

**EXHIBIT M**

**FORM OF CONSTRUCTION AGENCY AGREEMENT**

**CONSTRUCTION AGENCY AGREEMENT**

**BY AND BETWEEN**

**SANTA CLARA STADIUM AUTHORITY**

**AND**

**FORTY NINERS STADIUM, LLC**

**DATED AS OF \_\_\_\_\_, 2012**

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## CONSTRUCTION AGENCY AGREEMENT

THIS CONSTRUCTION AGENCY AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between the SANTA CLARA STADIUM AUTHORITY, a joint powers agency created pursuant to Section 6532 of the California Government Code (the "Stadium Authority"), and FORTY NINERS STADIUM, LLC, a Delaware limited liability company ("Stadco" or "Construction Agent").

### RECITALS

A. The Stadium Authority and Stadco have entered into that certain Stadium Lease Disposition and Development Agreement, dated as of December \_\_\_, 2011 (the "DDA").

B. The DDA contemplates that Stadco will administer and manage the construction for the Project (as defined below) as the exclusive agent for the Stadium Authority.

C. In consideration of and as an inducement the Stadium Authority entering into the DDA, Stadco has agreed to enter into this Agreement.

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

### ARTICLE I

#### DEFINED TERMS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"Affiliate" shall have the meaning set forth in the DDA.

"Agreement" means this Construction Agency Agreement.

"Approvals" means all necessary permits, licenses, consents, approvals, entitlements and other authorizations required pursuant to applicable Law in connection with the development of the Project in accordance with the Operative Documents and all of the authorizations required for obtaining a certificate of occupancy of the Project for delivery of the possession and occupancy of the Completed Project pursuant to the Stadium Lease

"Budget-Related Revisions" means any revisions to the Project Documents required to reduce Project Development Costs to conform with the corresponding Final Development Budget line items.

"Building Permit" shall have the meaning set forth in the DDA.

"Business Day" shall have the meaning set forth in the DDA.

“City” means the City of Santa Clara, a municipal corporation.

“Code-Related Revisions” means any revisions to the Project Documents required for compliance with applicable building codes, government health and safety regulations or other applicable Law, or to comply with changes or corrections required in the plan check process.

“Completed” and “Completion” shall mean the later of Substantial Completion and the final completion of all Punch List Items as evidenced by the Stadium Authority making the final payment pursuant to the Design-Build Agreement.

“Construction Agent” means Stadco, or its Affiliate approved by the Stadium Authority, acting in its capacity under this Agreement.

“Construction Agent Representative” shall have the meaning set forth in Section 6.2 hereof.

“DDA” shall have the meaning set forth in Recital A above.

“Design Architect” means Howard, Needles, Tammen, & Bergendoff California Architects, P.C., a California corporation.

“Design Professionals” means any architectural, engineering or other design professionals retained by the Stadium Authority to provide services relating to the Project.

“Design Professional Agreement” means any contract between the Stadium Authority and a Design Professional.

“Design-Build Agreement” shall have the meaning set forth in the DDA.

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

“Effective Date” is the date set forth in the first paragraph of this Agreement.

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

“Final Development Budget” shall have the meaning set forth in the DDA.

“Force Majeure” shall have the meaning set forth in the DDA.

“GMP” shall have the meaning set forth in the Design-Build Agreement.

“GMP Amendment” shall have the meaning set forth in the Design-Build Agreement.

“GMP Set” means the drawings, specifications and other documents that form the basis for the guaranteed maximum price in the Design-Build Agreement, which documents shall fix and describe all design features, including, sustainable design features, as well as the size, character, and quality of the entire Stadium as to architectural, civil and structural components

and mechanical, electrical, plumbing and fire protection systems, structural dimensions, elevations, materials and colors, landscaping, and other features reasonably required by the Stadium Authority, all of the foregoing as reasonably required to define the scope of the Design-Build Contractor's obligations under the Design-Build Agreement.

"Improvements" shall have the meaning set forth in the DDA.

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

"Operative Documents" means the following documents: the DDA, this Agreement, the Design-Build Agreement and the GMP Set.

"Party" means the Stadium Authority or Stadco, as applicable. "Parties" means both the Stadium Authority and Stadco.

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

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

"Punch List Items" means the list of items developed pursuant to Section 3.4 to be completed after Substantial Completion.

"Project" means the development of the Improvements.

"Project Documents" shall have the meaning set forth in the DDA.

