

Meeting Date: 2-12-08

AGENDA REPORT

Agenda Item # S. A. 2

Santa Clara

City of Santa Clara, California



DATE: February 6, 2008

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

FROM: Assistant City Manager

SUBJECT: Approval of Consulting Contracts with Goldfarb and Lipman for Legal Services and Keyser Marsten Associates, Inc. for Fiscal and Economic Consulting Services to Assist with Preliminary Negotiations with the San Francisco 49ers to Develop a Term Sheet Agreement

EXECUTIVE SUMMARY:

At their January 15, 2008 meeting, Council directed the City Manager to proceed with preliminary negotiations to develop a Term Sheet Agreement with the San Francisco 49ers for a football stadium in the City of Santa Clara. In addition to City staff departmental expertise, the negotiating team will require specialized expertise in the areas of redevelopment law, land use issues, complex financing options, and real estate issues, particularly pertaining to stadiums and professional sports franchises.

Staff is recommending approval of a consulting contract with Goldfarb and Lipman for legal, redevelopment law and land use issues, and with Keyser Marston Associates, Inc. (KMA) for expertise in fiscal and economic analysis, complex financing scenarios, and real estate issues pertaining to the stadium project. It is anticipated that staff will be bringing forward at a later date a contract for a consulting firm with specific expertise in NFL stadium financing and professional sports franchises.

Various land use and financing specialists have historically supported the City and/or Redevelopment Agency (RDA): as an example, bond counsel, financial advisors and RDA legal counsel. Due to the complexity of the stadium project, there is a need to support City staff with specialized resources in order to proceed with this next step with the 49ers in a timely manner. Staff is recommending a budget of \$500,000 to support these efforts. These monies come from Redevelopment Agency tax increment revenues and can only be used to support redevelopment activities in the North Bayshore Area. No General Fund monies will be used in engaging consulting services for the stadium proposal.

Contracts have been placed in Council offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

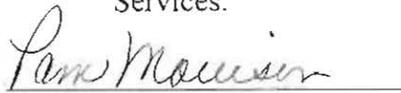
Goldfarb Lipman and KMA have extensive experience in representing public agencies in evaluating and negotiating professional sports venues, and have already worked with the City during the stadium Feasibility Study. Both firms are currently assisting the City of Fremont in ongoing discussion of a ballpark in their city. Goldfarb Lipman participated in the negotiation of the disposition and development agreement for the Staples Center in Los Angeles and the City of Stockton's minor league baseball stadium and indoor arena. Keyser Marston was involved in the feasibility study for AT&T ballpark in San Francisco and the Petco Park Ballpark District in San Diego. Both of these firms are experienced in complex project negotiations and creative property disposition and development, and both firms have the advantage of current knowledge of the stadium project to date.

ECONOMIC/FISCAL IMPACT: The Goldfarb Lipman contract is not to exceed \$225,000. The KMA

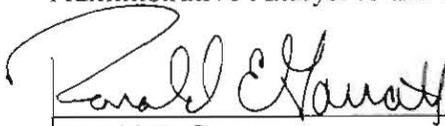
contract is not to exceed \$150,000. The additional \$125,000 will be used to retain a consulting firm with specific expertise in NFL stadium financing and professional sports franchises. Funds are available from FY0708 Redevelopment Agency tax increment revenue (account 941-9011-50100/59950) for transfer to the Redevelopment Agency Contractual Services (account 901-9011-87870).

RECOMMENDATION: That the Council/Agency:

1. Approve \$500,000 additional appropriations in Redevelopment Contractual Services (account 901-9011-87870) and transfer from Redevelopment Agency available tax increment revenue (account 941-9011-50100) for specialized legal and consulting services to support City/Agency staff during the preliminary negotiations with the San Francisco 49ers to develop a Term Sheet Agreement.
2. Approve a consulting contract with Goldfarb Lipman and the Redevelopment Agency for legal, redevelopment law, land use, and negotiating expertise to assist staff with preliminary negotiations with the San Francisco 49ers to develop a Term Sheet Agreement, in an amount not to exceed \$225,000 (901-9011-87870).
3. Approve a consulting contract with Keyser Marston Associates, Inc. and Redevelopment Agency for fiscal and economic land use issues, economic benefits analysis and stadium financing options analysis to assist staff with preliminary negotiations with the San Francisco 49ers to develop a Term Sheet Agreement, in an amount not to exceed \$150,000 (901-9011-87870).
4. Direct the City Manager/Executive Director to return to the City Council/Redevelopment Agency at a later date for approval of a contract for a consulting firm with specific expertise in NFL stadium financing and professional sports franchises.
5. Authorize the City Manager/Executive Director to execute the consulting contracts with Goldfarb and Lipman for Legal Services and Keyser Marsten Associates, Inc. for Fiscal and Economic Consulting Services.



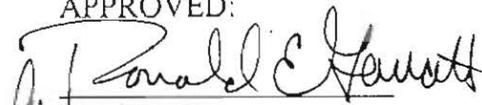
Pam Morrison
Administrative Analyst to the City Manager



Ronald E. Garratt
Assistant City Manager

eu
sh
Certified as to Availability of Funds:
941-9011-50100 \$500,000.00

APPROVED:



Jennifer Sparacino
City Manager/Executive Director for
Redevelopment Agency



Mary Ann Parrot
Director of Finance/
Redevelopment Agency Treasurer

Documents Related to this Report:

- 1) *Legal Services Agreement Between the Agency and Goldfarb and Lipman*
- 2) *Professional Services Agreement Between the Agency and Keyser Marston Associates, Inc.*

CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: February 6, 2008

SUBJECT: Agreement with Goldfarb and Lipman to provide legal consulting services to assist with preliminary negotiations with the 49ers to develop a Term Sheet Agreement.

CERTIFICATION

The proposed agreement regarding the provision of legal consulting services to assist with preliminary negotiations with the 49ers to develop a Term Sheet Agreement has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

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

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title ___ U.S.C. § ___ (Titles run 1 through 50)

California Codes:

Code ___ § ___ (i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

Title ___ C.F.R. § ___ (Titles run 1 through 50)

California Regulations:

Title ___ California Code of Regulations § ___ (Titles run 1 through 28)

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

- 1. As to City Functions, by [Signature] Department Head
2. As to Legality, by [Signature] City Attorney's Office
3. As to Environmental Impact Requirements, by [Signature] Director of Planning and Inspection
4. As to Substance, by [Signature] City Manager

CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: February 6, 2008

SUBJECT: Agreement with Keyser Marston Associates, Inc. to provide economic and fiscal consulting services to assist with preliminary negotiations with the 49ers to develop a Term Sheet Agreement.

