of all appropriate fees shall be completed prior to commencement of work, and all work under the permit shall be completed prior to issuance of certificate of final occupancy to the satisfaction of the Director of Public Works.

E4. The applicant shall construct driveways in the public right-of-way to City commercial type standards, to the satisfaction of the Director of Public Works, prior to the issuance of the certificate of final occupancy. Any proposed non-standard driveway will require approval by the Director of Public Works and the developer's execution of an agreement to maintain the driveway.

E5. Visual obstructions over three feet in height are not permitted within the driver's sight triangle near driveways and corners in order to allow an unobstructed *view* of oncoming traffic.

E6. Unused driveways in the public right-of-way shall be replaced by the applicant with City standard curb, gutter, and sidewalk to the satisfaction of the Director of Public Works, prior to issuance of certificate of final occupancy.

E7. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced by the applicant (to the

nearest score mark) in a manner acceptable to the Director of Public Works, prior to issuance of certificate of final occupancy. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.

E8. The applicant shall provide a complete storm drain study for the 10-year and 100-year storm events prior to grading permit issuance, to the satisfaction of the Director of Public Works. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at applicant's expense.

E9. The sanitary sewer (SS) discharge information (i.e., building use and square footage, and average and peak sanitary sewer flows) submitted by the applicant was added to the City's Sanitary Sewer Hydraulic Model (SSHM). The SSHM output indicates that there is enough SS conveyance capacity in the modeled SS trunk system to accommodate the proposed development. The SSHM output may change based on pending development applications and future projects. The SSHM output does not guarantee or in any way reserve or hold SS conveyance capacity until applicant has Final Approval for the project. For purposes of this condition, "Final Approval" shall mean the final vote of the City Council necessary for the rezoning, architectural design, and tentative subdivision map to be approved, unless a legal challenge is brought to the Council decisions, in which case the Final Approval shall mean the final disposition of the legal challenge.

E10. The existing sanitary sewer (SS) mains serving the site not included in the Sanitary Sewer Hydraulic Model were monitored in the field by the applicant. The field monitoring information along with the SS discharge information submitted by the applicant were analyzed by the applicant's Civil Engineer who determined that said SS mains currently have enough conveyance capacity to accommodate the proposed development. The SS Flow Monitoring output may change based on pending development applications and future projects. The SS Flow Monitoring output does not guarantee or in any way reserve or hold SS conveyance capacity until applicant has Final Approval for the project. For the purposes of this condition, "Final Approval" shall mean the final vote of the City Council necessary for the rezoning, architectural design, and tentative subdivision map to be approved, unless a legal challenge is brought to the Council decisions, in which case the Final Approval shall mean the final disposition of the legal challenge.

E11. The applicant shall file a Final Subdivision Map to be recorded with the County of Santa Clara in order to create the legal parcels for proposed development prior to issuance of certificate of final occupancy. Final map shall be substantially in conformance with the Tentative Subdivision Map to the satisfaction of the Director of Public Works.

E12. Prior to the effective date of the resolution ordering vacation of existing easements and Centennial Boulevard street right-of-way, the applicant shall either (a) complete the relocation of utilities and provide access to all parcels, or (b) enter into a public improvement agreement pursuant to City Code section 17.05.650 for such relocation of utilities and provision of access secured in the form and amount set forth in City Code section 17.05.660, to the satisfaction of the Director of Public Works. Issuance of an encroachment permit(s) shall authorize the applicant to perform any work within the public right-of-way that is performed prior to the effective date of the resolution ordering vacation of existing easements and Centennial Boulevard street right-of-way. If work is to be performed pursuant to a public improvement agreement, that public improvement agreement shall require that the applicant provide continuous access to all parcels and complete the relocation of utilities prior to taking existing utilities out of service.

E13. The applicant shall obtain permit approval from the Santa Clara Valley Water District prior to commencement of any work within the jurisdiction of the Santa Clara Valley Water District.

E14. In general, sanitary sewer (SS) and storm drain (SD) main lines should be designed such that all other parallel facilities have at least an eight-foot (8') clear distance of separation, unless otherwise allowed by the Director of Public Works. SS and SD pipelines that have large diameters or are deeper in elevation may require greater separation from other facilities. Other facilities may have minimum prescriptive clearances that are greater than these minimums. All facilities shall be shown on building permit plans, and constructed in compliance with the approved plans, to the satisfaction of the Director of Public Works.

E15. Traffic signal controller cabinets, surveillance cameras, traffic signal fiberoptic interconnection conduits and cables, and associated communications upgrades (or alternate communication technology proposed by the applicant if satisfactory to the Director of Public Works) shall be installed at specific intersections as defined in, and in order to facilitate the implementation of the Transportation Management and Operations Plan (TMOP), prior to the first event necessitating such improvements as determined by the TMOP. Specific intersections (which shall not include any intersections outside the area bounded by California State Route 237 to the north, United States Highway 101 to the south, Calabazas Creek to the west and the Guadalupe River to the east) will be identified in the TMOP. In addition, prior to the first event at the Stadium, a Traffic Management Center shall be constructed in the stadium and connected with City Hall Traffic Management Center, to the satisfaction of the Director of Public Works.

E16. Prior to any events at the stadium, the applicant shall contract with a Traffic Engineering Consulting firm to develop and implement traffic signal coordination plans to accommodate before and after event traffic, and the

applicant shall pay all costs associated with development and implementation of the plans, to the satisfaction of the Director of Public Works. The scope of work for the Traffic Engineering Consulting firm shall be subject to the approval of the Director of Public Works and the Transportation Management and Operations Plan (TMOP) working group.

E17. The applicant shall comply with all mitigation measures and improvements identified in the Mitigation Monitoring or Reporting Program, and Transportation Management and Operations Plan (TMOP) to the satisfaction of the Director of Public Works and the Director of Planning and Inspection.

E18. If required by the Transportation Management and Operations Plan (TMOP), the applicant shall utilize Changeable Message Signs/Informational Signs identified in the TMOP.

E19. Prior to the abandonment of Centennial Boulevard, the applicant shall deposit funds to the City sufficient to design and reconstruct the traffic signal at Tasman Drive/Centennial Boulevard to the satisfaction of the Director of Public Works, in order to accommodate the new alignment. As a part of this task, the applicant shall identify curb radius for southwest and southeast corners of Tasman/Centennial (should match existing) to the satisfaction of the Director of Public Works.

E20. Prior to issuance of certificate of final occupancy, if there are any corners at Tasman Drive/Centennial Boulevard that have curb ramps that are not compliant with current American with Disability Act (ADA) standards, the applicant shall reconstruct those curb ramps in a manner that is compliant with ADA requirements, to the satisfaction of the Director of Public Works.

E21. For events exceeding 25,000 attendees, the applicant shall provide a bicycle valet service that includes a dedicated, bicycle storage area with valet service for visitors, to the satisfaction of the Director of Public Works. Initially, the bicycle storage area shall provide enough space to house a minimum of 750 bicycles. The size of the bicycle valet area shall be adjusted, based upon demand, up to a maximum capacity of 1,250 bicycles.

E22. The applicant shall provide 50 Class I bicycle lockers and 30 Class II bicycle racks, consistent with Valley Transportation Authority (VTA) technical guidelines prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Public Works. A minimum of ten bicycle lockers shall be provided for employees. The remaining bicycle lockers shall be E-lockers, consistent with VTA requirements.

E23. The applicant shall design and install reconfigured driveways on Tasman Boulevard in front of the Stadium to be one-way (right turn in on western most and right turn out on eastern most) to the satisfaction of the Director of Public Works.

E24. The applicant shall design and install sidewalk completely around the new southern end of Centennial Boulevard south of Tasman Drive to the satisfaction of the Director of Public Works.

E25. The applicant shall provide street lighting along Centennial Drive from Tasman Drive Boulevard south onto the project site, and along pedestrian pathways on the project site per City standards. The applicant shall coordinate with Silicon Valley Power (SVP) on design of the lighting. All lighting shall be installed and operational prior to the first event at the Stadium, and installed to the satisfaction of the Director of Public Works and the Director of Electric Utility.

K. Fire Conditions of Approval (Source: Fire Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

F1. The applicant shall submit a plan to the Fire Department for approval that designates the following, to the satisfaction of the Fire Chief, prior to building permit issuance for the super structure:

1. Fire apparatus access road around stadium which complies with the following:

   a) Minimum 20" width.

   b) Minimum 13'6" vertical clearance.

   c) Minimum turning 36-foot inside turning radius.

   d) Engineered to support 70,000 pounds.

2. Fire Apparatus staging area in the vicinity of the service entrance.

3. Staging areas for ambulances for game days.

4. Dead-end fire apparatus access roads that exceed 150-feet in length shall be provided with a 75-foot diameter vehicle turnaround or an approved hammerhead turnaround (incorporating the minimum 36-foot inside turning radius).

5. Adjacent private emergency access roads from lands adjoining a property required to have access shall not be considered unless such access is designated as a "shared Emergency Access Easement" (EAE.).

F2. The applicant shall provide fire apparatus access roads (public/private), to the satisfaction of the Fire Chief, which shall be established and maintained to

within 150 feet of all exterior walls of any building prior to issuance of building permits for the construction of the super structure.

F3. The applicant shall provide emergency communication systems where adequate interior emergency radio communication is not possible. Emergency radio coverage acceptable to the fire code official shall also be installed (SCMFEC 511.1). Communication systems shall be provided to the satisfaction of the Fire Chief prior to the first event at the stadium.

F4. The applicant shall submit building plans to be approved by the Fire Chief, prior to construction of the super structure, illustrating that buildings and structures with one or more passenger service elevators shall be provided with not less than one medical emergency service to all landings as follows (2007 CSC 3002.4a):

1. The elevator car shall be of such a size and arrangement to accommodate a 24-inch by 84-inch ambulance gurney or stretcher in the open horizontal position. The hoistway landing openings shall be provided with power-operated doors.

2. A minimum clear distance between walls or between walls and door excluding return panels not less than 80 inches by 54 inches, and minimum distance from wall to return panel not less than 51 inches with a 42 inch side slide door.

3. Shall be equipped with a key switch to recall the elevator non-stop to the main floor.

4. Medical emergency elevators shall be identified by the international symbol (Star of Life) for emergency medical services. The symbol shall not be less than 3 inches in size, permanently attached to each side of the hoistway doorframe on the portion of the frame at right angles to the hallway or landing area. Each symbol shall not be less than 78 inches and not more than 84 inches above the floor at the threshold.

F5. If underground fire service mains are required, the applicant shall submit separate plans, permit processing and inspection fees legally required for a public building, and fire flow calculations to the Fire Department for separate review and permit prior to building permit issuance for the super structure. Plans shall be to the satisfaction of the Fire Chief. Each parcel or building may require separate fire service. (NOTE: Stamped and wet signed civil drawings shall be submitted in conjunction with shop quality drawings by the installing "A" or "C-16" licensed contractor).

F6. If the development provides any combination of six (6) or more fire hydrants, fire sprinkler or standpipe services, it shall not be served by a dead end water main, but rather served by a looped service with two separate feeds containing

fire department connections (FDCs), post indicator valves (PIVs) and private fire hydrants. The FDC and PIV shall be located on the street fronting each building. The FDC shall not supplement/charge/pressurize the private fire service main, but only the building's sprinkler/standpipe/wharf hydrant system it serves. The FDC shall be located within 50 feet of a fire hydrant, plus on the same side of the road as the fire hydrant(s). If the project is subject to these requirements, the applicant shall submit plans illustrating compliance with stated requirements, to the satisfaction of the Fire Chief, prior to issuance of building permits for the super structure.

F7. In private underground piping systems, any dead end pipe, which supplies both sprinkler and hydrants, shall be not less than eight (8) inches in diameter.

F8. The applicant shall provide an automatic fire sprinkler system in accordance with the Fire Code, to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F9. A standpipe system shall be provided in accordance with the Fire Code, to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F10. An automatic fire pump shall be provided in accordance with the Fire Code, to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F11. At the time of building permit application for the super structure, the applicant shall submit a construction "Fire Safety Plan" to the Fire Department for review and approval prior to the first event at the stadium. The "Fire Safety Plan" shall address fire protection (i.e., access roads, water mains, on-site fire hydrants, fire extinguishers and standpipes) be installed and made serviceable prior to the time of construction. Include in the safety plan the location of fire extinguishers, fire hydrants (public and private), storage of combustible construction materials, propane tanks, and "NO SMOKING" signs. Plus the Safety plan shall address the how the following items will be used: temporary heating devices, temporary electrical wiring, cutting/welding and other open-flame devices. See "Standards for Construction site fire Safety" handout or website at www.unidocs.org/fire

F12. At the time of Building Permit application for the super structure, the applicant shall submit Civil Drawings that denote existing and proposed locations of fire hydrants, underground sectional valves, fire department connections and post indicator valves for fire department review and approval, to the satisfaction of the Fire Chief.

F13. Prior to combustible materials being brought onto the site, the applicant shall construct the approved fire apparatus access roads. These roads shall be built to the satisfaction of the Fire Chief, and shall be capable of supporting the

imposed fire apparatus load (70,000 lbs.) and have a Fire Department approved all-weather driving surface.

F14. At no time shall the applicant allow construction materials to obstruct access roads, access to buildings, hydrants or fire appliances.

F15. The applicant shall not commence any construction that involves combustible materials in excess of 100 feet from the street until emergency access roads; underground fire service lines and permanent on-site hydrants are in service and have been tested, flushed and approved by the Fire Department to the satisfaction of the Fire Chief.

F16. During construction of a building and until permanent fire-extinguishers have been installed, portable fire extinguishers are required within 50 feet travel distance to any part of the building in accordance with California Fire Code and the Santa Clara Municipal Fire and Environmental Code, to the satisfaction of the Fire Chief.

F17. General Permit Storm Water Discharges Associated with Construction Activity-Water Quality through the State (order 99-08-DWQ) shall be adhered to regarding non-point source issues on construction sites. (i.e., prevention of paints, debris, etc. from going down storm drains). The Permit is issued by the State Water Resources Control Board. Information regarding the permit can be found at www.waterboards.ca.gov/stormwtr/index.html.

F18. If the applicant utilizes Internal-combustion-powered construction equipment it shall be used as follows; (a) Equipment shall not be refueled while in operation, (b) Exhausts shall be piped to the outside of the building, or the applicant will be subject to administrative code enforcement.

F19. The applicant shall provide an on-site secondary water supply equal to the hydraulically calculated sprinkler demand, including the hose stream requirement, for high-rise portions, and the supply shall have duration of not less than 30 minutes in accordance with NFPA 13. The on-site secondary water supply shall meet the satisfaction of the Fire Chief.

F20. The applicant shall provide a smoke control system, in accordance with the Fire Code and to the satisfaction of the Fire Chief, prior to issuance of the certificate of occupancy.

F21. The applicant shall provide an emergency voice/alarm communication system to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy.

F22. The applicant shall provide a two-way fire department communications system for fire department use, to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy.

F23. The applicant shall provide a fire command center, to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy.

F24. The applicant shall provide a standby power system for standby power loads (elevators, power and lighting fire the fire command center, and ventilation and automatic fire detection equipment for smoke proof enclosures) to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy. Note: If the standby system is a generator set inside a building, the system shall be located in a separate room enclosed with 2-hour fire barriers or horizontal assemblies, or both. System supervision with manual start and transfer features shall be provided at the fire command center.

F25. The applicant shall provide an emergency power system to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy (exit signs and means of egress illumination, elevator car lighting, emergency voice/alarm communications systems, automatic fire detection systems, fire alarm systems, and fire pumps).

F26. Stairway doors other than the exit discharge doors shall be permitted to be locked from the stairway side. Stairway doors that are locked from the stairway side shall be capable of being unlocked simultaneously without unlatching upon a signal from the fire command center. Upon failure of electrical power to the locking mechanism the door shall unlock.

F27. The applicant shall provide a telephone or other two-way communications system connected to an approved constantly attended station at not less than every fifth floor in each required stairway where the doors to the stairway are locked. The system shall meet the satisfaction of the Fire Chief and be installed prior to the issuance of the certificate of occupancy.

F28. The applicant shall provide the high-rise building with a passive or active smoke control system or combination thereof in accordance with the California Fire Code and to the satisfaction of the Fire Chief. The system shall be installed prior to the issuance of the certificate of occupancy.

F29. The applicant shall provide project plans that illustrate that every exit enclosure in the high-rise building will be maintained to ensure to a reasonable degree that the system is capable of controlling smoke for the required duration (2007 CFC, 907.20). The exit enclosures shall be constructed to the satisfaction of the Fire Chief prior to the issuance of the certificate of occupancy.

F30. The applicant shall provide three medical stations within the stadium, which shall be constructed to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy. The submitted plans for the Fire Department's approval shall include a minimum of 3 medical stations, and more

specifically: 1. The location of the medical stations. 2. The floor plan of each station including the beds, work spaces and storage.

F31. The applicant shall provide an Emergency Command Center to the satisfaction of the Fire Chief, prior to the issuance of the certificate of occupancy. The applicant submitted plans for the Emergency Command Center shall include: 1. The location of the Emergency Command Center. 2. The floor plan including the work stations, equipment required by Fire Code, command table and storage.

F32. The Emergency Command Center can function as the fire command center required as part of the high-rise conditions as long as the conditions listed in Section 509 of the Fire Code are satisfied.

F33. The applicant should strategically place automatic emergency defibrillators throughout the stadium facility in order to ensure effective access and use by trained personnel. The Fire Chief can assist in preferred placement locations if these devices are included in the project plans.

L. Parks and Recreation Conditions of Approval (Source: Parks and Recreation Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

PR1. Prior to the abandonment of Centennial Boulevard south of Tasman Drive, the applicant shall record a final subdivision map with the Santa Clara County Clerk-Recorder that provides access and utility easements to the Youth Soccer Park Facility to the satisfaction of the Director of Public Works.

PR2. The applicant shall submit plans for review by the Director of Parks and Recreation, and final approval by the Director of Planning and Inspection regarding the relocation of the Youth Soccer Park entry gate, signage, fencing, utility boxes and drainage prior to reconstruction. The reconstruction design shall address and include all elements of the existing facility to be altered with the planned redesign of the facility and reduction in the number of existing parking spaces.

PR3. Prior to commencement of any work on the Planned Development Project Site that inhibits access to any parcel on the Overall Project Site, the applicant shall develop and submit a site Construction Management Plan to the satisfaction of the Director of Planning and Inspection that includes information regarding Youth Soccer Park security during construction, continuous access to the facility during construction, continuous utility service during construction, and public outreach.

PR4. The applicant shall provide the Director of Planning and Inspection with a Stadium construction schedule prior to commencement of any work on the Planned Development Project Site. The applicant shall notify the Director of Planning and Inspection of any changes to the Stadium construction schedule

that would impact the Youth Soccer Park Facility no less than 72 hours in advance of any work subject to grading and/or building permits, in order to minimize impacts to the regular season use of the Youth Soccer Park, and to mitigate dust and related impacts associated with the Youth Soccer Park entrance reconstruction.

PR5. If deemed necessary by the Director of Planning and Inspection, the applicant shall install fencing fabric along the existing Centennial Drive Youth Soccer Park fence to mitigate blowing dust onto the Youth Soccer Park fields within three days of the Director's request.

PR6. The applicant or their representative shall monitor and mitigate construction effects on the Youth Soccer Park fields to the satisfaction of the Director of Planning and Inspection. If there is blown dust, debris or other impacts to the Youth Soccer Park soccer fields during construction, construction contractor shall clean the fields by providing/paying for cleaning equipment and staff with experience in removal of dust and debris from the Youth Soccer Park synthetic turf and grass fields to return them to playable condition within 24 hours of the impact, to the satisfaction of the Director of Planning and Inspection.

PR7. The applicant shall provide temporary directional signs to the satisfaction of the Director of Planning and Inspection, to direct Youth Soccer Park staff and users to the accessible entrance during project construction. Signage shall be posted on Tasman in both directions, in front of David's Banquet Facility and at the end of Stars & Stripes prior to any work requiring grading and/or building permit approvals.

PR8. If deemed necessary by the Director of Parks and Recreation, the applicant shall install new signs addressing parking and parking restrictions on the new Youth Soccer Park entrance gates at the southern terminus of Centennial Boulevard and on the eastern entrance to the Youth Soccer Park prior to the first event at the Stadium.

M. Planning and Inspection Conditions of Approval (Source: Planning and Inspection Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

P1. Prior to the issuance of the certificate of final occupancy, the applicant shall demonstrate to the satisfaction of the City Building Official that the site is independently served by all required facilities and utilities.

P2. The applicant shall grade and develop the site so that site drainage will comply with the Building Code and the State Storm Management (C.3) requirements, to the satisfaction of the City Building Official. Compliance with Building Code and C.3 requirements pertaining to site drainage shall be

verified by the City Building Official prior to issuance of the certificate of final occupancy.

P3. Project building permit plan set submittals shall meet all site accessibilities (accessible path(s) from public transportation point(s)) to all accessible entrances and exits prior to issuance of building permits, to the satisfaction of the City Building Official.

P4. Project building permit plan set submittals shall meet building/facility accessibilities (provide handicap accessible access to all levels and to exit discharge as required, required number and arrangement of accessible seats, accessible toilet facilities and drinking fountains, etc.) prior to issuance of building permits, to the satisfaction of the City Building Official.

P5. The applicant shall propose site addressing (street number and street name), which shall be approved by the City Building Official, prior to issuance of the certificate of final occupancy.

P6. Project building permit plan set submittals shall include a Building Code Analysis that addresses the following items, to the satisfaction of the Building Official, prior to issuance of building permits:
a. Required Building Type of Construction
b. Required separation from property lines and from adjacent buildings
c. Allowable building area
d. Fire protection of exterior walls and openings
e. Exiting requirements including accessible means of egress
f. Emergency power for exit illumination
g. Required safe exit discharge (for quick and safe dispersal)

P7. The applicant, in conjunction with the working group responsible for oversight and implementation of the Transportation Management and Operations Plan (TMOP), shall comply with all provisions of the TMOP, to the satisfaction of the Director of Planning and Inspection and the Director of Public Works, prior to the first event at the Stadium. The TMOP shall be reviewed annually and updated as necessary, to the satisfaction of the Director of Planning and Inspection.

P8. The applicant shall employ green building standards and materials in the site design and construction of the Stadium project designed to meet United States Green Building Council Leadership in Energy and Environmental Design (LEED) certified standards, or equivalent, for new construction. Applicant shall provide the Director of Planning and Inspection with proof of LEED certification, or equivalent, within one year of the issuance of the certificate of final occupancy.

P9. The applicant shall provide certification from the project engineer that the drainage design for the subject property will prevent flood water intrusion in

the event of a storm of 100-year return period. The applicant's engineer shall verify to the satisfaction of the City Building Official that the site will be protected from off-site water intrusion by designing the on-site grading and storm water collection system using the 100-year hydraulic grade line elevation provided by the City's Engineering Department or the Federal Flood Insurance Rate Map, whichever is more restrictive. Such certification shall be submitted to the City Building Official prior to issuance of building permits.

P10. The applicant shall submit a truck hauling route and schedule for demolition, soil, debris and material removal, and construction to the Director of Planning and Inspection for review and approval prior to the issuance of demolition and building permits.

P11. Construction activities shall be limited as follows:

a. No person shall engage or authorize others to engage in construction of any building or related road or walkway, pool or landscape improvement, or in construction operations related thereto, including delivery of construction materials, supplies, or improvements on or to the Planned Development Project Site if the site is within three hundred (300) feet of any residentially zoned property except within the hours of 7:00 A.M. to 6:00 P.M. following on weekdays other than holidays, Monday through Friday, inclusive; and within the hours of 9:00 A.M. to 6:00 P.M. following, inclusive, on any Saturday which is not a holiday.

b. Pile driving shall be prohibited on weekends and holidays.

P12. The applicant shall comply with the Mitigation Monitoring or Reporting Program for the 49ers Stadium project that was adopted by the City Council on March 9, 2010, as amended by the City Council from time to time.

P13. The applicant shall provide more detailed stormwater design information for City review and approval prior to the issuance of with the Building Permits for site grading, Generally, the information shall be consistent with the mitigation measures identified in the EIR, to the satisfaction of the Director of Planning and Inspection.

P14. The applicant shall include pollutant source control measures, such as application of "No Dumping" labels on storm drain inlets and regular parking lot sweeping and trash removal. The applicant shall not utilize pesticides in the bioretention areas, and shall minimize pesticide use in the other landscaped areas. These measures shall be detailed in the Stormwater Management Plan, which is a required component of the Stormwater Operations and Maintenance Agreement that shall be prepared to the satisfaction of the Director of Streets and Automotive Services, prior to the issuance of the certificate of final occupancy.

P15. The applicant shall exhibit compliance with the Water Efficient Landscape Ordinance (WELO), to the satisfaction of the Director of Planning and Inspection, prior to the issuance of the certificate of final occupancy.

P16. The applicant shall submit plans for the piles clearly illustrating whether the proposed piles will cross property lines. The piles utilized to construct the superstructure shall not cross property boundaries, unless the applicant secures approval of an encroachment permit, or records an easement, prior to the issuance of building permits, to the satisfaction of the Director of Public Works.

P17. The applicant shall prepare a Construction Management Plan, to the satisfaction of the Director of Planning and Inspection, prior to issuance of any building permits for the project. The Construction Management Plan shall include, but not be limited to:

1. Public notices and community relations;
2. Project scheduling, site access and sequencing;
3. Safety program;
4. Construction administration; and
5. Environmental Compliance.

P19. The applicant shall prepare, and submit to the Director of Planning and Inspection for approval, an Annual Events Program, as described below; provided, however, that if the Annual Events Program or any amendment thereto, would provide for a total of more than 22 days on which Non-NFL events would be held with anticipated attendance of more than 25,000, the Annual Events Program (or amendment thereto) shall be subject to approval of the City Manager. The Annual Events Program shall include a calendar that will identify and describe anticipated events at the Stadium, including both projected NFL events and Non-NFL events, the anticipated number of such events, event type, size of event (number of tickets to be sold/participant counts), day(s), time and duration of the event, parking availability, including locations of available parking and evidence of Off-Site Parking Permits, if applicable, and any special considerations related to the event. The Annual Event Program shall identify the projected dates for NFL events including NFL games but actual dates for NFL games shall not be required to be submitted to the City until the NFL schedule is completed each year. Within ten (10) days of receipt of the NFL schedule, the Applicant shall provide the Director of Planning and Inspection with the NFL game schedule, which is subject to later adjustment, as required by the NFL. The Director of Planning and Inspection's approval of the Annual Events Program shall be limited to approval of the Non-NFL Events Schedule. An amendment of the Annual Events Program may be necessary for significant new Non-NFL events or significant changes in the number and size of smaller Non-NFL events proposed subsequent to the regular adoption of the Annual Events Program. The applicant shall reimburse the City for reasonable costs associated with review and implementation of the Annual Events Program, including, but not

limited to, City/public administrative costs related to ongoing updates and actions of the Transportation Management and Operations Plan (TMOP), Public Safety Plan, and monitoring of operations and maintenance of off-site parking areas made available for Stadium events. Annual administrative costs related to the Program may be shared proportionally among the events sponsored at the Stadium. All costs associated with the program shall be paid annually, to the satisfaction of the Director of Finance. In addition, the applicant shall enter into an agreement with the City for the reimbursement of reasonable public safety costs incurred in connection with the Annual Events Program.

P20. As further specified below, the applicant shall annually prepare, and submit to the Director of Planning and Inspection for approval, parking plans that include implementation programs for event parking for NFL games and other events at the Stadium. Parking may be provided through a combination of on-site, public off-site locations and/or private off-site locations, and shall include accessible parking meeting the requirements, including path of travel requirements, of Title 24 of the California Code of Regulations and the Americans with Disability Act (ADA). Off-site parking on non City-owned properties will require the approval of a City Off-Site Parking Permit in accordance with Chapter 18.86 of the Santa Clara City Code. Parking requirements are as follows:

- NFL Events: The applicant shall prepare and submit to the Director of Planning and Inspection an annual NFL Parking Plan, consistent with the requirements of the TMOP, which shall include an implementation program for providing parking for the proposed NFL games scheduled (or that could be scheduled) for the NFL season covered by the plan. It is anticipated that the NFL Parking Plan will provide for approximately 19,000 attendee parking stalls and 1,740 employee parking stalls for each NFL game, and that attendee spaces will generally be located within a 20 minute walk of the Stadium. If the anticipated parking as described above would not be provided for all NFL games, the NFL Parking Plan shall include enhancements of the TMOP designed to provide alternative transportation options or enhanced transit services to accommodate the projected attendance at such NFL games. Such enhancements may include, but are not limited to, provision of parking at more distant locations, shuttle service, increased charter bus service, increased transit access, or subsidy or other support to enhance transit use at such NFL games. The NFL Parking Plan shall be subject to the approval of the Director of Planning and Inspection, and shall be approved if the anticipated parking described above would be provided or if the NFL Parking Plan and TMOP will otherwise provide parking and transportation options adequate to accommodate the projected attendance at NFL games. If the Director of Planning and Inspection determines that the anticipated parking as described above will not be available for NFL

games on weekends and that the implementation of the NFL Parking Plan and TMOP will not sufficiently accommodate the projected attendance at such NFL games, the Director of Planning and Inspection shall provide specific feasible remedial actions required to be undertaken by the applicant to amend the NFL Parking Plan to accommodate the projected attendance, but the Director of Planning and Inspection shall not have the authority to limit NFL games at the Stadium on Saturdays or Sundays. If the Director of Planning and Inspection determines that the anticipated parking as described above will not be available for NFL games on weeknights and that implementation of the NFL Parking Plan and TMOP will not sufficiently accommodate the projected attendance at such NFL games, the applicant shall inform the NFL that it shall forego weeknight NFL home games on the schedule for that season.

- Non-NFL Events: In conjunction with the Annual Events Program, the applicant shall prepare and submit to the Director of Planning and Inspection an annual Non-NFL Event Parking Plan, which shall include an implementation program for providing parking for the Non-NFL Events proposed in the Annual Events Program consistent with the requirements of the TMOP. The parking requirement for non-NFL events shall be based on the expected attendance at each such event, and shall initially be calculated using a ratio of 3.61 expected attendees per vehicle (which is equivalent to the ratio resulting from 19,000 parking spaces required for a capacity NFL event with 68,500 patrons, and takes into account that some attendees will use other modes of transportation), although smaller events may have lesser or greater parking requirements in terms of seating ratios or occupancy demands, depending upon the nature and size of the event. The specific parking requirements may be adjusted from time to time as set forth in the TMOP. The Non-NFL Event Parking Plan shall be subject to the approval of the Director of Planning and Inspection.

P21. Stadium field lighting system shall incorporate reflector controls to control spill light and glare to avoid or minimize impacts upon nearby residential properties (east and south), as described in the project EIR.

P23. In order to control noise, the Stadium loudspeaker systems (permanent and temporary) shall be oriented in a manner consistent with Community Noise Analysis prepared by WJHW, dated May 27, 2010 for the proposed 49ers Stadium, in order to control noise impacts to adjacent residential neighborhoods. In accordance with Section 9.10.070(c) of the Santa Clara City Code, and the recommendations of this noise analysis, sound system levels shall be limited to 100 dBA for NFL games and other uses of the permanent speaker system, and not more than 105 dBA for temporary concert speaker systems as presented in the analysis. For sound system installations

and modifications within the Stadium site, the target for maximum sound level exposure in residential areas to the east and south shall be 60 dBA, in order to minimize noise impacts to sensitive receptors.

P24. The applicant shall obtain Valley Transportation Authority (VTA) approval to implement mid-block pedestrian crossing of the Light Rail tracks at vicinity of N/W Stadium gate (west of Centennial Boulevard), prior to the construction of any such crossing. Use of crossing shall be limited to time and manner as permitted by Transportation Management and Operations Plan (TMOP).

P25. The applicant shall obtain City approvals/permits for redesign and restripe of Valley Transportation Authority (VTA) parking lot east of Training Facility. Applicant shall coordinate with and provide VTA with a City-approved schedule of work in and around this lot prior to commencement of work.

P26. The applicant, in concert with the City, shall negotiate any necessary changes and execute any these changes to the Valley Transportation Authority (VTA) Cooperative Agreement for Construction and Maintenance of the Great America Rail Station Improvements - Stars and Stripes Drive Extension Parking lot, prior to commencement of work, and/or use of the parking lot.

P27. The applicant shall obtain license of entry for City properties (Stadium site, Stars and Stripes, Youth Soccer Park Facility, chip-seal lot) and permits, as required, prior to any work to the satisfaction of the City Manager.

P29. Prior to erection of any signage, the applicant shall obtain a Master Sign Program Permit (comprehensive sign program), to the satisfaction of the Director of Planning and Inspection. Exterior Stadium signage shall not exceed a maximum of 111,312 square feet.

P33. The following recommended Airport Land Use Commission conditions shall apply:

a. In accordance with ALUC Land Use Policy G-7, all proposed lighting shall be downward shrouded to avoid adverse light and glare impacts for aircraft landing and taking off at San Jose International Airport. The lighting shall be arrayed in such a manner that it cannot be mistaken for airport approach or runway lights by pilots.

b. Should the design of the lighting towers change, the following condition shall apply: All proposed Stadium lighting towers shall conform to the Federal Aviation Regulations Part 77 Surfaces.

N. Police Conditions of Approval (Source: Police Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

PD1. The applicant shall provide an adequate number of antennas/repeaters to ensure radio communications within the Stadium, prior to the first event at the stadium, to the satisfaction of the Chief of Police.

PD2. The applicant shall provide a centralized command post within the Stadium prior to the first event at the stadium, to the satisfaction of the Chief of Police.

PD3. The applicant shall provide a temporary holding/processing facility within the Stadium prior to the first event at the stadium, to the satisfaction of the Chief of Police.

PD4. The applicant shall develop, continuously update as necessary, and fund the implementation of a Public Safety Plan that shall be prepared to the satisfaction of the City Manager, prior to the first event at the stadium. The Public Safety Plan shall describe procedures for traffic management, security and public safety at NFL Games, and other large non-NFL events at the Stadium, which will include police and fire personnel stationed in and around the Stadium, as well as private security.

PD5. The applicant shall facilitate the formation of a multi-jurisdictional Joint Powers Authority (JPA), mutual aid agreement, or similar mechanism prior to the first event at the stadium. The multijurisdictional group shall include representatives from the City of Santa Clara and neighboring jurisdictions' Police and Fire Departments.

PD6. The applicant shall provide a minimum illumination of one-foot candle in parking areas and in all common pedestrian or landscaped areas of the development. The illumination should be deployed in fixtures that are both weather and vandal resistant.

PD7. Address numbers should be a minimum of twelve (12) inches in height for commercial or industrial buildings. The numbers shall be illuminated during hours of darkness, and in a color that is contrasting to the background material. They shall be clearly visible from the street.

PD8. Any required enclosure fencing (trash area, utility equipment, etc.) if not see through, should have a six inches opening along the bottom for clear visibility. Any gates or access doors to these enclosures should be locked.

PD9. Exterior stairs should be open style and well lit.

PD10. Exterior elevators should be see through for maximum visibility. All elevators should be well lit and equipped with a security mirror to provide interior and exterior visibility prior to entry or exit.

PD11. The Stadium should have a comprehensive internal security plan, tailored to the specific use. This should include, but not be limited to, employee security during working hours, after hours security, disaster preparation, etc. For retail

uses, especially where cash is on hand, robbery and cash security protocols should be established.

PD12. All entrances to parking areas should be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code Section 22658(a) for guidance).

PD13. All exterior doors should be adequately illuminated at all hours with their own light source.

PD14. Alleys or driveways to the rear of the Stadium providing pedestrian or vehicle access shall be fenced and locked after hours. A "Knox Box" or similar system should be used for Police and Fire emergency access.

O. Silicon Valley Power (SVP) Conditions of Approval (Source: Silicon Valley Power Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

EL1. Prior to submitting any project for SVP review. the applicant shall provide a site plan showing all existing utilities, structures, easements and trees. SVP will work with Applicant's Engineers on design of required substructures prior to issuance of Electric Permits.

EL2. Electric Department facilities include electric and fiber optic facilities. The applicant shall provide and install electric facilities per Santa Clara City Code Chapter 17.15.210, Property Developments, Municipal Utilities. Electric substructure facilities shall be installed prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility, to the satisfaction of the Director of Electric Utility (or designated representative).

EL3. The applicant shall install all new electric and fiber optic services underground. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department Standard UG-1000, latest version, and Santa Clara City Code Chapter 17.15.050. All new and relocated electric service shall be installed prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility, to the satisfaction of the Director of Electric Utility (or designated representative).

EL4. The applicant shall provide a "Load Survey" form showing all current and proposed electric loads, to the satisfaction of the Director of Electric Utility (or designated representative), prior to issuance of electric permit. Preliminary information from Applicant indicates they will require two (2) - 12Kv primary feeders to serve an approximate demand of 9.0MVA.

EL5. The applicant shall own, maintain, and install underground service entrance conduits and conductors per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per Silicon Valley Power Standard MS-G7, Rev. 2, to the satisfaction of the Director of Electric

Utility (or designated representative), prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility.

EL6. The applicant shall grant to the City, without cost, all easements and/or right of way necessary for serving the project site and for the installation of utilities (Santa Clara City Code chapter 17.15.110), prior to commencement of any utility work, to the satisfaction of the Director of Public Works.

EL7. The applicant shall install electric meters and services disconnects in a group at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed. Work shall be completed prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility, to the satisfaction of the Director of Electric Utility (or designated representative).

EL8. If the project requires equipment pads, the applicant shall provide an area that is clear of all utilities, trees, walls, and other obstructions. This area includes a 5'-0" area away from the actual equipment pad. The area in front of the equipment may be reduced from a 8'-0" apron to a 3'-0", providing the apron is back of a 5'-0" minimum wide walkway. Equipment pads must be a minimum of 10'-0 from all doors and windows, and shall be located next to a level, drivable area that will support a large crane or truck. All equipment pad locations shall be subject to the approval of the Director of Electric Utility (or designated representative).

EL9. The applicant shall submit a landscape plan illustrating that all trees, existing and proposed, will be a minimum of five (5) feet from any existing or proposed Electric Department facilities. Existing trees in conflict with Electric Department facilities and easements will have to be removed. Trees shall not be planted in Public Utility Easements (PUE) or electric easements. The landscape plan shall be to the satisfaction of the Director of Planning and Inspection, and the Director of Streets and Automotive Department.

EL10. The applicant shall comply with all electric overhead conductor clearances in accordance with CPUC General Order 95 to the satisfaction of the Director of Electric Utility (or designated representative). A minimum of ten (10) feet of radial clearance must be maintained from any and all overhead electrical conductors. All surfaces accessible to vehicular traffic must maintain a minimum distance of thirty (30) feet vertical clearance to any and all overhead conductors.

EL11. Any relocation or rearrangement of existing electric and fiber optic facilities shall be at applicant's expense and shall meet the satisfaction of the Director of Electric Utility (or designated representative). Electric facilities includes, but are not limited to, underground conduits, manholes, splice boxes, cables,

poles, conductors, anchors, down guys, fences, gates, equipment, and associated facilities.

EL12. The applicant shall pay Electric Load Increase fees in the amount of $833,400 prior to the installation of SVP conductors, equipment, or meters serving the applicant's facility.

EL13. Prior to the installation of SVP conductors, equipment, or meters, the applicant shall provide SVP, in accordance with current SVP standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by SVP in the development of frontage and on-site property. Specific details will be provided by SVP to the Applicant in a Developer's Work Package after Applicant submits electric building permit drawings to the Permit Center. The applicant shall further install, own, and maintain, at their cost, the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. (Santa Clara City Code chapter 17.15.210 (2)).

EL14. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Director Electric Utility (or designated representative). All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. No interconnection of a generation facility with SVP's electric system is allowed without written authorization from the Director of Electric Utility (or designated representative).

EL15. The applicant shall provide vehicular access across or through the project site to City property, including the Electric Department Gianera Power Plant and Northern Receiving Station (NRS). Vehicular access must accommodate vehicles with a sixty-two (62) foot wheel base and a minimum of a forty-five (45) foot turning radius in accordance with Department of Transportation requirements. Access easements shall be recorded prior issuance of the certificate of final occupancy, and meet the satisfaction of the Director of Public Works.

EL16. The applicant shall comply with Silicon Valley Power (SVP) standards pertaining to design, placement and connection of fiber facilities, and illustrate compliance on building permit plans. All work shall be completed in compliance with approved Building Plans, to the satisfaction of the Director of the Electric Utility.

P. Streets Conditions of Approval (Source: Streets and Automotive Services Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

ST1. Prior to issuance of the final building permit, the applicant shall submit a complete landscape and automatic irrigation plans for review and approval by the Director of Planning and Inspection, and the Director of the Streets and Automotive Services Department Plans are to include all existing trees with 4" or larger diameter (measured 54" above grade) on the project site and adjacent property if they may be impacted, proposed trees, existing storm water drainage facilities, proposed storm water drainage facilities, and proposed locations of solid waste containers. Trees are to be correctly labeled with specie name and correctly plotted as to exact location on the plans. Trees are to be noted as to whether they are proposed to be saved or removed. City tree preservation specifications are to be included on all plans where existing trees are to be saved during construction. A copy of these specifications can be obtained from the City Arborist City. Arborist standard notes shall be placed on all landscape plans.

ST2. The applicant shall supply and install City street trees per City specifications; spacing, specie, and size (24" box minimum) to the satisfaction of the Director of Streets and Automotive Services Department, prior to issuance of the certificate of final occupancy. All proposed on-site trees shall receive final approval for specie, size, spacing and planting location from the City Arborist.

ST3. The applicant and/or their designee shall not cut City trees, or any part of City trees, including roots, without following city tree preservation specifications and securing approval and direct supervision from the City Arborist. If the applicant fails to follow City Tree Removal Permit requirements, they shall be subject to fines, and they will be required to pay all removal and replacement costs.

ST4. Per City of Santa Clara Policy and Procedure 33, Tree Removal on City Property, the applicant shall receive required public tree removal permits, prior to removal of any public trees. Public tree removal permits are subject to review and approval by the City Arborist, and requested removals shall be approved in advance of removal by the City Arborist.

ST5. Existing mature trees identified by the City Arborist shall be maintained by the applicant where feasible. The applicant shall prepare a tree protection plan for any trees that are maintained on site for review and approval by the City Arborist prior to any demolition, grading or other earthwork in the vicinity of existing trees on the site.

ST6. The applicant shall install landscaping and irrigation systems that meet City standard specifications, prior to issuance of the certificate of final occupancy,

to the satisfaction of the Director of Planning and Inspection, and the Director of the Streets and Automotive Services Department.

ST7. Since this project involves disturbing a land area of one acre or more, the applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division, and the City Planning Division. A storm water pollution prevention plan is also required with the NOI, which shall meet the satisfaction of the Director of Streets and Automotive Services Department and the Director of Planning and Inspection.

ST8. Consistent with the mitigation measures contained in the Mitigation, Monitoring or Reporting Plan for the project, the applicant shall incorporate Best Management Practices (BMPs) into construction plans and incorporate post construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of building permits. Proposed BMPs shall be submitted to and thereafter reviewed and approved by the Director of Planning and Inspection for incorporation into construction drawings and specifications.

ST9. The applicant shall prepare an erosion control plan for approval by the Director of Planning and Inspection prior to the issuance of grading permits or building permits that involve substantial disturbance of ground area.

ST10. The applicant shall consider the use of pretreatment unit(s) to remove sediment, trash and/or gross pollutants upstream of any proposed media filters. If a pretreatment unit is proposed for inclusion as a component of the stormwater management plan the applicant shall include the unit on the project plans, and it shall be approved by the Director of Planning and Inspection.

ST11. All applicant proposed stormwater treatment vaults shall have internal treated distribution plumbing; no external folding racks are permitted. All stormwater treatment vaults shall be shown on project plans and approved by the Director of Planning and Inspection.

ST12. Decorative water features such as fountains and ponds shall be designed and constructed to drain to sanitary sewer only, to the satisfaction of the Director of Public Works. No discharges from water features to the storm drain are permitted.

ST13. The proposed project triggers Stormwater Management (C.3) requirements; therefore, all post construction structural controls shall require the applicant to execute with the City a Stormwater Treatment Measures Inspection and Maintenance Agreement prior to the issuance of the certificate of final

occupancy, to the satisfaction of the Director of Streets and Automotive Services Department.

ST14. The applicant shall comply with City Development Guidelines for Solid Waste Services as specified by development type. Proposed solid waste facilities shall be shown on project plans to the satisfaction of the Director of Streets and Automotive Services Department prior to issuance of building permits. All trash enclosures should be constructed to drain to the sanitary sewer.

ST15. The applicant shall comply with City Code Section 8.25.285 and recycle or divert at least fifty percent (50%) of materials generated for discards by the project during demolition and construction activities to the satisfaction of the Director of Planning and Inspection. No building, demolition or site development permit shall be issued unless and until applicant has submitted a construction and demolition debris materials check-off list. After completion of project, applicant shall submit a construction and demolition debris recycling report as stipulated by ordinance, or be subject to monetary, civil, and/or criminal penalties.

ST16. The applicant shall slurry seal and restripe any roadway damaged by construction to the satisfaction of the Director of Streets and Automotive Services, prior to issuance of the certificate of final occupancy.

ST17. The applicant is required to obtain solid waste collection services solely from the solid waste company designated by the City (currently Mission Trail Waste). Only the solid waste company designated by the City shall be permitted to charge fees for placing, transporting, and disposing or recycling materials from the site.

ST18. The applicant shall salvage all existing irrigation heads, valves, valve boxes, controllers and associated devices from the project site and deliver them to the Director of Streets and Automotive Services prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Streets and Automotive Services. Alternatively, the applicant shall inform the Director of Streets and Automotive Services 30 days in advance of any ground disturbing activities on the Overall Project Site so that City Staff can remove the irrigation devices prior to start of work.

ST19. The applicant shall salvage all existing light fixtures from the project site and deliver them to the Director of Streets and Automotive Services prior issuance of the certificate of final occupancy, to the satisfaction of the Director of Streets and Automotive Services. Alternatively, the applicant shall inform the Director of the Electric Utility 30 days in advance of any ground disturbing activities on the Overall Project Site so that City Staff can remove the existing light fixtures prior to start of work.

Q. Water and Sewer Department Conditions of Approval (Source: Water and Sewer Utilities Department Conditions of Approval to Development Permit PLN2008-06947 and Tentative Subdivision Map PLN2010-08216)

W1. It shall be the responsibility of the applicant to determine if there are any water wells on the property prior to issuance of grading permits. Unless the continued use of such well or wells is specifically permitted under City Code, and such well or wells can be demonstrated to meet all applicable sanitary standards and absent of contamination, the applicant shall seal the well or wells in accordance with the Standards promulgated by Santa Clara Valley Water District. A copy of the Destruction Permit issued by District, indicating that the well or wells have been properly sealed, shall be submitted to City as evidence thereof.

W2. Prior to issuance of plumbing permits for any outdoor irrigation, the applicant shall submit plans and calculations illustrating that all landscaping and irrigation systems meet water conservation requirements as per City's Rules and Regulations for Water Service. Plans and calculations shall be prepared to the satisfaction of the Director of Planning and Inspection.

W3. If the project requires pumping to maintain adequate water pressure for all uses including but not limited to fire, irrigation, and domestic uses from either recycled or potable water systems, the applicant shall be responsible for the design, installation, and maintenance of any such pumping system, to the satisfaction of the City Building Official.

W4. The applicant shall design and install independent water and sewer services. As such, said property shall not be connected to service lines from the adjacent properties, unless approved by the City Building Official. The systems shall be designed to the satisfaction of the Director of Water and Sewer Utilities.

W5. The applicant shall install a clean-out at the property line on all existing or proposed sanitary sewer lateral(s) to the satisfaction of the Director of Public Works, prior to the issuance of the certificate of final occupancy.

W6. The applicant shall provide landscape irrigation water by separate water service(s). The irrigation system shall be designed and constructed in compliance with City's Rules and Regulations for recycled water use to the satisfaction of the Director of Water and Sewer Utilities, prior to the issuance of the certificate of final occupancy.

W7. Landscape irrigation, toilet flushing, and cooling water needs shall be provided by City's recycled water system. The applicant shall submit landscape irrigation and plumbing plans with utility plans to the Water and Utilities Department for review and approval by the City, and the State Department of Public Health, prior to issuance of plumbing permits for the

recycled water system. The irrigation, plumbing and cooling tower piping plans must show all existing and proposed potable water piping.

W8. Decorative water features such as fountains and ponds shall be designed and constructed to include provisions for operating the system without City potable water supply. All decorative water features shall be capable of being physically disconnected from the source of potable water supply during City declared water conservation periods. Decorative water features may be permanently connected to City recycling water supply.

W9. The applicant shall illustrate on a landscape plan, to the satisfaction of the Director of Planning and Inspection, that all trees, existing and proposed, maintain a minimum of ten feet from any existing or proposed Water and Sewer Department facilities. If a City-approved Tree Root Barrier (TRB) is used, the TRB must be a minimum of five feet from existing and proposed Water and Sewer Department facilities, with the tree behind the TRB. Existing trees that conflict must be removed by developer. Trees shall not be planted in water or public utility easements.

W10. Any construction of new water and sewer facilities or relocation of existing Water and Sewer Utilities Department facilities shall be at applicant's expense, and completed to the satisfaction of the Director of Water and Sewer Utilities prior to the issuance of the certificate of final occupancy.

W11. The applicant shall install an approved sanitary sewer grease interceptor on the sanitary discharge line to the satisfaction of the San Jose/Santa Clara Water Pollution Control Plant, Industrial Waste Division. The applicant shall submit a letter from said division to verify compliance, prior to issuance of the certificate of final occupancy. In addition, the applicant shall secure arrangement to periodically have the grease removed and properly disposed of. Sewer rates will vary with type of discharge and sewer charges are a function of water use.

W12. The applicant shall install an approved backflow preventer on all water services including but not limited to any required fire service(s), domestic service(s), and recycled water service(s) connection at the applicants sole cost and expense, prior to issuance of certificate of final occupancy, to the satisfaction of the Director of Water and Sewer Utilities.

W13. The applicant shall install dual plumbing to implement domestic usage of recycled water for the proposed project prior to issuance of the certificate of final occupancy, to the satisfaction of the Director of Water and Sewer Utilities.

W14. The applicant shall contact the Water and Sewer Utilities Department Code Enforcement Officer for review and approval of the plans for irrigation, cooling towers and dual plumbing at the site. The plans shall be in compliance

with recycled water rules and regulations and must also be approved by South Bay Water Recycling and the State Department of Public Health for the specified services prior to issuance of plumbing permits for the systems.

W15. If relocation of 16-inch Ductile Iron Pipe (DIP) pipeline is required adjacent to San Tomas Aquino Creek, the applicant shall be responsible for all costs associated with the permitting, design and construction of the relocated pipeline and the abandonment of the existing pipeline. Work shall be completed prior to issuance of building permits, to the satisfaction of the Director of Water and Sewer Utilities.

W16. The applicant provided planting palette shall be consistent with the use of recycled water for irrigation purpose, and is subject to approval by the Director of Planning and Inspection prior to issuance of the certificate of final occupancy. Redwood trees and other salt sensitive landscaping are not compatible with recycled water based on the soil type in the area.

W17. Applicant prepared building permit plans shall include signage details for using recycled water for approved uses including but not limited to landscaping, toilet flushing and cooling towers, and shall be prepared to the satisfaction of the Director of Water and Sewer Utilities.

W18. The applicant is solely responsible for obtaining all necessary permits for construction or relocation of existing facilities including but not limited to those within the Santa Clara Valley Water District (SCVWD) property/easements. All permits necessary for construction or relocation of existing facilities shall be obtained prior to work commencing on these utilities.

W19. The applicant shall record utility easements for the proposed water and recycled water mains, and sewer lines on the project site prior to relocating any utilities, to the satisfaction of the Director of Public Works. In addition, the applicant shall record utility easements for the water services and all City owned appurtenances such as fire hydrants, fire services with backflow devices, water services with backflow devices and recycled water services prior to relocating any utilities, to the satisfaction of the Director of Public Works.

W20. The applicant shall provide isolation valves, air release valves, and other water appurtenances for the water and recycled water mains. At a minimum, main isolation valves shall be provided at all services, 90 degree bends, tees and every 500 feet. Valves shall be shown on project plans and installed prior to finalization of permits associated with the work to the satisfaction of the Director of Water and Sewer Utilities.

W21. The applicant shall provide bollards around the existing four inch water service on the south side of the property serving adjacent to the Silicon Valley

Power (SVP) substation prior to issuance of certificate of final occupancy, to the satisfaction of the Director of Water and Sewer Utilities.

W22. The applicant shall be responsible for relocating or replacing the existing chain link fence on the south side of the property adjacent to the Water Department Facility, to the top of the proposed retaining wall to the satisfaction of the Director of Water and Sewer Utilities, prior to issuance of the certificate of final occupancy.

W23. The applicant shall place the existing 16 inch water main on the west side of the project site in casing where the proposed new bridge is crossing the water main to the satisfaction of the Director of Water and Sewer Utilities, prior to the finalization of the permit associated with the work.

W24. The applicant shall submit building plans that clearly designate fire hydrants as either public or private, to the satisfaction of the Director of Water and Sewer Utilities.

W25. Stormwater Management plans submitted with the building permit application shall clearly illustrate that stormwater drains away from the water tank site, to the satisfaction of the City Building Official.

W26. Building Permit Plans shall show all existing and proposed water and recycled water services for all parcels on the overall project site, to the satisfaction of the Director of Water and Sewer Utilities.

W27. The applicant shall provide load bearing calculations for the locations that show water main depths less than four feet, to the satisfaction of the Director of Water and Sewer Utilities.

EXHIBIT M

CONSTRUCTION AGENCY AGREEMENT

BY AND BETWEEN

SANTA CLARA STADIUM AUTHORITY

AND

FORTY NINERS STADIUM, LLC

DATED AS OF _____, 2012

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CONSTRUCTION AGENCY AGREEMENT

THIS CONSTRUCTION AGENCY AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2012 (the "Effective Date"), by and between the SANTA CLARA STADIUM AUTHORITY, a joint powers agency created pursuant to Section 6532 of the California Government Code (the "Stadium Authority"), and FORTY NINERS STADIUM, LLC, a Delaware limited liability company ("Stadco" or "Construction Agent").

RECITALS

A. The Stadium Authority and Stadco have entered into that certain Stadium Lease Disposition and Development Agreement, dated as of December ___, 2011 (the "DDA").

B. The DDA contemplates that Stadco will administer and manage the construction for the Project (as defined below) as the exclusive agent for the Stadium Authority.

C. In consideration of and as an inducement the Stadium Authority entering into the DDA, Stadco has agreed to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINED TERMS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"Affiliate" shall have the meaning set forth in the DDA.

"Agreement" means this Construction Agency Agreement.

"Approvals" means all necessary permits, licenses, consents, approvals, entitlements and other authorizations required pursuant to applicable Law in connection with the development of the Project in accordance with the Operative Documents and all of the authorizations required for obtaining a certificate of occupancy of the Project for delivery of the possession and occupancy of the Completed Project pursuant to the Stadium Lease

"Budget-Related Revisions" means any revisions to the Project Documents required to reduce Project Development Costs to conform with the corresponding Final Development Budget line items.

"Building Permit" shall have the meaning set forth in the DDA.

"Business Day" shall have the meaning set forth in the DDA.

"City" means the City of Santa Clara, a municipal corporation.

"Code-Related Revisions" means any revisions to the Project Documents required for compliance with applicable building codes, government health and safety regulations or other applicable Law, or to comply with changes or corrections required in the plan check process.

"Completed" and "Completion" shall mean the later of Substantial Completion and the final completion of all Punch List Items as evidenced by the Stadium Authority making the final payment pursuant to the Design-Build Agreement.

"Construction Agent" means Stadco, or its Affiliate approved by the Stadium Authority, acting in its capacity under this Agreement.

"Construction Agent Representative" shall have the meaning set forth in Section 6.2 hereof.

"DDA" shall have the meaning set forth in Recital A above.

"Design Architect" means Howard, Needles, Tammen, & Bergendoff California Architects, P.C., a California corporation.

"Design Professionals" means any architectural, engineering or other design professionals retained by the Stadium Authority to provide services relating to the Project.

"Design Professional Agreement" means any contract between the Stadium Authority and a Design Professional.

"Design-Build Agreement" shall have the meaning set forth in the DDA.

"Design-Build Contractor" means TDJV or such other general contractor as approved by the Stadium Authority.

"Effective Date" is the date set forth in the first paragraph of this Agreement.

"Final Construction Documents" means the construction documents based on the GMP Set, approved by the City in connection with the issuance of the Building Permit.

"Final Development Budget" shall have the meaning set forth in the DDA.

"Force Majeure" shall have the meaning set forth in the DDA.

"GMP" shall have the meaning set forth in the Design-Build Agreement.

"GMP Amendment" shall have the meaning set forth in the Design-Build Agreement.

"GMP Set" means the drawings, specifications and other documents that form the basis for the guaranteed maximum price in the Design-Build Agreement, which documents shall fix and describe all design features, including, sustainable design features, as well as the size, character, and quality of the entire Stadium as to architectural, civil and structural components

and mechanical, electrical, plumbing and fire protection systems, structural dimensions, elevations, materials and colors, landscaping, and other features reasonably required by the Stadium Authority, all of the foregoing as reasonably required to define the scope of the Design-Build Contractor's obligations under the Design-Build Agreement.

"Improvements" shall have the meaning set forth in the DDA.

"Law" means federal, state or local law, ordinance, rule, regulation or order of any governmental or quasi-governmental authority, or any license, permit or other governmental approval.

"Operative Documents" means the following documents: the DDA, this Agreement, the Design-Build Agreement and the GMP Set.

"Party" means the Stadium Authority or Stadco, as applicable. "Parties" means both the Stadium Authority and Stadco.

"Person" or "Persons" means any individual, partnership, joint venture, corporation, limited liability corporation, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

"Procurement Plan" means the Subcontractor Selection and Procurement Plan approved by the Board on July 5, 2011, as the same may be amended from time to time, or any substitute subcontracting competitive bid process adopted by the Stadium Authority Board pursuant to California Government Code Section 6532.

"Punch List Items" means the list of items developed pursuant to Section 3.4 to be completed after Substantial Completion.

"Project" means the development of the Improvements.

"Project Documents" shall have the meaning set forth in the DDA.

"Property" means the Stadium Site, the Stadium and all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Stadium Site on or after the Effective Date.

"Schedule of Performance" shall have the meaning set forth in the DDA.

"Scope of Development" means the narrative description of the Project attached to the DDA.

"Stadium" means a stadium in the City suitable for NFL games, with a permanent seating capacity of up to 68,500 seats (with the possibility for expansion to approximately 75,000 seats for larger events such as an NFL Super Bowl), landscaping and infrastructure, all as more fully set forth in the Scope of Development attached to the DDA.

"Stadium Authority Representative" shall have the meaning set forth in Section 5.1 hereof.

"Stadium Lease" shall have the meaning set forth in the DDA.

"Stadium Site" shall have the meaning set forth in the DDA.

"State" means the State of California.

"Substantial Completion" means when the Stadium Authority has issued a Certificate of Completion pursuant to the DDA.

"TDJV" means Turner/Devcon Joint Venture, which is a joint venture of Turner Construction Company and Devcon Construction, Incorporated.

"Team" means the San Francisco Forty Niners, Limited, a California limited partnership.

"Total Development Costs" shall have the meaning set forth in the DDA.

"Transfer" shall have the meaning set forth in the DDA.

"Work" means the construction, design and other services required by the Final Construction Documents, and includes the furnishing of all material, labor, detailing, layout, equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements of the Final Construction Documents and items reasonably inferable from and consistent with the Final Construction Documents.

1.2 Other Terms. Unless otherwise defined herein, words that have well known construction industry meanings are used in this Agreement with such recognized meanings.

ARTICLE II

APPOINTMENT OF CONSTRUCTION AGENT

2.1 Appointment. Subject to the terms and conditions of this Agreement, the Stadium Authority hereby designates and appoints Construction Agent as its exclusive agent for the management and administration of the development of the Project in accordance with this Agreement and the other Operative Documents. The terms "develop", "development" and any other similar terms with the root word "develop" used herein shall, for all purposes of this Agreement, include all related construction, removals, installation, relocation and reinstallation, equipping, furnishing, improvement, development, testing, inspecting and project management, administration, consultation and advice necessary or incident to the construction of the Project.

2.2 Acceptance and Undertaking. Construction Agent hereby unconditionally accepts the appointment made by the Stadium Authority in Section 2.1 hereof, and undertakes, for the benefit of the Stadium Authority, to manage and administer the development of the Project in

accordance with this Agreement, as an independent contractor with and agent of and for the Stadium Authority. Construction Agent shall provide sufficient personnel to carry out the requirements of this Agreement and shall take actions with such reasonable promptness as to cause no delay in the Project.

2.3 Standard of Care. The Construction Agent shall perform the Construction Agent's services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Final Development Budget and in the best interests of the Stadium Authority.

2.4 Term. Construction Agent's duties under this Agreement shall commence on the Effective Date and shall terminate (except for those obligations that are stated to survive the termination of this Agreement) upon the first to occur of the following: (a) termination of the Stadium Lease in accordance with the terms thereof, (b) termination of the DDA in accordance with the terms hereof, (c) termination of this Agreement in accordance with the terms hereof, or (d) Completion of the Project. The termination of Construction Agent's authority hereunder shall not discharge Construction Agent or limit in any way Construction Agent's liability with respect to obligations arising under this Agreement or Construction Agent's performance or failure to perform any such obligation, on or prior to the date of termination of Construction Agent's authority granted under this Agreement.

2.5 Scope of Authorizations and Duties of Construction Agent.

(a) Management and Control of Construction Property. Construction Agent shall, on behalf of the Stadium Authority, manage and administer the Project in consultation with the Stadium Authority Representative in accordance with this Agreement and the other Operative Documents. As between the Stadium Authority and Construction Agent, Construction Agent shall have management responsibility for and control over (i) the Project Site, (ii) the means, methods, sequences and procedures with respect to the development of the Project, and (iii) the security of the Project. As further provided in this Section 2.5, the Construction Agent shall consider in good faith the advice and opinions of the Stadium Authority Representative in the management of the development of the Project.

(b) Design Professionals. Construction Agent shall manage and administer all Design Professional Agreements on behalf of the Stadium Authority, shall coordinate and supervise the performance of all duties of the Design Professionals thereunder, and shall submit timely requests for the approval of all payments, if any, required under any Design Professional Agreement, in the manner set forth in the DDA and the other Operative Documents.

(c) Design-Build Agreement; Design-Build Contractor. The Design-Build Agreement shall be in substantially the form attached to the DDA. Stadium Authority shall enter into the Design-Build Agreement concurrently with the execution of this Agreement. Construction Agent and the Stadium Authority shall not permit or agree to any change in the identity of the Design-Build Contractor without the written consent of the other.

(d) Contracts Generally; Contractors. Construction Agent, on behalf of the Stadium Authority and in conjunction with the Stadium Authority Representative, shall negotiate the terms of all contracts related to and necessary for the development of the Project. Construction Agent shall recommend the execution of any such contract to the Stadium Authority in writing. All such contracts, from and after the date of this Agreement, shall be signed by and in the name of the Stadium Authority.

(e) General Duties Pertaining to Project Facilities. Construction Agent is hereby authorized to and shall, as agent of the Stadium Authority and for the benefit of the Stadium Authority, take all actions necessary or desirable for the development of the Project on behalf of the Stadium Authority and as its agent pursuant to this Agreement and in accordance with the other Operative Documents. The Construction Agent's obligations include generally, but without limitation, the obligations to:

(i) review and monitor the Final Construction Documents produced by the Design-Build Contractor;

(ii) negotiate and make recommendations to the Stadium Authority as to execution of all contracts and make arrangements to procure all labor, materials, equipment and services necessary for the development of the Project;

(iii) manage and administer the performance of the obligations (other than any obligation requiring the payment of money) of the Stadium Authority under the Design-Build Agreement and all other contracts and arrangements relating to the development of the Project;

(iv) manage the process by which the Design-Build Contractor shall award subcontracts pursuant to the Procurement Plan;

(v) obtain, on behalf of the Stadium Authority, the Approvals;

(vi) monitor Total Development Costs in relation to the Final Development Budget. Construction Agent shall maintain current records showing actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with the Final Development Budget;

(vii) review and certify the amounts due Design-Builder on the Stadium Authority's behalf, authorize for payment the costs due to the Design-Builder under the Design-Build Agreement or other Operative Documents in accordance with the terms and conditions of the DDA and the other Operative Documents;

(viii) observe the Contactor's final testing and start-up of utilities, operational systems and equipment;

(ix) maintain all books and records with respect to the development of the Project;

(x) manage and monitor the insurance and risk management program established for the Project, including coordinating with the Stadium Authority Representative all claims made and received relating to the Project;

(xi) ensure and coordinate periodic project meetings with knowledgeable supervisory representatives of the Design-Build Contractor, the Stadium Authority Representative and other key Project participants to discuss the progress of the development of the Project;

(xii) assist the Stadium Authority with the check out of utilities and of operations systems and equipment for readiness and shall assist the Stadium Authority in the initial start-up and testing of such equipment and systems;

(xiii) secure and transmit warranties and similar submittals required by the Design-Build Agreement for delivery to the Stadium Authority and deliver all keys, manuals, record drawings and maintenance stocks to the Stadium Authority; and

(xiv) perform of all other acts necessary in connection with the development of the Project on behalf of the Stadium Authority in accordance with the Operative Documents.

(f) Specific Duties Pertaining to Development of GMP. Construction Agent is hereby authorized to and shall, as agent of the Stadium Authority and for the benefit of the Stadium Authority, in consultation with the Stadium Authority Representative, take all actions necessary or desirable for the development and finalization of the GMP on behalf of the Stadium Authority and as its agent pursuant to this Agreement and in accordance with the other Operative Documents. The Construction Agent's obligations include generally, but without limitation, the obligations to do the following within the time frames provided in the Design-Build Agreement:

(i) cause Design Architect to deliver the GMP Drawings and Specifications and the Prose Statement (as such terms are defined in the Design-Build Agreement), and other documents required for Design-Builder to develop its proposed GMP,

(ii) cause the Design-Builder to prepare and deliver the proposed GMP and the GMP Qualifications and Assumptions (as defined in the Design-Build Agreement) for Construction Agent's review and approval;

(iii) following receipt of the proposed GMP and GMP Qualifications and Assumptions, meet with the Design Builder, along with the Stadium Authority Representative, Design Architect and the Design Architect's consultants, to reconcile any questions, discrepancies or disagreements relating to the GMP proposal, the GMP Qualifications and Assumptions, the GMP Drawings and Specifications or the Prose Statement, and document the reconciliation by an addendum to the GMP Qualifications and Assumptions that shall be approved in writing by Construction Agent (after consultation with the Stadium Authority Representative, and subject to the limitations in Section 3.1 below), Design Architect and Design-Builder; and

(iv) Construction Agent, on behalf of the Stadium Authority and in conjunction with the Stadium Authority Representative, shall negotiate the terms of the GMP Amendment. Construction Agent shall recommend the execution of the GMP Amendment to the Stadium Authority in writing. The GMP Amendment shall be signed by and in the name of the Stadium Authority.

2.6 Stadium Authority Representative. Construction Agent shall coordinate with the Stadium Authority Representative and keep the Stadium Authority Representative fully informed regarding the progress of the development of the Project and any material issues that arise that may impact the Project development budget or schedule for completion of the Project. Construction Agent shall inform the Stadium Authority Representative of all schedule draw request meeting and shall develop with the Stadium Authority a schedule for regular meeting to discuss the Project's progress. The Construction Agent shall consider, in good faith, the recommendations and advice of the Stadium Authority relating to the development of the Project. The Stadium Authority Representative shall have full access to the Stadium Site to inspect the Work and to review construction documents as reasonably necessary to verify that the Work is in general conformance with the Final Construction Documents.

2.7 Access to Site. The Stadium Authority shall make the Stadium Site fully available to Construction Agent for the construction of the Project and for the other purposes contemplated by the Operative Agreements.

