



Date: October 20, 2009

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

From: Administrative Analyst to the City Manager

Subject: Recommendation from the Charter Review Committee to Use the Authority Granted by SB 43 to Allow a Design/Build Construction Process and the Use of the General Contractor Chosen by the Stadium Authority for the Proposed New Stadium

EXECUTIVE SUMMARY:

On June 23, 2009, Council established a process and timeline for creating a Charter Review Committee. The purpose of the Charter Review Committee was to determine if existing City Charter language requiring competitive bidding for Public Works projects could be modified to allow for some focused, limited use of a design/build process not subject to competitive bidding in some or all of the construction of an NFL stadium. Seventeen members were appointed: seven members directly appointed by each Council member, eight at-large members selected by Council through an application/interview process, one member selected by the Citizens Advisory Committee, and one member selected by the Chamber of Commerce. The Committee met a total of three times: August 20, 2009; September 3, 2009; and September 17, 2009 (copies of the minutes are attached). The Committee selected Don Von Raesfeld as chair and Pat Kolstad as vice chair.

According to the San Francisco 49ers, one of the most important aspects of the stadium project is to have the ability to construct the stadium using methods and techniques that the Team believes are most favorable to ensuring a timely completion at an agreed-to budget. From the Team's perspective, this requires the use of a design/build construction methodology, with the ability to select the general contractor of their choice, especially because the Team would carry the responsibility for any cost overruns on the project. As explained to the Charter Review Committee, the Team went through a detailed, competitive selection process in 2006 to designate a preferred general contractor. After this process was completed, the Team then determined that the City of Santa Clara was their preferable site to construct an NFL stadium. City staff and Team representatives provided the Charter Review Committee with a thorough explanation of City Charter Section 1310 bidding procedures and the current state-of-the-art processes for a design/build project at the Committee's September 3, 2009 meeting. The team representatives presented two specific requests to the Committee: 1) Allow the team to use a design-build process to help manage their cost overrun risk; and 2) Allow the team to continue using their previously-selected General Contractor to manage the stadium construction process.

Staff also presented an overview of Senate Bill 43, a bill introduced by Senator Elaine Alquist. SB 43 would authorize a joint powers agency that includes the City and its Redevelopment Agency to let a design-build contract without using the competitive bid process specified in Section 1310 of the City Charter for the construction of a stadium in Santa Clara. Passage of SB 43 would not mandate that the City use its provisions; rather, it would give the City an additional option for consideration in the process of building of a stadium, one that did not require a change to the existing City Charter. Council referred SB 43 to the Charter Review Committee so that it could be reviewed and considered as part of the Committee's deliberations.

City Manager for Council Action

Recommendation from the Charter Review Committee to Use the Authority Granted by SB 43 to Allow a Design/Build Construction Process and the Use of the General Contractor Chosen by the Stadium Authority for the Proposed New Stadium

October 20, 2009

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After careful review and consideration of all the information and materials presented, the Charter Review Committee at its September 17, 2009 meeting made the following recommendation:

- If Senate Bill 43 is signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium; and
- If Senate Bill 43 is not signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council propose that the City Charter be amended by a vote of the people in accordance with the draft language proposed, including
 - The City Charter be amended to provide a design/build process similar to that proposed in Senate Bill 43
 - The City Charter amendment would only apply to the proposed stadium
 - The City Charter amendment would allow the Stadium Authority to select a design/build contractor on a sole source basis, but would require that the majority of the subcontractors be awarded on a competitive bid basis
 - The Charter Amendment would provide that any City investment from Redevelopment Agency (RDA) and Community Facilities District (CFD) funds would be used only to pay subcontractors selected based on City's existing bid process.

At the time of the Charter Review Committee's final meeting, it was not yet known whether SB 43 would be signed into law. Since then, the Governor has in fact signed SB 43 (October 11, 2009). A copy of the bill is attached.

Also attached to this agenda report is information from the City Clerk/Auditor regarding updated options and costs regarding potential ballot measures.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Using the authority granted under SB 43 would allow the 49ers to use a design/build construction process and allow the sole source selection of the general contractor by the Stadium Authority. It also requires that public funds used in financing stadium construction be competitively bid in compliance with existing Charter Section 1310 language. In addition, use of SB 43 avoids the need to modify Section 1310 of the City Charter, thereby avoiding the costs of putting Charter modification language on a ballot. The 49ers have committed to cover any cost overruns associated with construction of the stadium, protecting the City's General Fund and Enterprise Funds from impacts. A disadvantage is that the use of SB 43 could be perceived as a way of avoiding the requirement for public bidding contained in the Charter. Additionally, SB 43 contains more reporting requirements to the State than are needed under the City Charter.

ECONOMIC/FISCAL IMPACT:

Use of SB 43 would avoid the costs associated with putting a Charter modification measure on a ballot that would allow for the sole sourcing of the General contractor for the stadium project only. Additional staff time would be necessary to generate the state-mandated reports under SB 43, at an unknown cost. However, the state reporting requirement is one time only, not an annual reporting requirement.

COUNCIL OPTIONS:

The Council can consider one of three options regarding the Charter Review Committee's recommendation:

1. Note and File the minutes of the September 17, 2009 Charter Review Committee meeting, and take no further action to either use the provisions of SB 43 or make changes to the language in the City Charter, thereby requiring the Stadium Authority to use the competitive bidding process outlined in Section 1310 of the City Charter for the proposed new stadium.
2. Note and File the minutes from the September 17, 2009 Charter Review Committee meeting, and recommend that the City Charter be amended by a vote of the people to provide a design/build process similar to that proposed in Senate Bill 43 and to allow the Stadium Authority to select a design/build contractor on a sole source basis, with the provision that the majority of the subcontracts be awarded on a competitive bid basis.
3. Approve the Charter Review Committee's recommendation to use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium, and Note and File the minutes from the September 17, 2009 Charter Review Committee meeting.

RECOMMENDATION:

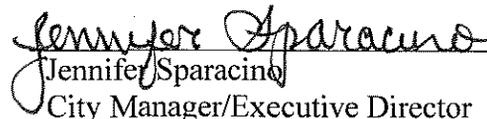
That the Council:

- 1) Approve Option 3, which is to accept the Charter Review Committee's recommendation to use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium, and Note and File the minutes from the September 17, 2009 Charter Review Committee meeting;
- 2) Authorize a letter of thanks to the Charter Review Committee members for serving on the Committee.

APPROVED:



Pam Morrison
Administrative Analyst to the City Manager



Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:

- 1) *Charter Review Committee Minutes dated September 17, 2009*
- 2) *October 15, 2009 Memo from City Clerk/Auditor on Options and Costs Regarding Potential Ballot Measure for the Proposed San Francisco 49ers Stadium*
- 3) *Charter Review Committee Minutes date September 3, 2009*
- 4) *Charter Review Committee Minutes dated August 20, 2009*
- 5) *Text of Senate Bill 43 (Alquist)*



CITY OF SANTA CLARA CITY CLERK'S OFFICE



Date: October 16, 2009
To: City Council, City Manager
From: City Clerk/Auditor
Subject: Updated Options and Costs Regarding Potential Ballot Measure for the Proposed San Francisco 49ers Stadium

Please find the below updated information regarding election options for the proposed San Francisco 49ers Stadium up to and including the 2010 Primary Election.

- 1) **March 2, 2010 All Mail Ballot Election:** It was recently indicated by the City Attorney's Office that the option of an all mail ballot election to be held in March of 2010 is not available to the City of Santa Clara. The Elections Code limits this option to cities with 100,000 residents or less and the City of Santa Clara currently has approximately 117,000 residents. The City Charter has not specifically reserved the right for the City of Santa Clara to hold all mail ballot elections above and beyond the Elections Code. While state law may allow this in the future, an all mail ballot is currently not an option in Santa Clara.
- 2) **April 13, 2010 Special City Election:** It would be appropriate to call an April 13, 2010 Special City Election at the Council meeting of either December 8th or 15th, 2009. The estimated costs for this election are \$652,395 for a single measure, or \$818,998 for two measures.
- 3) **June 8, 2010 Primary Election:** It would be appropriate to call a June 8, 2010 Primary Election at the City Council meeting of either February 9th or February 16th, 2010. The estimated costs for this election are \$151,644 for a single measure, or \$221,965 for two measures.

Please note that the above information is subject to modification based on the final Registrar of Voters election calendar and other factors. Please let me know if you would like additional information regarding potential options to place the proposed San Francisco 49ers Stadium on the ballot.

A handwritten signature in black ink, appearing to read "Rod Diridon, Jr.", written over a horizontal line.

Rod Diridon, Jr.
City Clerk/Auditor

Documents Related to this Report:

- 1). *Calendar for Year 2010 City Council Meetings*



Calendar for Year 2010 City Council Meetings



January						
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KEY

○ City Holiday

□ City Council Meeting

Charter Review Committee Meeting Minutes
September 17, 2009, 5:30 p.m.
Central Park Library, Redwood Room

In attendance:

Don Von Raesfeld, Committee Chair
Pat Kolstad, Committee Vice Chair
Aldyth Parle, Committee Member
Dan MacNaughton, Committee Member
Dave DeLozier, Committee Member
Dick Wentz, Committee Member
Don Callejon, Committee Member
Fred Raia, Committee Member
George Netto, Committee Member
John Haggerty, Committee Member
Kathleen Lockwood, Committee Member
Larry Marsalli, Committee Member
Lisa Gillmor, Committee Member

Raymond Gamma, Committee Member
Rosalie Wilson, Committee Member
Steve Chan, Committee Member

Jennifer Sparacino, City Manager
Ron Garratt, Assistant City Manager
Rod Diridon, Jr., City Clerk/City Auditor
Helene L. Leichter, City Attorney
Carol McCarthy, Deputy City Manager
Rajeev Batra, Director of Public Works
Kevin Riley, Director of Planning & Insp.
Pam Morrison, Administrative Analyst
Jashma Kadam, Senior Staff Aide

Guests:

John Wasson, 49ers
Harry O'Brien, 49ers
Steve Fine, 49ers
Lisa Lang, 49ers
Larry MacNeil, 49ers

Steve Van Dorn, Santa Clara Chamber of
Commerce/CVB
Bill Gissler, Resident
Bill Bailey, Resident
James Rowen, Resident
Stephen Hazel, Resident

Matters for Council Action: The Charter Review Committee, by majority vote, made the following recommendation to the City Council:

- If Senate Bill 43 is signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium; and
 - If Senate Bill 43 is not signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council propose that the City Charter be amended by a vote of the people in accordance with the draft language proposed, including
 - The City Charter be amended to provide a design/build process similar to that proposed in Senate Bill 43
 - The City Charter amendment would only apply to the proposed stadium
 - The City Charter amendment would allow the Stadium Authority to select a design/build contractor on a sole source basis, but would require that the majority of the subcontractors be awarded on a competitive bid basis
 - The Charter Amendment would provide that any City investment from RDA and CFD funds would be used only to pay subcontractors selected based on City's existing bid process.
-

Call to Order: The meeting was called to order by Chair, Don Von Raesfeld, at 5:30 p.m. The City Manager announced the absence of Committee Member Jim Lee. The City Manager went through the agenda items and binder handouts, including responses to questions from Committee Member John Haggerty and Bill Gissler. She advised the Committee that they could make a recommendation to the City Council at this meeting, or if more time was needed for deliberation, they could request one additional meeting on October 1, 2009.

SB 43 Update: The City Manager provided an update on Senate Bill 43. The City Council referred this bill regarding design/build option for a Stadium in Santa Clara to the Charter Review Committee as one of several options for their consideration. This bill has now passed both the State Assembly and Senate; October 11 is the deadline for the Governor to either sign or veto the bill. The bill, if signed into law, would allow for design/build construction process for the Stadium, based on certain conditions, which include no City's General or Enterprise funds to be used in the construction of the stadium. Further, RDA funds or Mello Roos District funds may only be used for subcontracts awarded on the basis of the lowest responsible bidder. Per this bill, the Stadium Authority would have to report to the State on the status of Stadium construction work. Voters would have to approve the Stadium; no City Charter amendment would be required.

