

Meeting Date: 7/15/11

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item # SA-2 SA



Date: June 28, 2011

To: Executive Director for Stadium Authority Action

From: Administrative Analyst to the City Manager

Subject: Adoption of a Resolution Approving an Agreement Regarding Stadium Design between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC

EXECUTIVE SUMMARY:

The Santa Clara Stadium Authority is proposing to enter into an Agreement Regarding Stadium Design (Agreement) with Forty Niners Stadium, LLC (Stadco), in order to proceed with the design of the Stadium.

This Agreement authorizes Stadco to proceed with the design development of the Stadium, and provides for the reimbursement of Stadco's predevelopment costs from construction funds. The Agreement will also allow Stadco to begin design work prior to execution of the Disposition and Development Agreement (DDA), which is not expected to occur until Fall 2011. Once the DDA is executed, this Agreement will terminate and its provisions incorporated into the DDA.

Stadco intends to retain Howard, Needles, Tammen, & Bergendoff California Architects, P.C., (HNTB) as the architects, and Turner/Devcon Joint Venture as the design-builder, to assist the architects. Stadco will coordinate with the concessionaire selected by the Stadium Authority to insure that the concessionaire has input in the design of the Stadium.

Stadco will submit an estimated budget to the Executive Director that will have a statement of costs incurred to date for Stadium design and costs to be incurred prior to the execution of the Stadium-related leases (Closing). At the Closing the schematic drawings and the design drawings will be assigned to the Stadium Authority, and Stadco will be reimbursed for those costs from construction funds.

A copy of the agreement has been placed in Council offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Entering into the Agreement with Stadco for work on the Stadium design will allow this work to proceed immediately, which will further the goal of timely completion of the Stadium Project. This Agreement also specifies the conditions under which the Stadium Authority will ultimately become the owner of the work product resulting from this Agreement.

Executive Director for Stadium Authority Action

Subject: Adoption of a Resolution Approving a Stadium Design Agreement between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC

June 28, 2011

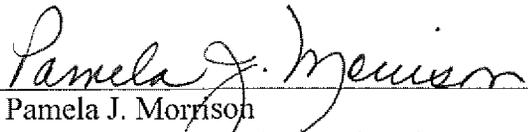
Page 2

ECONOMIC/FISCAL IMPACT:

Execution of the Stadium Design Agreement will not result in a financial impact on the Stadium Authority. Stadco will be reimbursed for design costs out of construction funds, if and when construction funding is obtained.

RECOMMENDATION:

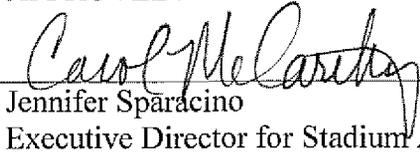
That the Authority adopt the Resolution approving an Agreement Regarding Stadium Design between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC, in order to move forward with design development of the Stadium.



Pamela J. Morrison

Administrative Analyst to the City Manager

APPROVED:



Jennifer Sparacino

Executive Director for Stadium Authority

Documents Related to this Report:

- 1) *Agreement Regarding Stadium Design between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC*

RESOLUTION NO. _____ (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY APPROVING AN AGREEMENT REGARDING
STADIUM DESIGN RELATED TO THE CONSTRUCTION OF
THE STADIUM PROJECT**

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

WHEREAS, on February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City of Santa Clara authorized the execution of a Joint Powers Agreement (“Agreement”) with the City of Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority (“Stadium Authority”);

WHEREAS, the Stadium Authority was formed to facilitate the development and operating of a stadium in the City suitable for NFL games ("Stadium Project") and to fulfill the mandates of Measure J, “The Santa Clara Stadium Taxpayer Protection and Economic Progress Act”; and

WHEREAS, the Stadium Authority intends to negotiate a Disposition and Development Agreement with Forty Niners Stadium, LLC, pursuant to which, the Stadium Authority would develop and own the Stadium and Forty Niners Stadium, LLC would enter into an agreement with the Stadium Authority to lease the Stadium; and

WHEREAS, the Stadium Authority desires to enter into an Agreement Regarding Stadium Design with the Forty Niners Stadium, LLC, which would authorize Forty Niners Stadium, LLC to proceed with preparation of design development documents and other design work on behalf of the Stadium Authority and provide for reimbursement for costs related to such stadium design work; and