CERTIFICATION

The proposed agreement regarding the provision of economic and fiscal consulting services to assist with preliminary negotiations with the 49ers to develop a Term Sheet Agreement has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

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

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Federal Regulations:

Title ___ C.F.R. § ___ (Titles run 1 through 50)

California Regulations:

Title ___ California Code of Regulations § ___ (Titles run 1 through 28)

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

- 1. As to City Functions, by [Signature] Department Head
2. As to Legality, by [Signature] City Attorney's Office
3. As to Environmental Impact Requirements, by [Signature] Director of Planning and Inspection
4. As to Substance, by [Signature] City Manager

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN, LLP**

PREAMBLE

This agreement for the performance of work ("Agreement") is made and entered into on this _____ day of _____, 2008, ("Effective Date") by and between The Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code section 33000, et seq.) ("Agency") with its primary business address at 1500 Warburton Avenue, Santa Clara, CA 95050, and Goldfarb & Lipman, LLP, a limited liability partnership ("Firm") with its primary business address at 1300 Clay Street, Ninth Floor, Oakland, CA 94612. Agency and Firm may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. Agency desires to secure professional services more fully described in this Agreement; and,
- B. Firm represents that it, and its sub-consultants, if any, have the professional qualifications, expertise, necessary licenses and desire to provide legal services of the quality and type which meet objectives and requirements of Agency; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. RETENTION OF FIRM.

- A. Agency hereby confirms, retains and authorizes Firm to represent Agency and provide legal services as may be requested, from time to time, orally or in writing, by authorized representatives of Agency on an as-needed basis. By this Agreement, Agency is retaining Firm and not individual members of the Firm. Firm's client is the Agency, as a public entity, and not any of its individual members, groups of individuals or any other entity. Firm shall report to and

receive direction from the Governing Board of the Redevelopment Agency of the City of Santa Clara ("Board") or the Agency General Counsel.

- B. Firm shall perform such legal services for and on behalf of Agency under the primary direction of the Agency General Counsel. Firm shall undertake, subject to approval of Firm, such additional duties as may be authorized by Agency from time to time under the terms and conditions of this Agreement.

2. DESCRIPTION OF SERVICES TO BE PROVIDED.

Legal services are to be provided to Agency by Firm as directed by the Agency General Counsel. Such services may include, but are not limited to, providing advice and counsel on legal matters affecting Agency, performing legal research, representing Agency in judicial proceedings in state and/or federal court or other dispute resolution tribunals or before administrative agencies, negotiating contracts and drafting contracts, correspondence, resolutions and other legal documents as may become necessary. Such services shall also include the preparation and delivery of status reports to Agency as specified in paragraph 9 of this Agreement.

3. COMMENCEMENT OF WORK.

Firm shall begin performing legal services under this Agreement when directed to do so by the Agency General Counsel and shall complete said services within the time limits mutually determined to be acceptable by Firm and Agency.

4. ASSIGNMENT OF DUTIES.

It is contemplated that no other attorneys will be assigned from Firm other than Lee C. Rosenthal. It is agreed by and between the Parties that should it be desirable for any attorneys other than Lee C. Rosenthal to work under this Agreement, such attorney may only be added with the express oral consent of Agency. Should any associate in the Firm be assigned any task under this Agreement which exceeds three (3) billable hours per month, the assignment of such associate should be approved orally by Agency.

5. PUBLIC FUNDING.

Firm and Agency mutually recognize that Firm's services under this Agreement are being paid for with tax dollars from citizens and taxpayers of the City of Santa Clara, California, and that, given this fact, a heightened duty of care exists in both Firm and Agency to ensure that Firm scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying forth the goals of this Agreement. Firm and each of its attorneys pledge themselves to scrupulously observe a duty of reasonableness and cost effective representation in all aspects of this Agreement and to carry forth the ends of achieving the goals set forth herein while entailing the expenditure of only a reasonable sum for Firm's representation under this Agreement.

6. PAYMENT FOR SERVICE.

In consideration for Firm's performance of legal services on behalf of Agency under the terms of this Agreement, and upon review and approval of Firm's bill by the Agency General Counsel, Firm shall be compensated at the preapproved hourly rates and for authorized expenses as set forth in **Exhibit A** entitled "Scope of Work and Schedule of Fees and Charges," attached and incorporated by this reference. Fees for services performed by retained consultants, subcontractors, experts or other personnel may be billed to Agency only if approved in writing by the Agency General Counsel.

7. BILLING INVOICES.

Firm shall, within fifteen (15) days after the end of each calendar month in which services are performed under this Agreement, submit to the Agency an itemized bill, describing the specific services performed as set forth in this Agreement. The Firm shall adhere to the billing procedures set forth in **Exhibit B** entitled "Protocols and Guidelines," attached and incorporated by this reference. The bill shall be submitted to:

City of Santa Clara
Attn : General Counsel
1500 Warburton Avenue
Santa Clara, CA 95050

8. PERSONNEL BILLING.

Firm shall scrupulously examine all bills submitted for services rendered under this Agreement to assure that appropriate billing judgment is employed in billing Agency for service hereunder. Firm shall not bill for hours other than those hours expressly devoted to the tasks approved in advance by the Agency General Counsel. Firm agrees it will not bill for time which is not specifically devoted to said task(s). Firm shall not use legal professionals for secretarial work and under no circumstances shall Firm have lawyers billing for making copies, scheduling appointments or taking care of matters or work which would otherwise be work performed by a law clerk or secretary. The billing format utilized to provide bills shall be set forth in the required detailed format which readily permits the full scrutiny by any Agency retained auditors.

9. STATUS REPORTS.

Firm shall, within fifteen (15) days of each calendar quarter thereafter, submit to Agency a written report setting forth a summary of activities performed on behalf of Agency during the preceding calendar quarter, the current status of each pending matter or proceeding, results obtained or expected to be obtained, a summary of invoices for the preceding quarter and such other information relating to the services rendered as Agency may reasonably request. See Billing Protocol/Guidelines, Exhibit B for additional reporting requirements.

10. TERMINATION.

Either Party may terminate this Agreement by providing written notice to the other. Any termination hereunder shall become effective upon receipt of written notice of termination; provided, however, that Firm may exercise its right of termination only to the extent and under terms and conditions consistent with the obligations of Firm under the Rules of Professional Conduct of the State Bar of California; and provided, further, that in the event of termination, the amount due Firm for services rendered and costs and expenses incurred prior to termination shall remain due and payable. The Agency General Counsel may exercise the power of Agency to terminate this Agreement without prior Board approval. Upon the written request of the Agency General Counsel, Firm agrees to turn over to any attorney substituted in its place, the entire file and attorney work product regarding any such matter within seven (7) days of any such termination.