ARTICLE III

DESIGN AND CONSTRUCTION

3.1 Project Document Revisions.

(a) Construction Agent shall have overall responsibility to manage and control the Project Documents; provided, however, that Construction Agent may not approve without the approval of the Stadium Authority Representative any change orders or revisions to the Project Documents that (A) materially change the size, location, or elevations of the Stadium, (B) materially change the quality or appearance of the exterior materials of the Stadium, or (C) materially alter the location or dimension of the Stadium Authority Exclusive Facilities or the Public Safety Space. If such change order or revisions does not require an amendment to the Approvals the Stadium Authority Representative shall approve or disapprove submittals under this Section 3.1 within five (5) days of receipt of the submittal from the Construction Agent. If such change order or revisions require an amendment to the Approvals the Stadium Authority Representative shall approve or disapprove submittals under this Section 3.1 within five (5) days of receipt of the submittal from the Construction Agent, subject to the revisions to one or more of the Approval. If the Stadium Authority rejects the proposed change, then the Stadium Authority shall provide the Construction Agent with the specific reasons therefor, and the previously approved Project Documents shall continue to control.

(b) Subject to restrictions imposed in any Stadium Authority Financing Documents (as defined in the DDA), and provided that there is no increase in the GMP under the Design-Build Agreement, Construction Agent shall have authority, without any further approval

of the Stadium Authority, to approve the following change orders and revisions to Project Documents on behalf of the Stadium Authority:

(i) any and all Code Required Revisions;

(ii) any and all Budget-Related Revisions that are: (A) consistent with the Scope of Development; (B) consistent with the Mitigation Measures and Conditions of Approval (as defined in the DDA); (C) approved by the City or applicable Regulatory Agencies if required in connection with the Building Permit or Approvals.

(iii) any other change orders or revisions to the Project Documents that do not (A) materially change the size, location, or elevations of the Stadium, (B) materially change the quality or appearance of the exterior materials of the Stadium, or (C) materially alter the location or dimension of the Stadium Authority Exclusive Facilities or the Public Safety Space.

Prior to approving any single change order in the amount of Fifty Thousand Dollars ($50,000) or more, the Construction Agent shall deliver to the Stadium Authority Representative a copy of such any change order. The Stadium Authority Representative shall be provided twenty four (24) hours from receipt of such change order to consult with the Construction Agent regarding the basis of the change order and the Construction Agent's rational for approving the change order. The Construction Agent shall deliver all other change orders less than Fifty Thousand Dollars ($50,000) and all revisions to Project Documents approved pursuant to this Section 3.1(b) within ten (10) days of such approval. Such change shall become a part of the Project Documents, binding on StadCo and the Stadium Authority.

(c) Expedited Dispute Resolution. If the Parties are unable to resolve any disagreements under this Section 3.1, then either Party may file for Expedited ADR pursuant to the following provisions:

(i) Disputes or deadlocks among the Parties as to whether any of the submittals under Section 3.1(a) or (b) meet the requirements set forth in those sections ("Expedited ADR Dispute") shall be submitted to expedited alternative dispute resolution ("Expedited ADR"). The Parties have mutually agreed to establish a panel ("Panel") of at least three (3) arbitrators qualified to resolve design and construction-related contract disputes to be available to resolve Expedited ADR Disputes. Unless the Parties mutually agree otherwise, the arbitrators will be chosen from the AAA Large and Complex Case Panel of Arbitrators except that none of the arbitrators shall have performed, directly or indirectly, a material amount of work for any Party within the five (5)-year period immediately preceding the date of their selection or intend or desire to perform work for any Party within one (1) year following the date of their selection. The Parties shall exchange proposed Panel compositions within fifteen (15) days after the Effective Date and agree on the Panel within thirty (30) days after the Effective Date.

(ii) As to each Expedited ADR Dispute, the Parties shall mutually select an arbitrator from the approved Panel to whom Expedited ADR Disputes shall be submitted for resolution under this Section and that Person is hereinafter referred to as the

"Neutral". If the Parties do not agree upon the selection of the Neutral within ten (10) Business Days after delivery of the Dispute Notice, then, at the request of either Party, the Neutral shall be selected by lot from the Panel.

(iii) The Neutral shall have the power and authority to decide Expedited ADR Disputes, but shall not have the power or authority to award any damages. There shall be no discovery permitted with respect to any Expedited ADR other than that required by the Neutral. Each of the Parties who is party to such Expedited ADR shall present its position with respect to the issues to be determined by such Expedited ADR by written submission to the Neutral and the other Party, followed at least two days later by an oral presentation to the Neutral. Each of the Parties who is party to such Expedited ADR shall be given the opportunity to hear and orally respond to the others' presentations to the Neutral, and to present documents to the Neutral in support of such Party's position. The Neutral shall have the right to limit the documents presented to the Neutral to assure a prompt resolution of the issues to be determined by the Neutral. The Parties who are party to such Expedited ADR may have their respective counsels present at such Expedited ADR, but there shall be no examination or cross-examination of witnesses other than as required or permitted by the Neutral.

(iv) The Parties shall use Expedited ADR exclusively, rather than arbitration or litigation, as the means of resolving all Expedited ADR Disputes. Expedited ADR will be scheduled so that it is completed and a written decision is rendered within fourteen (14) days from the date of selection of the Neutral. The written decision by the Neutral shall be the binding, final determination on the merits of the Expedited ADR Dispute and judgment thereon may be entered in any court having jurisdiction. Each Party shall bear its own attorneys' fees and costs relating to the Expedited ADR. The fees and costs of the Neutral shall be borne by the Stadium Authority and included in Development Cost.

(v) Each of the Parties shall (a) accept such terms and conditions as the Neutral may seek to impose in relation to the discharge of his or her functions; (b) give the Neutral such assistance, facilities and information as the Neutral requests in the discharge of his or her duties and such Party is reasonably able to provide; and (c) make all reasonable efforts to ensure that the Neutral reaches a decision as soon as practicable.

3.2 Amendments to Design Architect Agreement and Design-Build Agreement. Subject to restrictions imposed in any Stadium Authority Financing, and after consultation with the Stadium Authority Representative, Construction Agent shall have authority to approve, on behalf of the Stadium Authority, amendments and modifications to any Design Professional Agreement and Design-Build Agreement and any such amendment shall not require advance notice or approval by the Stadium Authority except as may be required by the DDA.

3.3 Project Schedule.

(a) Construction Agent shall update the Schedule of Performance monthly to reflect changes to the milestone dates reflected in the construction schedule relating to the Work. Copies of the monthly updates shall be provided to the Stadium Authority Representative. Construction Agent shall provide notice to the Stadium Authority Representative of any amendments to any material milestone date contained in the Schedule of Performance.

(b) Construction Agent shall provide to the Stadium Authority the construction schedule for the Work issued by the Design-Build Contractor and all updates to such construction schedule. The construction schedule shall set forth the construction start dates and time parameters required to meet the targeted Completion Date, the date set for Substantial Completion of the Work and all other major milestone dates set forth in the Schedule of Performance. The construction schedule shall utilize the Primavera format or another format commonly used in the construction industry for large commercial construction projects.

3.4 Punch List. In consultation with the Stadium Authority Representative, Construction Agent shall cause to be prepared a list of Punch List Items to be completed by the Design-Build Contractor after Substantial Completion. Construction Agent shall provide the Stadium Authority Representative with a copy of the list of Punch List Items. Construction Agent shall use reasonable efforts to cause the Design-Build Contractor to complete the punch list items in accordance with the Design-Build Agreement.

3.5 Warranties. All Design-Build Contractor, relevant subcontractor, supplier and manufacturer warranties with respect to the Stadium shall name StadCo and the Stadium Authority as intended beneficiaries of the warranties.

3.6 Liens. Construction Agent shall use commercially reasonable efforts to cause the Stadium to be constructed in accordance with the Final Construction Documents free and clear of any stop notices and all mechanics or materialmen liens arising from the Work that encumber the Property. In the event any such lien is filed by the Design-Build Contractor, or any subcontractors or suppliers, Construction Agent shall cause said lien to be discharged or transferred to appropriate bond within thirty (30) days of recording. If Construction Agent does not discharge or transfer to appropriate bond any such lien within thirty (30) days of recording, the Stadium Authority shall have the right, but not the obligation, to cause the lien to be released by any commercially reasonable means that the Stadium Authority reasonably deems proper. Construction Agent shall have the right to contest any such lien in good faith.

ARTICLE IV

COMPENSATION

4.1 Budget. Construction Agent shall prepare a budget for approval by the Executive Director of the Authority, identifying projected costs associated with Construction Agent's performance of services under this Agreement (the "CA Budget"). Costs shall include salaries and benefits for employees devoted primarily to performing Construction Agent's duties hereunder, and other items identified in the final CA Budget. The CA Budget shall be updated from time to time, subject to the approval of the Executive Director.

4.2 Compensation. From and after the Close of Escrow pursuant to the DDA, the Authority will reimburse Construction Agent for its actual costs incurred consistent with the approved CA Budget pursuant to progress billings submitted on a monthly basis throughout the term of this Agreement. Construction Agent shall compile and submit to the Authority each month an invoice, together with all requisite receipts and documentation reasonably required by

the Authority, of costs actually incurred by Construction Agent in performing its services under this Agreement for the previous month.

ARTICLE V

INDEMNIFICATION AND INSURANCE

5.1 Indemnification. To the extent permitted by law, and subject to the indemnification obligations under the DDA, Construction Agent undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, their respective commissioners, council members, officers, employees, agents, and successors (the "Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability arising out of any personal or bodily injury, including death, to any person or destruction of property resulting from the negligent performance (or failure to perform) by Construction Agent of its obligations under this Agreement except to the extent caused by the negligence or willful misconduct of the Indemnified Parties. Notwithstanding the foregoing, Construction Agent shall not be liable to indemnify, hold harmless or defend any of the Indemnified Parties for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with (a) any loss or liability due to a Force Majeure, or (b) Construction Agent's performance of any actions in accordance with written instructions from the Stadium Authority, or actions otherwise expressly approved by the Stadium Authority if performed in compliance with such written instructions or express approval.

5.2 Insurance Requirements. Construction Agent shall purchase and maintain, and shall cause Design Architect and Design-Builder (as appropriate) to purchase and maintain, insurance consistent with the Insurance Program approved by the Stadium Authority pursuant to the DDA.

ARTICLE VI

PARTY REPRESENTATIVES

6.1 Designation of Stadium Authority and City Representatives. The Stadium Authority Executive Director hereby designates _____ (the "Stadium Authority Representative") to act as liaison and contact person between Construction Agent, on the one hand, and the Stadium Authority Executive Director , on the other hand, in administering and implementing the terms of this Agreement and the other Operative Documents. The Stadium Authority may change the Person it has designated as its representatives so longs as it notifies Construction Agent of such change within three (3) Business Days of the effective date of the change. Except as otherwise specifically provided in this Agreement or the other Operative Documents, the Stadium Authority Representative shall have the power, authority and right to:

(a) review, approve and consent, in writing, to documents, plans, applications, and requests required or allowed by Construction Agent to be submitted to the Stadium

Authority Representative or the Stadium Authority, as the case may be, pursuant to this Agreement or the other Operative Document;

(b) consent to and approve, in writing, actions, events and undertakings by Construction Agent or other Persons for which consent and/or approval is required from the Stadium Authority under this Agreement; and

(c) sign any and all documents on behalf of the Stadium Authority necessary or convenient to the foregoing approvals and consents in a timely manner.

Any consent, approval, decision, or determination under this Agreement or the other Operative Documents by the Stadium Authority Representative shall be binding on the Stadium Authority.

6.2 Designation of Construction Agent Representative. The Construction Agent hereby designates Jack Hill or his designee (the "Construction Agent Representative") to act as liaison and contact person between Construction Agent, on the one hand, and the Stadium Authority, on the other hand, in administering and implementing the terms of this Agreement or the other Operative Documents. Construction Agent may change the Person it has designated as its representatives so longs as it notifies the Stadium Authority of such change within three (3) Business Days of the effective date of the change. Except as otherwise specifically provided in this Agreement or the other Operative Documents, Construction Agent Representative shall have the power, authority and right to:

(a) review, approve and consent to documents, plans, applications, and requests required or allowed by the Stadium Authority Representative or the Stadium Authority, to be submitted to Construction Agent pursuant to this Agreement or the other Operative Documents;

(b) consent to and approve actions, events and undertakings by the Stadium Authority Representative or the Stadium Authority, as the case may be, or other Persons for which consent and/or approval is required from Construction Agent under this Agreement; and

(c) sign any and all documents on behalf of Construction Agent necessary or convenient to the foregoing approvals and consents in a timely manner.

(d) Any consent, approval, decision, determination, waiver or amendment under this Agreement by Construction Agent Representative shall be binding on Construction Agent.

ARTICLE VII

DEFAULT

7.1 Construction Agent Event of Default. Following notice and cure as set forth in Section 6.2, each of the following events constitutes a "Construction Agent Event of Default" and a basis for the Stadium Authority to take action against Construction Agent:

(a) Construction Agent breaches any provision of this Agreement and has not cured such default within the applicable time period contained therein, subject, to the rights of any Tenant Mortgagee under the Stadium Lease..

(b) StadCo defaults under the Stadium Lease and has not cured such default within the applicable time period contained therein, subject, to the rights of any Tenant Mortgagee under the Stadium Lease.

(c) a StadCo Event of Default has occurred under the DDA, subject, to the rights of any Tenant Mortgagee.

(d) StadCo, or an Affiliate, defaults under the Subordinate Loan Documents and such default is not cured within the time periods set forth therein, subject, to the rights of any Tenant Mortgagee.

7.2 Notice and Cure Procedure; Remedies. Upon the occurrence of any breach under Section 6.1(a) above, the Stadium Authority shall first notify Construction Agent in writing of its purported breach or failure, giving Construction Agent thirty (30) days from receipt of such notice to cure any other breach or failure. In the event Construction Agent does not then cure the payment default within such ten (10) day period, or such other default within such thirty (30)-day period (or, if the default is not reasonably susceptible to cure within such thirty (30)-day period, Construction Agent fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion within a reasonable time not to exceed sixty (60) days from receipt of the default notice), then the Stadium Authority shall be entitled to any rights afforded it at law or in equity by pursuing any or all of the following remedies:

(1) terminating this Agreement upon ten (10) days prior written notice to Construction Agent; provided, however, that this Agreement shall not be terminated unless the DDA and Stadium Lease are also simultaneously terminated;

(2) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for a Construction Agent Event of Default; or

(3) seeking any other remedy available at law or in equity (excluding punitive damages and Consequential Damages). If the Stadium Authority elects to terminate this Agreement the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

ARTICLE VIII

MISCELLANEOUS

8.1 Notices. All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Agreement shall be given in writing to such Party at the address set forth below, or at such other address as such Party shall designate by written notice to the other Party to this Agreement and may be (1) sent by registered or certified U.S. Mail with return receipt requested, (2) delivered personally (including delivery by private courier services) or (3) sent by facsimile (with confirmation of such notice) to the Party entitled

thereto. Such notices shall be deemed to be duly given or made (i) three (3) Business Days after posting if mailed as provided, (ii) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day or (iii) in the case of facsimile (with confirmation of such notice), when sent, so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties ("Additional Addressees") to whom notice hereunder must be given, by delivering to the other Party five (5) days notice thereof setting forth the address(es) for each such Additional Addressee:

If to the Stadium Authority:	Santa Clara Stadium Authority 1500 Warburton Avenue Santa Clara, CA 95050 Attention: Jennifer Sparcino, Executive Director
With a copy to:	Santa Clara Stadium Authority 1500 Warburton Avenue Santa Clara, CA 95050 Attention: Richard E. Nosky, Jr., Authority General Counsel
If to Construction Agent:	49ers Stadium, LLC 4949 Centennial Boulevard Santa Clara, CA 95054 Attention: John Edward York, President
With a copies to:	49ers Stadium, LLC 4949 Centennial Boulevard Santa Clara, CA 95054 Attention: Larry MacNeil, CFO and 49ers Stadium, LLC 4949 Centennial Boulevard Santa Clara, CA 95054 Attention: Jack Hill, Project Executive and Coblentz, Patch, Duffy & Bass LLP One Ferry Building, Suite 200 San Francisco, CA 94111 Attention: Harry O'Brien

Notwithstanding the foregoing, periodic and ordinary course notices, deliveries and communications between Construction Agent and the Stadium Authority Representative may be given (and shall be considered given when provided) by any of the means set forth above.

8.2 Amendment. This Agreement may not be amended or modified except in a writing signed and duly executed by the Parties.

8.3 Binding Effect. This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Stadium Authority and Construction Agent, subject to the limitations on assignment set forth in the DDA. Where each term "Stadium Authority", "Construction Agent" or "Stadco" is used in this Agreement, it means and includes the respective successors and assigns.

8.4 Waiver. Waiver by any Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement. Any waiver must be in writing and signed by all Parties whose interests are being waived.

8.5 Nonrecourse Liability of Construction Agent Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Agreement and except for their criminal acts with respect to this Agreement (i.e., acts which would constitute crimes were they prosecuted for and convicted of such acts), the officers, directors, partners, shareholders, members, employees and agents of Construction Agent (the "Construction Agent Personnel") shall not in any way be liable under or with respect to this Agreement; no deficiency or other monetary or personal judgment of any kind shall be sought or entered against any of Construction Agent Personnel with respect to liability under or with respect to this Agreement; no judgment with respect to liability under or with respect to this Agreement shall give rise to any right of execution or levy against the assets of any of Construction Agent Personnel; and the liability of Construction Agent under this Agreement shall be limited to the assets of Construction Agent and to any guarantee delivered in connection with this Agreement, strictly in accordance with the terms of any such guarantee(s).

8.6 No Indirect Damages. In no event shall any Party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from the sole or concurrent negligence or intentional acts of such Party or any of its Affiliates or related parties. Notwithstanding the foregoing, this limitation of liability shall not apply to any indemnification for third-party claims available at law or pursuant to, but subject to the limitations in, Article IV. The preceding limitation shall not be a basis for any claim or argument that a dispute should not be arbitrated. The provision shall survive the expiration or earlier termination of this Agreement.

8.7 Assignment. Neither Party shall Transfer this Agreement or any of its rights under this Agreement except in connection with a Transfer that is permitted under the terms of the DDA.

8.8 Headings. The headings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or of its provisions.

8.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Laws, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with applicable Laws, (b) does not alter any of the substantive rights, obligations or liabilities of any Party under this Agreement or any other Operative Document, and (c) confers upon the Parties the benefits intended to be conferred by the invalid provision; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.

8.10 Absence of Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

8.11 Governing Law. This Agreement and the interpretation of its terms shall be governed by the laws of the State, without application of conflicts of law principles.

8.12 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

8.13 Relationship of Parties. No partnership or joint venture is established among the Parties under this Agreement. Except as expressly provided in this Agreement, no Party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other Party or to have been authorized to incur any expense on behalf of any other Party or to act for or to bind any other Party. No Party shall be liable for any acts, omissions or negligence on the part of the other Parties or their employees, officials, agents, independent contractors, licensees and invitees. Construction Agent is an independent contractor of the Stadium Authority and the City.

8.14 Context. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

8.15 Incorporation by Reference. All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

8.16 Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

8.17 Force Majeure. If any Party shall be delayed in the performance of any obligation hereunder as a result of a Force Majeure, then the performance of such obligation shall be extended by the length of such delay. In response to and during any delay caused by a Force Majeure, the Parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure as promptly as reasonably possible and any Party seeking an excuse of performance due to such Force Majeure shall work diligently and in good faith to reduce or eliminate any damage, cost or delay caused by such Force Majeure.

8.18 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Parties had executed the same document. All counterparts shall be construed together and shall constitute one instrument.

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

SANTA CLARA STADIUM AUTHORITY,
a California joint powers agency

JENNIFER SPARACINO
Executive Director

1500 Warburton Avenue
Santa Clara, CA 95050
Phone: (408) 615-2210
Fax: (408) 241-6771

APPROVED AS TO FORM:

Stadium Authority General Counsel

ATTEST:

ROD DIRIDON, JR.
Stadium Authority Secretary

FORTY NINERS STADIUM, LLC,
a Delaware limited liability company

JOHN EDWARD YORK
President

4949 Centennial Boulevard
Santa Clara, CA 95054
Phone: (408) 562-4949
Fax: (408) 727-4937

Exhibit N

Summary of Parking Rights on City Owned Properties

Through the Ground Lease, the City will convey to the Stadium Authority certain parking rights on City owned properties (the "Parking Rights"). Through the Stadium Lease, the Stadium Authority will convey to Stadco all of the Parking Rights relating to NFL Events. The Ground Lease will not be amended without the approval of Stadco.

Except as specifically provided in this Summary of Parking Rights, no additional rent or charge shall be payable by the Stadium Authority or Stadco for the Parking Rights, which shall be appurtenant to their rights as tenants under the Ground Lease and Stadium Lease. Incremental costs of operation and clean-up of the parking facilities, resulting from exercise of the Parking Rights shall be borne by Stadco for all NFL Events and by the Stadium Authority (or event organizer) for all Non-NFL Events. In each case, the Parking Rights include exclusive rights to sell advertising and space for promotional displays and activities in the parking areas in conjunction with NFL and Non-NFL events, including, without limitation, concessions stands and kiosks, signage, advertising and other promotional uses ("Incidental Rights") on event days. Stadco shall have the exclusive right to sell naming rights and sponsorship rights for the parking areas in conjunction with NFL and Non-NFL events.

The Parking Rights in certain of the parking facilities are subject to the rights of others under existing contracts, as described below. These existing contracts will not be amended in any way that would affect the Parking Rights without the approval of the Stadium Authority and Stadco.

Parking stall counts used in this Summary are approximate, and may be subject to adjustment from time to time.

The Parking Rights consist of the following, and the parking stalls are located in the areas generally depicted in the attached Exhibit A.

1. Main Lot.

(a) Parking Facility: Upon completion of restriping by the City, approximately 7,000 automobile spaces (depending on the final restriping plan) located on the so-called "Main Lot", including the property on which the substation is currently located (APNs 104-43-51, 104-43-52, 104-43 38, 104-43-004, and 104-42-14).

(b) Prior Rights: The Parking Rights in the Main Lot are subject to the parking rights of the tenant under the Great America Ground Lease.

(c) Parking Rights: Subject only to the parking rights of the tenant under Great America Ground Lease, Stadco would have the right to use the entire Main Lot for NFL Events and the Stadium Authority would have the right to use the entire Main Lot to the extent needed for Non-NFL Events. Portions of the Main Lot may be used as a bicycle storage area.

2. Convention Center/TechMart.

(a) Parking Facility: Approximately 2,000 spaces located in the existing Convention Center Garage, surface spaces at Convention Center and at the TechMart.

(b) Prior Rights: The Parking Rights in the Convention Center/TechMart are subject to the rights of the tenants under the Hyatt (approximately 500 spaces) and TechMart (approximately 1,081 spaces) Ground Leases.

(c) Parking Rights: Approximately 500 spaces are available net of the spaces allocated to Hyatt and TechMart. Stadco would have the right to use all of these available spaces for NFL Events and the Stadium Authority would have the right to use these available spaces to the extent needed for Non-NFL Events.

(d) Other Terms: Specific location of the spaces is to be determined in consultation with the tenants under the Hyatt and TechMart Ground Leases. The Stadium Authority and Stadco will cooperate with the Convention Center to develop a mutually agreeable plan to encourage events at the Convention Center to be held in conjunction with NFL and Non-NFL Events and to identify sponsorship and advertising opportunities for the Convention Center that do not conflict with that conflict with the Incidental Rights or the terms of contracts that Stadco, the Team or any Second Team negotiates with its advertisers or sponsors.

3. Tasman Drive Parking Structure.

(a) Parking Facility: Approximately 1,812 spaces to be located in the Tasman Drive Parking Structure (City Project No. CE 10-11-11).

(b) Prior Rights: The Parking Rights in the Tasman Drive Parking Structure would be subject to the parking rights, if any, of the tenants under the Great America and Hyatt Ground Leases.

(c) Parking Rights: Stadco would have the right to use the entire Tasman Drive Parking Structure for NFL Events and the Stadium Authority would have the right to use the entire Tasman Drive Parking Structure to the extent needed for Non-NFL Events.

4. Stars and Stripes Lot.

(a) Parking Facility: Approximately 189 spaces along extension of Stars and Stripes Drive.

(b) Prior Rights: The Parking Rights in the Stars and Stripes Lot shall be subject to that certain Cooperative Agreement dated July 24, 2001 between the City and the Santa Clara Valley Transportation Authority ("VTA), as the same may be amended in connection with the Ground Lease.

(c) Parking Rights: Stadco would have the right to use the entire lot for NFL Events and the Stadium Authority would have the right to use the entire lot to the extent needed for Non-NFL Events.

5. Tasman Drive Surface Lots.

(a) Affected Property: Approximately 789 spaces to be located in surface Lots on Tasman Drive (APNs 104-03-038 and 104-03-039).

(b) Prior Rights: None.

(c) Parking Rights: Until development commences for another use of these lots, Stadco would have the right to use the entire lot for NFL Events and the Stadium Authority would have the right to use the entire lot to the extent needed for Non-NFL Events.

(d) Other Terms: Stadco will pay to the City as owner of the lots five dollars ($5.00) per stall for each NFL Game for which the Tasman Drive Surface Lots are used for parking. Parking for Non-NFL Events will be provided to the Stadium Authority at no cost.

(e) Future Development: In the event the City offers the Tasman Drive Surface Lots, or either of them, for sale or lease, the following shall apply:

(i) Any RFP or other document offering the Tasman Drive Surface Lots, or either of them, for sale or lease shall indicate the City's intent to require that to the extent that any such development includes parking in excess of that reasonably required for the use of such development on Stadium event days, such parking shall be made available for parking for NFL Events and Non-NFL Events at no charge. In the course of negotiating any binding agreements for the sale or lease of each of the Tasman Drive Surface Lots, the City, Stadco and any purchaser or lessee of each of the lots shall agree upon the terms to be included in such sale or lease documents related to Stadium event parking.

(ii) The City shall cooperate with the Stadium Authority and Stadco to identify other City property in the area that could be used for Stadium event parking. To the extent available, CFD funds will be used to put such property into condition to be used for parking. The City shall have no responsibility for any such costs, but shall make such property available to the Stadium Authority and Stadco at no cost.

6. South Lot.

(a) Parking Facility: Approximately 181 spaces, just south of the Stadium Site, identified as Parcel 6 on the Tentative Subdivision Map for the Stadium Site.

(b) Prior Rights: Rights in the City of access to Parcel 5 and to APN 104-43-001, as provided in a reciprocal easement agreement to be entered into simultaneously with the recordation of the Tentative Subdivision Map.

(c) Parking Rights: Stadco and the Stadium Authority, and potentially Silicon Valley Power, would have the right to use the entire South Lot on a shared basis.

Exhibit A to:
Summary of Parking Rights on City Owned Properties

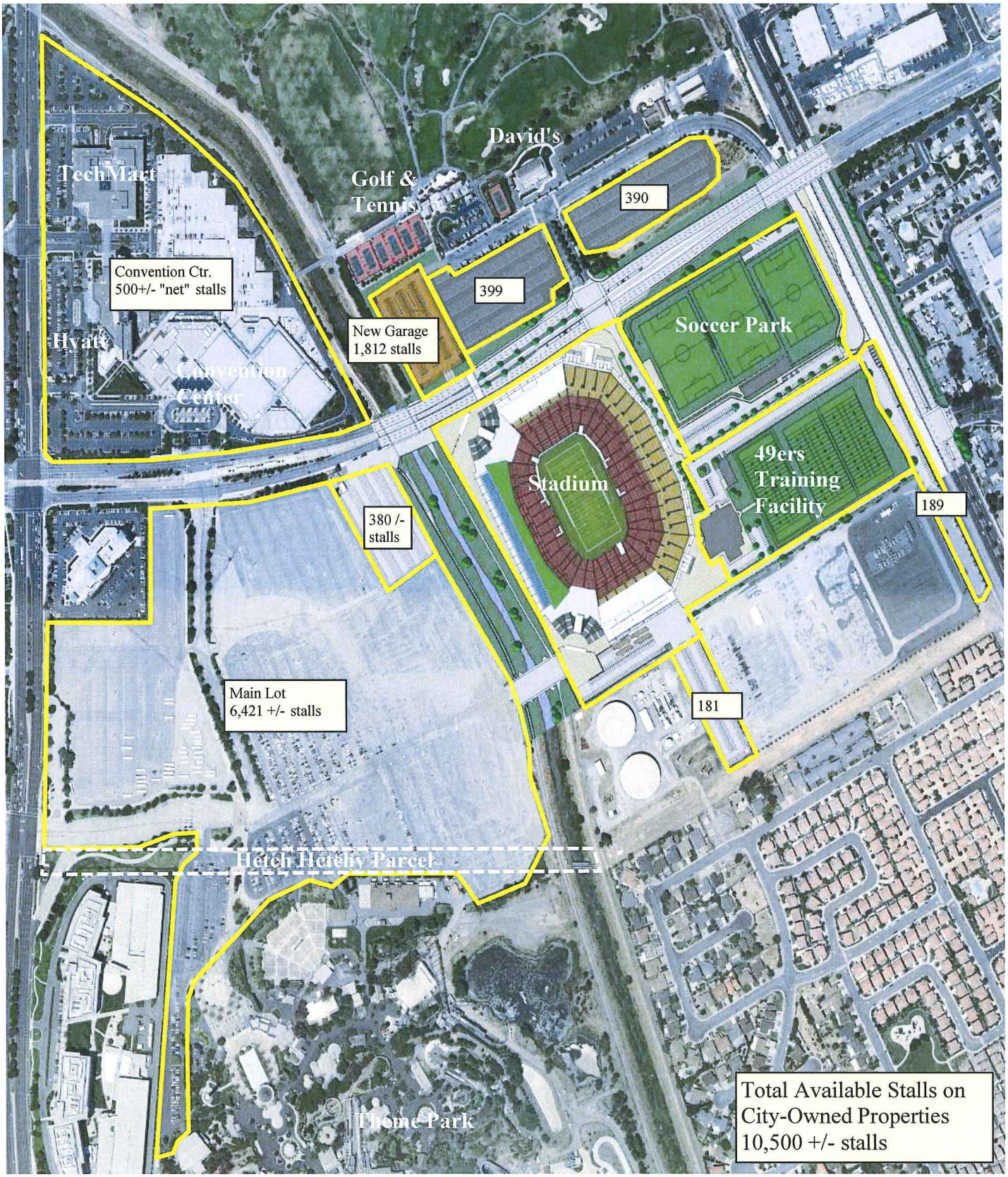

EXHIBIT O

SUMMARY OF LINE OF CREDIT AGREEMENT

THIS SUMMARY OF LINE OF CREDIT AGREEMENT ("**Credit Agreement Summary**" or "**Summary**") sets forth certain of the principal terms and conditions upon which the STADIUM AUTHORITY OF SANTA CLARA, a California joint powers authority (the "**Authority**"), as Borrower, and 49ERS MANAGEMENT COMPANY, INC., a _____ corporation ("**Manager**"), intend to enter into an agreement ("**Agreement**") establishing a line of credit to provide working capital and other funds required for the Stadium Authority's costs of operation and maintenance of the Stadium, as defined in, and consistent with the terms of (1) that certain Disposition and Development Agreement (Stadium Lease) dated as of December __, 2011 (the "**DDA**") by and between the Authority and Forty Niners Stadium, LLC, a Delaware limited liability company (hereinafter, "**Stadco**"), to which this summary is attached, (2) the Summary of Stadium Lease Agreement ("**Lease Summary**"), which is an attachment to the DDA, and (3) following agreement by the respective parties thereto on the final forms thereof, the Stadium Lease and the Stadium Management Agreement. Unless the context otherwise requires, capitalized terms used in this Summary have the meanings set forth herein or if undefined herein, in the DDA or its exhibits, including the Lease Summary. Authority and Manager collectively are sometimes referred to herein as the "**Parties**," and each individually is sometimes referred to as a "**Party**." The rules set forth on **Exhibit B** to the Lease Summary shall be followed when construing words used in this Summary.

RECITALS

A. Manager has agreed to make a revolving line of credit loan in the amount of Twenty Five Million Dollars ($25,000,000) ("**Revolving Loan**") to the Authority.

B. The Revolving Loan is to be evidenced by a promissory note executed by the Authority in favor of Manager.

C. The Authority shall use the Revolving Loan to establish a line of credit that may be used to pay expenses related to owning and operating the Stadium, specifically for working capital to be utilized by the Authority to pay expenses under the approved Annual Stadium Authority Budget.

DEFINITIONS

"Annual Stadium Authority Budget" shall mean the annual operating and expense budget adopted by the Authority and approved by the Tenant and/or Manager pursuant to the Stadium Lease and/or Management Agreement.

"Authority Expenses" shall mean all Stadium Authority Expenses (as defined in the Stadium Lease) that are incurred consistent with the Annual Stadium Authority Budget, other

than required repayments of the Revolving Loan, Stadium Authority Discretionary Expenses, and costs and expenses paid by the Stadium Authority in connection with Civic Events.

"Authority Revenue" shall mean all Stadium Authority Revenue (as defined in the Stadium Lease), exclusive of revenues from the Non-NFL Event Ticket Surcharge and the City of Santa Clara Senior and Youth Program Fee (as defined in the Stadium Lease).

"Available Funds" shall mean Authority Revenues plus funds in the Operating Reserve that can be used to pay Authority Expenses.

"**Disbursement Request** " shall mean that certain request duly executed by an authorized representative of the Authority requesting funds under the Revolving Loan.

"Excess Revenue" shall mean the amount of Authority Revenue that exceeds the amount needed by the Authority to pay Authority Expenses.

"**Revolving Loan**" shall mean the revolving line of credit loan to be made by Manager to Authority pursuant to the Agreement.

"**Loan Amount**" shall mean then outstanding principal amount not to exceed Twenty Five Million Dollars ($25,000,000.00).

"**Loan Term**" shall mean the period commencing on the Commencement Date and ending on the Maturity Date.

"**Maturity Date**" shall mean the date on which the Revolving Loan becomes due and payable, which date shall be October ___, 2044 – unless said date is accelerated as provided in Section 4, below.

"Payment Date" shall have the meaning in Section 5.

1. Purpose of the Loan; Revolving Line of Credit. The Loan shall be for the purpose of establishing a revolving line of credit that will be utilized only to pay Authority Expenses, and only to the extent that Available Funds are not otherwise available to pay such Authority Expenses. Prior to the Maturity Date, the Loan may be drawn, repaid and drawn again through individual disbursements in repetition, subject to the limitations herein, so long as the sum of (a) the amounts outstanding on the Revolving Loan, and (b) the cumulative Revolving Loan amounts that are committed but not yet advanced on the Revolving Loan, never exceed the Loan Amount.

2. Interest Rate. Interest on the principal balance outstanding under the Agreement from time to time shall accrue at a rate equal to [one-half of one percent (0.5%) in excess of the rate applicable from time to time to the Take-Out Financing]. Interest shall be computed for each calendar day on the principal balance outstanding at the beginning of such day, at the interest rate then applicable. Interest not paid on any day shall be added to the outstanding principal balance daily and shall thereafter bear interest as principal.

3. Default Interest. If any amount remains outstanding under the Agreement following the Maturity Date, the outstanding balance shall thereafter bear interest until paid in

full at [three percentage points (3.0%) in excess of the interest rate per annum otherwise payable on outstanding balances under the Agreement] (the "**Default Rate**"). Interest shall also accrue at the Default Rate following the occurrence of any default on the part of the Authority under the Agreement.

4. Term of Loan. The principal and any current and accrued interest of the Loan shall be due and payable on the earlier of (a) the Maturity Date, (b) the expiration or earlier termination of the term (as extended) of the Stadium Lease; (c) upon, and as a condition to the occurrence of, the Tenant Season Expansion Date; (d) termination in accordance with Section 10, below; (e) an Event of Default by Authority which has not been cured as provided for in the Agreement; or (f) distribution by the Authority of Excess Revenues to any of its constituent members pursuant to Article 13 of the Lease Summary in excess of limitations to be negotiated in the definitive Line of Credit Agreement.

5. Repayment of the Revolving Loan.

(a) Beginning on the first September 1st in the first full fiscal year following a disbursement under the Revolving Loan and continuing through each September 1st thereafter so long as any balance on the Revolving Loan remains outstanding (each such September 1st is referred to as a "Payment Date"); the Authority shall make annual payments to Manager equal to the lesser of (i) the Excess Revenue, if any, for the prior fiscal year, and (ii) the outstanding balance under the Revolving Loan.

(b) Annual payments made shall be applied first to interest currently due, and then to principal amounts due. Notwithstanding any provision to the contrary, all principal and interest shall be due under the Revolving Loan as set forth Section 4.

(c) The Authority may make a payment to reduce any balance outstanding under the Revolving Loan at any time without penalty, upon not fewer than three (3) days' prior written notice.

6. Disbursement of Loan. Manager shall make disbursements to the Authority, upon receipt from the Authority of a Disbursement Request, if the Authority does not have adequate Available Funds to pay Authority Expenses.

7. Conditions to Obligation to Fund Draws. The obligation of Manager to fund requested advances under the Agreement will be subject to satisfaction, as of the date of each funding, of the following conditions:

(a) The Stadium Lease and the Management Agreement remain in full force and effect;

(b) No default (or event that with notice or passage of time would become a default) on the part of the Stadium Authority exists under this Agreement, the Stadium Lease or the Management Agreement.

(c) The Manager has received an executed Disbursement Request.

8. Extension of Term. The term of the Agreement will be automatically extended if and to the extent the Management Agreement is extended, unless the Parties agree otherwise in writing.

9. Termination for Cause. Either party may terminate the Agreement for cause by written notice upon the occurrence of an Event of Default [to be defined] by the other party and the failure of the breaching party to cure the Event of Default in accordance with the terms hereof.

10. Termination of Management Agreement. The Agreement may be terminated by either party upon or at any time following termination of the Management Agreement for any reason, including a default by such party or the other party, provided, however, that upon termination of the Management Agreement by Authority due to Material Breach [to be defined] by Manager, the Agreement shall not be terminated and Manager shall continue to provide advances to the extent specified in the Agreement, provided, however, that in such event, Manager shall continue to have the right to approve the Annual Stadium Authority Budget for each subsequent Lease Year during the continuation of the Agreement, as and to the extent otherwise provided in the Agreement and/or in the Management Agreement.

11. Survival of Obligations Following Termination. The termination of the Agreement shall not affect the obligation of Authority to repay any principal then outstanding thereunder, or any interest accrued, or thereafter accruing, thereon.

12. Assignment. Manager shall have the right to transfer its right to receive payment of amounts due under the Agreement, in whole or in part, to one or more third parties, either absolutely or as collateral. If Manager gives notice to Authority that Manager has transferred its right to receive some or all payments due under the Agreement, Authority shall thereafter make payments in accordance with the terms of such notice.

13. Collateral Assignments [to come]

14. Defaults [to come]

15. Security [to come]

16. Remedies [to come]

17. Notices [to come]

18. Miscellaneous [to come]

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA

PUBLIC HEARING SANTA CLARA STADIUM AUTHORITY

CONSIDERATION OF A DISPOSITION AND DEVELOPMENT AGREEMENT ...

State of California, } SS.
County of Santa Clara

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 11/30, 12/7/2011

Dated at Santa Clara, California

This _____8TH day of _____DECEMBER_____, 2011

I declared under penalty of perjury that the foregoing is true and correct.

Signed: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

LEGAL NOTICE
PUBLIC HEARING

SANTA CLARA STADIUM AUTHORITY
CONSIDERATION OF A DISPOSITION AND DEVELOPMENT AGREEMENT (STADIUM LEASE) RELATED TO THE LEASE OF CERTAIN PROPERTY LOCATED AT TASMAN DRIVE AND CENTENNIAL BOULEVARD

NOTICE IS HEREBY GIVEN that the Santa Clara Stadium Authority (the "Authority") will hold a public hearing on December 13, 2011, at 7:00 pm, at the City Council Chambers located at 1500 Warburton Avenue, Santa Clara, California. The public hearing is being conducted in accordance with Health and Safety Code Section 33431 and the Joint Powers Agreement governing the Authority which adopted the California Redevelopment Law procedures for disposition of property. The hearing may be continued from time to time until completed. The hearing also may be cancelled or set for another time in the future at any time until the scheduled hearing time. Any person desiring the opportunity to be heard will be afforded an opportunity to do so.

The purpose of this hearing is to consider approval of a Disposition and Development Agreement (the "DDA") between the Authority and Forty Niners Stadium LLC (the "StadCo"). Among other matters, the DDA provides for the Stadium Authority to lease certain property located at Tasman Drive and Centennial Boulevard to StadCo provided certain conditions in the DDA are met.

Any and all persons having any objections to the proposed DDA, or to the lease of the properties, or who deny the regularity of this proceeding or wish to speak on any issue raised by the DDA, may appear at the hearing and will be afforded an opportunity to state their objections.

If any person desires to challenge in court the approval of the DDA, or any proceedings in connection therewith, they may be limited to raising only those issues that they or someone else raised at the hearing described in this notice, or in written correspondence delivered to the City Clerk of the City of Santa Clara, at the address provided below, at or prior to the hearing.

Further information regarding the DDA and this hearing may be obtained by contacting Pam Morrison at (408) 615-2210 or by contacting the Santa Clara Stadium Authority at the address listed above.

DATED: November 23, 2011
SANTA CLARA STADIUM AUTHORITY
By: /s/Jennifer Sparacino
Authority Executive Director
DATE OF PUBLICATION:
November 30, 2011
December 7, 2011
Pub.: 11/30, 12/7/2011

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B-2/4B-2 SA

Date: December 8, 2011

To: City Manager/Executive Director for Council Information/Stadium Authority Action

From: Administrative Analyst to the City Manager

Subject: Adoption of a Resolution to Approve a Joinder Agreement, an Indemnification Contribution Agreement and the Summary Of StadCo Obligations, as Part of the Preliminary Financing Plan for Construction of the Proposed 49ers Stadium

EXECUTIVE SUMMARY:

The Disposition and Development Agreement (DDA) by and between the 49ers Stadium, LLC (StadCo) and the Stadium Authority, which is being considered for approval on a related agenda item, contains as an exhibit a preliminary financing plan that incorporates the terms and conditions of certain loans the Stadium Authority expects to obtain for Stadium construction. The Stadium Authority is being asked to approve a Joinder Agreement, agreeing to be bound by the terms of a Commitment Letter issued by Goldman Sachs Bank, USA; Merrill Lynch, Pierce, Fenner & Smith, Inc., Bank of America, N.A.; and US Bank National Association ("Construction Lenders") and an Engagement Letter issued by affiliates of the Construction Lenders. As part of the entering into the Joinder Agreement, the Stadium Authority is also being asked to approve an Indemnification Contribution Agreement allocating liabilities under the Commitment Letter and Engagement Letter and to approve a letter from StadCo summarizing the StadCo loan commitments.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the financing commitments is a major step toward completing a final financing plan and commencing construction of the Stadium. A series of Study Sessions have been held over the past five years through the evolution of the proposed 49ers Stadium Project to inform the Council/Stadium Authority and the community of progress to date. As previously outlined in the Study Sessions, while the approach to financing and operating the Stadium has been modified in certain details since the June 2009 Term Sheet, the modifications remain consistent with the requirements of the Term Sheet and Measure J.

ECONOMIC/FISCAL IMPACT:

The financing commitments provide a feasible method of financing the development of the Stadium that conforms to the requirements of Measure J. Total cost of the Stadium is now estimated at $1.02 billion. NFL financing, Redevelopment Agency (RDA) contribution, and other revenues generated during construction from sources described herein are expected to pay a portion of the construction costs. The balance will come from the Stadium Authority incurring construction financing debt of up to $850 million from Construction Lenders and StadCo. It is estimated that the Stadium Authority will obtain approximately $450 million from the Construction Lenders and $400 million on a subordinated basis from StadCo. Construction loan debt will then be refinanced into long term debt. The amount of the long term debt is expected to be lower than the construction debt as a result of Stadium Authority revenues received during construction. While the

Financing Commitments do not commit to provide the long term debt, the Engagement Letter gives affiliates of the Construction Lenders the right to arrange the long term financing Protections are built into the transaction to ensure that the Stadium Authority has the resources for debt repayment.

RECOMMENDATION:

That the Stadium Authority adopt a resolution to approve the Joinder of the Santa Clara Stadium Authority in that certain Commitment Letter dated November 4, 2011 and that certain Engagement Letter dated November 4, 2011, the Indemnification Contribution Agreement and the Summary Of StadCo Obligations, as part of the Preliminary Financing Plan for Construction of the Proposed 49ers Stadium.

Pamela J. Morrison
Administrative Analyst to the City Manager

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:

1) ***A Resolution Of The Santa Clara Stadium Authority Approving A Joinder Agreement, An Indemnification Contribution Agreement And The Summary Of StadCo Obligations And Making Certain Findings Related Thereto***

Document1

DISCUSSION:

As set forth in the staff report regarding the approval of the DDA, the DDA includes the preliminary financing plan for the Stadium. The preliminary financing plan includes loans to the Stadium Authority in an amount up to $850 million to cover costs of construction of the Stadium. The documents before the Stadium Authority Board evidence the commitments for that financing. The documents consist of a Joinder Agreement, whereby the Stadium Authority would agree to be bound by the terms of that certain Commitment Letter dated November 4, 2011 ("Commitment Letter") and that certain Engagement Letter dated November 4, 2011 ("Engagement Letter"). Also attached is an Indemnification Contribution Agreement allocating the liability related to certain indemnities under the Commitment Letter and the Engagement Letter, and a letter from StadCo, including attachments, summarizing StadCo's commitments regarding the proposed financing for the Stadium.

1. Commitment Letter.

The Commitment Letter sets forth the terms under which the Construction Lenders are willing to make a loan to be used for Stadium construction. Under the terms of the Commitment Letter, Goldman Sachs is committing to providing $325 million, Bank of America is committing to providing $325 million and US Bank is committing to providing $200 million toward the financing. Although the Construction Lenders are each committing to provide these sums toward the construction financing, they have also reserved their rights to syndicate the loan, thereby bringing in other lenders to provide part of the loan.

Under the terms of the Commitment Letter, the Construction Lenders will make their loan to Stadium Funding Trust (FinanceCo), a special purpose entity formed solely for this financing. FinanceCo will in turn make two loans, one to the Stadium Authority expected to be in the amount of $450 million and one to StadCo, expected to be in the amount of $400 million. Both loans can only be used for Stadium construction purposes.

The interest rate under the Commitment Letter will be based on an index rate tied to the Base Rate (also referred to as "Prime Rate") plus 2.25% or a Eurodollar rate (which usually matches the London Interbank Rate or LIBOR) plus 3.25%. The selection of the interest rate will be made at closing on the loan. Interest will be capitalized or paid from draws on the loan.

The Construction Loan will be secured by a pledge by the Stadium Authority of Stadium revenues, including Stadium Builders License proceeds, naming rights proceeds, ticket surcharges, and revenues from non-NFL events (after payment to the City of its performance rent under the Ground Lease of 50% of the Net Non-NFL revenue). The Stadium Authority will also give the Construction Lenders a deed of trust on the Stadium Authority's leasehold interest in the Stadium Site.

During the term of the Construction Loan all revenues of the Stadium Authority and StadCo will be deposited into restricted accounts. Funds will be disbursed from the restricted account in accordance with the loan documents but any disbursements will recognize the City's priority interest in receipt of rent payments under the Ground Lease and the payment of operation and maintenance expenses for the Stadium.

The Construction Loan must close prior to April 30, 2012. The Commitment Letter contains certain conditions to closing, including the execution of the Design-Build Agreement and the Design-Builder obtaining bids or proposals representing at least 75% of all of the subcontracted project costs. As an additional condition to closing, the Team must enter into a non-relocation agreement for the benefit of the Construction Lenders. Additionally, the Construction Lenders are requiring the execution of a NFL Consent letter that permits the NFL under certain circumstances to seek a purchaser of all of the assets of the Team and StadCo.

The Construction Loan will have a maturity date of September 1, 2015.

The Commitment Letter also imposes certain obligations on StadCo. These obligations include the requirement that StadCo loan to the Stadium Authority the loan proceeds received by StadCo pursuant to the Construction Loan for use for development of the Stadium. Additionally, StadCo is obligated to purchase from the Construction Lenders the remaining balance of the Stadium Authority Construction Loan on the maturity date. StadCo's obligations under the Commitment Letter are supported by a requirement to make a capital call on the Team. In the event that StadCo fails to perform its obligations, it is expected that the NFL will be involved in working out a resolution of any loan defaults pursuant to the NFL Consent Letter.

2. Engagement Letter

The Engagement Letter is issued by affiliates to the Construction Lenders ("Arrangers"). Under the Engagement Letter, the Stadium Authority upon execution of the Joinder Agreement would be offering to retain the Arrangers to arrange the permanent financing that will take out the construction loan. The Stadium Authority cannot enter into any loans providing permanent financing for the Stadium without the consent of the Arrangers during the term of the Engagement Letter. Failure to obtain the Arrangers' consent could result in damages being assessed in an amount equal to the fee the Arrangers would have earned if they had acted as the Arrangers of the financing.

3. Indemnification Contribution Agreement.

Both the Commitment Letter and the Engagement Letter contain indemnification provisions that require StadCo and the Stadium Authority, upon execution of the Joinder Agreement, to indemnify the Construction Lenders from certain claims related to the Commitment Letter and the proposed financing. The indemnification liabilities in the Commitment Letter and the Engagement Letter are joint and several, meaning that either party could be responsible for the full amount of any claims under the indemnification provisions. The Indemnification Contribution Agreement provides for StadCo to assume responsibility for any of these indemnification obligations except in the event that the claims arise from the action or inaction of the Stadium Authority. This agreement protects the Stadium Authority from liability for claims that could arise from StadCo actions and limits liability solely to those claims that result from the Stadium Authority's actions.

4. Summary of StadCo Obligations

Attached as part of the Preliminary Financing Plan is a letter from StadCo that includes a summary of the obligations of StadCo under the Commitment Letter. Pursuant to the Summary, StadCo will loan the Stadium Authority the proceeds of the loan received by StadCo from the Construction Lenders ("StadCo Subordinated Loan") The StadCo Subordinated Loan will have the same terms as the Stadium Authority Construction Loan except that the maturity date could be up to 25 years. During construction, interest-only payments will be due, to be paid from capitalized interest funds or draws on the loan. If the loan has an extended term, upon completion of construction the loan will be fully amortizing over the life of the StadCo Subordinated Loan.

The Stadium Authority will pledge Stadium Authority revenues to repayment of the StadCo Subordinated Loan, but the pledge will be subordinate to the pledge to the Construction Lenders. The Stadium Authority will also grant StadCo a security interest in the Stadium Authority's leasehold interest in the Stadium Site, but that pledge will also be subordinate to the Construction Lenders.

If the StadCo Subordinated Loan has a maturity date of September 1, 2015, StadCo will convert the StadCo Subordinated Loan to a long term loan expected to have a 25 year term. The Summary of the StadCo Loan also requires that StadCo purchase any Stadium Authority debt to the Construction Lenders remaining at the maturity date of that debt. Upon purchase of the Construction Lender's loan to the Stadium Authority, the loan will be extended for an additional three years, which will allow the Stadium Authority and StadCo time to secure long term financing.

The Summary of the StadCo Loan also includes protections of the Stadium Builders License revenue. The Stadium Authority will not be required to use SBL proceeds for construction costs or payments on the Construction Loan until approximately $350 million to $400 million of funds have been spent on construction of the Stadium. This threshold ensures that SBL proceeds are not used until construction of the Stadium is well under way and limits any refund risk.

RESOLUTION NO. _____ (STADIUM AUTHORITY)

A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY APPROVING A JOINDER AGREEMENT, AN INDEMNIFICATION CONTRIBUTION AGREEMENT AND THE SUMMARY OF STADCO FINANCING AND MAKING CERTAIN FINDINGS RELATED THERETO

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

WHEREAS, the Santa Clara Stadium Authority ("Authority"), a joint exercise of power entity created pursuant to Government Code Section 6500 *et seq.* composed of the City of Santa Clara, the Santa Clara Redevelopment Agency and the Bayshore North Project Enhancement Authority, is engaged in various activities designed to lead to the development of a 68,500 seat stadium suitable for professional football ("Stadium Project") on a property located in the Bayshore North Redevelopment Project Area at Tasman and Centennial Drive ("Stadium Site");

WHEREAS, the Authority has approved entering into a Disposition and Development Agreement ("DDA") with Forty Niners Stadium, LLC ("StadCo") providing for the Authority to lease the Stadium to StadCo pursuant to the terms of a Stadium Lease and providing for the development and financing of the Stadium Project;

WHEREAS, the DDA includes a preliminary financing plan ("Preliminary Financing Plan") for the Stadium Project, which financing plan contemplates the Authority obtaining certain loans to finance the Stadium Project;

WHEREAS, Goldman Sachs Bank, USA, Merrill Lynch, Pierce, Fenner & Smith Inc. and U.S. Bank (collectively "Construction Lenders") have issued commitments to provide the financing contemplated in the Preliminary Financing Plan attached to and incorporated into the DDA;

WHEREAS, the Authority, in furtherance of the DDA and the Stadium Project, desires to enter into that certain Joinder Agreement whereby the Stadium Authority is bound by the terms of the commitments issued by the Construction Lenders;

WHEREAS, the Authority also desires to enter into that certain Indemnification Contribution Agreement allocating liability under the commitment letter;

WHEREAS, in connection with the commitments from the Construction Lenders and consistent with the preliminary financing plan, StadCo had issued to the Authority a summary of StadCo commitments with respect to the financing of the Stadium Authority; and

WHEREAS, the construction of the Stadium Project will further the goals of the City of creating an entertainment destination in the Bayshore North Area and will provide significant economic benefits to the City and its residents and businesses;

WHEREAS, as further described in the attached Staff Report, the Stadium Project has previously undergone environmental review pursuant to the California Environmental Quality Act ("CEQA") and was considered as part of the project Environmental Impact Report certified for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (the "Stadium EIR"); and

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

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

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The Stadium Authority hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the Stadium EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the Joinder Agreement with respect to the Stadium Project considered in the Stadium EIR. The Stadium Authority further specifically finds that there have not been any of the following occurrences since the approval of the Stadium EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the Joinder Agreement:

A. There have not been substantial changes in the project analyzed in the Stadium EIR which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program;

B. There have not been substantial changes with respect to the circumstances under which the project analyzed in the Stadium EIR will be undertaken which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program; and

C. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the Stadium EIR and the Mitigation Monitoring Program which is relevant to the approval of the Stadium EIR and the Mitigation Monitoring Program as it relates to the Predevelopment Agreement.

3. The Stadium Authority hereby approves the Joinder Agreement and the Indemnification Contribution Agreement, and authorizes the Executive Director to enter into and execute the Joinder Agreement and the Contribution Agreement on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Authority signatory, such determination to be conclusively deemed to have

been made by the execution of the Joinder Agreement and Indemnification Contribution Agreement by the Authority signatory. The Executive Director is authorized to implement the Joinder Agreement and Indemnification Contribution Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Joinder Agreement and Indemnification Contribution Agreement.

4. The Stadium Authority hereby approves the Summary of StadCo Subordinated Loan, StadCo Obligations and SBL Disbursement Conditions ("Summary") and finds that the Summary is consistent with the Preliminary Financing Plan.

5. The Executive Director is hereby authorized and directed to file a Notice of Determination with respect to the Joinder Agreement and Indemnification Contribution Agreement in accordance with the applicable provisions of CEQA.

6. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution, the Joinder Agreement, the Indemnification Contribution Agreement and the Summary.

7. The Authority Secretary shall certify to the adoption of this Resolution.

8. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Board of the Santa Clara Stadium Authority hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

9. Effective date. This Resolution shall take effect immediately upon adoption.

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

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST: _____

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

Attachments Incorporated by Reference:
1. Joinder Agreement
2. Commitment Letter dated November 4, 2011
3. Engagement Letter dated November 4, 2011
4. Indemnification Contribution Agreement
5. Summary of StadCo Obligations

I:\Stadium Authority\Finance Plan\Resolution approving Financing documents.doc

JOINDER OF SANTA CLARA STADIUM AUTHORITY

By executing this joinder (this "Joinder"), the undersigned, a California joint powers agency, hereby agrees, effective as of December 13, 2011, to be bound by all terms and conditions of the following agreements: (1) the Commitment Letter dated November 4, 2011 (inclusive of Annexes A, B and C attached thereto, the "Commitment Letter") among Stadium Funding Trust, a Delaware statutory trust (the "Borrower"), Forty Niners Stadium, LLC, a Delaware limited liability company (the "Company"), Goldman Sachs Bank USA ("Goldman Sachs"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), Bank of America, N.A. and U.S. Bank National Association ("U.S. Bank"), and (2) the Engagement Letter (Right of First Offer) dated November 4, 2011 (inclusive of Annex A attached thereto, the "ROFO Engagement Letter") among the Borrower, the Company, Goldman, Sachs & Co., MLPFS and U.S. Bank (the agreements identified in the preceding numbered clauses (1) and (2), collectively, the "Joined Agreements"), in each case, with the same force and effect as if originally named therein as a co-obligor of the Borrower and the Company. Without limiting the generality of the foregoing, the undersigned hereby agrees and acknowledges that it has all the rights, entitlements, duties and obligations of a co-obligor of the Borrower and the Company as set forth in the Joined Agreements, as the same are amended, if at all, concurrently with the execution and delivery of this Joinder.

The undersigned acknowledges that it has received and has had the opportunity to review the above-listed Joined Agreements together with, (A) if any, the amendments to the Commitment Letter set forth on *Annex A* hereto, as approved and agreed by the parties indicated thereon, and, (B) if any, the amendments to the ROFO Engagement Letter set forth on *Annex B* hereto, as approved and agreed by the parties indicated thereon. The undersigned represents and warrants that this Joinder has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

This Joinder shall be construed in accordance with and governed by the internal laws of the State of New York without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the undersigned has caused this Joinder to be executed and delivered as of the date first written above.

SANTA CLARA STADIUM AUTHORITY

By: _____
Name: Jennifer Sparacino
Title: Executive Director

Annex A

[amendments to the Commitment Letter as are reasonably necessary in connection with this Joinder; if there are "*none*," so indicate on this Annex A, without execution]

APPROVED AND AGREED AS OF _____, 2011:

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By:_____
Name:
Title:

Annex B

[amendments to the ROFO Engagement Letter as are reasonably necessary in connection with this Joinder; if there are "*none*," so indicate on this Annex B, without execution]

APPROVED AND AGREED AS OF _____, 2011:

GOLDMAN, SACHS & CO.

By: _____
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By:_____
Name:
Title:

Execution Copy

GOLDMAN SACHS
BANK USA
200 West Street
New York, New York
10282-2198

MERRILL LYNCH, PIERCE,
FENNER & SMITH
INCORPORATED
BANK OF AMERICA, N.A.
100 North Tryon Street
24th Floor
Charlotte, North Carolina
28255

U.S. BANK NATIONAL
ASSOCIATION
425 Walnut Street
Cincinnati, Ohio 45202

PERSONAL AND CONFIDENTIAL

November 4, 2011

Stadium Funding Trust
c/o Wilmington Trust, National Association, as Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001
Attention: Corporate Trust Administration

Forty Niners Stadium, LLC
4949 Centennial Blvd.
Santa Clara, California 95054
Attention: John Edward York, President

Commitment Letter

Ladies and Gentlemen:

Goldman Sachs Bank USA ("**Goldman Sachs**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**MLPFS**") and U.S. Bank National Association ("**U.S. Bank**" and together with Goldman Sachs and MLPFS, the "**Arrangers**" or "**we**") are pleased to confirm the arrangements under which (i) we are authorized by Stadium Funding Trust (the "**Borrower**"), a bankruptcy remote special purpose Delaware statutory trust, and Forty Niners Stadium, LLC (the "**Company**"), a special purpose Delaware limited liability company, to act as co-lead arrangers and joint bookrunners in connection with, (ii) Goldman Sachs is exclusively authorized by the Company and the Borrower to act as administrative agent and collateral agent in connection with, and (iii) Goldman Sachs, Bank of America, N.A. ("**BOA**" and together with the Arrangers, each a "**Commitment Party**" and collectively, the "**Commitment Parties**") and U.S. Bank commit to provide the financing for, certain transactions described herein, in each case on the terms and subject to the conditions set forth in this letter and the attached Annexes A, B and C hereto (collectively, this "**Commitment Letter**").

You have informed us that the Borrower was established exclusively for the purpose of entering into (i) an up to $850,000,000 senior secured multi-draw construction term loan facility having the terms set forth on Annex B (the "**Senior Secured Facility**"), and (ii) the Loans (as defined below). The Borrower intends to borrow funds under the Senior Secured Facility and (A) make a loan (the "**Authority Loan**") to the Santa Clara Stadium Authority (the "**Authority**"), a California joint powers agency formed exclusively for the purpose of financing, constructing and owning the Stadium Project (as defined below), to finance

costs of the development and construction of a new approximately 1.8 million square foot, 68,500 seat stadium (the "**Stadium**") and all related facilities and other improvements (collectively, including the Stadium, the "**Improvements**") on a site on the south side of Tasman Drive at Centennial Boulevard in Santa Clara, California (the "**Stadium Site**" and, together with the Improvements, the "**Stadium Project**") and for other permitted purposes and (B) make a loan to the Company (the "**Stadco Loan**" and together with the Authority Loan, the "**Loans**") to finance or refinance certain costs and expenses of the Improvements paid or payable by the Company and for other permitted purposes, all as more particularly described in Annex B. The Stadium and certain other Improvements and appurtenant rights will be leased by the Authority to the Company for the National Football League (the "**NFL**") season (including pre-season, regular season and post-season NFL games), during each year of the lease term, and in turn subleased by the Company to San Francisco Forty Niners, Limited (the "**Team**") for each such NFL season. The Company, a special purpose entity whose activities will be limited exclusively to (i) participation in the development and financing of the Stadium Project, (ii) leasing the Stadium from the Authority, and (iii) subleasing the Stadium, including to the Team, will, on and after the Closing Date (as defined in Annex B), be a bankruptcy remote (A) wholly-owned direct subsidiary of the Team or (B) sister entity of the Team with the identical ownership as the Team.

The Authority will use the proceeds of the Authority Loan, together with the proceeds received by the Authority from other sources, including the Stadco Advance (as defined below), and other available funds of the Authority, to pay costs and expenses of the design, development, construction and completion by the Scheduled Completion Date (as defined in Annex B) of the Improvements (the "**Authority Project Costs**"), fund interest and fees that become due under the Authority Loan during the construction of the Improvements, and pay all other fees, costs and expenses incurred or payable by the Authority in connection with the transactions described herein. The Company will use the proceeds of the Stadco Loan, together with the proceeds received by the Company from other sources, including the NFL Financing (as defined in Annex B), and other available funds of the Company, to finance or refinance certain costs and expenses of the Improvements paid or payable by the Company, fund interest and fees that become due under the Stadco Loan during the construction of the Improvements, advance funds to the Authority to be used by the Authority to pay Authority Project Costs (the "**Stadco Advance**"), and pay all other fees, costs and expenses incurred or payable by the Company in connection with the transactions described herein. The Stadco Advance will be a loan subordinate to the Authority Loan and repayable by the Authority pursuant to the terms set forth in a note of the Authority issued to the Company at or before the time the Stadco Advance is initially made.

1. Commitments; Titles and Roles.

Each Arranger severally agrees to act, and you hereby agree that, upon the Authority's joinder hereto, each such Arranger shall act, as a co-lead arranger and joint bookrunner in connection with the Senior Secured Facility. Goldman Sachs is pleased to confirm its agreement to act, and you hereby agree that, upon the Authority's joinder hereto, Goldman Sachs shall act, as administrative agent (the "**Administrative Agent**") and collateral agent (the "**Collateral Agent**") for the Senior Secured Facility. In addition, (a) Goldman Sachs is pleased to inform you of its commitment to provide up to $325,000,000 of the Senior Secured Facility, (b) BOA is pleased to inform you of its commitment to provide up to $325,000,000 of the Senior Secured Facility, and (c) U.S. Bank is pleased to inform you of its commitment to provide up to $200,000,000 of the Senior Secured Facility, in each case on the terms and subject to the conditions contained in this Commitment Letter and the Fee Letter (referred to below). Our fees for our commitment and for services related to the Senior Secured Facility are to be set forth in a separate fee letter (the "**Fee Letter**") to be entered into by the Company, the Borrower, the Authority, Goldman Sachs, MLPFS and U.S. Bank on or prior to the Closing Date. Goldman Sachs shall have "left side" designation and shall appear on the top left of any financing materials and all other offering or

marketing materials in respect of the Senior Secured Facility, and MLPFS shall appear to the immediate right of Goldman Sachs in any such financing materials, offering or marketing materials.

2. Conditions Precedent.

In addition to the conditions precedent described on Annexes B and C hereto, each Arranger's commitments and agreements are subject to there not having occurred, since March 31, 2011 (the date of the most recent audited financial statements furnished by the Team to the Arrangers), any event that has resulted in or could reasonably be expected to result in a material adverse change in or effect on (i) the general affairs, management, financial position or results of operations of the Borrower and the Authority, or (ii) the general affairs, management, financial position, shareholders' equity or results of operations of the Company and the Team and their respective subsidiaries (taken as a whole), in each case as determined by each Arranger in its reasonable discretion (each, a "**Material Adverse Change**"). Each Commitment Party's commitments and agreements are also subject to the execution and delivery of appropriate definitive loan documents relating to the Senior Secured Facility including, without limitation, credit agreements, security agreements, pledge agreements, leasehold mortgages, opinions of counsel and other related definitive documents (collectively, the "**Loan Documents**") that are substantially consistent with the terms set forth in this Commitment Letter and otherwise contain customary terms for similar financings acceptable to each Arranger and the Borrower, and the execution and delivery of appropriate definitive loan documents relating to the Authority Loan and the Stadco Loan, respectively, in each case acceptable to each Arranger, the Borrower, the Authority and the Company. Each Commitment Party's commitment is also conditioned upon and made subject to such Commitment Party not becoming aware after the date hereof of any new or inconsistent information or other matters not previously disclosed to such Commitment Party relating to the Borrower, the Authority, the Company, the Team or the Stadium Project or the transactions contemplated by this Commitment Letter which such Commitment Party, in its reasonable judgment, deems material and adverse relative to the information or other matters disclosed to each Arranger prior to the date hereof. Each Arranger's commitment is also conditioned upon and made subject to the Authority joining, pursuant to a joinder agreement in form and substance reasonably satisfactory to each Arranger, this Commitment Letter on or prior to December 15, 2011 and the Fee Letter on or prior to the Closing Date as a co-obligor of the Company and the Borrower, in each case with such amendments to the Commitment Letter and Fee Letter as are reasonably necessary in connection with such joinder but only as approved in writing by each Arranger (which approval shall not be unreasonably withheld or delayed). The Arrangers agree to cooperate with the Borrower and the Company and, upon its joinder hereto, the Authority in connection with obtaining necessary consents and approvals regarding the transactions described herein from the NFL, governmental bodies and other third parties.

3. Syndication

Goldman Sachs intends, and reserves the right, in consultation with the other Arrangers, to syndicate the Senior Secured Facility to the Lenders (as defined in Annex B), and you acknowledge and agree that the commencement of syndication shall occur in the discretion of Goldman Sachs, in consultation with the other Arrangers. Goldman Sachs, in consultation with the other Arrangers, will select the Lenders after consultation with the Borrower, the Authority and the Company. Goldman Sachs will lead the syndication, including determining, in consultation with the other Arrangers, the timing of all offers to potential Lenders, any title of agent or similar designations or roles awarded to any Lender and the acceptance of commitments, the amounts offered and the compensation provided to each Lender from the amounts to be paid to the Arrangers pursuant to the terms of this Commitment Letter and the Fee Letter. Goldman Sachs will determine the final commitment allocations in consultation with the other Arrangers, the Borrower, the Authority and the Company. The Company agrees to use all commercially reasonable efforts to ensure that Goldman Sachs' and the other Arrangers' syndication efforts benefit from the

existing lending relationships of the Team and its subsidiaries. Solely to facilitate an orderly and successful syndication of the Senior Secured Facility, you agree that, until the earlier of the termination of each syndication period as determined by Goldman Sachs, in consultation with the other Arrangers, and 90 days following the date of initial funding under the Senior Secured Facility, the Borrower, the Authority and the Company will not syndicate or issue, attempt to syndicate or issue, or announce or authorize the announcement of the syndication or issuance of, or engage in discussions concerning the syndication or issuance of, any debt facility or any debt security of the Borrower, the Authority, the Company or any of their respective subsidiaries or affiliates (other than the Senior Secured Facility and other indebtedness contemplated hereby to remain outstanding after the Closing Date), including any renewals or refinancings of any existing debt facility or debt security, without the prior written consent of Goldman Sachs. The Arrangers acknowledge and agree that for the purposes of this Commitment Letter, the Authority has no affiliates or subsidiaries.

