



Date: March 14, 2012

To: Executive Director for Stadium Authority Action

From: Director of Public Works / City Engineer

Subject: Approval of a License Agreement with the Santa Clara Valley Water District for Pedestrian Bridges Near the Proposed Stadium and authorization for the Executive Director to Execute the Agreement

EXECUTIVE SUMMARY:

The proposed Stadium requires three pedestrian bridges over San Tomas Aquino Creek south of Tasman Drive to connect the Great America Theme Park's main parking lot on the west side to the Stadium on the east side of the creek. This flood control facility is under the jurisdiction of Santa Clara Valley Water District (District). The District proposes to enter into a license agreement with the Stadium Authority to allow the construction of three new pedestrian bridges over their right-of-way and to allow additional utilities proposed to be attached to an existing bridge in the same vicinity. The District retained an appraiser and concluded that the appraised value for the "highest and best use" of their property is \$81,256 per year for the next 65 years which will be the term of the agreement. This fee can be adjusted every two years based on the Consumer Price Index.

It is noted that the Stadium Authority retained Carneghi-Blum and Partners, Inc. to provide an independent appraisal for the District property. The conclusion of this report is that the District property is valued at \$14,400 and a lease/rental value should be \$720 per year.

Throughout the negotiations with the District, City staff has maintained that it is not a good practice to charge a fee to another public agency. It has also been pointed out to the District that the City granted a 45 foot strip of land on either side of the creek in 1975 for flood control purposes at no cost. Similarly, the City has provided easements or granted land for flood control improvements along other creeks at no cost to the District.

In their report to the Board, District staff included the following options for Board consideration at their March 13, 2012 meeting:

1. Execute the agreement using the appraised value of \$81,256 per year.
2. An exchange in equivalent value which would include:
 - a. Annual fee of \$10,000
 - b. Construction and maintenance of interpretive signs along the creek trail
 - c. Annual advertising for the District presented to Stadium audiences at various events
 - d. Waiver of City permit fee for District's work in the City.
3. An exchange providing long term use of City-owned property for District's maintenance and operations functions.
4. Allow use of District property for bridges at no cost to the Stadium Authority.

On March 13, 2012, the District Board approved a combination of Options 1 and 2 such that the Stadium Authority will not pay an annual fee of \$81,256 to the District, but will arrange for annual advertising of District goals at some game events in lieu of the fee as stated in items 2b and 2c above. Stadium Authority will not pay an annual fee of \$10,000 (Item 2a) or waive the permit fee for District work in the City (Item 2d).

City staff has worked with StadCo and developed specific language and frequency of District advertisements at events in and around the Stadium and is included in the License Agreement approved by the District Board.

In order to meet the financing deadlines, it is recommended that the Executive Director of the Stadium Authority be authorized to finalize the language for District advertisement with District staff and to execute the agreement for the three new pedestrian bridges and the existing bridge with the District for a 65-year term.

A draft copy of the Agreement, in substantially final form, has been approved by Stadium Authority Counsel and a copy has been placed in Council offices for review.

ADVANTAGES/DISADVANTAGES

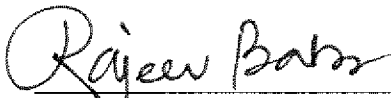
An executed agreement with the District prior to March 20, 2012, will assist with the timely financing of the Stadium project. Authorizing the Executive Director will enable the execution of the agreement prior to the following Stadium Authority meeting to meet the above deadline.

ECONOMIC/FISCAL IMPACT

The District Board has selected Options 1 and 2 putting an annual value of \$81,256 for their property. Allowing the District to advertise their goals and policies at Stadium events along with a few interpretive signs along the Creek Trail meets that direction. The advertisement in the Stadium will not cost the Stadium Authority, however, staff expects the interpretative signs to cost \$50K - \$75K for installation with minimal ongoing maintenance cost.

RECOMMENDATION:

It is recommended that the Stadium Authority authorize the Executive Director to execute the license agreement with the District and make minor modifications as necessary.



Rajeev Batra
Director of Public Works / City Engineer

APPROVED:



Jennifer Sparacino
Executive Director for Stadium Authority

Documents Related to this Report: Agreement

DRAFT

Recording Requested by:

Santa Clara Stadium Authority

When Recorded Mail To:

**Attn: Executive Director
Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050**

DOCUMENT WILL BE RETURNED TO NAME &
ADDRESS IDENTIFIED ABOVE

No fee for recording per Government Code §27383

[Space Above for Recorder's Use]

**Project: San Tomas Aquino Creek
Grantor: SCVWD
Licensee: The Santa Clara Stadium Authority
APN: 104-43-002, 053
District Real Estate File No.: 2019-45, 103, 119, 143
Encroachment/Construction Permit No.:**

REAL PROPERTY LICENSE AGREEMENT

This Real Property License Agreement ("Agreement"), is entered into as of _____, 2012 (the "Effective Date"), by and between the Santa Clara Valley Water District, a California Special District ("District"), and the Santa Clara Stadium Authority, a California joint powers authority ("Authority").

Whereas, the District was created to provide for the control and conservation of flood and storm waters and the protection of watercourses, watersheds, public highways, life and property from damage or destruction from such waters; to provide for the acquisition, retention, and reclaiming of drainage, storm, flood, and other waters and to save, conserve, and distribute such waters for beneficial use in said District;

Whereas, the District owns a portion of the San Tomas Aquino Creek more particularly described in Exhibit A, attached hereto and incorporated herein by this reference ("Property"), which it maintains in furtherance of its aforementioned flood control and water management responsibilities;

Whereas the Property is adjacent on either side to property owned by the City of Santa Clara ("City"). The property to the east of the Property (the "Stadium Site") more particularly described in Exhibit B, attached hereto and incorporated herein by this reference is planned to be leased to the Authority. The property to the west of the Property (the "Main Lot") more particularly described in Exhibit C, attached hereto and incorporated herein by this reference, is currently a parking lot used for patrons of the Great America Theme Park, and is intended to be used by the Authority and its tenants for parking;

Whereas, the City owns an existing bridge constructed on, over and across the Property (the "Existing Bridge") pursuant to a revocable Construction/Encroachment Permit from the District, dated March 22, 1991, Permit No. 91206;

Whereas, the Authority is a joint powers authority, formed by the City, its Redevelopment Agency and the Bayshore North Project Enhancement Authority, to build, own and operate on the Stadium Site an approximately 68,500 seat (expandable to 75,000 for special events) stadium, including related landscaping, infrastructure improvements and public facilities for the exhibition of professional football and other events, which will be leased to an affiliate (herein "Tenant") of a National Football League team or teams;

Whereas, the stadium will further the goals of the City of creating an entertainment destination adjacent to the Property, and will provide significant economic benefits to the City and its residents and businesses.