Presentation of Options with Analysis of Advantages/Disadvantages for Committee

Consideration: The City Manager gave a powerpoint presentation on the draft amendment language to the City Charter which would provide an alternative process for stadium construction, if SB 43 is not signed into law. She informed the Committee that the conditions for use of Stadium contract procedures are still being worked on. She pointed out that the draft language mentions the specific amount of \$40 million dollars while the Senate Bill 43 states "funding is limited to a specific maximum amount." The RDA investment is capped at \$40 million dollars plus approximately \$1.7 million for a share of development fees.

The Assistant City Manager continued the presentation with the advantages and disadvantages of modifying, or not modifying, Section 1310 of the City Charter. He also reviewed the advantages and disadvantages of the Stadium Authority choosing to use Senate Bill 43 to accomplish the Sole Source Engagement of a General Contractor for a 49ers stadium project. He stated the City Charter has served the City well for decades. However, Staff also understands that under requirements of the Term Sheet, the Team is responsible to pay for all construction cost overruns, and as such has significant concern that the cost overruns remain minimal considering the risk they are taking.

If the Governor signs SB 43 into law, the Charter Review Committee could recommend that the City use the authority granted in the bill to allow a design/build construction process and the sole source selection of the general contractor by the Stadium Authority. This will also solidify the Team's commitment to cover all construction cost overruns. In addition, the bill will require public funds used in financing stadium construction to be competitively bid in compliance with existing Charter Section 1310. If SB 43 does not pass, there will be two ballot measures: one for the approval of the Term Sheet, and the second, for City Charter amendment to allow for some focused, limited use of a design/build process not subject to competitive bidding in some or all of the construction of an NFL stadium. Both measures will have to be approved by the voters for the project to move forward.

Larry McNeil from the 49ers responded verbally to Bill Gissler's questions, which were submitted following the September 3, 2009 meeting. Mr. McNeil stated the Team will not publish the construction cost estimates for the stadium in order for the bidding of contracts to be a fair and competitive process. He stated that the Team would invite bids from subcontractors from local area; however for specialized contract work they would look for contractors nationally. A letter from Turner Construction responding to other questions from Mr. Gissler was also included in the handouts. Committee Member Don Callejon advised the Committee that the Santa Clara Unified School District had contracted with Turner Construction to rebuild the Buchser Middle School Science Building and the project was completed ahead of schedule.

When asked, under public presentation, why sole sourcing of contractor was never specified in the Term Sheet, the Assistant City Manager said the Term Sheet is not the final definitive agreement. The Development and Disposition Agreement is still in the process of being negotiated and will speak to this issue. The Term Sheet is to make the community aware of the key points of negotiations.

Committee Discussion and Deliberation: Committee Member Pat Kolstad proposed, and Committee Member Kathleen Lockwood seconded, the following motion for consideration of the Charter Review Committee:

- If Senate Bill 43 is signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium; and
- If Senate Bill 43 is not signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council propose that the City Charter be amended by a vote of the people in accordance with the draft language proposed, including
 - The City Charter be amended to provide a design/build process similar to that proposed in Senate Bill 43
 - The City Charter amendment would only apply to the proposed stadium
 - The City Charter amendment would allow the Stadium Authority to select a design/build contractor on a sole source basis, but would require that the majority of the subcontractors be awarded on a competitive bid basis
 - The Charter Amendment would provide that any City investment from RDA and CFD funds would be used only to pay subcontractors selected based on City's existing bid process.

In the discussion that ensued, it was asked whether SB 43's grant of power directly to the Stadium Authority to use design/build construction process would override Section 1310 of the City Charter. It was clarified for the Committee that the City Council approved the Term Sheet on the proposed stadium project and referred the specific issue of competitive bidding to the Charter Review Committee for its recommendation on how to deal specifically with the Charter language and design/build process. In response to Committee Member John Haggerty's letter and questions from several Committee Members, the City Attorney advised the Committee that SB 43 does not appear to conflict with Charter Section 1310, as SB 43 only grants the power of design/build to the Stadium Authority, which is a separate and distinct legal entity from the City. The limitation in Charter Section 1310 would apply only to the City.

The Committee was also advised that the funding of the stadium is more significant than the RDA and Mello Roos funds. The Stadium Authority will award the contract for the entire stadium construction budget.

Committee Member Lisa Gillmor supported the motion and provided comments in favor of it. The motion was carried by a majority, with one opposing vote. The agenda report on the Charter Review Committee's recommendation will be on Council agenda for the October 27th meeting.

Public Presentations: Stephen Hazel and James Rowen made some general comments.

Adjournment: The meeting adjourned at 6:55 p.m. Since the motion was carried by the majority, no additional meeting was scheduled.

Prepared by:



Jashma Kadam
Senior Staff Aide

APPROVED:



Jennifer Sparacino
City Manager

09/29/09

6D-6

**Charter Review Committee Meeting Minutes
September 3, 2009, 5:30 p.m.
Central Park Library, Redwood Room**

In attendance:

Don Von Raesfeld, Committee Chair
Pat Kolstad, Committee Vice Chair
Aldyth Parle, Committee Member
Dave DeLozier, Committee Member
Dick Wentz, Committee Member
Don Callejon, Committee Member
Fred Raia, Committee Member
George Neto, Committee Member
James E. Lee, Committee Member
John Haggerty, Committee Member
Kathleen Lockwood, Committee Member
Larry Marsalli, Committee Member
Steve Chan, Committee Member

Lisa Gillmor, Committee Member
Rosalie Wilson, Committee Member

Jennifer Sparacino, City Manager
Ron Garratt, Assistant City Manager
Rod Diridon, Jr., City Clerk/City Auditor
Helene L. Leichter, City Attorney
Carol McCarthy, Deputy City Manager
Rajeev Batra, Director of Public Works
Kevin Riley, Director of Planning & Insp.
Jashma Kadam, Senior Staff Aide

Guests:

John Wasson, 49ers
Harry O'Brien, 49ers
Steve Fine, 49ers
Lisa Lang, 49ers
Larry MacNeil, 49ers

Steve Van Dorn, Santa Clara Chamber of
Commerce/CVB
Bill Gissler, Resident
Judy Boccignone, Resident
Bill Bailey, Resident
James Rowen, Resident

Matters for Council Action: None

Call to Order: The meeting was called to order by Chair, Don Von Raesfeld, at 5:30 p.m. The City Manager announced the absence of Committee Member Raymond Gamma and Dan MacNaughton. Excusing the absence was moved by the Chair, seconded and carried unanimously.

SB 43 Update: At the August 25, 2009 City Council meeting, SB 43 was referred to Charter Review Committee to consider as one of several potential options. The City Manager reviewed the agenda items for the meeting. She provided an update on SB 43 which passed the Assembly 50-13. Senator Alquist's office advised that the final vote may change slightly because some Assembly members were not on the Floor for the vote. The next step is the Senate: Senate Local Government hearing on Tuesday or Wednesday the following week; Senate Floor vote on Wednesday, Thursday, or Friday the same week. October 11 is the deadline for the Governor to sign or veto the bill. Copies of the updated SB 43 were handed out to Committee members.

Presentation on Existing Charter Language-City Process for Public Works Project: The Chair called the main agenda items for the meeting (1) an overview of the City's Competitive Bidding process for construction projects presented by Director of Public Works; and (2) a presentation by the 49ers representative John Wasson, explaining their request for a design/build process.

The Director of Public Works gave a powerpoint presentation on the City's competitive bidding process for construction projects. He read Section 1310 of the City Charter which pertains to Public Works contracts stating that the City Council may reject any and all bids presented and may re-advertise at its discretion. He explained some of the definitions of the terms used and the different project delivery methods which included Design/Bid/Build (standard method used by the City); Design/Build; Multi-prime; and Construction Manager-At Risk. The features of each project delivery methods were discussed along with the pros and cons of each. In addition, the Director of Public Works provided examples of City facilities built with each of the methods used. It was noted that the Construction Manager-At Risk method has not been used by the City of Santa Clara.

Presentation on the Design/Build Process as it would Relate to a Stadium in Santa Clara:

John Wasson, Stadium Project Manager for the 49ers, also gave a powerpoint presentation. He informed the Committee that under the Term Sheet, the 49ers have agreed to cover the construction cost overruns and would, therefore, need to manage the design and construction process of the stadium. In order to manage this risk, the 49ers are proposing that the City modify its Charter *only with respect to the Stadium Project*. The Charter, as it currently stands, would continue to apply to all other City projects.

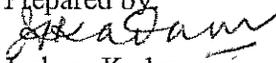
In light of the above, the 49ers asked the Charter Review Committee for the consideration on the following two items: (1) to allow the 49ers to use a Design/Build process to help manage cost overrun risk; and (2) ask the City to allow the 49ers to continue using their previously selected General Contractor to manage the stadium construction process. Mr. Wasson proposed that the Design/Build project delivery would be ideal for the stadium and that the entire amount of \$75 million in project contributions from the Santa Clara Redevelopment Agency and the Community Facilities District (Mello-Roos Bonds) be competitively bid, using the method currently allowed by the City's Charter. Mr. Wasson added that the 49ers would pursue a Charter Amendment only if SB 43 does not become law.

Next Meeting: The next meeting is scheduled for September 17, 2009, at 5:30 p.m.

Public Presentations: Mr. Bill Gissler raised several questions. He was requested to submit his questions in writing to the City Manager's Office, with responses to be provided at the next Charter Review Committee meeting. James Rowen made some general comments.

Adjournment: The meeting adjourned at 7:05 p.m. to the next meeting scheduled for September 17, 2009.

Prepared by:


Jashma Kadam
Senior Staff Aide

APPROVED:


Jennifer Sparacino
City Manager

09/15/09

7D.1

Charter Review Committee Meeting Minutes
August 20, 2009, 5:30 p.m.
Central Park Library, Redwood Room

In attendance:

Aldyth Parle, Committee Member
Dan MacNaughton, Committee Member
Dick Wentz, Committee Member
Don Callejon, Committee Member
Don Von Raesfeld, Committee Member
Fred Raia, Committee Member
George Neto, Committee Member
James E. Lee, Committee Member
John Haggerty, Committee Member
Kathleen Lockwood, Committee Member
Larry Marsalli, Committee Member
Lisa Gillmor, Committee Member
Pat Kolstad, Committee Member
Raymond G. Gamma, Committee Member
Steve Chan, Committee Member

Jennifer Sparacino, City Manager
Ron Garratt, Assistant City Manager
Rod Diridon, Jr., City Clerk/City Auditor
Helene L. Leichter, City Attorney
Rajeev Batra, Director of Public Works
Pam Morrison, Administrative Analyst
Jashma Kadam, Senior Staff Aide

Guests:

John Wasson, 49ers
Steve Van Dorn, Santa Clara Chamber of Commerce
Sandra Gonzales, *San Jose Mercury News*
Larry MacNeil, 49ers
Steve Fine, 49ers
Lisa Lang, 49ers
James Rowen, Resident

Matters for Council Action: None

1. Welcome/Introductions; Orientation to Committee Process: The City Manager called the meeting to order at 5:30 p.m., and welcomed the Committee members. She congratulated all Committee Members on their appointment by Council, in an advisory role, to the Charter Review Committee. Committee members were introduced. The City Manager provided an overview of the Committee's task, which is to determine if existing City Charter language requiring competitive bidding for Public Works projects can be modified to allow for some focused, limited use of a design/build process not subject to competitive bidding in some or all of the construction of an NFL stadium. The City Manager also pointed out that the City

Council would be the ultimate authority on any recommendation made by the Charter Review Committee.

