

DRAFT
December 2, 2011

EXHIBIT C

FORM OF DESIGN-BUILD AGREEMENT

DESIGN-BUILD AGREEMENT

by and between

SANTA CLARA STADIUM AUTHORITY
as Owner

FORTY NINERS STADIUM, LLC
as Construction Agent

and

TURNER/DEVCON, A JOINT VENTURE
as Design-Builder

Dated as of _____, 2012

DESIGN-BUILD AGREEMENT
SANTA CLARA STADIUM AUTHORITY
TURNER/DEVCON, A JOINT VENTURE

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5.2.6.11 a provision that Subcontractor shall comply with all of the City contracting requirements as set forth in Section 3.3 hereof.

5.3 Sponsor-Related Work.

5.3.1 Owner and the Construction Agent shall identify certain portions of the Work that will be privately funded by 49ers Stadium Company, the Team and/or its sponsors ("Sponsor-Related Work"). The Sponsor-Related Work may require use of particular vendors or subcontractors for portions of the Work, and Owner, the Construction Agent, the Team and Design-Builder will cooperate with one another to identify as early as reasonably practicable such vendors or subcontractors and other requirements with respect to the Sponsor-Related Work. Any contracts or purchase orders executed in connection with the Sponsor-Related Work may, at the option of Owner and the Construction Agent, be assigned to Design-Builder, and the Parties shall execute an appropriate Change Order setting forth any required changes to the Work and the Contract Sum to reflect the addition and or deletion of Work as a result of the Sponsor-Related Work. The Authority shall have no liability to Design-Builder for Sponsor-Related Work as 49ers Stadium Company shall be solely responsible for payment of Sponsor-Related Work. **Contracts or Purchase Orders that are to be assigned to Design-Builder shall be compliant with the Project Labor Agreement and vendors or contractors working under these Contracts or Purchase Orders shall comply with the Project Labor Agreement.**

5.3.2 Design-Builder, as part of its obligation to provide overall coordination of the various portions of the Work, is responsible for the scheduling and coordination of the Sponsor-Related Work. Design-Builder to have reasonable review and approval of all assigned Sponsor-Related Work including, but not limited to, scope of work, plans and specifications, contract documents and agreements, including **the compliance with the Project Labor Agreement.** Design-Builder waives any Claim it may have against Owner, Construction Agent, 49ers Stadium Company, or the Team (a) relating to the Work to the extent that such Claim is based on a default or other unexcused failure on the part of Design-Builder to perform, schedule or coordinate the Sponsor-Related Work in accordance with the Contract Documents and (b) relating to the Sponsor-Related Work to the extent that such Claim is based on a default or other unexcused failure on the part of Design-Builder to perform, schedule or coordinate the Work in accordance with the Contract Documents.

5.4 Self-Performed Work.

5.4.1 To the extent permitted by Applicable Laws, Design-Builder or its Affiliates shall be permitted to propose on the categories of Self-Performed Work only. Design-Builder or its Affiliates shall be permitted to submit a sealed proposal for such Self-Performed Work pursuant to the competitive proposal procedures applicable to all subcontractors as described on **Exhibit T** attached hereto and made a part hereof; provided, however, that Design-Builder or its Affiliates must submit its proposal for Self-Performed Work one (1) day before the deadline for other subcontractors to submit their proposals. In such instance, the opening, review and advice with respect to award and/or rejection of such proposals shall be managed by Owner. In such instances, the following requirements shall also apply: (a) if Design-Builder or its Affiliates desire to propose on Self-Performed Work, then Design-Builder or its Affiliates shall review such Work (including the subcontracting packaging plan) with Owner prior to finalizing the

and the exercise by Owner of its rights under this Agreement or portion thereof applicable to the materials, equipment or services being furnished by such Subcontractor, such Subcontractor, as so requested by Owner, shall continue to perform all of such party's obligations, covenants and agreements under Subcontractor's Subcontract with Design-Builder for the benefit of Owner.

