

County of Santa Clara

Finance Agency

County Government Center
70 West Hedding Street, East Wing, 2nd Floor
San Jose, California 95110-1705
(408) 299-5205 FAX: (408) 287-7629



June 20, 2012

VIA E-MAIL AND U.S. MAIL

Mark Hill
Program Budget Manager
California Department of Finance
915 L Street
Sacramento, CA 95814

Re: Santa Clara Successor Agency – 49ers Santa Clara Stadium Agreements

Pursuant to Health and Safety Code Section 34182(a)(1), my office previously certified the initial Recognized Obligation Payment Schedule (ROPS) submitted by the Successor Agency to the City of Santa Clara Redevelopment Agency (RDA). That certification excluded a reported obligation of the former RDA related to the 49ers Santa Clara Stadium Project as memorialized by a Cooperation Agreement, dated February 22, 2011, as amended on February 28, 2011, between the former RDA and the Santa Clara Stadium Authority. As set forth on the initial ROPS, that obligation presented an undetermined financial obligation payable during the relevant ROPS period. Moreover, the enforceability of the Cooperation Agreement under the law as modified by ABX1 26 appeared uncertain. At the request of the Oversight Board to the RDA, the County agreed to review additional documentation presented by the RDA and outside legal counsel for the City. Pending our review, my office agreed to create a reserve of \$12.8 million (all residual tax increment), which reflects the amount due under the agreement if the agreement is determined to have created an enforceable obligation under ABX1 26.

County staff has reviewed the additional information provided by the parties related to the 49ers Stadium Project as it pertains to the RDA. Despite further consideration, my office is unable to confirm the validity of the proposed obligation arising under the Cooperation Agreement. The County now requests the opinion of the Department of Finance and State Controller's Office as to the

issues stated herein. Below please find a summary of the Cooperation Agreement and Predevelopment Funding Agreement and the issues the County has identified as potentially problematic to their certification as establishing enforceable obligations.

Factual Background

- In late-2006, the San Francisco 49ers and the City of Santa Clara began discussing the building of a publicly-owned stadium to be located in the Bayshore North Redevelopment Project Area.
- By June 2009, the 49ers and the City had negotiated a non-binding term sheet outlining the basic provisions of the transaction, including a proposed maximum investment of \$40 million in redevelopment funds toward construction costs.
- In June 2010, voters in the City passed Measure J approving the building of a professional football stadium.¹
- On February 22, 2011, the City and the RDA entered into a Joint Powers Agreement that established the Santa Clara Stadium Authority (“Stadium Authority”). The members of the Stadium Authority governing board were the same individuals as the City Council members and RDA board members.
- Also on February 22, 2011 (revised on February 28, 2011), the RDA and the Stadium Authority entered into a Cooperation Agreement obligating the RDA to pay \$1.6 million to the City and \$40 million (plus interest) to the Stadium Authority. This Agreement is attached as Exhibit 1, and is discussed in more detail below.
- On March 21, 2011, the RDA, the Stadium Authority, and the Forty Niners Stadium, LLC (“49ers”) executed a Predevelopment Funding Agreement, which is attached as Exhibit 2 and is discussed in more detail below.
- On May 24, 2011, the City formed another joint powers authority – the Bayshore North Project Enhancement Authority, which became a member of

¹ The City of Santa Clara maintains a comprehensive timeline regarding the stadium transaction and relevant public documents at <http://santaclaraca.gov/index.aspx?page=1359>.

the Stadium Authority along with the City and the RDA. According to Stadium Authority documents, the purpose behind making the Bayshore North Project Enhancement Authority a party to the joint powers agreement for the Stadium Authority was to “ensure the survival of the Stadium Authority if redevelopment agencies are eliminated in the State of California.” (See Agenda Report for June 28, 2011 Stadium Authority board meeting, agenda item #2A.)

- Construction of the stadium commenced in May 2012 with an estimated cost of over \$1.3 billion dollars.

Cooperation Agreement

Under the Cooperation Agreement between the RDA and the Stadium Authority, the RDA is to pay the following: (1) \$1.6 million to the City to cover one-half of the development fees associated with the stadium; and (2) \$40,000,000 (excluding debt service and other financing costs) to the Stadium Authority for stadium development costs. (See Cooperation Agreement, Art. 3.) The RDA was to fund these payments with the following: (1) an up-front payment of approximately \$4,000,000 from existing, unallocated RDA funds; (2) proceeds of tax allocation bonds; and (3) to the extent necessary, a loan from the Stadium Authority to the RDA subject to an interest rate equal to the lower of the rate on 30-year BB-rated corporate bonds or 8½% and to be repaid with “Net Tax Increment.” The terms “Net Tax Increment” and “Tax Increment” are defined in section 1.1 of the Cooperation Agreement. The Forty Niners Stadium, LLC is designated as a third party beneficiary in section 4.4 of the Cooperation Agreement.

The RDA has already paid the \$1.6 million to the City and \$4 million of the \$40 million. The outstanding balance (including interest) is \$52.5 million. Exhibit 3 shows the fiscal impacts on taxing entities of recognizing the \$52.5 million as an enforceable obligation.

Predevelopment Funding Agreement

The Predevelopment Funding Agreement between the RDA, the Stadium Authority, and the Forty Niners Stadium, LLC (“49ers”) provides, among other things, that each incurrence of stadium pre-construction costs by the 49ers constitutes a loan from the 49ers to the Stadium Authority and, in turn, a loan from the Stadium Authority to the RDA. (See § 4.1.) The loans from the 49ers to

the Stadium Authority are also subject to an interest rate equal to the lower of the rate on 30-year BB-rated corporate bonds or 8½%. (See § 4.2.) As inducement for the 49ers to make the loans to the Stadium Authority, the RDA was required to deposit all Net Tax Increment into an escrow account. (See § 4.3.) The Agreement deemed these commitments to be an indebtedness of the RDA and a pledge of tax increment. (See § 4.4.)

Whether the Agreements Created “Enforceable Obligations” under ABX1 26

ABX1 26 mandated that my office certify the initial ROPS consistent with the law’s requirements and my fiduciary duties to the affected taxing entities. Our review of the Cooperation Agreement and Predevelopment Funding Agreement and the surrounding circumstances has raised the following questions about whether the agreements constitute enforceable obligations of the former RDA.

