Meeting Date: 02-12-08

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5.A.1

Santa Clara All-America City 2001

DATE: February 8, 2008

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

FROM: Assistant City Manager

SUBJECT: Proposed Negotiating Agreement Between the City of Santa Clara and the San Francisco 49ers Allowing for a Period of Time to Conduct Non-binding Negotiations for the Construction and Operation of a Proposed Stadium in the City of Santa Clara

EXECUTIVE SUMMARY:

Overview

For the past year the City has been reviewing and evaluating a proposed 49ers stadium project to be located in the City's North Bayshore Redevelopment Area. At their January 4, 2007 meeting, the City Council received a request from the San Francisco 49ers to begin a cooperative effort towards conducting a feasibility study evaluating a possible NFL stadium to be located in the Great America Theme Park parking lot. The 49ers presented their economic analysis for a Santa Clara stadium on April 10, 2007 and brought forward their stadium proposal on April 24, 2007. The 49ers and City staff and consultants then commenced a nine month feasibility study process to understand, question and comment on the 49ers proposal. At their January 15, 2008 meeting, as one of their actions, the Council approved the following:

- Refer to the City Manager to proceed to negotiate an Exclusive Negotiating Rights Agreement with the San Francisco 49ers to enter into preliminary negotiations for a determined period of time resulting in a Term Sheet Agreement that would memorialize key understandings, obligations, responsibilities and financial commitments between the City and the 49ers. The Term Sheet Agreement would be a non-binding Agreement that will allow the Council to determine if they wish to proceed further to negotiating a lease that would address stadium construction and operations issues. The Exclusive Negotiating Rights Agreement would return to Council for approval.

Negotiating Agreement

The Negotiating Agreement provides the opportunity to resolve significant remaining issues pertaining to the construction and operation of a publically owned stadium in the City of Santa Clara. The Negotiating Agreement provides a period of time, from January 16, 2008 through December 31, 2008 (if necessary) to allow the parties, the City and the 49ers, to seek and develop a mutually acceptable outline of the transaction structure and significant business terms for the construction and operation of a stadium. If, by July 22, 2008, the parties have not approved a mutually acceptable Term Sheet, this Negotiating Agreement is subject to termination by either party. The negotiating period may be extended by mutual agreement of the parties, and this Agreement can be terminated if a ballot measure to approve the project is not approved by the voters of the City.

ADVANTAGES / DISADVANTAGES OF ISSUE:

The advantages of proceeding forward with a Negotiating Agreement period are that the parties shall make good faith efforts to:

- Determining the location of the stadium and any parking structure.
- Have the Team (and LLC) submit a rezoning application to the City to rezone the overflow lot location and adjacent parking and access areas as a planned development zone.
- Have the Team (and LLC) submit such information as is necessary to permit the City to go forward with preparation of an EIR for the project.
- Develop a mutually acceptable outline of the transaction structure and significant business terms for the construction and operation of a stadium.
- Consider taking steps to create the Stadium Authority structure.
- Undertake preliminary design and engineering studies for the parking structure or structures in order to evaluate the feasibility of a particular location.
- Undertake preliminary design and engineering studies for the Tasman electric substation relocation.
- Review and evaluate the availability and amount of financing for stadium project costs as set forth in the Council/Agency approved action of January 15, 2008 setting a not to exceed amount of $136 million in public financing.

ECONOMIC/FISCAL IMPACT:
The cost of engaging City/Agency consultants to proceed into the Term Sheet negotiations period through July 2008 is estimated at $500,000. The primary consulting contracts pertaining to legal services and economic/fiscal analysis are included in a separate agenda report. This would bring the total consulting services contract appropriations for the stadium project to $1 million for the 16 month period between April 2007 and July 2008. The cost of the CEQA/EIR process is the responsibility of the project applicant. For the stadium project, the applicant is the San Francisco 49ers.

RECOMMENDATION:
Staff recommends that Council/Redevelopment Agency direct the City Manager to execute the Negotiating Agreement between the City of Santa Clara, the Redevelopment Agency of the City of Santa Clara and the San Francisco 49ers, LLC to proceed with Term Sheet negotiations with a proposed ending date of July 22, 2008.

APPROVED:

Ronald E. Garratt
Assistant City Manager

Jennifer Sparacino
City Manager/Executive Director
Redevelopment Agency

Documents Related to this Report:
1) Exhibit 1-Proposed Negotiating Agreement

CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: February 12, 2008

SUBJECT: Negotiating Agreement between the City/Redevelopment Agency and the San Francisco 49ers to proceed into preliminary negotiations on a non-binding term sheet from the period January 16, 2008 through July 22, 2008.

