

Meeting Date: 3/15/12

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 3A-2/3A-2
SA



Date: March 12, 2012

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

From: Assistant City Manager/Assistant Executive Director

Subject: Adoption of a Resolution to Approve a Non-Relocation Agreement with Forty Niners Football Company LLC

EXECUTIVE SUMMARY:

Measure J, passed by the voters in June 2010, authorized the City to move forward with the development of the Stadium subject to certain binding requirements to safeguard the City's general fund and enterprise funds. In conformance with Measure J, the Stadium Authority approved a Disposition and Development Agreement ("DDA") with Forty Niners Stadium, LLC in December, 2011 and the City approved a Ground Lease with the Stadium Authority leasing the Stadium Site to the Stadium Authority. One of the conditions to close of the financing on the Stadium and execution of the Ground Lease is that the Forty Niners Football Company, LLC ("Team") enter into a Non-Relocation Agreement with the Stadium Authority. Under the terms of the Non-Relocation Agreement, the Team is agreeing to play its home games at the Stadium for 40 years. The Team would be excused from playing home games at the Stadium in the event that the conditions at the Stadium were determined to be untenable. Untenable conditions would include situations where 20% or more of the seats at the Stadium were unusable, or 20% or more of the public parking spaces were unusable. In the event that the Team breaches the terms of the Non-Relocation Agreement, the Stadium Authority can specifically enforce the Agreement, obtaining a court order requiring the Team to continue to play home games at the Stadium. If the Stadium Authority is unable to specifically enforce the Non-Relocation Agreement, the Stadium Authority would be entitled to recover liquidated damages in an amount necessary to pay off the debt incurred by the Stadium Authority in developing the Stadium.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

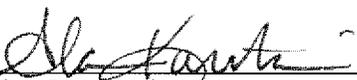
The Non-Relocation Agreement provides the Stadium Authority with protection from the Team choosing to relocate elsewhere and ensures that the City receives the economic benefits of an NFL team playing its home games in the Stadium for the duration of the Stadium Lease. The Non-Relocation Agreement does allow the Team to play home games elsewhere in the event the Stadium is considered to be in an untenable condition. Untenable conditions would include situations where part of the Stadium is unusable or where a portion of the public parking spaces are no longer available.

ECONOMIC/FISCAL IMPACT:

The Non-Relocation Agreement protects the Stadium Authority's investment in the Stadium by providing assurances that the Team will continue to play home games at the Stadium. Home games are projected to have positive fiscal impact on the City and surrounding businesses.

RECOMMENDATION:

That the Stadium Authority adopt a Non-Relocation Agreement with Forty Niners Football Company LLC, authorizing the execution of the Non-Relocation Agreement by the Santa Clara Stadium Authority, and making certain findings related thereto.



Alan Kurotori
Assistant City Manager/Assistant Executive Director

APPROVED:



Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:

- 1) *Resolution*
- 2) *Non-Relocation Agreement*

RESOLUTION NO. ___ (STADIUM AUTHORITY)

A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY APPROVING A NON-RELOCATION AGREEMENT WITH FORTY NINERS FOOTBALL COMPANY LLC, AUTHORIZING THE EXECUTION OF THE NON-RELOCATION AGREEMENT BY THE SANTA CLARA STADIUM AUTHORITY, AND MAKING CERTAIN FINDINGS RELATED THERETO

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

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

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

WHEREAS, the Authority previously entered into a Disposition and Development Agreement ("DDA") with Forty Niners Stadium, LLC, which DDA Forty Niners Stadium, LLC intends to assign to Forty Niners SC Stadium Company LLC ("StadCo") providing for the Authority to sublease the Stadium Site to StadCo pursuant to the terms of the Stadium Lease and providing for the development and financing of the Stadium Project;

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

WHEREAS, under the DDA, StadCo is obligated to satisfy certain conditions to induce the Authority to execute the Stadium Lease, including, but not limited to, obtaining a Non-Relocation

Agreement from the Team providing the Stadium Authority with certain rights and remedies in the event the Team attempts to relocate from the Stadium;

WHEREAS, the Authority desires to approve the Non-Relocation Agreement, and authorize the execution of the Non-Relocation Agreement in accordance with the requirements of the DDA; and

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

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

WHEREAS, the Staff Report 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 Authority hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.
2. The 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 Non-Relocation Agreement. The 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 Non-Relocation 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 approval of the Stadium Lease and related documents as set forth in this Resolution and the Non-Relocation Agreement.

