File No. 120477

Committee Item No. 4
Board Item No. 21

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight **Date** May 24, 2012

Board of Supervisors Meeting **Date** June 5,2012

Cmte	Board	
☐	☐	**Motion**
☒	☒	**Resolution**
☐	☐	**Ordinance**
☐	☐	**Legislative Digest**
☐	☐	**Budget and Legislative Analyst Report**
☐	☐	**Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form (for hearings)**
☐	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☒	☒	**Form 126 – Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☒	☒	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

☒	☒	Environmental Review Determination, dtd 5/15/12
☒	☒	Deal Points/Term Sheet
☒	☒	Amendment to Lease
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Completed by: Alisa Miller **Date** May 18, 2012
Completed by: Alisa Miller **Date** May 31, 2012

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Lease Amendment - San Francisco Forty Niners - Candlestick Park Stadium]

Resolution: 1) approving and authorizing an amendment to the Lease of Candlestick Park Stadium with San Francisco Forty Niners, LLC, to grant the Forty Niners an additional option to terminate the Lease early, between May 31, 2014, and May 31, 2015, providing for the Forty Niners to pay the City $1,000,000 in consideration for the early termination option, and providing that if the Forty Niners exercise the option, the Forty Niners make added minimum guaranteed payments to the City, in lieu of the rent scheduled under the current Lease, of $4,295,000 if the team plays no regular season or post-season NFL games at Candlestick in the 2014 season and up to $5,000,000 more if the team does play such games; 2) approving and accepting the dedication under the amendment of $1,045,000 of such $4,295,000 minimum guaranteed payment for youth programs for the City's Recreation and Park Department; 3) ratifying prior acts; and 4) making environmental findings.

WHEREAS, The City and County of San Francisco (the "City") owns a stadium located at Candlestick Point commonly referred to as Candlestick Park Stadium (the "Stadium"), which is under the administrative jurisdiction of the City's Recreation and Park Commission; and

WHEREAS, Forty Niners Football Company LLC, a Delaware limited liability company (the "Forty Niners"), owns the National Football League ("NFL") franchise for the professional football team known as the San Francisco 49ers, and is the successor-in-interest to the San Francisco Forty Niners, Limited, a California limited partnership; and

WHEREAS, The City and the Forty Niners are parties to a lease dated December 3, 1969, as subsequently amended (collectively, the "Lease"), under which the Forty Niners uses and occupies the Stadium for the exhibition of its home professional football games; and

WHEREAS, Under the most recent amendment to the Lease approved by the Board of Supervisors in 2011 ("2011 Amendment"), the term of the Lease currently expires on May 31, 2016, subject to (i) the option of the Forty Niners to terminate the Lease early as of May 31, 2015, under specified conditions, and (ii) the right of the Forty Niners to exercise up to seven 1-year extension options, for a maximum term of May 31, 2023; and

WHEREAS, The City and the Forty Niners have negotiated a proposed amendment of the Lease (the "Lease Amendment") in substantially the form on file with the Clerk of the Board in File No. 120477, which includes, among other provisions, the following significant terms:

(1) the Forty Niners shall have the option to terminate the Lease early on a date within the period commencing on May 31, 2014, and ending on May 31, 2015, to be specified by the Forty Niners in its option exercise notice;

(2) the Forty Niners will pay the City the non-refundable sum of $1,000,000, in cash, as option consideration on December 1, 2012;

(3) if the Forty Niners exercises the new early termination option and plays no games in the Stadium for the 2014 NFL season, then in addition to the nonrefundable option consideration and in lieu of the rent payments scheduled under the 2011 Amendment, the Forty Niners will make guaranteed minimum payments to the City totaling $4,295,000, payable in installments on the schedule set forth in the Lease Amendment, and which guaranteed minimum payments include a $1,045,000 community payment that the City must use only for its Recreation and Park Department youth programs and that is payable in two equal installments of $522,500 each on May 31, 2014 and May 31, 2015;

(4) if the Forty Niners exercises the new early termination option but plays one or more games in the Stadium for the 2014 NFL season, then in addition to the nonrefundable option consideration and the guaranteed minimum payment described in paragraph (3) above, and in lieu of the rent payments scheduled under the 2011 Amendment, the Forty Niners shall make additional payments to the City of up to $5,000,000 on the schedule and in the amounts specified in the Lease Amendment, based on the number of home games and post season games actually played at the Stadium during the 2014 NFL season;

(5) if the Forty Niners exercises the new early termination option but requires to hold over in the Stadium for any home games for the 2015 NFL season, it will give the City advance notice and pay the City guaranteed minimum payments and additional home game payments in the same amounts payable for the 2014 NFL season as further provided in the Lease Amendment;

(6) the Forty Niners will waive certain claims against the City relating to the condition of the Stadium as provided in the Lease Amendment;

(7) the extension option in the Lease Amendment is in addition to the extension option under the existing Lease;

(8) all of the seven 1-year extension options under the existing Lease shall terminate when and if the Forty Niners exercise the new early termination option, or the termination option under the existing Lease;

(9) the City and the Forty Niners will lead a Super Bowl bid committee to work with the NFL to bring a Super Bowl to the Bay Area as early as 2016;

(10) the Forty Niners will have its concession operator (Centerplate) retain and/or offer employment to existing Stadium employees upon the Forty Niners' moving to the new stadium; and

WHEREAS, The City's Planning Department has found that the Lease Amendment is categorically exempt from environmental review under the California Environmental Quality Act (a copy of these findings is on file with the Clerk of the Board of Supervisors in File No. 120477, and are incorporated herein by reference); now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves and authorizes the execution, delivery and performance by the City of the Lease Amendment, subject to the approval of the Lease Amendment by the City's Recreation and Park Commission, in its sole discretion; and, be it

FURTHER RESOLVED, That subject to the preceding paragraph, the Recreation and Park General Manager is authorized to execute and deliver the Lease Amendment in substantially the form filed with the Clerk of the Board in File No. 120477, and to take any and all steps necessary or appropriate to effectuate the execution, delivery and performance of the Lease Amendment. The Recreation and Park General Manager, at his or her discretion and in consultation with the City Attorney and the City's Controller, is authorized to enter into any additions, amendments, or other modifications to the Lease Amendment that the Recreation and Park General Manager determines are in the best interests of the City and do not materially increase the obligations or liabilities of the City or materially decrease the payments or other benefits to the City, and are necessary or advisable to effectuate the purpose and intent of this Resolution; and, be it

FURTHER RESOLVED, That the Board approves and accepts the dedication in the Lease Amendment of $1,045,000 of the Minimum Payment for youth programs of the Recreation and Park Department, as a community payment by the Forty Niners, subject to the budgetary and appropriations provisions of the Charter; and, be it

FURTHER RESOLVED, That any and all actions taken by City employees or officials regarding the Lease Amendment are hereby ratified and approved.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 15, 2012

File No. 120477

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On May 8, 2012, Mayor Lee introduced the following proposed legislation:

File No. 120477

Resolution: 1) approving and authorizing an amendment to the Lease of Candlestick Park Stadium with San Francisco Forty Niners, LLC, to grant the Forty Niners an additional option to terminate the Lease early, between May 31, 2014, and May 31, 2015, providing for the Forty Niners to pay the City $1,000,000 in consideration for the early termination option, and providing that if the Forty Niners exercise the option, the Forty Niners make added minimum guaranteed payments to the City, in lieu of the rent scheduled under the current Lease, of $4,295,000 if the team plays no regular season or post-season NFL games at Candlestick in the 2014 season and up to $5,000,000 more if the team does play such games; 2) approving and accepting the dedication under the amendment of $1,045,000 of such $4,295,000 minimum guaranteed payment for youth programs for the City's Recreation and Park Department; 3) ratifying prior acts; and 4) making environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Miller

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

Exempt from CEQA, per CEQA Guidelines Section 15301, Existing Facilities,
Maxine K Sunell
May 15, 2012

Item 4 File 12-0477	Department(s): Recreation and Park

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve an amendment to the existing lease of Candlestick Park Stadium (Candlestick Park) between the Recreation and Park Department (RPD) and the San Francisco Forty Niners, LLC (49ers), granting the 49ers a New Early Termination Option to terminate the lease between May 31, 2014 and May 31, 2015.