"Property" means the Stadium Site, the Stadium and all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Stadium Site on or after the Effective Date.

"Schedule of Performance" shall have the meaning set forth in the DDA.

"Scope of Development" means the narrative description of the Project attached to the DDA.

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

“Stadium Authority Representative” shall have the meaning set forth in Section 5.1 hereof.

“Stadium Lease” shall have the meaning set forth in the DDA.

“Stadium Site” shall have the meaning set forth in the DDA.

“State” means the State of California.

“Substantial Completion” means when the Stadium Authority has issued a Certificate of Completion pursuant to the DDA.

“TDJV” means Turner/Devcon Joint Venture, which is a joint venture of Turner Construction Company and Devcon Construction, Incorporated.

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

“Total Development Costs” shall have the meaning set forth in the DDA.

“Transfer” shall have the meaning set forth in the DDA.

“Work” means the construction, design and other services required by the Final Construction Documents, and includes the furnishing of all material, labor, detailing, layout, equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements of the Final Construction Documents and items reasonably inferable from and consistent with the Final Construction Documents.

**1.2** Other Terms. Unless otherwise defined herein, words that have well known construction industry meanings are used in this Agreement with such recognized meanings.

## ARTICLE II

### APPOINTMENT OF CONSTRUCTION AGENT

**2.1** Appointment. Subject to the terms and conditions of this Agreement, the Stadium Authority hereby designates and appoints Construction Agent as its exclusive agent for the management and administration of the development of the Project in accordance with this Agreement and the other Operative Documents. The terms “develop”, “development” and any other similar terms with the root word “develop” used herein shall, for all purposes of this Agreement, include all related construction, removals, installation, relocation and reinstallation, equipping, furnishing, improvement, development, testing, inspecting and project management, administration, consultation and advice necessary or incident to the construction of the Project.

**2.2** Acceptance and Undertaking. Construction Agent hereby unconditionally accepts the appointment made by the Stadium Authority in Section 2.1 hereof, and undertakes, for the benefit of the Stadium Authority, to manage and administer the development of the Project in



accordance with this Agreement, as an independent contractor with and agent of and for the Stadium Authority. Construction Agent shall provide sufficient personnel to carry out the requirements of this Agreement and shall take actions with such reasonable promptness as to cause no delay in the Project.

**2.3** Standard of Care. The Construction Agent shall perform the Construction Agent's services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Final Development Budget and in the best interests of the Stadium Authority.

**2.4** Term. Construction Agent's duties under this Agreement shall commence on the Effective Date and shall terminate (except for those obligations that are stated to survive the termination of this Agreement) upon the first to occur of the following: (a) termination of the Stadium Lease in accordance with the terms thereof, (b) termination of the DDA in accordance with the terms hereof, (c) termination of this Agreement in accordance with the terms hereof, or (d) Completion of the Project. The termination of Construction Agent's authority hereunder shall not discharge Construction Agent or limit in any way Construction Agent's liability with respect to obligations arising under this Agreement or Construction Agent's performance or failure to perform any such obligation, on or prior to the date of termination of Construction Agent's authority granted under this Agreement.

**2.5** Scope of Authorizations and Duties of Construction Agent.

(a) Management and Control of Construction Property. Construction Agent shall, on behalf of the Stadium Authority, manage and administer the Project in consultation with the Stadium Authority Representative in accordance with this Agreement and the other Operative Documents. As between the Stadium Authority and Construction Agent, Construction Agent shall have management responsibility for and control over (i) the Project Site, (ii) the means, methods, sequences and procedures with respect to the development of the Project, and (iii) the security of the Project. As further provided in this Section 2.5, the Construction Agent shall consider in good faith the advice and opinions of the Stadium Authority Representative in the management of the development of the Project.

(b) Design Professionals. Construction Agent shall manage and administer all Design Professional Agreements on behalf of the Stadium Authority, shall coordinate and supervise the performance of all duties of the Design Professionals thereunder, and shall submit timely requests for the approval of all payments, if any, required under any Design Professional Agreement, in the manner set forth in the DDA and the other Operative Documents.

(c) Design-Build Agreement; Design-Build Contractor. The Design-Build Agreement shall be in substantially the form attached to the DDA. Stadium Authority shall enter into the Design-Build Agreement concurrently with the execution of this Agreement. Construction Agent and the Stadium Authority shall not permit or agree to any change in the identity of the Design-Build Contractor without the written consent of the other.