3. The Authority hereby approves the Non-Relocation Agreement, and authorizes the Executive Director to enter into and execute the Non-Relocation 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 such agreement by the Authority signatory. The Executive Director is authorized to implement the Non-Relocation Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Non-Relocation Agreement.

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

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

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

7. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The 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.

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

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A SPECIAL MEETING THEREOF HELD ON THE ___ DAY OF _____, 2012, 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: none

NON-RELOCATION AGREEMENT (Stadium Authority)

THIS NON-RELOCATION AGREEMENT is entered into as of March __, 2012, by and between the **SANTA CLARA STADIUM AUTHORITY**, a joint exercise of powers entity, created through Government Code Section 6500 *et seq.* (the "Stadium Authority"), and **FORTY NINERS FOOTBALL COMPANY LLC**, a Delaware limited liability company ("Team").

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 exercise of powers entity, created through Government Code Section 6500 *et seq.*, formed by the City, its Redevelopment 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 Stadium Authority and Forty Niners Stadium, LLC, an Affiliate of Team, entered into a certain Disposition and Development Agreement (the "DDA") dated December 13, 2011. Forty Niners Stadium, LLC subsequently assigned its interest in the DDA to Forty Niners SC Stadium Company, LLC ("StadCo"), also an Affiliate of Team. Pursuant to the DDA, the Stadium Authority and StadCo made certain commitments with respect to the development of the Stadium.

D. The Stadium Authority and the City have entered into a certain Ground Lease executed simultaneously with the execution of this Agreement (the "Ground Lease") providing for the lease by the City of certain property for the development of the Stadium on the terms and conditions set forth therein.

E. The Stadium Authority and StadCo have entered into a certain Stadium Lease Agreement executed simultaneously with the execution of this Agreement (the "Stadium Lease") providing for the lease by StadCo of the Stadium on the terms and conditions set forth therein.

F. StadCo and Team have entered into a certain Sublease Agreement executed simultaneously with the execution of this Agreement (the "Team Sublease") with an initial term coincident with the term of the Stadium Lease, permitting Team to utilize the Stadium for the exhibition of Team's Home Games (as hereinafter defined).

G. As a material inducement for the Stadium Authority to enter into the Stadium Lease, Team has agreed to enter into this Agreement to assure that Team will play substantially all its Home Games at the Stadium on the terms and conditions set forth herein.

H. The Stadium Authority has committed to invest a substantial amount of funds for the development of the Stadium and the Stadium Authority has a significant interest in assuring that Team play substantially all of its Home Games at the Stadium.

I. The construction of the Stadium will further the City's goal 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.

J. Pursuant to CEQA, the Stadium Authority has reviewed that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, previously certified by the City 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, in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Stadium Authority and Team agree as follows:

ARTICLE 1.

DEFINITION

Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Team Sublease. The following terms as used herein shall have the following meanings:

"**Affiliate**" means any Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with a Party.

"**Agreement**" means this Non-Relocation Agreement, as amended from time to time.

"**Business Days**" means Monday through Friday, inclusive, other than (i) holidays recognized by the City or the federal government and (ii) days on which the City or federal government is closed for business. If any item must be accomplished or delivered under this Agreement on a day that is not a Business Day, then it shall be deemed to have been timely accomplished or delivered if accomplished or delivered on the next following Business Day. Any time period that ends on other than a Business Day shall be deemed to have been extended to the next Business Day.

"**Casualty**" is defined in the Stadium Lease.

"**Casualty Repair Work**" is defined in the Stadium Lease.

"**Casualty Untenantability Period**" means the period, if any, commencing on the date that that a Stadium Untenantable Condition exists due to a Casualty and ending on the date that the Stadium

Premises can reasonably be used by Team for the playing of Home Game(s) following completion of the Casualty Repair Work.

"City" is defined in Recital A.

"Condemnation Action" is defined in the Stadium Lease.

"Construction/Takeout Loan" means (i) that certain Authority Loan from FinanceCo as described in that certain Credit Agreement dated March __, 2012 among the Authority, Stadium Funding Trust and Goldman Sachs Bank USA, as administrative agent thereunder, or (ii) any financing by the Stadium Authority solely to extend, renew, replace, refund or refinance the Authority Loan, which financing is approved by StadCo pursuant to the Stadium Lease.