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

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

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The Stadium Authority hereby approves the Agreement Regarding Stadium Design and authorizes the Executive Director to enter into and execute the Agreement Regarding Stadium Design on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Authority signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Authority signatory. The Executive Director is authorized to implement the Agreement Regarding Stadium Design and take all further actions and execute all other documents which are necessary or appropriate to carry out the Agreement Regarding Stadium Design.
3. The Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Authority's obligations pursuant to this Resolution and the Agreement Regarding Stadium Design.
4. The Authority Secretary shall certify to the adoption of this Resolution.
5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

[Paragraph 6 and certification follows on next page]

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

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

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST:

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

Attachments incorporated by reference:

1. Staff Report dated June 28, 2011: Adoption of a Resolution Approving an Agreement Regarding Stadium Design between the Santa Clara Stadium Authority and Forty Niners Stadium, LLC

I:\Stadium Authority\Reso for Agreement Regarding Stadium Design.doc

**AGREEMENT REGARDING STADIUM DESIGN
BY AND BETWEEN THE
SANTA CLARA STADIUM AUTHORITY
AND
FORTY NINERS STADIUM, LLC**

PREAMBLE

THIS AGREEMENT REGARDING STADIUM DESIGN (this "Agreement") is made as of July _____, 2011, by and between the Santa Clara Stadium Authority, a California joint powers authority (the "Stadium Authority"), and Forty Niners Stadium, LLC, a Delaware limited liability company ("Stadco"), with reference to the following facts, purposes, and understandings.

RECITALS

- A. 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").
- B. The Stadium Authority is a joint powers authority formed by and comprised of the City, its Redevelopment Agency (the "Agency") and the Bayshore North Public Enhancement Authority for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.
- C. The construction of the Stadium will further the goal of both the City and Agency of creating an entertainment destination in the Bayshore North Redevelopment Project Area and will provide significant economic benefits to the City and its residents and businesses.
- D. The Stadium Authority intends to lease from the City certain real property located in the City within the Bayshore North Redevelopment Project Area (the "Stadium Site") for development of the Stadium.
- E. The Stadium Authority and the Agency entered into a Cooperation Agreement to Assist Publicly Owned Stadium originally dated February 22, 2011, and re-executed with clarifying amendments on February 28, 2011 (the "Cooperation Agreement"), pursuant to which, among other things, the Agency agreed (i) to pay on behalf of the Stadium Authority one-half (½) of the development fees to be paid to the City in connection with the construction of the Stadium, (ii) to pay an amount not to exceed a total of Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs) toward Stadium development costs, and (iii) to pledge Net Tax Increment (as defined therein) in sufficient amounts to meet such obligations.
- F. The Stadium Authority, the Agency and Stadco entered into a Predevelopment Funding Agreement dated as of March 21, 2011 (the "Predevelopment Funding Agreement"), which provides for the payment of certain predevelopment costs from Agency funds and requires that the Agency deposit all Net Tax Increment into an escrow account mutually approved by the Stadium Authority and Stadco. The Predevelopment Funding Agreement expressly contemplates that Stadco would transfer to the Stadium Authority its assignable, non-

privileged interest in the work product resulting from predevelopment costs incurred for the benefit of the Stadium Project and that certain of those costs would be reimbursed from Net Tax Increment. In entering into this Agreement, and proceeding with the Stadium Design Work, the Parties are relying on the Agency's commitments in the Cooperation Agreement and the Predevelopment Funding Agreement, including the Agency's commitment to contribute to the development cost of the Stadium and its pledge of Net Tax Increment for such purpose.

- G. The Stadium Authority and Stadco intend to negotiate a Disposition and Development Agreement ("DDA") pursuant to which, subject to various conditions precedent, the Stadium Authority would develop and own the Stadium and Stadco would enter into an agreement with the Stadium Authority to lease the Stadium (the "Stadium Lease").
- H. Stadco is an affiliate of the San Francisco Forty Niners, Limited, an NFL team that would play home games at the Stadium (the "Team").
- I. The Stadium Authority and Stadco have determined that the Stadium Design Work provided for in this Agreement furthers their shared goal of timely completion of the Stadium Project.
- J. The Stadium Authority and Stadco desire to enter into this Agreement to specifically authorize Stadco to proceed with Design Development Documents and other Stadium Design Work on behalf of the Stadium Authority in advance of the execution of the DDA and to more specifically provide for the reimbursement of Stadco for the Stadium Design Costs out of the Development Fund. It is anticipated that the DDA, when it becomes effective, will supersede the provisions of this Agreement.
- K. Pursuant to CEQA, the Stadium Authority has reviewed, and certified that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing (the "Final Environmental Impact Report"). The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Stadium Authority and Stadco agree as follows:

ARTICLE 1. **DEFINITIONS**

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

- (1) "Agency" is defined in Recital B.
- (2) "Agreement" means this Agreement Regarding Stadium Design.
- (3) "Architect" means Howard, Needles, Tammen, & Bergendoff California Architects, P.C., a California corporation, and any other design professionals retained by Stadco

to perform Stadium Design Work, including the preparation of the Schematic Design Drawings and the Design Development Documents.

(4) "Board" means the governing body of the Stadium Authority.

(5) "Closing" means the satisfaction or waiver of the conditions precedent to the Agency's obligation to disburse funds to the Stadium Authority as provided in Article 2 of the Cooperation Agreement.

(6) "Concessionaire Contract" means that agreement by and between the Stadium Authority, Stadco and the Concessionaire, pursuant to which the Concessionaire agrees to provide certain pre-opening services related to the Stadium Project.

(7) "Concessionaire" means the Person that enters into the Concessionaire Contract with the Stadium Authority and Stadco.

(8) "DDA" is defined in Recital G.

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

(10) "Development Fund" means an account or accounts to be established pursuant to the DDA at or prior to the commencement of construction of the Stadium into which funds available for payment of development costs of the Stadium, including the Agency's contribution pursuant to the Cooperation Agreement, will be deposited and from which such costs will be paid.

(11) "Entitlements" means the entitlements, permits, authorizations or approvals, as applicable, required to be obtained in connection with the implementation of the Stadium Project from governmental agencies with jurisdiction over the Stadium Project.

(12) "Executive Director" means the Executive Director of the Stadium Authority or his/her designee.

(13) "Logical Evolution" means a refinement or amplification of the Schematic Design Drawings into architectural drawings and design material which flow reasonably therefrom, and which reflect architectural and engineering design consistent with such industries' standards and practices and applicable code requirements.

(14) "Net Tax Increment" is defined in the Cooperation Agreement.

(15) "Party" means the Stadium Authority or Stadco, as applicable.

(16) "Parties" collectively means the Stadium Authority and Stadco.

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

(18) "Predevelopment Funding Agreement" is defined in Recital F.

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

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

(21) "Stadium Design Budget" is defined in Section 5.1.

(22) "Stadium Design Costs" means costs incurred by Stadco in performing or causing the performance of Stadium Design Work, as reflected in the Stadium Design Budget approved by the Parties or otherwise approved by the Parties; provided, however, that Stadium Design Costs shall exclude design costs attributable to Tenant Improvements.

(23) "Stadium Design Work" means work in connection with the entitlement and design of the Stadium Project, including the preparation of conceptual design documents, the Schematic Design Drawings, the Design Development Documents, and the Final Environmental Impact Report, and also including TDJV's preconstruction services and the Concessionaire's pre-opening services under the Concessionaire Contract.

(24) "Stadium Project" means the development of the Stadium and other related improvements on and off the Stadium Site.

(25) "Stadium Site" is defined in Recital D.

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

(27) "Team" is defined in Recital H.

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

(29) "Term" means the term of this Agreement as defined in Section 3.1.

ARTICLE 2. **COOPERATION**

Section 2.1 Cooperation. The Stadium Authority and Stadco agree to cooperate and coordinate with each other in connection with the Stadium Authority's ongoing efforts to develop the Stadium, including, without limitation, with respect to the Stadium Design Work. The Parties acknowledge that such cooperation and coordination is necessary in order to timely develop the Stadium Project.

Section 2.2 Relationship to Other Agreements. Nothing in this Agreement shall amend or affect the parties obligations under either the Predevelopment Funding Agreement or

the Cooperation Agreement. Nothing herein shall preclude the Stadium Authority and Stadco from entering into separate agreements that govern the performance of and reimbursement or payment for other predevelopment activities neither addressed in the foregoing agreements nor otherwise specified herein.

