
**AMENDED AND RESTATED AGREEMENT
FOR THE USE, OPERATION AND MANAGEMENT OF THE
SAN JOSÉ MUNICIPAL STADIUM**

Dated as of January 1, 2022

By and Between

CITY OF SAN JOSÉ

and

DBH SAN JOSE, LLC

Relating to the

SAN JOSÉ MUNICIPAL STADIUM

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**AMENDED AND RESTATED AGREEMENT
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THIS AGREEMENT (the “Agreement”) is made and entered into this 1st day January, 2022, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California, (“CITY”) and DBH San Jose, LLC, a California corporation (“CONTRACTOR”).

RECITALS

WHEREAS, CITY is the owner of that certain real property located at the intersection of East Alma Avenue and South Tenth Street, commonly known as the San José Municipal Stadium, consisting of approximately 7.58 acres and identified by Santa Clara County Assessor Parcel Number 477-38-018, together with the right of ingress and egress via the access driveway shared with the Ice Centre land along E. Alma Avenue (“Stadium” or “Stadium Premises” or “Premises” or “Stadium Facilities”), as more particularly described in the attached **Exhibit A**, entitled “Stadium Premises and Facilities”, which is attached hereto and incorporated herein; and

WHEREAS, CITY and Baseball Acquisition Company, Inc. entered into that certain Amended and Restated Agreement between City of San José and Baseball Acquisition Company, Inc. for the Use, Operation, and Management of the San José Municipal Stadium dated December 17, 2013 (the “Initial Agreement”), and subsequently on September 4, 2019, entered into a First Amendment to the Amended and Restated Agreement to extend the term through December 31, 2021 and revised the Memorandum of Understanding for parking operations (collectively with Initial Agreement, “Existing Agreement”); and

WHEREAS, Baseball Acquisition Company, Inc. is a general partner of Progress Sports Management, L.P., which entered into a Player Development License Agreement with MLB Professional Development League, LLC, effective as of February 12, 2021, the contents of which provide leaguewide facility standards and requirements for the development of players; and

WHEREAS, Baseball Acquisition Company, Inc. and Progress Sports Management, L.P.’s has sold, assigned, and transferred their right, title, and interest in and to the San Jose Giants to DBH San Jose, LLC (“DBH” or “CONTRACTOR”). The San Jose Giants will continue to be a Minor League Baseball affiliate of the San Francisco Giants and be led by the current President and CEO, and Chief Operating Officer; and

WHEREAS, on December 14, 2021, the San Jose City Council convened on Item 2.11 and adopted a resolution authorizing the City Manager’s Office to negotiate and execute an amendment to the Existing Agreement to extend the lease for a period of five (5) years, with one option to DBH to extend the term for an additional five (5) years, as well as approving the agreement between

Excite Credit Union and DBH for the sponsorship of the Stadium Premises and naming rights of the Stadium as “Excite Ballpark, Home of the San Jose Giants”, for a period of ten (10) years; and

WHEREAS, the City Manager is charged with the oversight of the Existing Agreement and the use of Stadium Premises; and

WHEREAS, CONTRACTOR desires to continue to use, operate and manage the Stadium Premises for the presentation of San Jose Giants baseball games, as well as recreational activities, sporting events, concerts, and other events;

WHEREAS, CITY desires to contract with CONTRACTOR for CONTRACTOR to operate the Stadium Premises in accordance with the provisions of this Agreement; and

WHEREAS, CONTRACTOR and the CITY desire to amend and restate the Existing Agreement in its entirety with this Agreement.

NOW, THEREFORE, in consideration of their mutual promises and the terms, conditions and covenants hereinafter specified, the parties hereby amend and restate the Existing Agreement in its entirety and agree as follows:

AGREEMENT

SECTION 1. DEFINITIONS.

- A. As used in this Agreement, the following terms shall have the following meanings:
1. **“Club”** means the professional baseball club currently known as the San Jose Giants.
 2. **“Commissioner”** means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person or body succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.
 3. **“CONTRACTOR's Gross Receipts”** shall mean one hundred percent (100%) of all money and other things of value received by or paid to the CONTRACTOR for use of the Stadium Facilities including refreshment, BBQ and souvenir sales, smokehouse sales, premises use fees and charges, outside bookings, vendors sales, parking fees, all other revenue as recognized in prior years statements of operations of CONTRACTOR and gate receipts, but specifically excluding (i) gate receipts from San Jose Giants games, (ii) advertising revenues, (iii) Stadium Naming Revenue, (iv) Gross Video Revenues, and (v) any money or other things of value (a) received by or paid to CONTRACTOR for sales taxes or (b) refunded by CONTRACTOR to customers; and is to be calculated prior to any payment obligation or fee, including any related calculations, owed to MLB PDL.
 4. **“Gross Video Revenues”** shall mean the aggregate gross revenues generated from advertising, ad panels, or other use of the enhanced video board.

5. **“Major League Baseball”** or **“MLB”** means, depending on the context, any or all of (a) the Office of the Commissioner of Baseball, each other MLB PDL Entity and/or all boards and committees thereof and/or (b) the Major League Clubs acting collectively.
6. **“Major League Baseball Club”** or **“Major League Club”** means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.
7. **“Major League Constitution”** means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.
8. **“MLB PDL”** means, depending on the context, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.
9. **“MLB PDL Entity”** means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.
10. **“PDL Approval”** means, any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.
11. **“PDL Club”** means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.
12. **“PDL Governance Agreement”** means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each Club, as may be amended, modified, supplemented or restated from time to time.
13. **“PDL Governing Documents”** means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.
14. **“PDL License Agreement”** means each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including, without limitation, the San Jose Giants PDL License Agreement.
15. **“PDL Rules and Regulations”** means (i) the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting

collectively that are specifically related to or generally applicable to the Professional Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.

16. **"Person"** means any individual, partnership, limited liability company, corporation or other association, entity, trustee or legal representative.
17. **"Professional Development League System"** means a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball Clubs.
18. **"San Jose PDL License Agreement"** means that certain player development license agreement entered into between Progress Sports Management, L.P. and MLB PDL effective as of February 12, 2021 (as subsequently assigned to and assumed by CONTRACTOR), pursuant to which the Club has been granted the right to participate in the Professional Development League System.

SECTION 2. OPERATION AND MANAGEMENT.

A. CITY engages CONTRACTOR to operate and manage the Stadium Premises in accordance with the provisions of this Agreement. As a material inducement for CITY to enter into this Agreement, CONTRACTOR agrees that it shall use the Stadium Premises for the presentation of the San Jose Giants professional baseball games, including, subject to the PDL Rules and Regulations, exhibition games, regular season games and postseason games as the "home park" of the San Jose Giants for the entire term of this Agreement.

B. Subject to the PDL Rules and Regulations, in each year of the term, the San Jose Giants may play up to three (3) games at: other site(s) for the purpose of providing professional baseball to underserved communities or any home games that MLB PDL may schedule at a location other than the Stadium Premises. CONTRACTOR'S failure to provide a full schedule of professional baseball games at the Stadium Premises for each year during the term of this Agreement shall be a breach of this Agreement and grounds for immediate termination of this Agreement by CITY, unless the cause of such breach is a professional baseball strike, a natural disaster, or similar force majeure outside of the control of CONTRACTOR rendering CONTRACTOR'S performance impossible.

C. In the event that the San Jose Giants terminate use of the Stadium Premises as their "home park", this Agreement will terminate as provided for in Section 40, below.

D. When the Stadium Premises are not in use for San Jose Giants baseball games, CONTRACTOR may schedule other commercial activities, subject to CONTRACTOR obtaining (i) written permission from the CITY, for which permission shall not be unreasonably withheld, and (ii) any permits or other regulatory requirements for such type of activity. In the coordination of the parking lot for these other commercial activities, CONTRACTOR shall comply with the requirements provided in Section 19 and 20 hereof.

E. Arena Authority. CITY has designated the San José Arena Authority (“Arena Authority”) to perform an oversight role respecting the operation of the Stadium Facilities on behalf of CITY and act as a liaison to the broader community concerning neighborhood impacts and the operation of the Stadium Facilities. CITY may delegate to the Arena Authority, from time to time, in whole or in part, and subject to such requirements and limitations as CITY may designate, such rights, obligations and functions of CITY hereunder as CITY shall deem appropriate in its sole and absolute discretion. CITY shall notify CONTRACTOR from time to time in writing of any such delegation to the Arena Authority, whereupon CONTRACTOR shall be entitled to rely without further investigation upon acts of the Arena Authority within the scope of its delegated authority as set forth in such notification from CITY. CONTRACTOR shall acknowledge such delegation and with respect thereto shall recognize the Arena Authority for such purposes as acting on behalf of CITY hereunder. Unless otherwise provided, or the context requires otherwise, references under this Agreement to CITY shall include the Arena Authority to the extent of its authority delegated to it by CITY from time to time, of which CONTRACTOR has been notified as provided above.

F. Relationship with CITY, Arena Authority, and Community. CONTRACTOR shall attend (at no expense to the CITY) all public meetings of CITY or the Arena Authority, of which CONTRACTOR is notified and reasonably requested to attend and at which matters concerning the Stadium are to be considered. CONTRACTOR shall meet regularly as reasonably necessary with CITY representatives to be designated by CITY for the purposes of providing CITY with information to which CITY is entitled of CONTRACTOR's activities hereunder. In addition, when reasonably requested to do so by CITY upon reasonable notice, CONTRACTOR shall meet with representatives of various community groups and organizations, in order to promote public understanding of the Stadium Facilities.

G. CONTRACTOR shall operate and manage the Stadium at the “Applicable Standard.” The “Applicable Standard” is defined as:

1. A standard of performance, operation (including bookings) and maintenance equal to or exceeding those generally applicable to contemporary comparable baseball stadiums in the United States at which PDL Club games are played.

2. Except as otherwise noted in this Agreement, and subject to the PDL Rules and Regulations, with respect to (i) prices, (ii) regulation of advertising and serving of alcoholic beverages, cannabis and tobacco products, and (iii) prevailing wages, the standard shall be equal

to comparable PDL Club stadiums located in Northern California, and must comply with any then current applicable laws, regulations, rules, codes or policies.

SECTION 3. TERM OF AGREEMENT.

The term of this Agreement shall commence on January 1, 2022 ("Commencement Date"), and shall continue until terminating at 11:59 p.m. on December 31, 2027 ("Termination Date"), subject to sooner termination as herein provided and the CONTRACTOR's option to extend the term as provided in Section 4. The period between the Commencement Date and the Termination Date shall be referred to as the "Initial Term."

SECTION 4. OPTION TO EXTEND.

If this Agreement shall not have been previously terminated and if CONTRACTOR is not in default under the terms of this Agreement as of the date CONTRACTOR exercises its option hereunder, then CONTRACTOR shall have the option to extend the term of this Agreement on the same terms and conditions for one (1) additional term of five (5) years ("Option Term") at the expiration of the Initial Term. Said option may be exercised only by the delivery of written notice by CONTRACTOR to CITY at least one hundred eighty (180) days, but not more than three hundred sixty (360) days, prior to the Termination Date (the "CONTRACTOR's Option Election Notice").

SECTION 5. CONTRACTOR'S OBLIGATION AND MANAGEMENT OF STADIUM CAPITAL RESERVE FUND.

A. CONTRACTOR agrees to maintain a reserve fund with respect to the Stadium (the "Stadium Capital Reserve Fund"). This Stadium Capital Reserve Fund will be held in a separate fund from other CONTRACTOR expenses and revenue funds and will be accessible for review by the CITY at their (CITY'S OR CITY'S agent's) request, which will not be unreasonably withheld or delayed.

B. CONTRACTOR agrees that, no later than sixty (60) days after the beginning of the first year of the Initial Term (January 1) and each year thereafter of this Agreement, CONTRACTOR shall deposit funds, as collected during CONTRACTOR's previous calendar year (January 1 - December 31), into the Stadium Capital Reserve Fund, which are listed below, but are not limited to, the following:

1. Stadium Naming Revenue: CONTRACTOR shall deposit net revenues generated from naming rights related to the Stadium Premises as calculated in accordance with Section 5.E below (the "Stadium Naming Revenue").
2. Annual Stadium Gross Receipts: Twenty Thousand Dollars (\$20,000) or 1.1% of CONTRACTOR's Gross Receipts, whichever is greater, as may be adjusted in accordance with this Section 5 (the "Annual Stadium Gross Receipts").

3. Annual Video Revenues: Twenty-Five Hundred Dollars (\$2,500) or 10% of Gross Video Revenues received by CONTRACTOR, whichever is greater (the "Annual Video Revenues").

C. CONTRACTOR agrees to maintain and record all detailed activity of the annual revenue and expenses in the Stadium Capital Reserve Fund and will provide previous year's annual revenue and expenses report to CITY by June 30 of each following year during the term.

D. CITY has the exclusive right to review all annual deposits and payments in the Stadium Capital Reserve Fund. These deposits include the Stadium Naming Revenue, the Annual Stadium Gross Receipts and Annual Video Revenues and other revenue sources that may be mutually agreed upon and established during the term of this Agreement.

E. Stadium Naming Revenue. CITY acknowledges CONTRACTOR's and CITY's interest in the naming of the Stadium Premises as a potential revenue generating opportunity. Any agreement granting naming rights to any portion of the Stadium Premises must be approved, in writing, by CITY, in its sole discretion. Furthermore, CITY acknowledges that Stadium Naming Revenue will be deposited in the Stadium Capital Reserve Fund as calculated below, separate and prior to any payment obligation or fee, including any related calculations, owed to MLB PDL. The terms of the PDL Rules and Regulations will not impinge on CITY's rights relating to the Naming Rights Agreement, including the City's right to consent to any future naming rights, and any Naming Rights Revenue shall be deposited into the Stadium Capital Reserve Fund prior to any net payments required to be paid to MLB-PDL, if any.

1. Stadium Naming Revenue shall be calculated by deducting from gross revenues generated from naming rights under any Naming Rights Agreement any reasonable and necessary expenses incurred by CONTRACTOR or CITY to solicit and administer such naming revenues, including (a) sales commission and expense reasonably incurred in connection with the marketing and sale of the name provided that CONTRACTOR has obtained the City Manager's prior written approval of such expenditures, (2) direct costs, reasonably incurred by CONTRACTOR or CITY for the design, construction, and installation of any sign or fixture intended principally to display the name, which costs may be reasonably amortized over the expected life of the sign or fixture, and (c) CITY's inspection costs.