Key Points

- On December 3, 1969, RPD and the 49ers entered into a lease under which the 49ers play their home games at Candlestick Park. The lease currently expires on May 31, 2016, subject to exercise of the option for the 49ers to extend the term of the lease to May 31, 2023 through seven consecutive one-year options. The existing lease also has an Early Termination Option that would allow the 49ers at their discretion to terminate the lease effective May 31, 2015.
- The 49ers have requested a New Early Termination Option that would allow the 49ers to terminate the lease up to one year earlier than the existing lease currently provides. Under the proposed lease amendment, the 49ers would have the option to terminate the lease up to one year earlier, on a date between May 31, 2014 and May 31, 2015 (New Early Termination Option) instead of the existing option to terminate the lease May 31, 2015.
- In consideration for the New Early Termination Option, the 49ers would pay the City a non-refundable Early Termination Fee of $1,000,000 on December 31, 2012.
- If the 49ers exercise the New Early Termination Option by January 31, 2014, the 49ers would be required to pay the City a Guaranteed Minimum Payment of $4,295,000 in addition to the Early Termination Fee of $1,000,000, or a total of $5,295,000.
- If the 49ers exercise the New Early Termination Option in FY 2014-15 and then opt to play at Candlestick Park during the NFL 2014 season, the 49ers would be required to pay the City a Home Game Payment, ranging from a total of $500,000 to play one to four home games up to a total of $5,000,000 to play ten home games and two post-season games. The 49ers maximum payment to the City would be $10,295,000 ($5,295,000 plus $5,000,000).

Fiscal Impacts

- Under the existing lease, the 49ers pay RPD rent for Candlestick Park, including RPD's share of advertising, concessions, and other revenues generated by the 49ers at Candlestick Park, less rent credits for the 49ers' costs for repairs and renovations. RPD incurs expenses for operating and maintaining Candlestick Park. Rent payments paid by the 49ers less operating and maintenance expenses resulted in net revenue to RPD of $2,300,426 in FY 2011-12. In addition, the City received tax revenues including sales, admission, payroll, parking, and possessory interest taxes, from the regular season and post-season 49ers' games at Candlestick Park in FY 2011-12 of $2,428,000. Therefore, net payments and tax revenues to the City in FY 2011-12 were $4,728,426.

- If the 49ers exercise the New Early Termination Option, the 49ers would pay the City between $5,295,000 and $10,295,000, as noted above.
- Under the proposed lease amendment, the 49ers could terminate the lease up to one year early in FY 2014-15 (2014 NFL season), rather than the existing lease provision that allows the 49ers to terminate the lease on May 31, 2015. Therefore, the City could lose up to one-year of revenues under the proposed lease amendment that the City would otherwise receive under the existing lease.
- However, when compared to the net revenues received by the City in FY 2011-12 of $2,186,939 (the 2011 NFL season when the City received the highest net revenues in the six-year period FY 2006-07 through FY 2011-12), the Budget and Legislative Analyst estimates that the City would realize a net gain under the proposed lease amendment of $3,108,061, if the 49ers were to exercise the New Early Termination Option between May 31, 2014 and May 31, 2015 and play no games at Candlestick during the 2014 NFL season.[1]
- The City would also realize an unquantified net gain if the 49ers exercise the New Early Termination Option and play up to 12 games at Candlestick Park. In this case the net gain to the City would vary based on RPD's and City departments' expenditures related to the operation of Candlestick Park for the 49ers games played and the City's tax revenues from such games.

Recommendations

- As noted above, the Budget and Legislative Analyst estimates a net gain in revenue to the City under the proposed lease amendment. However, the Budget and Legislative Analyst considers the proposed resolution to be a policy matter for the Board of Supervisors because it would allow the 49ers to terminate the existing Candlestick Park lease with RPD up to one year early.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

Charter Section 9.118 requires Board of Supervisors approval for leases of ten or more years or revenues of $1 million or more.

Background

The existing lease between the Recreation and Park Department and the San Francisco Forty Niners LLC (49ers) terminates on May 31, 2016. The existing lease also contains seven one-year options to extend the lease through May 31, 2023. The existing lease also has an Early Termination Option, which allows the 49ers to terminate the lease one year early or on May 31, 2015.

[1] The City's estimated net gain could be higher if the basis of comparison is the average annual net revenue over the last six fiscal years. (See Table Two)

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve an amendment to the existing lease of the Candlestick Park Stadium (Candlestick Park) between the Recreation and Park Department (RPD) and the 49ers, granting the 49ers a New Early Termination Option to terminate the lease between May 31, 2014 and May 31, 2015 instead of the existing option to terminate the lease on May 31, 2015.

The New Early Termination Option would allow the 49ers to terminate the lease up to one year earlier than the current lease's early termination option date of May 31, 2015. The existing lease also contains seven one-year extension options, which allow the 49ers to extend the lease through May 31, 2023. These seven one-year options could not be exercised if the 49ers exercise the New Early Termination Option.

Under the proposed amendment to the existing lease, January 31, 2014 is the deadline by which the 49ers must provide written notice to the RPD that the 49ers will exercise the New Early Termination Option. If the 49ers exercise the New Early Termination Option, 49ers must specify a New Termination Date between May 31, 2014 and May 31, 2015 instead of the existing option to terminate the lease on May 31, 2015. If the 49ers do not exercise the early termination option by January 31, 2014, the proposed new termination option expires, and the 49ers must pay "all rent and other payments" due to the City for FY 2014-15.

49ers' Payments to the City under the Proposed Lease Amendment

New Early Termination Option Fee

In consideration for the New Early Termination Option, the 49ers would pay the City a non-refundable fee of $1,000,000 on December 31, 2012.

Guaranteed Minimum Payments (GMP) and Home Game Payments (HGP)

If the 49ers exercise the New Early Termination Option by January 31, 2014, the proposed lease amendment requires the 49ers to pay the City:

(1) A Guaranteed Minimum Payment (GMP) of $4,295,000,in addition to the Early Termination Fee of $1,000,000, in lieu of the rent scheduled under the current lease. The proposed resolution dedicates $1,045,000 of the $4,295,000 GMP to the Recreation and Park Department youth programs.

(2) Home Game Payments (HGP) of up to $5,000,000 in addition to the $4,295,000 GMP and $1,000,000 Early Termination Fee, if the 49ers exercise the New Early Termination Option and then opt to play regular or post-season games at Candlestick in the 2014 season. The amount of Home Game Payments the 49ers would pay the City depends on how many regular and post season games the 49ers plays at Candlestick in the 2014 season, as shown in Table 1 below.

Table 1

Home Game Payments for NFL 2014 Season under the Proposed Lease Amendment

Number of Home Games at Candlestick[2]	Home Game Payment Amount
None	$0
One to Four	500,000
Five to Ten	3,000,000
Playoff Game 1	750,000
Playoff Game 2	750,000
Maximum Home Game Payment	**$5,000,000**

The 49ers' maximum payment to the City for exercising the New Early Termination Option between May 31, 2014 and May 31, 2015 is $10,295,000, as follows:

Early Termination Fee	$1,000,000
Guaranteed Minimum Payment	4,295,000
Home Game Payment	5,000,000
Total	$10,295,000

If the 49ers use Candlestick Park for the 2015 NFL regular season or post season games, the proposed lease amendment requires the 49ers to make a new Guaranteed Minimum Payment and Home Game Payments in the same amounts as for the 2014 NFL season.

Other Proposed Lease Amendment Terms

Stadium Rent Credits and Rent Reductions under Current Lease

Since 2005, the City has granted the 49ers a series of rent credits that have allowed the 49ers to perform upgrades at the Stadium and deduct the cost of those upgrades from their rent payments. According to Ms. Katherine Petrucione, RPD Director of Administration and Finance, these rent credits have averaged $2,968,000 annually since FY 2006-07 or approximately $17,808,000 in the last six fiscal years. If the 49ers exercise the New Early Termination Option, rent credits and reductions for the 2014 NFL season would be eliminated and the 49ers would be required to make the Guaranteed Minimum Payment and the Home Game Payments to the City discussed above.

