

Meeting Date: 04/21/09

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B



Date: April 14, 2009

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

From: Assistant City Manager

Subject: Amendment No. 3 to the Professional Services Agreement with Keyser Marston Associates, Inc. for Fiscal and Economic Analysis to Assist Staff in the 49er Stadium Term Sheet Negotiations

EXECUTIVE SUMMARY:

At their January 15, 2008 meeting, the Council/Redevelopment Agency determined the proposed San Francisco 49ers stadium project to be feasible, but with many outstanding issues requiring resolution in the next phase of negotiations. On February 12, 2008, the Council/Agency directed the City Manager to execute a Negotiating Agreement between the City and the San Francisco 49ers to proceed with the Term Sheet negotiations.

At their February 12, 2008 meeting, the Council/Agency authorized the use of an additional \$500,000 of Agency appropriations for specialized legal and consulting services to support City/Agency staff in conducting the term sheet negotiations, and approved a legal services agreement with the firm of Goldfarb and Lipman, and a fiscal and economic analysis consulting agreement with the firm of Keyser Marston Associates, Inc. (KMA). Additionally, funds were set aside for specialized consulting in the areas of sports financing and operations. These monies come from Redevelopment Agency tax increment revenues and can only be used to support redevelopment activities in the North Bayshore Area. General Fund monies have not been used in engaging consulting services for the stadium proposal.

On June 17, 2008, the Council/Agency approved an amendment to the Negotiating Agreement to extend the deadline for Term Sheet negotiations through February 2009, and on November 25, 2008, the Council/Agency approved Amendment No. 1 to the professional services agreement with KMA for fiscal and economic analysis during the extended period of the Term Sheet negotiations. Since that time, the downturn in the national and state economy has had a significant financial impact on the City's Redevelopment Agency. In addition, the 49ers recently announced the concept of sharing the stadium with a second NFL team. Both the City and the 49ers needed additional time to assess the financial implications of these recent developments, which caused a delay in the Term Sheet negotiation process, and on February 24, 2009, the Council Agency approved Amendment No. 2 to the professional services agreement with KMA.

Term sheet negotiations are continuing to move forward; however, due to the complexity and range of financial issues involved in the Term Sheet negotiations, it is necessary to increase by \$100,000 the funding amount for the City's fiscal and economic consultant, KMA. This results in an increase in the total amount appropriated for the Feasibility Study and Term Sheet negotiations to \$1.1 million. If a Term Sheet is approved by Council at a later date, staff would return with a consultant budget for fiscal/economic analysis and legal services to proceed forward into the Disposition and Development Agreement phase of the stadium project. Any unused funds from this KMA professional services agreement amendment could be carried forward into the next budgeting phase, if a next phase stadium project budget is required. The KMA professional services agreement amendment has been placed in Council Offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Increasing the funding for the Agency's external fiscal and economic consultant will allow staff the opportunity to continue with the Term Sheet negotiations into and through its final stages, employing resources that have been critical to the negotiation effort to date.

ECONOMIC/FISCAL IMPACT:

This amendment will increase KMA's contractual not-to-exceed amount by \$100,000, to a total of \$387,000 for Term Sheet negotiations. The amendment increases the total Term Sheet negotiations cost to \$600,000 (\$1.1 million total including the initial \$500,000 for the feasibility study). Funds are available in the Redevelopment Agency Contractual Services account (901-9011-87870). Staff anticipates that this additional contractual capacity will be sufficient to complete the term sheet.

RECOMMENDATION:

That the Council/Agency approve Amendment No. 3 to the professional services agreement with Keyser Marston Associates, Inc. in the amount of \$100,000 for fiscal and economic analysis to assist staff in the 49er stadium Term Sheet negotiations, for a total contractual amount not to exceed \$387,000, and authorize the City Manager/Executive Director to execute Amendment No. 3.



