Meeting Date: 10/09/07

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6C

Santa Clara

All-America City

2001

DATE: October 4, 2007

TO: City Manager/Executive Director for Council/Redevelopment Agency Action

FROM: Assistant City Manager

SUBJECT: Amendments to Legal and Fiscal Consulting Services Agreements for the Completion of the San Francisco 49ers Stadium Feasibility Study

EXECUTIVE SUMMARY:

At their February 6, 2007 meeting the Redevelopment Agency directed the City Manager to proceed with a feasibility study for a San Francisco 49ers proposed stadium to be sited in the parking lot of Great America Theme Park. Additionally, the Agency authorized an appropriation of $200,000 of Agency funds for specialized legal and consulting services to support City/Agency staff in completing the feasibility study. These monies come from Redevelopment Agency tax increment revenues and can only be used to support redevelopment activities in the North Bayshore Area. General Fund monies have not been used in engaging consulting services for the evaluation of the stadium proposal.

At their April 3, 2007 meeting, the Agency approved a legal services agreement with the firm of Goldfarb Lipman ($68,000) and a fiscal and economic analysis consulting agreement with the firm of Keyser Marston Associates ($75,000). Additionally, $57,000 of the initial $200,000 appropriation was set aside for specialized consulting in the areas of sports financing and operations. At this point in time, staff had not yet been presented with the 49ers stadium proposal, and commented in the Agency report that a definitive budget for a stadium feasibility study could not be determined in advance, as the scope and depth of the issues involved in such a project were not yet known.

At a special "Committee of the Whole" meeting on April 24, 2007, the Agency received the 49ers stadium proposal and financing plan. City/Agency staff and consultants have been rigorously and diligently working with the 49ers the past five months in analyzing and evaluating the myriad of issues involved in stadium financing, construction, and operation. At the July 10, 2007 Agency meeting, staff requested $115,000 in additional funding for Goldfarb Lipman ($50,000) and Keyser Marston Associates ($65,000) to continue in the analysis and evaluation phase of the feasibility study. Staff is adhering to the feasibility study guidelines adopted by the Council/Agency in January, 2007, particularly those guidelines that speak to no commitment of General Fund or Utility monies to a stadium project and the need for Cedar Fair's cooperation in siting a stadium project in their contracted Theme Park parking area. This work effort is ongoing, and while not yet completed, staff anticipates concluding the feasibility study process by the end of this calendar year.

In order to complete the remaining work on the feasibility study, it is necessary to amend and supplement the legal services and fiscal and economic analysis consulting agreements in the amount of $185,000. This supplemental amount results in a total feasibility study cost of $500,000. Staff believes this is a conservative estimate of the cost to complete the study and that some portion of the total appropriation may not be spent by the conclusion of the study. The remaining three months of the feasibility study are critical, as the 49ers' initial proposal is being evaluated against the staff analysis to date. Various options have been developed on

numerous issues with staff continuing to work with the 49ers in testing the viability of the financing, construction and operations components of the proposal and report staff findings to the Council/Agency by the end of the year. Contract amendments in Council offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:
Extending the contract length and funding for the Agency's external legal counsel and fiscal and economic consultant will allow staff the opportunity to continue with the stadium feasibility study into and through its final stages, employing resources that have been critical to the evaluation effort to date. Staff anticipates reporting to the Council/Agency on the results of the feasibility study by the end of December 2007.

ECONOMIC/FISCAL IMPACT:
These amendments increase the contractual not-to-exceed amount by $185,000, in addition to the existing $315,000 previously approved. The amendments result in a total feasibility study cost of $500,000. Funds are available in the Redevelopment Agency Contractual Services account (901-9011-87870). Staff anticipates that this additional contractual capacity will be sufficient to complete the stadium feasibility study.

RECOMMENDATION:
It is recommended that the Council/Agency:

1. Approve a consulting contract amendment with Goldfarb Lipman for legal, redevelopment law, land use, and negotiating expertise to assist staff in the 49er stadium feasibility study in an amount not to exceed $90,000.00 (901-1012-87870-(I)2292-(A)04949);
2. Approve a consulting contract amendment with Keyser Marston Associates, Inc. for fiscal and economic land use issues, economic benefits analysis and stadium financing options analysis to assist staff in the 49er stadium feasibility study in an amount not to exceed $95,000.00 (901-1012-87870-(I)2292-(A)04949).