A binder of information was provided to all members of the Committee, which included the ground rules for the meeting, process for creating Charter Review Committee, the City of Santa Clara Charter, Guiding Principles for 49ers Negotiations, the City's Code of Ethics & Values, and the Term Sheet, which the City Manager will review to put it in context with the Charter amendment.

2. **Election of Chair and Vice Chair:** The Committee unanimously voted on a Chair and Vice Chair. Don Von Raesfeld was voted Chair and Patrick Kolstad was voted Vice Chair.
3. **Review of Term Sheet:** The City Manager gave a powerpoint presentation on the Term Sheet outlining the key understandings, obligations, responsibilities, and financial arrangements between the City, the Redevelopment Agency, and the 49ers. She provided an overview of the Term Sheet's key elements and details, and the deal structure and economics of the project. The Assistant City Manager continued the presentation regarding the location of the proposed stadium site. He informed the members that the property tax from redevelopment area stays in the redevelopment fund. These funds have strict limitations and can be used for economic development only; these funds cannot be used for maintenance purposes. He added that if the State takes the proposed \$12 million dollars over the next two years, the redevelopment fund will be given an additional year through 2027 (currently Bayshore North RDA ends in 2026). In 2028, all of the redevelopment area will lose its special designation and tax revenues currently flowing to the Agency will instead accrue to the City, school district, and other agencies.

The City Manager continued with the powerpoint presentation regarding the City's Guiding Principles for the proposed stadium project, which include no use or obligation of General Fund monies; to maintain integrity of all City funds, including utilities; to maintain the industrial to residential conversion policy; no tax increase on residents, businesses, and ratepayers; to address the Theme Park issues; no loss of ground lease payments from the Theme Park; conduct an open and visible process; synergy with surrounding development, and to maintain the City's Code of Ethics & Values to be fiscally responsible.

The following Term Sheet key points were negotiated: the City/Redevelopment Agency principles will be maintained; no General Fund monies or Enterprise Funds will be used for this project, except for the substation relocation; fair market value return for the stadium site; economic benefit to the City and community; creation of a new senior and youth program fund; Redevelopment Agency investment capped at \$40 million plus \$1.7 million for share of development fees; no floor on Redevelopment Agency contribution; no new or increase in taxes; creation of a Mello-Roos hotel community facilities district only if approved by vote of affected hotels; 49ers responsible for construction cost overruns; creation of a Charter Review Committee; 49ers to pay reasonable operating costs for the stadium.

The stadium will be publicly owned. A Stadium Authority will be formed by the City of Santa Clara and the Redevelopment Agency. The City Council will serve as the governing board. The City Manager will serve as Executive Director. Neither the City, nor the Redevelopment Agency, will have responsibility for any liabilities of the Joint Powers Authority (JPA). The Stadium authority will construct the stadium and enter into a project

management agreement with 49ers stadium company. It will be a 40-year lease, with options to extend to a total of 60 years.

After the City Council approved the Term Sheet, a piece of legislation, SB 43, was introduced by Senator Alquist. The Bill is currently under amendment. The City Manager will provide more information on SB 43 at the next meeting on September 3, 2009.

During the Term Sheet discussions with the 49ers, the 49ers were aware that the City Charter requires a public bid process. The 49ers position is that it is critical to use the construction company they selected that has the expertise to build sports stadiums, to ensure that cost overruns, if any, would be minimal. It was a negotiated item that the 49ers would pay for construction overruns on the stadium.

The Disposition and Development Agreement is currently being negotiated. If voters approve the proposed stadium, financing will be secured in 2011; construction will begin in 2012; and the stadium opening is slated for 2014.

The City Manager was asked what parameters should be kept in mind when discussing the option of changing the City Charter. She informed the Committee that Committee input would be taken, followed by staff and the 49ers providing information regarding the respective bidding processes, and then deliberation from the Committee. Forty Niners representative John Wasson responded to the Committee question regarding life span of stadium building. The stadium's lifespan depends on the design and materials used and how well it is maintained. The stadium will be improved every 5 to 7 years and both the City and 49ers goals are aligned in this regard. A copy of the amended version of SB 43 will most likely be available for the next Committee meeting.

4. **Next Meeting:** The next meeting is scheduled for Thursday, September 3, 2009, 5:30 p.m., in the Redwood Room at the Central Park Library.
5. **Public Presentation:** James Rowen made general comments.
6. **Adjournment:** The meeting adjourned at 6:30 p.m.

Prepared by:

Jashma Kadam
Senior Staff Aide

APPROVED:


Jennifer Sparacino
City Manager

Senate Bill No. 43

CHAPTER 330

An act to add Section 6532 to the Government Code, relating to joint powers agencies.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 43, Alquist. Joint powers agencies: City of Santa Clara.

Under existing law, 2 or more public agencies may enter into an agreement to jointly exercise any power common to the contracting parties, as specified.

This bill would provide that the Santa Clara Stadium Authority, a joint powers agency formed by the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara, has the authority to acquire, finance, construct, manage, maintain, and operate a stadium and related facilities suitable for use by a professional football team, in addition to the powers common to the city and the redevelopment agency. The bill prohibits the redevelopment agency from expending property tax increment revenues to operate or maintain the stadium.

This bill would authorize the Santa Clara Stadium Authority to let a design-build contract without utilizing a competitive bid process for the stadium construction project, if, among other requirements, a ballot measure endorsing the development of a stadium suitable for use by a professional football team is approved by voters in a citywide election, the design-build contract does not require expenditures from the general fund of the City of Santa Clara, and the design-build contract is not funded by contributions from the Redevelopment Agency of the City of Santa Clara or a community facilities district except as provided in the bill. The bill would provide that redevelopment agency funds and community facilities district funds may be used to fund subcontracts awarded pursuant to a competitive bidding process established by the joint powers agency.

This bill would provide that for state highway improvement projects deemed necessary by the Department of Transportation based on the construction and maintenance of the stadium, the department is the responsible agency for project development services, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 6532 is added to the Government Code, to read:
6532. (a) The Legislature finds and declares that it is in the best interest of the communities located in and around the City of Santa Clara that a joint

powers agency that includes the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara formed to construct, operate, and maintain a stadium for use by a professional football team be authorized to let a sole source contract for the stadium construction project to a qualified design-build contractor. This authorization may enable that joint powers agency to contain costs, improve efficiency, and benefit from specialized expertise. Nothing in this section shall be construed to affect any contract relating to the development of the stadium between the joint powers agency and any private party other than a design-build contract awarded pursuant to this section.

(b) (1) Consistent with existing law, the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara may enter into a joint powers agreement to create and operate a joint powers agency for the construction, operation, and maintenance of a stadium and related facilities located within the North Bayshore Redevelopment Project Area that are suitable for use by a professional football team. The joint powers agency created pursuant to this section shall be known as the Santa Clara Stadium Authority. In addition to, and without limitation on, any powers common to the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara, the Santa Clara Stadium Authority shall have the power to acquire, finance, construct, manage, maintain, and operate a stadium and related facilities suitable for use by a professional football team.

(2) Notwithstanding paragraph (1), the Santa Clara Stadium Authority and the Redevelopment Agency of the City of Santa Clara shall not expend any property tax increment revenues allocated to the redevelopment agency pursuant to Section 33670 of the Health and Safety Code to operate or maintain a stadium within the North Bayshore Redevelopment Project Area.

(c) (1) Notwithstanding any other provision of law, and subject to subdivision (d), the Santa Clara Stadium Authority may award a design-build contract to a qualified design-build contractor to construct the stadium without utilizing an otherwise applicable competitive bid process, provided that all of the following have occurred:

(A) A ballot measure endorsing the development of a stadium suitable for use by a professional football team is approved by voters in the City of Santa Clara in a citywide election.

(B) The governing body of the Santa Clara Stadium Authority determines that the cost of the contract is reasonable.

(C) The governing body of the Santa Clara Stadium Authority determines that the award of the contract is in its best interest.

(2) The contract awarded to the qualified design-build contractor pursuant to paragraph (1) shall not be funded, either through direct payment or reimbursement, using funds contributed by the Redevelopment Agency of the City of Santa Clara or by a community facilities district established under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5), except that these funds may be used to pay for or reimburse for subcontract work

pursuant to subcontracts awarded by the design-build contractor to the lowest responsible bidder as provided in subdivision (e).

(d) The Santa Clara Stadium Authority shall not award a design-build contract pursuant to subdivision (c) unless all of the following conditions are met:

(1) The design-build contract does not require expenditure of money from the general fund or enterprise funds of the City of Santa Clara.

(2) The obligation of the Redevelopment Agency of the City of Santa Clara to contribute funding is limited to a specified maximum amount, exclusive of debt service and other related financing costs, and these funds are used only to pay for or reimburse for subcontract work pursuant to subcontracts awarded by the design-build contractor to the lowest responsible bidder as provided in subdivision (e). Nothing in this subdivision modifies the requirements and limitations set forth in the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code) with respect to the financial obligations of the Redevelopment Agency of the City of Santa Clara to the joint powers agency.

(3) A private party will be responsible for any construction cost overruns.

(e) If the Santa Clara Stadium Authority awards a design-build contract pursuant to this section, it shall establish a competitive bid process for awarding subcontracts, and it shall require the design-build contractor to award subcontracts using this process. This competitive bid process shall provide that subcontracts be awarded using either the lowest responsible bidder or by best value, as defined in Section 20133 of the Public Contract Code. Subcontracts awarded on the basis of best value shall not be funded, either through direct payment or reimbursement, using funds contributed by the Redevelopment Agency of the City of Santa Clara or by a community facilities district established under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5). Funds contributed by the Redevelopment Agency of the City of Santa Clara or a community facilities district may be used only to fund subcontracts awarded to the lowest responsible bidder in a manner consistent with the process applicable to the City of Santa Clara under its charter.

(f) Notwithstanding Section 3248 of the Civil Code, for design-build contracts awarded pursuant to this section, the Santa Clara Stadium Authority may specify that the payment bond shall be in a sum not less than one-half of the contract price or three hundred million dollars (\$300,000,000), whichever is less.

(g) If the Santa Clara Stadium Authority elects to proceed under this section and uses the design-build method to construct a stadium suitable for use by a professional football team, it shall submit to the Legislative Analyst's Office, within six months following the completion of construction of the stadium, a report regarding the project that shall include, but shall not be limited to, all of the following information:

- (1) A brief description of the project.
- (2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) Where appropriate, the estimated and actual length of time to complete the project.

(5) The estimated and actual project costs.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) A description of the method used to award the contract. If best value, as defined in Section 20133 of the Public Contract Code, was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(h) It is not the intent of the Legislature, under the provisions of this section, to authorize design-build for other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resource facilities and infrastructure not located on the stadium site or adjacent city streets and property.

(i) If the construction and operation or maintenance of a stadium as contemplated by this section is deemed by the Department of Transportation under otherwise applicable law to require improvements on the state highway system, all of the following provisions shall apply:

(1) Notwithstanding any other provision of this section, for any project on the state highway system deemed necessary by the department due to the construction, operation, or maintenance of the stadium as contemplated by this section, the department is the responsible agency for the performance of project development services, including performance specifications, preliminary engineering, prebid services, the preparation of project reports and environmental documents, project design, and construction inspection services. The department is also the responsible agency for the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary and final plans and specifications, and any other information deemed necessary to design and construct a project that meets the needs of the department.

(2) The department may use department employees or consultants to perform these services, consistent with Article XXII of the California Constitution. Department resources, including personnel requirements necessary for the performance of those services, shall be included in the department's capital outlay support program for workload purposes in the annual Budget Act.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application. Except as provided in this section, nothing in this section shall be construed to affect the application of any other law.

