

**AGREEMENT by and between the
SANTA CLARA STADIUM AUTHORITY, CITY OF SANTA CLARA, and
the CITIES OF CAMPBELL, GILROY, MILPITAS, MORGAN HILL,
MOUNTAIN VIEW and PALO ALTO, and the TOWN OF LOS GATOS
FOR INDEMNITY**

PREAMBLE

This agreement for indemnity ("Agreement") is made and entered into on this _____ day of _____, 2013, ("Effective Date") by and between the **Santa Clara Stadium Authority**, a Joint Powers Authority, with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("Authority"), the **City of Santa Clara**, a chartered municipal corporation, located at 1500 Warburton Avenue, Santa Clara, California 95050 ("Santa Clara"), the **City of Campbell**, a municipal corporation, located at 70 N. First Street, Campbell, California 95008 ("Campbell"), the **City of Gilroy**, a chartered municipal corporation, located at 7351 Rosanna St., Gilroy, California 95020 ("Gilroy"), the **City of Milpitas**, a municipal corporation, located at 455 E. Calaveras Blvd., Milpitas, California 95035 ("Milpitas"), the **City of Morgan Hill**, a municipal corporation, located at 17575 Peak Ave., Morgan Hill, California 95037 ("Morgan Hill"), the **City of Mountain View**, a chartered municipal corporation, located at 500 Castro St., Mountain View, California 94039 ("Mountain View"), the **City of Palo Alto**, a chartered municipal corporation, located at 250 Hamilton Ave., Palo Alto, California 94301 ("Palo Alto"), and the **Town of Los Gatos**, located at 110 E. Main St., Los Gatos, California 95030 ("Los Gatos") (Campbell, Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, and Los Gatos may be collectively referred to herein as "Agencies" and individually as an "Agency"). Authority, Santa Clara and Agency may be referred to individually as a "Party" or collectively as the "Parties" to this Agreement."

RECITALS

- A. Authority and Santa Clara agrees to provide indemnity and insurance coverage to Agency regarding the performance of the law enforcement functions described herein.
- B. Agency is agreeable to allow its off-duty police officers to participate in such law enforcement services pursuant to the terms and conditions set forth in this Agreement.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. DOUBLE BADGING OF OFFICERS.

- A. Santa Clara and Authority require supplemental special detail law enforcement services for events taking place at the new Santa Clara Levi Stadium ("Stadium") site and surrounding areas during the term of this Agreement. Santa Clara will be hiring off-duty law enforcement officers from other local agencies, including Agencies, as City of Santa Clara Police Reserve Officers. These officers will be Reserve Police Officers of the City of Santa Clara in accordance with the Santa Clara Police Department Operations Manual, General Order 16.3 or any other applicable order.

The Reserve Police Officers will be issued badges and uniforms by the City of Santa Clara.

- B. Santa Clara is authorized to and does hereby provide consent, pursuant to Penal Code section 830.1(a)(2), for any Agency peace officer providing services hereunder to exercise full peace officer authority within Santa Clara's jurisdiction.
- C. Reserve Police Officers from Agency will be using their home Agency equipment including firearms, vests, duty belts, and tasers. Communication devices (radio) shall be provided by Santa Clara.
- D. Subject to the terms and provisions of this Agreement, Agency shall allow its police officers to serve as City of Santa Clara Reserve Officers for the purposes described in this Agreement when off-duty from their assignments with the Agency. Agency also authorizes them to use the Agency equipment described in paragraph C of this section, subject to the terms and provisions of this Agreement.
- E. The Parties understand and agree that the officers' duties and assignments to Agency shall have priority over any assignments as a City of Santa Clara Reserve Officer, and that the Agency may recall the officer for duty to the Agency at any time, without prior notice to Santa Clara or the Authority. However, Agency will cooperate in good faith to avoid any scheduling conflicts.
- F. The Parties further understand and agree that while serving as a City of Santa Clara Reserve officer, the officer will be under the supervision of the City of Santa Clara Police Department.

2. HOLD AGENCY HARMLESS.

Agency shall not be responsible for any act or omission of its law enforcement officer(s) while serving as a City of Santa Clara Reserve Officer or the act or omission of law enforcement officers from other Agencies pursuant to this Agreement. To the extent permitted by law, Santa Clara and Authority agree to indemnify, protect, defend with counsel reasonably acceptable to Agency and hold harmless Agency, its Council, officers, employees, volunteers and agents from and against any claim, action, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from, or alleged to arise from any negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the services by Agency, its employees, officers or agents or the use of Agency equipment under this Agreement, except for any claim, injury, liability, loss, cost, and/or expense or damage directly and proximately caused by the sole and active negligence or willful misconduct of Agency.

The provisions of this section are intended to fully allocate all responsibility between the Parties for claims, demands, actions or suits brought by any third party concerning the services contemplated under this Agreement. Neither Santa Clara nor the Authority shall have any rights in law or equity, or otherwise, to any indemnity or contribution from Agency for matters covered by this section.

In the event of a dispute between and/or Authority and any Agency, or if an Agency employee is named in an action due to service as a Santa Clara Reserve Officer, the other Agencies named in this Agreement are not necessary parties and need not be named or involved as parties to that dispute.

3. INSURANCE.

During the term of this Agreement, Santa Clara and Authority shall purchase, and maintain in full force and effect, at least the following insurance policies:

- A. Commercial general liability insurance;
- B. Comprehensive automobile injury insurance (bodily injury and property damage) with respect to employees and vehicles assigned to the performance of work pursuant to this Agreement;
- C. Workers' compensation, employer's liability, if required by law; and,

Santa Clara and Authority shall, during the term of this Agreement, and at no expense to Agency, maintain the insurance policies, with limits of coverage, endorsements and with the required certificates as set forth in the attached **Exhibit "A"** entitled "Insurance Requirements." The scope and form of each respective insurance coverage shall be subject to approval of Agency's City Attorney's Office so that the protection afforded to Agency by Santa Clara and Authority with respect to this Agreement will be accomplished. Agency must approve all insurance coverages and carriers prior to commencement of work under this Agreement. Santa Clara and/or Authority may elect to self-insure with written notice of such self-insurance provided to Agency(ies).

4. TERM OF AGREEMENT.

The term of this Agreement shall commence upon execution by the Parties and shall terminate June 30, 2016, unless terminated sooner or extended in whole or in part as provided for herein.

5. TERMINATION.

- A. Any Party may terminate this Agreement as to that Party with or without cause by giving not less than sixty (60) days advance written notice to the other Parties. A termination by one Party other than Santa Clara or the Authority shall not terminate this Agreement as to the remaining Parties. A termination of this Agreement by Santa Clara or the Authority shall terminate this Agreement as to all Parties hereto.
- B. Notwithstanding the foregoing, Agency may terminate the Agreement on at least twenty (20) days advance notice, or less in the event of exigent circumstances, if Agency concludes that there are insufficient personnel to provide the agreed upon services and still perform other Agency duties as solely determined by Agency in its unfettered discretion.

C. In the event of a termination, each Party shall fully discharge all obligations owed to the other Party accruing prior to the date of such termination, and, except as otherwise provided herein, each Party shall be released from all obligations, which would otherwise accrue subsequent to the date of termination. The duty to hold harmless, indemnify, protect, and defend in accordance with Section 2 above shall survive termination of this Agreement.

6. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent and addressed as follows:

Santa Clara Stadium Authority
Attention: Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Fax: (408) 241-6771

And to Santa Clara as follows:

City of Santa Clara
Attention: City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Fax: (408) 241-6771

And to Agencies addressed as follows:

Campbell: City Manager
70 N. First Street
Campbell, CA 95008
Fax: (408) 374-6889

Gilroy: City Administrator
7351 Rosanna Street
Gilroy, CA 95020
Fax: (408) 846-0500

Los Gatos: Town Manager
110 E. Main St.
Los Gatos, CA 95030
Fax: (408) 399-5786

Milpitas: City Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035
Fax: (408)

Morgan Hill: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attn: City Manager or Chief of Police
Fax: (408)

Mountain View: City Manager
500 Castro St.
Mountain View, CA 94039
Fax: (650)

Palo Alto: City Manager
250 Hamilton Ave.
Palo Alto, CA 94301
Fax: (650)

The workday that a facsimile is sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

7. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara.

8. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument; and the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

[Signatures follow on next pages.]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"SANTA CLARA"

**SANTA CLARA STADIUM AUTHORITY
a Joint Powers Authority**

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
Authority Counsel

ATTEST:

ROD DIRIDON, JR.
Secretary

JULIO J. FUENTES
Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"AUTHORITY"

City of Campbell

Approved as to Form:

By: _____
MARK LINDER
City Manager
70 N. First Street
Campbell, California 95008
Telephone: (408) 866-2125
Fax: (408) 374-6889

By: _____
WILLIAM R. SELIGMANN
City Attorney

"CAMPBELL"

APPROVED AS TO FORM:

LINDA A. CALLON
City Attorney

THOMAS J. HAGLUND
City Administrator
7351 Rosanna Street
Gilroy, California 95020
Telephone: (408) 846-0202
Fax: (408) 846-0500

ATTEST:

SHAWNA FREELS
City Clerk

"GILROY"

Town of Los Gatos

By: _____
Greg Larson, Town Manager

Approved as to Form:

Judith J. Propp, Town Attorney

"LOS GATOS"

APPROVED AS TO FORM:

MICHAEL J. OGAZ
City Attorney

THOMAS C. WILLIAMS
City Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035
Telephone: (408) 586-3050
Fax: (408) 586-3056

STEVE PANGELINAN
Chief of Police
1275 North Milpitas Blvd.
Milpitas, CA 95035
Telephone: (408) 586-2426
Fax: (408) 586-2492

"MILPITAS"

Approved as to Form:

CITY OF MORGAN HILL a California
general law municipal corporation

RENEE A. GURZA
City Attorney

By: _____
STEVE RYMER
Its: City Manager

"MORGAN HILL"

APPROVED AS TO FORM:

Jannie L. Quinn
City Attorney

FINANCIAL APPROVAL:

Patty J. Kong
Finance and Administrative Services
Director

ATTEST:

Lorrie Brewer
City Clerk

"MOUNTAIN VIEW"

CITY OF PALO ALTO

City Manager
James Keene

CITY OF PALO ALTO

Police Chief
Dennis Burns

APPROVED AS TO FORM

By: _____
Assistant City Attorney
City of Palo Alto

"PALO ALTO"

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AGREEMENT FOR INDEMNITY AND INSURANCE

EXHIBIT "A"

INSURANCE REQUIREMENTS

Santa Clara and Authority, and subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "Agency" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the Agency (city), California, individually or collectively.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the Agency:

A. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

- \$2,000,000 each occurrence (combined single limit);
- \$2,000,000 for personal injury liability;
- \$4,000,000 aggregate for products-completed operations; and,
- \$4,000,000 general aggregate applying separately to this project.

B. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL"). (A Workers' Compensation Policy is required.)

These policies shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of California; and
2. Employer's Liability insurance with coverage amounts not less than one

million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Santa Clara and or Authority and approved by the Agency before work is begun pursuant to this Agreement. At the option of the Agency, Santa Clara shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to the Agency guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- A. **Additional Insureds** The Agency, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the scope of work of this Agreement, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- B. **General Aggregate** The general aggregate limits shall apply separately to Santa Clara and Authority stadium events under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
- C. **Primary Insurance** This policy shall be considered primary insurance with respect to any other valid and collectible insurance Agency may possess, including any self-insured retention Agency may have, and any other insurance Agency does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- D. **Notice of Cancellation** No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to Agency at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, BAL, WC/EL & PL).
- E. **Waiver of Subrogation.** The policy shall provide a waiver of any right to subrogation which any insurer of Santa Clara or the Authority may acquire against the Cities by virtue of any loss under such insurance. This provision applies whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

4. **ABSENCE OF INSURANCE COVERAGE.**

Agency may direct Santa Clara or Authority to immediately cease all activities with respect to this Agreement if the Agency determines that Santa Clara fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to Agency by each of Santa Clara's and Authority's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Contractor shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to the persons identified in the Agreement as receiving notices.