Whereas, The Authority seeks to construct, operate, maintain, repair and use three bridges and related improvements, including but not limited to modifications to the Existing Bridge, fabricated and/or earthen structural support, approach paths, sidewalks and the like, on, over and across the Property generally at the locations shown on Exhibit D (the three new bridges and the Existing Bridge referred to individually and collectively herein as the "Bridges"), to provide -access to and from the Stadium Site;

Whereas, regular and consistent use of the Bridges for the aforementioned purposes is vital to the viability of the Authority's use of and ability to finance the stadium on the Stadium Site;

Whereas, the Existing Bridge will also support the installation of a bank of utility conduits across the Property and through the levees to allow for the relocation of an electric substation;

Whereas, the District wishes to grant the Authority a right of access on, over and across the Property to construct, operate, maintain, repair and use the Bridges for the term and on the conditions set forth herein;

Whereas, the Authority understands that the Property is primarily used to fulfill the District's flood control and water management responsibilities, and the District will continue to access and use the Property to perform flood control and water management-related maintenance and operational activities under the terms of this Agreement.

Now, therefore, the District and the Authority hereby agree as follows:

- 1. Scope of License.** The District hereby grants to the Authority a non-exclusive right and irrevocable license for the term set forth herein, to enter upon, travel across and use the Property for any lawful purpose related to: (a) the design and construction of the Bridges; (b) the repair, maintenance, rehabilitation or reconstruction (including but not limited to the right to reconstruct after damage or destruction by fire, earthquake, flood or other casualty) of the Bridges; and (c) the use and operation of the Bridges for any lawful purpose in connection with any and all activities on the Stadium Site, including an exclusive right to authorize and regulate their use by third parties subject to the provisions of Section 3 below concerning the District's access to the Bridges. The license and accompanying rights granted to the Authority under this Agreement shall be subordinate only to those matters listed in Exhibit F (herein the "Permitted Encumbrances").
- 2. Design and Construction of the Bridges.** The Authority shall coordinate the design and construction of the Bridges with the District so that neither the design of the Bridges nor the Authority's construction activities will materially interfere with the Property's current capacity to contain stormwater within and convey stormwater through the length of the Property, or with the District's ability to operate, maintain and repair the Property for such purposes once the Bridges have been completed. The District shall cooperate with the Authority, shall provide information reasonably requested by the Authority or its consultants, and at the Authority's request shall review and comment on plans and specifications for the construction. The Authority shall obtain a construction/encroachment permit from the District prior to commencement of construction of the Bridges, which the District shall not unreasonably withhold, condition or delay.

3. **District's Use of the Property.** Subject to the requirements of this Section 3, the District retains all rights of fee title ownership of the Property, including but not limited to the right to construct, operate, maintain, repair and reconstruct flood control improvements (collectively, "Operations") on the Property. The District further retains the right to issue further leases, licenses, easements, rights of entry, or permits for the Property so long as they do not interfere with the Authority's rights under this Agreement, including its rights to construct, maintain and use the Bridges.

A. Schedules. (1). Together with its application for a construction/encroachment permit for its work on the Property, the Authority shall submit to the District a schedule for the construction of the Bridges ("Construction Schedule"). Subject to Section 3(D) below, the District shall avoid planning activities on the Property that would disrupt or delay activities reflected on the Construction Schedule. If a disruption or delay cannot be avoided, the District shall have 14 days from the receipt of the Construction Schedule to notify the Authority, and if so notified the Authority shall prepare and submit a revised Construction Schedule reflecting the District's activity. In addition, the Authority may from time to time provide an updated Construction Schedule to the District, but to the extent any activities on the such updated Project Schedule would conflict with an activity on the Property planned by the District, the District shall notify the Authority of such conflict within seven (7) days of receiving the updated Construction Schedule and the Authority shall revise its updated Construction Schedule to avoid such conflict, provided that the District shall carry out the conflicting activity in as timely a manner as possible.

(2). Beginning with the first season of professional football to be held at the Stadium Site and annually thereafter for the term of this Agreement, the Authority agrees to obtain and provide to the District the schedule of professional football events to be held at the Stadium Site within fourteen (14) days of the NFL's release of such schedule which generally occurs in mid-April of each year, together with any other events at the Stadium Site known to or planned by the Authority at that time (the "Stadium Schedule"). When scheduling events to be held at the Stadium Site unrelated to professional football, the Authority acknowledges and agrees that the District must have sufficient time and opportunity to conduct flood control and water management-related maintenance and operational activities on the Property, and that the provisions of this Section (A)(2) and Section (A)(3) below are intended to establish a framework for coordinating the respective schedules of the parties. In scheduling its annual Operations for the Property in May of each year, the District shall, to the greatest extent feasible, avoid scheduling Operations on weekends or between the hours of 4 pm and midnight on weekdays or that would require limitation of the use of the Bridges for any events described in the Stadium Schedule. Within seven (7) days of finalizing its plan for Operations on the Property but in no case later than June 1st of each year in which the Authority provides a Stadium Schedule, the District shall provide to the Authority and the Tenant a written schedule reflecting, for the same period as the Stadium Schedule, estimated commencement and completion dates of its Operations on the Property (the "District Schedule"). The District is not required to include in the District Schedule routine activities on the Property that would not require limitation of the use of the Bridges, or activities that would necessitate limitation of use of the Bridges for less than a four-hour period on any day when no event for the Stadium Site is reflected on the Final Stadium Schedule, but District shall nonetheless provide notice to and coordinate with the Authority any such limitation of the use of the Bridges beforehand.