11. CONFLICTS OF INTEREST.

At the beginning of each month during the term of the Agreement, Firm shall make a good faith effort to identify and shall apprise Agency of those possible conflicts of interest which could affect Firm's duties to Agency or to the Agency General Counsel under the California Rules of Professional Responsibility, or Firm's performance of the responsibilities reposed in Firm under this Agreement, or which Firm reasonably believes are likely to affect future transactions by and between Agency and third parties. Agency retains those rights with respect to future conflicts as are vested in a traditional client under the California Rules of Professional Responsibility, and may terminate Firm's services and withhold consent to such conflicts of interest under the California Rules of Professional Responsibility which Agency deems in good faith not to be in the Agency's best interest.

12. ASSIGNMENTS AND SUCCESSORS IN INTEREST.

Agency and Firm bind themselves, their partners, successors, assigns, executors and administrators to the terms of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the Agency General Counsel.

13. INDEPENDENT CONTRACTOR.

In performing work required under this Agreement, Firm is not an agent nor employee of Agency but an independent contractor. Firm shall at all times act as an independent contractor with respect to the performance of this Agreement, with full rights to manage its employees subject to the requirements of the law. Neither Firm nor any employees or agents of Firm shall be considered an employee of Agency for any purpose.

14. RECORDS AND DOCUMENTATION.

Firm shall maintain complete and accurate records of the services provided to Agency and expenses incurred on behalf of Agency. Firm agrees to assist Agency in meeting Agency's reporting requirements to other agencies with respect to Firm's work under this Agreement. All records, reports and documentation relating to the work performed under this Agreement shall be made available to Agency during the term of this Agreement, and for a period of six (6) years after termination of the Agreement.

15. FAIR EMPLOYMENT.

Firm shall not discriminate against any employee or applicant for employment in hiring, promotion or unlawfully discharge, on the basis of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law. In the State of California this requirement is an ethical obligation of attorneys in the management of their Firms. [Rules of Professional Conduct Section 2-400 (c).]

16. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Firm shall indemnify protect, defend, and hold harmless Agency, its Board, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from Firm's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the work by Firm, its agents, subcontractors and/or assigns under to this Agreement.

17. INSURANCE REQUIREMENTS.

Firm shall maintain in full force and effect the following insurance policies:

- A. Commercial general liability policy (bodily injury and property damage);
- B. Worker's compensation/employer's liability policy;
- C. Business automobile liability insurance policy; and,
- D. Professional liability policy.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, endorsements, certificates of insurance and coverage verifications as set forth in **Exhibit C**, entitled "Insurance Requirements," attached and incorporated by this reference.

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18. CONFIDENTIALITY AND DISCLOSURE.

The data, information and reports acquired or prepared by Firm in connection with matters upon which the Agency has retained Firm shall not be shown or distributed to any other public or private person or entity except as authorized by the Agency General Counsel and in no event prior to having been first disclosed to the Agency General Counsel. All information, documents, records, reports, data or other materials furnished by Agency to Firm or other such information, documents, records, data or other materials to which the Firm has access during its performance pursuant to this Agreement are deemed confidential and shall remain the property of Agency. Firm shall not make oral or written disclosure of such documents or materials, other than as necessary for its performance under this Agreement, without the prior written approval of the Agency General Counsel.

19. AMENDMENTS.

This Agreement, including any Exhibits attached to it, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement. All Agreements with Agency are subject to approval of the Board before Agency shall be bound thereby.

20. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties. No third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

21. NOTICES.

All notices, invoices, reports or other communication to the Parties shall be properly given if delivered in person or sent by First Class mail, facsimile or overnight delivery and addressed as follows:

City of Santa Clara
Attn : General Counsel
1500 Warburton Avenue
Santa Clara, CA 95050
Fax Number: (408) 249-7846

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And to Firm addressed as follows:

Goldfarb & Lipman, LLP
Attn: Lee C. Rosenthal, Esq.
1300 Clay Street, Ninth Floor
Oakland, CA 94612
Fax Number: (510) 836-1035

Either Party may change its address for receipt of notices under this Agreement by notice given in the manner provided herein.

22. LAW GOVERNING AGREEMENT.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

23. INVALID PROVISIONS.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Agreement shall not be affected thereby.

[Paragraph 24 and Signatures follow on Page 8]

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24. LICENSE REQUIREMENTS.

Firm shall demonstrate that the attorney(s) who provide legal services to Agency under this Agreement are licensed to practice law in the State of California and, if not, indicate to the satisfaction of the Agency General Counsel why such license is not required to perform the services required.

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

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

APPROVED AS TO FORM:

HELENE L. LEICHTER
Agency General Counsel

JENNIFER SPARACINO
Executive Director

ATTEST:

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

ROD DIRIDON, JR.
Agency Secretary

“Agency”

GOLDFARB & LIPMAN, LLP
a California limited liability partnership

By:

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

“Firm”

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN, LLP**

EXHIBIT A

SCOPE OF WORK AND SCHEDULE OF FEES AND CHARGES

SCOPE OF WORK.

The scope of the engagement is to assist The Redevelopment Agency as requested by the Governing Board and administered by the Agency General Counsel. The scope of work will include, but not be limited to the following:

TASK	HOURS	BUDGET
Attend City Council meetings - assumes 20 meetings	160	\$41,600
Attend negotiating meetings - assumes 25 meetings	180	\$46,800
Weekly staff meetings and calls	180	\$46,800
Draft term sheet	70	\$18,200
Prepare/review memos and staff reports	70	\$18,200
Cedar Fair negotiations	100	\$26,000
Draft/review Cedar Fair agreements	30	\$7,800
Revenue, expense and capital expenditure research	100	\$20,000
Ballot measure research	30	\$7,800
Prepare ballot measure and analysis	30	\$7,800
	890	\$225,400

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SCHEDULE OF FEES AND CHARGES.

Billable Rates

The Firm shall bill its time by the hour at the hourly billable rate assigned to each attorney. The Firm shall bill Agency for its services at its current hourly rates, which range from \$175 to \$260 per hour for attorney time and from \$125 to \$145 per hour for paralegal time. A review of hourly rates may be conducted annually and adjustments may be made so long as the rates fall within the range set forth in this Agreement.

It is anticipated that most of the legal work provided under this Agreement shall be performed by the following attorneys at the designated hourly billing rates:

LEE C. ROSENTHAL \$260/per hour

Other attorneys from Firm may also work on Agency projects with prior approval of the Agency General Counsel. Hourly rates charged by Firm for such attorneys shall be approved in advance by the Agency General Counsel.