5.6 Project Labor Agreement.

5.6.1 Design-Builder shall enter into a Project Labor Agreement with Building and Construction Trades Councils of Santa Clara County and its Affiliates to govern labor relations for the Project and for purposes of establishing binding rules and methods for the efficient employment of workers and assignment of work, and the prompt settlement of all misunderstandings, disputes, grievances and jurisdictional problems that might arise during construction of the Project in order to ensure uninterrupted operations and maintenance of harmonious and peaceful labor relations for all parties to this Agreement. Such agreement, if any, shall be in a form and substance reasonably satisfactory to Construction Agent and Design-Builder shall follow and enforce the terms and conditions of such Project Labor Agreement (as the same may be modified and amended from time to time) for the benefit of the Project.

5.7 Meetings; Reports; Schedule Updates.

5.7.1 Design-Builder shall schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Design-Builder shall hold progress and coordination meetings with Owner at least bi-weekly throughout the construction period. Design-Builder shall have, at a minimum, monthly meetings with selected Subcontractors to review the following with each Subcontractor (as applicable): (a) actual construction progress as compared against Subcontractor's schedule, (b) status of major components of Subcontractor's Work, (c) progress made on critical activities of Subcontractor's Work, (d) explanation for any lack of work on any critical path items, (e) explanation of critical path activities to be performed in the subsequent thirty (30) to sixty (60)-day period, (f) status of major Materials and Equipment procurements, (g) explanation for any delays during the reporting period, (h) Subcontractor's current construction schedule, (i) design issues and progress, (j) permit processing issues and progress, (k) safety issues, and (l) quality control, testing and inspection issues. Design-Builder shall prepare and promptly distribute minutes of all meetings to Owner and to all other persons in attendance. Owner will be notified in writing sufficiently in advance and may, at its option, attend any meetings.

5.7.2 Design-Builder shall update and distribute, on a monthly basis, the Master Project Schedule and Construction Schedule incorporating the activities of Subcontractors and Sub-subcontractors on the Project, including processing of Shop Drawings and similar required Submittals and delivery of products requiring long lead time procurement and showing current conditions and revisions required by actual experience. Design-Builder shall include the Project occupancy requirements showing portions of the Project having occupancy priority, as directed by Owner. Design-Builder recognizes and acknowledges that Owner is relying on Design-Builder's experience and capabilities in the area of building construction. Furthermore, Owner will be providing certain components of the building in the form of furniture, fixtures, equipment and other items as determined by Owner that are not a part of the Work under this Agreement. Design-Builder agrees to use its considerable experience and expertise in advising Owner as to

7.4 Work by Separate Contractors.

7.4.1 Owner reserves the right to hire Separate Contractors in connection with the Project. Design-Builder shall afford Separate Contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their services, and shall properly connect and coordinate the Work with the services of such Separate Contractors. With respect to each part of the Project as to which Owner may enter into separate contracts with Separate Contractors, Design-Builder shall, as part of the Work, cooperate with Owner and Separate Contractors in the scheduling and coordination of services to be performed by such Separate Contractor with the Work to be performed by Design-Builder or its Subcontractors. Design-Builder shall cooperate with Owner and all Separate Contractors, their subcontractors and any other entity involved in the performance of any separate services for the Project. In order to cause the Work and any separate services to be performed by Separate Contractors to be completed in an expeditious manner, Design-Builder agrees that it will use all reasonable efforts in order to ensure that such Separate Contractors have a reasonable opportunity to complete their services as and when required. Owner assumes responsibility for the failure of Separate Contractors that Owner has hired to perform their work properly, and shall require in any agreement it may have with a Separate Contractor that the Separate Contractor shall cooperate with Design-Builder and its Subcontractors in the performance of the Work. Owner shall require that any and all Separate Contractors **comply with any applicable project labor agreement** and comply with Design-Builder's safety program. Design-Builder acknowledges that the foregoing does not apply to "make ready" work on the Site and on the Adjacent Property (e.g., site preparation, site access, utility installation and infrastructure support) that will be completed by Owner, the City and such other persons or entities as designated by Owner. If Owner's Separate Contractors materially interfere with or cause damage to the Work, Design-Builder shall be entitled to make a claim pursuant to Article 16.

