

Meeting Date: 6/20/11



AGENDA REPORT

City of Santa Clara, California

Agenda Item # 2A



BNPEA

DATE: June 16, 2011

TO: Executive Director for Bayshore North Project Enhancement Authority Action

FROM: Elizabeth H. Silver, Interim Authority Counsel

SUBJECT: Adoption of a Resolution Authorizing the Execution of a First Amendment to the Joint Exercise of Powers Agreement between the Redevelopment Agency of the City of Santa Clara and the City of Santa Clara to add the Bayshore North Project Enhancement Authority as a Party to the Joint Exercise of Powers Agreement and as a Member of the Stadium Authority

EXECUTIVE SUMMARY:

On June 2, 2009, Council approved a Term Sheet between the City of Santa Clara, the Redevelopment Agency and the 49er Stadium Company, LLC for the construction and operation of an NFL stadium in the Bayshore North Redevelopment Area. A special election was held on June 8, 2010 to allow Santa Clara voters to have the opportunity to decide whether a stadium should be built under the conditions negotiated in the Term Sheet. Chapter 17.20 of the Santa Clara City Code (Measure J), the Stadium ballot measure, passed with 58.2% of the vote.

Chapter 17.20 of the Santa Clara City Code provides that any lease of City property for development and operation of a stadium shall be to a Joint Powers Authority created by the City and the Agency. The legal basis for the creation of a public Authority resides in state law, which permits several government entities to join together to form a new entity called a "Joint Powers" Authority or Agency.

On February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City authorized the execution of a Joint Powers Agreement with the Santa Clara Redevelopment Agency to form the Santa Clara Stadium Authority ("Stadium Authority"). On May 24, 2011, the City adopted Ordinance No. 1887, adding Chapter 17.25 to the Santa Clara City Code, forming the Bayshore North Project Enhancement Authority.

The Bayshore North Project Enhancement Authority would now like to amend the Joint Exercise of Powers Agreement to be added as a party to the agreement and as a member of the Stadium Authority. The addition of the Bayshore North Project Enhancement Authority to the Joint Exercise of Powers Agreement and to the Stadium Authority will ensure the survival of the Stadium Authority if redevelopment agencies are eliminated in the State of California. There is nothing in Chapter 17.20 that would prohibit a third party from also joining the Joint Exercise of Powers Agreement.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Adoption of the resolution will ensure the survival of the Stadium Authority if redevelopment agencies are eliminated in the State of California. There are no known disadvantages.

Date: June 16, 2011

Subject: Adoption of a Resolution Authorizing the Execution of a First Amendment to the Joint Exercise of Powers Agreement between the Redevelopment Agency of the City of Santa Clara and the City of Santa Clara to add the Bayshore North Project Enhancement Authority as a Party to the JPA and as a Member of the Stadium Authority

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ECONOMIC/FISCAL IMPACT:

There is no cost to the Bayshore North Project Enhancement Authority other than administrative staff time and expense.

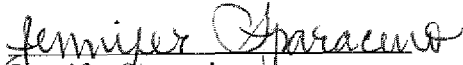
RECOMMENDATION:

That the Bayshore North Project Enhancement Authority adopt the Resolution authorizing the execution of a First Amendment to the Joint Exercise of Powers Agreement between the Redevelopment Agency of the City of Santa Clara and the City of Santa Clara to add the Bayshore North Project Enhancement Authority as a party to the Joint Exercise of Powers Agreement and as a Member of the Stadium Authority.



Elizabeth H. Silver
Interim Authority Counsel

APPROVED:



Jennifer Sparacino
Executive Director

Documents Related to this Report:

- 1) *Resolution of the Bayshore North Project Enhancement Authority authorizing the execution of a First Amendment to the Joint Exercise of Powers Agreement Between the Redevelopment Agency of the City of Santa Clara and the City of Santa Clara to add the Bayshore North Project Enhancement Authority as a party to the Joint Exercise of Powers Agreement and as a Member of the Stadium Authority*
- 2) *First Amendment to Joint Exercise of Powers Agreement Establishing the Santa Clara Stadium Authority by and between the City of Santa Clara and Redevelopment Agency of the City of Santa Clara and Bayshore North Project Enhancement Authority*

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RESOLUTION NO. _____(BNPEA)

A RESOLUTION OF THE BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY OF THE CITY OF SANTA CLARA, CALIFORNIA, AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA AND THE CITY OF SANTA CLARA TO ADD THE BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY AS A PARTY TO THE JOINT EXERCISE OF POWERS AGREEMENT AND AS A MEMBER OF THE STADIUM AUTHORITY