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

"Covered Pledge" means a pledge, lien, security interest, hypothecation or similar conditional assignment of Team's right, title, or interest in and to the Franchise.

"Effective Date" means the date of this Non-Relocation Agreement.

"Expiration Date" means the date forty (40) years following the Sublease Commencement Date; provided, however, that if (i) Team exercises any option provided under the Team Sublease to extend the term of the Team Sublease, and (ii) StadCo exercises any option provided under the Stadium Lease to extend the term of the Stadium Lease to a date on or after the expiration of the term of the Team Sublease as so extended, the Expiration Date shall be automatically, without further action by the Team, extended to the date of the expiration of the Team Sublease.

"Force Majeure" means an occurrence, including any of the following, for the period of time, if any, that the Team's performance of the Non-Relocation Covenants is actually, materially and reasonably delayed or prevented thereby: acts of God; acts of the public enemy; the confiscation or seizure by any Governmental Authority; insurrections; wars or war-like action (whether actual and pending or expected); arrests or other restraints of government (civil or military); blockades; embargoes; strikes, labor unrest, labor disputes or unavailability of labor or materials; strikes, lock-outs or other work stoppages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; wash-outs; explosions; any delays occasioned by arbitration actions and proceedings; civil disturbance or disobedience; riot; sabotage; terrorism, threats of sabotage or terrorism; or any other cause, whether of the kind herein enumerated or otherwise, that is not within the reasonable control of the Party claiming the right to excuse performance on account of such occurrence and which, in any event, is not a result of the negligence or willful misconduct of the Party claiming the right to excuse performance on account of such occurrence.

Notwithstanding the foregoing, "Force Majeure" shall not include economic hardship or inability to pay debts or other monetary obligations in a timely manner.

"**Franchise**" means the right granted by the NFL to Team allowing Team to be a member of the NFL and to play NFL Games.

"**Ground Lease**" means the Ground Lease, dated as of March __, 2012, by and between the City and Stadium Authority, as amended from time to time.

"**Governmental Authority**" means any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof).

"**Home Game**" means a pre-season, regular season or playoff NFL game, excluding the Super Bowl, in which Team is designated by the NFL as the home team.

"**Landlord Failure**" means the Stadium Authority's failure to perform any obligation required to be performed by the Stadium Authority under the Stadium Lease or under any of the other Project Agreements.

"**ManagementCo**" is defined in the Stadium Lease.

"**Management Company Revolving Loan**" is defined in the Stadium Lease.

"**NFL**" means the National Football League, a not-for-profit association, and any successor thereto.

"**NFL Game**" means an NFL football game.

"**NFL Rules And Regulations**" means the Constitution and Bylaws of the NFL, the Articles of Association and Bylaws of the NFL Management Council, any amendments to any such document, any interpretations of any such document issued from time to time by the NFL Commissioner, and all other applicable rules, resolutions or policies as the NFL, the NFL Management Council, or the NFL Commissioner may issue from time to time.

"**NFL Season**" means the schedule of pre-season games, regular season games and playoff games announced by the NFL each year commencing on the date of any NFL team's first scheduled preseason football game and ending with the Super Bowl.

"**Non-Relocation Covenants**" means the collective covenants made by Team under Article 2.

"**Non-Relocation Default**" means Team's breach of any of the terms, covenants or agreements of Article 2 of this Agreement.

"**Non-Relocation Term**" means the period beginning on the Sublease Commencement Date and continuing until the termination of this Agreement pursuant to Section 3.2 of this Agreement.

"Other Default" means (i) any failure of the Team to observe or perform in any respect any of the terms, covenants or agreements of this Agreement, other than the terms, covenants or agreements of Article 2 of this Agreement, or (ii) any representation or warranty made by the Team in this Agreement shall have been false or inaccurate in any material respect when made, which failure or misrepresentation shall continue for a period of thirty (30) days after notice thereof to the Team in writing of its purported failure or misrepresentation, or, if the failure or misrepresentation is not reasonably susceptible of cure within such thirty (30)-day period, the Team fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion).

"Parties" or **"Party"** means the Stadium Authority and Team, as the context in this Agreement may require.

"Permitted Transfer" means any Transfer of Team's right, title, or interest in and to the Franchise that is permitted under the provisions of Section 4.1 of this Agreement.

"Public Parking Spaces" means the parking spaces located in the "NFL Game Public Parking Areas" as defined in the Stadium Lease.

"Project Agreements" means those certain agreements identified on Exhibit A hereto.