CERTIFICATION

The proposed Negotiating Agreement regarding proceeding into preliminary negotiations for an NFL football stadium for the San Francisco 49ers has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

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

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

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

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

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

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

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

1. As to City Functions, by _____
Department Head

2. As to Legality, by Helene Leichter
City Attorney's Office / CAO Assignment No 07._____

3. As to Environmental Impact Requirements, by _____
Director of Planning and Inspection

4. As to Substance, by Ronald E Garratt
City Manager

Revision Date June 7, 2005

NEGOTIATING AGREEMENT

This Negotiating Agreement (the "Agreement") is entered into as of January 16, 2008 (the "Effective Date"), by and among the City of Santa Clara (the "City"), a California charter city, the Redevelopment Agency of the City of Santa Clara (the "Agency"), a public body corporate and politic formed and existing under the California Community Redevelopment Law, the San Francisco Forty Niners, Limited (the "Team"), a California limited partnership, and the Forty Niners Stadium LLC (the "LLC"), a Delaware limited liability company, with reference to the following facts:

RECITALS

A. On or about April 24, 2007, the Team made a proposal to the City for development of a stadium to be located on property owned by the City and Agency located within the North Bayshore Redevelopment Project Area and within the City.

B. After receipt of the Team proposal, the City, Agency and Team undertook a study to determine if implementation of the Team proposal would be feasible.

C. On January 15, 2008, the City Council (acting both as the City Council of the City and governing board of the Agency) reviewed the feasibility study of the Team proposal and adopted the staff recommendation that the City and Agency proceed to enter into a negotiating agreement that would provide the opportunity to resolve the significant remaining issues. The Team has determined that construction and operation of the stadium is feasible subject to resolution of the significant remaining issues.

D. In light of the City Council and Team's conclusions, the City, Agency, Team and LLC desire to go forward with negotiations for agreements providing for the construction and operation of the stadium by a stadium authority to be formed by the City and Agency (the "Stadium Authority") and the long term lease of the stadium by the Stadium Authority to the LLC for the National Football League ("NFL") games and related activities. The LLC is an affiliate of the Team.

THEREFORE, the City, Agency, Team and LLC mutually agree as follows:

ARTICLE 1.
THE SITE

Section 1.1 Identification of the Site. The stadium is proposed to be located on land that is owned in part by the City and in part by the Agency at the location shown generally on Exhibit A-1 referred to in this Agreement as the "Overflow Lot Location." The Overflow Lot Location contemplates construction of a parking structure at one of two locations:

- The northeast quadrant of the permanent parking area serving the Great America theme park south of Tasman Drive and west of San Tomas Aquino Creek and/or

the substation parcel adjacent to the northeast quadrant of the permanent parking area as shown on Exhibit B-1 (the "B-1 Lot"); or

- The existing parking lot east of San Tomas Aquino Creek and north of Tasman Drive as shown on Exhibit B-2 (the "B-2 Lot").

The parties may also explore other locations for the stadium including a location in the permanent parking area serving the Great America theme park as shown generally on Exhibit A-2 and referred to in this Agreement as the "Permanent Lot Location." The Permanent Lot Location alternative also contemplates construction of a parking structure located as follows:

- The southeast quadrant of the permanent parking area serving the Great America theme park across from the entrance to the theme park as shown on Exhibit B-3 (the "B-3 Lot").

The Overflow Lot Location, Permanent Lot Location and alternative parking structure locations, together with adjacent existing surface parking areas are referred to collectively in this Agreement as the "Site."

Section 1.2 Existing Agreements Regarding the Site.

(a) With the exception of the B-2 Lot and the northeast portion of the Overflow Lot Location, the Site is subject to provisions of an existing lease, (the "Theme Park Lease") between the Agency and Cedar Fair, L.P. ("Cedar Fair") which, subject to various terms and conditions, requires the Agency to make parking available for use by Cedar Fair and visitors to its adjacent theme park at the times and to the extent needed to provide adequate parking for the theme park visitors. The parties understand and agree that the Agency and City will not go forward with construction of a stadium project on the Site unless the project is consistent with the terms and conditions of the Theme Park Lease and/or the Agency, Cedar Fair and the Team and/or LLC have executed a memorandum detailing the cooperative operation of the stadium and the theme park.

(b) The B-2 Lot is subject to the provisions of an existing lease (the "Hyatt Lease") between the Agency and T-W Santa Clara LLC ("Hyatt") under which the Agency is required to make the existing surface parking on the B-2 Lot available for users of the adjacent Convention Center complex. The parties understand and agree that, if the stadium project includes construction of a parking structure on the B-2 Lot, the Agency and City will not go forward with construction of a parking structure on the B-2 Lot unless parking will be provided consistent with the Hyatt Lease.