BE IT RESOLVED BY THE BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY OF THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on June 8, 2010, the citizens of the City approved Measure J, “The Santa Clara Stadium Taxpayer Protection and Economic Progress Act,” which endorsed the development of a stadium suitable for professional football and other large events (the “Stadium Project”) and called for the creation of the Santa Clara Stadium Authority to own, develop, construct, operate and maintain the Stadium Project;

WHEREAS, Chapter 17.20 of “The Code of the City of Santa Clara, California,” (SCCC) approved by the voters on June 9, 2010, provides that any lease of City property for development and operation of a Stadium shall be to a joint powers authority created by the City and the Redevelopment Agency;

WHEREAS, on February 22, 2011, by City of Santa Clara Resolution No. 11-7825, the City authorized the execution of a Joint Exercise of Powers Agreement (“JPA”) with the Redevelopment Agency to form the Santa Clara Stadium Authority;

WHEREAS, on May 24, 2011, the City adopted Ordinance No. 1887, adding Chapter 17.25 SCCC and forming the Bayshore North Project Enhancement Authority (“BNPEA”);

WHEREAS, the City of Santa Clara and the Redevelopment Agency would now like to amend the JPA to add the BNPEA, so that the Santa Clara Stadium Authority will survive in the event that the Redevelopment Agency of the City of Santa Clara is eliminated;

WHEREAS, Chapter 17.20 SCCC does not prohibit the addition of a new member to the Stadium Authority; and,

WHEREAS, the JPA should be amended to add the BNPEA as a member of the Santa Clara Stadium Authority.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the Board of the Bayshore North Project Enhancement Authority of the City of Santa Clara hereby approves the First Amendment to the Joint Exercise of Powers Agreement and authorizes the Executive Director to execute it on behalf of the Bayshore North Project Enhancement Authority.

2. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Bayshore North Project Enhancement Authority of the City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

3. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2011, BY THE FOLLOWING VOTE:

AYES: AUTHORITY BOARD MEMBERS:

NOES: AUTHORITY BOARD MEMBERS:

ABSENT: AUTHORITY BOARD MEMBERS:

ABSTAINED: AUTHORITY BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY
BAYSHORE NORTH PROJECT
ENHANCEMENT AUTHORITY
OF THE CITY OF SANTA CLARA

Attachments incorporated by reference:

1. First Amendment to the Joint Exercise of Powers Agreement Establishing the Santa Clara Stadium Authority
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FIRST AMENDMENT TO
JOINT EXERCISE OF POWERS AGREEMENT
ESTABLISHING THE
SANTA CLARA STADIUM AUTHORITY

by and between

THE CITY OF SANTA CLARA

AND

REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA

AND

BAYSHORE NORTH PROJECT ENHANCEMENT AUTHORITY

**FIRST AMENDMENT TO THE
JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
SANTA CLARA STADIUM AUTHORITY**

This First Amendment to the Joint Exercise of Powers Agreement ("First Amendment") is entered into as of _____, 2011, by and between the City of Santa Clara, a charter city ("City"), the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic ("Agency"), and the Bayshore North Project Enhancement Authority, a public authority ("BNPEA") with reference to the following:

RECITALS

A. On February 15, 2011, the City and the Agency entered into the Joint Exercise of Powers Agreement for the Santa Clara Stadium Authority ("Original Agreement") and created the Santa Clara Stadium Authority (the "Stadium Authority") as a means of accomplishing the cooperation and coordination among them necessary to provide for development and operation of the Stadium..

B. The City and the Agency desire to amend the Original Agreement to add the Bayshore North Project Enhancement Authority as a party to the Joint Exercise of Powers Agreement.

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That Section H of the Recitals of the Original Agreement, is hereby amended by deleting the existing Section H in its entirety and replacing it with the following:

"The City, the Agency and the BNPEA desire to enter into this Agreement and create the Santa Clara Stadium Authority (the "Stadium Authority") as a means of accomplishing the cooperation and coordination among them necessary to provide for development and operation of the Stadium."

That Section 1.1 ("Definitions") of Article 1 ("Definitions and Exhibits") of the Original Agreement, is hereby amended by adding a new Section (c):

""BNPEA" means the Bayshore North Project Enhancement Authority."

That Section (I) of Section 1.1 ("Definitions") of Article 1 ("Definitions and Exhibits") of the Original Agreement, is hereby amended by deleting the existing Section (I) in its entirety and replacing it with the following:

““Member” means an entity that is a party to this Agreement and a member of the Stadium Authority. The Members of the Stadium Authority are the City, the Agency and the BNPEA.”

That Section 2.10 (“Stadium Authority Facilities”) of Article 2 (“Purpose and Powers”) of the Original Agreement, is hereby amended by deleting the existing Section 2.10 in its entirety and replacing it with the following:

“All public facilities constructed or acquired by the Stadium Authority may be held in the name of the Stadium Authority for the benefit of the Stadium Authority in accordance with the terms of this Agreement unless conveyed to and accepted by the City, the Agency or the BNPEA.”