ARTICLE 3.
TERM

Section 3.1 Term. This Agreement shall commence on the date hereof and, except for the provisions which survive the expiration or earlier termination hereof, shall continue thereafter until the earlier of: (i) the execution of the DDA; (ii) June 30, 2012; or (iii) a date mutually determined by the Parties.

ARTICLE 4.
STADIUM DESIGN DEVELOPMENT

Section 4.1 Design Development. Prior to the adoption of Measure J and the formation of the Stadium Authority, Stadco retained the Architect to prepare design documents for the Stadium, including the Schematic Design Drawings, anticipating that the costs it incurred in doing so would be reimbursed out of the Development Fund if the Stadium Authority proceeded with development of the Stadium. Consistent with the Predevelopment Funding Agreement, Stadco now intends to retain the Architect to prepare the Design Development Documents with the same expectation that it will be reimbursed out of the Development Fund, as provided in Section 5.3 below. Stadco's agreement with the Architect shall expressly provide that Stadco shall have the right to transfer and assign to the Stadium Authority all of its right, title and interest in the Schematic Design Drawings, the Design Development Documents, and other work product prepared by the Architect for the Stadium Project.

Section 4.2 Concessionaire. Stadco, on behalf of the Stadium Authority, shall coordinate and supervise the Concessionaire in the performance of the Concessionaire's pre-opening services under the Concessionaire Contract. Stadco and the Stadium Authority acknowledge that the Concessionaire and the Architect will need to collaborate in order for the Design Development Documents to accurately incorporate the design needs of the Concessionaire for the concession areas of the Stadium Project. Stadco shall coordinate the necessary exchange of information between the Concessionaire and the Architect to facilitate such collaboration. If any payment is due to the Concessionaire under the Concessionaire Contract, such payment shall, subject to the provisions of Article 5, be included in Stadium Design Costs.

Section 4.3 TDJV. Stadco has engaged TDJV to perform certain preconstruction services, including among other things, to participate in the development of the Design Development Documents. Consistent with the Procurement Plan, TDJV may issue bid documents and select design/build subcontractors for the Stadium Project. Subcontractors selected through the Procurement Plan may participate in the development of the Design Development Documents as part of TDJV's preconstruction services. The Stadium Authority shall have no obligation to TDJV or to such selected subcontractors unless and until the Stadium Authority enters into a design/build contract with TDJV.

Section 4.4 Design Consistent with Schematic Design. The Schematic Design Drawings shall establish the baseline design standards from which, and consistent with which,

Stadco, in consultation with the Stadium Authority, shall cause the Architect to prepare the Design Development Documents.

Section 4.5 Submittal and Review of Design Development Documents. Stadco shall use its best efforts to submit the Design Development Documents to the Stadium Authority for its review and approval pursuant to the DDA by January 15, 2012. The Design Development Documents shall be a Logical Evolution of the Schematic Design Drawings and shall serve as the basis of the drawings required to establish a guaranteed maximum price under a contract with a design-builder for the Stadium. The Design Development Documents shall as appropriate, provide for compliance with the relevant mitigation measures required by the Final Environmental Impact Report and any relevant conditions imposed by the City's entitlement process.

Section 4.6 Stadium Authority Approval. The Design Development Documents shall be subject to the approval of the Stadium Authority pursuant to the DDA.

Section 4.7 Predevelopment Oversight Working Group. Stadco shall meet with the Executive Director, on a schedule to be agreed upon by the Parties, to review and discuss the evolution of the design documents and other applicable predevelopment matters. Stadco shall consult with the Executive Director regarding the progress of the design documents at each meeting and shall report on any material alterations or issues encountered by Stadco or the Architect in the design process since the previously held meeting.

Section 4.8 Entitlements. Stadco shall use commercially reasonable efforts to identify, prepare and submit on behalf of Stadium Authority the required applications and supporting documents to applicable governmental agencies to obtain any required Entitlements. All such applications shall be consistent with the design documents prepared in accordance with this Agreement and shall be submitted to the Executive Director for approval prior to submission to the applicable governmental agency. Any costs incurred by Stadco in connection with its efforts to obtain the Entitlements shall, subject to the provisions of Article 5, be Stadium Design Costs.