Notice of any proposed increase in the approved hourly rates for services rendered under this Agreement will be given to Agency in writing no later than thirty (30) days prior to the effective date of subject increase. No proposed increase will become effective if, prior to its effective date, Agency notifies Firm in writing of objections thereto. In the event a timely notice of objection to any proposed increase is given, Firm and Agency shall attempt to reach agreement concerning future hourly rates. If agreement is reached, the rates agreed upon shall be applicable as of the date agreed upon. In the event that after a reasonable period the parties are unable to reach agreement, either party may advise the other in writing that this Agreement is terminated.

Firm will be reimbursed for all out-of-pocket costs and expenses actually incurred by Firm in the above-described representation of Agency. Reimbursable out-of-pocket expenses include, but are not limited to, all travel expenses, (i.e., local travel including taxis), lodging, long distance telephone calls, reproduction and printing costs, postage, filing fees, word processing costs paid to third parties after prior Agency approval, transcript costs, staff (non-attorney) overtime after prior Agency approval and notary fees, to the extent that any such costs are incurred on behalf of Agency.

Maximum Not to Exceed Contract Amount.

In no event shall the total amount paid to the Firm for services, including all fees, costs and/or expenses, under this Agreement exceed two hundred twenty-five thousand four hundred dollars (\$225,400.00), subject to budgetary appropriations.

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN, LLP**

EXHIBIT B

BILLING PROTOCOL/GUIDELINES

Firm will be required to comply with this protocol. If you have questions concerning it, please contact the Agency General Counsel for clarification. In the event you wish to negotiate changes due to the internal operation of your Firm, please raise them in writing as soon as possible. Any changes to this protocol will need prior, written approval from the Agency General Counsel. In the interest of fairness, all special counsel are required to comply with this protocol. This protocol is also to be used in conjunction with any new proposal for services.

These billing guidelines are instituted to ensure that Firm's bills convey the information necessary to manage outside litigation. Also, because these guidelines are set out in advance, they are designed to minimize any confusion or misunderstanding. Compliance with these guidelines should enhance the attorney-client relationship. If you have any comments or suggestions that could improve this system, please feel free to contact the Agency General Counsel at the above-listed address.

1. All cases shall be billed monthly pursuant to paragraph 7 of this Agreement.
2. The fee portion of each invoice shall include the amount, date work was performed, the amount of time expended, rate per hour and a brief description of the services rendered as a basis for fee calculation, or other method of determining the fees. The invoice shall include a description of the services provided and the time charged by each legal professional. All tasks set forth in Firm's billing documentation shall be specific and detailed. Overly generalized listings of task descriptions such as "review contract" or "prepare for negotiations" are not acceptable.
3. Billings under this Agreement shall not be provided in more than six (6) minute increments and shall represent the devotion of a full six minutes before an increment is billed. Under no circumstances shall Firm use "block billing" procedures, wherein a list or series of activities is done each day with only an aggregate amount of time specified.
4. Firm shall not double staff with respect to any task unless the express oral consent of the Agency General Counsel is first obtained to do so.
5. The cost and expense portion of the invoice shall clearly identify the nature and amount and any other cost(s) billed to Agency must be separately itemized with prior written

approval of the Agency General Counsel. Any experts or other contractors contracted by Firm on behalf of Agency whose charges are billed through the Firm must also provide such billing itemization and such billing shall be attached to the billing provided to Agency by Firm. Professional fees and expenses invoiced to Agency shall be due and payable within thirty (30) days after receipt of Firm's statement.

6. In support of payment for such bill, Firm shall furnish payroll records, bills, invoices, receipts or other evidence of reimbursable expenses incurred as reasonably requested by the Agency General Counsel. Agency reserves the right to require additional substantiation of any item of claimed expense.
7. In addition to the requirements for status reports in paragraph 9 of this Agreement, if a Agency case is involved in active litigation, more frequent reporting is required. For such cases, the primary attorney shall prepare a brief summary of activity on each case on a monthly basis. After the first monthly summary is sent, you may copy the prior month's summary with an indication in the last few sentences at the end of each summary of any relevant changes during the month. This summary shall be provided by the seventh (7th) day of each new month. The attorney shall not charge more than one hour per case for this summary without prior Agency General Counsel approval. Normally less than one hour will be required.
8. A different case number/identifier shall be adopted for each individual matter assigned to Firm to facilitate tracking individual cases, or advisory matters. General accounts are not acceptable to Agency without prior approval. That is, unless it is prearranged, a general account is not to be opened. In the event that a general account is approved, a separate case number/identifier should still be used if a matter exceeds five (5) billable hours.
9. Each month's bill should include the total billable hours and expenses to date for each litigation matter. That total should provide, at a glance, the total fees and costs incurred to date for the specific case. This will facilitate Agency's approach of cost-effective management of cases. The advantage of listing this total on the monthly bills is that it provides immediate information on how much Agency has spent on a case, thus far. (Simply stated, this should assist in avoiding a situation of spending \$40,000 in legal fees on cases where only \$20,000 is at stake.) If the totals cannot be produced by your computerized billing system, please provide them with the billing under separate cover, listing totals to date. **If totals to date are not provided, the bills will not be paid and will be returned to you.**
10. The attorney-client relationship is a personal one. Firm was hired for the individual skills and experience of its attorneys. Agency may authorize one other individual, usually an associate, to help handle its cases, but only with the Agency General Counsel's prior permission. Please inform the Agency General Counsel who that person will be and his/her qualifications. Agency does not anticipate that any other attorney will bill on this account without prior approval. If an urgent issue arises or a court appearance needs to be covered, please call the Agency General Counsel to inform Agency prior to making arrangements for another attorney to cover for the authorized primary attorney.