ARTICLE 2.
NEGOTIATION RIGHTS

Section 2.1 Good Faith Negotiations. During the Negotiating Period (as defined below), the City, Agency, Team and LLC shall negotiate in good faith towards the agreements needed for development on the Site of a National Football League stadium with approximately 68,500 seats (expandable to approximately 75,000 seats for special events, such as the NFL Super Bowl), a parking structure or structures and other related improvements including parking and access in areas adjacent to the Site (the "Project") and the subsequent operation of the Project. As set forth in Section 3.5 below, the parties intend to first seek to develop a mutually acceptable outline of the transaction structure and significant business terms for the construction and operation of the Project before proceeding to preparation and negotiation of the definitive agreements providing for the construction and operation of the Project (each a "Project Agreement"). All such Project Agreements shall be subject to all required environmental review processes and all applicable governmental approvals, as set forth in Section 5.1 below.

Section 2.2 Negotiating Period. The period of negotiations (the "Negotiating Period") under this Agreement shall commence as of January 16, 2008, and shall extend to December 31, 2008, but shall be subject to termination by either the City or the Team if, by July 22, 2008, the parties have not approved a mutually acceptable Term Sheet pursuant to Section 3.5 of this Agreement. Such termination shall be accomplished by written notice given by the terminating party to the other parties. The Negotiating Period may be extended by mutual agreement of the parties. This Agreement may be also be terminated by either of the parties if a ballot measure to approve the Project is not passed by the voters of the City.

Section 2.3 Provision of Information. The obligation to negotiate in good faith pursuant to this Agreement shall not prevent the City or Agency from providing information about the Site or its development and shall not prevent the Team or the LLC from seeking or providing information concerning alternative sites for a stadium.

ARTICLE 3.
NEGOTIATION TASKS

Section 3.1 Overview. To facilitate negotiation of the project agreements, the parties shall use good faith efforts to accomplish the tasks set forth in this Article 3 within a reasonable timeframe.

Section 3.2 Project Location. During the Negotiating Period, the parties shall make good faith efforts to preliminarily determine the location of the stadium and any parking structure or structures on the Site. The parties acknowledge that the location decision will depend on various factors including but not limited to the agreements referenced in Section 1.2 and the information developed in the EIR referenced in Section 3.4 below.

Section 3.3 Project Approvals. Unless previously filed, promptly following the Effective Date, the Team and the LLC shall submit a rezoning application to the City to rezone the Overflow Lot Location and adjacent parking and access areas as a planned development zone, and shall submit to the City any other permit application as determined by the City to be necessary. The City and/or Agency, as owner of the Site or portion thereof, shall, to the extent required under the City's municipal code, consent to the Team and LLC application. The Team and the LLC shall indemnify and defend the City and the Agency from any third party claim for damages, compensation or other relief made against the City or Agency or their respective employees, officers or agents that arises from the City or Agency's consent to or participation in the filing of the above-described permit applications.

Section 3.4 EIR. Promptly following the Effective Date, the Team and LLC shall submit such information as is necessary to permit the City to go forward with preparation of an EIR for the Project. The City shall thereafter proceed diligently to prepare a draft EIR for the Project, and the Agency, the Team and the LLC shall cooperate with the City in preparation of the draft EIR. The Project considered in the EIR shall include the stadium at the Overflow Lot Location but will also consider as an alternative the stadium at the Permanent Lot Location. The Team and the LLC will directly fund the contract with the primary contractor for preparation of the EIR. However, the parties understand and agree that the City will oversee the EIR process and will give direction to the consultant as to the content and methodology in the EIR.

Section 3.5 Term Sheet. Promptly following the Effective Date, the parties shall make good faith efforts to develop a mutually acceptable outline of the transaction structure and significant business terms for the construction and operation of the Project (the "Term Sheet"). The parties believe such Term Sheet will be helpful in directing the negotiations for the Project Agreements, but the Term Sheet is not intended to be an agreement binding on the parties. When the parties have developed a mutually acceptable Term Sheet, the parties shall indicate that approval in writing. As set forth in Section 2.2 above, if a mutually acceptable Term Sheet is not developed by July 22, 2008, the City or the Team may terminate this Agreement.

Section 3.6 Project Agreements. Once an acceptable Term Sheet has been developed and approved by all the parties, the parties shall make good faith efforts to prepare and negotiate Project Agreements.

Section 3.7 Existing Agreements Regarding the Site. During the Negotiating Period, the parties shall make good faith efforts to negotiate and enter into a memorandum, if any such memorandum is necessary, with the parties to the agreements referenced in Section 1.2 above detailing the cooperative operation of the stadium.

Section 3.8 Provision of Reports. To the extent not previously provided, promptly after the Effective Date, the Agency and City shall provide to the Team and the LLC all reports in the possession of or under the control of the Agency, the City which documents are related to the physical or environmental condition of, status of title to and encumbrances on, and administrative or judicial procedures in connection with the Site. The City and Agency, however, shall not be required to provide any reports that contain privileged or confidential information.

