

to provide for any security required under Section 17.05.660 of the Municipal Code of the City for the Make-Ready Work that is subject to the Improvement Agreement.

**Section 4.6.** Compliance with Approvals and Applicable Law. Prior to the Close of Escrow, Stadco shall supervise the Make-Ready Work in accordance with the Make-Ready Work Agency Agreement. From and after the Close of Escrow, Stadco, as Construction Agent, shall supervise the Make-Ready Work under the Construction Agency Agreement. In its capacity under, and in accordance with, each of the Make-Ready Work Agency Agreement and the Construction Agency Agreement, as applicable, Stadco shall use Professional Efforts to cause the Make-Ready Work to be performed in compliance with the requirements of the Make-Ready Work License, other third party approvals, if any, and all applicable Laws now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 et seq., of the California Labor Code).

**Section 4.7.** Acceptance of Make-Ready Work. Upon completion of the Make-Ready Work and its acceptance by the City, the Make-Ready Work License shall terminate, and the Parties will cause the Team Make-Ready Work License to terminate. As a condition of acceptance of the Make-Ready Work, the Stadium Authority shall cause the contractor responsible for constructing the Make-Ready Work to provide to the City a warranty for all Make-Ready Work items, which warranty shall not expire any sooner than the one year anniversary date for the Completion of the Stadium.

**Section 4.8.** Assignment of Work Product. Prior to the issuance of bid documents for the Make-Ready Work, Stadco shall assign to the Stadium Authority, pursuant to a form of assignment prepared by Stadco and approved by the Stadium Authority, and the Stadium Authority shall accept assignment from Stadco, all of Stadco's right, title and interest in the permits and entitlements or work products obtained or created in connection with the Make-Ready Work.

ARTICLE 5.  
DESIGN AND ENTITLEMENTS

**Section 5.1.** Cooperation. The Stadium Authority and Stadco agree to cooperate and coordinate with each other in connection with the Stadium Authority's ongoing efforts to develop the Stadium, including, without limitation, with respect to the Stadium design work. The Parties acknowledge that such cooperation and coordination is necessary in order to timely develop the Stadium Project.

**Section 5.2.** Design Development. Prior to the date of this Agreement, Stadco retained the Architect and Stadco Design Professionals to prepare design documents for the Stadium, including the Schematic Design Drawings and Design Development Documents, anticipating that the costs it incurred in doing so would be considered Development Costs and reimbursed out of the Development Fund if the Stadium Authority proceeded with development of the Stadium. Stadco's agreement with the Architect and with Stadco Design Professionals shall expressly provide that Stadco shall have the right to transfer and assign to the Stadium Authority all of its right, title and interest in the Schematic Design Drawings, the Design Development Documents,

the GMP Set, and other work product prepared by the Architect or Stadco Design Professionals for the Stadium Project. Stadco has submitted to the Stadium Authority, a statement of the costs for the Design Development Documents incurred as of the date the Predevelopment Funding Agreement and an estimated budget for the completion of the Design Development Documents. The budget approved pursuant to the Predevelopment Funding Agreement shall be incorporated into the Final Development Budget.

**Section 5.3. Design Consistent with Scope of Development and Schematic Design Drawings.** The Scope of Development and the Schematic Design Drawings shall establish the baseline design standards from which, and consistent with which, Stadco, in consultation with the Stadium Authority, shall cause the Architect and Stadco Design Professionals to prepare the Design Development Documents and the GMP Set.

**Section 5.4. LEED Certification.** The Stadium has been registered with the U.S. Green Building Council for Leadership in Energy and Environmental Design (“LEED”) certification. The Architect shall submit or cause to be submitted to the Stadium Authority a preliminary LEED checklist signed by a LEED Accredited Professional demonstrating the credits Stadco intends to attain for the Stadium in order to meet the point requirements for LEED certification. The Stadium Authority and Stadco shall cooperate to obtain LEED certification for the Project.

**Section 5.5. Submittal and Review of Design Development Documents.** Within the time period set forth in the Schedule of Performance, Stadco shall submit the Design Development Documents to the Stadium Authority for review and approval. The Design Development Documents shall, as appropriate, provide for compliance with the relevant Mitigation Measures and Conditions of Approval. The purpose of the Stadium Authority’s review of the Design Development Documents is to ensure consistency with the Scope of Development and Schematic Design Drawings, the provisions of this Agreement, and conformance to the Redevelopment Plan. The Stadium Authority shall be required to approve the Design Development Documents provided that the Design Development Documents meet the requirements of this Section 5.5 and are a Logical Evolution of the Schematic Design Drawings. For purposes of this Article 5, “Logical Evolution” means a refinement or amplification of the prior phase of drawings approved by the Stadium Authority into drawings and design material which flow reasonably therefrom, and which reflect architectural and engineering design consistent with such industries’ standards and practices and applicable code requirements.

