

## AGENCY AND APPROVAL AGREEMENT

**THIS AGENCY AND APPROVAL AGREEMENT**, dated as of November \_\_, 2020 (the "**Agreement**"), is by and between DYNAMO STADIUM, LLC, a Delaware limited liability company ("**Tenant**"), and HARRIS COUNTY-HOUSTON SPORTS AUTHORITY, a sports and community venue district created under Chapter 335 of the Texas Local Government Code ("**Landlord**").

### WITNESSETH:

**WHEREAS**, Landlord leases to Tenant the land and facility known as BBVA Stadium located at 2200 Texas Avenue, Houston, Texas (the "**Stadium**") pursuant to that certain Lease and Development Agreement dated as of February 18, 2011 (the "**Lease**");

**WHEREAS**, Tenant desires to obtain approval of Landlord to perform, as Landlord's agent, certain Additional Work (as defined in the Lease) described in Exhibit A attached hereto (the "**Proposed Additional Work**") in accordance with the terms of the Lease;

**WHEREAS**, the Proposed Additional Work will enhance the ability of the Stadium to attract desirable entertainment acts to the community and to improve the quality of events held at the Stadium;

**WHEREAS**, title to improvements, additions, and alterations comprising the Proposed Additional Work shall vest in Landlord pursuant to the terms of Section 15.1.1 of the Lease;

**WHEREAS**, Landlord is exempt from Texas state and local sales and use tax under Texas Tax Code Section 151.309; and

**WHEREAS**, Landlord desires to authorize Tenant to procure the materials and labor necessary to perform and complete the Proposed Additional Work as Landlord's agent, but subject to the terms of this Agreement and the Lease.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

### AGREEMENT:

1. Approval. For the purposes of Section 15.2 of the Lease, Landlord hereby grants approval to Tenant for Tenant's performance and completion of the Proposed Additional Work so long as Tenant's performance and completion of such Proposed Additional Work complies with the other terms of Section 15.2.1 of the Lease.

2. Agency. Landlord does hereby appoint Tenant as agent for Landlord, subject to the terms of this Agreement, for the limited purpose of purchasing materials and services necessary to perform and complete the Proposed Additional Work.

3. Duties of Tenant. Tenant is hereby authorized to act on behalf of Landlord, subject to the terms of this Agreement, in connection with negotiating for and purchasing materials and services necessary to perform and complete the Proposed Additional Work, subject to the terms of the Lease. Tenant shall timely consult with, advise, and cooperate with Landlord in all aspects of the performance and completion of the Proposed Additional Work. Tenant is hereby authorized to present sales and use tax exemption certificates bearing the signature of Landlord's officers or employees, if required by applicable law, to material vendors and service providers in connection with purchases of materials and services necessary to perform and complete the Proposed Additional Work.

4. Duties of Landlord. If required by applicable law, Landlord shall prepare sales and use tax exemption certificates reasonably necessary for Tenant to purchase materials and labor for the performance and completion of the Proposed Additional Work without paying sales and use tax. Landlord shall further reasonably cooperate with Tenant in taking any additional actions reasonably necessary to prevent Tenant from becoming subject to sales and use tax on purchases made hereunder. Landlord shall not be liable to Tenant or any other person or entity for any costs or expenses related to the performance or completion of the Proposed Additional Work. Landlord shall also not be liable to Tenant for any sales or use taxes paid or required to be paid by Tenant on purchases of materials or labor for the performance and completion of the Proposed Additional Work.

5. Term. This Agreement shall be effective from the date of its execution through the date that the Proposed Additional Work is complete and Tenant has fully paid all costs of materials and services associated with the Proposed Additional Work.

6. No Compensation for Agency. Tenant is not entitled to any fee or other compensation for its services under this Agreement.

7. Indemnification. Tenant does hereby indemnify, defend and hold harmless Landlord and each of its directors, officers, agents and employees (collectively, "**Landlord Parties**") from and against any and all liability, claims, demands, liens, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action (collectively, "**Claims**") of any and every kind and nature which may arise out of or in connection with the performance and completion of the Proposed Additional Work. The provisions of this Section 7 shall survive expiration or termination of this Agreement.

8. Title to Purchases. It is the intent of this Agreement that all purchases of materials and services made by Tenant under this Agreement shall be deemed to have been made by Landlord for its own account. To the extent applicable law, notwithstanding this Agreement, treats Tenant as having purchased materials and services for the Proposed Additional Work for its own account, Tenant dedicates the real property improvements to Landlord, and title to materials and the right to receive such services shall immediately vest in Landlord before the Proposed Additional Work begins. Landlord agrees to accept all real property improvements dedicated to it under this section.

9. Notice. All notices or other communications required or permitted hereunder will be in writing, and will be given by (a) personal delivery, or (b) professional expedited delivery

service with proof of delivery, or (c) facsimile (provided that such facsimile is confirmed by the sender by personal delivery or expedited delivery service in the manner previously described), sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee will have designated by written notice sent in accordance herewith and will be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service, as of the date of first attempted delivery on a business day at the address or in the manner provided herein, or, in the case of facsimile transmission, upon receipt if on a business day and, if not on a business day, on the next business day. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

If to the Tenant:           Dynamo Stadium, LLC  
                                  1001 Avenida de las Americas, Suite 200  
                                  Houston, Texas 77010  
                                  Attention: Lance Eversole, General Counsel

If to Landlord:           Harris County–Houston Sports Authority  
                                  Partnership Tower  
                                  701 Avenida de las Americas, Suite 450  
                                  Houston, Texas 77010  
                                  Attention: Janis Burke, CEO

and

Hunton Andrews Kurth, LLP  
600 Travis, Suite 4200  
Houston, Texas 77002  
Attention: Mark B. Arnold

10.    Miscellaneous. This Agreement comprises the entire understanding of the parties with respect to the matters and transactions contemplated by this Agreement and shall supersede any prior agreement and understanding with respect to such matters and transactions. This Agreement may be amended only in writing signed by all parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement may be executed by the parties hereto by facsimile or other electronic signature and in counterparts each of which shall constitute an original and all of which when together shall constitute but one instrument.