11. As a follow-up to the previous point, Agency will not pay for new attorneys to “get up to speed” on a file unless it has been preapproved.
12. Agency encourages the use of paralegals for any task that can be delegated. However, similar to attorneys, no more than two paralegals (but preferably one) should work on each case without the Agency General Counsel’s prior approval.
13. For each approval requested, you may contact the Assistant Agency General Counsel if the Agency General Counsel is unavailable.
14. Law clerks present a unique situation. Agency recognizes Firm’s need to train new associates; however, as a public entity, Agency cannot afford to pay for training. Law clerks can be used, with prior approval, and only when it will be beneficial or cost-effective for Agency.
15. Costs related to legal services and litigation can easily spiral out of control. Agency needs to know Firm’s photocopying charges on a per-copy basis. The maximum charge is twenty-five cents (\$.25), noting that actual costs are usually one-half of that amount. Agency encourages Firm to use outside copying services, when possible, if the cost of doing so is less than what Firm would charge.
16. Agency needs to know Firm’s incoming and outgoing fax charges. Fax charges should be one dollar (\$1.00) or less per fax (many firms charge fifty cents (\$.50) per fax). This should not be a profit center for Firm. Unless there is an urgent need that a document be delivered immediately, please use the United States Postal Service or a courier service if it would be less expensive than faxing via your system.
17. Messenger and other charges in excess of actual costs are not permitted. Agency does not allow cost, plus a percentage, for actual outside costs.
18. Administrative charges are a difficult issue. Generally, Agency does not pay them. If there is a valid explanation and other items are not charged, Agency will consider paying for them. However, this should be negotiated in advance.
19. As Agency often uses firms that are outside of the nearest metropolitan area, the Board is very conscious of travel costs. Usually Firm will be held to charging no more than a local firm from the nearest metropolitan area would charge to travel to a deposition, court appearance or Board meeting. This is subject to negotiation depending upon special circumstances.
20. Agency does not allow “double billing” of any sort. If Firm is working on another client’s matter, do not bill Agency for that time. This applies to travel time or any other matter.

21. Agency does not pay two attorneys to discuss its case. Agency recognizes the need for such discussion; however, only one of the attorneys should bill for the time. Again, training time is not billable.
22. Telephone, cellular telephone and postage charges are billable at actual cost.
23. Meals are not billable to Agency without prior authorization.
24. Expert witness fees are not automatically authorized. Firm will need to clear each expert witness with the Agency General Counsel. Agency encourages the use of experts whenever necessary; therefore, do not consider this as a warning against retention of experts. The Agency General Counsel must be kept aware of the need for expert witnesses and their qualifications.
25. Professional Liability insurance is required to be in force at all times. Firm shall maintain at least the insurance coverage set forth in Exhibit C at all times.
26. Most work for Agency is done on a not-to-exceed basis. The not-to-exceed figure that Firm is provided is considered as contractual material terms binding upon Firm. The not-to-exceed figure may not be increased without prior approval by the Agency General Counsel. Usually this approval must be obtained directly from the Board, as it generally exceeds the authority of the Agency General Counsel or Executive Director.
27. If Firm is provided with a new case directly from staff; or if a matter arises that requires Firm to open a new file, the Agency General Counsel should be informed immediately.
28. Agency attempts to process Firm's bills as quickly as possible. If Firm complies with Agency's format requested, Agency can expedite processing.
29. Each litigation matter should have a separate budget. The budget should be preapproved by the Agency General Counsel. Generally, it should be divided into discovery and motion sections. Agency does not require a trial budget up front. However, a trial budget should be prepared at least one month before trial.
30. Generally, the Agency General Counsel will rely upon Firm for guidance on litigation strategy. Nonetheless, prior approval from the Agency General Counsel is necessary for demurrers, motions for summary judgment and discovery motions.
31. Agency expects that Firm will resolve all discovery disputes without court intervention. If this is impossible due to the conduct of others, please inform the Agency General Counsel immediately. Agency's intent is to have discovery be fair and open with the money spent on reviewing relevant items that are discovered, not on discovery battles.
32. Agency is settlement-oriented. With rare exceptions, every case has a settlement value. Each monthly summary should outline attempts at settlement, if the Agency has not

provided Firm with authority, please ask opposing counsel for a settlement number and present it to the Agency General Counsel.

33. Bills should list the names of each attorney or paralegal working on the matter. Each entry should delineate who has performed the work via initials or some other method of identification.
34. Agency's Finance Department will send a request for an auditor response letter annually. Please respond to these requests promptly. The response should not take longer than 2.5 hours per case, although usually not more than one hour is required. In complicated cases where more than 2.5 hours is required, please contact the Agency General Counsel before drafting your response.
35. Agency does not pay for secretarial time or secretarial overtime. Agency does not pay attorneys or paralegals for secretarial tasks or tasks that should be included in Firm's overhead. For example, faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
36. Agency does not pay for word processing charges. This includes per page or hourly charges.
37. Agency does not pay for billing or discussion of bills. If Agency has questions about billing or needs additional information on a bill that is not a chargeable event, Firm should respond without charging Agency for the time required to respond to Agency's inquiry.
38. The practice of charging minimum billing charges is unacceptable. Please charge for actual time spent. For example, a minimum of .2 for phone calls or .4 for letters is unreasonable unless it is an accurate measure of time spent.
39. Do not charge for file opening or file closing. These are not true legal services, tasks or adequate descriptions of legal activities.
40. Provide full descriptions of legal tasks performed. This will help the Agency General Counsel follow case development and understand Firm's strategy.
41. Please provide copies of all written research prepared on Agency's cases or matters. Firm's research can help the Agency in similar matters.
42. Please provide copies of all motions or briefs which are filed related to Agency's matter. Unless previously requested, Firm does not need to send drafts or miscellaneous correspondence. Copies of significant pieces of correspondence should be provided to Agency.
43. Agency appreciates when Firm has researched an issue previously and uses that research on present cases. Agency has retained Firm because of the past experience of its

attorneys. Do not charge Agency for work Firm has done and billed another client for in the past. This also applies to forms.

44. Billing entries should be by date and task. For example, if four distinct tasks were performed on a file in one day, each task should be billed separately with an individual time charge for each task.
45. Agency expects early and frequent evaluation of its cases. If the likelihood of success on a particular case is low, Agency wants to know up front in order to minimize litigation costs and make reasonable attempts to settle the case. Agency does not want to be informed of the low probability of success on the eve of trial. Firm is not expected to be a guarantor of success or an insurer. Agency only asks for Firm's best estimate.
46. "Penny-wise and pound-foolish" is not Agency's approach. Cost-effective representation is. If Firm feels restricted by this protocol, please raise the issue as soon as possible. Agency's concern is to bring the matter to a fair and equitable solution.

