

File No. 110313

Committee Item No. 41

Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date March 28, 2011

Board of Supervisors Meeting Date April 12, 2011

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Recreation and Park Commission Resolution No. 1103-010</u> |
| * <input checked="" type="checkbox"/> | * <input checked="" type="checkbox"/> | <u>City Controller's Report, dtd 5/27/09</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Settlement Agreement, dtd 3/15/11</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Amendment to Lease, dtd 3/15/11</u> |
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Completed by: Alisa Somera Date March 25, 2011

Completed by: R. CRAIG Date 4/7/11

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

[Settlement Agreement and Lease Amendment - Forty Niners, Ltd.]

Ordinance authorizing a settlement agreement and related lease amendment with the San Francisco Forty Niners, Ltd. (the 49ers) to settle a claim made by the 49ers on June 18, 2010, against the City and County of San Francisco relating to the condition of Candlestick Stadium; exempting any new City policy requirements that the City's Administrative Code would otherwise require for a material amendment to the lease.

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike through italics Times New Roman~~; Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

(1) On June 18, 2010, the San Francisco Forty Niners, Ltd. ("the 49ers") filed a government claim against the City and County of San Francisco, alleging that the City is in breach of the Candlestick Park Stadium Lease dated as of December 3, 1969 between the City and the 49ers, as amended (the "Lease") based upon the City's alleged failure to maintain and repair the stadium commonly referred to as Candlestick Stadium ("the Stadium") as required under the Lease (the "49ers Claim").

(2) In May 2009, the City's Controller's Office released a report finding that the 49ers owed the City for underpaying rent relating to parking fees that the 49ers charged on property under the Lease, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 110313 (the "City's Claim").

(3) In settlement of the 49ers' Claim and of the City's Claim (collectively "the Claims"), the parties negotiated a settlement agreement (the "Settlement Agreement") and a related amendment to the Lease (the "Lease Amendment") that include: (1) a \$3 million payment to

1 the 49ers to make improvements to the Stadium; (2) the provision of \$3.4 million in rent
2 credits for further improvements to the Stadium; (3) a rent reduction in the amount of
3 \$3.4 million; (4) an extension of the lease term to May 31, 2016, with an option to terminate
4 the lease early, on May 31, 2015, exercisable by the 49ers; (5) a revision to the remaining
5 extension options under the lease to permit annual extensions to May 31, 2023 exercisable by
6 the 49ers, and providing additional rent credits and rent reductions during each annual
7 extension; (6) changes to the maintenance and repair provisions of the Lease, including new
8 provisions relating to the City's continuing maintenance and future unanticipated capital
9 repairs at the Stadium; (7) a mutual withdrawal of claims, covenant not to sue, and release of
10 existing claims; and (8) the termination of an existing tolling agreement between the City and
11 the 49ers; all as further described in the Settlement Agreement and Lease Amendment.

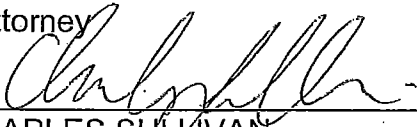
12 (4) The 49ers and the City understand and agree that as a material part of settlement
13 of the Claims, the Lease Amendment shall not be subject to any new City policy requirements
14 that the City's Administrative Code would otherwise require for a material amendment to the
15 Lease since the date of the last amendment to the Lease.

16 Section 2. The Board of Supervisors authorizes the San Francisco City Attorney's
17 Office to settle the Claims according to the terms set forth herein, and the Board of
18 Supervisors further approves and authorizes the Recreation and Park Commission, the
19 Recreation and Park General Manager, the Controller and the City Attorneys' Office, on behalf
20 of the City, to take any and all steps necessary or appropriate to effectuate the execution,
21 delivery and performance of the Settlement Agreement and the Lease Amendment in
22 substantially the form filed with the Clerk of the Board in File No. 110313, and any
23 additions, amendments or other modifications to the Settlement Agreement and Lease
24 Amendment that the Recreation and Park General Manager determines, in consultation with
25 the City Attorney, are in the best interests of the City and do not materially increase the


1 obligations or liabilities of the City or decrease the benefits to the City, and are necessary or
2 advisable to effectuate the purpose and intent of this Ordinance. Any and all actions taken by
3 City officials consistent with this Ordinance are hereby ratified and approved.
4

5 APPROVED AS TO FORM AND
6 RECOMMENDED:


7 DENNIS J. HERRERA
8 City Attorney

9 By: 
10 CHARLES SULLIVAN
11 Deputy City Attorney

RECOMMENDED BY RECREATION AND
PARK COMMISSION
RESOLUTION NO.:
DATE:


12 MARGARET MCARTHUR
13 Government Liaison

14 FUNDS AVAILABLE:


15 BEN ROSENFELD
16 Controller

RECREATION AND PARK COMMISSION
City and County of San Francisco
Resolution No. 1103-010

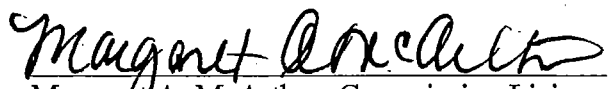
SAN FRANCISCO FORTY NINERS

RESOLVED, That this Commission does recommend that the Board of Supervisors approve a settlement agreement and lease amendment for the settlement of disputes relating to stadium maintenance and parking rent under the Candlestick Stadium Lease between the City and County of San Francisco, acting by and through its Recreation and Park Commission, and the San Francisco Forty Niners, LTD (the "49ers") that would (i) make a payment of \$3 million to the Forty Niners to use to make specified improvements to the stadium; (ii) establish new rent credits for the Forty Niners to make further agreed upon improvements to the Stadium; (iii) reduce rent payable by the Forty Niners; (iv) amend the term of the Lease, including an alteration of the remaining option terms, without extending the Outside Lease Termination Date; (v) make changes to the maintenance and repair provisions of the Lease, including new provisions relating to the City's Continuing Maintenance Obligation and possible future Unanticipated Capital Repairs at the Stadium; and (vi) require the Parties' withdrawal of claims, covenant not to sue, and mutual release of all claims and causes of action relating to the Disputes and termination of the Tolling Agreement.

Adopted by the following vote:

Ayes 7
Noes 0
Absent 0

I hereby certify that the foregoing resolution was adopted at the Special Meeting of the Recreation and Park Commission held on March 17, 2011.


Margaret A. McArthur, Commission Liaison

City and County of San Francisco

Office of the Controller – City Services Auditor

RECREATION AND PARK DEPARTMENT:

**The San Francisco Forty Niners
Owe the City More Than Half a
Million Dollars in Parking Lot Rent**



May 27, 2009



SETTLEMENT AGREEMENT

CANDLESTICK PARK STADIUM

DATED AS OF MARCH 15, 2011

BETWEEN

**CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH ITS RECREATION AND PARK COMMISSION**

AND

THE SAN FRANCISCO FORTY NINERS, LTD

SETTLEMENT AGREEMENT

Candlestick Stadium

THIS SETTLEMENT AGREEMENT (this "**Agreement**") dated for convenience of reference purposes only as of March 15, 2011, 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 **The San Francisco Forty Niners, Ltd.**, a California limited partnership (the "**Forty Niners**"). Unless otherwise defined in this Agreement, initially capitalized terms used in this Agreement shall have the meaning given them in Article 1 below.

RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

- A. The City owns a stadium located at Candlestick Point in the City and County of San Francisco commonly referred to 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 basis for the exhibition of its home professional football games. The Lease currently expires on May 31, 2013, subject to the option of the Forty Niners to extend the term of the Lease for up to two additional successive five year periods, through May 31, 2023 (the "**Outside Lease Termination Date**"). In connection with the Lease the Parties have also entered into the Advertising Agreement and the Naming Rights Agreement relating to the Forty Niners' use of the Stadium.
- C. The City and the Forty Niners have a long-standing dispute over the City's maintenance of the Stadium under the Lease. The Forty Niners have argued that the City has failed to fulfill its obligations to maintain the Stadium as required by the Lease, and the City has denied these assertions. In past efforts addressing this dispute, the Parties entered into a tolling agreement dated as of December 11, 1998, as amended by a first amendment dated as of April 17, 2000 (the "**Tolling Agreement**") and a series of six rent credit agreements (No. 1 dated as of March 31, 2004, No. 2 dated as of May 19, 2006, No. 3 dated as of April 1, 2007, No. 4 dated as of July 28, 2008, No. 5 dated as of September 3, 2009, and No. 6 dated as of August 19, 2010; collectively, the "**Rent Credit Agreements**"). Under the Tolling Agreement, the Parties extended the deadline for commencement and completion of arbitration of the Forty Niners' claims relating to the condition of the Stadium and amended the Lease. Under the Rent Credit Agreements, the Forty Niners performed specified work at the Stadium and the City gave the Forty Niners credits against future rent based on the cost of the work that the Forty Niners performed.
- D. On June 18, 2010, the Forty Niners filed a claim against the City (Claim No. 10-03538), a copy of which is attached as Exhibit A (the "**Forty Niners' Claim**"), in which the Forty Niners claim that the City has breached its obligation under the Lease to maintain the

Stadium in good order and repair and that the City also has failed to provide a rent reduction attributable to the "excess" portion of the stadium admissions tax that the City has not demonstrated it has dedicated to after school sport programs. On August 2, 2010, the City denied the Forty Niners' Claim. On January 31, 2011, consistent with the authority conferred by Board of Supervisors Resolution No. 29-11, the City Attorney tolled the end of the statute of limitations to June 1, 2011 for the Forty Niners to file an action based on the denial of the Forty Niners' Claim.

