



Date: May 29, 2009

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

From: Assistant City Manager/Assistant Executive Director

Subject: **Joint Council and Redevelopment Agency “Committee of the Whole” Special Meeting to Consider a Proposed Term Sheet Between the City of Santa Clara/Redevelopment Agency and the San Francisco 49ers for the Construction and Operation of an NFL Stadium**

EXECUTIVE SUMMARY:

Overview

In April 2007 the San Francisco 49ers (49ers) presented a proposal to the City of Santa Clara to locate an NFL stadium in the City’s Bayshore North Redevelopment Area, in proximity to the Great America Theme Park and the City-owned Santa Clara Convention Center (refer to attached map-Exhibit 1). This general area is designated as Tourist/Commercial in the General Plan and as an Entertainment Zone in the Council’s 2007/2009 Goals and Priorities. For the past two years, City staff and the 49ers have been evaluating all aspects of a proposed stadium plan: location (see Exhibit 2), financing, construction, and operation of a stadium, including the coordination with adjacent Theme Park operations. In addition, an Environmental Impact Report is being prepared. It is proposed that a public/private partnership between the City and the City’s Redevelopment Agency (Agency), acting as the Stadium Authority (SA), and the team, acting as the 49ers Stadium Company, LLC (49ers), build and operate the facility. The City and the 49ers commenced their respective participation in these discussions with a set of guidelines, delineating key issues each party chose to focus on throughout the negotiations process. Both the City’s Guiding Principles and the 49ers Guiding Principles are attached (Exhibit 3 and Exhibit 4, respectively). There have been 29 public meetings held on stadium issues over the past 2 ½ years, many held as “Committee of the Whole” special meetings.

Project Description

The stadium would be developed and owned by a public agency to be formed by the City of Santa Clara and the City’s Redevelopment Agency. The stadium would be leased to the 49ers for playing their home games during the National Football League’s (NFL) pre-season, regular season and post-season and used for other NFL-related events. In addition to football events, use of the stadium may range from incidental use of meeting room facilities within the main building portion of the stadium, including uses in support of adjacent Santa Clara Convention Center activities, to major activities such as concerts and other sporting events that could use a significant amount of the available seating. Approximately 17 events, resulting in an estimated 26 non-NFL related event days per year, are contemplated in the finance projections.

Additionally, the NFL is encouraging any franchise proposing a new stadium in a large market, such as the Bay Area, to evaluate the potential shared use of the stadium by a second NFL team. Although there are currently no specific plans for use of the stadium by a second NFL team, in recognition of this encouragement from the NFL, the project should be assumed to include the possible future use of the stadium by a second NFL team for its home games during the weeks when the 49ers team is scheduled for away games.

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The proposed stadium would have permanent seating capacity for up to 68,500 seats and would be designed to expand to approximately 75,000 seats for special events, like a Super Bowl game. The stadium structure would have a height of 175 feet, reaching a maximum height of 200 feet at the top of the light standards. The stadium would be five levels on the east, north and south sides and nine levels on the west side (referred to as the Suite Tower). In order to accommodate the stadium as proposed, Centennial Boulevard south of Tasman Drive would need to be abandoned and the roadway removed except for a restricted travel lane where a two-lane access driveway would be added along the eastern boundary of the stadium site to provide access to the City-owned Youth Soccer Park.

Process

City management staff and the 49ers have followed a methodical process in determining all aspects of the proposed stadium project in the City's Bayshore North Area. Immediately following the April 2007 presentation of the stadium proposal, City staff and consultants and the 49ers entered into an extended period of economic/fiscal analysis, reviewed alternative approaches to solving particular issues, and engaged in discussions with adjacent property stakeholders (Cedar Fair, owners of California's Great America Theme Park, and the management of the Santa Clara Convention Center). This initial review and analysis was summarized in a December 2007 report to Council on the City's ability to participate as a financing partner and in a January 2008 report addressing the feasibility of the stadium project pertaining to critical aspects of financing, construction, operations, and the impact to Cedar Fair, as understood to that date. The Feasibility Study noted that while there were real concerns pertaining to particular aspects of the proposed project, there was also sufficient potential to continue to proceed forward in discussions to determine if these issues could be resolved to the benefit of the City, the 49ers and Cedar Fair. Additionally, at their March 4, 2008 meeting, the Council determined that a City-wide ballot measure would be held on the proposed Term Sheet, if approved by Council, and that the ballot measure would be binding given the completion of the California Environmental Quality Act (CEQA) review.

For the past 18 months, staff and 49ers representatives have been working on the Term Sheet agreement. The Term Sheet serves as an outline of the stadium deal structure, addressing major issues of this proposed public/private partnership: the governance structure, financing plan, construction cost responsibilities, budget development for stadium operations, ground rent payments, treatment of stadium revenue, and a number of other key issues that comprise the core of the proposed project. If the proposed Term Sheet is approved by Council, City staff and the team will continue to negotiate and develop the various documents that will eventually define all aspects of the project. The end result of this effort would be a Disposition and Development Agreement (DDA) along with a Ground Lease and Stadium Lease. At the same time the DDA is under development, staff would continue to work on completing the project's CEQA-required Environmental Impact Report (EIR). It is anticipated that the EIR will be completed by the end of this calendar year, if not sooner, allowing the Santa Clara community the opportunity to vote on a stadium proposal in the first quarter of calendar year 2010.

Term Sheet

The intent of the Term Sheet is to document respective commitments and obligations of the involved parties: the City of Santa Clara, its Redevelopment Agency, and the San Francisco 49ers. Terms negotiated in this document serve as the basis to inform the Santa Clara community in preparation for a City-wide ballot measure. Additionally, the Term Sheet serves as an outline in continuing negotiations between the 49ers and the City in defining and documenting all aspects of a proposed long-term lease agreement. The stadium project will not proceed unless and until the parties have negotiated, executed, and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and

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from other public review and hearing processes, and subject to all applicable governmental approvals. The Term Sheet is attached to this report (Exhibit 5). Critical elements of the Term Sheet are addressed in more detail in the Discussion section of this report.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The public-private partnership as defined in the Term Sheet will contain significant opportunities and obligations for both the City and the 49ers:

- At Council's direction, the City's Guiding Principles have been maintained to the greatest extent possible.
- There will be no General Fund or Enterprise (Utility) Fund monies used or pledged to the development of the stadium project, except if the City decides to relocate or reconfigure the Tasman electric substation currently adjacent to the proposed stadium location. If the substation is relocated or reconfigured, the City's Electric Utility Enterprise Fund would pay for the cost.
- Options are being pursued with Cedar Fair to ensure the Theme Park remains a vital component of this expanded Entertainment Zone concept. The proposed stadium will be built and operated consistent with the Agency's obligations under the Ground Lease for the Great America Theme Park, or other arrangements acceptable to the Theme Park tenant. The 49ers and Cedar Fair have been negotiating the possible sale of the Theme Park to the team. While discussions continue, there has been no resolution on a potential sale to date. If the Theme Park is not sold, the City has created a revised parking lot plan to provide the necessary spaces required by the lease to the Theme Park, thereby allowing for stadium construction in what is now the overflow parking lot for the Theme Park. See the Discussion section of this report for additional information.
- The City will ground lease the stadium site to the SA for a fixed (guaranteed) base rent and a percentage of a performance-based rent. It is projected that the total rent received from this site provides a fair market value return for the land. Additionally, if a permanent, second NFL team comes to play in the stadium, the fixed (guaranteed) base rent is substantially increased and is escalated at different time periods through the life of the lease.
- The City land for the stadium site, including surrounding land and parking areas, will not be subordinated to financing for the project or to the payment of rent provisions (rents paid to the City) contained in the lease.
- The stadium lease will have a 40-year base term, with five separately exercisable options of four years each. The maximum term of the lease is 60 years.
- A \$0.35 (thirty-five cent) surcharge on NFL tickets will fund a City of Santa Clara Senior and Youth Program Fund, to a maximum amount of \$250,000 per year. This fee will be remitted to the City and will fund City programs for parks, recreation and libraries, including, without limitations, senior activities and the Youth Championship Team Fund, at the discretion of the City Council.
- Investment by the Agency in the construction of the stadium shall not exceed \$40 million, exclusive of debt service and other financing costs and exclusive of payments to the City for certain development fee costs (the Agency's share of development fees is estimated at \$2 million). There is no floor to the Agency's financial obligation; therefore, if economic conditions or State budget

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actions reduce the amount of Agency monies available, the Agency will only commit those funds available at the time of financing. In the most extreme case, if there were no Agency funds available at the time of financing, the 49ers would need to assume the Agency's entire portion of the public financing by way of a team advance to the Agency in order to proceed with the project.