Section 3.9 Formation of Stadium Authority. The parties contemplate that the Project would be built and operated by the Stadium Authority which would be a joint powers authority whose members would be the City and the Agency. As a result, the parties contemplate that the Stadium Authority will be a party to most or all of the Project Agreements. Consequently, during the Negotiating Period, the City and Agency may take steps to create the Stadium Authority. Nothing in this Agreement is intended to obligate the City and the Agency to enter into a joint powers agreement creating the Stadium Authority.

Section 3.10 Preliminary Design for Parking Structure. The Agency may, to the extent the Agency deems it necessary, undertake preliminary design and engineering studies for the parking structure or structures in order to evaluate the feasibility of the preliminary location determination and the environmental effects of the parking structure and its operation. Prior to letting any contracts for any preliminary design or engineering study, the Agency shall consult with the Team and LLC as to the scope of the work, the cost of the work and any consultants who will undertake the work. The Agency agrees to keep the Team and LLC informed of the progress of and expenditures for the preliminary design, engineering studies and resulting feasibility evaluation for the parking structure or structures and promptly respond to the Team's or LLC's request for information regarding such progress. The Agency will also make good faith efforts to include a representative of the Team or LLC in all key meetings with the Agency's consultants for the preliminary design, engineering studies and feasibility evaluation for the parking structure or structures. The Agency shall also provide the Team and LLC with all reports, plans and studies that are produced.

Section 3.11 Preliminary Design for Substation Relocation. The City will, to the extent the City deems necessary, undertake preliminary design and engineering studies for relocation of the City's electrical substation that is currently located on the Site. Such studies are necessary to evaluate the feasibility of the relocation and the environmental effects of the relocation. The City agrees to keep the Team and LLC informed of the progress of the preliminary design, engineering studies and resulting feasibility evaluation for the relocation of the City's electrical substation and to promptly respond to the Team's or LLC's request for information regarding such progress.

Section 3.12 Investigation of Financing. During the Negotiating Period, the parties shall undertake investigation of the availability and amounts of financing for the Project costs including NFL financing, the Team contribution, Stadium Authority financing using ticket fee, naming rights or other Stadium Authority revenue sources, financing using a Mello Roos community facilities district for hotels in the stadium area, and Agency tax increment financing. As is set forth in the City Council January 15, 2008 action referenced in Recital C above, the funds potentially available from the Agency tax increment for parking garage construction and other Project costs and from the City utility fund for substation relocation do not exceed $136 million; no other Agency or City funds are available for the Project.

ARTICLE 4.
FINANCIAL PROVISIONS

Section 4.1 Funding for EIR Preparation. The Team and the LLC shall reimburse the City for the costs it incurs for EIR preparation during the term, or until earlier termination of this Agreement. These costs shall include but are not limited to, the costs for consultants and experts preparing the contents of the EIR and appendices thereto, for legal advice and review of the EIR and any other related documents, and for preparing, posting, mailing or delivering any notice or document related to the EIR process. The costs shall not include Agency or City staff time in reviewing or preparing the EIR.

The City will bill the Team and LLC monthly for the EIR preparation costs. Each billing shall be accompanied by bills and invoices or other documents showing the costs included in the bill. The Team or LLC shall pay each bill within ten (10) days after receipt from the City.

Section 4.2 Payment of Application Fees. The Team or LLC shall pay all City charges and fees for review and processing of the application for project approvals contemplated by Section 3.3 above. Notwithstanding the foregoing terms of this Section, however, the City and the Team agree that if the City adopts any cost recovery fee covering the EIR preparation, then any fee covering environmental review costs for the Project already paid by the Team pursuant to Section 4.1 shall be credited against such cost recovery fee.

Section 4.3 Funding for Preliminary Design and Engineering for Parking Structures. If the activities under this Agreement do not result in the parties' approval and execution of Project Agreements, then, upon the end of the term of this Agreement or earlier termination, the Team or LLC shall reimburse the City and Agency for any costs reasonably incurred by the City and Agency pursuant to Section 3.10 for preparation of the preliminary design and engineering for a parking structure to be located on any parcel other than the B-2 Lot. The reimbursable costs shall include consultant and testing costs. The reimbursable costs shall not include City and Agency staff time involved in the preliminary design and engineering studies for the parking structures.

The Team or the LLC shall reimburse the Agency within ten (10) days after a request from the City and Agency for such reimbursement which request shall be accompanied by bills

and invoices or other documents showing the City and Agency costs for preparation of the preliminary design and engineering for the parking structure.