(3). If the Stadium Schedule and the District Schedule contain conflicting activities, i.e. activities that would require limitation of the use of the Bridges when needed to provide access to a scheduled event at the Stadium Site, the parties shall meet within seven (7) days of the District's transmittal of the District Schedule and work in good faith to resolve all conflicts to the extent possible. Once resolved, but in no case later than fourteen (14) days after meeting, the parties will exchange a revised Stadium Schedule and District Schedule, as necessary, reflecting their efforts to resolve all schedule conflicts (the "Final Stadium Schedule" and "Final District Schedule," respectively); or if the Stadium Schedule and the District Schedule contain no conflicting events, those schedules shall be deemed,

respectively, the Final District Schedule and the Final Stadium Schedule (until such Final Schedules are replaced the following year as provided above). The parties shall take into account the Final Stadium Schedule and Final District Schedule when scheduling additional activities not reflected on the applicable Final Schedule, make all reasonable efforts to avoid creating a conflict between said schedules when scheduling such additional activities, and notify the other party by providing an update to the party's Final Schedule within seven (7) days of scheduling any additional activity, and, whenever possible, no less than 14 days before the occurrence of the newly scheduled activity.

(4). To the extent Operations reflected on any Final District Schedule are not completed within the timeframe reflected on said Schedule, the District may pursue its activities to completion, provided that in doing so the District shall avoid any limitation of the use of the Bridges as needed to serve any activity reflected on the Final Stadium Schedule.

(5). If the District plans capital improvements or other activities on Property that requires advanced (i.e., multiyear) planning before commencement, the District shall, in creating a construction schedule for such improvements, not require closure of any of the Bridges on any Saturday or Sunday during the National Football League season (i.e., August through January). Upon request of the Authority, the District shall provide an update of its planning process for such improvements, which the Authority may request on not more than a quarterly basis.

- B. Use of the Property. In exercising its rights concerning the Property (including its right to construct, operate, maintain, repair and reconstruct flood control improvements on the Property), the District shall use reasonable care to prevent damage to the Bridges.
 - C. Limited Redesign or Relocation Obligation. Upon demonstrating to the Authority that the District's future flood control activities on the Property cannot be feasibly performed without redesign or relocation of one or more of the Bridges, the Authority and the District will cooperate to identify a suitable alternate Bridge design and/or location on the Property and the Authority will, at no cost to the District, carry out such redesign and/or relocation. This provision shall not be construed as providing an additional right to require the permanent removal of the Bridges in addition to that established in Section 5 herein.
 - D. Emergency Activities. For purposes of this Agreement an emergency includes but is not limited to a federal, state or District declared emergency or an imminent threat to health, safety or risk of damage to structures or property from actual or potential flooding, earthquakes or other natural or manmade disasters. Notwithstanding the foregoing restrictions on use in this Section 3, the District may, in response to an emergency (including but not limited to flooding events), restrict access to the Bridges in connection with the performance of any work necessary to prevent or respond to such emergency condition for so long as the emergency condition exists. The District will use reasonable efforts to provide as much prior notice to the Authority as is practical under the circumstances, which may be no notice if necessary, prior to undertaking such emergency activities. All such activities shall be performed as promptly as possible under the circumstances and so as to cause as little interference with the Authority's actual concurrent use of the Bridges as is reasonably practical.
4. **Term**. This Agreement and the rights and license granted hereby shall be in effect for a term commencing on the Effective Date and continuing until the date sixty-five (65) years following the Effective Date.
5. **Termination/Expiration**. Upon termination (as provided in Sections 7(C) and 14) or expiration of this Agreement, the Authority shall remove all its improvements constructed on the Property and restore the Property as closely as possible to its original condition and repair any damage caused by the Authority, its employees, agents, contractors, or invitees.

6. **Licensing Fee and Costs.** In consideration of the rights provided to the Authority under this Agreement, the Authority shall pay to the District an annual licensing fee, commencing on the Effective Date and for the duration of this Agreement, in the amount of \$_____ due and payable upon the anniversary of the Effective Date ("Annual Fee"). In lieu of the Annual Fee, the District may elect to receive a media/advertising package promoting the District, its services and programs, as described in Exhibit G (the "Advertising/Media Package"). In addition to the Annual Fee or Advertising/Media Package, the Authority shall reimburse the District for any unavoidable additional and demonstrable costs of construction, operation, maintenance, repair and reconstruction of flood control and water management facilities on the Property, including removal of sediment under the Bridges not reached by the long-reach excavator used for such work, incurred as a result of the presence of the Bridges, as a result of the Construction Schedule or as a result of the Stadium Schedule (including any amendment thereto) as required under Section 3. The Authority shall reimburse the District for such unavoidable additional and demonstrable costs as reasonably determined by the District within forty-five (45) days of demand by the District.

[District's escalation provision]

Payments shall be mailed to the District at the following address:

Santa Clara Valley Water District
Attn: Accounts Payable
P.O. Box 20130
San Jose, CA 95160-0130