- If the Agency cannot meet its \$40 million obligation cap, the 49ers will advance the difference up to the cap. The 49ers will seek repayment of their advance for the respective financings from available tax increment through the life of the Redevelopment Plan (2026). The advance will carry an annual compound interest rate the lower of either the rate on 30-year BB-rated corporate bonds or 8.5%, which is reasonable to the risk assumed.
- The principal amount of any team advance made on behalf of the Agency will be reimbursed to the Agency/City at the commencement of a second permanent NFL team playing in the stadium, contributing to repayment of a portion of the existing Cooperation Agreement between the City and the Agency.
- If a second NFL team comes to play on a permanent basis in the stadium, the 49ers would reimburse to the Agency/City an amount equal to the cash and bond proceeds advanced by the Agency at the commencement of the second team's first season of play. The Agency's portion of development fees paid would also be reimbursed to the Agency/City.
- No new or increased taxes will be required for the stadium, except that eight hotels in the stadium area, if they vote to form a special Mello Roos Community Facilities District (CFD), will be subject to a special tax based on hotel room revenue, which could be pledged to provide up to a \$35 million cap, exclusive of debt service and other financing costs, toward development of the stadium and related infrastructure.
- If the eight hotels cannot meet their \$35 million CFD cap, the 49ers will advance the difference up to the CFD cap of \$35 million and seek repayment of its advance from the hotel room surcharge as available. There can be no melding of repayment of advances to the 49ers between the Agency's obligation and the hotel CFD obligation. The advance will carry an annual compound interest rate the lower of either the rate on 30-year BB-rated corporate bonds or 8.5%, which is reasonable to the risk assumed.
- The 49ers will be responsible for any construction cost overruns.
- The Redevelopment Agency will construct a previously funded garage on the north side of Tasman Drive, adjacent to the tennis courts of the Santa Clara Golf and Tennis Club. This garage will be multi-purpose: to support Theme Park overflow parking if necessary, to support event parking at the proposed stadium, to meet the Hyatt Regency lease requirements pertaining to the provision of overflow parking, and to provide the Convention Center with additional parking as available.
- Reasonable costs incurred by the City in providing public safety and traffic management for NFL and non-NFL events will be reimbursed by the 49ers.

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- Upon completion of stadium construction, the 49ers will play their pre-season, regular season and post-season home games in the City, except as may otherwise be prescribed by the NFL. A permanent second team in the stadium will have the same requirements.
- The 49ers will pay the cost of demolition at the end of the lease if the SA (City Council) chooses to demolish the stadium.
- The SA will develop an annual stadium operating budget in cooperation with the 49ers and the 49ers will pay all operating expenses the team considers reasonable. There will be a dispute resolution process in place if the 49ers and SA cannot agree on a proposed budgeted item and, for public safety expenses, there will be a dispute resolution process available whereby the decision of the arbitrator will be final. In addition, a “Discretionary Fund” will be established within the SA from performance-based revenues resulting from a ticket surcharge on non-NFL event tickets. This fund is intended to be available to cover stadium operating expenses that are not agreed to in the budget development process and thus not reimbursed by the team, or additional expenses that may arise during the year that the SA chooses to pay for, particularly for Civic Events that the SA may wish to hold at the stadium. The SA may elect to distribute Discretionary Fund revenues to the City if the fund exceeds \$1 million, but one-half of any such distribution will remain with the SA to offset costs subject to the team reimbursement.
- The City, its Police and Fire Departments, the SA and the 49ers will develop and continuously update as needed, a Public Safety Plan describing procedures for traffic management, security and public safety at NFL games and other large events at the stadium. The SA will reimburse the City for the actual and reasonable costs of police, traffic control, fire, emergency services and similar services attributable to stadium events. Public safety capital expenditures dedicated to stadium operations will be budgeted for in the stadium’s development budget. Public safety costs attributable to NFL games, including an amortization charge for capital equipment dedicated to the stadium, will be included in reimbursable expenses to the City up to a maximum annual amount equal to the product of \$170,000 multiplied by the total number of pre-season, regular season and post-season NFL games played in the stadium. This is the “Threshold” amount for the season (e.g., 10 home games times \$170,000 maximum reimbursement per game results in a Threshold of \$1.7 million for the season). For every season after the first, the Threshold will be increased by 4% per year; 6% per year if two teams are playing in the stadium. “Principal Terms of the Public Safety Agreement” can be found as Attachment C to the Term Sheet (Exhibit 5).

In addition, the SA will reimburse the City up to \$500,000 for each of the first two years of stadium operations for the actual total compensation of a police lieutenant and sergeant to establish a special events unit to develop procedures and protocols for the implementation of the Public Safety Plan as well as coordinating joint powers/mutual aid agreements with surrounding jurisdictions for the use of officers to supplement City of Santa Clara police officers on game days. If a second team plays in the stadium on a permanent basis, the SA will reimburse the City \$250,000 for each of the first two years the second team is playing to allow the Special Events Unit to update their operating procedures based on two teams playing in the stadium. If the NFL mandates new or expanded security measures that substantially increase Public Safety costs in connection with NFL games, and these new measures cause the existing Threshold to be exceeded, then, at the request of the City, the Threshold shall be adjusted.

Any public safety costs due to NFL games that exceed the Threshold will be paid by the SA, unless paid out of the SA Discretionary Fund, and will be considered “Credited Public Safety Costs” and will be credited against performance-based rent allocated to the SA to be paid to the City. If the City, SA and the 49ers cannot agree on any Public Safety cost, the allocation of such costs among NFL events, non-NFL events and/or Civic Events, or any adjustment of the Threshold, then senior management of each of the parties will meet and confer in good faith to resolve such disagreement. If it cannot be resolved in this manner, it may be submitted to expedited final alternative dispute resolution (expedited ADR) conducted by a 3-member panel: one member selected by the City, one member selected by the 49ers and the third member selected by the first two arbitrators. The expedited ADR panel’s decision will be limited to (i) whether or not the particular cost is a Public Safety cost subject to reimbursement by the SA, (ii) determining the allocation of particular costs among NFL events, non-NFL events and/or Civic Events, and/or (iii) the amount of any increase in the Threshold required by NFL mandates.