ARTICLE 5.
GENERAL PROVISIONS

Section 5.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate the parties or the Stadium Authority to enter into any Project Agreements, to enter into any particular Project Agreement, or to enter into a Project Agreement on or containing any particular terms. By execution of this Agreement (and any extension of the Negotiating Period), none of the Agency, City or the Stadium Authority is committing itself to or agreeing to approve any land use entitlements, undertake disposition or lease of the Site, or any part thereof or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Agency or the City. Execution of this Agreement by the City and Agency is merely an agreement to conduct a period of negotiations in accordance with the terms hereof, reserving for subsequent Agency and City action the final discretion and approval regarding any Project Agreement and all proceedings and decisions in connection therewith. Any Project Agreement resulting from negotiations pursuant to this Agreement shall become effective only if and after such Project Agreement has been considered and approved by the City Council, Agency governing board or Stadium Authority governing board, as the case may be, in their sole discretion following conduct of all legally required procedures, including, without limitation, all required environmental review processes and all other applicable governmental approvals, and executed by duly authorized representatives of the City, Agency, Stadium Authority, Team and LLC, as the case may be. Unless and until all necessary Project Agreements have been approved by the Team or LLC, as the case may be, approved by the City Council, Agency governing board or Stadium Authority governing board, as the case may be, and executed by the relevant party or parties, no agreement drafts, actions, term sheets, outlines, deliverables, memoranda or other communications arising out of or in the course of performance of this Agreement shall impose any legally binding obligation on any party to enter into or support entering into any Project Agreement or be used as evidence of any oral or implied agreement or promise to enter into any Project Agreement or other legally binding document. As such, the Agency, the City and the Stadium Authority retain the absolute discretion before action on the Project by the Agency governing board, the Stadium Authority governing board or the City Council to (i) subject to the agreement of the parties, make such modifications to the Project Agreements and the Project as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided or (iv) determine not to proceed with the Project.

Section 5.2 Notices. Formal notices, demands and communications between the City and Agency and the Team and LLC shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

Agency and City: City of Santa Clara
Santa Clara Redevelopment Agency
1500 Warburton Avenue
Attention: City Manager
Attention: City Attorney

Team and LLC San Francisco 49ers
4949 Centennial Blvd.
Santa Clara, CA 95054
Attention: Jed York
Attention: Larry MacNeil

with a copy to:

Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Attention: Harry O'Brien

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 5.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against any portion of the Site with respect to this Agreement or any dispute or act arising from it.

Section 5.4 Right of Entry. The Team and LLC and their consultants and contractors shall have the right to enter the Site during normal business hours to conduct investigations in accordance with this Agreement, provided such entry is permitted under the Theme Park Lease. In connection with such entry and investigation during the Negotiating Period, the Team and LLC shall:

(a) give the Agency reasonable advance notice;

(b) repair and restore any damage it may cause;

(c) deliver to the Agency and City, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which the Team or LLC conducts, or causes to be conducted, with respect to the Site; and

(d) indemnify, defend and hold the Agency, the City and their directors, officers, employees and agents (the "Indemnified Parties") harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs)(collectively "Claims") which proximately arise out of the Team or LLC's entry upon the Site or the investigation(s) and test(s)which the Team or LLC may conduct; provided, however, that this indemnity shall not apply to Claims arising from the sole negligence or willful

misconduct of any of the Indemnified Parties as adjudged by a court of competent jurisdiction, or to Claims arising from the results of the Team's or LLC's investigations, tests and inspections (e.g., this indemnity shall not apply to any diminution in value or remediation costs incurred by the Agency or City if the Team's or LLC's investigations were to discover an environmental condition that required remediation).

Section 5.5 Costs and Expenses. Except as otherwise expressly provided in this Agreement, each party shall be responsible for its owns costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 5.6 Confidentiality of Information. The confidentiality of information the Team or LLC provides to the Agency or City pursuant to this Agreement shall be governed by the existing Confidentiality Agreement dated April 30, 2007 among the City, Agency and Team.

Section 5.7 Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit brought under or concerning this Agreement shall be filed in the State or federal court with jurisdiction in Santa Clara County, California.

Section 5.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 5.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 5.10 Assignment. Neither the Team nor the LLC may transfer or assign any or all of its rights or obligations under this Agreement except with the prior written consent of the City and Agency, which consent shall be granted or withheld in the City and Agency's sole discretion, and any such attempted transfer or assignment without the prior written consent of City and Agency shall be void. The City Manager of the City shall have the authority to consent to on behalf of the City and Agency a requested transfer or assignment by the LLC of any or all of its rights or obligations under this Agreement to an entity controlled by or under common control with the Team.

Section 5.11 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Agency, the Team and LLC, and no other person shall have any right of action under or by reason of this Agreement.

Section 5.12 General Indemnity. The Team and LLC shall indemnify, defend and hold the Indemnified Parties harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) which arise out of the performance of this Agreement by the Team, LLC, their respective directors, officers, employees, agents or owners; provided, however, that this indemnification obligation shall not extend to any matters

arising from the sole negligence or willful misconduct of any of the Indemnified Parties as adjudged by a court of competent jurisdiction.

