

DRAFT
December 2, 2011

EXHIBIT C

FORM OF DESIGN-BUILD AGREEMENT

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

DESIGN-BUILD AGREEMENT
SANTA CLARA STADIUM AUTHORITY
TURNER/DEVCON, A JOINT VENTURE

TABLE OF CONTENTS

	PAGE
ARTICLE 1 GENERAL	1
1.1 Defined Terms	1
Other Terms	10
ARTICLE 2 RELATIONSHIP OF THE PARTIES	10
Appointment of Construction Agent	10
Cooperation with Project Development Team and Owner	11
Design-Builder's Architect Services	11
Project Partnering	11
Project Transaction Documents	12
Conflict-of-Interest/Confidentiality	12
Financing	13
Cooperation with Governmental Authorities	13
Limitation of Authority	13
Representations	14
ARTICLE 3 STANDARD OF CARE; PERSONNEL	14
Standard of Care	14
Design-Builder's Personnel and Consultants	14
City Contracting Requirements	15
Investigation of Site and Adjacent Property	16
ARTICLE 4 PRELIMINARY DESIGN PHASE	16
Programming and Planning	16
Project Schedules	17
4.3 Value Engineering	17
Schematic Design Phase	18
Design Development Phase	18
Cost Estimates and IGMP/GMP	18
IGMP and GMP Documents; Construction Cost Limitation; Contingency	19
ARTICLE 5 FINAL DESIGN AND CONSTRUCTION PHASE	21
5.1 Construction Drawings and Specifications	21
Subcontract Bidding	23
Sponsor-Related Work	26
Self-Performed Work	26
Assignment of Subcontracts	27
Project Labor Agreement	28
Meetings; Reports; Schedule Updates	28
Construction	30
Testing	34
Quality Management	35
Substitutions	35

Use of Hazardous Materials.....	36
Soils Management/Stormwater Management Plans	36
Adjacent Property/Ongoing Operations.....	36
Checkout of Utilities; Training of Operating Personnel.....	37
ARTICLE 6 TIME.....	37
Time is of the Essence	37
Delay Liquidated Damages.....	38
Extensions of Time	39
Remedies for Failure to Prosecute Work.....	39
ARTICLE 7 OWNER'S RESPONSIBILITIES	40
Construction Agent's Project Representative.....	40
Hazardous Materials	41
Evidence of Financing	41
7.4 Work by Separate Contractors.....	42
ARTICLE 8 PAYMENT	43
Contract Sum; Construction Contingency	43
Allowances.....	44
Cost of the Work.....	45
Design-Builder's Fee.....	51
Accounting Records/Right to Audit.....	51
Progress Payments	52
Final Payment	56
Owner's Right to Withhold	56
Warranty of Title.....	57
Project Suspension or Abandonment.....	57
ARTICLE 9 WARRANTY/CORRECTION OF WORK	57
ARTICLE 10 INDEMNIFICATION.....	60
General.....	60
Patent Indemnification.....	60
Lien Indemnification.....	60
Defense	60
ARTICLE 11 TERMINATION OF THE AGREEMENT AND DEVELOPER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS.....	61
Suspension and Termination by Design-Builder	61
Owner's Right to Perform Design-Builder's Obligations and Termination by Owner for Cause	61
Termination For Convenience	62

ARTICLE 12 SUCCESSORS AND ASSIGNS	62
ARTICLE 13 EXTENT OF AGREEMENT	63
Entire Agreement.....	63
Third Party Rights.....	63
ARTICLE 14 INSURANCE/BONDS	63
General Liability/Workers' Compensation	63
Bonds/Contractor Default Insurance.....	64
14.3 Builder's Risk.....	64
14.4 Contractor Pollution Liability.....	65
14.5 Errors and Omissions.[OPEN].....	65
ARTICLE 15 CHANGES.....	66
Change Orders	66
Changes Directed by Owner	67
Changes other than Owner-Directed Changes.....	67
Performance of Changed Work	68
Fast Track.....	69
ARTICLE 16 DISPUTE RESOLUTION	69
ARTICLE 17 MISCELLANEOUS PROVISIONS.....	71
ARTICLE 18 OWNERSHIP OF DOCUMENTS	74

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] [the City requested: _____ of the Stadium Authority], or such other person as Construction Agent [the City requested: _____ of the Stadium Authority] 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 be 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 Indemnitees 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 of 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: HO'Brien@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: MO'Brien@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

<u>EXHIBIT A</u>	Design Architect's Subconsultants
<u>EXHIBIT B</u>	Construction Drawings Criteria
<u>EXHIBIT C</u>	General Conditions of the Contract for Construction
<u>EXHIBIT D</u>	Description of General Conditions Work
<u>EXHIBIT E</u>	Form of Amendment Establishing Guaranteed Maximum Price
<u>EXHIBIT F</u>	IGMP Drawings and Specifications Description and GMP Drawings and Specifications Criteria
<u>EXHIBIT G</u>	Design-Builder's Key Personnel and Consultants
<u>EXHIBIT H</u>	Form of Payment and Performance Bonds
<u>EXHIBIT I</u>	[NOT USED]
<u>EXHIBIT J</u>	Rate Schedule of Project Staff Reimbursable as a Cost of the Work
<u>EXHIBIT K</u>	List of Long-Term Warranty Requirements
<u>EXHIBIT L</u>	Schedule of Insurance and Bond Requirements
<u>EXHIBIT M</u>	Wrap-Up Insurance Coverages and Limits
<u>EXHIBIT N</u>	Change Order Pricing
<u>EXHIBIT O</u>	List of Pre-Qualified Mediators
<u>EXHIBIT P</u>	Project Administration Forms
<u>EXHIBIT Q</u>	Description of Project Site
<u>EXHIBIT R</u>	Preliminary Schedule
<u>EXHIBIT S</u>	Preconstruction Payment Fee Schedule
<u>EXHIBIT T</u>	Subcontractor Selection and Procurement Plan
<u>EXHIBIT U</u>	Project Transaction Documents
<u>EXHIBIT V</u>	Ethical Standards For Contractors Seeking to Enter into an Agreement with the City of Santa Clara, California
<u>EXHIBIT W</u>	Design/Construction Mitigation Measures and Conditions of Approval
<u>EXHIBIT X</u>	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. Bond Requirements

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	<ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$2M Each Occurrence and General Aggregate 	<ul style="list-style-type: none"> ▪ \$250,000 Each Occurrence 	Limits and sub-limits to be determined with underwriters; Deductible & SIR amounts to be determined with underwriters
Commercial General Liability	<ul style="list-style-type: none"> ▪ \$2M Each Occurrence ▪ \$4M General Aggregate 	<ul style="list-style-type: none"> ▪ \$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)	<ul style="list-style-type: none"> ▪ \$150M-\$200M Each Occurrence ▪ \$150M-\$200M General Aggregate 	<ul style="list-style-type: none"> ▪ 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)	<ul style="list-style-type: none"> ▪ \$25M-\$200M Each Loss ▪ \$25M-\$200M Term Aggregate 	<ul style="list-style-type: none"> ▪ \$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 delegatee ("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 Contractor¹ does any of the following:
 - a. Is convicted² 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 dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of 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

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 capability⁴ or business experience⁵ 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.

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 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. 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 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 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. 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 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 cost [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.

¹The 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-Builder's 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.