Meeting Date: 6/14/11

Santa Clara All-America City 2001

# AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5A.1/4B.1 RDA

**Date:** June 10, 2011

**To:** Mayor and Council for Action/Redevelopment Agency for Action

**From:** City Manager/Executive Director

**Subject:** Letter from Montana Group Requesting an Exclusive Negotiating Agreement Regarding the Development of Parcels Adjacent to the Proposed 49ers Stadium Site

## EXECUTIVE SUMMARY:

The City owns two bare land parcels (APN 104-03-038 and APN 104-03-039) bordered by Tasman Drive on the south, the new Tasman Drive Parking Structure to the west, and Stars and Stripes Drive to the north and east (refer to Exhibit 1) totaling approximately seven acres. In December 2010 the Mezzetti Law Firm, on behalf of its client Joseph C. Montana and his investment group, submitted a letter to the Council requesting the opportunity to enter into an Exclusive Negotiating Agreement (ENA) for an eighteen month period to develop the parcels (Exhibit 2). In order to evaluate this request it is important to understand the economic vision and diversity of this area of Santa Clara and the past processes used by staff and Council to ground lease City property in this area.

### Bayshore North Redevelopment Area

This 1,200 acre area bounded by Highway 101 to the south, Calabasas Creek to the west, Highway 237 to the north and San Tomas Aquino Creek to the east is a diversified area of predominately Class A business campuses, Mission College, and numerous hospitality and entertainment venues. The four hotels residing in this area comprise 45% of the rooms City-wide from Santa Clara's 27 hotels/motels. The core area of this region, essentially east of Great America Parkway and north and south of Tasman Drive has been designated "Regional Commercial" in the recent update to the City's General Plan. This "Entertainment Area" is the location of the City's Convention Center Complex, which includes the Santa Clara Convention Center, the Hyatt Regency Hotel and Techmart office building, the Santa Clara Golf and Tennis Club, California's Great America Theme Park, the Santa Clara Hilton Hotel, the Santa Clara Youth Soccer Park, the 49ers Training Center, the Santa Clara Marriott Hotel, the Avatar Hotel, the Mercado retail center and the proposed 49ers NFL stadium. Except for the Marriott and Avatar Hotels and the Mercado retail center, all other entertainment venues in the area are on City-owned land. The last remaining undeveloped City-owned parcels are the two bare land parcels now under consideration. There have been a number of proposals for these two sites over the past 15+ years. The majority of the proposals to date have focused on short-term housing such as a hotel or short-stay corporate housing. Staff and Council have long felt that additional hotel/restaurant/entertainment amenities in this area would support both the Convention Center and nearby business campuses. Council direction is to focus on this area as an entertainment zone.

### History of Leasing City-Owned Property in the Bayshore North Area

The City Charter gives the Council the power to lease any City property. Although neither the City Charter nor state law requires the Request for Proposal process, the Council has had a long-held practice of creating a competitive business opportunity for the private development community by broadly advertising ground lease opportunities through an open, transparent Request for Qualifications (RFQ)/Request for Proposal

(RFP) process. The majority of the City's existing ground leases in the North Bayshore area were accomplished though the competitive bid process: Great America Theme Park, the Convention Center Complex hotel, the Convention Center Complex office building, David's Restaurant, the Santa Clara Hilton Hotel, and the Irvine Company Office Park. The 49ers Training Center and David's Banquet and Meeting Center leases were accomplished through specific developer/operator selection as the Council was seeking specific goals for these projects – a training center site for an NFL team in one case and the synergistic operation of the Banquet Facility with the neighboring Golf and Tennis Club Restaurant in the other case.

In late 2000, the two bare land parcels under discussion entered into the ground lease negotiations process through specific developer selection. Neither of these proposals resulted in development projects due to economic conditions. There were reasons why a competitive bidding process was not followed at the time. This is elaborated on in the DISCUSSION section of the report.