(d) Contracts Generally; Contractors. Construction Agent, on behalf of the Stadium Authority and in conjunction with the Stadium Authority Representative, shall negotiate the terms of all contracts related to and necessary for the development of the Project. Construction Agent shall recommend the execution of any such contract to the Stadium Authority in writing. All such contracts, from and after the date of this Agreement, shall be signed by and in the name of the Stadium Authority.

(e) General Duties Pertaining to Project Facilities. Construction Agent is hereby authorized to and shall, as agent of the Stadium Authority and for the benefit of the Stadium Authority, take all actions necessary or desirable for the development of the Project on behalf of the Stadium Authority and as its agent pursuant to this Agreement and in accordance with the other Operative Documents. The Construction Agent's obligations include generally, but without limitation, the obligations to:

(i) review and monitor the Final Construction Documents produced by the Design-Build Contractor;

(ii) negotiate and make recommendations to the Stadium Authority as to execution of all contracts and make arrangements to procure all labor, materials, equipment and services necessary for the development of the Project;

(iii) manage and administer the performance of the obligations (other than any obligation requiring the payment of money) of the Stadium Authority under the Design-Build Agreement and all other contracts and arrangements relating to the development of the Project;

(iv) manage the process by which the Design-Build Contractor shall award subcontracts pursuant to the Procurement Plan;

(v) obtain, on behalf of the Stadium Authority, the Approvals;

(vi) monitor Total Development Costs in relation to the Final Development Budget. Construction Agent shall maintain current records showing actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with the Final Development Budget;

(vii) review and certify the amounts due Design-Builder on the Stadium Authority's behalf, authorize for payment the costs due to the Design-Builder under the Design-Build Agreement or other Operative Documents in accordance with the terms and conditions of the DDA and the other Operative Documents;

(viii) observe the Contactor's final testing and start-up of utilities, operational systems and equipment;

(ix) maintain all books and records with respect to the development of the Project;

(x) manage and monitor the insurance and risk management program established for the Project, including coordinating with the Stadium Authority Representative all claims made and received relating to the Project;

(xi) ensure and coordinate periodic project meetings with knowledgeable supervisory representatives of the Design-Build Contractor, the Stadium Authority Representative and other key Project participants to discuss the progress of the development of the Project;

(xii) assist the Stadium Authority with the check out of utilities and of operations systems and equipment for readiness and shall assist the Stadium Authority in the initial start-up and testing of such equipment and systems;

(xiii) secure and transmit warranties and similar submittals required by the Design-Build Agreement for delivery to the Stadium Authority and deliver all keys, manuals, record drawings and maintenance stocks to the Stadium Authority; and

(xiv) perform of all other acts necessary in connection with the development of the Project on behalf of the Stadium Authority in accordance with the Operative Documents.

(f) Specific Duties Pertaining to Development of GMP. Construction Agent is hereby authorized to and shall, as agent of the Stadium Authority and for the benefit of the Stadium Authority, in consultation with the Stadium Authority Representative, take all actions necessary or desirable for the development and finalization of the GMP on behalf of the Stadium Authority and as its agent pursuant to this Agreement and in accordance with the other Operative Documents. The Construction Agent's obligations include generally, but without limitation, the obligations to do the following within the time frames provided in the Design-Build Agreement:

(i) cause Design Architect to deliver the GMP Drawings and Specifications and the Prose Statement (as such terms are defined in the Design-Build Agreement), and other documents required for Design-Builder to develop its proposed GMP,

(ii) cause the Design-Builder to prepare and deliver the proposed GMP and the GMP Qualifications and Assumptions (as defined in the Design-Build Agreement) for Construction Agent's review and approval;

(iii) following receipt of the proposed GMP and GMP Qualifications and Assumptions, meet with the Design Builder, along with the Stadium Authority Representative, Design Architect and the Design Architect's consultants, to reconcile any questions, discrepancies or disagreements relating to the GMP proposal, the GMP Qualifications and Assumptions, the GMP Drawings and Specifications or the Prose Statement, and document the reconciliation by an addendum to the GMP Qualifications and Assumptions that shall be approved in writing by Construction Agent (after consultation with the Stadium Authority Representative, and subject to the limitations in Section 3.1 below), Design Architect and Design-Builder; and

(iv) Construction Agent, on behalf of the Stadium Authority and in conjunction with the Stadium Authority Representative, shall negotiate the terms of the GMP Amendment. Construction Agent shall recommend the execution of the GMP Amendment to the Stadium Authority in writing. The GMP Amendment shall be signed by and in the name of the Stadium Authority.

