

## AMENDMENT TO DESIGN-BUILD AGREEMENT

THIS AMENDMENT TO DESIGN-BUILD AGREEMENT (this "Amendment") is by and among Santa Clara Stadium Authority ("Owner" or "Authority"), Turner/Devcon, a Joint Venture ("Design-Builder" or "TDJV"), and Forty Niners SC Stadium Company LLC (successor by assignment to Forty Niners Stadium, LLC) ("Construction Agent") (Owner, Design-Builder and Construction Agent are each referred to herein individually as a "Party" and collectively as the "Parties").

WHEREAS, Owner, Design-Builder and Construction Agent are parties to that certain Design-Build Agreement dated as of February 8, 2012, as amended by certain amendments thereto, including the amendments dated as of March 28, 2012 and as of June 14, 2012 (as so amended, the "Agreement");

WHEREAS, the Parties desire to further amend the Agreement to address certain warranty work, pursuant to Section 9.5 of the Agreement;

WHEREAS, the Construction Agent will work in conjunction with Design-Builder to manage the warranty work and services and other corrective remediation work as administered under the Nevarez legal settlement (the "Settlement"), or as otherwise directed by the Construction Agent.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, the Parties hereto agree to amend the Agreement as provided herein.

### ARTICLE 1 AMENDMENTS

1.1 Warranty Work. The scope of warranty work and services described on **Schedule 1**, attached hereto and made a part hereof, are hereby added to the Agreement and shall be deemed "Warranty Work" under the Agreement. Capitalized terms not defined therein shall have the meaning ascribed in the settlement agreement executed by and between the Parties in connection with the Nevarez complaint.

1.2 Remediation Work. Design-Builder shall perform other corrective remediation work ("Remediation Work") as evidenced by change orders to be executed by and between Construction Agent and Design-Builder, each of which shall contain the full scope of work performed therein. Each change order shall be made a part of and incorporated within the Agreement.

1.3 Project Schedule. Design-Builder shall provide to Construction Agent a detailed and comprehensive project schedule to complete the Warranty Work and Remediation Work (collectively referred to as, "the Work") in accordance with the remediation settlement deadlines. Where inconsistent with Section 9.3, this section shall control. Time is of the essence.

1.4 Design Documents. Construction Agent shall produce and deliver (or cause the production and delivery of) relevant construction drawings and specifications for the Remediation Work to the Design-Builder. Construction Agent may request Design-Builder produce or prepare such construction drawings and specifications for it, subject to the mutual agreement of Construction Agent and Design-Builder. The construction drawings and specifications shall comply with all Applicable Laws and design requirements set forth below and in accordance with the provisions in the Settlement. Construction Agent will not require Design-Builder to provide design drawings for the Warranty Work, unless required by any Governmental Authority.

1.5 Cost of Work. Design-Builder shall perform the Warranty Work without cost to Owner or Construction Agent, pursuant to Section 9.5 of the Agreement. Design-Builder shall perform the full scope of Remediation Work at the Cost of Work, in which total compensation shall be paid exclusively by Construction Agent, with funds provided through the Settlement or otherwise designated for such Remediation Works, and shall not, at any time, be charged to, or reimbursed by, Owner, unless approved in writing by Owner.

1.6 Terms and Conditions. All of the terms and conditions of the Agreement shall apply to the Work excepting those provisions set forth in Schedule 2, attached hereto and made a part hereof, and the provisions of Section 1.7 below.

1.7 Other Terms and Conditions. Design-Builder shall provide and maintain the insurance described in Schedule 3, attached hereto and made a part hereof, and shall provide a performance and payment bond in the amount of the contract sum of the Work and otherwise meeting the requirements of Section 14.2.1 of the Agreement.

## ARTICLE 2 MISCELLANEOUS

2.1 Defined Terms. All capitalized words and phrases not otherwise defined herein shall have the meanings ascribed to such words and phrases in the Agreement.

2.2 Conflict. If there is an express conflict between the terms and conditions of this Amendment and the Agreement, then the terms and conditions of this Amendment shall prevail.

2.3 Ratification. Except as expressly amended herein, all other terms, covenants and conditions contained in the Agreement shall continue to remain unchanged and in full force and effect and are hereby ratified and confirmed.

2.4 Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed to be an original, and all of which, taken together, shall constitute but one in the same instrument.

2.5 Agreement Terms. All terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.

2.6 Authority. Each signatory to this Amendment represents that he has the authority to execute and deliver the Agreement on behalf of the Party set forth above his signature.

This Amendment to Design-Build Agreement is entered as of the 15th day of July, 2021.