ARTICLE 5. **STADIUM DESIGN BUDGET**

Section 5.1 Stadium Design Budget. Stadco shall submit to the Stadium Authority as promptly as possible following the date of this Agreement, a statement of the Stadium Design Costs incurred to date and an estimated budget of Stadium Design Costs to be incurred prior to the Closing. Stadco shall submit to the Stadium Authority updates of the budget from time to time, as necessary, and otherwise in accordance with the terms of this Section 5.1. Such statement and budget, and any updates thereto, shall be subject to the approval of the Executive Director, which approval shall not be unreasonably withheld or delayed, and are referred to herein collectively as the "Stadium Design Budget".

Section 5.2 Books and Records. Stadco shall keep and maintain in accordance with generally accepted accounting principles full, complete and appropriate books, records and accounts of Stadium Design Costs to facilitate the determination of the Stadium Authority's purchase price for the Stadium Design Work. All Stadium Design Costs shall be subject to the review by the Executive Director of reasonably satisfactory evidence of Stadco's actual

incurrence of such costs. Such evidence may be in the form of invoices, cancelled checks, wire confirmations or similar types of proof of incurrence and/or payment.

Section 5.3 Stadium Authority's Purchase of Stadium Design Work Products. Upon the Closing, and in accordance with the terms of the DDA, the Stadium Authority shall purchase from Stadco, and Stadco shall assign to the Stadium Authority, all of Stadco's right, title and interest in the Schematic Design Drawings, the Design Development Documents, and any other permits, entitlements or work products resulting from the Stadium Design Work, other than those relating to the Tenant Improvements, for a purchase price equal to the Stadium Design Costs, which shall be payable from the Development Fund.

ARTICLE 6. **GENERAL PROVISIONS**

Section 6.1 Non-Liability of Officials. No member, official, employee, manager or agent of any Party shall be personally liable to any other Party, or any successor in interest, in the event of any default or breach by such Party for any amount which may become due to any other Party or successor or on any obligation under the terms of this Agreement.

Section 6.2 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits the Stadium Authority's approval, consent, or waiver, the written approval, consent, or waiver of the Executive Director (or his/her respective designee) shall constitute the approval, consent, or waiver of the Stadium Authority, respectively, without further authorization required from the governing board of such Party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board as she/he deems it appropriate.

Section 6.3 Third Party Beneficiaries. The Stadium Authority and Stadco do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party, and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

Section 6.4 State Law. This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 6.5 Additional Acts. The Parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other Parties for purposes of consummating the transactions contemplated in this Agreement.

Section 6.6 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, Party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 6.7 Modification and Amendment. This Agreement cannot be amended or modified except by written agreement of the Parties.

Section 6.8 Defaults and Remedies. If either Party breaches any material provision of this Agreement, the other Party shall first notify the breaching Party in writing of the purported breach or failure, giving the breaching Party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching Party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching Party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-breaching Party shall be entitled to elect either to terminate this Agreement or to seek specific performance, as its sole and exclusive remedy. Notwithstanding the foregoing, the limitation on remedies contained in this Section 6.8 shall not apply to a breach of any indemnity obligations set forth in Section 6.9 below.

Section 6.9 Indemnity. To the extent permitted by law, Stadco undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, the Agency, their respective commissioners, directors, council members, officers, employees, agents, and successors (the "Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising out of Stadco's acts or omissions in its performance under this Agreement, except to the extent caused by the negligence or willful misconduct of the Indemnified Parties. The provisions of this Section 6.9 shall survive the termination of this Agreement.

Section 6.10 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties to this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 6.11 Time of the Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

[Section 6.12 and signatures follow on next page]

Section 6.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

SANTA CLARA STADIUM AUTHORITY
a California joint powers authority

APPROVED AS TO FORM:

ELIZABETH H. SILVER
Interim Stadium Authority General Counsel

JENNIFER SPARACINO
Executive Director

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

ROD DIRIDON, JR.
Stadium Authority Secretary

“Stadium Authority”

FORTY NINERS STADIUM, LLC
a Delaware limited liability company



LAWRENCE MACNEIL

Vice President and Chief Financial Officer

4949 Centennial Blvd.
Santa Clara, CA 95054
Telephone: (408) 562-4949

“Stadco”