**Current Status of the Properties**

Mr. Montana and his development group are interested in ground leasing the two parcels for a major hospitality themed investment that includes a hotel, restaurant and sports bar. This is consistent with the Council's historic view of property development on these two sites and consistent with the City's General Plan. Based on the Term Sheet approved in June 2009, the 49ers also have the ability to participate in the RFP process. However, team representatives have indicated that if the Montana Group is granted an Exclusive Negotiating Agreement, then the 49ers would waive their right to participate in an RFP. Although Mr. Montana's letter was not in response to an RFP, since being made public, it has elicited interest from two international hotel chains that have an interest in being considered as potential site developers. Regardless of the developer selected by Council to build on the property, there are some specific scheduling limitations that affect development on these parcels:

- The westerly property (APN 104-03-039) is needed going forward through mid-to-late 2012 to serve as a construction staging area and offset parking area for the Santa Clara Golf and Tennis Club while the new Tasman Drive Parking Structure is under construction.
- In mid-to-late 2012 through mid-2015 both bare land sites will be required as construction staging/construction layout areas for the proposed 49ers stadium across the street on Tasman Drive. Centennial Boulevard will become the main construction throughway during stadium construction.
- These two sites will not be available for construction commencement until the opening of the 49ers stadium in mid-2015.

## ADVANTAGES AND DISADVANTAGES OF ISSUE:

Staff recommends that Council follow its past practice of putting available City-owned land for ground lease out to a competitive bid process. The most recent development activity on the two sites in question, now over ten years ago, was an aberration, an attempt to quickly catch a disappearing development market caused by the 2001 crash of the high-tech sector in Silicon Valley. The economic disequilibrium from that period has only become worse for a variety of reasons over the past ten years. Only now, in 2011, is Silicon Valley experiencing some amount of rebound from a long recession.

However, for the two properties in question, the development catalyst is the construction of the 49ers stadium. That catalyst is especially important now because of the lingering, difficult market for the financing of hotels, especially of the size and type that would be most appropriate on the two properties. Without the stadium, financing the type of development sought by Council on these sites remains difficult at best. With the eventual stadium Financing Plan and Ground Lease approved, these two properties become highly marketable and desirable. As Council was informed recently in a stadium project progress study session, the 49ers are projecting their Finance Plan and the stadium Ground Lease will be brought forward for Stadium Authority approval mid-year 2012.

A competitive developer RFP process would ensure the City realizes the highest and best value for its long-term ground leases. As an example, as part of our last major completed ground lease project in 2000 the Council requested a last-best offer bid from the competing developers of the now Gateway office park site. While all the developers had offered lease revenue at or above market rate at that time, the successful developer increased their offer 40% to ensure their successful bid.

A particular disadvantage to working through an RFQ/RFP process is that Mr. Montana's development group may determine that the additional time involved would not be acceptable and may cause them to withdraw from the proposed project.

## ECONOMIC/FISCAL IMPACT:

Since the two parcels are City-owned, lease revenues would go to the City's General Fund to help support basic City services. Although improving, current leasing activity and hotel occupancy in the Bayshore North area remains below pre "Great Recession" levels. With the surety of a stadium project, developers and development financing would know that a major anchor tenant, drawing over one million attendees a year, would be across the street. The strongest means of assuring the highest return for the City's General Fund from the remaining bare land parcels is to wait for the completion of the stadium Financing Plan and Ground Lease and then put the parcels out to competitive bid for a hospitality themed development. Given the parcels are not available for construction until mid-2015 a possible calendar of events for an RFQ/RFP process is included in the DISCUSSION section of the report.

Options
Council could consider one of the following options:

1. Accept Mr. Montana's proposal to enter into a negotiating agreement that would include the City's standard ground leasing principles – e.g., receive a fair market value rent for the property, no subordination of City-owned land or ground lease rents, demonstration of financial capability to complete and operate the project, etc. A sub-option would be to limit the Exclusive Negotiating Agreement to twelve months, rather than the requested eighteen months, to conform with the anticipated timing of the stadium Financing Plan;
2. Commence the RFQ/RFP process immediately with the Montana group able to respond but, per the recommendation of the City's economic/fiscal advisor, offer the Montana group and others the opportunity to put together the best mix of hotel development experience, strong hotel operator, and – of maximum importance in this lingering difficult economic climate for hotel financing, sources with the best chance to secure necessary equity as well as debt financing in responding to the RFQ/RFP process.;
3. Commence the RFQ/RFP process at the time the stadium Financing Plan and Ground Lease are approved by the Stadium Authority next year, with the Montana group able to respond and participate along with other developers who would be interested in bidding on the project. In the interim staff would work with Council to develop the project's principles and priorities to include in the RFQ/RFP process to aid in the evaluation of potential bidders.

## RECOMMENDATION:

That the Council and Agency direct the City Manager/Executive Director to proceed with Option 2, the development of a Request for Qualifications/ Request for Proposals process for the two bare land parcels (APN 104-03-038 and APN 104-03-039) adjacent to the proposed 49ers stadium site and report back to the Council/Agency with a proposed calendar of events to accomplish a competitive bid process.