2. CITY acknowledges CONTRACTOR's interest in assisting CITY in marketing the naming rights to the Stadium Premises and may develop proposed business terms for naming rights. It is understood that naming the Stadium Premises for any entity may require City Council approval, independent of this Agreement, and will be handled in compliance with the CITY's adopted Revenue Generating Policy.

3. The CONTRACTOR and Excite Credit Union have entered into a Letter of Intent dated April 1, 2021 ("Naming Rights LOI"), which sets the basic terms for an agreement for naming rights of the Stadium Premises from 2022-2031. Per the terms of the Naming Rights LOI, the San Jose Giants will be paid the amount of One Million Two Hundred Forty-

Nine Thousand Four Hundred Ninety-Four Dollars (\$1,249,494) over ten (10) years. CONTRACTOR and Excite Credit Union have drafted terms of a Naming Rights Agreement and provided therein the schedule of fees for the naming rights; **Exhibit F**, entitled "NAMING RIGHTS AGREEMENT" (such naming rights agreement, and any future naming rights agreements that may be entered into in accordance with the terms of this Agreement from time to time, a "Naming Rights Agreement"), and **Exhibit G**, entitled "SCHEDULE OF DEPOSITS TO STADIUM CAPITAL RESERVE FUND" are attached hereto and incorporated herein. CONTRACTOR acknowledges that naming rights of the Stadium Premises are subject to the terms of this Section 5 of this Agreement, and the CITY must approve, at its sole discretion, any agreement granting naming rights to any portion of the Stadium Premises. Furthermore, the Stadium Naming Revenue is to be deposited in the Stadium Capital Reserve Fund. The Executive Director of the Arena Authority shall coordinate with the City Manager's Office to seek proper CITY approvals, and to ensure the satisfactory execution of capital improvements and securing of all necessary documentation from the CONTRACTOR.

F. CONTRACTOR shall deposit the Annual Stadium Gross Receipts into the Stadium Capital Reserve Fund. CONTRACTOR further agrees that, no later than sixty (60) days after the beginning of the first year of the Initial Term (January 1) and each year thereafter of this Agreement, to deposit an adjustment representing any amount due to the Stadium Capital Reserve Fund over the minimum Twenty Thousand Dollars (\$20,000) per year, if applicable, as collected during CONTRACTOR's previous calendar year (January 1 - December 31).

G. Failure by CONTRACTOR to make deposits in the amounts and at the times hereinabove specified shall constitute a material breach of this Agreement.

H. If CONTRACTOR fails to deposit funds on or before its due date as required under this Agreement, CONTRACTOR shall be responsible for and shall pay, in addition to the past due fee, interest thereon until paid at the lesser of the two following rates: eighteen percent (18%) per annum; or five percent (5%) per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks under Section 13 and 13a of the Federal Reserve Act which was prevailing on the 25th day of the month preceding the month for which payment is past due; provided that nothing contained in this Agreement shall require CONTRACTOR to pay an interest rate which exceeds that permitted by applicable law. This provision shall not be deemed as a forbearance on the deposits of such amounts, and CITY retains any and all remedies for not submitting such deposits amounts.

I. Video Revenues. In addition to the payments set forth above, CONTRACTOR agrees to deposit into the Stadium Capital Reserve Fund the Annual Video Revenues. Deposits of the Annual Video Revenues shall be due and deposited annually within sixty (60) days after the end of each lease year (December 31) for Gross Video Revenues received during CONTRACTOR'S previous fiscal year or within sixty (60) days of termination of this Agreement, whichever occurs earlier. With the Annual Video Revenues deposit, CONTRACTOR shall provide an accounting of the revenues generated.

SECTION 6. STADIUM CAPITAL RESERVE FUND OBLIGATION.

In addition to CONTRACTOR depositing Annual Stadium Gross Receipts, the Stadium Naming Revenue and the Annual Video Revenues in accordance with Section 5.F, Section 5.E (1-3), and Section 5.I., respectively, into the Stadium Capital Reserve Fund, and subject to appropriation of funds at City Council's sole discretion, CITY shall deposit any additional annual fees required to be paid by CONTRACTOR to CITY and actually received by CITY under this Agreement into the Stadium Capital Reserve Fund.

SECTION 7. CASH REGISTERS.

To facilitate the accurate rendition of annual accounts and the payment of the annual fees, CONTRACTOR shall use or require the use of cash registers for the recordation of all sales of refreshments and souvenir sales, with the cash registers to be kept in full public view during such times that the Stadium Premises are open for business. CONTRACTOR shall retain or cause the retention of cash register tapes for a period of 2 years, or as otherwise modified from time to time, at such time their destruction is authorized by the City Manager.

SECTION 8. RECORDS, ACCOUNTING AND AUDIT.

A. CONTRACTOR shall establish and maintain complete records of the financial transactions of all the business operations conducted on the Stadium Premises or in any way related thereto, which records shall be kept in conformance with generally accepted accounting principles and as required by the City Manager.

B. CONTRACTOR shall maintain a commercial bank account into which all of the cash receipts from the operations conducted on the Stadium Premises, pursuant to this Agreement, shall be deposited, except such change as may be reasonably required for a one-day operation.

C. CONTRACTOR shall have prepared an annual financial statement by certified public accountant(s) in accordance with generally accepted accounting principles of all financial transactions of the preceding fiscal year related to CONTRACTOR's operation under this Agreement. Format and content of the annual report shall be approved by City Manager and shall include, but not be limited to, CONTRACTOR's Gross Receipts, Stadium Naming Revenue, and Gross Video Revenues. The annual report shall be submitted to City Manager within 60 days of the Commencement Date, and each year thereafter on the anniversary of the Commencement Date while this Agreement is in effect.

D. CONTRACTOR agrees that the CITY's Auditor, Attorney or City Manager, or any duly authorized representative thereof, shall have access to and the right to examine all facilities and activities of CONTRACTOR related to CONTRACTOR's performance of this Agreement, including the right to audit, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records

relating to matters covered by this Agreement. CONTRACTOR further agrees that the right of CITY to examine or audit shall continue for three (3) years after the expiration or termination of this Agreement and any cost associated with CITY review or audit shall be borne by CITY.

E. CONTRACTOR shall preserve and make available its records (a) until the expiration of three (3) years from the date of expiration or sooner termination of this Agreement, or (b) for such longer period, if any, as is required by applicable law. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

SECTION 9. QUALITY OF OPERATIONS.

A. CONTRACTOR shall at all times operate the Stadium Premises in a good businesslike manner and incident thereto render to the public using the Premises efficient and courteous service. In the event that the City Manager finds that service rendered by the CONTRACTOR is substandard or that any other provisions of this Agreement are not being adequately performed or complied with, CONTRACTOR, upon being advised of the nonperformance or noncompliance, shall immediately correct any violations, deficiencies or omissions which cause the nonperformance or noncompliance. If CONTRACTOR fails to take corrective action immediately which cures the violations, deficiencies or omissions causing nonconformance or noncompliance, this Agreement shall terminate at the sole discretion of City Manager and CITY shall have no further obligation whatsoever to permit the use of the Stadium Premises by CONTRACTOR.

B. Maintenance Standard. CONTRACTOR shall maintain the Stadium Facilities and any improvements thereto in accordance with maintenance standards equal to or exceeding the Applicable Standard. The CITY and CONTRACTOR acknowledge that the Applicable Standard is set by MLB PDL and, as such, compliance with the Applicable Standard is the sole responsibility of the CONTRACTOR. The CITY shall not be obligated to maintain or fund maintenance of the facility to meet the Applicable Standard, including but not limited to any upgrades, repairs, renovations, or other such items required under the PDL Rules and Regulations, except as otherwise required pursuant to the provisions hereunder.

C. CONTRACTOR's responsibilities and duties with respect to the stadium parking facilities shall be general maintenance, including day-to-day sweeping of and litter removal from the stadium parking facilities. All repairs to the parking facility shall be programmed and paid for through the Stadium Capital Reserve Fund or by one-time budget requests to the CITY.

D. CONTRACTOR shall be responsible for performing and paying for the cost and expense of trash removal and sweeping of the CITY public walkways and sidewalks immediately

adjoining the Stadium Facilities after Stadium events to the extent CONTRACTOR and CITY reasonably determine that extraordinary debris results from patrons of the Stadium.

E. CONTRACTOR shall maintain all furnishings, fixtures, and equipment in the Stadium Facilities to the standard set forth above, but in any event not less than maintenance standards and requirements set forth in applicable manuals and specifications provided by equipment manufacturers and suppliers.

F. CONTRACTOR shall maintain the Stadium Facilities and landscaping of the Stadium Facilities to the standard set forth above, but in no event less than the reasonable maintenance standards and requirements established by CITY, provided that the City at its sole expense shall maintain the structural elements of the Stadium.

SECTION 10. EMPLOYEES.

Any and all personnel employed by the CONTRACTOR in conducting the operations of Stadium Premises shall be qualified to perform the duties assigned to them by CONTRACTOR.

SECTION 11. NONDISCRIMINATION BY CONTRACTOR.

CONTRACTOR shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement. Moreover, CONTRACTOR will comply with the provisions of Chapter 4.08 of the San Jose Municipal Code, as may be amended from time to time, and any other applicable laws regarding anti-discrimination and/or preferential treatment. In accordance with the foregoing, CONTRACTOR will not discriminate against any contractor, employee, or applicant for employment because of race, color, creed, religion, sex, marital status, age, handicap, ancestry, sexual orientation, actual or perceived gender identity or national origin. CONTRACTOR will take affirmative action to ensure that employees are treated during employment in accordance with applicable laws, including for purposes of employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth its nondiscrimination requirements. CONTRACTOR will, in all solicitations or advertisements for employees by or on behalf of CONTRACTOR, include such statements consistent with the foregoing requirements.

SECTION 12. COMPLIANCE WITH ALL LAWS.

A. CONTRACTOR shall comply, at its sole costs and expense, with all applicable CITY, state and federal laws, regulations and rules related to the use and operation of the Stadium Premises and to the sale of merchandise, including but not limited to, laws, regulations and rules

applicable to health, safety and equal opportunity employment. Without limiting the generality of the foregoing, CONTRACTOR shall comply with the provisions of CITY's "No-Smoking" ordinance (Chapter 9.44 of the San José Municipal Code) regulating smoking at certain public places. CONTRACTOR acknowledges receipt of a copy of CITY's "No-Smoking" ordinance. CONTRACTOR shall obtain and keep in full force and effect all permits and licenses required for the use and operation of the Stadium Premises. This compliance with laws provision shall extend to any and all conflicts with the San Jose PDL License Agreement and the PDL Rules and Regulations, notwithstanding the subservience clause in Section 47(A). The CITY shall not be required to take any action which would be in violation of any applicable federal, state or CITY laws, regulations, or rules, including both City and Council Policies of CITY.

B. CONTRACTOR shall pay before delinquency any and all taxes (including sales and possessory interest taxes), assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of CONTRACTOR's interest, or which may be imposed upon CONTRACTOR's business, or which may be imposed upon CONTRACTOR for the privilege of selling merchandise or for occupying Stadium Premises permitted to be used and operated by CONTRACTOR, which may be imposed upon any other property of CONTRACTOR. CONTRACTOR understands and agrees that this Agreement may create a possessory interest on which a possessory interest tax may be imposed. CONTRACTOR shall pay any such possessory interest tax without obligation to CITY.

C. Pursuant to California Civil Code Section 1812.97, the following warning is set forth:

WARNING: USE OF STEROIDS TO INCREASE STRENGTH OR GROWTH CAN CAUSE SERIOUS HEALTH PROBLEMS. STEROIDS CAN KEEP TEENAGERS FROM GROWING TO THEIR FULL HEIGHT; THEY ALSO CAUSE HEART DISEASE, STROKE, AND DAMAGED LIVER FUNCTION. MEN AND WOMEN USING STEROIDS MAY DEVELOP FERTILITY PROBLEMS, PERSONALITY CHANGES, AND ACNE. MEN CAN ALSO EXPERIENCE PREMATURE BALDING AND DEVELOPMENT OF BREAST TISSUE. THESE HEALTH HAZARDS ARE IN ADDITION TO THE CIVIL AND CRIMINAL PENALTIES FOR UNAUTHORIZED SALE, USE OR EXCHANGE OF ANABOLIC STEROIDS.

D. CONTRACTOR shall conspicuously post the warning set forth above in subsection 12.C. in each locker room of the Stadium. The warning shall be printed in prominent bold type in conformance with California Civil Code Section 1812.97.

SECTION 13. CONTRACTOR RIGHTS AND STATUS.

A. The rights herein given to the CONTRACTOR are revocable contract rights only and in no respect shall the same constitute or be construed as granting a leasehold interest in any of the real or personal property described in this Agreement.

B. The parties hereto mutually agree that CONTRACTOR and CONTRACTOR's employees hired to perform CONTRACTOR's covenants made hereunder are and shall be at all times independent contractors and not agents or employees of the CITY, and that CONTRACTOR and CONTRACTOR's employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sickleave, insurance or any other benefit or right connected with employment by CITY, or compensation other than as prescribed herein, and CONTRACTOR expressly waives any claim it may have to any such rights.

SECTION 14. GIFTS.

CONTRACTOR is familiar with CITY's prohibition against the acceptance by a CITY officer or designated employee of gifts prohibited by Chapter 12.08 of the San José Municipal Code. CONTRACTOR agrees not to offer any CITY officer or designated employee any gifts prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by CONTRACTOR. In addition to any other remedies CITY may have in law or equity, CITY may immediately terminate this Agreement for any such breach.

SECTION 15. ASSIGNMENT PROHIBITED.

This Agreement is not assignable by CONTRACTOR and any attempt by CONTRACTOR to assign any rights, duties or obligations arising under the provisions of this Agreement without (i) the written consent of the City Manager and (ii) the prior receipt of all necessary PDL Approvals, shall be void and of no effect. Further, any assignment or attempt at assignment by the CONTRACTOR without the written consent of the CITY shall constitute a material breach for which this Agreement, at CITY's sole option, may be automatically terminated without notice. No consent shall be required for the assignment of any obligations, rights, or privileges in this Agreement to an affiliate of CONTRACTOR.

SECTION 16. NAMING RIGHTS, ADVERTISING AND OTHER STANDARDS.