That Section 3.1 (“Membership”) of Article 3 (“Organization”) of the Original Agreement, is hereby amended by deleting the existing Section 3.1 in its entirety and replacing it with the following:

“The Members of the Stadium Authority shall be the City, the Agency and the BNPEA.”

That Section 3.9 (“Vote or Assent of Members”) of Article 3 (“Organization”) of the Original Agreement, is hereby amended by deleting the existing Section 3.1 in its entirety and replacing it with the following:

“The vote, assent, or approval of the City, the Agency and the BNPEA as Members in any matter requiring such vote, assent or approval hereunder, shall be evidenced by a certified copy of the resolution of the governing board of such Member filed with the Stadium Authority.”

That Section 4.4(a) (“Contributions for Operating Expenses”) of Article 4 (“Financing”) of the Original Agreement, is hereby amended by deleting the existing Section 4.4(a) in its entirety and replacing it with the following:

“(a) The City shall have no obligation to contribute any City funds, including general funds or enterprise (utility) funds to the construction, operation or maintenance of the Stadium or the costs and expenses of the administration of the Stadium Authority other than the CFD funds set forth in Section 4.2 above. The Agency shall have no obligation to contribute any Agency funds to the construction, operation or maintenance of the Stadium or the costs and expenses of the administration of the Stadium Authority other than as set forth in the Agency Funding Agreement. The BNPEA

shall have no obligation to contribute any BNPEA funds to the construction, operation or maintenance of the Stadium or the costs and expenses of the administration of the Stadium Authority. The City, the Agency or the BNPEA may contract with the Stadium Authority for the use of personnel, equipment or property provided such contract provides for full reimbursement of the City's, the Agency's or the BNPEA's costs associated with such contract. The Stadium Authority shall reimburse the City the direct and indirect costs of City employees performing the duties of the Executive Director, the Finance Director/Treasurer/Auditor, the Stadium Authority Counsel and the Secretary, and for other out of pocket expenses for outside services and other reimbursable expenses authorized by the Stadium Authority, all in accordance with the approved Annual Stadium Operating Budget.”

That Section 4.5 (“General Bond Provisions”) of Article 4 (“Financing”) of the Original Agreement, is hereby amended by deleting the existing Section 4.5 in its entirety and replacing it with the following:

“Upon approval of the Board, the Stadium Authority may, in any given year, issue bonds, or enter into other financing arrangements, to finance activities or facilities in accordance with the provisions of any applicable law and the JPA Law. The City, the Agency and the BNPEA, either individually or collectively shall not be obligated under any bonds issued by, or other financing arrangements entered into by, the Stadium Authority and no revenue, funds or property of the City, the Agency or the BNPEA shall be pledged toward repayment of any such bonds.”

That Section 4.6 (“Revenue Bonds”) of Article 4 (“Financing”) of the Original Agreement, is hereby amended by deleting the existing Section 4.6 in its entirety and replacing it with the following:

“The Stadium Authority, upon approval of the Board, shall have the power and authority to issue revenue bonds for the purposes and in accordance with the procedures and requirements set forth in the JPA Law. Only the revenues of the Stadium Authority may be pledged to any such revenue bonds issued by the Stadium Authority and no funds of the City, the Agency, or the BNPEA shall be pledged toward the repayment of any revenue bonds issued by the Stadium Authority.”

That Section 8.4 (“Notice”) of Article 8 (“General Provisions”) of the Original Agreement, is hereby amended by deleting the existing Section 8.4 in its entirety and replacing it with the following:

“Any notice or instrument required to be given shall be delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, by hand delivery or by overnight delivery service and shall be addressed to the addressee of the Members as follows:

City	City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Attn: City Manager
Agency:	Redevelopment Agency of the City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Attn: Executive Director
BNPEA:	Bayshore North Project Enhancement Authority 1500 Warburton Avenue Santa Clara, CA 95050 Attn: Executive Director

Such notice shall be effective upon receipt or refusal to accept receipt.”

2. TERMS

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

The Signature Page of the Original Agreement, is hereby amended by deleting the existing Signature Page in its entirety and replacing it with the following.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

ATTEST:

CITY OF SANTA CLARA

Secretary

By: _____

APPROVED AS TO FORM:

Name: _____

City Attorney

Title: _____

ATTEST:

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA CLARA

Secretary

By: _____

APPROVED AS TO FORM:

Name: _____

Agency Counsel

Title: _____

ATTEST:

BAYSHORE NORTH PROJECT
ENHANCEMENT AUTHORITY

Secretary

By: _____

APPROVED AS TO FORM:

Name: _____

Authority Counsel

Title: _____