First, the Cooperation Agreement appears to fall within Health and Safety Code section 34167.5, which requires the return of any assets transferred from a redevelopment agency to another public agency after January 1, 2011. In particular, the Cooperation Agreement provided for the transfer of \$1.6 million in cash to the City and the transfer of \$4 million to the Stadium Authority, a public agency. Under the State Controller’s April 20, 2012 order, “contract rights” and “rights to payment” fall within the scope of this provision; hence, the Cooperation Agreement’s attempt to lock up future tax revenue is also questionable.

In addition, Health and Safety Code section 34171(d)(2) excludes agreements between an RDA and the city that created it. Although the Cooperation Agreement is between the RDA and the Stadium Authority, the Stadium Authority was created through a Joint Powers Agreement executed by the RDA and the City. And the same individuals served on the governing boards of the two parties to the agreement (the RDA and Stadium Authority) when the Cooperation Agreement was executed. The Cooperation Agreement calls for the RDA to pay the City \$1.6 million in development fees, and \$40 million to the Stadium Authority. Therefore, the Cooperation Agreement appears to violate the intent, if not the letter, of section 34171(d)(2), which excludes “agreements, contracts, or arrangements between the city . . . that created the redevelopment agency and the former redevelopment agency” from

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the definition of “enforceable obligation.” For the same reason, this agreement appears to violate public policy and should therefore not be deemed an enforceable obligation pursuant to section 34171(d)(1)(E).

Likewise, when the Predevelopment Funding Agreement was executed, the Stadium Authority’s only members were the RDA and the City, and the same individuals served on the governing boards of two of the three parties (the RDA and Stadium Authority) to the agreement. Except for providing that the RDA would deposit its tax increment in an escrow account as part of the procedure for reimbursing the Stadium Authority for \$40 million in stadium predevelopment costs, the Predevelopment Funding Agreement generally re-states the provisions of the Cooperation Agreement. Thus, the Predevelopment Funding Agreement raises the same concerns as the Cooperation Agreement with respect to whether it creates any valid enforceable obligations as intended by ABX1 26.

We would appreciate any guidance that the Department of Finance and State Controller’s Office might offer regarding these issues. Please contact me if you have any questions or would like to discuss this matter.

Sincerely,



Vinod K. Sharma
Director of Finance
County of Santa Clara
San José, California
408-299-5201 (vinod.sharma@fin.sccgov.org)

cc: Santa Clara Successor Agency Oversight Board
George Lolas, California State Controller’s Office
Miguel Márquez, County Counsel
Jeffrey V. Smith, County Executive
Jennifer Sparacino, City Manager, City of Santa Clara

Exhibit 1

COOPERATION AGREEMENT TO ASSIST
PUBLICLY-OWNED STADIUM

THIS COOPERATION AGREEMENT TO ASSIST PUBLICLY-OWNED STADIUM (this "Agreement") is made as of February 28, 2011, by and among the Santa Clara Stadium Authority, a California joint powers authority (the "Stadium Authority") and the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic (the "Agency"), with reference to the following facts, purposes, and understandings.

RECITALS

- A. Capitalized terms used herein are defined in Article 1 of this Agreement.
- B. On June 8, 2010, the voters of the City approved Measure J, which endorses the construction, operation and maintenance of a stadium in the City suitable for NFL games,
- C. The Stadium Authority is a joint powers authority formed by, and comprised of, the City and the Agency pursuant to the Joint Powers Agreement for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.
- D. The Stadium Authority intends to lease from the City approximately twenty-two (22) acres of real property located in the City within the Redevelopment Project Area.
- E. Pursuant to authority granted under California law, the Agency is charged with administration and enforcement of the Bayshore North Redevelopment Plan for the Bayshore North Redevelopment Project Area. The Redevelopment Plan controls the development and use of all real property located within the Bayshore North Redevelopment Project Area as more particularly described in the Plan.
- F. To assist in implementing the Redevelopment Plan, the Agency has adopted a five (5)-year implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law.
- G. The construction of the Stadium will further the Agency's and City's goals of creating an entertainment destination in the Redevelopment Project Area, and will provide significant economic benefits to the City and its residents and businesses.
- H. Assistance to the Stadium is consistent with the Implementation Plan. The development of the Stadium will benefit the Project Area and will assist in the elimination of blight in the Project Area. The Agency's use of funds as provided in this Agreement is authorized by the Redevelopment Law, and the Agency, the City and the Stadium Authority have made all findings required under the Redevelopment Law for such use.
- I. Pursuant to CEQA, the Agency and the Stadium Authority (each in its capacity as "responsible agency") has prepared, reviewed, and certified that certain Final Environmental

Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing (the "Final Environmental Impact Report"). The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

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

ARTICLE 1.
DEFINITIONS

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

(a) "Agency" means the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic.

(b) "Agency Administrative Costs" shall mean the total cost shown on the adopted Agency 2008/2009 budget in the amount of Four Million Eighteen Thousand Five Hundred Nine Dollars (\$4,018,509) or such other amount as agreed upon by the Agency and the Stadium Authority; provided, however, that if legislation is adopted to suspend or substantially reduce the Agency's ability to undertake redevelopment activities, "Agency Administrative Costs" shall not exceed the lesser of (i) the actual costs incurred by the Agency or its successor entity in administering the redevelopment programs for that fiscal year or (ii) the amount of Four Million Eighteen Thousand Five Hundred Nine Dollars (\$4,018,509).

(c) "Agreement" means this Cooperation Agreement to Assist Publicly-Owned Stadium.

(d) "DDA" shall mean the Disposition and Development Agreement proposed to be entered into by and between the Stadium Authority and the Forty Niners Stadium, LLC, a Delaware limited liability company.

(e) "Final Financing Plan" means the detailed plan approved by the Stadium Authority pursuant to the DDA for the financing of the development of the Stadium.