Section 5.13 Defaults. In the event of any default by any party under this Agreement, any non-defaulting party may give notice to the defaulting party specifying in reasonable detail the basis for the determination of the default. The defaulting party shall have thirty (30) days from the date the default notice is given to cure such default or defaults specified in the notice. A party may terminate this Agreement pursuant to Section 2.2 of this Agreement, and such termination shall be effective even if a notice of default has previously been given pursuant to this section and the cure period has not yet expired.

Section 5.14 Remedies.

(a) Termination. In the event of a default under this Agreement not cured within the cure period set forth in Section 5.13 above (an "Event of Default"), any non-defaulting party negatively affected by such default may terminate this Agreement upon written notice to the defaulting party. Upon such termination, the City shall return to the Team all remaining funds from the EIR Deposit in accordance with the terms of Section 4.1 above, together with all interest actually accrued thereon, and no party shall have any further rights or obligations to the other under this Agreement, except that (i) all indemnities in this Agreement shall survive the termination with respect to actions occurring prior to the date of termination, and (ii) amounts owing under this Agreement before termination shall remain owing.

(b) No Damages. No party shall be liable for any damages to any other party and each party waives its right to seek damages from each other party, whether by litigation, arbitration or otherwise. The foregoing limitation does not contravene or limit the effectiveness of any indemnity or payment obligations that, pursuant to subsection (a) above, survive the termination of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

AGENCY:

REDEVELOPMENT OF THE CITY OF SANTA CLARA

By:_____
Patricia Mahan, Chair

By:_____
Jennifer Sparacino, Executive Director

APPROVED AS TO FORM:

By:_____
Lee C. Rosenthal
Special Agency Counsel

CITY:

APPROVED AS TO FORM:

CITY OF SANTA CLARA, a charter city

By:_____
Helene Leichter
City Attorney, Agency Counsel

By: _____
Jennifer Sparacino, City Manager

TEAM:

SAN FRANCISCO FORTY NINERS LIMITED

By San Francisco Forty Niners, LLC, an Ohio limited liability company, its general partner

By: _____
Larry MacNeil, Vice President

LLC:

FORTY NINERS STADIUM LLC

By: _____
Larry MacNeil, Vice President

EXHIBIT A-1

ALTERNATIVE STADIUM LOCATION
(Overflow Lot Location)

EXHIBIT A-2

ALTERNATIVE STADIUM LOCATION
(Permanent Lot Location)