SEC. 2. The Legislature finds and declares that Section 1 of this act, that adds Section 6532 to the Government Code, is a special law which is necessary because a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of Santa Clara. In that respect, the construction, operation, and maintenance of a stadium for use by a professional football team may enhance employment opportunities in and around the City of Santa Clara and the south bay area.

O

John K. Haggerty
1400 Coleman Ave., Suite C-21
Santa Clara, CA 95050
Telephone: (408) 988-2019

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Office of the
City of Santa Clara

September 9, 2009

Helene L. Leichter
City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

COPY

Re: **Charter Review Committee**
(SB 43 And The Municipal Affairs Provisions
Of The State Constitution)

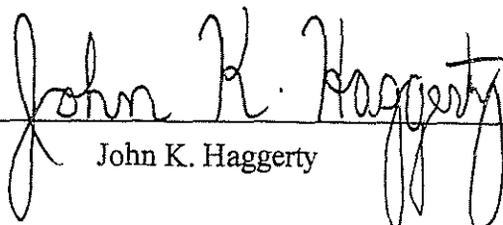
Dear Ms. Leichter:

I am writing this letter as a resident of the City of Santa Clara and a member of its current Charter Review Committee. At the last meeting of the Committee on September 3, 2009, John Watson, the project manager for the 49'ers organization, indicated to us that it was his understanding that, if the Legislature enacted SB 43, it would not be necessary for the City Charter to be amended to accomplish the "design-build" bidding mechanism his organization seeks. He apparently believes that, if SB 43 is enacted, only a ratification by the City Council would be necessary.

However, based on the contents of the memo I have enclosed herewith (regarding the municipal affairs provisions of the California Constitution), I am not certain that Mr. Watson is correct in this regard. More specifically, is it possible that, if a court were to hold that SB 43 involves a municipal affair, it could further hold that SB 43 does not trump the "lowest responsible bidder" provisions of the City Charter? I would appreciate hearing your thoughts on this subject at the next meeting of the Committee on September 17, 2009, when SB 43 is scheduled to be addressed.

If you have any questions regarding this letter or the enclosed memo, please do not hesitate to call. You may disseminate those documents to others as you see fit. Thank you for your attention to this letter.

Very truly yours,



John K. Haggerty

cc: J. Sparacino
encl.

MEMO

To: Helene L. Leichter, Esq.
(City Attorney, RDA General Counsel)

From: John K. Haggerty
(Charter Review Committee Member)

Date: September 9, 2009

Re: **A Charter City's Power To Regulate Municipal Affairs In Relation To State Legislation**

With respect to charter cities, such as the City of Santa Clara, article XI, section 5(a), of the California Constitution provides that:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and **with respect to municipal affairs shall supersede all laws inconsistent therewith.** (Emphases and boldface added.)

The respected California legal treatise, Witkin, discusses this constitutional provision as follows:

Under this theory of "municipal home rule," municipalities have supreme authority in the field of "municipal affairs," i.e., matters of internal or local concern, free from interference by the Legislature. [Numerous citations.] (8 Witkin, Summary of California Law (10th ed.), Constitutional Law, § 993, pp. 566-567 (emphasis added).)

Witkin proceeds to discuss the subject of what is a "municipal affair" as follows:

The cases have not developed a formula or test for determining whether a particular subject is a municipal affair, over which the municipality has full authority [], or is a matter of "statewide" or "general" concern as to which the legislative authority is paramount [] [Citations.]

Although the legislative purpose is entitled to great weight, the issue is one for judicial determination. "[T]he fact, standing alone, that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs, nor does it impair the constitutional authority of a home rule city or county to enact and enforce its own regulations to the exclusion of general laws if the subject is held by the courts to be a municipal affair rather than of statewide concern; stated otherwise, the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern." (*Id.* at § 995, 996, pp. 571, 572-573 (quoting *Bishop v. San Jose* (1969) 1 Cal.3d 56, 63)(emphases added).)

Memo to H. L. Leichter, Esq.
Sept. 9, 2009
Page 2 of 2

The courts have held that public contracting is a municipal affair. (See, e.g., *First Street Plaza Partners v. Los Angeles* (1998) 65 Cal.App.4th 650, 661.) In fact, the state Legislature appears to have recognized this in 2001 when it enacted Public Contract Code section 1100.7 which provides in pertinent part as follows:

With regard to charter cities, this code applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of this code.

The courts have also held that bidding procedures for public projects are a municipal affair. (See, e.g., *Piledrivers' Local Union No. 2375 v. City of Santa Monica* (1984) 151 Cal.App.3d 509, 511; *R & A Vending Services v. City of Los Angeles* (1985) 172 Cal.App.3d 1188, 1191; *Smith v. City of Riverside* (1973) 34 Cal.App.3d 529, 534.)

In addition, the courts have held that “[t]he expenditure of city funds on a city’s public works project is a municipal affair.” (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170-171 (emphasis added; also noting, at p. 171, that “it is well settled that a charter city may not act in conflict with its charter”).)

Accordingly, in light of the foregoing, it is probably worth considering whether an action proposed by the Legislature--relating to a charter city’s public works contract procedures and/or its expenditure of city funds--is inconsistent with the provisions of that city’s charter.

JKH/jkh

INTEROFFICE MEMORANDUM
Santa Clara City Attorney's Office

DATE: September 17, 2009

TO: Members of the Charter Review Committee

FROM: Helene Leichter, City Attorney

RE: SB 43 and the Municipal Affairs Doctrine

By letter dated September 9, 2009, Committee Member John Haggerty asks whether SB 43's grant of power directly to the Stadium Authority to use design-build would "trump" the language of Charter Section 1310. Charter Section 1310 currently provides that most public contracts of \$1,000 or more are subject to competitive bidding. Mr. Haggerty asks whether the "municipal affairs" doctrine in the California Constitution would require that the provisions of Charter Section 1310 be applied to the stadium project regardless of the adoption of SB 43.

The municipal affairs doctrine, embodied in Article XI, § 5(a) of the California Constitution, grants charter cities broad legislative latitude over their "municipal affairs," free from any constraint imposed by the Legislature. A "municipal affair" is not defined, and may change over time, taking into account changing social issues and mores.¹ However, in general, the greater impact an issue has on regional and state interests, the less likely it is to be a purely municipal affair.² Although competitive bidding matters are often a matter of local concern, they are not always purely "municipal affairs." For example, consideration of minority and female owned businesses required by state legislation may supersede local competitive bidding procedures.³

Although general law cities must follow the public contracting procedures set forth in the California Public Contracts Code, charter cities may, pursuant to the municipal affairs doctrine, establish their own contracting procedures for public works. The City of Santa Clara's Charter, Section 1310, provides that almost every public works project "involving an expenditure of more than one thousand dollars (\$1,000.00) . . . shall be let to the lowest responsible bidder." SB 43 provides that the Stadium Authority may instead use the design-build process for the Stadium project, upon satisfaction of certain conditions, including that voter approval of the stadium

¹ *Baggett v. Gates*, 32 Cal.3d 128, 136, 185 Cal.Rptr. 232 (1982) – state legislation regarding police officers' employment rights was of statewide concern; *Bishop v. City of San Jose*, 1 Cal.3d 56, 62-63, 81 Cal.Rptr. 465 (1969); *Committee of Seven Thousand v. Superior Court*, 45 Cal.3d 491, 505, 247 Cal.Rptr. 362 (1988). A "municipal affair" is a legal, not factual, matter for the courts. *Id.*

² *Committee of Seven Thousand*, *supra* – construction of local roads is a municipal affair; construction of regional and state highways is not.

³ *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal.App.4th 810, 820-824, 48 Cal.Rptr.2d 822, 828-831 (1996).

project be given, the cost is reasonable, the award of the contract is in the JPA's best interests, and that no monies from the general fund, enterprise funds, Mello-Roos district or RDA be used to pay for design-build activities.

Whether a subject is a municipal affair is relevant in determining whether state law is applicable to charter cities. Courts have repeatedly held that if there is no conflict between the language of a state law and a charter provision, there is no preemption and both laws are valid. If there is a conflict, the charter language prevails if the subject is a municipal affair, and state law prevails if it is not.⁴ Thus, the first step in any municipal affair discussion is to determine whether a conflict exists between the state law and charter provision.

A. Charter Does Not Limit the JPA's Power

Here, there is no such conflict because SB 43 only grants the design-build power to the Stadium Authority, a joint powers agency which is a distinct legal entity from the City and RDA.⁵ The limitation in Charter Section 1310 would apply only to the City. In a similar situation, the City of San Diego formed a "Convention Center Expansion Financing Authority" to issue bonds for renovations. San Diego was sued on the basis that the JPA could not issue bonds without complying with the two-thirds approval requirement for such financing under the San Diego City Charter. The California Supreme Court was direct in its decision, finding that:

"The City's charter regulates the manner in which *the City* may incur certain indebtedness. In this case, the City is incurring no indebtedness; rather, the Financing Authority is incurring indebtedness. As we already have noted, the Financing Authority is a separate legal entity from the City . . . the law permits what the City and the Port District have done." (emphasis in original)⁶

In addition, the Supreme Court declined to look at the "substance" of the transaction, e.g., the City's role in forming the JPA to avoid its own Charter requirements, finding that the application of the Joint Powers Act was controlling.⁷ Thus, because SB 43 only affects the Stadium Authority, there is no conflict and it is highly unlikely that a court would pursue the inquiry further.⁸

⁴ *Johnson v. Bradley*, 4 Cal.4th 389, 14 Cal. Rptr.2d 470 (1992) – local regulation of charter financing of campaigns not pre-empted by state regulation; *California Federal Savings and Loan Association v. City of Los Angeles*, 54 Cal.3d 1, 283 Cal.Rptr. 569 (1991); *Cobb v. O'Connell*, 134 Cal.App.4th 91, 96, 36 Cal.Rptr.3d 170, 174 (2005) – tax on financial corporations is a matter of statewide concern.

⁵ See Government Code §§ 6505.3, 6508.1, 6551.

⁶ *Rider v. City of San Diego*, 18 Cal.4th 1035, 1054-1055, 77 Cal.Rptr.2d 189, 201-202 (1998).

⁷ *Id.*

⁸ A court may also find that even though the City is forming the JPA, the City itself will not be contributing any general or enterprise funds to activities subject to design-build activities in violation of the Charter, as all activities funded by the Mello-Roos and RDA monies will be publicly bid and thus there is no conflict at all because the Charter provisions are not being violated.

B. A JPA May Have Greater Powers Than Its Members

Even if a court were to inquire into the substance of the JPA formation, it is unlikely that it would find a conflict exists on the basis that public contracting is a purely municipal affair. Because the Stadium Authority will be formed and operate pursuant to the California Joint Exercise of Powers Act (“Act”), any municipal affairs analysis must be conducted by taking into account that particular administrative structure.⁹

JPAs are created by the state, and their powers are created and defined by state legislative action. In general, the Act provides that JPAs must exercise powers that are common to all participating agencies. However, there are two exceptions to the common powers requirement.