Holdover Periods

If the 49ers exercise the New Early Termination Date that terminates the lease before the 2014 NFL season, the proposed lease amendment would allow the 49ers to play one or more regular season or post season games during the 2014 and/or the 2015 NFL seasons after the New Early Termination Date. In this event, the 49ers would be required to give the City advanced written notice of their intentions to use the Stadium after the New Early Termination Date and provide a

[2] Home Game Payments are cumulative.

new Extended Termination Date by which they expect to move to the new stadium in Santa Clara.

Stadium Condition/Operation and Maintenance

The City and the 49ers entered into a settlement agreement and lease amendment in 2011, in which the 49ers waived certain claims against the City relating to the condition of the Stadium. Under the proposed lease amendment, the 49ers will agree that the waiver and release provisions contained in the 2011 settlement agreement will continue as of the effective date of the proposed lease amendment. Also, if the 49ers exercises the New Early Termination Option and then "hold over" after the New Early Termination Date, as described above, the proposed lease amendment requires the 49ers to agree that the waiver and release provisions contained in the 2011 settlement agreement will continue as of the effective date of the holdover period and will extend through the end of holdover period.

Super Bowl Bid Committee

Under the proposed lease amendment, the City and the 49ers will jointly lead a Super Bowl bid committee to work with the NFL to bring a Super Bowl to the Bay Area as early as 2016.

Continued Employment For Current Stadium Employees

Under the proposed lease amendment, the 49ers agree to have its concession operator (Centerplate) retain and/or offer employment to existing Candlestick Park employees upon the 49ers' moving to the new stadium in Santa Clara County.

FISCAL ANALYSIS

Revenues to the City under the Existing Lease

Net Lease Payments

As shown in Table 2 below, under the existing lease total net payments to RPD by the 49ers for the six-year period from FY 2006-07 through FY 2011-12 were $3,774,213. Net payments are the difference between (1) rent payable by the 49ers to RPD, less rent credits[3], and (2) RPD expenditures, such as custodial and maintenance staff costs and utilities, for maintaining Candlestick Park. The average annual net payments to RPD by the 49ers for the six-year period from FY 2006-07 through FY 2011-12 were $629,036.

[3] Net payments to RPD include rent, and RPD's share of advertising, concessions and other revenues generated by the 49ers' use of Candlestick Park.

Table 2
Net Payments by the 49ers to the Recreation and Park Department
FY 2006-07 to FY 2011-12

	Net Payments to RPD	Recreation and Park Department Expenses	Net Payments
FY 2006-07 [1]	$2,104,610	$3,555,934	($1,451,324)
FY 2007-08	4,999,491	3,784,757	1,214,734
FY 2008-09	4,986,613	4,054,649	931,964
FY 2009-10	4,550,966	4,063,765	487,201
FY 2010-11	5,273,571	4,982,359	291,212
FY 2011-12 [2]	7,835,785	5,535,359	2,300,426
6 Year Total	**$29,751,036**	**$25,976,823**	**$3,774,213**
Average	$4,958,506	$4,329,471	$629,036

Source: Recreation and Parks Department

[1] Beginning in 2005, the City granted the 49ers a series of rent credits which allowed the 49ers to perform upgrades at the Stadium and to deduct the cost of those upgrades from their rent payments. According to Ms. Petrucione, in fiscal year 2006-2007, the City gave the 49ers a rent credit of $6.02 million.

[2] According to Ms. Petrucione, the City received $2,217,705 in additional payments in FY 2011-12 for two home playoff games during the 2011 NFL season

Tax Revenues

In addition to net payments to RPD, the 49ers pay various taxes to the City. Tax payments for FY 2011-12 totaled $2,428,000, as shown in Table 3 below.

Table 3
Estimated Candlestick Park Stadium Tax Revenue FY 2011-12

Tax	Amount
Parking Tax	$1,000,000
Payroll Tax	150,000
Possessory Interest Tax	300,000
Sales Tax	200,000
Stadium Operator Tax [4]	778,000
Total	**$2,428,000**

Source: Recreation and Parks Department

Other City Department Expenditures for 49er Home Games

Other City departments incur expenses during 49er home games that the 49ers does not reimburse as shown in Table 4.

[4] Portion not allocated to RPD

Table 4
Costs of 49er Home Games to Other City Departments FY2012

Tax	Amount
Police	$970,000
MUNI	1,463,032
Department of Public Works	108,455
Total	**$2,541,487**

Revenues to the City under the Proposed Lease Amendment

Under the proposed lease amendment, the 49ers would have the option to terminate the lease one year early between May 31, 2014 and May 31, 2015, rather than the existing option to terminate the lease effective May 31, 2015. Therefore, the City could lose up to one-year of revenues under the proposed lease amendment that the City would otherwise receive under the existing lease.

The Budget and Legislative Analyst estimates that the City will receive a net gain under the proposed lease amendment, if the 49ers exercise the New Early Termination Option as follows:

- An estimated net gain of at least $3,108,061, if the 49ers exercise the proposed New Early Termination Option and play no games at Candlestick Park Stadium in the 2014 NFL season. Under this proposed option, the 49ers would pay the City the Early Termination Option fee of $1,000,000 plus the Guaranteed Minimum Payment of $4,295,000, totaling $5,295,000. When compared to the City's net revenues in FY 2011-12 of $2,186,939[5] (the 2011 NFL season when the City received the highest net revenues in the six-year period FY 2006-07 through FY 2011-12), theB udget and Legislative Analyst estimates that the City would realize a net gain under the proposed lease amendment of $3,108,061.

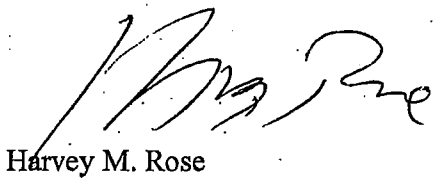
  Or,

- An unquantified net gain to the City if the 49ers exercise the New Early Termination Option and play up to 12 games at Candlestick Park, including two post season games, in the 2014 NFL season. The 49ers would pay to the City an amount ranging from at least $5,795,000 to play up to four games[6] at Candlestick Park, and up to $10,295,000 to play up to ten regular season games plus two post season games[7]. The net gain to the City would vary based on the Recreation and Park Department's and City departments' expenditures for the games and the City's tax revenues from the games.

[5] Net City revenues include: (1) $2,300,426 net revenues to the Recreation and Park Department (Table 2); (2) $2,428,000 in City tax revenues (Table 3); less (3) $2,541,487 in other City department expenditures (Table 4).
[6] $5,795,000 includes (1) $5,295,000 in the Early Termination Option fee and the Guaranteed Minimum Payment, plus (2) $500,000 to play up to four games (see Table 1).
[7] $10,295,000 includes (1) $5,295,000 in the Early Termination Option fee and the Guaranteed Minimum Payment, plus (2) $5,000,000 for up to ten regular season games plus two post season games (see Table 1).

RECOMMENDATION

The Budget and Legislative Analyst estimates a net gain in revenue to the City under the proposed lease amendment. However, the Budget and Legislative Analyst considers the proposed resolution to be a policy matter for the Board of Supervisors because it would allow the 49ers to terminate the existing Candlestick Park lease with RPD up to one year early.