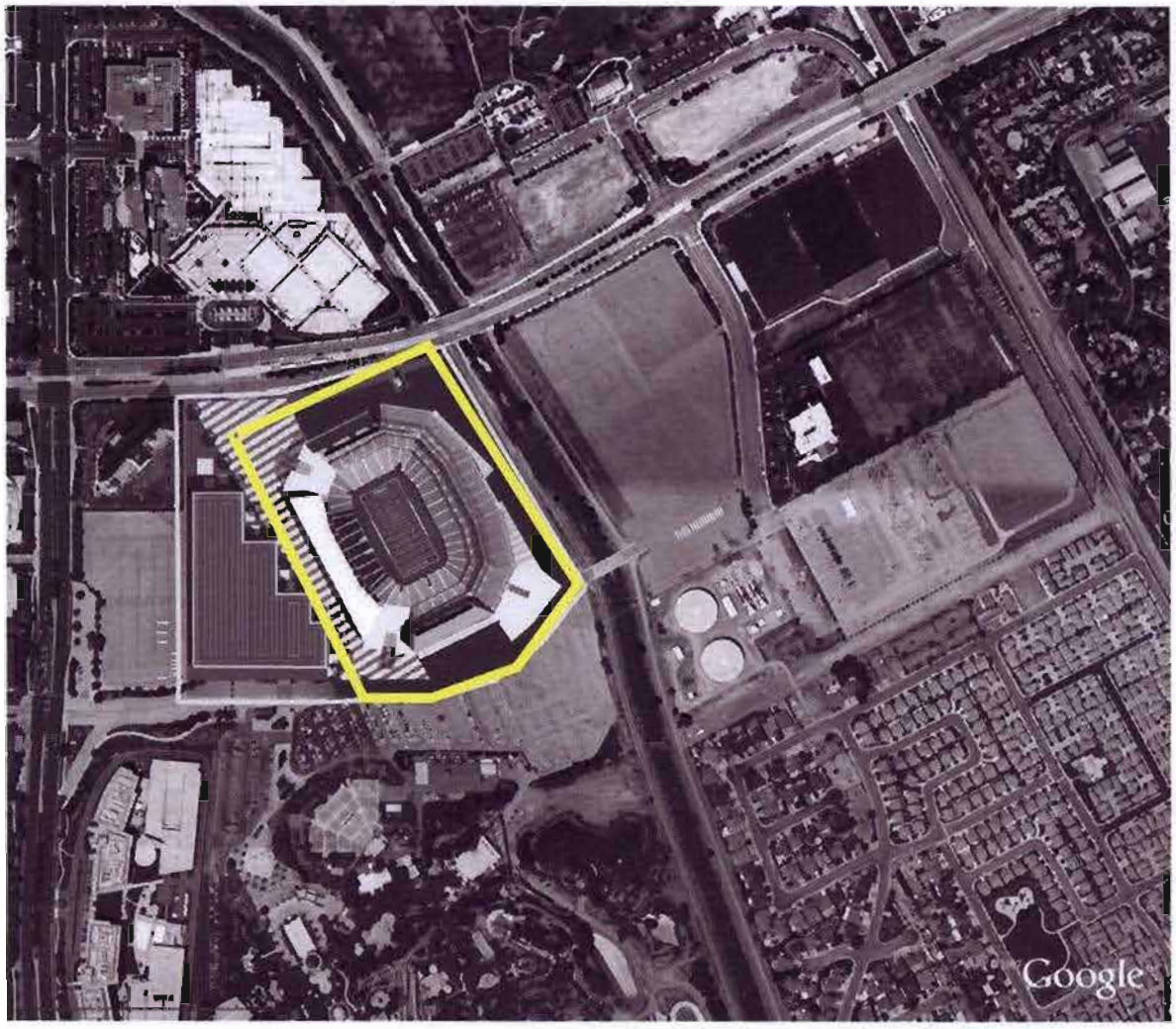


EXHIBIT B-1

PARKING STRUCTURE LOCATION
(Northeast Quadrant of Permanent Lot)