A. Naming Rights.

1. CONTRACTOR shall be entitled to sell the right to name the Stadium to any entities approved by the CITY, in its sole discretion and from time to time, in accordance with the applicable provisions of City Council Policy 7-5 (Naming of City-Owned Land and Facilities).
2. Within a reasonably prompt time following CONTRACTOR's written request to CITY for approval of a proposed new naming rights sponsor and the proposed new Stadium name, CITY shall endeavor to place such request on the City Council calendar for a council determination following a public hearing.
3. CONTRACTOR acknowledges that the name "San José", the CITY seal and other CITY identification upon the Stadium Premises is important to the CITY. The name "San José" shall be prominently displayed in the name of the stadium and upon

the Stadium Premises unless CITY expressly agrees otherwise. CONTRACTOR shall include "San Jose" in each new name, such as, for example, "(Sponsor's Name) Ballpark, Home of (or at) (Team Name) San Jose".

4. In the event the City Council approves the sale of a Stadium's naming rights, CITY retains the right (through the City Manager) to approve the location, design, size and appearance of the graphic statement proposed to portray the name or logo of the approved sponsor on the exterior of the Premises, or elsewhere on the site, outside of the Stadium Facility; any such display shall be in accordance with applicable law.

B. Advertising Standards.

1. Subject to the requirements of this Section 16.B and PDL Rules and Regulations, whichever is more restrictive, CONTRACTOR may sell, display and maintain advertising in and around the Stadium Premises, including the inside of the outfield fence facilities, scoreboard, first and third base coaching boxes, and on signs which may be attached by CONTRACTOR to the back of the bleachers, the grandstands and other areas as agreed upon by the CITY within the Premises, only, except to companies who produce, market and/or distribute tobacco or cannabis products.
2. CONTRACTOR may place permanent signage on the exterior of the Premises to the extent permitted by Title 23 of the San Jose Municipal Code and other applicable laws, subject to approval by CITY of a Sign Permit Application submitted by CONTRACTOR for the desired signage. CONTRACTOR also may place temporary signs and banners for events, with the appropriate CITY approvals.

SECTION 17. ALCOHOL SERVICE.

- A. With respect to the advertisement and sale of alcoholic beverages, the following shall apply:
 1. CONTRACTOR intends to obtain, through an affiliate or concessionaire, a new or amended Type 47 general ABC license ("**ABC License**") that would permit the holder to serve beer and wine within the Stadium, the Premises' bars and restaurants, and other specified locations. Additional alcoholic beverages may be sold provided the CONTRACTOR obtains and acts in accordance with all appropriate licenses and pursuant to applicable rules and regulations.
 2. As permitted under this Agreement, CONTRACTOR shall have the right, through its licensed affiliate or concessionaire, to allow the sale and consumption of alcoholic beverages consistent with its ABC License.
 3. No party may serve alcoholic beverages at the Premises except for an affiliate of CONTRACTOR, or concessionaire, or catering vendor under contract with CONTRACTOR, and then only to the extent such party has an

appropriate license to do so.

- B. In conformance with any relevant CITY or Council Policy, and subject to the PDL Rules and Regulations, when it is more restrictive, CONTRACTOR may display advertisements for beer and wine anywhere within the Premises. All advertisements for alcoholic beverages must comply with the policy attached hereto as **Exhibit H** ("**Alcohol Advertising Policy**").
- C. CONTRACTOR shall develop and implement an education program to educate and train CONTRACTOR's employees, including without limitation, parking lot attendants, vendors, ticket takers and security personnel, regarding the responsible consumption of beer and wine at events held at the Premises.
- D. CONTRACTOR shall not permit the consumption of beer or wine at the Premises after the 7th inning of baseball games. At events other than baseball games, CONTRACTOR shall not permit the consumption of beer or wine later than one hour prior to the scheduled conclusion of the event.

SECTION 18. ACCESS TO STADIUM PREMISES.

A. CONTRACTOR shall have full and unimpaired access to Stadium Premises at all times during the term of this Agreement.

B. Access for CITY Personnel. Officers, employees, agents and other authorized persons of CITY, including the Arena Authority, in the performance of their duties, shall have access to the Stadium at all times, subject to reasonable security measures during non-business hours as may be imposed by CONTRACTOR, and provided that access to exclusive areas of the Stadium shall be only to perform CITY's obligation hereunder or under circumstances that access to private property is generally permitted to CITY agents. There shall be no charge for such access, including parking, during events at the Stadium, provided that such access shall not entitle any such persons to have viewing rights to Stadium events except as otherwise provided herein. Parking shall be in designated areas and subject to availability.

C. CITY and its authorized representatives shall have the right to enter the Stadium Premises at all times for any of the following purposes:

1. To determine whether the Premises are in good condition and whether CONTRACTOR is complying with its obligations under this Agreement.

2. To do any necessary maintenance or inspection and to make any restoration to the Premises that CITY has the right or obligation to perform.

D. Ticket Distribution Program. In order to promote a variety of CITY goals including civic, economic development and volunteer recognition, CONTRACTOR shall provide CITY, at no charge, up to 3,500 passes or tickets annually for professional baseball games played at the

Stadium. All such passes or tickets shall be provided directly by CONTRACTOR or Arena Authority and shall be distributed for community use in accordance with CITY's ticket distribution policy.

SECTION 19. STADIUM USES.

A. CONTRACTOR and CITY understand and agree that Stadium Premises shall be made available to organizations or public entities desiring to use the Stadium Premises when not otherwise scheduled for use. CONTRACTOR shall administer the use of the Premises and issue permits for the use of Stadium Premises on a first-come basis (all such uses, the "Third Party Events"). The fees for such permits shall be in accordance with the schedule set forth in **Exhibit B**, entitled "THIRD PARTY EVENT USE FEES", which is attached hereto and incorporated herein. CONTRACTOR shall provide notice of such events to San Jose Arena Authority through the monthly South Campus Operations Committee meetings attended by the two entities. CITY shall review and approve all non-CONTRACTOR Stadium uses pursuant to Paragraph 2(D).

B. Any such permit for the use of the Stadium Premises shall be subject to the terms and conditions of this Agreement.

C. From time to time, CITY and CONTRACTOR may meet and confer to discuss property development on the Stadium site as it relates to Stadium uses.

D. CONTRACTOR desires to book corporate and other commercial events at the Stadium Premises ("Commercial Events"). Commercial Events are activities run by entities that are not in Group I, II or III, as defined in **Exhibit B**, and that may or may not include admission charges. To assist CONTRACTOR in raising operational revenues, CONTRACTOR may charge higher fees for Commercial Events than for Group I, II or III entities, as further provided in **Exhibit B**.

SECTION 20. PARKING LOT RATES.

The parking fees which CONTRACTOR charges for use of the Stadium Premises parking lot shall be consistent with other Bay Area sports facilities. CONTRACTOR may charge market rate for parking fees associated with Third Party Events as identified on **Exhibit B**.

SECTION 21. PARKING LOT USE AND MANAGEMENT.

A. CONTRACTOR has access to parking spaces within the Premises for use during San Jose Giants home games and other events. CONTRACTOR may negotiate access to the Ice Center on-site parking facility, the San Jose State University parking garage at the corner of Tenth Street and Alma Avenue and other area parking facilities as appropriate. CITY reserves the right to use above referenced parking spaces, and may allow others to use, when not in use by CONTRACTOR. CONTRACTOR is not responsible for cleaning, repairs, or maintenance needed because of such use.

SECTION 22. STAGING, LIGHTING, SOUND.

A. CONTRACTOR, at its expense, shall be responsible for the installation and removal of any staging required for the presentation of an event.

B. CONTRACTOR shall have the right to use the public address system, sound system, and broadcast booths located on the Stadium Premises. CONTRACTOR, at its sole expense, shall be responsible for obtaining any additional sound broadcasting equipment, which the CONTRACTOR may desire or require for the presentation of an event.

C. CONTRACTOR, at its sole expense, shall be responsible for any additional lighting, other than the lighting which is permanently installed on the Stadium Premises, and which the CONTRACTOR may desire or require for the presentation of an event.

SECTION 23. EVENT STAFFING AND CLEANUP.

A. CONTRACTOR shall provide, at its sole expense, all event personnel, including, without limitation, ticket sellers, ticket takers, ushers, janitors, medical persons, sound and scoreboard persons, supervisory personnel, and all other personnel reasonably necessary for the operation of the Premises for the events held therein. The number and type of such personnel shall be based upon the number of spectators and the type of event.

B. CONTRACTOR shall be responsible, at its sole expense, for cleaning the Premises, including equipment removal, at the conclusion of each event held on Premises.

C. If CITY should provide any of the labor or services described in subsections A and B above, CONTRACTOR shall reimburse CITY for its labor, materials, supplies and administrative overhead costs.

SECTION 24. UTILITIES AND ADDITIONAL SERVICES.

A. CONTRACTOR shall make arrangements for and pay for all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, telephone service, and trash collection, and for all connection charges.

B. At CONTRACTOR's request or upon CITY'S determination that additional CITY services or supplies are prudent or necessary, CITY may provide, at the sole discretion of the City Manager, additional services and supplies in support of the presentation of any of the events herein contemplated or to address the additional impacts to the CITY which are caused by an event at the Stadium Premises. CONTRACTOR shall reimburse CITY for the labor, materials, supplies and administrative overhead costs incurred in providing such services and supplies.

C. If the City Manager determines that any event will likely result in excessive parking and traffic congestion or other increased community impacts, CONTRACTOR shall reimburse CITY for the cost of additional parking, traffic control, or other staff assigned by CITY to the vicinity of Stadium Premises.

SECTION 25. SECURITY.

CONTRACTOR shall be responsible at its sole cost and expense for providing all reasonably necessary security at each and every event held at the Stadium Premises under the provisions of this Agreement. The number and type of such personnel shall be based upon the type of event and the number of spectators in determining reasonably necessary security.

SECTION 26. EQUIPMENT, REPAIRS AND OWNERSHIP.

A. CONTRACTOR agrees to accept Stadium Premises in an "as is condition", and as equipped by the CITY, as of the Commencement Date of this Agreement. In the event CONTRACTOR determines that additional and/or new equipment is necessary for the continued operation of Stadium Premises, CONTRACTOR may, at CONTRACTOR's sole cost and expense, purchase such additional and/or new equipment.

B. CONTRACTOR shall, at CONTRACTOR's sole cost and expense, maintain and repair all equipment, including fixed and portable equipment furnished by CITY, which is used in the operation of Stadium Premises.

C. Upon expiration, or sooner termination of this Agreement, CONTRACTOR and CITY agree that CITY may purchase, at an amount to be agreed upon by CONTRACTOR and CITY but not to exceed the fair market value, any and all equipment purchased at CONTRACTOR's sole cost for use in the operation of the Stadium Premises.

SECTION 27. STADIUM CAPITAL BUDGET.

A. Prior to January 15 of each calendar year, CONTRACTOR shall prepare and submit to CITY for its approval a preliminary budget for the following fiscal year that reasonably itemizes and estimates the cost of all normal capital repairs and replacements. CITY shall review and approve the preliminary budget, which approval shall not be unreasonably withheld or delayed. The preliminary budget, as and when approved by CITY (including any agreed to revisions by CITY) shall constitute the "Stadium Capital Budget". The Stadium Capital Budget shall not exceed the Stadium Capital Reserve Fund balance that will be available to pay for budgeted amounts in the following fiscal year, and neither party shall be required by the other to make additional deposits to the Stadium Capital Reserve Fund or pay for budgeted items from its separate funds without its prior written consent, which may be withheld in its sole discretion. CONTRACTOR may not make any capital repairs and replacements, other than Emergency Capital Repairs and

Replacements, that are not included in the Stadium Capital Budget or not otherwise approved in advance in writing by CITY.

B. Implementation of Work. CONTRACTOR may, upon approval of CITY, implement the design, construction and repair of capital repairs and replacements. Capital repairs and replacements shall be described in CONTRACTOR's Stadium Capital Budget approved by CITY, subject to scope, schedule, and permitting requirements of the CITY. The CITY's Department of Public Works will provide oversight to the annual Stadium capital repair and replacement projects in its sole discretion.

C. To the extent this Agreement provides for CONTRACTOR to be reimbursed the cost of such work from the Stadium Capital Reserve Fund, then CONTRACTOR shall be reimbursed but only for all hard costs and soft costs related to such work, including fees, if any, of a third party construction manager, but shall not be paid a fee for CONTRACTOR's staff time or overhead. CONTRACTOR shall accept such responsibility as delegated to it by CITY.

CONTRACTOR may also decide to fund, solely out of CONTRACTOR's funds, capital improvements, repairs or replacements to the Stadium Premises, including any and all repairs, upgrade, and/or renovations required under the PDL agreement. CONTRACTOR shall seek CITY's written approval of any such capital improvements, repairs or replacements, which approval shall not be unreasonably withheld if the underlying improvements are required under the PDL Rules and Regulations, and shall follow the provisions of this Section 27 in implementing such work. Such capital improvements, repairs or replacements shall remain the property of CITY unless CONTRACTOR has followed the process set forth in Section 30 "Ownership of Alterations". All applicable local, state and federal laws, rules and regulations, including but not limited to CITY's City and/or Council Policies and any existing prevailing wage requirements in Section 32, and all necessary and required approvals of plans and specifications, permits and all other approvals and documents required shall be fully applicable to, and obtained by CONTRACTOR for, all work projects carried out by CONTRACTOR under this Agreement. CONTRACTOR agrees to exercise its supervisory responsibilities hereunder with the objective that all such work and materials utilized therein shall be of the highest quality appropriate to the uses to which such improvements and materials are intended and as are reasonably consistent with the nature of the improvements, the amount budgeted therefore and the Applicable Standard. To the extent that any work is a public work, CONTRACTOR shall also comply with the construction requirements as set forth in **Exhibit E**, entitled "CONSTRUCTION REQUIREMENTS - AWARD OF CONSTRUCTION CONTRACTS", which is attached hereto and incorporated herein.