E. In May 2009 the City's Controller's Office released a report finding that the Forty Niners owed the City for underpaying rent due under the Lease for parking fees collected by the Forty Niners (for a copy of the report, see <http://co.sfgov.org/webreports/details.aspx?id=919>) (the "City's Claim"). The Forty Niners deny the City's Claim.

F. Consistent with the Non-Binding Term Sheet for the Settlement of Disputes Relating to Stadium Maintenance and Parking Rent under the Candlestick Stadium Lease signed by the Forty Niners on January 20, 2011 (the "Term Sheet"), the Parties wish to settle, compromise, and resolve their claims against each other relating to the Forty Niners' Claim and the City's Claim (collectively, the "Disputes") by entering into this Agreement and providing for certain amendments to the Lease, including: (i) the City's payment of \$3 million to the Forty Niners to use to make specified improvements to the stadium; (ii) the City's provision of new rent credits for the Forty Niners to make further agreed upon improvements to the Stadium; (iii) the reduction of rent payable by the Forty Niners; (iv) an amendment to the term of the Lease, including an alteration of the remaining option terms, without extending the Outside Lease Termination Date; (v) changes to the maintenance and repair provisions of the Lease, including new provisions relating to the City's Continuing Maintenance Obligation and possible future Unanticipated Capital Repairs at the Stadium; and (vi) the Parties' withdrawal of claims, covenant not to sue, and mutual release of all claims and causes of action relating to the Disputes and termination of the Tolling Agreement; all as further provided in this Agreement.

AGREEMENT

ACCORDINGLY, in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the following terms and conditions as a complete and final resolution of the Disputes between them:

ARTICLE 1

DEFINITIONS

1.1 Definitions

For purposes of this Agreement, the following terms shall have the meaning set forth below. Any terms not otherwise defined in this Agreement, shall have the meanings given them in the Lease.

- (a) "**Advertising Agreement**" means the Agreement for Stadium Advertising dated as of June 20, 2002, between the City and the 49ers, relating to advertising rights for the Stadium.
- (b) "**Agreement**" has the meaning set forth in the opening paragraph of this Agreement and includes, where applicable, the Lease Amendment.
- (c) "**City**" has the meaning set forth in the opening paragraph of this Agreement.
- (d) "**City's Claim**" has the meaning set forth in Recital E.
- (e) "**Claim**" or "**Claims**" means any and all claims, demands, causes of action, losses, liabilities, obligations, liabilities, damages (including foreseeable and unforeseeable consequential damages to the extent arising from third party claims), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable attorneys' fees and costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.
- (f) "**Commission**" has the meaning set forth in the opening paragraph of this Agreement.
- (g) "**Continuing Maintenance Obligation**" has the meaning given in the Lease Amendment.
- (h) "**Disputes**" has the meaning set forth in Recital F.
- (i) "**Effective Date**" has the meaning set forth in Section 2.2(c).
- (j) "**Forty Niners**" has the meaning set forth in the opening paragraph of this Agreement and includes any successors or assigns as provided in this Agreement.
- (k) "**Forty Niners' Claim**" has the meaning set forth in Recital D.
- (l) "**General Manager**" means the General Manager of the Recreation and Park Department.
- (m) "**Lease**" has the meaning set forth in Recital B, and shall include, from and after the Effective Date, the Lease Amendment.
- (n) "**Lease Amendment**" has the meaning set forth in Section 3.1.
- (o) "**Lease Related Agreements**" means the Advertising Agreement, Naming Rights Agreement, Rent Credit Agreements, and Tolling Agreement.

(p) **"Naming Rights Agreement"** means the Agreement Regarding Extension of Naming Rights dated as of July 23, 2004, between the City and the 49ers, relating to naming rights for the Stadium.

(q) **"New Rent Credits"** has the meaning given in the Lease Amendment.

(r) **"NFL"** means the National Football League.

(s) **"Outside Approval Date"** has the meaning set forth in Section 2.2(b).

(t) **"Outside Lease Termination Date"** has the meaning set forth in Recital B.

(u) **"Party"** means the City or the Forty Niners, and **"Parties"** means both of them.

(v) **"Person"** means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or other federal, state or local governmental entity.

(w) **"Premises"** means the Stadium, site of the Stadium, parking lot area and other City-owned real property that is covered by the Lease.

(x) **"Rent Credit Agreements"** has the meaning set forth in Recital C.

(y) **"Rent Reduction"** has the meaning given in the Lease Amendment.

(z) **"Stadium"** has the meaning set forth in Recital A.

(aa) **"Stadium Improvement Payment"** has the meaning given in the Lease Amendment.

(bb) **"Term Sheet"** has the meaning set forth in Recital F.

(cc) **"Tolling Agreement"** has the meaning set forth in Recital C.

(dd) **"Unanticipated Capital Repair"** has the meaning given in the Lease Amendment.

ARTICLE 2

GENERAL TERMS

2.1 Term of Agreement

The term of this Agreement (the **"Term"**) shall commence on the Effective Date as provided in Section 2.2(c) below, and end on the Outside Lease Termination Date, unless the

Lease is sooner terminated in accordance with the terms and conditions of the Lease (as amended by the Lease Amendment).

2.2 Agreement Approvals and Effective Date

(a) **NFL Approval.** The Forty Niners represents, warrants and covenants that it has obtained all required approvals for it to enter into this Agreement, other than the approval of the NFL and team owners required for this Agreement (including the Lease Amendment). Upon execution and delivery to the City, the Forty Niners agrees that it shall submit this Agreement (including the Lease Amendment) to the NFL for approval, shall use its best efforts to obtain such approval no later than 30 days after the execution of this Agreement, and shall notify the City promptly of any action taken by the NFL or the owners regarding such request for approval. If, despite using its best efforts, the Forty Niners do not obtain such approvals by the Outside Approval Date (as defined in Section 2.2(b) below), then this Agreement shall automatically terminate and shall be of no force and effect, unless the City acting through the General Manger and the City Attorney, and the Forty Niners, in their respective sole discretion, agree in writing to extend the Outside Approval Date and such approvals are obtained on or before such extended date.

(b) **City Approval.** Once the Forty Niners has signed and delivered this Agreement to the City, the City shall timely submit this Agreement (including the Lease Amendment) to the Commission for its approval and to the Board of Supervisors for its approval, by ordinance. Notwithstanding anything in this Agreement to the contrary, the Forty Niners understands and agrees that no officer or employee of the City has authority to bind the City to this Agreement (including the Lease Amendment) unless and until the Commission shall have recommended approval of this Agreement (including the Lease Amendment) in its sole and absolute discretion and the Board of Supervisors shall have duly enacted an ordinance in its sole and absolute discretion approving this Agreement (including the Lease Amendment) and such ordinance has further been approved by the City's Mayor in his sole and absolute discretion or otherwise becomes effective under the City's Charter without the Mayor's approval. Therefore, any obligations of the Parties under this Agreement (including the Lease Amendment) are contingent upon such City approvals, and this Agreement shall not be effective unless and until such approvals are obtained in accordance with the City's Charter. Notwithstanding the foregoing, if an ordinance approving this Agreement (including the Lease Amendment) does not become effective by May 15, 2011 (the "**Outside Approval Date**"), then this Agreement shall automatically terminate and shall be of no force and effect, unless the City acting through the General Manger and the City Attorney, and the Forty Niners, in their respective sole discretion, agree in writing to extend the Outside Approval Date and such an ordinance is duly enacted and becomes effective on or before such extended date.

(c) **Effective Date.** The effective date of this Agreement (the "**Effective Date**") shall be the date that this Agreement is executed and delivered by the Parties, the Forty Niners has obtained the necessary approvals as set forth in Section 2.2(a) above and the City has obtained the necessary approvals as set forth in Section 2.2(b) above.

ARTICLE 3

LEASE AMENDMENT

3.1 Lease Amendment

On the Effective Date, the Forty Niners and the City shall each execute and deliver the Lease Amendment substantially in the form attached as Exhibit B (the "**Lease Amendment**"). The Parties understand and agree that as a material part of settlement of the Disputes under this Agreement, the Lease Amendment shall not be subject to any new City policy requirements that the City's Administrative Code would otherwise require for a material amendment to the Lease since the date of the last amendment to the Lease (i.e., the amendment entitled the Ninth Amendment and dated January 1994).

3.2 No Other Changes

Except as specifically provided in the Lease Amendment, all provisions of the Lease and the Lease Related Agreements (other than the Tolling Agreement as provided in Section 4.1 below) remain unchanged and in full force and effect.

ARTICLE 4

TOLLING AGREEMENT

4.1 Termination of Tolling of Stadium Maintenance Arbitration Proceeding under the Tolling Agreement

The Parties agree that on the Effective Date, and subject to the execution and delivery of the Lease Amendment, the Tolling Agreement shall automatically terminate, and any rights or obligations of the Parties regarding arbitration of any Claim that the Tolling Agreement covered or that is otherwise within the scope of the Claims released under this Agreement, shall likewise be extinguished; provided, however, that (i) if this Agreement does not become effective for any reason, the Tolling Agreement shall remain in effect in accordance with its terms, and (ii) notwithstanding the termination of the Tolling Agreement, the amendments to the Lease as set forth in Sections 1.2, 1.3 and 4.1 through 4.5 of the Tolling Agreement shall remain in full force and effect as a part of the Lease.