- The 49ers will cover operating losses for non-NFL events. By definition, non-NFL events are those events that the 49ers and the SA mutually agree to book in the stadium.
- The City will create a Charter Review Committee to determine if existing City Charter language requiring competitive bidding for Public Works projects can be modified to allow for some focused, limited use of a design/build process in some or all of the stadium construction. If a Charter modification of Section 1310 of the City Charter (Contracts on Public Works) were to go forward on the same ballot as the Term Sheet it would be limited solely to the stadium project and no other future Public Works projects in the City.
- The stadium supports the Council’s goal for an Entertainment Zone and can develop synergy with existing Theme Park and Santa Clara Convention Center activities.
- The Agency’s financing commitment of up to \$40 million still allows for an approximate 6% per year commitment of Agency tax increment revenue, above the required 20% housing commitment, to be put to affordable housing projects.
- Prior to calculating available tax increment to commit to the stadium project, \$25 million in tax increment will be set aside for other redevelopment projects. The projects could include the refurbishment of existing City facilities in the Bayshore North Redevelopment Area, such as the Santa Clara Convention Center. These monies will be set aside through the remaining life of the Redevelopment Plan (2026).
- In order for the Agency to issue any amount of bonds in support of stadium construction, it will have to amend the Redevelopment Plan and become obligated as a result of the amendment to make what are known as SB 211 pass-through payments to other local taxing agencies after the Plan Amendment becomes effective. A portion of the property tax increment received by the Agency will be “passed-through” to these other agencies. The major recipient of this property tax pass-through is the Santa Clara Unified School District. It is estimated the District could receive up to \$20 million in additional property tax revenue through the remaining life of the Redevelopment Plan (2026).

The negotiations process has resulted in a few conditions that, to some degree, could affect the assumptions and expectations contributing to a favorable return to the General Fund:

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- A significant portion of the rent to the City is performance-based, dependent upon the success of non-NFL events at the Stadium, and is not guaranteed. This puts great importance on professional, year-round management of the stadium. There will need to be an experienced venue operator who can book profitable events when the stadium is not needed for NFL games. This concern is mitigated by the fact that revenue from non-NFL events is shared 50/50 between the SA and the 49ers, so the team is incentivized, along with the SA, to ensure there is a viable stadium operator in place and revenue producing non-NFL events to support the year-round operation of the stadium. The ability to have a successful non-NFL event calendar will be influenced by the planning and coordination between the SA and the Theme Park, allowing the Theme Park to maintain its successful operation.
- In the performance-based rent structure there are certain credits against the City's share of performance rent that reduce the amount of performance-based rent received by the City while increasing revenue available to pay stadium operating costs, a responsibility of the 49ers (see the Discussion section that follows for additional information).
- It is anticipated that a stadium in the Bayshore North Area will significantly benefit the weekend business of local hotels and increase overall transient occupancy tax (TOT) revenues in the City. However, by instituting a Community Facilities District (CFD) with eight of the City's largest hotels in proximity to the stadium, the 2% TOT equivalent included on every room charge is a potential TOT opportunity cost to the City's General Fund. However, in spite of this 2% equivalent TOT increase, there is no restriction on the City's right to propose a TOT increase in support of General Fund revenue enhancement at any time that the City would determine a TOT increase would be beneficial.
- The commitment of Agency funding will reduce somewhat the ability for the Council to meet its 30% goal for affordable housing (mandatory 20% set-aside requirement plus the Council's voluntary goal of an additional 10% set-aside). It is estimated that the City's contribution to affordable housing will decrease by \$6 million (in nominal dollars - dollars that are not adjusted for inflation) over the remaining life of the Redevelopment Plan, from an estimated \$189 million to \$183 million invested in affordable housing projects.
- The Agency is obligated to share 50/50 with the 49ers the cost of site development fees, estimated at approximately \$4 million. However, if a second NFL team comes to play in the stadium the Agency's share of development fees will be reimbursed to the Agency/City.
- If a second team comes to play in the stadium the Agency/City will be reimbursed the amount of cash and bond principal utilized for the stadium but not the interest on the debt or the issuance costs of the debt. Additionally, the principal amount of any advance from the 49ers repaid by the Agency will be reimbursed to the Agency/City, however, interest earned by the 49ers on the advance repayment will not be reimbursed to the Agency/City.
- The City has negotiated several protections to ensure stadium-related public safety and traffic management expenses are paid, including a reasonable Threshold for annual public safety expenses for NFL games, the creation of a SA Discretionary Fund to support certain classifications of stadium-related public safety expenses and other City expenses if necessary, a financial commitment from the 49ers to fund selected capital and personnel public safety expenses in the

early years of the operation stadium, the ability for the SA to take a credit against the City's performance-based rents to pay certain expenses not agreed to in the budget process, and a final dispute resolution process that either party can request, if necessary. With these various forms of financial protection, there is not an absolute guarantee from the 49ers that any and all City-defined public safety costs related to the stadium project will be reimbursed by the team. However, as described above, there are multiple checks and balances built into the public safety cost reimbursement process to ensure that the risk of the General Fund having to pay City-defined public safety expenses has been reduced significantly.

ECONOMIC/FISCAL IMPACT:

At the time the 49ers brought their stadium proposal to the City in 2007, the team conducted an economic analysis that looked at the effect of the stadium on the City and County economy and included tax revenues that accrue to City, County, and State government. Given that the City is the only public entity requested to participate in the financing of the stadium project, City staff limited the review of the economic and fiscal impacts to the City of Santa Clara only. The City's economic and fiscal consultant, Keyser Marston Associates (KMA), generally concurred with the 49ers economic consultant, CS&L International (CS&L) but made several refinements to CS&Ls findings including separately identifying economic benefits of the proposed stadium from the existing 49ers Training Center (which has been located in the City for the past twenty years). The annual direct, indirect and induced economic activity generated by the stadium was estimated at approximately \$41 million annually (Exhibit 6 – KMA Stadium Economic and Fiscal Impacts Recap). KMA also estimated that approximately 500 full-time equivalent jobs would be attributable to a new stadium and that the City's General Fund would benefit from revenues of approximately \$650,000 per year (estimate in 2007 dollars) that is projected to increase by 3% per year over time.

As Term Sheet negotiations progressed and critical issues were agreed to, particularly the term of the lease (negotiated from a proposed 30-year base term to a 40-year base term), the annual economic benefits calculated in the KMA economic study review were re-evaluated through the longer lease term. KMA estimated the fiscal revenues over a 40 year lease term from a 49ers stadium at \$13 million (stated in terms of net present value (NPV) is the total present value of a time series of cash flows, in this case 40 years of fiscal revenues brought back to current dollars). These revenues consist of sales taxes, transient occupancy (hotel) taxes, and other City revenues. The effect of a second team playing in the stadium commencing five years after the 2014 stadium opening (a 2019 estimated start date for a second team) is estimated to generate an additional \$6 million (NPV) from these same local taxes and fees, for a total of \$19 million (NPV) through the base term of the lease with two teams playing in the stadium.

Additionally, the economic consultants recognized that the stadium venue, with a significant amount of dining, meeting and pre-function space would create a synergistic relationship with the City's adjacent Santa Clara Convention Center and allow the Convention Center to utilize the stadium club areas and pre-function areas that include meeting space and food and beverage capabilities. The stadium will as a result allow the Convention Center to host larger shows than they are able to host now with significantly more space for meetings and exhibitions. The Convention Center will also be able to host more diverse shows, and manage separate shows in both the Convention Center and stadium venues. The stadium would charge a commercial rate for the use of its space, thereby enhancing the non-NFL revenue streams that become performance-based rent for the City. CS&L recently completed a report analyzing the effects of this synergistic relationship between the Convention Center and Stadium which was reviewed by KMA. Both consultants accepted that it is reasonable to project a positive benefit to the City's General Fund of \$330,000 annually, which with a 3% annual inflation rate yields an NPV of approximately \$7 million over 40 years.

Return on Investment to the General Fund

It is estimated that there will be a \$31 million (NPV) return to the General Fund over the 40-year term of the initial lease period. This return increases significantly if a second NFL team plays in the stadium on a permanent basis, to \$67 million. The higher return is driven primarily by the reimbursement of the Agency's financing contribution by the 49ers, due to the arrival of a second team (refer to Exhibit 7).