D. Emergency Capital Repairs and Replacements. CITY may make Emergency Capital Repairs and Replacements consistent with established CITY procedures for handling civil emergencies. CITY shall provide CONTRACTOR with the names and telephone numbers of the City Manager's Office to contact in the event of an emergency involving the Stadium. Unless any delay would present a material risk to human life or the structural integrity of the Stadium Facilities or prevents the holding of a scheduled event, CONTRACTOR shall notify the City Manager's Office at the emergency number provided to CONTRACTOR, and receive the CITY's prior approval, or

wait 24 hours without receiving a response, before commencing Emergency Capital Repairs and Replacements. CITY may elect to perform the Emergency Capital Repairs and Replacements. If CITY approves CONTRACTOR's proposed action, or if CITY neither responds to CONTRACTOR's notice nor performs the emergency work itself, then CITY cannot contest the characterization of the work as Emergency Capital Repairs and Replacements (any work performed in accordance with the provisions of this Section 27.D., an "Emergency Capital Repair and Replacement"). Immediately following completion of the Emergency Capital Repairs and Replacements, the party that performed them shall be reimbursed the cost thereof by the fund or party obligated to pay for them.

SECTION 28. STRUCTURAL RESTORATION AND REPAIR.

A. Except as provided in this Section 28, and Section 35, CITY, at its cost but which may include money from the Stadium Capital Reserve Fund, shall repair, replace, and maintain the structural integrity of the following:

1. The structural parts of the building and permanent fixtures and other improvements that are a fixed part of the Premises, including, without limitation, the foundations, bearing walls, subflooring, ceiling, roof, perimeter fencing, window, and door frames (not including screens and panes), gutters and down spouts, light poles, grandstands, concession stands, and backstop.

2. The exposed and unexposed electrical, plumbing and sewage systems, including without limitation, those portions of the systems lying outside the Stadium Premises.

B. CITY shall repair Stadium Premises if they are damaged by (i) causes outside the Stadium Premises, over which CONTRACTOR has no control; (ii) acts or omissions of CITY or its authorized representatives; or (iii) failure to perform its obligations under this Section. CONTRACTOR shall, and hereby agrees, to reimburse CITY for CITY's total cost of repairs made necessary by the activities and operations of CONTRACTOR, CONTRACTOR's agents, employees, contractors or invitees.

C. The provisions of this Section are not intended to include any additional renovations, improvements, additions, or other such expenses associated with compliance with the facility standards or other such requirements of the PDL Rules and Regulations, with which compliance shall be at the sole expense of CONTRACTOR, except as provided pursuant to the provisions hereunder.

SECTION 29. INSPECTION.

The City shall have the right to inspect the facility at any time.

SECTION 30. OWNERSHIP OF ALTERATIONS.

A. Upon expiration or termination of this Agreement, CITY shall own all such improvements and thereafter CONTRACTOR shall have no rights or interest of ownership therein except as provided below. During the term of this Agreement, CONTRACTOR shall own all capital repairs and replacements paid for solely by CONTRACTOR, but upon expiration or termination of this Agreement all such improvements shall be owned by CITY and thereafter CONTRACTOR shall have no rights or interest of ownership therein. CITY shall own capital repairs and replacements paid for by CITY., including those paid for out of contributions to the Stadium Capital Reserve Fund made by CITY.

B. Upon the expiration or termination of this Agreement, computer software programs related to building systems operation shall be delivered to and belong to CITY, but computer software programs related to CONTRACTOR's financial operations shall remain the property of CONTRACTOR. Trade fixtures, furniture and equipment used for the operation of the Stadium Facilities and necessary to the operation of the Stadium in accordance with the Applicable Standard shall be surrendered to CITY upon expiration or termination of this Agreement and from and after such time CONTRACTOR shall have no further rights or ownership therein except as provided below. CONTRACTOR may remove and shall own all of its office artwork, furniture and equipment and trade fixtures equipment and personal property paid for solely by CONTRACTOR provided that CITY and CONTRACTOR may agree that CITY may purchase such equipment or trade fixtures pursuant to Section 26.C. CONTRACTOR covenants that it will not remove any of said alterations, additions, improvements and fixtures, furnishings and equipment that belong to CITY or which will revert to CITY upon termination of this Agreement, nor take any action regarding said alterations, additions, improvements or fixtures, furnishings and equipment which would diminish CITY's rights and interests therein. The foregoing is subject to the rights of CONTRACTOR under the San Jose PDL License Agreement between CONTRACTOR and MLB PDL and subject to the rights of third parties who are not affiliates of CONTRACTOR.

C. If CONTRACTOR desires to fully fund, out of CONTRACTOR'S own funds, a permanent improvement or capital upgrade to the Stadium Premises that the CITY also agrees is beneficial to the Stadium Premises, and CONTRACTOR can demonstrate to CITY's satisfaction that the anticipated useful life of the improvement or upgrade exceeds the term of this Agreement, then CITY and CONTRACTOR may, but are not obligated to, enter into an amendment to this Agreement specifying the anticipated useful life of the improvement, and the basis for calculation of payment to CONTRACTOR for any remaining useful life of such improvement if (i) the term of this Agreement expires and no renewal or extension is granted to CONTRACTOR or (ii) if CITY terminates this Agreement prior to the expiration of the term without breach of this Agreement by CONTRACTOR. If CITY terminates this Agreement due to CONTRACTOR's breach of this Agreement, CONTRACTOR shall not be entitled to repayment for such costs. In the event of condemnation of the Stadium or Stadium Premises or any portion thereof under the power of eminent domain, CONTRACTOR shall be entitled to compensation for the value of property rights CONTRACTOR owns prior to any termination of this Agreement for such cause.

SECTION 31. APPROVAL AND REVIEW OF ALTERATIONS.

A. Except for advertising signage as provided in Section 16 or 17, and such capital repairs or capital replacements permitted under Section 27 or 28, CONTRACTOR shall not make any structural or nonstructural alterations to the Premises without the CITY's consent. The City Manager may act for the CITY in giving such consent.

B. In addition to considering its consent to any temporary alterations, CITY, by its Attorney, shall determine whether such alteration is a public work under the City Charter or the Municipal Code. If such alterations are a public work, CITY shall require, as a condition of its consent, that CONTRACTOR adhere to all applicable bidding procedures relative to the construction and installation of such alterations.

C. CITY may elect, within ninety (90) days before the expiration of the term, to require CONTRACTOR to remove any alterations that CONTRACTOR has made to the Stadium Premises. If termination is prior to expiration of the term, CITY shall provide such notice to CONTRACTOR as soon as reasonably practical. If CITY so elects, CONTRACTOR, at its cost, shall restore the Stadium Premises to the condition it was in at the Commencement Date, less normal wear and tear, within sixty (60) days after notice of election is given.

SECTION 32. PREVAILING WAGES.

CONTRACTOR recognizes that maintenance, alterations and construction of Improvements may be a "public work" for the purposes of California Labor Code Sections 1720 et seq., and that pursuant to California Labor Code Section 1771 and to the extent CITY deems these provisions are applicable, CONTRACTOR shall be required to pay the general prevailing rate of per diem wages for work of similar character in the San José area. CONTRACTOR shall also submit any documentation required under the CITY's Standard Specifications regarding payment of prevailing wages ("Documentation Provision"). CONTRACTOR's failure to pay or ensure payment of prevailing wages or to comply with the Documentation Provision is subject to the provisions of **Exhibit D**, entitled "REMEDIES FOR BREACH OF PREVAILING WAGE PROVISIONS", which is attached hereto and incorporated herein.

SECTION 33. INDEMNIFICATION AND HOLD HARMLESS.

CONTRACTOR agrees to protect, defend, indemnify and save harmless CITY, its officers, employees, contractors and invitees ("CITY Indemnitee") from any and all losses or damage, and from any and all liability, loss, damages, suits, actions or claims ("Claims") arising or resulting from any acts, omissions, or activities of CONTRACTOR, CONTRACTOR's agents, employees or subcontractors in the use and operation of the Stadium Premises for which permission is herein granted, or in the performance of any activity permitted or done pursuant to this Agreement. CONTRACTOR shall be liable to CITY for any and all damage to facilities owned or controlled by CITY, which results from any act or omission of CONTRACTOR, its employees, agents or subcontractors.

SECTION 34. INSURANCE REQUIREMENTS.

CONTRACTOR agrees to have and maintain the policies set forth in **Exhibit C**, entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. These requirements are subject to amendment or waiver if so approved in writing by the CITY or other authorized designee ("Risk Manager"). CONTRACTOR agrees to provide CITY with a copy of certificates of insurance and/or endorsements before work commences under this Agreement.

SECTION 35. DESTRUCTION.

If, during the term, the Stadium Premises at the sole discretion of the City, are totally or partially destroyed from any cause, rendering the Stadium Premises totally or partially inaccessible or unusable, this Agreement shall immediately terminate.

SECTION 36. PARTIES RIGHTS AND OBLIGATIONS IF PREMISES CONDEMNED.

If, during the term, or during the period of time between the dates the term commences and the execution of this Agreement there is any taking of all or any part of the Stadium Premises, or any interest in this Agreement by Condemnation, the rights and obligations of the parties shall be determined pursuant to this Section 36 and Section 37 hereof. For purposes of Section 36 and 37 hereof, the following definitions shall apply:

A. "Condemnation" means:

1. The exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor; and
2. A voluntary sale or transfer by CITY to any Condemnor, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

B. "Date of taking" means the date the Condemnor has the right to possession of the property being condemned.

C. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

SECTION 37. TAKING BY CONDEMNATION.

A. If a portion of the Stadium Premises is taken by Condemnation, this Agreement shall remain in effect, except that CONTRACTOR can elect to terminate this Agreement if the remaining portion of the building or other improvements, or the parking area, that are a part of the Stadium Premises, is rendered unsuitable for CONTRACTOR's continued use of the Stadium Premises, and CITY may elect to terminate the Agreement if all or any portion of the Stadium

building is taken by Condemnation. If either CITY or CONTRACTOR elects to terminate this Agreement, such party must exercise its right to terminate pursuant to this Section only after the nature and extent of the taking have been finally determined.

B. In the event of Condemnation of the Stadium or Stadium Premises or any portion thereof under the power of eminent domain, CONTRACTOR shall be entitled to compensation for the value of property rights that they own therein immediately prior to any termination of this Agreement for such cause

C. If all of the Stadium Premises are taken by Condemnation, this Agreement shall terminate effective on the date of taking.

SECTION 38. TIME OF ESSENCE BREACH.

A. Where performance of a covenant is specified herein to be performed on or before a date certain, time shall be of the essence.

B. CONTRACTOR's performance of each and every provision of this Agreement is an integral part of the consideration for CITY to enter into this Agreement. CONTRACTOR's failure to perform any of the provisions of this Agreement shall constitute a material breach for which CITY, in addition to any other rights or remedies available to CITY may immediately terminate this Agreement upon written notice to CONTRACTOR.

SECTION 39. EFFECT OF WAIVER.

The waiver by CITY of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by CITY to any act by CONTRACTOR requiring CITY's approval or consent shall not be deemed to waive provisions for CITY's approval or consent to any subsequent acts by CONTRACTOR.

SECTION 40. TERMINATION WITHOUT CAUSE.

A. This Agreement may be terminated by either party during the term specified herein, upon giving to the other party 360 days written notice of termination. In the event such notice of termination is given, this Agreement shall be deemed terminated and at end of 360 days after notice is either personally served or deposited in the United States mail in a postage-paid envelope, certified mail, return receipt requested, addressed to the CITY or CONTRACTOR at their respective addresses as set forth in Section 43. Should the 360-day notice period end within the period of regularly scheduled San Jose Giants games, postseason playoff or championship games, provided the San Jose Giants are contenders, then said termination shall go into effect seven (7) days after the last game is played. In the event of CITY's termination pursuant to this paragraph, CONTRACTOR waives all claims or entitlements to relocation benefits, including any costs or losses arising from the temporary or permanent discontinuation

of CONTRACTOR's use of the Premises, finding or establishing an alternate business site, moving or replacing equipment, diminished business goodwill, or any other costs or losses arising from early termination of this Agreement and/or business interruption due to CITY.

B. The City Manager is authorized to decide on behalf of the CITY that this Agreement is to be terminated and to furnish written notice hereof.

SECTION 41. AUTOMATIC TERMINATION.

The rights and privileges given to CONTRACTOR shall automatically be deemed terminated and at an end without any notice whatsoever for any of the following reasons in addition to the grounds set forth elsewhere in this Agreement:

A. Any action taken or suffered by the CONTRACTOR under any insolvency or bankruptcy act, including the appointment of a receiver to take possession of all or substantially all of the assets of the CONTRACTOR.

B. Any general assignment by CONTRACTOR for the benefit of creditors.

SECTION 42. SURRENDER OF PREMISES.

Upon expiration or sooner termination of this Agreement, CONTRACTOR shall immediately and forthwith surrender possession of the Stadium Premises and all improvements and alterations to the CITY in as good a condition as when received, reasonable wear and tear and damage from casualty excepted. CONTRACTOR shall remove all of its personal property and perform all restoration made necessary by the removal of said personal property and by the removal of any alterations in accordance with the provisions of this Agreement.

SECTION 43. NOTICES.

Any and all notices which either party desires or is required by this Agreement to give or furnish to the other party shall be in writing and personally delivered or deposited in the United States postal service, postage prepaid, certified mail, return receipt requested, or via e-mail, addressed as follows:

CITY

City of San José
200 E. Santa Clara St., 12th Floor
San José, CA 95113
Attention: Real Estate Manager
E-Mail: kevin.ice@sanjoseca.gov

CONTRACTOR

Baseball Acquisition Company Inc.
P.O. Box 21727
San José, CA 95151
E-Mail: bentaylor@sjgiants.com

With Copy to:

City of San Jose
200 E. Santa Clara St., 16th Floor
San Jose, CA 95113
Attn: Real Estate Attorney
E-Mail: cao.main@sanjoseca.gov

The parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this Section.

SECTION 44. MISCELLANEOUS.

A. All exhibits referred to or attached to this Agreement are incorporated by reference.

B. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State Court of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in a United States District Court for the Northern District of California, San José, California.

C. The laws of the State of California shall govern this Agreement.

D. The captions to the Sections of this Agreement are for convenience only. They are not to be used in construing this Agreement.

E. This Agreement, including all exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by written amendment duly executed by the parties to this Agreement.

F. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

G. Where this Agreement refers to CITY and no officer of the CITY is named, CITY's Manager shall have the authority to act on CITY's behalf.

H. The City Manager has authority to enter into an amendment to this Agreement to provide partial reimbursement for permanent improvements to the Stadium Premises made

at CONTRACTOR'S sole cost, as described in Section 30.C., for an aggregate amount not to exceed \$500,000 over the term of this Agreement.

SECTION 45. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

SECTION 46. USE OF ELECTRONIC SIGNATURES.