Harvey M. Rose

cc: Supervisor Farrell
Supervisor Elsbernd
President Chiu
Supervisor Avalos
Supervisor Campos
Supervisor Chu
Supervisor Cohen
Supervisor Kim
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Mayor Lee
Controller
Kate Howard

CCSF-FORTY NINERS DEAL POINTS/TERM SHEET
CANDLESTICK LEASE AMENDMENT–NEW EARLY TERMINATION OPTION
MAY 8, 2012

1. **The Existing Lease and Existing Early Termination Option.** Forty Niners Football Company LLC, a Delaware limited liability company (the "Forty Niners"), owns the NFL franchise for the professional football team known as the San Francisco 49ers, and is the successor-in-interest to the San Francisco Forty Niners, Limited, a California limited partnership. The City and County of San Francisco (the "City"), under the administrative jurisdiction of its Recreation and Park Commission, owns the Candlestick Park Stadium (the "Stadium"). The City and the Forty Niners predecessor-in-interest entered into a lease dated December 3, 1969, as amended (the "Lease"), under which the Forty Niners plays its home NFL football league games at the Stadium and uses the Stadium for related activities. Under the most recent amendment to the Lease, dated March 15, 2011, ("2011 Amendment"), the base term of the Lease runs through May 31, 2016. The 2011 Amendment granted the Forty Niners a right to terminate the Lease as early as May 31, 2015, under specified conditions. The 2011 Amendment also granted the Forty Niners seven consecutive one-year extension options, up to May 31, 2023.

2. **New Early Termination Option.** The Forty Niners seeks to amend the Lease to further obtain a right to terminate the Lease as early as May 31, 2014 (the "New Early Termination Option"), and the City is willing to agree to negotiate a Lease amendment providing for a New Early Termination Option on the terms and conditions summarized here. This term sheet is intended to be the basis for an amendment to the Lease (the "Lease Amendment"). Subject among other things to approval of the City's Recreation and Park Commission and Board of Supervisors, and approval of the NFL, as further provided in section 3 of this term sheet, staff for the City's Recreation and Parks Department and the Forty Niners shall in good faith endeavor to negotiate the Lease Amendment and any related agreements by 5:00 p.m. on May 7, 2012, in accordance with the following deal points.

    a. **Option Consideration.** For the right to exercise the New Early Termination Option, the Forty Niners shall pay the City the non-refundable sum of $1,000,000, in cash, payable on December 1, 2012.

    b. **Deadline for Exercising New Early Termination Option.** The Forty Niners may, in its sole discretion, exercise the New Early Termination Option by providing written notice to the City (the "Option Notice") on or before January 31, 2014 (the "Exercise Date"). In the Option Notice the Forty Niners must specify the effective date of the early termination, which shall be within the period commencing on May 31, 2014, and ending on May 31, 2015 and be based on the Forty Niners' then best good faith estimate of when the team would relocate to its new stadium in Santa Clara (the "New Stadium"). The option exercise shall be effective if the Forty Niners gives the Option Notice by the Exercise Date, provided that the Forty Niners is not then in material default under the Lease and timely makes the first installment of the GMP payments in the amount of $3,250,000 as specified below.

c. **Payments to the City Upon Option Exercise: $4,295,000 - $9,295,000.** If the Forty Niners exercises the New Early Termination Option, then in lieu of the rent payments scheduled in the Lease, the Forty Niners will make the following payments, in cash, to the City. These and all other payments required to be made by the Forty Niners to the City under the Lease Amendment will be made without deduction, abatement or offset, and will be in addition to any taxes payable by the Forty Niners or others in connection with the playing of home games or any other use or occupancy of the Stadium under the Lease. And any obligations the Forty Niners have to make such payments to the City after the termination of the Lease shall survive under the Lease Amendment.

i. **Guaranteed Minimum Payments (the "GMP") of $4,295,000**: The Forty Niners will make a guaranteed minimum payment to the City of $4,295,000 for Fiscal Year 2014-15, even if no games are played at the Stadium during the 2014 NFL Season. The Forty Niners will make such payment as follows:

- $3,250,000 minimum payment, due on the Exercise Date; and
- $1,045,000 community payment to the City, which the City must use only for its Recreation and Park Department youth programs, as determined by the City. The community payment will be payable in two equal installments, with the first $522,500 due on May 31, 2014 and the second $522,500 due on May 31, 2015.

ii. **Home Game Payments ("HGP").** If the Forty Niners exercise the New Early Termination Option, then the Forty Niners shall make additional payments to the City of up to $5,000,000 depending upon the number of games actually played in the Stadium during the NFL 2014 season. The payment terms for the HGP are as follows:

- $500,000 for one to four games played at the Stadium for the NFL 2014 season;
- An additional $3,000,000 for five to ten games played at the Stadium for the NFL 2014 season;
- An additional $750,000 for the first home playoff game at the Stadium for the NFL 2014 season; and
- An additional $750,000 for the second home playoff game at the Stadium for the NFL 2014 season.

The above payments of HGP are cumulative and are in addition to the GMP. For example, if the Forty Niners played two games at the Stadium in 2014, payments to the City would total $4,795,000 (GMP of $4.295m + HGP of $0.5m). If the Forty Niners played all of the 2014 season and two playoff games at the Stadium, then the City would receive payments totaling $9,295,000 (GMP of $4.295m + HGP of $5m), in lieu of the rent payments scheduled in the Lease. The HGP shall be payable no later than January 31, 2015.

iii. **Holdover.** If the Forty Niners exercises the Early Termination Option but later learns it requires the Stadium for part or all of the 2015 season, then the Forty Niners will give the City as much advance written notice as possible (but not later than May 1, 2015) that it will require the Stadium for the 2015 season and the date through which it will require the Stadium (in no event later than May 31, 2016), which will be based on its then best good faith estimate of when it would relocate to the New Stadium. In such instance, the termination date will be extended until the date stated in the notice (but under no circumstance later than May 31, 2016) and the Forty Niners will pay the City the same GMP, HGP, and holdover payments (if any) for the 2015 season as it did for the 2014 season, based on the games actually played at the Stadium for the NFL 2015 season. The payment of GMP shall be due on August 1, 2015, and the HGP shall be due on January 31, 2016.

d. **Existing Termination Option.** The New Early Termination Option shall be in addition to the termination option under 2011 Amendment, which provides the Forty Niners the option to terminate the Lease on May 31, 2015. But if the Forty Niners exercises the New Early Termination Option, then the existing termination option shall automatically terminate.

e. **Extension Options.** The existing seven 1-year extension options shall terminate when and if the Forty Niners exercise the New Early Termination Option (or the existing termination option under the 2011 Amendment).

f. **Stadium Condition/Operation and Maintenance.** Under the 2011 settlement agreement (which the City and the Forty Niners entered into in conjunction with the 2011 Amendment), the Forty Niners waived certain claims against the City relating to the condition of the Stadium. Under the Lease Amendment, the Forty Niners will agree that the same waiver and release provisions contained in the 2011 settlement agreement apply as of the effective date of the Lease Amendment (i.e., the Forty Niners will "date down" the waiver and release provisions of the 2011 settlement agreement). Also, if the Forty Niners exercises the New Early Termination Option and then holds over after the termination date specified in the Option Notice, the Forty Niners will agree that the same waiver and release will be automatically remade effective as of the beginning of such holdover period and will extend through the end of holdover period. The granting of the New Early Termination Option under the Lease Amendment will not affect rent credits and rent reductions that are provided under the 2011 Amendment, provided that if the Forty Niners exercise the New Early Termination Option then the GMP, HGP and other payments described in this term sheet will be in lieu of the rent, including rent credits and rent reductions, set forth in the 2011 Amendment.

g. **Proration for Taxes.** The Forty Niners responsibility for taxes and assessments under the Lease will be prorated, with the Forty Niners responsible for such taxes and assessments up until the date the Lease terminates and the Forty Niners cease using the Stadium.

h. **Other Terms and Conditions.**

i. **Super Bowl.** A Super Bowl bid committee will be formed and jointly led by the City and the Forty Niners to work with the NFL to bring a Super Bowl to the Bay Area as early as 2016.

ii. **Current Stadium Employees.** The Stadium currently provides jobs to many economically disadvantaged workers, many of whom are residents of San Francisco. If such workers are displaced following the Forty Niners' relocation to the New Stadium, those workers may have difficulty finding jobs in the current market, and an increased number of such unemployed workers could place a financial burden on the social service programs that the City provides. In recognition of these interests of the City, and its own interest in providing for employee stability and quality operations, the Forty Niners agree to have its concession operator (Centerplate) retain and/or offer employment to existing Stadium employees upon the Forty Niners' moving to the New Stadium.

iii. **Deadlines for Approval.** The City's Recreation and Park Commission and Board of Supervisors shall, in their sole discretion, approve a lease amendment granting the Early Termination Option no later than June 26, 2012. The Forty Niners shall secure the NFL's approval of the lease amendment as soon as possible after Board of Supervisors' approval, but no later than 60 days after the date of such Board approval.