Ronald E. Garratt
Assistant City Manager

Certified as to Availability of Funds:
901-9011-87870 $ 185,000.00

Mary Ann Parrot
Redevelopment Agency Treasurer

APPROVED:

Jennifer Sparacino
City Manager/Executive Director for
Redevelopment Agency

Documents Related to this Report:
1) Amendments to Legal and Fiscal Consulting Services Ageements

CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: October 9, 2007

SUBJECT: Amendment 2 with Goldfarb & Lipman to provide legal services in support of the 49ers stadium feasibility study.

CERTIFICATION

The proposed amendment regarding the provision of legal services in support of the 49ers stadium feasibility study has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published _____ time(s) at least _____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 200__.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:
Title _____ *U.S.C. §* _____
(Titles run 1 through 50)

California Codes:
Code _____ *§* _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:
Title _____ *C.F.R. §* _____
(Titles run 1 through 50)

California Regulations:
Title _____ *California Code of Regulations §* _____
(Titles run 1 through 28)

City
City Charter § _____ *(i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)*
City Code § _____

1. As to City Functions, by

   _____
   Department Head

2. As to Legality, by

   _____
   City Attorney's Office

3. As to Environmental Impact Requirements, by

   _____
   Director of Planning and Inspection

4. As to Substance, by

   _____
   City Manager

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AMENDMENT 2 TO THE LEGAL SERVICES AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA AND GOLDFARB & LIPMAN LLP

This agreement ("Amendment 2") is made and entered into on this ____ day of October, 2007, ("Effective Date") by and between The Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code section 33000, et seq.) ("Agency") with its primary business address at 1500 Warburton Avenue, Santa Clara, CA 95050, and Goldfarb & Lipman LLP, a limited liability partnership ("Firm") with its primary business address at 1300 Clay Street, 9th Floor, Oakland, CA 94612. Agency and Firm may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The Parties previously entered into an agreement entitled "Legal Services Agreement by and between the Redevelopment Agency of the City of Santa Clara and Goldfarb & Lipman LLP," dated April 3, 2007 (the "Original Agreement"); and

B. The Parties entered into the Original Agreement for the purpose of having Contractor provide legal services. The Parties amended the Original Agreement to increase the not-to-exceed amount of sixty-eight thousand dollars ($68,000.00) by fifty thousand dollars ($50,000.00), bringing the total not-to-exceed amount to one hundred eighteen thousand dollars ($118,000.00), dated July 10, 2007 ("Amendment 1"); and

C. The Parties amended the Original Agreement and Amendment 1 to increase the not-to-exceed amount of one hundred eighteen thousand dollars ($118,000.00) by ninety thousand dollars ($90,000.00), bringing the total not-to-exceed amount to two hundred eight thousand dollars ($208,000.00), dated October 9, 2007 ("Amendment 2").

In consideration of the above Recitals and the following mutual covenants and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

1. That the paragraph entitled "Maximum Not to Exceed Contract Amount" of Exhibit A, entitled "Scope of Work and Schedule of Fees and Charges" of the Original Agreement, is hereby amended to read as follows:

   "**Maximum Not to Exceed Contract Amount**.
   In no event shall the total amount paid to the Firm for services, including all fees, cost and/or expenses, under this Agreement exceed two hundred eight thousand dollars ($208,000.00) per fiscal year, subject to budgetary appropriations."

2. All other terms of the Original Agreement and Amendment 1which are not in conflict with the provisions of this Amendment 2, shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement, Amendment 1 and this Amendment 2, the provisions of this Amendment 2 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment 2 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment 2 shall become operative on the Effective Date first set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,
a redevelopment agency, a public body, corporate and politic,
organized and existing in the County of Santa Clara,
under and by virtue of the laws of the State of California

APPROVED AS TO FORM:

HELENE L. LEICHTER
Agency General Counsel

JENNIFER SPARACINO
Executive Director

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
Agency Secretary

"Agency"

GOLDFARB & LIPMAN LLP
a California limited liability partnership

By:

LEE C. ROSENTHAL
Partner
1300 Clay Street, 9th Floor
Oakland, CA 94612
Telephone: (510) 836-6336
Fax Number: (510) 836-1035

"Firm"

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CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: October 9, 2007

SUBJECT: Amendment 2 with Keyser Marston Associates to provide fiscal and economic analysis services in support of the 49ers stadium feasibility study.