**LEGAL SERVICES AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA CLARA
AND
GOLDFARB & LIPMAN, LLP**

EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS

Without limiting the Firm's indemnification of the Agency, and prior to commencing any of the services required under this Agreement, the Firm shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Firm; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Firm to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another;
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability;

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Firm included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Firm or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the Redevelopment Agency of the City of Santa Clara, its Governing Board, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the Agency General Counsel's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. The Redevelopment Agency of the City of Santa Clara, its Governing Board, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Firm's work for Agency, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Firm shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Firm's insurance.
3. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to Agency at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to Agency at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

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F. ADDITIONAL INSURANCE RELATED PROVISIONS

Firm and Agency agree as follows:

1. Firm agrees to ensure that subcontractors, and any other party involved with the performance of Services, who is brought onto or involved in the performance of the Services by Firm, provide the same minimum insurance coverage required of Firm, except as with respect to limits Firm agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Firm agrees that upon request by Agency, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to Agency for review.
2. Firm agrees to be responsible for ensuring that no contract used by any party involved in any way with the services reserves the right to charge Agency or Firm for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.
3. The Agency reserves the right to withhold payments from the Firm in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Firm and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to Agency and as described in this Agreement. Firm shall file with the Agency, or its designated representative as set forth below, all certificates and endorsements for the required insurance policies for Agency's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Firm or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to Agency, or its designated representative as set forth below, at or prior to execution of this Agreement. Upon Agency's request, Firm shall submit to Agency copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements,

coverage verifications and other items required to be delivered to Agency pursuant to this Agreement shall be delivered to:

The Redevelopment Agency of the City of Santa Clara
Attn: General Counsel's Office
c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 (or, if by courier) 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951)766-2280
Fax: (951)766-2299

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Firm shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the Agency or its insurance compliance representatives.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA CLARA
AND
KEYSER MARSTON ASSOCIATES, INC.**

PREAMBLE

This agreement for the performance of services (“Agreement”) is made and entered into on this ____ day of February, 2008 (“Effective Date”), by and between The Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, a corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code section 33000, et seq.) (“Agency”) with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050, and Keyser Marston Associates, Inc., a California corporation, with its principal place of business located at Golden Gateway Commons, 55 Pacific Avenue Mall, San Francisco, California 94111 (“Consultant”). City and Consultant may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. Agency desires to secure professional services necessary for a project as described in **Exhibit A**, entitled “Scope of Services” and Consultant has the ability to provide certain specialized services as set forth in this Agreement; and
- B. Consultant represents that it and its subconsultants possess the professional qualifications and expertise to provide such services and, as may be required by the Scope of Services, are licensed by the State of California to practice professionally in the required disciplines; and
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as “Services”) to satisfactorily complete the work required by Agency at its own risk and expense. Services to be provided to Agency are more fully described in **Exhibit A**, entitled “Scope of Services.” All of the exhibits referenced in this Agreement are attached and incorporated by this reference.

2. **TERM OF AGREEMENT**

A. Consultant shall begin providing the Services under the requirements of this Agreement upon receipt of written "Notice to Proceed" from Agency. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Consultant shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.

B. Time is of the essence in performance of the Services described in this Agreement. Unless extended by mutual written agreement of the Parties, Consultant's obligation to perform the Services to be provided under the terms of this Agreement shall commence as described above in paragraph 2A and be completed on or before the termination date of December 31, 2008 ("Termination Date").

3. **CONSULTANT'S SERVICES TO BE APPROVED BY A LICENSED PROFESSIONAL**

Not Applicable To This Contract.

4. **QUALIFICATIONS OF CONSULTANT - STANDARD OF WORKMANSHIP**

Consultant represents, and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and Agency expressly relies upon Consultant's representations regarding its skills and knowledge. Consultant shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under **Exhibit A**, shall be of a quality acceptable to Agency. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by Agency for similar projects.

5. **RESPONSIBILITY OF CONSULTANT**

Consultant shall be responsible for the professional quality, technical accuracy and coordination of the Services furnished by it under this Agreement. Neither Agency's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Consultant shall be and remain liable to Agency in accordance with applicable law for all damages to Agency caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

Any acceptance by Agency of plans, specifications, construction contract documents, reports, diagrams, maps and other material prepared by Consultant shall not in any respect absolve Consultant from the responsibility Consultant has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules and orders.

6. RESPONSIBILITY OF AGENCY

- A.** The Agency shall provide available information regarding the Project.
- B.** The Agency has established a budget for the Project, including, if applicable, Construction Cost, Agency's other costs, and reasonable contingencies related to all of these costs.
- C.** The Agency shall designate a representative authorized to act on the Agency's behalf. Such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.
- D.** The Agency shall furnish surveys describing the physical characteristics relevant to the Project.
- E.** If necessary, the Agency shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials and other laboratory and environmental tests, inspection and reports required by law.

7. PAYMENT OF COMPENSATION

- A.** In consideration for Consultant's complete performance of the Services, Agency shall pay Consultant for all Services rendered by Consultant in accordance with the rate per hour for labor and cost per unit for materials as outlined in **Exhibit B**, entitled "Schedule of Fees." The payments made by Agency under this Agreement will be the amounts charged for Services provided and billed by Consultant, subject to verification by Agency, pursuant to the hourly rates set forth in the Schedule of Fees supplied in writing by Consultant and maintained on file with Agency at the time the Services are provided.
- B.** Consultant shall bill Agency on a monthly basis for the Services provided by Consultant during the preceding month, subject to verification by Agency. Payment to Consultant for Services will be made within thirty (30) days of Agency's receipt of invoice.

8. PROGRESS SCHEDULE

The Progress Schedule will be as set forth in the attached **Exhibit F**, entitled "Milestone

Schedule”, if applicable.

9. **DEFAULT OF CONSULTANT / TERMINATION**

If Consultant fails to perform the Services which Agency has requested to be performed within the time and in the manner provided in the Scope of Services, or otherwise violates any of the terms of this Agreement, Agency may terminate this Agreement by giving Consultant a written *Notice of Termination*. Such notice shall state the reason for such termination. In such event, Consultant shall be entitled to receive full payment for all actual labor and materials satisfactorily rendered. Agency may deduct from such payment the amount of actual damage, if any, sustained by Agency by virtue of the failure to perform the Services or for breach of this Agreement by Consultant.

10. **NO ASSIGNMENT OF AGREEMENT / SUCCESSORS IN INTEREST**

This Agreement is a contract for professional services. Agency and Consultant bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of Agency. However, claims for money due to or to become due to Consultant from Agency under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to Agency. In the event that one or more members of Consultant’s firm dies or becomes incapacitated, the surviving member or members shall complete the Services covered by this Agreement. Any such assignment shall not relieve Consultant from any of its obligations or liability under the terms of this Agreement.

11. **NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

12. **SUBCONTRACTING**

Subconsultants shall perform none of the Services provided under this Agreement unless such subconsultants are specifically identified by Consultant and pre-approved by Agency in writing.

13. **CONSULTANT IS AN INDEPENDENT CONSULTANT**

It is agreed that in performing the work required under this Agreement, Consultant and any person employed by or contracted with Consultant to furnish labor and/or materials under this Agreement is not an agent nor employee of Agency. Consultant has full rights to manage its employees subject to the requirements of the law.