3. General Term Sheet Provisions. While this term sheet summarizes certain essential financial terms of the proposed Lease Amendment, it does not set forth all of the material terms and conditions of that amendment. The signatures of the parties below acknowledge their support for the proposed Lease Amendment on the terms specified in this term sheet, and the agreement of the Forty Niners and City staff in good faith and diligently to negotiate the Lease Amendment consistent with this term sheet, for submission to the City's Recreation and Park Commission, Board of Supervisors and NFL, for their approval in their sole discretion.. But, this term sheet is not intended to be, and shall not become, contractually binding on the City (including its Recreation and Park Commission), or the Forty Niners, and no legal obligation shall exist unless and until the parties have negotiated, executed and delivered a mutually acceptable agreement based upon information produced from the public review and hearing process and subject to all applicable governmental approvals and NFL approval. While the parties anticipate that the Lease Amendment is exempt from environmental review, City staff retains the absolute discretion before obtaining approval of the Lease Amendment by the City's Recreation and Park Commission, Board of Supervisors, Planning Commission, or any other board or commission having jurisdiction over the Stadium, to (i) make such modifications to the proposed deal points in this term sheet that may be deemed necessary to mitigate any significant environmental impacts; (ii) select other feasible alternatives to avoid such impacts; (iii) balance the benefits against unavoidable significant impacts before taking final action if any such

significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the Lease Amendment in light of any such significant environmental impacts.

READ AND APPROVED:

Phil Ginsburg
General Manager, Recreation and Park Department
City and County of San Francisco

Date: May 8, 2012

READ AND APPROVED:

Forty Niners Football Company LLC,
a Delaware limited liability company

By: _____
Larry MacNeil
Vice President and Chief Financial Officer

Date: May 8, 2012

AMENDMENT TO LEASE
AND ADDITIONAL OPTION TO TERMINATE LEASE EARLY

Candlestick Park Stadium

This Amendment to Lease and Additional Option to Terminate Lease Early (this **"Amendment"**) dated for convenience of reference only as of _____, 2012, is between the **City and County of San Francisco,** a municipal corporation (the **"City"**), acting by and through its Recreation and Park Commission (the **"Commission"**), and **Forty Niners Football Company LLC**, a Delaware limited liability company (the **"Forty Niners"**), which owns the NFL franchise for the professional football team known as the San Francisco 49ers (the **"Team"**), and is the successor-in-interest to the San Francisco Forty Niners, Limited, a California limited partnership. The City and the Forty Niners are sometimes referred to below as the "Parties."

RECITALS

This Amendment is made with reference to the following facts and circumstances:

A. The City owns real property including the stadium located at Candlestick Point in the City and County of San Francisco commonly known as Candlestick Park (the **"Stadium"**).

B. The Parties have entered into a Lease dated December 3, 1969, as amended (the **"Lease"**), under which the Forty Niners uses and occupies the Stadium on a limited time basis for the exhibition of its home professional football games. The amendments to the lease include agreements dated August 1, 1972, August 1, 1976, December 6, 1985, June 6, 1986, April 24, 1987, August 16, 1990, May 17, 1993, and February 1994. The Parties most recently amended the Lease under an amendment dated as of March 15, 2011 (the **"2011 Amendment"**) in connection with a Settlement Agreement also dated as of March 15, 2011 (the **"2011 Settlement Agreement"**). The Forty Niners was previously organized as San Francisco Forty Niners, Limited, a California limited partnership. On or about March 22, 2012, this limited partnership reorganized into a Delaware limited liability company and changed its name to Forty Niners Football Company LLC. This reorganization effectuated a change in corporate form, but did not change the beneficial ownership of the Forty Niners.

C. The Lease is presently scheduled to expire on May 31, 2016. In accordance with Section 2.1(b) of the 2011 Amendment, the City granted the Forty Niners the right to terminate the Lease one year early, effective as of May 31, 2015 (the **"Existing Termination Option"**), which the Forty Niners may exercise by providing notice to the City on or before January 15, 2014. Under the Lease, the Forty Niners also has seven consecutive options to extend the Lease by one year, beyond May 31, 2016.

D. The Santa Clara Stadium Authority has commenced construction of a new stadium in the City of Santa Clara for the Forty Niners to play their home games in the future (the "**New Stadium**"). Subject to all required approvals (including the City's Recreation and Park Commission and Board of Supervisors, and the NFL), the Parties have negotiated an additional right of the Forty Niners to terminate the Lease up to one year earlier than the date provided by the Existing Termination Option, for a termination effective on a date between May 31, 2014 and May 31, 2015 specified by the Forty Niners, subject to the Forty Niners' payment of nonrefundable option consideration in the amount of $1,000,000 and, upon any exercise of such option, payment of guaranteed payments–in lieu of Rent scheduled under the 2011 Amendment–totaling $4,295,000, plus additional payments of up to $5,000,000 if the Forty Niners play any home games and playoff games at the Stadium during any part of the 2014-15 NFL season, depending on the number of games actually played. Accordingly, the City and the Forty Niners wish to amend the Lease to provide the New Early Termination Option and to amend the Lease in certain other respects, all in accordance with the terms and conditions set forth in this Amendment.

E. Capitalized terms that are used in this Amendment shall have the meanings given to them in the Lease, unless otherwise defined in this Amendment.

AGREEMENT

Accordingly, in consideration of the mutual covenants and agreements in this Amendment, and for other good and valuable consideration, the receipt and adequacy of which each Party acknowledges, the Parties agree as follows:

1. Additional Termination Right.

A. New Early Termination Option. In addition to the Existing Termination Option, the City grants the Forty Niners the option, exercisable in the Forty Niners' sole discretion, to terminate the Lease early (the "**New Early Termination Option**"), with such termination effective on a date during the period commencing on May 31, 2014 and ending on May 31, 2015 (the "**Early Termination Window**") as the Forty Niners specifies in its Termination Notice as provided below. The Forty Niners may exercise the New Early Termination Option, if at all, by delivering written notice to the City on or before 5:00 p.m. on January 31, 2014 (the "**Termination Notice**"). The date on which the Forty Niners delivers such notice is referred to in this Amendment as the "**Exercise Date.**" The Forty Niners acknowledges and agrees that if it exercises the New Early Termination Option as provided in this section, then the full release and waiver made by the Forty Niners as set forth in Section 9 of this Amendment, shall be automatically updated to release and waive all Claims as of the Exercise Date. In the Termination Notice the Forty Niners shall specify an effective date of the early termination that must be within the Early Termination Window and must be based on the Forty Niners' then best good faith estimate of when the Team would relocate to the New Stadium (the "**New Termination Date**"). The Parties understand and agree that the Forty Niners may designate a New Termination Date that falls during the 2014 NFL season, in which case the

Team will play a portion of its home games during the 2014 NFL season at the Stadium and a portion at the New Stadium or another location. Any Termination Notice that the Forty Niners may give shall be irrevocable by the Forty Niners. But notwithstanding anything to the contrary in this Amendment, the City shall have the right to reject the Forty Niners' exercise of the New Early Termination Option, by providing the Forty Niners written notice, if the Forty Niners (i) has not paid an installment of the New Early Termination Option Fee (as defined below) when due under Section 1.C of this Amendment or the first installment of the Guaranteed Minimum Payments, which is due on the Exercise Date, as set forth in Section 2 of this Amendment, or (ii) as of the Exercise Date is otherwise in material default under the Lease (after notice and any opportunity to cure provided for in the Lease).