7.4.2 If any part of the Work depends upon the proper performance of work of any Separate Contractor, Design-Builder shall prior to proceeding with that portion of the Work, inspect and measure the work of the Separate Contractor and promptly report to Owner any apparent discrepancy or defects in such other work except for latent or concealed defects. Design-Builder's failure to inspect and make such report shall constitute an acceptance of the Separate Contractor's work as fit and proper for the proper execution of the Work, except for latent defects.

7.4.3 If Design-Builder causes damage to the Work or the property of Owner, Design-Builder shall promptly remedy such damage. If Design-Builder causes damage to the work or property of any Separate Contractor, Design-Builder shall promptly attempt to settle any resulting dispute or claim with such Separate Contractor. If a Separate Contractor or its subcontractor shall assert any claim against Owner on account of any damage or loss alleged to have been sustained as a result of the fault or negligence of Design-Builder, or by anyone for whom Design-Builder is responsible, Owner shall notify Design-Builder and Design-Builder shall indemnify Owner from and against any and all such claims, damages, losses and expenses, including attorneys' fees, arising from the assertion of any such claim.

7.4.4 If a dispute arises among Design-Builder, Separate Contractors and Owner as to the responsibility under the respective contracts for maintaining the Site and Adjacent Property free

and conditions of Section 5.2 hereof or later assigned to Design-Builder by Owner. All costs incurred in connection with other subcontracts for services provided in connection with the Project (including the fees and reimbursable expenses of Design-Builder's consultants, Design-Builder's Architect and its consultants).

8.3.2.2 Personnel Expenses:

- (a) **Actual wages paid by Design-Builder for labor in Design-Builder's direct employ under labor agreements covered by the Project Labor Agreement** or revisions to the City's Wage Rate Schedule. Cost of the Work shall include benefits payable under collective bargaining agreements with respect to the wages described in the preceding sentence. Design-Builder shall provide Owner with a list of any off-site personnel whose services it proposes to charge as a portion of the Cost of the Work and to document, at Owner's request, at such intervals Owner may deem appropriate, the services related to the Project performed by such personnel. The wages and salary of any personnel not contained in the list provided to Owner shall not be a reimbursable Cost of the Work.
- (b) Actual, direct salaries of the all staff engaged on the Project while on Site (or off site with Owner's approval) and performing services directly related to the Project to the extent of hours devoted to the Project pursuant to the Rate Schedule attached hereto as **Exhibit J**. If Design-Builder and Owner agree that the Cost of the Work can be decreased by reducing Design-Builder's staff without affecting the timely completion or quality of the Work or in any way diminishing the performance of all contract requirements, Design-Builder shall so decrease its staff. With respect to Design-Builder's employees described in this item (ii) of this Section 8.3.2.2, Cost of the Work shall include the pro rata portion of the cost of mandatory and customary contributions and benefits as required by law, any applicable collective bargaining agreement or the company-wide policy of Design-Builder related to the direct salaries of such employees, including employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, profit sharing, *per diem* allowances, bonuses, car allowances and similar benefits per the agreed upon rates contained within **Exhibit J**, Rate Schedule.
- (c) Except with Owner's prior written approval and except for craft labor and hourly administrative workers (e.g., file clerks, clerks of record or similar functions), actual wages and direct salaries of employees to the extent directly employed in connection with the services or Work of Design-Builder shall not include any premium for overtime, holidays or shift differential work, but it shall include all straight time compensation (if any) actually paid for such work.

8.3.2.3 **Equipment and Materials:** The amounts Design-Builder paid for Equipment and Materials, whether for a permanent or temporary use, purchased by Design-Builder directly