The Return of Investment exhibit details the components that make up the return to the General Fund:

- Fixed ground rent – represents the guaranteed rent payable to the City.
- Performance-based rent – represents the 50% share of non-NFL events net profit that flows to the City. The combination of these rent streams are estimated to produce a fair market value return on the City's land.
- The repayment of the Agency's construction investment in the stadium at the point a second team comes to play. It is estimated that the Agency's investment will be \$28 million of the \$40 million cap. The \$28 million (NPV) Agency investment is more than the estimated \$21 million (NPV) reimbursement as it is projected that there will be a five-year delay, after stadium opening, before a permanent second team will arrive.
- The \$0.35 per NFL ticket fee will produce a benefit estimated at \$3 million (NPV) over the initial 40-year term of the lease.
- The increase in property tax benefit to the General Fund is higher with a second team as it is believed that the lease valuation will be higher due to a doubling of the NFL-game use in the stadium.
- Sales tax, Vehicle license fees and transient occupancy tax values were validated by the City's fiscal/economic consultant, Keyser Marston Associates from the studies performed by the 49ers consultant, CS&L International.
- The relocation of the electric substation, estimated at \$20 million, is subtracted from the City's return above.

Return on Investment to the Redevelopment Agency

It is estimated that there will be a negative \$45 million return to the Redevelopment Agency for one team and a negative \$43 million from the addition of a second team. It is important to understand the primary goal of a Redevelopment Agency is to spend capital projects monies to renovate and enhance selected business, entertainment and mixed-use areas in a community. The true return on investment to the Redevelopment Agency comes from the increase in residents, tourists and jobs generated from Agency projects, such as the Convention Center, the Youth Soccer Park or David's Restaurant and Banquet Facility, all built with Agency funds and all returning sales tax, hotel tax and user fee dollars to the City's General Fund. The Return on Investment for the Agency is comprised of the following:

- Possessory interest taxes (property taxes) from the ground leases. With two teams it is estimated the lease valuation for possessory interest tax purposes will increase somewhat.
- \$36 million is the net present value of the Agency's investment to construction financing and the Agency's 50% share of development fees.
- It is estimated that if it is necessary to reconfigure the Theme Park parking lots to meet the City's requirements under the lease, that approximately 40% of the garage (700 parking spaces) will be dedicated to Theme Park overflow parking. This is an investment of \$15 million (NPV - \$17 million in nominal dollars) of the estimated \$42 million cost of the garage.

Cooperation Agreement

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The Agency has an financial obligation to pay the City for a parcel of land purchased for the ground leasing and development of an office park in 2005. The repayment comes from the lease revenues of three City-ground leased properties in Bayshore North Area and, when available, tax increment from the Agency. With the Agency's proposed investment in the stadium the repayment schedule will stretch as there will be less tax increment revenue to supplement the lease revenue source of the repayment. It should be noted that when the Cooperation Agreement was established it contemplated the possibility of additional projects requiring tax increment financing, and specifically states that the Cooperation Agreement is not intended to put the repayment of the land purchase to the City in a superior position over any future development project opportunities in the Bayshore North Redevelopment Area.

COUNCIL OPTIONS:

The Council can consider one of three options pertaining to the Term Sheet:

1. Determine that the Term Sheet as presented does not meet the Council's goals for this project and, in consideration of the time and resources expended to date on the stadium project, direct the City Manager to terminate all further discussions with the 49ers on a stadium project in the City of Santa Clara.
2. Determine that the Term Sheet does not adequately address all the critical, relevant issues associated with a stadium project of this scope and cost, and direct the City Manager to return to Term Sheet negotiations with the 49ers to more fully develop selected issues and/or to seek different negotiating positions than currently reflected in the Term Sheet.
3. Determine that the Term Sheet does adequately address all the critical, relevant issues associated with a stadium project of this scope and cost, and:
 - a. Approve the 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 and authorize the City Manager/Executive Director to execute the Term Sheet;
 - b. Direct the City Manager/Executive Director to return to the June 23, 2009 City Council/Redevelopment Agency meeting with:
 - 1) a report for City Council action to proceed with the process of creating a Charter Review Committee;
 - 2) an information report detailing the calendar of events necessary to have a Term Sheet ballot measure ready for a Spring 2010 election;
 - c. Direct the City Manager/Executive Director to return to the July 14, 2009 City Council/Redevelopment Agency meeting with:
 - 1) a presentation by the San Francisco 49ers on the design of the proposed stadium;
 - 2) a report for City Council/Redevelopment Agency action to amend the existing Negotiating Agreement between the City of Santa Clara, the Redevelopment Agency and the 49er Stadium Company, LLC in order to proceed with the next phase of the proposed stadium project, which is negotiation of the Disposition and Development Agreement;
 - 3) a proposed consultant budget for continuing staff support for the next phase of the stadium project.

RECOMMENDATION:

That the City Council/Redevelopment Agency take the following actions in approving Option 3:

- a. Approve the 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 and authorize the City Manager/Executive Director to execute the Term Sheet;
- b. Direct the City Manager/Executive Director to return to the June 23, 2009 City Council/Redevelopment Agency meeting with:

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- 1) a report for City Council action to proceed with the process of creating a Charter Review Committee;
- 2) an information report detailing the calendar of events necessary to have a Term Sheet ballot measure ready for a Spring 2010 election;
- c. Direct the City Manager/Executive Director to return to the July 14, 2009 City Council/Redevelopment Agency meeting with:
 - 1) a presentation by the San Francisco 49ers on the design of the proposed stadium;
 - 2) a report for City Council/Redevelopment Agency action to amend the existing Negotiating Agreement between the City of Santa Clara, the Redevelopment Agency and the 49er Stadium Company, LLC in order to proceed with the next phase of the proposed stadium project, which is negotiation of the Disposition and Development Agreement;
 - 3) a proposed consultant budget for continuing staff support for the next phase of the stadium project.



Ronald E. Garratt

Assistant City Manager / Assistant Executive
Director for Redevelopment Agency

APPROVED:



Jennifer Sparacino

City Manager / Executive Director for
Redevelopment Agency

Documents Related to this Report:

- 1) ***Exhibit 1 – Map of the City’s North Bayshore Redevelopment Area***
- 2) ***Exhibit 2 – Map of Stadium Project Area***
- 3) ***Exhibit 3 – City Guiding Principles***
- 4) ***Exhibit 4 – 49ers Guiding Principles***
- 5) ***Exhibit 5 – Term Sheet Between the City of Santa Clara and the San Francisco 49ers***
- 6) ***Exhibit 6 – KMA Stadium Economic and Fiscal Impacts Recap***
- 7) ***Exhibit 7 – Preliminary Estimate of Return to City After Investment from Stadium Project***
- 8) ***Exhibit 8 – Ground Rent***
- 9) ***Exhibit 9 – Projected Ground Rent to City-One Team***
- 10) ***Exhibit 10 – Projected Ground Rent to City-Two Teams***
- 11) ***Exhibit 11 – Projected Non-NFL Event Revenue and Hypothetical Calendar of NFL Games and Non-NFL Events***
- 12) ***Exhibit 12 – Ground Rent Projection with One Team***
- 13) ***Exhibit 13 – Ground Rent Projection with Two Teams***
- 14) ***Exhibit 14 – Stadium Construction Financing***
- 15) ***Exhibit 15 – Public Safety Costs***
- 16) ***Exhibit 16 – Proposed Theme Park Parking Lot Renovation Plan***

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DISCUSSION:

There are certain issues in the Term Sheet (refer to Exhibit 5–Term Sheet) that require more detailed explanation. Listed below are selected issues and supporting information:

Voter Approval

Section 1.1 of the Term Sheet notes that the Stadium will not be constructed unless and until the voters of the City approve a ballot measure endorsing the development of a stadium consistent with the essential elements set out in the Term Sheet. It is anticipated that a ballot measure would go before the voters in Spring 2010.