**Section 5.6. Submittal and Review of GMP Set.** Within the time periods set forth in the Schedule of Performance, Stadco shall submit the GMP Set to the Stadium Authority for review and approval. The purpose of the Stadium Authority’s review of the GMP Set is to ensure that the GMP Set is generally consistent in all material respects with the Scope of Development, the Design Development Documents, the provisions of this Agreement, the Mitigation Measures and Conditions of Approval, and conformance to the Redevelopment Plan. The Stadium Authority shall be required to approve the GMP Set provided that the GMP Set meets the requirements set forth in this Section 5.6 and is a Logical Evolution of the Design Development Documents.



**Section 5.7. Approval Process.** The Stadium Authority shall approve or disapprove submittals under this Article 5 within thirty (30) days of receipt of the submittal from Stadco. The failure of the Stadium Authority to approve or disapprove such submittals within thirty (30) days shall be deemed to be an approval of such submittals. In the event the Stadium Authority disapproves a submittal pursuant to the terms of this Article 5, the Stadium Authority shall submit a list of reasons for such disapproval to Stadco, together with its notice of disapproval. Upon receipt of such a list, Stadco shall submit a revised submittal the later of (a) the date set forth in the Schedule of Performance for such submittal or (b) twenty (20) Business Days after receipt of such list. Upon the Stadium Authority's receipt of a revised submittal, the Stadium Authority shall have fifteen (15) Business Days to approve or disapprove of the revised design. The Stadium Authority's failure to approve or disapprove the revised submittal within fifteen (15) Business Days shall be deemed to be an approval of such change. The times for approval of the submittals included in the Schedule of Performance shall be automatically adjusted to reflect time for Stadco to make resubmittals, if required to obtain Stadium Authority approval, as allowed by this Section 5.7.

**Section 5.8. Construction Oversight Working Group.** Stadco shall meet with the Executive Director, on a schedule to be agreed upon by the Parties, to review and discuss the evolution of the design documents through the development of the Final Construction Documents. Stadco shall consult with the Executive Director regarding the progress of the design documents at each meeting and shall report on any material alterations or issues encountered by Stadco, the Architect, Stadco Design Professionals, as applicable, or the Design-Build Contractor in the design process since the previously held meeting.

**Section 5.9. Concessionaire.** Prior to the date of this Agreement, the Stadium Authority, Stadco and the Concessionaire entered into the Pre-Opening Services Contract, pursuant to which the Stadium Authority selected Concessionaire to act in the capacity of the pre-opening concessionaire to provide assistance to the Stadium Authority in the design and location of concession spaces within the Stadium. The Pre-Opening Services Contract includes a form of Concession Operating Agreement as an exhibit to the Pre-Opening Services Contract with the intent that the Concessionaire would execute a form of the Concession Operating Agreement with the Managementco at or around the date of Completion. Stadco, on behalf of the Stadium Authority, shall coordinate and supervise the Concessionaire in the Concessionaire's performance of the Pre-Opening Services Contract. Stadco and the Stadium Authority acknowledge that the Concessionaire, the Architect, other design professionals, and other Persons designated by the Stadium Authority and Stadco will need to collaborate in order for the Design Development Documents to accurately incorporate the design and location needs of the Concessionaire for the concession areas of the Stadium Project. Stadco shall coordinate the necessary exchange of information between the Concessionaire, the Architect and others referenced in this Section 5.9 to facilitate such collaboration.

**Section 5.10. Preconstruction Services.** Prior to the date of this Agreement, Stadco engaged TDJV to perform certain preconstruction services, including among other things, to participate in the development of the Design Development Documents. Consistent with the Procurement Plan, TDJV may issue prequalification and bid documents and select design/build

subcontractors for the Project. The subcontractors selected through the Procurement Plan may participate in the development of the Design Development Documents as part of TDJV's preconstruction services. The Stadium Authority shall have no obligation to TDJV or to such selected subcontractors unless and until the Stadium Authority enters into the Design-Build Agreement with TDJV.