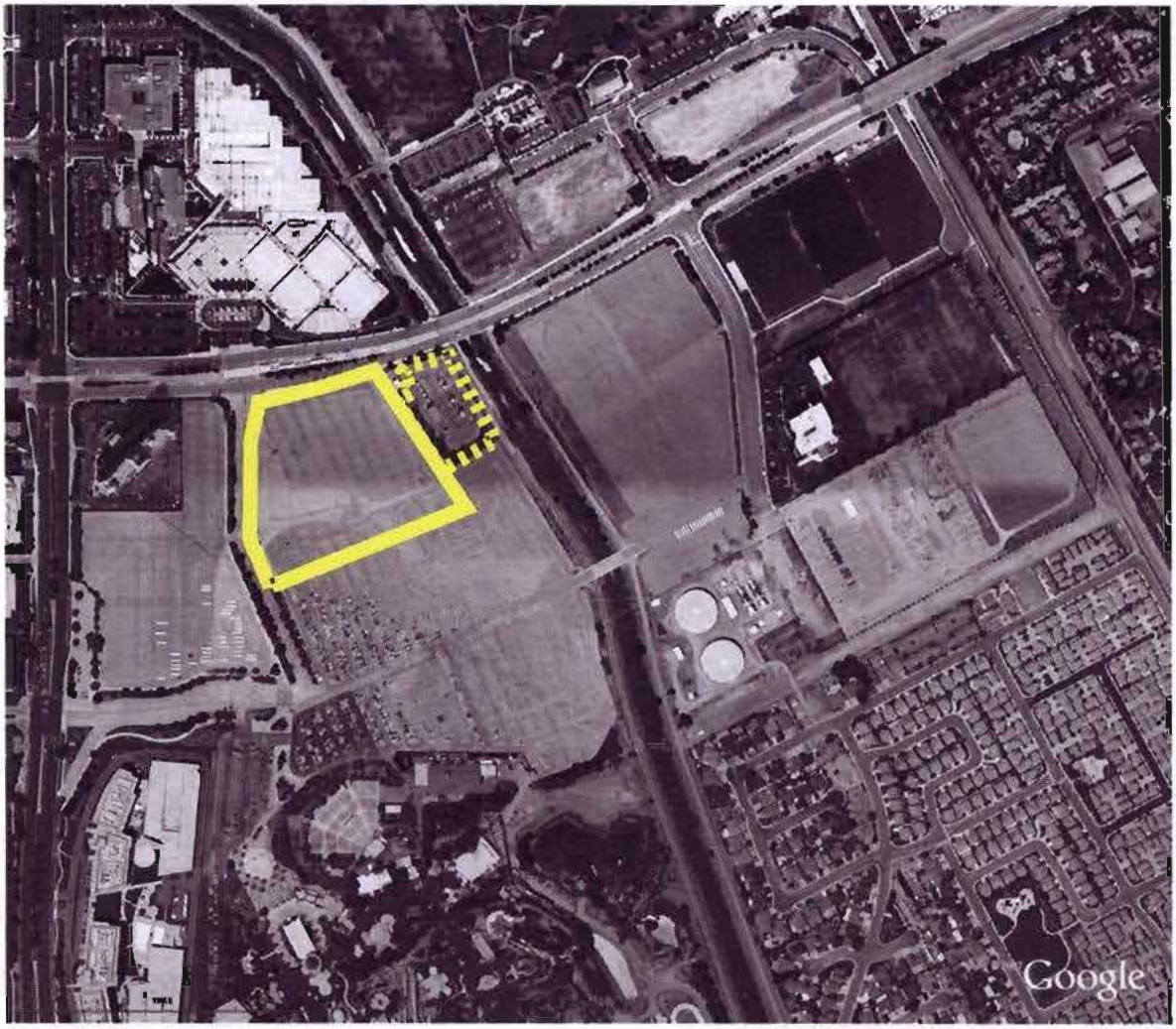
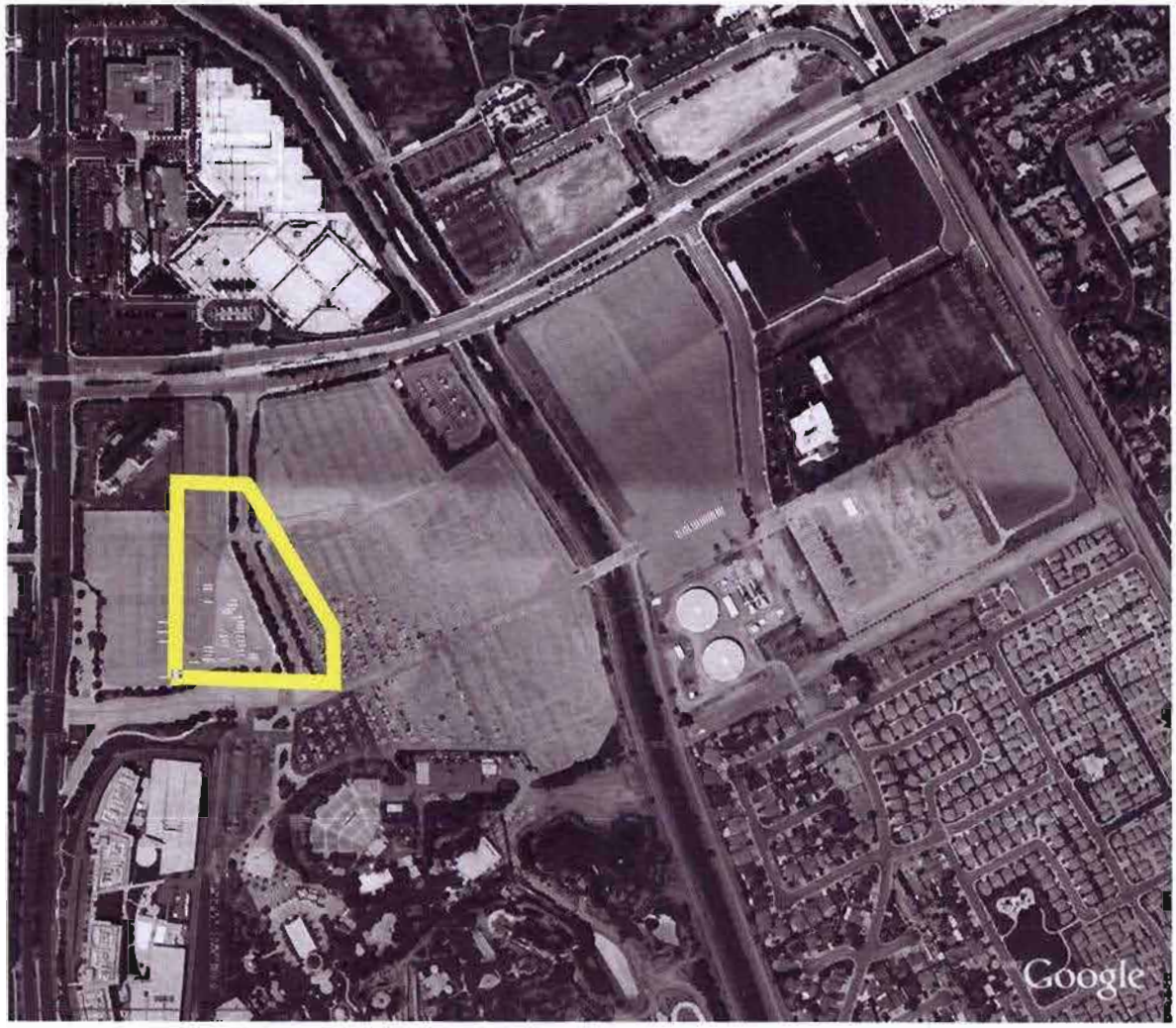


EXHIBIT B-2

PARKING STRUCTURE LOCATION
(North of Tasman)

EXHIBIT B-3

PARKING STRUCTURE LOCATION
(Southeast Quadrant of Permanent Lot)