Unless otherwise prohibited by law or CITY policy, the parties agree that an Electronic Copy of a Signed Contract, or an Electronically Signed Contract, has the same force and legal effect as a contract executed with an original ink signature. The term "Electronic Copy of a Signed Contract" refers to a writing as set forth in Evidence Code Section 1550. The term "Electronically Signed Contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

SECTION 47. MLB PDL REQUIREMENTS.

A. This Agreement and any rights granted to CITY or CONTRACTOR hereunder shall in all respects be subordinate to the PDL Rules and Regulations, as long as CONTRACTOR, is party to the San Jose PDL License Agreement that is in effect. The issuance, entering into, amendment or implementation of any of the PDL Rules and Regulations shall be at no cost or liability to any MLB PDL Entity, CITY or to any individual or entity related thereto, and instead shall be at the sole expense of CONTRACTOR. The territory within which CITY is granted rights under this Agreement is limited to, and nothing herein shall be construed as conferring on CITY rights in areas outside of, the PDL Club Marketing Territory (as defined in the San Jose PDL License Agreement). No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Agreement, except as are specifically approved in writing by MLB PDL.

B. If, at any time prior to the expiration of the term of this Agreement, this Agreement is terminated by CITY for any reason (and any legal action challenging the right of CITY to terminate this Agreement and seeking specific performance has either been (i) finally adjudicated by a court of competent jurisdiction as evidenced by a final non-appealable order or (ii) settled, withdrawn or otherwise concluded, in either case solely with respect to the request for specific performance) and the San Jose PDL License Agreement has been terminated, CITY agrees to offer to assign this Agreement, subject to approval of the City Council, to any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to CITY. To the extent that this Agreement is not so assigned, CITY agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such a PDL Club is so identified, CITY shall offer to lease the Stadium Premises to such PDL Club.

C. As long as CONTRACTOR is party to the San Jose License Agreement that is in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 47 and each other provision in this Agreement that prohibits action without first obtaining PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 47, MLB PDL shall be entitled and have the right to waive or enforce such other provisions that prohibit action without first obtaining PDL Approval directly against any party hereto (or their successors and permitted assigns) to the extent that any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.

D. Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 47 (other than for fraudulent acts or willful misconduct with respect to this Section 47 by MLB PDL), and CITY hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this Agreement shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.

SECTION 48. CERTAIN COVENANT OF CONTRACTOR.

CONTRACTOR covenants that any notices required to be made by CONTRACTOR to Major League Baseball pursuant to the PDL License Agreement or the PDL Rules and Regulations, will also be furnished to the CITY.

SECTION 49. AUTHORITY AND EXECUTION.

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

[Signature Page to Follow]

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

A stylized, handwritten signature of Cameron Day in dark blue ink.

Email: cameron.day@sanjoseca.gov

CAMERON DAY
Deputy City Attorney

"CITY"

City of San Jose, a municipal corporation

A stylized, handwritten signature of Nanci Klein in dark blue ink.

Email: nanci.klein@sanjoseca.gov

NANCI KLEIN
Director, Office of Economic Development
and Cultural Affairs
Director, Real Estate Services

"CONTRACTOR"

DBH San Jose, LLC.

PETER FREUND
Chief Executive Officer

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

CAMERON DAY
Deputy City Attorney

"CITY"

City of San Jose, a municipal corporation

NANCI KLEIN
Director, Office of Economic Development
and Cultural Affairs
Director, Real Estate Services

"CONTRACTOR"

DBH San Jose, LLC.

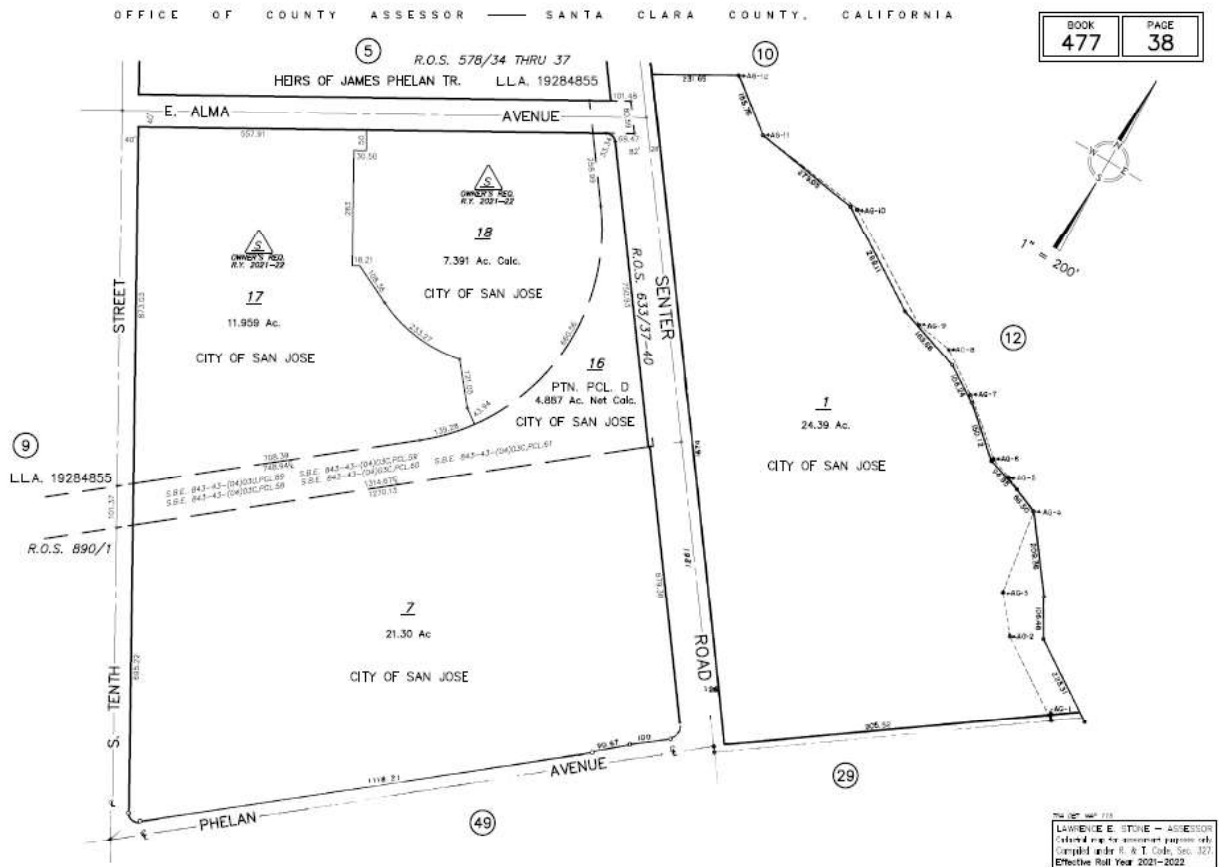


PETER FREUND
Chief Executive Officer

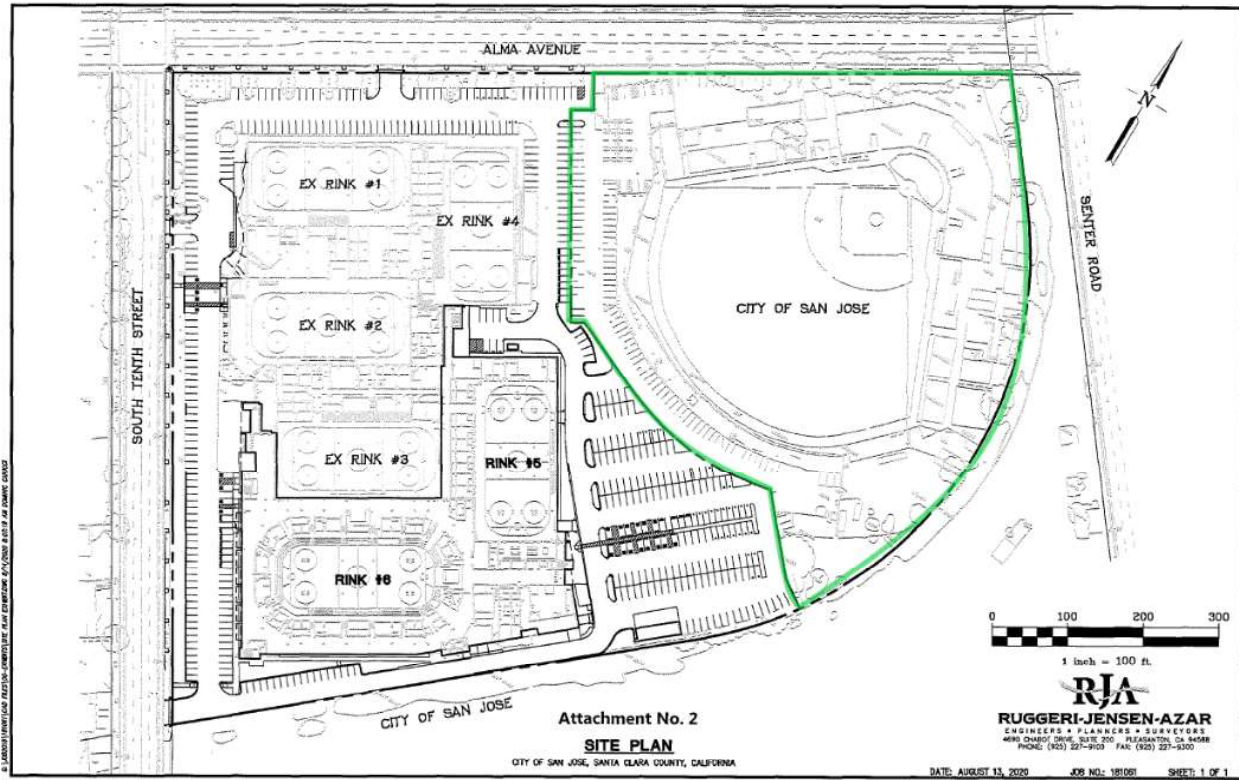
EXHIBIT A

Stadium Premises and Facilities

APN: 477-38-018



APN: 477-38-018



A-2

T-11950.005\1844028
US-DOCS\128013581.6

EXHIBIT B

Third Party Event Use Fees

1. Classifications

- Group I All City of San José conducted activities.
- Group II Nonprofit organizations, schools, public agencies, and City of San José Parks, Recreation and Neighborhood Services sponsored events not charging admissions or collecting donations.
- Group III Nonprofit organizations, schools, public agencies, and City of San José Parks, Recreation and Neighborhood Services sponsored events charging admissions or collecting donations.
- Group IV Commercial User - means any other user

2. Fees

- a. Group I Permittees - No fees payable.
- b. Group IV Permittees - CONTRACTOR may negotiate fees for Commercial Users and for parking based upon the fair market value of such use which shall be based upon an analysis of fees for similar facilities, and further provided that the fees shall not be less than the fees set for Group I, Group II and Group III users, CONTRACTOR shall provide Arena Authority or CITY with a summary of the basis for CONTRACTOR's fair market fees. CONTRACTOR may not charge higher fees to groups based upon discriminatory factors including the race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of the facility users, nor upon the political views of the facility user.
- c. Use Rate for Baseball and other Recreational use based on five (5) hours duration.

	Group II	Group III	Group IV
Single Day Game	\$300.00	\$500.00	\$700.00

Any additional games on the same day/night subject to additional charges not to exceed 50% of the applicable fee plus direct expenses.

EXHIBIT C

Insurance Requirements

CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the CONTRACTOR's operation and use of the Property. The cost of all such insurance shall be borne by the CONTRACTOR.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001, including ongoing operations and products completed;
2. The coverage provided by Insurance Services Office Form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned, and hired automobiles;
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability insurance;
4. Liquor Legal Liability: "Bodily injury" or "property damage" for which any insured may be held liable.
5. Property Insurance against all risks of loss to any improvements or betterments, CONTRACTOR's furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by CONTRACTOR on the Stadium Premises.
6. Builder's Risk insurance during any construction of improvements or betterments being installed by CONTRACTOR on the Stadium Premises.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage including \$100,000 of fire legal liability coverage. If Commercial General Liability Insurance or other form with a general

aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers Compensation limits as required by California Labor Code and Employer's Liability with employer liability limits of \$1,000,000 per accident; per disease, per employee;
4. Liquor Legal Liability: \$2,000,000 limit per occurrence.
5. Property Insurance: Full replacement cost.
6. Builder's Risk insurance: Full replacement cost.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager.

D. Other Insurance Provisions

1. The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:
 - a. The City of San Jose, its officials, employees and agents are to be covered as additional insureds with respect to: liability arising out of activities performed by, or on behalf of, CONTRACTOR, premises owned, occupied or used by the CONTRACTOR, or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or agents.
 - b. The CONTRACTOR's insurance coverage shall be primary insurance with respect to the City, its officials, employees and agents. Any insurance or self-insurance shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to the City, its officials, employees or agents.
 - d. Coverage shall state that the CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought,

except with respect to the limits of the insurer's liability.

- e. Coverage shall contain a waiver of subrogation by endorsement in favor of the City, its officials, employees, and agents.

2. Property and Workers' Compensation and Employers' Liability

Coverage shall contain a waiver of subrogation by endorsement in favor of the City, its officials, employees, and agents.

3. Builder's Risk

City shall be named as a loss payee on any Builder's Risk policy to the full extent allowable and for which the City's insurable interests may appear.

4. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

F. Verification of Coverage

CONTRACTOR shall furnish the City with certificates of insurance and endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the CONTRACTOR's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov.

Certificate Holder
City of San José – Finance Department
Risk and Insurance
200 East Santa Clara St., 14th Floor Tower
San Jose, CA 95113-1905

G. Subconsultants/Subcontractors/Subconcessionaires

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements from each subcontractors.

EXHIBIT D

REMEDIES FOR BREACH OF PREVAILING WAGE PROVISIONS

A. General. CONTRACTOR acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, that in the event CONTRACTOR may be required to pay workers a prevailing wage ("Wage Provision"), CONTRACTOR shall submit certain documentation to the CITY establishing its compliance with the Documentation Provision, as defined in Section 32. CONTRACTOR further acknowledges the CITY has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects CITY job opportunities and stimulates the CITY's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.

2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the CITY by fostering high turnover and instability in the workplace.

3. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose, because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.

4. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment. CONTRACTOR agrees that the Documentation Provision is critical to the CITY'S ability to monitor CONTRACTOR's compliance with the Wage Provision and to ultimately achieve the Goals. CONTRACTOR further agrees its breach of the Documentation Provision would result in the need for additional enforcement action to verify compliance with the Wage Provision.