2.6 Stadium Authority Representative. Construction Agent shall coordinate with the Stadium Authority Representative and keep the Stadium Authority Representative fully informed regarding the progress of the development of the Project and any material issues that arise that may impact the Project development budget or schedule for completion of the Project. Construction Agent shall inform the Stadium Authority Representative of all schedule draw request meeting and shall develop with the Stadium Authority a schedule for regular meeting to discuss the Project's progress. The Construction Agent shall consider, in good faith, the recommendations and advice of the Stadium Authority relating to the development of the Project. The Stadium Authority Representative shall have full access to the Stadium Site to inspect the Work and to review construction documents as reasonably necessary to verify that the Work is in general conformance with the Final Construction Documents.

2.7 Access to Site. The Stadium Authority shall make the Stadium Site fully available to Construction Agent for the construction of the Project and for the other purposes contemplated by the Operative Agreements.

### ARTICLE III

#### DESIGN AND CONSTRUCTION

##### 3.1 Project Document Revisions.

(a) Construction Agent shall have overall responsibility to manage and control the Project Documents; provided, however, that Construction Agent may not approve without the approval of the Stadium Authority Representative any change orders or revisions to the Project Documents that (A) materially change the size, location, or elevations of the Stadium, (B) materially change the quality or appearance of the exterior materials of the Stadium, or (C) materially alter the location or dimension of the Stadium Authority Exclusive Facilities or the Public Safety Space. If such change order or revisions does not require an amendment to the Approvals the Stadium Authority Representative shall approve or disapprove submittals under this Section 3.1 within five (5) days of receipt of the submittal from the Construction Agent. If such change order or revisions require an amendment to the Approvals the Stadium Authority Representative shall approve or disapprove submittals under this Section 3.1 within five (5) days of receipt of the submittal from the Construction Agent, subject to the revisions to one or more of the Approval. If the Stadium Authority rejects the proposed change, then the Stadium Authority shall provide the Construction Agent with the specific reasons therefor, and the previously approved Project Documents shall continue to control.

(b) Subject to restrictions imposed in any Stadium Authority Financing Documents (as defined in the DDA), and provided that there is no increase in the GMP under the Design-Build Agreement, Construction Agent shall have authority, without any further approval

of the Stadium Authority, to approve the following change orders and revisions to Project Documents on behalf of the Stadium Authority:

- (i) any and all Code Required Revisions;
- (ii) any and all Budget-Related Revisions that are: (A) consistent with the Scope of Development; (B) consistent with the Mitigation Measures and Conditions of Approval (as defined in the DDA); (C) approved by the City or applicable Regulatory Agencies if required in connection with the Building Permit or Approvals.
- (iii) any other change orders or revisions to the Project Documents that do not (A) materially change the size, location, or elevations of the Stadium, (B) materially change the quality or appearance of the exterior materials of the Stadium, or (C) materially alter the location or dimension of the Stadium Authority Exclusive Facilities or the Public Safety Space.

Prior to approving any single change order in the amount of Fifty Thousand Dollars (\$50,000) or more, the Construction Agent shall deliver to the Stadium Authority Representative a copy of such any change order. The Stadium Authority Representative shall be provided twenty four (24) hours from receipt of such change order to consult with the Construction Agent regarding the basis of the change order and the Construction Agent's rationale for approving the change order. The Construction Agent shall deliver all other change orders less than Fifty Thousand Dollars (\$50,000) and all revisions to Project Documents approved pursuant to this Section 3.1(b) within ten (10) days of such approval. Such change shall become a part of the Project Documents, binding on Stadco and the Stadium Authority.

(c) Expedited Dispute Resolution. If the Parties are unable to resolve any disagreements under this Section 3.1, then either Party may file for Expedited ADR pursuant to the following provisions:

(i) Disputes or deadlocks among the Parties as to whether any of the submittals under Section 3.1(a) or (b) meet the requirements set forth in those sections ("Expedited ADR Dispute") shall be submitted to expedited alternative dispute resolution ("Expedited ADR"). The Parties have mutually agreed to establish a panel ("Panel") of at least three (3) arbitrators qualified to resolve design and construction-related contract disputes to be available to resolve Expedited ADR Disputes. Unless the Parties mutually agree otherwise, the arbitrators will be chosen from the AAA Large and Complex Case Panel of Arbitrators except that none of the arbitrators shall have performed, directly or indirectly, a material amount of work for any Party within the five (5)-year period immediately preceding the date of their selection or intend or desire to perform work for any Party within one (1) year following the date of their selection. The Parties shall exchange proposed Panel compositions within fifteen (15) days after the Effective Date and agree on the Panel within thirty (30) days after the Effective Date.