The Borrower, the Company and, upon its joinder hereto, the Authority agree to cooperate with the Arrangers, and the Company agrees to cause the Team to cooperate with the Arrangers, in connection with (i) the preparation of one or more information packages for the Senior Secured Facility regarding the business, operations, financial projections and prospects of the Borrower, the Authority, the Company and the Team (collectively, the "**Confidential Information Memorandum**"), including, without limitation, all information relating to the transactions contemplated hereunder prepared by or on behalf of the Borrower, the Authority, the Company or the Team deemed reasonably necessary by the Arrangers to complete the syndication of the Senior Secured Facility, and (ii) the presentation of one or more information packages for the Senior Secured Facility acceptable in format and content to the Arrangers (collectively, the "**Lender Presentation**") in meetings and other communications with prospective Lenders or agents in connection with the syndication of the Senior Secured Facility (including, without limitation, direct contact between senior management and representatives, with appropriate seniority and expertise, of the Borrower, the Authority, the Company and the Team, with prospective Lenders and participation of such persons in meetings). The Borrower, the Company and, upon its joinder hereto, the Authority further agree that the commitments and agreements of the Arrangers hereunder are conditioned upon the Borrower's, the Authority's, the Company's and the Team's satisfaction of the requirements of the foregoing provisions of this paragraph by a date sufficient to afford the Arrangers a period of at least 30 consecutive days following the launch of the general syndication of the Senior Secured Facility to syndicate the Senior Secured Facility prior to the Closing Date; *provided* that such 30 consecutive day period shall (i) either conclude prior to December 19, 2011 or commence after January 3, 2012 and (ii) exclude November 23, 2011 through and including November 27, 2011. As more fully described below, each of the Borrower, the Authority and the Company will be responsible only for their respective contents of any such Confidential Information Memorandum and Lender Presentation relating to each such entity and all other information, documentation or materials delivered to the Arrangers in connection therewith (collectively, the "**Information**") and acknowledge that the Arrangers will be using and relying upon the Information without independent verification thereof. The Borrower, the Company and, upon its joinder hereto, the Authority agree that Information regarding the Senior Secured Facility and Information provided by the Borrower, the Company, the Authority, the Team or their respective representatives to the Arrangers in connection with the Senior Secured Facility (including, without limitation, draft and execution versions of the Loan Documents, the Authority Loan documents, the Stadco Loan documents, the Confidential Information Memorandum, the Lender Presentation, pro forma financial statements and feasibility studies) may be disseminated to potential Lenders and other persons through one or more internet sites (including an IntraLinks, SyndTrak or other electronic workspace (the "**Platform**")) created for purposes of syndicating the Senior Secured Facility or otherwise, in accordance with the Arrangers' standard syndication practices, and you acknowledge that no Arranger nor any of its affiliates will be responsible or liable to you or any other person or entity for damages arising from the use by others of any Information or other materials obtained on the Platform. Third-party access to the Information, including but not limited to Information with respect to the Team, whether such access be through the

Platform or otherwise, shall be conditioned upon each third party's acceptance of an affirmative obligation to maintain the confidentiality of the Information.

The Borrower, the Company and, upon its joinder hereto, the Authority acknowledge that certain of the Lenders may be "public side" Lenders that do not wish to receive MNPI (as defined below) (each, a **"Public Lender"**). At the request of the Arrangers, you agree to prepare an additional version of the Confidential Information Memorandum and the Lender Presentation to be used by Public Lenders that may contain MNPI. It is understood that in connection with your assistance described above, you will provide, and cause all other applicable persons to provide, authorization letters to the Arrangers authorizing the distribution of the Information to prospective Lenders and you agree that the Information distributed to prospective Public Lenders will contain a representation that (i) each of the Borrower, the Authority and the Company is not then the issuer of any debt or equity securities, (ii) such Confidential Information Memorandum and the Lender Presentation may contain MNPI, but do not contain financial projections and (iii) if the Borrower, the Authority or the Company is or becomes the issuer of any debt or equity securities issued pursuant to a public offering or Rule 144A or other private placement, or it is actively contemplating any such issuance of securities, in connection with (and prior to) the issuance of such securities, the Borrower, the Authority or the Company, as applicable, will publicly disclose (or otherwise disclose in an appropriate manner for the type of offering, including in the related prospectus or other offering document for the issuance of such securities) all information contained in such Confidential Information Memorandum or such Lender Presentation that constitutes MNPI at such time. **"MNPI"** means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or any of its respective affiliates or securities.

4. Information.

The Company represents and covenants that (i) all Information (other than financial projections) provided directly or indirectly by the Company or the Team to any Commitment Party, in its capacity as an Arranger or as a Lender, or to the other Lenders, in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and (ii) the financial projections that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Team or the Company have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that financial projections are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond your control, and are not a guarantee of financial performance; that no assurance can be given that any particular financial projections will be realized; and that actual results may differ from financial projections and such differences may be material. You agree that if at any time prior to the earlier of (i) 90 days following the Closing Date and (ii) the termination of each syndication of the Senior Secured Facility as determined by Goldman Sachs, in consultation with the other Arrangers, any of the representations in the preceding sentence would be incorrect in any material respect if such Information and financial projections were being furnished, and such representations were being made, at such time, then you will promptly supplement, or cause to be supplemented, such Information and financial projections so that such representations will be correct in all material respects under those circumstances.

The Borrower represents and covenants that (i) all Information (other than financial projections) provided directly or indirectly by the Borrower to any Commitment Party, in its capacity as an Arranger or as a Lender, or to the other Lenders, in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements

contained therein not misleading and (ii) the financial projections that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Borrower have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that financial projections are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and are not a guarantee of financial performance; that no assurance can be given that any particular financial projections will be realized; and that actual results may differ from financial projections and such differences may be material. The Borrower agrees that if at any time prior to the earlier of (i) 90 days following the Closing Date and (ii) the termination of each syndication of the Senior Secured Facility as determined by Goldman Sachs, in consultation with the other Arrangers, any of the representations in the preceding sentence would be incorrect in any material respect if such Information and financial projections were being furnished, and such representations were being made, at such time, then the Borrower will promptly supplement, or cause to be supplemented, such Information and financial projections so that such representations will be correct in all material respects under those circumstances.

Upon its joinder hereto, the Authority represents and covenants that (i) all Information (other than financial projections) provided on or prior to its joinder hereto and directly or indirectly by the Authority to any Commitment Party, in its capacity as an Arranger or as a Lender, or to the other Lenders, in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and (ii) the financial projections, if any, that have been or will be made available to the Commitment Parties or the Lenders by or on behalf of the Authority (which, for the avoidance of doubt, do not and will not include any financial projections made available by or on behalf of the Team or the Company) have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to the Commitment Parties or the Lenders, it being understood and agreed that financial projections are as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the Authority's control, and are not a guarantee of financial performance; that no assurance can be given that any particular financial projections will be realized; and that actual results may differ from financial projections and such differences may be material. Upon its joinder hereto, the Authority agrees that if at any time prior to the earlier of (i) 90 days following the Closing Date and (ii) the termination of each syndication of the Senior Secured Facility as determined by Goldman Sachs, in consultation with the other Arrangers, any of the representations in the preceding sentence would be incorrect in any material respect if such Information and financial projections were being furnished, and such representations were being made, at such time, then the Authority will promptly supplement, or cause to be supplemented, such Information and financial projections so that such representations will be correct in all material respects under those circumstances.

In arranging and syndicating the Senior Secured Facility, we will be entitled to use and rely on the Information and the financial projections without responsibility for independent verification thereof. We will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of the Borrower, the Authority, the Company or the Team or any other party or to advise or opine on any related solvency issues.

5. Indemnification and Related Matters.

In connection with arrangements such as this, it is the policy of each of our firms to receive indemnification. The Borrower, the Company and, upon its joinder hereto, the Authority agree to the

provisions with respect to our indemnity and other matters set forth in Annex A, which is incorporated by reference into this Commitment Letter.

6. Assignments.

This Commitment Letter may not be assigned by you without the prior written consent of each Arranger (and any purported assignment without such consent will be null and void), is intended to be solely for the benefit of the Arrangers and the other parties hereto and, except as set forth in Annex A hereto, is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. Notwithstanding the foregoing, the Company may, with the prior written consent of each Arranger (such consent not to be unreasonably withheld or delayed), assign all of its rights and obligations hereunder to a duly created and existing (i) affiliate established as a direct wholly-owned and controlled bankruptcy remote, single-purpose subsidiary of the Team or (ii) bankruptcy remote sister entity of the Team with the identical ownership as the Team, in each case to assume and carry out the business of the Company relating to the Stadium Project as described herein and the transactions contemplated hereby and by the Fee Letter, in which event such affiliate or sister entity shall thereafter be deemed to be the "Company" hereunder. Each Arranger may assign its commitments and agreements hereunder, in whole or in part, to any of its affiliates and, as provided above, to any Lender prior to the Closing Date. In addition, until the termination of the syndication of the Senior Secured Facility, as determined by Goldman Sachs, in consultation with the other Arrangers, each Arranger may, in consultation with the Borrower, the Authority and the Company, assign its commitments and agreements hereunder, in whole or in part, to additional arrangers or other Lenders. Any assignment by an Arranger to any potential Lender made prior to the Closing Date will not relieve such Arranger of its obligations set forth herein to fund that portion of the commitments so assigned unless such assignment was approved by the Borrower in writing (such approval not to be unreasonably withheld or delayed). Neither this Commitment Letter nor the Fee Letter may be amended or any term or provision hereof or thereof waived or otherwise modified except by an instrument in writing signed by each of the parties hereto or thereto, as applicable, and any term or provision hereof or thereof may be amended or waived only by a written agreement executed and delivered by all parties hereto or thereto.

7. Confidentiality.

Please note that this Commitment Letter, the Fee Letter and any written communications provided by, or oral discussions with, any Arranger in connection with this arrangement are exclusively for the information of the Borrower, the Company and, upon its joinder hereto, the Authority and may not be disclosed by you to any third party (other than the Company's, the Borrower's or the Authority's outside law firms or accounting firms, in each case who has been informed by you of the confidential nature of such advice and the terms of this letter and has agreed to treat such information confidentially) or circulated or referred to publicly without our prior written consent except, after providing written notice to each Arranger, pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative or legislative body or committee; *provided* that we hereby consent to your disclosure of (i) this Commitment Letter, the Fee Letter and such communications and discussions to the Borrower's, the Authority's, the Company's and the Team's respective officers, directors, agents and advisors who are directly involved in the consideration of the Senior Secured Facility and who have been informed by you of the confidential nature of such advice and this Commitment Letter and the Fee Letter and who have agreed to treat such information confidentially; (ii) this Commitment Letter, the Fee Letter and such communications and discussions to the NFL; (iii) this Commitment Letter and the Fee Letter as required by applicable law or compulsory legal process (in which case you agree to inform us promptly thereof); (iv) this Commitment Letter and the Fee Letter to the Authority to the extent necessary in connection with the joinder of the Authority hereunder, including without limitation in connection with the Authority's requisite processes as a joint powers agency of the State of California, of which we are

aware; and (v) the existence of this Commitment Letter and information about the Senior Secured Facility to market data collectors, similar services providers to the lending industry, and service providers to the Arrangers and the Lenders in connection with the administration and management of the Senior Secured Facility.

Each Arranger agrees that it will treat as confidential all information provided to it hereunder by or on behalf of you, the Team, the Authority or any of your or their respective subsidiaries or affiliates; *provided, however*, that nothing herein will prevent an Arranger from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding relating hereto, or otherwise as required by applicable law or compulsory legal process (in which case such person agrees to inform you promptly thereof to the extent not prohibited by law), (b) upon the request or demand of any regulatory authority purporting to have jurisdiction over such person or any of its affiliates, (c) to the extent that such information is publicly available or becomes publicly available other than by reason of improper disclosure by such person, (d) to such person's affiliates and their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other experts or agents who need to know such information, who have been informed by such person of the confidential nature of such information and who have agreed to treat such information confidentially, (e) to potential and prospective Lenders, participants and any direct or indirect contractual counterparties to any swap or derivative transaction relating to the Borrower or its obligations under the Senior Secured Facility, in each case, who are advised of the confidential nature of such information and who have agreed to treat such information confidentially, (f) to Moody's and S&P and other rating agencies or to market data collectors as determined by each Arranger; *provided* that such information is limited to Annex B and Annex C and is supplied only on a confidential basis, (g) received by such person on a non-confidential basis from a source (other than you, the Team, the Authority or any of your or their affiliates, advisors, members, directors, employees, agents or other representatives) not known by such person to be prohibited from disclosing such information to such person by a legal, contractual or fiduciary obligation, (h) to the extent that such information was already in an Arranger's possession (excluding any information in the possession of Goldman Sachs or its affiliates prior to the date hereof in connection with the Company's engagement of Goldman, Sachs & Co. pursuant to the engagement letter dated October 6, 2010) or is independently developed by an Arranger or (i) for purposes of establishing a "due diligence" defense. Each Arranger's obligation under this provision shall remain in effect until the earlier of (i) four years from the date hereof and (ii) the date the definitive Loan Documents are entered into by the Arrangers, at which time any confidentiality undertaking in the definitive Loan Documents shall supersede this provision.

8. Absence of Fiduciary Relationship; Affiliates; Etc.

As you know, each of the Arrangers is a full service financial institution engaged, either directly or through its respective affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services globally. In the ordinary course of their various business activities, each Arranger and funds or other entities in which such Arranger invests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, each Arranger may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of the Borrower, the Authority, the Company, the Team and/or other entities and persons which may (i) be involved in transactions arising from or relating to the arrangement contemplated by this Commitment

Letter or (ii) have other relationships with the Borrower, the Authority, the Company or the Team. In addition, each Arranger may provide investment banking, commercial banking, underwriting and financial advisory services to such other entities and persons. The arrangement contemplated by this Commitment Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph, and employees working on the financing contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefor. Although each Arranger in the course of such other activities and relationships may acquire information about the transaction contemplated by this Commitment Letter or other entities and persons which may be the subject of the financing contemplated by this Commitment Letter, such Arranger shall have no obligation to disclose such information, or the fact that such Arranger is in possession of such information, to the Borrower, the Authority or the Company or to use such information on the Borrower's, the Authority's or the Company's behalf.

No Arranger has assumed (A) an advisory responsibility in favor of the Borrower, the Authority, the Company, the Team or their respective equity holders or their respective affiliates with respect to the financing transactions contemplated hereby, (B) a fiduciary responsibility in favor of the Borrower, the Authority, the Company, the Team or their respective equity holders or their respective affiliates with respect to the transactions contemplated hereby, or in each case, the exercise of rights or remedies with respect thereto or the process leading thereto (irrespective of whether an Arranger has advised, is currently advising or will advise the Borrower, the Authority, the Company, the Team or their respective equity holders or their respective affiliates on other matters) or (C) any other obligation to the Borrower, the Authority, the Company or the Team except the obligations expressly set forth in this Commitment Letter and the Fee Letter.

You acknowledge that no Arranger nor any of its respective affiliates has an obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained or that may be obtained by them from any other person. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees that it will not claim that any Arranger has rendered advisory services of any nature or respect with respect to the financing transactions contemplated hereby.

Each Arranger may have economic interests that conflict with those of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates. You agree that each Arranger will act under this Commitment Letter as an independent contractor and that nothing in this Commitment Letter or the Fee Letter will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Arranger and the Borrower, the Company, their respective equity holders or their respective affiliates. You acknowledge and agree that the transactions contemplated by this Commitment Letter and the Fee Letter (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Arrangers, on the one hand, and the Borrower, the Authority and the Company, on the other, and in connection therewith and with the process leading thereto, (i) no Arranger has assumed an advisory or fiduciary responsibility in favor of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether an Arranger has advised, is currently advising or will advise the Borrower, the Authority, the Company, their respective equity holders or their respective affiliates on other matters) or any other obligation to the Borrower, the Authority or the Company except the obligations expressly set forth in this Commitment Letter and the Fee Letter and (ii) each Arranger is acting solely as a principal and not as the agent or fiduciary of the Borrower, the Authority, the Company, or their respective management, equity holders, affiliates, creditors or any other person. Each of the Borrower, the Company and, upon its joinder hereto, the Authority acknowledges and agrees that each such party has consulted its own legal and financial advisors to the extent it deemed

appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees that it will not claim that any Arranger has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, the Authority or the Company, in connection with such transactions or the process leading thereto. In addition, each Arranger may employ the services of its affiliates in providing services and/or performing its or their obligations hereunder and, subject to Section 7 hereof, may exchange with such affiliates information concerning the Borrower, the Authority, the Company and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded to such Arranger hereunder.

In addition, please note that no Arranger provides accounting, tax or legal advice. Notwithstanding anything herein to the contrary, the Borrower, the Authority and the Company (and each employee, representative or other agent of the Borrower, the Authority or the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Senior Secured Facility and all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, the Authority or the Company relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure will remain subject to the confidentiality provisions hereof (and the foregoing sentence will not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" means U.S. federal or state income tax treatment, and "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Commitment Letter but does not include information relating to the identity of the parties hereto or any of their respective affiliates.

9. Miscellaneous.

The obligations of each Arranger under this Commitment Letter and the Fee Letter are several and not joint, and no Arranger will be liable for the obligations of any other Arranger.

The Arrangers' commitments and agreements hereunder will terminate upon the first to occur of (i) a material breach by the Borrower, the Authority or the Company under this Commitment Letter or the Fee Letter and (ii) April 30, 2012, unless the closing of the Senior Secured Facility, on the terms and subject to the conditions contained herein, has been consummated on or before such date.

The provisions set forth under Sections 3, 4, 5 (including Annex A), 7 and 8 hereof and this Section 9 hereof and the provisions of the Fee Letter, to the extent provided therein, will remain in full force and effect regardless of whether definitive Loan Documents are executed and delivered. The provisions set forth in the Fee Letter and under Sections 5 (including Annex A), 7 and 8 hereof and this Section 9 will remain in full force and effect notwithstanding the expiration or termination of this Commitment Letter or the Arrangers' commitments and agreements hereunder.

It is expressly understood and agreed by the parties hereto that (a) this Commitment Letter is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Trustee of the Borrower, in the exercise of the powers and authority conferred and vested in it under that certain Trust Agreement dated as of November 4, 2011 among the Company, as depositor, BSCS 2011-4, Inc., as beneficiary, and Wilmington Trust, National Association, as owner trustee (the "**Trust Agreement**"), (b) each of the representations, undertakings and agreements herein made on the part of the Borrower is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose for binding only the Borrower, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association, individually or personally, to perform any covenant either express or implied

contained herein, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Borrower or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Borrower under this Commitment Letter or the other related documents.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority for itself and its affiliates agrees that any suit or proceeding arising in respect of this Commitment Letter or the Arrangers' commitments or agreements hereunder or the Fee Letter will be tried exclusively in any Federal court of the United States of America sitting in the Borough of Manhattan or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and the Borrower, the Authority and the Company agree to submit to the exclusive jurisdiction of, and to venue in, such court. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either an Arranger's commitments or agreements or any matter referred to in this Commitment Letter or the Fee Letter is hereby waived by the parties hereto. Each of the Borrower, the Authority and the Company for itself and its affiliates agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above shall be effective service of process against such party for any suit, action or proceeding brought in any such court. This Commitment Letter and the Fee Letter will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

Each Arranger hereby notifies the Borrower, the Authority and the Company that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**") such Arranger and each Lender may be required to obtain, verify and record information that identifies the Team, the Borrower, the Authority and the Company, which information includes the name and address of the Borrower and other information that will allow such Arranger and each Lender to identify the Team, the Borrower, the Authority and the Company in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective for each Arranger and each Lender.

This Commitment Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission or electronic transmission (in pdf format) will be effective as delivery of a manually executed counterpart hereof. This Commitment Letter and the Fee Letter are the only agreements that have been entered into among the parties hereto with respect to the Senior Secured Facility and set forth the entire understanding of the parties with respect thereto and supersede any prior written or oral agreements among the parties hereto with respect to the Senior Secured Facility.

Please confirm that the foregoing is in accordance with your understanding by signing and returning to the Arrangers the enclosed copy of this Commitment Letter, on or before the close of business on November 4, 2011, whereupon this Commitment Letter will become a binding agreement between us. If this Commitment Letter has not been signed and returned as described in the preceding sentence by such date, this offer will terminate on such date.

[Remainder of page intentionally left blank]

We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

Robert Ehudin
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name: Wm. Elliott McCabe
Title: Managing Director

BANK OF AMERICA, N.A.

By: _____
Name: Madison B. Wyche, IV
Title: Director

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS BANK USA

By: _____
Authorized Signatory

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: William Mahnkell
Title: Vice President

ACCEPTED AND AGREED AS OF NOVEMBER 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By: _____
Name: Jacqueline E. Solone
Title: Banking Officer

FORTY NINERS STADIUM, LLC

By: _____
Name:
Title:

ACCEPTED AND AGREED AS OF NOVEMBER 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By: John Edward York
Name: John Edward York
Title: President

Annex A

In the event that any Commitment Party becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including shareholders, partners, members or other equity holders of the Borrower, the Authority or the Company in connection with or as a result of either this arrangement or any matter referred to in this Commitment Letter or the Fee Letter (together, the "Letters"), the Borrower, the Company and, upon its joinder hereto, the Authority jointly and severally agree to periodically reimburse each Commitment Party for its reasonable legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided, however, that if it is found by a final, non-appealable judgment of a court of competent jurisdiction in any such action, proceeding or investigation that any loss, claim, damage or liability of such Commitment Party has resulted from the gross negligence or willful misconduct of such Commitment Party in performing the services which are the subject of the Letters or in connection with any matter referred to herein, such Commitment Party shall repay such portion of the reimbursed amounts that is attributable to expenses incurred in relation to the act or omission of such Commitment Party which is the subject of such finding. The Borrower, the Company and, upon its joinder hereto, the Authority also agree to indemnify and hold each Commitment Party harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in the Letters (whether or not such investigation, litigation, claim or proceeding is brought by you, your equity holders or creditors or an indemnified person and whether or not any such indemnified person is otherwise a party thereto), except to the extent that such loss, claim, damage or liability has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Commitment Party in performing the services that are the subject of the Letters or in connection with any matter referred to herein. If for any reason the foregoing indemnification is unavailable to a Commitment Party or insufficient to hold it harmless, then the Authority, the Borrower and the Company shall contribute to the amount paid or payable by such Commitment Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Commitment Party on the other hand in the matters contemplated by the Letters as well as the relative fault of the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and such Commitment Party on the other hand with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Borrower, the Authority and the Company under this paragraph shall be in addition to any liability which the Borrower, the Authority and the Company may otherwise have, shall extend upon the same terms and conditions to any affiliate of a Commitment Party and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of such Commitment Party and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Borrower, the Authority, the Company, such Commitment Party, any such affiliate and any such person. The Borrower, the Company and, upon its joinder hereto, the Authority, also agree that neither any indemnified party nor any of such affiliates, partners, members, directors, agents, employees or controlling persons shall have any liability to the Borrower or the Company or any person asserting claims on behalf of or in right of the Borrower, the Authority or the Company or any other person in connection with or as a result of either this arrangement or any matter referred to in the Letters except in case of the Borrower, the Authority and the Company to the extent that any losses, claims, damages, liabilities or expenses incurred by the Borrower, the Authority or the Company or their respective affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnified party in performing the services that are the subject of the Letters or in connection with any matter referred to herein; provided, however, that in no event will such indemnified party or such other parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such indemnified party's or such other parties' activities related to the Letters. For a period of one year from the termination of this

letter, prior to entering into any agreement or arrangement with respect to, or effecting, any proposed sale, exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Borrower, the Authority or the Company set forth in this Annex A, the Company will notify each Commitment Party in writing thereof (if not previously so notified) and, if requested by any such Commitment Party, shall arrange in connection therewith alternative means of providing for the obligations of the Borrower, the Authority or the Company, as applicable, set forth in this paragraph, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions reasonably satisfactory to such Commitment Party; provided, however, that if any action, proceeding or investigation is pending at the end of such one year period for which a claim for indemnification, contribution or reimbursement under this agreement has been or may be made, the Borrower's, the Authority's and the Company's obligations pursuant to this sentence shall continue until such action, proceeding or investigation has been ultimately resolved. ***The provisions of this Annex A shall survive any termination or completion of the arrangements provided by the Letters.***

Annex B

Summary of the Senior Secured Facility

This Summary outlines certain terms of the Senior Secured Facility referred to in the Commitment Letter, of which this Annex B is a part. Certain capitalized terms used herein are defined in the Commitment Letter.

Borrower: Stadium Funding Trust, a statutory trust established under the laws of the State of Delaware (the "***Borrower***") exclusively for the purpose of borrowing funds from the Lenders (as defined below) under the Senior Secured Facility and making loans to the Loan Parties (as defined below) to finance the development and construction of the Stadium Project (as defined below).

Loan Parties: Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code (the "***Authority***"), formed exclusively for the purpose of financing, constructing and owning the Stadium Project, and Forty Niners Stadium, LLC ("***Stadco***" or the "***Company***"), a special purpose entity whose activities will be limited exclusively to (i) participating in the development and financing of the Stadium Project, (ii) leasing the Stadium (as defined below) from the Authority and (iii) subleasing the Stadium to San Francisco Forty Niners, Limited (the "***Team***," and together with Stadco, the "***Team Parties***"; and the Authority, together with Stadco, the "***Loan Parties***"). As of the Closing Date, Stadco will be a wholly-owned, direct subsidiary of the Team.

Stadium Project: The Authority intends to (i) develop, finance and construct an approximately 1.8 million square foot, 68,500 seat professional football stadium (the "***Stadium***"), and all related facilities and other improvements (collectively, including the Stadium, the "***Improvements***"), together with supporting infrastructure, on a site on the south side of Tasman Drive at Centennial Boulevard in Santa Clara, California (the "***Stadium Site***" and, together with the Improvements, the "***Stadium Project***"), and (ii) lease the Stadium and certain other Improvements and appurtenant rights to Stadco for the National Football League (the "***NFL***") season (including pre-season, regular season and post-season NFL games), during each year of the lease term. The scheduled completion date for the construction of the Improvements (the "***Scheduled Completion Date***") will be established to the reasonable satisfaction of each of the Co-Lead Arrangers, on or before the Closing Date.

Construction Monitor/ Independent Engineer: An independent engineering firm (the "***Construction Monitor***") selected by the Co-Lead Arrangers in consultation with the Borrower and the Company with responsibility for, among other things, (i) confirming that sufficient proceeds are available from the monies deposited in the construction account and amounts available from and under the Senior Secured Facility, the NFL Financing (as hereinafter

defined), and other sources to complete construction of the Improvements by the Scheduled Completion Date, (ii) reviewing and approving all material change orders and certifying that there are sufficient contingencies available to fund change orders (or, alternatively, requiring that additional monies be deposited into the construction account prior to signing a change order) and (iii) after the Closing of the Senior Secured Facility, reviewing and approving each construction invoice prior to a construction draw being made to pay a construction contractor.

NFL Financing:

It will be a condition precedent to the Closing that the NFL shall have committed to provide at least $150 million to the Team Parties under the successor to its G-3 stadium financing program or otherwise (collectively, the "*NFL Financing*") to finance or refinance tenant improvements and other costs of the Stadium Project incurred by Stadco, pursuant to a legally binding commitment letter or similar documentation and on terms reasonably satisfactory to the Initial Lender (as defined below), in its sole discretion.

Purpose/Use of Proceeds:

The proceeds of the Senior Secured Facility will be used to make (x) a loan to the Authority up to a maximum amount to be agreed (the "*Authority Loan*") and (y) a loan to Stadco up to a maximum amount to be agreed (the "*Stadco Loan*," and together with the Authority Loan, the "*Loans*"), which Loans shall not, in the aggregate, exceed $850,000,000.

The Authority will use the proceeds of the Authority Loan, together with the proceeds received by the Authority from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including, without limitation, the Stadco Advance (as defined below), and other available funds of the Authority, to (a) pay costs and expenses of the design, development, construction and completion of the Stadium Project by the Scheduled Completion Date (the "*Authority Project Costs*"), (b) fund interest and fees that become due under the Authority Loan during the construction of the Improvements, and (c) pay all other fees, costs and expenses incurred or payable by the Authority in connection with the transactions described herein. Stadco will use the proceeds of the Stadco Loan, together with the proceeds received by Stadco from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including, without limitation, the NFL Financing, and other available funds of Stadco, to (i) finance or refinance certain costs and expenses of the Improvements paid or payable by Stadco (the "*Stadco Project Costs*"), (ii) fund interest and fees that become due under the Stadco Loan during the construction of the Improvements, (iii) advance funds to the Authority up to a maximum amount to be agreed to be used by the Authority to pay Authority Project Costs (the "*Stadco Advance*"), and (iv) pay all other fees, costs and expenses incurred or payable by Stadco in connection with the transactions described herein. Authority Project Costs and Stadco Project Costs include certain amounts relating to prior advances that are to be reimbursed directly or indirectly to the Team on the Closing Date. The

	Stadco Advance will be a loan subordinate to the Authority Loan and repayable by the Authority pursuant to the terms set forth in a note of the Authority (the "*Authority Note*"), which Authority Note shall be issued to Stadco at or before the time the Stadco Advance is initially made.
Co-Lead Arrangers:	Goldman Sachs Bank USA ("*Goldman Sachs*"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("*MLPFS*") and U.S. Bank National Association ("*U.S. Bank*" and, collectively with Goldman Sachs and MLPFS, the "*Co-Lead Arrangers*").
Joint Bookrunners:	Goldman Sachs, MLPFS and U.S. Bank.
Administrative Agent:	Goldman Sachs (in its capacity as Administrative Agent under the Senior Secured Facility and the Loans, the "**Administrative Agent**").
Co-Syndication Agents:	Bank of America, N.A. ("*BOA*") and U.S. Bank.
Documentation Agent:	A financial institution selected by Goldman Sachs in consultation with the Co-Lead Arrangers.
Collateral Agent:	Goldman Sachs (in its capacity as Collateral Agent, the "*Collateral Agent*").
Initial Lenders:	Goldman Sachs, BOA, and U.S. Bank and/or one or more of their affiliates (each, an "*Initial Lender*" and, collectively, the "*Initial Lenders*"; the Initial Lenders together with any financial institutions selected by the Co-Lead Arrangers that shall become lenders pursuant to the terms of the definitive Loan Documents, the "*Lenders*").
Type and Amount of Senior Secured Facility:	An up to $850,000,000 senior secured multi-draw construction term loan.
Availability:	Multiple drawings may be made under the Senior Secured Facility in accordance with the provisions relating to Construction Draws set forth below to fund, as described herein, the Authority Loan and the Stadco Loan.
Maturity Date:	The Senior Secured Facility, the Authority Loan, and the Stadco Loan will mature on the earlier of (i) September 1, 2015 and (ii) the closing date of the final portion of takeout financings the proceeds of which, in the aggregate, together with any other funds available therefor, are sufficient to pay in full the outstanding amount of the Senior Secured Facility. The Stadco Advance may, in certain circumstances, mature after the Maturity Date of the Senior Secured Facility, the Authority Loan and the Stadco Loan.
Closing Date:	The date on which the Administrative Agent declares that all conditions precedent to the effectiveness of the Senior Secured Facility have

occurred (the "*Closing Date*"; and the closing of the Senior Secured Facility is referred to herein as the "*Closing*"). The Closing is anticipated to occur on or before April 30, 2012.

Amortization: No scheduled amortization will be required with respect to the Senior Secured Facility, the Authority Loan, the Stadco Loan or the Stadco Advance.

Interest Rate: All amounts outstanding under the Senior Secured Facility will bear interest, at the Borrower's option, as follows:

(i) the Base Rate plus 2.25% *per annum*; or

(ii) the reserve adjusted Eurodollar Rate plus 3.25% *per annum*.

As used herein, the terms "*Base Rate*" and "*reserve adjusted Eurodollar Rate*" will have meanings customary and appropriate for financings of this type, and the basis for calculating accrued interest and the interest periods for loans bearing interest at the reserve adjusted Eurodollar Rate will be customary and appropriate for financings of this type. In no event shall the Base Rate be less than the sum of (i) the one-month reserve adjusted Eurodollar Rate (after giving effect to any reserve adjusted Eurodollar Rate "floor") plus (ii) the difference between the applicable stated margin for reserve adjusted Eurodollar Rate loans and the applicable stated margin for Base Rate loans. After the occurrence and during the continuance of any payment, bankruptcy or financial covenant Event of Default, interest on amounts then outstanding will accrue at a rate equal to the rate then applicable thereto, or otherwise at a rate equal to the rate then applicable to loans bearing interest at the rate determined by reference to the Base Rate, in each case plus an additional two percentage points (2.00%) *per annum*. Such interest will be payable on demand.

All amounts outstanding under the Authority Loan and the Stadco Loan will bear interest at the same rate as that of the Senior Secured Facility.

Interest Payments: After the Closing Date, quarterly for loans bearing interest with reference to the Base Rate; except as set forth below, on the last day of selected interest periods (which will be one, two, three and six months) for loans bearing interest with reference to the reserve adjusted Eurodollar Rate (and at the end of every three months, in the case of interest periods of longer than three months); and upon prepayment, in each case payable in arrears and computed on the basis of a 360-day year (365/366 day year with respect to loans bearing interest with reference to the Base Rate).

Commitment Fees: Beginning after the Closing Date, the Borrower shall pay each Lender a commitment fee, payable in arrears on a quarterly basis, and passed through pro rata from the Authority and Stadco under the Authority

Loan documents and Stadco Loan documents, respectively, equal to (x) the Applicable Rate (as defined below) *multiplied by* (y) the aggregate amount of such Lender's undrawn commitments.

As used herein, the "*Applicable Rate*" means, for any day:

(a) if the aggregate amount of the Initial Lender's undrawn commitments under the Senior Secured Facility on such day is greater than zero but less than $325.0 million, 0.75%;

(b) if the aggregate amount of the Initial Lender's undrawn commitments under the Senior Secured Facility on such day is equal to or greater than $325.0 million but equal to or less than $625.0 million, 1.00%; and

(c) if the aggregate amount of the Initial Lender's undrawn commitments under the Senior Secured Facility on such day is greater than $625.0 million, 1.25%.

Voluntary Prepayments: The Senior Secured Facility may be prepaid in whole or in part without premium or penalty; *provided* that loans bearing interest with reference to the reserve adjusted Eurodollar Rate will be prepayable only on the last day of the related interest period unless the Borrower pays any related breakage costs.

Each of the Authority Loan and the Stadco Loan may be prepaid in whole or in part without premium or penalty; *provided* that loans bearing interest with reference to the reserve adjusted Eurodollar Rate will be prepayable only on the last day of the related interest period unless the applicable Loan Party pays any related breakage costs.

Mandatory Prepayments: The Borrower will be required to make mandatory prepayments from the proceeds of the following, to the extent such proceeds are not otherwise used or held for use in accordance with the definitive Loan Documents: (X)(A) any voluntary prepayments made by the Authority under the definitive Authority Loan documents and (B) any mandatory prepayments made by the Authority under the definitive Authority Loan documents from the proceeds of the following, to the extent such proceeds are not otherwise used or held for use under the definitive Authority Loan documents: (i) any cash advances to the Authority from Stadco made after the Closing Date in accordance with the Stadco Term Loan Commitment (as defined below), (ii) asset sales by the Authority, (iii) receipt of casualty or condemnation proceeds by the Authority, (iv) incurrence of indebtedness (other than the Stadco Advance) or execution of securitization transactions by the Authority, (v) receipt of additional public sector contributions by the Authority, (vi) receipt of proceeds from the sale or license of any stadium builder licenses, naming rights or other rights or assets owned by the Authority and related to the Stadium Project, (vii) receipt by the Authority of any liquidated damages under the Design-Build Agreement and any non-relocation agreement related to the Stadium Project, and (viii) receipt by

the Authority of any additional proceeds from the NFL (whether as a result of NFL Financing or otherwise) or upfront payments contributed to the Authority by another NFL team related to an additional franchise playing at the Stadium (which additional franchise will be permitted to play at the Stadium upon satisfaction by Stadco of its related obligations to the Authority under the Stadium Lease (defined below)); (Y)(A) any voluntary prepayments made by Stadco under the definitive Stadco Loan documents and (B) any mandatory prepayments made by Stadco under the definitive Stadco Loan documents[1] from the proceeds of the following, to the extent such proceeds are not otherwise used or held for use under the definitive Stadco Loan documents: (i) incurrence of indebtedness by Stadco, (ii) issuance of equity by Stadco, (iii) asset sales by Stadco, (iv) casualty or condemnation proceeds received by Stadco, (v) the sale or license by Stadco of luxury suites at the Stadium, (vi) any repayment of the Stadco Advance by the Authority, and (vii) receipt by Stadco of any additional proceeds from the NFL (whether as a result of NFL Financing or otherwise) or upfront payments contributed to Stadco by another NFL team related to an additional franchise playing at the Stadium (which additional franchise will be permitted to play at the Stadium upon satisfaction by Stadco of its related obligations to the Authority under the Stadium Lease); and (Z) incurrence of indebtedness. All mandatory prepayments by the Borrower will be applied to the Senior Secured Facility (including funded loans and loan commitments) without penalty or premium (except for breakage costs, if any).

Commitment Reduction Upon Application of Pledged Revenues

As and to the extent described in the definitive Loan Documents, Pledged Revenues directed by the Authority and Stadco, and approved by the Lenders, to be withdrawn from any Account (defined below) or otherwise applied to pay Stadium Project costs will reduce the commitment amount on a dollar for dollar basis provided such use of funds does not dilute annual cash flows to levels that adversely affect the operating profile for any takeout financing.

Lease Structure:

The Authority has entered into, or will enter into on or before the Closing Date, (i) a ground lease (the "*Ground Lease*"), pursuant to which the City of Santa Clara (the "*City*") will lease the Stadium Site to the Authority, and (ii) a lease (the "*Stadium Lease*"), pursuant to which the Authority will lease the Stadium to Stadco for the NFL season (including pre-season, regular season and post-season NFL games), during each year of the lease term. Under certain circumstances described in the Stadium Lease, the Authority may elect to extend Stadco's tenancy to the full 12 months of each year of the lease term following such election. In addition, Stadco has entered into, or will enter into on or before the Closing Date, a sublease with the Team (the

[1] Any mandatory prepayments required to be made under the terms of the Stadco Loan documents will be made from net cash proceeds after satisfaction of any resulting tax obligations.

"*Team Sublease*" and, collectively with the Ground Lease and the Stadium Lease, the "*Leases*"), pursuant to which Stadco will sublease the Stadium to the Team for its NFL games and other purposes. The Authority and Stadco will obtain all necessary consents for the collateral assignment of the Leases to the Borrower, which shall in turn collaterally assign its interests therein to the Collateral Agent, and the Borrower, the Authority, the Team Parties and the City shall enter into appropriate subordination and non-disturbance agreements with respect to the Leases.

The Team currently plays its NFL home games at Candlestick Park pursuant to a lease between the Team and the City of San Francisco (the "*Candlestick Lease*"). The Candlestick Lease is currently subject to early termination by the Team on May 31, 2015 pursuant to its terms. The Team intends to attempt to reach an agreement to terminate the Candlestick Lease in time to allow the Team to play all or substantially all of its NFL regular season home games at the Stadium commencing with the 2014 NFL season. The ability of the Team to play its NFL regular season home games at the Stadium commencing with the 2014 NFL season is not a condition precedent to the Closing.

In the first lease year of the Team Sublease, the Team will be required to pay as rent an amount equal to the higher of (i) the revenues of the Team allocable to Candlestick Park operations during such lease year (exclusive of Team specific revenues such as ticket and media revenues), if any, *less* the operating costs of the Team allocable to Candlestick Park operations during such lease year (exclusive of Team specific operating costs such as operating costs attributable to ticket and media and football operations, including without limitation, players' salaries, bonuses and other compensation), and (ii) the scheduled base rent payable by the Team under the Team Sublease for such lease year.

Stadco Obligations:

In accordance with the terms of the Stadium Lease, the Authority and Stadco will enter into an agreement (the "*Stadco Obligations Agreement*") pursuant to which Stadco will agree to make the Stadco Advance to the Authority, evidenced by the Authority Note, to finance a portion of the Authority Project Costs. Additionally, Stadco will agree under the Stadco Obligations Agreement, for the benefit of the Borrower, to (X) advance to the Authority, after the Closing Date and on or prior to the Maturity Date, funds up to an aggregate amount to be agreed, to finance or refinance certain costs and expenses of the Stadium Project paid or payable by the Authority (the "*Stadco Term Loan Commitment*") and (Y) purchase on the Maturity Date a portion of the Authority Loan (up to a maximum amount to be agreed) on terms and under conditions to be agreed among Stadco, the Authority, the Borrower and the Initial Lenders (the "*Stadco Purchase Commitment*"; and, together with the Stadco Term Loan Commitment, the "*Stadco Obligations*"). The Stadco Obligations shall, in the aggregate, equal the amount of the Authority Loan. Amounts advanced to the Authority pursuant to the Stadco Term Loan Commitment, if any, shall constitute a subordinate loan to be repaid by the Authority to Stadco over a term to

be agreed. To support Stadco's obligation to fulfill the Stadco Purchase Commitment, and the Stadco Term Loan Commitment, if any, (i) pursuant to Stadco's operating agreement, in the event Stadco does not then have available funds or access to financing sufficient to meet its obligation under the Stadco Purchase Commitment or the Stadco Term Loan Commitment, Stadco shall have the right to, and shall, make a capital call on the Team in the amount of any deficiency, and the Team shall be obligated to promptly fund such capital call, subject to any restrictions on the Team under the NFL Constitution or the NFL League-wide Credit Facility, and provided that the NFL waives the debt limit to which the Team is subject under the terms of the NFL Constitution so as to permit the aggregate Indebtedness (as defined in the NFL League-wide Credit Facility) of the Team, including such Team capital call obligation, to be up to 250% of the Team's Average Annual Allocated Revenue Amount under, and as defined in, the NFL League-wide Credit Facility; or (ii) the NFL shall agree under the NFL Consent Letter (as defined below) to seek a purchaser for (a) all assets of the Team and Stadco or (b) the Team and Stadco as a whole (*i.e.*, in the case of (a) and (b) the NFL shall be required to bundle the assets or equity (as applicable) of the Team and Stadco).

Lenders' Non-Relocation Agreement:

On the Closing Date, the Team will enter into a non-relocation agreement with the Collateral Agent, for the benefit of the Lenders (the "***Lenders' Non-Relocation Agreement***"), whereby the Team will agree to play all of its pre-season, regular season and post-season home games in the Stadium, except as otherwise provided therein (including, without limitation, any home games played, at the direction of the NFL, at a location other than the Stadium), following substantial completion thereof and until all loans and other obligations under the Senior Secured Facility have been indefeasibly paid and performed in full.

Security:

The Senior Secured Facility will be secured by all of the assets of the Borrower, including first priority security interests in the Loans and all payments made under the Loans and all of the collateral securing the Loans including all of the assets (including, without limitation, all personal, real and mixed property) of (a) the Authority (as borrower under the Authority Loan), including (i) subject to any limitations set forth in the definitive Authority Loan documents, all revenue from naming rights, stadium builders licenses, certain ticket surcharges, ticket sales and rent or license payments from non-NFL events and all other revenues accruing to the Authority from any source, including amounts paid or payable by Stadco to the Authority under the Stadco Obligations Agreement, the Stadium Lease, the Stadco Obligations or otherwise (collectively, the "***Authority Pledged Revenues***"), (ii) the Authority's interests in all agreements associated with events to be held at the Stadium, including, without limitation, all agreements relating to the use of the Stadium by a second NFL franchise, with the pledge by the Authority of the revenues received by it thereunder being on terms reasonably satisfactory to the Lenders, (iii) the Authority's interests in the Ground Lease and the Stadium Lease, the Disposition and

Development Agreement, the Project Management Agreement, the Non-Relocation Agreement, the Naming Rights Agreement, the Design-Build Agreement and other contracts related to the Stadium Project, (iv) all insurance proceeds received by the Authority, (v) all other funds, proceeds, disbursement rights, payment rights, and reimbursement rights, if any, related to the Stadium Project that may be advanced, distributed, disbursed, paid or reimbursed to the Authority, (vi) all other personal or mixed property of the Authority, and (vii) the Authority's leasehold and other interests in the Stadium Site and the Improvements; (b) Stadco (as borrower under the Stadco Loan), including, without limitation, (i) subject to any limitations set forth in the definitive Stadco Loan documents, revenues from luxury suites, club seats, advertising, sponsorships, concessions, merchandise, parking charges and all other revenues accruing to Stadco from any source, including amounts paid or payable by the Authority to Stadco under the Authority Note or otherwise and any net replacement revenues that are allocable to Stadco from compensation provided by the NFL for lost revenues resulting from the fact that the Team was required by the NFL to play a home football game at a location other than the Stadium (collectively, the "***Stadco Pledged Revenues***"; and, together with the Authority Pledged Revenues, the "***Pledged Revenues***"), and (ii) the Stadium Lease, the Team Sublease and other contracts related to the Stadium Project; and (c) the proceeds of the Loans, the Collateral Account, each of the other Accounts and all funds and proceeds deposited therein. Leasehold mortgages will be recorded in favor of the Borrower against the Authority's and Stadco's leasehold and other interests in the Stadium Site and the Improvements, which leasehold mortgages will be subsequently assigned by the Borrower to the Collateral Agent.

The Senior Secured Facility shall be further secured by (i) the Lenders' Non-Relocation Agreement; (ii) the Authority's interests in any and all property of Stadco as and to the extent pledged or purported to be pledged to the Authority as collateral for the Stadco Obligations, including, without limitation, (a) the Stadco Pledged Revenues, and (b) the Stadium Lease, the Team Sublease and other contracts related to the Stadium Project, which interests will be collaterally assigned by the Authority to the Borrower, and in turn collaterally assigned by the Borrower to the Collateral Agent; and (iii) Stadco's interests in any and all property of the Authority as and to the extent pledged or purported to be pledged to Stadco as collateral for the Stadco Advance, including, without limitation, (a) the Authority Pledged Revenues, and (b) the Authority's interests in the Ground Lease and the Stadium Lease, the Naming Rights Agreement and other contracts related to the Stadium Project, which interests will be collaterally assigned by Stadco to the Borrower, and in turn collaterally assigned by the Borrower to the Collateral Agent.

The Ground Lease, the Stadium Lease, the Team Sublease, the Design-Build Agreement, the Disposition and Development Agreement, the Project Management Agreement and all other contracts related to the

Stadium Project shall be collaterally assigned by the Authority and Stadco, as applicable, to the Borrower, which shall in turn collaterally assign all of such agreements and contracts to the Collateral Agent (on behalf of the Lenders) pursuant to documentation satisfactory to the Collateral Agent in form and substance. Appropriate UCC financing statements will be filed in favor of the Collateral Agent in Santa Clara County and in the Secretary of State's office of the States in which the Borrower, the Authority and Stadco are respectively formed, in each case, evidencing the security interests granted to the Collateral Agent (on behalf of the Lenders) in connection with the transactions contemplated by the Commitment Letter.

Any Arranger may accept deposits from (i) the Company or (ii) the Borrower or the Authority at the direction of the Company. All security arrangements relating to the Senior Secured Facility shall be in form, scope and substance satisfactory to the Collateral Agent and the Co-Lead Arrangers and shall be perfected on the Closing Date.

Representations and Warranties of the Borrower: The credit agreement for the Senior Secured Facility will contain such representations and warranties by the Borrower as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: due organization; requisite power and authority; qualification; due authorization, execution, delivery and enforceability of the Loan Documents to which the Borrower is a party; creation, perfection and priority of security interests; no conflicts; governmental consents; absence of material litigation; title to properties; no defaults under material agreements; absence of brokers or finders fees; solvency; compliance with laws; status as senior debt; full disclosure; and Patriot Act and other related matters.

Covenants of the Borrower: The credit agreement for the Senior Secured Facility will contain such financial, affirmative and negative covenants by the Borrower as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation:

- financial covenant: From and after the commencement of operations at the Stadium, the Borrower shall maintain (i) a pro forma debt service coverage ratio as of the end of each fiscal quarter of not less than 2.0:1.0 and (ii) an historical debt service coverage ratio as of the end of each fiscal quarter to be mutually agreed upon prior to the Closing.

- affirmative covenants: delivery of financial statements and other reports (including the identification of information as suitable for distribution to Public Lenders or Non-Public Lenders); maintenance of existence; payment of taxes and claims; maintenance of properties; maintenance of insurance; cooperation with syndication efforts; books and records; inspections; lender meetings; compliance with laws; compliance with

NFL rules and regulations; agreement to take direction from Lenders and/or the NFL, as applicable, upon a default; cash management and further assurances; and use of best efforts to work with the Authority and Stadco so as to arrange the Borrower's transaction structure and the operations of the Loan Parties in such a way that any takeout financings of the Senior Secured Facility achieve an investment grade credit rating, and including, in each case, exceptions and baskets to be mutually agreed upon; and

- negative covenants: limitations with respect to other indebtedness; liens; negative pledges; restrictions on junior payments (e.g., dividends, redemptions or voluntary payments on certain debt); investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; special purpose entity provisions; capital expenditures; conduct of business; amendments and waivers of organizational documents and other material agreements; and changes to fiscal year, and including, in each case, exceptions and baskets to be mutually agreed upon.

Events of Default in respect of the Borrower: The credit agreement for the Senior Secured Facility will include such events of default (and, as appropriate, grace periods) as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: failure to make payments when due, defaults under other agreements or instruments of indebtedness, certain events under hedging agreements, noncompliance with covenants, breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts, and impairment of security interests in collateral.

Representations and Warranties of the Authority: The credit agreement for the Authority Loan will contain such representations and warranties by the Authority as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: due organization; requisite power and authority; due authorization, execution, delivery and enforceability of the Loan Documents and Authority Loan documents to which the Authority is a party; creation, perfection and priority of security interests; no conflicts; governmental consents; absence of material litigation; title to properties; no defaults under material agreements; absence of brokers or finders fees; solvency; compliance with laws; status as senior debt; full disclosure; and Patriot Act and other related matters.

Covenants of the Authority: The credit agreement for the Authority Loan will contain such affirmative and negative covenants by the Authority as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation:

- affirmative covenants: delivery of financial statements and other reports (including the identification of information as suitable for distribution to Public Lenders or Non-Public Lenders); maintenance of existence; payment of taxes and claims; maintenance of properties; maintenance of insurance; cooperation with syndication efforts; books and records; inspections; lender meetings; compliance with laws; maintenance of the Design-Build Agreement in full force and effect; cash management and further assurances; and use of best efforts to work with the Borrower and Stadco so as to arrange the Borrower's transaction structure and the operations of the Loan Parties in such a way that any takeout financings of the Senior Secured Facility achieve an investment grade credit rating, and including, in each case, exceptions and baskets to be mutually agreed upon; and

- negative covenants: limitations with respect to other indebtedness, other than a line of credit provided to the Authority by the Stadium manager; liens; negative pledges; restrictions on junior payments (e.g., dividends, redemptions or voluntary payments on certain debt); investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; special purpose entity provisions; capital expenditures; conduct of business; amendments and waivers of organizational documents and other material agreements; junior indebtedness; and changes to fiscal year, and including, in each case, exceptions and baskets to be mutually agreed upon.

Events of Default in respect of the Authority: The credit agreement for the Authority Loan will include such events of default (and, as appropriate, grace periods) as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: failure to make payments when due, defaults under other agreements or instruments of indebtedness, certain events under hedging agreements, noncompliance with covenants, breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts, and impairment of security interests in collateral.

Representations and Warranties of Stadco: The credit agreement for the Stadco Loan will contain such representations and warranties by Stadco as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: due organization; requisite power and authority; qualification; equity interests and ownership; due authorization, execution, delivery and enforceability of the Loan Documents and Stadco Loan documents to which Stadco is a party; creation, perfection and priority of security interests; no conflicts; governmental consents; historical and projected financial condition; no material adverse change; no restricted junior payments; absence of material litigation; payment of taxes; title to properties; environmental matters; no defaults under material agreements;

Investment Company Act and margin stock matters; ERISA and other employee matters; absence of brokers or finders fees; solvency; compliance with laws; status as senior debt; full disclosure; and Patriot Act and other related matters.

Covenants of Stadco: The credit agreement for the Stadco Loan will contain such affirmative and negative covenants by Stadco as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation:

- affirmative covenants: delivery of financial statements and other reports (including the identification of information as suitable for distribution to Public Lenders or Non-Public Lenders); maintenance of existence; payment of taxes and claims; maintenance of properties; maintenance of insurance; cooperation with syndication efforts; books and records; inspections; lender meetings; compliance with laws; environmental matters; additional collateral and guarantors; maintenance of facility level ratings; maintenance of the Design-Build Agreement in full force and effect; cash management and further assurances; and use of best efforts to work with the Borrower and the Authority so as to arrange the Borrower's transaction structure and the operations of the Loan Parties in such a way that any takeout financings of the Senior Secured Facility achieve an investment grade credit rating, and including, in each case, exceptions and baskets to be mutually agreed upon; and

- negative covenants: limitations with respect to other indebtedness; liens; negative pledges; restrictions on junior payments (e.g., dividends, redemptions or voluntary payments on certain debt); restrictions on subsidiary distributions; investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; special purpose entity provisions; capital expenditures; transactions with affiliates; conduct of business; permitted activities of Stadco; amendments and waivers of organizational documents and other material agreements; junior indebtedness (such that the only junior indebtedness permitted is indebtedness incurred pursuant to the NFL Financing); and changes to fiscal year, and including, in each case, exceptions and baskets to be mutually agreed upon.

Events of Default in respect of Stadco: The credit agreement for the Stadco Loan will include such events of default (and, as appropriate, grace periods) as are reasonably satisfactory to the Co-Lead Arrangers and usual and customary for project financings of this kind, giving due regard to then current market conditions, including without limitation: failure to make payments when due, defaults under other agreements or instruments of indebtedness, certain events under hedging agreements, noncompliance with covenants, breaches of representations and warranties, bankruptcy, judgments in excess of specified amounts,

ERISA, impairment of security interests in collateral and "change of control" (to be defined in a mutually agreed upon manner).

Pledged Revenues Waterfall: All Pledged Revenues received shall be paid directly by Stadco, the Authority or the Borrower to one or more restricted deposit accounts subject to the exclusive control of the Collateral Agent (the "*Collateral Account*") on a daily basis. Commencing upon the receipt of any Pledged Revenues into the Collateral Account, the Collateral Agent shall transfer funds periodically from the Collateral Account to certain other restricted deposit accounts (which will be subject to the exclusive control of the Collateral Agent) (such accounts collectively, together with the Collateral Account, the "*Accounts*") in an order of priority to be set forth in the definitive Loan Documents (which will reflect the seniority of obligations of the Authority under the Ground Lease and will otherwise be in accordance with such terms and conditions as are usual and customary for project financings of this kind). Upon completion of construction, any excess amounts remaining after the transfers described above shall not be distributed but shall instead be used to permanently reduce the Senior Secured Facility so long as sufficient reserves have been established to fund the operating expenses of the Stadium for the then current NFL season.

Construction Draws: Advances under the Senior Secured Facility shall be made (after review and approval by the Construction Monitor) solely (X) to fund advances under the Authority Loan, which shall be applied solely to pay (i) Stadium Project costs, pursuant to the Construction Budget, no more frequently than monthly and pursuant to construction loan requisition and disbursement procedures and requirements established by the Collateral Agent, including retainage withheld in accordance with construction contract documents, loan balancing provisions, adequacy of funding and approval by the Construction Monitor of all requisitions, (ii) approved operating expenses pursuant to an approved operating budget at such times to be mutually agreed upon, (iii) interest and fees that become due under the Authority Loan, and (iv) all other fees, costs and expenses incurred or payable by the Authority under the Authority Loan; (Y) to fund advances under the Stadco Loan, which shall be applied solely to (i) finance or refinance certain Stadco Project Costs, (ii) advance funds in respect of the Stadco Advance evidenced by the Authority Note (subject to the restrictions described in clause (X)(i), above), (iii) pay interest and fees that become due under the Stadco Loan, and (iv) pay all other fees, costs and expenses incurred or payable by Stadco under the Authority Loan; and (Z) without duplication, to pay (i) interest and fees that become due under the Senior Secured Facility, and (ii) all other fees, costs and expenses incurred or payable by the Borrower under the Senior Secured Facility.

Conditions Precedent to Effectiveness of Senior Secured Facility: The Senior Secured Facility will be subject to customary closing conditions, including, without limitation, the conditions precedent

referred to in the Commitment Letter and listed on Annex C attached to the Commitment Letter.

Conditions Precedent to Each Borrowing:

Each borrowing under the Senior Secured Facility will be subject to conditions that are usual and customary for project financings of this kind and as otherwise agreed to by the Borrower and the Administrative Agent, including, without limitation: (i) accuracy of representations and warranties, and (ii) absence of any default or event of default. In addition, for each borrowing under the Senior Secured Facility, there shall have occurred a completion of a periodic inspection of the Stadium Project by the Construction Monitor and delivery of a certificate by the Construction Monitor to the Administrative Agent and the Co-Lead Arrangers, together with delivery by the Borrower and the Authority of certain certifications and written evidence in respect of the items and costs for which such borrowing is to be made.

Capitalized Interest:

Whenever any amount of interest and fees is due and payable under the Senior Secured Facility and (a) there are undrawn commitments under the Senior Secured Facility, the Administrative Agent will be entitled, in its sole discretion, to make, on behalf of the Borrower, a borrowing under the Senior Secured Facility, or (b) all of the commitments have been drawn, or during the continuance of any default or event of default under the definitive Loan Documents, the Administrative Agent will be entitled, in its sole discretion, to apply any funds on deposit in the Accounts that will be funded under the Pledged Revenues Waterfall, in each case, in the amount necessary to provide for the payment in full in cash of such unpaid amount as and when due, without the necessity of any further approval, authorization or other action of the Borrower, the Authority or Stadco.

Design-Build Agreement

On or prior to the Closing Date, (i) the Authority, Stadco, as construction agent, and Turner/Devcon, a joint venture (the "***Design-Builder***"), shall have entered into a design-build agreement (the "***Design-Build Agreement***") and shall have established an initial guaranteed maximum price for the construction of the Stadium, and (ii) the Design-Builder shall have obtained bids or proposals representing not less than 75% of all subcontracted project costs associated with the Stadium Project. Within 90 days following the Closing Date, the Authority, Stadco, as construction agent, and the Design-Builder shall enter into an amendment to the Design-Build Agreement establishing the guaranteed maximum price ("***GMP***") for the construction of the Stadium (exclusive of Stadco-controlled tenant improvements), which GMP shall (i) include all fees and other amounts payable to the Design-Builder and its affiliates and subcontractors, all costs and expenses for which the Design-Builder or any of its affiliates or subcontractors is entitled to reimbursement, and an appropriate contingency in an aggregate amount reasonably satisfactory to the Initial Lenders and (ii) not be greater than the initial guaranteed maximum price for the construction of the Stadium unless such excess is funded with cash (which may be advanced to the Authority by Stadco

as part of the Stadco Advance). The Design-Builder shall be responsible in certain circumstances to pay liquidated damages pursuant to the Design-Build Agreement. The Construction Monitor will be required to approve material change orders in accordance with provisions to be set forth in the definitive Loan Documents.

Stadco Obligation to Fund Cost Overruns: Pursuant to, and subject to the terms and conditions of, the Disposition and Development Agreement, Stadco is obligated to pay any amount by which the costs of the development and construction of the Stadium Project exceed the amounts available to the Authority to fund such costs.

NFL Rights: The Senior Secured Facility, the Security, the Authority Loan, the Stadco Loan, the Stadco Obligations, the Stadium Lease and the Team Sublease will be subject in all respects to the NFL Constitution, rules and regulations. The Collateral Agent, the Administrative Agent, the Co-Lead Arrangers, the Borrower, the Authority and the Team Parties will enter into a letter agreement with the NFL on the Closing Date (the "***NFL Consent Letter***") with respect to the Senior Secured Facility, the Security, the Authority Loan, the Stadco Loan, the Stadco Obligations, the Stadium Lease and the Team Sublease. The NFL Consent Letter will (i) impose certain restrictions on the ability of the Collateral Agent and the Lenders to exercise remedies under the Loan Documents, and (ii) permit the NFL under certain circumstances further described therein to seek a purchaser for (a) all assets of the Team and Stadco or (b) the Team and Stadco as a whole.

Assignments and Participations: The Lenders may assign all or any part of their respective shares of the Senior Secured Facility to their affiliates (other than natural persons) or one or more banks, financial institutions or other entities that are eligible assignees (to be defined in the Loan Documents) which, in the case of assignments with respect to the Senior Secured Facility (except in the case of assignments made by or to Goldman Sachs), are reasonably acceptable to the Administrative Agent, the Borrower, the Authority and Stadco, such consents not to be unreasonably withheld or delayed; *provided* that the Borrower, the Authority and Stadco shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within 5 business days after having received written notice thereof. Upon such assignment, such affiliate, bank, financial institution or entity will become a Lender for all purposes under the Loan Documents; *provided* that assignments made to affiliates and other Lenders will not be subject to the above described consent or minimum assignment amount requirements. A $3,500 processing fee will be required in connection with any such assignment, with exceptions to be agreed. The Lenders will also have the right to sell participations, without restriction, subject to customary limitations on voting rights, in their respective shares of the Senior Secured Facility.

Requisite Lenders: Amendments and waivers will require the approval of Lenders (other than Defaulting Lenders (as such term will be defined in the definitive Loan Documents) holding more than 50% of total commitments or exposure under the Senior Secured Facility ("***Requisite Lenders***"), *provided* that, in addition to the approval of Requisite Lenders, the consent of each Lender directly and adversely affected thereby will be required with respect to matters relating to (a) increases in the commitment of such Lender, (b) reductions of principal, interest, fees or premium, (c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment (d) certain collateral issues and (e) the definition of Requisite Lenders.

Yield Protection: The Senior Secured Facility will contain customary provisions (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, capital adequacy and capital requirements (or their interpretation), illegality, unavailability and other requirements of law and from the imposition of or changes in certain withholding or other taxes and (b) indemnifying the Lenders for "breakage costs" incurred in connection with, among other things, any prepayment of a Eurodollar Rate loan on a day other than the last day of an interest period with respect thereto. For all purposes of the Loan Documents, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case, pursuant to Basel III, shall be deemed introduced or adopted after the date of the Loan Documents. The Senior Secured Facility will provide that all payments are to be made free and clear of any taxes (other than franchise taxes and taxes on overall net income), imposts, assessments, withholdings or other deductions whatsoever. Lenders will furnish to the Administrative Agent appropriate certificates or other evidence of exemption from U.S. federal tax withholding.

Indemnity: The Senior Secured Facility will provide customary and appropriate provisions relating to indemnity and related matters in a form reasonably satisfactory to the Co-Lead Arrangers, the Administrative Agent and the Lenders.

Governing Law and Jurisdiction: The Senior Secured Facility will provide that the Borrower will submit to the exclusive jurisdiction and venue of the federal and state courts of the State of New York (except to the extent the Collateral Agent requires submission to any other jurisdiction in connection with the exercise of any rights under any security document or the enforcement of any judgment) and will waive any right to trial by jury. New York law will govern the Loan Documents, the Authority Loan documents and the Stadco Loan documents, except with respect to certain security documents where applicable local law is necessary for enforceability or perfection.

Counsel to the Co-Lead Arrangers, Administrative Agent and Collateral Agent: Winston & Strawn LLP.

The foregoing is intended to summarize certain basic terms of the Senior Secured Facility. It is not intended to be a definitive list of all of the requirements of the Lenders in connection with the Senior Secured Facility.

Annex C

Summary of Conditions Precedent to the Senior Secured Facility

This Summary of Conditions Precedent outlines certain of the conditions precedent to the Senior Secured Facility referred to in the Commitment Letter, of which this Annex C is a part. Certain capitalized terms used herein are defined in the Commitment Letter.

A. CONDITIONS PRECEDENT TO THE CLOSING OF THE SENIOR SECURED FACILITY

1. Concurrent Transactions: The Borrower shall agree to use the proceeds of the borrowings (collectively, the "**Borrowing**") to make the Authority Loan and the Stadco Loan. The Authority shall (i) agree to use the proceeds of the Authority Loan, together with the proceeds received by the Authority from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including, without limitation, the Stadco Advance, and other available funds of the Authority (all such proceeds and funds, collectively, the "**Authority Funds**"), to (A) pay costs and expenses of the design, development, construction and completion of the Stadium Project and (B) fund interest and fees that become due under the Authority Loan during the construction of the Improvements and (ii) use Authority Funds to pay all other fees, costs and expenses incurred or payable by the Borrower or the Authority in connection with the transactions described herein. The Company shall (i) agree to use the proceeds of the Stadco Loan, together with the proceeds received by the Company from all other sources reasonably satisfactory to each of the Co-Lead Arrangers, including without limitation the NFL Financing, and other available funds of the Company (all such proceeds and funds, collectively, the "**Company Funds**"), to (A) finance or refinance certain costs and expenses of the Improvements paid or payable by the Company, (B) fund interest and fees that become due under the Stadco Loan during the construction of the Improvements, and (C) make the Stadco Advance, and (ii) use Company Funds to pay all other fees, costs and expenses incurred or payable by the Borrower or the Company in connection with the transactions described herein. There will not exist any default or event of default under any of the Loan Documents, the definitive loan documents for the Authority Loan and the Stadco Loan, the Stadco Obligations Agreement, or under any other material indebtedness of the Borrower, the Authority, the Company, the Team or any of their respective subsidiaries. The Borrower, the Authority and the Company shall have obtained all requisite consents, including, without limitation those necessary under the NFL Consent Letter and the NFL Financing, to permit (i) the Borrowing under the Senior Secured Facility, and the borrowings under the Authority Loan and the Stadco Loan (ii) the obligation by the Team with respect to any capital call made on the Team by the Company as contemplated by the Commitment Letter, and (iii) the incurrence by the Company of the Stadco Obligations. The Authority and the Design-Builder shall have executed the Design-Build Agreement. The Company shall have obtained all necessary feasibility studies satisfactory to the Co-Lead Arrangers regarding market demand and revenue projections in respect of, among other things, stadium builders licenses, premium seating and sponsorship revenues. The amounts contained in the construction fund together with all amounts available from and under the Senior Secured Facility, the NFL Financing and any other sources reasonably satisfactory to each of the Co-Lead Arrangers shall be sufficient to complete construction of the Improvements by the Scheduled Completion Date.

2. Financial Statements. Each Co-Lead Arranger shall have received (i) pro forma financial statements for the Authority and Stadco, in form, scope and substance reasonably satisfactory to such Co-Lead Arranger and the Initial Lenders that demonstrate that the ratio of projected net revenues of the Borrower available for debt service to projected debt service is expected to be not less than 2.0:1.0 (based on assumptions satisfactory to each Co-Lead Arranger in respect of the

proposed takeout financings) and (ii) detailed financial information regarding sales to date of premium seating, stadium builders licenses and sponsorships, including comparisons as to projected sales and any necessary revisions to such projected sales.

3. Due Diligence. Each Co-Lead Arranger shall be satisfied, in its discretion, with the results of the due diligence performed with respect to (i) the general affairs, management, prospects, financial position, equity holders' equity or results of operations of the Borrower, the Company, the Team, the Authority and their respective subsidiaries and affiliates, and (ii) the tax, accounting, legal, environmental, regulatory and other issues relevant to the Borrower, the Company, the Team, the Authority, their respective subsidiaries and affiliates and the transactions contemplated by the Commitment Letter and (iii) the financial projections provided and the disclosure contained in the several feasibility studies and the reports (including market studies, pricing recommendations and projected revenues) prepared in respect of the Stadium Project and the insurance program established in respect thereof by the insurance consultant, the Construction Monitor and other third party consultants, in each case satisfactory to such Co-Lead Arranger.

4. Performance of Obligations. All costs, fees, expenses (including, without limitation, legal fees and expenses, title premiums, survey charges and recording taxes and fees) and other compensation contemplated by the Commitment Letter and the Fee Letter payable to each Co-Lead Arranger, the Administrative Agent or the Lenders shall have been paid to the extent due and the Borrower, the Authority and the Company shall have complied in all material respects with all of their other obligations under the Commitment Letter and the Fee Letter, on the Closing Date.