Jennifer Sparacino

Jennifer Sparacino
City Manager/Executive Director

***Documents Related to this Report:***
1) ***Exhibit 1 – Site Map***
2) ***Exhibit 2 – Letter from Mezzetti Law Firm dated December 6, 2010***

## DISCUSSION

An RFQ/RFP process for the development of the parcels was not followed in 2000 for the following reasons:

- By late 2000, the tech economy impacting Silicon Valley was softening and businesses were pulling back employee travel budgets, affecting hotel stays, and in some cases downsizing staff, affecting the desire to build new Class A office buildings. With the two remaining bare land parcels it was felt that the necessary time to engage in a Request for Qualifications (RFQ)/Request for Proposal (RFP) process might cause the City to miss the development window that had been very active just a few months before.
- The Council had very recently approved a ground lease for a full service hotel, the Santa Clara Hilton (early 1999), and a ground lease for a major business park, The Irvine Company's Gateway Project (mid 2000). Therefore, staff felt there existed a very good read of the current economic opportunities for either a full service hotel project or a Class A office project and therefore did not need to go back to the market with a competitive process to determine either project economics and/or ground lease revenue potential.
- In late 2000 the development firm of Franklin Croft, who had commenced construction on the Santa Clara Hilton Hotel, approached staff with a ground lease scenario and revenue package equivalent to the recently completed Hilton deal. Having a successful history with this particular developer and having Council approval of their Hilton project, staff recommended that the City enter into negotiations with Franklin Croft for a Marriott Courtyard hotel project on the bare land parcel in front of David's Restaurant (APN104-03-039).
- In the second quarter of 2000, the recently completed Gateway project lease set a benchmark for Class A office ground leasing in this area. In early 2001 a development firm led by Howard White approached the City and offered a ground lease revenue stream that was multiples of the recently completed Irvine deal. They desired to build a multi-story Class A office building on the bare land parcel in front of Fire Station #10 (APN 104-03-038). By this time the downturn in the Valley was becoming evident and staff felt, as with the Marriott Courtyard project, that to take the number of months necessary for an RFQ/RFP process might very well close out any remaining development window.

Conclusion of Previous Negotiation Process for the Two Parcels

- Franklin Croft entered into a Council-approved Disposition and Development Agreement (DDA) with the close of lease scheduled for late 2001. By this time the regional economy was no longer supporting additional new hotel space or the related financing needed to complete such a project. Franklin Croft was granted a number of DDA performance schedule extensions by Council, but in 2006 they terminated their interest in the project.
- The Howard White development group entered into a Negotiating Agreement with the City that was extended for a period of time. It quickly became apparent that their initial lease revenue offer was far in excess of what the declining office market could support from tenant rents. The Negotiating Agreement expired in late 2002.

A Proposed RFQ/RFP Calendar Consistent with Option 3

- June 2011 through June 2012 – staff and Council would develop RFQ/RFP policies and process, ensuring that all desirable aspects of a hospitality themed proposal are included. This will shorten the negotiations process when a developer is selected as a number of the critical lease terms would then be predetermined.

- June 2012 – with the approval of the stadium Financing Plan and Ground Lease staff would circulate the RFQ to a wide array of local, regional and national hospitality developers.
- July 2012 through March 2013 – with Council direction staff would enter into a negotiating agreement and commence the developer-financed CEQA process.
- April 2013 through December 2013 – completion of the Disposition and Development Agreement and Ground Lease negotiating process for the two land parcels.
- January 2014 through June 2015 – final design development, plan check, preparation to obtain building permits.

There is more than sufficient time to complete a comprehensive, competitive RFQ/RFP process and Mr. Montana and his development group would have full opportunity to participate in the process