ARTICLE 5

DISMISSAL WITH PREJUDICE OF CLAIMS

5.1 Withdrawal With Prejudice of Forty Niners' Claim and Dismissal with Prejudice of any Legal Action

On the Effective Date, the Forty Niners' shall irrevocably and fully withdraw the Forty Niners' Claim, and dismiss with prejudice any lawsuit filed in connection with such claim. The

Forty Niners agrees that after it has withdrawn its claim and dismissed with prejudice any lawsuit it has filed, it shall not file any new claim or file or pursue any lawsuit or other cause of action that relates to or is based in any way on the Forty Niners' Claim, except as provided in Section 6.2 below.

5.2 Withdrawal With Prejudice of City's Claim

On the Effective Date, the City shall irrevocably and fully withdraw the City's Claim. The City agrees that after it has withdrawn its claim, it shall not file any new claim or file or pursue any lawsuit or other cause of action that relates to or is based in any way on the City's Claim.

ARTICLE 6 SETTLEMENT AND RELEASE OF CLAIMS

6.1 City's Release of Claims Against the Forty Niners

In consideration of the promises, conditions and covenants contained in this Agreement, and except for any claims relating to a breach of any obligation by the Forty Niners under this Agreement (including the Lease Amendment), the City, on behalf of itself, its officials (including but not limited to its elective boards, appointive boards, including the Commission, and commissioners), agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors, constituents, 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 Forty Niners, its general partners, limited partners, officers, directors, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors, and assigns, that arise from, relate to, or are based upon the City's Claim, including, without limiting the generality of the foregoing, all such Claims that in any way relate to or arise out of any action, omission, representation, or proceeding with respect to any matter involving rent related to parking on the Premises that the City raised or that the City could have raised as part of the City's Claim.

6.2 Forty Niners' Release of Claims Against the City

In consideration of the promises, conditions and covenants contained in this Agreement, and except for any claims relating to a breach of any obligation by the City under this Agreement (including the Lease 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 Agreement, 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 Lease Amendment; (iii) any Claim for the City's failure to perform the Continuing Maintenance Obligation under the terms and conditions of the Lease Amendment, and (iv) any Claim relating to the City's obligations regarding an Unanticipated Capital Repair under the terms and conditions of the Lease Amendment.

6.3 Waiver of Civil Code Section 1542

Each Party expressly acknowledge that each may have Claims against the other Party, 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 other Party, whether known or unknown, that arise from the matters that are the subject of the releases described in Sections 6.1 and 6.2 above. As a further inducement and consideration in resolution of the Disputes, the Parties expressly and specifically waive any rights or benefits available to them 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: City: _____ Forty Niners: _____

Each Party acknowledges it may have sustained damages, losses, costs or expenses that are currently unknown or unsuspected, and that such damages, losses, costs or expenses as may have been sustained may give rise to additional damages, losses, costs or expenses in the future. But each Party acknowledges that the releases contained in this Article 6 have been negotiated and agreed upon in light of this situation and expressly waives any and all rights that it may have under California Civil Code section 1542 or under any state or federal statute or common law principle of similar effect. Each Party further agrees that the releases contained in this Article 6 shall survive the expiration or termination of this Agreement.

6.4 Negotiated Settlement

The discussions that have produced this Agreement have been conducted with the explicit understanding that they are privileged under California Evidence Code section 1152 and Federal Rule of Evidence 408, and that such discussions shall be without prejudice to the position of either Party and may not be used in any manner in any proceeding or otherwise, except as may be necessary to enforce or interpret this Agreement or as otherwise required by law.

6.5 Voluntary Release

Each Party has carefully read this Agreement, and signs it freely and voluntarily upon the advice of its own attorneys. Each such Party affirms that the only consideration for its execution

of this Agreement are the terms stated in the body of this Agreement (including the Lease Amendment); that no other promise or agreement of any kind has been made to it, or with it, by any Person to cause them to execute this Agreement; that it is competent to execute this Agreement; that its agreement to execute this Agreement has not been obtained by any duress or undue influence; and that it fully understands and voluntarily executes this Agreement knowing it constitutes a complete release of Claims as provided in this Article 6.

ARTICLE 7

NO ADMISSION

7.1 No Admission of Liability

The City and the Forty Niners each agrees that this Agreement is intended to be a compromise of disputed Claims, and a full resolution of their Disputes, and is entered into for settlement purposes only. Neither the fact of, nor any statement or provision contained in this Agreement, nor any action taken under this Agreement, shall constitute, be construed as, or be admissible in evidence as, any admission or concession with respect to any claim or allegation of any wrongdoing, fault, violation of law, or liability of any kind on the part of any of the Parties with respect to any subject matter of the Disputes. But nothing stated in this paragraph shall preclude any of the Parties from seeking to introduce the terms of this Agreement in any proceeding to enforce this Agreement.

ARTICLE 8

GENERAL

8.1 Notices

Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither Party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

- (a) In the case of a notice or communication to the City:

General Manager
Recreation and Park Department

McLaren Lodge
501 Stanyan Ave.
San Francisco, CA 94117
Reference: Candlestick Stadium
(f) 415-831-2099

With a copy to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Reference: Candlestick Stadium
Attn: Real Estate Team Leader
(f) 415-554-4755

and to

Office of Economic and Workforce Development
Room 448, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Reference: Candlestick Stadium
(f) 415-554-4565

(b) And in the case of a notice or communication to the Forty Niners:

Jim Mercurio
Vice President, Stadium Operations & Security
San Francisco 49ers
Candlestick Park
490 Jamestown Ave. RM 398
San Francisco, CA 94124
(f) 415-467-3222

With a copy to:

Peter N. Larson, Esq.
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
(f) 415-875-5700

Every notice given to a Party to this Agreement, under the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(i) the Section of this Agreement under which the notice is given and the action or response required, if any; and

(ii) if applicable, the period of time within which the recipient of the notice must respond.

If a request for approval states a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period. In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

8.2 Relationship of Parties: No Joint Venture or Partnership

The subject of this Agreement is the settlement of the Disputes and amendment of the Lease, with no Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement is intended to or shall be construed or deemed to render any Party as a partner in the other Party's business, or joint venturer or member in any joint enterprise.

8.3 Conflict of Interest

No member, official or employee of the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

8.4 Time of Performance

(a) **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 Agreement.

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

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.

8.5 Interpretation of Agreement

(a) **Words of Inclusion.** The use of the terms "including," "such as" or 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.

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

(c) **Costs and Expenses.** The Party on which any obligation is imposed in this Agreement 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.

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

(e) **Approvals and Consents.** Unless this Agreement otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Agreement shall be made by the General Manager, or his or her designee. Approval by a Party to or of any act or request by any other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

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

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

(h) **Exhibits.** Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

8.6 Successors and Assigns

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Parties under the Lease and the Lease Related Agreements.

8.7 No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns under the Lease and the Lease Related Agreements.

8.8 Counterparts

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

8.9 Entire Agreement

This Agreement, including the attached Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous conditions mentioned in or incidental to this Agreement (including, but not limited to, any term sheets relating to any of the subject matters of this Agreement). No parol evidence of any prior draft of this Agreement or any other agreement (including the Term Sheet) shall be permitted to contradict or vary the terms of this Agreement.

8.10 Governing Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

8.11 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 Agreement. The City Attorney is authorized to execute on behalf of the City any notices, dismissals, or similar documents and any agreements, memoranda or similar documents that are necessary or proper to achieve the purposes and objectives of this Agreement and that do not materially increase the obligations of the City under this Agreement, if the City Attorney determines that the document is necessary or proper, consistent with the purposes of this Agreement and in the City's best interests. The City Attorney's signature of any such document shall conclusively evidence such a determination by him or her.

8.12 Severability

If any provision of this Agreement, 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 Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect,

unless enforcement of this Agreement 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 Agreement.

8.13 Amendments; Corrections of Technical Errors

Neither this Agreement 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 Agreement shall be subject to approval of the Board of Supervisors by resolution. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement or any of its Exhibits, the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of amendment of this Agreement. The City Attorney may execute any such written memorandum on behalf of the City.

8.14 Representations, Warranties and Covenants

(a) **Forty Niners Representation, Warranties and Covenants.** The Forty Niners represents, warrants, and covenants to the other Parties that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Valid Existence; Good Standing.** The Forty Niners is a limited partnership duly organized, validly existing and in good standing under the laws of the State of California. The Forty Niners has all requisite power and authority to own its property and conduct its business as presently conducted.

(ii) **Authority.** The Forty Niners has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement.

(iii) **No Limitation on Ability to Perform.** Neither the Forty Niners' limited partnership agreement, nor any other agreement, court decision or law prohibits or materially limits or otherwise affects the right or power of the Forty Niners to enter into and perform all of the terms and covenants of this Agreement. The Forty Niners is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that prohibits or materially limits or otherwise affects the same. Except as expressly stated in this Agreement, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Forty Niners of this Agreement or any of the terms and covenants contained in this Agreement (or if required, any such consent, authorization or approval has been obtained, any such action has occurred, and any such notice has been given). There are no pending or threatened suits or proceedings or undischarged judgments affecting the Forty Niners before any court, governmental agency, or arbitrator that might materially adversely affect the enforceability of this Agreement or the ability of the Forty Niners to perform its obligations under this Agreement.

(iv) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by the Forty Niners have been duly and validly authorized by all necessary action on the part of the Forty Niners. Upon its execution and delivery by all Parties and Board of Supervisors approval under Section 2.2, this Agreement will be a legal, valid, binding and enforceable obligation of the Forty Niners.

(v) **Financial Matters.** The Forty Niners has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and has no present intention to petition for relief under any chapter of the U.S. Bankruptcy Code and to the Forty Niners' knowledge, no involuntary petition naming the Forty Niners as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

(b) **City Representations, Warranties, and Covenants.** The City represents, warrants, and covenants to the other Parties that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Authority.** The City has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement.

