

Meeting Date: 2/14/12

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 4B.3



Date: February 9, 2012

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

From: Assistant City Manager/Assistant Executive Director

Subject: Adoption of Resolutions to Approve Subdivision Improvement Agreement for the Completion of Public Improvements Related to the Stadium

EXECUTIVE SUMMARY:

In November 2, 2012 the City approved a Tentative Subdivision Map for the Stadium Project located at 4900 Centennial Boulevard to abandon public right-of-way, reconfigure parcels and establish easements. As part of the Tentative Subdivision Map, the Stadium Authority, as subdivider under the Map, was required to complete certain improvements prior to approval of the Final Map. Under Government Code Section 66492, as well as Section 17.05.650 of the Santa Clara Municipal Code, if any improvement required as a condition to approval of the final map has not been completed prior to approval of the final map, the subdivider must enter into an agreement with the City to complete the work. Government Code Section 66499 and Section 17.05.660 require that such an agreement must be secured by a surety bond or an instrument of credit or a cash deposit.

The City expects to approve the final map for the Stadium site early in March. Certain improvements required as a condition to approval of the Final Map have not yet been completed but are currently underway or will be completed as part of construction of the Stadium Project. These improvements include relocation of public utilities, reconfiguration of driveways on Tasman Drive and design and installation of sidewalks on the southern end of Centennial Boulevard and Tasman Drive. The City and the Stadium Authority desire to enter into the Subdivision Improvement Agreement requiring the Stadium Authority to install the improvements identified in the Agreement in accordance with the terms and conditions set forth in the Agreement. A copy of the Agreement has been placed in Council offices.

As required by the Government Code and the City's Municipal Code, the security required pursuant to the Improvement Agreement can take the form of a bond, a credit instrument or a deposit of cash. The full amount of the costs associated with the improvements covered by the Subdivision Improvement Agreement has been deposited in a secured account to be drawn on for payment of the costs associated with the improvements.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

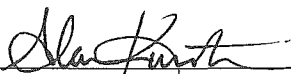
The Subdivision Improvement Agreement conforms to the Government Code and the City's Municipal Code. Approval of the Agreement will allow for approval of the Final Map early in March. The Final Map creates the Stadium parcel which will be the subject of the lease from the City to the Stadium Authority and the Stadium Authority sublease to the Forty Niners Stadium, LLC ("StadCo") and will allow the financing for the Stadium project to proceed on schedule.

ECONOMIC/FISCAL IMPACT:

The Subdivision Improvement Agreement requires that there be sufficient security to ensure that the required improvements are completed. StadCo has deposited with the Stadium Authority the funds required for payment of the costs associated with the Improvements. The Stadium Authority will draw on those funds for the costs of the improvements as they are constructed.

RECOMMENDATION:

1. That the Council adopt a Resolution to approve a Subdivision Improvement Agreement for the completion of public improvements related to the Stadium; and
2. That the Stadium Authority adopt a Resolution to approve a Subdivision Improvement Agreement for the completion of public improvements related to the Stadium.



Alan Kurotori
Assistant City Manager/Assistant Executive Director

APPROVED:



Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:

- 1) *City Resolution*
- 2) *Stadium Authority Resolution*

RESOLUTION NO. ___ (STADIUM AUTHORITY)

**A RESOLUTION OF THE SANTA CLARA STADIUM
AUTHORITY APPROVING A SUBDIVISION
IMPROVEMENT AGREEMENT WITH THE
CITY OF SANTA CLARA**

**BE IT RESOLVED BY THE BOARD OF 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 City approved a tentative subdivision map for the Stadium Project in November 2010 subject to certain conditions to be met by the Stadium Authority;

WHEREAS , the Stadium Authority has submitted to the City a final Subdivision Map and is requesting that the City approve the Final Subdivision Map;

WHEREAS, as required by the Government Code and the City Municipal Code, the Stadium Authority has proposed to the City entering into an Improvement Agreement which obligates the Stadium Authority to complete those improvements that were a condition of the Tentative Map in accordance with the terms of the Improvement Agreement;

WHEREAS, the Stadium Project has previously undergone environmental review pursuant to the California Environmental Quality Act ("CEQA") and was considered as part of the project