5. Environmental Matters. The Lenders shall have received Phase I and Phase II environmental reports and other information in form, scope and substance reasonably satisfactory to each Co-Lead Arranger concerning any environmental liabilities.

6. Customary Closing Documents. Each Co-Lead Arranger shall be satisfied that the Borrower, the Authority and the Company, as applicable, has complied with the following other customary closing conditions, including, without limitation: (i) the delivery of legal opinions (including, without limitation, non-consolidation opinions in respect of the Company (i.e., that it will not be consolidated with the Team upon a Team bankruptcy) and the Borrower (i.e., that it will not be consolidated with the Company or the Authority upon a Company or an Authority bankruptcy)), evidence to the reasonable satisfaction of the Co-Lead Arrangers that the Authority will not be consolidated with the City upon a City bankruptcy, corporate records and documents from public officials, lien searches and officer's certificates; (ii) evidence of authority; (iii) obtaining material third party and governmental consents necessary in connection with the transactions contemplated by the Commitment Letter, the financing contemplated thereby and the construction of the Improvements; (iv) absence of litigation affecting the transactions contemplated by the Commitment Letter and the financing contemplated thereby; (v) certified copies of the operating, partnership or similar agreements, as applicable, of each of the Borrower, the Authority and the Company; (vi) perfection of liens, pledges, and mortgages on the collateral securing the Senior Secured Facility, including, without limitation, all filings, recordations and searches necessary or desirable in connection with the security interest having been granted; (vii) delivery of the leasehold mortgages in respect of the Stadium Site and satisfactory commitments for title insurance in respect of such leasehold interests; (viii) evidence of insurance during construction of the Improvements and a final determination (to the satisfaction of each Co-Lead Arranger) of the insurance requirements applicable to the Stadium once it is open to the public, and a third party insurance consultant shall provide a report certifying that the insurance program for both (A) construction of the Improvements and (B) the period following its opening to the public) is

sufficient; and (ix) delivery of a solvency certificate from a responsible officer of each of the Borrower, the Authority and the Company in form and substance, and with supporting documentation, satisfactory to each Co-Lead Arranger, certifying that such party is solvent. Each Co-Lead Arranger will have received at least 10 days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act. Each Co-Lead Arranger shall be satisfied with the terms of the Loans, the Stadco Advance, the Authority Note, the Stadco Obligations, the Leases, the NFL Consent Letter and the Stadco operating agreement.

7. Rating for Takeout Financings. Each Co-Lead Arranger shall be satisfied that the Borrower, the Authority and the Company have established the transaction structure and operations of the Borrower in such a way that any takeout financing in respect of the Senior Secured Facility will achieve an investment grade rating.

8. Construction Program. The construction program designed for the Stadium Project shall be satisfactory in all respects to each Co-Lead Arranger and shall include all required public approvals, satisfactory environmental reviews and reports and all necessary building permits. The Design-Builder shall have demonstrated to the satisfaction of each Co-Lead Arranger sufficient financial resources to meet its obligations under the Design-Build Agreement. The Construction Monitor shall have delivered a report to each Co-Lead Arranger stating that the funds deposited into the construction fund at Closing, together with all monies available from and under the Senior Secured Facility, the NFL Financing and any other source are sufficient to complete construction of the Improvements by the Scheduled Completion Date. The Authority, the Company, as construction agent, and the Design-Builder, shall have entered into a design-build agreement and shall have established an initial guaranteed maximum price for the construction of the Stadium, and the Design-Builder shall have obtained bids or proposals representing not less than 75% of all subcontracted project costs associated with the Stadium Project.

9. NFL Approvals. Each Co-Lead Arranger shall have received from the NFL: (i) approval by the NFL owners of the financing contemplated by the transactions set out in the Commitment Letter, (ii) a debt limit waiver enabling the Team and Stadco to undertake their respective obligations as expressly contemplated by the Commitment Letter, (iii) the NFL Consent Letter and (iv) executed copies of all documents relating to the NFL Financing.

10. Formation and Organization of Borrower. The governing instrument, beneficial owners and trustee of the Borrower shall, in each case, be reasonably satisfactory to each of the Co-Lead Arrangers.

Execution Copy

GOLDMAN, SACHS & CO.
200 West Street
New York, New York
10282-2198

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
100 North Tryon Street
24th Floor
Charlotte, North Carolina
28255

U.S. BANK NATIONAL ASSOCIATION
425 Walnut Street
Cincinnati, Ohio 45202

PERSONAL AND CONFIDENTIAL

November 4, 2011

Stadium Funding Trust
c/o Wilmington Trust, National Association, as Owner Trustee
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001
Attention: Corporate Trust Administration

Forty Niners Stadium, LLC
4949 Centennial Blvd.
Santa Clara, California 95054
Attention: John Edward York, President

Engagement Letter

Ladies and Gentlemen:

We refer to the commitment letter by and among Stadium Funding Trust (the "**Borrower**"), Forty Niners Stadium, LLC (the "**Company**"), Goldman Sachs Bank USA ("**GS Bank**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and U.S. Bank National Association dated the date hereof (the "**Commitment Letter**"), regarding the Senior Secured Facility to be made by the Lenders (as defined therein) to the Borrower in the aggregate principal amount of $850,000,000. Capitalized terms used herein without definitions have the meanings assigned to them in the Commitment Letter.

1. Retention Offer. Each of the Borrower and the Company and, upon its joinder hereto, Santa Clara Stadium Authority (the "**Authority**") hereby confirms that it offers to retain Goldman, Sachs & Co. ("**Goldman Sachs**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**MLPFS**") and U.S. Bank National Association ("**U.S. Bank**" and together with Goldman Sachs, and MLPFS, the "**Arrangers**"), or a designated affiliate of an Arranger, if any, to act in a senior role, in each case, for the Borrower, the Company, the Authority and for their respective affiliates in connection with (i) any underwritten offering, private placement or securitization of debt securities issued to refinance or takeout the Senior Secured Facility in connection with the Stadium Project (collectively, "**Permanent Securities**"), subject to the terms and conditions set forth in this Engagement Letter and the execution and delivery of an underwriting, purchase or placement agency agreement in customary form to be agreed upon (giving due regard to then current market conditions applicable to similar financings), and (ii) any bank loan or other debt financing (other than the Senior Secured Facility) not covered by clause (i) incurred to refinance or takeout the Senior Secured Facility or any other debt (other than any NFL Financing) incurred in

connection with the Stadium Project (collectively, the "**Permanent Loans**" and, together with the Permanent Securities, the "**Permanent Debt**"), subject to the terms and conditions set forth in this Engagement Letter and the execution and delivery of loan documentation in customary form to be agreed upon (giving due regard to then current market conditions applicable to similar financings). The Arrangers will have the right, but not the obligation, to act in such senior roles and may, in consultation with the Borrower, the Authority and the Company, form an underwriting syndicate, bank loan syndicate or selling group and/or appoint co-managers, co-agents, co-book-runners or co-lead arrangers in connection therewith. If any Arranger elects not to act in such senior roles, the Authority, the Borrower, the Company and/or their respective affiliates (together, the "**Debt Issuer**") shall be permitted to incur such Permanent Debt without such Arranger and without any further obligation to such Arranger hereunder with respect to such Permanent Debt.

Except as contemplated in the preceding paragraph, none of the Borrower, the Authority, the Company nor any of their respective subsidiaries will offer or sell any Permanent Securities to, or incur any Permanent Loans or borrow any similar debt from, any third party (other than the Arrangers) during the term of this engagement without the prior consent of each Arranger.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority acknowledges that this Engagement Letter is neither an expressed nor an implied commitment by the Arrangers, or any of their respective affiliates, to act in any capacity in any of the transactions described above, to provide or arrange any financing or to purchase or place any securities or loans, or to enter into any foreign exchange or commodities transaction, currency or interest rate swap, or other hedging or derivative transaction, which commitment or agreement, if any, will only exist if set forth in a separate agreement appropriate for such transaction. Each such separate agreement shall also include a customary undertaking by the Borrower, the Authority and the Company to cooperate (including an undertaking by the Company to use its commercially reasonable efforts to cause the Team to cooperate) with the Arrangers in respect of the placing or selling or arranging or obtaining of commitments in respect of the Permanent Securities or Permanent Loans, as applicable.

For the avoidance of doubt, the obligations of the Borrower, the Company and the Authority hereunder (other than Section 5 and Annex A hereto) are subject to the Authority joining this Engagement Letter as a co-obligor of the Borrower and the Company on or prior to December 15, 2011, with such amendments hereto as are reasonably necessary in connection with such joinder.

2. Fees and Expenses. The compensation for each Arranger's participation in any Permanent Debt transaction will be determined by reference to then-current market rates for such participation in similar roles in similar transactions for similar borrowers. In addition, each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees to reimburse each Arranger and its respective affiliates, if any, for their reasonable out of pocket fees and expenses in connection with any such transaction to which such Arranger and its respective affiliates, if any, is a party, including the fees and disbursements of the attorneys and advisors to such Arranger and its respective affiliates, if any, plus any sales, use or similar taxes (including additions to such taxes, if any) arising in connection with any matter referred to in this Engagement Letter; *provided, however*, that in the event that the Borrower, the Authority or the Company enters into an underwriting or purchase agreement for the sale of Permanent Securities in an underwritten offering and consummates such sale, the Arrangers will bear the fees and disbursements of its counsel, other than the customary Blue Sky and Financial Industry Regulatory Association, Inc. fees and expenses,

and expenses related to the preparation and production of underwriting or similar transaction documents, which fees and expenses will be borne by the Borrower, the Authority or the Company, as applicable.

3. Annex A. In connection with engagements such as this, it is the policy of each of our firms to receive indemnification. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees to the provisions with respect to our indemnity and other matters set forth in Annex A, which is incorporated by reference into this Engagement Letter.

4. Termination. This Engagement Letter may be terminated: (i) by the Authority (upon and after its joinder hereto), the Borrower and the Company at any time with or without cause (a) after the abandonment of the Stadium Project or the repayment in full of the Senior Secured Facility, (b) after expiration or termination by the Arrangers of the Commitment Letter prior to the funding of the Senior Secured Facility, (c) at the Maturity Date or (d) as to any Arranger in the event such Arranger or an affiliate thereof is obligated under the terms of the Commitment Letter to fund its respective loan under the Senior Secured Facility on the Closing Date and such Arranger fails to fund, or whose affiliate fails to fund, such loan; and (ii) by an Arranger, at any time with or without cause effective upon receipt of written notice to that effect. The obligations of the Authority (upon and after its joinder hereto), the Borrower and the Company under Sections 3, 5 and 6 herein will survive any such termination.

In entering into this Engagement Letter, the Arrangers have relied upon the commitments of the Borrower, the Company and, upon its joinder hereto, the Authority in Section 1 above (the "**Commitment**"). If, from the date hereof until the Maturity Date, any offering or placement of Permanent Securities or arrangement of Permanent Loans is consummated in which any Arranger was not approached to act in a senior role, in each case, in violation of Section 1 hereof, then the Authority (if it had joined hereunder), the Borrower and the Company will be deemed to be in breach of the Commitment and such Arranger will be entitled to liquidated damages from the Authority (if it had joined hereunder), the Borrower and the Company in the amount equal to the fee that such Arranger would have earned if such Arranger (or its designated affiliate) had been approached and had acted in such capacity during the term of this Engagement Letter for such breach of the Commitment, without proof of loss or damages. Such liquidated damages for the breach by the Authority (if it had joined hereunder), the Borrower and the Company of the Commitment will be the exclusive remedy of such Arranger and its respective affiliates with respect to a breach of Section 1.

Notwithstanding anything to the contrary contained in this Engagement Letter, the Debt Issuer shall be permitted to enter into no more than two financings related to single, specified revenue streams (*e.g.*, the securitization of the revenue stream arising from the naming rights associated with the Stadium Project), and the Arrangers shall not have the right (unless the Debt Issuer and the Arrangers agree otherwise) to act as an underwriter, initial purchaser, placement agent, book-runner and/or lead arranger in respect of such financings, or receive any fees in respect thereof.

5. Confidentiality. Please note that this Engagement Letter and any written communications provided by, or oral discussions with, any Arranger in connection with this arrangement are exclusively for the information of the Borrower, the Company and, upon its joinder hereto, the Authority and may not be disclosed by you to any third party (other than the Borrower's, the Company's and the Authority's outside law firms or accounting firms, in each case who has been informed by you of the confidential nature of such advice and the terms of this Engagement Letter and has agreed to treat such information confidentially) or circulated or referred to publicly without the Arrangers' prior written consent except,

after providing written notice to the Arrangers, pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative, regulatory or legislative body or committee; *provided* that the Borrower, the Authority and the Company shall have (a) promptly notified the Arrangers of the receipt of any such subpoena or order, (b) consulted with the Arrangers as to the advisability of taking steps to resist or narrow the scope of the disclosure contemplated thereby and (c) cooperated with the Arrangers in any efforts it may make to obtain an order or other reliable assurance that confidential treatment will be accorded to such advice and the terms of this Engagement Letter. However, we hereby consent to your disclosure of this Engagement Letter and such communications and discussions (i) to the Borrower's, the Authority's, the Company's and the Team's respective officers, directors, agents and advisors who are directly involved in the consideration of this Engagement Letter and who have been informed by you of the confidential nature of such advice and this Engagement Letter and who have agreed to treat such information confidentially; (ii) to the NFL; and (iii) to the extent necessary in connection with the joinder of the Authority hereunder, including without limitation in connection with the Authority's requisite processes as a joint powers agency of the State of California, of which we are aware. Notwithstanding anything herein to the contrary, you may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the offering and all materials of any kind (including opinions or other tax analyses) that are provided to the Borrower, the Authority, the Company or the Team relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure will remain subject to the confidentiality provisions hereof (and the foregoing sentence will not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the offering but does not include information relating to the identity of the issuer of the Senior Secured Facility, the issuer of any assets underlying the Senior Secured Facility, or any of their respective affiliates that are offering the Senior Secured Facility. Any information provided to the Arrangers under the terms of this Engagement Letter shall be provided to the Arrangers solely for the roles for which it was retained hereunder and shall not be deemed to have been given to the Arrangers or any affiliate of the Arrangers pursuant to the terms of any other agreement (including, without limitation, the Commitment Letter) or for any other purpose.

6. Miscellaneous. The Borrower, the Company and, upon its joinder hereto, the Authority may not assign any of their respective rights or be relieved of any of their respective obligations hereunder without the prior written consent of each Arranger. Notwithstanding the foregoing, the Company may, with the prior written consent of each Arranger (such consent not to be unreasonably withheld or delayed), assign all of its rights and obligations hereunder to a duly created and existing (i) affiliate established as a direct wholly-owned and controlled bankruptcy remote, single-purpose subsidiary of the Team or (ii) bankruptcy remote sister entity of the Team with the identical ownership as the Team, in each case to assume and carry out the business of the Company relating to the Stadium Project as described in the Commitment Letter and the transactions contemplated hereby, in which event such affiliate or sister entity shall thereafter be deemed to be the "Company" hereunder.

As you know, each of the Arrangers is a full service financial institution engaged, either directly or through its respective affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services

globally. In the ordinary course of their various business activities, each Arranger and funds or other entities in which such Arranger invests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, each Arranger may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of the Borrower, the Authority, the Company, the Team and/or other entities and persons which may (i) be involved in transactions arising from or relating to the engagement contemplated by this Engagement Letter or (ii) have other relationships with the Borrower, the Authority, the Company or the Team. In addition, each Arranger may provide investment banking, commercial banking, underwriting and financial advisory services to such other entities and persons. The engagement contemplated by this Engagement Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph, and employees working on the engagement contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefore. Although each Arranger in the course of such other activities and relationships may acquire information about the transaction contemplated by this Engagement Letter or other entities and persons which may be the subject of the engagement contemplated by this Engagement Letter, such Arranger shall have no obligation to disclose such information, or the fact that such Arranger is in possession of such information, to the Borrower, the Authority or the Company or to use such information on the Borrower's, the Authority's or the Company's behalf.

Each Arranger may have economic interests that conflict with those of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates. You agree that each Arranger will act under this Engagement Letter as an independent contractor and that nothing in this Engagement Letter or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Arranger and the Borrower, the Company, their respective equity holders or their respective affiliates. The Borrower, the Company and, upon its joinder hereto, the Authority acknowledge and agree that the transactions contemplated by this Engagement Letter (including the exercise of rights and remedies hereunder) are arm's-length commercial transactions between the Arrangers, on the one hand, and the Borrower, the Authority and the Company, on the other, and in connection therewith and with the process leading thereto, (i) no Arranger has assumed an advisory or fiduciary responsibility in favor of the Borrower, the Authority, the Company, their respective equity holders and/or their respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether an Arranger has advised, is currently advising or will advise the Borrower, the Authority, the Company, their respective equity holders or their respective affiliates on other matters) or any other obligation to the Borrower, the Authority or the Company except the obligations expressly set forth in this Engagement Letter and (ii) each Arranger is acting solely as a principal and not as the agent or fiduciary of the Borrower, the Authority, the Company, or their respective management, equity holders, affiliates, creditors or any other person. Each of the Borrower, the Company and, upon its joinder hereto, the Authority acknowledges and agrees that each such party has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees that it will not claim that any Arranger has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower,

the Authority or the Company, in connection with such transactions or the process leading thereto. In addition, each Arranger may employ the services of its affiliates in providing services and/or performing its or their obligations hereunder and may exchange with such affiliates information concerning the Borrower, the Authority, the Company and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded to such Arranger hereunder. The Arrangers acknowledge and agree that for the purposes of this Engagement Letter, the Authority has no affiliates or subsidiaries.

In the event any portion of the financing for the Stadium Project involves the issuance of municipal securities, the Arrangers will not be acting in any financial advisory or municipal advisor (as defined in Section 15B of the Exchange Act of 1934, as amended) capacity to any municipal entity, including, without limitation, the Authority, or the Borrower or the Company. In such financing the Arrangers would be acting solely as an underwriter. The Borrower, the Authority and the Company should be aware that the primary role of an underwriter is to purchase, or arrange for the placement of, securities in an arm's-length commercial transaction between the issuer and the underwriter and that the underwriter has financial and other interests that differ from those of the issuer. Each of the Borrower, the Company and, upon its joinder hereto, the Authority hereby consents to our acting in the capacities described in this Engagement Letter and as an underwriter in connection with the financing of the Stadium Project. Any Arranger may employ the services of its affiliates in providing certain services hereunder and may exchange with such affiliates information concerning the Borrower, the Authority, the Company and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded the Arrangers hereunder. In addition, please note that the Arrangers do not provide accounting, tax or legal advice.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority recognizes that, in providing services pursuant to this Engagement Letter, the Arrangers will rely upon and assume the accuracy and completeness of all of the financial, accounting, tax and other information discussed with or reviewed by us for such purposes, and we do not assume responsibility for the accuracy or completeness thereof. The Arrangers will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of the Borrower, the Authority, the Company or any other party or to advise or opine on any related solvency issues. Except as set forth in Annex A hereto, nothing in this Engagement Letter is intended to confer upon any other person (including equity holders, employees or creditors of the Borrower, the Authority or the Company) any rights or remedies hereunder or by reason hereof.

It is expressly understood and agreed by the parties hereto that (a) this Engagement Letter is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Trustee of the Borrower, in the exercise of the powers and authority conferred and vested in it under the Trust Agreement, (b) each of the representations, undertakings and agreements herein made on the part of the Borrower is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose for binding only the Borrower, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association, individually or personally, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the

Borrower or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Borrower under this Engagement Letter or the other related documents.

Each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees for itself and its affiliates that any suit or proceeding arising in respect to this Engagement Letter or our engagement will be tried exclusively in any Federal court of the United States of America sitting in the Borough of Manhattan or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and each of the Borrower, the Company and, upon its joinder hereto, the Authority agrees to submit to the exclusive jurisdiction of, and to venue in, such court. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either our engagement or any matter referred to in this Engagement Letter is hereby waived by the parties hereto. Each of the Borrower, the Company and, upon its joinder hereto, the Authority for itself and its affiliates agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above shall be effective service of process against such party for any suit, action or proceeding brought in any such court. This Engagement Letter will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

This Engagement Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Engagement Letter by facsimile transmission or electronic transmission (in PDF format) will be effective as delivery of a manually executed counterpart hereof.

[Remainder of page intentionally left blank]

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Engagement Letter, which will become a binding agreement upon our receipt. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN, SACHS & CO.

By: Goldman Sachs & Co.
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Engagement Letter, which will become a binding agreement upon our receipt. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN, SACHS & CO.

By: _____
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: _____
Name: Nan Elliott McCabe
Title: Managing Director

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Engagement Letter, which will become a binding agreement upon our receipt. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN, SACHS & CO.

By:_____
(Goldman, Sachs & Co.)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By:_____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION

By:_____
Name: William Malcolm
Title: Vice President

Confirmed as of November 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By: _____
Name:
Title: Jacqueline E. Solone
Banking Officer

FORTY NINERS STADIUM, LLC

By: _____
Name:
Title:

Confirmed as of November 4, 2011:

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association,
not in its individual capacity but solely as Owner Trustee

By:_____
Name:
Title:

FORTY NINERS STADIUM, LLC

By: John Edward York
Name: John Edward York
Title: President

Annex A

In the event that any Arranger becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including shareholders, partners, members or other equity holders of the Borrower, the Authority or the Company in connection with or as a result of either this arrangement or any matter referred to in this Engagement Letter, the Borrower, the Company and, upon its joinder hereto, the Authority jointly and severally agree to periodically reimburse each Arranger for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided, however, that if it is found in any such action, proceeding or investigation that any loss, claim, damage or liability of such Arranger has resulted from the gross negligence or willful misconduct of such Arranger in performing the services which are the subject of this Engagement Letter or in connection with any matter referred to herein, such Arranger shall repay such portion of the reimbursed amounts that is attributable to expenses incurred in relation to the act or omission of such Arranger which is the subject of such finding. The Borrower, the Company and, upon its joinder hereto, the Authority also agree to indemnify and hold each Arranger harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in this Engagement Letter (whether or not such investigation, litigation, claim or proceeding is brought by you, your equity holders or creditors or an indemnified person and whether or not any such indemnified person is otherwise a party thereto), except to the extent that such loss, claim, damage or liability has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Arranger in performing the services that are the subject of this Engagement Letter or in connection with any matter referred to herein. If for any reason the foregoing indemnification is unavailable to an Arranger or insufficient to hold it harmless, then the Borrower, the Authority and the Company shall contribute to the amount paid or payable by such Arranger as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Arranger on the other hand in the matters contemplated by this Engagement Letter as well as the relative fault of the Borrower, the Authority and the Company and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and such Arranger with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Borrower, the Authority and the Company under this paragraph shall be in addition to any liability which the Borrower, the Authority and the Company may otherwise have, shall extend upon the same terms and conditions to any affiliate of any Arranger and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of such Arranger and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Borrower, the Authority, the Company, each Arranger, any such affiliate and any such person. The Borrower, the Company and, upon its joinder hereto, the Authority also agree that neither any indemnified party nor any of such affiliates, partners, members, directors, agents, employees or controlling persons shall have any liability to the Borrower, the Authority or the Company or any person asserting claims on behalf of or in right of the Borrower, the Authority or the Company or any other person in connection with or as a result of either this arrangement or any matter referred to in this Engagement Letter, except in the case of the Borrower, the Authority and the Company to the extent that any losses, claims, damages, liabilities or expenses incurred by the Borrower, the Authority or the Company or their respective affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnified party in performing the services that are the subject of this Engagement Letter or in connection with any matter referred to herein; provided, however, that in no event will such indemnified party or such other parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such indemnified party's or such other parties' activities relating to

this Engagement Letter. For a period of one year from the termination of this Engagement Letter, prior to entering into any agreement or arrangement with respect to, or effecting, any proposed sale, exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one or a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Borrower, the Authority or the Company set forth in this Annex A, the Company will notify each Arranger in writing thereof (if not previously so notified) and, if requested by any Arranger, shall arrange in connection therewith alternative means of providing for the obligations of the Borrower, the Authority or the Company, as applicable, set forth in this paragraph, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions reasonably satisfactory to such Arranger; provided, however, that if any action, proceeding or investigation is pending at the end of such one year period for which a claim for indemnification, contribution or reimbursement under this agreement has been or may be made, the Borrower's, the Authority's and the Company's obligations pursuant to this sentence shall continue until such action, proceeding or investigation has been ultimately resolved. The provisions of this Annex A shall survive any termination or completion of the engagement provided by this Engagement Letter.

INDEMNIFICATION CONTRIBUTION AGREEMENT

This **INDEMNIFICATION CONTRIBUTION AGREEMENT** (this "Agreement"), dated as of [December 13], 2011, is made by and among Forty Niners Stadium, LLC, a Delaware limited liability company (the "Company"), Stadium Funding Trust, a Delaware statutory trust (the "Borrower"), and Santa Clara Stadium Authority, a California joint powers agency (the "Authority" and, together with the Borrower and the Company, the "Parties").

RECITALS

A. The Parties are parties to: (1) the Commitment Letter dated November 4, 2011 (inclusive of Annexes A, B and C attached thereto, the "Commitment Letter") among the Parties, Goldman Sachs Bank USA ("Goldman Sachs"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), Bank of America, N.A. ("BOA") and U.S. Bank National Association ("U.S. Bank" and, together with Goldman Sachs, MLPFS and BOA, the "Commitment Indemnified Parties") and (2) the Engagement Letter (Right of First Offer) dated November 4, 2011 (inclusive of Annex A attached thereto, the "ROFO Engagement Letter") among the Parties, Goldman, Sachs & Co., MLPFS and U.S. Bank (only the latter three entities, the "ROFO Indemnified Parties"). The Commitment Letter and the ROFO Engagement Letter are referred to collectively herein as the "Applicable Agreements". Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided in the Applicable Agreements.

B. Each of the Applicable Agreements provides for a joint and several indemnity obligation of the Parties, and the Parties desire to have any and all indemnity claims brought against any Party under any of the Applicable Agreements treated in the manner hereinafter set forth.

AGREEMENT

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

1. **Indemnification Contribution; Limited Borrower and Authority Obligations.**

(a) (i) *Company Obligations*. Subject to the exclusions and limitations set forth below in this Section 1, including but not limited to the limited contribution obligations of the Borrower set forth in Section 1(a)(i) and of the Authority set forth in Section 1(a)(ii), and further subject to any limitations on liability applicable to the Company under the Applicable Agreements and under applicable law, the Company hereby agrees to bear such claims by (A) any Commitment Indemnified Party pursuant to Section 5 (incorporating Annex A) of the Commitment Letter and (B) any ROFO Indemnified Party pursuant to Section 3 (incorporating

Annex A) of the ROFO Engagement Letter (the amount of any claim, in each case, "Indemnifiable Damages"). Such obligations shall exist without regard to which Party or Parties the claim is made against.

(ii) *Borrower Obligation.* Subject to the exclusions set forth in this Section 1, and further subject to any limitations on liability applicable to the Borrower under the Applicable Agreements and under applicable law, the Borrower hereby agrees to contribute an amount sufficient to provide for payment of the Indemnifiable Damages (x) in whole, to the extent that the Indemnifiable Damages result solely from the action or inaction of the Borrower and (y) in part, in proportion to the Borrower's relative fault as determined among the Parties, to the extent that the Indemnifiable Damages result from the action or inaction of the Borrower and one or more of the other Parties. Such obligations shall exist without regard to which Party or Parties the claim is made against.

(iii) *Authority Obligation.* Subject to the exclusions set forth in this Section 1, and further subject to any limitations on liability applicable to the Authority under the Applicable Agreements and under applicable law, the Authority hereby agrees to contribute an amount sufficient to provide for payment of the Indemnifiable Damages (x) in whole, to the extent that the Indemnifiable Damages result solely from the action or inaction of the Authority and (y) in part, in proportion to the Authority's relative fault as determined among the Parties, to the extent that the Indemnifiable Damages result from the action or inaction of the Authority and one or more of the other Parties. Such obligations shall exist without regard to which Party or Parties the claim is made against.

(b) Notwithstanding anything in this Agreement to the contrary, a Party shall not have any obligation to bear any Indemnifiable Damages relating to, arising from, or in connection with (i) the breach by one or both of the other Parties of any representation or warranty regarding such other Parties set forth in either of the Applicable Agreements, if such representation and warranty was known by such other Parties to be untrue when made, or (ii) any claim that is based upon any fraudulent, grossly negligent or intentional misconduct (including the failure to act) by such other Parties.

(c) In the event that any Party initially pays more than its applicable share of Indemnifiable Damages, then the Parties shall make such payments to each other such that the net payments reflect their applicable, respective shares.

(d) In the event a Party shall have made payment of its applicable share of Indemnifiable Damages and, subsequent to such payment, there shall be the recovery or receipt of payment respecting the previously paid claim by any Party, the effect of which is to reduce the amount of funds previously paid with respect to such claim, whether by the recovery of insurance proceeds, third party indemnification or otherwise, then the aggregate amount so recovered or received shall be shared among the Parties, in proportion to their payments but in each case subject to the limitations of Sections 1(a)(ii) and (iii) hereof, and shall be paid to the other Parties within ten (10) days after the date upon which such amount shall be received.

2. Settlement of Claims.

Any Party who receives notice of a claim for Indemnifiable Damages from (a) a Commitment Indemnified Party pursuant to the Commitment Letter or (b) a ROFO Indemnified Party pursuant to the ROFO Engagement Letter shall give prompt written notice thereof and a copy of such notice to the other Parties. If a Party has an obligation for the payment of an indemnification contribution pursuant to Section 1(a) above, such Party shall cooperate with the other Parties in connection with the defense and settlement of the claims pursuant to the Applicable Agreement with respect to which such contribution obligation applies. No Party shall settle any such claim, or agree to settle any such claim, without the prior written consent of the other Parties, unless such settling Party waives its right to contribution hereunder against the other Parties, and any settlement made in violation of this restriction, without notice or the obligation of any party to perform any act, shall have the immediate and irrevocable effect of fully releasing and discharging such non-consenting Parties from any obligation to make payment hereunder with respect to the settled claims.

3. Authority; No Conflict.

Each Party represents and warrants to the other Parties that (i) it has full capacity and power to execute, deliver and perform this Agreement, (ii) this Agreement has been duly executed and delivered by such Party, and is enforceable against such Party in accordance with its terms, and (iii) the obligations of such Party hereunder do not and will not conflict with any law, rule or statute applicable to such Party or create a breach or default under any material agreement to which such Party is a party.

4. Binding Effect; Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding any provision to the contrary in this Agreement, no member, officer, official, councilmember, commissioner, partner, employee, shareholder, manager, director or agent (as applicable) of a Party shall be personally liable to any other Party (or any of their respective successors-in-interest) under Section 1(a) of this Agreement. No Party shall assign its obligations under this Agreement without the prior written consent of the other Parties.

It is expressly understood and agreed by the Parties that (a) this Agreement is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as trustee of the Borrower, in the exercise of the powers and authority conferred and vested in it under that certain Trust Agreement dated as of November 4, 2011 among the Company, as depositor, BSCS 2011-4, Inc., as beneficiary, and Wilmington Trust, National Association, as owner trustee (the "Trust Agreement"), (b) each of the representations, undertakings and agreements herein made on the part of the Borrower is made and intended not as personal representations, undertakings and agreements by Wilmington Trust, National Association but is made and intended for the purpose for binding only the Borrower, (c) nothing herein contained shall be construed as creating any liability on Wilmington Trust, National Association, individually or personally, to perform any covenant either express or implied

contained herein, all such liability, if any, being expressly waived by the parties hereto and any person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any amount to be paid by the Borrower pursuant to the terms hereof or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Borrower hereunder.

5. Severability.

Each provision of this Agreement constitutes a separate and distinct undertaking, covenant and provision with respect to the Parties. In the event that one or more provisions of this Agreement are held illegal or unenforceable with respect to any Party, such provisions shall be deemed severed and the remaining provisions of this Agreement shall survive and remain fully enforceable against the Parties. The determination that any one or more provisions of this Agreement are illegal or unenforceable with respect to any Party shall not be construed to mean that any such provision is illegal or unenforceable with respect to the other Parties.

6. Construction.

This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of California without regard to principles of conflicts of laws. The captions in this Agreement are for convenience only and shall not be construed to limit or otherwise affect the meaning of any term or provision of this Agreement. Unless otherwise stated, section references refer to the sections of this Agreement.

7. Notices.

Any notice to be given to the Parties shall be made in writing and shall be addressed to the Parties at the addresses set forth on the signature page hereto, or at such other address provided in writing by a Party to the other Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

STADIUM FUNDING TRUST

By: Wilmington Trust, National Association, not in its individual capacity but solely as Owner Trustee

By:_____
Name: _____
Its: _____

Address for Notices:
Stadium Funding Trust
c/o Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890-0001
Attention: Corporate Trust Administration

FORTY NINERS STADIUM, LLC

By:_____
Name: _____
Its: _____

Address for Notices:
Forty Niners Stadium, LLC
4949 Centennial Blvd.
Santa Clara, California 95054
Attention: Chief Financial Officer

SANTA CLARA STADIUM AUTHORITY

By:_____
Name: _____
Its: _____

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

RECEIVED
DEC 08 2011
Office of the City Manager
City of Santa Clara

December 7, 2011

Jennifer Sparacino
Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95051

Re: Summary of Stadco Obligations

Dear Jennifer:

As you know, Forty Niners Stadium, LLC ("Stadco") has executed that certain Commitment Letter, dated November 4, 2011, among Stadco, the Stadium Funding Trust, Goldman Sachs Bank USA, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and U.S. Bank National Association (the "Commitment Letter"). On December 13, 2011, the Board of the Santa Clara Stadium Authority ("SCSA") is scheduled to consider approval of the SCSA's joinder to the Commitment Letter. In connection with its consideration of the joinder, the SCSA has asked that Stadco submit a summary description of the obligations to the SCSA that Stadco would undertake with respect to the financing described in the Commitment Letter. In response to that request, Stadco hereby submits for your consideration the attached "Summary of the Stadco Subordinated Loan, Stadco Obligations and SBL Disbursement Conditions" (the "Summary of Stadco Obligations").

The Summary of Stadco Obligations is intended as a companion to the Summary of the Senior Secured Facility attached as Annex B to the Commitment Letter, and is also intended to be attached, along with the Summary of the Senior Secured Facility, to the Disposition and Development Agreement ("DDA") as a part of the Preliminary Financing Plan. As described in the DDA and the Commitment Letter, the Senior Secured Facility and the Subordinated Loan and other obligations described in the Summary of Stadco Obligations are subject to a variety of conditions precedent and to the final negotiation, approval and execution of binding legal agreements.

Although much work remains to be done, the approval of the DDA and the SCSA's joinder to the Commitment Letter are exciting milestones for the project. As always, we appreciate the dedication of the SCSA staff and its consultants, and we look forward to continuing to work with you in the coming months.

Very truly yours,

Forty Niners Stadium, LLC

By: _____
Lawrence MacNeil

cc: Ronald E. Garrett

Summary of the StadCo Subordinated Loan, StadCo Obligations and SBL Disbursement Conditions

*This Summary outlines certain terms (i) of the StadCo Subordinated Loan, (ii) of the StadCo Term Loan Commitment, (iii) of the StadCo Purchase Commitment and (iv) under which SBL Proceeds are to be disbursed for the payment or reimbursement of Stadium Project construction costs. Capitalized terms used but not defined herein are defined in the Commitment Letter, dated November 4, 2011 (inclusive of Annexes A, B and C attached thereto, the "**Commitment Letter**"), among Forty Niners Stadium, LLC, a Delaware limited liability company, Stadium Funding Trust, a Delaware statutory trust ("**FinanceCo**"), Goldman Sachs Bank USA, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A. and U.S. Bank National Association.*

Parties; StadCo Obligations Agreement	
Authority:	Santa Clara Stadium Authority, a joint powers agency created pursuant to Section 6532 of the California Government Code (the "***Authority***"), formed exclusively for the purpose of financing, constructing, owning and operating the Stadium Project.
StadCo:	Forty Niners Stadium, LLC ("***StadCo***"), a special purpose entity whose activities will be limited exclusively to (i) participating in the development and financing of the Stadium Project, (ii) leasing the Stadium from the Authority and (iii) subleasing the Stadium to San Francisco Forty Niners, Limited (the "***Team***"; and together with StadCo, the "***Team Parties***"). As of the Closing Date, StadCo will be a wholly-owned, direct subsidiary of the Team.
StadCo Obligations Agreement:	On or prior to the Closing Date, StadCo and the Authority will enter into an agreement (the "***StadCo Obligations Agreement***") pursuant to which, among other things, (i) StadCo will make the StadCo Subordinated Loan (as defined and further described below), (ii) StadCo will obligate itself under certain circumstances to purchase from FinanceCo all or a portion of the Authority Loan on the Maturity Date (defined below), and (iii) StadCo will be required on the Maturity Date to loan to the Authority funds in an amount further described below if the StadCo Subordinated Loan has then matured.
StadCo Subordinated Loan	
StadCo Subordinated Loan:	Beginning on or around the Closing Date, and until the GMP for the construction of the Stadium has been established (exclusive of StadCo-controlled tenant improvements), StadCo will apply, in accordance with the Funding Agreement (as defined in the Disposition and Development Agreement), the proceeds of the StadCo Loan (proceeds drawn during such period, the "***Initial Proceeds***") to the payment of certain financing and other costs payable or reimbursable during such period (including, without limitation, fees owed by FinanceCo to the Lenders with respect to the Senior Secured Facility). Thereafter, StadCo will loan to the Authority all or substantially all of the remaining proceeds of the

	StadCo Loan, which loan (such loan, together with other amounts loaned by StadCo to the Authority to pay or reimburse financing costs (including interest and fees) and Authority Project Costs (defined below), collectively, the "***StadCo Subordinated Loan***") is to be used by the Authority to pay or reimburse Authority Project Costs and to fund interest and fees that become due with respect to the StadCo Subordinated Loan during the construction of the Improvements. The StadCo Subordinated Loan will constitute a loan subordinate to the Authority Loan and will be evidenced by a note of the Authority (the "***Authority Note***") issued to StadCo on or before the Closing Date.
Amount:	Up to a maximum amount to be agreed and presently anticipated to be US$400 million.
Purpose/Use of Proceeds:	The Authority will use the proceeds of the StadCo Subordinated Loan to pay (i) costs and expenses of the design, development, construction and completion of the Stadium Project ("***Authority Project Costs***"), and (ii) interest and fees that become due with respect to the StadCo Subordinated Loan during the construction of the Improvements.
Maturity Date:	The StadCo Subordinated Loan is expected to mature either (i) on the maturity date of the Senior Secured Facility, the Authority Loan and the StadCo Loan (the "***Maturity Date***"), or (ii) at the end of an approximately 25-year term (the "***Long Term Maturity Date***"). If the StadCo Subordinated Loan is structured such that it matures on the Maturity Date, StadCo will make the StadCo Term Loan Commitment as described below. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, no StadCo Term Loan Commitment will be made.
Availability:	Multiple drawings may be made under the Authority Note.
Amortization:	No scheduled amortization will be required with respect to the StadCo Subordinated Loan during the construction of the Improvements. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, amortization will begin following the Maturity Date and will proceed on a schedule to be agreed upon which will fully amortize the StadCo Subordinated Loan over its term.
Interest Rate:	While the Authority Loan is outstanding, the StadCo Subordinated Loan will bear interest at the rate and on the terms applicable to the Authority Loan and the StadCo Loan. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, it is anticipated that, following the refinancing of the Authority Loan, the StadCo Subordinated Loan will automatically adjust to bear interest at the rate and on the terms applicable to the permanent financing incurred by the Authority to refund the

	Authority Loan.
Interest Payments:	After the Closing Date, while the Authority Loan is outstanding, interest on the StadCo Subordinated Loan will be payable on the schedule on which interest is payable on the Authority Loan. If the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, it is anticipated that, following the refinancing of the Authority Loan, interest on the StadCo Subordinated Loan will be payable on the schedule on which interest is payable on the permanent financing incurred by the Authority to refund the Authority Loan.
Voluntary Prepayments:	The StadCo Subordinated Loan may be prepaid in whole or in part without premium or penalty; *provided* that, while the Authority Loan is outstanding, if the StadCo Subordinated Loan then bears interest with reference to the reserve adjusted Eurodollar Rate, it will be prepayable only on the last day of the related interest period unless the Authority pays any related breakage costs; and *provided, further*, that if the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, the Authority shall be required to pay any breakage costs, premium or penalty, if any, payable by StadCo as a result of any such prepayment made after the refinancing of the Authority Loan.
Mandatory Prepayments:	The Authority will be required to make mandatory prepayments on the StadCo Subordinated Loan from designated revenues received by the Authority (i) subject to (A) any obligation to make payments to the City under the Ground Lease, (B) while the Authority Loan is outstanding, any obligation otherwise to use or hold revenues pursuant to the definitive Authority Loan documents, (C) any obligation otherwise to use or hold revenues pursuant to the definitive StadCo Obligations Agreement (including, without limitation, the obligation to apply such revenues to the payment of the Authority's operating and maintenance expenses and to the funding of reserves), and (D) if the StadCo Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, any obligation otherwise to use or hold revenues pursuant to the definitive documents governing the permanent financing incurred by the Authority to refund the Authority Loan; and (ii) prior to any other distribution of such revenues to the City or to the Redevelopment Agency of the City of Santa Clara (the "***Agency***"), except for payments to the City and Agency required to be made as a condition to a sublease to a second NFL franchise. The Authority will be deemed to have made a mandatory prepayment of the StadCo Subordinated Loan upon the application by FinanceCo of Authority Pledged Revenues to the payment of the Senior Secured Facility under certain circumstances and to the extent described in the definitive Loan Documents.

Security:	Subject to any limitations described in the definitive documents, as security for the StadCo Subordinated Loan, StadCo will have a subordinate security interest in any and all property of the Authority that is pledged or purported to be pledged to FinanceCo as collateral for the Authority Loan, including, without limitation, (a) the Authority Pledged Revenues, and (b) the Authority's interests in the Ground Lease and the Stadium Lease, the Naming Rights Agreement and other contracts related to the Stadium Project.
StadCo Obligations	
StadCo Obligations:	Under the StadCo Obligations Agreement, StadCo will, for the benefit of the Authority and FinanceCo, make (a) the StadCo Term Loan Commitment[1] and (b) the StadCo Purchase Commitment (the StadCo Term Loan Commitment and the StadCo Purchase Commitment, collectively, the "***StadCo Obligations***").
Amount:	The amount of the StadCo Obligations will, in the aggregate, equal the amount of the Authority Loan outstanding from time to time. If the StadCo Term Loan Commitment is not required to be made because of the tenor of the StadCo Subordinated Loan, the amount of the StadCo Purchase Commitment will equal the amount of the Authority Loan outstanding from time to time. If the StadCo Term Loan Commitment is required to be made, the initial respective amounts of the StadCo Term Loan Commitment and the StadCo Purchase Commitment will be agreed upon among the Authority, StadCo, FinanceCo and the Initial Lenders prior to the Closing.
StadCo Term Loan Commitment:	If the StadCo Subordinated Loan is structured such that its maturity date is the Maturity Date, and consequently the StadCo Term Loan Commitment is made, StadCo will be required to loan to the Authority funds in an amount equal to the StadCo Term Loan Commitment by not later than the Maturity Date.
Purpose/Use of Proceeds of StadCo Term Loan Commitment:	To finance or refinance certain costs and expenses of the Stadium Project paid or payable by the Authority, including, without limitation, to refinance all or a portion of the Authority Loan.
Amortization:	If StadCo makes a term loan to the Authority pursuant to the StadCo Term Loan Commitment, amortization of that loan will begin following the Maturity Date and will proceed on a schedule to be agreed upon which will fully amortize the loan over its term.
StadCo Purchase Commitment:	StadCo will be required to purchase from FinanceCo on the Maturity Date all or a portion of the Authority Loan then outstanding on terms and under conditions to be agreed among StadCo, the Authority, FinanceCo and the Initial Lenders. The StadCo Purchase Commitment will be an obligation of StadCo subordinate to the

[1] If the Stadco Subordinated Loan is structured such that its maturity date is the Long Term Maturity Date, the Stadco Term Loan Commitment will not be made.

	StadCo Loan. The Authority's obligation to repay the principal of the Authority Loan purchased by StadCo pursuant to the StadCo Purchase Commitment will be forborne by StadCo until (i) the third anniversary of the Maturity Date, or (ii) if earlier, the date on which the Authority Loan has been fully refinanced (either such date, as applicable, the "***Deferred Maturity Date***"). During the period that begins on the Maturity Date and ends on the Deferred Maturity Date, interest on the Authority Loan will remain payable at the rate and on the terms applicable prior to the Maturity Date.
Mandatory Reduction of StadCo Obligations:	The aggregate amount of the StadCo Obligations will be reduced automatically to the extent that the amount of the Authority Loan outstanding from time to time is reduced.
Support for StadCo Obligations:	To support StadCo's obligation to fulfill the StadCo Purchase Commitment, and the StadCo Term Loan Commitment, if any, (i) pursuant to StadCo's operating agreement, in the event StadCo does not then have available funds or access to financing sufficient to meet its obligation under the StadCo Purchase Commitment or the StadCo Term Loan Commitment, StadCo shall have the right to, and shall, make a capital call on the Team in the amount of any deficiency, and the Team shall be obligated to promptly fund such capital call, subject to any restrictions on the Team under the NFL Constitution or the NFL League-wide Credit Facility, and provided that the NFL sufficiently waives the debt limit to which the Team is subject under the terms of the NFL Constitution; or (ii) the NFL shall agree under the NFL Consent Letter to seek a purchaser for (a) all assets of the Team and StadCo or (b) the Team and StadCo as a whole.
Security:	Subject to any limitations described in the definitive documents, as security for the StadCo Obligations, the Authority will have a subordinate security interest in any and all property of StadCo that is pledged or purported to be pledged to FinanceCo as collateral for the StadCo Loan, including, without limitation, (a) the StadCo Pledged Revenues, and (b) the Stadium Lease, the Team Sublease and other contracts related to the Stadium Project to which StadCo is a party.
SBL Proceeds	
Application of SBL Proceeds:	Proceeds received by the Authority from the sale or license of any stadium builder licenses ("***SBL Proceeds***") will be applied by the Authority to (1) the payment of Authority Project Costs, (2) the prepayment of the Authority Loan, or (3) the prepayment of the StadCo Subordinated Loan, in each case subject to the terms of the definitive Authority Loan documents and the definitive StadCo Obligations Agreement, and *provided* the Construction Loan Threshold (defined below) has been met or exceeded.

Construction Loan Threshold:	The Construction Loan Threshold will have been met only when (1) the Initial Proceeds shall have been applied by StadCo as described above under the heading "StadCo Subordinated Loan," (2) the proceeds of the NFL Financing shall have been applied by StadCo as contemplated in the Commitment Letter, and (3) at least US$200 million of proceeds of the Senior Secured Facility shall have been disbursed at the direction of FinanceCo to pay Authority Project Costs or StadCo Project Costs, not including any proceeds of the Senior Secured Facility loaned by FinanceCo to StadCo as part of the Initial Proceeds (the circumstances described in the foregoing clauses (1), (2) and (3), collectively, the "***Construction Loan Threshold***"). Until the Construction Loan Threshold has been met, all SBL Proceeds shall remain fully available to reimburse each purchaser of a stadium builder license as and to the extent required under the terms and conditions of such license.
NFL Rights:	The StadCo Obligations will be subject in all respects to the NFL Constitution, rules and regulations. The Collateral Agent, the Administrative Agent, the Co-Lead Arrangers, FinanceCo, the Authority and the Team Parties will enter into a letter agreement with the NFL on the Closing Date (the "***NFL Consent Letter***") with respect to the StadCo Obligations. The NFL Consent Letter will (i) impose certain restrictions on the ability of the Collateral Agent and the Lenders to exercise remedies under the Loan Documents, and (ii) permit the NFL under certain circumstances further described therein to seek a purchaser for (a) all assets of the Team and StadCo or (b) the Team and StadCo as a whole.

The foregoing is intended to summarize certain basic terms of the StadCo Subordinated Loan, the StadCo Term Loan Commitment and the StadCo Purchase Commitment and the terms and conditions under which SBL Proceeds are to be disbursed for the payment or reimbursement of Stadium Project construction costs. The foregoing is not intended to be a definitive, comprehensive or binding description of such terms.

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B-3/4B-1 RDA

Santa Clara All-America City 2001

Date: December 9, 2011

To: City Manager/Executive Director for Council/Redevelopment Agency Information

From: Assistant City Manager/Assistant Executive Director

Subject: Withdrawal of Request for the Consideration to Approve or Disapprove the Proposed Transfer of Ownership of the Great America Theme Park Lease from the Current Lessee, Cedar Fair, L.P., to the Proposed Lessee, JMA Ventures, L.L.C. or an Affiliate of JMA Ventures

EXECUTIVE SUMMARY:

At their November 15, 2011 meeting, the City Council set December 6, 2011 for the consideration to approve or disapprove the proposed transfer of ownership of the Great America Theme Park Lease from the current lessee, Cedar Fair, L.P., to the proposed lessee, JMA Ventures, L.L.C., or an affiliate of JMA Ventures. At the same meeting the Redevelopment Agency to an action to note and file the report.

Staff was then informed by JMA Ventures that a brief amount of additional time was needed to conclude the transaction between JMA Ventures and Cedar Fair. The requested transfer consideration was continued until the December 13, 2011 meeting of the Council and Agency.

On December 6, 2011, through a press release from Cedar Fair (attached), it was stated that JMA Ventures, LLC had elected to not move forward with their proposed purchase of California's Great America amusement park and that Cedar Fair would retain ownership of the Theme Park, therefore the proposed transfer consideration is being withdrawn.

Cedar Fair's retention of ownership of the Theme Park comes with a renewed commitment the Park's ongoing success. In their press release Cedar Fair commented, "We look forward to continuing to take advantage of the synergies which are uniquely available to us as a result of operating this park as part of our larger portfolio of properties."

APPROVED:

for Carol L McCarthy

Jennifer Sparacino
City Manager/Executive Director, Redevelopment Agency

Alan Kurotori
Assistant City Manager/Assistant Executive Director, Redevelopment Agency

Documents Related to this Report: Cedar Fair Press Release

Cedar Fair Entertainment Company

News Release

For Immediate Release
December 6, 2011

Contact: Stacy Frole (419) 627-2227

CEDAR FAIR TO RETAIN OWNERSHIP OF ITS CALIFORNIA'S GREAT AMERICA PARK

- **Valuable property expected to remain strong performer for Cedar Fair going forward**
- **Company reaches agreement with the San Francisco 49ers on parking and construction issues**
- **Expects to achieve high end of its annual distribution target of $1.35 to $1.65 per unit in 2012, and $2.00 or more in 2013**

SANDUSKY, OHIO, December 6, 2011 –Cedar Fair Entertainment Company (NYSE: FUN), a leader in regional amusement parks, water parks and active entertainment announced today that JMA Ventures, LLC ("JMA") has elected to not move forward with their purchase of California's Great America amusement park in Santa Clara, California. As a result, the definitive purchase agreement governing this transaction, originally agreed on September 16, 2011, has been terminated.

"We respect JMA's decision and are pleased to return to the long-term ownership of this exceptional property," said Matt Ouimet, Cedar Fair's president. "As we stated at the time the agreement was made, this is a quality park that has terrific employees and serves a strong market. We look forward to continuing to take advantage of the synergies which are uniquely available to us as a result of operating this park as part of our larger portfolio of properties."

According to Ouimet, the termination of this sale does not alter the Company's expectations of achieving record adjusted EBITDA between $365 million and $375 million in 2011. "In fact, we expect to be at the higher end of our original distribution guidance of $1.35 to $1.65 per limited partner unit in 2012," he said. "With continued growth in our annual distribution rates and additional debt reduction through our improved operating performance, we believe Cedar Fair will maintain its position as one of the most attractive growth and yield stories in the leisure and hospitality industry."

The Company also announced that it has reached a long-term agreement with the San Francisco 49ers related to the construction of the stadium and parking for NFL and other stadium-related events for the life of the new

stadium. The agreement is still subject to the execution of a definitive agreement and the approval of the Stadium Authority and related approvals from the City of Santa Clara.

"The combination of an NFL stadium and a premier amusement park in one location offers tremendous and exciting opportunities for family entertainment. We are excited to reach an agreement on construction issues and parking that are important to the stadium project," said Jed York, president and chief executive officer of the San Francisco 49ers.

"This arrangement leads the way to a mutually beneficial relationship between Cedar Fair, the 49ers and the City of Santa Clara," added Ouimet. "California's Great America was a strong performer in 2011 and we are confident this will continue into the future as we build the park's customer base through new marketing initiatives and capital investments."

About Cedar Fair

Cedar Fair is a publicly traded partnership headquartered in Sandusky, Ohio, and one of the largest regional amusement-resort operators in the world. The Company owns and operates 11 amusement parks, six outdoor water parks, one indoor water park and five hotels. Its parks are located in Ohio, California, North Carolina, South Carolina, Virginia, Pennsylvania, Minnesota, Missouri, Michigan, and Toronto, Ontario. Cedar Fair also operates the Gilroy Gardens Family Theme Park in California under a management contract. Cedar Fair's flagship park, Cedar Point, has been consistently voted the ***"Best Amusement Park in the World"*** in a prestigious annual poll conducted by *Amusement Today* newspaper.

Forward-Looking Statements

Some of the statements contained in this news release constitute "forward-looking statements" within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995, including statements as to the Company's expectations, beliefs and strategies regarding the future. These statements may involve risk and uncertainties that could cause actual results to differ materially from those described in such statements. Although the Company believes that the expectations reflected in such forward-looking statements are reasonable, it can give no assurance that such expectations will prove to have been correct. Important factors, including general economic

conditions, adverse weather conditions, competition for consumer leisure time and spending, unanticipated construction delays and other factors discussed from time to time by the Company in reports filed with the Securities and Exchange Commission (the "SEC") could affect attendance at our parks and cause actual results to differ materially from the Company's expectations. Additional information on risk factors that may affect the business and financial results of the Company can be found in the Company's Annual Report on Form 10-K and in the filings of the Company made from time to time with the SEC. The Company undertakes no obligation to correct or update any forward-looking statements, whether as a result of new information, future events or otherwise.

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This news release and prior releases are available online at www.cedarfair.com.

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-1

Date: December 2, 2011

To: City Manager for Council Action

From: Acting Chief of Police

Subject: Request to Allow Police Captain Michael Sellers to Exceed the Maximum Vacation Accrual into 2012

EXECUTIVE SUMMARY:

Due to increased job responsibilities, Police Captain Michael Sellers will not have used enough vacation hours during 2011 to reduce his balance to 400 hours by January 7, 2012, as called for in the Unit 9A MOU. He is projected to be approximately 40 hours over the limit. I request that Captain Sellers be allowed to temporarily exceed the maximum accrual of 400 hours without penalty.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval will allow Captain Sellers to carry more than the maximum amount of accrued vacation hours into 2012 without penalty.

ECONOMIC/FISCAL IMPACT:

The amount and value of accrued vacation hours will be temporarily higher.

RECOMMENDATION:

That the Council approve the request to allow Captain Sellers to exceed the maximum vacation accrual into 2012.

Kevin R. Kyle
Acting Chief of Police

APPROVED:

Jennifer Sparacino
City Manager

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 9A-2

Santa Clara All-America City 2001

Date: December 1, 2011

To: City Manager for Council Action

From: Senior Staff Aide

Subject: Request for Approval and Authorization to Publish *Mission City SCENES/* February 2012

EXECUTIVE SUMMARY:

The February 2012 issue of Mission City SCENES is scheduled to include the following:

- Showtime 2012
- Single Stream Curbside Recycling Program & Other Recycling News
- H.E.A.T. Program
- Amplified Sound Permits
- 2012 Spring Recreation Classes

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The *Mission City SCENES* provides timely and important information to citizens, including details about City events and programs, and updates of City activities. There are no recognized disadvantages.

ECONOMIC/FISCAL IMPACT:

Cost of printing the *Mission City SCENES* for one year is $18,000 or roughly 3.6 cents for each insert printed. There is no additional postage cost for including the SCENES with utility bills. With the current one-page utility bills, there is sometimes sufficient postage to handle a second, additional insert without incurring increased postage costs.

RECOMMENDATION:

That the Council give approval and authorization to publish the February 2012 *Mission City SCENES.*

Jashma Kadam
Senior Staff Aide

APPROVED:

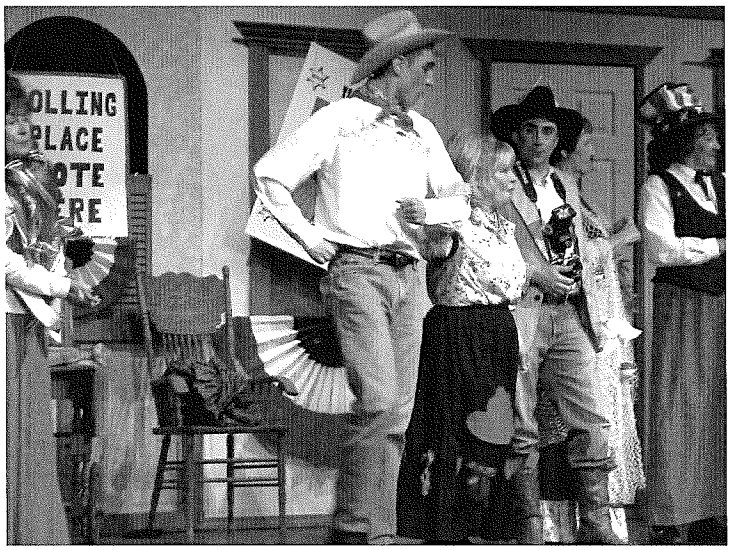
Jennifer Sparacino
City Manager

Documents Related to this Report:
1) February 2012 Mission City SCENES

I:\Citymanagers\CMO Publications\Mission City SCENES\2011\February 2012

COVER

Showtime 2012



On March 2, 3, and 4, 2012, the Santa Clara Women's League will present Showtime 2012! This 30th anniversary production will feature the original melodrama performed at the first Showtime, entitled "*Penelope of Pruneyard Patch!*" Come cheer the heroes, boo the villains, and enjoy the evening of local talent, refreshments and raffle prizes. Performances start at 7 p.m. on March 2 and 3, and at 2 p.m. on March 4 at the Community Recreation Center, 969 Kiely Boulevard. Tickets can be purchased at the Community Recreation Center and the Santa Clara Senior Center (1303 Fremont Street) during regular business hours. For more information, call 408-247-5927 or go to www.santaclarawomensleague.org.

INSIDE –

- Single Stream Curbside Recycling Program & Other Recycling News
- H.E.A.T. Program
- Amplified Sound Permits
- 2012 Spring Recreation Classes

COVER

Showtime 2012

On March 2, 3, and 4, 2012, the Santa Clara Women's League will present Showtime 2012! This 30th anniversary production will feature the original melodrama performed at the first Showtime, entitled "*Penelope of Pruneyard Patch!*" Come cheer the heroes, boo the villains, and enjoy the evening of local talent, refreshments and raffle prizes. Performances start at 7 p.m. on March 2 and 3, and at 2 p.m. on March 4 at the Community Recreation Center, 969 Kiely Boulevard. Tickets can be purchased at the Community Recreation Center and the Santa Clara Senior Center (1303 Fremont Street) during regular business hours. For more information, call 408-247-5927 or go to www.santaclarawomensleague.org.

INSIDE –

- Single Stream Curbside Recycling Program & Other Recycling News
- H.E.A.T. Program
- Amplified Sound Permits
- 2012 Spring Recreation Classes

Single-Stream Recycling Program

The single-stream curbside recycling program's blue wheeled carts take all recyclables including newspapers, mixed paper (including old telephone books), corrugated cardboard, glass bottles and jars, aluminum and metal cans, plastic containers #1 through #7, (no styrofoam) scrap kitchen metal (clean aluminum foil and pie pans, pots and pans), plastic bags and discharged metal spray paint cans. Plastic bags (bread, dry cleaning, shopping, grocery) should be bundled into a plastic bag (bag the bags!) and placed in the blue cart. Used motor oil (in one-gallon or less screw top containers) should be placed on the ground next to the blue cart. Motor oil filters and compact fluorescent lightbulbs (CFL's) should be placed in separate plastic ziplock bags and also set on the ground next to the blue cart. Fluorescent tubes are considered household hazardous waste which cannot be disposed of in the garbage and are not accepted in the curbside recycling program. To make an appointment to dispose of any household hazardous waste, call 408-299-7300, or go to www.hhw.org for a list of retail locations that will accept fluorescent tubes/bulbs at no charge to the consumer.

Dry-cell household batteries can be easily and safely disposed of year round. Place in a plastic ziplock bag and set the bag on top of the black garbage cart for pickup on your regular solid waste collection day. Don't have a garbage cart? Dry-cell household batteries can be dropped off at your nearest Santa Clara Fire Station from 8 a.m. to 5 p.m., seven days a week. For Fire Station locations or questions, call 408-615-2063. Miscellaneous scrap metal, such as old television antennas, copper wire, steel, tin and other scrap metals not recyclable through the City's residential curbside program may be taken to American Metal & Iron (408-452-0777), Sims Metal (408-494-4200) or Valley Recycling (408-297-5352). Call for more information.

E-waste (anything requiring a plug or batteries to operate) can be disposed of safely during the Annual Clean-Up Campaign, which will be held from March 12 through April 6, 2012. Set e-waste out separately from the rest of your Clean-Up Campaign materials for collection. Can't wait for the Clean-Up Campaign? The Countywide Household Hazardous Waste Program accepts e-waste on a year-round basis at its drop-off events. For information or an appointment, call 408-299-7300 or go online at www.hhw.org.

H.E.A.T. Program

Have you ever thought: How can I get ready for a major disaster? What can I do to prepare myself and family, friends and neighbors to survive the first 72 hours of a disaster? The answers to these questions can be acquired by signing up for Santa Clara's H.E.A.T. (Home Emergency Assistance Teams) training program. The program is designed to help citizens be self-sufficient after a major disaster by developing multi-functional teams that are cross-trained by highly qualified instructors from the Santa Clara Fire Department in basic emergency skills. These skills are easy to learn and can be used for many types of emergencies, including the threat of a terrorist attack.

Participants will gain self-confidence and learn how to be self-reliant by practicing with the tools and equipment that they may have to use in a real emergency. This program and others like it have received very strong support, not only at a national level, but also from Santa Clara's Mayor and Council. In the last 16 years, over 800 Santa Clara residents have graduated from this 20-hour Department of Homeland Security endorsed training program. One of the participants wrote, "*The instructors explained all of the material. I feel like I am prepared to help my neighbors and myself in an emergency. I appreciated having a variety of experienced instructors.*" Another participant wrote, "*Very helpful instructors, plenty of demonstrations,*

easy to ask questions and get answers." We hope you will consider being a H.E.A.T. participant…it's the best way to prepare for a disaster.

Call the City Fire Department at 408-615-4940 for more information or to register.

Amplified Sound Permits

Permits for outdoor sound amplification are required by the City of Santa Clara in order to minimize neighborhood noise impacts. These permits are necessary for live or recorded sound or music when amplified outside by more than the normal portable stereo equipment. Amplified sound permit request forms can be obtained and submitted at City Hall, Finance Department (1500 Warburton Avenue), at the Business License window (amplified sound permit request forms for Central Park may be obtained and submitted at the Community Recreation Center, 969 Kiely Blvd.). Permit request forms should be submitted with a payment of $48.50 at least two weeks prior to the event. Any event scheduled outside the hours of 9 a.m. to 10 p.m. will require City Council approval and may increase processing time. All permit request applications for residential addresses are checked with the Police Department Records Division to determine whether there have been disturbances in that location in the past year. Previous violations could be a reason for denial of the amplified sound permit. Please remember to be a good neighbor. A permit is not a "license to disturb the peace." Even with a permit, complaints from neighbors about the amplification can result in Police shutting down the sound/music. For more information, contact the City at 408-615-2310.

2012 Winter/Spring Recreation Classes

If your New Year's resolution includes taking care of yourself with a new sport, hobby and fitness plan, Parks and Recreation can help you succeed. Registration is open now and we have something for everyone!

We always offer a great selection of fitness, dance and sports programs for all ages. You might enjoy a Yoga class, CrossFit (for age 50 and up), 5K Training program, or Jazzercise class to invigorate yourself. Try a new outdoor activity such as a group nature hike, Golf, Tae Kwon Do, Tennis or Kayaking. We have challenging sports for children including Gymnastics, Fencing, Hockey, Tennis, Basketball, Skateboarding, Karate, and more!

If Spring is a time for you to get creative, check out our Ceramics, Painting and Drawing classes, or try a new style of cooking. Our upcoming cooking classes for adults are: French Dinner Party, Romantic Valentine's Dinner, and Ultimate Chocolate Truffles. For youth and teens, we have Piano/Keyboarding, Java Programming, Guitar, and Driver Education. For the younger members of your family, we offer classes for all ages in arts and crafts, music, cooking, and dance.

See the *City of Santa Clara Recreation Activities Guide* for a complete listing of the programs being offered. Pick up a copy at the Community Recreation Center, Walter E. Schmidt Youth Activity Center, Teen Center, Senior Center, or City Hall. The guide is also available online at: *www.santaclaraca.gov*

You may sign up for classes online. An account "PIN" number and "client barcode" are required before using online registration. You may also register in person during regular business hours at the Community Recreation Center or Walter E. Schmidt Youth Activity Center. Call the Community Recreation Center, 408-615-3140, for more information.

Meeting Date: 12/13/11

AGENDA REPORT

Agenda Item # 4A-3

City of Santa Clara, California

Santa Clara All-America City 2001

Date: December 2, 2011

To: Mayor and Council Action

From: City Manager

Subject: Departmental Activity Report for October 2011

EXECUTIVE SUMMARY:

The Departmental Activity Report for the month of October 2011 has been placed in the Council Offices for your review. Separate copies have been provided for the City Manager, Director of Public Works, both City Libraries and is available in the City Clerk's Office.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Departmental Activity Report includes activity reports for all City Departments. There is no disadvantage.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council note and file the Departmental Activity Report for the month of October 2011.