First, recognizing that JPAs are often comprised of entities with differing powers, the California Legislature included a provision in the Act that a JPA may exercise a power that is available to one member but not the others, if the governing agreement specifies so.¹⁰ Thus, in the case of *Zack v. Marin Emergency Radio Authority*,¹¹ a joint powers authority comprised of a county and several cities was not required to comply with a participant agency’s zoning laws because the governing agreement specified that the county was the administrator of the JPA, and thus the JPA was only subject to statutory restrictions imposed on the county, which did not include compliance with city zoning laws. Similarly, a joint powers agency created between a public land conservancy and a park district was not required to comply with the requirement imposed on public conservancies to gain pre-approval of land acquisition from the State of California, because the governing agreement provided that any restrictions on the JPA’s power were the same as the park district’s, which entities are not required to get such approval.¹²

The second exception is for the Legislature to explicitly authorize the JPA to exercise powers that its member agencies do not possess. In general, restrictions applicable to the agencies comprising a joint powers authority, e.g., the inability to issue bonds or conduct eminent domain proceedings, do not apply if the joint powers authority has been granted specific powers under state law.¹³ This is routinely done for various entities to allow construction activities, financing and insurance activities.¹⁴ Similarly, SB 43 is a grant of power by the Legislature to the Stadium Authority which allows it to construct using a design-build process upon compliance with the pre-conditions stated in the text, which neither the City nor the RDA are otherwise authorized to perform.

C. Judicial Deference to Legislature’s Determination

Finally, even if a court were to find a conflict exists, the courts give a strong deference to

⁹ Government Code § 6500 and following.

¹⁰ Government Code § 6509.

¹¹ 118 Cal.App.4th 671, 13 Cal.Rptr.3d 323 (2004).

¹² *Cooper v. Mountains Recreation and Conservation Authority*, 61 Cal.App.4th 115, 71 Cal.Rptr.2d 858 (1998).

¹³ *Rider v. City of San Diego*, 18 Cal.4th 1035, 77 Cal.Rptr.2d 189 (1998).

¹⁴ See, e.g., Government Code § 6516.3 and following.

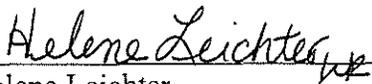
the Legislature's evaluation of whether an issue is one of local or broader interest and thus whether the issue is a "municipal affair" free from state regulation. The statement in SB 43 that the stadium construction is not just an issue of local interest to Santa Clara, but that "it is in the best interest of the communities located in and around the City of Santa Clara,"¹⁵ will be accorded great weight by a court, particularly when coupled with the regional economic benefits and other issues that have been part of the City Council record to date, and it is therefore unlikely that a court would find the issue to be one of purely local interest.¹⁶ Additionally, given the very limited nature and scope of the powers granted in SB 43, it is likely that a court would find the state's intrusion into local affairs was narrowly tailored.¹⁷

CONCLUSION

In conclusion, SB 43 does not appear to conflict with Charter Section 1310, as SB 43 only grants the power of design-build to the Stadium Authority, which is a separate and distinct legal entity from the City, and which has been granted special powers apart from the powers held by its formative entities. Moreover, given the narrowly tailored application of the state law, and the legislative intent statement and evidence before the Council to date, it is unlikely that the issue would be considered to be one of purely local interest.

I have also attached for the Committee's information a copy of the Staff Report and accompanying PowerPoint presentation to the City Council made on October 23, 2007, regarding the legal issues related to the formation of the Stadium Authority JPA, in which many of the issues raised in this memorandum were touched upon.

Please let me know if you have any questions.



Helene Leichter
City Attorney

HL:rk

cc: Jennifer Sparacino, City Manager
City Council (via email)

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¹⁵ SB 43, Government Code § 6532(a).

¹⁶ *Baggett, supra*, 32 Cal.3d 128, 134, 185 Cal.Rptr. 232; *Bishop, supra*, 1 Cal.3d at 63, 81 Cal.Rptr. 465.

¹⁷ *Domar Electric, Inc., supra*.

Meeting Date: 10/23/07

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5B



DATE: October 17, 2007

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

FROM: Assistant City Manager

SUBJECT: "Committee of the Whole" Discussion of the Structure and Functions of a Possible Stadium Authority as Outlined in the April 24, 2007 San Francisco 49ers Stadium Financing Proposal

EXECUTIVE SUMMARY:

Overview

As part of their stadium financing proposal presented at the April 24th Council/Agency meeting, the San Francisco 49ers outlined a concept for the creation of a Stadium Authority as follows:

- The City would create a Stadium Authority
- The Stadium authority would own and operate the stadium
- The 49ers would lease the stadium from the Authority for NFL games
- The Stadium Authority would schedule all other non-NFL events

Staff has taken the Stadium Authority (Authority) concept under review as part of the Feasibility Study process. It is important to note that there has been no Council commitment or action to date to create such an Authority, rather the Stadium Authority structure needs to be considered with all the elements of the stadium project, under the umbrella of the Feasibility Study.

Proposed Stadium Authority Structure

The legal basis for the creation of a public Authority resides in Government Code Sections 6500 et.seq. These code sections permit several government entities to join together to form a new entity called a "Joint Powers" Authority or Agency. The members of the Stadium Authority would be the City of Santa Clara and the City of Santa Clara Redevelopment Agency. The seven elected members of the City Council, who also serve as members of the Redevelopment Agency Board, would serve as governing board members to the Authority. The Mayor would serve as chair of the Authority, with the City Manager as the Executive Director and the City Attorney as the Authority's General Counsel.

The primary governing documents of the Authority will be the Joint Powers Agreement between the City of Santa Clara and the Santa Clara Redevelopment Agency. The Joint Powers Agreement establishes the Stadium Authority and sets basic ground rules for its operation. The Authority will also enact Bylaws that will govern some aspects of Authority governance. The Authority will be formally created by action of the City Council and the Santa Clara Redevelopment Agency in approving the Joint Powers Agreement. Pertaining to the overall timeline for the construction of the proposed stadium, approval of the Joint Powers Agreement must precede the approval of the EIR for the stadium project and any final definitive agreements with the 49ers for the development and construction of the stadium. The Stadium Authority can be structured so that the City of Santa Clara and the Redevelopment Agency will not have any legal responsibility for the contractual obligations or the tort liabilities of the Authority. Subject to the limitations of the Joint Powers Agreement, the Authority will have all the powers that the City has.

Proposed Stadium Authority Functions

The day-to-day staffing parameters for the Authority will depend in part on the scope and extent of the functions that the Authority undertakes. Some basic staffing models are:

- Operate the stadium with City staff serving as staff of the Authority under the typical City departmental management structure, with the City reimbursed by the Authority for staff expenses.
- The Stadium Authority would employ its own staff with the Executive Director (City Manager) as the hiring authority.
- The Authority would employ a private stadium management company well experienced in the complex operations and leasing of such a substantial facility, including the unique operating characteristics resident in an open-air stadium.
- A combination of the above staffing structures could also be used. As an example, certain management activities could be carried out by City employees while other operations and maintenance issues might be carried out by a private company under contract with the Authority.

It is staff's preferred option, through the initial study to date, that the Authority hire an experience stadium management company to be responsible for all aspects of stadium operations and maintenance.

In reviewing the breadth of Stadium Authority functions, staff has taken into consideration the 49ers concept of the operation of a Stadium Authority, however it may prove with further analysis that some functions should not reside with the Authority, but possibly be the responsibility of the 49ers or a related entity. It is also important to note that the fact that the Authority undertakes a particular function does not necessarily mean the Authority must bear the financial risk of carrying out the particular function. Examples of Authority functions are:

- Authority will lease the land for the stadium from the City pursuant to a long-term ground lease.
- Ownership of the stadium (Authority or possible City ownership of the stadium remains under study).
- Authority will contract with design and engineering professionals to design the stadium.
- Authority will contract with a construction contractor to construct the stadium.
- The construction of the stadium will be undertaken using funds that the Authority will obtain from the issuance of bonds and cash from stadium revenue sources:
 - \$330 million Stadium Authority financing sources:
 - Ticket Tax
 - Naming Rights
 - Stadium Builders Licenses
 - Concessionaries Equity
 - Pouring Rights
 - Corporate Founding Partners
 - \$330 million of Stadium Authority financing is estimated as follows:
 - \$185 million in Authority bonding
 - \$145 million cash from certain of the financing sources
- The Authority will lease the stadium to the 49ers, under a long-term contract, for use for all 49er home games.
- The Authority may lease the stadium for other events in addition to 49er home games.
- The Authority will be responsible for day-to-day stadium operations and the surrounding areas for football games and other stadium events, including maintenance, security, traffic control and parking.
- The Authority would enter into agreements with the owners of nearby parking lots (primarily office building complexes) in the vicinity of the stadium and make use of and operate those parking areas on stadium event days.
- The Authority will be responsible for obtaining insurance against hazards such as fires, floods or earthquakes and also insure against tort claims such as injuries to event attendees.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Providing the Council and community the opportunity to review the basic structure and functions of a Stadium Authority concept assists in the understanding of the major governance and operation issues inherent in owning and operating a large, complex project such as the proposed 49ers stadium.

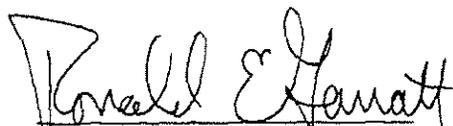
ECONOMIC/FISCAL IMPACT:

It is critical that, if the stadium project proceeds to completion, there be an experienced, competent operator able to maximize the publically-owned stadium's return on invested funds.

RECOMMENDATION:

It is recommended that the Council/Redevelopment Agency accept the Committee of the Whole presentation of the structure and functions of a Stadium Authority for a proposed San Francisco 49ers stadium in the City of Santa Clara and direct the City Manager to include this analysis in the accumulated body of materials and information being used in the Stadium Feasibility Study.

APPROVED:



Ronald E. Garratt
Assistant City Manager



Jennifer Sparacino
City Manager/Executive Director
Redevelopment Agency

Documents Related to this Report:

none



Santa Clara Joint Powers Authority Presentation

As part of the proposed 49ers'
Feasibility Study



Proposed Santa Clara Stadium Authority - Overview

April 24, 2007 49ers Stadium Proposal

- City would create a Stadium Authority.
- Stadium Authority would own and operate stadium.
- 49ers lease stadium from Authority for NFL games.
- Stadium Authority schedules non-NFL events.



Proposed Santa Clara Stadium Authority - Overview

- City Feasibility Study
 - Stadium Authority concept under review.
 - No commitment to a Stadium Authority at this time.
 - Creation of Authority needs to be considered as a part of the larger Feasibility Study.

3



Members of Santa Clara Stadium Authority

- City of Santa Clara.
- Santa Clara Redevelopment Agency.

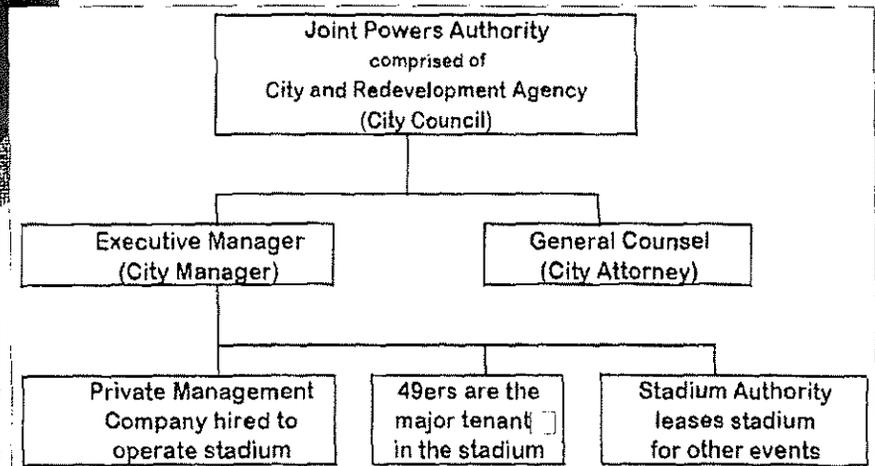
4

Governance Structure

- Seven members of City Council serve as governing board of Joint Powers Authority.
- City Manager serves as Executive Director.
- City Attorney serves as General Counsel.

5

Organization Chart



6



Governing Documents

- Joint Powers Agreement between City and Redevelopment Agency.

- ByLaws of Stadium Authority.