Environmental Impact Report certified for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (the "Stadium EIR");

WHEREAS, the Stadium Authority desires to enter into the Subdivision Improvement Agreement with the City; and

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

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

1. That the Board of the Stadium Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The Stadium Authority hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the Stadium EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the Subdivision Improvement Agreement with respect to the Stadium Project considered in the Stadium EIR. The Stadium Authority further specifically finds that there have not been any of the following occurrences since the approval of the Stadium EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the Subdivision Improvement Agreement:
 - a. there have not been substantial changes in the project analyzed in the Stadium EIR which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program;

- b. there have not been substantial changes with respect to the circumstances under which the project analyzed in the Stadium EIR will be undertaken which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program; and
 - c. there has not been the appearance of new information which was not known and could not have been known as of the date of approval of the Stadium EIR and the Mitigation Monitoring Program which is relevant to the approval of the Stadium EIR and the Mitigation Monitoring Program as it relates to the Subdivision Improvement Agreement.
3. The Stadium Authority hereby approves the Subdivision Improvement Agreement and authorizes the Executive Director to enter into and execute the Subdivision Improvement Agreement on behalf of the Authority, substantially in the form on file with the Authority Secretary, with such revisions as are reasonably determined necessary by the Authority signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Authority signatory. The Executive Director is authorized to implement the Subdivision Improvement Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Subdivision Improvement Agreement.
 4. 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 Subdivision Improvement Agreement.
 5. The Executive Director is hereby authorized and directed to file a Notice of Determination with respect to the Subdivision Improvement Agreement in accordance with the applicable provisions of CEQA.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE BOARD OF THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2012, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBER:
NOES:	BOARD MEMBER:
ABSENT:	BOARD MEMBER:
ABSTAINED:	BOARD MEMBER:

ATTEST: _____
 ROD DIRIDON, JR.
 AUTHORITY SECRETARY

Attachments Incorporated by Reference: None

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**SUBDIVISION IMPROVEMENT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
THE SANTA CLARA STADIUM AUTHORITY**

PREAMBLE

This subdivision improvement agreement (“Agreement”) is made and entered into on this _____ day of _____, 2012, (“Effective Date”) by and between the Santa Clara Stadium Authority, a joint exercise of powers entity created through Government Code sections 6500 *et seq.* (“Developer”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. The California Subdivision Map Act and the Subdivision Ordinance of the City of Santa Clara provide that a subdivider shall install streets, storm drainage facilities, utilities, landscaping, and other improvements as determined by the City to be necessary for the subdivision and to ensure consistency with the General Plan and applicable specific plans;
- B. Sections 66462 and 66419(a) of the Government Code provide that if any improvements so required as a condition precedent to the approval and acceptance of the final subdivision map have not been completed prior to the acceptance of a final subdivision map, a developer must first enter into an agreement with the City to perform the work of improvement in consideration of the acceptance of the final map by the City;
- C. Section 66499 of the Government Code requires that such an agreement must be secured by a surety bond or an instrument of credit issued by a financial institution subject to regulation by the State or federal governments, or by a cash deposit;
- D. Section 66499.3 of the Government Code establishes the types and amount of security to guarantee the performance of any such improvement agreement;
- E. City and Developer desire to enter into such an improvement agreement to install such improvements in accordance with the requirements of the Subdivision Map Act, the Subdivision Ordinance of the City of Santa Clara, the terms and conditions hereinafter set forth, and those certain plans for development entitled:

“49ers Stadium Santa Clara, CA Final Planned Development Resubmittal Package”

(collectively, “Development Plans”) now on file in the office of the City Engineer, which are hereby referred to for a more definite and distinct description of the work to be performed under this Agreement as though set forth at length herein.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT PROVISIONS

1. INCORPORATION OF RECITALS.

The foregoing recitals are true and correct, express the intent of the Parties, and are incorporated herein as contractual terms. All exhibits to this Agreement are essential to this Agreement and are hereby deemed a part hereof.