C. Liquidated Damages for Breach of Wage Provision. CONTRACTOR agrees its breach of the Wage Provision would cause the CITY damage by undermining the Goals, and CITY'S damage would not be remedied by CONTRACTOR's payment of restitution to the workers who were paid a substandard wage. CONTRACTOR further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The CITY and CONTRACTOR mutually agree that making a precise determination of the amount of CITY'S damages as a result of CONTRACTOR's breach of the Wage

Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, CONTRACTOR shall pay to the CITY as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

D. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Provision shall be made available for audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to CITY for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

The difference between such stipulated prevailing wage rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was paid less than the stipulated prevailing wage rate shall be paid to each worker by the CONTRACTOR pursuant to the requirements of Section 1775 of the Labor Code of the State of California.

E. Adjustment. The CITY will not recognize any claim for additional compensation because of the payment by the CONTRACTOR of any wage rate in excess of the prevailing wage rate set forth in the Agreement. The possibility of wage increases is one of the elements to be considered by the CONTRACTOR in determining his bid and will not under any circumstances be considered as the basis of a claim against the CITY under this Agreement.

EXHIBIT E

CONSTRUCTION REQUIREMENTS - AWARD OF CONSTRUCTION CONTRACTS

A. Plans and Specifications. Prior to awarding a contract for construction of any capital improvement to the Premises, at CITY's direction, CONTRACTOR shall submit for the written review and approval of CITY a complete set of plans and specifications for the work to be performed. Notwithstanding the foregoing, if the CITY determines that no plans and specifications are necessary for a particular capital improvement due to the nature of the capital improvement, by written notice the CONTRACTOR will not be required to submit plans and specifications.

1. The plans and specifications shall include an estimate of the cost of the work to be performed and a schedule of construction.

2. The plans and specifications shall be stamped and approved by the appropriate design professionals.

3. The plans and specifications shall comply with all applicable federal, state and local requirements, including, without limitation, the City of San José Department of Public Works Standard Specifications, dated July 1992, and any subsequent modifications to such Standard Specifications. The plans and specifications shall incorporate any other design guidelines and requirements provided by the CITY.

B. Award of Construction Contract. The CONTRACTOR shall not construct any capital improvement except pursuant to a construction contract entered into pursuant to the requirements set forth herein.

1. No construction agreement shall be awarded to any contractor other than one qualified and properly licensed in the State of California to perform such construction work.

2. The CONTRACTOR shall be responsible for obtaining all permits, approvals, and authorizations necessary to construct a capital improvement. CONTRACTOR shall not award a construction contract for a capital improvement until it has obtained all such permits, approvals, and authorizations.

3. Where the cost for construction of the capital improvement is less than the amount required under the San José City Charter for publicly bidding a public works project, the CONTRACTOR shall obtain at least three (3) quotes, from three (3) separate contractors, to perform the work as set forth in the approved plans and specifications. If the CITY has authorized CONTRACTOR to obtain quotes without first having approved plans and specifications, then the proposed work will be described with sufficient detail so as to provide responding contractors

with the information necessary to respond with an accurate and complete quote. The CONTRACTOR shall award the construction contract to the lowest quote obtained, subject to first obtaining CITY's approval and the requirements of Section B.5. below.

4. Where the cost of construction of the capital improvement is over the amount required under the San Jose City Charter for publicly bidding a public works project, then the CONTRACTOR shall award the construction contract to the lowest responsive bidder who is responsible, subject to first obtaining CITY's approval and the requirements of Section B.5. In doing so, CONTRACTOR shall comply with the public bidding procedures and requirements as set forth in the San Jose City Charter and in Chapter 14.04 of the San Jose Municipal Code, as these may be amended.

5. If the lowest quote or bid obtained by the CONTRACTOR pursuant to Sections B.3. or B.4. is over the estimate for the capital improvement set forth in the approved plans and specifications, or in the absence of approved plans and specifications, the estimated amount for the capital improvement, CONTRACTOR and Director shall meet and confer in good faith to determine whether to award the construction contract to the low bidder, to reduce the scope of the work and obtain new quotes, to bid or rebid the capital improvement project, as applicable, or to proceed in some other manner.

C. Insurance. Every construction agreement for a capital improvement entered into between the CONTRACTOR and a contractor shall contain insurance provisions naming the CITY as an additional insured. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee as to form and content.

D. Payment and Performance Bonds. Prior to commencing construction of a capital improvement, CONTRACTOR or its contractor shall furnish to CITY, at no expense to CITY, the following bonds: (1) a payment bond securing the payment of all construction labor and materials and (2) a bond of faithful performance securing completion of all the work and construction, and, if requested by CITY, (3) a warranty bond protecting the CITY from any work or labor done or materials or equipment furnished under the contract for the capital improvement, which is defective or not in accordance with the terms of the contract. The bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the CITY as obligee. The payment and performance bonds shall be for an amount equal to one hundred percent (100%) of the total amount of the contract secured by each respective bond. The form of the bonds shall be approved by the City Attorney and they shall be filed with the City Clerk. The bonds shall be in the forms set forth in Appendix 1 to this Agreement. In the event that CITY revises the forms set forth in Appendix 1, CONTRACTOR, at CITY's direction, shall use the revised forms.

E. Construction.

1. Construction of any capital improvement shall be in accordance with the plans and specifications approved by the Director of PBCE and the CITY's standard specifications. During construction, CONTRACTOR may execute change orders involving minor, routine changes to the plans and specifications as needed to facilitate construction of the capital improvement, provided that no such changes shall alter the scope or increase the cost of the capital improvement. CONTRACTOR shall not execute a change order involving anything other than a minor, routine change to the plans and specifications without first obtaining the Director of PBCE consent.

2. CITY shall have the right to inspect the work at any time during the construction of the capital improvement project. If at any point during construction, CITY determines that the work is not being performed in a manner that complies with this Section E, CITY shall have the right to stop the construction and direct the CONTRACTOR to correct the deficiency.

3. CONTRACTOR shall not finally accept any work without first obtaining the written approval and acceptance of the Director of DPW. Immediately following the Director of DPW's final written approval and acceptance of the capital improvement, the CONTRACTOR shall finally accept the project and immediately record in the Office of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 3093.

4. Following completion of the capital improvement, CONTRACTOR shall provide the CITY with two (2) completed sets of as-built drawings and a CAD disk, if drawings were produced on disk, and a breakdown that shows all costs incurred for such work.

F. Compliance with Laws. CONTRACTOR shall cause the capital improvements to be designed and constructed in accordance with all applicable laws. Without limiting the generality of the foregoing, CONTRACTOR shall assume all responsibility for coordinating and obtaining required approvals from all government and regulatory agencies (i.e. City Fire Department, County Health Department and the like) for the design and construction of any capital improvement. CITY agrees to cooperate with CONTRACTOR in seeking the necessary or desired governmental approvals.

APPENDIX 1 TO EXHIBIT E

Form of Bonds

Bond No.

Premium

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), and _____ ("CONTRACTOR"), and _____, as General Contractor, collectively referred to herein as principals ("Principals"); and

WHEREAS, the CONTRACTOR has entered into an Agreement entitled _____ related to certain facility improvements at the San José Stadium, which is incorporated herein by reference and referred to as the "Contract," pursuant to which the CONTRACTOR shall install and complete certain designated public improvements; and

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, CONTRACTOR is required to furnish a bond to CITY for faithful performance of the Contract; and, General Contractor has agreed to provide this bond to the City of San Jose on behalf of, and jointly and severally with, the CONTRACTOR.

NOW, THEREFORE, we the Principals and **[insert full name of Surety]**, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the CITY in the sum of **[AMOUNT OF CONSTRUCTION COST]** DOLLARS (\$_____) for the payment of which sum well and truly to be made, we the Principals and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principals, Principals' heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principals in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless CITY, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by CITY

in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

General Contractor by executing this bond agrees that the foregoing recitals are true and correct and agrees it is bound to perform its duties and responsibilities as Principal under this bond.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principals and Surety. SIGNED AND SEALED on _____, 20__.

PRINCIPALS:

SURETY:

"OPERATOR"

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

"GENERAL CONTRACTOR"

[Principal Name]
(Seal)

Address:

Telephone:

Affix Corporate Seals

Attach Notary Jurats for All Signatures

Attach Power-of-Authority if executed by Attorney-in-Fact

Bond No.

Premium

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and _____ ("CONTRACTOR"), and _____, as General Contractor, collectively referred to herein as principals ("Principals"); and

WHEREAS, the CONTRACTOR has entered into an Agreement entitled _____ related to certain facility improvements at the San José Stadium, which is incorporated herein by reference and referred to as the "Contract," pursuant to which the CONTRACTOR shall install and complete certain designated public improvements; and

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Contractor is required to furnish a good and sufficient payment bond to the CITY to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code; and General Contractor has agreed to provide this bond to the City of San Jose on behalf of, and jointly and severally with, the Developer.

NOW, THEREFORE, we the Principals and [insert full name of Surety], a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the CITY, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of **[AMOUNT OF CONSTRUCTION COST]** DOLLARS (\$_____) on the condition that if Principals shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principals and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principals, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to

give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

General Contractor by executing this bond agrees that the foregoing recitals are true and correct and agrees it is bound to perform its duties and responsibilities as Principal under this bond.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principals and Surety. SIGNED AND SEALED on _____, 20__.

PRINCIPALS:

SURETY:

"CONTRACTOR"

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

"GENERAL CONTRACTOR"

[Principal Name]
(Seal)

Address:

Telephone:

Affix Corporate Seals

Attach Notary Jurats for All Signatures

Attach Power-of-Authority if executed by Attorney-in-Fact

Bond No.

Premium

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California ("City") and _____ ("CONTRACTOR"), and _____ General Contractor, collectively referred to herein as principals ("Principals"); and

WHEREAS, the CONTRACTOR has entered into an Agreement entitled _____ related to certain facility improvements at the San Jose Stadium, which is incorporated herein by reference and referred to as the "Contract," pursuant to which the CONTRACTOR shall install and complete certain designated public improvements; and

WHEREAS, under the terms of the Contract, CONTRACTOR is required to furnish a bond to CITY to make good and protect the CITY against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract; and, General Contractor has agreed to provide this bond to the City of San Jose on behalf of, and jointly and severally with, the Developer.

NOW, THEREFORE, we the Principals and [insert full name of Surety], a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the CITY in the sum of [AMOUNT OF CONSTRUCTION COST] DOLLARS(\$_____) for the payment of which sum well and truly to be made, we the Principals and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principals shall well and truly make good and protect the CITY against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

General Contractor by executing this bond agrees that the foregoing recitals are true and correct and agrees it is bound to perform its duties and responsibilities as Principal under this bond.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principals and Surety. SIGNED AND SEALED on _____, 20__.

PRINCIPALS:

SURETY:

"CONTRACTOR"

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

"GENERAL CONTRACTOR"

[Principal Name]
(Seal)

Address:

Telephone:

Affix Corporate Seals
Attach Notary Jurats for All Signatures

PRINCIPALS:

"OPERATOR"

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

SURETY:

[Insert Name]
(Seal)

By _____
Name: _____
Title: _____

"GENERAL CONTRACTOR"

[Principal Name]
(Seal)

Address:

Telephone:

Affix Corporate Seals

Attach Notary Jurats for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

EXHIBIT F

Naming Rights Agreement

San Jose Giants Sponsorship Agreement:

THIS SPONSORSHIP AGREEMENT (this "Agreement"), effective as of October 1, 2021 is made by and among PROGRESS SPORTS MANAGEMENT, L.P. dba San Jose Giants (the "San Jose Giants") and EXCITE CREDIT UNION ("Sponsor").

1. Term

- a) The term of this Agreement shall commence on January 1, 2022 and shall remain in effect thereafter until December 31, 2031 (the "Term") unless earlier terminated pursuant to the terms of this Agreement.

2. Sponsorship Fee

- a) During the Term, Sponsor agrees to pay the San Jose Giants the amount of One Million, Two Hundred Forty Nine Thousand, Four Hundred Ninety Four Dollars (\$1,249,494) (the "Sponsorship Fee"), which shall be paid in accordance with the schedule laid out below:
 - i. January 1, 2022 - \$103,029
 - ii. January 1, 2023 - \$108,180
 - iii. January 1, 2024 - \$113,589
 - iv. January 1, 2025 - \$118,133
 - v. January 1, 2026 - \$122,858
 - vi. January 1, 2027 - \$127,772
 - vii. January 1, 2028 - \$132,883
 - viii. January 1, 2029 - \$136,870
 - ix. January 1, 2030 - \$140,976
 - x. January 1, 2031 - \$145,205

3. Sponsorship Assets

In exchange for the Sponsorship Fee, Sponsor will be the naming rights partner for the ballpark located at 588 E. Alma Ave., San Jose, CA (the "Ballpark") and receive the following sponsorship and promotional rights (hereinafter referred to as the "Sponsorship Rights"):

- i. The Ballpark shall be known as Excite Ballpark Home of the San Jose Giants
 - ii. Exterior Wrapping and Branding of the Ballpark as depicted on Exhibit A attached hereto
 - iii. Scoreboard Branding as depicted on Exhibit A attached hereto
 - iv. Branding on primary San Jose Giants collateral, PR communications, website and digital platforms, including but not limited to press releases, newsletters, ticketing and group brochures, ticket stock and SJGiants.com home page and webpages.
- b) The San Jose Giants shall bear the costs of production and installation of signage and other in-stadium assets. Sponsor bears all other costs associated with sponsorship agreement including any change or update to original artwork unless execution costs are mutually agreed upon as part of the agreement. All advertising/artwork to be used is subject to prior approval of the San Jose Giants.