7. Enforcement and Remedies.

- A. **Procedures Upon Violation.** If a party hereto (the "Complaining Party") determines there is a violation of the terms of this Agreement by the other party, written notice of such violation (the "Notice of Violation") and a demand for corrective action sufficient to cure the violation shall be given by the Complaining Party to the party allegedly violating this Agreement (the "Responding Party"), as well as to the Tenant and to any Recognized Secured Party (as defined on Exhibit E hereto). Within fourteen (14) days after delivery of a Notice of Violation, the parties, including the Tenant and, at its option, any Recognized Secured Party, shall meet at a mutually agreed-upon location to discuss the circumstances of the alleged or threatened violation and to attempt to agree on appropriate corrective action. [If the Authority and the District determine that it is appropriate and desirable, a duly qualified expert in the subject matter of the alleged violation (the "Consulting Expert") shall attend the meeting. The Authority and the District shall each pay one-half of the costs of retaining the services of the Consulting Expert for such discussion; provided, however, that if the Authority and the District are unable to agree upon a Consulting Expert, each may retain the services of an expert at its own expense. If the parties agree upon appropriate corrective action, then the Responding Party shall diligently prosecute the agreed upon corrective action to completion. If the parties are unable to agree on appropriate corrective action (if any such corrective action is required) within thirty (30) days after such meeting, then the Complaining Party may deliver a further written notice to the Responding Party to demand reasonable, particular corrective action to cure the violation (the "Second Notice"). If a violation is not cured within thirty (30) days after the delivery of the Second Notice, or if the cure reasonably requires more than thirty (30) days to complete and there is failure to begin the cure within the 30-day period or failure to continue diligently to completion of the cure, the Complaining Party, subject to the provisions of Section 7(B) below, may proceed as provided in Section 7(C) below.
- B. **Additional Corrective Action Rights.** If the Authority is alleged to be in violation of this Agreement and the Authority fails to diligently prosecute any corrective action, the Tenant, or, subject to the terms of Exhibit E hereto, any Recognized Secured Party, may take corrective action on behalf of the Authority, and the District agrees to accept such corrective action by

or at the instance of the Tenant or a Recognized Secured Party as if the same had been made by the Authority. The right to take such corrective action includes the right to make payment of any delinquent license fees or other sums payable by Authority hereunder.

- C. Remedies. If, after the expiration of the time periods set forth in Section 7(A) and (in the event of an alleged breach on the part of the Authority) Section 7(B), corrective action has not been completed, or if the cure reasonably requires more than thirty (30) days to complete and there is failure to begin the cure or to continue diligently to complete the cure, the Complaining Party (or in the event of an alleged breach on the part of the District, a Tenant or Recognized Secured Party) may (1) after satisfying all provisions of Exhibit E, terminate this Agreement; or (2) bring an action at law or in equity in a court of competent jurisdiction to enforce compliance with the terms of this Agreement or to recover any damages to which the Complaining Party may be entitled for violation of the terms of this Agreement, provided, however, that in no event shall the Responding Party be liable to the Complaining Party for, and the parties each hereby waive their right to, any indirect, special, punitive, or consequential damages resulting from the Responding Party's breach of this Agreement, whether foreseeable or unforeseeable.
- D. Costs of Enforcement. All costs incurred in enforcing the terms of this Agreement, including, but not limited to, costs of suit and reasonable attorneys' fees as set forth in Section 29, shall be borne by the breaching party to the extent that a breach of this Agreement is determined to have occurred.
- E. Waiver. Enforcement of the terms of this Agreement against a party shall be at the discretion of the Complaining Party, and any forbearance by the Complaining Party to exercise its rights under this Agreement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by the Complaining Party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such party's rights under this Agreement. No delay or omission by the Complaining Party in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A party's permission to carry out, or failure to object to, any proposed use or activity by the other party shall not constitute consent to any subsequent use or activity of the same or any different nature.
- F. Emergency Injunctive Relief. If circumstances require immediate action to prevent or mitigate a violation of this Agreement and the Complaining Party reasonably determines that irreparable harm would result if the Complaining Party were required to complete the process set forth in Section 7(A) and 7(B), above, the Complaining Party may proceed immediately to seek an injunction to stop the violation, temporarily or permanently.

8. Authority's Maintenance Obligations.

- A. Bridges. The Authority shall, at all times and at no cost to the District, be responsible for maintaining the Bridges in a safe and lawful condition, and for securing the Bridges against access by any unauthorized persons.
- B. The Authority understands that the Property is covered by a Joint Use Agreement between the District and the City of Santa Clara dated April 16, 1996 and as amended, which allows the City of Santa Clara to operate, maintain and repair a public trail on the west bank of the Property. The District acknowledges that in connection with the construction of the Bridges, the trail may be relocated in accordance with the Construction/Encroachment Permit approved for the Bridges.
- C. The Authority understands that the elevation of water on the Property may fluctuate from day to day due to uncontrolled flows onto the Property, and such fluctuations may require the Authority to suspend use of a Bridge or the Bridges. The Authority shall exercise reasonable diligence and be responsible for ascertaining the water elevations and determining and

implementing controls to ensure the health and safety of those maintaining, using or accessing the Bridges.

D. **Ordinary Maintenance.** The Authority shall be responsible for performing certain maintenance on the Property, consisting of cleaning, litter and graffiti removal, and repair of any damage to the Property, resulting from or reasonably attributable to use by Authority, its invitees and sublessees. Any modifications to the Bridges, including structural repairs or modifications, installation of utility crossings or activities defined by the District's Water Resource Protection Ordinance, are subject to District approval as evidenced by the issuance of a District permit.

9. **Release.** The Authority waives and releases the District from any and all liability to the Authority, its employees, agents or contractors for any loss, damage, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which may arise out of use by the Authority, its employees, agents, contractors, or invitees of the Property, excepting such loss or damage that is caused by or arises out of the gross negligence or willful misconduct of the District, its agents, officers or employees.

10. **Indemnification.** The Authority agrees to indemnify and fully defend and hold harmless the District, its officers, agents, employees and assigns from all claims of suits of any kind, brought by any person and/or entity claiming personal injury or property damage, resulting from the construction, operation, maintenance or use of the Bridges or arising out of or in connection with other activities on the Property by the Authority or anyone directly or indirectly employed or in contract with the Authority, except to the extent any such personal injury or property damage is due to the gross negligence or intentional misconduct of the District, its officers, agents, employees, or assigns. The indemnity and other rights afforded to the District by this Section 10 survive the termination or expiration of this Agreement.