City to Form Stadium Authority

Section 2.1 - The City and the Redevelopment Agency will enter into a joint powers agreement creating the Stadium Authority (SA). The SA will be a separate and distinct legal entity, and neither the City nor the Agency will be liable for the debts or obligations of the SA. The SA governing board will be the seven members of the City Council, with the City Manager acting as Executive Director and the City Attorney acting as General Counsel. It is anticipated that SA business will be added to the existing Council Agenda, which currently consists of City business followed by Agency business followed by Sports & Open Space Authority business.

City to Lease Stadium Site to Stadium Authority

Section 2.2 and 3.2 - The City will ground lease its property to the SA, who will then in turn concurrently lease the site to the 49ers Stadium, LLC who will then sublease to the 49ers team to allow them to play in the stadium. If a second team comes to play in the stadium, the 49ers will have the right to sublease to the second team.

Formation of Mello-Roos Community Facilities District (CFD)

Section 2.3 - The City will make good faith efforts to form a CFD that will include all hotel properties in the vicinity of the stadium (there are presently eight hotels in this proximate area). If approved by a vote of the property owners included in the CFD, the hotel properties in the CFD would be subject to a special tax based on hotel room revenue. Prior to the development of the CFD, a map will be created that will delineate the boundaries of the CFD and inform any future hotel projects whether they will be included in the district depending on their site location. Additionally, two of the eight hotels are on ground leases with the City. Under CFD regulations the City is required to vote for the Hyatt Regency Hotel and the Santa Clara Hilton Hotel as the underlying property owner; however, the City will consult with these hotel owners and vote their desired positions at the appropriate time.

Limitation of City Liability

Section 2.4 - There can be no City funds, investments, contracts or property interests used for the construction or operation of the Stadium nor pledged or loaned for the payment of any stadium construction financing, except the possible relocation of the substation.

Preconditions to Closing

Section 3.1 - The City and SA will enter into a Disposition and Development Agreement (DDA) with the 49ers Stadium Company, LLC that will set forth the predevelopment activities to be performed, the preconditions to the commencement of construction and the amount and timing of the construction funding from the participating parties, and will contain the ground lease as an attachment.

Term

Section 4.1 and Section 5.1- The lease will have an initial 40-year base term with 5 four-year option periods, totaling a maximum possible term of 60 years.

Stadium Operations Generally

Section 8.1 – The SA, in cooperation with the 49ers, will conduct NFL games and events, non-NFL events and Civic Events. The primary purpose of the stadium is to serve as a venue for NFL football games. In order to enhance the revenue opportunities beyond a 10 to 12 game schedule (49ers) or a 20 to 22 game schedule (2 NFL teams playing in the stadium), the SA and the 49ers will cooperate in booking non-NFL events throughout the year, but with particular sensitivity to cooperating with Cedar Fair and the Theme Park schedule. These non-NFL events will be agreed to by both parties, the SA and the 49ers. Net income from these events is called performance-based rent and is shared between the City and the SA, with the 49ers obligated to cover any event losses. Events proposed by the SA that the 49ers do not concur with can still be held by the SA and are called Civic Events. Depending on the nature of the Civic Event, if it is not a revenue-producing event, the SA can pay the loss from its Discretionary Fund or the General Fund can assume responsibility for the event. The 49ers are not responsible for losses from Civic Events nor do they share in the profits from revenue producing Civic Events. An example of a Civic Event could be a 4th of July fireworks show held in the stadium.

Ground Lease and Rent to the City

Section 4.3 – There will be a fixed (guaranteed) ground rent and a performance-based (participating) ground rent paid to the City. The fixed ground rent starts at \$180,000 in the first year the stadium is opened and increases \$35,000 a year for each of the first ten years (year 10 rent will be \$495,000). In year 11 the fixed rent increases to \$1 million. It increases \$100,000 every 5 years thereafter, so that at the end of the initial term in year 40 the rent would be \$1.5 million per year. If a second NFL team comes to play in the stadium on a permanent basis, the second team will pay an additional \$1 million per year from the first year of its arrival through year 10, with the rent then increasing by \$100,000 every 5 years through the remainder of the initial term.

Performance-based rent is derived from non-NFL events held at the stadium. The net income from these events would be split 50/50 between the City and the 49ers. The City's share of the performance-based rent is adjusted for certain rent credits:

- 50% of the fixed (guaranteed) rent paid in a particular year for either one team or two teams will be credited against the performance-based rent.
- There is a threshold as to the payment of public safety costs that is calculated at \$170,000 multiplied by the number of NFL games played at the stadium in a season. If for any reason public safety costs exceed the threshold, the excess could be funded from the SA's Discretionary Fund, or the 49ers will cover the costs and seek reimbursement through a credit to the performance based rent due to the City. This reimbursement concept is known as "Credited Public Safety Costs".
- Following the expiration of the Agency's ability to collect tax increment in 2026, the portion of property tax revenue actually received by the City (10% of the property tax levied on the stadium lease in any year after 2026) will be credited against performance-based rent. It is important to note that the 10% share of stadium property tax will go to the City's General Fund each year after 2026. Through this credit formula that amount will be deducted from the stadium performance-based rent which also goes to the City.

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- The sum of fixed and performance rent is expected to meet or exceed fair market rent for the stadium site even after the credits are taken into account. Additionally, although it is a credit, the City will receive its share of property tax from the Stadium. It should also be noted that performance rent cannot go below zero under any circumstances.

Senior and Youth Program Fee

Section 4.4 – A \$0.35 (thirty-five cent) fee will be applied to every NFL ticket, producing a City of Santa Clara Senior and Youth Program Fee not to exceed \$250,000 a year. With one team this fee is estimated to produce a maximum of \$228,000 a year in revenue. With two teams, the revenue will be substantially more, but is capped at \$250,000 per year. This fee will be remitted to the City to be used for parks, recreation and library programs, including, without limitation, senior activities and the existing Youth Championship Team Fund.

Summary of Ground Rent Received by the City

Exhibit 8 titled “Ground Rent” demonstrates the flow of fixed (guaranteed) rent in 5-year increments over the initial term of the lease. A sense of the escalation of the ground rent over time and the effect of a second team (assumed to commence playing in year six of stadium operations or 2019) can be gained from Table 1. The projected performance-based rent is predicated on approximately 17 non-NFL events in eight event categories held in the stadium each year comprising an estimated 26 event days (some events occur over multiple days), with attendance estimated at 500,000. Non-NFL rent is escalated 3% per year in this projection. Added to these two rent streams (fixed and performance-based) are the Senior and Youth Program Fee.

Exhibit 9 titled “Projected Ground Rent to City – One Team” demonstrates the projected flow of rent to the City after the credits detailed above are deducted from the performance-based rent. Column A is the fixed (guaranteed) rent to the City. It is nearly \$41 million (in nominal dollars) over the initial term of the lease. Column B is the city’s 50% share of the net income from performance-based (non-NFL) events. Column C is the rent credit equivalent to one-half of the fixed (guaranteed) rent for that year. Column D is the 10.2% (City share) of property tax paid annually by the SA. Commencing at the end of the Redevelopment Plan in 2026, this property tax credit reduces performance-based rent to the City, yet the City’s General Fund is still receiving this full amount of property tax through the County’s tax collection process. Column E represents credits if the 49ers are required to pay public safety expenses that exceed the threshold cap of \$170,000 times the number of games. Those credits are paid from performance based rent. In this example, it is assumed that there is a very low probability of this form of rent credit materializing, given the adequate coverage of public safety expenses and the dispute resolution process. Column F is the net of the credits against the City’s 50% share of performance-based rents. Column G is a projection of the revenue supporting the Senior and Youth Program Fee with Column H representing the estimated total revenue to be received by the City. The smaller font column to the far right in Column H is the net present value (2009 dollars) of the nominal projected rents shown in Column H.

Exhibit 10 titled “Projected Ground Rent to the City – Two Teams” is in the same format and structure as Exhibit 9 with the addition of the fixed (guaranteed) ground rent from a second team commencing in the sixth year of stadium operations. The performance-based rent assumptions remain unchanged between one team and two teams. With two teams there may be more of a challenge to scheduling non-NFL events, but a portion of the football season occurs through the winter months when fewer non-NFL events are scheduled due to weather considerations.

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Given that the performance-based rent is such a large component of the potential return to the City, staff and the 49ers have reviewed other open air stadium venues and had a former general manager from a major event management company review the non-NFL event projections to test the accuracy of the assumptions. Exhibit 11 contains a hypothetical calendar of events for NFL games with two teams playing in the stadium. Section 5.2 notes that the 49ers require that the stadium be available and ready for NFL games 48 hours prior to the start of the game. This requirement does inhibit to some degree the flexibility in scheduling non-NFL events in the football season, but this time period can be reduced by the team if they so determine.

In summarizing the issue of rent paid to the City, it is important to note that even if the credits applied against performance-based rent exceed the amount of performance-based rent available, there can be no reduction of the annual fixed (guaranteed) rent to the City.

Excess Revenue

Sections 5.3 and 10.5 and Article 15 – In their original stadium proposal presented to the City in 2007, the 49ers included a \$5 million facility rent commitment plus a commitment to cover all operating expenses of the stadium. If in any year, stadium expenses were less than stadium revenues, which include the \$5 million Facility Rent, a “waterfall” of excess revenue would be distributed as follows:

- The first \$1 million will go to the Stadium Capital Expenditure Reserve;
- The second \$1 million will be paid to the City as additional ground rent;
- The third portion of \$2 million will be retained by the SA to fund future SA expenses;
- The fourth portion, the remainder if any, will be distributed 1/3 each to the City, the SA Capital Expenditure Reserve and the SA to fund future SA expenses.

The City’s fiscal/economic consultant, KMA, analyzed the possibility of excess revenue resulting from SA operations given the projected revenues and expenditures associated with stadium operations and concluded that it would be highly unlikely for excess revenues to materialize thereby significantly discounting the ability for a “waterfall” revenue distribution to occur.

Fair Market Return on Land

KMA estimated the fair market rent of the approximate 15-acre site being used for the stadium at \$1.8 million per year, escalated at 3% per year and based on the General Plan designation of the site for retail/entertainment use. The graph shows the projected rents from one team as shown in Exhibit 12 titled “Projected Ground Rent to City – One Team,” as well as the combination of the fixed rent, performance-based rent and the Senior and Youth Program Fee exceeds the fair market value for the property. The fair market rent is also realized and exceeded in the projections for two teams playing in the stadium, with a major difference being the significant increase in fixed (guaranteed) rent from two teams (refer to Exhibit 13). Both scenarios determine that a fair market rent can be realized, but also points out that the realization of a fair market rent return is heavily dependent on performance-based activities (non-NFL events).

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Demolition

Section 5.4 – At the end of the lease term, the 49ers Stadium Company, at the option of the SA, will demolish the stadium. If the SA transfers ownership of the stadium to the City at the end of the lease, the City becomes responsible for any future cost of demolition.

Charter Review Committee

Section 6.3 addresses the need for a Charter Review Committee to consider a possible amendment to Section 1310 of the City Charter (Contracts on Public Works) to facilitate the use of sole source contracting, if necessary, while assuring that the majority of stadium construction work is put out for public bid on a best value basis. If a Charter amendment were to be approved by the City's voters, it would be limited in scope to only the stadium project and no other Public Works projects in the City.

Development Fees

Section 6.4 – One half of the approximate \$4 million in development fees will be paid by the Agency, and will be reimbursed by the 49ers if a second team plays in the stadium.

Stadium Construction Financing

Article 7 – Current assumptions have stadium construction commencing in 2012 for a 2014 opening. Exhibit 14 details the estimated contributions from the participating parties in the stadium financing. The Agency's contribution of \$42 million includes financing from bonds and cash of \$28 million thereby necessitating an advance from the 49ers of \$12 million. In addition, the Agency will be contributing 50% of the development fees, approximately \$2 million. The combination of the Agency's contribution and 49ers advance may be allocated differently by the anticipated date of the stadium financing in 2011 given economic circumstances and credit markets at the time of financing, but the concept of the \$40 million cap on tax increment financing remains, regardless of the mix in contributions. Additionally, given current economic conditions, it is projected that the hotel CFD financing from the 8 participating hotels will generate approximately \$15 million, necessitating a 49ers advance of \$20 million, again not exceeding the \$35 million CFD cap. As with the Agency's financing, the allocation between the hotel CFD and the 49ers advance are not set and will very likely be modified by changing financial/economic circumstances at the time the financing is done, estimated in 2011. In seeking reimbursement for any advance the team might make, the 49ers can only look to the Agency for tax increment reimbursement or the hotels for CFD funds reimbursement; the 49ers cannot meld the two revenue sources in seeking reimbursement.

Prior to moving forward with stadium construction financing, the SA and Agency will create a finance plan, which will set out in reasonable detail the amount and timing of the various construction sources: the Agency's upfront contribution, the Mello Roos CFD bonds, and the 49ers Stadium Company, LLC contribution. The Finance Plan will demonstrate, to the reasonable satisfaction of the City, Agency and SA, that the 49ers Stadium Company, LLC will have sufficient assets, credit and revenue streams to timely fund the team's contribution. It is the intent of the financing structure that the recourse of any bondholder or lender of any SA financing will be limited such that no City or Agency General Funds or operating revenues or City Enterprise Funds will be used as collateral. Both Stadium Builder's Licenses and Naming Rights will be marketed by the SA in consultation with the 49ers. Additionally, the SA will impose a surcharge on the price of admission to all NFL games held in the stadium. This NFL ticket surcharge is intended to be a percentage of the price of all tickets sold in that year, excluding the amount of suite, club and other premiums attached to the tickets. The SA will use these revenue sources to fund the construction of the stadium (Section 7.3).

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Redevelopment Agency Construction Financing

Section 7.4 - The Agency will invest an amount not to exceed \$40 million, comprised of cash on hand from existing unallocated Agency funds not otherwise needed to make any State mandated payments to offset State budget shortfalls. The Agency will issue tax increment bonds from the net tax increment available to the Agency net of existing obligations and legally required affordable housing set-asides, SB 211 required pass-through payments to other local taxing jurisdictions, debt service on a new tax increment bond financing of \$25 million for future Agency refurbishment projects in support of existing publically owned facilities in the Bayshore North Redevelopment Area, and Agency administrative costs at a fiscal 2008/2009 base escalated 4% annually.

49ers Advance to the Agency

Section 7.4 c - The 49ers will advance the difference between the maximum Agency upfront investment and \$40 million. This advance will be repayable only from the net tax increment remaining after the Agency's payment of debt service on the tax allocation bonds issued in support of stadium construction. Annual compound interest on the advance will be the lower of either the rate on 30-year BB-rated corporate bonds or 8 ½ %. Prior to making a payment on the 49ers advance, the Agency will make an annual election to provide an additional deposit to the mandatory 20% affordable housing set-aside fund of up to an additional 10% of gross tax increment, with such additional deposit ceasing on December 2016 with the termination of the Redevelopment Plan. Upon the expiration of the Agency's ability to collect tax increment (2026), any amount of the 49ers advance that is outstanding will be forgiven by the 49ers.

CFD (Hotel) Construction Financing

Section 7.5 - If approved by a vote of the eight participating hotels, the Mello Roos Community Facilities District (CFD) will be formed to collect special taxes on room charges projected to raise \$35 million. The rate imposed on the participating hotels to raise these monies may not exceed a rate equal to a 2% increase in the City's transient occupancy tax (TOT). The term of the CFD will not exceed 40 years. The CFD will issue Mello Roos bonds to the maximum amount subject to fiscal prudence and the financial markets at the time of issuance. If the CFD financing cannot raise the full \$35 million for construction, the 49ers will advance funds similar to the Agency advance described above with a similar interest rate assigned.

If the CFD repays the Mello Roos bonds and the 49er advance prior to the expiration of the 40-year term of the CFD, the SA may use any remaining CFD proceeds for CFD-eligible expenditures. However, in this period of time, if the City has increased the City-wide TOT rate beyond 9.5%, the participating CFD hotels will receive a credit for the amount of TOT they pay above 9.5% against the remaining CFD proceeds.

49ers Stadium Company Investment

Section 7.6 language commits the 49ers to pay all construction cost overruns in excess of the contributed financing from the Redevelopment Agency and the participating hotels.

Stadium Operations

Article 8 – The SA will be responsible for the management and operation of the stadium for NFL events, non-NFL events and Civic events and the 49ers Stadium Company will cooperate with the SA in the operation of the facility. Non-NFL events are defined as those events occurring in the stadium that have been agreed to between the SA and the 49ers as being profitable event opportunities. These events cannot conflict with the need to have the stadium available for NFL games and events. If the SA desires to host a particular non-NFL event that the 49ers are not interested in hosting, or if the SA wishes to hold a civic function in the stadium that may or may not return a profit, then these events are classified as Civic Events.

A Stadium Operation and Maintenance Plan and a Capital Expenditure Plan (Cap X Plan) will be adopted annually by the SA, subject to mutual approval between the SA and the 49ers. The Cap X Plan will include an annual projection of expenditures as well as a 5-year projection of capital needs. The 49ers maintain the right to the reasonable approval of the annual operating and capital budgets. Any activities not agreed to in the budget by the team will require a separate funding source such as the SA's Discretionary Fund (funded from a \$2 per ticket surcharge on all non-NFL tickets), or the City's General Fund. If the SA and the 49ers cannot agree on certain stadium expenses, then the management of each of the parties will meet and confer to resolve the issue and, if necessary, submit the issue to non-binding mediation.

Stadium Parking

Section 8.2 – Parking for stadium events will occur in existing publicly-owned lots and private lots within easy walking distance of the stadium. It is anticipated that a mutually agreeable resolution to the use of Theme Park lots will be a part of this parking program. There will be an experienced, responsible third-party parking operator hired to manage the private and public lots used for event parking under the supervision of the SA and in close coordination with the City's public safety resources. The City will consider amending its zoning ordinance to create a parking overlay zoning district for the area around the stadium to require a conditional use permit for paid public parking use of off-street parking for stadium events. There will be a parking fee that will be allocated to pay the parking lot owner for the use of their lot, pay the parking lot operator for the control, security and clean-up of the lot and pay the SA for the reimbursement of event public safety costs.

As mentioned previously, the Agency financed, nearly ten years ago, a 1,700 space parking garage to be constructed on the north side of Tasman, east of San Tomas Aquino Creek, in front of the tennis courts for the Santa Clara Golf and Tennis Club. Access to this garage will be from Stars and Stripes Drive off of the northern terminus of Centennial Boulevard. This garage will be used for a variety of parking needs, but will be available for stadium event parking also.

Police, Traffic and Emergency Services

Section 8.3 and Attachment C – There will be specific public safety facilities constructed in the stadium including a holding facility and a secure command center. The City will develop a public safety joint powers agreement (JPA) with surrounding jurisdictions to provide sufficient sworn public safety resources to effectively manage events at the stadium. The Santa Clara Police Chief will be in charge of this public safety JPA.

The City, the public safety departments, the SA and the 49ers will develop a Public Safety Plan that will be continuously updated to deal with large events at the stadium. The SA will reimburse the City for actual and reasonable costs of police, traffic control, fire, emergency services and similar services attributable to stadium events in addition to a paying for a fair share of reasonable capital expenditures that are stadium related.

For stadium operations, Public Safety Costs will be allocated as follows:

- NFL games – an annual funding threshold will be established based on \$170,000 multiplied by the pre-season, regular and post-season games played in the stadium. This amount will be increased by 4% per year if only the 49ers are playing in the stadium and by 6% per year if two teams are playing in the stadium. Certain public safety costs that will be reimbursed by the SA to the City that are not included in the threshold include: 1) \$500,000 for each of the first two years of stadium operations

for the cost of a police lieutenant and sergeant to establish a Special Events Unit to develop procedures and protocols for the implementation of the Public Safety Plan and coordinate the joint powers/mutual aid agreements as necessary. If a second team plays in the stadium on a permanent basis the SA will reimburse the City \$250,000 for each of the first two years the second team is playing to allow the Special Events Unit to update their operating procedures based on two teams playing in the stadium; 2) rental from third parties of barricades and radios to be used on event days; 3) police escorts or additional security requested for the 49ers or visiting teams; and 4) a capital expenditure amortization charge to replace dedicated stadium public safety equipment. Exhibit 15 demonstrates how these costs are accumulated in the start-up budget under the assumption of a 10-game season.

The public safety threshold amount may be modified at the request of the City if the NFL mandates specific new or expanded security measures that substantially increase game-day costs. If there is disagreement between the parties as to the amount of such an increase then the issue can be taken to expedited final ADR. If due to unanticipated circumstances other than new or expanded security measures mandated by the NFL, public safety costs that exceed the annual threshold over any three consecutive years can be discussed between the parties in good faith to determine if an increase to the threshold should occur. This unanticipated increase in cost is not subject to expedited ADR.

Any public safety costs attributable to NFL games paid by the SA to the City in excess of the threshold in any year can be paid from the SA's Discretionary Fund at the SA's sole discretion or can be considered as a "Credited Public Safety Cost" and be credited against performance-based rent to the City.

Stadium Operating Revenue

Article 10 - The SA will receive all Stadium Operating Revenue comprised of the following sources:

- Ticket surcharges – NFL ticket surcharge proceeds not needed to pay debt service or other NFL ticket surcharge financing.
- Naming rights revenue – not needed to pay debt service or other costs of naming rights financing.
- Stadium Builders Licenses (SBL's) – resulting from the sale or transfer of seat licenses.
- Mello-Roos CFD special taxes – received from the hotel tax in excess of debt service and team advance repayments.
- Facility rent – payable by the 49ers Stadium company in the amount of \$5 million per year.
- Parking revenue – all net revenues from the operation of surface lots or in parking structures owned or controlled by the SA.
- Concessions revenue – all net revenues from concessionaires authorized by the SA to engage in the sale of food, beverages and other goods in the stadium or on parking lots or structures owned or controlled by the SA.
- Third-party rent – the SA will receive all net rent for leasable space in the stadium, estimated to be in the range of 10,000 square feet.
- Revenue from non-NFL events - net revenue received from a promoter or other sponsor of any non-NFL event for the right to put on an event in the stadium.
- Non-NFL advertising revenue – net revenue received from transient electronic advertising on designated area of stadium scoreboards provided the advertising does not conflict with terms of any contracts for advertising for NFL events.

Team Revenue

Article 11 – Team revenue is comprised of:

- All NFL event revenues – ticket revenues, premium seat revenues (includes suite and club seat revenues) and team service revenues from the delivery of services, equipment rental or the use of technology in connection with NFL events.
- All NFL advertising and sponsorship revenues from stadium related advertising and signage. Subject to the rights of existing tenants of City-owned property under ground lease, the City and Agency will commit that no other property owned or controlled by the City or Agency within an area designated as “Control Area for Display of Advertisements and Promotional Activities” (refer to aerial map - Attachment B of the Term Sheet, included in this report as Exhibit 5) will be used to display advertisements or be used for promotional activities during days of NFL events that conflict with NFL sponsor contracts or the rights of stadium concessionaires and other vendors, provided that the foregoing will not apply to any City or Agency advertising or similar contracts that pre-date such sponsor contracts or vendor contracts.
- All other NFL-related revenue streams resulting from NFL events, with a few exceptions.

Reimbursable Expenses

Article 12 – are essentially all costs of operating, maintaining and repairing the stadium and all costs attributable to NFL events and non-NFL events for all facilities under the control of the SA and for public safety costs as previously addressed. A listing of the various expense categories can be found in the Term Sheet, Article 12.1. There are a few expense categories excluded from Reimbursable Expenses, including Capital Expenditures except those defined as reimbursable; debt service on financing secured by NFL ticket surcharges and/or naming rights revenue; SA Discretionary Expenses including costs attributable to Civic Events; and any distribution of excess revenues.

Non-NFL Events and Civic Events

Article 13 - The SA will have the right to conduct events such as concerts and sporting events other than NFL games in the stadium when it is not scheduled for NFL games. The SA and the 49ers Stadium Company will establish an annual calendar of events in coordination with, and awareness of, the Theme Park’s busy periods. Events that are agreed to be scheduled are called non-NFL events. Net income from these events is called performance-based rent and is split 50%/50% between the SA and the City. The 49ers will assume responsibility for any non-NFL events losses in the form of net operating expenses. Any event(s) that can not be mutually agreed upon to be scheduled can still be held in the stadium by the SA, but they are called Civic Events and the 49ers do not have responsibility for losses from these events and the SA must bear the cost of all Civic Event expenses.

Non-NFL Ticket Surcharge

The SA will impose a \$4 per ticket surcharge on any non-NFL ticket. One-half of the surcharge proceeds will be included in Stadium Operating Revenue while the other half is deposited in a separate account under the control of the SA called the Discretionary Fund. This fund may be used to pay certain costs that the 49ers and SA do not agree on in the budget setting process, such as additional equipment purchases that can not be agreed to as stadium related, or the Special Events Public Safety Team after the 49ers funding expires or the expenses associated with having a Civic Event held in the stadium or unanticipated stadium-related costs (as defined by the City) that impact the General Fund. In the event the fund accrues to more than \$1 million in any year and the funds are not used by the SA for allowed discretionary expenses, then up to one-half of the excess amount may be transferred to the City’s General Fund while one-half of the excess is transferred to the SA’s operating fund to be included in SA operating revenue available to pay reimbursable expenses.

Capital Reserves

Article 14 – The SA will deposit annually \$1.5 million into a Stadium Capital Expenditure Reserve (Cap X Reserve). This amount escalates 3% per year. The 49ers can add additional funding as they determine. If a permanent second team comes to play in the stadium an additional \$1 million per year will be added to the Cap X Reserve, also escalated at 3% annually.

The Cap X Reserve will be used by the SA for replacements and improvements to the stadium according to an agreed-to annual plan. Any remaining amounts in the Cap X Reserve upon termination of the stadium lease will be paid to the 49ers Stadium Company.

Second Team

Article 16 – The 49ers Stadium Company will have the right to enter into a sublease with a second NFL team who will then play their home games in the stadium with the 49ers. At the time a second team commences play in the stadium the 49ers will reimburse to the Agency/City an amount equal to the Agency's initial investment, currently estimated at \$28 million. Additionally, the 49ers Stadium Company will repay the principal amount of any advance the team made in support of the initial Agency financing to meet the Agency financing cap of \$40 million.

The SA will pay the City an additional fixed (guaranteed) ground rent of \$1 million per year in the first season of a second team playing in the stadium. This rent will increase to \$1.1 million in the 11th year and continue to escalate by \$100,000 every five years thereafter during the initial term of the lease. In each extension term of the lease the fixed rent will increase \$80,000 per extension term. The Agency/City will also be reimbursed by the 49ers for the share of development fees paid as a result of stadium construction (estimated at \$1.7 million).

The 49ers Stadium Company will be responsible for all additional capital costs necessary to make the stadium ready for use by a second team. Each year the second team plays in the stadium, the SA will fund an additional \$1 million per year, escalated by 3% per year, into the Capital Expenditure Reserve fund.

Temporary Second NFL Team Occupancy

Section 16.2 – In the event the 49ers Stadium company chooses to sublease to a second NFL team to play in the stadium for a period not to exceed two NFL seasons, then the reimbursement criteria above for a second team does not apply.

Theme Park

Section 17.1 – The stadium will be built and operated consistent with the Agency's obligations under the Ground Lease for California's Great America Theme Park, owned by Cedar Fair, or other arrangements acceptable to the Theme Park tenant. Discussions have occurred and are continuing with Theme Park management to work through issues involved with the possibility of having two major outdoor entertainment venues, the Theme Park and stadium, in close proximity, and at certain times in their respective seasons having overlapping operating days. While the 49ers are in discussions with Cedar Fair for the possible purchase of the Park, those discussions have not yet been concluded.

The ground lease for the Theme Park has always contemplated the possible future development of the overflow parking area, the proposed site for the stadium. In order to proceed with development of the overflow lot, the City needs to replace the parking that would be lost if the overflow lot was no longer available to the Theme Park. The City Manager recently met with Cedar Fair's Chairman of the Board,

Date: May 29, 2009

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President and CEO to discuss a parking option that would replace parking lost to the proposed stadium located in what is currently the overflow lot. This parking lot renovation plan (Exhibit 17), provides parking spaces equivalent to the 8,100 parking spaces currently available. The renovation plan takes advantage of the possible electric substation relocation which would produce an additional 380 spaces in the Park's main lot. The existing main lot driveway to Tasman as well as selected areas around the main parking lot can be redesigned to add additional parking. There will be a small number of parking spaces created around the stadium for use by the Theme Park as overflow parking. Additionally, the Theme Park would have available the use of a certain number of spaces in the proposed new garage to be built on the north side of Tasman, adjacent to San Tomas Creek. Walking access to the Theme Park from the garage can be from the San Tomas Creek Trail, which runs under Tasman Drive. City staff and the 49ers will continue discussions with Cedar Fair to work on a plan whereby the Theme Park and Stadium can both benefit from the synergies created in an expanded Entertainment Zone area.

Other Stadium Area Property

Section 17.2 - Attached to the Term Sheet is an aerial map of the area adjacent to the proposed stadium (refer to aerial map - Attachment D of the Term Sheet, included in this report as Exhibit 5). Included in this area are three bare-land, City-owned properties, totaling approximately 9 acres, that have opportunity for future development. Under the Council's long-held policy it is anticipated that these three properties would be ground leased, rather than sold, by the City, thereby producing a long-term stream of income to the City's General Fund. If the City chooses to put these properties out for development, it will follow its practice of seeking competitive offers from the development community. The 49ers will be given notice of any proposed development opportunity on these three sites through the term of their stadium lease and will have the ability to compete as a potential developer under an open, competitive selection process.

49ers Training Facility Lease

Section 17.3 – The team's existing ground lease at 4949 Centennial Boulevard, used as the Team's headquarters and training facility, shall remain in full force with existing conditions except that the lease will be extended to be co-terminus with the stadium lease.