4. Trademarks

- a) **Rights:** Sponsor shall have the right to promote the fact that Sponsor is a Proud Partner, Official or Exclusive Credit Union of the San Jose Giants. The San Jose Giants grant to Sponsor a non-exclusive, royalty free, fully-paid license to use the San Jose Giants Marks and Ballpark Marks in the Marketing Territory during the Term for the purpose of promoting Sponsor. Sponsor shall be entitled to use the San Jose Giants' Marks and the Ballpark Marks in any media except Interactive Media. From time to time throughout the Term, the San Jose Giants shall provide to Sponsor a style guide which shall set forth acceptable formats in which the San Jose Giants' Marks and the Ballpark Marks may be used, which may change from time to time (the "San Jose Giants' Style Guide"). Sponsor understands that its use of the San Jose Giants' Marks and the Ballpark Marks must comply with the San Jose Giants' Style Guide. In the event that the San Jose Giants notifies Sponsor that Sponsor is using any of the San Jose Giants' Marks or the Ballpark Marks in a manner that is contrary to the provisions of the San Jose Giants' Style Guide, Sponsor shall promptly cease such nonconforming use. The San Jose Giants may also determine that any material nonconforming use is a breach of this Agreement. Sponsor acknowledges that it will not obtain any rights or interests of ownership in the San Jose Giants' Marks or the Ballpark Marks by any use of them and the benefits of any such use (e.g. goodwill) shall inure to the benefit of the San Jose Giants. Sponsor's right to use the San Jose Giants Marks and the Ballpark Marks as provided herein may not be assigned or transferred at any time. Upon termination of this Agreement, Sponsor shall immediately cease use of the San Jose Giants' Marks and the Ballpark Marks.
- b) **Using Sponsor's Marks:** For purposes of allowing the San Jose Giants to perform its obligations hereunder, Sponsor hereby grants to the San Jose Giants a non-exclusive royalty-free, fully-paid, sublicensable (as provided herein) license to use the Sponsor Marks identified on Exhibit B hereto during the Term for the purposes set forth in this Agreement. For purposes of clarity, the San Jose Giants shall have the right to sublicense the Sponsor Marks to all Authorized Sublicensees and such Authorized Sublicensees may sublicense such Sponsor Marks to their respective licensees and agents the use of the Sponsor Marks, as necessary, for promotional purposes in reference to the Ballpark and events and games held within the Ballpark, the San Jose Giants and the MLB PDL (as defined below) and its composite leagues; and for inclusion on merchandise and premiums as permitted by the PDL Rules (as defined herein) (such purposes, the "Sublicense Purposes"). For purposes of this Agreement, "Authorized Sublicensee" means MLB Professional Development Leagues, LLC ("MLB PDL"), Minor League Baseball, MLB Advanced Media, L.P., The Office of the Commissioner of Baseball, Major League Baseball Properties, Inc., and The MLB Network, LLC. The San Jose Giants and its Authorized Sublicensees acknowledge that they will not obtain any rights or interests of ownership in the Sponsor's Marks by any use of them and the benefits of any such use (e.g. goodwill) shall inure to the benefit of Sponsor. Upon termination of this Agreement and except as permitted herein, the San Jose Giants and its Authorized Sublicensees shall immediately cease use of the Sponsor's Marks.

- c) **Ballpark Name and Logo.** The San Jose Giants and Sponsor shall develop a logo or logos during the Term of a design or designs to be mutually and reasonably agreed upon between the San Jose Giants and Sponsor to be used as the logo(s) for the Ballpark (collectively, the "Ballpark Logo"). The Ballpark Logo shall include Sponsor's name, San Jose Giants' Marks and/or any other word, name, symbol, or device, or any combination thereof as mutually agreed upon by the parties in its design. The Ballpark Logo shall be owned by the San Jose Giants, provided that the San Jose Giants' ownership shall not extend to the elements of the Ballpark Logo that constitute Sponsor Marks (as depicted in Exhibit B, the "Sponsor Elements"), which shall be owned by Sponsor. Unless the parties mutually agree in writing, the parties agree that none of them shall, nor shall any of them permit any third party to, make any filing to register the Ballpark Logo, as a trademark or service mark or otherwise. The San Jose Giants shall also develop the stylization of the name Excite Ballpark Home of the San Jose Giants (the "Name"), to be mutually and reasonably agreed upon between and Sponsor. The Name shall be owned by Sponsor, provided that Sponsor's ownership shall not extend to the trade dress of the lettering that currently appears on the Ballpark or any other lettering that may appear in stylizations of the Name (excluding any such lettering that constitutes an indicia of origin of Sponsor), which trade dress shall be owned by the San Jose Giants. For purposes of clarity, neither party's ownership shall extend to elements that are in the public domain, the other party's Marks, or are proprietary to a third party. The parties acknowledge and agree that the Ballpark Logo and the Name will be substantially similar to the logo and the name depicted in Exhibit C attached hereto. During the Term of this Agreement, Sponsor hereby grants to the San Jose Giants a sublicenseable and royalty-free right and license to use the Sponsor Elements within the Ballpark Logo, and the Name, including Sponsor's name in connection therewith, in connection with performance of this Agreement, including to all Authorized Sublicensees in connection with the Sublicense Purposes.
- d) Sponsor further grants to the San Jose Giants, both during and after the Term, a royalty-free, worldwide license to use (and to sublicense others to use) its rights in the Ballpark Logo and the Name for historical uses (e.g., providing historical information and commentary and for literary, photographic, video, digital, or other documentary works that capture or discuss the Ballpark and/or its history) and to sublicense such rights to the Authorized Sublicensees as authorized under the PDL Documents (e.g., merchandise related to anniversary, retrospective or other historically related purposes). This Section 4.d will survive termination of this Agreement.

5. Exclusivity

- a) Exclusivity is granted to Sponsor in the following instances/categories. Nothing beyond what is outlined below will be construed as prohibiting or otherwise restricting the San Jose Giants from selling tickets, sponsorship, advertising, marketing or promotional rights of any kind to any person or entity for any product or services.
- i. Credit Unions

- A. For the duration of the Term, Sponsor receives complete sponsorship, marketing, promotional and branding exclusivity to the Credit Union category. "Credit Union" means a member-owned financial cooperative that provides banking and other financial services to its members, but does not include traditional banks or other types of financial institutions. The San Jose Giants retain the rights to sell single, group, and/or season tickets in this category.
- ii. First Right - New Stadium Entitlement. If at any time during the Term, the San Jose Giants intend to permanently relocate the playing site of the San Jose Giants' home games to a facility other than the Ballpark (a "New Facility"), then the San Jose Giants shall provide Sponsor with written notice thereof and a written proposal for a new naming rights and sponsorship agreement for the New Facility. Thereafter, Sponsor, not later than thirty (30) business days following receipt by Sponsor of the written proposal, shall notify the San Jose Giants in writing if Sponsor elects to commence negotiations regarding the terms of such arrangement. If Sponsor does not notify the San Jose Giants in writing of its election within such thirty (30) business day period, the San Jose Giants shall be free to negotiate and enter into any agreement with any third party without future notice or obligation to Sponsor. If Sponsor provides such notification of its election within such thirty (30) business day period, the San Jose Giants shall negotiate in good faith exclusively with Sponsor for a period (the "New Facility Exclusive Negotiating Period") of ninety (90) days from the date Sponsor sends the San Jose Giants notice electing to commence negotiations for a new naming rights and sponsorship agreement for the New Facility. If the parties are unable to reach mutual agreement on the terms and conditions of such new naming rights agreement during the New Facility Exclusive Negotiating Period, the San Jose Giants shall be free to negotiate and enter into any agreement with any third party without future notice or obligation to Sponsor. In any event, this Agreement shall automatically terminate upon a permanent relocation of the playing site of the San Jose Giant's home games to a New Facility and the San Jose Giants will refund any prepaid unused Sponsorship Fees for the year in which the termination occurred.

6. Termination

- a) Sponsor and the San Jose Giants each will have the opportunity to opt-out and terminate this Agreement without cause after five years (January 1, 2027). Notice of termination must be provided by written notice by January 1, 2026. If neither party opts-as set forth in this Section 6(a), this Agreement will remain in effect through the end of the Term unless otherwise terminated pursuant to other terms of this Agreement.
- b) In addition to any other rights or remedies to which Sponsor and the San Jose Giants may be entitled at law or in equity, each shall have the right, at no cost or liability to it or any Club (as defined below), or any PDL Entity or any MLB Entity, to terminate this

Agreement if the other party breaches any representation or warranty made by such party in this Agreement, or fails to perform or comply with any other material term, agreement or covenant of this Agreement to be performed or observed by such party as and when performance or observance is due and such failure or breach continues for more than thirty (30) days after the nonbreaching party gives written notice thereof to the breaching party; provided, however, that if, by the nature of such representation, warranty, term, agreement or covenant, such failure or breach cannot reasonably be cured within such period of thirty (30) days, but is capable of cure, no termination right shall not exist as long as the breaching party commences with due diligence and dispatch to cure such failure or breach within such period of thirty (30) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach within such time period as may be reasonably necessary to effect such cure. For purposes of this Agreement, "MLB Entity" shall mean MLB Advanced Media, L.P., the Office of the Commissioner of Baseball ("BOC"), its Bureaus, Committees, Subcommittees and Councils, the Major League Baseball Clubs ("Clubs"), Major League Baseball Properties, Inc., The MLB Network, LLC, each of their parent, subsidiary, affiliated and related entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Clubs or the BOC and the owners, general and limited partners, shareholders, directors, officers, employees and agents of the foregoing entities.

- c) Sponsor and the San Jose Giants will each have the opportunity to terminate this Agreement if the San Jose Giants do not have a valid lease, license, permission, or other right to use and occupy the Ballpark for the purpose of staging San Jose Giants home games ("Use Rights"), provided that the San Jose Giants shall have a period of ninety (90) days from the expiration of its Use Rights to renew or extend such rights before Sponsor may exercise its termination right under this provision.

7. Assignment

- a) The rights granted to Sponsor in this sponsorship are not transferrable to any third party without prior written approval from the San Jose Giants.

8. Jurisdiction

- a) This Agreement and all acts, transactions, rights, and obligations pursuant to this Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

9. Indemnity

- a) Except to the extent caused by the gross negligence or willful misconduct of the other party with respect to the claim or event in question, each party shall defend, indemnify and hold harmless the other party and the other party's owners, shareholders, members, partners, employees, agents, officers and directors (including, with respect to the San Jose Giants, the PDL Entities and Authorized Sublicensees) ("Indemnitees") from and against any and all third party claims, demands, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses (on an indemnity basis), arising out of or relating

to the first party's or its employees' actions, omissions to act, negligence, unauthorized use of a third party's intellectual property rights, violation of applicable law, breach of any representation, warranty or agreement with third parties or breach of any representation, warranty or covenant contained in this Agreement; provided, however, that the party seeking indemnification shall promptly notify the indemnifying party of any claim or litigation to which the indemnity set forth in this Section applies.

10. Force Majeure

- a) Each party to this agreement will be excused from performing its obligations if its performance is prevented by (1) fire, earthquake, act of God, pandemic, war, strike or other labor dispute, or other occurrence of a like nature beyond the party's reasonable control or (2) any law, rule, or order stemming from economic controls, riot, hostilities, war, terrorist attacks, or similar conditions. These types of events will not be the result of financial difficulties or incapacities. Other than the payment of amounts due, if either party is delayed or hindered from performing its obligations, performance will be excused for the period of delay.

11. Insurance

- a) Sponsor shall, at its sole cost and expense, maintain in effect insurance as set forth on Exhibit D.

12. Dispute Resolution

- a) Any controversy, dispute or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this agreement, shall be settled at the request of any party to this agreement by final and binding arbitration conducted in the City and County of San Jose, California, administered by and in accordance with the Streamlined Arbitration Rules and Procedures of J.A.M.S. The arbitrator shall determine which is the prevailing party and shall include in the award that party's reasonable attorneys' fees and expenses and the costs and fees of arbitration, including the fees of J.A.M.S.

13. Compliance with Laws

- a) Each party shall comply in all respects with all applicable laws, rules, ordinances, orders, and regulations of any kind and other requirements of any government or public authority now in force or which may hereafter be in force in connection with its performance of its obligations hereunder.

14. Compliance with San Jose Giants Player Development License with Major League Baseball: Notwithstanding any other provision of this Agreement:

- a) This Agreement and the rights, exclusivities and protections granted by the San Jose Giants to Sponsor hereunder shall, at the request of MLB Professional Development Leagues, LLC ("MLB PDL"), be subject to its review and written approval, and shall in all respects be subordinate to, and shall not prevent the issuance, entering into, or

amendment of, any of the following, each as may be issued, entered into or amended from time to time (collectively, the "PDL Documents"): (i) any present or future agreements or arrangements entered into by, or on behalf of MLB PDL and/or any of its respective present or future affiliates, assigns or successors (collectively, the "PDL Entities") that are specifically related to or generally applicable to the player development league system including the PDL Clubs, including, without limitation, the player development license agreement entered into between the San Jose Giants and MLB PDL; and (ii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, MLB PDL, any other PDL Entity and/or the Commissioner of Baseball that are specifically related to or generally applicable to the player development league system or one or more of the PDL Clubs. The issuance, entering into, amendment, or implementation of any of the PDL Documents shall be at no cost or liability to any PDL Entity or to any individual or entity related thereto.

- b) The territory within which Sponsor is granted rights hereunder is limited to, and nothing herein shall be construed as conferring on Sponsor rights in areas outside of, the Marketing Territory of the San Jose Giants, as established and amended from time to time pursuant to the PDL Documents.
- c) No rights, exclusivities or obligations involving Interactive Media are conferred by this Agreement, except as specifically approved in writing by the applicable PDL Entity. For purposes of this provision, "Interactive Media" shall mean (i) the Internet or any other on-line system or computer network; (ii) any interactive wireless service, including, without limitation, any interactive microwave or cellular service; (iii) any interactive satellite service; (iv) any interactive broadcast television, broadcast radio or cable television service; and (v) any other medium of interactive communication now known or hereafter devised.
- d) In addition to any other rights or remedies to which the San Jose Giants may be entitled at law or in equity, the San Jose Giants shall have the right, at no cost or liability to it or any other PDL Club, MLB Entity or any PDL Entity, to terminate this Agreement at any time Sponsor breaches its obligations under Paragraph 1, 2 or 3 above. The right to terminate shall be exercisable by delivering written notice to (Sponsor within 30 days after the (PDL Club) obtains actual knowledge that such breach has occurred and the effective date of such termination shall be no more than 30 days after the date such notice is given, as specified by the San Jose Giants in such notice.

15. Warranties.

- a) **Mutual Warranties.** Each party represents and warrants that: (i) it has the requisite corporate power and authority and the right to enter into this Agreement and to

perform its obligations hereunder and agrees to obtain all necessary consents, approvals, licenses and/or permits; and (ii) the individual signing this Agreement on its behalf is duly authorized to do so.

