Meeting Date: <u>5|8|2</u>

AGENDA REPORT

City of Santa Clara, California





DATE:

April 26, 2012

TO:

Executive Director for Stadium Authority Action

FROM:

Assistant Executive Director for Stadium Authority

SUBJECT:

Approval of Amendment No. 1 to the Consulting Agreement with Keyser Marston Associates, Inc. in the Amount of \$200,000 for Fiscal and Economic Analysis Related

to the Development of the San Francisco 49ers Stadium

EXECUTIVE SUMMARY:

At its December 13, 2011 meeting, the Stadium Authority adopted a resolution to approve a Disposition and Development Agreement (DDA) and Preliminary Finance Plan related to the construction of a professional football stadium in Santa Clara. In early 2012, the Stadium Lease, Ground Lease, final financing documents, and other legal agreements needed for the project were approved, allowing the close of escrow to take place in late March 2012 and start of construction planned for May 1, 2012.

The negotiation and drafting of the many financial and legal documents essential to the Stadium Project has required specialized expertise in the areas of fiscal and economic analysis, complex financing options and real estate issues, particularly pertaining to stadiums and professional sports franchises. Prior to the formation of the Stadium Authority, the City's Redevelopment Agency contracted with Keyser Marston Associates, Inc. for this expertise. The Stadium Authority was formed on February 22, 2011, and the Stadium Authority budget for fiscal year 2011/12, adopted on June 14, 2011, includes appropriations for staff and consulting costs to provide ongoing support for the development of the Stadium. At the July 5, 2012 meeting, the Stadium Authority Board approved a consulting contract with Keyser Marston Associates, Inc. for assistance with fiscal and economic analysis and real estate issues pertaining to the stadium project.

Although the majority of the documents pertaining to the Stadium Project have been completed and the final finance plan has been approved, fiscal and economic analysis and assistance from Keyser Marston Associates, Inc. will continue to be required as the construction phase of the project begins and the terms and conditions of the Stadium-related agreements and financing plan are carried out. For this reason, staff is recommending that the Stadium Authority enter into Amendment No. 1 to the contract with Keyser Marston Associates, Inc. to increase the not-to-exceed amount by \$200,000, for a total not-to-exceed amount of \$600,000, to support these efforts through June 2013. Funding is available in the Stadium Authority budget for this purpose. A copy of the contract has been placed in Authority offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of this amendment to the contract with Keyser Marston Associates, Inc. will allow the Stadium Authority to continue to receive fiscal and economic analysis related to the development of the 49ers Stadium. Keyser Marston Associates, Inc. has provided excellent advice and outstanding support from the beginning of this project through close of escrow; this expertise and assistance will continue to be needed as the project moves forward in the construction phase.

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ECONOMIC/FISCAL IMPACT:

This amendment increases the not-to-exceed amount for the agreement by \$200,000, for a total not-to-exceed amount of \$600,000. Funds are available in the Stadium Authority Contractual Services account (870-8124-87870).

RECOMMENDATION:

That the Authority

- 1. Approve Amendment No. 1 to the consulting agreement with Keyser Marston Associates, Inc. in the amount of \$200,000 for fiscal and economic analysis related to the development of the San Francisco 49ers stadium.
- 2. Authorize the Executive Director to execute Amendment No. 1 to the agreement with Keyser Marston Associates, Inc.

Assistant Executive Director for Stadium Authority

Certified as to Availability of Funds: 870-8124-87870 \$200,000.00

APPROVED:

Executive Director for Stadium Authority

Gary Ameling

Stadium Authority Treasurer

Documents Related to this Report:

1) Amendment No. 1 to Professional Services Agreement between the Stadium Authority and Keyser Marston Associates, Inc.

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AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND

KEYSER MARSTON ASSOCIATES, INC.

PREAMBLE

This agreement ("Amendment No. 1") is made and entered into on this _____ day of May, 2012, ("Effective Date") by and between Keyser Marston Associates, Inc., a corporation, with its principal place of business located at 55 Pacific Avenue Mall, San Francisco, CA 94111 ("Consultant"), and the Santa Clara Stadium Authority, a joint exercise of powers entity, created through Government Code sections 6500 *et seq.* ("Authority"), with its primary place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050. Stadium Authority and Firm may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for the Performance of Services by and between the Santa Clara Stadium Authority and Keyser Marston Associates, Inc." dated July 5, 2011 (the "Original Agreement"); and
- B. The Parties entered into the Original Agreement for the purpose of having Consultant provide fiscal, economic and land use analysis services, and the Parties now wish to amend the Original Agreement to increase the not-to-exceed amount of four hundred thousand dollars (\$400,000.00) by two hundred thousand dollars (\$200,000.00), bringing the total not-to-exceed amount to six hundred thousand dollars (\$600,000.00).

AGREEMENT PROVISIONS

The Parties agree as follows:

1. AMENDMENT PROVISIONS

- a. That Section 2 of the Original Agreement, entitled "Term of Agreement" is hereby amended to read as follows:
 - "Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on June 30, 2013."
- b. That the paragraph entitled "Maximum Not to Exceed Contract Amount" of Exhibit B, entitled "Schedule of Fees" of the Original Agreement, is hereby amended to read as follows:

"In no event shall the amount billed to Stadium Authority by Consultant for services under this Agreement exceed Six Hundred Thousand Dollars (\$600,000.00), subject to budget appropriations."

1. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

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

SANTA CLARA STADIUM AUTHORITY,

a Joint Exercise of Powers Entity, created through Government Code sections 6500 et seq.

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.

Stadium Authority Counsel

ATTEST:

JENNIFER SPARACINO

Executive Director

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Santa Clara, CA 95050

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ROD DIRIDON, JR.

Secretary

"STADIUM AUTHORITY"

Keyser Marston Associates, Inc. a California corporation

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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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