2. FINDINGS AND CONDITIONS OF SUBDIVISION MAP.

Developer recognizes that approval of this subdivision was subject to the findings and conditions attached to such approval and hereby acknowledges and agrees to be bound by such findings and conditions. As required under the conditions attached to the tentative subdivision map approval, Developer shall provide continuous access to all parcels subject to the subdivision map and shall complete the relocation of utilities pursuant to the Development Plan prior to taking existing utilities out of service.

3. APPROVAL OF FINAL SUBDIVISION MAP.

City agrees to approve the final map of the subdivision presented to it by Developer and designated "Amended Tentative Subdivision Map San Francisco 49ers New Stadium" to accept on behalf of the public all lands, rights of way and easements therein offered in dedication, in accordance with the conditions hereinafter set forth. The furnishing of security by Developer as required by Section 7 is a condition precedent to such acceptance.

4. INSTALLATION OF IMPROVEMENTS.

In consideration of such approval, Developer agrees to install the improvements required for such subdivision as a condition precedent to the approval and acceptance of the final subdivision map, as more specifically set forth in Exhibit A (the "Improvements"), pursuant to the schedule set forth in Section 5, and in accordance with the requirements of the Subdivision Map Act, the Subdivision Ordinance of the City of Santa Clara, and the Development Plans.

5. COMPLETION OF IMPROVEMENTS.

Developer shall complete the Improvements not later than two years following the Effective Date. Time is of the essence in this Agreement. Upon completion, Developer shall furnish City with a complete and reproducible set of final record drawings of the improvements, including any modifications made during construction.

6. ESTIMATED COST OF IMPROVEMENTS.

The estimated cost of constructing the Improvements required by this Agreement, as approved by the City Engineer, is agreed to be Twelve Million Dollars (\$12 million). Such amount provides for ten percent of the total construction cost for contingencies; all utility installation costs unless waived by the City Engineer; and estimated costs and reasonable expenses, including attorney's fees, which may be incurred in enforcing the obligation secured.

7. IMPROVEMENT SECURITY.

Concurrently with the execution of this Agreement, Developer shall obtain and furnish security to City in a form satisfactory to the City Attorney and as set forth below.

- A. Faithful Performance. Developer shall obtain and furnish security that shall secure the faithful performance by Developer of the Improvements, in the amount of not less than one hundred percent (100%) of the total estimated cost of the Improvements as set forth in Section 6 and sufficient to assure City that the Improvements will be satisfactorily completed.
- B. Labor and Materials. Developer shall obtain and furnish security that shall secure the payment for labor and materials in the construction and installation of the Improvements, in the amount of not less than one hundred percent (100%) of the total estimated cost of the Improvements as set forth in Section 6 and sufficient to assure City that Developer's contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefor.
- C. Form of Security. For both the Faithful Performance and the Labor and Materials security, the form of the security shall be one of the following or a combination of the following, in compliance with Santa Clara City Code Section 17.05.660 and subject to the approval of City:
 - 1. A bond or bonds in favor of the City by one or more corporate sureties duly and legally licensed to conduct a general surety business in the State of California. The provisions of the bond or bonds shall be in accordance with Government Code Sections 66499.1 and 66499.2.
 - 2. An instrument of credit or certificate of deposit from one or more financial institutions subject to regulation by the State or Federal Governments with an office located in the nine Bay Area counties and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment.
 - 3. A deposit, either with the City or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for securing deposits of public money.

8. WORK PERFORMANCE AND GUARANTEE.

- A. One Year Guarantee. Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Developer guarantees all work on the construction and installation of the Improvements executed by Developer and/or Developer's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one (1) year after acceptance of the entire work by City. Developer shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within such one-year guarantee period without expense or charge of any nature whatsoever to City. Developer further covenants and agrees that when defects in workmanship and materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period for the defected items shall automatically be extended for an additional year from the date of the completion of the repair to ensure that such defects have actually been corrected.
- B. City's Right to Repair. In the event Developer fails to comply with the conditions of the foregoing guarantee within thirty (30) days after being notified of a defect in writing, City shall have the right, but not the obligation, to repair or obtain the repair of the defect, and Developer shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition that constitutes an immediate hazard to the public health, safety, or welfare, City shall have the right to immediately repair, or cause to be repaired, such defect, and Developer shall pay to City all costs and expense of such repair. The foregoing statement related to hazards to health and safety shall be deemed to include either temporary or permanent repairs that may be required as determined in the sole discretion and judgment of City.

9. INSPECTION OF THE IMPROVEMENTS.

Developer shall guarantee free access to City through its City Engineer and designated representatives for the safe and convenient inspection of the Improvements through their construction. Such City representatives shall have the authority to reject all materials and workmanship that are not in accordance with the Development Plans, and all such materials and/or work shall be removed promptly by Developer and replaced to the satisfaction of City, without any expense to City, in strict accordance with the Development Plans.

10. ABANDONMENT OF WORK.

- A. Notice of Default. If Developer fails to commence or complete the installation of the Improvements, or any severable part thereof, within the time required as set

forth in Section 5 above, or if Developer should be adjudged as bankrupt, or should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed, or if Developer or any of Developer's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the City through its City Engineer may serve written notice on Developer and Developer's surety or holder of other security of breach of this Agreement, or of any portion thereof, and the default of Developer.

- B. Surety Obligations. In the event of any such notice of breach of this Agreement, Developer's surety shall have the duty to take over and complete the Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the Agreement, and does not commence performance thereof within thirty (30) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer. Developer's surety shall be liable to City for any damages and/or reasonable and documented excess costs occasioned by City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant, and other property belonging to Developer as may be on the site of the work and necessary therefor.

11. USE OF STREETS OR IMPROVEMENTS.

At all times prior to final acceptance of the work by City, the use of any or all streets and Improvements within the work to be performed under this Agreement shall be at the sole and exclusive risk of Developer. The issuance of any building or occupancy permit by City for buildings located within the tract shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such Improvements by City.

12. SAFETY DEVICES.

Developer shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the tract site as may be necessary to prevent accidents to the public and damage to the property. Developer shall furnish, place, and maintain such lights as may be necessary for illuminating such fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety devices (except such safety items as may be shown on the Development Plans and included in the items of work) shall be removed from the site of the work by the Developer, and the entire site left clean and orderly.

13. ACCEPTANCE OF WORK.

Upon notice of the completion of the Improvements and the delivery of a set of final as-built plans to City by Developer, City, through its City Engineer or designated representative, shall examine the Improvements without delay, and, if found to be in accordance with the Development Plans and this Agreement, and upon submittal of a warranty bond in the amount of ten percent (10%) of the estimated cost of the Improvements in accordance with City Code Section 17.05.660(e), shall recommend acceptance of the work to the City Council, and, upon such acceptance, shall notify Developer of such acceptance.

City shall release any and all security provided by Developer in the manner described in Government Code Section 66499.7.

14. PATENT AND COPYRIGHT COSTS.

In the event that the Development Plans require the use of any material, process or publication that is subject to a duly registered patent or copyright, Developer shall be liable for, and shall indemnify City from any fees, costs or litigation expenses, including attorneys' fees and court costs, which may result from the use of such patented or copyrighted material, process, or publication.

15. ALTERATION IN DEVELOPMENT PLANS.

Any alteration or alterations made to the Development Plans or to any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to such bonds waive the provisions of Section 2819 of the California Civil Code.

16. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit B, Developer shall purchase and maintain in full force and effect, at no cost to City, insurance policies with respect to employees, agents, subcontractors and vehicles assigned to the installation and construction of Improvements under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit B.

17. LIABILITY AND INDEMNIFICATION.

Developer hereby warrants that the design and construction of the Improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. Developer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from the negligent, reckless or

wrongful acts, errors, or omissions of Developer, its employees, agents, or independent contractors with respect to or in any way connected with Developer's actions and obligations hereunder; provided as follows:

- A. That City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold harmless provisions, because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in Section 16 hereof.
- B. That the aforesaid hold harmless provisions shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Section, regardless of whether or not City has prepared, supplied, or approved of plans and/or specifications for the subdivision, and regardless of whether or not the insurance policies referred to in Section 16 shall have been determined to be applicable to any of such damages or claims for damages.
- C. Design Defect. If, in the opinion of the City, a design defect in the Improvements becomes apparent during the course of construction, or within one (1) year following acceptance by the City of the Improvements, and such design defect, in the opinion of the City, may substantially impair the public health and safety, Developer shall, upon order by the City, correct such design defect at its sole cost and expense, and the sureties under the Faithful Performance and Labor and Materials Bonds shall be liable to the City for the corrective work required.
- D. Litigation Expenses. In the event that legal action is instituted by either Party to this Agreement, and such action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorney's fees and court costs. If City is the prevailing party, City shall also be entitled to recover its attorney's fees and costs in any action against Developer's surety on the security provided under Section 7.

18. DEVELOPER IS NOT AN AGENT OR EMPLOYEE.

Developer and all person(s) employed by or contracted with Developer to furnish labor and/or materials under this Agreement do not act as agent(s) or employee(s) of City. Developer has full rights, however, to manage its employees in their performance of Services under this Agreement. Developer is not authorized to bind City to any contracts or other obligations.

19. MANNER OF PERFORMANCE OF SERVICES.

Developer shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Developer shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Developer is for the acts and omissions of persons

directly employed by it. Developer will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

20. NO ASSIGNMENT OR SUBCONTRACTING OF AGREEMENT.

City and Developer bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Developer shall not hire subcontractors without express written permission from City.

21. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

22. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Developer have the authority or power to pledge the credit of City or incur any obligation in the name of City. Developer shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Developer under this Agreement.

23. USE OF CITY NAME OR EMBLEM.

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

24. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

25. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Developer. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

26. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

27. WAIVER.

Developer agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

28. NOTICES.

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

City of Santa Clara
Attention: Jennifer Sparacino, Executive Director
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 241-6771

Notices to Developer shall be addressed as follows:

Name: Santa Clara Stadium Authority
Address: 1500 Warburton Avenue
Santa Clara, CA 95050
Attention: Jennifer Sparacino, Executive Director
or by facsimile at (408) 241-6771

with copies to:

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

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

29. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

30. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in

the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

31. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Developer and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, through mediation only. In the event of litigation, the prevailing party shall recover its reasonable costs of suit, expert's fees and attorney's fees.

32. CONFLICT OF INTERESTS.

This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Developer certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Developer will advise City if a conflict arises.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

[Signatures follow on next page]

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

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

“CITY”

SANTA CLARA STADIUM AUTHORITY

a joint exercise of powers entity, created through Government Code sections 6500 *et seq.*

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Stadium Authority Counsel

ATTEST:

ROD DIRIDON, JR.
Secretary

JENNIFER SPARACINO
Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“STADIUM AUTHORITY”

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**SUBDIVISION IMPROVEMENT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
SANTA CLARA STADIUM AUTHORITY**

EXHIBIT A

IMPROVEMENTS

Unless separately defined in this Exhibit A, all initially capitalized terms are as defined in the Agreement. The following comprise the Improvements subject to the Agreement:

1. Relocation of all existing public facilities, excluding any investor-owned utilities, that is necessary pursuant to the Development Plans; provided, however, that relocation of 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 shall not be deemed an Improvement subject to the Agreement.
2. Design and installation of reconfigured driveways on Tasman Boulevard in front of the stadium depicted in the Development Plans, which shall be one-way (right turn in on western most and right turn out on eastern most), to the satisfaction of the City's Director of Public Works.
3. Design and installation of sidewalk completely around the new southern end of Centennial Boulevard south of Tasman Drive, to the satisfaction of the Director of Public Works.
4. Any relocation or rearrangement of existing electric and fiber optic facilities, including, but not limited to, underground conduits, manholes, splice boxes, cables, poles, conductors, anchors, down guys, fences, gates, equipment, and associated facilities, that is necessary pursuant to the Development Plans; provided, however, that relocation of 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 shall not be deemed an Improvement subject to the Agreement. Any such relocation or rearrangement shall meet the satisfaction of the City's Director of Electric Utility (or designated representative).
5. Design and installation of independent water and sewer services pursuant to the Development Plans, which shall not be connected to service lines from adjacent properties, unless approved by the City Building Official. The water and sewer systems shall be designed to the satisfaction of the City's Director of Water and Sewer Utilities.