(ii) As to each Expedited ADR Dispute, the Parties shall mutually select an arbitrator from the approved Panel to whom Expedited ADR Disputes shall be submitted for resolution under this Section and that Person is hereinafter referred to as the

"Neutral". If the Parties do not agree upon the selection of the Neutral within ten (10) Business Days after delivery of the Dispute Notice, then, at the request of either Party, the Neutral shall be selected by lot from the Panel.

(iii) The Neutral shall have the power and authority to decide Expedited ADR Disputes, but shall not have the power or authority to award any damages. There shall be no discovery permitted with respect to any Expedited ADR other than that required by the Neutral. Each of the Parties who is party to such Expedited ADR shall present its position with respect to the issues to be determined by such Expedited ADR by written submission to the Neutral and the other Party, followed at least two days later by an oral presentation to the Neutral. Each of the Parties who is party to such Expedited ADR shall be given the opportunity to hear and orally respond to the others' presentations to the Neutral, and to present documents to the Neutral in support of such Party's position. The Neutral shall have the right to limit the documents presented to the Neutral to assure a prompt resolution of the issues to be determined by the Neutral. The Parties who are party to such Expedited ADR may have their respective counsels present at such Expedited ADR, but there shall be no examination or cross-examination of witnesses other than as required or permitted by the Neutral.

(iv) The Parties shall use Expedited ADR exclusively, rather than arbitration or litigation, as the means of resolving all Expedited ADR Disputes. Expedited ADR will be scheduled so that it is completed and a written decision is rendered within fourteen (14) days from the date of selection of the Neutral. The written decision by the Neutral shall be the binding, final determination on the merits of the Expedited ADR Dispute and judgment thereon may be entered in any court having jurisdiction. Each Party shall bear its own attorneys' fees and costs relating to the Expedited ADR. The fees and costs of the Neutral shall be borne by the Stadium Authority and included in Development Cost.

(v) Each of the Parties shall (a) accept such terms and conditions as the Neutral may seek to impose in relation to the discharge of his or her functions; (b) give the Neutral such assistance, facilities and information as the Neutral requests in the discharge of his or her duties and such Party is reasonably able to provide; and (c) make all reasonable efforts to ensure that the Neutral reaches a decision as soon as practicable.

**3.2 Amendments to Design Architect Agreement and Design-Build Agreement.**  
Subject to restrictions imposed in any Stadium Authority Financing, and after consultation with the Stadium Authority Representative, Construction Agent shall have authority to approve, on behalf of the Stadium Authority, amendments and modifications to any Design Professional Agreement and Design-Build Agreement and any such amendment shall not require advance notice or approval by the Stadium Authority except as may be required by the DDA.

### **3.3 Project Schedule.**

(a) Construction Agent shall update the Schedule of Performance monthly to reflect changes to the milestone dates reflected in the construction schedule relating to the Work. Copies of the monthly updates shall be provided to the Stadium Authority Representative. Construction Agent shall provide notice to the Stadium Authority Representative of any amendments to any material milestone date contained in the Schedule of Performance.

(b) Construction Agent shall provide to the Stadium Authority the construction schedule for the Work issued by the Design-Build Contractor and all updates to such construction schedule. The construction schedule shall set forth the construction start dates and time parameters required to meet the targeted Completion Date, the date set for Substantial Completion of the Work and all other major milestone dates set forth in the Schedule of Performance. The construction schedule shall utilize the Primavera format or another format commonly used in the construction industry for large commercial construction projects.

3.4 Punch List. In consultation with the Stadium Authority Representative, Construction Agent shall cause to be prepared a list of Punch List Items to be completed by the Design-Build Contractor after Substantial Completion. Construction Agent shall provide the Stadium Authority Representative with a copy of the list of Punch List Items. Construction Agent shall use reasonable efforts to cause the Design-Build Contractor to complete the punch list items in accordance with the Design-Build Agreement.

