Santa Clara All-America City 2001

INTEROFFICE MEMORANDUM City of Santa Clara

DATE:

September 17, 2009

TO:

City Manager / Executive Director, Redevelopment Agency for Charter Review

Committee

FROM:

Assistant City Manager / Assistant Executive Director, Redevelopment Agency

SUBJECT:

Analysis of the Advantages / Disadvantages of the Various Approaches to

Allowing for the Sole Source Selection of the General Contractor for the

Proposed Stadium Project

Overview

City staff recommended as part of the Term Sheet as approved by the Council that a Charter Review Committee be created to review and evaluate the possibility of modifying City Charter Section 1310 to allow for the sole source selection of a general contractor to design/build a proposed NFL stadium for the Forty Niners. The creation of a Charter Review Committee is in keeping with past practice in the City when existing Charter language is proposed to be modified. This particular proposed modification to Charter Section 1310 is limited strictly to the NFL stadium project and therefore is not precedent setting in allowing other City facilities to be bid in the same manner.

Of all the unique aspects and conditions of moving forward with the completion of a proposed NFL stadium in the City of Santa Clara for the Forty Niners, few are more important to the Team than the ability to construct the stadium using methods and techniques that the team believe are most favorable to ensuring a timely completion at an agreed to budget. From the Team's perspective, this will require employing a design/build construction methodology and having the ability to select the general contractor of their choice. As explained to the Council appointed Charter Review Committee, the Team went through a detailed, competitive selection process in 2006 to designate a preferred general contractor. After this process was completed, the Team then determined that the City of Santa Clara was their preferable site to construct an NFL stadium. City staff and Team representatives provided the Charter Review Committee with a thorough explanation of City Charter Section 1310 bidding procedures and the current state-of-the-art processes for a design/build project at the Committee's September 3, 2009 meeting.

Options

The proposed stadium construction can follow distinct paths that have been identified over the course of negotiations between City staff and Team representatives:

- 1. Follow the requirements of existing City Charter Section 1310 which requires the competitive bidding to qualified, responsible general contractors and subcontractors.
- 2. Modify the language in Charter Section 1310 to allow for the sole source selection of the general contractor by the Stadium Authority. Subcontractors would be selected per

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existing Section 1310 competitive bid requirements.

- 3. If signed into law by the Governor, allow the Stadium Authority to use the provisions of Senate Bill 43 in allowing for the sole source selection of the general contractor while also following SB 43's direction that any public monies used for construction must follow competitive bid processes consistent with the City Charter.
- 4. If SB 43 is signed into law the Charter Review Committee recommends to the City Council that the City of Santa Clara use the authority granted in SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority; and if SB 43 is not signed into law the Committee recommends to the City Council that the City Charter Section 1310 be amended by a vote of the people in accordance with ballot language as discussed in the Charter Review Committee.

An analysis of the various advantages and disadvantages of the first three of the above options is attached for the Committee's review. This analysis was done in collaboration with the Team, but in no way is intended to be the definitive view of all of the advantages/disadvantages for any of the proposed options.

Recommendation

City staff has no specific recommendation on the options. The City Charter has served the community well for decades. Having said this, staff also understands that under the requirements of the Term Sheet the Team has the full and complete responsibility to pay for all construction cost overruns caused by pricing issues or time delays, and as such has significant concern that they have the ability to construct the stadium following the processes that they have determined will work best for the risk that the Team is assuming. Therefore, the 49ers representatives are recommending Option 4 above.

Ronald E. Garratt Assistant City Manager