7



Proposed Structure and Functions

- Insulation from Liability
 - City and RDA will not have legal responsibility for contractual obligations or tort liabilities.

- General Powers
 - Subject to the Joint Powers Agreement the Stadium Authority will have same powers as City.

8

Proposed Structure and Functions

- Stadium Authority Staffing based:
 - Functional requirements of operating a stadium.
 - Existing Council / Manager roles and responsibilities.
- Basic models for stadium operations:
 - Through existing City departmental operations.
 - Authority employs staff/City Manager as hiring authority.
 - Authority employs private stadium management firm with experience in stadium management.
- Staff Recommendation – Hire private management firm.

9

Proposed Structure and Functions

- Examples of Stadium Authority functions:
 - Lease of land.
 - Leasing the stadium.
 - Leasing the stadium for non-NFL events.
 - Ownership of stadium.
 - City Vs Authority ownership remains a consideration.
 - Design of stadium.
 - Construction of stadium.

10

Proposed Structure and Functions

- Examples of Stadium Authority functions (cont'd):
 - Overall financing of stadium.
 - Day-to-day operations including game day.
 - Parking and security operations.
 - Providing insurance for stadium.
 - Repair/refurbishment/replacement of stadium.

11

Financing of Stadium Construction (as proposed by 49ers)

- Stadium Authority bonds:
 - Secured by naming rights contract revenue
 - Secured by ticket fee revenue
- Other Stadium Authority revenue:
 - Additional naming rights revenue
 - Additional ticket fee revenue
 - Seat license revenue
 - Concessionaire payments
- Payments from Team and NFL
- Payments from the City or Redevelopment Agency

12

Proposed Structure and Functions

- Financing details from 49ers proposal:
 - \$330 M in Stadium Authority financing sources:
 - Ticket Tax
 - Naming Rights
 - Stadium Builders Licenses
 - \$330 M in Stadium Authority financing split:
 - \$185 M in Stadium Authority bonding
 - \$145 M cash from certain financing sources

13

Proposed Structure and Functions

Examples of Stadium Authority functions (cont'd):

- Enter into naming rights contract
 - Impose a ticket fee
 - Sell seat licenses
 - Enter into concession rights contracts

14



Legal Issues

Presented by Lee Rosenthal,
RDA Counsel

15



Authority for Joint Powers Authority

- Joint exercise of powers agency, commonly "JPA"
- JPA is made up of other government agencies who come together to carry out a specific task or activity
- Formation and operation of JPAs authorized by State law.
Government Code Sections 6500 et seq.

16

Formation of Joint Powers Authority

- "Constitution" of a joint powers authority is the joint powers agreement required by Government Code Section 6503.
- Joint powers agreement typically creates a separate agency or entity.
- Joint powers authority also has by-laws that govern various aspects of the operation of the authority.

17

Governing Board

- Typically, the governing board of a JPA is made up of members of the governing board of the entities that form the JPA.
- JPA law does not dictate composition of JPA governing boards so other models are possible:
 - JPA governing board members are made up of elected officials.
 - JPA governing board consists of appointed members.

18



Government Agency Rules

- Because a JPA is a government agency, it is generally subject to same laws that apply to other government agencies. For example:
 - Brown Act governing the noticing, agendas and conduct of public agency meetings.
 - Public Records Act governing the availability of public agency documents to the public.

19



Exercise of Common Power

- Purpose of a JPA must be to undertake an activity a function that the member agencies both can undertake – common power.
- However, under Government Code Section 6509, any restrictions on undertaking that activity are those of one of the member agencies designated in the joint powers agreement.
- As a result, sometimes a JPA can exercise a power (such as eminent domain or issuance of bands) that is available to one member but not the other.

20

Limitations of Liability

- A JPA is authorized by Government Code Section 6508 to:
 - Enter into contracts
 - Own property
 - Incur debts
- Where a joint powers agreement creates a separate government entity, the parties' agreement may specify, under Government Code Section 6508.1, that they will not be liable for the JPA's debt and liabilities.
- A government agency forming a JPA can insulate itself from liability for JPA's debts.

21

Functions Carried Out by JPA's

- Transportation services.
- Insurance and risk management.
- Open space acquisition and maintenance.
- Bond financing.
- Public recreation and entertaining facilities including stadiums and areas.
- Animal shelters.
- Regulatory functions such as air quality.

22



Staff Recommendation

- Accept Committee of the Whole Presentation on the Structure and Functions of a Stadium Authority.
- Direct City Manager to include Stadium Authority report in materials and information used in the Feasibility Study.

23



Questions?

24

Jashma Kadam

From: Ron Garratt
Sent: Tuesday, September 08, 2009 5:05 PM
To: Jashma Kadam
Subject: FW: 49er Stadium

-----Original Message-----

From: wgissler@juno.com [mailto:wgissler@juno.com]
Sent: Monday, September 07, 2009 6:30 AM
To: Ron Garratt
Cc: jdbocci@comcast.net
Subject: 49er Stadium

September 4, 2009

To: Don Von Raesfeld, Chairman
Santa Clara Charter Review Committee (CRC)
c/o Jennifer Sparacino, City Manager/Executive Director

From: Bill Gissler, 1075 Blossom Dr. Santa Clara, 408-241-0477

RE: 49er Presentation at CRC meeting, September 3

Because of insufficient time for public questions at the conclusion of the CRC meeting, you asked us to submit our questions in writing. My questions are as follows:

(1) Has the City ever received from the 49ers a detail construction cost estimate for the Stadium? Without this there can be no way of verifying which jobs can be done locally. I believe that many sub-contracts have to be let to contractors who are not local. If there is an estimate, I would like a detail copy.

(2) In 2006 Turner Construction Company was sued by two of their sub-contractors on the Lane Stadium Project in Florida. The lawsuits were by Gate Precast Co. over concrete items and Varney Inc. over plumbing, air conditioning, heating and ventilation items. Other lawsuits against Turner related to delay of work may also have been brought to court. One can dismiss this by saying that such lawsuits are frequent on construction projects. But I am concerned that Turner may have a record for these types of lawsuits, which may be due to their business practices. To protect the City and give us a feeling that Turner Construction Co. is the right contractor for the job, I would like to know what lawsuits have been filed against Turner over stadium and other major projects in the last 15 years and what the outcome of the lawsuits were.

(3) What other projects - recreational facilities, commercial or industrial has Turner Construction Co. built for the 49ers or other York controlled interests over the last 20 years? Is there a long term relationship between Turner and the Yorks?

(4) Since the Santa Clara site is unique and Turner was selected by the 49ers in 2006 for the San Francisco site, wouldn't it be better to re-evaluate contractor qualifications? There are several contractors who could do just as good a job. To mention just two: (1) Manhattan Construction Co., builders of the recently completed Dallas Stadium, and (2) Hunt Construction Co., recognized by Engineering News Record as one of the top recreational facility contractors in the U.S.

I look forward to hearing answers to my questions at the Sept. 17 CRC meeting, and that adequate time be available at that meeting to ask questions.



Turner Construction Company
60 South Market Street, Suite 1100
San Jose, CA 95113
phone: (408) 295-7598
fax: (408) 295- 7698

September 15, 2009

Mr. Larry MacNeil
Vice President/CFO
San Francisco 49ers
4949 Centennial boulevard
Santa Clara, CA 95054-1229

Re: Questions by Mr. Gissler at the CRC meeting on September 3, 2009

Dear Mr. MacNeil,

We are in receipt of the four questions raised by Mr. Gissler via an email to Mr. Raesfeld, Chairman, Santa Clara Charter Review Committee (CRC), dated September 4, 2009. In this letter we are responding to questions 2 and 4 since they pertain to Turner's qualification as the proposed new stadium builder for the 49ers in Santa Clara.

Question 2

Engineering News Record has rated Turner as the nation's top sports builder in 2008 and 2009. In the preceding eight years it has occupied one of the top two spots. Such market dominance in a highly specialized field is a result of Turner's customer focus and their business practices. With 44 offices nationwide and hundreds of projects under construction at any given day, disputes and disagreements are inevitable. However, Turner is never dismissive of such disputes or doubts raised by any client or concerned citizen over Turner's business practices.

Since 2000, for all major stadium projects built by Turner, Turner competed on the basis of the value and expertise brought to the client during planning, preconstruction and construction phase. In most cases Turner was involved from project conception to completion and the project was built using a negotiated 'Construction Management at Risk' approach. As a result, during the last decade alone, Turner has completed more than 150 major sports facilities nation-wide without any litigation.

The exception to an otherwise stellar record was the Lane Stadium Renovation project at Virginia Tech (not in Florida) which was procured by the Client through a lump sum, low price, bid process where Turner did not provide any preconstruction services. The bid documents were incomplete and poorly coordinated. It is common knowledge within the industry that poorly coordinated documents lead to issues during construction that cause delays and increase in costs. Both Gates Precast Co. and Varney Inc. brought claims against Turner as a result of issues they encountered due to incomplete design. Under Virginia law, these subcontractors could not directly make claims against the Owner or the design team because

Turner

their contracts were directly with Turner. Turner successfully mediated settlements with both Gates and Varney. Despite several challenges Turner pulled all stops and the stadium was opened on time for the first scheduled football game. Once the mission was accomplished Turner reached a negotiated settlement with the Owner. Attached to this letter are some testimonials from our NFL clients that speak volumes of our ability.

Although Turner is the number one General Builder in the nation, it operates through local offices that operate as Business Units responsible for the local market and develop their own expertise that caters to the local needs. Turner has been operating in Northern California for over 40 years and has built some landmark projects. Turner's San Jose office responsible for the proposed new 49ers stadium in Santa Clara, completed the \$200M San Jose City Hall in 2005 with no claims or litigation. This was the first in San Jose's history where a project of this magnitude was not marred by litigation and claims. The County of Santa Clara has been a repeat client of Turner since 1994. Over that time Turner has successfully completed the Valley Medical Center North Tower project, Methadone Clinic, three parking garages, Valley Specialty Center, Medical Office Building, and McKinley Clinic. Currently we are building a \$200M new replacement Hospital facility on a Design/Build basis. All these years there has not been any litigation. In addition, since 1995, Turner has been providing construction services for Intel in Santa Clara, one of the biggest employers in the City. Attached to this letter is a list of customers in the Bay Area that have been a repeat client of Turners in the last 40 years.

Despite Turner's best efforts and best business practices, Turner is not infallible. Attached to this letter is a list of claims in the Bay Area in the last 10 years most of which have been amicably resolved.

Question 4

Turner successfully competed for the 49ers stadium project against Hunt in 2006. One of the reasons for the selection was to ensure that maximum amount of economic impact was local. Turner and their JV partner for the project employ over 650 people in the Bay Area. This compares to less than 50 employed by Hunt and none by Manhattan Construction. In fact there is not a single firm in the Bay Area that combines Stadium construction expertise with local know-how to deliver a NFL class facility which is critical to the 49ers organization and critical to the community it is built in.

I hope the responses above are adequate to allay Mr. Gissler's concerns. If we can be of any more assistance please let us know.

Sincerely,



Michael E. O'Brien
Senior Vice President, General Manager
Turner Construction Company

Encl: Testimonials, Northern Calif. litigation history, List of Repeat Clients in Northern Calif.
cc: John Wasson
Harry O'Brien



MAR 15 2006

March 14, 2006

To Whom It May Concern:

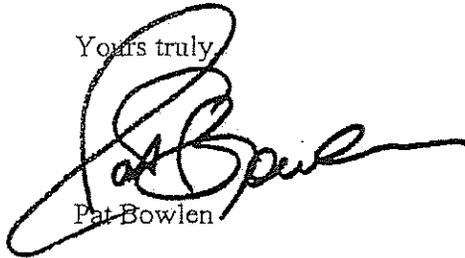
I am writing this letter in support of Turner Construction's bid for the new San Francisco 49'ers stadium.

