

### **Charter Review Committee**

September 17, 2009 5:30 p.m. Central Park Library

## Advantages/Disadvantages of Not Modifying Section 1310 of City Charter

#### Advantages:

- The City maintains its Charter intact and would not be making modifications for a proposed stadium project.
- Existing Charter language has served the City well since its inception.
- Existing Charter Section 1310 language allows for more than a pure "low-bid" procedure. As an example other City construction projects have allowed for the prequalification of bidders to ensure bidders qualifications and responsiveness to construct and complete a project.
- Charter Section 1310 is consistent with an open, competitive bid process.

## Advantages/Disadvantages of Not Modifying Section 1310 of City Charter

#### Disadvantages:

- The Team would no longer agree to cover the construction cost overruns and has stated that the current Charter process of selecting the lowest responsible/qualified bidder is not workable for the specialized expertise required for the design/build of an NFL stadium thereby putting the entire stadium project in jeopardy.
- A different process to engage the general contractor not consistent with current Charter Section 1310 requirements could cause unintended consequences.

### Advantages/Disadvantages of Modifying Section 1310 of City Charter

#### Advantages:

- Voters of the City of Santa Clara will be able to decide if the Stadium Authority should be granted authorization to choose and sole source the design-build general contractor.
- If such a ballot measure is passed, this would solidify the Team's commitment to cover the construction cost overruns.
- Language would be constructed such that the Stadium Authority could proceed through the life of a stadium lease with the Team and make major renovations and upgrades using a design/build, sole sourcing of the general contractor if the Authority so chose.

## Advantages/Disadvantages of Modifying Section 1310 of City Charter

- Voter approval of a Charter modification would allow the stadium project to proceed if voters also approve the Term Sheet ballot measure that would accompany a Charter change ballot measure.
- Allows for the implementation of the Charter Review Committee process which is consistent with past practice.
- Use of SB 43 by the Stadium Authority requires certain State mandated reporting requirements and contains certain Caltrans construction bidding processes that are superfluous to the proposed stadium project.

# Advantages/Disadvantages of Modifying Section 1310 of City Charter

#### Disadvantages:

- Since such a ballot measure would require a vote of the citizens of Santa Clara, the City would be incurring additional costs to fund the election.
- A successful vote on this measure would change the City Charter to allow for this particular stadium project. A failed vote on this measure could put the stadium project in jeopardy as the Team will not guarantee to pay cost overruns on construction.
- A vote on a Charter change could cause confusion among voters by requiring the passage of two ballot measures in order for a stadium to be approved and proceed.
- Ballot measure wording will need to be very precise to limit the ability to sole source the general contractor to only the proposed stadium project.

Advantages / Disadvantages of the Stadium Authority Choosing to Use Senate Bill 43 to Accomplish the Sole Source Engagement of a General Contractor for a 49ers Stadium Project

#### Advantages:

- If SB 43 is signed into law the Charter Review committee could recommend that the City use the authority granted in the bill to allow a design/build construction process and the sole source selection of the general contractor by the Stadium Authority.
- SB 43 provides State legislation to accomplish the Team's goal of sole sourcing the general contractor responsibility. It also requires that public funds used in financing stadium construction be competitively bid in compliance with existing Charter Section 1310 language.

Advantages / Disadvantages of the Stadium Authority Choosing to Use Senate Bill 43 to Accomplish the Sole Source Engagement of a General Contractor for a 49ers Stadium Project

- Use of SB 43 avoids the need to modify Section 1310 of the City Charter.
- Use of SB 43 avoids the costs of putting Charter modification language on a ballot.
- Use of SB 43 by the Stadium Authority leaves only a single ballot issue for an election – whether the community approves the Term Sheet for a 49ers Stadium.
- If SB 43 is implemented, and the general contractor is sole sourced by the Stadium Authority and the Team is commitment to cover all construction cost overruns is solidified.

Advantages / Disadvantages of the Stadium Authority Choosing to Use Senate Bill 43 to Accomplish the Sole Source Engagement of a General Contractor for a 49ers Stadium Project

#### Disadvantages:

- If SB 43 is signed into law the City would be making a special exception for the stadium project by allowing the Stadium Authority, formed through a joint powers Agency between the City and the RDA, to abide by the narrowly defined terms of SB 43 that only apply to the proposed stadium project construction.
- The use of SB 43 legislation by the Stadium Authority could be perceived as an "end run" around the locally determined language contained in Charter Section 1310.

Advantages / Disadvantages of the Stadium Authority Choosing to Use Senate Bill 43 to Accomplish the Sole Source Engagement of a General Contractor for a 49ers Stadium Project

 If SB 43 is not signed into law and the City moves forward with a Charter modification to Section 1310 through a ballot measure, it would create additional expense for an election and would be granting a special exception for the proposed stadium project construction. The combination of these issues could cause confusion among voters by requiring passage of two ballot measures in order to have the stadium project approved.