"StadCo" is defined in Recital C.

"Stadium" is defined in Recital A.

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

"Stadium Lease" means the Stadium Lease Agreement, dated as of March __, 2012, by and between the Stadium Authority and StadCo, as amended from time to time.

"Stadium Untenantable Condition" means the existence of any one of the following conditions, including as a result of Condemnation Action, Casualty, Force Majeure or Landlord Failure, but only to the extent the same is not the result of the willful misconduct of Team or any Affiliate of Team:

(a) The condition of the Stadium is such that the playing of NFL Games is not permitted under NFL Rules and Regulations;

(b) The condition of the Stadium does not reasonably permit it to be used, occupied or exploited by the Team in connection with Home Games in the manner that stadiums are customarily used, occupied or exploited by NFL teams;

(c) The use or occupancy of the Stadium for a Home Game is not permitted under Applicable Laws or is restricted in any material respect under Applicable Laws or otherwise, including, but not limited to, denial of access;

(d) The use or occupancy of twenty (20%) or more of the total manifested seats within the Stadium is restricted or such seats are unusable or are subject to a material restriction on access; or

(e) The use or occupancy of twenty percent (20%) or more of the Public Parking Spaces is restricted or such Public Parking Spaces are unusable or are subject to a material restriction on access.

"**Sublease Commencement Date**" has the meaning set forth in the Team Sublease.

"**Subordinated Loan**" has the meaning set forth in the Stadium Lease.

"**Team**" means Forty Niners Football Company LLC, a Delaware limited liability company, or its successor pursuant to Section 4.1 of this Agreement.

"**Team Sublease**" means the Sublease Agreement, dated as of March __, 2012, by and between Team and StadCo, as amended from time to time.

"**Transfer**" means any sale, transfer, assignment or other disposition of Team's right, title, or interest in and to the Franchise; *provided that* in the absence of a specific intent to use a Covered Pledge to effect a relocation of the Franchise, the making of a Covered Pledge is not deemed to be a transfer.

ARTICLE 2.

NON-RELOCATION

2.1 Obligation to Maintain Franchise

Beginning on the Effective Date and continuing until the Expiration Date or earlier termination of this Agreement, Team covenants to the Stadium Authority that it shall maintain the Franchise as a validly existing NFL franchise.

2.2 Covenant to Play

(a) During the Non-Relocation Term, subject only to the exceptions described in this Section 2.2, Team covenants to the Stadium Authority (i) to play at the Stadium during each NFL Season, except to the extent prescribed by the NFL, all of Team's Home Games other than pre-season Home Games; and (ii) to play at the Stadium during each NFL Season, except to the extent prescribed by the NFL, at least one of Team's pre-season Home Games, so long as there are at least two (2) pre-season Home Games played by Team in that NFL Season.

(b) Notwithstanding subsection (a) of this Section 2.2 above, Team shall be permitted to play, and to enter into arrangements to permit it to play, what would otherwise be a Home Game at a location other than the Stadium (i) if Team reasonably determines that a Stadium Untenantable Condition exists or is expected to exist at the time of any scheduled Home Game, (ii) due to Force Majeure, or (iii) during any Casualty Untenantability Period and, if such

Casualty Untenantability Period ends, or if Team reasonably determines that such Casualty Untenantability Period is expected to end, during an NFL season or within ninety (90) days prior to the beginning of an NFL season, during the entirety of such season. Team shall give written notice to the Stadium Authority promptly following any determination by Team that it intends to play or enter into arrangements to play one or more Home Game(s) at a location other than the Stadium pursuant to this paragraph.

2.3 Non-Relocation

Team shall not enter into any contract or agreement with respect to or which would result in the move or relocation, or make application to the NFL with respect to or which would result in the move or relocation, and shall not move or otherwise relocate or attempt to move or otherwise relocate or permit the move or relocation, of Home Games to a location other than the Stadium, other than as permitted under Section 2.2, except that the prohibitions set forth in this Section 2.3 shall not apply to prospective applications or agreements if any such proposed move or relocation would not take effect during the Non-Relocation Term.

2.4 Team Sublease

Team shall not, without the consent of the Authority, which consent may be granted or withheld in the sole discretion of the Authority, (i) terminate the Team Sublease, except pursuant to Article XVII (Damage or Destruction and Condemnation), or (ii) amend the Team Sublease so as to reduce its term or otherwise materially interfere with the Team's ability to meet its obligations under Section 2.2 above.