(ii) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by the City have been duly and validly authorized by all necessary action on the part of the City. Upon its execution and delivery by all Parties and Board of Supervisors approval under Section 2.2, this Agreement will be a legal, valid, binding and enforceable obligation of the City. The City has provided (or upon written request will provide) to the City a written ordinance of the City authorizing the execution of and performance by the City of its obligations under this Agreement.

(iii) **Defaults.** The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the City is a party or (B) any applicable law, statute, ordinance or regulation.

8.15 Cooperation and Non-Interference

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

8.16 Conflicts of Interest

The Forty Niners acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of such provisions, and agrees that if the Forty Niners becomes aware of any such fact during negotiations for the Agreement then the Forty Niners shall immediately notify the City.

8.17 Notification of Limitations on Contributions

The Forty Niners acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Forty Niners acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of fifty thousand dollars (\$50,000) or more. The Forty Niners further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Forty Niners' board of directors; the Forty Niners' chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent in the Forty Niners; any subcontract listed in the bid or contract; and any committee that is sponsored or controlled by the Forty Niners.

8.18 Exhibits

The attached exhibits are made a part of this Agreement:

- Exhibit A Forty Niners Claim
- Exhibit B Form of Lease Amendment

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

The San Francisco Forty Niners Ltd,
a California limited partnership

By: _____
Jim Mercurio, Vice President, Stadium Operations & Security

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 _____,
2011 and Board of Supervisors Ordinance No. _____, adopted on
_____, 2011

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

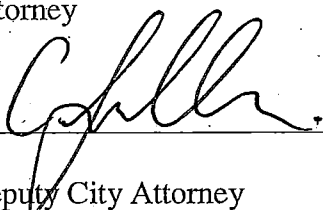
By:  _____
Deputy City Attorney

EXHIBIT A TO SETTLEMENT AGREEMENT

FORTY NINERS' CLAIM

EXHIBIT B TO SETTLEMENT AGREEMENT

LEASE AMENDMENT

**AMENDMENT TO LEASE
CANDLESTICK PARK STADIUM**

DATED AS OF MARCH 15, 2011

BETWEEN

**CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH ITS RECREATION AND PARK COMMISSION**

AND

THE SAN FRANCISCO FORTY NINERS, LTD

AMENDMENT TO LEASE

Candlestick Park Stadium

THIS AMENDMENT TO LEASE (this "**Amendment**") dated for convenience of reference purposes only as of March 15, 2011, 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 **The San Francisco Forty Niners, Ltd.**, a California limited partnership (the "**Forty Niners**"). Unless otherwise defined in this Amendment, initially capitalized terms used in this Amendment shall have the meaning given them in Article 1 below.

RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

- A. The City owns a stadium located at Candlestick Point in the City and County of San Francisco commonly referred to 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 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 the Ninth Amendment to Stadium Lease executed by the Parties in February 1994.
- C. The City and the Forty Niners have a long-standing dispute over the City's maintenance of the Stadium under the Lease. The Forty Niners allege that the City has failed to fulfill its obligations to maintain the Stadium as required by the Lease, and the City denies this allegation. In past efforts addressing this dispute, the Parties entered into a tolling agreement dated as of December 11, 1998, as amended by a first amendment dated as of April 17, 2000 (the "**Tolling Agreement**") and a series of six rent credit agreements (No. 1 dated as of March 31, 2004, No. 2 dated as of May 19, 2006, No. 3 dated as of April 1, 2007, No. 4 dated as of July 28, 2008, No. 5 dated as of September 3, 2009, and No. 6 dated as of August 19, 2010; collectively, the "**Rent Credit Agreements**"). Under the Tolling Agreement, the Parties extended the deadline for commencement and completion of arbitration of the Forty Niners' claims relating to the condition of the Stadium and amended the Lease. Under the Rent Credit Agreements, the Forty Niners performed specified work at the Stadium and the City gave the Forty Niners credits against future rent based on the cost of the work that the Forty Niners performed.
- D. On June 18, 2010, the Forty Niners filed a claim against the City (Claim No. 10-03538), a copy of which is attached as Exhibit A (the "**Forty Niners' Claim**"), in which the Forty Niners claim that the City has breached its obligation under the Lease to maintain the Stadium in good order and repair and that the City also has failed to provide a rent reduction attributable to the "excess" portion of the stadium admissions tax that the City has not demonstrated it has dedicated to after school sport programs. On August 2, 2010, the City denied the Forty Niners' Claim.

E. In May 2009 the City's Controller's Office released a report finding that the Forty Niners owed the City for underpaying rent due under the Lease for parking fees collected by the Forty Niners (for a copy of the report, see <http://co.sfgov.org/webreports/details.aspx?id=919>) (the "City's Claim"). The Forty Niners deny the City's Claim.

F. The Parties have entered into a Settlement Agreement, dated as of March 15, 2011 (the "Settlement Agreement"), under which they have agreed to settle, compromise, and resolve their claims against each other relating to the Forty Niners' Claim and the City's Claim (collectively, the "Disputes"). As a material part of the Settlement Agreement, the Parties have agreed to the terms and provisions of this Lease Amendment.

G. The Parties are entering into this Amendment as part of and in furtherance of the Settlement Agreement.

AGREEMENT

ACCORDINGLY, in consideration of the mutual covenants and agreements in this Amendment and the Settlement Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the following:

ARTICLE 1

DEFINITIONS

1.1 Definitions

All capitalized terms used in this Amendment shall have the same meaning as is given such terms in the Lease unless expressly defined otherwise in this Amendment. Defined terms used in this Amendment shall amend certain terms used in the Lease as noted below.

(a) "Advertising Agreement" means the Agreement for Stadium Advertising dated as of June 20, 2002, between the City and the Forty Niners, relating to advertising rights for the Stadium.

(b) "Amendment" has the meaning set forth in the opening paragraph of this Amendment.

(c) "Books and Records" has the meaning set forth in Section 5.2(B) of this Amendment.

(d) "City" has the meaning set forth in the opening paragraph of this Amendment.

(e) "City representatives" has the meaning given in Section 5.2(C) of this Amendment.

(f) "City's Claim" has the meaning set forth in Recital E of this Amendment.

(g) "**Commission**" has the meaning set forth in the opening paragraph of this Amendment.

(h) "**Continuing Maintenance Obligation**" has the meaning set forth in Section 6.1 of this Amendment.

(i) "**Effective Date**" means the effective date of this Amendment, which shall be the same date as the Effective Date of the Settlement Agreement (as defined in the Settlement Agreement).

(j) "**Fiscal Year**" means July 1 to June 30 of each calendar year during the Term.

(k) "**Forty Niners**" has the meaning set forth in the opening paragraph of this Amendment and includes any successors or assigns as provided in this Amendment. All references in the Lease to "Lessee" are deleted and replaced with the term "Forty Niners".

(l) "**Forty Niners' Claim**" has the meaning set forth in Recital D of this Amendment.

(m) "**General Manager**" means the General Manager of the Recreation and Park Department, or such officer's designee.

(n) "**Laws**" means all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the Parties, that may affect or apply to the Premises or any part of the Premises, the Lease or the Lease Related Agreements.

(o) "**Lease**" has the meaning set forth in Recital B of this Amendment, and shall include, from and after the Effective Date, this Amendment. All references in the Lease to the "lease" are deleted and replaced with the initially capitalized term "Lease".

(p) "**Lease Related Agreements**" means the Advertising Agreement, Naming Rights Agreement, Rent Credit Agreements, and Tolling Agreement.

(q) "**Naming Rights Agreement**" means the Agreement Regarding Extension of Naming Rights dated as of July 23, 2004, between the City and the Forty Niners, relating to naming rights for the Stadium.

(r) "**New Rent Credits**" has the meaning set forth in Section 4.1(A) of this Amendment.

(s) "**New Rent Credit Improvements**" has the meaning set forth in Section 4.1(A) of this Amendment.

(t) "**NFL**" means the National Football League.

(u) "NFL Season" shall mean the period each year when the Forty Niners play their first pre-season game at the Stadium and ends when the Forty Niners play their last game that year at the Stadium, including any championship games.

(v) "Outside Lease Termination Date" has the meaning set forth in Section 2.1(c) of this Amendment.

(w) "Party" means the City or the Forty Niners, and "Parties" means both of them.

(x) "Person" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust; unincorporated association, joint venture or any other entity or association, the United States, or other federal, state or local governmental entity.

(y) "Premises" means the Stadium, site of the Stadium, parking lot area and other City-owned real property that is covered by the Lease. All references in the Lease to the "premises" or the "demised premises" are deleted and replaced with the term "Premises".

(z) "Rent" includes all amounts payable by the Forty Niners as rent under the Lease, and excluding any taxes, assessments, permits and other regulatory fees or charges.

(aa) "Rent Credit Agreements" has the meaning set forth in Recital C of this Amendment.

(bb) "Rent Reduction" has the meaning set forth in Section 4.3(A) of this Amendment.

(cc) "Settlement Agreement" has the meaning set forth in Recital F of this Amendment.

(dd) "Stadium" has the meaning set forth in Recital A of this Amendment.

(ee) "Stadium Improvement Payment" has the meaning set forth in Section 3.1(A) of this Amendment.

(ff) "Term" has the meaning set forth in Section 2.1 of this Amendment. All references in the Lease to the "term" or the "lease term" are deleted and replaced with the "Term".

(gg) "Tolling Agreement" has the meaning set forth in Recital C of this Amendment.