3.5 Warranties. All Design-Build Contractor, relevant subcontractor, supplier and manufacturer warranties with respect to the Stadium shall name Stadco and the Stadium Authority as intended beneficiaries of the warranties.

3.6 Liens. Construction Agent shall use commercially reasonable efforts to cause the Stadium to be constructed in accordance with the Final Construction Documents free and clear of any stop notices and all mechanics or materialmen liens arising from the Work that encumber the Property. In the event any such lien is filed by the Design-Build Contractor, or any subcontractors or suppliers, Construction Agent shall cause said lien to be discharged or transferred to appropriate bond within thirty (30) days of recording. If Construction Agent does not discharge or transfer to appropriate bond any such lien within thirty (30) days of recording, the Stadium Authority shall have the right, but not the obligation, to cause the lien to be released by any commercially reasonable means that the Stadium Authority reasonably deems proper. Construction Agent shall have the right to contest any such lien in good faith.

## ARTICLE IV

### COMPENSATION

4.1 Budget. Construction Agent shall prepare a budget for approval by the Executive Director of the Authority, identifying projected costs associated with Construction Agent's performance of services under this Agreement (the "CA Budget"). Costs shall include salaries and benefits for employees devoted primarily to performing Construction Agent's duties hereunder, and other items identified in the final CA Budget. The CA Budget shall be updated from time to time, subject to the approval of the Executive Director.

4.2 Compensation. From and after the Close of Escrow pursuant to the DDA, the Authority will reimburse Construction Agent for its actual costs incurred consistent with the approved CA Budget pursuant to progress billings submitted on a monthly basis throughout the term of this Agreement. Construction Agent shall compile and submit to the Authority each month an invoice, together with all requisite receipts and documentation reasonably required by

the Authority, of costs actually incurred by Construction Agent in performing its services under this Agreement for the previous month.

## ARTICLE V

### INDEMNIFICATION AND INSURANCE

5.1 Indemnification. To the extent permitted by law, and subject to the indemnification obligations under the DDA, Construction Agent undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the Stadium Authority) the Stadium Authority, the City, their respective commissioners, council members, officers, employees, agents, and successors (the “Indemnified Parties”), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney’s fees and costs of litigation and litigation-related matters, damage or liability arising out of any personal or bodily injury, including death, to any person or destruction of property resulting from the negligent performance (or failure to perform) by Construction Agent of its obligations under this Agreement except to the extent caused by the negligence or willful misconduct of the Indemnified Parties. Notwithstanding the foregoing, Construction Agent shall not be liable to indemnify, hold harmless or defend any of the Indemnified Parties for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys’ fees and expenses) arising from or in connection with (a) any loss or liability due to a Force Majeure, or (b) Construction Agent’s performance of any actions in accordance with written instructions from the Stadium Authority, or actions otherwise expressly approved by the Stadium Authority if performed in compliance with such written instructions or express approval.

5.2 Insurance Requirements. Construction Agent shall purchase and maintain, and shall cause Design Architect and Design-BUILDER (as appropriate) to purchase and maintain, insurance consistent with the Insurance Program approved by the Stadium Authority pursuant to the DDA.

## ARTICLE VI

### PARTY REPRESENTATIVES

6.1 Designation of Stadium Authority and City Representatives. The Stadium Authority Executive Director hereby designates \_\_\_\_\_ (the “Stadium Authority Representative”) to act as liaison and contact person between Construction Agent, on the one hand, and the Stadium Authority Executive Director, on the other hand, in administering and implementing the terms of this Agreement and the other Operative Documents. The Stadium Authority may change the Person it has designated as its representatives so long as it notifies Construction Agent of such change within three (3) Business Days of the effective date of the change. Except as otherwise specifically provided in this Agreement or the other Operative Documents, the Stadium Authority Representative shall have the power, authority and right to:

(a) review, approve and consent, in writing, to documents, plans, applications, and requests required or allowed by Construction Agent to be submitted to the Stadium



Authority Representative or the Stadium Authority, as the case may be, pursuant to this Agreement or the other Operative Document;

(b) consent to and approve, in writing, actions, events and undertakings by Construction Agent or other Persons for which consent and/or approval is required from the Stadium Authority under this Agreement; and

(c) sign any and all documents on behalf of the Stadium Authority necessary or convenient to the foregoing approvals and consents in a timely manner.

Any consent, approval, decision, or determination under this Agreement or the other Operative Documents by the Stadium Authority Representative shall be binding on the Stadium Authority.

**6.2 Designation of Construction Agent Representative.** The Construction Agent hereby designates Jack Hill or his designee (the "Construction Agent Representative") to act as liaison and contact person between Construction Agent, on the one hand, and the Stadium Authority, on the other hand, in administering and implementing the terms of this Agreement or the other Operative Documents. Construction Agent may change the Person it has designated as its representatives so long as it notifies the Stadium Authority of such change within three (3) Business Days of the effective date of the change. Except as otherwise specifically provided in this Agreement or the other Operative Documents, Construction Agent Representative shall have the power, authority and right to:

(a) review, approve and consent to documents, plans, applications, and requests required or allowed by the Stadium Authority Representative or the Stadium Authority, to be submitted to Construction Agent pursuant to this Agreement or the other Operative Documents;

(b) consent to and approve actions, events and undertakings by the Stadium Authority Representative or the Stadium Authority, as the case may be, or other Persons for which consent and/or approval is required from Construction Agent under this Agreement; and

(c) sign any and all documents on behalf of Construction Agent necessary or convenient to the foregoing approvals and consents in a timely manner.

(d) Any consent, approval, decision, determination, waiver or amendment under this Agreement by Construction Agent Representative shall be binding on Construction Agent.

## ARTICLE VII

### DEFAULT

**7.1 Construction Agent Event of Default.** Following notice and cure as set forth in Section 6.2, each of the following events constitutes a "Construction Agent Event of Default" and a basis for the Stadium Authority to take action against Construction Agent:

(a) Construction Agent breaches any provision of this Agreement and has not cured such default within the applicable time period contained therein, subject, to the rights of any Tenant Mortgagee under the Stadium Lease..

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

(c) a Stadco Event of Default has occurred under the DDA, subject, to the rights of any Tenant Mortgagee.

(d) Stadco, or an Affiliate, defaults under the Subordinate Loan Documents and such default is not cured within the time periods set forth therein, subject, to the rights of any Tenant Mortgagee.

**7.2** Notice and Cure Procedure; Remedies. Upon the occurrence of any breach under Section 6.1(a) above, the Stadium Authority shall first notify Construction Agent in writing of its purported breach or failure, giving Construction Agent thirty (30) days from receipt of such notice to cure any other breach or failure. In the event Construction Agent does not then cure the payment default within such ten (10) day period, or such other default within such thirty (30)-day period (or, if the default is not reasonably susceptible to cure within such thirty (30)-day period, Construction Agent fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion within a reasonable time not to exceed sixty (60) days from receipt of the default notice), then the Stadium Authority shall be entitled to any rights afforded it at law or in equity by pursuing any or all of the following remedies:

(1) terminating this Agreement upon ten (10) days prior written notice to Construction Agent; provided, however, that this Agreement shall not be terminated unless the DDA and Stadium Lease are also simultaneously terminated;

(2) prosecuting an action for damages (excluding punitive damages and Consequential Damages) for a Construction Agent Event of Default; or

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

## ARTICLE VIII

### MISCELLANEOUS

**8.1** Notices. All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Agreement shall be given in writing to such Party at the address set forth below, or at such other address as such Party shall designate by written notice to the other Party to this Agreement and may be (1) sent by registered or certified U.S. Mail with return receipt requested, (2) delivered personally (including delivery by private courier services) or (3) sent by facsimile (with confirmation of such notice) to the Party entitled

thereto. Such notices shall be deemed to be duly given or made (i) three (3) Business Days after posting if mailed as provided, (ii) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day or (iii) in the case of facsimile (with confirmation of such notice), when sent, so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at any time and from time to time to specify additional parties (“Additional Addressees”) to whom notice hereunder must be given, by delivering to the other Party five (5) days notice thereof setting forth the address(es) for each such Additional Addressee:

If to the Stadium Authority: Santa Clara Stadium Authority  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: Jennifer Sparcino, Executive Director

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

If to Construction Agent: 49ers Stadium, LLC  
4949 Centennial Boulevard  
Santa Clara, CA 95054  
Attention: John Edward York, President

With a copies to: 49ers Stadium, LLC  
4949 Centennial Boulevard  
Santa Clara, CA 95054  
Attention: Larry MacNeil, CFO

and

49ers Stadium, LLC  
4949 Centennial Boulevard  
Santa Clara, CA 95054  
Attention: Jack Hill, Project Executive

and

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

Notwithstanding the foregoing, periodic and ordinary course notices, deliveries and communications between Construction Agent and the Stadium Authority Representative may be given (and shall be considered given when provided) by any of the means set forth above.