APPROVED:

Jennifer Sparacino

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Departmental Activity Report

I/CITYCLERK/DEPARTMENTALACTIVITYREPORT/Agenda Report
10/01/11
Office Records Specialist

Rev. 02/26/08

CITY OF SANTA CLARA

DEPARTMENTAL ACTIVITY REPORT

MONTH OF

OCTOBER 2011

CITY OF SANTA CLARA

I\CITYCLERK\DEPARMENTAL ACTIVITY REPORT\Cover, List of Departments & Missing Page.doc
01/01/07
Office Records Specialist

DEPARTMENTAL ACTIVITY REPORT
LIST OF DEPARTMENTS

City Manager

City Clerk/City Auditor
- **Performance Measures**
- **Recorded Documents**

Electric Department
- **Monthly Outage Report**

Finance Department (Purchasing)
- **Performance Measures**
- **Municipal Services/License**

Fire Department

Human Resources
- **Employee Activity**
- **Performance Measures**
- **Training/Safety Program Status**
- **Workers Adjustment & Retraining Notification Act**

Library Department
- **Performance Measures**

Parks and Recreation Department
- **Cemetery Division/Mission City Memorial Park**

Planning & Inspection Department
- **Planning Division**
- **Building Inspection Division**
- **Housing & Community Services Division**

Police Department

Public Works Department
- **Automotive Services**
- **Engineering**
- **Building Maintenance**
- **Street**

Water and Sewer Utilities Department
- **Sewer Utility**
- **Water Utility**

Monthly Activity Report
CITY MANAGER'S OFFICE

October 2011	2011-12			Previous year		
Performance Measures/Activities	**Current Month**	**Year to Date**	**Budget**	**Current Month**	**Year to Date**	**Budget**
Number of citizen contacts responded to by City Manager's Office	28	154	450	26	138	450
Number of contacts assigned out within 5 business days	28	154	---	26	138	---
% contacts assigned out within 5 business days	100%	100%	90%	100%	100%	90%
Number of EOC training meetings	0	0	5	0	0	5
Number of hours of EOC activation	0	0	---	0	0	---
Assist families in purchasing a home though the First Time Homebuyers Program	1	4	25	3	10	25
Prepare and distribute the Annual Report/Calendar	0	0	1	0	0	1
Prepare and distribute monthly utility bill inserts to utility customers	1	4	12	1	4	12
Prepare City Employee newsletter and distribute to all employees, six times per year	1	2	6	1	2	6
Prepare City newspaper (Inside Santa Clara) and distribute three times per year	0	0	3	0	0	3
Prepare and distribute newsreleases as needed	2	15	---	5	16	---
Number of website updates processed	57	168	---	33	144	---
Number of website page views	1,340,738	6,166,586	---	1,361,043	6,152,586	---
Develop and review City publications	47	144	---	28	142	---
Number of weekly cable channel updates processed	30	123	---	33	116	---
Number of press contacts	57	282	---	101	321	---
Number of video newsbriefs produced	2	5	44	2	11	44
Percent of Council meetings taped and broadcast	100%	88%	100%	1	1	1
Respond to legislative inquiries within 4 working days	100%	100%	90%	100%	1	90%
Number of new volunteer applications processed	11	38	---	35	80	---
Number of registered volunteer hours, excluding Police and Fire Reserves	NA	6,146	---	NA	6,799	---
Number of special events, recognition, and dedications held	10	35	---	6	21	---
Number of business outreach contacts	3	27	---	3	19	---
Provide staff support to Council Committees/ Commissions (number of meetings attended)	3	15	---	4	8	---
Update and administer agreements with organizations and intergovernmental agencies	1	3	10	2	4	10

Performance Measures Reporting
Department: City Clerk's Office
October 2011

Division/Program/Measure	2011-12 Current Month	2011-12 Year to Date	2011-12 Budget	2010-11 Current Month	2010-11 Year to Date	2010-11 Budget
Council/Administration Support						
1. Percent of Council minutes approved within 4 weeks	100%	100%	90%	100%	100%	90%
Number of Council minutes approved	2	12		3	9	
Number of Council minutes approved within 4 weeks	2	12		3	9	
2. Percent of Council minutes approved without amendment	100%	100%	100%	100%	100%	100%
Number of Council minutes approved without amendment	2	12		3	9	
Public Information/Legislative Records Management						
1. Percent of records declared eligible for destruction are destroyed within 30 days	100%	100%	100%	100%	100%	100%
Number of records destruction requests processed	2	9		2	17	
Number of records declared eligible for destruction are destroyed within 30 days	2	9		2	17	
2. Percent of requests for records/information completed within one business day	100%	100%	100%	100%	100%	100%
Number of requests for records/information from citizens (includes telephone inquiries)	851	3,719		1,046	4,017	
Number of requests for records/information from staff	330	1,426		340	1,267	
3. Number of documents processed	65	342	1,820	71	319	1,820
Elections/Political Reform Act						
1. Percent of Campaign Disclosure Reports distributed	100%	100%	100%	100%	100%	100%
2. Number of Campaign Disclosure Reports processed	0	22	30	28	75	30
3. Number of Conflict of Interest forms processed	0	0	200	0	3	200
4. Number of elections held	0	0	0	0	0	1

Performance Measures Reporting
Department: City Clerk's Office
October 2011

Division/Program/Measure	2011-12			2010-11		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
City Auditor						
1. Number of vendor warrants audited	1,024	4,834	20,000	1,121	4,774	20,000
2. Number of travel reports audited	24	62	750	8	56	750
3. Number of payroll checks processed	2,333	9,365	35,000	2,447	9,860	35,000
Miscellaneous Tasks (not a program)						
UPS deliveries processed	23	115		31	146	
Number of Notary transactions completed	14	68		7	86	
Number of deeds and real property interests accepted and recorded	2	11		5	16	

Rod Diridon, Jr., City Clerk

CITY CLERK
MONTHLY DEPARTMENTAL REPORT
OCTOBER 2011

DATE: November 1, 2011

TO: City Manager

FROM: City Clerk/Auditor

SUBJECT: Monthly Report on Designated Property Interests Conveyed to the City and Not Requiring Council Action

Summary of deeds and real property interests accepted for recordation (Council action not required) during the last thirty (30) day period.

October 2011

Property Address	Other Party / Contractor	Project Name	Name of Document	S.C. # APN # (year) Site/Tract/CE#	Date Sent
N/A	KB Home South Bay Inc.	N/A	Stormwater Treatment Measures Inspection and Maintenance Agreement	N/A	10/26/2011
N/A	CoreSite Coronado Stender, L.L.C.	N/A	Stormwater Treatment Measures Inspection and Maitenance Agreement	N/A	10/26/2011

Rod Diridon, Jr.
City Clerk/Auditor

Jennifer Sparacino
City Manager

ELECTRIC DEPARTMENT ACTIVITY REPORT

The following report covers the principal activities of the Electric Department during the month of **October 2011**

DESCRIPTION		CURRENT MONTH	YEAR TO DATE
Poles Replaced		0.0	23.0
Transformers Installed		0.0	13.0
Transformers Replaced		4.0	24.0
Distribution Patrol (circuit maps)	Total 71 Maps	31.0	71.0
Distribution Inspection O/H (circuit maps)	Total 19 Maps	2.0	7.0
Distribution Inspection U/G (circuit maps)	Total 19 Maps	4.0	6.0
Switches Replaced/Installed		0.0	11.0
Underground Cable Installed (ft)		1,400.0	45800.0
Underground Cable Replaced (ft)		0.0	5528.0
Metering New Services (Residential/Comm/Indust)		20.0	125.0
Total Meter Removals (Residential/Comm/Indus)		5.0	65.0
Street Lights Installed or Replaced (Knock Down & New Installations)		2.0	30.0
Street Lights Repaired/Replaced		71.0	500.0
Traffic Signal Lamps Replaced		6.0	59.0
Manhours for Graffiti Removal (T&D)		4.0	60.0
Manhours for Graffiti Removal (Substations)		6.0	80.5
Unlocks	Electric	1.0	23.0
Service & Trouble Calls		142.0	1585.0
Trees Trimmed	Contractor	621.0	6244.0
Underground Locates		205.0	2117.0
Underground Inspections		45.0	564.0
Peak Demands		OCTOBER 2011 OCTOBER 2010	431.30 444.30
Energy Requirements		OCTOBER 2011 OCTOBER 2010	259,122.60 249,697.20

Average Service Availability Index (ASAI)	99.99990
System Average Interruption Frequency Index (SAIFI)	0.0002
Customer Average Interruption Duration Index (CAIDI) (Number of hours per customer)	241.22222

Outages (see attached sheet)

Silicon Valley Power | OUTAGE SUMMARIES | October 2011

Total Customers this Month	51,088	Days of Month
Total Customer Minutes this Month	2,280,568,320	31

Outage Totals

		This Month	This Month Last Year
Unscheduled Outages			
Long	# Outages	3	12
	# Customers Out	9	7489
	# Minutes Out	921	2888
	# Customer Minutes Out	2,171	443048
	# Within City System	3	12
	# Supply to City Minutes	0	39695
Short	# Outages (Blinks)	1	1
	# Customers Affected	485	125
	# Within City System	1	1
	# Supply to City Minutes	0	0
Scheduled Outages			
Long	# Outages	0	0
	# Customers Out	0	0
	# Minutes Out	0	0
	# Customer Minutes Out	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Short	# Outages (Blinks)	0	0
	# Customers Affected	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Totals			
Total Long Outages		3	12
Total Short Outages (Blinks)		1	1
Total Customers Out (Long)		9	7489
Total Customers Affected (Short- Blinks)		485	125
Total Customer Minutes Out		2,171	443048
Total Outages Within City System		3	12
Total Outages in Supply to City		0	0

Number of Outages (by Cause)

Cause #	Description	Total This Month	This Month Last Year	Rolling AT	% AT
0	Supply to City	0	0	0	0%
1	Overhead Equipment Failure	0	2	9	13%
2	Underground Equipment Failure	0	1	10	14%
3	Weather	0	1	0	0%
4	Birds, Animals, Snakes, etc.	0	2	13	18%
5	Trees	1	0	8	11%
6	Foreign Interference	1	3	14	19%
7	Human	0	1	4	6%
8	Other	0	1	0	0%
9	Unknown	2	0	11	15%
10	Vehicle	0	2	3	4%
	Total	4	13	72	

12 Month Outage Statistics

Index	As of This Month	As of This Month Last Year	Current Month
ASAI (%)	99.9876	99.9956	99.99990
CAIDI (Long) (min)	93.31	68.21	241.22222
SAIDI (Long) (min)	65.22	23.13	0.04250
SAIFI (Long) (ints/tot cust)	0.70	0.34	0.00018
SAIFI (Short) (ints/tot cust)	0.16	0.22	0.00949

ASAI - Average Service Availability Index
(customer minutes available/total customer minutes, as a %)
CAIDI - Customer Average Interruption Duration Index
(average minutes interrupted per interrupted customer)
SAIDI - System Average Interruption Duration Index
(average minutes interrupted per customer for all customers)
SAIFI (Long) - System Average Interruption Frequency Index
(# of long interruptions per customer for all customers)
SAIFI (Short) - System Average Interruption Frequency Index
(# of short interruptions per customer for all customers)

S/U - Scheduled or Unscheduled
Ints - # of Interruptions
Long - >1 min; Short - <1 min
Cause # - see table on page 3

Jeff Ipsaro
Division Manager - Operations

Silicon Valley Power

MONTHLY OUTAGE REPORT

October 2011

General Information				Cause		Time & Duration				Customers	
#	Date	S/U	Address/Location	Description	#	Ints	T off	T on	Mins	# Out	Cust Min
1	10/1/2011	U	102-S 126 Rondonovan Dr.	Tree shorted secondary, T3021 blown fuses	5	1	10/1/11 4:14 PM	10/1/11 7:32 PM	198	6	1188
2	10/9/2011	U	102-T Circuit tripped. Unknown location	Unknown	9	1	10/9/11 3:15 PM	10/9/11 3:15 PM	0	485	0
3	10/12/2011	U	102-T 5401 Lafayette St.	Ameresco xfer trip operated BT1794 in VS2477	6	1	10/12/11 7:51 AM	10/12/11 3:34 PM	463	1	463
4	10/31/2011	U	201-B 1040 Di Giulio	Fuses blown @ BT934 RCO, cause unknown	9	1	10/31/11 8:19 AM	10/31/11 12:39 PM	260	2	520

S/U - Scheduled or Unscheduled
Ints - # of Interruptions
Long - >1 min; Short - <1 min
Cause # - see table on page 3

Jeff Ipsaro
Division Manager - Operations

Performance Measures Reporting
Department: Finance
October-11

Division/Program/Measure	2011-2012			2010-2011		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Administrative Services/City-Wide Fiscal Planning & Administration						
1. Prepare up to three financial reports including the second in the budget and the third in the CAFR.	N/A	N/A	3	N/A	N/A	3
2. Meet with staff at least quarterly to review work plans.	1	1	4	1	1	4
Administrative Services/Special Projects						
1. Percent of legislative analysis completed within negotiated time frame.	100%	100%	100%	100%	100%	100%
2. Percent of special requests completed within negotiated time frame.	100%	100%	100%	100%	100%	100%
Budget and Treasury/Cash Management						
1. Average weighted yield on unrestricted funds will be at least 98% of the twelve month average yield on two-year US Government Agency securities.	463%	481%	100%	361%	351%	98%
Budget and Treasury/Contract Management						
1. All actions required in contracts will be met by agreed upon due dates.	100%	100%	100%	100%	100%	100%
2. Ensure that quarterly lease payments for the Great America Theme Park site are made when due.	100%	100%	100%	100%	100%	100%
Budget and Treasury/Debt Management						
1. Submit debt schedules to Council no later than January 31 and July 31 of each year.	N/A	0%	100%	N/A	100%	100%
Budget and Treasury/Financial Analysis						
1. Complete special projects by agreed-upon due dates.	100%	100%	100%	100%	100%	100%

Performance Measures Reporting
Department: Finance
October-11

Division/Program/Measure	2011-2012			2010-2011		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Budget and Treasury/Budget Development & Analysis						
1. Receive California Society of Municipal Finance Officers (CSMFO) budget awards.	N/A	N/A	2	N/A	N/A	2
Accounting/General Accounting						
1. Complete the external audit process and preparation of City's Comprehensive Annual Financial Report with an unqualified audit by December 31.	N/A	N/A	100%	N/A	N/A	100%
2. Receive Government Financial Officers Association of the United States and Canada (GFOA) excellence in financial reporting award.	N/A	1	1	N/A	1	1
3. Complete the preparation and submission of various State, Local, and Federal Agency reports by due dates.	100%	100%	100%	100%	100%	100%
4. Complete the month-end accounting close process and distribution of department budget status reports by the 15th working day of the following month.	0%	0%	100%	100%	100%	100%
Accounting/Payroll						
1. Process bi-weekly payroll and issuance of employee checks by the due date and time.	100%	100%	100%	100%	100%	100%
2. Complete and file the required monthly/quarterly State and federal tax returns before due date.	100%	100%	100%	100%	100%	100%
3. Issue employee W-2 forms by January 31.	N/A	N/A	100%	N/A	N/A	100%
4. Transmit the electronic version of W-2 to Internal Revenue Service by March 31.	N/A	N/A	100%	N/A	N/A	100%

Performance Measures Reporting
Department: Finance
October-11

Division/Program/Measure	2011-2012			2010-2011		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Accounting/Accounts Payable						
1. Number of invoices processed.	3,126	13,039	36,000	3,240	13,671	36,000
2. Number of vendor warrants issued.	1,025	4,841	20,000	1,124	4,787	20,000
3. Percentage of vendor invoices paid by due date.	61%	66%	99%	64%	67%	99%
4. Number of quick invoice vouchers processed.	1,178	4,709	30,000	1,173	4,786	28,000
5. Number of Payables process improvements.	1	1	2	N/A	N/A	2
Accounting/Business License/Receivables/Fixed Assets						
1. Percent of time that invoices are mailed within 10 working days of receipt of documentation from City Departments.	100%	100%	97%	100%	100%	97%
Municipal Services/Utility Billing Services						
1. Percent of delinquent closed utility accounts turned over to collection agency compared to number of closed accounts with debit balances.	0%	0%	30%	0%	17%	23%
2. Amount of late fees assessed.	$54,834	$250,929	$550,000	$26,022	$146,422	$450,000
Municipal Services/Revenue Receipting-Cashiering						
1. Average monthly number of utility accounts paying by automated methods.	14,847	17,745	18,000	16,796	17,711	15,000
2. Average monthly utility payments processed.	41,972	48,649	52,000	50,831	52,011	52,000
Municipal Services/Business Certificate						
1. Number of business tax certificates processed annually.	877	3,951	12,750	845	3,935	12,500
2. Percent of delinquent tax certificates at fiscal year end.	6.9%	6.8%	6.0%	4.2%	3.8%	4.0%

Performance Measures Reporting
Department: Finance
October-11

Division/Program/Measure	2011-2012			2010-2011		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Municipal Services/Field Service						
1. Percent of monthly utility meters accurately read.	100.0%	100.0%	99.9%	99.9%	99.9%	99.9%
2. Number of service requests processed yearly.	2,917	13,134	42,000	2,925	13,906	41,000
3. Average number of meters read monthly.	79,583	79,545	80,000	79,367	78,367	79,450
4. Number of months where all 200 routes are read and billed	1	4	12	1	4	12
Municipal Services/Administration						
1. Percent of Accounts Receivables written off as bad debt annually.	0.01%	0.01%	0.40%	0.00%	0.30%	0.20%
2. Number of major UMIS initiatives successfully implemented during the year.	N/A	N/A	7	1	1	4
Municipal Services/Call Center/Communication						
1. Percent of customer calls answered within 90 seconds.	34%	38%	40%	32%	41%	50%
2. Average hold time of sequenced calls (m:s).	4:57	5:47	5:00	4:09	3:30	3:00
3. Number of dropped calls to total calls.	26%	33%	25%	17%	12%	9%
4. Average hold time of sequenced calls before drop (m:s).	6:54	5:05	4:00	3:19	3:05	3:30
5. Average number of customer telephone calls taken monthly.	5,380	6,977	7,000	6,415	6,397	7,000
6. Average number of IVR calls received monthly.	Unavailable	Unavailable	12,500	11,337	11,265	12,000
7. Average number of outbound calls made by CSR's.	1,632	2,398	1,800	1,444	1,766	2,200
Purchasing/Warehouse						
1. Number of material requisitions	247	965	3,200	247	1,071	4,000
2. Number of inventory items cycle counted.	189	737	1,200	86	409	1,200

Performance Measures Reporting
Department: Finance
October-11

Division/Program/Measure	2011-2012			2010-2011		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Purchasing/Duplicating						
1. Number of print jobs completed.	5	25	140	7	42	600
2. Percent of print jobs completed within standard 5 day cycle time.	100%	100%	100%	100%	100%	100%
3. Number of printer cartridges recycled or recovered.	14	54	150	12	45	150
Purchasing/Purchasing						
1. Number of purchase orders.	91	417	1,250	88	435	1,500
2. Number of cost reductions/avoidance.	N/A	N/A	5	N/A	N/A	5

CITY OF SANTA CLARA
DEPARTMENT OF FINANCE - BUSINESS TAX & BUSINESS LICENSE
MONTHLY ACTIVITY REPORT
For the month ending OCTOBER 31, 2011
With Comparative Amounts for the month ended October 31, 2010

	CURRENT FY 2011-2012		PRIOR FY 2010-2011	
	This Month	Fiscal Year To Date	This Month	Fiscal Year To Date
CASH RECEIVED FROM:				
Business License (Tax Certificate)	$ 62,898	$ 273,312	$ 62,568	$ 289,075
Fire Permits	$ 106,535	$ 519,560	$ 109,963	$ 498,825
Rubbish Hauler (10%-20%)	$ -	$ 225,722	$ 42,979	$ 279,916
Transient Occupancy Tax (9.5%)	$ 976,347	$ 3,842,802	$ 996,672	$ 3,217,850
FISCAL YEAR STATISTICS FOR BUSINESS LICENSES:				
NEW BUSINESS INFORMATION:				
No. of Rental Businesses	2	7	-	2
No. of Santa Clara Businesses	112	488	104	455
No. of Out-of-Town Businesses	53	210	53	238
Total New Businesses	167	705	157	695
RENEWALS	710	3,246	688	3,240
LICENSES/PERMITS DELETED:	141	512	83	496
FIELD ENFORCEMENTS/DELINQUENCIES:				
Total No. of Delinquent Accounts	798	* n/a	517	* n/a
Total No. of Accounts in Collection	274	* n/a	304	* n/a
No. Delinquent Accounts Paid	57	189	50	219
No. Delinquent Accounts Deleted	63	192	20	208
Total Delinquents as a % of Total Certificates	6.3%	* n/a	4.2%	* n/a
BREAKDOWN OF CURRENT BUSINESS LICENSES: (Tax Certificates)				
Number of Hotels/Motels	30		29	
Rental Owners	1,480		1,488	
Fixed Location in City (Inc Home Bus)	8,168		8,040	
Out of City (Includes Contractors)	3,017		2,778	
Total Tax Certificates	12,695		12,335	

Gary Ameling
Director of Finance

cc: City Clerk

* Fiscal Year To Date amounts in these categories are labled not applicable (n/a) as the number listed under "This Month" reflects a revolving count.

EXPLANATION OF SIGNIFICANT CHANGES:

Rubbish Hauler Tax: The current month is less than the same month from the previous year, due to payment timing differences. Also, the current Fiscal Year To Date total is less than the Fiscal Year Total as of September 30, 2011, due to a one-time reclassification of $123,956

Number of Hotels/Motels: The increased number of hotels (from 29 to 30) in October 2011 is due to an ownership change and a temporary business certificate overlap, whereby two business certificates are currently on file for the same hotel. Hyatt took ownership of the Sierra Suites hotel on 10/14/11. The business certificate for Sierra Suites will expire on 12/30/11, and it is expected that the number of hotels/motels will go back to 29 after that time.

Santa Clara Fire Department
Monthly Activity Report
Oct 2011

		This Month	FY 11/12 To Date
Division: Protection			
Program: Administration			
1	Number of hours contributed by the Volunteer/Reserve Division	1319	4117
2	Number of Fire responses	13	66
3	Number of emergency Medical responses	374	1411
4	Number of non-emergency Medical responses	192	627
5	Number of Hazardous Materials responses	5	18
Division: Protection			
Program: Emergency Response			
1	Response time in 90% of all high level emergency medical calls.	6:37 **	5:57
2	Rseponse time in 90% of all high level emergency fire calls.	3:22	4:29
3	Number of emergency responses	482	1828
4	Number of non-emergency responses	248	861
5	Percent of total alarms catagorized as false	8.90%	9.4%
Division: Prevention			
Program: Code Enforcement/Public Education			
1	Number of inspections performed by the Fire Prevention Bureau	328	889
2	Number of inspections performed by the Fire Protection Division	137	1137
3	Number of citizen complaints	2	4
4	Number of community participants in fire and safety training and education programs	75	425
5	Number of public education meetings	3	18
6	Number of permit inspections	120	616
7	Number of new business license inspections	52	199
8	Number of plans reviewed	66	377
9	Percent of multi-family (R-1) occupancies inspected	9.23%	24.25%

	This Month	FY 11/12 To Date
Division: Prevention		
Program: Investigations		
1 Number of fires investigated	2	10
2 Number of hazardous materials incidents investigated	0	0
Division: Training		
Program: Training		
1 Number of fire prevention training hours	56.50	188.83
2 Number of hazardous materials training hours	226.33	306.34
3 Number of Emergency Medical Services training hours	32.73	520.45
4 Number of rescue training hours	80.08	400.98
5 All other training hours	413.25	1809.38
Division: Hazardous Materials		
Program: Hazardous Materials Code Enforcement		
1 Number of hazardous materials emergency responses	2	7
2 Number of business inspections	71	427
Division: Incremental EMS Costs		
Program: Paramedic Services		
1 Response time in 90% of all high level emergency medical calls.	6:37 **	5:57

** Note: response times were actually shorter than reported here due to technical difficulties with the Mobile Data Terminals on the apparatus

William Kelly

William Kelly
Deputy Fire Chief

Interoffice Memorandum
Office of Emergency Services
Santa Clara Fire Department

Date: November 16, 2011 (X) For Your Information

To: City Manager Sparacino

From: Gene Sawyer
Emergency Services Coordinator

Subject: October 2011 Monthly OES Report

October 3rd
Prepare response to County Exec on disaster preparedness, 3 hrs

October 4th
CADRE Leadership Meeting 3 hrs

October 5th
EOC to EOC Radio test, ½ hr
Meeting with Chief Kleinheinz to discuss response to County Exec on disaster preparedness, 2 hrs

October 6th
Meeting with ARES/RACES, 1 hr
Emergency Managers' Association Meeting, 4 ½ hrs

October 10th
Prep for City Employee CPR Training, 2 hrs

October 11th
City Employee CPR Training, 4 hrs

October 18th
EOC update meeting, 2 hrs
Emergency Managers' Association Op Area Meeting, 2 hrs

October 19th
WebEOC Review, 3 hrs

October 21st
CADRE Leadership conference call, 1 hr

October 25th
CADRE Emergency Operations Planning Workshop, 3 hrs

City of Santa Clara
Employee Activity Report - October 2011
September 18, 2011 - October 29, 2011

	Classified	Unclassified	As-Needed	Total
Budgeted Positions	**871.00	124.00		**995.00
Filled Positions	752.75	108.00		860.75
Available Positions	118.25	16.00		134.25
Regular Appointments	4.00	4.00		8.00
As-Needed Appointments (includes Additional Classes)			8.00	8.00
Filled As-Needed Positions			411.00	411.00
Separations - Failed Probation				0.00
Separations - Resignation	1.00			1.00
Separations - Layoff				0.00
Separations - As-Needed			8.00	8.00
Reinstatement				0.00
Retirements - Service	2.50			2.50
Retirements - Industrial Disability	1.00			1.00
Promotions	8.00			8.00
Transfers - 3/4-Time to Full-Time				0.00
Transfer				0.00
Salary Reduction	1.00			1.00
.	48.00		13.00	61.00
Step Increases Denied				0.00
Unemployment Insurance Claims			1.00	1.00
Long Term Disability Claims				0.00
State Disability Claims	6.00			6.00
Industrial Injury/Illness - Supervisor's Report	8.00			8.00
Industrial Injury/Illness - Medical Only	3.00			3.00
Industrial Injury/Illness - Indemnity (Lost Time)	8.00			8.00

** Total includes 1 City Manager Temporary Overfill position.

FHunt

Francine Hunt
Human Resources Supervisor

PERFORMANCE MEASURES REPORTING
HUMAN RESOURCES - RECORDS BENEFITS
OCTOBER 2011

Records and Benefits	2011-2012		2010-2011	
	Year to Date	Budget Goal	Budget Actual	Budget Goal
Benefits, Records and Payroll				
1. Percent of employee benefits & compensation transactions processed accurately and timely.	99%	100%	100%	99%
2. Percent separation and retirement payoff calculations completed according to policy and within the final pay period.	100%	100%	100%	99%
3. Percent of new hires processed for pay and benefits in time for their first paycheck	100%	100%	100%	95%

Records and Benefits	2011-2012		2010-2011	
	Year to Date	Budget Goal	Budget Actual	Budget Goal
Workers' Compensation				
1. Percent of Workers' Compensation claims processed within five business days of receipt in Human Resources Department.	100%	100%	98%	100%
2. Percent of work hours lost as a result of industrial injuries and illnesses.	0.90%	2.0%	1.05%	3.5%
3. Percent of workforce that is accident free.	87.5%	83%	83.3%	83%
4. Percent of City-sponsored training classes rated very good or above by attendees.	95%	95%	95%	95%
Percent of City employees attending City sponsored training classes.	18.4%	40%	73.1%	20%

Notes:

* ANNUALIZED TO DATE

Report Date: 11/22/11
DVMGR: 31

HUMAN RESOURCES DEPARTMENT

TRAINING AND SAFETY ACTIVITIES
Monthly Report

October 2011

TRAINING

1. Topic: Harassment Prevention – Employee (Video)
Date: October 5, 11, 19, 21, 2011
Participants: 5
Duration: 1 hr.

2. Topic: Creating a Respectful Work Environment
Date: October 17, 20, 2011
Participants: 52
Duration: 2 hrs.

SAFETY

No significant activities for the month on a City-wide basis.

Attached is the current statistics regarding the Worker Adjustment and Retraining Notification (WARN) Act.

Greg Harris
Human Resources Division Manager/
Training and Safety Officer

cc: Director of Human Resources

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT
2011 (OCTOBER)

COMPANY NAME	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Applied Materials	4		30			4	10		5			
Cisco								62				
Texas Instruments									207			

Notifications Received This Month	1	0	1	0	0	1	1	1	2	0	0	0
Received This Month Last Year	0	1	1	0	1	1	0	0	1	1	1	0

Employees Affected This Month	4	0	30	0	0	4	10	62	212	0	0	0
Affected This Month Last Year	0	126	47	0	1	51	0	0	93	50	13	0

Total Notifications Received This Year:	7
Total Notifications Received Last Year:	7

Employees Affected This Year:	322
Employees Affected Last Year:	381

City of Santa Clara
Library Department Monthly Report
October 2011

		October-2011	October-2010	Fiscay YTD 2011/12	Fiscal YTD 2010/11
Items Borrowed					
Central Library		200,817	205,653	828,933	846,207
Mission Branch		2,775	3,562	9,921	14,162
TOTAL		203,592	209,215	838,854	860,369
Patron Visits					
Central Library		114,726	108,975	474,537	460,846
Mission Branch		3,952	7,461	14,263	21,060
TOTAL		118,678	116,436	488,800	481,906
Patron Electronic Resources Use					
Central Public ER Use		3,389	4,060	14,514	18,032
Reference Inquiries					
Central Library		6,962	8,021	31,629	36,826
Mission Branch		463	517	1,134	1,716
TOTAL		7,425	8,538	32,763	38,542
Program Attendance	*Number*				
Children: Central Library	*34*	4,181	5,805	9,493	12,038
Mission Branch	*1*	7	131	239	517
Adults: Central Library	*18*	559	293	1,123	1,180
Mission Branch	*6*	68	58	170	213
Senior Booktalks	*1*	6	14	29	57
TOTAL	*60*	4,821	6,301	11,054	14,005
Patron Registration					
Santa Clara		652	754	3,378	3,393
SVLS Libraries		383	489	1,946	2,025
Other Libraries		53	64	216	276
TOTAL		1,088	1,307	5,540	5,694
Collection					
Items Added		2,195	2,630	11,662	12,945
Holds					
Placed		5,067	5,626	20,572	23,773
Filled		4,128	5,021	17,484	21,381
Volunteer Hours					
Genealogy		128.25	152.75	523.92	609.75
READ Santa Clara		341.50	443.00	1,630.00	1,451.50
Volunteer Program		207.95	232.41	759.96	938.73
Foundation & Friends		545.08	477.00	2,265.52	2,245.23
Total		1,222.78	1,305.16	5,179.40	5,245.21

Julie Passalacqua

Julie Passalacqua
City Librarian

Performance Measures Reporting
Department: Library
2011-2012
Month Ending October 2011

Division/Program/Measure	2011-2012 Year to Date	2011-2012 Budget	2010-2011 Year to Date	2010-2011 Budget
Division: Administration				
Program: Administration				
1. Number of hours Library facilities are open to the public annually.	1,325.00	4,700	1,332.00	4,800
2. Number of patron visits to all Library facilities annually.	488,800	1,300,000	481,906	1,300,000
Division: Youth & Extension Services				
Program: Youth Services				
1. Number of programs for children and parents offered.	86	270	86	275
2. Number of reference and reader's advisory questions annually.	11,890	40,000	14,214	40,000
3. Number of participants registered annually in Summer Reading Club.	384	2,800	360	3,000
4. Number of children and adults attending programs.	9,493	34,500	12,038	35,000

Division/Program/Measure	2011-2012 Year to Date	2011-2012 Budget	2010-2011 Year to Date	2010-2011 Budget
Division: Youth & Extension Services				
Program: Young Adult				
1. Number of Young Adult programs offered.	18	25	15	25
2. Number of Young Adult items circulated.	29,801	75,000	33,114	75,000
3. Number of participants annually in the Teen Summer Reading Program.	130	800	114	675
Division: Youth & Extension Services				
Program: Mission Library				
1. Number of items circulated.	9,921	40,000	14,162	40,000
2. Number of programs for children and parents.	9	11	20	
3. Number of participants registered annually in the Summer Reading Club.	0	200	207	200
4. Number of matched literacy pairs.	70	75	73	75
5. Number of children and adults attending programs.	239	500	517	1,000

Division/Program/Measure	2011-2012 Year to Date	2011-2012 Budget	2010-2011 Year to Date	2010-2011 Budget
Division: Youth & Extension Services				
Program: Extension Services				
5. Number of Homebound patrons served each month	16	24	23	24
6. Number of Programs for Adults	4	11	4	11
7. Number of Volunteer Hours (all Library Programs)	5,207.40	17,000.00	5,257.21	17,000.00
Division: Adult Services				
Program: Reference				
1. Number of reference and reader's advisory questions answered annually.	19,739	55,000	22,612	60,000
2. Number of programs offered to adults.	45	40	49	40
3. Total attendance at programs offered to adults.	1,123	1,000	1,180	1,000

Division/Program/Measure	2011-2012 Year to Date	2011-2012 Budget	20010-2011 Year to Date	20010-2011 Budget
Division: Adult Services				
Program: Periodicals				
1 Number of patron requests filled for magazines in storage.	3,323	1,300	244	500
Division: Adult Services				
Program: Local History				
1 Number of programs presented/sponsored annually	12	15	8	15
2 Number of displays developed annually.	3	5	2	5
3 Research inquiries answered annually.	1,142	2,000	1,155	2,000
Division: Adult Services				
Program: Circulation				
1 Number of items circulated annually	831,507	2,500,000	849,791	2,600,000
2 Number of patrons registered annually	5,540	16,000	5,694	17,000
Division: Collection Services				
Program: Technical Services				
1. Number of items added to the collection each month.	2,195	2,000	2,630	2,500

Division/Program/Measure	2011-2012 Year to Date	2011-2012 Budget	2010-2011	2010-2011
Division: Collection Services				
Program: Collection Management				
1. Books held per capita.	3.07	3.00	3.17	3.00
2. Total items held per capita.	3.48	3.60	3.58	3.60
3 Library materials expenditure per capita.	$3.80	$ 3.80	$4.60	$ 4.60
Division: Support Services				
Program: Facilities				
1 # of safety inspections made annually	4	12	4	12
2 % of safety issues resolved within 48 hours of report	98%	98%	98%	98%
Division: Support Services				
Program: Technology				
1 Percent of problem reports responded to within 24 hours of receipt.	100%	100%	100%	100%
2 Number of tickets/requests for services resolved by Technology Staff	425	600	444	600
3 Number of tickets/requests for services resolved by Technology Aides	5,862	10,000	6,699	10,000
4 Number of Library public computer users	14,514	48,000	18,032	48,000
5 Number of Public laptop users	7,489	12,000	6883	12,000

Month: October Year: 2011
PARKS AND RECREATION DEPARTMENT
MONTHLY ACTIVITY REPORT

1 **Participant Attendance Total** **38,645** with breakdown as follows:

A. By Program

Senior Citizens	15,194	Sports Classes & Leagues	3,676
Pre School	1,426	Teen Activities	1,761
Culture/Performing Arts	6,181	Therapeutics	523
Special Events	5,272	Instructional Swim	6
Camps	0	Recreational Swim	1,146
Total	**38,645**	Youth Activities	3,460

B. By Location (consider special events for each location)

Community Recreation Center	7,204	Parks	2,625
Senior Center	15,521	Pools	1,152
Parks Buildings	2,888	School Facilities (add special events)	0
Youth Activities Center	6,313	Teen Center	2,525
Total	**38,645**	Off-Site	417

2 **Non-Directed. Permit or Contract groups attendance total** **52,340** with breakdown as follows:

A. By Activity

	Groups	Attendance
Community Recreation Center Reservation		0
Senior Center		185
Teen Center/YAC		240
Parks- Buildings Reservation		3,037
Parks- Picnic Reservation		2,908
Field Reserv., Adult & Youth Groups		30,400
Swim Pool Reservations		15,570
Total	**0** **Total**	**52,340**

B. By Location

Senior Center	185	T.C./YAC	240
Community Recreation Center	0	Fields	30,400
Park Buildings	3,037	Pools	15,570
Parks Picnics	2,908		
		Total	**52,340**

3 **Monthly Participation totaled** **90,985** (Program attendance & non-directed or permit groups)

4 Revenue Collected for the Month:

		11-Oct	Fiscal Year 11/12	10/1/2010	Fiscal Year 10/11
6	Swim Pool Admission	1,749.00	19,894.00	$ 2,296.21	$ 22,758.26
7	Rec. Classes/Swim Lessons	75,653.01	617,699.36	$ 51,072.42	$ 404,718.78
8	Rentals & Commissions	13,641.00	50,989.00	$ 10,367.00	$ 30,829.05
		$91,043.01	**$688,582.36**	**$ 63,735.63**	**$ 458,306.09**

PARKS AND RECREATION DEPARTMENT
PARKS AND PLAYGROUNDS DIVISION
MONTHLY CONSTRUCTION ACTIVITY REPORT
October-11

Fund 532 Parks & Recreation:	
3001	Miscellaneous Park Improvements – FY 2011-12 Projects are being planned.
3003	Tennis & Sport Court Resurfacing – Completed - 2011-2012 Being Planned
3004	YAC Refurbishment – FY 2011-12 5 bids are out.
3005	Senior Center Refurbishment –
3006	Teen Center Refurbishment – FY 2011-2012 Projects are being planned.
3140	Ulistac Natural Area – Phase III Project is starting design.
3157	Central Park Bridge Repairs – Job completed. New electrical drop and meters completed, all permits signed off.
3165	Lawn Bowl Clubhouse – Project is on hold.
3171	Agnew Park Basketball Court & Walkway - Improvements are being planned.
3172	International Swim Center -Plumbing has been repaired, locker rooms repainted and donated LED lights to be installed ASAP.
3173	Miscellaneous Pool Improvements - FY 2011-12 Projects are being planned.

CDBG Projects:	
5555	Bracher Park Restroom - Open and project is finish. Project was finalized.
5556	Senior Center ADA Improvements-Projects to go to bid soon, 3 different projects all on CDBG grant: 1) ADA electric doors, 2) Air dampers in natatorium, 3) Acoustics in lobby.
5557	Parkway Park - Restroom project halfway done/block walls are done.
5558	Senior Center - 300kv Back-up Generator Project underway, in design by City Engineering and Automotive Services.

Redevelopment Agency:	
9066	Agnew Cemetery Renovation – Construction complete.
9049	Soccer Park Building - Grand stand project is on hold.

THE CITY OF SANTA CLARA

ACTIVITY REPORT FOR THE MONTH OF OCTOBER, 2011

MISSION CITY MEMORIAL PARK

	TOTAL INCOME FROM ALL SOURCES:			FISCAL YEAR COMPARISON SUMMARY TOTALS TO DATE:		
	OCTOBER, 2011	OCTOBER, 2010	%	2011-2012	2010-2011	%
FACILITIES 093/1162/5730 093/1163/5730	$11,215.00	$24,596.00	-54.4%	$39,486.00	$48,088.00	-17.9%
LABOR 093/1162/5740 093/1163/5740	$18,500.00	$19,051.00	-2.9%	$78,929.00	$76,791.00	2.8%
MATERIALS 093/1162/5760 093/1163/5760	$9,055.00	$13,989.00	-35.3%	$44,942.00	$27,184.00	65.3%
BSR TOTALS	$38,770.00	$57,636.00	-32.7%	$163,357.00	$152,063.00	7.4%
SALES TAX	$747.06	$1,293.99		$3,755.28	$2,514.53	
ENDOWMENT CARE 077/0131/57500 077/0131/0361	$4,074.00	$4,134.00		$14,293.00	$7,708.00	
TOTAL INCOME	$43,591.06	$63,063.99	-30.9%	$181,405.28	$162,285.53	11.8%

MONTHLY PURCHASES AND BURIAL SUMMARY

OCTOBER FISCAL YEAR 2011-2012

INVOICES 32398-32411

NICHES PURCHASED	1
CREMATION PLOTS PURCHASED	2
CREMATION BURIAL RIGHTS	2
FULL BODY PLOTS PURCHASED	1
CREMATION BURIAL (GROUND OR NICHE)	5
FULL BODY BURIALS	3
TOTAL BURIALS FOR THE MONTH OF OCTOBER 2011	8

OCTOBER FISCAL YEAR 2010-2011

INVOICES 32252-32262

NICHES PURCHASED	2
CREMATION PLOTS PURCHASED	0
CREMATION BURIAL RIGHTS	0
FULL BODY PLOTS PURCHASED	3
CREMATION BURIAL (GROUND OR NICHE)	5
FULL BODY BURIALS	4
TOTAL BURIALS FOR THE MONTH OCTOBER 2010	9

LAWRENCE DEJANVIER
CEMETERY OPERATIONS SUPERINTENDENT

MONTHLY ACTIVITY REPORT
Planning Department
October 1 - 31, 2011

Division/Program/Measure	2011 - 2012 Current Month	2011 - 2012 Fiscal Year To Date	2010 - 2011 This Month Last Year	2010 - 2011 Fiscal Year To Date
Planning Commission Agenda Items				
Variances & Modifications	0	0	0	1
Use Permits (includes Conditional and Special)	1	5	3	4
Zoning & Rezoning	1	4	3	5
Tent. Map, Ten. Parcel Map & Lot Line Adj.	0	0	0	1
ARC Referrals & Review	0	0	0	2
General Plan Amendment	0	0	1	2
Mitigated Negative Declaration	1	2	0	1
EIR	0	0	0	1
Others including Appeals	0	0	0	1
Total	3	11	7	18
Historical & Landmark Commission Agenda Items				
Projects reviewed	2	6	2	8
Applications Filed				
Variances	0	0	0	1
Zoning - Regular	0	7	1	2
Zoning Administrator Action (Including Modification)	6	31	13	47
Permits - Special & Use	5	24	7	19
Tent. Map, Ten. Parcel Map & Lot Line Adj.	1	7	0	3
Signs	6	19	6	31
Temp Signs	0	5	0	5
Historical & Landmarks including Mills Act	0	1	2	5
General Plan Amendments	0	0	0	0
New Buildings	1	4	0	1
Residential Additions (story) - No Fee	0	0	10	10
Residential Addition (story) - With Fee	0	2	1	2
Residential Regular Projects- No Fee	3	27	0	35
Residential Regular Projects - With Fee	0	7	2	14
Non-Residential - No Fee	1	9	2	23
Non-Residential - With Fee	2	9	5	18
Mixed Use	0	1	0	0
Landscape - Non Residential	3	9	4	8
Others including Appeals	2	10	2	16
Total	30	172	55	240
Code Enforcement				
New Complaints	22	108	25	122
Complaints Resolved	15	77	25	105
Total	37	185	50	227
Fees Collected				
Unadjusted Fees Collected	$168,595.00	$ 92,714.00	$ 26,412.00	$ 75,086.00
Add/Deduct: Adjustments & Refunds				
PLN2011-08808	$ (230.00)			
PLN2010-08446 not included in Oct.2010 Rept.				$ 3,040.00
Net Fees Collected	$168,365.00	$ 261,079.00	$ 26,412.00	$ 78,126.00

Kevin L. Riley

KEVIN L. RILEY, AICP
Director of Planning and Inspection

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City of Santa Clara

October 2011

Department of Plannning and Inspection
Building Inspection Division

DESCRIPTION	THIS MONTH	FY YR TO DATE	LAST YEAR
1. PERMITS ISSUED:			
Building	153	654	143
Electrical	127	621	119
Plumbing	86	358	76
Mechanical	68	372	83
Total Number of Permits	434	2005	421
2. NUMBER OF INSPECTIONS:			
Building	865	3752	955
Electrical	407	1816	506
Plumbing/Mechanical	493	2051	574
Housing	0	69	24
Total Number of Inspections	1765	7688	2054
Total Daily Average	93	94	98
3 SERVICE REQUESTS, COMPLAINTS,CN'S			
Service Requests/Complaints	25	78	19
Correction Notices Issued	22	70	23
Correction Notices Resolved	17	64	19
Correction Notices Unresolved	203	0	214
Citations Issued	12	22	15
4. REVENUE GENERATED FEES:			
Building Permits	$ 96,310.06	$611,369.46	$174,499.78
Plan Check	$ 154,917.07	$513,774.61	$76,092.61
Electrical Permits	$ 20,818.31	$97,934.56	$12,096.44
Plumbing Permits	$ 6,421.53	$57,213.87	$5,978.36
Mechanical Permits	$ 6,681.98	$71,595.02	$9,932.79
Miscellaneous	$ 12,075.84	$51,226.59	$12,948.36
Total Fees	$ 297,224.79	$1,403,114.11	$291,548.34
Total last year to date		$1,635,265.85	

5. NATURE OF BLDG PERMITS ISSUED:

	NO	VALUATION	UNITS	SQFT	PLAN CHECK	PERMIT FEES
Single Family		$0.00	0			
Multi-Family						
Duplex		$0.00	0			
Apartments		$0.00				
Commercial		$0.00	0	0		
Industrial		$0.00		0		
Public		$0.00		0		
Alteration & Additions						
Residential	49	$1,574,447.01		2,210	$10,915.54	$21,642.50
Commercial/Industrial	23	$8,870,681.00			$38,292.70	$47,835.65
Miscellaneous	81	$2,221,046.00			$18,530.78	$25,505.51
Public		$0.00				
Total		$12,666,174.01				
Total F/Y to Date		$130,747,157.19				

for Bunny Samounthe
Building Official

PERFORMANCE MEASURES
BUILDING INSPECTION DIVISION

For the Month of October 2011

Permit Services	Adopted	Actual	% Actual/Adopted
1. Percent of express plan checks performed within two working days.	95%	100.0%	105.3%
2. Percent of short cycle plan checks performed within ten business days.	90%	83.3%	92.6%
3. Percent of regular cycle plan checks performed within 30 calendar days.	85%	72.4%	85.2%
4. Percentage of service provided to all Permit Center customers within 20 minutes of their arrival	90%	86.49%	96.1%
Inspection			
1. Percent of code complaints responded to within two working days.	90%	92%	102%
2. Percent of inspections completed within next working day.	95%	94%	98.9%
Housing Inspection			
1. Percent of multi-family rental housing complexes inspected per month.	1.67%	0.00%	0.0%
2. Percent of housing code complaints responded to within two business days.	90%	n/a	n/a

CITY OF SANTA CLARA
DEPARTMENT OF PLANNING & INSPECTION

HOUSING & COMMUNITY SERVICES DIVISION
ACTIVITY REPORT FOR OCTOBER 2011

Program: Federal & State Grant Administration

Mission: Meet the expectations of city residents in delivering needed community services while meeting program administration requirements stipulated by the U.S. Department of Housing and Urban Development.

Measures:	Budgeted	Current Month	FYTD
3. Obtain approval by HUD of the City's annual Consolidated Plan.	100%	100%	100%
4. Obtain approval by HUD of the City's Consolidated Annual Performance and Evaluation Report.	100%	0%	0%

Program: Neighborhood Conservation & Improvement Program

Mission: Improve the local housing stock for the protection of residents and the enhancement of the City.

Measures:	Budgeted	Current Month	FYTD
3. Complete minor and substantial rehabilitation of up to 50 owner-occupied houses.	50	7	27
4. Administer grants to homeowners for exterior house painting under the Bright Home Program.	40	7	19

Program: Housing & Community Development Projects

Mission: Implement in a timely manner budgeted projects and programs that are identified as meeting particular community needs, primarily for low and moderate income people.

Measures:	Budgeted	Current Month	FYTD
2. Monitor the performance of all Public Service Agencies contracting with the City and Agency for compliance to contractual obligations.	21	0	0
2. Annually monitor for compliance all affordable housing contracts.	43	1	19
3. Initiate all new Division capital improvement projects within the fiscal year.	7	1	2

Jeffrey B. Pedersen
Housing & Community Services
Division Manager

Approval:

Kevin L. Riley
Director of Planning & Inspection

SANTA CLARA POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

OCTOBER, 2011	Current Month	Previous Month	This Year to Date	Prev. Year to Date
Homicide	0	0	2	2
Rape	1	0	11	6
Robbery	6	7	56	50
Felony Assaults	10	8	86	103
Burglary	30	24	322	400
Larceny - Thefts	145	174	1,789	1,859
(Of above that were from vehicle)	<64>	<54>	<789>	<1019>
Auto Theft	19	25	265	278
Local Recovered	25	20	236	263
Recovered for Others	6	17	135	98
Traffic Collisions				
Fatalities	1	0	3	2
Injuries	37	30	258	284
Prop. Damage	85	81	763	863
Total	**123**	**111**	**1,024**	**1,149**
Traffic Violations				
Moving	500	538	6,383	6,706
Parking	878	824	10,141	9,096
Miscellaneous	0	0	0	0
Total	**1,378**	**1,362**	**16,524**	**15,802**
Arrests				
Adult	382	353	3,613	3,779
Juvenile	53	33	339	361
Total	**435**	**386**	**3,952**	**4,140**
Warrants				
Received	161	204	1,532	1,287
Cleared	131	118	1,080	983
Reserve Police Hours	880	789	8,918	8,479
Financial Report - Records				
Reports Sold	$ 1,237.90	$ 669.30	$ 8,876.00	$ 4,253.27
Photos/Fingerprnts	$ 1,439.50	$ 1,600.00	$ 14,173.50	$ 9,729.30
Others	$ 8,403.10	$ 4,238.10	$ 70,094.50	$ 66,071.80
DMV Coll/Parking	$ 18,302.00	$ 18,298.00	$ 132,365.00	$ 60,028.00
ETEC Parking	$ 0.00	$ 51,404.14	$ 300,218.55	$ 237,979.49
Total Monies Received	**$ 29,382.50**	**$ 76,209.54**	**$ 525,727.55**	**$ 378,061.86**
Fines, Forfeitures, Etc.				
CA Veh. Codes	$ 29,976.50	$ 17,715.67	$ 199,545.08	$ 240,065.88
Ordinance/Misd.	$ 0.00	$ 4,674.03	$ 48,176.38	$ 12,603.71
Health & Safety	$ (774.10)	$ (467.07)	$ (4,935.62)	$ (10,018.62)
Highway Patrol	$ 2,375.69	$ 3,551.13	$ 41,583.29	$ 43,277.73
Traffic School	$ 12,773.23	$ 13,185.45	$ 118,035.11	$ 134,520.90
Miscellaneous	$ 17,647.01	$ 8,297.35	$ 106,427.07	$ 86,467.28
Total Monies Received	**$ 61,998.33**	**$ 46,956.56**	**$ 508,831.31**	**$ 506,916.88**

Legend: Revised**

Prepared by M Sawin, PRS 11/18/11

Automotive Services
Monthly Activity Report
Fiscal Year 2011-12

Report date: 11/29/2011

Equipment Summary	October 2011	Yr to Date FY 11-12	Budgeted FY 11-12
1. Purchased qty of repl units:	1	15	88 *
2. Purchased (co) qty of units:	0	0	0 *
3. Purchased qty of upgrades:	0	0	0
4. Emergency Unsched Purchase:	0	0	0
5. % of total units purchased:	1%	17%	
6. Total Dollars Budgeted: (1. - 6. :minus deferrals)*			2,352,800
7. Cost of units purchased:			
$ Budgeted	75,000	570,740	
$ Actual Cost	84,229	721,213	
8. % of dollars allocated:			
% Budget	3%	24%	
% Actual Purchased	4%	31%	

Appropriations (8804) rplcmnts:	88	2,352,800
Capital outlay/upgrades:	0 *	0
Less equipment deferred:	0 *	0 *
Emergency Unsched Purchase:	0	0
Balance of total purchases:	88	2,352,800

Maintenance Summary		October	Yr to Date
1. Qty of PM appointments:		111	403
2. Unscheduled repairs:		145	760
3. Total Repairs/PM written:		256	1163
4. Avg Qty repairs/PM per day:		13	15
Total work days this month:	19		
Total work days to date:	80		

Claude Edwards
Auto Services Superintendent

Prepared by S.Cucuzza
c:Monthly activity fy2011-12

Submit to City Clerk,
2nd wk of month following activity.

Automotive Services Department
Sustainable "Green Fleet" Commitment
Monthly Activity Report - Fiscal Year 2011/12

Month: October 2011

In October 2005, the City Council approved a goal of 75% of all non-public safety sedans to be ultra-low or zero-emission vehicles by the end of the fiscal year 2007/08. Succesfully Completed fiscal year 2006/07.

In May 2007, the City Council joined Sustainable Silicon Valley and committed among other items to increase the fuel efficiency of our fleet with the goal of not increasing total fleet fuel usage. Council reaffirmed this goal as part of its Principles and Priorities for 2009/10. On track.

The California Air Resources Board (CARB) approved a regulation to reduce toxic diesel particulate matter emissions* from diesel fueled public agency and utility fleet vehicles beginning in 2007. Continue to be on Schedule for 2011.

Sustainable Green Fleet Progress							
	Base Year End FY 2006-07			October 2011			
Type Vehicle (Sedans)	Non-Public Safety	Public Safety	Total	Non-Public Safety	Public Safety	Total
All Electric	4	1	5	4	1	5
Hybrids (gas/elec)	47	17	64	48	21	69
Alternate Fuel (capable)	0	0	0	0	29	29
Subtotal	86%	16%	41%	96%	55%	71%
qty	51	18	69	52	51	103
Other (gas only)	14%	84%	59%	4%	45%	29%
qty	8	93	101	2	41	43
Total	100%	100%	100%	100%	100%	100%
qty	59	111	170	54	92	146

Comment: Future City purchased police patrol cars off State contract, will be alternate fuel capable vehicles.

Fleet Fuel Usage Unleaded only	Base Year FY 2006/07	Last Year Monthly Usage	Current Monthly Usage	Current Total Usage YTD	Current Total FY (% Base Year)
Annual Gallons	**219029**	23147	18515	79551	36%

CARB Diesel Emission Retrofit/Replacement				
# of Diesel Fueled Veh's (that require retrofit) by cal year	Summary of Retrofits	Balance of Retrofits / Sell due by Cal Year	Scheduled Retrofits / Sell Completed by Cal Year	Total Fleet Retrofits/Sold Completed to date (by Cal Year)
cal year **2007** : 13 20% of applicable Fleet (64)	Compliant	13	13+3	13 Retros / **3** sold in calif
cal year **2008** : --	Compliant	0	1	**1** sold in Calif
cal year **2009** : 39 60% of applicable Fleet (64)	(39-13 = 26)	26	29+1	29 Retros / **1** sold in Calif
cal year **2010** : --	Compliant	0	1	**1** sold in Calif
cal year 2011 : bal of fleet(15-1 sold) 100% of applicable Fleet (64)	Compliant	0	14	14 Retros ** Last 1 Unit to be sold (V# 2526)

** Installation issues Unit to be sold, Replacement on order, due pre-December 31st, 2011.

for C Edwards

Automotive Services Superintendent

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Support Services
Program: Division Administration
Number: 001/4411

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percentage of Agenda Reports completed on time.	100%	94%	90%
2. Percentage of Agenda Reports completed satisfactorily.	100%	88%	90%
3. Percent of City Manager assignment requests responded within time requested.	100%	80%	90%
4. Percentage of customers surveyed that are very satisfied.	100%	100%	90%

Division: Support Services
Program: Development Support
Number: 001/4412

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Support Services
Program: Capital Improvement Projects
Number: 001/4413

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Building Maintenance
Program: Maintenance / Repair
Number: 001/2222

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percent of Priority One requests for service responded to within one business day.	-	-	90%
2. Percent of all requests for service responded to within four business days.	100%	100%	90%

Division: Building Maintenance
Program: Janitorial
Number: 001/2223

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Respond to all service requests within two hours.	100%	100%	90%
2. Clean all restrooms in all major buildings daily.	100%	100%	90%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Design
Program: Division Administration
Number: 001/4441

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Design
Program: Development Support
Number: 001/4442

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Design
Program: Capital Improvement Projects
Number: 001/4443

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percent of Capital Improvement Projects designed within budget.	-	100%	80%
2. Percent of Capital Improvement Projects designed within approved schedule.	-	100%	80%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Field Services
Program: Division Administration
Number: 001/4461

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percentage of complaints responded to within one business day.	-	100%	90%
2. Number of construction activity complaints.	-	12	50

Division: Field Services
Program: Development Support
Number: 001/4462

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percent of inspection requests responded to within one business day.	100%	100%	95%

Division: Field Services
Program: Capital Improvement Projects Inspection
Number: 001/4463

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percent of Capital Improvement Projects that reached substantial completion within the construction contract time.	0%	50%	75%
2. Percentage of Capital Improvement Projects completed within approved budget.	100%	100%	100%
3. Percentage of customers rating services as satisfactory.	-	-	100%
4. Percentage of Capital Improvement Projects completed with Change Orders under 5% of construction cost.	100%	100%	75%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Land & Property Development
Program: Division Administration
Number: 001/4451

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Land & Property Development
Program: Development Support & Review
Number: 001/4452

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Percent of subdivision maps first submittals reviewed within 15 business days.	-	67%	95%
2. Percent of subdivision maps subsequent submittals reviewed within 10 business days.	100%	100%	95%
3. Percent of Title documents drafted within 10 business days.	100%	94%	90%
4. Percent of private development plans reviewed on first review within 20 business days.	100%	90%	90%
5. Percent of private development plans reviewed on subsequent reviews within 15 business days.	100%	87%	90%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Traffic
Program: Division Administration
Number: 001/4431

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Number of grants applied for or being processed.	0	1	16
2. Number of special transportation permits issued.	15	114	347
3. Number of traffic resolutions approved by City Council.	0	2	16

Division: Traffic
Program: Development Support
Number: 001/4432

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Number of preliminary site and development plans for Project Clearance and Subdivision Committee reviewed.	4	30	90
2. Number of street opening permits, Capital Improvement Projects, and traffic control plans reviewed within agreed time frame.	3	37	120

Division: Traffic
Program: Capital Improvement Projects
Number: 001/4433

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Number of traffic projects under design.	0	2	8
2. Number of projects under construction requiring Traffic division support.	0	2	10

Division: Traffic
Program: Traffic Signal Management
Number: 001/4434

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Number of timing, coordination, detection, equipment, or other signal management requeests responded to.	20	99	185

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
OCTOBER 2011

Division: Traffic
Program: Traffic Striping and Signing
Number: 001/4435

Performance Measures	OCTOBER Actuals	YTD Actuals	2011-12 Budget
1. Number of work orders created for Street Department action.	1	29	75

STREET AND AUTOMOTIVE SERVICES DEPARTMENT
MONTHLY ACTIVITY REPORT - OCTOBER 2011

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
A. STREET MAINTENANCE					
1.	Deeplift AC R&R (In-House)	(ton)	114	455	677
2.	AC Restorations (Permits) (In-House)	(ton)	89	396	1,144
3.	Miscellaneous AC Repair (In-House)	(ton)	0	6	13
3.1.	Total AC Placed (In-House)	(ton)	203	899	2,057
4.	Crack Sealing (In-House)	(lf)	28,350	103,110	65,310
5.	Area of Streets Prepared for Slurry (In-House)*	(sy)	3,785	13,185	124,495
6.	Area of Streets Prepared for Fog Seal (In-House)*	(sy)	0	0	0
7.	Deeplift AC R&R (Contract)	(ton)	0	255	0
8.	AC Restorations (Permits) (Contract)	(ton)	0	0	0
9.	AC Overlay (Contract)	(ton)	0	0	0
10.	Slurry/Cape Seal (Contract)*	(sy)	0	30,000	0
11.	Miscellaneous AC Repair (Contract)	(ton)	0	0	0
11.1.	Total AC Placed (Contract)	(ton)	0	255	0
12.	Miscellaneous Activities	(hr)	702	2,918	2,396
SIDEWALK MAINTENANCE					
13.	Sidewalk R&R (In-House)	(sf)	245	577	626
14.	Curb & Gutter R&R (In-House)	(lf)	19	96	133
15.	Sidewalk Grinding	(hr)	39	127	176
16.	Sidewalk R&R (Contract)	(sf)	0	2,360	8,244
17.	Curb & Gutter R&R (Contract)	(lf)	0	480	1,523
18.	Valley Gutter (Contract)	(sf)	0	0	0
19.	Wheelchair Ramp (Contract)	(ea)	0	0	0
20.	Median Curbs (Contract)	(lf)	0	50	0
21.	Miscellaneous Activities	(hr)	166	166	425
B. STORM DRAIN SYSTEM MAINTENANCE					
1.	Catch Basins Cleaned	(ea)	704	2,997	2,238
2.	Main & Lateral Flushing	(ft)	0	21,146	3,268
2.1.	Main & Lateral Flushing	(cy)	0	10	1
3.	Illicit/Illegal Discharge Incidents	(ea)	4	23	27
4.	Illicit/Illegal Discharge Incidents	(hr)	28	90	68
5.	Other Non-Point Source Activities	(hr)	0	2	685
6.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(hr)	46	237	406
6.1.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(cy)	3	24	22
7.	Pump Station/Outfall Monitoring	(hr)	220	563	30
8.	Creek Clean-Up/Trash Abatement	(hr)	4	44	57
9.	Construction Site Inpections	(ea)	7	7	4
10.	Construction Site Inspections	(hr)	23	25	10
11.	Ind/Com Facility Inspections	(ea)	1	12	7
12.	Ind/Com Facility Inspections	(hr)	1	20	11
13.	Public Information Participation	(hr)	0	0	0
14.	Miscellaneous Activities	(hr)	280	1,020	1,356
C. TRAFFIC STRIPING & SIGNAGE MAINTENANCE					
1.	Striping Installed	(mi)	1.8	65.1	52.0
2.	Curbs Painted	(lf)	195	6,444	6,905
3.	Vandalism	(hr)	6	21	29
4.	Services for Other Departments	(hr)	0	237	70
5.	Pavement Marking (messages & crosswalks)	(sf)	2,962	7,048	9,409
6.	Sign Fabrication	(ea)	106	347	230
7.	Sign Maintenance	(hr)	137	777	552
8.	Signs Installed, Upgraded or Repaired	(ea)	144	530	551
9.	Metal Beam Guardrails	(lf)	0	44	0
10.	Miscellaneous Activities	(hr)	146	715	166

STREET AND AUTOMOTIVE SERVICES DEPARTMENT
MONTHLY ACTIVITY REPORT - OCTOBER 2011

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
11.	Striping Installed (Contract)	(mi)	0.0	3.8	0.0
12.	Pavement Marking (Contract)	(sf)	0	3,307	0
13.	Pavement Markers (Contract)	(ea)	0	497	0
D.	**SPECIAL DEPARTMENTAL ACTIVITIES**				
1.	Clean-Up Campaign - Hours	(hr)	0	0	0
2.	Clean-Up Campaign - Debris Collected	(cy)	0	0	0
3.	Crack Sealing (Contract)	(lf)	0	0	0
4.	Fog Sealing (Contract)	(sy)	0	0	0
5.	Leaf Vac Program - Debris Collected	(cy)	0	0	0
6.	Christmas Tree Collection Program	(hr)	0	0	0
E.	**PARKWAYS & BOULEVARDS MAINTENANCE**				
1.	Trees Planted	(ea)	24	75	36
2.	Trees Sprayed/Trees Injected	(ea)	0	60	10
3.	Root Pruning	(ea)	2	8	3
4.	Bracing & Cabling	(ea)	12	37	10
4.1.	Immediate Calls for H/B and B/D	(ea)	45	218	158
5.	Trees & Stumps Removed	(ea)	6	60	64
6.	Citizen Generated Tree Trim Requests	(ea)	123	492	411
6.1.	Miscellaneous Generated Service Requests	(ea)	59	375	292
7.	Trees Trimmed - City Crews	(ea)	91	370	360
7.1.	Trees Trimmed - Contract	(ea)	180	541	786
7.2.	Total Trees Trimmed	(ea)	271	911	1,144
8.	Backlog of Citizen Trim Requests - In-House				
8.1.	Current Month	(ea)	96		396
8.2.	More than 30 days	(ea)	39		274
8.3.	More than 60 days	(ea)	100		914
8.4.	Total Backlog	(ea)	235		1,584
9.	Backlog of Citizen Trim Requests - Contracted				
9.1.	Current Month	(ea)	186		79
9.2.	More than 30 days	(ea)	38		61
9.3.	More than 60 days	(ea)	62		1,094
9.4.	Total Backlog	(ea)	286		1,234
F.	**SOLID WASTE**				
1.	Clean Green Collection				
1.1.	Cubic Yards	(cy)	4,520	19,363	16,408
1.2.	Tons	(ton)	904	3,873	3,282
2.	Complaints Responded To:				
2.1.	Clean Green	(ea)	0	0	0
2.2.	Garbage	(ea)	0	2	1
3.	Street Sweeping				
3.1.	Miles Cleaned	(mi)	2,195	8,751	8,994
3.2.	Man-Hrs per Curb-Mile	(hr/mi)	0.11	0.44	0.45
4.	Illegal Sign/Graffitti Abatement				
4.1.	Illegal Signs Removed	(ea)	174	1,196	877
4.2.	Graffiti Loc. (Pri/Pub/Gar Bins) Reported	(ea)	98	436	304
4.3.	Private Property Graffiti Letters Sent	(ea)	12	59	41
4.4.	Private Property Graffiti City Clean Up	(ea)	90	392	261

* Partial street area not included.

Prepared by: Karin Hickey

Approved by: [illegible]

CITY OF SANTA CLARA SEWER DEPARTMENT
MONTHLY ACTIVITY REPORT OCTOBER 2011

ACTIVITY	WORK UNIT	THIS MONTH	FISCAL YEAR
TOTAL Service Requests		695	2832
Cleanout Installations		4	12
Lateral Stoppages		123	386
Main Stoppages		2	8
Misc. Requests/Complaints		188	453
Roach Customer Complaints		1	4
Lateral/Main Repairs		10	26
Sewer Construction		0	0
Jet Cleanings		39238	128327
Roach Control (Manholes)		2	9
Lateral Installations		0	0
TV Inspections, Laterals		13	22
TV Inspections, Main Lines		82	29612
Root Foaming, Main Line		0	0
Root Foaming, Lateral		3	33
Pump Calls, Storm & Sewer		225	944

SEWAGE PUMP STATIONS DATA	NORTHSIDE	RABELLO
Total pumped (MG) during October (28 days)	43.9	185.2
Total pumped (MG) since July 1, 2010	230.8	890.8
Average daily flow for the month (MGD)	1.6	6.6

SAN JOSE OUTFALL		MONTH	F.Y.
	28 days		
Flow Total (MG)	Line A	81.48	332.15
	Line B	120.4	510.58
Combined flow Lines A & B (MG)		202	843
Average Daily Flow (MGD),	Line A	2.9	
	Line B	4.3	
Total average flow		15.4 mgd	

Christopher L. de Groot
Acting Director Water & Sewer Utilities

BW: XLS I:\WATER\MEMOS\MONTHLYREPORTS\SEWER\swrreport 11-12

Division/Program/Measure		2011-2012			2010-2011		
		Oct-11	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Sewer System Administration	**094/1511**						
1. Prepare annual Sewer Revenue Program (as required for Federal program and WPCP cost distribution) by due dates each year.		0	0	2	1	1	2
2. Prepare monthly status reports and TPAC agenda reports.		1	4	12	1	4	12
Sewer System Maintenance	**094/1512**						
1. Number of feet of mainline jetted.		39,238	128,327	350,000	13,759	107,784	500,000
2. Report sanitary sewer overflows to the State online CIQWS database.		0	100%	100%	1	3	6
3 Number of reportable sewer spills		0	2	<3	N/A	N/A	N/A
Sewer Operations	**094/1514**						
1. Number of pump and metering stations inspected.		33	132	396	33	132	396
2. Provide all preventative and routine maintenance as specified in operations and maintenance manuals.		100%	100%	100%	100%	100%	100%
San Jose/Santa Clara WPCP	**094/1515**						
1. Support Treatment Plant Advisory Committee (TPAC) members to represent the City in matters relating to the WPCP at monthly meetings.		1	4	12	1	4	12
2. Provide sufficient funding for all WPCP approved projects.		N/A	100%	100%	N/A	25%	100%
Sewer/Storm Pump Maintenance	**094/1516**						
1. Number of storm pump stations inspected.		34	136	408	34	136	408
2. Provide all preventative and routine maintenance as specified in operations and maintenance manuals.		100%	100%	100%	100%	100%	100%
3 Coordinate annual load test for generators.		3	3	10	0	3	10

Christopher L. de Groot
Acting Director of Water & Sewer Utilities

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CITY OF SANTA CLARA WATER DEPARTMENT MONTHLY REPORT

OCT	2011

MAINS INSTALLED:		
SIZE (in)	MATERIAL	FOOTAGE
TOTAL		0

CT-Contractor

SERVICES:		
SIZE (in)		QUANTITY
2	RW	2
TOTAL		2

RW = Recycled Water

METERS:	
SIZE (in)	QUANTITY
2	3
TOTAL	3

FIRE SERVICES:	
SIZE (in)	QUANTITY
8	1
TOTAL	1

BACKFLOW PREV:	
SIZE (in)	QUANTITY
TOTAL	0

METERS REMOVED:	
SIZE (in)	QUANTITY
2"	1
TOTAL	1

TASK	QUANTITY
WATER WASTE WARNINGS ISSUED	0
LOW FLOW SHOWER HEAD/CONSERVATION KITS DISTRIBUTED	0
COMPLAINTS & SERVICE REQUESTS RESOLVED	116
METERS CHANGED FOR REPAIR & TESTING, ROUTINE	58
METERS TESTED IN SHOP	0
METERS REPAIRED	0
SERVICE TAGS PROCESSED (SO1)	89
FIRE HYDRANTS INSTALLED	0
FIRE HYDRANTS REPAIRED	6
DAMAGED FIRE HYDRANTS REPAIRED	0
FIRE HYDRANTS PAINTED	9
LARGE METERS TESTED & REPAIRED IN FIELD	0
MAIN BREAKS REPAIRED	7
BROKEN VALVES REPLACED	0
MAINLINE VALVES TESTED AND EXERCISED	239
USA WATER LOCATES PERFORMED	314

TASK	QUANTITY
LARGE WATER METERS/SERVICES PAINTED	4
BACKFLOW PREVENTERS TESTED	241
SOLAR POOL HEATERS INSTALLED	0
SOLAR DOMESTIC HOT WATER SYSTEMS INSTALLED	0
SOLAR POOL SYSTEM COMPLAINTS & SERVICES	11
SOLAR DOMESTIC HOT WATER COMPLAINTS & SERVICES	0
FIRE DETECTOR CHECK VALVES REPAIRED	0
FIRE DETECTOR CHECK VALVES READ	11
FIRE DETECTOR CHECK VALVES TESTED	0
AIR RELIEF VALVES TESTED AND REPAIRED	0
WELL SITE FACILITIES PAINTED	1
REGULATOR (ZONE) VALVES CHECKED/ADJUSTED	12
WATER QUALITY SAMPLES TAKEN	241
FIRE HYDRANTS FLUSHED	64
BACKFLOW PREVENTERS REPAIRED	19
PLANS CHECKED	20

WORK IN PROGRESS:

INSTALLATION OF SOLAR SYSTEMS AT VARIOUS LOCATIONS.
INSTALLATION OF FIRE SERVICES AT VARIOUS LOCATIONS.
INSTALLATION OF RP DEVICES AT VARIOUS LOCATIONS.
INSTALLATION OF FIRE HYDRANTS AT VARIOUS LOCATIONS.