**Section 5.11. Design-Build Contractor.**

(a) **Entry into Design-Build Agreement.** Subject to the satisfactory completion of preconstruction services, Stadco expects to recommend TDJV as the Design-Build Contractor. Within the time specified in the Schedule of Performance, the Stadium Authority will consider approving and executing the Design-Build Agreement with the recommended Design-Build Contractor; provided, however, that (i) the award of the Design-Build Agreement shall be subject to compliance with California Government Code Section 6532, and (ii) Stadco shall be responsible to pay, on the Stadium Authority's behalf, any payments due to the Design-Build Contractor under the Design-Build Agreement from its effective date until the Close of Escrow, at which time, the Stadium Authority shall become responsible to pay the costs due to the Design-Build Contractor under the Design-Build Agreement. Amounts advanced by Stadco to fund the costs due to the Design-Build Contractor under the Design-Build Agreement will be reimbursed to Stadco by the Stadium Authority, in accordance with the Funding Agreement and the Final Development Budget. In the event the Close of Escrow does not occur, any such funds advanced by Stadco shall be repaid by the Stadium Authority, but only from funds other than funds of the Stadium Authority that (1) were received by the Stadium Authority from the Agency, (2) are required to pay other costs incurred by the Stadium Authority in furtherance of the Stadium Project that are included in the budget approved by the Board, and (3) the Stadium Authority cannot, consistent with applicable Law and its other contractual covenants, use to pay for Development Costs. The provisions of this Section 5.11(a) shall survive the termination of this Agreement.

(b) **Establishment of GMP.** The Stadium Authority shall not issue the notice to proceed until the IGMP has been established and the Close of Escrow has occurred. Within ninety (90) days of the Close of Escrow, the GMP shall be established pursuant to the provisions of the Design-Build Agreement and the Construction Agency Agreement. As provided in Section 6.4, the Funding Agreement shall include limitations, satisfactory to the Stadium Authority and consistent with the Final Financing Plan, on draws on any Stadium Authority financing prior to the establishment of the GMP.

**Section 5.12. Separate Construction Work.** The Parties acknowledge that certain components of the Improvements, including certain infrastructure (such as the pedestrian bridges across San Tomas Creek) and certain Tenant Improvements, are expected to be excluded from the scope of work under the Design-Build Agreement and the Make-Ready Construction Contract (the "Separate Construction Work") and constructed by Separate Contractors. Plans and Specifications for any Separate Construction Work shall be submitted to the Stadium Authority for review, and it shall be subject to the Stadium Authority's approval pursuant to the process set forth in Section 5.7. Any and all Separate Contractors shall be directed and managed



by the Construction Agent, and any Separate Construction Contracts shall contain provisions consistent with the Design-Build Agreement requiring coordination with the work of the Design-Build Contractor. Any Separate Construction Contract entered into by the Stadium Authority shall be competitively bid and, if determined to be appropriate, awarded to the lowest responsive and responsible bidder, all in a manner generally consistent with the City's standard process for bidding public works projects. The Stadium Authority shall obtain Stadco's approval of the bid documents prior to issuing the bid documents, and promptly following Stadco's request, the Stadium Authority shall submit to Stadco all bid documents and all documents relating to the selection process for the Separate Contractors and their subcontractors.

**Section 5.13. Construction Agency Agreement.** Simultaneously with the execution of the Design-Build Agreement, the Stadium Authority and Stadco shall enter into the Construction Agency Agreement in substantially the form attached hereto as Exhibit M.

**Section 5.14. Entitlements and Additional Permits and Approvals.** Within the time period specified in the Schedule of Performance, Stadco and the Stadium Authority shall work cooperatively and use commercially reasonable efforts to identify, prepare and submit, the required applications and supporting documents to applicable government agencies to obtain the Entitlements and a Building Permit as necessary to allow for the commencement of construction of the Make-Ready Work, and with respect to the other Improvements, the Commencement of Construction. All applications for such permits and approvals shall be consistent with the Project Documents, as applicable, and shall be subject to approval by the Stadium Authority before submission to the applicable government agency. Stadco acknowledges that execution of this Agreement by the Stadium Authority does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the lawful exercise of discretion by the City in the permit, allocation or approval process otherwise required under applicable Law. Each Party shall provide reasonable assistance to the other in their efforts to secure such permits and approvals.

**Section 5.15. Subdivision of the Stadium Site.** Stadco and the Stadium Authority shall work cooperatively and use commercially reasonable efforts to prepare and submit the required applications and supporting documents to the City to obtain approval from the City of the recordation of the Subdivision Map at the Close of Escrow.

**Section 5.16. Stadium Authority's Purchase of Stadco's Stadium Design Work Product.** At the Close of Escrow, Stadco shall assign to the Stadium Authority, in a form reasonably approved by the Stadium Authority, and the Stadium Authority shall purchase from Stadco, all of Stadco's Stadium Design Work Product, excluding any of Stadco's Stadium Design Work Product relating to the Tenant Improvements, for a purchase price equal to the lesser of (i) the actual costs incurred by Stadco for such work and (ii) the amount for such work set forth in the Final Development Budget. Such purchase price shall be payable to Stadco from the Development Fund in accordance with the Funding Agreement and the Final Development Budget.