The staff at Turner Construction provided reliable, trustworthy and expert planning and construction assistance over the months leading up to the construction of INVESCO Field at Mile High. They paid constant attention to our budget constraints and reduced our project costs without compromising the design features and function that we required in our facility.

As a result, we currently have a facility that maximizes the NFL team's competitiveness and patron enjoyment as well as a multi-use facility that provides numerous ways for revenue opportunities beyond the sports on the field.

I do not hesitate to recommend Turner Construction Company for your project. Should you have any questions or require further information, please feel free to contact me.

Yours truly,


Pat Bowlen

Pat Bowlen
President and
Chief Executive
Officer

Denver
Broncos
Football
Club
13655
Broncos
Parkway
Englewood,
Colorado
80112



12-TIME WORLD CHAMPIONS
SUPER BOWL CHAMPIONS I, II, XXXI

ROBERT E. HARLAN
President/
Chief Executive Officer

March 13, 2006

Mr. Robert A. Bursack, Project Executive
Turner Construction Company
55 East Monroe Street, Ste. 3100
Chicago, IL 60603

*Re: Lambeau Field Redevelopment
Green Bay, Wisconsin*

Dear Bob:

When the Green Bay Packers embarked on the comprehensive redevelopment of historic Lambeau Field, we recognized the need to hire a Construction Manager who had extensive experience in constructing NFL stadiums, as well as a demonstrated ability to successfully execute a major rehabilitation program while maintaining the stadium fully operational for all scheduled events and daily activities. The Green Bay Packers selected Turner Construction Company based on its experience and its promise to achieve our construction objectives for the project. We couldn't be more pleased with the commitment and performance of Turner's Lambeau Field project team as it delivered on all its promises to the Green Bay Packers.

Please have future clients with similar needs contact my office regarding the significant value of having Turner Construction involved in their project.

Best regards,

Robert E. Harlan
President & Chief Executive Officer

REH/mjm





JACKSONVILLE JAGUARS, LTD

William R. Prescott, CPA
Senior Vice President
Chief Financial Officer

March 16, 2006

Mr. Dale Koger
Turner Construction Group
3865 Wilson Blvd. Suite 200
Arlington, VA 22203

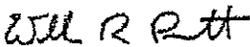
Dear Dale,

On behalf of the Jacksonville Jaguars, Ltd., I would like to say thank you for the great job Turner has done on the recent \$65 million in renovations to Alltel Stadium. As a result of Turner's expertise with scheduling, estimating and construction management techniques we were able to open the additions to our stadium on time and within budget.

Throughout the project the Turner team showed sensitivity and commitment in accommodating all our requirements on a very tight timeframe. The project was an extremely fast-tracked project and required sensitivity to working on the existing structure without disrupting stadium events and other events within the Sports Complex. The Turner team consistently produced high quality work while fulfilling the stringent quality control parameters that were essential to the longevity of the stadium and its use.

And finally, the Turner team were not only "builders" on this project, they became an integral member of the Owner's team, representing the Owner with the highest level of dedication and professionalism. We thank you for your support and professional service and would highly recommend Turner Construction Company to any future clients considering challenging sports projects.

Sincerely,


William R. Prescott
Senior Vice President
Chief Financial Officer

WRP/emc

DEPARTMENT OF PUBLIC WORKS



March 14, 2006

Mr. Larry MacNeil
Vice President & Chief Financial Officer
San Francisco 49ers
4949 Centennial Boulevard
Santa Clara, CA. 95054-1229

Dear Mr. MacNeil;

On behalf of the City of Jacksonville, I would like to make you aware of the great job Turner has done on the ALLTEL Stadium Upgrades. As a result of Turner's expertise with scheduling, estimating and construction management techniques we were able to open our facility on time and within budget.

Throughout the project the Turner team showed sensitivity and commitment in accommodating all our requirements and had a heightened awareness for the problems involved with delivering this project within a very tight timeframe. The project was an extremely fast-tracked project, with multiple prime contractors. Turner consistently produced high quality results while ensuring the stringent quality control parameters that were essential to the longevity of the stadium and its use.

As in the past, Turner was an integral member of the Owner's team, representing the Owner with the highest level of dedication and professionalism. We thank them for their support and professional service and would highly recommend Turner Construction Company to any future clients considering challenging, sports projects.

Sincerely,

A handwritten signature in black ink, appearing to read "T. H. Goldsbury", written in a cursive style.

Thomas H. Goldsbury, P.E., C.B.O., Chief
Building Inspection Division



Your goal achievement company

March 9, 2006

Reference: *The Adaptive Reuse of Soldier Field*

Subject: Letter of commendation and reference for *Turner Construction Company*

To whom it may concern,

My name is Andrew Parkinson and I am pleased to commend and stand as a reference for *Turner Construction Company* for their contributions in the development of the new *Soldier Field Stadium* for the NFL *Chicago Bears Football Club*. As background, I am an equity partner in the management firm Hoffman Management Partners and am a member of *Who's Who of American Professionals and Executives*. My firm and I have represented the *Chicago Bears Stadium LLC* since 1999, retained to act as their agent and representative during the design and construction of the renovations to *Soldier Field* completed in September of 2003. It is in that capacity I am familiar with *Turner Construction* who along with their venture partners *Barton Malow* and *Kenny* (collectively *T/BM/K*) were responsible for the pre-construction development of programs, budgets, and schedules, the construction management, and close-out matters related to warranty, insurance, and audit and contract reconciliations.

The Club's stated project objectives to achieve quality, schedule, and budget were incorporated into *TBMK's* construction management contract. *Turner* and in particular Messrs. Mark Simonides, John DiCiurcio, and project management and supervisory staff achieved all three with skill, diplomacy, cooperation, and direct communications.

The level of quality construction detail, tolerance, and systems performance was achieved through their close cooperation with a broad variety of trade specialists, engineers representing design, peer review, field and shop inspections, surveying. *Turner* and their venture partners committed to and delivered a solid record of scheduling, accounting, and administration that was timely, accurate, and sufficient to resolve disputes timely.

Turner and particularly Mark Simonides achieved the schedule through prompt response to challenges and adept sequencing when coordinating with follow-on trades. Each of the design modifications made during the course of construction was incorporated in the finished Stadium with sufficient time to independently verify completeness and safety for successor activities. Where *Turner* could not accommodate an acceleration demand, they worked closely with those making the request to support their need to maintain a sometimes conflicting schedule. They provided regular task schedule revisions so that we could adjust and maintain the overall project schedule.

There were occasions when change orders had to be approved for the modifications to design and sequencing imposed upon *Turner* and partners. They were prompt in providing accurate change estimates and participating in reconciliation of the changes with us prior to approval.

Turner are adroit managers. To realize the quality, schedule, and budget required constantly adjusting and complementing staff to address either an engineering, procurement, delivery, construction, schedule, or finance matter. Their and Messrs. Simonides and DiCiurcio decisions in personnel assignments were quick, definitive, and in direct support of our overall development efforts. There are others at *Turner* who deserve recognition for the roles they played here as support of their executives and venture partners. Together they were instrumental in our achieving a precision engineered architecture of extreme cantilevers, curves, tapers, sweeps, and angles, in a difficult urban environment which imposed historical and staging restraints, in the aggressive time we had forecast, and a budget reflective of our needs.

It has been my pleasure to have been associated with *Turner Construction Company* on other professional sports development projects. It is with my direct experience of their ability to perform under extreme conditions that I endorse their pursuit of future challenges in this highly specialized field. Thank you for your time and consideration of *Turner Construction Company* and my recommendation.

Respectfully,



Andrew H. Parkinson,
Partner
Hoffman Management Partners
Developer, As Agent for *Chicago Bears Stadium, LLC*

Cc: Mark Simonides
Operations Manager
Turner Construction Company
55 East Monroe Street
Suite 3100
Chicago, Illinois 60603



Owner's Advocate. Project Champion. Bottom Line Results.

1000 West Morehead St
Suite M-100
Charlotte NC 28208
704 343 4931 fax 704 343 4934
www.getz.com

March 13, 2006

Mr. John Wasson
Columbus Consulting
153 Gramercy Drive
San Mateo, CA 94402

Reference: San Francisco 49ers

Dear John,

It is my understanding that you are considering Turner Construction Company as your construction partner for the San Francisco 49ers new stadium. I have worked with Turner Construction Co. on several NFL stadiums. Based on my experiences with them on Bank of America Stadium, Paul Brown Stadium and Invesco Field, I would not hesitate to have them on another stadium project.

As I know you are aware, the key to any organization's performance is the team that they put on your project. I have been fortunate to have had a successful experience with three different Turner Construction Company teams.

If you have any questions, please call me at 704-343-4931. Good luck on your adventure and know we are only a phone call away.

Sincerely,

A handwritten signature in cursive script that reads "Norm".

Norman W. Getz

Cc: Chantell Stanek, Turner Construction Company
File



KANSAS CITY CHIEFS FOOTBALL CLUB

Carl D. Peterson
President / General Manager,
Chief Executive Officer

September 8, 2008

Dave Masel
Turner Construction
1 Dubiner Circle
Kansas City, MO 64129

Dear Dave:

I want to thank you on behalf of our entire football team, coaches and football support staff for the outstanding effort you made regarding our new and expanded practice facility and office building. Although the building is not quite complete yet, you assisted us in successfully reaching our priority goal of having everything ready for our coaches, players, and football operations staff such that they could move in directly upon return from training camp on August 15, 2008. Goal accomplished!

The response of our players, coaches, and football operations staff has been an overwhelming, "...outstanding and a first class facility." We all are much appreciative and know that when the final finishes are completed, the Chiefs' facilities will compare to and compete with the best in the NFL. Please take pride in your efforts contributing to the success of "your" Kansas City Chiefs, and by that you will always be a part of this organization's future.

Thank you again.

Sincerely,

Carl D. Peterson
President/General Manager
Chief Executive Officer

ec

cc: Clark Hunt, Chairman
Lynn Stiles
Emil Konrath
Bill Newman



Charter Member of the American Football Conference
of the National Football League

FIRST & GOAL
I N C O R P O R A T E D

July 24, 2002

Mr. Thomas B. Gerlach, Jr.
Senior Vice President and General Manager
Turner Construction Company
830 Fourth Avenue South
Suite 400,
Seattle, WA 98134

Dear Tom:

Last Friday was the official grand opening of the Seahawks Stadium and Exhibition Center. This unique public-private partnership has accomplished all of its goals. I would like to take this opportunity to recognize the contributions of Turner Construction Company over the past five and one-half years.

From the very beginning, Turner provided First & Goal with preliminary estimates dating back to our work with the "Kingdome Renovation Task Force" in late 1996. Your efforts continued during the referendum period leading up to voter approval of the \$430 million project on June 17, 1997.

Starting the very next day, your team, working together with First & Goal, Ellerbe Becket and LMN Architects, worked tirelessly to provide consistent and high quality pre-construction and construction services.

Five years after the referendum, the team has worked together to achieve a project completed to the highest quality standards. Best of all, the project is on time and on budget, a rare accomplishment for such a large project!

Perhaps most gratifying is that these accomplishments included the achievement of many of First & Goal's community objectives: first, to be a good neighbor to the three surrounding communities; second, to achieve over \$80 million of M/WBE participation; and finally, to achieve eighteen percent apprenticeship utilization over the course of the entire project, beating our goal by twenty percent!

The contributions of Turner to these successes are numerous. I would particularly emphasize the high quality of your pre-construction planning services, including estimating and purchasing, as well as the dedication of your field personnel to achieving high quality work. The result is a beautiful building, which we are certain will enhance the prospects of our primary tenant, the Seattle Seahawks.

Please share my enthusiastic endorsement of your company's achievements on this project with your staff and thank them for their dedicated hard work over the past five plus years. Turner has been an outstanding partner for First & Goal.