Pam Morrison
Administrative Analyst to the City Manager



Ronald E. Garratt
Assistant City Manager

APPROVED:



Jennifer Sparacino
City Manager/Executive Director for
Redevelopment Agency

Certified as to Availability of Funds: ^{01/25/09}
901-9011-87870 \$100,000.00



Mary Ann Parrot
Director of Finance/
Redevelopment Agency Treasurer

Documents Related to this Report:

- 1) Amendment to Professional Services Agreement between the Agency and Keyser Marston Associates, Inc.***

**AMENDMENT NO. 3 TO THE
PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
THE REDEVELOPMENT AGENCY
OF THE
CITY OF SANTA CLARA
AND
KEYSER MARSTON ASSOCIATES, INC.**

This agreement ("Amendment No. 3") is made and entered into on this ____ day of April 2009, ("Effective Date") by and between The Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code section 33000, et seq.) ("Agency") with its primary business address at 1500 Warburton Avenue, Santa Clara, CA 95050, and Keyser Marston Associates, Inc., a California corporation ("Consultant"), with its primary business address at Golden Gateway Commons, 55 Pacific Avenue Mall, San Francisco, CA 94111. Agency and Consultant may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 3."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Professional Services by and between the Redevelopment Agency of the City of Santa Clara and Keyser Marston Associates, Inc.," dated February 12, 2008 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor provide fiscal, economic and land use analysis services, and the Parties amended the agreement to increase the not-to-exceed amount of one hundred fifty thousand dollars (\$150,000.00) by one hundred thousand dollars (\$100,000.00), bringing the total not-to-exceed amount to two hundred fifty thousand dollars (\$250,000.00), dated December 17, 2008 ("Amendment 1"); and
- C. The Parties amended the Original Agreement and Amendment 1 to increase the not-to-exceed amount of two hundred fifty thousand dollars (\$250,000.00) by thirty-seven thousand dollars (\$37,000.00), bringing the total not-to-exceed amount to two hundred eighty-seven thousand dollars (\$287,000.00), dated February 24, 2009 ("Amendment 2"); and
- D. The Parties now wish to amend the Original Agreement and Amendments 1 and 2 to increase the not-to-exceed amount of two hundred eighty-seven thousand dollars (\$287,000.00) by one hundred thousand dollars (\$100,000.00), bringing the total not-to-exceed amount to three hundred eighty-seven thousand dollars (\$387,000.00).

In consideration of the above Recitals and the following mutual covenants and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

- 1. That the paragraph entitled "Maximum Not to Exceed Contract Amount" of Exhibit B, entitled "Schedule of Fees and Charges" of the Original Agreement, is hereby amended to read as follows:

"In no event shall the amount billed to Agency by Consultant for services under this Agreement exceed Three Hundred Eighty-Seven Thousand Dollars (\$387,000.00), subject to budget appropriations."

2. All other terms of the Original Agreement that are not in conflict with the provisions of this Amendment No. 3 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 3, the provisions of this Amendment No. 3 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 3 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 3 shall become operative on the Effective Date first set forth above.

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

APPROVED AS TO FORM:

HELENE L. LEICHTER
Agency General Counsel

JENNIFER SPARACINO
Executive Director

ATTEST:

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

ROD DIRIDON, JR.
Agency Secretary

"Agency"

Keyser Marston Associates, Inc.
a California corporation

By:



A. JERRY KEYSER

Chairman of the Board
55 Pacific Avenue Mall
San Francisco, CA 94111
Telephone: (415) 398-3050
Fax Number: (415) 397-50655

"Consultant"

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CITY OF SANTA CLARA

AGENDA MATERIAL ROUTE SHEET

Council Date: April 21, 2009

SUBJECT: Amendment 3 with Keyser Marston Associates to provide fiscal and economic analysis services to assist with preliminary negotiations with the 49ers to develop a Term Sheet Agreement.

CERTIFICATION

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

PUBLICATION REQUIRED:

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

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

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

California Codes:

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

Federal Regulations:

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

California Regulations:

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

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

1. As to City Functions, by

[Signature] Department Head

2. As to Legality, by

[Signature] City Attorney's Office 09 0532

3. As to Environmental Impact Requirements, by

Director of Planning and Inspection

4. As to Substance, by

[Signature] City Manager