(f) "Net Tax Increment" means Tax Increment, generated in the Redevelopment Project Area for the then current fiscal year net of the following amounts: (i) amounts required to be set aside in the Low and Moderate Income Housing Fund pursuant to California Health & Safety Code Section 33334.3; (ii) existing debt service payments on the 1992 North Bayshore Redevelopment Project Area Tax Allocation Bonds, the 1999 North Bayshore Redevelopment Project Area Tax Allocation Bonds, the 2002 North Bayshore Redevelopment Project Area Tax Allocation Bonds, and the 2003 North Bayshore Redevelopment Project Area Tax Allocation Bonds, (iii) payments on the following City/Agency

Reimbursement Agreements: Reimbursement Agreement dated as of July, 1988, Reimbursement Agreement dated as of March 1, 1989, Reimbursement Agreement dated as of June 30, 1998; Reimbursement Agreement dated as of 2002, (iv) pass-through payments to local taxing agencies as required by Health & Safety Code Section 33607.5, Health & Safety Code Section 33676 or any successor legislation (v) other State mandated payments, including, without limitation, the County of Santa Clara Administration Fee, as appropriate, payments to the Education Revenue Augmentation Fund and Supplemental Education Revenue Augmentation Fund (or such successor replacement funds as may be enacted), but not including any State mandated payments to taxing entities made directly or indirectly by any successor entity to the Agency, (vi) debt service on one or more new tax allocation bond issuances resulting in net bond proceeds of Twenty Five Million Dollars (\$25,000,000) for future Agency projects other than the Stadium; and (vii) Agency Administrative Costs, escalated by four percent (4%) annually, commencing on July 1, 2009 and continuing on each July 1st thereafter.

(g) "Project Area" shall mean the Bayshore North Redevelopment Project Area.

(h) "Redevelopment Plan" shall mean Bayshore North Redevelopment Plan for the Bayshore North Redevelopment Project Area

(i) "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.

(j) "Stadium Authority" means the Santa Clara Stadium Authority, a California joint powers authority.

(k) "Stadium Authority Advance" shall have the meaning ascribed to it in Section 3.2(b).

(l) "Tax Allocation Bonds" means the bonds to be issued by the Agency as described in Section 3.2(b).

(m) "Tax Increment" means that portion of taxes levied upon taxable property in the Project Area which is allocated to and paid into a special fund of the Agency or any successor agency pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Community Redevelopment Law and Section 16 of Article XVI of the Constitution of the State of California, including all subventions or payment in lieu of business inventory subventions received by the Agency or any successor agency.

ARTICLE 2.
PRECONDITIONS TO DISBURSEMENT OF AGENCY ASSISTANCE

Section 2.1 Conditions Precedent to the Agency's Obligation to Disburse. As conditions precedent to the Agency's obligation to disburse funds to the Stadium Authority under this Agreement, the conditions set forth in this Article 2 must be satisfied. Only the Agency can waive satisfaction of the conditions in this Article 2.

Section 2.2 Execution of DDA. The DDA has been fully executed by the Stadium Authority and the Forty Niners Stadium, LLC, and is in full force and effect.

Section 2.3 Financing Plan Approval Procedure. The Stadium Authority has certified to the Agency that the Stadium Authority has approved the Final Financing Plan and that the Final Financing Plan demonstrates that adequate funding for the development of the Stadium is available.

Section 2.4 Stadium Financing. The Stadium Authority has certified to the Agency that the construction financing for the development of the Stadium is ready to close prior to or concurrently with the initial disbursement of Agency funds under this Agreement.

Section 2.5 Commencement of Construction. The Stadium Authority has certified to the Agency that the Stadium Authority is ready to commence construction of the Stadium and has met all the preconditions for the close of escrow and commencement of construction contained in the DDA.

Section 2.6 SB 211 Ordinance. The City has adopted a so-called "SB 211 Ordinance", amending the Redevelopment Plan to eliminate the Agency's time limit for incurring indebtedness.

ARTICLE 3. AGENCY FINANCING AND STADIUM AUTHORITY CONSTRUCTION OF THE STADIUM

Section 3.1 Agency Contribution Toward Development Fees. The Agency shall pay to the City, on behalf of the Stadium Authority one-half (½) of the development fees to be paid to the City in connection with the construction of the Stadium. The Agency shall remit payment, estimated to be One Million Six Hundred Thousand Dollars (\$1,600,000), to the City concurrently with the Stadium Authority's payment of its share of the development fees.

Section 3.2 Agency Contribution Toward Project Development. In addition to the Agency's payment of development fees pursuant to Section 3.1 above, the Agency shall pay an amount not to exceed a total of Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs) toward Stadium development costs. The Agency's commitment to provide assistance to the Stadium Authority will be derived from the available funds and from the receipt of future Net Tax Increment. The Agency pledges to the Stadium Authority future Net Tax Increment in sufficient amounts to pay to the Stadium Authority Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs). The Agency shall pay to the Stadium Authority an amount from available funds specified in Section 3.2(a) and use the

proceeds from one or more tax allocation bond issuances specified in Section 3.2 (b) to pay Stadium development costs (the "Agency Upfront Investment"). To the extent the Agency Upfront Investment does not equal a total of Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs), the Stadium Authority shall advance funds (the "Stadium Authority Advance") on behalf of the Agency so that the total Agency assistance totals Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs). The Stadium Authority Advance will be repaid by the Agency in accordance with Section 3.3, below.

(a) Available Funds. The Agency agrees to pay toward the development costs the cash on hand from existing unallocated Agency funds, not otherwise needed to make any State-mandated payments, in the amount not less than Four Million Dollars (\$4,000,000).

(b) Tax Allocation Bonds. The Agency, in consultation with the Stadium Authority shall issue one or more new bonds to be secured by available Net Tax Increment ("Tax Allocation Bonds"). The proceeds of the Tax Allocation Bonds (net of issuance costs and fees) shall be used to pay development costs of the Stadium, including the Stadium Authority Advance, in accordance with the disbursement provisions to be agreed upon by the Agency and the Stadium Authority.

(c) Conditions to the Issuance of Tax Allocation Bonds. The conditions set forth in this Section 3.2 (c) must be met prior to the Agency's issuance of the Tax Allocation Bonds.

(1) The Agency's bond counsel shall be irrevocably prepared to issue an opinion letter in connection with issuance of Tax Allocation Bonds, in a form reasonably approved by the Agency, stating, among other things, that the Tax Allocation Bonds constitute the valid and binding obligations of the Agency, enforceable against the Agency, and the indenture between the Agency and the trustee has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Agency enforceable against the Agency.

(2) The Agency shall have approved the projected proceeds to be realized from the Tax Allocation Bonds and such projections are in accordance with the Final Financing Plan.

(3) The proposed issuance complies with all covenants of the Agency's existing bonded indebtedness with regards to parity or subordinate indebtedness.

(4) No condition, event or act exists that would constitute a default by Forty Niners Stadium, LLC under the DDA.

(5) No existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency exists affecting the Agency, the Stadium Authority or the Forty Niners Stadium, LLC that would, if adversely determined, adversely affect the Tax Allocation Bonds.

Section 3.3 Stadium Authority Advance. If the Stadium Authority makes the Stadium Authority Advance to the Agency, the Agency shall repay the Stadium. The Stadium Authority

Advance, including annual compound interest at an annual fixed rate equal to the lower of the rate on 30-year BB-rated corporate bonds or eight and one-half percent (8½%), calculated as of the date of the first funding by Stadium Authority of the Stadium Authority Advance, will be repayable by the Agency only from the Net Tax Increment remaining after payment of debt service on the Tax Allocation Bonds. In addition, prior to making a payment on the Stadium Authority Advance, the Agency may make, based on an annual election by the Agency, an additional deposit into the Agency Low and Moderate Income Housing Fund of up to ten percent (10%) of gross Tax Increment (after excluding Tax Increment generated from the taxes imposed on the Stadium). The additional deposit into the Agency Low and Moderate Income Housing Fund, if any, will cease as of December 2016 with the termination of the Redevelopment Plan for the Redevelopment Project Area. Upon the expiration of the ability of the Agency or any successor agency to collect tax increment from the Project Area, any principal or interest amount of the Stadium Authority Advance still outstanding shall no longer be due from the Agency and shall no longer be a debt of the Agency.

Section 3.4 Indebtedness of the Agency. Subject to the provisions of Section 2.6, the obligation of the Agency to pay the funds to the Stadium Authority under this Agreement shall constitute an indebtedness of the Agency incurred in carrying out the Redevelopment Plan and a pledge of tax increment received by the Agency from the Project Area to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Redevelopment Plan.

Section 3.5 Subordination. The parties agree that the obligation of the Agency to make payments pursuant to this Agreement is subordinate to any obligation of the Agency to pay debt service on tax increment bonds currently issued or issued following the date of this Agreement.

Section 3.6 Commencement and Completion of Construction. The Stadium Authority shall commence and diligently prosecute to completion the construction of the Stadium in accordance with the terms of the DDA and within the time set forth in the schedule of performance incorporated into the DDA. The Stadium Authority, in accordance with the terms of the DDA, shall enter into such agreements as the Stadium Authority deems necessary with the Forty Niners Stadium, LLC, to utilize the extensive design and engineering work product already developed as of the date of this Agreement. The Agency acknowledges that the Stadium Authority intends to use the completed design and engineering work in the development of the Stadium and that the Stadium Authority will reimburse the Forty Niners Stadium, LLC for all or a portion of the costs of this work.

Section 3.7 Indemnity. The Stadium Authority shall indemnify, defend, and hold the Agency, its officers, agents, and employees, harmless against all claims, demands, damages, losses, costs, expenses, including without limitation, attorneys' fees and costs of litigation, or liabilities made against them which arise out of, or in connection with, the construction of the Stadium; provided, however, that this indemnity shall not extend to any claim arising solely from the Agency's negligence or the Agency's negligent failure to perform its obligations under this Agreement.

ARTICLE 4.
GENERAL PROVISIONS

Section 4.1 Non-Liability of Officials. No member, official, employee or agent of the Agency shall be personally liable to the Stadium Authority, or any successor in interest, in the event of any default or breach by the Agency for any amount which may become due to the Stadium Authority or successor or on any obligation under the terms of this Agreement. No member, official, employee or agent of the Stadium Authority shall be personally liable to Agency, or any successor in interest, in the event of any default or breach by the Stadium Authority for any amount which may become due to the Agency or successor or on any obligation under the terms of this Agreement.

Section 4.2 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits a party's approval, consent, or waiver, the written approval, consent, or waiver of the Agency's Executive Director and the Stadium Authority Executive Director (or their respective designees) shall constitute the approval, consent, or waiver of the Agency and the Stadium Authority, respectively, without further authorization required from the governing board of the party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board when she/he deems it appropriate.

Section 4.3 Nondiscrimination.

(a) In Performance of Agreement. The Stadium Authority and its contractors, subcontractors, agents, and employees shall not, because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability of any person, refuse to hire or employ the person, or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions or privileges of employment with respect to performance of this Agreement.

(b) With Respect to Use of the Stadium. The Stadium Authority covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Infrastructure Improvement Projects.

Section 4.4 Third Party Beneficiaries. The Forty Niners Stadium, LLC, and its successor and assignees, will expend substantial resources in reliance on the representations and promises of the Agency and the Stadium Authority contained in this Agreement. The Agency and the Stadium Authority intend that the Forty Niners Stadium, LLC directly benefit from this Agreement and intend to confer on the Forty Niners Stadium, LLC, and its successor and assignees, the rights, benefits and remedies of this Agreement. Except as otherwise expressly provided in this Section 4.4, the Agency and the Stadium Authority do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any other third party,

and no other third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

Section 4.5 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 4.6 Records. The Stadium Authority shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the Agency's authorized agents for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the Stadium Authority for the longer of two (2) years following completion of the Stadium or whatever retention period the Stadium Authority has designated for such documents.

Section 4.7 Inspection of Documents. During the regular office hours and upon reasonable prior notice, the Stadium Authority and the Agency, by their duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement.

Section 4.8 Additional Acts. The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of consummating the transactions contemplated in this Agreement.

Section 4.9 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement.

Section 4.10 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 4.11 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of the parties.

Section 4.12 Defaults and Remedies. If either party breaches any other material provision of this Agreement, the other party shall first notify the breaching party in writing of the purported breach or failure, giving the breaching party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-breaching party shall be afforded all of its

rights at law or in equity, by taking all or any of the following remedies: (a) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination); and (b) prosecuting an action for damages or specific performance.

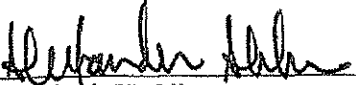
Section 4.13 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties to this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 4.15 Time of The Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

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


Approved as to Form

SANTA CLARA STADIUM AUTHORITY


for Elizabeth H. Silver
Interim Stadium Authority General Counsel



for Jennifer Sparacino
Executive Director

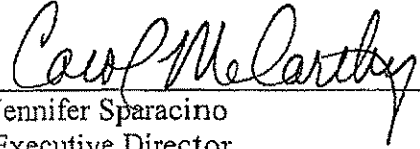
Attest:


Rod Diridon, Jr.
Stadium Authority Secretary

Approved as to Form

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA


for Elizabeth H. Silver
Interim Agency General Counsel


for Jennifer Sparacino
Executive Director

Attest:

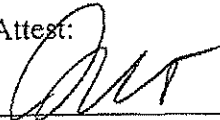

Rod Diridon, Jr.
Agency Secretary

Exhibit 2

PREDEVELOPMENT FUNDING AGREEMENT

THIS PREDEVELOPMENT FUNDING AGREEMENT (this "Agreement") is made as of March 21, 2011, by and among the Santa Clara Stadium Authority, a California joint powers authority (the "Stadium Authority"), the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic (the "Agency"), and Forty Niners Stadium, LLC, a Delaware limited liability company ("Stadco"), with reference to the following facts, purposes, and understandings.

RECITALS

A. On June 8, 2010, the voters of the City of Santa Clara approved Measure J, which endorses the construction, operation and maintenance of a stadium in the City suitable for NFL games (the "Stadium"), and requires that contributions to the costs thereof by the Agency shall not exceed Forty Million Dollars (\$40,000,000), exclusive of debt service and other financing costs and payments to the City for development fees.

B. The Stadium Authority is a joint powers authority formed by, and comprised of, the City and the Agency pursuant to the Joint Powers Agreement for the purpose of acquiring, financing, constructing, owning, managing, operating and maintaining the Stadium and related facilities.

C. The Stadium Authority intends to lease from the City approximately twenty-two (22) acres of real property located in the City within the Project Area (the "Stadium Site").

D. Pursuant to authority granted under California law, the Agency is charged with administration and enforcement of the Redevelopment Plan. The Redevelopment Plan controls the development and use of all real property located within the Bayshore North Redevelopment Project Area as more particularly described in the Redevelopment Plan.

E. To assist in implementing the Redevelopment Plan, the Agency has adopted a five (5)-year implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law.

F. The construction of the Stadium will further the Agency's and City's goals of creating an entertainment destination in the Project Area, and will provide significant economic benefits to the City and its residents and businesses.

G. Assistance to the Stadium is consistent with the Implementation Plan. The development of the Stadium will benefit the Project Area and will assist in the elimination of blight in the Project Area. The Agency's use of funds as provided in this Agreement is authorized by the Redevelopment Law, and the Agency, the City and the Stadium Authority have made all findings required under the Redevelopment Law for such use.

H. On February 22, 2011, the Stadium Authority and the Agency entered into a Cooperation Agreement to Assist Publicly Owned Stadium (the "Cooperation Agreement"),

pursuant to which, among other things, the Agency agreed (i) to pay on behalf of the Stadium Authority one-half (½) of the development fees to be paid to the City in connection with the construction of the Stadium, (ii) to pay an amount not to exceed a total of Forty Million Dollars (\$40,000,000) (exclusive of debt service and other financing costs) toward Stadium development costs, and (iii) to pledge Net Tax Increment (as defined therein) in sufficient amounts to meet such obligations. Capitalized terms used, but not defined in Article 1 or elsewhere in this Agreement, shall have the definitions given them in the Cooperation Agreement.

I. To further the goal of the Stadium Authority, the Agency and the City of timely completion of the Stadium Project, Stadco has performed predevelopment work and as a result thereof, incurred predevelopment costs for the benefit of the Stadium Project, and the Parties hereto acknowledge that the Stadium Authority and Stadco will incur further predevelopment costs for the benefit of the Stadium Project prior to the Stadium Authority's receipt of sufficient funds to pay such predevelopment costs.

J. In accordance with the terms of this Agreement, the Parties desire to establish the process for the reimbursement and/or payment from Net Tax Increment by the Stadium Authority and the Agency, as applicable, of the Stadium Authority's Operating Costs and Stadco's Predevelopment Costs.

K. Pursuant to CEQA, the Agency and the Stadium Authority (each in its capacity as "responsible agency") have prepared, reviewed, and certified that certain Final Environmental Impact Report, 49ers Santa Clara Stadium Project for the transactions contemplated by this Agreement, following conduct of a duly noticed public hearing (the "Final Environmental Impact Report"). The Final Environmental Impact Report has served as the environmental documentation for the Stadium Authority's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

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

ARTICLE I. DEFINITIONS

Section 1.1 Capitalized words used in this Agreement, and not defined below or elsewhere in this Agreement, shall have the meanings set forth in the Cooperation Agreement. In addition to the terms defined elsewhere in this Agreement and in the Cooperation Agreement, the following capitalized words shall have the following meanings:

- (a) "Agreement" means this Predevelopment Funding Agreement.
- (b) "Budget" is defined in Section 2.3.
- (c) "Cooperation Agreement" is defined in Recital H.

(d) "Initial Make-Ready Work Funds" means the funds in the amount of Four Million Dollars, as further described in Section 3.1, plus any interest earned thereon.

(e) "Make-Ready Work" means the work required to prepare the site for the construction of the Stadium as generally described in Exhibit A to this Agreement.

(f) "Maximum Principal Amount" means the sum of Forty Million Dollars (\$40,000,000) less the amount of the Initial Make-Ready Work Funds paid to Stadco pursuant to Section 3.1 below.

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

(h) "Parties" collectively means the Stadium Authority, the Agency and Stadco.

(i) "Redevelopment Law" means the Community Redevelopment Law set forth in the California Health and Safety Code (commencing with Section 33000).

(j) "Stadium Authority Operating Costs" means such out-of pocket, third-party costs for staff, financial consultants, agents, legal counsel, and other consultants reasonably required to assist the Stadium Authority in predevelopment matters and ongoing operations of the Stadium, solely to the extent such consultants provide services directly related to the development and operation of the Stadium, as such costs are set forth in the approved Budget.

(k) "Stadium Project" means the development of the Stadium and all related physical construction on and off the Stadium Site.

ARTICLE 2.

PREDEVELOPMENT COSTS INCURRED BY STADCO

Section 2.1 Predevelopment Costs. Stadco has incurred various predevelopment costs for the benefit of the Stadium Project prior to the date of this Agreement ("Previously Incurred Predevelopment Costs"). Stadco intends to transfer, assign or otherwise convey to the Stadium Authority its assignable, non-privileged interest in the work product resulting from the Previously Incurred Predevelopment Costs and requests reimbursement for certain of those costs from the Stadium Authority in accordance with the terms of this Agreement. Stadco expects to supervise and/or produce or cause to be produced additional predevelopment work product for the benefit of the Stadium Authority subsequent to the execution of this Agreement and to incur additional predevelopment costs as a result of such activity for which Stadco requests reimbursement in accordance with this Agreement. Without limiting the generality of the foregoing, with respect to the Make-Ready Work in particular, Stadco will retain consultants and contractors to design and construct the Make-Ready Work for the benefit of Stadium Authority; provided, however, that it is acknowledged that construction of the Make-Ready Work is subject to the further approvals by the Stadium Authority, issuance of permits and the requirement to obtain licenses to enter property from the appropriate City agencies and others. Pursuant to this Agreement the Stadium Authority will reimburse Stadco for certain of those costs, including,

without limitation, costs related to the design and engineering of the Stadium, and design engineering and construction of the Make-Ready Work (collectively, "Continuing Predevelopment Costs"). Previously Incurred Predevelopment Costs and Continuing Predevelopment Costs shall hereafter be referred to as "Predevelopment Costs". Predevelopment Costs shall also include, without limitation, Stadium Authority Operating Costs. Only Predevelopment Costs related to the Make-Ready Work and Stadium Authority Operating Costs may be paid with the Initial Make-Ready Work Funds.

Section 2.2 Stadium Operating Cost Budget. Prior to the submittal to the Stadium Authority of the proposed Budget pursuant to Section 2.3 below, the Stadium Authority and Stadco shall negotiate in good faith a Stadium Authority budget to pay Stadium Authority Operating Costs to be incurred by the Stadium Authority for the time period until the commencement of construction for the Stadium.

Section 2.3 Budget. Stadco shall submit to the Stadium Authority as promptly as possible following the date of this Agreement, an estimated budget of costs related to the Make-Ready Work and for Stadium Authority Operating Costs, and which shall also include an estimated schedule for the Make-Ready Work expenditures through December 31, 2011. By November 30, 2011, Stadco shall submit an estimated budget of costs related to the Make-Ready Work and Stadium Authority Operating costs from January 1, 2012 to commencement of construction of the Stadium. Stadco shall submit to the Stadium Authority updates of such Budgets from time to time as necessary. Such budgets, and any updates thereto, shall be subject to the approval of the Stadium Authority Executive Director, which approval shall not be unreasonably withheld or delayed, and are referred to herein collectively as the "Budget".

Section 2.4 Books and Records. Stadco shall keep and maintain in accordance with generally accepted accounting principles full, complete and appropriate books, records and accounts of the Predevelopment Costs for which Stadco requests reimbursement, including the disbursements made from the Initial Make-Ready Work Funds. Stadco shall submit monthly reports to the Stadium Authority setting forth any disbursements from the Initial Make-Ready Funds and the balance remaining. All Predevelopment Costs shall be subject to the review by the Executive Director of the Stadium Authority of reasonably satisfactory evidence of Stadco's actual incurrence of the Predevelopment Costs. Such evidence may be in the form of invoices, cancelled checks, wire confirmations or similar types of proof of incurrence and/or payment. Disbursement of funds to pay Predevelopment Costs, other than the Initial Make-Ready Work Funds, shall be in accordance with Section 4.3 below.

ARTICLE 3.

PAYMENT OF INITIAL MAKE-READY FUNDS AND DEVELOPMENT FEES

Section 3.1 Payment for Make-Ready Work. The Stadium Authority hereby agrees to advance to Stadco in lawful money of the United States, immediately upon execution of this Agreement, funds previously transferred by the Agency to the Stadium Authority pursuant to the Cooperation Agreement in the amount of Four Million Dollars (\$4,000,000) (the "Initial Make-Ready Work Funds"). Stadco shall maintain the Initial Make-Ready Work Funds, including any

interest earned thereon, in an account, separate from any other account, at a financial institution reasonably approved by the Stadium Authority. The Initial Make-Ready Work Funds shall only be used to pay invoices related to the design and construction of the Make-Ready Work and Stadium Authority Operating Costs consistent with the Budget approved pursuant to Section 2.3. If construction on the Stadium Project has not commenced by December 31, 2015, as such date may be extended by the Stadium Authority, or if funds are released from Escrow pursuant to Section 4.3(c) below, then Stadco shall repay the Stadium Authority, promptly upon demand, any Initial Make-Ready Work Funds that have not been expended in accordance with this Agreement prior to such date. In addition, Stadco shall deliver to the Stadium Authority all its assignable, non-privileged interest in any work product relating to the Make-Ready Work for which Stadco received reimbursement.

Section 3.2 Payment of Development Fees. The Stadium Authority confirms receipt of \$1,600,000.00 from the Agency, which the Parties agree satisfies the Agency's obligation under the Cooperation Agreement to pay its share of development fees to the City for the development of the Stadium ("Agency's Share of Development Fees"). The Stadium Authority agrees to maintain the Agency's Share of Development Fees in an account with the Stadium Authority Treasurer, separate from all other accounts, and shall pay all such funds to the City at the time payment of such development fees are required for the development of the Stadium Project. If construction on the Stadium Project has not commenced by December 31, 2015, as such date may be extended by the Stadium Authority, the Stadium Authority may retain the Agency's Share of Development Fees for reimbursement of Stadium Authority Operating Costs.

Section 3.3 Waiver of Conditions. Pursuant to the terms of the Cooperation Agreement, the Agency hereby waives the conditions to disbursement of Net Tax Increment set forth in Article 2 thereof, and disbursement of Net Tax Increment shall occur in accordance with the terms of this Agreement.

ARTICLE 4. ADVANCES OF PRECONSTRUCTION COSTS

Section 4.1 Stadco Advance. Stadco's payment of Predevelopment Costs, up to the Maximum Principal Amount, shall be considered a loan by Stadco to the Stadium Authority (the "Stadco Advance") in accordance with the terms of this Agreement. Stadium Authority is incurring the Stadco Advance in reliance on the Agency's agreement to repay the Stadium Authority Advance pursuant to Section 3.2 of the Cooperation Agreement. With each such payment of Predevelopment Costs, the Stadium Authority, for purposes of the Cooperation Agreement, shall be considered to have made a corresponding Stadium Authority Advance to the Agency. Pursuant to the Cooperation Agreement, the Agency may pay the Stadium Authority Advance with cash on hand, proceeds from Tax Allocation Bonds and from Net Tax Increment. Payment of the Stadium Authority Advance, other than the Initial Make-Ready Work Funds, shall be deposited by the Agency into the escrow account established pursuant to Section 4.3 below.

Section 4.2 Terms of Stadco Advance. The outstanding amount of the Stadco Advance, including compound interest at an annual fixed rate equal to the lower of the rate on 30-year BB-rated corporate bonds or eight and one-half percent (8½%), calculated from the

commencement of construction of the Stadium, will be repayable by the Stadium Authority only from Net tax Increment, whether through payments on the Stadium Authority Advance, from proceeds of Tax Allocation Bonds issued pursuant to the Cooperation Agreement, or otherwise. The Parties anticipate that the Stadium Authority will obtain funds from various sources to assist with the development costs of the Stadium (including, without limitation, the repayment of Predevelopment Costs), and agree that this Agreement solely deals with the Stadium Authority's obligation to pay from Net Tax Increment the portion of Predevelopment Costs equivalent to the Stadco Advance, and that any other Predevelopment Costs not paid from Net Tax Increment may be repaid from sources other than Net Tax Increment, as may be further provided in the Final Financing Plan.

Section 4.3 Escrow of Net Tax Increment. In order to induce Stadco to continue to incur Predevelopment Costs on behalf of the Stadium Project, the Agency and the Stadium Authority agree that the Agency shall deposit all Net Tax Increment, other than the Initial Make-Ready Work Funds, into an escrow account, which shall be established by the Stadium Authority and Stadco with an escrow holder mutually approved by the Stadium Authority and Stadco ("Escrow"); provided, however, that the total Net Tax Increment which the Agency is obligated to deposit into Escrow shall not exceed the Maximum Principal Amount, plus all interest accrued to date on the Stadium Authority Advance. Upon commencement of construction of the Stadium, all funds released from the Escrow shall be deposited into a development fund to reimburse Predevelopment Costs and to pay other Stadium development costs in accordance with the terms of the Final Financing Plan. The establishment and terms of the Escrow shall be subject to irrevocable escrow instructions of the Stadium Authority and Stadco, which shall provide that:

(a) Upon the written direction of Stadco, specified amounts can be released, from time to time, to pay the Stadium Authority's Operating Costs.

(b) Upon commencement of construction of the Stadium, all funds remaining in Escrow will be disbursed in accordance with the written direction of Stadco to the development fund referenced above.

(c) If construction of the Stadium has not commenced by December 31, 2015 as such date may be extended by the Stadium Authority, or if jointly directed prior to that date by Stadco and the Stadium Authority, all amounts remaining in the Escrow will be paid to the Stadium Authority.

To the extent that the aggregate amount of funds from Escrow received by Stadco and the Stadium Authority following the commencement of construction exceeds the Maximum Principal Amount, plus applicable interest accrued on the Stadco Advance, Stadco shall pay any such excess that it received to the Stadium Authority and the Stadium Authority shall pay that amount, together with any such excess that it received from Escrow to the Agency, or its successor.

Section 4.4 Indebtedness of the Agency. The obligation of the Agency to pay the Net Tax Increment into Escrow under this Agreement shall constitute an indebtedness of the Agency incurred in carrying out the Redevelopment Plan and a pledge of tax increment received by the

Agency from the Project Area to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Redevelopment Plan.

ARTICLE 5.
GENERAL PROVISIONS

Section 5.1 Non-Liability of Officials. No member, official, employee, manager or agent of any Party shall be personally liable to any other Party, or any successor in interest, in the event of any default or breach by such Party for any amount which may become due to any other Party or successor or on any obligation under the terms of this Agreement.

Section 5.2 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits the Stadium Authority's or the Agency's approval, consent, or waiver, the written approval, consent, or waiver of the Agency's Executive Director or the Stadium Authority Executive Director (or their respective designees) shall constitute the approval, consent, or waiver of the Agency or the Stadium Authority, respectively, without further authorization required from the governing board of such Party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board as she/he deems it appropriate.

Section 5.3 Nondiscrimination.

(a) In Performance of Agreement. The Stadium Authority and its contractors, subcontractors, agents, and employees shall not, because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability of any person, refuse to hire or employ the person, or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions or privileges of employment with respect to performance of this Agreement.

(b) With Respect to Use of the Stadium. The Stadium Authority covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Stadium.

Section 5.4 Third Party Beneficiaries. The Agency, the Stadium Authority and Stadco do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any other third party, and no other third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

Section 5.5 State Law. This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 5.6 Records. The Stadium Authority shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the Agency's authorized agents for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the Stadium Authority for the longer of seven (7) years following completion of the Stadium or whatever retention period the Stadium Authority has designated for such documents.

Section 5.7 Inspection of Documents. During the regular office hours and upon reasonable prior notice, the Stadium Authority, the Agency and Stadco, by their duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of the Stadium Authority and the Agency pertaining to this Agreement. During regular office hours and upon reasonable prior notice, the Stadium Authority and the Agency, by their duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of Stadco's Predevelopment Costs.

Section 5.8 Additional Acts. The Parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other Parties for purposes of consummating the transactions contemplated in this Agreement.

Section 5.9 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, Party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby. In the event litigation is initiated attacking the validity of this Agreement, each Party shall in good faith defend and seek to uphold the Agreement. In the event the Stadium Authority or the Agency is ordered by a court of law, pursuant to a final nonappealable judgment by such court of law, to return the Initial Make-Ready Work Funds to the City or a successor agency, Stadco, upon request of the Stadium Authority or the Agency, shall immediately pay to the Stadium Authority or the Agency, as directed, any Initial Make-Ready Work Funds that have not been expended in accordance with this Agreement prior to such date.

Section 5.10 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties. This Agreement cannot be amended or modified except by written agreement of the Parties.

Section 5.11 Defaults and Remedies. If any Party breaches any other material provision of this Agreement, any of the other Parties shall first notify the breaching Party in writing of the purported breach or failure, giving the breaching Party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching Party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching Party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in

no event later than one hundred twenty (120) days, then each non-breaching Party shall be afforded all of its rights at law or in equity, including to prosecute an action for damages or specific performance.

Section 5.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties to this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 5.13 Time of The Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

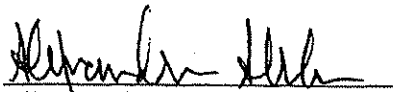
Section 5.14 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

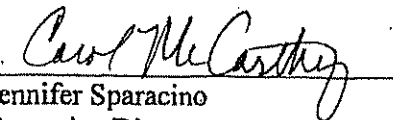
(signatures on following page)

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

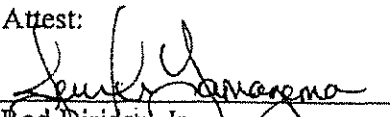
Approved as to Form

SANTA CLARA STADIUM AUTHORITY

for 
Elizabeth H. Silver
Interim Stadium Authority General Counsel


for 
Jennifer Sparacino
Executive Director

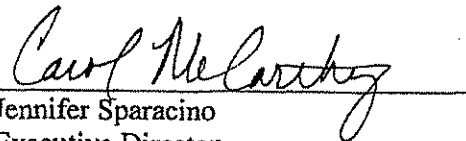
Attest:

for 
Rod Diridon, Jr.
Stadium Authority Secretary

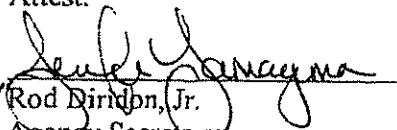
Approved as to Form

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA

for 
Elizabeth H. Silver
Interim Agency General Counsel

for 
Jennifer Sparacino
Executive Director

Attest:

for 
Rod Diridon, Jr.
Agency Secretary

FORTY NINERS STADIUM, LLC, a
Delaware limited liability company

By: 

Name: Lawrence MacArthur

Title: VP : CFO

EXHIBIT A

DESCRIPTION OF MAKE-READY WORK

GENERAL DESCRIPTION OF MAKE-READY WORK

Phase I – Utility Relocation and Ramp Construction at Southwest Corner of Site

- Install fire hydrants for construction period and future use as stadium site hydrants
- Relocate Silicon Valley Power (SVP) high voltage poles along Southerly property line
- Isolate recycled water line at Bridge and cap line for relocation
- Demolition, clearing and grading in Southwest work area
- Construct retaining walls for ramp south of Stadium
- Place partial embankment adjacent to ramp
- Design, testing and regulatory approvals for bridges spanning San Tomas Aquino Creek
- Geotechnical investigation and testing of the stadium site
- Environmental investigation and testing of the stadium site
- Place new utilities in ramp area and Southwest corner of site
- Locate and work around existing north/south fiber optic cable
- Relocate transformer in Centennial Blvd right-of-way to SVP property corner
- Pull SVP conductors and fiber optic cables in previously installed duct banks
- Begin abandonment of SVP ducts that are no longer required
- Construct remaining utilities in Southwest work area
- Design, engineering, surveying, title work, estimating, development fees, inspection, and preconstruction services relating to the above work

Phase II – Access and Utility Installation at East and Southeast Portions of Site

- Install fencing to separate 49ers Training Facility from new access road and parking lot construction
- Clearing and grubbing of new Parking Lot Area and new South Access Roadway
- Install utilities adjacent to South Access Roadway
- Install new temporary sanitary sewer line from 49ers Training Facility to existing sanitary sewer main at Youth Soccer Park
- Construct East-West public utilities corridor on North side of existing 49ers Training Facility property
- Reconnect Youth Soccer Park utility services after utility relocations have been completed
- Construct South Access Road for access to 49ers Training Facility, Northern Receiving Station, reconnect utilities to City water tanks and City emergency generators after utility relocations have been completed
- Reconnect utilities to SVP Northern Receiving Station after utility relocations have been completed
- Switch over SVP electrical service and PG&E gas service to 49ers Training Facility upon completion of new utilities and obtaining of signoffs from SVP and PG&E
- Centennial Blvd. right-of-way clearing and grubbing in preparation for new stadium construction
- Abandonment and removal of replaced and no-longer-needed utilities in Centennial Blvd right-of-way
- Design, engineering, surveying, title work, estimating, development fees, inspection, and preconstruction services relating to the above work

Exhibit 3

EXHIBIT 3

Impact of Agreements on Taxing Entities

Taxing Entities	Amounts Not Available for Immediate Distribution to the Taxing Entities (Note 1)	Estimated Amounts Not Available for Future Distribution to the Taxing Entities (Note 2)	Total Amount Not Available for distribution to the Taxing Entities C = A+B
Santa Clara Unified	4,917,441	15,285,000	20,202,441
ERAF K-12	1,738,259	5,403,000	7,141,259
County School Service	508,874	1,582,000	2,090,874
West Valley-Mission Community College	1,421,961	4,420,000	5,841,961
ERAF College	289,482	900,000	1,189,482
Santa Clara Valley Water District	287,552	895,000	1,182,552
El Camino Hospital	542	2,000	2,542
Bay Area Air Quality Management District	31,505	98,000	129,505
Santa Clara County	2,311,254	7,184,000	9,495,254
Santa Clara City	1,288,806	4,006,000	5,294,806
Santa Clara Parking District No.122	5,897	18,000	23,897
Santa Clara Bridge District No.01	2,370	7,000	9,370
Total	12,803,943	39,800,000	52,603,943

Note 1: If the agreements are recognized as creating enforceable obligations.

Note 2: The amount would not be available over the next three fiscal years.