(hh) "Unanticipated Capital Repair" means any capital repair to the Stadium, other than a repair caused by the City's failure to meet its Continuing Maintenance Obligation as set forth in this Amendment, that: (i) in any year exceeds individually or cumulatively \$100,000, (ii) is not contemplated by the agreed upon scope of work for the Upfront Stadium Improvements or the New Rent Credit Improvements, (iii) results from a natural disaster, change in laws, unanticipated worsening of conditions at the Stadium or other unexpected reason and (iv) is designed to address materially adverse impacts on the exhibition of NFL games.

(ii) "Upfront Stadium Improvements" has the meaning set forth in Section 3.1(A) of this Amendment.

(jj) "Work" means all improvements to the Stadium described in the attached Exhibit B and Exhibit C, or as otherwise agreed to by the Parties as set forth in this Amendment, in connection with the Stadium Improvement Payment, New Rent Credits, and Rent Reduction as provided in this Amendment.

(kk) "Work Plans" has the meaning given in Section 5.1(A) of this Amendment.

ARTICLE 2

TERM

2.1 Five Year Extension of Term, Early Termination Right, and Potential One-Year Extensions

The Lease currently expires on May 31, 2013, subject to two 5-year extension options exercisable by the Forty Niners. The Parties agree to extend the term of Lease to May 31, 2016, provide for an early termination option exercisable by the Forty Niners, eliminate the two remaining 5-year extension options and replace them with seven 1-year extension options. The Parties further acknowledge that in connection with the Disposition and Development Agreement for Candlestick Point and Phase 2 of the Hunters Point Shipyard, dated as of June 2, 2010, between the Redevelopment Agency of the City and County of San Francisco, and CP Development Co., LP (the "**Developer**"), the City has agreed not to extend the term of the Lease beyond the Outside Lease Termination Date, without the Developer's consent. The Parties are not agreeing to extend the term beyond the Outside Lease Termination Date. Accordingly, Sections 4(a) and 4(b) of the Lease are deleted and the following provisions shall govern the remaining term of the Lease:

(a) The term of the Lease (the "**Term**") shall be for the Regular Football Season, the Pre-Season Schedule and the Champion Schedule, if any, during and throughout a period commencing June 1, 1970 and ending on May 31, 2016 (the "**Expiration Date**"), unless sooner terminated in accordance with the Lease or extended by the Forty-Niners' exercise of one or more of the Extension Options.

(b) The Forty Niners has the right to terminate the Lease effective as of May 31, 2015 (the "**Early Termination Option**") by providing written notice of termination to the City on or before January 15, 2014. The Forty Niners may in its sole discretion exercise the Early Termination Option at any time before January 15, 2014. Any exercise of the Early Termination Option by the Forty Niners shall be irrevocable. Upon exercise of the Early Termination Option, (i) the Lease shall terminate on May 31, 2015, unless sooner terminated in accordance with the terms of this Lease, and (ii) the New Rent Credits shall be revised as set forth in Section 4.1(B) of this Amendment and Rent Reduction shall be revised as set forth in Section 4.3(B) of this Amendment.

(c) If the Forty Niners does not exercise the Early Termination Option, then the Forty Niners shall have seven (7) options to extend the Term (each, an “**Extension Option**”), each for a term of one year (each, an “**Extension Term**”), by providing written notice of exercise to the City. The Forty Niners may exercise an Extension Option at any time during the Term but if it decides to do so it must give written notice to City not less than twenty-four (24) months before the date the Term of the Lease would otherwise expire. If the Forty Niners fail to exercise an Extension Option, then all future Extension Options shall terminate as of that date. Upon each exercise of an Extension Option, the Expiration Date shall extend one year. In no event shall the Term extend beyond May 31, 2023 (the “**Outside Lease Termination Date**”). Any notice of exercise of an Extension Option by the Forty Niners shall be irrevocable. If a material default by Forty Niners is outstanding under the Lease either at the time of the Forty Niners’ exercise of the Extension Option or at any time before the first day of the Extension Term (that remains uncured following any notice and cure periods required under this Lease, and subject to a judicial determination if the Parties disagree as to whether there is such a material default), then the City may elect to reject the Forty Niners’ exercise of the Extension Option by providing written notice of such election to the Forty Niners, whereupon the Extension Option shall be null and void.

(d) If the Forty Niners exercise an Extension Option, then the lease for the Extension Term shall cover and include all of the Premises and shall be on all of the terms, covenants and conditions of the Lease, except that the adjustments to the New Rent Credits as set forth in Section 4.1(C) of this Amendment and the adjustments to the Rent Reduction as set forth in Section 4.3(C) of this Amendment will apply.

ARTICLE 3

STADIUM IMPROVEMENT PAYMENT

3.1 Stadium Improvement Payment and Upfront Stadium Improvements

A. Within 60 days following the Effective Date, the City shall pay to the Forty Niners Three Million Dollars (\$3,000,000)(the “**Stadium Improvement Payment**”). The Forty Niners shall use the Stadium Improvement Payment to pay for or reimburse itself for the actual cost without markup of certain improvements to the Stadium identified on Exhibit B (the “**Upfront Stadium Improvements**”). The Forty Niners shall complete the Upfront Stadium Improvements no later than August 1, 2012.

B. In no event shall the Forty Niners be required under this Amendment to incur costs in excess of the Stadium Improvement Payment for the Upfront Stadium Improvements. If the Forty Niners become aware that the actual cost to the Forty Niners of the Upfront Stadium Improvements will exceed the Stadium Improvement Payment, then the Forty Niners shall promptly notify the City of this fact and the Parties agree to meet and confer to determine whether to proceed with the Work as contemplated, identify alternative improvements that can be completed with the Stadium Improvement Payment, or to defer portions of the Upfront Stadium Improvements as needed to prevent the cost from exceeding the Stadium Improvement Payment. Notwithstanding the foregoing, the Forty Niners shall have the right to either (i) defer one or more of the Upfront Stadium Improvements if necessary to prevent the actual cost to the

Forty Niners from exceeding the Stadium Improvement Payment, or (ii) complete the Upfront Stadium Improvements and apply any costs in excess of the Stadium Improvement Payment to either the New Rent Credits or the Rent Reduction, as and when available, to reimburse itself, without interest, for such excess costs.

C. Subject to Section 3.1(B) of this Amendment, the Forty Niners further agree to spend all of the Stadium Improvement Payment before August 1, 2012 on repairs to the Stadium that are included on the list of Upfront Stadium Improvements attached as Exhibit B, provided that if the Forty Niners complete all of the work listed on Exhibit B and has not exhausted the Stadium Improvement Payment, then the Forty Niners may select improvements listed in Exhibit C or such alternative improvements as the General Manager and the Forty Niners may agree in writing, to exhaust the Stadium Improvement Payment by August 1, 2012.

D. Upon completion of the Upfront Stadium Improvements, but no later than September 1, 2012, the Forty Niners shall submit a report to the City, with invoices or other appropriate backup documentation, detailing expenditures made with Stadium Improvement Payment. Upon the General Manager's request at any time during construction, the Forty Niners shall also provide a status report of the work and the costs, together with invoices or other appropriate backup documentation.

E. All of the work in performing the Upfront Stadium Improvements shall be done in accordance with the requirements of Article 6 of this Amendment.

ARTICLE 4

NEW RENT CREDITS AND RENT REDUCTION

4.1 Grant of New Rent Credits

A. The City grants to the Forty Niners credit against Rent in the amount of Three Million Four Hundred Twenty Six Thousand Dollars (\$3,426,000) in accordance with the schedule attached as Exhibit A (the "New Rent Credits"), subject to (i) a decrease if the Forty Niners exercise the Early Termination Option or (ii) an increase if the Forty Niners exercise one or more of the Extension Options as set forth in Section 4.1(B) of this Amendment. The Forty Niners shall use the New Rent Credits each year during the Term to pay for the actual cost of improvements identified in Exhibit C, or such alternative improvements as the Forty Niners and the General Manager may agree in writing (the "New Rent Credit Improvements").

B. If the Forty Niners exercise the Early Termination Option, then there shall be no New Rent Credits for the 2015-16 Fiscal Year and the New Rent Credits for the 2014-15 Fiscal Year shall be converted to a Rent Reduction. The adjustment to the schedule of New Rent Credits following the Forty Niners exercise of the Early Termination Option shall be as set forth in Exhibit A-1.

C. If the Forty Niners exercise the first Extension Option, then for the period subject to such Extension Option, and on the exercise of each Extension Option thereafter, the New Rent Credits shall be modified from what is shown on Exhibit A so that: (i) the New Rent Credits for

the 2014-15 and 2015-16 Fiscal Year and each Extension Term, except for the last two years of the Lease, shall be One Million Forty Five Thousand Dollars (\$1,045,000); (ii) the New Rent Credits for the second to last year of the Lease shall equal the New Rent Credits shown in Exhibit A for the 2014-15 Fiscal Year; and (iii) the New Rent Credits for the last year of the Lease shall equal the New Rent Credits shown in Exhibit A for the 2015-16 Fiscal Year. Examples of this modification, showing the Rent Credits if the Forty Niners exercise one, two or three Extension Options are shown in Exhibit A-2.

4.2 Scope of Work and Schedule for New Rent Credit Improvements

A. Before the end of each NFL Season during the Term, the Forty Niners shall propose a list of New Rent Credit Improvements that the Forty Niners intend to perform before the start of the next NFL Season and those that it intends to perform before the end of the next NFL Season. Following the delivery of such list, the Parties agree to meet and confer in good faith to agree upon the New Rent Credit Improvements and a schedule for completion. If the Parties are not able to reach agreement within sixty (60) days following the Forty Niners' delivery of the proposed list, then the Forty Niners shall have the right to select any one or more of the improvements listed on Exhibit C, subject to the provisions relating to Unanticipated Capital Repairs as set forth in Section 6.2(B) of this Amendment. The Forty Niners shall complete all New Rent Credit Improvements before the end of the NFL season in which the New Rent Credits are applied for such Work, except as the Forty Niners and the General Manager may otherwise agree.