- b) **The San Jose Giants Warranties.** Without limiting the generality of the foregoing warranties, the San Jose Giants warrants and represents that (i) it has the right and authority to contract for the Sponsorship Rights provided hereunder including but not limited to any permissions, consents, or approvals necessary from the PDL Entities, (ii) as of the effective date of this Agreement, all of the Sponsorship Rights and other benefits granted to Sponsor under this Agreement are within the scope of the San Jose Giants' powers such that it has the ability to grant such rights as described hereunder, and (iii) the entering into and performance by the San Jose Giants will not breach or violate the organization documents of the San Jose Giants or any provision of any indenture, mortgage, lien, lease, material agreement, order, judgment, or decree to which the San Jose Giants is a party or by which its assets or properties (including the Ballpark) are bound.

16. Notices

Except as otherwise expressly provided in this Agreement, notices, approvals, consents or other communications hereunder shall be in writing and shall be sent to the addresses set forth herein by (a) personal delivery, (b) certified mail, return receipt requested, (c) a nationally-recognized overnight delivery courier or (d) electronic mail. Except as otherwise expressly provided in this Agreement, notices shall be effective upon receipt; provided, however, that in the event a notice is mailed it shall be deemed to have been received on the third day after mailing or the next business day if sent via overnight delivery courier. The parties hereto may change the address as to which notices are to be sent by written notice in accordance with the terms of this paragraph.

Notice to the San Jose Giants:

San Jose Giants
588 E Alma Ave.
San Jose, CA 95112

Notice to Sponsor:

Excite Credit Union
265 Curtner Ave.
San Jose, CA 95125

- 17. Confidentiality.** By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the terms and pricing under this Agreement and any other material or information

relating to the disclosing party's technology, business plans and affairs, financial, trade secrets, research and marketing or sales plans, or any other information that is either identified as confidential or, by its nature, should reasonably be treated as confidential. Each party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar information of like nature but in no event less than a commercially reasonable degree of care and to use such Confidential Information only as permitted under this Agreement. A party's Confidential Information shall not include information that a party can demonstrate: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party without reference to the Confidential Information. The parties agree that, unless (x) required by court order or law (in which case the receiving party shall notify the disclosing party to enable the disclosing party to seek confidential treatment of any information so required to be disclosed and if disclosure is required after the disclosing party's attempt to prevent such disclosure, the receiving party agrees to disclose no more Confidential Information of the disclosing party than is reasonably necessary), (y) to its accountants, auditors, legal counsel, regulators, lenders, prospective lenders, investors, prospective investors, financial advisors, insurance advisors and underwriters who have a need to know such Confidential Information and agree to maintain the Confidential Information in accordance with all provisions of this Agreement or (z) in the case of the San Jose Giants only, to MLB or the other MLB Entities as required under the PDL Documents, they shall not make each other's Confidential Information available in any form to any unaffiliated third party for any purpose without the disclosing party's prior written consent. Each party agrees to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Agreement.

- 18. Miscellaneous.** This Agreement may be executed in counterparts which, when signed by all parties, shall constitute a binding agreement. Counterparts signed by all parties and transmitted in PDF shall be treated as original counterparts and shall constitute a binding agreement. This Agreement may be signed electronically by the parties and each electronic signature shall constitute an original signature. Sponsor and the San Jose Giants are independent contractors, and nothing contained in this Agreement will be construed as establishing an employer-employee or other agency relationship, partnership, or joint venture between them. No delay of or omission in the exercise of any right, power or remedy accruing to any party under this Agreement or failure to insist upon strict compliance with the provisions of this Agreement by the other parties shall impair any such right, power or remedy, nor shall it be construed as a waiver of any future exercise of any right, power or remedy. Exhibits and schedules referred to in this Agreement are by such reference incorporated in this Agreement as if set forth in full and are made a part of this Agreement. The captions contained in this Agreement are inserted for convenience of reference only. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that this Agreement has been prepared jointly by the parties and has been the subject of arms' length and careful negotiation, that each party has been given the opportunity independently to review this Agreement with legal counsel, and that each party enters into this Agreement with full knowledge of the terms of this Agreement. shall not in any way define or affect the meaning, construction, or scope of

the provisions captioned. In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be severed from this Agreement. The validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. This Agreement, including all Exhibits hereto, is the final, complete and exclusive statement and expression of the agreement among the parties hereto with relation to the subject matter of this Agreement, it being understood that there are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of, any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind. This Agreement may only be amended by a written agreement signed by the parties hereto and specifically referring to this Agreement, and rights contained hereunder shall not be waived unless in writing and signed by the party waiving such rights.

19. Definitions

Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the following meanings:

- a) "Ballpark Marks" shall mean any logo, trade name, trademark, service mark, design, mascot, character, identification, symbol or other proprietary designs associated with the Ballpark that are in existence during the Term and which are owned, licensed or otherwise controlled by the San Jose Giants. Ballpark Marks shall not include the Ballpark Logo, the Name, or any other mark, symbol or design that incorporates any Sponsor Mark or any element of any Sponsor Mark, including the Sponsor Elements, or any other indicia of origin of Sponsor.
- b) "Marketing Territory" shall mean: Santa Clara County, California and the geographic area that is within one hundred (100) miles of the Ballpark located at 588 E Alma Ave, San Jose, CA.
- c) "San Jose Giants Marks" shall mean the San Jose Giants' name, uniforms, and emblems and all trade names, trademarks, service marks, designs, logos, mascots, characters, identifications, symbols or other proprietary designs, associated with the San Jose Giants that are in existence during the Term and which are owned, licensed or otherwise controlled by the San Jose Giants. The San Jose Giants' Marks shall not include the Ballpark Logo, the Name, or any other mark, symbol or design that incorporates any Sponsor Mark or any element of any Sponsor Mark, including the Sponsor Elements, or any other indicia of origin of Sponsor.
- d) "Sponsor Marks" shall mean Sponsor's name and all trade names, trademarks, service marks, designs, logos, characters, identifications, symbols or other proprietary designs, associated with Sponsor that are in existence during the Term and which are owned, licensed or otherwise controlled by Sponsor.

[Signature Page to Follow]

* * *

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year written below.

EXCITE CREDIT UNION

PROGRESS SPORTS MANAGEMENT, L.P., dba
San Jose Giants

By Brian Dorcy
Brian Dorcy (Sep 22, 2021 15:40 PDT)

By Daniel Orum
Daniel Orum (Sep 22, 2021 15:54 PDT)

Dated: Sep 22, 2021

Dated: Sep 22, 2021

Exhibit A

Sponsorship Assets



Exhibit B
Sponsor Elements



Official Credit Union of the San Jose Giants

Exhibit C

Ballpark Logo

excite
B A L L P A R K



Exhibit D

1.1 Insurance. Sponsor must obtain, and continuously maintain, at its own expense, and require each of its own subcontractors to obtain and maintain, the following insurance policies:

1.1.1 Workers' Compensation (or its equivalent in the country of Sponsor) in compliance with state statutory laws, covering employees, volunteers, temporary workers and leased workers including Employers' Liability with minimum limits of:

\$1,000,000 Each Accident;
\$1,000,000 Disease - Each Employee;
\$1,000,000 Disease - Policy Limit.

1.1.2 An Insurance Services Office (or its equivalent) occurrence based Commercial General Liability Insurance Policy, providing coverage for bodily injury and property damage and personal and advertising injury including contractual liability and products/completed operations liability coverage with minimum limits of:

\$300,000 Each Occurrence;
\$900,000 General Aggregate;

1.1.3 Umbrella Liability Insurance, in excess of 1 & 2 above, with minimum limits of:

\$15,000,000 Each Occurrence
\$45,000,000 General Aggregate

Umbrella policies must follow form of the underlying policies.

All insurance policies must be issued by an admitted insurance carrier with an A.M. Best rating of A or better. Progress Sports Management L.P. ("PSM"), Baseball Acquisition Company, Inc. ("BAC"), and each of their subsidiaries or affiliated entities, any entity which, now or in the future, controls, is controlled by, or is under common control with PSM or BAC, and its and their directors, officers and employees, including without limitation the Indemnitees ("Additional Insureds") must be named as Additional Insureds under the Commercial General Liability and Umbrella Liability Policies. All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). The Commercial General Liability policy shall include no third-party-over action exclusions or similar endorsements or limitations. Sponsor's liability policies shall include no exclusion for claims by employees of any of Sponsor's contractors, subcontractors, or independent contractors. Further, coverage for the Additional Insureds shall apply on a primary and non-contributory basis irrespective of any other insurance available to the Additional Insureds, whether collectible or not. No policy shall contain a self-insured retention. No policy shall contain a deductible in excess of \$50,000 and any/all deductibles shall be the sole responsibility of the Sponsor and shall not apply to PSM or BAC. All policies shall be endorsed to provide a waiver of subrogation in favor of the Additional Insureds. Sponsor shall provide PSM with at least 30 days' written notice if any of the required policies are cancelled or not renewed. Upon request and no more than once per year, Sponsor shall furnish Progress Sports Management L.P. ("PSM") with certificates of insurance evidencing compliance with all insurance provisions noted above prior to the commencement of the Sponsorship and annually at least ten (10) days prior to the expiration of each required insurance policy. The insurance requirements set forth will in no way modify, reduce, or limit the indemnification herein made by Sponsor. Any actions, errors or omissions that may invalidate coverage for Sponsor shall not invalidate or prohibit coverage available to the Additional Insured Parties. Receipt by PSM of a certificate of insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same, nor is any verbal agreement to modify same permissible or binding.

EXHIBIT G

Schedule of Deposits to Stadium Capital Reserve Fund

During the term of the Naming Rights Agreement, Excite Credit Union agrees to pay the San Jose Giants the amount of One Million, Two Hundred Forty Nine Thousand, Four Hundred Ninety Four Dollars (\$1,249,494), which shall be paid in accordance with the schedule laid out below:

- i. January 1, 2022 - \$103,029
- ii. January 1, 2023 - \$108,180
- iii. January 1, 2024 - \$113,589
- iv. January 1, 2025 - \$118,133
- v. January 1, 2026 - \$122,858
- vi. January 1, 2027 - \$127,772
- vii. January 1, 2028 - \$132,883
- viii. January 1, 2029 - \$136,870
- ix. January 1, 2030 - \$140,976
- x. January 1, 2031 - \$145,205

EXHIBIT H

Alcohol Advertising Policy

1. INTRODUCTION.

This Alcohol Advertising Policy ("**Policy**") is a part of the Amended and Restated Agreement for the Use, Operation and Management of the San Jose Municipal Stadium between the City of San Jose ("**City**") and Baseball Acquisition Company, LLC ("**Contractor**"), and addresses the advertising of alcoholic beverages at the San Jose Municipal Stadium (the "**Stadium**"). As used in this Policy, the following terms have the meanings given below:

- "**Beer and Wine**" means fermented alcoholic beverages, including malt beverages such as alcoholic ciders, alcoholic lemonades and wine coolers; and
- "**Legal Age**" means the age at which a person may legally purchase or consume alcoholic beverages in the State of California, which as of the effective date of this Policy is 21 years.

2. GENERAL PROHIBITIONS.

In general, no advertising or "sponsor activation" of alcoholic beverages (whether in the Beer and Wine category) may do any of the following:

- Target or intend to appeal to those under the Legal Age;
- Encourage the consumption of alcohol (although promotion of brand preference is permissible);
- Depict the consumption of alcohol;
- Portray activities attractive primarily to persons under the Legal Age;
- Promote the irresponsible or illegal use of alcohol;
- Associate alcohol with social or personal achievement;
- Associate alcohol with motor vehicles or other activities requiring significant skill or care; and/or
- Otherwise violate applicable laws.

3. SPECIFIC PROHIBITIONS.

Consistent with the foregoing general standards, the following specific prohibitions shall apply to alcoholic beverage advertising placement:

- There shall be no advertising or promotion of any alcoholic beverages on or in connection with website pages or other activities or programming

intended for fans under the Legal Age (e.g., kids' clubs, mascot activities, and youth and amateur coverage and programming).

- No alcoholic beverage branded apparel shall be sold in any child sizes.

4. PERMISSIBLE SPONSORSHIP ACTIVATION.

Subject to the foregoing rules and requirements and the PDL Rules and Regulations where more restrictive, Contractor may allow sponsors to engage in the following representative areas of sponsorship activation in either the Beer or Wine category (although this is not a comprehensive list):

- Co-branded line-of-sight advertising (e.g., outfield walls, signs, and scoreboard);
- In-Stadium advertising on fixed signage in all public areas where alcoholic beverages are lawfully permitted to be sold or consumed;
- In-Stadium advertising on digital displays where at least 75% of the viewers are expected to be above the Legal Age;
- In-Stadium sponsorship activation and promotions to the extent intended for participants above the Legal Age (e.g., age verification requirement for participation in a promotion);
- Co-branded premium items that would not appeal primarily to consumers under the Legal Age (e.g., glassware, but not toys, stickers or trading cards);
- Team branding on alcoholic beverage bottle label, inscription, embossing, engraving, etching or other similar product application as part of a limited edition or limited release program;
- Co-branded point-of-sale items targeted to consumers above the Legal Age and located where alcoholic beverages are permitted to be sold (e.g., neon signs, mirrors, posters, signage, glassware, coasters, refrigerator magnets, beverage dispensers/taps, buttons/pins, menus, wait-staff apparel);
- Advertising on team websites and other media without time restriction; and
- Advertising on mobile sites and mobile applications.

5. CITY APPROVAL REQUIRED FOR CHANGES.

Contractor shall not allow advertising of alcoholic beverages on or about the Stadium in violation of this Policy, or make any changes to this Policy, without the prior written consent of the City Manager, which consent shall not be unreasonably withheld if the City Manager is satisfied that such advertising would otherwise conform to the Applicable Standard then in effect.



- ☒ FOR YOUR ELECTRONIC SIGNATURE
☐ FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Thomas Cavanagh-Harris

STAFF EMAIL: Thomas.Harris@sanjoseca.gov

SCANNED SIGNATURE AUTHORIZATION

DATE: 02/22/2022 TOTAL PAGES: 72
(INCLUDING THIS PAGE)
CONSULTANT NAME: Peter B. Freund
EMAIL: peter@sports holdings.com
PHONE: 914-329-1887

☒ I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE IN **BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS): thomas.harris@sanjoseca.gov

TO BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- ☐ USE OF A PASSWORD PROTECTED WEBSITE
☐ CONFIRMED BY A KNOWN TELEPHONE NUMBER / EMAIL
☐ PERSONALLY KNOWN TO CITY STAFF