WORK COMPLETED:

ARV ON PETERSON FOR RCW
2" RCW SERVICE FOR 2880 NORTHWESTERN (Vantage Data)
2" RCW SERVICE FOR 3111 Coronado (Biixby)
8" DCDA UPGRADE FOR 3111 Coronado (Bixby)
3 2" WATER SERVICE KILLS ON 1450 ECR
INSTALL 2" METER & RP FOR PEACOCK CT.
TAP MAIN FOR 2 FIRE SERVICES

WATER SUPPLY DATA:	UNITS	QUANTITY
GROUND WATER PUMPED	MG	388.23
SCVWD TREATED WATER PURCHASED	MG	152.50
HETCH-HETCHY WATER PURCHASED	MG	57.86
TOTAL DRINKING WATER PRODUCTION THIS MONTH	MG	598.59
AVG. DAILY DRINKING WATER PRODUCTION THIS MONTH	MGD	18.71

MISCELLANEOUS:

MAINTENANCE OF MAINS, HYDRANTS,SERVICES, WELLS, TANKS AND SOLAR SYSTEMS.

Christopher de Groot
Acting Director of Water & Sewer Utilities

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Division/Program/Measure		2011-2012			2010-2011		
		Oct-11	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Water Engineering/Design Engineering	**092/1411**						
1. Number of plans reviewed.		21	91	220	19	81	220
2. Complete review of plans by the required due dates.		80%	84%	90%	84%	79%	90%
Water Engineering/ Water Quality	**092/1412**						
1. Create and publish the annual Consumer Confidence Report in accordance with the California Safe Drinking Water Act requirement.		0	0	1	0	0	1
2. Number of water quality samples processed.		241	1,341	3,000	237	1,808	3,000
Water Engineering/Water Resources	**092/1413**						
1. Promote water conservation at public events.		0	1	5	0	1	5
Water System Maintenance	**092/1422**						
1. Maintain an industrial standard for unaccounted water of 5% or less.		≤ 5%	≤ 5%	≤ 5%	≤ 5%	≤ 5%	≤ 5%
2. Number of responses to customer service requests.		116	485	1,600	129	524	1,600
3. Respond to customer service requests within 30 minutes of receipt of calls (excluding scheduled appointments and after hours call back requests).		90%	88%	80%	93%	88%	80%
4. Number of backflow prevention devices tested.		241	891	2,000	216	835	2,000
5. Number of meters changed for routine, repair and testing.		58	199	800	51	282	800
6. Number of main break repairs/broken valve replacements performed.		7	27	≤ 95	8	29	95

Division/Program/Measure		2011-2012			2010-2011		
		Oct-11	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Water System Construction	**092/1423**						
1. Number of lineal feet of water mains installed.		0	0	5,000	0	0	0
2. Number of new service installations.		16	57	50	0	9	50
3. Number of underground utility locates performed.		314	1,235	2,000	230	881	2,000
Water System Operations	**092/1424**						
1. Perform routine maintenance on City fire hydrants.		79	278	750	97	119	750
2. Number of production meters read and recorded.		64	260	800	32	224	800
3. Number of mainline water valves tested and exercised.		239	498	800	68	149	800
Solar System Maintenance	**092/1532**						
1. Number of responses to customer service requests.		11	95	300	17	94	300
2. Number of systems provided with semi-annual winterization service. twice each year.		30	30	50	2	33	100
3. Number of removal and reinstallation requests.		0	7	12	1	4	12
4. Percent of service requests responded to within one business day.		91%	90%	75%	71%	85%	75%
Recycled Water System Maintenance, City	**097/1522**						
1. Number of recycled water meters greater than 2" tested annually.		0	0	18	0	0	18
South Bay Water Recycling System Maintenance	**097/1525**						
1. Provide all O & M services as required in Agreement for Services.		100%	100%	100%	100%	100%	100%

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-4

Santa Clara All-America City 2001

Date: October 3, 2011

To: City Manager for Council Action

From: John C. Roukema, Director of Electric Utility

Subject: Approval for Use of City Forces, Electric Department Estimates

EXECUTIVE SUMMARY:

It is requested that the City Council find that City Forces, supplemented by Public Works and Contract Labor, if necessary, can best perform the installation of the following electric facilities and approve the use of City Forces, therefore:

Estimate No:	32457
Title/Location	Dannys Recycling Load Increase, 1745 Walsh Avenue
Type of Job:	Load Increase
Description of Work:	Remove one BT riser. Install 275'± of 1/0 al tri primary conductor, 40'± of 5" primary conduit, one BT riser and connect customer service.

Estimated Cost:	$24,167.25	Customer/Developer Contribution:	$	33,845.00	
		Salvaged Plant	$	436.35	
		Customer Service Charge	<	10,114.10	>

Estimate No:	32703
Title/Location	104W Feeder, Walsh Substation
Type of Job:	Capacity
Description of Work:	Install 585' ± of 1100 AL 15kV primary conductor, three 600 amp roll-on terminations; nine 1100 to 1100 al splices.

Estimated Cost:	$22,783.41	Customer/Developer Contribution:	$	.00
		Salvaged Plant	$	.00
		Customer Service Charge	$	22,783.41

RECOMMENDATION:

That Council approve the use of City Electric forces for the installation of facilities at 1745 Walsh Avenue and for one feeder at Walsh Substation.

John C Roukema

John C. Roukema
Director of Electric Utility

APPROVED

Jennifer Sparacino

Jennifer Sparacino
City Manager

Documents related to this report: None

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-5

Santa Clara All-America City 2001

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Finance

Subject: Acceptance of the Monthly Financial Status Reports for July 2011

EXECUTIVE SUMMARY:

In compliance with the Charter of the City of Santa Clara, Article IX, Sections 904(d) and (h) and the State of California Government Code Sections 41004 and 53646, the following reports for July 2011 are submitted for your information and acceptance:

1. Summaries of Revenues and Expenditures (Operating and Capital Improvement Funds)
2. All Funds Cash Position
3. Summary of Portfolio
4. Summary Schedule of Investments
5. Investment Maturity Distribution
6. List of Securities Brokers and Dealers
7. Attachment A: Investment Inventory With Market Value

ADVANTAGES AND DISADVANTAGES OF ISSUE:

These reports provide monthly revenues and expenditures summaries and summary investment schedules.

ECONOMIC/FISCAL IMPACT:

Costs associated with the regular preparation of these reports are included in the General Fund Operating Budget.

RECOMMENDATION:

That the Council accept the Monthly Financial Status Reports for July 2011 as presented.

Gary Ameling
Director of Finance

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Monthly Financial Status Reports for July 2011

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Rev. 02/26/08

CITY OF SANTA CLARA

MONTHLY FINANCIAL STATUS REPORTS

SUMMARIES OF REVENUES AND EXPENDITURES

ALL FUNDS CASH POSITION

SUMMARY OF PORTFOLIO

SUMMARY SCHEDULE OF INVESTMENTS

INVESTMENT MATURITY DISTRIBUTION

LIST OF SECURITIES BROKERS AND DEALERS

ATTACHMENT A: INVESTMENT INVENTORY WITH MARKET VALUE

July 2011

CITY OF SANTA CLARA

MONTHLY FINANCIAL STATUS REPORTS

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6	List of Securities Brokers and Dealers	7
7	Attachment A: Investment Inventory With Market Value	

CITY OF SANTA CLARA
OPERATING FUNDS
SUMMARY OF REVENUES AND EXPENDITURES (Unaudited)
Fiscal Year 2011-2012
as of July 31, 2011

		EXPENDITURES			REVENUES		
Fund Description	Fund #	Appropriations[1]	Expenditures To Date	Unexpended Balance	Budgeted Resources [2]	Receipts and Net Transfers In/(Out) [3] To Date	Unrealized (Unanticipated) Revenue
General Fund	001	$ 142,133,079	$ 10,875,139	$ 131,257,940	$ 142,133,079	$ 5,604,959	$ 136,528,120
Downtown Parking Mtce.	025	150,550	7,547	143,003	150,550	139,350	11,200
Convention Center Mtce.	026	1,314,582	83,776	1,230,806	1,314,582	653,005	661,577
Public Facilities Corp. Debt	431	2,740,404	0	2,740,404	2,740,404	2,899,305	(158,901)
Debt Service	441	3,506,210	0	3,506,210	3,506,210	3,161,937	344,273
Vehicle Equipment	050	2,352,800	935	2,351,865	2,352,800	463,170	1,889,630
Automotive Services	053	4,011,983	293,897	3,718,086	4,011,983	396,065	3,615,918
Senior Nutrition Program	111	133,750	9,953	123,797	133,750	(11,569)	145,319
Communications Tech. Srv.	047	762,508	57,699	704,809	762,508	87,163	675,345
Communications Equip.	048	20,000	0	20,000	20,000	1,667	18,333
Electric Utility Funds	091/191	266,162,771	18,752,866	247,409,905	266,162,771	(11,300,534)	277,463,305
Electric Utility Debt	491	16,424,713	9,680,034	6,744,679	16,424,713	16,424,713	0
Water Utility Fund	092	27,166,953	1,895,859	25,271,094	27,166,953	3,278,695	23,888,258
Sewer Utility Fund	094	16,774,526	3,019,841	13,754,685	16,774,526	166,887	16,607,639
Cemetery	093	910,005	86,269	823,736	910,005	(93,939)	1,003,944
Solid Waste Utility Fund	096	18,898,448	1,297,057	17,601,391	18,898,448	1,845,269	17,053,179
Water Recycling Program	097	1,942,673	235,721	1,706,952	1,942,673	(55,585)	1,998,258
TOTAL		**$ 505,405,955**	**$ 46,296,593**	**$ 459,109,362**	**$ 505,405,955**	**$ 23,660,558**	**$ 481,745,397**

(1) - Budgeted appropriations include unexpended 6-30-11 appropriations plus FY11-12 appropriations.
(2) - Budgeted Resources include Estimated Revenues, Net Operating Transfers and Fund Beginning Balance.
(3) - Includes Actual Revenues, Net Operating Transfers and Budgeted Decreases (Increases) to Fund Reserves.

CITY OF SANTA CLARA
CAPITAL IMPROVEMENT FUNDS
SUMMARY OF REVENUES AND EXPENDITURES (Unaudited)
Fiscal Year 2011-2012
as of July 31, 2011

		EXPENDITURES			REVENUES		
Fund Description	Fund #	Appropriations[1]	Expenditures To Date	Unexpended Balance	Budgeted Resources[2]	Receipts and Net Transfers To Date	Unrealized (Unanticipated) Revenue
Street Beautification	531	$ 206,472	$ -	$ 206,472	$ 206,472	$ 229,117	$ (22,645)
Parks & Recreation	532	2,424,104	5,968	2,418,136	2,424,104	1,763,161	660,943
Streets & Highways	533	8,935,355	213,756	8,721,599	8,935,355	4,335,394	4,599,961
Section 2105 Gas Tax	521	571,832	0	571,832	571,832	364,079	207,753
Major City Streets	522	3,335,776	11,666	3,324,110	3,335,776	3,103,702	232,074
FAU Washed Gas Tax Exchange	523	0	0	0	0	(40,063)	40,063
Select City Streets	524	856,963	15,261	841,702	856,963	691,090	165,873
Traffic Mitigation	525	15,061,670	8,561	15,053,109	15,061,670	10,832,316	4,229,354
Street Lighting	534	392,564	926	391,638	392,564	80,472	312,092
Storm Drain	535	2,579,835	3,521	2,576,314	2,579,835	1,889,725	690,110
Fire	536	370,090	310	369,780	370,090	338,090	32,000
Library	537	196,361	0	196,361	196,361	196,361	0
Public Buildings	538	3,348,235	4,388	3,343,847	3,348,235	3,132,634	215,601
General Govmnt - Other	539	9,112,866	62,170	9,050,696	9,112,866	9,461,959	(349,093)
Community Services	562	4,751,132	16,865	4,734,267	4,751,132	119,430	4,631,702
Electric Utility	591	96,729,590	2,908,569	93,821,021	96,729,590	81,917,943	14,811,647 [3]
Water Utility	592	9,707,465	63,321	9,644,144	9,707,465	9,258,008	449,457
Cemetery	593	112,886	48	112,838	112,886	112,886	0
Sewer Utility	594	22,961,328	1,603,051	21,358,277	22,961,328	12,737,343	10,223,985
Solid Waste Utility	596	946,203	0	946,203	946,203	962,219	(16,016)
Water Recycling Prgm.	597	9,156,299	373,037	8,783,262	9,156,299	1,159,589	7,996,710
University Project Area CIP	938	3,951,533	0	3,951,533	3,951,533	3,635,733	315,800
Bayshore North Proj Area CIP	939	88,920,825	240,162	88,680,663	88,920,825	88,889,242	31,583
TOTAL		**$ 284,629,384**	**$ 5,531,580**	**$ 279,097,804**	**$ 284,629,384**	**$ 235,170,430**	**$ 49,458,954**

(1) - Budgeted appropriations include unexpended 6-30-11 appropriations plus FY11-12 appropriations, and exclude unallocated appropriations.

(2) - Budgeted Resources include Estimated Revenues, Net Operating Transfers and Fund Beginning Balance.

(3) - Electric Fund budgeted resources and unrealized revenue include $650,000 transfer from Rate Stabilization Fund

CITY OF SANTA CLARA
ALL FUNDS - CASH POSITION (Unaudited)
as of July 31, 2011

TOTAL - ALL FUNDS CASH POSITION

Cash - Active	$ 15,232,169
Savings & Investments	510,408,924
TOTAL	$ 525,641,093

DETAIL OF SELECTED FUND CASH BALANCES:

	ELECTRIC	WATER	SEWER	SELECTED CONTINGENCY RESERVE
Operating Cash	$ 36,832,526	$ 3,724,046	$ 4,204,440	
Construction Cash	80,081,229	12,704,328	14,628,970	
Replacement & Improvement		303,090	1,507,553	
Water Conservation		498,125		
Rate Stabilization Fund Reserve	25,000,000			
Cost Reduction Fund Reserve	83,594,624			
DVR Power Plant Contracts Reserve	5,078,163			
Working Capital (Emergency) Reserve				$ 4,117,155
Capital Projects Reserve				4,717,964 (1)
Building Inspection Reserve				1,842,402
Non-Expendable Land Proceeds				16,956,005
TOTALS	$ 230,586,542	$ 17,229,589	$ 20,340,963	$ 27,633,526

(1) - With the anticipated return of unspent portion of closed/reduced projects as of June 30, 2011, the Capital Projects Reserve would be $6.3 million.

CITY OF SANTA CLARA
SUMMARY OF PORTFOLIO

All securities held by the City of Santa Clara as of July 31, 2011 were in compliance with the City's Investment Policy Statement regarding current market strategy and long-term goals and objectives. All securities held are rated "A" or higher by two nationally recognized rating agencies. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

The following table provides the breakdown of the total portfolio among the City, the Redevelopment Agency (RDA), and the Sports and Open Space Authority (SOSA) as of July 31, 2011.

	BOOK VALUE	PERCENTAGE
City	$372,907,370	82.44%
RDA	78,036,277	17.25%
SOSA	1,396,969	.31%
Unrestricted	$452,340,616	100.00%
Restricted Bond Proceeds	58,068,308	
Total	$510,408,924	

At July 31, 2011, the principal cost and market value of the City's unrestricted pooled cash portfolio were $452,340,616 and $460,166,003, respectively. In addition, the accrued interest was $3,707,059.

Investment Strategy and Market Update

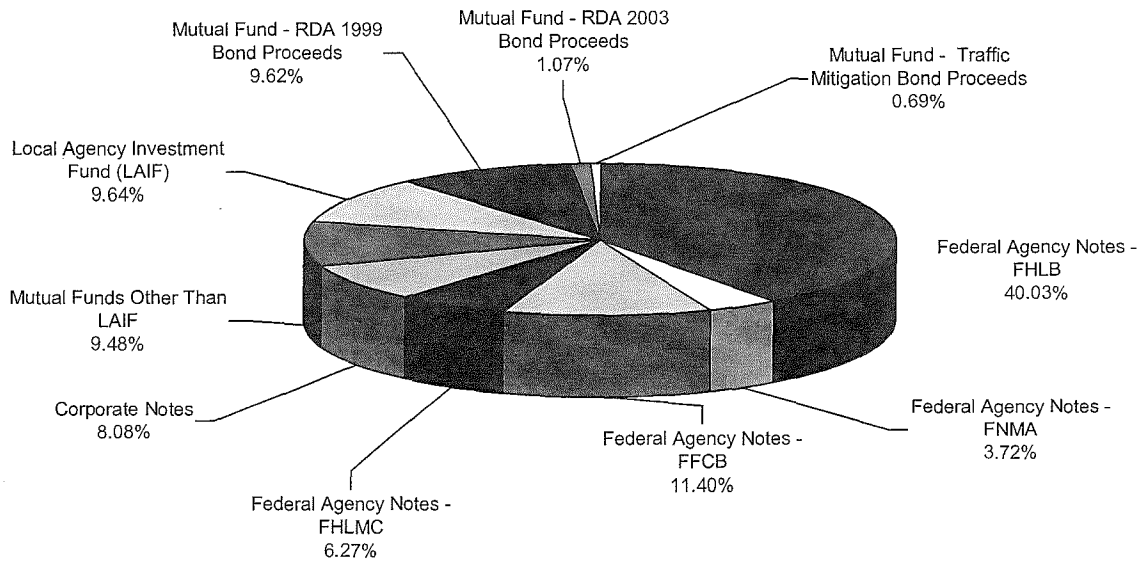
The City's investment strategy for July 2011 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from date of purchase. This strategy ensures safety of the City's funds, provides the liquidity to meet the City's cash needs and earns a reasonable portfolio return.

As of July 31, 2011, City's portfolio consists of approximately 61.42% of securities issued by four different Federal Agencies. In addition, to comply with the 1986 Tax Reform Act arbitrage regulations, a portion of the City's bond proceeds is invested in yield-restricted investments. These yield-restricted investments are not included in the calculation of the City's portfolio yield. The average maturity of the City's portfolio was 1.57 years and the City's portfolio yield vs. the 12-month average yield of two-year Treasury Notes was as follows:

PERIOD		CITY'S PORTFOLIO RETURN	BENCHMARK RETURN	AVERAGE DAYS TO MATURITY
July	2011	2.34%	0.53%	574
June	2011	2.71%	0.55%	610
July	2010	2.86%	0.62%	462

CITY OF SANTA CLARA
SUMMARY OF INVESTMENTS - July 31, 2011

INVESTMENT TYPE	BOOK VALUE	% OF PORTFOLIO	PER INVESTMENT POLICY
U.S. Treasury Notes	$ -	0.00%	No Limit
Federal Agency Notes - FHLB	204,344,331	40.03%	No Limit
Federal Agency Notes - FNMA	18,968,558	3.72%	No Limit
Federal Agency Notes - FFCB	58,185,048	11.40%	No Limit
Federal Agency Notes - FHLMC	32,004,566	6.27%	No Limit
Corporate Notes	41,245,178	8.08%	15%
Mutual Funds Other Than LAIF	48,390,362	9.48%	10% Per Fund
Local Agency Investment Fund (LAIF)	49,202,571	9.64%	$50 M
Mutual Fund - Redeveopment Agency (RDA) 1999 Bond Proceeds	49,078,104	9.62%	No Limit
Mutual Fund - Redevelopment Agency (RDA) 2003 Bond Proceeds	5,480,972	1.07%	No Limit
Mutual Fund - Traffic Mitigation Bond Proceeds	3,509,233	0.69%	No Limit
TOTAL INVESTMENTS	$ 510,408,924	100.00%	

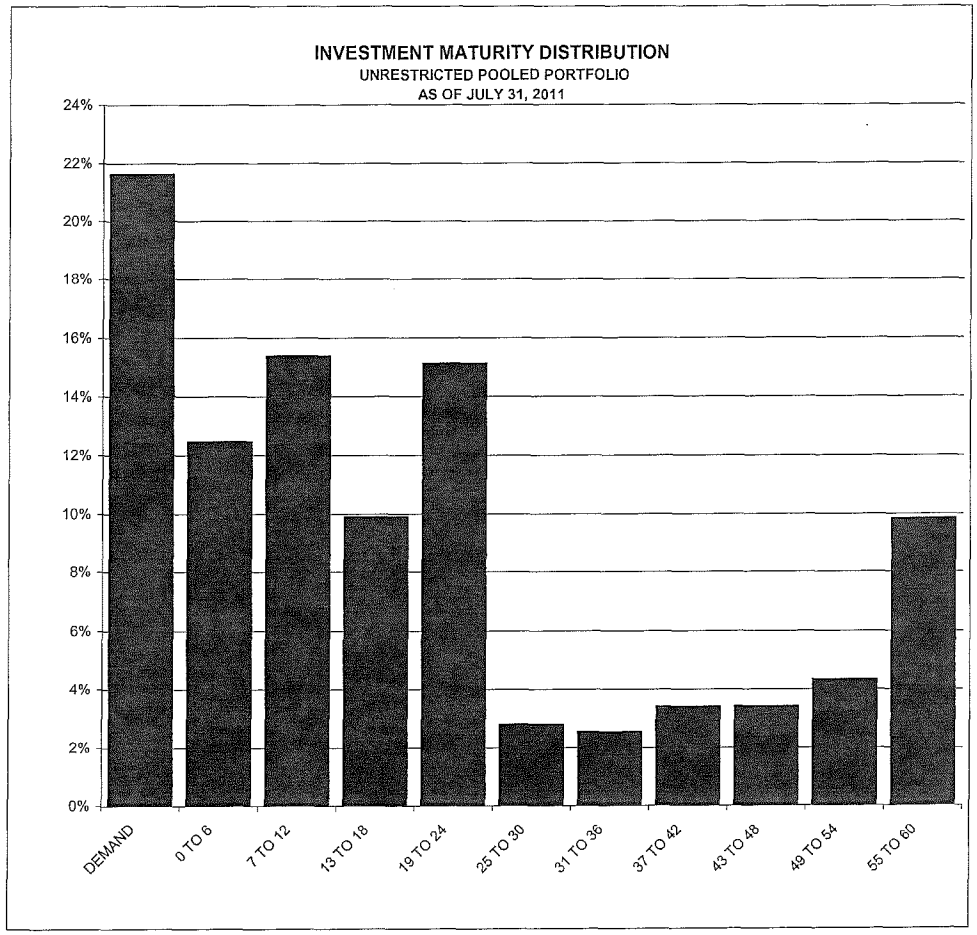


INVESTMENT MATURITY DISTRIBUTION
AS OF JULY 31, 2011
UNRESTRICTED POOLED PORTFOLIO

MATURITY (IN MONTHS)	BOOK VALUE	NUMBER OF INVESTMENTS	DISTRIBUTION
DEMAND	$ 97,592,932 (a)	3	21.57%
0 TO 6	56,110,180	19	12.40%
7 TO 12	69,330,087	23	15.33%
13 TO 18	44,455,661	15	9.83%
19 TO 24	68,152,613	22	15.07%
25 TO 30	12,227,827	4	2.70%
31 TO 36	11,106,828	3	2.46%
37 TO 42	14,965,710	3	3.31%
43 TO 48	15,024,029	3	3.32%
49 TO 54	19,236,898	4	4.25%
55 TO 60	44,137,851	7	9.76%
TOTAL	$ 452,340,616	106	100.00%

Average Maturity of Unrestricted Pool: 1.57 Years

(a) $20M is earmarked for the City's Electric Utility power-trading.



CITY OF SANTA CLARA

List of Securities Brokers and Primary Dealers in U.S. Government Securities and Mutual Funds

AIM Investment Co.

Dreyfus Institutional Services

Fidelity Investment Institutional Services Co.

Franklin's Institutional Fiduciary Trust

FTN Financial Securities Corp.

Gilford Securities, Inc.

Government Perspectives, LLC

Higgins Capital Management

Mischler Financial Group, Inc.

Morgan Keegan & Co., Inc.

All individual securities purchased by the City of Santa Clara from Securities Brokers/Primary Dealers are delivered to the City's safekeeping account with the Bank of New York Securities Safekeeping.

Attachment A

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

(RPTMKT)

RUN: 08/24/11 14:33:02

INVESTMENTS OUTSTANDING AS OF 07/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16930	FHLB MEDIUM TERM NOTES	3133MGYH3	25	1	5.7500	3,000,000.00	3,006,324.00	79,541.67	
	02/26/08 08/15/11		28	000	3.4001	3,032,536.49	100.2108000000	IDC	-26,212.49
A 16897	FHLB MEDIUM TERM NOTES	3133XF5T9	25	1	5.0000	3,000,000.00	3,014,796.00	59,166.67	
	01/04/08 09/09/11		28	000	3.6691	3,018,536.92	100.4932000000	IDC	-3,740.92
A 16935	FHLB MEDIUM TERM NOTES	3133XF5T9	25	1	5.0000	3,000,000.00	3,014,796.00	59,166.67	
	03/06/08 09/09/11		25	000	3.0400	3,027,730.50	100.4932000000	IDC	-12,934.50
A 16938	FHLB MEDIUM TERM NOTES	3133XF5T9	25	1	5.0000	3,000,000.00	3,014,796.00	59,166.67	
	03/12/08 09/09/11		25	000	3.0732	3,027,247.78	100.4932000000	IDC	-12,451.78
A 17011	FHLB MEDIUM TERM NOTES	3133XRY46	25	1	3.7500	3,000,000.00	3,011,166.00	44,375.00	5,375.18
	09/09/08 09/09/11		28	000	3.3401	3,005,790.82	100.3722000000	IDC	
A 17016	FHLB MEDIUM TERM NOTES	3133XRY46	25	1	3.7500	3,000,000.00	3,011,166.00	44,375.00	8,372.75
	09/23/08 09/09/11		25	000	3.5502	3,002,793.25	100.3722000000	IDC	
A 16886	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	3,000,000.00	3,028,833.00	45,000.00	16,515.89
	12/10/07 10/13/11		28	000	4.0996	3,012,317.11	100.9611000000	IDC	
A 16898	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	2,000,000.00	2,019,222.00	30,000.00	6,101.56
	01/09/08 10/13/11		25	000	3.5803	2,013,120.44	100.9611000000	IDC	
A 16904	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	3,000,000.00	3,028,833.00	45,000.00	5,696.20
	01/17/08 10/13/11		25	000	3.3400	3,023,136.80	100.9611000000	IDC	
A 16908	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	3,000,000.00	3,028,833.00	45,000.00	1,002.67
	01/23/08 10/13/11		25	000	3.0172	3,027,830.33	100.9611000000	IDC	
A 16958	FHLB MEDIUM TERM NOTES	3133MJUQ1	25	1	4.8750	3,000,000.00	3,040,476.00	30,875.00	13,592.20
	04/15/08 11/15/11		25	000	2.9751	3,026,883.80	101.3492000000	IDC	
A 16896	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,047,394.00	20,583.33	33,605.12
	01/04/08 12/09/11		25	000	3.7491	3,013,788.88	101.5798000000	IDC	
A 16902	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,047,394.00	20,583.33	31,285.47
	01/11/08 12/09/11		25	000	3.5851	3,016,108.53	101.5798000000	IDC	
A 16999	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,047,394.00	20,583.33	36,320.77
	07/30/08 12/09/11		29	000	3.9500	3,011,073.23	101.5798000000	IDC	
A 17035	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,047,394.00	20,583.33	25,636.29
	11/06/08 12/09/11		25	000	3.2102	3,021,757.71	101.5798000000	IDC	
A 17042	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,047,394.00	20,583.33	25,328.95
	11/18/08 12/09/11		26	000	3.1898	3,022,065.05	101.5798000000	IDC	
A 16900	FHLB MEDIUM TERM NOTES	3133XJUT3	25	1	5.0000	3,000,000.00	3,084,486.00	59,166.66	45,851.23
	01/10/08 03/09/12		28	000	3.6003	3,038,634.77	102.8162000000	IDC	
A 16931	FHLB MEDIUM TERM NOTES	3133XPCS1	25	1	3.2500	3,000,000.00	3,052,758.00	38,458.32	61,589.36
	02/26/08 03/09/12		26	000	3.5684	2,991,168.64	101.7586000000	IDC	
A 16948	FHLB MEDIUM TERM NOTES	3133XPCS1	25	1	3.2500	3,000,000.00	3,052,758.00	38,458.33	54,488.95
	04/03/08 03/09/12		28	000	3.3116	2,998,269.05	101.7586000000	IDC	
A 16952	FHLB MEDIUM TERM NOTES	3133XQ4C3	25	1	3.5000	3,000,000.00	3,057,291.00	41,416.67	51,569.72
	03/25/08 03/09/12		30	000	3.2945	3,005,721.28	101.9097000000	IDC	
A 16953	FHLB MEDIUM TERM NOTES	3133XQ4C3	25	1	3.5000	3,000,000.00	3,057,291.00	41,416.68	51,735.65
	04/08/08 03/09/12		28	000	3.3005	3,005,555.35	101.9097000000	IDC	
A 16961	FHLB MEDIUM TERM NOTES	3133XJUT3	25	1	5.0000	3,000,000.00	3,084,486.00	59,166.67	39,962.16
	04/17/08 03/09/12		26	000	3.4013	3,044,523.84	102.8162000000	IDC	
A 16966	FHLB MEDIUM TERM NOTES	3133XPCS1	25	1	3.2500	3,000,000.00	3,052,758.00	38,458.33	61,700.24
	04/21/08 03/09/12		28	000	3.5713	2,991,057.76	101.7586000000	IDC	
A 16969	FHLB MEDIUM TERM NOTES	3133XQ4C3	25	1	3.5000	3,000,000.00	3,057,291.00	41,416.68	59,693.14
	05/05/08 03/09/12		25	000	3.5855	2,997,597.86	101.9097000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

RUN: 08/24/11 14:33:02

INVESTMENTS OUTSTANDING AS OF 07/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16921	FHLB MEDIUM TERM NOTES	3133XKSK2	25	1	4.8750	3,000,000.00	3,105,231.00	21,531.25	64,159.82
	02/13/08 06/08/12		25	000	3.3902	3,041,071.18	103.5077000000	IDC	
A 16971	FHLB MEDIUM TERM NOTES	3133XKSK2	25	1	4.8750	3,000,000.00	3,105,231.00	21,531.25	70,585.32
	05/06/08 06/08/12		28	000	3.6200	3,034,645.68	103.5077000000	IDC	
A 16984	FHLB MEDIUM TERM NOTES	3133XR5T3	25	1	3.6250	3,000,000.00	3,084,360.00	16,010.42	93,341.54
	06/06/08 06/08/12		25	000	3.9952	2,991,018.46	102.8120000000	IDC	
A 16992	FHLB MEDIUM TERM NOTES	3133XBT39	25	1	4.3750	3,000,000.00	3,102,717.00	19,322.92	89,661.53
	07/14/08 06/08/12		25	000	3.9002	3,013,055.47	103.4239000000	IDC	
A 16996	FHLB MEDIUM TERM NOTES	3133XBT39	25	1	4.3750	3,000,000.00	3,102,717.00	19,322.92	97,296.90
	07/23/08 06/08/12		25	000	4.1760	3,005,420.10	103.4239000000	IDC	
A 16998	FHLB MEDIUM TERM NOTES	3133XBT39	25	1	4.3750	3,000,000.00	3,102,717.00	19,322.92	95,062.10
	07/30/08 06/08/12		24	000	4.0949	3,007,654.90	103.4239000000	IDC	
A 16889	FHLB MEDIUM TERM NOTES	3133XLX73	25	1	5.0000	3,000,000.00	3,151,704.00	57,083.33	116,961.41
	12/14/07 09/14/12		25	000	4.1413	3,034,742.59	105.0568000000	IDC	
A 16928	FHLB MEDIUM TERM NOTES	3133XCTG8	25	1	4.5000	3,000,000.00	3,136,017.00	51,375.00	100,599.56
	02/26/08 09/14/12		25	000	3.6401	3,035,417.44	104.5339000000	IDC	
A 17000	FHLB MEDIUM TERM NOTES	3133XLX73	25	1	5.0000	3,000,000.00	3,151,704.00	57,083.33	115,015.35
	07/30/08 09/14/12		25	000	4.1052	3,036,688.65	105.0568000000	IDC	
A 17006	FHLB MEDIUM TERM NOTES	3133XCTG8	25	1	4.5000	3,000,000.00	3,136,017.00	51,375.00	120,105.67
	08/12/08 09/14/12		29	000	4.1120	3,015,911.33	104.5339000000	IDC	
A 17008	FHLB MEDIUM TERM NOTES	3133XCTG8	25	1	4.5000	3,000,000.00	3,136,017.00	51,375.00	116,367.80
	08/14/08 09/14/12		25	000	4.0221	3,019,649.20	104.5339000000	IDC	
A 16973	FHLB MEDIUM TERM NOTES	3133XDTB7	25	1	4.8750	3,000,000.00	3,181,221.00	19,093.75	138,810.71
	05/14/08 12/14/12		25	000	3.8371	3,042,410.29	106.0407000000	IDC	
A 17061	FHLB MEDIUM TERM NOTES	3133XVNT4	25	1	1.7500	3,000,000.00	3,054,207.00	6,854.18	45,902.08
	04/21/10 12/14/12		25	000	1.5603	3,008,304.92	101.8069000000	IDC	
A 17067	FHLB MEDIUM TERM NOTES	3133XVEC1	25	1	1.8000	3,000,000.00	3,059,913.00	4,950.00	13,152.06
	09/02/10 12/28/12		25	000	.7502	3,046,760.94	101.9971000000	IDC	
A 16976	FHLB MEDIUM TERM NOTES	3133XPNZ3	25	1	3.5000	3,000,000.00	3,148,437.00	41,708.33	165,214.92
	05/20/08 03/08/13		25	000	3.8079	2,983,222.08	104.9479000000	IDC	
A 16978	FHLB MEDIUM TERM NOTES	3133XPNZ3	25	1	3.5000	3,000,000.00	3,148,437.00	41,708.33	172,364.31
	05/23/08 03/08/13		26	000	3.9408	2,976,072.69	104.9479000000	IDC	
A 16982	FHLB MEDIUM TERM NOTES	3133XPNZ3	25	1	3.5000	3,000,000.00	3,148,437.00	41,708.33	179,331.64
	06/06/08 03/08/13		26	000	4.0706	2,969,105.36	104.9479000000	IDC	
A 17066	FHLB MEDIUM TERM NOTES	3133705T1	25	1	1.0800	3,000,000.00	3,033,480.00	10,170.00	31,714.93
	07/08/10 04/08/13		28	000	1.0502	3,001,765.07	101.1160000000	IDC	
A 16983	FHLB MEDIUM TERM NOTES	3133X26Y6	25	1	5.1300	3,000,000.00	3,254,031.00	28,642.50	198,598.51
	06/06/08 05/24/13		28	000	4.0990	3,055,432.49	108.4677000000	IDC	
A 17064	FHLB MEDIUM TERM NOTES	3133XYHD0	25	1	1.6250	3,000,000.00	3,065,652.00	6,364.58	65,962.64
	05/13/10 06/14/13		25	000	1.6300	2,999,689.36	102.1884000000	IDC	
A 17065	FHLB MEDIUM TERM NOTES	3133XYHD0	25	1	1.6250	3,000,000.00	3,065,652.00	6,364.58	38,072.71
	07/08/10 06/14/13		25	000	1.1552	3,027,579.29	102.1884000000	IDC	
A 17070	FHLB MEDIUM TERM NOTES	3133XYHD0	25	1	1.6250	3,000,000.00	3,065,652.00	6,364.58	22,221.35
	09/10/10 06/14/13		25	000	.8902	3,043,430.65	102.1884000000	IDC	
A 17073	FHLB MEDIUM TERM NOTES	313371PM2	25	1	.5000	5,000,000.00	5,004,350.00	2,430.56	47,723.38
	12/15/10 06/26/13		25	000	.9401	4,956,626.62	100.0870000000	IDC	
A 17056	FHLB MEDIUM TERM NOTES	3133XD6A4	25	1	4.3750	3,000,000.00	3,243,228.00	50,312.50	82,715.70
	01/11/10 09/13/13		28	000	2.1401	3,160,512.30	108.1076000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
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INVESTMENTS OUTSTANDING AS OF 07/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 17068	FHLB MEDIUM TERM NOTES	313370LB2	25	1	1.0000	3,000,000.00	3,030,372.00	11,500.01	27,424.41
	09/02/10 09/13/13		28	000	.9599	3,002,947.59	101.0124000000	IDC	
A 17069	FHLB MEDIUM TERM NOTES	313370LB2	25	1	1.0000	3,000,000.00	3,030,372.00	11,500.00	29,648.45
	09/10/10 09/13/13		28	000	.9900	3,000,723.55	101.0124000000	IDC	
A 17059	FHLB MEDIUM TERM NOTES	3133XSP93	25	1	3.1250	3,000,000.00	3,176,778.00	12,500.00	113,134.43
	01/20/10 12/13/13		29	000	2.2340	3,063,643.57	105.8926000000	IDC	
A 17060	FHLB MEDIUM TERM NOTES	3133XWKV0	25	1	2.3750	3,000,000.00	3,130,977.00	27,114.58	134,881.04
	01/11/10 03/14/14		25	000	2.4212	2,996,095.96	104.3659000000	IDC	
A 17058	FHLB MEDIUM TERM NOTES	3133XKTV7	25	1	4.8750	3,000,000.00	3,344,850.00	19,500.00	143,677.01
	01/20/10 06/13/14		28	000	2.5001	3,201,172.99	111.4950000000	IDC	
	SUBTOTAL (Inv Type) 21 FHLB MEDIUM TERM NOTES 31.73%(M)				3.8132	160,000,000.00	164,455,808.00	1,736,661.82	3,365,130.78
					3.0740	161,146,016.91	102.7848800000		-55,339.69
A 17077	FHLB COUPON NOTES	313371MU7	25	1	1.0000	5,000,000.00	5,000,520.00	9,444.44	90,961.18
	12/29/10 05/23/14		30	000	1.6221	4,909,558.82	100.0104000000	IDC	
A 17080	FHLB COUPON NOTES	313370SW9	25	1	1.4900	5,000,000.00	5,000,245.00	28,144.44	33,792.54
	01/12/11 09/15/14		25	000	1.6882	4,966,452.46	100.0049000000	IDC	
A 17093	FHLB COUPON NOTES	313373NB4	25	1	2.1500	5,000,000.00	5,030,055.00	21,798.61	21,055.00
	05/18/11 08/18/15		30	000	2.1058	5,009,000.00	100.6011000000	IDC	
A 17095	FHLB COUPON NOTES	3136FRKL6	25	1	2.1250	5,000,000.00	5,071,484.40	20,069.44	71,484.40
	05/23/11 11/23/15		25	000	2.1250	5,000,000.00	101.4296880000	IDC	
A 17097	FHLB COUPON NOTES	313371CG9	25	1	2.0000	4,220,000.00	4,220,468.42	1,406.67	1,903.52
	06/08/11 01/25/16		25	000	2.0077	4,218,564.90	100.0111000000	IDC	
A 17091	FHLB COUPON NOTES	31331KHG8	25	1	2.7000	5,000,000.00	5,055,005.00	38,625.00	15,005.00
	05/02/11 04/18/16		30	000	2.5273	5,045,250.00	101.1001000000	IDC	
A 17094	FHLB COUPON NOTES	313373NG3	25	1	2.5500	4,060,000.00	4,063,718.96	21,568.75	1,729.56
	05/16/11 05/16/16		25	000	2.5395	4,061,989.40	100.0916000000	IDC	
A 17100	FHLB COUPON NOTES	313374AH3	25	1	2.2000	10,000,000.00	10,017,780.00	18,944.44	30,280.00
	06/30/11 06/30/16		26	000	2.2266	9,987,500.00	100.1778000000	IDC	
	SUBTOTAL (Inv Type) 22 FHLB COUPON NOTES 8.39%(M)				2.0392	43,280,000.00	43,459,276.78	160,001.79	266,211.20
					2.1133	43,198,315.58	100.4142250000		
A 17098	FNMA COUPON NOTE	3135G0BK8	25	1	2.2500	10,000,000.00	10,109,540.00	34,375.00	42,540.00
	06/08/11 06/06/16		28	000	2.1079	10,068,250.00	101.0954000000	IDC	
	SUBTOTAL (Inv Type) 23 FNMA COUPON NOTE 1.95%(M)				2.2500	10,000,000.00	10,109,540.00	34,375.00	42,540.00
					2.1079	10,068,250.00	101.0954000000		
A 17029	FNMA MEDIUM TERM NOTE	3136F4XC3	25	1	4.5300	2,790,000.00	2,827,584.09	23,170.95	25,391.44
	10/30/08 11/25/11		25	000	3.6001	2,802,192.65	101.3471000000	IDC	
A 16960	FNMA MEDIUM TERM NOTE	31359MYQ0	25	1	5.0000	3,000,000.00	3,139,185.00	74,583.33	69,577.02
	04/16/08 08/02/12		29	000	3.3200	3,069,607.98	104.6395000000	IDC	

FINANCE DEPARTMENT
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A 17005	FNMA MEDIUM TERM NOTE	31359MQV8	25	1	4.7500	3,000,000.00	3,200,037.00	63,333.33	171,529.93
	08/12/08 02/21/13		25	000	4.2220	3,028,507.07	106.6679000000	IDC	
SUBTOTAL (Inv Type) 24 FNMA MEDIUM TERM NOTE			1.77%(M)		4.7670	8,790,000.00	9,166,806.09	161,087.61	266,498.39
					3.7151	8,900,307.70	104.2867590000		
A 16894	FFCB MEDIUM TERM NOTES	31331YHZ6	25	1	4.1500	3,000,000.00	3,045,495.00	14,525.00	44,059.93
	12/19/07 12/19/11		28	000	4.0451	3,001,435.07	101.5165000000	IDC	
A 16954	FFCB MEDIUM TERM NOTES	31331YC24	25	1	3.2500	3,000,000.00	3,060,351.00	30,333.33	62,134.78
	04/09/08 04/09/12		25	000	3.3140	2,998,216.22	102.0117000000	IDC	
A 16986	FFCB MEDIUM TERM NOTES	31331XG30	25	1	5.4500	2,975,000.00	3,109,589.00	18,015.28	96,273.55
	06/10/08 06/21/12		25	000	4.0402	3,013,315.45	104.5240000000	IDC	
A 17010	FFCB MEDIUM TERM NOTES	31331Y3X6	25	1	3.9500	3,000,000.00	3,104,775.00	2,633.33	92,835.86
	09/09/08 07/23/12		25	000	3.5200	3,011,939.14	103.4925000000	IDC	
A 16949	FFCB MEDIUM TERM NOTES	31331X2J0	25	1	4.9300	3,000,000.00	3,140,163.00	60,392.50	76,061.56
	04/03/08 09/04/12		25	000	3.3860	3,064,101.44	104.6721000000	IDC	
A 16892	FFCB MEDIUM TERM NOTES	31331YGE4	25	1	4.2500	3,000,000.00	3,155,703.00	20,187.50	157,735.22
	12/27/07 12/04/12		25	000	4.3001	2,997,967.78	105.1901000000	IDC	
A 17055	FFCB MEDIUM TERM NOTES	31331GG37	25	1	2.1500	3,000,000.00	3,078,645.00	31,712.50	93,342.41
	08/10/09 02/04/13		28	000	2.4073	2,985,302.59	102.6215000000	IDC	
A 17062	FFCB MEDIUM TERM NOTES	31331JKS1	25	1	1.8750	3,000,000.00	3,072,696.00	16,562.50	65,141.50
	04/21/10 04/15/13		25	000	1.7451	3,007,554.50	102.4232000000	IDC	
A 17063	FFCB MEDIUM TERM NOTES	31331JKS1	25	1	1.8750	3,000,000.00	3,072,696.00	16,562.50	51,739.26
	05/13/10 04/15/13		28	000	1.5160	3,020,956.74	102.4232000000	IDC	
A 17003	FFCB MEDIUM TERM NOTES	31331VYZ3	25	1	5.4200	3,000,000.00	3,260,922.00	36,585.01	194,172.52
	08/12/08 05/10/13		28	000	4.1802	3,066,749.48	108.6974000000	IDC	
A 16991	FFCB MEDIUM TERM NOTES	31331YP79	25	1	3.7000	3,000,000.00	3,172,668.00	23,433.33	183,556.00
	07/14/08 05/15/13		28	000	3.9001	2,989,112.00	105.7556000000	IDC	
A 17082	FFCB MEDIUM TERM NOTES	31331KCR9	25	1	2.0500	5,000,000.00	5,171,425.00	46,409.73	143,125.00
	03/09/11 02/18/15		26	000	1.9001	5,034,279.17	103.4285000000	IDC	
SUBTOTAL (Inv Type) 26 FFCB MEDIUM TERM NOTES			7.61%(M)		3.5113	37,975,000.00	39,445,128.00	317,352.51	1,260,177.59
					3.1208	38,190,929.58	103.8713050000		
A 17085	FFCB COUPON NOTES	31331J6X6	25	1	2.1000	5,000,000.00	5,028,815.00	7,583.33	29,557.53
	03/29/11 01/05/15		25	000	2.1041	4,999,257.47	100.5763000000	IDC	
A 17083	FFCB COUPON NOTES	31331KEB2	25	1	2.1800	5,000,000.00	5,052,065.00	40,875.00	52,065.00
	03/16/11 03/16/15		25	000	2.1800	5,000,000.00	101.0413000000	IDC	
A 17084	FFCB COUPON NOTES	31331KDQ0	25	1	2.6000	5,000,000.00	5,069,390.00	51,277.78	74,890.00
	03/10/11 03/09/16		25	000	2.6236	4,994,861.11	101.3878000000	IDC	
A 17096	FFCB COUPON NOTES	31331KNJ5	25	1	2.1400	5,000,000.00	5,025,425.00	14,266.67	25,425.00
	06/13/11 06/13/16		25	000	2.1400	5,000,000.00	100.5085000000	IDC	
SUBTOTAL (Inv Type) 27 FFCB COUPON NOTES			3.89%(M)		2.2549	20,000,000.00	20,175,695.00	114,002.78	181,937.53
					2.2618	19,994,118.58	100.8784750000		

FINANCE DEPARTMENT
CITY OF SANTA CLARA
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A 17036	FHLMC MEDIUM TERM NOTES	3128X7FA7	25	1	3.5000	3,000,000.00	3,020,115.00	31,208.33	16,280.73
	11/10/08 10/14/11		28	000	3.2288	3,003,834.27	100.6705000000	IDC	
A 16883	FHLMC MEDIUM TERM NOTES	3128X4DM0	25	1	4.7500	3,000,000.00	3,119,595.00	13,062.50	97,307.21
	12/06/07 06/28/12		25	000	3.9301	3,022,287.79	103.9865000000	IDC	
A 17033	FHLMC MEDIUM TERM NOTES	3137EABE8	25	1	4.1250	3,000,000.00	3,154,014.00	13,750.00	131,853.84
	11/06/08 12/21/12		28	000	3.5902	3,022,160.16	105.1338000000	IDC	
A 16988	FHLMC MEDIUM TERM NOTES	3128X1KG1	25	1	4.0000	3,000,000.00	3,185,034.00	16,333.33	207,833.51
	06/12/08 06/12/13		30	000	4.4280	2,977,200.49	106.1678000000	IDC	
SUBTOTAL (Inv Type) 28 FHLMC MEDIUM TERM NOTES			2.41%(M)		4.0950	12,000,000.00	12,478,758.00	74,354.16	453,275.29
					3.7928	12,025,482.71	103.9896500000		
A 17081	FHLMC COUPON NOTES	3134G14A9	25	1	2.0000	5,000,000.00	5,004,480.00	43,333.33	4,480.00
	02/25/11 08/25/14		25	000	2.0000	5,000,000.00	100.0896000000	IDC	
A 17087	FHLMC COUPON NOTES	3134G2EG3	25	1	2.2500	5,000,000.00	5,020,140.00	31,562.50	30,390.00
	04/20/11 04/20/15		25	000	2.3039	4,989,750.00	100.4028000000	IDC	
A 17086	FHLMC COUPON NOTES	3134G16G4	25	1	2.4000	5,000,000.00	5,013,810.00	45,000.00	12,810.00
	04/11/11 09/16/15		26	000	2.3950	5,009,333.33	100.2762000000	IDC	
A 17099	FHLMC COUPON NOTES	3134G2LY6	25	1	2.0000	5,000,000.00	5,032,820.00	8,888.89	52,820.00
	06/29/11 06/29/16		25	000	2.0847	4,980,000.00	100.6564000000	IDC	
SUBTOTAL (Inv Type) 29 FHLMC COUPON NOTES			3.87%(M)		2.1626	20,000,000.00	20,071,250.00	128,784.72	100,500.00
					2.1960	19,979,083.33	100.3562500000		
A 16980	GEN ELECT CAP CORP MTN	36962GXS8	25	1	5.8750	3,000,000.00	3,087,675.00	81,270.83	47,545.19
	05/08/08 02/15/12		28	000	4.4001	3,040,129.81	102.9225000000	IDC	
A 16884	Gen Elect Cap Corp	36962GG57	25	1	4.3750	3,000,000.00	3,066,378.00	53,958.33	71,363.65
	12/11/07 03/03/12		28	000	4.5581	2,995,014.35	102.2126000000	IDC	
A 16888	Gen Elect Cap Corp	36962GG57	25	1	4.3750	3,000,000.00	3,066,378.00	53,958.33	75,170.75
	12/17/07 03/03/12		24	000	4.7000	2,991,207.25	102.2126000000	IDC	
A 16950	GE CAPITAL CORP MTN	36962GYY4	25	1	6.0000	3,000,000.00	3,144,279.00	23,000.00	102,083.57
	04/07/08 06/15/12		25	000	4.4400	3,042,195.43	104.8093000000	IDC	
A 16956	GE CAPITAL CORP MTN	36962GYY4	25	1	6.0000	3,000,000.00	3,144,279.00	23,000.00	93,891.89
	04/10/08 06/15/12		29	000	4.1500	3,050,387.11	104.8093000000	IDC	
A 16955	WELLS FARGO CO MTN	949746CL3	25	1	5.1250	2,000,000.00	2,085,908.00	42,708.33	69,352.49
	04/10/08 09/01/12		25	000	4.5102	2,016,555.51	104.2954000000	IDC	
A 16959	WELLS FARGO CO MTN	949746CL3	25	1	5.1250	3,000,000.00	3,128,862.00	64,062.50	99,292.27
	04/17/08 09/01/12		25	000	4.3952	3,029,569.73	104.2954000000	IDC	
A 16895	GE CAP CORP MTN	36962G3K8	25	1	5.2500	3,000,000.00	3,161,145.00	44,625.00	145,331.91
	12/28/07 10/19/12		28	000	4.8500	3,015,813.09	105.3715000000	IDC	
A 16964	METLIFE GLOBAL FUNDING	592179JG1	25	1	5.1250	3,000,000.00	3,188,724.00	47,406.25	190,056.33
	04/22/08 04/10/13		29	000	5.1500	2,998,667.67	106.2908000000	IDC	
A 16977	PRINCIPAL LIFE INC FDG MTN	74254PYE6	25	1	5.3000	3,000,000.00	3,221,766.00	42,841.67	201,800.50
	05/20/08 04/24/13		28	000	4.9200	3,019,965.50	107.3922000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

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INVESTMENTS OUTSTANDING AS OF 07/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16985	PRINCIPAL LIFE INC FDG MTN	74254PYE6	25	1	5.3000	3,000,000.00	3,221,766.00	42,841.67	213,715.07
	06/10/08 04/24/13		25	000	5.1450	3,008,050.93	107.3922000000	IDC	
A 16979	ALLSTATE LIFE GLOBAL FDG MTN	02003MBQ6	25	1	5.3750	3,000,000.00	3,231,216.00	40,760.42	214,211.01
	05/23/08 04/30/13		28	000	5.0501	3,017,004.99	107.7072000000	IDC	
A 16981	ALLSTATE LIFE GLOBAL FDG MTN	02003MBQ6	25	1	5.3750	3,000,000.00	3,231,216.00	40,760.42	216,538.47
	06/06/08 04/30/13		25	000	5.0942	3,014,677.53	107.7072000000	IDC	
A 16987	ALLSTATE LIFE GLOBAL FDG MTN	02003MBQ6	25	1	5.3750	3,000,000.00	3,231,216.00	40,760.42	225,276.52
	06/10/08 04/30/13		29	000	5.2600	3,005,939.48	107.7072000000	IDC	
	SUBTOTAL (Inv Type) 35 CORPORATE MEDIUM TERM N	8.34%(M)			5.2902	41,000,000.00	43,210,808.00	641,954.17	1,965,629.62
					4.7636	41,245,178.38	105.3922150000		
A 16555	Mutual Fund for Bond - Dreyfus		1	430	.0000	5,480,971.73	5,480,971.73	-5,013.43	0.00
	05/27/03 10/14/11		2	000	.0000	5,480,971.73	100.0000000000	USERPR	
	SUBTOTAL (Inv Type) 61 REPURCHASE AGREEMENTS-I	1.06%(M)			0.0000	5,480,971.73	5,480,971.73	-5,013.43	.00
					.0000	5,480,971.73	100.0000000000		
A 16667	RDA1999 Bond Proceeds Investmen		20	400	.0098	49,078,103.89	49,078,103.89*	-28,067.19	0.00
	10/04/04 10/14/11		3	000	.0098	49,078,103.89	100.0000000000	BOOK	
	SUBTOTAL (Inv Type) 65 Govt Mutual Fund - Fide	9.47%(M)			.0098	49,078,103.89	49,078,103.89	-28,067.19	.00
					.0098	49,078,103.89	100.0000000000		
A 16059	STATE OF CA DEMAND DEP		96	1	.5056	49,202,571.18	49,202,571.18	49,288.35	0.00
	09/30/97 10/14/11		96	000	.5056	49,202,571.18	100.0000000000	USERPR	
	SUBTOTAL (Inv Type) 99 LOCAL AGENCY INVESTMENT	9.49%(M)			.5056	49,202,571.18	49,202,571.18	49,288.35	.00
					.5056	49,202,571.18	100.0000000000		
A 17046	MUTUAL FUNDS-FIDELITY		25	1	.0099	46,216,945.96	46,216,945.96*	12,918.27	0.00
	11/01/08 10/14/11		101	000	.0099	46,216,945.96	100.0000000000	BOOK	
	SUBTOTAL (Inv Type) 305 MUTUAL FUNDS-FIDELITY	8.92%(M)			.0099	46,216,945.96	46,216,945.96	12,918.27	.00
					.0099	46,216,945.96	100.0000000000		
A 16064	DREYFUS TREASURY CASH MANAGEMEN		20	800	.0098	3,509,232.62	3,509,232.62	1,271.13	0.00
	10/31/97 10/14/11		102	000	.0098	3,509,232.62	100.0000000000	USERPR	
A 16122	DREYFUS GOVERNMENT FUND		20	1	.0001	2,173,415.86	2,173,415.86	2,149.38	0.00
	05/15/98 10/14/11		102	100	.0001	2,173,415.86	100.0000000000	USERPR	

* MARKET = BOOK LESS PURCHASE INTEREST

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

RUN: 08/24/11 14:33:02

INVESTMENTS OUTSTANDING AS OF 07/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
SUBTOTAL (Inv Type) 315 MUTUAL FUNDS-DREYFUS			1.10%(M)		.0061	5,682,648.48	5,682,648.48	3,420.51	.00
					.0061	5,682,648.48	100.0000000000		
GRAND TOTAL					2.5143	508,706,241.24	518,234,311.11	3,401,121.07	7,901,900.40
					2.1887	510,408,924.01	101.8730000000		-55,339.69

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MA-6

Santa Clara All-America City 2001

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Finance

Subject: Acceptance of the Monthly Financial Status Reports for August 2011

EXECUTIVE SUMMARY:

In compliance with the Charter of the City of Santa Clara, Article IX, Sections 904(d) and (h) and the State of California Government Code Sections 41004 and 53646, the following reports for August 2011 are submitted for your information and acceptance:

1. Summaries of Revenues and Expenditures (Operating and Capital Improvement Funds)
2. All Funds Cash Position
3. Summary of Portfolio
4. Summary Schedule of Investments
5. Investment Maturity Distribution
6. List of Securities Brokers and Dealers
7. Attachment A: Investment Inventory With Market Value

ADVANTAGES AND DISADVANTAGES OF ISSUE:

These reports provide monthly revenues and expenditures summaries and summary investment schedules.

ECONOMIC/FISCAL IMPACT:

Costs associated with the regular preparation of these reports are included in the General Fund Operating Budget.

RECOMMENDATION:

That the Council accept the Monthly Financial Status Reports for August 2011 as presented.

Gary Ameling
Director of Finance

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Monthly Financial Status Reports for August 2011

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Rev. 02/26/08

CITY OF SANTA CLARA

MONTHLY FINANCIAL STATUS REPORTS

SUMMARIES OF REVENUES AND EXPENDITURES

ALL FUNDS CASH POSITION

SUMMARY OF PORTFOLIO

SUMMARY SCHEDULE OF INVESTMENTS

INVESTMENT MATURITY DISTRIBUTION

LIST OF SECURITIES BROKERS AND DEALERS

ATTACHMENT A: INVESTMENT INVENTORY WITH MARKET VALUE

August 2011

CITY OF SANTA CLARA

MONTHLY FINANCIAL STATUS REPORTS

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2	All Funds Cash Position	3
3	Summary of Portfolio	4
4	Summary Schedule of Investments	5
5	Investment Maturity Distribution Schedule	6
6	List of Securities Brokers and Dealers	7
7	Attachment A: Investment Inventory With Market Value	

CITY OF SANTA CLARA
OPERATING FUNDS
SUMMARY OF REVENUES AND EXPENDITURES (Unaudited)
Fiscal Year 2011-2012
as of August 31, 2011

		EXPENDITURES			REVENUES		
Fund Description	Fund #	Appropriations[1]	Expenditures To Date	Unexpended Balance	Budgeted Resources [2]	Receipts and Net Transfers In/(Out) [3] To Date	Unrealized (Unanticipated) Revenue
General Fund	001	$ 142,133,079	$ 22,549,822	$ 119,583,257	$ 142,133,079	$ 15,103,971	$ 127,029,108
Downtown Parking Mtce.	025	150,550	21,741	128,809	150,550	139,350	11,200
Convention Center Mtce.	026	1,314,582	180,359	1,134,223	1,314,582	653,005	661,577
Public Facilities Corp. Debt	431	2,740,404	1,350	2,739,054	2,740,404	2,899,305	(158,901)
Debt Service	441	3,506,210	0	3,506,210	3,506,210	3,161,937	344,273
Vehicle Equipment	050	2,352,800	62,720	2,290,080	2,352,800	637,864	1,714,936
Automotive Services	053	4,011,983	692,265	3,319,718	4,011,983	724,395	3,287,588
Senior Nutrition Program	111	133,750	22,588	111,162	133,750	4,345	129,405
Communications Tech. Srv.	047	762,508	114,144	648,364	762,508	148,528	613,980
Communications Equip.	048	20,000	0	20,000	20,000	(112,744)	132,744
Electric Utility Funds	091/191	266,162,771	38,852,975	227,309,796	266,162,771	14,175,867	251,986,904
Electric Utility Debt	491	16,424,713	9,912,079	6,512,634	16,424,713	16,424,996	(283)
Water Utility Fund	092	27,166,953	4,273,922	22,893,031	27,166,953	6,148,062	21,018,891
Sewer Utility Fund	094	16,774,526	3,396,132	13,378,394	16,774,526	2,144,597	14,629,929
Cemetery	093	910,005	182,652	727,353	910,005	(76,642)	986,647
Solid Waste Utility Fund	096	18,898,448	2,656,767	16,241,681	18,898,448	3,419,100	15,479,348
Water Recycling Program	097	1,942,673	270,179	1,672,494	1,942,673	217,287	1,725,386
TOTAL		**$ 505,405,955**	**$ 83,189,695**	**$ 422,216,260**	**$ 505,405,955**	**$ 65,813,223**	**$ 439,592,732**

(1) - Budgeted appropriations include unexpended 6-30-11 appropriations plus FY11-12 appropriations.
(2) - Budgeted Resources include Estimated Revenues, Net Operating Transfers and Fund Beginning Balance.
(3) - Includes Actual Revenues, Net Operating Transfers and Budgeted Decreases (Increases) to Fund Reserves.

CITY OF SANTA CLARA
CAPITAL IMPROVEMENT FUNDS
SUMMARY OF REVENUES AND EXPENDITURES (Unaudited)
Fiscal Year 2011-2012
as of August 31, 2011

		EXPENDITURES			REVENUES		
Fund Description	Fund #	Appropriations[1]	Expenditures To Date	Unexpended Balance	Budgeted Resources[2]	Receipts and Net Transfers To Date	Unrealized (Unanticipated) Revenue
Street Beautification	531	$ 206,472	$ 2,089	$ 204,383	$ 206,472	$ 229,117	$ (22,645)
Parks & Recreation	532	2,424,104	25,276	2,398,828	2,424,104	1,763,921	660,183
Streets & Highways	533	8,935,355	279,437	8,655,918	8,935,355	4,335,394	4,599,961
Section 2105 Gas Tax	521	571,832	0	571,832	571,832	465,941	105,891
Major City Streets	522	3,335,776	25,888	3,309,888	3,335,776	3,263,289	72,487
FAU Washed Gas Tax Exchange	523	0	0	0	0	192,488	(192,488)
Select City Streets	524	856,963	40,382	816,581	856,963	759,860	97,103
Traffic Mitigation	525	15,061,670	10,741	15,050,929	15,061,670	10,907,026	4,154,644
Street Lighting	534	392,564	926	391,638	392,564	80,472	312,092
Storm Drain	535	2,579,835	41,700	2,538,135	2,579,835	1,900,500	679,335
Fire	536	370,090	15,586	354,504	370,090	338,090	32,000
Library	537	196,361	0	196,361	196,361	196,361	0
Public Buildings	538	3,348,235	9,602	3,338,633	3,348,235	3,132,634	215,601
General Govmnt - Other	539	9,112,866	251,943	8,860,923	9,112,866	9,462,811	(349,945)
Community Services	562	4,751,132	83,856	4,667,276	4,751,132	181,136	4,569,996
Electric Utility	591	96,729,590	5,698,949	91,030,641	96,729,590	82,159,601	14,569,989 [3]
Water Utility	592	9,707,465	139,604	9,567,861	9,707,465	9,278,340	429,125
Cemetery	593	112,886	713	112,173	112,886	112,886	0
Sewer Utility	594	22,961,328	1,696,652	21,264,676	22,961,328	13,057,611	9,903,717
Solid Waste Utility	596	946,203	21,280	924,923	946,203	963,936	(17,733)
Water Recycling Prgm.	597	9,156,299	799,497	8,356,802	9,156,299	1,159,589	7,996,710
University Project Area CIP	938	3,951,533	54	3,951,479	3,951,533	3,635,733	315,800
Bayshore North Proj Area CIP	939	88,920,825	302,204	88,618,621	88,920,825	88,889,668	31,157
TOTAL		**$ 284,629,384**	**$ 9,446,379**	**$ 275,183,005**	**$ 284,629,384**	**$ 236,466,404**	**$ 48,162,980**

(1) - Budgeted appropriations include unexpended 6-30-11 appropriations plus FY11-12 appropriations, and exclude unallocated appropriations.

(2) - Budgeted Resources include Estimated Revenues, Net Operating Transfers and Fund Beginning Balance.

(3) - Electric Fund budgeted resources and unrealized revenue include $650,000 transfer from Rate Stabilization Fund

CITY OF SANTA CLARA
ALL FUNDS - CASH POSITION (Unaudited)
as of August 31, 2011

TOTAL - ALL FUNDS CASH POSITION

Cash - Active	$ 24,750,594
Savings & Investments	504,664,936
TOTAL	$ 529,415,530

DETAIL OF SELECTED FUND CASH BALANCES:

	ELECTRIC	WATER	SEWER	SELECTED CONTINGENCY RESERVE
Operating Cash	$ 48,037,748	$ 4,843,821	$ 3,612,286	
Construction Cash	78,105,719	12,639,459	13,569,560	
Replacement & Improvement		303,090	1,507,553	
Water Conservation		498,125		
Rate Stabilization Fund Reserve	25,000,000			
Cost Reduction Fund Reserve	84,894,624			
DVR Power Plant Contracts Reserve	5,078,163			
Working Capital (Emergency) Reserve				$ 4,117,155
Capital Projects Reserve				4,715,051 (1)
Building Inspection Reserve				1,842,402
Non-Expendable Land Proceeds				16,956,005
TOTALS	$ 241,116,254	$ 18,284,495	$ 18,689,399	$ 27,630,613

(1) - With the anticipated return of unspent portion of closed/reduced projects as of June 30, 2011, the Capital Projects Reserve would be $6.3 million.

CITY OF SANTA CLARA
SUMMARY OF PORTFOLIO

All securities held by the City of Santa Clara as of August 31, 2011 were in compliance with the City's Investment Policy Statement regarding current market strategy and long-term goals and objectives. All securities held are rated "A" or higher by two nationally recognized rating agencies. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

The following table provides the breakdown of the total portfolio among the City, the Redevelopment Agency (RDA), and the Sports and Open Space Authority (SOSA) as of August 31, 2011.

	BOOK VALUE	PERCENTAGE
City	$367,412,725	82.27%
RDA	77,360,950	17.32%
SOSA	1,822,497	.41%
Unrestricted	$446,596,172	100.00%
Restricted Bond Proceeds	58,068,764	
Total	$504,664,936	

At August 31, 2011, the principal cost and market value of the City's unrestricted pooled cash portfolio were $446,596,172 and $453,785,181, respectively. In addition, the accrued interest was $3,649,093.

Investment Strategy and Market Update

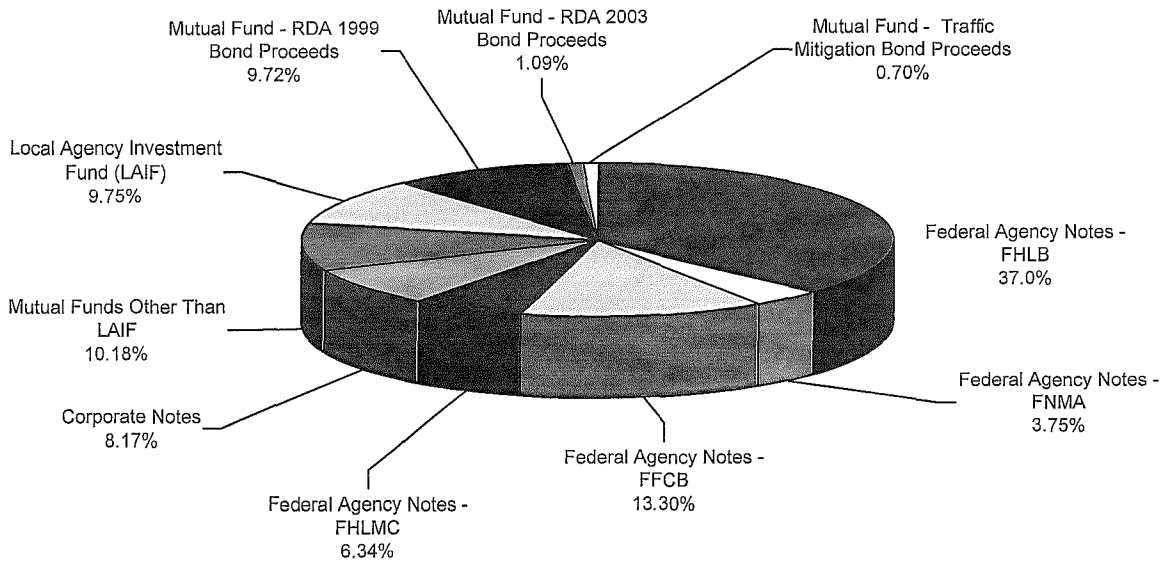
The City's investment strategy for August 2011 was to invest funds not required to meet current obligations, in securities listed in the prevailing Investment Policy Statement, with maturities not to exceed five years from date of purchase. This strategy ensures safety of the City's funds, provides the liquidity to meet the City's cash needs and earns a reasonable portfolio return.