14. NO PLEDGING OF AGENCY'S CREDIT

Under no circumstances shall Consultant have the authority or power to pledge the credit of Agency or incur any obligation in the name of the Agency. Consultant shall save and hold harmless the Agency, its Agency Board, officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of Agency's credit by Consultant under this Agreement.

15. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of Agency, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or becomes generally known to the related industry shall be deemed confidential.

16. USE OF CITY/AGENCY NAME OR LOGO

Consultant shall not use City's/Agency's name, insignia or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

17. OWNERSHIP OF MATERIAL

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of Agency, with the exception of computer models developed by the consultant. Consultant may retain and use copies thereof. Agency shall not be limited in any way or at any time in its use of said material. However, Consultant shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

18. RIGHT OF AGENCY TO INSPECT RECORDS OF CONSULTANT

Agency, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant's compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally

accepted accounting principles to establish the correctness of all charges submitted to Agency. Agency shall disallow any expenses not so recorded. Consultant shall submit to Agency any and all reports concerning its performance under this Agreement that may be requested by Agency in writing. Consultant agrees to assist Agency in meeting Agency's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

19. CORRECTION OF SERVICES

Consultant agrees to correct any incomplete, inaccurate or defective Services at no further cost to Agency, when such defects are due to the negligence, errors or omissions of Consultant.

20. FAIR EMPLOYMENT

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background, or marital status, in violation of state or federal law.

21. HOLD HARMLESS / INDEMNIFICATION

To the extent permitted by law, Consultant agrees to protect, defend, hold harmless and indemnify Agency, its Agency Board, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Agency shall become liable arising from Consultant's negligent, reckless or wrongful acts, errors or omissions with respect to or in any way connected with the services performed by Consultant pursuant to this Agreement.

22. INSURANCE REQUIREMENTS

A. During the term of this Agreement, and for any required time thereafter as set forth below, Consultant shall purchase and maintain in full force and effect, at no cost to Agency, the following insurance policies:

1. commercial general liability policy (bodily injury and property damage);
2. worker's compensation employer's liability policy;
3. comprehensive automobile liability insurance policy; and,
4. errors and omissions.

B. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required

endorsements, certificates of insurance and coverage verifications as defined in **Exhibit C**.

23. AMENDMENTS

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by Agency and Consultant, shall be incorporated in amendments to this Agreement.

24. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT

This Agreement embodies the agreement between Agency and Consultant and its terms and conditions. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of Agency prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon Agency.

25. SEVERABILITY CLAUSE

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

26. WAIVER(S)

Consultant agrees that waiver by Agency of any one or more of the conditions of performance or other requirement included under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

27. NOTICES

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

City Manager's Office
Attn: Assistant City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

And to Consultant addressed as follows:

Name: A. Jerry Keyser
Address: Keyser Marston Associates, Inc.
55 Pacific Avenue Mall
San Francisco, CA 94111

28. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

29. STATUTES AND LAW GOVERNING CONTRACT

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

30. DISPUTE RESOLUTION

- A.** Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and Agency regarding the construction or application of this Agreement, and claims arising out of this contract or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B.** The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed one work day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C.** The costs of mediation shall be borne by the Parties equally.
- D.** Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation, which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

31. VENUE

In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

32. OTHER AGREEMENTS

This Agreement shall not prevent either Party from entering into similar agreements with others.

33. TERMINATION OF AGREEMENT

This Agreement may be terminated by the Agency immediately upon receipt of written notice delivered personally or by registered mail or equivalent mail or delivery service, which provides for an office signature of receipt. In the event of such termination, Consultant shall immediately discontinue further services. If such termination is due to the fault of Consultant payment shall be made by Agency to Consultant for Services satisfactorily rendered up to the date of termination. If such termination is without fault on the part of Consultant, Consultant shall be paid for Services rendered up to the time of termination. Agency shall have the right, at its own expense, to cause the audit of Consultant's project books and records for the purpose of verifying Consultant's compensation claims.

(Paragraph 34 and Signatures Continue on Page 10)

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34. COMPLIANCE WITH ETHICAL STANDARDS

As a condition precedent to entering into this Agreement, Consultant shall:

- A. read the attached **Exhibit D** entitled “*Ethical Standards for Consultants Seeking to Enter into an Agreement with the Redevelopment Agency of the City Of Santa Clara, California*”; and,
- B. execute the affidavit attached as **Exhibit E** entitled “*Affidavit of Compliance with Ethical Standards.*”

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

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

Approved as to form:

HELENE L. LEICHTER
Agency General Counsel

Attest:

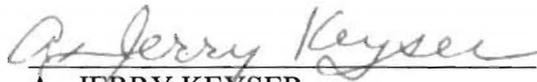
ROD DIRIDON, JR.
Agency Secretary

JENNIFER SPARACINO
Executive Director
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“Agency”

KEYSER MARSTON ASSOCIATES, INC.

a California corporation



A. JERRY KEYSER
Chairman of the Board
Local Address: 55 Pacific Avenue Mall
San Francisco, CA 94111
Telephone: (415) 398 - 3050
Fax: (415) 397 - 5065

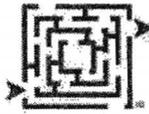
“Consultant”

AGREEMENT FOR PROFESSIONAL SERVICES
by and between the
REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CALIFORNIA
and
KEYSER MARSTON ASSOCIATES, INC.

EXHIBIT A

SCOPE OF SERVICES

Refer to Next Page – letter titled “49ers Stadium Negotiations Scope of Work”.



KEYSER MARSTON ASSOCIATES.
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

February 6, 2008

Mr. Ron Garratt
Assistant City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: 49ers Stadium Negotiations Scope of Work

Dear Ron:

Thank you for requesting this scope of work for real estate and financial advisory services in relation to term sheet negotiations with the San Francisco 49ers regarding development of a new stadium in Santa Clara. Under this scope, Keyser Marston Associates (KMA) will continue its role as one of several consultants comprising an advisory team on the stadium proposal as the City moves into negotiations.

This work scope includes advisory services related to various real estate and entitlement valuation issues, stadium finance, public finance, fiscal impacts/benefits, and other issues related to the 49ers proposal. Many of these issues were addressed in the feasibility study but are likely to continue to be a focus during negotiations. In some cases, prior analysis may need to be adjusted to account for changed circumstances or new information. For example, a resolution to concerns raised by Cedar Fair may need to be taken into account. In addition, concepts and assumptions relied upon in the feasibility study will need to be formalized into deal points.