B. If the Forty Niners become aware that the actual cost to the Forty Niners of the New Rent Credit Improvements will exceed the applicable New Rent Credits, then the Forty Niners shall promptly notify the City of this fact and the Parties agree to meet and confer to determine whether to proceed with the Work as contemplated, identify alternative improvements that can be completed with the New Rent Credits, or to defer portions of the New Rent Credit Improvements as needed to prevent the cost from exceeding the applicable New Rent Credits. Notwithstanding the foregoing, the Forty Niners shall have the right to either (i) defer one or more of the New Rent Credit Improvements if necessary to prevent the actual cost to the Forty Niners from exceeding the applicable New Rent Credits, or (ii) complete the New Credits Improvements and apply any costs in excess of the applicable New Credits to either future New Rent Credits or the Rent Reduction, as and when available, to reimburse themselves without interest for such excess costs.

C. If the Forty Niners do not wish to use any New Rent Credits in any Fiscal Year during the Term, then the Forty Niners shall notify the City in advance of this fact and the applicable, unused New Rent Credits shall be rolled over without interest to the next Fiscal Year, provided that the Forty Niners use those unused New Rent Credits to complete New Rent Credit Improvements in the following Fiscal Year in accordance with this Amendment.

D. Upon completion of the New Rent Credit Improvements each Fiscal Year, but not later than 30 days after the start of the following Fiscal Year, the Forty Niners shall submit a report to the City, with invoices or other appropriate backup documentation, detailing expenditures made with New Rent Credits and the Work performed with such funds. Upon the General Manager's

request at any time during construction, the Forty Niners shall also provide a status report of the work and the costs, together with invoices or other appropriate backup documentation.

E. All of the work in performing New Rent Credit Improvements shall be done in accordance with the requirements of Article 6 of this Amendment.

4.3 Rent Reduction

A. The City grants to the Forty Niners a reduction in Rent payable under the Lease in the amount of Six Million Four Hundred Twenty-Six Thousand Dollars (\$6,426,000) in accordance with the schedule attached as Exhibit A (the "**Rent Reduction**"), subject to (i) a decrease if the Forty Niners exercise the Early Termination Option or (ii) an increase if the Forty Niners exercise one or more of the Extension Options as set forth in Section 4.3(B) of this Amendment. The Parties agree that the funds saved by the Forty Niners through the Rent Reduction may be expended at the sole discretion of the Forty Niners, and that in the exercise of such discretion the Forty Niners may decide to pay for additional improvements to the Stadium subject to agreement by the General Manager and the Forty Niners on the scope of work for any such additional improvements. Each applicable Rent Reduction shall, upon accrual in accordance with this Amendment, be applied to reduce the amount of Rent that otherwise would be due and owing by the Forty Niners to the City on February 1st of that year.

B. If the Forty Niners' exercise the Early Termination Option, then there shall be no Rent Reduction for the 2015-16 Fiscal Year. Instead, the schedule of Rent Reduction following the Forty Niners' exercise of the Early Termination Option shall be adjusted as set forth in Exhibit A-1 of this Amendment.

C. If the Forty Niners' exercise the first Extension Option, then for the period subject to such Extension Option, and on the exercise of each Extension Option thereafter, the Rent Reduction shall be modified from what is shown on Exhibit A of this Amendment so that: (i) the Rent Reduction for the 2014-15 and 2015-16 Fiscal Year and each Extension Term, except for the last two years of the Lease, shall be One Million Forty Five Thousand Dollars (\$1,045,000); (ii) the Rent Reduction for the second to last year of the Lease shall equal the Rent Reduction shown in Exhibit A of this Amendment for the 2014-15 Fiscal Year; and (iii) the Rent Reduction for the last year of the Lease shall equal the Rent Reduction shown in Exhibit A of this Amendment for the 2015-16 Fiscal Year. Examples of this modification, showing the Rent Reduction if the Forty Niners exercise one, two, or three Extension Options, are shown in Exhibit A-2 of this Amendment.

4.4 New Rent Credits and Rent Reduction Adjustment if an NFL Season is Shortened or Cancelled

A. If the 2011 NFL Season is cancelled due to labor disruptions or any other reason outside of the City's control, then the Forty Niners shall not receive any New Rent Credits or Rent Reduction for the 2011-2012 Fiscal Year, and such New Rent Credits and Rent Reduction shall terminate and not be rolled over to later Fiscal Years under any circumstances. Additionally, should any subsequent NFL Season be cancelled, the Forty Niners shall receive no New Rent Credits or Rent Reduction in that Fiscal Year, and such New Rent Credits and Rent

Reduction for each such NFL Season shall terminate and shall not be rolled over to later Fiscal Years under any circumstances.

B. If the 2011 NFL Season or any subsequent NFL Season is shortened due to labor disruptions or any other reason outside of the City's control, then (i) the New Rent Credits and Rent Reduction for that Fiscal Year shall be reduced proportionately based on the proportion of the number of pre-season and regular-season home games that the Forty Niners actually play that NFL Season compared to the total number of pre-season and regular-season home games that the Forty Niners would have played that NFL Season but for the shortening, provided that any post-season games the Forty Niners may play in that NFL Season will count as a regular-season game for purposes of this calculation, and (ii) the unapplied portion of the New Rent Credits and Rent Reduction shall terminate and shall not be rolled over to later NFL Seasons under any circumstances. For any of the ten (10) home games that are scheduled but not played as a result of any work stoppage in the 2011 NFL Season, the New Rent Credits and Rent Reduction for that NFL Season will be reduced by 10%; provided that each post-season game played at the Stadium during the 2011 NFL Season will replace, on a one-for-one basis, any of the ten (10) pre-season or regular-season games that were not played at the Stadium and thereby reinstate 10% of the previously-eliminated New Rent Credits and Rent Reduction.

For example, if the schedule calls for the Forty Niners to play two (2) pre-season and eight (8) regular-season games at the Stadium but that NFL Season is shortened due to labor disruptions and the Forty Niners play only one (1) pre-season and four (4) regular-season games, then the Forty Niners shall be entitled to 50% of the New Rent Credits and 50% of the Rent Reduction for that Fiscal Year (i.e., $(1+4)/(2+8) = 5/10$ or 50%). Using this same example, if the Forty Niners also play three (3) post-season games at the Stadium, then the three (3) post-season games will count as regular-season games such that the Forty Niners will have played 8 games (i.e., 1 pre-season, four (4) regular-season, and three (3) post-season games) of the anticipated 10-game season and the Forty Niners shall be entitled to 80% of the New Rent Credits and 80% of the Rent Reduction for that Fiscal Year (i.e., $(1+4+3)/(2+8) = 8/10$ or 80%).

C. Beginning with the 2012 season, twenty five percent (25%) of any net revenues received by the City under the Lease (including parking, ticket, suite, concessions, signage and sponsorship revenue) as a result of any and all playoff games played at Candlestick Park (excluding those that are played in a shortened season), shall be applied to create New Rent Credits in the next Fiscal Year. For purposes of this section, "revenues" mean revenue excluding taxes, assessments, permits and other regulatory fees or charges.

ARTICLE 5

PERFORMANCE OF WORK

5.1 General

A. Work Plans. The Forty Niners shall, after the successful completion of an environmental review under CEQA if required, submit plans and specifications and work plans (collectively, the "**Work Plans**"), together with the name of the contractor who will perform the work described in the Work Plans if the work will not be performed by the Forty Niners, for the

General Manager's advance approval, which shall not be unreasonably withheld or denied, for each component of the Work. If the General Manager fails to respond to any such request for approval within thirty (30) days, such plans and specifications and contractor shall be deemed approved. The General Manager shall designate a representative to promptly review requested changes to the approved Work Plans made in the ordinary course of construction.

B. Permits. The Forty Niners acknowledge that the General Manager's approval of the Work Plans does not alter the Forty Niners' obligation to obtain all regulatory approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the City itself acting in its regulatory capacity. The City shall act as applicant or co-applicant on any such required permits and shall use reasonable good-faith efforts, at no cost to the City, to assist the Forty Niners' efforts to obtain such permits on a timely basis and to have any applicable fees waived.

C. Construction Standards. With respect to all Work commenced, the Forty Niners shall undertake commercially reasonable measures, as a tenant contracting for repair or construction of improvements, to (i) complete such Work expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws, (ii) minimize damage, disruption or inconvenience caused by such Work, (iii) avoid any damage or harm to the Stadium or operations or use of the Stadium and (iv) make adequate provision for the safety and convenience of any persons affected by such Work. Dust, noise and other effects of such Work shall be controlled using commercially accepted methods. In addition, the Forty Niners shall erect construction barricades substantially enclosing the area of such construction and maintain them until the construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

D. Prevailing Wages. The Forty Niners agree that as to any Work under this Amendment, the Forty Niners shall comply with all the provisions of Section 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages for such Work.

E. Safety Matters. The Forty Niners, while itself performing any Work, shall undertake commercially reasonable efforts in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Stadium and the surrounding property or the risk of injury to members of the public caused by or resulting from the performance of its Work. If performing any Work through contractors, the Forty Niners shall require, in all contracts relating to the Work, that the contractor undertake commercially reasonable efforts in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Stadium and the surrounding property or the risk of injury to members of the public caused by or resulting from the performance of its Work.