As of August 31, 2011, City's portfolio consists of approximately 60.39% of securities issued by four different Federal Agencies. In addition, to comply with the 1986 Tax Reform Act arbitrage regulations, a portion of the City's bond proceeds is invested in yield-restricted investments. These yield-restricted investments are not included in the calculation of the City's portfolio yield. The average maturity of the City's portfolio was 1.48 years and the City's portfolio yield vs. the 12-month average yield of two-year Treasury Notes was as follows:

PERIOD		CITY'S PORTFOLIO RETURN	BENCHMARK RETURN	AVERAGE DAYS TO MATURITY
August	2011	2.664%	0.53%	541
July	2011	2.34%	0.53%	574
August	2010	2.87%	0.50%	448

CITY OF SANTA CLARA
SUMMARY OF INVESTMENTS - August 31, 2011

INVESTMENT TYPE	BOOK VALUE	% OF PORTFOLIO	PER INVESTMENT POLICY
U.S. Treasury Notes	$ -	0.00%	No Limit
Federal Agency Notes - FHLB	186,714,694	37.00%	No Limit
Federal Agency Notes - FNMA	18,938,414	3.75%	No Limit
Federal Agency Notes - FFCB	67,119,921	13.30%	No Limit
Federal Agency Notes - FHLMC	32,004,566	6.34%	No Limit
Corporate Notes	41,225,224	8.17%	15%
Mutual Funds Other Than LAIF	51,390,782	10.18%	10% Per Fund
Local Agency Investment Fund (LAIF)	49,202,571	9.75%	$50 M
Mutual Fund - Redeveopment Agency (RDA) 1999 Bond Proceeds	49,078,530	9.72%	No Limit
Mutual Fund - Redevelopment Agency (RDA) 2003 Bond Proceeds	5,480,972	1.09%	No Limit
Mutual Fund - Traffic Mitigation Bond Proceeds	3,509,262	0.70%	No Limit
TOTAL INVESTMENTS	$ 504,664,936	100.00%	

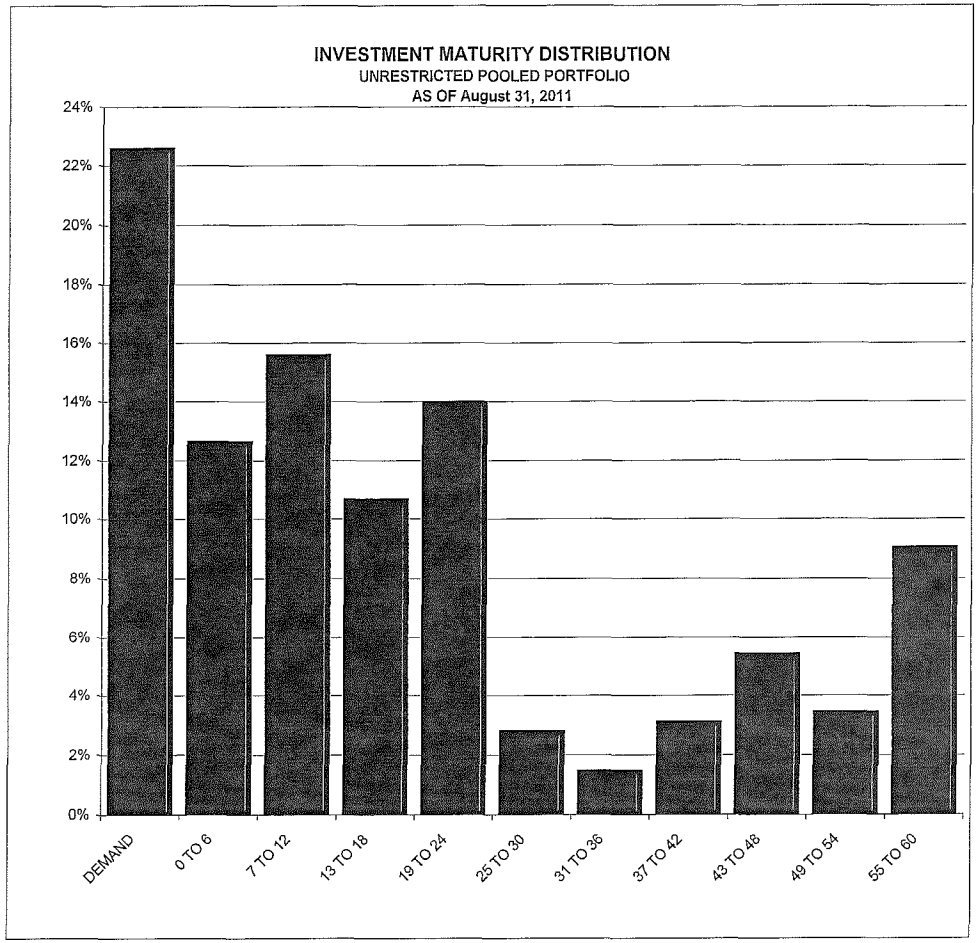


INVESTMENT MATURITY DISTRIBUTION
AS OF AUGUST 31, 2011
UNRESTRICTED POOLED PORTFOLIO

MATURITY (IN MONTHS)	BOOK VALUE	NUMBER OF INVESTMENTS	DISTRIBUTION
DEMAND	$ 100,593,355 (a)	3	22.53%
0 TO 6	56,097,818	19	12.56%
7 TO 12	69,336,490	23	15.53%
13 TO 18	47,396,439	16	10.61%
19 TO 24	62,138,803	20	13.91%
25 TO 30	12,227,827	4	2.74%
31 TO 36	6,197,269	2	1.39%
37 TO 42	13,584,359	3	3.04%
43 TO 48	23,938,618	4	5.36%
49 TO 54	15,009,333	3	3.36%
55 TO 60	40,075,861	6	8.97%
TOTAL	$ 446,596,173	103	100.00%

Average Maturity of Unrestricted Pool: 1.48 Years

(a) $20M is earmarked for the City's Electric Utility power-trading.



CITY OF SANTA CLARA

List of Securities Brokers and Primary Dealers in U.S. Government Securities and Mutual Funds

AIM Investment Co.

Dreyfus Institutional Services

Fidelity Investment Institutional Services Co.

Franklin's Institutional Fiduciary Trust

FTN Financial Securities Corp.

Gilford Securities, Inc.

Government Perspectives, LLC

Higgins Capital Management

Mischler Financial Group, Inc.

Morgan Keegan & Co., Inc.

All individual securities purchased by the City of Santa Clara from Securities Brokers/Primary Dealers are delivered to the City's safekeeping account with the Bank of New York Securities Safekeeping.

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

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INVESTMENTS OUTSTANDING AS OF 08/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16897	FHLB MEDIUM TERM NOTES	3133XF5T9	25	1	5.0000	3,000,000.00	3,003,135.00	71,666.67	
	01/04/08 09/09/11		28	000	3.6691	3,018,536.92	100.1045000000	IDC	-15,401.92
A 16935	FHLB MEDIUM TERM NOTES	3133XF5T9	25	1	5.0000	3,000,000.00	3,003,135.00	71,666.67	
	03/06/08 09/09/11		25	000	3.0400	3,027,730.50	100.1045000000	IDC	-24,595.50
A 16938	FHLB MEDIUM TERM NOTES	3133XF5T9	25	1	5.0000	3,000,000.00	3,003,135.00	71,666.67	
	03/12/08 09/09/11		25	000	3.0732	3,027,247.78	100.1045000000	IDC	-24,112.78
A 17011	FHLB MEDIUM TERM NOTES	3133XRY46	25	1	3.7500	3,000,000.00	3,002,370.00	53,750.00	
	09/09/08 09/09/11		28	000	3.3401	3,005,790.82	100.0790000000	IDC	-3,420.82
A 17016	FHLB MEDIUM TERM NOTES	3133XRY46	25	1	3.7500	3,000,000.00	3,002,370.00	53,750.00	
	09/23/08 09/09/11		25	000	3.5502	3,002,793.25	100.0790000000	IDC	-423.25
A 16886	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	3,000,000.00	3,016,926.00	57,500.00	4,608.89
	12/10/07 10/13/11		28	000	4.0996	3,012,317.11	100.5642000000	IDC	
A 16898	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	2,000,000.00	2,011,284.00	38,333.33	
	01/09/08 10/13/11		25	000	3.5803	2,013,120.44	100.5642000000	IDC	-1,836.44
A 16904	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	3,000,000.00	3,016,926.00	57,500.00	
	01/17/08 10/13/11		25	000	3.3400	3,023,136.80	100.5642000000	IDC	-6,210.80
A 16908	FHLB MEDIUM TERM NOTES	3133XH2V3	25	1	5.0000	3,000,000.00	3,016,926.00	57,500.00	
	01/23/08 10/13/11		25	000	3.0172	3,027,830.33	100.5642000000	IDC	-10,904.33
A 16958	FHLB MEDIUM TERM NOTES	3133MJUQ1	25	1	4.8750	3,000,000.00	3,028,989.00	43,062.50	2,105.20
	04/15/08 11/15/11		25	000	2.9751	3,026,883.80	100.9663000000	IDC	
A 16896	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,036,537.00	32,458.33	22,748.12
	01/04/08 12/09/11		25	000	3.7491	3,013,788.88	101.2179000000	IDC	
A 16902	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,036,537.00	32,458.33	20,428.47
	01/11/08 12/09/11		25	000	3.5851	3,016,108.53	101.2179000000	IDC	
A 16999	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,036,537.00	32,458.33	25,463.77
	07/30/08 12/09/11		29	000	3.9500	3,011,073.23	101.2179000000	IDC	
A 17035	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,036,537.00	32,458.33	14,779.29
	11/06/08 12/09/11		25	000	3.2102	3,021,757.71	101.2179000000	IDC	
A 17042	FHLB MEDIUM TERM NOTES	3133XHRK0	25	1	4.7500	3,000,000.00	3,036,537.00	32,458.33	14,471.95
	11/18/08 12/09/11		26	000	3.1898	3,022,065.05	101.2179000000	IDC	
A 16900	FHLB MEDIUM TERM NOTES	3133XJUT3	25	1	5.0000	3,000,000.00	3,075,294.00	71,666.66	36,659.23
	01/10/08 03/09/12		28	000	3.6003	3,038,634.77	102.5098000000	IDC	
A 16931	FHLB MEDIUM TERM NOTES	3133XPCS1	25	1	3.2500	3,000,000.00	3,047,904.00	46,583.32	56,735.36
	02/26/08 03/09/12		26	000	3.5684	2,991,168.64	101.5968000000	IDC	
A 16948	FHLB MEDIUM TERM NOTES	3133XPCS1	25	1	3.2500	3,000,000.00	3,047,904.00	46,583.33	49,634.95
	04/03/08 03/09/12		28	000	3.3116	2,998,269.05	101.5968000000	IDC	
A 16952	FHLB MEDIUM TERM NOTES	3133XQ4C3	25	1	3.5000	3,000,000.00	3,051,816.00	50,166.67	46,094.72
	03/25/08 03/09/12		30	000	3.2945	3,005,721.28	101.7272000000	IDC	
A 16953	FHLB MEDIUM TERM NOTES	3133XQ4C3	25	1	3.5000	3,000,000.00	3,051,816.00	50,166.68	46,260.65
	04/08/08 03/09/12		28	000	3.3005	3,005,555.35	101.7272000000	IDC	
A 16961	FHLB MEDIUM TERM NOTES	3133XJUT3	25	1	5.0000	3,000,000.00	3,075,294.00	71,666.67	30,770.16
	04/17/08 03/09/12		26	000	3.4013	3,044,523.84	102.5098000000	IDC	
A 16966	FHLB MEDIUM TERM NOTES	3133XPCS1	25	1	3.2500	3,000,000.00	3,047,904.00	46,583.33	56,846.24
	04/21/08 03/09/12		28	000	3.5713	2,991,057.76	101.5968000000	IDC	
A 16969	FHLB MEDIUM TERM NOTES	3133XQ4C3	25	1	3.5000	3,000,000.00	3,051,816.00	50,166.68	54,218.14
	05/05/08 03/09/12		25	000	3.5855	2,997,597.86	101.7272000000	IDC	
A 16921	FHLB MEDIUM TERM NOTES	3133XKSK2	25	1	4.8750	3,000,000.00	3,097,332.00	33,718.75	56,260.82
	02/13/08 06/08/12		25	000	3.3902	3,041,071.18	103.2444000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

RUN: 10/03/11 11:19:16

INVESTMENTS OUTSTANDING AS OF 08/31/11
MAJOR SORT KEY IS ICC#

	INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A	16971	FHLB MEDIUM TERM NOTES	3133XKSK2	25	1	4.8750	3,000,000.00	3,097,332.00	33,718.75	62,686.32
		05/06/08 06/08/12		28	000	3.6200	3,034,645.68	103.2444000000	IDC	
A	16984	FHLB MEDIUM TERM NOTES	3133XR5T3	25	1	3.6250	3,000,000.00	3,078,483.00	25,072.92	87,464.54
		06/06/08 06/08/12		25	000	3.9952	2,991,018.46	102.6161000000	IDC	
A	16992	FHLB MEDIUM TERM NOTES	3133XBT39	25	1	4.3750	3,000,000.00	3,095,058.00	30,260.42	82,002.53
		07/14/08 06/08/12		25	000	3.9002	3,013,055.47	103.1686000000	IDC	
A	16996	FHLB MEDIUM TERM NOTES	3133XBT39	25	1	4.3750	3,000,000.00	3,095,058.00	30,260.42	89,637.90
		07/23/08 06/08/12		25	000	4.1760	3,005,420.10	103.1686000000	IDC	
A	16998	FHLB MEDIUM TERM NOTES	3133XBT39	25	1	4.3750	3,000,000.00	3,095,058.00	30,260.42	87,403.10
		07/30/08 06/08/12		24	000	4.0949	3,007,654.90	103.1686000000	IDC	
A	16889	FHLB MEDIUM TERM NOTES	3133XLX73	25	1	5.0000	3,000,000.00	3,143,721.00	69,583.33	108,978.41
		12/14/07 09/14/12		25	000	4.1413	3,034,742.59	104.7907000000	IDC	
A	16928	FHLB MEDIUM TERM NOTES	3133XCTG8	25	1	4.5000	3,000,000.00	3,129,183.00	62,625.00	93,765.56
		02/26/08 09/14/12		25	000	3.6401	3,035,417.44	104.3061000000	IDC	
A	17000	FHLB MEDIUM TERM NOTES	3133XLX73	25	1	5.0000	3,000,000.00	3,143,721.00	69,583.33	107,032.35
		07/30/08 09/14/12		25	000	4.1052	3,036,688.65	104.7907000000	IDC	
A	17006	FHLB MEDIUM TERM NOTES	3133XCTG8	25	1	4.5000	3,000,000.00	3,129,183.00	62,625.00	113,271.67
		08/12/08 09/14/12		29	000	4.1120	3,015,911.33	104.3061000000	IDC	
A	17008	FHLB MEDIUM TERM NOTES	3133XCTG8	25	1	4.5000	3,000,000.00	3,129,183.00	62,625.00	109,533.80
		08/14/08 09/14/12		25	000	4.0221	3,019,649.20	104.3061000000	IDC	
A	16973	FHLB MEDIUM TERM NOTES	3133XDTB7	25	1	4.8750	3,000,000.00	3,173,904.00	31,281.25	131,493.71
		05/14/08 12/14/12		25	000	3.8371	3,042,410.29	105.7968000000	IDC	
A	17061	FHLB MEDIUM TERM NOTES	3133XVNT4	25	1	1.7500	3,000,000.00	3,054,498.00	11,229.18	46,193.08
		04/21/10 12/14/12		25	000	1.5603	3,008,304.92	101.8166000000	IDC	
A	17067	FHLB MEDIUM TERM NOTES	3133XVEC1	25	1	1.8000	3,000,000.00	3,060,012.00	9,450.00	13,251.06
		09/02/10 12/28/12		25	000	.7502	3,046,760.94	102.0004000000	IDC	
A	16976	FHLB MEDIUM TERM NOTES	3133XPNZ3	25	1	3.5000	3,000,000.00	3,145,296.00	50,458.33	162,073.92
		05/20/08 03/08/13		25	000	3.8079	2,983,222.08	104.8432000000	IDC	
A	16978	FHLB MEDIUM TERM NOTES	3133XPNZ3	25	1	3.5000	3,000,000.00	3,145,296.00	50,458.33	169,223.31
		05/23/08 03/08/13		26	000	3.9408	2,976,072.69	104.8432000000	IDC	
A	16982	FHLB MEDIUM TERM NOTES	3133XPNZ3	25	1	3.5000	3,000,000.00	3,145,296.00	50,458.33	176,190.64
		06/06/08 03/08/13		26	000	4.0706	2,969,105.36	104.8432000000	IDC	
A	17066	FHLB MEDIUM TERM NOTES	3133705T1	25	1	1.0800	3,000,000.00	3,036,678.00	12,870.00	34,912.93
		07/08/10 04/08/13		28	000	1.0502	3,001,765.07	101.2226000000	IDC	
A	16983	FHLB MEDIUM TERM NOTES	3133X26Y6	25	1	5.1300	3,000,000.00	3,248,148.00	41,467.50	192,715.51
		06/06/08 05/24/13		28	000	4.0990	3,055,432.49	108.2716000000	IDC	
A	17064	FHLB MEDIUM TERM NOTES	3133XYHD0	25	1	1.6250	3,000,000.00	3,068,568.00	10,427.08	68,878.64
		05/13/10 06/14/13		25	000	1.6300	2,999,689.36	102.2856000000	IDC	
A	17065	FHLB MEDIUM TERM NOTES	3133XYHD0	25	1	1.6250	3,000,000.00	3,068,568.00	10,427.08	40,988.71
		07/08/10 06/14/13		25	000	1.1552	3,027,579.29	102.2856000000	IDC	
A	17070	FHLB MEDIUM TERM NOTES	3133XYHD0	25	1	1.6250	3,000,000.00	3,068,568.00	10,427.08	25,137.35
		09/10/10 06/14/13		25	000	.8902	3,043,430.65	102.2856000000	IDC	
A	17073	FHLB MEDIUM TERM NOTES	313371PM2	25	1	.5000	5,000,000.00	5,014,050.00	4,513.89	57,423.38
		12/15/10 06/26/13		25	000	.9401	4,956,626.62	100.2810000000	IDC	
A	17056	FHLB MEDIUM TERM NOTES	3133XD6A4	25	1	4.3750	3,000,000.00	3,242,736.00	61,250.00	82,223.70
		01/11/10 09/13/13		28	000	2.1401	3,160,512.30	108.0912000000	IDC	
A	17068	FHLB MEDIUM TERM NOTES	313370LB2	25	1	1.0000	3,000,000.00	3,037,842.00	14,000.01	34,894.41
		09/02/10 09/13/13		28	000	.9599	3,002,947.59	101.2614000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

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MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 17069	FHLB MEDIUM TERM NOTES	313370LB2	25	1	1.0000	3,000,000.00	3,037,842.00	14,000.00	37,118.45
	09/10/10 09/13/13		28	000	.9900	3,000,723.55	101.2614000000	IDC	
A 17059	FHLB MEDIUM TERM NOTES	3133XSP93	25	1	3.1250	3,000,000.00	3,184,095.00	20,312.50	120,451.43
	01/20/10 12/13/13		29	000	2.2340	3,063,643.57	106.1365000000	IDC	
A 17060	FHLB MEDIUM TERM NOTES	3133XWKV0	25	1	2.3750	3,000,000.00	3,144,357.00	33,052.08	148,261.04
	01/11/10 03/14/14		25	000	2.4212	2,996,095.96	104.8119000000	IDC	
A 17058	FHLB MEDIUM TERM NOTES	3133XKTV7	25	1	4.8750	3,000,000.00	3,357,510.00	31,687.50	156,337.01
	01/20/10 06/13/14		28	000	2.5001	3,201,172.99	111.9170000000	IDC	
	SUBTOTAL (Inv Type) 21 FHLB MEDIUM TERM NOTES	31.49%(M)			3.7760	157,000,000.00	161,204,205.00	2,150,374.31	3,177,630.42
					3.0677	158,113,480.42	102.6778380000		-86,905.84
A 17101	FHLB COUPON NOTES	313374RE2	25	1	1.4500	3,560,000.00	3,564,763.28	3,871.50	4,763.28
	08/04/11 11/04/14		25	000	1.4500	3,560,000.00	100.1338000000	IDC	
A 17093	FHLB COUPON NOTES	313373NB4	25	1	2.1500	5,000,000.00	5,019,985.00	3,881.94	11,523.96
	05/18/11 08/18/15		30	000	2.1058	5,008,461.04	100.3997000000	IDC	
A 17095	FHLB COUPON NOTES	3136FRKL6	25	1	2.1250	5,000,000.00	5,069,820.00	28,923.61	69,820.00
	05/23/11 11/23/15		25	000	2.1250	5,000,000.00	101.3964000000	IDC	
A 17091	FHLB COUPON NOTES	31331KHG8	25	1	2.7000	5,000,000.00	5,056,070.00	49,875.00	16,070.00
	05/02/11 04/18/16		30	000	2.5273	5,045,250.00	101.1214000000	IDC	
A 17100	FHLB COUPON NOTES	313374AH3	25	1	2.2000	10,000,000.00	10,012,630.00	37,277.78	25,130.00
	06/30/11 06/30/16		26	000	2.2266	9,987,500.00	100.1263000000	IDC	
	SUBTOTAL (Inv Type) 22 FHLB COUPON NOTES	5.61%(M)			2.1729	28,560,000.00	28,723,268.28	123,829.83	127,307.24
					2.1440	28,601,211.04	100.5716680000		
A 17098	FNMA COUPON NOTE	3135G0BK8	25	1	2.2500	10,000,000.00	10,121,380.00	53,125.00	54,380.00
	06/08/11 06/06/16		28	000	2.1079	10,068,250.00	101.2138000000	IDC	
	SUBTOTAL (Inv Type) 23 FNMA COUPON NOTE	1.98%(M)			2.2500	10,000,000.00	10,121,380.00	53,125.00	54,380.00
					2.1079	10,068,250.00	101.2138000000		
A 17029	FNMA MEDIUM TERM NOTE	3136F4XC3	25	1	4.5300	2,790,000.00	2,818,025.55	33,703.20	15,832.90
	10/30/08 11/25/11		25	000	3.6001	2,802,192.65	101.0045000000	IDC	
A 16960	FNMA MEDIUM TERM NOTE	31359MYQ0	25	1	5.0000	3,000,000.00	3,130,761.00	12,083.33	84,228.19
	04/16/08 08/02/12		29	000	3.3200	3,046,532.81	104.3587000000	IDC	
A 17005	FNMA MEDIUM TERM NOTE	31359MQV8	25	1	4.7500	3,000,000.00	3,194,199.00	3,958.33	172,760.12
	08/12/08 02/21/13		25	000	4.2220	3,021,438.88	106.4733000000	IDC	
	SUBTOTAL (Inv Type) 24 FNMA MEDIUM TERM NOTE	1.79%(M)			4.7664	8,790,000.00	9,142,985.55	49,744.86	272,821.21
					3.7157	8,870,164.34	104.0157630000		
A 16894	FFCB MEDIUM TERM NOTES	31331YHZ6	25	1	4.1500	3,000,000.00	3,036,063.00	24,900.00	34,627.93
	12/19/07 12/19/11		28	000	4.0451	3,001,435.07	101.2021000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

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(RPTMKT)

RUN: 10/03/11 11:19:16

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MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16954	FFCB MEDIUM TERM NOTES	31331YC24	25	1	3.2500	3,000,000.00	3,054,420.00	38,458.33	56,203.78
	04/09/08 04/09/12		25	000	3.3140	2,998,216.22	101.8140000000	IDC	
A 16986	FFCB MEDIUM TERM NOTES	31331XG30	25	1	5.4500	2,975,000.00	3,099,405.58	31,526.74	86,090.13
	06/10/08 06/21/12		25	000	4.0402	3,013,315.45	104.1817000000	IDC	
A 17010	FFCB MEDIUM TERM NOTES	31331Y3X6	25	1	3.9500	3,000,000.00	3,098,829.00	12,508.33	86,889.86
	09/09/08 07/23/12		25	000	3.5200	3,011,939.14	103.2943000000	IDC	
A 16949	FFCB MEDIUM TERM NOTES	31331X2J0	25	1	4.9300	3,000,000.00	3,132,831.00	72,717.50	68,729.56
	04/03/08 09/04/12		25	000	3.3860	3,064,101.44	104.4277000000	IDC	
A 16892	FFCB MEDIUM TERM NOTES	31331YGE4	25	1	4.2500	3,000,000.00	3,149,820.00	30,812.50	151,852.22
	12/27/07 12/04/12		25	000	4.3001	2,997,967.78	104.9940000000	IDC	
A 17055	FFCB MEDIUM TERM NOTES	31331GG37	25	1	2.1500	3,000,000.00	3,078,342.00	4,837.50	89,395.26
	08/10/09 02/04/13		28	000	2.4073	2,988,946.74	102.6114000000	IDC	
A 17062	FFCB MEDIUM TERM NOTES	31331JKS1	25	1	1.8750	3,000,000.00	3,074,199.00	21,250.00	66,644.50
	04/21/10 04/15/13		25	000	1.7451	3,007,554.50	102.4733000000	IDC	
A 17063	FFCB MEDIUM TERM NOTES	31331JKS1	25	1	1.8750	3,000,000.00	3,074,199.00	21,250.00	53,242.26
	05/13/10 04/15/13		28	000	1.5160	3,020,956.74	102.4733000000	IDC	
A 17003	FFCB MEDIUM TERM NOTES	31331VYZ3	25	1	5.4200	3,000,000.00	3,254,253.00	50,135.01	187,503.52
	08/12/08 05/10/13		28	000	4.1802	3,066,749.48	108.4751000000	IDC	
A 16991	FFCB MEDIUM TERM NOTES	31331YP79	25	1	3.7000	3,000,000.00	3,170,148.00	32,683.33	181,036.00
	07/14/08 05/15/13		28	000	3.9001	2,989,112.00	105.6716000000	IDC	
A 17082	FFCB MEDIUM TERM NOTES	31331KCR9	25	1	2.0500	5,000,000.00	5,211,670.00	3,701.39	186,568.96
	03/09/11 02/18/15		26	000	1.9001	5,025,101.04	104.2334000000	IDC	
SUBTOTAL (Inv Type) 26 FFCB MEDIUM TERM NOTES		7.70%(M)			3.5113	37,975,000.00	39,434,179.58	344,780.63	1,248,783.98
					3.1208	38,185,395.60	103.8424740000		
A 17085	FFCB COUPON NOTES	31331J6X6	25	1	2.1000	5,000,000.00	5,023,430.00	16,333.33	24,172.53
	03/29/11 01/05/15		25	000	2.1041	4,999,257.47	100.4686000000	IDC	
A 17083	FFCB COUPON NOTES	31331KEB2	25	1	2.1800	5,000,000.00	5,044,930.00	49,958.33	44,930.00
	03/16/11 03/16/15		25	000	2.1800	5,000,000.00	100.8986000000	IDC	
A 17103	FFCB COUPON NOTES	31331KUU2	25	1	1.0000	8,940,000.00	8,917,989.72	3,476.67	
	08/19/11 08/17/15		25	000	1.0003	8,940,407.27	99.75380000000	IDC	-21,920.88
A 17084	FFCB COUPON NOTES	31331KDQ0	25	1	2.6000	5,000,000.00	5,061,205.00	62,111.11	66,705.00
	03/10/11 03/09/16		25	000	2.6236	4,994,861.11	101.2241000000	IDC	
A 17096	FFCB COUPON NOTES	31331KNJ5	25	1	2.1400	5,000,000.00	5,024,445.00	23,183.33	24,445.00
	06/13/11 06/13/16		25	000	2.1400	5,000,000.00	100.4889000000	IDC	
SUBTOTAL (Inv Type) 27 FFCB COUPON NOTES		5.68%(M)			1.8672	28,940,000.00	29,071,999.72	155,062.77	160,252.53
					1.8720	28,934,525.85	100.4561150000		-21,920.88
A 17036	FHLMC MEDIUM TERM NOTES	3128X7FA7	25	1	3.5000	3,000,000.00	3,012,030.00	39,958.33	8,195.73
	11/10/08 10/14/11		28	000	3.2288	3,003,834.27	100.4010000000	IDC	
A 16883	FHLMC MEDIUM TERM NOTES	3128X4DM0	25	1	4.7500	3,000,000.00	3,111,180.00	24,937.50	88,892.21
	12/06/07 06/28/12		25	000	3.9301	3,022,287.79	103.7060000000	IDC	
A 17033	FHLMC MEDIUM TERM NOTES	3137EABE8	25	1	4.1250	3,000,000.00	3,148,803.00	24,062.50	126,642.84
	11/06/08 12/21/12		28	000	3.5902	3,022,160.16	104.9601000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

RUN: 10/03/11 11:19:16

INVESTMENTS OUTSTANDING AS OF 08/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
A 16988	FHLMC MEDIUM TERM NOTES	3128X1KG1	25	1	4.0000	3,000,000.00	3,183,384.00	26,333.33	206,183.51
	06/12/08 06/12/13		30	000	4.4280	2,977,200.49	106.1128000000	IDC	
SUBTOTAL (Inv Type) 28 FHLMC MEDIUM TERM NOTES 2.43%(M)					4.0950	12,000,000.00	12,455,397.00	115,291.66	429,914.29
					3.7928	12,025,482.71	103.7949750000		
A 17087	FHLMC COUPON NOTES	3134G2EG3	25	1	2.2500	5,000,000.00	5,012,760.00	40,937.50	23,010.00
	04/20/11 04/20/15		25	000	2.3039	4,989,750.00	100.2552000000	IDC	
A 17086	FHLMC COUPON NOTES	3134G16G4	25	1	2.4000	5,000,000.00	5,004,690.00	55,000.00	3,690.00
	04/11/11 09/16/15		26	000	2.3950	5,009,333.33	100.0938000000	IDC	
A 17102	FHLMC COUPON NOTES	3134G2XX5	25	1	1.5500	5,000,000.00	5,015,325.00	1,722.22	15,325.00
	08/23/11 02/23/16		25	000	1.5500	5,000,000.00	100.3065000000	IDC	
A 17099	FHLMC COUPON NOTES	3134G2LY6	25	1	2.0000	5,000,000.00	5,061,855.00	17,222.22	81,855.00
	06/29/11 06/29/16		25	000	2.0847	4,980,000.00	101.2371000000	IDC	
SUBTOTAL (Inv Type) 29 FHLMC COUPON NOTES 3.93%(M)					2.0500	20,000,000.00	20,094,630.00	114,881.94	123,880.00
					2.0833	19,979,083.33	100.4731500000		
A 16980	GEN ELECT CAP CORP MTN	36962GXS8	25	1	5.8750	3,000,000.00	3,069,864.00	7,833.33	49,688.85
	05/08/08 02/15/12		28	000	4.4001	3,020,175.15	102.3288000000	IDC	
A 16884	Gen Elect Cap Corp	36962GG57	25	1	4.3750	3,000,000.00	3,043,002.00	64,895.83	47,987.65
	12/11/07 03/03/12		28	000	4.5581	2,995,014.35	101.4334000000	IDC	
A 16888	Gen Elect Cap Corp	36962GG57	25	1	4.3750	3,000,000.00	3,043,002.00	64,895.83	51,794.75
	12/17/07 03/03/12		24	000	4.7000	2,991,207.25	101.4334000000	IDC	
A 16950	GE CAPITAL CORP MTN	36962GYY4	25	1	6.0000	3,000,000.00	3,123,642.00	38,000.00	81,446.57
	04/07/08 06/15/12		25	000	4.4400	3,042,195.43	104.1214000000	IDC	
A 16956	GE CAPITAL CORP MTN	36962GYY4	25	1	6.0000	3,000,000.00	3,123,642.00	38,000.00	73,254.89
	04/10/08 06/15/12		29	000	4.1500	3,050,387.11	104.1214000000	IDC	
A 16955	WELLS FARGO CO MTN	949746CL3	25	1	5.1250	2,000,000.00	2,084,720.00	51,250.00	68,164.49
	04/10/08 09/01/12		25	000	4.5102	2,016,555.51	104.2360000000	IDC	
A 16959	WELLS FARGO CO MTN	949746CL3	25	1	5.1250	3,000,000.00	3,127,080.00	76,875.00	97,510.27
	04/17/08 09/01/12		25	000	4.3952	3,029,569.73	104.2360000000	IDC	
A 16895	GE CAP CORP MTN	36962G3K8	25	1	5.2500	3,000,000.00	3,141,339.00	57,750.00	125,525.91
	12/28/07 10/19/12		28	000	4.8500	3,015,813.09	104.7113000000	IDC	
A 16964	METLIFE GLOBAL FUNDING	592179JG1	25	1	5.1250	3,000,000.00	3,169,191.00	60,218.75	170,523.33
	04/22/08 04/10/13		29	000	5.1500	2,998,667.67	105.6397000000	IDC	
A 16977	PRINCIPAL LIFE INC FDG MTN	74254PYE6	25	1	5.3000	3,000,000.00	3,202,884.00	56,091.67	182,918.50
	05/20/08 04/24/13		28	000	4.9200	3,019,965.50	106.7628000000	IDC	
A 16985	PRINCIPAL LIFE INC FDG MTN	74254PYE6	25	1	5.3000	3,000,000.00	3,202,884.00	56,091.67	194,833.07
	06/10/08 04/24/13		25	000	5.1450	3,008,050.93	106.7628000000	IDC	
A 16979	ALLSTATE LIFE GLOBAL FDG MTN	02003MBQ6	25	1	5.3750	3,000,000.00	3,204,177.00	54,197.92	187,172.01
	05/23/08 04/30/13		28	000	5.0501	3,017,004.99	106.8059000000	IDC	
A 16981	ALLSTATE LIFE GLOBAL FDG MTN	02003MBQ6	25	1	5.3750	3,000,000.00	3,204,177.00	54,197.92	189,499.47
	06/06/08 04/30/13		25	000	5.0942	3,014,677.53	106.8059000000	IDC	
A 16987	ALLSTATE LIFE GLOBAL FDG MTN	02003MBQ6	25	1	5.3750	3,000,000.00	3,204,177.00	54,197.92	198,237.52
	06/10/08 04/30/13		29	000	5.2600	3,005,939.48	106.8059000000	IDC	

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

RUN: 10/03/11 11:19:16

INVESTMENTS OUTSTANDING AS OF 08/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
	SUBTOTAL (Inv Type) 35 CORPORATE MEDIUM TERM N	8.39%(M)			5.2899 4.7637	41,000,000.00 41,225,223.72	42,943,781.00 104.7409290000	734,495.84	1,718,557.28
A	16555 Mutual Fund for Bond - Dreyfus 05/27/03 10/14/11		1 2	430 000	.0001 .0001	5,480,972.21 5,480,972.21	5,480,972.21 100.0000000000	-5,013.43 USERPR	0.00
	SUBTOTAL (Inv Type) 61 REPURCHASE AGREEMENTS-I	1.07%(M)			.0001 .0001	5,480,972.21 5,480,972.21	5,480,972.21 100.0000000000	-5,013.43	.00
A	16667 RDA1999 Bond Proceeds Investmen 10/04/04 10/14/11		20 3	400 000	.0101 .0101	49,078,529.59 49,078,529.59	49,078,529.59* 100.0000000000	-28,067.49 BOOK	0.00
	SUBTOTAL (Inv Type) 65 Govt Mutual Fund - Fide	9.59%(M)			.0101 .0101	49,078,529.59 49,078,529.59	49,078,529.59 100.0000000000	-28,067.49	.00
A	16059 STATE OF CA DEMAND DEP 09/30/97 10/14/11		96 96	1 000	.5056 .5056	49,202,571.18 49,202,571.18	49,202,571.18 100.0000000000	70,708.10 USERPR	0.00
	SUBTOTAL (Inv Type) 99 LOCAL AGENCY INVESTMENT	9.61%(M)			.5056 .5056	49,202,571.18 49,202,571.18	49,202,571.18 100.0000000000	70,708.10	.00
A	17046 MUTUAL FUNDS-FIDELITY 11/01/08 10/14/11		25 101	1 000	.0101 .0101	49,217,366.57 49,217,366.57	49,217,366.57* 100.0000000000	12,918.27 BOOK	0.00
	SUBTOTAL (Inv Type) 305 MUTUAL FUNDS-FIDELITY	9.62%(M)			.0101 .0101	49,217,366.57 49,217,366.57	49,217,366.57 100.0000000000	12,918.27	.00
A	16064 DREYFUS TREASURY CASH MANAGEMEN 10/31/97 10/14/11		20 102	800 000	.0098 .0098	3,509,262.38 3,509,262.38	3,509,262.38 100.0000000000	1,271.13 USERPR	0.00
A	16122 DREYFUS GOVERNMENT FUND 05/15/98 10/14/11		20 102	1 100	.0006 .0006	2,173,416.99 2,173,416.99	2,173,416.99 100.0000000000	2,149.38 USERPR	0.00
	SUBTOTAL (Inv Type) 315 MUTUAL FUNDS-DREYFUS	1.11%(M)			.0063 .0063	5,682,679.37 5,682,679.37	5,682,679.37 100.0000000000	3,420.51	.00

* MARKET = BOOK LESS PURCHASE INTEREST

FINANCE DEPARTMENT
CITY OF SANTA CLARA
INVESTMENT INVENTORY WITH MARKET VALUE

Attachment A

(RPTMKT)

RUN: 10/03/11 11:19:16

INVESTMENTS OUTSTANDING AS OF 08/31/11
MAJOR SORT KEY IS ICC#

INVEST NUMBER	DESCRIPTION PURCHASE MATURITY DATE	CUSIP	BANK BROK	FUND SAFE	CPN RATE YTM TR	PAR/SHARES BOOK	MARKET VALUE MARKET PRICE	CURR ACCR INT PRICE SOURCE	UNREALIZED GAIN UNREALIZED LOSS
	GRAND TOTAL				2.4698	502,927,118.92	511,853,945.05	3,895,552.80	7,313,526.95
					2.1468	504,664,935.93	101.7749740000		-108,826.72

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MA-7

Santa Clara All-America City 2001

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Public Works / City Engineer

Subject: Acceptance: South of Forest Neighborhood Street Improvements – Phases II and III (CE 09-10-07)

Contractor: Granite Rock Company DBA Pavex Construction Division
120 Granite Rock Way, San Jose, CA 95136

EXECUTIVE SUMMARY:

This Project consisted of the rehabilitation of North Henry Avenue, Westridge Drive, Douglane Avenue, Tyler Avenue, Cecil Avenue, Cypress Avenue, Bel Ayre Drive, and portions of Forest Avenue between Bel Ayre Drive and North Henry Avenue. The rehabilitation work included full depth rehabilitation of the street pavement area with a three (3") inch asphalt concrete overlay, sidewalks, curbs, gutters, driveways, ADA curb ramps, traffic calming devices, and Silicon Valley Power (SVP) electric utility improvements to upgrade existing street lights on Bel Ayre Drive, Cecil Avenue, Cypress Avenue, and Forest Avenue and installing underground electrical substructures for future service to adjacent BAREC development site.

This is to certify that all work in connection with the referenced project has been completed in accordance with the plans and specifications and to the satisfaction of the City Engineer.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval will allow acceptance of contract.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than staff time and expense.

RECOMMENDATION:

That the Council:

1. Accept the work performed by Granite Rock Company DBA Pavex Construction Division on South of Forest Neighborhood Street Improvements – Phases II and III (CE 09-10-07); and
2. Authorize recordation of a Notice of Completion with the County Recorder.

For Rajeev Batra
Director of Public Works / City Engineer

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report: None

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MA-8

Santa Clara All-America City 2001

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Public Works / City Engineer

Subject: Site Acceptance: Site No. 7053, EP 12,823 - Public Improvements
Address: 2972 Stender Way, Santa Clara

Contractor: Redwood City Electric
2775 Northwestern Parkway
Santa Clara, CA 95051

EXECUTIVE SUMMARY:

This project consisted of the installation of new driveways, sidewalk, curb & gutter, curb ramp, electric conduits, and domestic and reclaimed water services.

This is to certify that all work in connection with the referenced site has been completed in accordance with the applicable plans and specifications and to the satisfaction of the City Engineer.

All fees have been paid and all bonds have been posted.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Completes requirements for these improvements as part of the development.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than staff time and expense.

RECOMMENDATION:

That the Council:

1. Accept the public improvements including installation of new driveways, sidewalk, curb & gutter, curb ramp, electric conduits, and domestic and reclaimed water services performed by Redwood City Electric for Site 7053, EP 12,823, APN 216-29-109 & 092 located at 2972 Stender Way; and
2. Authorize recordation of a Notice of Completion with the County Recorder.

For Rajeev Batra
Director of Public Works / City Engineer

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report: None

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Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MA-9

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Delegation of Authority to the City Manager Regarding 2500 De la Cruz Boulevard

EXECUTIVE SUMMARY:

There are no City Council meetings scheduled between December 14, 2011 to January 10, 2012. Due to scheduling constraints requiring completion of a Parcel Map for the property located at 2500 De La Cruz Boulevard, items such as approval of a covenant to defer public improvements will need to be completed during the Council recess. In order to keep this development project on schedule, it is requested that the City Manager be authorized to take appropriate actions during the Council recess.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Authorizing the City Manager to take appropriate actions will allow for this project to stay on schedule. Deferring these actions until after the Council recess could result in a delay or cancelation of this development project.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than staff time and expense.

RECOMMENDATION:

That the Council:

1. Delegate the authority to the City Manager to approve project related actions for the property located at 2500 De La Cruz Boulevard from December 14, 2011 to January 10, 2012.

APPROVED:

For Rajeev Batra
Director of Public Works/City Engineer

Jennifer Sparacino
City Manager

Documents Related to this Report:
None

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-1

Santa Clara All-America City 2001

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Agreement and Covenant Running with the Land with Coresite Coronado Stender, LLC, to defer installation of City standard sidewalk along a portion of 2972 Stender Way (APN 216-29-109; SC 18,508)

EXECUTIVE SUMMARY:

As a condition to be satisfied in conjunction with the issuance of a Building Permit (BLD2010-22592) valued at more than $200,000, the property owner is required to construct City standard sidewalk along the subject property frontage. The property owner is requesting that the proposed sidewalk be constructed in two (2) phases. The first phase will be done immediately, along approximately 57% of the property frontage, and the remaining portion will be deferred for a period of two (2) years. An agreement (SC 18,508) to defer construction for a period of two (2) years of said City standard sidewalk improvements along a portion of the property frontage has been prepared by staff, approved for form by the City Attorney, and executed by the property owner. A copy of the Agreement has been placed in Council offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of this Agreement will allow the owner to make improvements to its property and allow it to defer installation of City standard sidewalk improvements along a portion of the property frontage.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than staff time and expense.

RECOMMENDATION:

That the Council:

1. Approve and authorize the City Manager to execute an Agreement and Covenant Running with the Land with Coresite Coronado Stender, LLC, to defer the installation of City standard sidewalk along a portion of 2972 Stender Way (APN 216-26-109; SC 18,508); and
2. Authorize the recordation of the Agreement.

For Rajeev Batra
Director of Public Works / City Engineer

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Agreement

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RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

AGREEMENT AND COVENANT RUNNING WITH THE LAND [DEFERMENT OF PUBLIC IMPROVEMENTS (PUBLIC SIDEWALK)] (ALONG FRONTAGE OF PROPERTY)

[Restriction on 2972 Stender Way, Santa Clara, CA]

This Restrictive Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2011 ("Effective Date"), by and between Coresite Coronado Stender, LLC ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

a. Owner is the owner of real property located at 2972 Stender Way in the City of Santa Clara, California ("Property"), and is shown on the 2010-11 Santa Clara County Property Tax Roll as Assessor's Parcel No. 216-29-109. Property is also known as Parcel Four, as shown on Parcel Map, which map was filed for record in Book 338 of Maps, at page 50, Santa Clara County Records.

b. Whenever the term "Owner" is used, it shall refer collectively to the owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party".

c. City is deferring the construction of sidewalk improvements for a period of two (2) years from hereinabove date.

The Parties agree as follows:

COVENANT

1. Installation of City standard sidewalk (herein "Improvements") along the frontage of Property is a requirement to be satisfied in conjunction with the issuance of a Building Permit (BLD2010-22592) valued at $200,000 or more, and that the cost of the sidewalk shall not be more than 10% of the Building Permit valuation and in accordance with the City "Industrial Sidewalk Program"..

2. Property and location of Improvements are shown in Exhibit "A" (Tracing No. 11,868-A), attached hereto and made a part hereof by this reference.

3. Improvements shall include, but are not limited to curb and gutter, sidewalk, driveways, retaining walls, and modification and/or reconstruction of existing improvements such as electrical conduits and pullboxes, landscaping, irrigation systems, utilities, poles, and signs necessary to suit the sidewalk improvement, and incidental work thereto. All work shall be completed in accordance with City standards in effect at the time of such installation of Improvements.

4. City will permit the deferment of Improvements along the frontage of Property for a period of two (2) years, upon the execution of this agreement by Owner.

5. In the event City determines that it is most practical and beneficial for City to install Improvements, Owner agrees to pay the costs incurred by City to cause said construction, which costs may be recovered in the manner provided in Paragraph 9 of this Agreement.

6. Upon service to Owner of written notice that City requires Owner to construct Improvements, Owner shall, within 60 days of said service, provide City with plans of Improvements prepared in accordance with the requirements of and subject to the approval of City.

7. Owner shall cause construction of Improvements to commence within 60 days of City approval of said plans. Owner shall cause Improvements to be completed within a time period specified by City at time of City approval of said plans. If no time period is specified, completion shall be within 120 days of commencement of construction.

8. Prior to acceptance of Improvements by City, Owner shall provide City with one set of plans revised to show "As Built" condition prepared in accordance with City requirements.

9. If Owner fails to comply with any of the conditions set forth herein, City may cause said conditions to be satisfied. All costs, including interest at the legal rate, incurred by City to cause said conditions to be satisfied shall be recovered by any means allowed by law.

10. Each and every covenant made by Owner and/or City is made for the direct benefit of the hereinafter indicated respective lands or interests in lands held by the parties hereto, their assigns and/or successors in interest, and shall run with said respective lands or interests in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the parties hereto, their assigns and successors in interest.

11. The land of Owner burdened by this Agreement is the abovementioned Property.

12. The land of City benefited by this Agreement is Stender Way, a public street owned by City.

13. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.

14. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of

the other provisions, which shall remain in full force and effect.

15. This Agreement shall be recorded by City in the Office of the County Recorder of Santa Clara County.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

JENNIFER SPARACINO
City Manager

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
City Clerk

"City"

CORESITE CORONADO STENDER, LLC

By: _____ By: _____

Print Name: Thomas Ray Print Name: _____

Title: President Title: _____

Address: 1050 17th Street, Denver, CO 80265

Telephone Number: (303) 405-1000 Fax Number: (_____) _____-_____

"Owner"

IF OWNER IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER.

Acknowledgment

State of Colorado)
County of Denver)

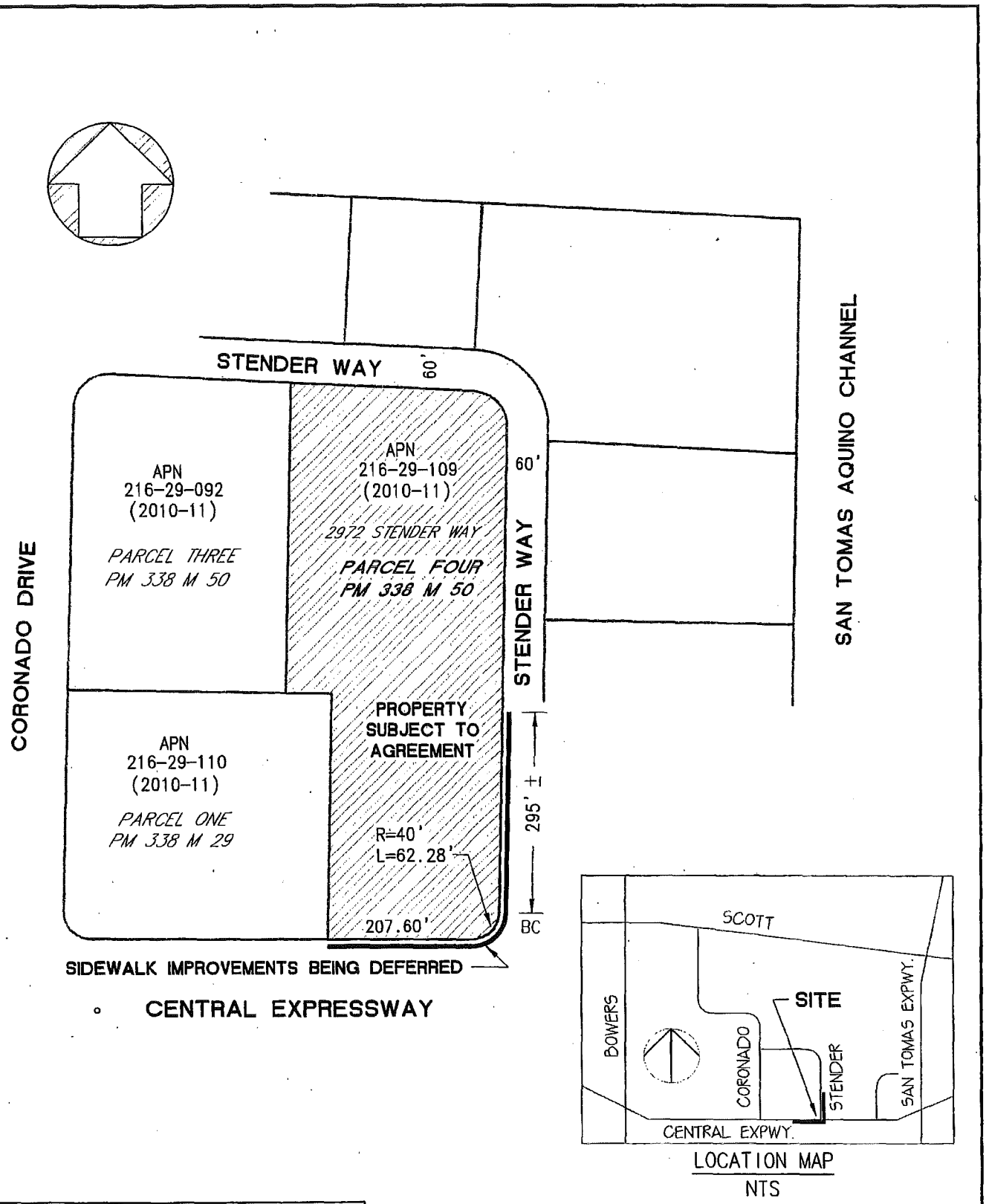
On October 21, 2011, before me, Annette Epperson, Notary Public, personally appeared Thomas Ray, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Annette Epper (Seal)

ANNETTE EPPERSON
NOTARY PUBLIC, STATE OF COLORADO
My Comm. Expires 05/22/2015



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Revised		CITY OF SANTA CLARA	Scale 1" = 200'
Drawn By ND	07-15-11		
Checked By K. Santos	07-18-11	EXHIBIT 'A'	Ref. SC 18,508
Approved By SUPAN	Date 7-19-11	AGREEMENT AND COVENANT RUNNING WITH THE LAND	
RAJEEV BATRA		(DEFER CONSTRUCTION OF PUBLIC SIDEWALK)	Tracing No. 11,868-A
DIRECTOR OF PUBLIC WORKS/CITY ENGINEER		2972 STENDER WAY	

11,868-A

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-2

Santa Clara All-America City 2001

Date: November 28, 2011

To: City Manager for Council Action

From: John C. Roukema, Director of Electric Utility

Subject: Approval of an Agreement for the Performance of Services with Brenntag Pacific Inc., for Bulk Chemicals for the Donald Von Raesfeld Power Plant

EXECUTIVE SUMMARY:

In order to operate the Donald Von Raesfeld power plant (DVR), it is necessary to use bulk chemicals to maintain plant chemistry to preserve asset life. Through this Agreement for the Performance of Services, Brenntag Pacific, Inc. will provide bulk chemicals for the DVR Demineralized water system and cooling-cycle equipment. A copy of the Agreement for the Performance of Services is available for review in the Council offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

This agreement for chemicals provides Silicon Valley Power with a quality bulk chemical program that is economical. The primary chemicals being supplied are caustic and sulfuric acid used to maintain cooling tower water chemistry. These chemicals are essential to maintain proper water chemistry in order to protect vital plant equipment from damage caused by scale buildup and corrosion.

ECONOMIC/FISCAL IMPACT:

The total cost under this agreement shall not exceed $250,000.00 per year. Sufficient funds are available in the Electric Department Operating Budget, Generation and Pumping Expense, account 091-1377-87960-[I]9240-[F]54800.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, the Agreement for the Performance of Services with Brenntag Pacific, Inc., in an amount not to exceed $250,000.00, for bulk chemicals for the Donald Von Raesfeld Power Plant.

John C. Roukema
John C. Roukema
Director of Electric Utility

Certified as to Availability of Funds: OK. LF.
091-1377-87960 $250,000.00

Gary Ameling
Director of Finance

APPROVED:

Jennifer Sparacino
Jennifer Sparacino
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:

1) Agreement for the Performance of Services with Brenntag Pacific, Inc.

AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND BRENNTAG PACIFIC INC.

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2011, ("Effective Date") by and between Brenntag Pacific Inc., a California corporation, with its principal place of business located at 860 Wharf Street, Richmond, CA 94804 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. City desires to secure professional services more fully described in this Agreement, at Exhibit A, entitled "Scope of Services"; and

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 City; 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 PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are

more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written Notice to Proceed from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.

B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written Notice of Final Acceptance. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. ASSIGNMENT OF DUTIES.

No other person(s) will be assigned from Contractor other than [NA]. It is agreed by and between the Parties that should it be desirable for any other person to work under this Agreement, such person may only be added with the express written consent of City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City 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.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

6. 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 the Effective Date of this Agreement and terminate on October 31, 2012.

7. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

8. 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 City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

9. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City 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. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

10. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Contractor shall not in any respect absolve Contractor form the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

11. COMPENSATION AND PAYMENT.

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and services rendered by Contractor at the rate per

hour for labor and cost per unit for materials as outlined in Exhibit B, entitled "SCHEDULE OF FEES."

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

12. TERMINATION OF AGREEMENT.

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

13. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

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

14. 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.

15. 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 City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

16. NO PLEDGING OF CITY'S CREDIT.

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

17. 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 City, 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.

18. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City'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 City.

19. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City 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.

20. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for 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 City. Any expenses not so recorded shall be disallowed by City.

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

21. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

22. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

23. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

24. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall purchase and maintain in full force and effect, at no cost to City insurance policies with respect to employees and vehicles assigned to the Performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

25. AMENDMENTS.

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

26. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

27. 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.

28. WAIVER.

Contractor agrees that waiver by City 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.

29. NOTICES.

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

City of Santa Clara
Attention: Electric Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 261-2717

And to Contractor addressed as follows:
Brenntag Pacific Inc.
860 Wharf Street
Richmond, CA 94804
or by facsimile at (510) 235-4182

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

30. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

31. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

32. DISPUTE RESOLUTION.

A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to

mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit through mediation only. In the event of litigation, the prevailing Party shall recover its reasonable costs of suit, expert's fees, and attorney's fees. If mediation does not resolve the dispute, the Parties agree that the matter shall be litigated in a court of law, and not subject to the arbitration provisions of the Public Contracts Code.

33. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall:

A. Read Exhibit D, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA"; and,

B. Execute Exhibit E, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

34. LIQUIDATED DAMAGES.

It is mutually agreed by Contractor and City that, in event completion of the Services to be provided by the Contractor under this Agreement is delayed beyond *[insert date], City will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, Contractor shall pay to City the sum of *[spell out dollar amount] ($*[insert numerical dollar amount]) per day in liquidated damages for each and every calendar day such delay in completion of said Services continues beyond *[insert date]. In the event that said liquidated damages are not paid, Contractor agrees that City may deduct the amount of said unpaid damages from any money due or that may become due to Contractor under this Agreement.

35. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its

knowledge, no City 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 City if a conflict arises.

36. PROGRESS SCHEDULE.

The Progress Schedule will be as set forth in the attached Exhibit F, entitled "MILESTONE SCHEDULE" if applicable.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

ELIZABETH H. SILVER
Interim City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

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

"CITY"

BRENNTAG PACIFIC INC.
a California corporation

By: TIM WILLENBORG
Title: Vice President, Sales and Marketing
Address: 10747 Patterson Place
Santa Fe Springs, CA 90670
Telephone: (562) 777-9332
Fax:

"CONTRACTOR"

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRENNTAG PACIFIC INC.

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the City by the Contractor under this Agreement are to provide the following bulk chemicals to the Donald Von Raesfeld Power Plant.

Caustic Soda 30% (Sodium Hydroxide)

Sodium BiSulfite 25%

Sodium Hyprochlorite 12.5%

Sulfuric Acid 93%

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRENNTAG PACIFIC INC.

EXHIBIT B

FEE SCHEDULE

In no event shall the amount billed to City by Contractor for services under this Agreement exceed two hundred fifty thousand dollars ($250,000.00), subject to budget appropriations.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRENNTAG PACIFIC INC.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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

   $2,000,000 Each occurrence
   $2,000,000 General aggregate
   $2,000,000 Products/Completed Operations aggregate
   $2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor 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 City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

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

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, 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 Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the

Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Contractor's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);

4. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City 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 City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor 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 Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor 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. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor 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 City or

Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City 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 City pursuant to this Agreement shall be mailed to:

City of Santa Clara Electric Department
c/o EBIX Inc.
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

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

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor 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 City or its insurance compliance representatives.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRENNTAG PACIFIC INC.

EXHIBIT D

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts.

I. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

---

[1] For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

J. The City may also terminate this Agreement in the event any one or more of the following occurs:

1. The City determines that Contractor no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or,

2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

K. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

[4] Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRENNTAG PACIFIC INC.

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Tim Willenborg, being first duly sworn, depose and state I am Vice President Sales and Marketing of Brenntag Pacific Inc., and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

BRENNTAG PACIFIC INC.
a California corporation

By: _____
Name: TIM WILLENBORG
Title: Vice President Sales and Marketing

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

AGREEMENT FOR THE PERFORMANCE OF SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
BRENNTAG PACIFIC INC.

EXHIBIT F

MILESTONE SCHEDULE

(Not Applicable)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On November 17, 2011 (Date) before me, Brenntag Pacific, Inc. / Vice President Sales & Marketing (Here Insert Name and Title of the Officer),

personally appeared Tim Willenborg (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/[redacted] subscribed to the within instrument and acknowledged to me that he/[redacted] executed the same in his/[redacted] authorized capacity(ies), and that by his/[redacted] signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

LAURA TUA
COMM. # 1880292
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
MY COMM. EXP. FEB. 15, 2014

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

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Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-3

Santa Clara All-America City 2001

Date: December 1, 2011

To: City Manager for Council Action

From: John C. Roukema, Director of Electric Utility

Subject: Approval of Amendment No. 3 to Call 10-1 for Professional Services with Willdan Energy Services, dba Intergy Corporation, for an Extension of the Retrocommissioning of City Facilities Third Party Energy Efficiency Program through June 30, 2012

EXECUTIVE SUMMARY:

As part of the President's American Recovery and Reinvestment Act of 2009, the U.S. Department of Energy (DOE) created a grant program entitled Energy Efficiency Conservation Block Grant (EECBG) Program. In June 2009, the City of Santa Clara applied for a direct formula grant in the amount of $1,180,900 to be spent on energy efficiency. On December 15, 2009, Council appropriated $375,900 of these funds for the Retrocommissioning (RCx) of City facilities. Willdan Energy Solutions dba Intergy Corporation has been working with Santa Clara businesses to help them generate substantial energy savings by providing retro commissioning services to businesses, commercial buildings, educational facilities, and hotels. In 2010, this program was expanded to provide retrocommissioning services to City facilities under the EECBG funding. RCx audits have been completed at several City facilities and energy savings opportunities were identified. Implementation has been completed at two City facilities and Willdan Energy Solutions is in the process of implementing the recommendations at the remainder of the facilities, but will not complete the work prior to the extension of the existing Call. Therefore, an extension of six months under the original program budget is requested. This program is expected to save 750,000 kWh annually. A copy of Amendment No. 3 to Call No. 10-1 with Willdan Energy Solutions is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

This program will provide specific recommendations and funding to assist the City in bringing existing building systems back into compliance or upgrade systems to more efficient ones. Significant savings can be found through retrocommissioning at low or no cost to the customer; therefore City facilities participating in this program will use energy more efficiently and thereby reduce energy expenses.

ECONOMIC/FISCAL IMPACT:

Funds for the program come from the US Department of Energy's EECBG Program. The total cost of this program will not exceed $375,900.00, and this Amendment will not increase the allocated funds.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, Amendment No. 3 to Call No. 10-1 for Professional Services with Willdan Energy Services dba Intergy Corporation, at no additional cost to the City, to extend the term of the Call for the Retrocommissioning of City Facilities Third Party Energy Efficiency Program through June 30, 2012.

APPROVED:

John C. Roukema, Director of Electric Utility

Jennifer Sparacino, City Manager

Documents Related to this Report:
1) Amendment No. 3 to Call 10-1 for Professional Services with Willdan Energy Solutions

AMENDMENT NO. 3 TO CALL NO. 10-1
FOR PROFESSIONAL SERVICES TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA BY WILLDAN ENERGY SOLUTIONS
dba INTERGY CORPORATION

The Parties acknowledge that they entered into Call No. 10-1 ("Original Call"), dated January 12, 2010, Amendment No. 1 to Call 10-1 on January 25, 2011, and Amendment No. 2 to Call 10-1 on September 20, 2011 and now agree that on this ____ day of _____, 20___, this Amendment No.3 to Call 10-1 For Professional Services ("Amended Call") is made and entered into pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and Between the City of Santa Clara, California and Willdan Energy Solutions dba Intergy Corporation," dated September 29, 2009, ("Call Agreement"). The terms of the Call Agreement and the Original Call are incorporated by this reference.

This Amended Call describes the Services to be provided to the City of Santa Clara, California ("City") by Willdan Energy Solutions dba Intergy Corporation ("Contractor"), which are fully described in Contractor's proposal to City entitled Scope of Work Silicon Valley Power's City Facilities RCx Program" dated November 17, 2011 ("Proposal"), attached to this Amended Call as Exhibit A and incorporated by this reference. The Parties agree that this Amended Call incorporates all of the Services ("Services") which were to be performed by the Contractor under the Original Call, Amendment No. 1 to the Call and Amendment No. 2 to the Call, as well as all of the additions, modifications and/or deletions to the Services to be performed under this Amended Call ("Revised Services"). The Revised Services to be performed under this Amended Call shall be completed within the time period beginning on January 1, 2012, and ending on June 30, 2012, an extension of six months. The attached Proposal contains a complete description of the Revised Services, and specifies the performance dates for the completion of the Revised Services, to be performed by the Contractor under this Amended Call. In no event shall the amount paid to the Contractor for the Revised Services provided to City by the Contractor under this Amended Call, including all fees or pre-approved costs and/or expenses, exceed three hundred seventy five thousand nine hundred dollars ($375,900.00), subject to budgetary appropriations. This Amended Call supercedes and replaces the Original Call and includes the entire amount of payments to the amount of Contractor for the Revised Services to be provided to the City.

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

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

Approved as to Form:

_____
RICHARD E. NOSKY, JR.
City Attorney

Attest:

_____
ROD DIRIDON, JR.
City Clerk

By:_____
JENNIFER SPARACINO
City Manager

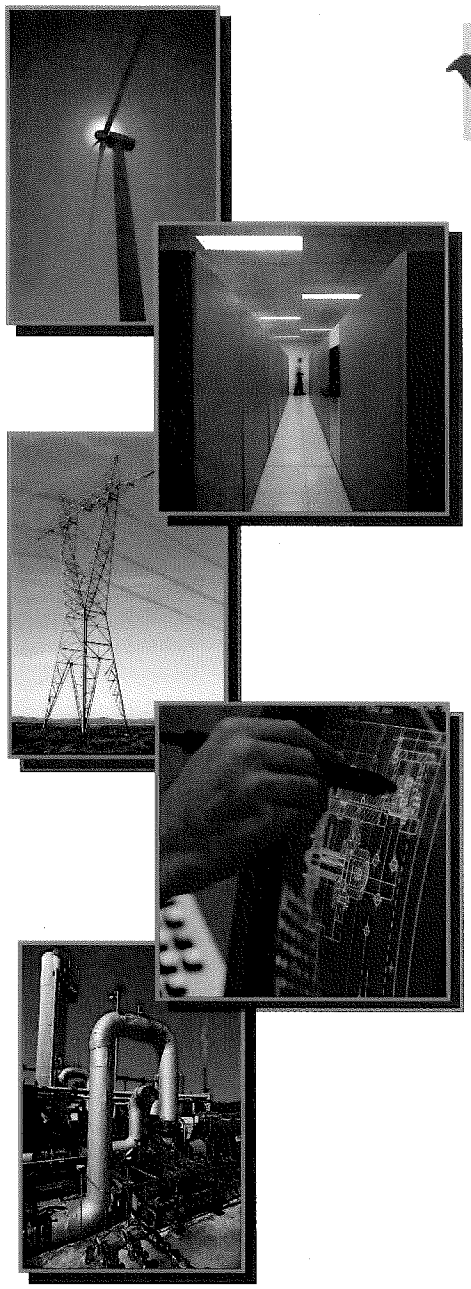
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"City"

WILLDAN ENERGY SOLUTIONS dba INTERGY CORPORATION
a California corporation

By: Richard U. Fox
RICHARD FOX
Title: Vice President, Engineering
Address: 11875 Dublin Blvd Suite A-201
Dublin, CA 94568
Telephone: (925) 556-2600 x1225
Facsimile: (925) 556-1444

"Contractor"



WILLDAN Energy Solutions | extending your reach

Scope of Work

Silicon Valley Power's City Facilties RCx Program

Prepared on:
November 17, 2011

By:
Willdan Energy Solutions
d/b/a Intergy Corporation

Contacts:
Ben Bradford
Director of Operations
Willdan Energy Solutions
11875 Dublin Blvd., Building A, Suite 201
Dublin, CA 94568

Scope of Work
SVP's City Facilities RCx Program

Scope of Work for SVP City Facilities RCx Program **2**
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I. Program Narrative

Introduction
WES is proposing revisions to Silicon Valley Power's City Facilities RCx Program. These can be summarized as follows:

- Extend program date from December 31, 2011 to June 30, 2012.
- No additional modifications are being sought in this Scope of Work. kWh goal and budget will remain intact from the previous Call Agreement.

To date, WES has ongoing RCx implementations at several City of Santa Clara facilities, including:

- City Hall
- Police Administration Building
- Convention Center
- City Library

In addition to the RCx implementations at the sites listed above, WES has conducted an audit and quantification of savings at the Santa Clara Senior Center. The implementaiton of this project is currently being scoped. It is expected that all sites listed above will deliver the the proposed 750,000 annual gross kWh within budget ($375,900).

A. Program Abstract

Willdan Energy Solutions (WES), dba as Intergy Corporation, will implement SVP's City Facilities Retro-Commissioning Program (SVP's City Facilities RCx Program) by June 30, 2012. The program will generate substantial energy savings by providing RCx services to buildings within the portfolio of the City of Santa Clara. 750,000kWh estimated savings has been identified for the City of Santa Clara Buildings.

B. Program Budget

The overall program budget will be $375,900 yielding an estimated savings of 750,000 kWh. This budget will cover every element of the program including administration, scoping and investigation, installation, and measurement and verification.