**OWNER:**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
BRIAN DOYLE  
Stadium Authority Counsel

\_\_\_\_\_  
DEANNA J. SANTANA  
Executive Director

ATTEST:

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

\_\_\_\_\_  
NORA PIMENTEL  
Secretary

\_\_\_\_\_  
Date

**CONSTRUCTION AGENT:**

**FORTY NINERS SC STADIUM  
COMPANY LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[Signatures continued on next page]**

**DESIGN-BUILDER:**

**TURNER/DEVCON,  
A JOINT VENTURE**

By: Turner Construction Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

and

By: Devcon Construction, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[End of signature pages]**

## **LIST OF ATTACHMENTS**

- Schedule 1**    Scope of Warranty Work
- Schedule 2**    Agreement Provisions Not Applicable to the Work
- Schedule 3**    Insurance Requirements

## Schedule 1

### **Scope of Warranty Work**

1. TDJV will confirm an Accessible Path of Travel that is no less than eight feet in width, which connect the entrances at Gate A to the entry gates to the team store entrances, to the entry door to the elevator at SAP tower at Plaza A, to the gates leading to the entry plaza to SAP tower to the gates and path of travel connecting Plaza A with the 49ers Museum, to the entry door to the elevator adjacent the Museum, to the Box Office and to all Box Office windows required to be Accessible, and to Bourbon Steak, Bourbon Pub and Tailgate restaurants. In the general locations identified in Exhibit 1 attached here to. In addition, there shall be an Accessible Path of Travel leading from the Main Lot to Gate A, and the designated Accessible entrance gates shall be at least 48 inches in width. There shall be an Accessible Path of Travel no less than eight feet in width from the accessible parking spaces in the Main Lot to each of the Accessible gates at the Canopies being used for events, and that connects those Canopies and their Accessible gates to Gate A and Gate C. As show on exhibit A. To the extent that any locations on those paths have slopes greater than 6% or cross slopes greater than 3% TDJV will correct those slopes or cross slopes. To the maximum extent feasible, the Accessible Paths of Travel shall not require remedial work in areas in the Stadium Plaza that include heritage bricks as of August 1, 2019.

2. TDJV will remediate Conditions in ramps shown on Exhibit 2 such that the maximum running slope at any location within the ramp does not exceed 9.0 percent, and the maximum cross slope at any location within the ramp does not exceed 3.0 percent.

3. TDJV will remediate Conditions in the designated Accessible seating areas and the aisles adjacent thereto identified in Exhibit 3, such that the maximum slope at any location in the Accessible seating areas and the aisles adjacent thereto shall not exceed (3%). TDJV will modify, adjust or replace area drains and area drain covers as required to ensure that the maximum slope at any location at the drain does not exceed 3.0 percent.

4. Drinking Fountains. The Stadium Defendants shall remediate the Conditions in drinking fountains identified in Exhibit 4 pursuant to the remedial measures set forth therein.

5. TDJV install a fold down, half- length storage shelf in any of the Stadium's suites and boxes that contains a closet or other enclosed area with a shelf where suite users can store personal items within the maximum height specified by 2010 ADAS section 308.1.

6. In the Dignity Heath Center A drain shall be installed so that there are no slopes in excess of three percent within the restroom and a round bowled toilet will be located within the distances required by the Standards. The drain shall be reset so that there are no slopes in excess of 3 percent within the restroom.

7. In the Level 4 designated accessible unisex restroom, the toilet will be replaced with a round bowl located such that its position in relationship to the sidewall is within the distance required by the Standards.

8. In the other restrooms floor drains in accessible stalls will be reset and or larger drain caps install so that there are no slopes in excess of 3 percent within the restroom.

9. Where necessary, trim or modify lavatory counter aprons to provide required knee clearance.

10. Remove and remount baby changing stations installed as part of original construction to provide required knee clearance.

11. Replace side by side dual roll toilet paper dispensers in rest rooms with new single roll dispensers located at accessible distance from toilet.



## **Schedule 2**

### **Agreement Provisions Not Applicable to the Work**

The following provisions of the Agreement are not applicable to the Work:

1. Section 5.6 (Project Labor Agreement)
2. Section 6.2 (Liquidated Damages)
3. Section 14.1 (General Liability/Worker's Compensation) (see **Schedule 3** of this Amendment)

### Schedule 3

#### **Insurance Requirements**

1. For the Work, Design-Builder shall carry the following insurance:

(a) Workers' Compensation insurance with statutory limits or if no statutory limits exist, with minimum limits of \$1,000,000 per occurrence. The Workers' Compensation insurance will conform to the laws of the state in which the work is being performed. The Workers' Compensation policy will be primary insurance and non-contributing with respect to persons directly engaged in the performance of site work at the Project Site. Design-Builder shall provide a copy of any endorsement required to effectuate the same.

(b) Employer's Liability insurance with minimum limits of \$2,000,000 for each employee for bodily injury by accident and for each employee for bodily injury by disease. An alternate employer endorsement shall issue showing Owner and Construction Agent in the schedule as the alternate employer.

(c) Commercial General Liability ("CGL") insurance (excluding Automobile Liability), including liability for this Project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations (including Broad Form Property Damage), Medical Payments, Contractor's Protective, Bodily Injury, and Property Damage, with minimum limits of \$5,000,000 per occurrence, \$5,000,000 general annual aggregate, \$5,000,000 products-completed operations aggregate, \$5,000,000 personal and advertising injury per occurrence, and \$50,000 medical expense. Design-Builder shall cause each insurance company to delete any contractual liability exclusion with respect to the insurance, including insurance coverage for personal injury, hazards of explosion, collapse, fire, and underground property damage. Design-Builder shall maintain products-completed operations coverage throughout the applicable state statute of repose. CGL insurance shall be written on ISO occurrence for CG 00 01 04 13 (or a substitute form providing equivalent coverage). There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. The foregoing limits can be achieved by any combination of primary or excess policies. To the extent that excess/umbrella policies are utilized to achieve the foregoing limits, Design-Builder's excess/umbrella insurance shall apply immediately upon exhaustion of the primary CGL insurance required herein as respects the coverage afforded to any additional insured, and shall apply before any other insurance available to the additional insured on which the additional insured is a named insured and will not seek contribution from such insurance for defense or indemnity.

(d) Commercial/Business Automobile Liability insurance with minimum combined single limits of \$2,000,000 per occurrence (bodily injury and property damage liability). Design-Builder shall cause each insurance company

to provide coverage for liability arising out of the use or operation of owned, hired, leased and non-owned vehicles. The insurance shall apply to all operations of Design-Builder both on and away from the Project Site.

(e) Professional Liability insurance with all coverage retroactive to the commencement of the Work in the Agreement, to cover claims arising out of the performance of professional services, including but not limited to design-build work, architectural, engineering, surveying, and construction management, rendered by the Design-Builder (including vicarious liability of the Design-Builder arising out of the activities of its consultants and subcontractors) caused by negligent acts, errors, or omissions, with limits of not less than \$2,000,000 per claim and annual aggregate. Coverage shall be on a claims-made basis with a retroactive date no later than the first date of professional services, with coverage to be continuously renewed and maintained through the applicable statute of repose.

(f) Contractors Equipment insurance covering loss or damage on an "all risk" basis to any Equipment, Small Tools, or other machinery whether owned, leased, rented, borrowed or otherwise in the care, custody and control of the Design-Builder for use in the performance of Work.

(g) Builders Risk insurance covering loss or damage to the Work. Such insurance shall be maintained throughout the Agreement. The insurance shall be in the amount of the total value for the entire Work and shall be written on a repair or replacement cost basis. Design-Builder shall be the named insured. Owner, Construction Agent, Design-Builder's Subcontractors, and Sub-subcontractors shall be additional insureds, as their respective interests may appear. The builders risk insurance shall be on an "all-risk" form and shall include insurance against the perils of fire (with extended coverage), theft, vandalism, malicious mischief, terrorism (as provided under TRIA), rigging and hoisting, collapse, earthquake, flood, windstorm, falsework, testing and startup, debris removal including demolition expenses, increased cost of repair occasioned by enforcement of any applicable law or ordinance. The builders risk insurance shall have a deductible of no greater than \$25,000 for physical loss of or damage to covered property, except if such loss or damage is caused by earth movement.

(h) Contractors Pollution Liability insurance coverage with limits of not less than \$2,000,000 per occurrence, \$2,000,000 annual aggregate. Coverage shall apply to the scope of work described in the Agreement and shall include coverage for bodily injury; property damage, including loss of use of damaged property or property that has not been physically injured; clean-up costs; defense and investigative costs. Said policy shall include but not be limited to coverage for liability arising out of microbial events such as mold, fungi and legionella; any hazardous materials introduced to the Work by Design-Builder, a Subcontractor, or a Sub-subcontractor; and any existing condition at the Site caused by the presence of pre-existing hazardous materials that is exacerbated by the negligent actions of the Design-Builder, a Subcontractor, or a Sub-subcontractor. Design-Builder shall maintain completed operations coverage for the applicable state statute of repose.

If the scope of services in the contract require the Design-Builder to provide services associated with arranging for, or brokering of, the transportation of hazardous materials off the Site, Design-Builder shall include coverage to address this scope of work including coverage for the disposal site(s) utilized.

The Owner and Construction Agent shall be included as additional insured on a primary/non-contributory basis with respect to liabilities arising out of both the ongoing and completed operations of Design-Builder, Subcontractors, or Sub-subcontractors.

If any part of the required coverage is written on a claims-made basis, continuous coverage shall be maintained, or an extended discovery period shall be exercised, for a minimum period of ten (10) years after the completion of the Agreement or the applicable State statute of repose, whichever date is later. Any retroactive dates should be no later than the date that contracting services were first performed for the Work.

2. City of Santa Clara, Forty Niners Stadium, LLC, Forty Niners Football Company LLC, Forty Niners Stadium Management Company LLC, Forty Niners Holdings LP, San Francisco Forty-Niners, LLC, and their respective subsidiaries, affiliates, officers, directors and employees shall be included as additional insureds ("Additional Insureds") under the CGL and under any commercial umbrella liability policy, using ISO additional insured endorsements CG 20 10 07 04 and CG 20 37 07 04, or a substitute providing equivalent coverage, with changes requested by Owner.

3. Design-Builder shall cause each insurance company, except the Professional Liability insurer, (a) to issue the insurance on an occurrence basis, (b) to provide defense as an additional benefit and not within the limits of liability, (c) to issue an endorsement to all policies that the policies are primary and that the policies of Owner and each Additional Insured are excess, secondary and noncontributing, (d) to issue an endorsement to all policies to provide a waiver of subrogation in favor of Owner and each Additional Insured, and (e) to include in each insurance policy a provision that the insurance company or companies shall not cancel, non-renew, or change coverage from the requirements of the Contract Documents without providing at least thirty (30) days' advance written notice to Owner and Construction Agent. The insurance company or companies shall not exclude from coverage the negligence, strict liability, or gross negligence, whether sole or otherwise, of the Additional Insureds. Design-Builder shall provide to Owner a certified copy of any and all insurance policies required in the Contract if Owner or Construction Agent requests a copy.

4. Design-Builder shall provide to Owner and each Additional Insured before the Work is started and at least thirty (30) days prior to the expiration of a policy or policies of insurance in effect during the term of the Contract a certificate or certificates of insurance evidencing all required insurance in the Contract Documents and acceptable to Owner and Construction Agent. All certificates, among other things, shall:

(a) Show the Additional Insureds, their respective subsidiaries and affiliates as a certificate holder and include the addresses thereon as set forth hereinabove.

(b) Show Design-Builder as the Named Insured.

(c) Have attached copies of all required endorsements to each insurance policy, and not contain the phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or representatives," or similar phrases and shall include the commitment that each insurance company shall issue each insurance policy to the named and Additional Insureds, that each policy is in full force and effect, and that each insurance company shall give to the named and Additional Insureds at least thirty (30) days' advance written notice, by certified mail, return receipt requested, in the event of cancellation, non-renewal, or change in coverage of any insurance policy.

5. All policies shall (a) be written by insurance companies with a A.M. Best's Rating of no less than "A-", or such lower rating as Owner, in its sole and exclusive discretion, may accept; and (b) apply separately to each named and Additional Insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Subcontractors and Sub-subcontractors are subject to the same insurance requirements as Design-Builder, except only as follows:

- a. Professional Liability shall be required if the applicable scope of work includes any design-build, engineering, surveying, or to the extent required in the applicable subcontract.
- b. Contractors Pollution Liability insurance shall be required to the extent such coverage is required in the applicable subcontract.
- c. With respect to the required additional insured endorsements under the CGL and any commercial umbrella insurance, the requirements for specific edition dates for form CG 2010 and form CG 2037 shall not apply.
- d. Limits of liability for each required coverage shall not be less than required in the applicable subcontract; however, in no event shall a Subcontractor or Sub-subcontractor be required to have limits of liability less than \$1,000,000 for any third-party liability coverage required herein.

Design-Builder shall cause each Subcontractor and Sub-subcontractor to purchase and maintain such required insurance. Design-Builder is also responsible for assuring that all Subcontractors' and Sub-subcontractors' insurance policies required herein comply with the additional insured, primary and non-contributory and waiver of subrogation requirements. If requested by Owner or Construction Agent, Design-Builder shall provide Owner or Construction Agent with certificates of insurance and additional insured, primary and non-contributory and waiver of subrogation endorsements for the insurance required for all Subcontractors and Sub-subcontractors.