F. Performance of Work. The Forty Niners shall require, in all contracts or subcontracts relating to the Work, that the Work shall be performed in strict compliance with all applicable laws, rules, ordinances and regulations. Before beginning any Work, the Forty Niners shall obtain all permits, licenses and approvals of any regulatory agencies required to commence and complete the permitted Work. The Forty Niners shall require any contractors to maintain standard insurance, acceptable to the General Manager, and shall list the City as an additional

insured under any such insurance policy. Immediately following completion of any Work performed under this Amendment, the Forty Niners shall notify the General Manager, who shall arrange for an inspection to ensure the Work was executed as contemplated in the approval plans and, if so, shall approve and accept the Work, which approval and acceptance shall not be unreasonably withheld or delayed. If the General Manager fails within thirty (30) days of such request to either approve and accept the Work or disapprove the Work, such Work shall be deemed approved and accepted. If the General Manager disapproves the Work, or any portion, he or she shall describe in detail the basis for its disapproval and the steps required to obtain the City's approval and acceptance of such Work. Upon approval and acceptance of the Work by the City, the Work shall thereupon become the property of the City and a part of the leasehold improvements. If any portion of the Stadium is damaged or destroyed by the Forty Niners or its Agents' performance of Work under this Amendment, then the Forty Niners shall immediately, at its sole cost, repair any and all such damage and restore the Stadium to its previous condition, provided, however, the Forty Niners shall not be responsible for repairing any damage resulting from (1) damage or changes to stadium conditions caused by Work properly performed in accordance with the approved Work Plans, or (2) pre-existing conditions, except and to the extent that such damage is the result of the Forty Niners or its Agents exacerbating such pre-existing condition, and provided further that the Forty Niners shall not be deemed to have exacerbated a pre-existing condition if the resulting damage was not a reasonably foreseeable consequence of the Forty Niners' or its Agents' Work.

G. Qualified Personnel. All Work performed by the Forty Niners under this Amendment shall be performed only by competent personnel under the supervision of the Forty Niners. The Forty Niners may contract for performance of any or all of the Work to be performed under this Amendment but shall retain the responsibility for the Work contracted to the extent provided in this Amendment.

H. Access. The Forty Niners shall have the right of access to the Stadium at reasonable times for the purposes of performing all Work contemplated hereunder, upon the following terms and conditions: The Forty Niners shall give the General Manager at least forty-eight (48) hours prior oral or written notice of such entry, including a description of the Work to be performed and an estimated time schedule, together with an identification of the personnel who will perform the Work. The Forty Niners shall schedule any Work to avoid any conflict with previously scheduled activities in or about the Stadium, including, but not limited to, any special events.

I. Part of Premises. The facilities installed as part of the Work shall become part of the Premises under the Lease, and shall be included under the indemnity set forth in paragraph 27 of the Lease.

5.2 Books and Records

A. Documentation and Actual Expenses for the Work. Upon entering into any contract for the Work, the Forty Niners shall provide to the City a copy of the contract. Within thirty (30) days following the completion of the Work, the Forty Niners shall provide to the City, a detailed

statement, certified by the Forty Niners as true, correct and complete, setting forth the amount of all the Forty Niners' actual expenditures for the Work, including copies of actual invoices.

B. Books and Records. The Forty Niners shall keep accurate books and records according to generally accepted accounting principles, consistently applied, related to the Work ("**Books and Records**").

C. Audit. The Forty Niners agree to make their Books and Records related to the Work reasonably available to the City, or to any City auditor, or to any auditor or representative designated by the City (collectively referred to as "**City representatives**") not more than once per calendar year, for the purpose of examining said Books and Records during normal business hours to determine the accuracy of the Forty Niners' reporting of any expenditures for the Work hereunder. The Forty Niners shall cooperate with the City representatives during the course of any audit. The Books and Records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to the City's representatives for the purpose of auditing or re-auditing these accounts. If an audit is made within said four-year period and the City claims that errors or omissions have occurred, the Books and Records shall be retained and made available until those matters are resolved. If the Forty Niners perform all or any part of their obligations under this Amendment through an agent or contractor, the Forty Niners shall require each such agent or subcontractor to provide the City with the foregoing audit right with respect to their respective Books and Records. The City shall keep financial information obtained in the course of such audit or inspection confidential to the extent allowed by applicable Law or to the extent reasonably required for the resolution of a dispute regarding such information. The City shall bear the cost of audit unless the audit reveals that the Forty Niners overstated any actual expenditure for the Work for any audit period by five percent (5%) or more in which case, the Forty Niners shall pay the cost of the audit.

5.3 Independent Contractors

The Forty Niners shall be deemed at all times to be an independent contractor. The Forty Niners are liable for the actions and omissions of itself and its employees, and shall use commercially reasonable efforts to manage and enforce any contracts it enters into for the Work consistent with the standards set forth in this Amendment. The Forty Niners shall include the City as a third party beneficiary in all such contracts, with an express City right to (i) rely on any representations or warranties of the contractor, (ii) enforce the provisions of the contract against the contractor, and (iii) receive the benefit of any guarantees or warranties made by the contractor to the Forty Niners for any part of the Work performed by such contractor. Upon City's request, the Forty Niners will assign to the City any and all guarantees or warranties or other rights against the contractor relating to the Work. Nothing in this Amendment shall be construed as creating an employment or agency relationship between the City and the Forty Niners.

ARTICLE 6

STADIUM MAINTENANCE, REPAIRS AND OPERATIONS

6.1 Maintenance

A. For remainder of the Term (including any Extension Terms), the Parties anticipate that the Stadium Improvement Payment, New Rent Credits, the Rent Reduction and the current levels of Recreation and Park Department funding and staffing, consistent with 2010-11 Fiscal Year funding and staffing, will be adequate for the maintenance and repair of the Stadium, as needed to continue exhibiting NFL games and satisfy the City's general maintenance obligations under the Lease. Accordingly, notwithstanding anything in the Lease to the contrary, the Parties agree that for the rest of the Term (including the Extension Terms), the City shall, with the above funding sources, maintain the Stadium in a condition similar to its condition after the agreed upon scope of work using the Upfront Stadium Improvements and the New Rent Credit Improvements is completed, and subject to wear and tear and damage by casualty (the "**Continuing Maintenance Obligation**"). The reference in Section 20 of the Lease to the maintenance manual prepared by Crosby-Thornton-Marshall, Architects, is deleted, and this maintenance manual will not be used for purposes of determining the requirements of the Continuing Maintenance Obligation.

B. After the 2015-2016 Fiscal Year, if the Forty Niners request additional maintenance during the Term, that is, any Stadium maintenance above what is required by the Continuing Maintenance Obligation (and excluding any Unanticipated Capital Repair, which will be subject to the terms described in Section 6.2 of this Amendment), then the remaining Rent Reduction shall be converted to Rent Credits and used for the additional maintenance.

C. The Recreation and Park Department shall include in its annual budget submitted to the Mayor, and use its best efforts to obtain, an annual appropriation from the Board of Supervisors and Mayor to keep the same level of funding and staffing currently dedicated to operation and maintenance of the Stadium as described in Paragraph A above.

D. Notwithstanding anything to the contrary set forth in Lease Section 20, the City's Continuing Maintenance Obligations shall be subject to all available remedies that the Forty Niners have at law or in equity to enforce the Lease.

6.2 Unanticipated Capital Repairs

A. If an Unanticipated Capital Repair is needed during the remaining Term of the Lease (including the Extension Terms), the Parties shall attempt in good faith to agree on such repairs and the funding for such repairs. In doing so, they shall take into account (i) whether such repairs are necessary to protect the health and safety of occupants, (ii) the age of the Stadium, (iii) the then remaining Term based on any Extension Options exercised by the Forty Niners (with consideration of the likelihood of the Forty Niners' exercise of any additional Extension Options), (iv) whether the repairs are necessary for the operation of an NFL quality type event, and (v) the then budget allocation as compared to other comparable NFL Stadiums of a similar age and similar rent (collectively, the "**Stadium Repair Factors**"). The Parties agree that such efforts to agree may include the application of any unused New Rent Credits or any future Rent Reduction to pay for such repairs, and that the Forty Niners reserve the right to request additional rent credits or rent reduction subject to the City's agreement, in its discretion.

B. If the Parties cannot agree on the scope of work, funding or existence of an Unanticipated Capital Repair, then either Party may refer the matter to nonbinding arbitration at JAMS to determine whether repairs are required under the Lease and if so, the scope of those repairs. The Parties must mutually agree upon the selection of the arbitrator, who must have at least 10 years experience with major commercial leases and construction projects in San Francisco. In reaching a decision, the arbitrator shall consider the Stadium Repair Factors and not amend the terms of the Lease or expand the City's obligations as set forth in the Lease. If the arbitrator determines that the City is required to make repairs under the Lease, then (i) after the 2015-2016 Fiscal Year the remaining Rent Reduction shall be converted to New Rent Credits and used for the repairs designated by the arbitrator, and (ii) if the foregoing is not sufficient to pay for the work and the City does not agree to make the repairs or provide the additional funding as deemed required by the arbitrator, then either Party may seek judicial relief for determination of its rights and remedies under the Lease. The Parties agree that the arbitrator's decision may be introduced in any such litigation.