The program budget breaks down as follows:

SVP'S 2009-2010 RETRO COMMISSIONING PROGRAM				
Expenditures	**Dollar Value**		**Energy Savings**	**Annual Gross kWh**
Total WES Program Budget (NTE)	NTE $375,900		Estimated Energy Savings	750,000
	Budget	**Payment Basis**	**Payment Description**	
Task 1 – Administration	NTE $20,000		Administration, Reporting, Management.	
Task 2 – Site Scoping & Investigation	NTE $120,000	Time and Material	Engineering Screening, Scoping and Analysis to define opportunity at identified City of Santa Clara Buildings. Solidify opportunity / develop implementation scope - there will be a $0 co-pay from the City. Paid to WES on a time and material basis.	
Task 3 – Installation	NTE $215,900	Time and Material	Implement recommended measures at identified sites - turn key solution to client	
Task 4 – Measurement & Verification	NTE $20,000	Time and Material	Measurement & verification of measures adopted. Paid to WES on a time and material basis.	
Total NTE	**NTE $375,900**			

C. Program Description

Our proposed 2010 SVP's City Facilities Retro-Commissioning Program (SVP City Facilities RCx Program) for City-owned Buildings is a cost-effective program that will build on the success of the SVP RCx Program, which has been in operation since 2007. It will generate substantial energy savings by providing retro-commissioning services to specific buildings within the City of Santa Clara portfolio.

The program will seek to provide RCx services at the following City of Santa Clara locations:

- Convention Center
- City Hall
- Central Library
- Police Admin Building
- Senior Center
- Triton Museum

Some of the key differentiating factors for the SVP's City Facilities RCx Program include:
An Unparalleled Ability to Get Out to a Quick Start by leveraging the team's strengths. Since we are currently implementing an RCX program with SVP, we will leverage our experience and expertise with commissioning to effectively design and develop the program.

Deployment of one of the RCx Industry's Most Successful Program Models that will Cost Effectively Deliver Maximum Savings. This program has an estimated 750,000 kWh savings potential. The proposed SVP's City Facilities RCx Program is unique in its implementation-first focus, thus ensuring that RCx audits convert to installed savings for the City-owned Buildings. The City has identified the buildings which will participate in this program.

A Primary Focus on Resource Acquisition While Also Helping to Build a cost effective local retro commissioning Program. Unlike other RCx programs that emphasizes education

and information for longer term market changes, our program focuses first and foremost on direct implementation of measures. However, we also recognize the value of longer-term change and the development of resources to serve that market. The RCx services and project installation work in our proposed program will go to City of Santa Clara-owned buildings.

The program will provide extensive project-management assistance to City Facilities staff, using our engineers to keep the projects moving to completion.

This program will be the first step in a process that includes:

- An introduction to the retro-commissioning opportunity
- Extensive and detailed retro-commissioning scoping phase
- Integration with demand-response and retrofit potential
- Close cooperation with building-operation staff
- Implementation assistance and project follow-up

Persistence of Savings

The retro-commissioning process requires building managers and operators to adjust current operation procedures and practices. Projects that end at measure installation will not produce persistent savings. The program will pay particular attention to ensure that savings of implemented commissioning measures persist by addressing this need in several ways:

- Owners will have recurring involvement in the progress of the project, beginning with the initial commitment to start the process, involve staff in the audit/investigation, and implement identified measures
- The program will provide training for the building staff
- Monitoring systems will track the performance of measures and ensure ongoing performance. The monitoring information will be available to both the program and the building operators.

Experience shows that properly trained operators who are aware of and understand ongoing system performance will maintain and even improve that performance.

The table below shows the key program and building system areas:

MEASURE	TYPICAL ITEMS ADDRESSED
Chillers	▪ Set chilled water temperature to match load ▪ Initiate chilled water temperature reset control ▪ Optimize staging of multiple chillers ▪ Lower condenser water temperatures ▪ Reset static pressure set point for variable speed pumping ▪ Optimize minimum loop flow rate ▪ Install VFDs on chilled water pumps
Cooling Towers	▪ Initiate wet bulb reset control ▪ Optimize staging of multiple cells ▪ Replace bypass control with fan cycling control ▪ Reinstate 2-speed fan control ▪ Install VFDs on fans ▪ Reduce or control bleed rate
Economizers	▪ Repair failed dampers. ▪ Upgrade mixed air control to true economizer control. ▪ Optimize high limit setting. ▪ Install enthalpy high limit control.
Simultaneous Heating and Cooling	▪ Coordinate room temperature set points ▪ Lock out the heating during summer months ▪ Set appropriate minimum VAV setpoints

	▪ Reduce over ventilation ▪ Optimize control logic
Controls	▪ Optimize sequence of operations ▪ Initiate scheduling control for HVAC and lighting systems. ▪ Optimally program reset schedules for supply air and hydronic systems. ▪ Adjust VFD turndown and static pressure setpoints.
Window Film	▪ Reduces solar gain within building ▪ Protects from solar heat in summer and keeps interior heat during winter

D. Program Targets

During the program's 12-month cycle we will seek to achieve these savings based on the proposed budget.

TARGETED SITES	RETRO COMMISSIONING
Total kWh	750,000kWh (estimated)
Convention Center	425,000 kWh (estimated
City Hall	125,000 kWh (estimated)
Central Library	90,000 kWh (estimated)
Police Admin	60,000 kWh (estimated)
Senior Center	40,000 kWh (estimated)
Museum	10,000 kWh (estimated)

E. Program Statement

Our team is well-versed in the issues facing delivery of RCx program savings. We have developed a program model that allows us to successfully address the common problems with the delivery of RCx processes and services, which include:

- An owner's lack of awareness that there are inefficiencies in building system operations
- An owner's or operator's lack of knowledge about how to address these problems
- Misinformation between the owner and RCx service providers
- The hassle factor and transaction costs of procuring RCx services
- The perceived high initial cost of RCx services and measures

Two other critical problems in achieving program savings targets are:

1. Long lead time to capture savings: the traditional RCx process has many steps, and with the collecting of data to quantify savings, the time required to deliver reports with savings recommendations is long, often 3 months or more. In addition, the customer then has the responsibility to implement the measure, which often causes additional delays while budgets are appropriated, and trades contractors are engaged. Often, customers lose momentum, priorities shift, and a disappointingly low amount of installed savings results.

2. Customers, through lack of commitment, resources, or time, do not implement the recommended measures, do not participate in the RCx process, provide required information, or implement even the simplest recommended measures.

F. Program Rationale

To overcome the barriers listed above and meet program goals, we will implement these strategies:

- Ensure selected City-owned Buildings enter the program and follow through with the implementation of commissioning and demand-response measures
- Provide a proper scope and expeditiously implement measures in buildings
- Ensure that the program's energy savings persist through tracking

These strategies will increase the magnitude and persistence of the program's energy savings. The proposed program includes several innovative features that create a comprehensive approach to overcoming the barriers we find in the field. These features address each target area in a way that brings synergistic value to the solutions:

- We will provide extensive project-management assistance to owners to keep the projects moving to completion
- A process that focuses on energy savings and spends additional effort helping owners implement measures

G. Program Strategy/Avoiding Lost Opportunities

This program is designed to minimize lost opportunity by involving owners and building facility staff throughout the process. Owners and staff will be involved in the audit, project identification and identification of measures for implementation. The program provides consistent methods for documenting all commissioning measures. The program will provide training and system monitoring to track the performance of measures and ensure their ongoing performance. The monitoring information will be available to both the program and the building operators. Experience shows that properly trained operators who understand ongoing system performance will maintain and even improve that performance.

On the smaller end of the market, our program has been designed to minimize lost opportunity by enhancing the often distracted and cash strapped owner's ability to say "yes" to a more aggressive savings proposal. These design features include simplifying participation forms; providing trusted and personalized technical analysis; offering aggressive incentives; deploying highly skilled technical sales staff; using best-available efficiency technology; offering turn-key installation combined with tight control of installers; maintaining close customer communication and employing advanced system design strategies that utilize the highest efficiency equipment that can be cost-effectively installed. In short, we use a systems approach that yields comprehensive results and satisfied customers.

In the case of larger properties, the threshold for overwhelming the decision maker is much higher because large facilities often assign facilities staff specifically to handle energy efficiency and operations. This presents a great opportunity, since the decision maker has the bandwidth and skills to entertain multi-measure, technically-complex proposals. As such, our program is designed to present and deliver aggressive savings proposals that work for the facility manager and minimize lost opportunities.

H. Program Objectives

SVP's City Facilities RCx Program will:

- Provide Free Scoping Reports by qualified RCx engineers to customers
- Provide a maximum of 6 Investigations at City Buildings by qualified RCx engineers and subcontractors at no cost to the customer
- Provide RCx implementations at a maximum of 6 buildings achieving an estimated 750,000kWh of savings.

I. Program Metrics

The primary program metrics for the proposed SVP's City of Santa Clara RCx Program include:

Project Time. The program will track project turn-around time to ensure that the program is providing efficient service to customers.

Number of Scoping, Investigating and Implementing Projects. The program tracking system will track these items to ensure program's targets are met.

Identified, Committed, Actual kWh by Measure, by Site. The program tracking system will track kWh by measure by site to ensure program's targets are met.

Consumer/Vendor Complaints. The program will respond to customer and/or vendor complaints as described in the proposal's complaint resolution procedures.

Vendor Payment. The program will generally pay vendors (i.e., suppliers, consultants, etc.) on a net 30 day basis, unless other specific arrangements have been specified.

Data Meets SVP QA/Validation Rules. The program will meet all quality assurance rules and procedures. Program staff will promptly respond to quality-related information or data requests and will resolve any issues.

J. Program Implementation

Task 1 – Administration, Reporting, Management

The program will build upon the infrastructure setup through the 2008 RCx Program focusing on the project tracking system, staffing assignments, reports and reporting timelines.

Task 1 will include all administrative time associated with implementing the program, including:

- Program ramp up
- Management of the program and implementation team
- Internal coordination meetings
- Quality control to ensure timeliness and thoroughness
- Reporting
- Bi-weekly phone calls
- Monthly reports
- Final report
- Customer feedback surveys
- Program ramp down and shut down

After program shut down, and all follow up issues have been completed and resolved, we will submit a final report that reviews the program's progress and accomplishments. The report will respond to the issues in the Scope of Work and detail the program's achievements and challenges. It will review goals and whether they were attained, review the lessons learned, and suggest recommendations for program improvement. The report will cover:

- Program Achievements – How many City-owned Buildings availed of the Program? How many sites were investigated? And received retrofits? Were the goals met? Was the program cost effective?
- Program Challenges – What were the significant obstacles that were overcome? Did the customers respond as planned?
- Goal Attainment – Did the program reach its savings goal? Did it finish within budget?
- Lessons Learned – Is it possible to broaden the program to reach other customers?

- Program Improvement Recommendations – What improvements could have been made to help the program be even more successful?

Deliverables: Administration of program, monthly and final report

Timing: Ongoing throughout program

Task 2 – Site Scoping & Investigation Phase

Task 2 will include all work associated with performing a site screening including engineering meetings, travel to customer location, engineering analyses, and delivery of the Scoping Report. Project scoping pertains to all program measures and consists of a site survey of controls, control strategies, pumps, HVAC equipment and related systems, and any energy efficiency projects that might be planned at the site. Identification of optimal energy-saving control strategies will begin using a Control Strategy Checklist. The scoping will pursue selected measurements, and will conduct trending if necessary to build the report. Scoping will also involve examining the utility data and performing analyses on the consumption data to target controls and other equipment that can be optimized to save energy.

The site scoping will involve facility staff, their contractors, energy managers, engineers and the like; the scoping process is a highly interactive activity to produce measures in the Scoping Report that have some buy-in from the staff and their government entity. The Scoping Report will include a write-up on the list of measures that can be accomplished at the site, discussion on their benefits and expected outcome, their estimated kWh savings, estimated Investigation costs, estimated Incentives and timing associated with performing the investigation and completing the implementation.

At the conclusion of the Scoping Phase, results will be given to SVP and a meeting will be generated at the customer's location to discuss the measures that can move directly to implementation and those that can move directly to the Investigation phase. For those measures that need to go through a formal investigation, a Program Investigation & Implementation Agreement will be developed and signed by the site before a formal Investigation will occur. All Phases will be free to the customer.

The City has idendified 6 potential sites. These are the Convention Center, City Hall, Central Library, Police Administration, Senior Center and the Triton Museum.

WES and SVP will work closely together to ensure that these 6 sites get maximum benefit from the program's funds and to ensure thorough investigations and implementation of the recommendations.

The Investigation Phase will be offered for free to the Customers. Before entering the Investigation Phase the customer will have received the Scoping Report which will lay out the cost-benefits of proceeding to the investigation. The customer will have the choice in which measures to investigate and which to shelve.

After the customer determines the measures that will proceed to the Investigation Phase, the WES team will prepare a final Program Investigation & Implementation Agreement that will bind the customer to the project. Within this agreement, the customer must commit to implementing any measure that is found to have a 1 year or less payback. Terms of the standard agreement will be fully developed in coordination with SVP to ensure it is acceptable and meets their expectations.

Once the Program Investigation & Implementation Agreement is signed, the WES team will formally begin the investigation phase. This phase will include trending using the existing BAS or temporary data-logging equipment, identification of energy efficiency measures, detailed calculations of potential energy savings, development of the Implementation Scope of Work including Equipment Specifications for required modification, and preparation of an Investigation Report and an Incentive Agreement. These documents and forms will be put together into a single package in order to simplify this step for the customer.

WES has budgeted for a maximum of 6 sites to enter the Investigation Phase. Making it mandatory to implement any measure with a 1 year or less payback will ensure that some savings are captured at sites where an investigation takes place.

Deliverables: Scoping and investigation for a maximum of 6 sites within the City of Santa Clara building portfolio. Customers will be highly screened by WES and SVP before entering the Scoping Phase to ensure Program funds are used wisely.

Timing: February 2010 - January 2011.

Task 4 – Implementation Phase, Measurement & Verification

Once the Investigation Phase is complete, the WES team will work with the customer to finalize the Implementation Scope of Work and the Incentive Agreement. The results of the Investigation Phase will form the basis for the Implementation as well as identify, with high accuracy, an implementation budget to be used for soliciting bids from contractors if an RFP process is desired by the customer.

During the implementation phase, the WES team will provide the following services:

- Support the customer through successful owner/contractor scope and contract negotiations
- Coordination in an advisory role with customer facility staff on the implementation of retro-commissioning measures
- Ensure contractor has any necessary permit(s) that need to be collected for the work.
- Assist contractor in the procurement of materials / software / technical assistance if needed
- Provide quality control oversight on the contractors work in support of the customer's facility staff
- Assist the customer with punch list items that need to be finished by the contractor in order to achieve substantial completion and a signed Customer Acceptance and Completion letter
- Ensure that all implementation is being completed as per program requirements
- Assist customer with the documentation of project costs that will be supplied to the RCx Program to ensure a maximized rebate
- Assist contractor with the training on RCx measures that have been completed at the facility and that are included as part of the contractor's scope of work with the facility
- On the post installation, the WES team will verify all installations have been completed to the satisfaction of the customer and as required by the program. Issues will be identified and remedied during the implementation phase with final wrap-up in the post installation phase. Customer satisfaction surveys will be delivered to the customer and collected by the WES team. Audit and implementation activities will be reported to SVP on a monthly basis
- Create the Measurement and Verification Report to fully document the energy savings achieved at the site

Deliverables: RCx implementation at 6 sites, estimated 750,000 gross annual kWh, fully documented measurement and verification reports

Timing: February 2010 - June 2012

K. Subcontractor List and List of Activities

Willdan Energy Solutions may team with EMC Engineers, a national company with over 20 years of commissioning experience. They have broad experience with projects that involve energy engineering, commissioning, commissioning system design, turn-key construction, and construction management. They are experts in energy efficient strategies for control systems, which are used to assure that control sequences are energy efficient and optimized. EMC Engineers have performed extensive work in support of projects for university and institutional clients, healthcare clients, as well as commercial/industrial sites worldwide. They have extensive experience with K-12 facilities, commercial, institutional and healthcare buildings.

WES's core areas of expertise include providing energy efficiency and technology solutions to the energy industry. We work extensively with utilities, local governments, cities, and counties to provide comprehensive energy efficiency solutions. The team has been providing energy efficiency services and project control systems for over 10 years. Willdan Energy Solutions has worked with all the utilities in California and its primary activities have been concentrated in across California. Besides the SVP RCx 2008 program, past energy efficiency and implementation projects include the SCE Community College Program (as part of SCE's IDEEA program), EE implementations at the Sweetwater Union High School District as part of SDGE's Bid Program, San Joaquin (as an implementer with PG&E and CPUC), City of Pomona, and other similar projects.

EMC ENGINEERS, INC.

EMC has 20 years of experience with building engineering, troubleshooting and diagnostics of systems rooted in energy conservation and retrofit design, providing feasibility studies, designs and commissioning of repairs, alterations, and improvements for all types of facility and utility systems. EMC has broad expertise, energy, and talent of commissioning engineers and technicians dedicated to making buildings work better. EMC is actively involved in retro-commissioning, commissioning, sustainable design technologies, high performance building systems, and building systems optimization.

EMC is currently a provider of building commissioning services for:

- Southern California Edison and Los Angeles County – Retro-commissioning program to demonstrate energy savings in multiple municipal buildings
- Xcel Energy SiteWise ReCommissioning Program - Building recommissioning program to achieve energy savings and optimize building operations in numerous commercial buildings
- San Diego Gas & Electric RCx Program – Incentive program for SDG&E customers to evaluate and implement building operational improvements to save energy

Included below is an organizational structure summarizing the implementation team for the proposed SVP RCx Program. Willdan Energy Solutions will primarily be responsible for overall coordination of the program, including all marketing and administrative activities. EMC Engineers will be responsible for the implementation, and/or coordination, of the Commissioning activities with the targeted customers. Resumes of the key personnel in the implementation team is included in the Supplemental Information section.

L. Quality Assurance and Measure Verification Activities

Willdan Energy Solutions and EMC will maintain the highest quality standards and measure verifications possible. They will include:

- Training of any outside contractors or installers
- Requisite licensure and insurance will be required
- Warranties on equipment and Installer labor
- Adherence to local building codes and permitting regulations
- Protection of work, persons and property
- Installation and performance standards
- Documented recycling of replaced equipment that contains hazardous materials. Copies of documentation will be provided to SVP.

For lighting retrofits, PCB-containing ballasts and mercury-containing lamps will be recycled through certified hazardous materials handlers. Copies of documentation will be provided to SVP.

The team's quality control and quality assurance (QC/QA) methods are built into the program standards and procedures, and will be directly confirmed by installation inspections. These specific standards and practices along with the team's extensive experience with commissioning assure the delivery of a quality program.

M. Conclusion

The SVP City Facilities Retro-Commissioning Program will provide services to specific City-owned Buildings. The program will provide services that ensure that mechanical machineries and their adjoining systems work according to design specifications. The program will troubleshoot existing systems and provide retrofit recommendations that will make for a more efficient energy system. We will resolve all mechanical issues that prevent optimal energy use. This type of commissioning provides excellent and cost-effective energy savings that is highly beneficial for building owners.

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 4C-1

Date: December 8, 2011

To: City Manager for Council Information

From: Director of Finance

Subject: Status Update on the Fiscal Year 2010-11 Audit and Comprehensive Annual Financial Report

The annual financial audit of the City is in process and will result in the issuance of the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended June 30, 2011. The City's external auditor, Vavrinek, Trine, Day & Co., LLP (VTD), is conducting the annual financial audit and an "unqualified opinion" is expected. In addition, the City will be issuing a separate, audited financial statements report for the Electric Utility dba Silicon Valley Power (SVP) and the Redevelopment Agency of the City of Santa Clara (Agency) will be issuing a separate, audited financial statements report for the Agency.

The Audit Committee met on December 7, 2011 and received a briefing on the status of the audit. There are several reasons why this year's audit has taken longer than typical including:

- The City and Agency took several actions to protect Agency assets which resulted in the creation of the Housing Authority; conveyance of property and leases from the Agency to the City or Housing Authority; and the assignment of capital improvement projects to the City, Stadium Authority, or Housing Authority. These mid-year changes added a significant level of complexity to the year-end closure process and financial statement and note preparation.

- The City replaced the hardware for its PeopleSoft Finance and Human Resources Management System and upgraded its database to the SQL Server database platform concurrent with the annual year-end closure process. This project took significant staff resources that otherwise would have been available for the year-end closure and audit processes.

- Implementation with the Governmental Accounting Standards Board Statement No. 54 - Fund Balance Reporting and Governmental Fund Type Definitions has added additional workload due to the new fund balance accounting and reporting requirements.

Staff anticipate that the audit will be completed over the next few weeks and that the CAFR will be ready for review and acceptance in early January. The next meeting for the Audit Committee has been tentatively scheduled for January 5, 2012 to review the results with VTD, and the CAFR and other financial reports are expected to come before the Council for acceptance on January 10, 2012.

Staff will provide copies of draft financial statements to comply with reporting requirements as necessary and will follow up with copies of final audited financial statements following the Council's acceptance. This delay is not expected to result in any compliance issues.

Gary Ameling
Director of Finance

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) None

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Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MC-2

Santa Clara All-America City 2001

DATE: December 9, 2011

TO: City Manager for Council Information

FROM: Public Communications Manager

SUBJECT: 2011 Annual Report/2012 City Calendar

It was with pleasure that we have forwarded copies of the City of Santa Clara's 2011 Annual Report/2012 Calendar to the City Council on December 9, 2011.

The photos and text of the publication support this year's theme: "Strength in Numbers" with a focus on the City's economic development efforts.

Since 1970, the City's Annual Report/City Calendar has provided valuable information to residents about programs, events, and other helpful City data. Its yearly distribution to each residential address in the City has made it a highly effective public information tool. Residents throughout the year frequently request extra copies.

It is a very popular City publication and we hope the Council finds it useful.

Dan Beerman
Public Communications Manager

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
None

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MC-3

Date: December 7, 2011

To: City Manager for Council Information

From: City Clerk/Auditor

Subject: Addition of City Attorney Reports as Sub-item to Closed Session Matters

In order to provide a more effective opportunity for the City Attorney to address reports to the City Council, a sub-item entitled, "City Attorney Reports" will be added to "Closed Session Matters" on the City Council agenda. The item will remain in the previously approved order on the agenda, following City Manager Reports.

Rod Diridon, Jr.
City Clerk/Auditor

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) None

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12/13/11

MD-1

Minutes
Of the City of Santa Clara, California
International Exchange Commission
for meeting held on Tuesday, November 1, 2011

Recommendations for Council Action: none

I. Call to Order
Called to order at 7:02 p.m.

II. Roll Call
Present: Commissioners Beavers, Ikezi, Mathre, Stahl
Absent: Mirabella, excused.
Visitors: Debi Davis, Andrew Ratermann

III. Previous minutes
Need to be amended to fix the spelling of Mathre's name, and for commissioners' reports, that Ikezi is a member of the Charter Review Commission.

IV. Correspondence and Communications
None.

V. Public Presentations
Motion to move timing of public presentation to accommodate Mr. Ratermann made by Mathre and seconded by Ikezi, voted unanimously.

VI. Santa Clara Sister Cities Association Presentation
The full SCA report is attached to these minutes. (For more details about the Santa Clara Sister Cities Association and its programs, visit www.santaclarasistercities.org).

V. Public Presentations (resumed)
Mr. Raterman presented update information on school district exchanges:

- Peterson Middle School sends about 100 kids per year to various places in Japan.
- Cabrillo MS is sending students to China next Spring to stay in Changxha, the capitol of Hunan.
- Twenty visiting students plus chaperones, from Limerick, Ireland expected in February 8-12. The schools have an environmental studies tie.
- Ambassador's band visited Portugal this year.
- Mrs. Flannagan from the University of Limerick wants Mr. Ratermann to facilitate ties with SCU.

VII. Ongoing Business

A. Coimbra Update
See SCA report.

B. Izumo Update:
25th Anniversary Visit and Gala
Many thanks to Davis and the SCSCA for all the hard work to pull off this highly successful and well attended event.

C. Limerick Update
See Public Presentations.

D. Yeongcheon City Update
No new information from Korea since last MOU draft. The Commission was informed that the Yeongcheon contact in Korea became ill shortly after receiving the MOU. Commissioners agreed to prepare a draft memo for Yeongcheon officials in order to restart MOU discussions.

VIII. New Business
Mathre contacted HP about their Autism Hackers conference. He made a good connection, and introduced them to Kevin Park from SCSCA.

IX. Commissioner Reports
Ikezi has been participating in the Charter Review Committee.
Beavers, Mirabella, and Stahl visited with the Izumo delegation and the mayor.
Beavers, Mathre, Mirabella, and Stahl attended the Izumo Gala.
Ikezi and Davis visited the Japanese Consul General's office.

X. Actions Items

Commissioner/ Staff/SCA	Action	Due by
Staff & SCA	Work together to draft government communication to the Yeongcheon City government	12/6/11

XI. Adjournment
Motion made by Mathre, seconded by Ikezi, and unanimously carried, that there being no further business, the meeting was adjourned at 8:00 pm to Tuesday evening, December 6, 2011 at 7:00 p.m. in the City Manager's Staff Conference Room.

Respectfully submitted,

for
Loretta Beavers
Recording Secretary

Santa Clara Sister Cities Association

Coimbra, Portugal — Established August 4, 1972

Izumo, Japan — Established October 11, 1986

EXECUTIVE BOARD

Debi Davis
President

Yuki Ikezi
Vice President

Brian P. Lowery
Vice President
Izumo

Ricky Matsuno
Vice President
Coimbra

Kevin Park
Vice President
Yeong Cheon

Debbie Pavao
Vice President
Youth Commission

Hanh Le
Secretary

Marilyn Benedetti
Treasurer

DIRECTORS

May Ban
SCAYC- Director

Colin Boyles
Youth Commission

Linda Esenni
Corresponding Secretary

John G. Figueira, Jr.
Past President
1982 – 2001

Lorraine Figueira
Past Secretary
1985 – 2001

Kathy Kuwano
SCAYC- Director

Lynn Hoang
Izumo Director

Marilyn Sakamoto
Event Coordinator

Report to the International Exchange Commission
November 1, 2011

Coimbra Update- The Coimbra Class of 2012 will arrive on April 13th through April 22, 2012. Isabel Cruz is planning on chaperoning again.

Izumo Update- The 25th Anniversary Celebration was a success !
The Izumo Delegation wishes to express their gratitude to the SCSCA and IEC for making this anniversary a memorable occasion. The hard work that was done in the planning and execution they felt was perfect. They were thankful for their gifts and Mayor Nagaoka wishes to thank the city staff for helping to get the eye appointment for his wife, Mihura.
The next scheduled visit will be March 28, 2012 and the possibility of 15 Junior High School is almost confirmed.
SCA would like to Thank, Commissioner Beavers for all the time she devoted to the etching of 80 plus glasses.
SCA would like to Thank, Commissioners Beavers, Mirabella and Stahl for greeting our guests at City Hall with Mayor Matthews.

Yeong Cheon City, Korea Update- No report at this time.

SCAYC Update- The YC is having a Spaghetti Dinner Fundraiser, Tuesday, November 29, 2011 at Mariani's at 6:00pm. Tickets are $20.00 with $10.00 going to Mariani's and $10.00 to the SCAYC funds. The students are working on a green energy project with Silicon Valley Power and Wilcox HS this March. Stay tuned for the details.

SCI Update- SCI NorCal Conference held in Orinda this past weekend was a success for our SCAYC students to be included in a Youth Workshop to help other NorCal Sister Cities with their programs. They answered questions about their organization and their viewpoints on the Riverside Conference.
They did an outstanding job, many of the attendees' commented on their professionalism.

Respectfully Submitted by :
Debi Davis
President
Santa Clara Sister Cities Association

12/13/11

MD-2

Santa Clara
All-America City
2001

CULTURAL ADVISORY COMMISSION

City of Santa Clara

Minutes of the November 7, 2011 Meeting

Commissioners Present:	Debi Davis, Chair; Vivian Arciniega-Aanenson; Debbie Pavao, Bunny Lockwood; and Fatima Fagundes
Commissioners Absent:	Michelle Guzman (excused)
Staff Liaison:	Pam Morrison, Staff Liaison
Visitors:	Michelle Castro

MATTERS FOR COUNCIL ACTION – None.

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1. Call to Order and Roll Call. The meeting was called to order at 7:30pm by Chair Davis. Commissioner Pavao motioned to excuse Commissioner Guzman, Commissioner Lockwood seconded the motion and it passed unanimously.
2. Approval of Minutes. August 1, 2011 meeting minutes were posted online, but not available at meeting to review and approve by commission members. Minutes were deferred to December 5th meeting for approval.
   Commissioner Arciniega-Aanenson moved to approve the minutes of the October 3, 2011 meeting; Commissioner Lockwood seconded and it passed unanimously.
3. Correspondence & Announcements. Staff reviewed correspondence received by Commission.
   a. Staff Liaison Pam Morrison announced her retirement as of December 31, 2011, saying she will stay on to help with stadium project 20 hours or less per week. New staff liaison replacement has not yet been named.
   b. Staff Liaison Pam provided updated Section 1 pages 1-16 for Commission binders.

4. **New Business.**
   a. Street Dance 2012 – Selection of Band. Suggestions included "House Rockers". Band is interested in performing again. Commissioner Arciniega-Aanenson highly recommends this band again at the price of $1500. Motion was made to have Commissioner Arciniega-Aanenson extend a formal invitation to the "House Rockers"; Commissioner Fatima seconded, motion passed unanimously. Commissioner Arciniega-Aanenson to confirm and email board with confirmation. Discussion also included Commissioner Davis contacting local police to enforce liquor laws being violated by local merchants that sell liquor outside their establishments during Street Dance. ABC should contact all merchants well in advance of event.

5. **Unfinished Business**
   a. Recycle- Themed Sculpture Show Recap- 2011 Fine Art of Recycle Sculpture Exhibition

Reception went well. Michelle Castro brought a classical guitar player, Daniel Avina as additional entertainment, at no additional expense, to play near the doors of the East Wing. Many guests commented favorably.

b. Street Dance 2011- Report from Sister Cities on Beer/Wine Sales. Commissioner Davis will present Information at February meeting.

c. Utility Art Box – Update.
   - Former Commissioner Castro reported that pilot box is complete except for final clear coat.
   - Staff Liaison Morrison is checking on graffiti resistant coating through SVP.
   - Photos were taken and presented to commission. Commissioners commented that the box looks very nice.
   - Former Commissioner Castro presented her guidelines and supply list to be given to artists after selection. It was noted that it took approximately 3 months to complete the pilot box. Due to amount of time needed to complete one box, it was recommended that student artists be allowed to work in groups of 2-4.
   - Commissioners Arciniega-Aanenson and Pavao to meet as a committee offsite to complete submission forms. Will have forms completed by November 17 and sent in to Staff Liaison for approval and printing.

d. **Triton Museum of Art** – Floral Art Show was attended by Commissioner Pavao and Davis. They noted that the floral art was exceptional, and food was very good. Triton staff bartered with food concessions.

6. **Commissioner Reports.** Commissioners reported on cultural activities of general interest.
7. **Public Presentations.** None.
8. **Adjournment.** There being no further business, the meeting was adjourned at 8:58pm. The next meeting is scheduled for December 5, 2011 at 7:30pm.

Respectfully submitted,

Debbie Pavao

Debbie Pavao
Recording Secretary

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 8A

Date: December 2, 2011

To: City Manager for Council Action

From: Housing and Community Services Division Manager

Subject: Public Hearing: Resolution Approving the Issuance by the California Statewide Communities Development Authority of Multi-Family Housing Revenue Bonds for the 2525 El Camino Real Senior Apartment Project

EXECUTIVE SUMMARY:

Notice was published setting December 13, 2011, for a public hearing to consider approving the issuance of tax-exempt multi-family housing revenue bonds by the California Statewide Communities Development Authority (CA Communities) for financing the construction of the 2525 El Camino Real Senior Apartment Project. ROEM Development Corporation, as a limited partner of 2525 El Camino Real Senior Apartments, LP, has applied to CA Communities for up to $8,500,000 in bond proceeds for project financing. Santa Clara is a member participant of CA Communities. CA Communities may approve its financing for the project only after the governing body of the participant city in whose jurisdiction the project is located approves the project and CA Communities issuance of indebtedness. The Resolution included with this report provides the findings necessary to allow CA Communities to proceed with financing the ROEM project.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The advantage of approving the recommendation will accommodate ROEM Development Corporation's subsidiary, 2525 El Camino Senior Apartments, LP, to assemble the financing needed for development of the project. There is no disadvantage imposed on the City by approving the recommendation.

ECONOMIC/FISCAL IMPACT:

There is no fiscal impact by approving CA Communities issuance of tax-exempt multi-family housing revenue bonds. CA Communities issuance of the bonds will present no financial obligation to the City.

RECOMMENDATION:

That the Council Approve by Resolution the Issuance by California Statewide Communities Development Authority of MultiFamily Housing Revenue Bonds for the 2525 El Camino Real Senior Apartments Project.

Jeffrey B. Pedersen
Housing and Community Services Division Manager

APPROVED:

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Resolution

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING THE ISSUANCE BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OF MULTI-FAMILY HOUSING REVENUE BONDS FOR THE 2525 EL CAMINO REAL SENIOR APARTMENTS

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is authorized pursuant to the provisions of California Government Code Section 6500 et seq. and the terms of an Amended and Restated Joint Exercise of Powers Agreement, dated as of June 1, 1988 (the "Agreement"), among certain local agencies throughout the State of California, including the City of Santa Clara (the "City"), to issue revenue bonds in accordance with Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code for the purpose of financing multifamily rental housing projects;

WHEREAS, 2525 El Camino Senior Apartments, LP, a limited partnership or related entities, has requested that the Authority adopt a plan of financing providing for the issuance of multifamily housing revenue bonds (the "Bonds") in one or more series issued from time to time, including bonds issued to refund such revenue bonds in one or more series from time to time, and at no time to exceed $8,500,000 in outstanding aggregate principal amount, to finance the acquisition, construction and development of a 48-unit senior multifamily rental housing project located at 2525 El Camino Real, Santa Clara, California, generally known as 2525 El Camino Real Senior Apartments (the "Project") and operated by FPI Management, Inc.;

WHEREAS, the Bonds or a portion thereof will be "private activity bonds" for purposes of the Internal Revenue Code of 1986 (the "Code");

WHEREAS, pursuant to Section 147(f) of the Code, prior to their issuance, private activity bonds are required to be approved by the "applicable elected representative" of the governmental units on whose behalf such bonds are expected to be issued and by a governmental unit having jurisdiction over the entire area in which any facility financed by such bonds is to be located, after a public hearing held following reasonable public notice;

WHEREAS, the members of this City Council (this "City Council") are the applicable elected representatives of the City;

WHEREAS, there has been published, at least 14 days prior to the date hereof, in a newspaper of general circulation within the City, a notice that a public hearing regarding the Bonds would be held on a date specified in such notice;

WHEREAS, such public hearing was conducted on such date, at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the Bonds;

WHEREAS, the Authority is also requesting that the City Council approve the issuance of any refunding bonds hereafter issued by the Authority for the purpose of refinancing the Bonds which financed the Project (the "Refunding Bonds"), but only in such cases where federal tax laws would not require additional consideration or approval by the City Council; and

WHEREAS, it is intended that this resolution shall constitute the approval of the issuance of the Bonds required by Section 147(f) of the Code and Section 9 of the Agreement;

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the above recitals are true and correct.

2. That the City Council hereby approves the issuance of the Bonds and the Refunding Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute

approval of the Bonds for the purposes of (a) Section 147(f) of the Code and (b) Section 9 of the Agreement.

3. That the officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents that they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing approved hereby.

4. That the City Clerk shall forward a certified copy of this Resolution and a copy of the affidavit of publication of the hearing notice to:

Justin Cooper, Esq.

Orrick, Herrington & Sutcliffe LLP

405 Howard Street

San Francisco, California 94105

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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

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

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None.

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA

NOTICE OF PUBLIC HEARING REGARDING ISSUANCE OF MULTIFAMILY

HOUSING REVENUE BONDS FOR 2525 EL CAMINO REAL ...

State of California,
County of Santa Clara } SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 11/23/2011

Dated at Santa Clara, California

This _____24TH day of _____NOVEMBER_____, 2011

I declared under penalty of perjury that the foregoing is true and correct.

Signed: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

NOTICE OF PUBLIC HEARING REGARDING ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS FOR 2525 EL CAMINO REAL SENIOR APARTMENTS

NOTICE IS HEREBY GIVEN that, at 7:00 p.m., or as soon thereafter as the matter can be heard, on Tuesday, December 13, 2011, at the City Hall Council Chambers, 1500 Warburton Avenue, Santa Clara, California, the City Council of the City of Santa Clara (the "City") will conduct a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986, at which it will hear and consider information concerning a proposed plan of financing providing for the issuance by the California Statewide Communities Development Authority of multifamily housing revenue bonds in one or more series issued from time to time, including bonds issued to refund such revenue bonds in one or more series from time to time, and at no time to exceed $8,500,000 in outstanding aggregate principal amount, to finance the acquisition, construction and development of a 48-unit senior multifamily rental housing project located at 2525 El Camino Real, Santa Clara, California. The facilities are to be owned by 2525 El Camino Senior Apartments, LP (the "Borrower") or related entities, operated by FPI Management, Inc., and are generally known as 2525 El Camino Real Senior Apartments (the "Project").

Those wishing to comment on the proposed financing and the nature and location of the Project may either appear in person at the public hearing or submit written comments, which must be received by the City prior to the hearing. Written comments should be sent to City of Santa Clara at 1500 Warburton Avenue, Santa Clara, California 95050, Attention: City Clerk.

Rod Diridon, Jr., City Clerk
Dated: November 23, 2011
Pub.: 11/23/2011

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 9A

Santa Clara All-America City 2001

Date: December 1, 2011

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Denial of a Special Permit Request to Allow Operation of Special Food Services Sales at 4272 Davis Street (PLN 2011-08923)

EXECUTIVE SUMMARY:

The property owner, Lee Ganey, submitted a petition on November 16, 2011, requesting that staff process a Special Permit to allow the operation of Special Food Services Sales at 4272 Davis Street for a period of two years. The request of Special Food Services Sales would operate from 10:30 a.m. to 8:30 p.m., Monday through Saturday, for business clientele and to-go costumers. The applicant is also requesting three tables with 6 to 9 chairs each, one small mobile unit during the winter season, and one larger unit through the summer season. The project site is currently occupied by a legal nonconforming single family home. The property owner has made improvements to the site by installing temporary pavers and landscaping. The proposed mobile unit would be positioned behind a fence, separating the commercial business from abutting single family residential. The business is currently operating on the site and has been initiated without a Special Permit and is not an allowed use under the City's Zoning Ordinance.

The sale of Special Food Services does not conform to the current General Plan land use designation of Neighborhood Mixed Use. The property is currently zoned Neighborhood Commercial (CN), and the proposed Special Food Services Sales is similar to fast food service, which is permitted in the commercial zoning district. As a legal nonconforming single family dwelling unit currently exists on the subject property, the proposed use cannot coexist as a single family residential/commercial use without rezoning the project site.

As defined in Section of 18.60.030 of the City's Zoning Code, Special Permits in non-industrial zoning districts are for three purposes:

1. Temporary construction trailers,
2. Residential care facilities, and
3. Temporary uses not regulated by the Zoning Code.

The Special Food Services Sales use does not meet any of the above criteria. The appropriate process for approval for the use at the subject location would be a rezoning of the property rather than a Special Permit, as proposed by the business owner. Staff would not recommend that the Special Permit process be used in lieu of the applicable provisions of the zoning code. The applicant has expressed desire to develop a comprehensive mixed use project proposal for the site during the requested two year duration of the Special Permit. Allowing the two year Special Permit would facilitate the continuation of the applicant's business within the neighborhood.

Should the Council decide to approve the Special Permit, staff recommends the following:

1. Hours of operation shall be from 10:30 a.m. to 8:30 p.m., Monday through Saturday;
2. Applicant shall choose one mobile unit for a maximum of two years;
3. No tables or chairs shall be allowed at anytime;
4. No alcohol shall be sold for on-site or off-site consumption; and,
5. This Special Permit may not be extended or amended.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The disadvantage of a Special Food Services Sales at the proposed location is that the proposed use is inconsistent with the current legal nonconforming use and cannot be approved without rezoning the property. However, approval of the Special Permit would facilitate the temporary continuation of an existing business and will give the applicant additional time to develop a comprehensive mixed use project site.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council deny the Special Permit request to allow operation of Special Food Services Sales at 4272 Davis Street (PLN2011-08923).

Kevin L. Riley

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Jennifer Sparacino

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Planning Application
2) Site Plan
3) Project Description

I:\PLANNING\2011\SPERMIT\4272 Davis St\CC agnd rpt 121311.doc

PLANNING APPLICATION

CITY OF SANTA CLARA PLANNING DIVISION

1500 Warburton Avenue, Santa Clara, California 95050
(408) 615-2450 Fax (408) 247-9857
E-mail Planning@santaclaraca.gov
Website: www.santaclaraca.gov

See reverse side for application requirements

NOV 07 2011

APPLICATION FOR:
(Please check all applicable boxes)
- ☐ VARIANCE
- ☐ USE PERMIT
- ☐ ZONING CHANGE
- ☐ TENTATIVE MAP
- ☐ TENTATIVE PARCEL MAP
- ☐ LOT LINE ADJUSTMENT
- ☐ MODIFICATION
- ☑ SPECIAL PERMIT
- ☐ HISTORICAL & LANDMARKS COMMISSION
- ☐ GENERAL PLAN AMENDMENT
- ☐ OFF-SITE PARKING PERMIT
- ☐ (OTHER):

ARCHITECTURAL REVIEW FOR:
- ☐ RESIDENTIAL
- ☐ NON-RESIDENTIAL
- ☐ MIXED-USE
- ☐ LANDSCAPE
- ☐ SIGNS
- ☐ TEMPORARY SIGNS

FOR PLANNING STAFF USE ONLY
- Checked in by: CDS on 11-07-11
- Fee: $615 Receipt number: _____
- PCC-SC meeting date: _____
- Tentative Commission date: _____
- Tentative AC meeting date: _____
- File number(s): PLN2011-08923

ENVIRONMENTAL REVIEW:
☐ EXEMPT ☐ NEG DEC ☐ EIR

Fax to: Lee Ganey
Fax #: [redacted] 408-982-9825

Project Address: 4272 Davis Street
Building area: _____ square feet
County Assessor's Parcel Number (APN): 104-12-180
Gross lot area: 9400 acres / square feet
Development Project Description: Special Food Service Sales up to two years outdoors on special built patio.

Hazardous Wastes and Substances Statement (Calif. Gov. Code 65962.5):
☑ This site is **not** included on the Hazardous Wastes and Substances Sites List
☐ This site is on the Hazardous Wastes and Substances Sites List.
(A copy of this list is available in the Planning Office)
Date of list: _____
Regulatory ID #: _____

☐ Urban Runoff Pollution Prevention Program (URPPP) information provided to applicant

Please print all information legibly, including correct zip code.

Applicant: Lee Ganey
Mailing address: 3964 Rivermark Plaza #107
Day phone: 408-892-0762
Company: Café Market
City: Santa Clara, CA
Fax #: 408-982-9825
Signature: Lee Ganey
Zip code: 95054
E-Mail (Optional): Lganey@comcast.net

Property Owner: Nita Nicolas
Mailing address: 4272 Davis Street
Day phone: 408-655-2290
Company: _____
City: Santa Clara, CA
Fax #: 408-982-9825
Signature: N Nicolas
Zip code: 95054
E-Mail (Optional): _____

NOTE: Please attach the names and full addresses, including zip codes, of all other involved parties to which you would like agendas and minutes sent.

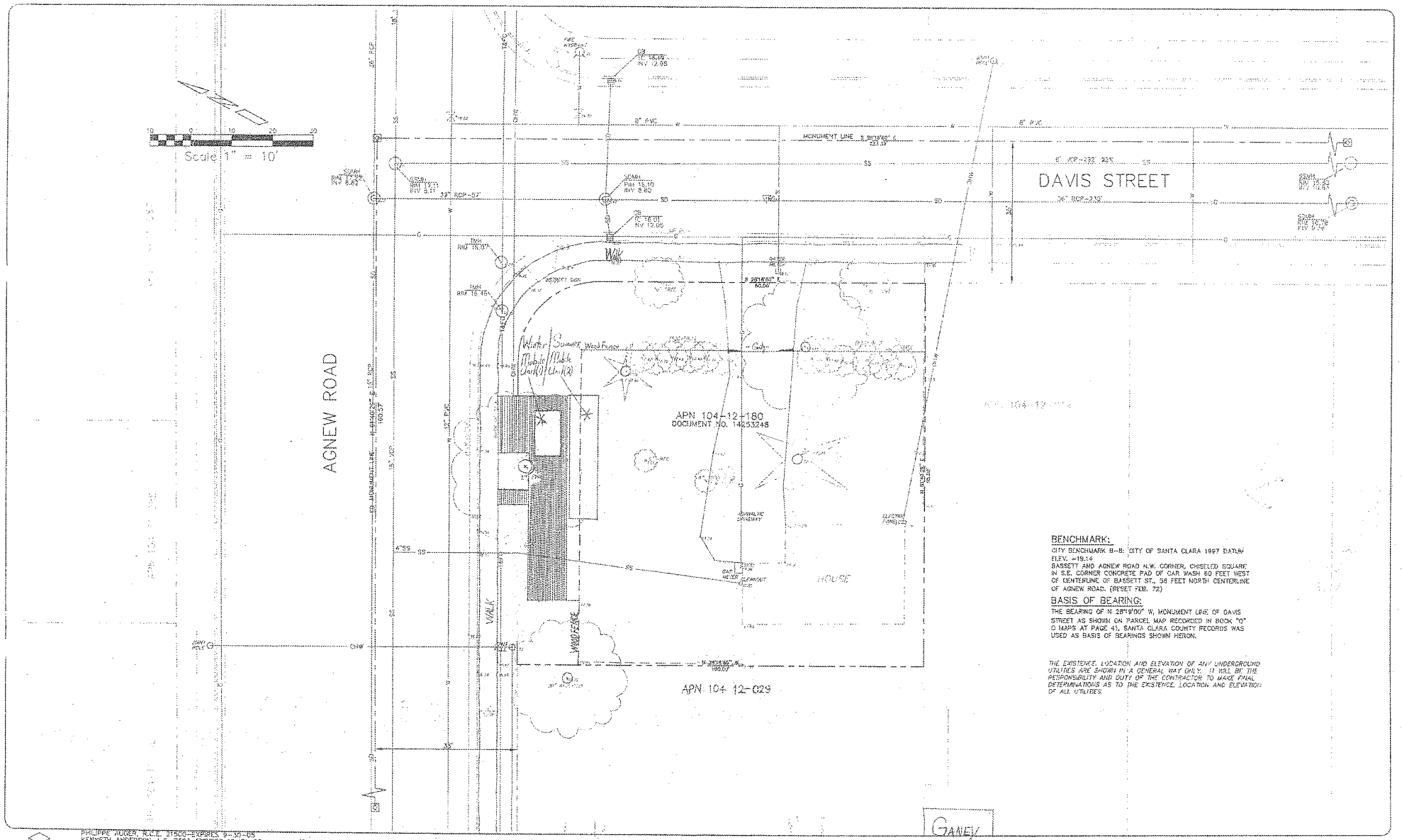
Statement of justification for the above **APPLICATION** (this statement will be included in the staff report to the Planning Commission; a separate statement may be attached, if necessary): Contact staff for assistance on preparing a statement.

(Statement Attached)

Tentative Map / Tentative Parcel Map / Lot-Line Adjustment application only:

Engineering firm: _____
Engineer's name: _____
Address: _____
Phone #: _____
Fax #: _____
Internet E-Mail (Optional) _____
Engineer's signature _____

STAFF COMMENTS: _____



PHILIPPE AUGER, R.C.E. 21500-EXPIRES 9-30-05
KENNETH ANDERSON, L.S. 7523-EXPIRES 12-31-03
SCOTT HOFFMAN, R.C.E. C58988-EXPIRES 6-30-03
PLANNING • LAND SURVEYING • CIVIL ENGINEERING • CONSTRUCTION STAKING
MISSION ENGINEERS, INC.
RESPONSIVE, RELIABLE RESULTS SINCE 1953
385 Reed St., Santa Clara, California 95050
Ph: (408) 727-8262 FAX: (408) 727-8285 E-mail: missioneng@earthlink.net

BOUNDARY & TOPOGRAPHICAL SURVEY
FOR
4272 DAVIS STREET
IN THE CITY OF SANTA CLARA, CALIFORNIA

REVISIONS

DATE	BY	DESCRIPTION	CHKD.

SCALE: 1"=10'
VERT.
DATE: 5/17/04
DWN: RM MCS
CHKD.
JOB NO. 04084
DWG NO. L-13238

SHEET 1 OF 1 SHEET

City of Santa Clara
City Hall, Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050
408-615-2450 fax408-247-9857

NOV 0 7 2011

Ms. Payal Bhagat / Planning Division

Project Location: 4272 Davis Street, SC, CA 95054 / APN: 104-12-180
Project description and history.

Dear Ms. Payal,

Our family has owned and operated Trio Foods-Trio Village Market, a small community grocery store, liquor store, exotic floral shop for the last sixteen years here in Santa Clara.

About a year ago we added take out foods to compensate for market declines as other small markets have done. We quickly achieved a new clientele base of local business professionals and city of Santa Clara workers including Santa Clara police, fireman, and utility personnel. We have recently sold the grocery and liquor portion of our business and have been consulting with planning division in order to build across the street from the market a small building to facilitate our floral business and our take out food service business. We processed our property through Planned Development in 2008-09 and had paid all community and city permit fees in full to build our market including separate units for grocery-liquor, floral, café and two residential condominiums on top of building as our retirement plan to sell the market and condos and just operate the floral shop and café. Like many other projects in the bay area the project was placed on indefinite hold per banking related to the condo units via the housing crisis.

We are submitting this special two year temporary permit for our special food service only while we develop a more comprehensive plan for the property. We would operate from 10:30am-8:30pm, Mon-Sat. Most clients are to-go customers with some local business professionals that like to walk from nearby campuses and sit briefly to eat lunch. For these clients we would like to provide three tables with 6-9 chairs which will be removed at the end of each day. Trash is only a foil and paper boat and drink cans that we recycle. Through the winter we would use our smaller mobile unit-1 and then the larger mobile unit-2 during summer season. The project represents our continued desire and commitment to be actively involved in this local community surrounding this location. We have worked on many issues with SCPD and other agency's over last several years to see this area progress to a more family and business friendly area that can facilitate local community needs and we hope to continue with your planning divisions assistance.

Thank you,

Lee Ganey Nita Nicolas

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 10A

Santa Clara All-America City 2001

Date: December 6, 2011

To: City Manager for Council Action

From: Director of Public Works / City Engineer

Subject: Award of Contract: Removal of Barriers to the Physically Challenged FY 2011-12 (CE 11-12-08)

Contractor: Weber Tractor Service
Address: 867 2nd Avenue
Redwood City, CA 94063

Bid Amount: $152,190.00

EXECUTIVE SUMMARY:

The Removal of Barriers to the Physically Challenged FY 2011-12 project (Project) consists of constructing fifty-nine (59) ADA-compliant curb ramps at various street intersections. Scope of work also includes modification of impacted traffic striping and pavement markings.

On November 30, 2011, bids were opened for construction of the Project. Six (6) bids were received ranging from $152,190.00 to $315,267.00 (see attached Bid Summary). The lowest bid received is approximately 23% below the Engineer's Estimate of $197,030.00. Bids were reviewed for compliance with the terms and conditions of the Instructions to Bidders, and any necessary minor corrections were made. Weber Tractor Service has been determined to be the lowest responsive and responsible bidder.

The recommendation includes authorization for the City Manager to execute change orders that may be required during construction of this Project up to 45%, which is greater than the normal 10%, of the contract amount. This will allow the City to take advantage of the unusually low cost per curb ramp and fully utilize the $250,000 Community Development Block Grant (CDBG) funding by including additional curb ramps to complete major pedestrian corridors.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Award of contract will allow the Project to provide accessible routes to the City streets more convenient for the physically challenged. A disadvantage may be the inconvenience to public and pedestrians during construction.

ECONOMIC/FISCAL IMPACT:

The cost of the contract is $152,190.00 plus the amount not-to-exceed $68,486.00 for change orders (45% of the contract amount) for a total cost of $220,676.00. Funding for this Project is available in the Capital Improvement Budget Account: Removal of Barriers to the Physically Challenged (562-4443-80XX0-5551-(G)CDBG). Since the funding source for the Project is the Community Development Block Grant (CDBG), there is no impact to the General Fund. No significant additional operation and maintenance cost is expected.

RECOMMENDATION:

That the Council:

1. Award the contract for the Removal of Barriers to the Physically Challenged FY 2011-12 project (CE 11-12-08) to the lowest responsive and responsible bidder, Weber Tractor Service, in the amount of $ 152,190.00; and
2. Authorize the City Manager to execute change orders up to 45% of the contract price, or an amount not-to-exceed $68,486.00.

For Rajeev Batra
Director of Public Works / City Engineer

Certified as to Availability of Funds: OK BF
562-4443-80XX0-5551 $ 220,676.00

Gary Ameling
Director of Finance

APPROVED:

Jennifer Sparacino
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) Bid Summary

I:\ENGINEERING\Draft\WP\Agenda\CE111208 Awd agn.doc

CITY OF SANTA CLARA ENGINEERING DEPARTMENT BID SUMMARY
REMOVAL OF BARRIERS TO THE PHYSICALLY CHALLENGED (FY 2011-1:

INV NO.: CE 11-12-08
Bid Opening Date: 11/30/11

ENGINEER'S ESTIMATE : $197,030.00 By: F. PASTRANA

	Contractor's Name and Position	Total Bid	%
1	Weber Tractor Service-Redwood City,CA	$152,190.00	-22.8
2	JJR Construction Inc -San Mateo, CA	$178,392.50	-9.5
3	Wattis Construction Co Inc-San Jose,CA	$181,959.00	-7.6
4	Sposeto Engineering Inc-Livermore, CA	$202,125.00	2.6

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	ENGINEER'S ESTIMATE UNIT PRICE	ENGINEER'S ESTIMATE AMOUNT	POSITION NO. 1 UNIT PRICE	POSITION NO. 1 AMOUNT	POSITION NO. 2 UNIT PRICE	POSITION NO. 2 AMOUNT	POSITION NO. 3 UNIT PRICE	POSITION NO. 3 AMOUNT	POSITION NO. 4 UNIT PRICE	POSITION NO. 4 AMOUNT
1	Curved Curb Ramp or Modified (ST-9 or ST-9M)	37	EA.	$3,000.00	$111,000.00	$1,950.00	$72,150.00	$2,615.00	$96,755.00	$2,550.00	$94,350.00	$2,860.00	$105,820.00
2	Straight Curb Ramp or Modified (ST-10 or ST-10M)	5	EA.	$3,000.00	$15,000.00	2,100.00	10,500.00	2,615.00	13,075.00	2,675.00	13,375.00	2,860.00	14,300.00
3	Curved Curb Ramp with Valley Gutter Replacement (VG-1)	6	EA.	$4,000.00	$24,000.00	4,650.00	27,900.00	3,285.00	19,710.00	4,845.00	29,070.00	4,900.00	29,400.00
4	Special Curb Ramp Design 1 (SP-1)	1	EA.	$2,800.00	$2,800.00	2,575.00	2,575.00	1,900.00	1,900.00	2,320.00	2,320.00	2,860.00	2,860.00
5	Special Curb Ramp Design 2 (SP-2)	1	EA.	$2,500.00	$2,500.00	1,650.00	1,650.00	1,900.00	1,900.00	2,150.00	2,150.00	2,400.00	2,400.00
6	Special Curb Ramp Design 3 (SP-3)	6	EA.	$2,800.00	$16,800.00	1,850.00	11,100.00	2,615.00	15,690.00	2,835.00	17,010.00	2,860.00	17,160.00
7	Special Curb Ramp Design 4 (SP-4)	1	EA.	$3,300.00	$3,300.00	3,100.00	3,100.00	2,275.00	2,275.00	2,800.00	2,800.00	2,600.00	2,600.00
8	Special Curb Ramp Design 5 (SP-5)	1	EA.	$3,400.00	$3,400.00	4,450.00	4,450.00	2,275.00	2,275.00	4,070.00	4,070.00	3,300.00	3,300.00
9	Special Curb Ramp Design 6 (SP-6)	1	EA.	$3,300.00	$3,300.00	3,550.00	3,550.00	2,275.00	2,275.00	3,570.00	3,570.00	2,500.00	2,500.00
10	Sidewalk Removal and Reconstruction	150	SF	$13.00	$1,950.00	7.50	1,125.00	8.95	1,342.50	15.00	2,250.00	9.00	1,350.00
11	Curb and Gutter Removal and Reconstruction	50	LF	$65.00	$3,250.00	54.00	2,700.00	50.25	2,512.50	50.00	2,500.00	49.00	2,450.00
12	Remove Existing Thermoplastic Pavement Marking/Striping	Lump Sum	LS	$5,000.00	$5,000.00	1,800.00	1,800.00	6,390.00	6,390.00	2,615.00	2,615.00	2,400.00	2,400.00
13	Install Thermoplastic Pavement Marking/Striping												
13.a	Striping - limit lines, crosswalk	1,010	LF	$3.00	$3,030.00	6.50	6,565.00	8.25	8,332.50	4.60	4,646.00	11.00	11,110.00
13.b	Pavement Marking - "STOP"	11	EA	$140.00	$1,540.00	250.00	2,750.00	330.00	3,630.00	102.00	1,122.00	370.00	4,070.00
13.c	Pavement Marking - "YIELD"	1	EA	$160.00	$160.00	275.00	275.00	330.00	330.00	111.00	111.00	405.00	405.00
	TOTAL BID=				**197,030.00**		**152,190.00**		**178,392.50**		**181,959.00**		**202,125.00**

	Contractor's Name and Position	Total Bid	%
5	Golden Bay Construction Inc-Hayward,CA	$222,527.00	12.9
6	Calstate Construction Inc - Fremont, CA	$315,267.00	60.0
7	-	-	-
8	-	-	-

CITY OF SANTA CLARA ENGINEERING DEPARTMENT BID SUMMARY
REMOVAL OF BARRIERS TO THE PHYSICALLY CHALLENGED (FY 2011-1
ENGINEER'S ESTIMATE : $197,030.00 By: F. PASTRANA

INV NO.: CE 11-12-08
Bid Opening Date: 11/30/11

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	ENGINEER'S ESTIMATE UNIT PRICE	ENGINEER'S ESTIMATE AMOUNT	POSITION NO. 5 UNIT PRICE	POSITION NO. 5 AMOUNT	POSITION NO. 6 UNIT PRICE	POSITION NO. 6 AMOUNT	POSITION NO. 7 UNIT PRICE	POSITION NO. 7 AMOUNT	POSITION NO. 8 UNIT PRICE	POSITION NO. 8 AMOUNT
1	Curved Curb Ramp or Modified (ST-9 or ST-9M)	37	EA.	$3,000.00	$111,000.00	$3,325.00	$123,025.00	$4,500.00	$166,500.00				
2	Straight Curb Ramp or Modified (ST-10 or ST-10M)	5	EA.	$3,000.00	$15,000.00	3,050.00	15,250.00	4,400.00	22,000.00				
3	Curved Curb Ramp with Valley Gutter Replacement (VG-1)	6	EA.	$4,000.00	$24,000.00	5,583.00	33,498.00	7,900.00	47,400.00				
4	Special Curb Ramp Design 1 (SP-1)	1	EA.	$2,800.00	$2,800.00	2,900.00	2,900.00	4,650.00	4,650.00				
5	Special Curb Ramp Design 2 (SP-2)	1	EA.	$2,500.00	$2,500.00	2,725.00	2,725.00	4,650.00	4,650.00				
6	Special Curb Ramp Design 3 (SP-3)	6	EA.	$2,800.00	$16,800.00	3,625.00	21,750.00	4,800.00	28,800.00				
7	Special Curb Ramp Design 4 (SP-4)	1	EA.	$3,300.00	$3,300.00	3,600.00	3,600.00	4,800.00	4,800.00				
8	Special Curb Ramp Design 5 (SP-5)	1	EA.	$3,400.00	$3,400.00	4,015.00	4,015.00	6,500.00	6,500.00				
9	Special Curb Ramp Design 6 (SP-6)	1	EA.	$3,300.00	$3,300.00	2,875.00	2,875.00	4,400.00	4,400.00				
10	Sidewalk Removal and Reconstruction	150	SF	$13.00	$1,950.00	8.00	1,200.00	11.00	1,650.00				
11	Curb and Gutter Removal and Reconstruction	50	LF	$65.00	$3,250.00	63.00	3,150.00	61.00	3,050.00				
12	Remove Existing Thermoplastic Pavement Marking/Striping	Lump Sum	LS	$5,000.00	$5,000.00	2,660.00	2,660.00	7,100.00	7,100.00				
13	Install Thermoplastic Pavement Marking/Striping												
13.a	Striping - limit lines, crosswalk	1,010	LF	$3.00	$3,030.00	4.60	4,646.00	9.20	9,292.00				
13.b	Pavement Marking - "STOP"	11	EA	$140.00	$1,540.00	102.00	1,122.00	375.00	4,125.00				
13.c	Pavement Marking - "YIELD"	1	EA	$160.00	$160.00	111.00	111.00	350.00	350.00				
	TOTAL BID=				**197,030.00**		**222,527.00**		**315,267.00**				

Meeting Date: 12/13/11

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 14A

Date: December 8, 2011

To: Mayor and City Council for Action

From: City Manager

Subject: Approval of Some Reduction in Furlough Hours for International Association of Firefighters Local 1171 (Unit 1), Professional Engineers (Unit 4), Employees' Association (Units 5, 7, & 8), American Federation of State, County and Municipal Employees Local 101 (Unit 6), Miscellaneous Unclassified Management Employees (Unit 9), Unclassified Fire Management Employees (Unit 9B), Police Officers Association (Unit 2), and Unclassified Police Management Employees (Unit 9A).

EXECUTIVE SUMMARY:

At the end of calendar year 2010 and the beginning of calendar year 2011, the following six City bargaining units agreed to economic concessions due to the City's budget challenges: Employees' Association (Units 5,7, & 8), Miscellaneous Unclassified Management Employees Association (Unit 9), Professional Engineers (Unit 4), American Federation of State, County and Municipal Employees (AFSCME, Unit 6), International Association of Firefighters Local 1171 (IAFF, Unit 1) and Unclassified Fire Management Employees (Unit 9B). Each of these groups agreed to unpaid furloughs as part of the concession agreements. Each of these groups agreed to 96 unpaid furlough hours for the 12/10 – 12/11 MOU year, with the exception of IAFF Local 1171 (Unit 1) and shift employees in the Unclassified Fire Management Employees (Unit 9B) which agreed to 144 furlough hours, due to the fact that they work more hours per year.

Also included in the concession agreements was "trigger language" which stated that, if the City's total combined revenues in six specified revenue categories exceeded projections for FY 2010-11 by over $1 million, the City and these bargaining units would meet to discuss whether or not the City would be willing to reduce the 96 furlough hours scheduled for the coming MOU year December 2011 to December 2012.

While the total combined revenues of the six revenue categories included in the "trigger" did exceed projections by about $4.3 million, this was only a piece of the overall financial picture. On the expenditure side, salary and benefit costs exceeded projections by $1.3 million, and the City's Working Capital (Emergency) Reserve and Capital Projects Reserve balances were well below target (the Emergency Reserve has a Council target of 90 days or 25% of General Fund expenditures -- $35 million for FY 2011-12 and the Capital Projects Reserve has a target of at least $5 million). As a result of the FY 2010-11 surplus, the City was able to contribute to these reserves for the first time in several years. The City's precarious budget position continues to assume continuation of past cost cutting measures, including but not limited to over 100 eliminated, frozen and held vacant positions, reduced department operating budgets, and further assumed savings through attrition. And the City still projects a deficit in the "out years," if and when furlough hours are eliminated.

Consistent with the City's obligation under the "trigger language" in the MOUs, the City met and conferred with the six bargaining units whose concession agreements/MOUs included furloughs. The City has

satisfied those obligations in a series of meetings that fully discussed the units' perspectives and preferences. The City has decided and agreed, based on the sacrifices made last year by the bargaining units as well as the City's interest in improving services to the extent possible given its still challenging financial situation, to reduce the number of furlough hours for the December 25, 2011 – December 24, 2012 MOU year from 96 hours to 72 hours for the Employees Association, Miscellaneous Management, AFSCME, Engineers and non-shift employees in Fire Management, and to reduce the number of furlough hours from 144 hours to 96 hours for IAFF and shift employees in Fire Management.

The reduction in furlough hours for MOU year 12/11- 12/12 does not change the 96 furlough hours scheduled for the Employees Association and Miscellaneous Management for the December 25, 2012 – December 24, 2013 MOU year. Those 12/12 – 12/13 furlough hours remain subject to the applicable trigger language in their MOU agreements for that MOU year.

In an effort to improve public safety service to the Community and to treat the Police Officers Association (Unit 2) and Police Management (Unit 9A) equitably, the City also has agreed to reduce the furlough hours for these two Units by the same number of hours as other units, i.e. from 96 to 72 hours for the MOU Calendar Year December 25, 2011 – December 24, 2012.

As mentioned previously, the impact of the "Great Recession" on the City of Santa Clara has resulted in severe financial challenges. Given these challenges, the City remains very appreciative of these bargaining groups and their representatives that continually work cooperatively with the City.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

By agreeing to the reduction in furlough hours, the City will see some improved level of service. The disadvantage is that there will be about 25% less savings for the General Fund and for all funds, but we will continue to receive savings through the remaining unpaid furlough days.

ECONOMIC/FISCAL IMPACT:

Reducing the number of furlough hours for the 12/11 – 12/12 MOU year will reduce the City's furlough savings by a proportionate amount. The current agreements would have resulted in savings during this time period of about $4.3 million for the General Fund and $5.3 million for all funds. With the reductions in the number of furlough hours, the City will realize savings of about $3.2 million for the General Fund and $4.0 million for all funds.

The reduction in furlough hours will result in lower than budgeted furlough savings during fiscal year 2011-12 and greater salary and benefit costs in fiscal year 2012-13. The total impact for the General Fund is about $1.1 million while the total impact on all City funds is about $1.3 million. There will be roughly half of the impact in each fiscal year.

RECOMMENDATION:

That the Council approve the reduction of furlough hours by:

1. 24 hours for the December 2011 to December 2012 MOU year for the following Bargaining Units: Professional Engineers (Unit 4), Employees Association (Unit 5, 7 & 8), AFSCME (Unit 6) and Unclassified Miscellaneous Management (Unit 9), Police Officers Association (Unit 2) and Police Management (Unit 9A) and 48 hours (Suppression/Shift Employees), and
2. 24 hours (for the non-shift 40 hour per week Employees) for December 2011 to December 2012 MOU year for Unclassified Fire Management (Unit 9B) and 48 hours for IAFF (Unit 1) .

Jennifer Sparacino

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) None

12/13/11

18A

CLOSED SESSION REQUEST

City of Santa Clara, California

It is requested the **CITY COUNCIL OF THE CITY OF SANTA CLARA** meet in closed session on **Tuesday, January 10, 2012,** at **5:30 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to Gov. Code § 54956.8
Property: APN: 104-43-051; APN: 104-43-052; APN: 104-43-030; APN: 104-42-014; and, APN: 104-42-019
Negotiating Party(ies): Cedar Fair and The San Francisco 49ers
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price, and terms of payment)

☒ **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
Pursuant to Gov. Code § 54956.8
Property: APN: 104-43-030
Negotiating Party(ies): Santa Clara Stadium Authority and The San Francisco 49ers
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment)

☒ **CONFERENCE WITH AGENCY LABOR NEGOTIATOR**
Pursuant to Gov. Code § 54957.6
City Negotiator: Jennifer Sparacino, City Manager (or her designee)
Employee Organization(s):
Unit #1 – Santa Clara Firefighters Association, IAFF, Local 1171
Unit #2 - Santa Clara Police Officer's Association
Unit #3 – IBEW Local 1245 (International Brotherhood of Electrical Workers)
Unit #4 - City of Santa Clara Professional Engineers
Units #5, 7 & 8 - City of Santa Clara Employees Association
Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees)
Unit #9 – Miscellaneous Unclassified Management Employees
Unit #9A - Unclassified Police Management Employees
Unit #9B - Unclassified Fire Management Employees
Unit #10 – PSNSEA (Public Safety Non-Sworn Employees Association)

Date: December 7, 2011

RICHARD E. NOSKY, JR.
City Attorney

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