ARTICLE 3.

TERM

3.1 Effective Date and Non-Relocation Term

The terms and provisions of this Agreement shall be effective as of the Effective Date and shall continue until the Expiration Date or earlier termination of this Agreement; provided that Team's obligations under the Non-Relocation Covenants shall be effective only during the Non-Relocation Term.

3.2 Termination

This Agreement shall terminate upon the occurrence of any of the following events: (i) written agreement of the Parties to terminate this Agreement; (ii) the Expiration Date; (iii) expiration of the Team Sublease; (iv) termination of the Team Sublease in accordance with its terms; or (v) the Stadium Authority is no longer the tenant under the Ground Lease.

ARTICLE 4.

TRANSFERS

4.1 Transfers of Franchise

Team shall not Transfer the Franchise unless: (a) the transferee assumes unconditionally in writing all then-unperformed obligations of Team under this Agreement whether accrued or due before or after the effective date of such Transfer and agrees to be bound hereby and thereby in a form reasonably approved by the Stadium Authority, which approval shall not be unreasonably withheld, delayed or conditioned; (b) such transfer is accomplished in accordance with then-applicable NFL Rules and Regulations and otherwise in compliance with all the provisions of this Agreement; and (c) such Transfer would not conflict with, or result in a breach of, the Stadium Lease.

4.2 Notice of Certain Changes

Team shall provide the Stadium Authority with not less than ten (10) days prior written notice of any submission of any application to the NFL for approval to Transfer the Franchise.

4.3 Release of Transferor

Following a Permitted Transfer, the transferor shall be relieved from all obligations arising under this Agreement after the date of such transfer.

4.4 Transfers by Stadium Authority

Except in connection with a Landlord Transfer permitted pursuant to the terms of the Stadium Lease, the Stadium Authority shall not (and the Stadium Authority agrees that it will not) voluntarily, involuntarily, by operation law or otherwise, sell, assign or otherwise transfer this Agreement or any of its rights, obligations or duties under this Agreement (a "Stadium Authority Transfer"), without first obtaining the consent of Team, which consent may be withheld, delayed or conditioned in Team's sole discretion.

ARTICLE 5.

DEFAULTS AND REMEDIES

5.1 Agreements and Acknowledgments

Team acknowledges that its obligations under the Non-Relocation Covenants are unique, are the essence of the bargain and are essential consideration for this Agreement and the other agreements being entered into by the Stadium Authority with Team's Affiliates for the development and operation of the Stadium. Team also recognizes, agrees, and stipulates that the financial, civic, and social benefits to the Stadium Authority and the City, as well as the inhabitants of the City, from the presence of Team and the playing of its Home Games at the Stadium in accordance with this Agreement are great, but that the precise value of those benefits

is difficult to quantify due to the number of citizens and businesses that will rely upon and benefit from the presence of Team at the Stadium. Accordingly, the magnitude of the damages that would result from a Non-Relocation Default would be difficult to quantify, including, without limitation, damages to reputation and finances of the Stadium Authority and some of such damages would not be compensable by money. Based on the foregoing, Team hereby agrees as follows:

(a) That the obligations are being incurred to make the Stadium available for Home Games during the Non-Relocation Term and that any Non-Relocation Default by Team shall constitute irreparable harm to the Stadium Authority for which monetary damages or other remedies at law will not be an adequate remedy, and that Team shall not assert or argue otherwise in any action or proceeding.

(b) That the specific performance of the Non-Relocation Covenants is a bargained-for expectation of the Stadium Authority and that in the event of a Non-Relocation Default, the Stadium Authority shall be entitled as a form of relief to a judicial order and judgment directing Team to specifically perform its obligations under the Non-Relocation Covenants and enjoining it from failing to perform its obligations under the Non-Relocation Covenants or acting in a manner that would constitute a Non-Relocation Default.

(c) That, in the event of a Non-Relocation Default, the Stadium Authority shall, in addition to any of the other applicable rights or remedies be entitled to seek and obtain, and Team hereby consents to the entry of, temporary, preliminary and permanent injunctive and other equitable relief restraining, enjoining and prohibiting any such Non-Relocation Default, and directing the specific performance of the terms of the Non-Relocation Covenants.

(d) That the rights of the Stadium Authority to injunctive relief as a result of a Non-Relocation Default shall not constitute a claim pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving Team, and that this Agreement is not an "executory contract" as contemplated by Section 365 of the United States Bankruptcy Code.