11.    Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

12.    No Third Party Beneficiaries. The parties to this Agreement hereby manifest their intent that no third party shall be deemed a third party beneficiary of this Agreement.

*[Signature Page(s) Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

DYNAMO STADIUM, LLC, as Tenant

By: \_\_\_\_\_  
Name:  
Title:

HARRIS COUNTY-HOUSTON SPORTS AUTHORITY, as Landlord

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**Proposed Additional Work**

Switch Project

All Inclusive Package Equipment

## **Eddie Jeanes**

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**From:** Juan Rodriguez <jrodriguez@bbvastadium.com>  
**Sent:** Wednesday, November 18, 2020 11:25 AM  
**To:** Arnold, Mark  
**Cc:** Janis Burke; Eddie Jeanes; Nicolas Somoano; Lance Eversole  
**Subject:** RE: Board Meeting Agenda Item - 2020 BBVA Stadium Projects  
**Attachments:** BBVA All Inclusive Equipment List 2020 v.4[1].xlsx

Mark

Attached is the description and attached list. Please let me know if a. this is what had been requested and b. if I still need to present tomorrow.

### **Switch Project**

The new switching does for the wired side of the stadium network what we did for the wireless side last year. All existing core and edge networks switches had reached their end of life and were no longer supported by their manufacturer which represents a risk to network availability and security. The new network infrastructure is based on the latest technology from Extreme Networks, a leader in campus and institutional network infrastructure, providing gigabit connections across the whole network as well as a redundant core for reliability and a unified management interface.

### **All Inclusive Equipment**

Our Sports Club was converted into an ALL-INCLUSIVE Club for 2020. Stadium was not equipped to provide this service, so upgrades and/or purchases of equipment were required. List attached.

**From:** Arnold, Mark <MarkArnold@andrewskurth.com>  
**Sent:** Monday, November 16, 2020 2:32 PM  
**To:** Juan Rodriguez <jrodriguez@bbvastadium.com>; Janis Burke <JBurke@houstonssports.org>  
**Cc:** Eddie Jeanes <EJeanes@houstonssports.org>  
**Subject:** RE: Board Meeting Agenda Item - 2020 BBVA Stadium Projects

Juan:

We will need a description of the Switch Project and a listing of what the All Inclusive Equipment is. We prefer not to go to the board without the projects adequately defined. mba

**HUNTON  
ANDREWS KURTH**

**Mark Arnold**  
Partner  
markarnold@HuntonAK.com  
p 713.220.3938  
m 713.876.9063  
bio | vCard

Hunton Andrews Kurth LLP  
600 Travis Street  
Suite 4200  
Houston, TX 77002

HuntonAK.com

This communication is confidential. If you are not an intended recipient, please advise by return email immediately and then delete this message, including all copies and backups.

**From:** Juan Rodriguez <[jrodriguez@bbvastadium.com](mailto:jrodriguez@bbvastadium.com)>  
**Sent:** Monday, November 16, 2020 2:17 PM  
**To:** Janis Burke <[JBurke@houstonssports.org](mailto:JBurke@houstonssports.org)>  
**Cc:** Arnold, Mark <[MarkArnold@andrewskurth.com](mailto:MarkArnold@andrewskurth.com)>; Edie Jeanes <[EJeanes@houstonssports.org](mailto:EJeanes@houstonssports.org)>  
**Subject:** Re: Board Meeting Agenda Item - 2020 BBVA Stadium Projects

Except for the switch project and All inclusive equipment, everything else was placed on hold right now. There really isn't anything to place a formal slide about

Juan A Rodriguez

On Nov 16, 2020, at 1:02 PM, Janis Burke <[JBurke@houstonssports.org](mailto:JBurke@houstonssports.org)> wrote:

Juan and Mark,

Edie and I are just trying to get prepared for the Board Meeting taking place later this week. I know that we are trying to get the Agency Agreement for the BBVA Stadium improvements signed and probably need board approval in order to sign it. Mark thought the agreement was a bit too general and the Board might need to better understand the scope of work or details, however, after touching base with Juan it appears that it's the same work that was already presented to the Board and approved last year. The work just never got completed. There may be a misunderstanding or miscommunication, so I just wanted to bring this subject matter up to ensure we are all on the same page as to what is actually needed. As a reminder, the list below are the descriptions provided and the highlighted ones were areas that Mark felt the Board might need more details about:

- Video Boards
- Field Side Seats
- Toro equipment
- Dryer
- Switch Project
- Supporter Section Retrofit
- Radio Repeater
- All Inclusive Package Equipment
- Field Re-Sod
- Concessionaire POS System

Thanks, everyone.

Janis

<2020 Dynamo Agency Agreement\_3973913\_1.DOCX>