Scope of Work

Negotiations of a term sheet with the 49ers commenced at the direction of Council at the January 15, 2008 joint public hearing and are expected to conclude not later than July 22, 2008. KMA's role will be to serve as a close advisor to the City on all appropriate issues related to negotiation of the terms, particularly those of a financial or real estate

nature. KMA will also work in close collaboration with Goldfarb & Lipman and all other City advisors. It is our expectation that there will be several areas in which our services will be focused:

1. *Real Estate and Valuation Issues.* It is expected that the City will seek a ground lease payment as compensation for the City's contribution of land for the stadium site. KMA will take the lead in evaluating the supported ground lease payment as well as other real estate issues that may arise.
2. *Structuring of Real Estate Transaction.* KMA will advise the City on how the value of the land is incorporated into the overall finance plan for the stadium and issues related to structuring the real estate transaction.
3. *Existing Lease Issues and Encumbrances.* KMA will advise the City on other real estate issues including existing leases and encumbrances related to the operation of Great America and other applicable development parcels, and interests of entities such as the Santa Clara Convention Center, the Hilton Hotel, SF PUC, and others depending on the 49ers proposal.
4. *Public Finance Plan.* KMA will advise on all issues related to public portions of the overall stadium finance plan, particularly as they relate to the contributions of real property, Redevelopment Agency tax increment / bonding capacity, or the proposed Team advance. We will work in cooperation with the City's Financial Advisor, Kelling, Norcross and Nobriga. KMA will also assist in identifying risk factors to the City and methods of mitigating such risks through alternative deal structures.
5. *Stadium Authority and Private Finance Plan.* The work effort will include a review and analysis of remaining issues regarding the proposed stadium authority and private stadium financing.
6. *Participant in Discussions with 49ers.* It is expected that this work effort will involve a number of meetings with 49ers representatives throughout the negotiation process.
7. *Presentations / Discussions with City Council* in both negotiation (closed) meetings and public meetings.

Schedule and Budget

We anticipate that this effort will conclude not later than July 22, 2008.

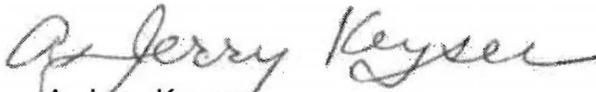
At this time, we anticipate that the work scope described in this proposal can be performed for a budget not to exceed \$150,000.

The contract will be billed on a time and materials basis, with the not to exceed maximum without previous City authorization. The budget assumes that this work scope can be performed within the time period allotted, and that it will be a focused analysis of the tasks described.

It has been a pleasure working with you on the feasibility study and we look forward to continuing to work with you during the negotiations phase.

Sincerely,

KEYSER MARSTON ASSOCIATES, INC.

A handwritten signature in cursive script that reads "A. Jerry Keyser".

A. Jerry Keyser
Chairman of the Board

AGREEMENT FOR PROFESSIONAL SERVICES
by and between the
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KEYSER MARSTON ASSOCIATES, INC.

EXHIBIT B

SCHEDULE OF FEES

Consultant shall provide a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as:

1. FEE SCHEDULE EFFECTIVE DATE; *Refer to Next Page*
2. HOURLY BILLING RATES FOR EACH STAFF POSITION\LEVEL; *Refer to Next Page*
3. MINIMUM BILLING HOURS; *not applicable*
4. CHARGES FOR EQUIPMENT BY DAY/WEEK / MONTH; *not applicable*
5. TRAVEL TIME AND COSTS; *not applicable*
6. PER DIEM EXPENSES; *not applicable*
7. EXPENDABLE MATERIAL OR NEW PARTS COSTS; *not applicable*
8. OUTSIDE SERVICES COSTS; *not applicable*
9. OVERTIME COSTS. *not applicable*

In no event shall the amount billed to Agency by Consultant for services under this Agreement exceed One Hundred Fifty Thousand Dollars (\$150,000), subject to budget appropriations.

**KEYSER MARSTON ASSOCIATES, INC.
HOURLY FEE SCHEDULE**

	<u>2007/2008</u>
A. JERRY KEYSER*	\$270.00
MANAGING PRINCIPALS*	\$270.00
SENIOR PRINCIPALS*	\$260.00
PRINCIPALS*	\$240.00
MANAGERS*	\$215.00
SENIOR ASSOCIATES	\$180.00
ASSOCIATES	\$160.00
SENIOR ANALYSTS	\$145.00
ANALYSTS	\$125.00
TECHNICAL STAFF	\$92.50
ADMINISTRATIVE STAFF	\$77.50

Directly related job expenses not included in the above rates are: auto mileage, air fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at 110% of cost.

Monthly billings for staff time and expenses incurred during the period will be payable within thirty (30) days of invoice date.

* Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
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and
KEYSER MARSTON, ASSOCIATES, INC.**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than two million dollars (\$1,000,000) per occurrence/aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with

the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA
and
KEYSER MARSTON ASSOCIATES, INC.**

EXHIBIT D

**ETHICAL STANDARDS FOR CONSULTANTS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA
CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Consultant¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty.³
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City Consultant or subconsultant;

¹For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

²For purposes of this Agreement, the words "convicted" or "conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement; and/or
2. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the Consultant can be imputed to the Consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Consultant, with the Consultant's knowledge, approval or acquiescence, the Consultant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If the City determines that Consultant no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If the City determines that the Consultant fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Consultant's failure to maintain a required state issued license, failure to obtain a City business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Consultant (or bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to these provisions, Consultant may appeal the City action to the City Council by filing a written request with the City Clerk to have the matter heard within ten (10) days of the notice given by the City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Consultant will have the burden of proof on the appeal. The Consultant shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴Consultant becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Consultant.

⁵Loss of personnel deemed essential by the City for the successful performance of the obligations of the Consultant to the City.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CALIFORNIA
and
KEYSER MARSTON ASSOCIATES, INC.**

EXHIBIT E

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SANTA CLARA]**

I, _____ *(insert name), being first duly sworn, depose and say that I am the _____ *(insert title or capacity) of Keyser Marston Associates, Inc. and I hereby state that I have read and understand the language entitled "Ethical Standards for Consultants Seeking to Enter into an Agreement with the City of Santa Clara, California" (herein "Ethical Standards") set forth in Exhibit D. I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made inquiry of those individuals potentially included within the definition of "Consultant" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote 1 of Exhibit D (i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.) has been convicted of any one or more of the crimes identified in Exhibit D within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

Keyser Marston Associates, Inc.

Signature of Authorized Person or Representative

Name (Typed or Printed)

Title

NOTARY'S ACKNOWLEDGMENT MUST BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
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EXHIBIT F

MILESTONE SCHEDULE

(If Applicable)

Not Applicable