11. **Insurance.**

A. The Authority shall, at no cost to the District, maintain, during the full term of this Agreement, a policy or policies of commercial general liability insurance providing coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence for public liability and property damage, naming District, its directors, officers, agents, and employees as additional insureds. The District may from time to time over the term of this Agreement reasonably increase the coverage limits upon notice to the Authority. Said insurance must provide protection against claims for injury to persons, or damage to property, or both, including accidental death, resulting from the Authority's construction, operation, maintenance or use of the Bridges under this Agreement. The Authority must furnish to District a certificate of insurance evidencing such coverage and naming the District, its directors, officers, agents, and employees as additional insureds. Said insurance shall be primary insurance and contain an endorsement stating that no insurance maintained by any additional insured will be called upon to contribute to a loss. The certificate of insurance shall provide that the foregoing policy of insurance may not be canceled or modified so as to reduce coverage without 30 calendar days' (10 days' in the event of nonpayment of premium) prior written notice to the District.

B. The Authority acknowledges that the District may choose to not insure the Property against fire, flood, or any other insurable risk other than public liability, and the Authority waives any claim against District for damages resulting from such risks.

12. **Notice.** Any and all notices required to be given hereunder shall be sent by United States Certified Mail, postage prepaid, or by personal delivery, which may be by messenger service, or commercial courier with charges prepaid for next business day delivery, addressed to the parties at the addresses hereinafter specified:

To the Authority:

Santa Clara Stadium Authority
1500 Warburton Avenue
Santa Clara, CA 95050
Phone: (408) 615-2200
Fax: (408) 241-6771
Attn: Executive Director

To District:

Clerk of the Board
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Phone: (408)265-2600
Fax: (408) 266-0271
Cc: Real Estate Services Unit
Community Projects Review Unit

Each notice shall be deemed received upon the earlier of receipt or three (3) days after the date of deposit with the United States Postal Service if sent by certified mail as provided above, or one (1) business day after deposit with the overnight courier specifying "next business day" delivery, or upon the date of personal delivery is made; provided, however, that any refusal to accept delivery shall be deemed to constitute receipt.

- 13. Emergency Contacts.** No later than January 5 of each year this Agreement is in effect, the Authority and the District shall provide each other with the name, address, telephone number, cell phone number, and email address of a person to contact in the event of an unforeseeable emergency involving the Property or the Bridges.
- 14. Condemnation.** If, at any time during the term of this Agreement, there is any Condemnation of all or any part of the Property, the Bridges, or property adjacent to the Bridges that substantially and materially eliminates access to the Bridges where no alternative access can be constructed or made available, the rights and obligations of the parties shall be determined pursuant to this Section 14. For purposes of this Section, "Condemnation" means the taking of all or any part of any property, or the right of possession thereof, for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of eminent domain, condemnation.
- A. Notice. In case of the commencement of any proceedings or negotiations that might result in the Condemnation of all or any portion of the Property, the Bridges or property adjacent to the Bridges that substantially and materially eliminates access to the Bridges where no alternative access can be constructed or made available, the party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other party and to each Recognized Secured Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such proceedings or negotiations and of the Condemnation that might result therefrom, as the case may be. Each Recognized Secured Party shall have the right to participate in any proceedings or negotiations that might result in any such condemnation of any of the Bridges.
- B. Award. As used in this Section 14, "Award" shall mean any compensation, sums or anything of value awarded or paid as a result of the Condemnation.
- C. In the event of Condemnation by the District of all or a part of the Bridges or property adjacent to the Bridges the taking of which would substantially and materially eliminate access to the Bridges where no alternative access can be constructed or made available:

- (1) Any Award for such Condemnation will be pursuant to the Eminent Domain Law of the State of California, California Code of Civil Procedure Section 1230.010 et seq., as it may be amended, replaced or restated. The District will make reasonable efforts to provide an alternate site for the Bridge(s) on the Property. Any such relocation shall be subject to the District's approval and reasonable discretion;
 - (2) This Agreement shall not be terminated by such Condemnation as it relates to any of the Bridges or property adjacent to the Bridges not subject to such Condemnation, but may be terminated in whole or in part by the Authority in its sole discretion.
 - D. In the event of Condemnation, on a permanent or temporary basis, by an entity other than the District of all or part of the Bridges, or of property adjacent to the Bridges the taking of which would substantially and materially eliminate access to the Bridges where no alternative access can be constructed or made available:
 - (1) Any Award for such Condemnation will be pursuant to the Eminent Domain Law of the State of California, California Code of Civil Procedure Section 1230.010 et seq., as it may be amended, replaced or restated. The District will make reasonable efforts to provide an alternate site for the Bridge(s) on the Property. Any such relocation shall be subject to the District's approval and reasonable discretion;
 - (2) This Agreement shall not be terminated by such Condemnation as it relates to any of the Bridges or of property adjacent to the Bridges not subject to such Condemnation, but may be terminated in whole or in part by the Authority in its sole discretion.
 - E. In the event of Condemnation by an entity other than the District that permanently deprives the District of its fee interest in the Property and the Authority its use of any of the Bridges or its rights hereunder concerning the Bridges, then any Award shall be allocated in accordance with the Eminent Domain Law of the State of California, California Code of Civil Procedure Section 1230.010 et seq., as it may be amended, replaced or restated.
 - F. Prior to commencement of Condemnation proceedings against the Bridges, any portion of the Property that would affect the Bridges or the Authority's rights under this Agreement, or property adjacent to the Bridges the taking of which would substantially and materially eliminate access to the Bridges where no alternative access can be constructed or made available, the District will make reasonable efforts to provide an alternate site for the Bridge(s) on the Property. Any such relocation shall be subject to the District's approval and reasonable discretion. Any Award for such Condemnation will be pursuant to the Eminent Domain Law of the State of California, California Code of Civil Procedure Section 1230.010 et seq., as it may be amended, replaced or restated.
- 15. **Assignment.** The Authority may not assign this Agreement without prior written consent of the District, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Authority may, without the District's prior written consent, assign this Agreement and its rights thereunder, in whole or in part, to:
 - A. The City of Santa Clara or other successor to the Authority;
 - B. A transferee of the Authority's leasehold interest in the Stadium Site;
 - C. Any holder of a Security Interest (as defined on Exhibit E hereto).
 - D. If the Ground Lease of the Stadium Site between the Authority and the City is terminated, then this Agreement will be automatically assigned to the City, and if a New Lease is entered into under the terms of the Ground Lease, then this Agreement will be automatically assigned

from the City to the New Tenant under the New Lease, as those terms are defined in the Ground Lease.