8.2 Amendment. This Agreement may not be amended or modified except in a writing signed and duly executed by the Parties.

8.3 Binding Effect. This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Stadium Authority and Construction Agent, subject to the limitations on assignment set forth in the DDA. Where each term "Stadium Authority", "Construction Agent" or "Stadco" is used in this Agreement, it means and includes the respective successors and assigns.

8.4 Waiver. Waiver by any Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement. Any waiver must be in writing and signed by all Parties whose interests are being waived.

8.5 Nonrecourse Liability of Construction Agent Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Agreement and except for their criminal acts with respect to this Agreement (i.e., acts which would constitute crimes were they prosecuted for and convicted of such acts), the officers, directors, partners, shareholders, members, employees and agents of Construction Agent (the "Construction Agent Personnel") shall not in any way be liable under or with respect to this Agreement; no deficiency or other monetary or personal judgment of any kind shall be sought or entered against any of Construction Agent Personnel with respect to liability under or with respect to this Agreement; no judgment with respect to liability under or with respect to this Agreement shall give rise to any right of execution or levy against the assets of any of Construction Agent Personnel; and the liability of Construction Agent under this Agreement shall be limited to the assets of Construction Agent and to any guarantee delivered in connection with this Agreement, strictly in accordance with the terms of any such guarantee(s).

8.6 No Indirect Damages. In no event shall any Party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from the sole or concurrent negligence or intentional acts of such Party or any of its Affiliates or related parties. Notwithstanding the foregoing, this limitation of liability shall not apply to any indemnification for third-party claims available at law or pursuant to, but subject to the limitations in, Article IV. The preceding limitation shall not be a basis for any claim or argument that a dispute should not be arbitrated. The provision shall survive the expiration or earlier termination of this Agreement.

8.7 Assignment. Neither Party shall Transfer this Agreement or any of its rights under this Agreement except in connection with a Transfer that is permitted under the terms of the DDA.

8.8 Headings. The headings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or of its provisions.

8.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable Laws, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Laws, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with applicable Laws, (b) does not alter any of the substantive rights, obligations or liabilities of any Party under this Agreement or any other Operative Document, and (c) confers upon the Parties the benefits intended to be conferred by the invalid provision; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.

8.10 Absence of Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

8.11 Governing Law. This Agreement and the interpretation of its terms shall be governed by the laws of the State, without application of conflicts of law principles.

8.12 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

8.13 Relationship of Parties. No partnership or joint venture is established among the Parties under this Agreement. Except as expressly provided in this Agreement, no Party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other Party or to have been authorized to incur any expense on behalf of any other Party or to act for or to bind any other Party. No Party shall be liable for any acts, omissions or negligence on the part of the other Parties or their employees, officials, agents, independent contractors, licensees and invitees. Construction Agent is an independent contractor of the Stadium Authority and the City.

8.14 Context. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

8.15 Incorporation by Reference. All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

**8.16** Calculation of Time. Unless otherwise stated, all references to “day” or “days” shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

**8.17** Force Majeure. If any Party shall be delayed in the performance of any obligation hereunder as a result of a Force Majeure, then the performance of such obligation shall be extended by the length of such delay. In response to and during any delay caused by a Force Majeure, the Parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure as promptly as reasonably possible and any Party seeking an excuse of performance due to such Force Majeure shall work diligently and in good faith to reduce or eliminate any damage, cost or delay caused by such Force Majeure.

**8.18** Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Parties had executed the same document. All counterparts shall be construed together and shall constitute one instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly appointed representatives as of the Effective Date.

**SANTA CLARA STADIUM AUTHORITY,** APPROVED AS TO FORM:  
a California joint powers agency

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JENNIFER SPARACINO  
Executive Director

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

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Stadium Authority General Counsel

ATTEST:

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ROD DIRIDON, JR.  
Stadium Authority Secretary

**FORTY NINERS STADIUM, LLC,**  
a Delaware limited liability company

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JOHN EDWARD YORK  
President

4949 Centennial Boulevard  
Santa Clara, CA 95054  
Phone: (408) 562-4949  
Fax: (408) 727-4937