Sincerely,



Robert L. Collier
Vice President/Director of Construction

RLC:sw

505 UNION STATION
505 FIFTH AVE S, NO 900, SEATTLE, WA 98104
TEL 206 342-2200 FAX 206 342-3000
WWW.FIRSTANDGOAL.COM



March 6, 2003

To Whom It May Concern:

Understanding the difficult and varied issues involved with the building of complex sports entertainment venues led us to look for the expertise of a strong leader for the construction of INVESCO FIELD at Mile High. This is why we chose Turner Construction Company as our partner.

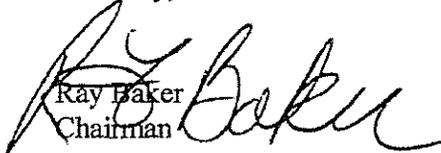
With the help of Turner, we were able to leverage the strengths of a team solution to achieve the project's goals and objectives. Turner consolidated the decision making process to allow team communications under one roof. This proved to be one of the single most valuable techniques for assuring the projects success.

Turner knew if the aggressive timeline was to be achieved, a traditional approach to project delivery wasn't enough. We needed a total project mindset. Through the collaborative process developed and commitment of the "entire" team this was achieved.

Every deadline, big or small, required a "road map". The Turner approach to managing time was a dynamic process that was not etched in stone. It was flexible enough to proactively identify the challenges and create cost effective solutions.

At the end of the day our new \$400M INVESCO FIELD was completed on schedule and within budget. Beating both the schedule and the budget is unprecedented in the sporting industry. In the process of accomplishing these goals, Turner has further enhanced their reputation in the local subcontractor community, and the community as a whole.

Sincerely,


Ray Baker
Chairman



CITY AND COUNTY OF DENVER

COMMUNITY PLANNING & DEVELOPMENT AGENCY
Wellington E. Webb
MAYOR

BUILDING INSPECTION
200 W. 14TH AVENUE
SUITE 001
DENVER, COLORADO 80204-2700

TO: Dave Masel
Project Superintendent
Turner Construction

FROM: John Brann
Chief Construction Inspector

DATE: August 16, 2001

It is with great pleasure that I write this letter to congratulate you and your staff on an outstanding job you did at Invesco Field at Mile High. In my seventeen years as Chief Construction Building Inspector, I have never written a letter to any superintendent or contractor upon completion of a job, however, in this case I'm making an exception. Because of you and your staff having the knowledge of what you were doing and how it was suppose to be built, you made my job and my inspection teams job a whole lot easier!

I want to wish you good luck on your next project where ever it may be. I have no doubt it will be as successful as this one is.

Sincerely,

John Brann

CC: Rod Wille
4601 North Fairfax Drive
Arlington, VA 22203



800 SOUTH MINT STREET
CHARLOTTE, NC 28202-1502
TEL: 704-358-7000
FAX: 704-358-7613

October 8, 1996

Gary R. Van Hart, P.E.
Director of Public Works
Hamilton County, Ohio
138 East Court Street, Suite 800
Cincinnati, OH 45202

Re: Ericsson Stadium
(Home of the Carolina Panthers)

Dear Mr. Van Hart:

I am writing this letter as confirmation of Turner's outstanding leadership in building our new NFL stadium. We are very proud of our stadium. Turner played a vital role in the success we achieved.

From the initial concept, through program management, design phase coordination, construction management and field construction, our goal was to build the most nearly perfect NFL stadium possible. This project was successfully completed June 30, 1996, on schedule, within budget and with permanent certificates of occupancy.

Meeting these challenges was accomplished through a totally coordinated "team effort" by the State of North Carolina, City of Charlotte, County of Mecklenburg, HOK design group, Turner Construction and Ownership's Management Team. Turner's early value engineering, costing design assistance and strong field leadership of the construction processes were instrumental in accomplishing our goal.

Jack Greenip, our project executive, is one of the most experienced construction professionals available for projects of this magnitude and complexity. He can take concepts, foresee problems and develop creative solutions to reach optimum results.

Ericsson Stadium has enjoyed wide acceptance and congratulations from persons with varied interests, including other NFL teams. Our efforts to utilize local contractors and to implement a minority outreach have been extremely well received. Much of this credit really should go to the fine efforts of the Turner team.



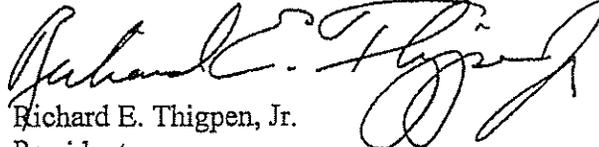
800 SOUTH MINT STREET
CHARLOTTE, NC 28202-1502
TEL: 704-358-7000
FAX: 704-358-7613

Gary R. Van Hart, P.E.
October 8, 1996
Page 2

If you would like to tour the facility or to discuss our experiences with Turner, please give me a call.

Sincerely,

CAROLINAS STADIUM CORP.



Richard E. Thigpen, Jr.
President

RET/jgm



10-Years Litigation History - Northern California

Turner is unavoidably involved in some litigation that falls primarily into two major categories: The majority includes Personal Injury and Property Damage which is handled by our insurance carrier. Turner prides itself as one of the safest Contractors in the industry.

The second category pertains to contract disputes, typically around Subcontractor quality performance issues and related payments.

Below are all claims for the past 10 years. We have settled all claims amicably through negotiations and out of court. During these 10 years, Turner has completed or under construction over 2,000 projects and \$6.5 billion in local construction.

	Project	Settled Out Of Court	Title of Legal Matter	Description of Litigation
1	Oakland Airport T2	no	Debro v Port of Oakland, Turner et al.	A third party alleged the Port of Oakland improperly awarded Turner a contract by not following public bidding procedure. <u>Turner & the Port filed demurrers, which were sustained by the court.</u>
		YES	Aircraft Fueling System v Turner, et al	A second tier Subcontractor filed a claim for non-payment. <u>Turner facilitated a negotiated settlement between it's Subcontractor and the tiered Subcontractor to resolve the matter.</u>
		YES	Digital Design Communications v Sureties	A second tier Subcontractor filed a claim for non-payment of bankrupt first tier Subcontractor. Turner provided lien releases showing that the Subcontractor had been paid. <u>All issues resolved satisfactorily through negotiations.</u>
2	LBNL Computing Center	YES	Turner v Encinal Broadway & Encinal Broadway v Turner	Turner filed a complaint for non-payment from the Developer. Developer cross claimed alleging faulty workmanship of subcontracted work. <u>All issues resolved satisfactorily through negotiations.</u>
3	Jackson Center 1	YES	A&B Painting v Turner; Turner v Encinal Jackson; Encinal Jackson v Turner	Turner filed a complaint for non-payment from the Developer. Developer cross claimed alleging faulty workmanship of subcontracted work. <u>All issues satisfactorily resolved through negotiations.</u>
4	Milpitas City Hall	YES	Aderholt v City of Milpitas; City of Milpitas v Turner, et al.	Subcontractor filed a complaint for non-payment. First complaint triggered cross complaints including one from the City alleging delays & project costs. <u>All issues satisfactorily resolved through negotiations.</u>
5	Dixon Warehouse	YES	C International v Turner et al.; Turner v C. International	Owner filed a complaint alleging faulty workmanship of subcontracted work. <u>All issues resolved thru negotiations and insurance.</u>
6	Western Digital	YES	WeatherProofing Technologies and Tremco v Western Digital et al incl Turner	Turner and Subcontractor disputed a payment for faulty workmanship and <u>negotiated amicable resolution.</u>
7	St. Josephs Medical Center	YES	Art's Floral Shop v CHW & Turner	Adjacent business owner filed a complaint alleging construction activity interfered with their business. <u>The case was dismissed for a waiver of costs.</u>
8	Washington Hospital	YES	Walshon Fire Protection v Turner et al	Subcontractor filed a claim due to non payment from the owner. <u>Turner resolved the matter directly with the Subcontractor.</u>
		pending	Schindler Elevator v Turner	Subcontractor filed a claim for non payment. Turner, Owner, and Subcontractor currently in negotiations.
9	Rocklin City Police Station	pending	Fernando Loera v City of Rocklin	Adjacent property owner filed a complaint alleging damages. Currently in negotiations.



REPEAT CLIENTS -
NORTHERN CALIFORNIA

Administrative Office of the Courts,
State of California
Albany School District
Alexandria Real Estate Equities
ALZA Corporation
AON
Apple Computer, Inc.
Applied Biosystems
Applied Materials
Armanino & McKenna
Aspire Charter Schools
AT&T
Bank of America
BART
Bayer Healthcare LLC
Boston Properties
Cal PERS
California Capitol Group
Carnegie Mellon University
Catholic Healthcare West
CB Richard Ellis, Inc.
CCSF
Celestica
Center Unified School District
Charles Schwab
Children's Hospital of Central CA
Children's Hospital Oakland
Chiron
CIM Group
Cingular Wireless
City and County of San Francisco
City of Mountain View
City of Oakland
City of Sacramento
City of Sacramento Housing and Redevelop
City of San Francisco
City of San Jose
City of Stockton
City of West Sacramento
Colliers Int'l
Comerica
County of Monterey

County of San Mateo
County of Santa Clara
Crescent Heights
CSU Chico
Delhi Unified School District
Department of General Services
East Side Union High School District
El Camino Hospital
Elk Grove Unified School District
Equity Office Properties
Ernst & Young
FRIT
Genentech
Golden Gate University
Haury Properties, LLC
Haworth
Hines
Host Marriott
Hyperion Software
Intel Corporation
International French School
Jesse Cooley
Jewish Home for the Aged
Johnson Controls, Inc
Jones Lang LaSalle Americas, Inc.
Kirkland Ellis LLP
Kirkpatrick & Lockhart Preston Gates Ellis LLP
Kirkwood Mountain Resorts
KPMG
Lieff Cabraser Heimann and Bernstein
Lucile Packard Children's Hospital
Merck
Merrill Lynch
Microsoft Corporation
Mills Peninsula Health Services
Monger Tolles and Olsen
Morgan Hill Unified School District
Natomas Unified School District
NBC Studios
Nikon Precision, Inc.
NorthBay Health Advantage
Northern Inyo Hospital

Turner

REPEAT CLIENTS

Novartis Vaccines and Diagnostics Inc.
Oak Valley Hospital District
Oakland Corporate Center LLC
O'Connor Hospital
Oracle Corporation
Palo Alto Medical Foundation
Planned Parenthood
Plantronics
Port of Oakland
Rambus
Ravenswood School District
Regents of the University of California
RNM Properties
RUMASA Group
Safeway Corporation
Salesforce.com
San Carlos Unified School District
San Jose Unified School District
San Mateo County
San Rafael City School District
Santa Clara Unified School District
Santa Clara Valley Medical Center
Saratoga Unified School District
Savoy Group
SB Architects
Schiff Hardin LLP
Seafarers Union
Sequoia Hospital
Seyfarth Shaw

Shell Oil
Shorenstein Realty Services
SIC Lakeside Dr, LLC
Sierra Joint Community College District
Skyy Spirits, LLC
Southwest Airlines
Specialty Bakeries
St. Josephs of Orange
St. Josephs Health
Stanford Hospital & Clinics
Stanford Linear Accelerator Center
Stanford University
State of California
State of California, Department of
General Services
Stockton Unified School District
Summit Commercial Properties
Sutter Davis Hospital
Sutter Health

The Swig Company
Tishman Speyer
Turlock School District
UC Davis Medical Center
University of California, San Francisco
Verizon Wireless
Versata
Wachovia Bank
Washington Unified School District
WEMED
Western Digital
Whole Foods Markets
Windbond Electronic Corp America
Winthrop Management LP
WPP

Turner