(e) That in any proceeding seeking relief for a Non-Relocation Default, any requirement for the Stadium Authority to post any bond or other security or collateral as a condition of any relief sought or granted is hereby waived, and neither Team nor any person or entity acting for or on behalf or in the interest of Team shall assert or argue otherwise in any action, suit or proceeding.

(f) That Team waives any right it may have to object to or to raise any defense to any actual or requested award of the remedy of specific performance in any action brought by or on behalf of the Stadium Authority in respect of a Non-Relocation Default except (a) alleged unclean hands of the plaintiff or laches in the commencement of the proceedings, and (b) the defense that there has in fact not been a Non-Relocation Default in accordance with the terms of this Agreement.

(g) That the obligations of Team under the Non-Relocation Covenants are absolute, irrevocable and unconditional, except as expressly provided herein, and shall not be released, discharged, limited or affected by any right of setoff or counterclaim that Team may have to the performance thereof. To the extent that the Stadium Authority is required to refund or disgorge (as a result of the bankruptcy of Team) any amount paid in connection with the payment of the liquidated damages hereunder, Team shall remain subject to the Non-Relocation Covenants until such amount is repaid in full.

(h) That the failure of any party to seek redress for violation of, or to insist upon the strict performance of, any provision of the Non-Relocation Covenants shall not prevent a subsequent act, which would have originally constituted a violation, from having effect of an original violation. No delay in the exercise of any remedy shall constitute a waiver of that remedy.

5.2 Stadium Authority Remedies for Non-Relocation Default

(a) Declaratory or Injunctive Relief. Upon the occurrence of a Non-Relocation Default or the threat of an imminent breach of any of the Non-Relocation Covenants, the Stadium Authority shall be entitled to seek declaratory relief or an equitable remedy, including but not limited to an injunction or specific performance, without the following: posting a bond or other security; demonstrating inadequacy of money damages as a remedy; or showing irreparable harm.

(b) Liquidated Damages. In the event of a Non-Relocation Default for which, the Stadium Authority is denied the relief in Section 5.2(a), Team shall be liable for, and the Stadium Authority shall have the right to recover from Team, liquidated damages in an amount equal to the amount, if any, of the outstanding principal, plus accrued interest, fees and expenses on the Construction/Takeout Loan on the date of payment, after giving effect to (x) any payments and the application of any cash collateral or other recoveries by or on behalf of the Stadium Authority, and (y) without duplication of the amounts described in clause (x), any payments and the application of any cash collateral or other recoveries by or on behalf of lenders providing the Construction/Takeout Loan, including on account of any non-relocation commitments made by Team to or for the benefit of such lenders; (ii) subject and subordinate to the liability set forth in clause (i) above, Team shall be liable for, and Team shall pay directly to StadCo on behalf of the Stadium Authority, unless waived by StadCo, liquidated damages in an amount equal to the amount, if any, of the outstanding principal, plus accrued interest, fees and expenses on the Subordinated Loan on the date of payment, after giving effect to any payments and the application of any cash collateral or other recoveries by or on behalf of the Stadium Authority, and (iii) subject and subordinate to the liability set forth in clauses (i) and (ii) above, Team shall be liable for, and Team shall pay directly to ManagementCo on behalf of the Stadium Authority, unless waived by ManagementCo, liquidated damages in an amount equal to the amount, if any, of the outstanding principal, plus accrued interest, fees and expenses under the ManagementCo Revolving Loan on the date of payment, after giving effect to any payments and the application of any cash collateral or other recoveries by or on behalf of the Stadium Authority. At such time as the Construction/Takeout Loan and the Subordinated Loan have been

fully discharged, the provisions of clauses (i) and (ii) of Section 5.2(b) shall be of no further force or effect.

5.3 Other Defaults

In the event of any Other Default, the Stadium Authority shall have the right to institute any and all proceedings or claims permitted by law or equity to recover any and all amounts necessary to compensate the Stadium Authority for all damages proximately caused by the Team's breach under this Agreement.

ARTICLE 6.

REPRESENTATIONS

6.1 Representations and Warranties

Team hereby represents and warrants to the Stadium Authority the following, which representations and warranties speak solely as of the Effective Date:

(a) Team is a limited company, duly formed and validly existing under the laws of the State of Delaware, with all necessary limited liability power and authority to carry on its present business, to enter into and perform this Agreement and to consummate the transactions herein contemplated.