- 16. Sublicense.** The Authority may authorize others to exercise some or all of the Authority's rights granted hereunder, including but not limited to contractors, subcontractors, agents, invitees or others engaged by the Authority for the construction, operation or maintenance of the Bridges or improvements to the Stadium Site, or any of Authority's tenants or subtenants and their invitees. The District agrees that if this Agreement is terminated by the District under Section 7(C), such termination will not affect rights conveyed by the Authority to a third party under this Section 16 prior to the termination, and the District will not terminate or otherwise disturb such rights, so long as one or more of the third parties assumes the obligations of the Authority under this Agreement.
- 17. Security Interests.** Nothing in this Agreement shall be interpreted to prevent the Authority, its tenants or subtenants from granting any lien or security interest in the Bridges or this Agreement and its rights hereunder, including its rights and license with respect to the Bridges.
- 18. Estoppel Certificates.** Either party to this Agreement shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other party, execute, acknowledge and deliver to the other party, or such persons designated by such other party, a statement in writing certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement is in full force and effect as modified and stating the modifications), (b) that there are no defaults under this Agreement (or, if so, specifying the same), (c) the dates, if any, to which licensing fees have been paid, and (d) any other information that may be reasonably required by any such persons. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other party or any prospective creditor, purchaser or holder of a Security Interest in its estate.
- 19. Third Party Beneficiaries.** The parties understand that the Tenant, as defined herein, is a third party beneficiary of the Authority's rights under this Agreement, including but not limited to the right to give and receive notices provided for in this Agreement.
- 20. No General Right of Access.** This Agreement does not and shall not be construed to create a right of access in the general public to access the Bridges.
- 21. Choice of Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California. The parties agree that the venue of any action, proceeding or counterclaim shall be in the County of Santa Clara, California.
- 22. Amendments.** This Agreement not may be modified, amended or, except as specified in Sections 7(C) and 14, terminated, except by a writing signed by both parties, with the written consent of the Tenant and any Recognized Secured Party. For minor amendments, such as those relating to dates, schedules or notice, the parties agree to respond to requests for amendments and/or proposed contract terms within ten business days.
- 23. Captions.** The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.
- 24. Severability.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.
- 25. -Counterparts.** This -Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.
- 26. -No Liens.** The Authority must not place any liens that would affect the District's fee interest in the Property and shall not allow any liens to be placed that would affect the District's fee interest in the Property.

- 27. **Compliance with Laws.** The Authority shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, employees and invitees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, and regulations.
- 28. **No Real Property Interest.** It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement or fee interest in the Property to the Authority. This license is intended to be appurtenant to the Stadium Site and shall be binding upon, benefit and burden the Authority and the District, their successors, and current and successive fee owners of the Property and the Stadium Site.
- 29. **Attorneys' Fees.** In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party is entitled to collect from the other its reasonable attorneys' fees as established by the judge presiding over such dispute.
- 30. **Permit Terms and Conditions.** The Authority agrees to abide by the terms and conditions contained in any current or future District permit related to exercising the Authority's rights under this Agreement.
- 31. **Exhibits.** For the avoidance of doubt, all Exhibits attached to this Agreement shall be deemed to be a part hereof.
- 32. **Entire Agreement.** This Agreement, together with the Exhibits A through E attached hereto, constitutes the entire agreement between the parties and supersedes all prior written or oral understandings.

IN WITNESS WHEREOF, the Authority and the District have executed this Agreement and it is effective as

SANTA CLARA STADIUM AUTHORITY

By: _____
 Jennifer Sparacino
 Executive Director

Date: _____

SANTA CLARA VALLEY WATER DISTRICT

By: _____
 Beau Goldie
 Chief Executive Officer

Date: _____

RECOMMENDED FOR APPROVAL:

 Real Estate Services Unit Manager

Exhibit A
Description of the Property

Exhibit B
Description of the Stadium Site

Exhibit C
Description of the Main Lot

Exhibit D
Depiction of Location of the Bridges

Exhibit E
Lender Protection Provisions

Notwithstanding anything contained in this Agreement to the contrary and without limitation of its rights under Section 16 of this Agreement, the Authority may grant any pledge, collateral assignment or other security interest or agreement to any person pursuant to which all or any portion of the rights created by this Agreement are encumbered, collaterally assigned or transferred as security for any bonds, notes, other evidences of indebtedness, credit facility or other financial obligation or guarantee of the Authority (each such pledge, collateral assignment or other security interest or agreement, a "Security Interest"). With respect to each Security Interest of which the District receives written notice including the name and address of the holder of such Security Interest (a "Recognized Secured Party"), the District agrees that following receipt of such notice by the District, and as long as such Security Interest remains unsatisfied of record or until written notice of satisfaction is given by the Recognized Secured Party thereunder to the District, the following provisions shall apply:

(a) No termination, cancellation, surrender or modification of this Agreement by the Authority, or waiver by the Authority of any of the provisions of this Agreement or giving by the Authority of any consent shall be effective as to the Recognized Secured Party unless consented to in writing by the Recognized Secured Party;

(b) The Recognized Secured Party shall have the right, but not the obligation, to perform any covenant or agreement under this Agreement to be performed by the Authority (and the District and the Authority each agree the Recognized Secured Party may enter onto the Property (or any part thereof) for purposes of effecting such performance), and the District shall accept such performance by any Recognized Secured Party or at its direction as if such performance was made by the Authority, including performance of covenants relating to the payment of fees set out in Section 6 of the Agreement.

(c) The District shall, upon providing the Authority with any notice of (i) default under this Agreement, (ii) a termination of this Agreement, or (iii) a matter on which the District may predicate or claim a default, at the same time provide a copy of such notice to the Recognized Secured Party. The District shall have no liability for the failure to give any such notice, except that no such notice by the District to the Authority shall be deemed to have been duly given to the Recognized Secured Party, or to be effective, unless and until a copy thereof has been so provided to the Recognized Secured Party. From and after the date such notice has been given to the Recognized Secured Party, the Recognized Secured Party shall have the right (but not the obligation) to cure the Authority's defaults within thirty (30) days (the "Secured Party's Grace Period") following the later of (x) its receipt of the District's notice with respect to such default and (y) the expiration of the grace period, if any, provided to the Authority to cure such default, subject to extension of such Secured Party's Grace Period for the additional periods of time specified in subsections (d) and (e) of this Exhibit E. The effectiveness of any default by the Authority shall be suspended for all purposes under this Agreement during the Secured Party's Grace Period.

(d) Notwithstanding anything contained in this Agreement to the contrary, the District shall have no right to terminate this Agreement in any circumstance where termination would otherwise be allowed under this Agreement unless, following the expiration of the period of time given the Authority to cure such default or the act or omission that gave rise to such default, the District shall notify the Recognized Secured Party of the District's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least ninety (90) days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money. The provisions of paragraph (e) below shall apply only if during such 30 or 90-day termination notice period, the Recognized Secured Party shall: (i) notify the District of Recognized Secured Party's desire to nullify such notice; and (ii) pay or

cause to be paid all amounts (A) then due hereunder and in arrears as specified in the termination notice to Recognized Secured Party and (B) any of the same that become due during such 30 or 90-day period as and when they become due; and (iii) comply, or with reasonable diligence commence in good faith to comply, with all non-monetary requirements of this Agreement then in default and reasonably susceptible of being complied with by the Recognized Secured Party.

(e) (i) If the District shall elect to terminate this Agreement in any circumstance where termination otherwise would be allowed under this Agreement, and the Recognized Secured Party shall have proceeded in the manner provided for by paragraph (d) above, this Agreement shall not be terminated as long as the Recognized Secured Party shall: (A) pay or cause to be paid the Annual Fee and other monetary obligations of the Authority under this Agreement as the same become due, and continue its good faith efforts to perform all of the Authority's other obligations under this Agreement excepting (x) past non-monetary obligations then in default and not reasonably susceptible of being cured by Recognized Secured Party; and (B) if not enjoined or stayed, take reasonable steps to acquire or sell the interest of the Authority subject to the Security Interest by foreclosure or any other appropriate and lawful means. Nothing contained in this clause (e)(i) shall be construed to extend this Agreement beyond the original term hereof, nor to require the Recognized Secured Party to continue such foreclosure or other appropriate proceedings after all defaults have been cured. If all defaults are cured and the Recognized Secured Party discontinues such foreclosure or other appropriate proceedings, this Agreement shall continue in full force and effect as if the Authority had not defaulted under this Agreement. If a Recognized Secured Party shall obtain possession of all or a portion of the Authority's interest in or rights under this Agreement by the initiation of foreclosure, power of sale or other enforcement proceeding under any Security Interest, or by obtaining an assignment thereof in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding (any of the foregoing being referred to as a "Security Interest Enforcement Proceeding"), and shall have assumed the Authority's obligations under this Agreement pursuant to an instrument reasonably satisfactory to the District, then any termination notice will be deemed to have been withdrawn and all alleged defaults described therein waived or satisfied, and all rights of the Authority under this Agreement which may have been terminated or suspended by virtue of such notice or alleged defaults shall be reinstated in favor of such Recognized Secured Party;

(ii) The making or granting of a Security Interest shall not be deemed to constitute an assignment or transfer of this Agreement or the interest or rights hereby created, nor shall the Recognized Secured Party, as such, be deemed to be an assignee or transferee of this Agreement or of the rights hereby created (other than as collateral assignee), so as to require the Recognized Secured Party, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Authority to be performed hereunder, unless the Recognized Secured Party shall acquire the interest or rights hereby created in any proceedings for the foreclosure of the Security Interest, by deed in lieu of foreclosure or any other lawful means;

(iii) Any Default Successor of the Security Interest pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, any immediate or remote assignee of such Default Successor (which immediate or remote assignee shall for all purposes hereof be deemed to be a Default Successor), and any party to a New Agreement as described in paragraph (f) below, may, upon acquiring the rights under this Agreement, without the consent of District, sell and assign this Agreement and/or any or all rights hereunder to a further Default Successor and thereafter be relieved of all obligations under this Agreement, provided that such further Default Successor has delivered to the District its written agreement to be bound by the terms and provisions of this Agreement. As used herein, "Default Successor" means a Recognized Secured Party or any other person or entity succeeding to the interest of the Authority at a foreclosure sale, an assignment or transfer in-lieu thereof or other proceedings.

(f) If this Agreement is terminated in whole or in part for any reason, including the rejection or disaffirmance of this Agreement in connection with a bankruptcy, insolvency or similar proceeding by or against the Authority, the District shall promptly provide the Recognized Secured Party with written notice that this Agreement has been terminated (the "New Agreement Notice"), together with a statement of all sums that would at that time be due under this Agreement but for such termination, and of all other defaults, if any, then known to the District. The District agrees to enter into a new real property license agreement ("New Agreement") with respect to the Property with the Recognized Secured Party or its designee (which for all purposes hereof shall be deemed to be a Default Successor) for the remainder of the term of this Agreement, effective as of the date of termination, upon the same terms, covenants and conditions of this Agreement provided that:

(i) the Recognized Secured Party shall make a written request upon the District for such New Agreement within thirty (30) days after the date that the Recognized Secured Party receives the District's New Agreement Notice given pursuant to this paragraph (f);

(ii) the Recognized Secured Party or a Default Successor shall pay or cause to be paid to the District, at the time of the execution and delivery of such New Agreement, any and all sums that would at the time of execution and delivery thereof be due pursuant to this Agreement but for such termination and, in addition thereto, all reasonable out-of-pocket expenses, including reasonable attorneys' fees, which the District shall have incurred by reason of such termination and the execution and delivery of the New Agreement and that have not otherwise been received by the District from the Authority or any other party in interest under the Authority. In the event of a controversy as to the amount to be paid to the District pursuant to this clause (f)(ii), the payment obligation shall be satisfied if the District is paid the amount not in controversy, and the Recognized Secured Party or such Default Successor agrees to pay any additional sum ultimately determined to be due. The parties shall cooperate to determine any disputed amount promptly in accordance with the terms of this Agreement;

(iii) concurrently with the execution and delivery of the New Agreement, the Recognized Secured Party or such Default Successor shall agree to remedy any of the Authority's defaults of which the Recognized Secured Party was notified by the District's New Agreement Notice and that are reasonably capable of being so cured by the Recognized Secured Party or such Default Successor. If, commencing on the effective date of the New Agreement, the Recognized Secured Party or such Default Successor fails to cure all such defaults within the time periods required, such failure shall constitute an event of default under the New Agreement and the District shall have all rights and remedies with respect thereto provided in the New Agreement;

(iv) any New Agreement made pursuant to this paragraph (f) shall have the same priority with respect to any security interest or other liens or encumbrances on the Property, or any part thereof, as this Agreement, and the Recognized Secured Party or such Default Successor shall have the same right in and to the Property under such New Agreement as the Authority has under this Agreement as of the date of the New Agreement, provided the requirements of clauses (ii) and (iii) above with respect to defaults by the Authority and unpaid sums have been satisfied.

(g) Nothing herein contained shall require the Recognized Secured Party or a Default Successor as a condition to its exercise of rights hereunder to cure any default of the Authority which by its terms is not reasonably susceptible of being cured by the Recognized Secured Party or such Default Successor in order to comply with the provisions of paragraph (d) or (e) above, or as a condition of entering into the New Agreement provided for by paragraph (f). No default, the cure of which, and no obligation of the Authority, the performance of which, requires access to the Property shall be deemed reasonably susceptible of cure or performance by the Recognized Secured Party or a successor to the Authority's interest under this Agreement or a New Agreement without access to the Property, provided

that such holder is complying with the requirements described in clause (e)(i)(B) above or to otherwise legally and peaceably obtain access to the Property and upon obtaining access promptly proceeds to cure any such default then reasonably susceptible of cure by the Recognized Secured Party or such successor.

(h) Notices from the District to the Recognized Secured Party shall be mailed to the address or addresses furnished to the District pursuant to the first paragraph of this Exhibit, and notices from the Recognized Secured Party to the District shall be mailed to the address or addresses designated pursuant to the provisions of Section 12 of the Agreement. Such notices, demands and requests shall be given in the manner described in Section 12 of the Agreement and shall in all respects be covered by the provisions of that Section.

(i) If this Agreement is rejected in connection with a bankruptcy proceeding by the Authority or a trustee in bankruptcy for the Authority, such rejection shall be deemed an assignment by the Authority to the Recognized Secured Party of all rights of the Authority under this Agreement and all of the Authority's interest under this Agreement, and this Agreement shall not terminate and the Recognized Secured Party shall have all rights and obligations of the Recognized Secured Party under this Exhibit as if such bankruptcy proceeding had not occurred, unless the Recognized Secured Party shall reject such deemed assignment by notice in writing to the District within thirty (30) days following rejection of this Agreement by the Authority or the Authority's trustee in bankruptcy, unless the foregoing is prohibited by any applicable laws; the Recognized Secured Party shall reimburse the District for all reasonable costs and expenses incurred by the District directly in connection with such assignment. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by the Authority or the Authority's trustee in bankruptcy in connection with any such proceeding, the rights of the Recognized Secured Party to a New Agreement from the District pursuant to paragraph (f) above shall not be affected thereby, subject to any contrary determination by the bankruptcy court.

(j) Notwithstanding anything to the contrary set forth in this Exhibit, no Recognized Secured Party shall be liable under this Agreement unless and until such time as it becomes the owner of the applicable portion of the Authority's rights hereunder or the Authority's interests under this Agreement, and then only for such obligations of the Authority which accrue during the period while it remains the owner of such rights or interests; if a New Agreement in favor of the Recognized Secured Party is in place, the terms thereof shall prevail.

(k) The District agrees to enter into such additional and further agreements as any Recognized Secured Party reasonably shall request to confirm and give effect to the rights of such Recognized Secured Party as provided in this Exhibit as long as such agreements do not increase the obligations of the District or reduce the obligations of the Authority under this Agreement in any material respect.

(l) In the event that the Authority shall grant Security Interests to more than one Recognized Secured Party, then at the request of the District, the Authority shall appoint one such Recognized Secured Party (selected by the Authority in its sole discretion) as agent for all of the Recognized Secured Parties and the District shall satisfy its notice obligations under this Exhibit by providing notice to such agent. If more than one Recognized Secured Party shall seek to exercise the rights provided for in this Exhibit, the Recognized Secured Party with the most senior lien priority (or with the senior priority right established under an intercreditor agreement) shall be entitled, as against the others, to priority in the exercise of such rights.

Exhibit "F"
Permitted Encumbrances

An easement in favor of the City of Santa Clara, a municipal corporation, as reserved in a document recorded June 17, 1975, Instrument No. 5030570, Book B641, Page 724, of the Official Records of Santa Clara County.

Exhibit G
Advertising/Media Package

The Advertising/Media Package includes the following:

1. LED Messaging: Four (4) exclusive thirty (30) second "moments" on the in-stadium high-definition LED ribbon panel at one regular-season home game.
2. IPTV Advertisements: A customized package of ___ thirty (30) second spots on the in-stadium IPTV network at one regular-season home game.
3. Gameday Magazine Advertisement: One (1) full page, four-color advertisement in one (1) regular-season Gameday Magazine.

The District may choose to receive each of the above at a single game or separately at games selected by the District, subject to availability.

The District will be responsible for preparing the specific advertisements or promotional messages to be published, broadcast or otherwise transmitted, subject to the reasonable approval of the Authority for consistency with NFL standards for in-stadium advertising.

Alternative media may be substituted over time with changes in technology, subject to the goal of reasonably equivalent advertising/media impact.