C. The arbitration process set forth in Section 6.2(B) of this Amendment shall apply to a dispute over Unanticipated Capital Repairs provided for in this Amendment, but it shall not change the remedy provisions in the Lease as of the Effective Date, including but not limited to the remedies set forth in Section 20 of the Lease. The City contends that Section 20 of the Lease, as amended by the Tolling Agreement, provides that the Forty Niners' sole remedy if the City does not agree to make repairs required in accordance with the arbitration award is to terminate the Lease. The Forty Niners contends that Section 20(c) of the Lease does not apply to matters arising after January 1, 1998 and, in any event, that Section 20(c) is not exclusive of remedies available under Section 20, other Sections of the lease, and/or other remedies available at law or equity. The Parties by this Amendment do not seek to resolve this disagreement. Instead, the Parties reserve all of their existing arguments and all of their rights under the Lease regarding the scope of the City's obligations and the remedies available to the Forty Niners if the City decides not to make any Unanticipated Capital Repair, including any such repair that the arbitrator may determine is needed.

6.3 Parking Rates

The City and the Forty Niners agree that beginning with the 2011-12 Fiscal Year, the price charged by the Forty Niners for parking within the Premises shall be Thirty Dollars (\$30). Any adjustment to the parking charges shall be subject to the approval of the Commission as set forth in Section 18 of the Lease, which approval shall not be unreasonably withheld.

6.4 Security

At the request of the General Manager or the Forty Niners, the Parties will discuss in good faith whether to transfer responsibility to the Forty Niners to provide and pay for security within the Premises during games, subject to the availability of rent credits or other funding mechanisms. Any agreement on the transfer of security obligations will be subject to the agreement of the Parties, each in their sole discretion.

ARTICLE 7

GENERAL

7.1 Notices

Section 38 of the Lease is deleted and replaced with the notice requirements in this Section 7.1. Except as otherwise expressly provided in the Lease, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under the Lease shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Amendment; however, neither Party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

- (a) In the case of a notice or communication to the City:

General Manager
Recreation and Park Department
McLaren Lodge
501 Stanyan Ave.
San Francisco, CA 94117
Reference: Candlestick Stadium

With a copy to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance Team
Reference: Candlestick Stadium

and to

Office of Economic and Workforce Development
Room 448, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance Team
Reference: Candlestick Stadium

(b) And in the case of a notice or communication to the Forty Niners:

Jim Mercurio
Vice President, Stadium Operations & Security
San Francisco 49ers
Candlestick Park
490 Jamestown Ave. RM 398
San Francisco, CA 94124

With a copy to:

Peter N. Larson, Esq.
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104

Every notice given to a Party must state (or must be accompanied by a cover letter that states) substantially the following:

- (i) the Section of the Lease under which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond;
- (iii) if approval is being requested, shall be clearly marked "Request for Approval under Stadium Lease";
- (iv) if a notice of a disapproval or an objection that is subject to a reasonableness standard, shall specify with particularity the reasons for the disapproval or objection; and
- (v) if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval that is the subject matter of the notice.

If a request for approval states a period of time for approval that is less than the time period provided for in the Lease for such approval, the time period stated in the Lease shall be the controlling time period. In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

7.2 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 venturer or member in any joint enterprise.

7.3 Time of Performance

(a) **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.

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

(c) **Days for Performance.** All periods for performance specified in this Amendment in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Amendment.

(d) **Time of the Essence.** Time is of the essence for each and every provision of this Amendment.

7.4 Interpretation of Agreement

(a) **Words of Inclusion.** The use of the terms "including," "such as" or 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.

(b) **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.

(c) **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.

(d) Agreement 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 Article, Section or paragraph of this Amendment or any specific subdivision of this Amendment.

(e) Approvals and Consents. Unless this Amendment otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Amendment shall be made by the General Manager, or his or her designee. Unless otherwise provided in this Amendment, whenever approval, consent or satisfaction is required of a Party under this Amendment, it shall not be unreasonably withheld or delayed. Approval by a Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

(f) 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 the 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.

(g) Captions. The captions preceding the articles and Sections 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.

(h) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Amendment unless otherwise specifically identified. All such Exhibits are incorporated in this Amendment by reference.

7.5 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.

7.6 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.

7.7 Counterparts

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

7.8 Effect of Amendment: Entire Agreement

Except as specifically provided in this Amendment, all provisions of the Lease and the Lease Related Agreements (other than the Tolling Agreement) remain unchanged and in full force and effect, provided that notwithstanding the termination of the Tolling Agreement as set forth in the Article 4 of the Settlement Agreement, the amendments to the Lease as set forth in Sections 1.2, 1.3 and 4.1 through 4.5 of the Tolling Agreement shall remain in full force and effect as a part of the Lease.

This Amendment, including the attached Exhibits, and together with the Settlement Agreement, constitutes the entire agreement between the Parties with respect to 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, the Term Sheet as described in the Settlement Agreement). Other than the Settlement Agreement, 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.

7.9 Governing Law

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

7.10 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 and the City Attorney are 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 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 and the City Attorney's signature of any such document shall conclusively evidence such a determination by him or her.

7.11 Severability

If any provision of 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.

7.12 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 Board of Supervisors by resolution. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Amendment or any of its Exhibits, the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of amendment of this Amendment. The General Manager and the City Attorney may execute any such written memorandum on behalf of the City.

7.13 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 reasonably necessary measures to achieve the provisions of this Amendment.

7.14 Exhibits

The attached exhibits are made a part of this Amendment:

Exhibit A	New Rent Credits and Rent Reduction Schedule
Exhibit A-1	Early Termination Option: New Rent Credits and Rent Reduction Schedule
Exhibit A-2	Extension Options Example of New Rent C
Exhibit B	Upfront Stadium Improvements Scope of Work
Exhibit C	New Rent Credits Scope of Work

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

The San Francisco Forty Niners Ltd.,
a California limited partnership

By: _____
Jim Mercurio, Vice President, Stadium Operations & Security

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 _____,
2011 and Board of Supervisors Ordinance No. _____, adopted on
_____, 2011

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

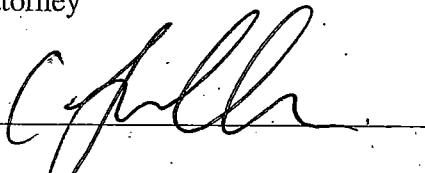
By: 
Deputy City Attorney

EXHIBIT A TO LEASE AMENDMENT

New Rent Credits and Rent Reduction Schedule

Fiscal Year	Stadium Improvement Payment	Rent Credit	Rent Reduction	Total
FY 2010-11	\$3,000,000	-	-	\$3,000,000
FY 2011-12	-	\$1,492,000	-	\$1,492,000
FY 2012-13	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2013-14	-	\$444,500	\$1,645,500	\$2,090,000
FY 2014-15	-	-	\$2,090,000	\$2,090,000
FY 2015-16	-	\$444,500	\$1,645,500	\$2,090,000
Total	\$3,000,000	\$3,426,000	\$6,426,000	\$12,852,000

EXHIBIT A-1 TO LEASE AMENDMENT

Early Termination Option
New Rent Credits and Rent Reduction Schedule

Fiscal Year	Stadium Improvement Payment	Rent Credit	Rent Reduction	Total
FY 2010-11	\$3,000,000	-	-	\$3,000,000
FY 2011-12	-	\$1,492,000	-	\$1,492,000
FY 2012-13	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2013-14	-	-	\$2,090,000	\$2,090,000
FY 2014-15	-	-	\$2,090,000	\$2,090,000
Total	\$3,000,000	\$2,537,000	\$5,225,000	\$10,760,000

EXHIBIT A-2 TO LEASE AMENDMENT

New Rent Credits and Rent Reduction Schedule

Example of Extensions through FY 2016-17

Fiscal Year	Stadium Improvement Payment	Rent Credit	Rent Reduction	Total
FY 2010-11	\$3,000,000	-	-	\$3,000,000
FY 2011-12	-	\$1,492,000	-	\$1,492,000
FY 2012-13	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2013-14	-	\$444,500	\$1,645,500	\$2,090,000
FY 2014-15	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2015-16	-	-	\$2,090,000	\$2,090,000
FY 2016-17	-	\$444,500	\$1,645,500	\$2,090,000
Total	\$3,000,000	\$4,471,000	\$7,471,000	\$14,942,000

Example for Extensions Through FY 2017-18

Fiscal Year	Stadium Improvement Payment	Rent Credit	Rent Reduction	Total
FY 2010-11	\$3,000,000	-	-	\$3,000,000
FY 2011-12	-	\$1,492,000	-	\$1,492,000
FY 2012-13	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2013-14	-	\$444,500	\$1,645,500	\$2,090,000
FY 2014-15	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2015-16	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2016-17	-	-	\$2,090,000	\$2,090,000
FY 2017-18	-	\$444,500	\$1,645,500	\$2,090,000
Total	\$3,000,000	\$5,516,000	\$8,516,000	\$17,032,000

Example for Extensions Through FY 2018-19

Fiscal Year	Stadium Improvement Payment	Rent Credit	Rent Reduction	Total
FY 2010-11	\$3,000,000	-	-	\$3,000,000
FY 2011-12	-	\$1,492,000	-	\$1,492,000
FY 2012-13	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2013-14	-	\$444,500	\$1,645,500	\$2,090,000
FY 2014-15	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2015-16	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2016-17	-	\$1,045,000	\$1,045,000	\$2,090,000
FY 2017-18	-	-	\$2,090,000	\$2,090,000
FY 2018-19	-	\$444,500	\$1,645,500	\$2,090,000
Total	\$3,000,000	\$6,561,000	\$9,561,000	\$19,122,000

EXHIBIT B TO LEASE AMENDMENT

Upfront Stadium Improvements Scope of Work

EXHIBIT C TO LEASE AMENDMENT

New Rent Credit Improvements Scope of Work