CERTIFICATION

The proposed amendment regarding the provision of fiscal and economic analysis services in support of the 49ers stadium feasibility study has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published _____ time(s) at least _____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 200__.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:
Title _____ *U.S.C. §* _____
(Titles run 1 through 50)

California Codes:
Code _____ *§* _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:
Title _____ *C.F.R. §* _____
(Titles run 1 through 50)

California Regulations:
Title _____ *California Code of Regulations §* _____
(Titles run 1 through 28)

City
City Charter § _____ *(i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)*
City Code § _____

1. As to City Functions, by

_____
Department Head

2. As to Legality, by

_____
City Attorney's Office

3. As to Environmental Impact Requirements, by

_____
Director of Planning and Inspection

4. As to Substance, by

_____
City Manager

AMENDMENT 2 TO THE PROFESSIONALSERVICES AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA AND KEYSER MARSTON ASSOCIATES, INC.

This agreement ("Amendment 2") is made and entered into on this ____ day of October, 2007, ("Effective Date") by and between The Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code section 33000, et seq.) ("Agency") with its primary business address at 1500 Warburton Avenue, Santa Clara, CA 95050, and Keyser Marston Associates, Inc., a California corporation ("Consultant"), with its primary business address at Golden Gateway Commons, 55 Pacific Avenue Mall, San Francisco, CA 94111. Agency and Consultant may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The Parties previously entered into an agreement entitled "Agreement for Professional Services by and between the Redevelopment Agency of the City of Santa Clara and Keyser Marston Associates, Inc.," dated April 3, 2007 (the "Original Agreement"); and

B. The Parties entered into the Original Agreement for the purpose of having Contractor provide fiscal, economic and land use analysis services. The Parties amended the Original Agreement to increase the not-to-exceed amount of seventy-five thousand dollars ($75,000.00) by sixty-five thousand dollars ($65,000.00), bringing the total not-to-exceed amount to one hundred forty thousand dollars ($140,000.00), dated July 10, 2007 ("Amendment 1"); and

C. The Parties amended the Original Agreement and Amendment 1 to increase the not-to-exceed amount of one hundred forty thousand dollars ($140,000.00) by ninety five thousand dollars ($95,000.00), bringing the total not-to-exceed amount to two hundred thirty five thousand dollars ($235,000.00), dated October 9, 2007 ("Amendment 2").

In consideration of the above Recitals and the following mutual covenants and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

1. That the paragraph entitled "Maximum Not to Exceed Contract Amount" of Exhibit A, entitled "Scope of Work and Schedule of Fees and Charges" of the Original Agreement, is hereby amended to read as follows:

"**Maximum Not to Exceed Contract Amount**.
In no event shall the total amount paid to the Consultant for services, including all fees, cost and/or expenses, under this Agreement exceed two hundred thirty five thousand dollars ($235,000.00) per fiscal year, subject to budgetary appropriations."

2. All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment 2, shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement, Amendment 1 and this Amendment 2, the provisions of this Amendment 2 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment 2 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment 2 shall become operative on the Effective Date first set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,
a redevelopment agency, a public body, corporate and politic,
organized and existing in the County of Santa Clara,
under and by virtue of the laws of the State of California

APPROVED AS TO FORM:

HELENE L. LEICHTER
Agency General Counsel

JENNIFER SPARACINO
Executive Director

ATTEST:

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

ROD DIRIDON, JR.
Agency Secretary

"Agency"

Keyser Marston and Associates, Inc.
a California corporatation

By:

A. JERRY KEYSER
Chairman of the Board
55 Pacific Avenue Mall
San Francisco, CA 94111
Telephone: (415) 398-3050
Fax Number: (415) 397-50655

"Consultant"

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