B. Effect of Option Exercise on Rent Payments. Upon the Forty Niners' exercise of the New Early Termination Option in accordance with this Amendment, from and after July 1, 2014: (i) the Forty Niners shall pay Rent in the amounts and on the dates set forth in this Amendment (including the Guaranteed Minimum Payments and the Home Game Payments), (ii) there shall be no New Rent Credits or Rent Reductions, or any other credits or reimbursements by City of any kind, for any work performed by or on behalf of the Forty Niners during the Term, including but not limited to the New Rent Credits and Rent Reductions set forth in the 2011 Amendment, and (iii) no other Rent shall be due or payable by the Forty Niners under the 2011 Amendment or other provisions of the existing Lease for the period commencing July 1, 2014, including without limitation, percentage rent, luxury box rent, or concession revenue (but excluding any taxes, assessments, permits and other regulatory fees or charges). The Forty Niners shall make the payments to the City that this Amendment requires, including the New Early Termination Option Fee, Guaranteed Minimum Payments, and Home Game Payments, without any offset, abatement or deduction of any kind. If the Forty Niners does not exercise the New Early Termination Option as provided in this Amendment on or before January 31, 2014 (or the Forty Niners fails to pay the New Early Termination Option Fee when required under Section 1.C of this Amendment or the first installment of the Guaranteed Minimum Payments when required under Section 2 of this Amendment), then the New Early Termination Option shall automatically expire and the Forty Niners shall make all Rent and other payments due under the Lease for the 2014-2015 Fiscal Year and thereafter for the remainder of the Term (subject to the Existing Termination Option), including, without limitation, percentage rent, luxury box rent, and concession revenue, consistent with the Lease, including the 2011 Amendment.

C. New Early Termination Option Fee. In consideration for the New Early Termination Option, the Forty Niners shall pay the City the sum of One Million Dollars ($1,000,000) in cash or other immediately available funds (the "**New Early Termination Option Fee**"), due on December 1, 2012. Such payments shall be non-refundable under all circumstances, including, but not limited to, the Forty Niners' failure to exercise the New Early Termination Option. If the Forty Niners does not pay the New Early Termination Option Fee in full on or before the applicable date specified above, then the City may either exercise its remedies to enforce its right to payment by the Forty Niners of the New Early Termination Option under this Amendment, or, by written notice to the Forty Niners, the City may terminate the New Early Termination Option. If the City elects to provide notice to the Forty Niners that the City is terminating the New Early Termination Notice as provided above, then the New Early

Termination Option shall be null and void, and the Forty Niners shall pay Rent and otherwise perform its obligations in accordance with the Lease, including the 2011 Amendment.

D. Termination of Seven Extension Options. In accordance with Section 2.1 of the 2011 Amendment, the Lease is presently scheduled to expire on May 31, 2016, but the Forty Niners has seven (7) one-year Extension Options to extend the Term. If the Forty Niners exercise the New Early Termination Option, then on the Exercise Date, all of the Extension Options shall automatically and irrevocably terminate and shall be of no further force or effect, regardless of whether the Forty Niners previously attempted to exercise them.

2. Guaranteed Minimum Payments.

A. Generally. If, and only if, the Forty Niners exercises the New Early Termination Option, then the Forty Niners shall pay to the City, in addition to the New Early Termination Option Fee, Rent in the amounts set forth below in Paragraph B of this Section 2 (cumulatively, the "**Guaranteed Minimum Payments**"). The Forty Niners shall make the Guaranteed Minimum Payments in cash or other immediately available funds on the dates specified below. The Guaranteed Minimum Payments do not apply if the Forty Niners exercises the Existing Termination Option set forth in the 2011 Amendment (terminating the Lease on May 31, 2015), rather than the New Early Termination Option.

B. Payments and Due Dates.

(i) The Forty Niners shall pay to the City Three Million Two Hundred Fifty Thousand Dollars ($3,250,000) (the "**Base Guaranteed Minimum Payment**") on the Exercise Date, regardless of the New Termination Date and even if no games are anticipated to be played or are played at the Stadium during the 2014 NFL season; and

(ii) In recognition of its commitment to the community, the Forty Niners shall pay to the City an additional amount of One Million Forty-Five Thousand Dollars ($1,045,000) (the "**Youth Recreation Payment**"), payable in two equal installments, with the first $522,500 due on May 31, 2014 and the second $522,500 due on May 31, 2015. The City shall use the Youth Recreation Payment for the San Francisco Recreation and Park Department's youth programs, as determined by the City, and for no other purpose.

3. Home Game Payments. If the Forty Niners exercises the New Early Termination Option and plays any home games at the Stadium during the 2014 NFL season, then, in addition to the New Early Termination Option Fee and the Guaranteed Minimum Payments, the Forty Niners shall pay to the City on or before January 31, 2015, an additional amount of up to Five Million Dollars ($5,000,000) based on the number of regular season home games actually played at the Stadium during the 2014 NFL season (a "**Regular Season Home Game Payment**") and an additional amount based on the number of post-season games actually played at the Stadium during the 2014 NFL season (the "**Post Season Home Game Payments**" and collectively with the Regular Season Home Game Payment, the "**Home Game Payments**"), calculated as follows:

(i) If the Team plays one or more but fewer than five regular season games at the Stadium during the 2014 NFL season, then the Forty Niners shall pay City a single Regular Season Home Game Payment of Five Hundred Thousand Dollars ($500,000);

(ii) If the Team plays five or more regular season games at the Stadium during the 2014 NFL season, then the Forty Niners shall pay City an additional Three Million Dollars ($3,000,000), for a Regular Season Home Game Payment in the total amount of Three Million Five Hundred Thousand Dollars ($3,500,000); and

(iii) If the Team plays any post-season games at the Stadium during the 2014 NFL season, then for each post-season game played at the Stadium the Forty Niners shall pay to City a Post-Season Home Game Payment of Seven Hundred Fifty Thousand Dollars ($750,000).

4. **Extension of New Termination Date During 2014 NFL Season**. If the Forty Niners exercises the New Early Termination Option but nevertheless later requires the Stadium after the New Termination Date to play one or more regular season or post-season games during the 2014 NFL season, then (i) the Forty Niners shall give the City as much advance written notice as possible of the Forty Niners' continued need for the Stadium, which notice shall specify a revised New Termination Date, and (ii) provided the Forty Niners is not in then material default under the Lease (after notice and any opportunity to cure provided for in the Lease) the New Termination Date shall be extended to the revised date specified by the Forty Niners in such notice, which date shall be based on its then best good faith estimate of when it will relocate to the New Stadium. The period during which the Forty Niners uses or occupies the Stadium from the New Termination Date through the extended New Termination Date as provided above is referred to below as the "**2014 Holdover Period.**" The Forty Niners acknowledges and agrees that if the New Termination Date is extended as provided in this section, then the full release and waiver made by the Forty Niners as set forth in Article VI of the 2011 Settlement Agreement, shall be automatically updated to release and waive all Claims as of the date on which the 2014 Holdover Period begins, and shall further be automatically updated to release and waive all such Claims throughout the period commencing on such date and continuing until the later of the expiration of the 2014 Holdover Period or the date the Forty Niners vacates the Stadium. The Forty Niners shall, upon the City's request, provide any documentation necessary to reflect the updating of such waivers and releases, in form and substance substantially the same as Section 9 of this Amendment. The terms and conditions governing the 2014 Holdover Period shall be the same as provided in the Lease as amended by this Amendment.