(b) All proceedings required to be taken by or on behalf of Team to authorize Team to execute and deliver this Agreement and to perform its covenants, obligations and agreements hereunder have been duly taken. This Agreement has been duly authorized and executed by Team.

(c) This Agreement constitutes the valid and legally binding obligation of Team, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(d) No consent to the execution and delivery of this Agreement by Team is required from any partner, member, manager, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or any other person, other than any such consent which already has been given in writing or has otherwise been obtained, without any unfulfilled conditions to the effectiveness thereof and remains in effect on the Effective Date.

(e) Neither the execution and delivery of this Agreement by Team nor the performance by Team of its obligations hereunder (a) violates any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge, or other restriction of any Governmental Authority, or court to which Team is subject or any provision of the operating agreement of Team or (b) conflicts with, results in a breach of, constitutes a default under, results in the

acceleration of or creates in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest, or other agreement to which Team is a party or by which Team or its assets (including, Team) are bound, except in each case for violations, conflicts, breaches, defaults, accelerations or terminations that in good faith would not be reasonably likely to materially impair Team's ability to perform under this Agreement.

(f) Team is a member in good standing of the NFL.

6.2 Notice of Inaccuracy

If Team becomes aware that any representation or warranty made in this Article 6 shall have been false or inaccurate in any material respect when made, Team will give prompt notice thereof to the Stadium Authority.

ARTICLE 7.

MISCELLANEOUS

7.1 Entire Agreement

This Agreement, together with any Project Agreement to which Team is a party, represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, written or oral, pertaining to the subject matter of this Agreement.

7.2 Amendments

No modification or amendment of this Agreement or of any of its conditions or provisions shall be binding upon the Stadium Authority or Team unless in writing signed by the Stadium Authority and Team.

7.3 Choice of Law

This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of California, without giving effect to conflict of laws provisions.

7.4 Severability; Interpretation

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof only shall be ineffective without in any manner invalidating or

affecting the remaining provisions of this Agreement or the valid portion of such provision, which provisions are deemed severable.

7.5 No Implied Waivers

No waiver by a Party of any term, obligation, condition or provision of this Agreement shall be deemed to have been made, whether due to any course of conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver, nor shall any forbearance by either Party to seek a remedy for any breach by the other Party be a waiver by such party of any rights or remedies with respect to such or any subsequent breach. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

7.6 Successors and Assigns

Each Party binds itself and its successors and authorized assigns to the other and to the successors and authorized assigns of the other Party with respect to all covenants of this Agreement.

7.7 Interpretations

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with generally accepted accounting principles, and all financial computations hereunder shall be computed, unless otherwise specifically provided herein, in accordance with generally accepted accounting principles. The captions and headings in this Agreement are only for convenience and do not define, limit or describe the scope or intent of any of the provisions of this Agreement. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. The Parties agree that they have been represented by counsel during the negotiation, drafting, preparation and execution of this Agreement and, therefore, waive the application of any law or rule of construction providing that ambiguities in a contract or other document will be construed against the party drafting such contract or document.

7.8 Notices

All notices, demands, certificates or other communications under this Agreement shall be given in writing at the address set forth below or at such other address as such party shall designate by written notice to the other party and may be (a) sent by registered or certified U.S.

Mail with return receipt requested, (b) delivered personally (including delivery by private courier services) or (c) sent by facsimile (with confirmation of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (i) three (3) Business Days after posting if mailed as provided, (ii) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day or (iii) in the case of facsimile (with confirmation of such notice), when sent, so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Addresses for delivery of notices are as follows:

If to the Stadium Authority:

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

with a copy to:

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

If to Team:

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

with copies to:

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

and

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

7.9 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same fully executed agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

[Remainder of page intentionally blank - Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SANTA CLARA STADIUM AUTHORITY,
a joint exercise of powers entity, created through
Government Code Section 6500 *et seq.*

By: _____
Name: _____
Title: _____

**FORTY NINERS FOOTBALL COMPANY
LLC,** a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

PROJECT AGREEMENTS

1. Disposition and Development Agreement, dated December 13, 2012;
2. Intangible Property License Agreement;
3. Stadium Operations Agreement, adopted pursuant to the Stadium Lease;
4. Subordination, Non-Disturbance and Recognition Agreement (Team Sublease), among the City, StadCo, SCSA and the Team