EXHIBIT 1

# SITE MAP

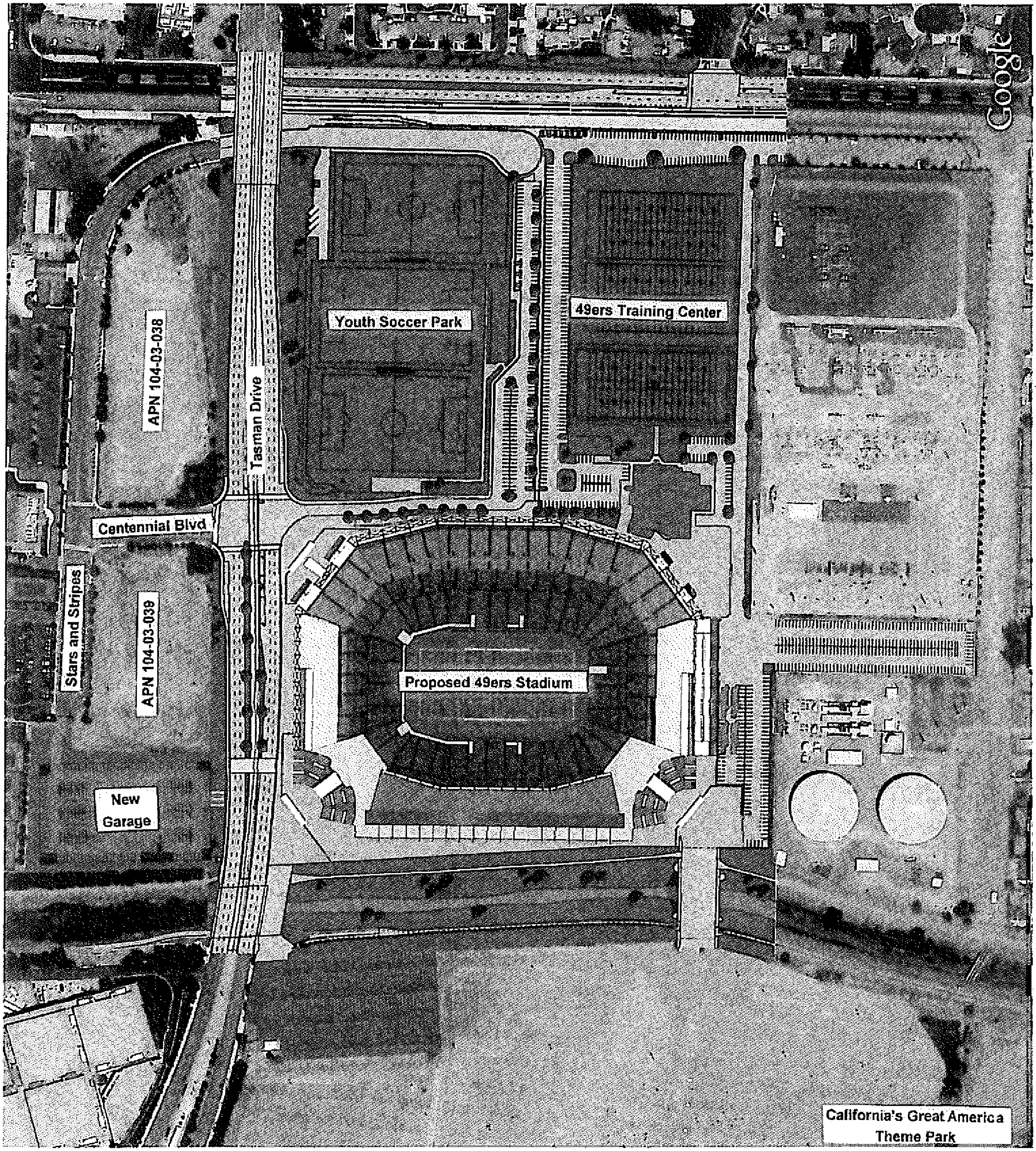

**EXHIBIT 2**

MEZZETTI LAW FIRM, INC.
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DEC 07 2010

December 6, 2010

Honorable Patricia Mahan, Mayor
Members of the City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

RE: MONTANA/APN #'s 104-03-038 and 104-03-039

Dear Mayor and Members of the Council:

I have been retained to assist Joseph C. Montana Jr and his investment group, which group includes Edward DeBartolo Jr., in connection with APN #'s 104-03-038 and 104-03-039 (the Property)

Mr. Montana is interested in working with the City to develop the Property into an entertainment location that may include a luxury hotel, sports bar, upscale restaurant and entertainment venue. We believe such a location would complement the 49er stadium, bring additional revenue to the City, have a positive impact on existing businesses, attract other businesses to the area, and increase neighboring property values. Given the expense and effort involved in planning such a development, the Montana group respectfully requests the City execute an Exclusive Negotiating Agreement (ENA) to allow an 18 month period for my client to reach a design/build contract with the City. Mr. Montana and his investors have extensive experience developing commercial and residential projects and have the ability to fund such a project.

Please consider my clients' request and advise whether the City is interested in negotiating an ENA.

Thank you for your attention to this matter.

Very truly yours,

ROBERT L. MEZZETTI II

ROB:jam

cc: client
Jennifer Sparacino, City Manager
Ronald Garratt, Assistant City Manager