5. **Extension of New Termination Date to Date in 2015 NFL Season**. If the Forty Niners exercises the New Early Termination Option but nevertheless later requires the Stadium after the scheduled New Termination Date to play one or more regular season or post season home games during the 2015 NFL Fiscal Year (each, a "**NFL 2015 Home Game**"), then (i) the Forty Niners shall give the City as much advance written notice as possible of the Forty Niners' continued need for the Stadium (but not later than May 1, 2015) (the "**NFL 2015 Extension Notice**") that it will require the Stadium for the 2015 NFL season and the date through which it will require the Stadium, based on its then best good faith estimate of when it would relocate to

the New Stadium (the "**Extended Termination Date**") (in no event later than May 31, 2016), and (ii) provided the Forty Niners is not then in material default under the Lease (after notice and any opportunity to cure provided for in the Lease) the New Termination Date shall be extended to the Extended Termination Date specified by the Forty Niners in such NFL 2015 Extension Notice. In such event, (a) the Forty Niners shall pay City a new Base Guaranteed Minimum Payment and a new Youth Recreation Payment (in the respective amounts specified above for the NFL 2014 season) on or before August 1, 2015, (b) the Forty Niners shall pay City Home Game Payments calculated in the same manner as provided above for the NFL 2014 season, based on the games actually played at the Stadium for the NFL 2015 season, and (c) the Forty Niners' release and waivers set forth in Section 9 below shall be deemed to be remade effective as of the date of the NFL 2015 Extension Notice. The Home Game Payments and the New Stadium Playoff Game Payment shall be due on January 31, 2016. The period during which the Forty Niners uses or occupies the Stadium from the New Termination Date through the extended New Termination Date as provided above is referred to below as the "**2015 Holdover Period**." The Forty Niners acknowledges and agrees that if the Forty Niners exercises the option to extend the New Termination Date to the Extended Termination Date as provided in this section, the release and waivers as set forth in Article VI of the 2011 Settlement Agreement, updated to release and waive all Claims as of the date on which the 2015 Holdover Period begins, and shall further be automatically updated to release and waive all such Claims throughout the period commencing on such date and continuing until the later of the expiration of the 2015 Holdover Period or the date the Forty Niners vacates the Stadium. The Forty Niners shall, upon the City's request, provide any documentation necessary to reflect the updating of such waivers and releases, in form and substance substantially the same as Section 9 of this Amendment. The terms and conditions governing the 2015 Holdover Period shall be the same as provided in the Lease as amended by this Amendment.

6. Termination of Lease; Survival of Payment Obligations. If the Forty Niners exercises the New Early Termination Option, then the Lease shall terminate on the New Termination Date or the Extended Termination Date (whichever is applicable as provided above), unless sooner terminated in accordance with the terms of the Lease. The Forty Niners' obligation to pay the New Early Termination Option Fee, the Guaranteed Minimum Payments and the Home Game Payments shall survive the expiration or termination of the Lease, including this Amendment.

7. Responsibility for Taxes; Proration for Taxes. Nothing in this Amendment affects the Forty Niners responsibility for paying or causing to be paid taxes (including, but not limited to, stadium admission taxes, parking taxes, sales taxes, possessory interest taxes, and payroll taxes) in connection with the use and occupancy of the Stadium, and no such taxes shall be credited against any of the payments due from the Forty Niners to the City under this Amendment. If the Lease terminates early in accordance with this Amendment, then the Forty Niners' responsibility for possessory interest taxes under the Lease shall be prorated, with the Forty Niners responsible for such taxes up until the date the Lease terminates and the Forty Niners cease using or occupying any part of the Stadium.

8. Amendment Subject to NFL Approval. The Parties expressly acknowledge and agree that this Amendment is subject to the approval of the National Football League ("**NFL**")

and shall not be effective until approved by the NFL. The Forty Niners shall diligently seek approval of the NFL as soon as possible after the Board of Supervisors adopts a resolution approving this Amendment and shall promptly notify the City if such approval is obtained, including providing the City with written evidence of such approval. If the Forty Niners does not obtain such approval by October 31, 2012 following the date that the Board of Supervisors adopts a resolution approving this Amendment, then the City shall have the right to terminate this Amendment upon written notice to the Forty Niners.

9. **Forty Niners' Release of Claims Against the City.** In Article VI of the 2011 Settlement Agreement, the Forty Niners released all Claims against the City arising from or relating to the condition of the Stadium or the City's maintenance or failure to maintain or repair the Stadium as of the effective date of the 2011 Settlement Agreement, subject to the exclusions expressly provided in that Article. The Forty Niners acknowledges and agrees that as of the Effective Date of this Amendment, it has no Claims against the City relating to the condition of the Stadium. In consideration of the promises, conditions and covenants contained in this Amendment, and except for any claims relating to a breach of any obligation by the City under 2011 Settlement Agreement (including the 2011 Amendment), the Forty Niners, on behalf of itself, its general partners, limited partners, officers, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors and assigns, shall and does release, relinquish, abandon and waive all Claims, whether known or unknown, that it has, had, and/or might have against the City (including, but not limited to, its elective boards, appointive boards, including the Commission, and commissioners, officers, agents, employees, attorneys, consultants, representatives, successors and assigns) that arise from, relate to, or are based upon the Forty Niners' Claim, or otherwise the condition of the Stadium or the City's maintenance or failure to maintain or repair the Stadium as of the Effective Date of this Amendment, but excluding only: (i) any Claim for which the City is responsible under the indemnity provisions of the Lease relating to any loss or injury by third parties, not affiliated with or in any way related to the Forty Niners, due to the condition of the Stadium; (ii) any Claim for the City's failure to provide the Stadium Improvement Payment, the New Rent Credits or the Rent Reduction under the terms and conditions of the 2011 Amendment, to the extent applicable under this Amendment; (iii) any Claim for the City's failure to perform the Continuing Maintenance Obligation under the terms and conditions of the 2011 Amendment, and (iv) any Claim relating to the City's obligations regarding an Unanticipated Capital Repair under the terms and conditions of the 2011Amendment.

The Forty Niners expressly acknowledge that each may have Claims against the City, of which it is currently unaware, and nevertheless each agrees that this Agreement is intended to and does extend to any and all Claims it may have against the City, whether known or unknown, that arise from the matters that are the subject of the releases described above. The Forty Niners further expressly and specifically waive any rights or benefits available to it under California Civil Code section 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Initials: Forty Niners:

The Parties acknowledge and agree that the City's granting of the New Early Termination Option under this Amendment shall not affect the New Rent Credits or Rent Reductions that are set forth under the 2011 Amendment, provided that if the Forty Niners exercise the New Early Termination Option then the Guaranteed Minimum Payments and Home Game Payments shall be in lieu of the Rent, including New Rent Credits and Rent Reductions, set forth in the 2011 Amendment

10. Super Bowl. Following the Effective Date of this Amendment, a Super Bowl bid committee will be formed and jointly led by the City and the Forty Niners to work with the NFL to bring a Super Bowl to the Bay Area as early as 2016.

11. Existing Employees. The Stadium currently provides jobs to many economically disadvantaged workers, many of whom are residents of San Francisco. If such workers are displaced following the Forty Niners' relocation to the New Stadium, those workers may have difficulty finding jobs in the current market, and an increased number of such unemployed workers could place a financial burden on the social service programs that the City provides. In recognition of these interests of the City, and its own interest in providing for employee stability and quality operations, the Forty Niners agrees, acting in conjunction with the Santa Clara Stadium Authority, to cause the concession operator (Centerplate) to retain and/or offer employment to existing Stadium employees upon the Forty Niners' moving to the New Stadium. Nothing in this section requires the contractor to hire or retain individuals that are not qualified based upon its reasonable hiring criteria.

12. Forty Niners Representations and Warranties. The Forty Niners represents and warrants to and covenants with the City that as of the Effective Date of this Amendment:

(i) Forty Niners Football Company LLC, a Delaware limited liability company, is the successor-in-interest to the San Francisco Forty Niners, Limited, a California limited partnership, that there has been no change in ownership of such entity, and that the Forty Niners entity that is the signatory to this Amendment owns the NFL franchise for the professional football team known as the San Francisco 49ers.

(ii) The City is not in default under the Lease and to the best of the Forty Niners' knowledge, no event has occurred that with the giving of notice or the passage of time or both would constitute such a default.

(iii) Except for the approval of the NFL, which is referenced in Section 8 of this Amendment, no other approvals are needed on the part of the Forty Niners to make this Amendment effective, valid and binding in accordance with its terms on the Forty Niners.

13. City Representations and Warranties. The City represents and warrants to and covenants with the Forty Niners that as of the Effective Date of this Amendment:

(i) The City is not in default under the Lease and to the best of the Forty Niners' knowledge, no event has occurred that with the giving of notice or the passage of time or both would constitute such a default.

(ii) Except for the approval of the City's Recreation and Park Commission, Board of Supervisors and Mayor of this Amendment, no other approvals are needed on the part of the City to make this Amendment effective, valid and binding in accordance with its terms on the City.

14. General Provisions.

A. Relationship of Parties: No Joint Venture or Partnership. The subject of this agreement is an amendment of the Lease, with no Party acting as the agent of the other Party in any respect. None of the provisions in this Amendment is intended to or shall be construed or deemed to render any Party as a partner in the other Party's business, or joint venture or member in any joint enterprise.

B. Time of Performance.

(i) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date, unless otherwise provided in this Amendment.

(ii) **Weekends and Holidays.** A performance date that falls on a Saturday, Sunday or City holiday (or official furlough day) is deemed extended to the next City working day.

(iii) **Time is of the Essence.** Time is of the essence for all dates in this Amendment, including dates for the Forty Niners to provide notice and make payments to the City.

C. Interpretation of Agreement.

(i) **Words of Inclusion.** The use of the terms "including," "such as" or other words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters set forth, whether or not language of non-limitation is used with reference to such items or matters. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(ii) **No Presumption Against Drafter.** This Amendment has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with in this Amendment. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly,

this Amendment shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Amendment.

(iii) **Costs and Expenses.** The Party on which any obligation is imposed in this Amendment shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(iv) **Amendment References.** A reference to any provision, term or matter "in this Amendment," "herein" or "hereof," or words of similar import shall be deemed to refer to any and all provisions of this Amendment reasonably related in the context of such reference, unless such reference refers solely to a specific numbered or lettered Section, subsection or paragraph of this Amendment or any specific subdivision of this Amendment.

(v) **Recitals.** The Recitals in this Amendment are included for convenience of reference only. In the event of any conflict or inconsistency between the Recitals and terms and conditions of this Amendment, the terms and conditions of this Amendment shall control. The Recitals in this Amendment are not intended to create or imply covenants under this Amendment.

(vi) **Captions.** The captions preceding the Sections and paragraphs of this Amendment have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Amendment.

D. Successors and Assigns. This Amendment is binding upon and will inure to the benefit of the successors and assigns of the Parties under the Lease.

E. No Third Party Beneficiaries. This Amendment is made and entered into for the sole protection and benefit of the Parties and their successors and assigns under the Lease. There are no third party beneficiaries of this Amendment.

F. Counterparts. This Amendment may be executed in counterparts and by facsimile or e-mailed signatures, each of which is deemed to be an originals, and all such counterparts shall constitute one and the same instrument.

G. Effect of Amendment: Entire Agreement. Except as specifically provided in this Amendment, all provisions of the Lease and the previous amendments remain unchanged and in full force and effect. This Amendment constitutes the entire agreement between the Parties regarding the subject matter of this Amendment and supersedes all negotiations or previous conditions mentioned in or incidental to this Amendment (including, but not limited to, any term sheet). No parol evidence of any prior draft of this Amendment or any other agreement

(including any term, sheet outlining the terms of this Amendment) shall be permitted to contradict or vary the terms of this Amendment.

H. Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Amendment.

I. Further Assurances. The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to effectuate the terms of this Amendment. The General Manager, in consultation with the City Attorney, is authorized to execute on behalf of the City any notices, consents, agreements, memoranda or similar documents that are necessary or proper to achieve the purposes and objectives of this Amendment and do not materially increase the obligations of the City or materially reduce the payments or other benefits to the City under this Amendment, if the General Manager and the City Attorney determines that the document is necessary or proper, consistent with the purposes of this Amendment and in the City's best interests. The General Manager's signature of any such document shall conclusively evidence such a determination by him or her.

J. Severability. If any provision if this Amendment, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Amendment or the application of such provision to any other Person or circumstance, and the remaining portions of this Amendment shall continue in full force and effect, unless enforcement of this Amendment as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Amendment.

K. Amendments; Corrections of Technical Errors. Neither this Amendment nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties. Any material amendment of this Amendment shall be subject to approval of the Recreation and Park Commission and the Board of Supervisors by resolution. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Amendment, then the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of a formal amendment of this Amendment. The General Manager, in consultation with the City Attorney, may execute and such written memorandum on behalf of the City.

L. Cooperation and Non-Interference. In connection with this Amendment, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Amendment. In so doing, the Parties shall each refrain from doing anything that would render its performance under this Amendment impossible and each shall do everything that this Amendment contemplates that the Party shall do to accomplish the objectives and purposes of this Amendment. In all situations arising out of this Amendment, the Parties shall each attempt to avoid and minimize the damages resulting from the conduct of the other and shall take all necessary measures to achieve the provisions of this Amendment.

M. Effective Date. The effective date of this Amendment (the **"Effective Date of this Amendment"**) shall be the date that this Amendment is executed and delivered by the

Parties, the NFL has approved this Amendment as set forth in Section 8, and the City's Board of Supervisors has adopted, and the Mayor has signed, a resolution approving this Amendment.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed on the date first written above.

Forty Niners Football Company LLC,
a Delaware limited liability company

By: _____
Larry MacNeil, Vice President and Chief Financial Officer

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Recreation and Park Commission

By: _____
Phil Ginsburg, General Manager

Under Recreation and Park Commission Resolution No. _____, adopted on _____, 2012 and Board of Supervisors Resolution No. _____, adopted on _____, 2012.

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

May 23, 2012

Supervisor Malia Cohen
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Proposed Lease Amendment for Candlestick Park Stadium

Supervisor Cohen:

Pursuant to your request, I wanted to clarify the Recreation and Park Department's intended uses for the $1,045,000 community payment by the Forty Niners required in Section 2(c)i of the proposed Lease Amendment for Candlestick Park Stadium. It has been, and remains, the Department's intention that those funds be used to fund Recreation and Park Department youth programming in San Francisco communities which are in closest proximity to Candlestick Park stadium.

Please feel free to contact me should you require any additional information.

Sincerely,

Philip A. Ginsburg

Cc: Supervisor Mark Farrell, Chair, Government Audit and Oversight Committee
Supervisor Sean Elsbernd, Vice-Chair, Government Audit and Oversight Committee
Supervisor David Chiu, Member, Government Audit and Oversight Committee

File 120477: correction request
Board of Supervisors to: Alisa Miller

05/11/2012 10:22 AM

From: Allen Jones <jones-allen@att.net>
To: Board.of.Supervisors@sfgov.org,
Date: 05/11/2012 07:54 AM
Subject: correction request

To All Memmbers of the San Francisco Board of Supervisors,

I do not mean to split hairs, if you consider $50 million splitting hairs, but a staffer for Supervisor Mark Farrell mentioned to me, a .$150 million dollar loan. by the NFL to the 49ers. Supervisor Farrell then repeated this figure to the full board.

The supervisor and his staffer bragged about how Farrell, being a 49er fan worked hard trying to work something out to keep the team in San Francisco. In my opinion, if a person works hard with the wrong information, that person did not work hard enough.

The loan by the NFL to the 49ers was $200 million.
http://espn.go.com/nfl/story/_/id/7533527/nfl-approves-200m-loan-san-francisco-49ers-stadium

My point is, if this supervisor is providing out-dated information to the full board, how can we trust that an educated vote on this matter will happen?

I say this and other pertinent facts should be corrected including the fallacy that this is good for San Francisco WAY before this matter is circulated, let alone voted on.

Allen Jones
(415) 756-7733
http://casegame.squarespace.com
jones-allen@att.net
http://youtu.be/BPw52WUbRzQ

File No. 120477

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: San Francisco Forty Niners, LTD	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** (1) None (2) CEO – John Edward York CFO – Larry MacNeil COO – Paraag Marathe (3) Forty Niners Holdings LP (4) None (5) None	
Contractor address: 490 Jamestown, San Francisco, CA 94124	
Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contract: $1,000,000 - $10,095,000
Describe the nature of the contract that was approved: Lease of Candlestick Park	
Comments:	

This contract was approved by (check applicable):

☐the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed