COUNCIL AGENDA: 11/06/07
ITEM: 4.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Nadine N. Nader

SUBJECT: **SEE BELOW**

DATE: October 23, 2007

Approved Deanna Santana Date 10/23/07

SUBJECT: UPDATE ON SOCCER STADIUM, AIRPORT WEST AND ISTAR SITE NEGOTIATIONS [Community and Economic Development Committee referral 10/22/07 – Item (h)]

On October 22, 2007 staff presented a report on the Update on Soccer Stadium, Airport West and iStar Site Negotiations to the Community and Economic Development Committee.

Councilmember Liccardo motioned to accept the staff report, Councilmember Constant seconded the motion. Attached you will find the report that was presented to the Community and Economic Development Committee.

Nadine Nader
NADINE N. NADER
Agenda Services Manager

Attachment

CED Comte: 10.22.07
Item: 4h

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

FROM: **Paul Krutko**

SUBJECT: **Update on Various Development Proposals: Soccer Stadium, iStar Development And Airport West Update**

DATE: October 12, 2007

Approved Kay Winer Date 10/12/07

RECOMMENDATION:

1) Accept the Staff Report Regarding Efforts to Bring a Professional, Major League Soccer Program Back to San Jose, a Report on a Proposed Change in Land Use of a 74-Acre Parcel (known as the iStar site) in Edenvale from Industrial and Retail Use to Residential Use and a Report on Proposed Development of the City-owned 75-Acre Airport West Property for Economic Development Purposes.

2) Direct Staff to Continue to Work with the Developers (as described below) for a period extending no later than June 30, 2008, so that Proposals for the Development of a Stadium for Major League Soccer in San Jose, Proposals for the Development of the iStar Property for Residential Uses and Proposals for the Development of the Airport West Property for Economic Development Purposes can come forward for consideration by City Council.

3) Direct Staff to Continue to Work With the Developers so that Applications and Agreements Can be Brought Forward For Council Consideration Related to a Stadium Project At Such Time that Those Items and All Related Actions Are Ready for Council Review. Council Acknowledges and Directs that a Separate General Plan and public hearings pertaining to related Land Use Applications May be Required for these Various Development Proposals.

OUTCOME

This memorandum responds to Council direction on June 12, 2007 to update the Council in October on progress made related to the potential return of the Earthquakes Soccer team to San Jose and the potential development of a stadium on City owned property near the Airport. This report also addresses other potential development on the Airport West site for economic development purposes and provides additional info learned related to proposed change of use of the iStar Property from industrial and commercial use to residential use. Based on the progress made to date, staff recommends continuing to negotiate with the Developers under the terms of the previously authorized Memorandum of Understanding and continuing to negotiate the Developers under the previously approved Exclusive Negotiations Agreement, all through June

30, 2008. Staff also recommends that the Council direct staff to return to Council for consideration of these various development proposals at such time that all related documents and applications are ready for Council review. In so doing, Council would indicate that it may consider holding a special General Plan and related public hearings on Land Use applications because of the magnitude of required analyses, the potentially substantial economic benefit to be derived from the various proposals, and the timing involved in the completion of the several proposals, applications and other documents.

EXECUTIVE SUMMARY

Project Concept – Soccer Stadium

The Developers, led by Lew Wolff and including John Fisher, Ed Storm, Deke Hunter and the Earthquakes, propose to bring an MLS team back to San Jose and construct a 15,000 – 20,000 seat soccer stadium. The Developers propose to seek a change the land use designation on the iStar property and they also intend to seek the ability to develop the Airport West property, all without any investment of public dollars. The Developers are currently formulating the entities that would undertake all actions needed to undertake and accomplish these goals. It is anticipated that Lew Wolff and John Fisher will continue to be the principal owners of the Earthquakes. The Developers intend that Deke Hunter and Ed Storm be the principal owners of the iStar and the Airport West properties.

The Developers seek to change the General Plan and Land Use designation of the 74-acre iStar parcel located in Edenvale from industrial and retail uses to residential uses. The City Council will consider the proposal in accordance with all City regulations and policies. If the Council decides to approve the change in land use of the iStar Property, the Developers have stated that they will commit to direct the proceeds they obtain from that decision, estimated to be approximately $80 million dollars, towards the construction of a stadium. The Developers have also committed to guarantee the full cost of the stadium, even if construction exceeds $80 million. The Developers would be responsible for all costs of the construction and operations of the stadium for a 55-year period. At present, the stadium location being examined is on the Airport West Property.

Project Concept – Airport West Property

The Developers also propose to develop the balance of the Airport West property with office, research and development (R&D), hotel and retail development under an Exclusive Negotiations Agreement (ENA) with the City. The development of the Airport West property would provide substantial sales tax, property tax and transit occupancy tax, ground lease revenues and cash to the City.

Progress Since June

Since Council consideration of the proposal on June 12, 2007 the following actions have been completed or are under discussion. A more detailed summary of each item is contained in the body of the memorandum:

iStar Property and Stadium

- An interdepartmental team was formulated including staff from the Office of Economic Development, Airport, Finance, Planning, Building, Code Enforcement, Attorney's Office, Public Works and the Department of Transportation.
- A Memorandum of Understanding (MOU) with the Developers for the stadium proposal was signed on July 12, 2007.
- The Developers and City staff have agreed that the Developers will provide a concrete financial guarantee for the construction of the stadium as part of the overall agreement.
- A preliminary traffic analysis indicates that the 1 million square feet of industrial space currently entitled on the iStar site can be reallocated to other properties within the Edenvale Redevelopment Project Area with feasible traffic mitigations.
- The Developers have requested that the City agree to accept ownership of the stadium subject to a ground lease from the City.
- The City would not contribute any dollars to the construction of the stadium or contribute any amount to the operations of the stadium during the term of a 55- year lease for the stadium.
- The developers would be responsible to cover all costs of the construction and operations of the stadium for a 55-year period and insure that adequate capital reinvestment is made to maintain the stadium at the standard applicable for professional international soccer.
- The developers would provide the necessary financial guarantee so that no public subsidy would have to be made to the stadium, even if the Earthquakes no longer place soccer in San Jose.
- A cost benefit analysis is underway for the stadium and iStar projects and will be available for preliminary Council Review by the Community and Economic Development Committee at its February meeting. This analysis will identify the costs of delivering City services to the iStar site and the stadium in comparison to the revenues generated on site. This analysis will also describe the potential impact of residential development on the iStar property on local school capacity.

Airport West

- An interdepartmental team was formulated including staff from the Office of Economic Development, Airport, Finance, Planning, Building, Code Enforcement, Attorney's Office, Public Works and the Department of Transportation.

- An Exclusive Right to Negotiate with the Developers for development of the Airport West property was signed on September 18, 2007. The agreement expires June 20, 2008.
- Airport staff has determined that construction-related parking and lay down requirements for the Airport expansion can be fulfilled at alternate locations. Therefore the full development of the Airport West Property can proceed to maximize revenue generation for the City and the Airport.
- The Developers and City staff have agreed that the Developers will provide a concrete financial guarantee for the construction of the stadium as part of the overall agreement.
- The Developers have proposed to purchase up to 40 acres of the 75-acre Airport West property rather than ground leasing that portion of the property. The Developers believe that market forces and financing for office development require fee title. Staff is analyzing the request to determine if a sale of the City property is appropriate.
- A cost benefit analysis of the project is underway and will be available for preliminary Council review by the Community and Economic Development Committee at its February meeting. This analysis will identify the costs of delivering City services to the Airport West site in comparison to the revenues generated on the site.

Staff Recommendations

- Council accepts the update on the various projects described in this report..
- Council directs staff to continue to negotiate with the Developers on all of the various proposals because of the substantial progress that has been made to date through an additional period extending to at most June 30, 2008.
- Council directs staff to return for Council review and consideration of the several different proposals once the required analyses and documents for each of the proposals has been completed. Council acknowledges and directs that consideration of all of these proposals may require a special General Plan and related public hearing on Land Use applications in recognition of the magnitude of analysis required, and the substantial extraordinary benefit that may result from the consideration of all of these proposals. **Consideration of a change in the General Plan Classifications and Zoning designations related to these various proposals is a key Council decision that will need to be evaluated.**

BACKGROUND

iStar and Stadium

In April of 2007, Lew Wolff, Co-Owner and Managing General Partner of the Oakland Athletics Major League Baseball team and John Fisher, son of the founder of the Gap Inc., purchased an MLS expansion team to be named the San Jose Earthquakes. The reported cost of the franchise purchase was $20 million dollars. Mr. Wolff has stated that the Earthquakes would begin play in

2008 in temporary facilities around the Bay Area until such time that a new MLS stadium is constructed. While the team will play in temporary facilities outside of San Jose, Mr. Wolff affirmed his desired to locate the permanent stadium for the Earthquakes in San Jose.

On June 12, 2007, the City Council authorized the City Manager to negotiate and execute a non-binding Memorandum of Understanding (MOU) with the Developers regarding shared aspirations to bring MLS back to San Jose. Lew Wolff leads this effort.

On July 13, 2007, the signed MOU was distributed to the City Council. The MOU incorporates the elements contained in the Term Sheet that was approved by Council and is included as Attachment A.

Airport West Property

On June 12, Council authorized the City Manager to enter into an Exclusive Right to Negotiate (ERN) for the development of the Airport West site located at 1125 Coleman Avenue with the Developers. At the June 12 meeting, Council directed staff to return to Council in October to determine if agreement with the Developers could be achieved or if the City should proceed with a Request for Proposals for the Airport West Property. On September, 18 2007 the ERN was signed. The ERN incorporates the elements contained in the Term Sheet approved by Council on June 12, 2007 and is included as Attachment B.

Staff has reached tentative agreements on many of the points required to move forward with the proposal to bring MLS back to San Jose and to develop the Airport West Property. A description of negotiations related to these projects to date is provided below.

ANALYSIS

Summary of the Memorandum of Understanding

The Developers include John Fisher, Lew Wolff, Ed Storm and Deke Hunter. The Developers intend to build a modern 15,000 – 20,000 seat stadium on a portion of the Airport West property. The Developers understand that the Municipal Code Chapter 4.95 requires that any proposed sports stadium with more than 5,000 seats which receives City subsidy must be approved by a majority vote of the general City population. However, the Developers have indicated they will privately finance both the development and the operations of the proposed stadium debt-free with no contribution of public dollars.

The Developers plan to fund the stadium in large part through their own private decision to utilize any increased land valuation that may result to them from a change in land uses allowed on the iStar property towards developing a stadium. The City Council will separately and independently consider the proposed land use change of the iStar Property from industrial and commercial use to residential use, and no actions taken prior to Council consideration of this proposal will in any way predetermine or pre-commit any particular Council action on these

proposals.. The Developers have stated that if the proposed land use change is approved they will commit to direct the funds generated from the land use change to the construction of a stadium. The Developers have secured an option on the 74-acre iStar property that has a current entitlement of 1 million square feet of industrial and up to 450,000 square feet of retail square footage

Summary of the Exclusive Right to Negotiate for the Airport West Property

The Developers propose that a portion of the Airport West Property be developed as a stadium site. Staff believes the Airport West site is an appropriate stadium location because the Airport West site is conveniently located to Hwy 880, other major traffic routes, is adjacent to a future BART station and is of a size to support stadium development. The 75-acre Airport West Property is entitled for 2.25 million square feet of office, research and development, retail, and hotel uses, and the Developers intend to build the full entitlement now envisioned for the property and propose to intensify the site further by adding the Stadium use. The Developers will be required to pay Fair Market Value either in cash and/or through a ground lease payments for the sale or lease of the City property. Under the terms in the Exclusive Right to Negotiate, if a successful agreement cannot be accomplished by June 2008, staff will conclude negotiations with the Developers on the Airport West site and release a Request for Proposals to the general development community for the Airport West property.

iStar Property

As mentioned above, the Developers have an option to buy a 74- acre parcel in Edenvale and seek to change the General Plan and Land Use designation of the property from industrial and retail uses to residential uses. The Developers propose to build up to 1,500 dwelling units at an average density of approximately 20 units to the acre. If the proposed land use change is ultimately approved by the City Council, it is estimated that the change in designation and the sale of the property to housing developers will yield roughly $80 million in capital. The Developers have privately determined that they would commit to fund the majority of construction costs for a new soccer stadium with these funds if such a land use change ultimately is approved. The Developers have committed to providing the remainder of the construction capital needed to build the stadium, and the Developers will guarantee completion of the stadium facility

The Developers and the City agree that the guarantee securing funds to construct the stadium will be in place by the time the entitlements for residential use on the iStar Property are in effect because the Developers propose to provide a stadium as an extraordinary public benefit to the City to support their request for a Development Agreement. **The obligation to fund and develop the stadium will arise if the developers are successful in obtaining the change in land use designation and will not be contingent on the actual development of the site for housing.** The Developers are exploring two possible structures to ensure that the appropriate financial guarantees are secured. The Developers may choose to contract with a reputable housing developer who will provide the financial guarantee directly. Alternatively, the

Developers may work with a financial intermediary. The intermediary would guarantee the dollars required to fund the anticipated $80 million investment at the time that any new entitlements for the iStar Property go into effect if and when that occurs.

The Developers acknowledge that the iStar property is in the Edenvale Redevelopment Project Area and as such the iStar project must provide that 20% of the units produced will be affordable housing. In addition, the Developer understands that all other City- mandated programs and fees must be provided as part of the housing project. The property will be subject to the Parkland Dedication Ordinance and the project must mitigate any transportation impacts that are generated by the housing development. The project will contribute its proportional share to any existing or required transportation infrastructure, including those improvements which are identified in the Edenvale Area Development Policy.

Stadium Ownership

Initial negotiations concerning the ownership and operating structure of the stadium are underway. These discussions have centered on the following preliminary concept: An estimated $80 million dollars will be guaranteed by the Developers after the change of land use designation of the iStar Property had gone into effect. The funds will be transferred to a non-profit arm of the Earthquakes organization to preserve the capital from the iStar transaction that would otherwise be subject to federal taxation. This non-profit Earthquakes related entity will then construct the stadium. Upon completion of construction, the non-profit would like to transfer the stadium to the City and the non-profit would continue to operate the stadium pursuant to an operating agreement. The land underneath the stadium will be owned by the City. The City will incur no costs for construction of the facility or for traffic mitigations required for the stadium development. These costs will be paid for by the Earthquakes and their investors. The City and the Earthquakes will execute both a ground lease and operating agreement for the stadium. It is currently anticipated that the Earthquakes will have a 55 year triple net lease for the stadium and land beneath the stadium. Under the proposal, the City will incur no costs for stadium operations over the 55 year period. The Developers will commit to pay for all associated maintenance costs as well as the capital costs required to maintain the stadium at a first level professional and international soccer facility. The lease will include provisions securing all payments associated with operating the stadium even if the Earthquakes cease play in San Jose. The City will be reviewing whether it would be in the best interest of the City to agree to accept ownership of the Stadium.

Adherence to Framework for Consideration of Industrial Conversions

On May 15, 2007, the City Council accepted a conceptual approach to revising the Framework for Employment Land Conversions. Council is scheduled to hear the final proposed Framework on October 24, 2007. Future General Plan Amendments including the proposed conversion of industrial and commercial lands to residential use will be reviewed for consistency with this Framework. The proposed Framework revision includes the following criteria:

(1) There shall be "no net loss" of total employment capacity as the result of any amendment to the General Plan.
(2) There shall be "no net loss" of acreage or square footage within the light or heavy industrial designations.
(3) Applications for conversions that support public infrastructure may be accepted only after the infrastructure has been designated by Council.
(4) "Extraordinary Economic Benefit" conversions must meet the above criteria and shall be limited to instances where there will be an increase or retention of jobs and a significant increase in revenue to the City, and/or a capital contribution for investments in economic development such as the Catalyst fund or the Economic Development Reserve.

Staff believes that the Developer's proposal aligns with the proposed revised Framework, including the additions made by the Mayor's supplemental memorandum because no net loss of industrial capacity is proposed to be lost as a result of the iStar project. Staff has determined that the 1 million square feet of industrial space currently entitled on the iStar property can be relocated to adjacent properties within Edenvale. In addition, development of a stadium will provide extraordinary economic benefit to the City.

Cost Benefit Analysis

Staff and consultants have initiated a cost benefit analysis (CBA) of the development of the iStar property. The (CBA) will assess the City service costs of the proposed change in land use of the iStar Property from its current industrial and retail land use designation to housing. This analysis will also describe the impact development of the iStar property will have on local school capacity. The CBA will also calculate the overall revenue impacts for the City from the development of the iStar properties and a stadium.

Edenvale Jobs Capacity and Traffic Impacts

Central to the proposed new Framework is a provision that any proposed conversion must retain jobs capacity within the City. It is important to note that the Edenvale Area Development Policy (EADP) and related Environmental Impact Report (EIR) allow 7.8 million square feet of industrial development within Edenvale. The Edenvale Area has been studied extensively from a traffic perspective and has unique regional traffic characteristics.

The original EADP allowed for construction of 7.8 million square feet of industrial development by identifying both regional and local traffic mitigations necessary to support this level of industrial development. Subsequently, the EADP has been modified to include commercial retail and residential development in order to maximize the transportation system in the area by co-locating jobs, housing and services in the area thus reducing travel distances. Overall, adding industrial development to this area improves the countywide commute pattern by taking advantage of available freeway capacity opposite the established commute to the north. However, it does exacerbate regional interchange traffic conditions that were initially identified by the EADP. With a limited amount of traffic capacity at the interchanges serving the Edenvale

area along Highway 101, adding additional housing and services to this area localizes some but not all of the traffic along the adjacent city streets and reduces the impacts to the interchanges along Highway 101.

City and Agency staff contracted with Hexagon Consulting to study the potential impacts of transferring the office-industrial capacity displaced by the Developer's proposal on the iStar site to other nearby office-industrial parcels in Edenvale. Hexagon also provided preliminary analysis on traffic mitigations required by the addition of up to 1,500 housing units as proposed by the Developers. **Hexagon's preliminary findings indicate that the 1 million square feet of office/industrial space can be relocated within the Edenvale area, specifically to Old Edenvale north of Cottle Road, to further enhance transit options provided by Light Rail.** In order to implement the transfer of development capacity to nearby sites, it is anticipated that a traffic mitigation fee would be developed and proposed for implementation in order to require those properties receiving additional development capacity to fund the necessary traffic capacity improvements. Staff preliminarily estimates the cost of the fee to be in the range of $3 to $4 per square foot. The cost in North San Jose for the transportation fee is $11 per square foot.

Hexagon's preliminary analysis also shows that the housing proposed by the Developers for the iStar site does not trigger major additional traffic mitigations.

Hexagon is currently analyzing the possible impact of retaining up to 450,000 square feet of retail capacity that is currently entitled on the iStar site for reallocation within the Edenvale Area.

Hexagon has subsequently been retained by the Developers and is conducting in-depth traffic analysis that will be included in the Environmental Impact Report required for the proposed change in land use designation for the iStar Property. Hexagon is regarded as a traffic expert in Edenvale, as the firm has provided several traffic analyses in the Edenvale area for both the City and private entitles.

Airport West Property

The City-owned 75-acre Airport West Property is currently entitled with up to 2.25 million square feet of office, R&D, retail and hotel development. Department of Transportation and Department of Public Works staff has determined that the trip generation rate established for the Airport West Property in 2004 was based primarily on Research and Development (R&D) and not office development which requires higher trip generation rates. As a result staff estimates that approximately 1.2 million square feet of office can be developed on site in conjunction with the stadium, two hotels each of 150 rooms, 72,000 square feet of retail and associated parking. The trip generation rates included in the current entitlement would allow proposed development of the Airport West Property that falls within that trip generation envelope.

Under the terms of the Department of Toxic Substance Control (DTSC) restriction recorded on the property residential uses on the Airport West Property are prohibited by the Department of Toxic Substance Control (DTSC) due to the extensive contamination of the site by the previous

use. BART has designated the property as the location for a station and maintenance yard. VTA has expressed purchasing approximately nine-acres of the Airport West Property to accommodate the maintenance yard.

The City initially attempted to purchase only 52 acres of the Airport West Property in 2003 when the property was owned by the FMC Corporation. At the time, the Airport estimated it needed approximately 52 acres of land for construction lay down, rental car parking and employee parking uses related to the anticipated $4.5 billion dollar construction of the Airport's expansion. FMC would only agree to sell the land to the City if the City agreed to purchase the entire parcel (75 acres). This required the City to finance the purchase through two separate but related funding mechanisms. Approximately 52 acres was purchased through the City of San Jose's Financing Authority Lease Revenue Bonds. The remaining 23 acres was funded through a Section 108 loan and a BEDI grant from the Federal Department of Housing and Urban Development (HUD). Since that time, the City Council directed that the Airport Expansion plan be reduced in scope and the Airport has determined that interim construction lay down and parking uses can also be reduced in scope and can be accommodated at alternate locations.

Any city land purchased by the Developers would be purchased at Fair Market Value to be established by an appraisal. An appraisal for the Property is currently underway and should be completed by mid-November. The land remaining in City ownership would be leased by the Developers who would pay a Fair Market lease also to be determined by appraisal. The use of funds generated from the proposed transactions including those from any land sale and annual ground lease payments will be a separate matter for Council consideration. Staff will analyze various policy options and bring back a recommendation after the first of the year when the potential proceeds are more fully understood.

The Developers have preliminarily proposed building roughly 1.2 million square feet of office, two hotels providing approximately 300 rooms, and 72,000 square feet of retail under existing site entitlements. In addition the Developers also propose to add a 15,000 – 20,000 seat soccer stadium. Preliminary parking plans for the stadium reflect a significant amount of possible shared parking between the office and stadium uses. The Developers have indicated that they anticipate that a bulk of development on the Airport West Property could occur perhaps as early as the fall of 2008. The first phase of the Airport West development could include up to 500,000 square feet of office space, the retail component of the project, and one hotel. Separate from this development, the goal would be to have the soccer stadium construction occur along a similar timeframe.

The Developer's proposal includes a request to purchase 23-40 acres of the Airport West Property. The Developers are in discussion with several large potential office users currently in the market place who desire to own their own property. The Developers have represented that asserts that financing institutions may require that office development be constructed on a site owned in fee simple rather than a ground lease. Staff is evaluating this request.

Staff will prepare a financial analysis of the City's options for selling and/or ground leasing portions of the Airport West property prior to returning to City Council for subsequent action.

A cost benefit analysis (CBA) is also being prepared for development of the Airport West property. The analysis will assess the potential costs and revenues associated with development on the Airport West site.

Timing of Proposal for City Council Consideration and Protection of City of San Jose Interests

In April of 2007, the City Council directed that it will consider land use conversions from employment to non-employment uses at only one General Plan hearing annually. Previously, the City Council considered such land use conversions up to four times each year. At this moment, Council has not specified at which date it will consider land use conversion proposals. It is anticipated that Council will hear these items at a General Plan hearing tentatively scheduled for May 2008.

The Developers are working to complete all required analyses and documents in order to adhere to the proscribed Council hearing requirements. Staff has determined it is in the City's best interests to have all actions pertaining to the development of the stadium and a proposed change of land use at the iStar Property so that all issues related to those items can be heard and considered by Council as a whole package. Staff recommends that a full presentation and analysis of all the elements of the stadium project would best serve both the Council's decision making process and provides the highest level of guarantee that a stadium will be constructed.

Since the stadium is proposed to be located on the Airport West property, staff would recommend bringing the development proposals related to that site to the Council at a point in time that Council also could consider both separate development proposals related to that site.

Given the number and complexity of documents to be prepared, the Developers and staff are unlikely to be ready to come before City Council at the tentative May/June General Plan hearing. Staff is therefore recommending that, in recognition of the substantial economic benefit that could be derived from the all of these various proposals, that the City Council direct that a special General Plan and Land use hearing for all of these various proposals at such time that all of the projects are ready to be heard at the same Council hearing.

PUBLIC OUTREACH/INTEREST

☐ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted was coordinated with the City Attorney's Office, Department of Transportation, Public Works Department, Redevelopment Agency, and the Department of Planning, Building and Code Enforcement.

COORDINATION

This memorandum was coordinated with the Airport, City Attorney's Office, Department of Transportation, Public Works, the Finance Department, the Redevelopment Agency and the Department of Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

The proposal and staff recommendation support the City's Economic Development Strategy.

BUDGET REFERENCE

Not applicable.

CEQA

Not a Project. As described above, the proposed action is for Council to accept the report on all of the various projects and provide direction to staff to return to Council for consideration of the final terms and conditions for these proposals. None of these actions commit the City Council to any particular future decisions related to the ultimate conversion of the iStar site, the location and development of a soccer stadium nor the development of the Airport West property.

COORDINATION

This memorandum was coordinated with the Airport, City Attorney's Office, Department of Transportation, Public Works, the Finance Department, the Redevelopment Agency and the Department of Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

The proposal and staff recommendation support the City's Economic Development Strategy.

BUDGET REFERENCE

Not applicable.

Paul Krutko
Chief Development Officer

FULLY-EXECUTED

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EXCLUSIVE NEGOTIATIONS AGREEMENT

This Exclusive Negotiations Agreement ("Agreement") is made and entered into this 23rd day of August, 2007 ("Effective Date"), by and among the City of San Jose, California, a California charter city ("City"), Coleman Airport Partners, LLC, a California limited liability company ("CAP"), and Earthquakes Soccer LLC, a California limited liability company ("Earthquakes") (CAP and Earthquakes are jointly referred to herein as "Developers").

RECITALS

A. City is the owner of certain real property commonly known as 1125 Coleman Avenue, San Jose, CA and more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Property").

B. Earthquakes, which has the exclusive rights to a major league soccer franchise in the vicinity of San Jose, has approached the City about the development of a portion of the Property for a soccer stadium. CAP, an indirect affiliate of Earthquakes, desires to develop the balance of the property with retail, hotel and industrial/office uses. CAP has developed major retail and industrial/office projects in San Jose and will work with Earthquakes to master plan the Property's 75 acres for a soccer stadium, new retail, industrial/office and hotel development, along with certain Santa Clara Valley Transportation Authority ("VTA") and airport operational uses on or adjacent to the Property.

C. The City now desires to offer Developers the opportunity to exclusively negotiate with the City to develop a project proposal for the development of a soccer stadium, industrial/office, retail and hotel development project which would include the development of the soccer stadium on the Property by Earthquakes, or an assignee approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby agree as follows:

1. Good Faith Negotiations. Subject to all terms and conditions of this Agreement, City and Developers agree for the time period set forth below to negotiate diligently and in good faith towards the preparation of a ground lease, purchase and sale agreement and other mutually acceptable agreements ("Property Agreement") for the development by CAP of a retail, industrial/office and hotel project and the development by Earthquakes, or an assignee of Earthquakes reasonably acceptable to City, of a soccer stadium on the Property. During the term of this Agreement, City agrees not to negotiate with any other person or entity regarding the development of the

Property. It is expressly understood and agreed by the parties that this is a contract regarding development negotiations only and does not convey any interest in the Property or a potential Property Agreement or constitute any approval whatsoever of any proposed project. By its execution of this Agreement, the City is not committing to or agreeing to undertake (a) any disposition of land to Developers; or (b) any other acts requiring the subsequent independent exercise of discretion by the City, the City, or their departments. It is further agreed and understood that this Agreement does not imply any obligation on the part of City to enter into any agreement that may result from the negotiations contemplated herein. It is expressly acknowledged and agreed by the parties that, until and unless a one or more Property Agreements is signed by CAP and/or Earthquakes and approved by the City Council, in their sole discretion, any drafts or other communications resulting from performance of this Agreement shall not be used to impose any legally binding obligation on such party or as evidence of any oral or implied agreement by such party to enter into legally binding documents.

2. Term of Agreement.

A. The term of this Agreement shall begin on the Effective Date and end December 31, 2008 ("Term"), unless earlier terminated.

B. This Agreement shall terminate without any further action required by either party if Developers do not submit the Development information required in Section 5 A. below.

C. This Agreement shall terminate if the City provides 30 days written notice to Developers that it has determined that a soccer stadium or other development proposed by CAP and Earthquakes on the Property is no longer feasible or in the interest of the City.

3. Studies/Reports/Analyses. During the term of this Agreement, Developers shall submit information necessary to prepare a scope of development describing the proposed project and the work necessary to commence and complete such project and shall also prepare all studies, reports, and analyses regarding the proposed development that may be necessary to evaluate the proposed project (collectively, "Studies"). At a minimum, Developers shall prepare the Studies set forth in the Schedule of Performance attached hereto as Exhibit B and incorporated herein by this reference. City acknowledges that CAP may act on behalf of itself and Earthquakes for some submittals.

4. Status Reports and Meetings. CAP, Earthquakes and all potential development partners identified of CAP and Earthquakes for the project shall meet with the City periodically, at City's request, to discuss the City's expectations with regard to any component of the proposed project. Throughout the term of this Agreement, CAP and Earthquakes shall meet with the City periodically, at City's request, to discuss the status of the Studies.

5. Development Proposal.

A. Development Partner: Within forty-five (45) days after execution of this Agreement, CAP and Earthquakes shall submit to the City sufficient information for the City to assess (a) the ownership, management and financial ability of the Developers, and (b) the construction and development experience of Developers. CAP and Earthquakes shall also identify the proposed structure of the developer entity which will enter into the Property Agreement and the roles and responsibilities of CAP and the Earthquakes, or the Earthquakes' proposed stadium development affiliate.

B. Development Proposal: Within sixty (60) days after execution of this Agreement, Developers shall submit to City a preliminary Development Proposal, including proposed uses and square footage, and a parking plan for those uses, adequate to process a re-zoning application for the proposed project.

C. Project Financing and Sources of Funding. Not later than July 30, 2008, CAP and Earthquakes shall submit to City a detailed description of the proposed sources of all funding for the projects, including development and operation and maintenance costs.

D. Planning Department Review. Not later than September 31, 2008, Developers shall submit a zoning amendment application, to the City of San Jose Planning Department for preparation of an Environmental Impact Report and consideration of a zoning amendment for the proposed project.

The City Manager, at his/her discretion, may, upon written request by Developers, extend the due dates for submitting the information required in Subsections 5.B, 5.C and 5.D, but under no circumstances longer than the term of this Agreement.

6. Property Agreement. The terms of the Property Agreements will be established following Developers' submittal of a Development Proposal and the negotiation and exchange of information between the City and Developers. Participation and/or any other consideration to be paid by Developers to the City under the Property Agreement will be based upon such factors as City's financial obligations related to the financings of the purchase of the Property, current land values, market conditions, density of development, costs of development, risks to the Developers, estimated or actual profit for the Developers, and the public purpose served by the improvements to be developed. The use by City of any or all such factors shall be in the sole and absolute discretion of the City. Notwithstanding the above, it is the City's expectation that any parking required for the Project, including any component, shall be constructed at no cost to the City; provided, however, that parking in connection with

VTA and or airport operations are expected to be the responsibility, in part or whole, of VTA and/or the City,

7. Schedule of Performance.

A. Upon approval of this Agreement by the City Council, Developers shall begin and complete all tasks within the times specified in the Schedule of Performance attached hereto as Exhibit B and incorporated herein by this reference. It is understood and agreed by the parties that time is of the essence in the performance of this Agreement.

B. Any failure on the part of Developers to submit its final Development Proposal by the time set forth herein, as may be subsequently extended, shall constitute grounds for termination of this Agreement by City.

C. It is understood and agreed by the parties that the deadline for submittal of the final Development Proposal may be extended only by written consent of the City Manager, which may be granted or withheld at the sole and absolute discretion of the City Manager as provided in Section 2.B above.

8. Disclosure of Confidential Information. The parties acknowledge that the City is subject to the California Public Records Act ("Act"). The Act generally provides that written documents retained by the City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. CAP or Earthquakes shall designate as "Confidential" any information which CAP or Earthquakes provides to the City which CAP or Earthquakes desires to keep confidential. If a request for disclosure of any information designated as "Confidential" by CAP or Earthquakes is made under the Act, the City shall notify CAP or Earthquakes in writing and CAP or Earthquakes shall have the opportunity to object to the release of such information.

9. Full Disclosure and Approval.

A. CAP is currently managed and controlled by Hunter Storm LLC of which Ed Storm and Deke Hunter are the managing members and Earthquakes is currently managed by Keith M. Wolff, managing member (collectively, "Development Principals"). Developer shall fully disclosure to City other proposed principals, officers, stockholders, partners, or joint-venturers and all other pertinent information concerning CAP or Earthquakes.

B. Any change in the management and control of CAP or Earthquakes shall be subject to the approval of the City, which approval shall be within the sole and absolute discretion of the City. Any change in the management and control of CAP or Earthquakes without prior City approval shall be a material default under this Agreement and City shall be entitled to terminate this Agreement. The City's City Manager shall

have the right to terminate this Agreement under these circumstances on behalf of the City by providing written notice of such termination to Developer.

C. Prior to entering into Property Agreements, Developers (or their permitted assignees) shall, if required, register and obtain any other governmental approvals necessary to conduct business in the State of California and to own or hold real property in the State of California. Developers shall provide evidence of its compliance with any such requirements to the City.

10. Conflict of Interest.

A. CAP and Earthquakes shall at all times avoid conflict of interest or appearance of conflict of interest under any applicable state, federal or local laws, rules and regulations in the performance of this Agreement. CAP and Earthquakes shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement. City and CAP acknowledge that CAP also owns property adjacent to the Property. For purposes of this Section, any conflict of interest of a principal, officer, stockholder, partner, joint-venturer, employee or other associate of CAP or Earthquakes shall be conclusively deemed to be a conflict of interest of CAP or Earthquakes, respectively.

B. City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate the Agreement and pursue any and all legal or equitable remedies for said breach of this Agreement.

11. Development Fees and Costs.

A. CAP and Earthquakes expressly acknowledge that all expenses and costs they may incur during the term of or as a result of this Agreement are their sole obligation and responsibility and done at their sole risk, including, but not limited to, any costs associated with any proposed project and any costs incurred to prepare the necessary studies, reports and analyses required for any proposed project.

B. Within three (3) business days after the delivery by the City to the CAP and Earthquakes of a counterpart of this Agreement signed by the City Manager, the CAP or Earthquakes shall pay a total Fifty Thousand Dollars ($50,000) to the City by cash, cashier's check or wire transfer of immediately available funds (the "ENA Fee"). The ENA Fee is non-refundable and is in consideration for the agreement of the City to enter into this Agreement and to defray certain of the City's costs in connection with its obligations under this Agreement and is in addition to any other fees CAP or Earthquakes may pay to the City for the costs of the proposed development of the Property.

12. City Assistance. By entering into this Agreement, the City in no way agrees or implies that it will provide any financial assistance to the proposed project.

The application of any City assistance by Developers to the proposed project shall be discussed during the negotiation process.

13. California Environmental Quality Act. The California Environmental Quality Act (CEQA) is applicable to any project contemplated by this Agreement. Environmental clearance must be obtained prior to obtaining the City Council's approval for any project proposed. City staff may provide assistance to Developers in working with the City of San Jose to obtain the necessary environmental clearance, but all costs shall be the responsibility of Developers.

14. Distinction from Regulatory Authority of the City and City. CAP and Earthquakes understand and agree that this Agreement does not and shall not be construed to indicate or imply that the City or the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site as contemplated by this Agreement.

15. City Public Hearing. If the negotiations contemplated herein culminate in Property Agreement agreed to by Developers and City administration, the Property Agreement will be brought forward for consideration by the City Council, provided, however, such Property Agreement shall become effective only after having been considered and approved by the City Council in their sole and absolute discretion following any public hearing or other actions required by law. Notwithstanding any other provision of this Agreement, Developers expressly agree and acknowledges that the timing of any presentation of Property Agreement for City Council consideration shall be in the City Manager's sole discretion.

16. Real Estate Commissions. City shall not be liable for any real estate commission or brokerage fee which may arise from the transfer, lease, or sale of the Property. City represents that it has engaged no broker, agent or finder in connection with any proposed project contemplated by this Agreement and Developers agree to hold City harmless from any claim by any broker, agent or finder with whom CAP or Earthquakes have dealt with regard to the Property in accordance with the provisions of Section 19 hereof.

17. Non-discrimination. Neither CAP nor Earthquakes shall discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, disability, ethnicity or national origin in connection with or related to the performance of this Agreement.

18. Termination by City. If Developers do not comply in a timely and diligent manner with any material obligation under this Agreement, City, at its option, may terminate this Agreement at any time by written notice. City's City Manager may terminate this Agreement on behalf of City. The termination shall be effective upon the Developers receipt of City's written notice.

19. Indemnification. CAP and Earthquakes shall defend, indemnify and hold harmless City, the City of San Jose, and their officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement by CAP, Earthquakes and/or their principals, officers, stockholders, partners, joint-venturers, employees and other associates or arising out of or resulting from any claim described in Section 16 above. This indemnification shall survive the expiration or other termination of this Agreement.

20. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City:
City of San Jose
Attention: Chief Development Officer
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113

To Developer:
Coleman Airport Partners, LLC
c/o Hunter-Storm LLC
20725 Valley Green Drive
Cupertino, CA 95014

Earthquakes Soccer, LLC
11828 La Grange Avenue
Los Angeles, CA 90025
Attention: Keith Wolff

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees shall also be served to the respective parties as follows:

To City:

City of San Jose
Richard Doyle, City Attorney
200 East Santa Clara Street 16th Floor
San Jose, CA 95113

To Developer:

Holland & Knight, LLP
Attention: Jennifer L. Hernandez
50 California Street, 28th Floor
San Francisco, CA 94111

21. Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

22. Time of Essence. It is understood and agreed by the parties that time is of the essence in the performance of the obligations of this Agreement. Unless otherwise expressly provided in this Agreement, any failure on the part of Developers to perform according to the Schedule of Performance shall constitute, at City's sole and absolute discretion, grounds for termination of this Agreement by City.

23. Assignment. Neither CAP nor Earthquakes may transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of City which may be granted or withheld in City's sole and absolute discretion, and any such attempted assignment without the prior written consent of City shall be wholly void and of no effect. Notwithstanding the foregoing, the City shall not withhold its consent to (i) the assignment of this Agreement from CAP to a legal entity to be formed for the purpose of developing the project contemplated by this Agreement provided that the Principals of CAP retain management and control of such legal entity during the term of this Agreement and (ii) the assignment of this Agreement from Earthquakes to a legal entity to be formed for the purpose of developing the soccer stadium contemplated by this Agreement provided that the Principals of the Earthquakes retain management and control of such legal entity during the term of this Agreement.

24. No third party beneficiaries. This Agreement is made and entered into solely for the benefit of the City, CAP and Earthquakes and no other person shall have any right of action under this Agreement.

25. Waiver. CAP and Earthquakes agree that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver

of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by CAP and Earthquakes shall not be deemed to be a waiver of any term or condition of this Agreement.

26. Governing Law. The law governing this Agreement shall be that of the State of California.

27. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara, or where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, binding on all the parties, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

29. Prior Agreements and Amendments. This Agreement, including all Exhibits listed below and attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

Exhibit A	Legal Description and Parcel Map
Exhibit B	Schedule of Performance

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"City"

APPROVED AS TO FORM:

City of San Jose

By: _____
Deanna Santana
Deputy City Manager

"Developer"

Coleman Airport Partners, LLC, a California limited liability company

By: Hunter Storm LLC, a California limited liability company,

By: _____
Deke Hunter
Title: Managing Member

Earthquakes Soccer, LLC,
A California limited liability company

By: _____
Lew Wolff
Title: Managing Member

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WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"City"

APPROVED AS TO FORM:

City of San Jose

By: _____
Deanna Santana
Deputy City Manager

"Developer"

Coleman Airport Partners, LLC, a California limited liability company

By: Hunter Storm LLC, a California limited liability company,

By: _____
Deke Hunter
Title: Managing Member

Earthquakes Soccer, LLC,
A California limited liability company

By: _____
Lew Wolff
Title: Managing Member

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EXHIBIT A

DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL A:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF "ADJUSTED PARCEL A" DESCRIBED IN THE LOT LINE ADJUSTMENT PERMIT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY SANTA CLARA ON JUNE 22, 1999 UNDER RECORDER'S SERIES NO. 14867793, OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF COLEMAN AVENUE WITH THE NORTHWESTERLY LINE OF "PARCEL B" DESCRIBED IN THE NOTICE OF LOT LINE ADJUSTMENT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON JULY 30, 1999 UNDER RECORDER'S SERIES NO. 14920701, OFFICIAL RECORDS, THENCE ALONG THE NORTHEASTERLY LINE OF SAID "PARCEL B" AND "ADJUSTED PARCEL A" ALSO BEING THE SOUTHWESTERLY LINE OF COLEMAN AVENUE SOUTH 57° 34' 50" EAST, 996.50 FEET TO THE TRUE POINT OF BEGINNING, THENCE SOUTH 32° 25' 10" WEST, 1083.08 FEET TO THE SOUTHWESTERLY LINE OF SAID "ADJUSTED PARCEL A"; THENCE ALONG THE SOUTHWESTERLY LINE OF "ADJUSTED PARCEL A" SOUTH 57° 34' 50" EAST, 1002.79 FEET TO THE SOUTHERLY CORNER OF "ADJUSTED PARCEL A"; THENCE ALONG THE SOUTHEASTERLY LINE OF "ADJUSTED PARCEL A", NORTH 32° 25' 10" EAST, 1083.08 FEET TO THE EASTERLY CORNER OF "ADJUSTED PARCEL A" AND THE SOUTHWESTERLY LINE OF COLEMAN AVENUE; THENCE ALONG SAID SOUTHWESTERLY LINE OF COLEMAN AVENUE NORTH 57° 34' 50" WEST, 1002.79 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

ALL THAT CERTAIN REAL PROPERTY SITUATED PARTIALLY IN THE CITY OF SAN JOSE AND PARTIALLY IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT LAND DESIGNATED AND DELINEATED AS "PARCEL B" IN THE NOTICE OF LOT LINE ADJUSTMENT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON JULY 30, 1999, UNDER RECORDER'S SERIES NO. 14920701, OFFICIAL RECORDS AND A PORTION OF "ADJUSTED PARCEL A" DESCRIBED IN THE LOT LINE ADJUSTMENT PERMIT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON JUNE 22, 1999, UNDER RECORDER'S SERIES NO. 14867793, OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF COLEMAN AVENUE WITH THE NORTHWESTERLY LINE OF SAID "PARCEL B", THENCE ALONG THE NORTHEASTERLY LINE OF SAID "PARCEL B" AND "ADJUSTED PARCEL A" ALSO BEING THE SOUTHWESTERLY LINE OF COLEMAN AVENUE SOUTH 57° 34' 50" EAST, 996.50 FEET; THENCE SOUTH 32° 25' 10" WEST, 1083.08 FEET TO THE SOUTHWESTERLY LINE OF SAID "ADJUSTED PARCEL A"; THENCE ALONG THE SOUTHWESTERLY LINE OF "ADJUSTED PARCEL A" AND "PARCEL B" NORTH 57° 34'

50" WEST, 1038.06 FEET TO THE MOST WESTERLY CORNER OF SAID "PARCEL B" THENCE ALONG THE NORTHWESTERLY LINE OF "PARCEL B" THE FOLLOWING SIX (6) COURSES AND DISTANCES.

1. *NORTH 32° 25' 09" EAST 250.12 FEET;*
2. *NORTH 57° 34' 51" WEST, 105.40 FEET;*
3. *NORTH 08° 45' 53" EAST, 270.00 FEET;*
4. *NORTH 82° 20' 17" EAST, 219.28 FEET;*
5. *SOUTH 57° 34' 51" EAST, 87.51 FEET;*
6. *NORTH 32° 25' 09" EAST, 444.46 FEET TO THE POINT OF BEGINNING.*

PARCEL C:

BEING "ADJUSTED PARCEL B" DESCRIBED IN THAT LOT LINE ADJUSTMENT PERMIT FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY SANTA CLARA ON JUNE 22, 1999 UNDER RECORDER'S SERIES NO. 14867793, SANTA CLARA COUNTY OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF NEWHALL STREET AT THE EASTERNMOST CORNER OF THAT CERTAIN 7.528 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM FOOD MACHINERY CORPORATION, A CORPORATION, TO SOUTHERN PACIFIC RAILROAD COMPANY, A CORPORATION, DATED JANUARY 23, 1947, RECORDED FEBRUARY 25, 1947 IN BOOK 1433 OFFICIAL RECORDS, PAGE 231 SANTA CLARA COUNTY RECORDS; THENCE NORTH 57 DEG. 34' 50" WEST ALONG THE NORTHEASTERLY LINE OF SAID 7.528 ACRE TRACT 841.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 32 DEG. 25' 10" EAST 35.14 FEET;
THENCE NORTH 57 DEG. 34' 50" WEST 39.00 FEET;
THENCE NORTH 32 DEG. 25' 10" EAST 1047.94 FEET TO THE SOUTHWESTERLY LINE OF COLEMAN AVENUE (100.00 FEET IN WIDTH);
THENCE NORTH 57 DEG. 34' 50" WEST 933.02 FEET ALONG SAID SOUTHWESTERLY LINE;
THENCE SOUTH 32 DEG. 25' 10" WEST 1083.08 FEET TO SAID NORTHEASTERLY LINE OF SAID 7.528 ACRE TRACT; THENCE SOUTH 57 DEG 34' 50" EAST ALONG SAID NORTHEASTERLY LINE 972.02 FEET TO THE TRUE POINT OF BEGINNING.

APN: 230-46-055 (Affects: Parcel C), 230-46-060 (Affects: Portion of Parcel B), 230-46-062 (Affects: Parcel A) and 230-46-063 (Affects: Remainder Portion of Parcel B)

EXHIBIT B

SCHEDULE OF PERFORMANCE

Note:

Whenever this Schedule of Performance requires the submission of plans or other documents at a specified time, such plans or other documents as submitted shall be complete and adequate for review by the City within the time set forth herein. Prior to the time set for each particular submission, Developers shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Task	Date
1. Development Entity. Developers' submittal of the information identifying their partners and experience in developing related projects.	Within forty-five (45) days of execution of this Agreement.
2. Development Proposal. Developers' submittal of a comprehensive Development Proposal, including proposed uses and square footage, and a parking plan for those uses.	Within sixty (60) days of execution of this Agreement.
3. Financing Proposal. Developers will submit a pro-forma of estimated costs, as well as its proposed method of financing; proof of funds commitment from any creditors; and financial data for any investors, partners, or participants in the financing of the project.	No later March 31, 2008.

4. CEQA Clearance. Developers shall commence preparation of all documentation and studies required by the California Environmental Quality Act (CEQA)	No later than March 31 2008
6. Developers submittal of an application to the City of San Jose Planning Department for a re-zoning of the proposed project.	No later than September 31, 2008.
7 Acceptance of Property Agreement. Developers will cooperate with City to produce a Property Agreement, and return a signed, executable copy to the City Council for Approval.	No later than September 31, 2008.
8. Execution of a Property Agreement City staff will present the final Property Agreement to City Council for approval and execution.	No later than December 31, 2008.

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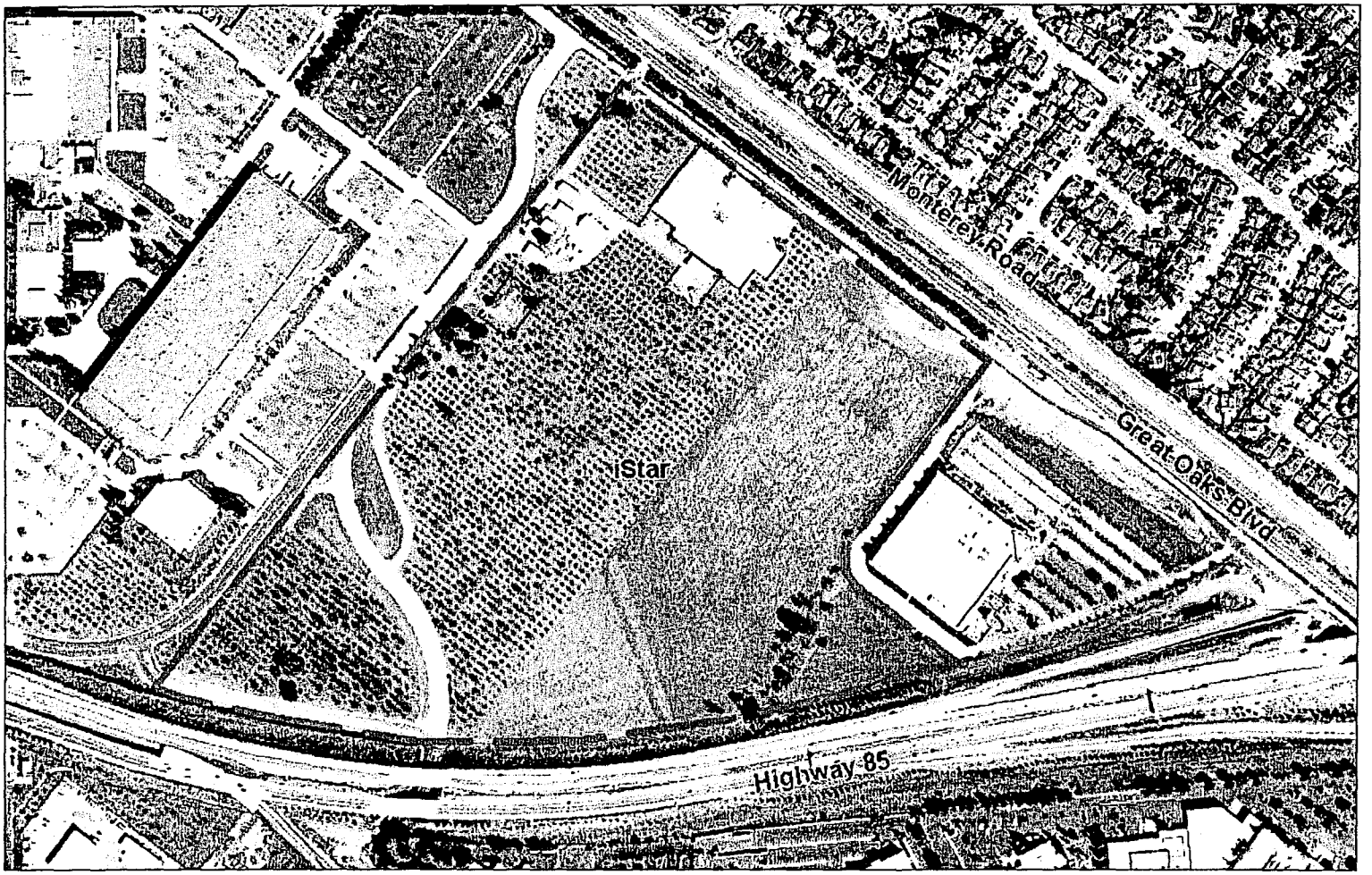
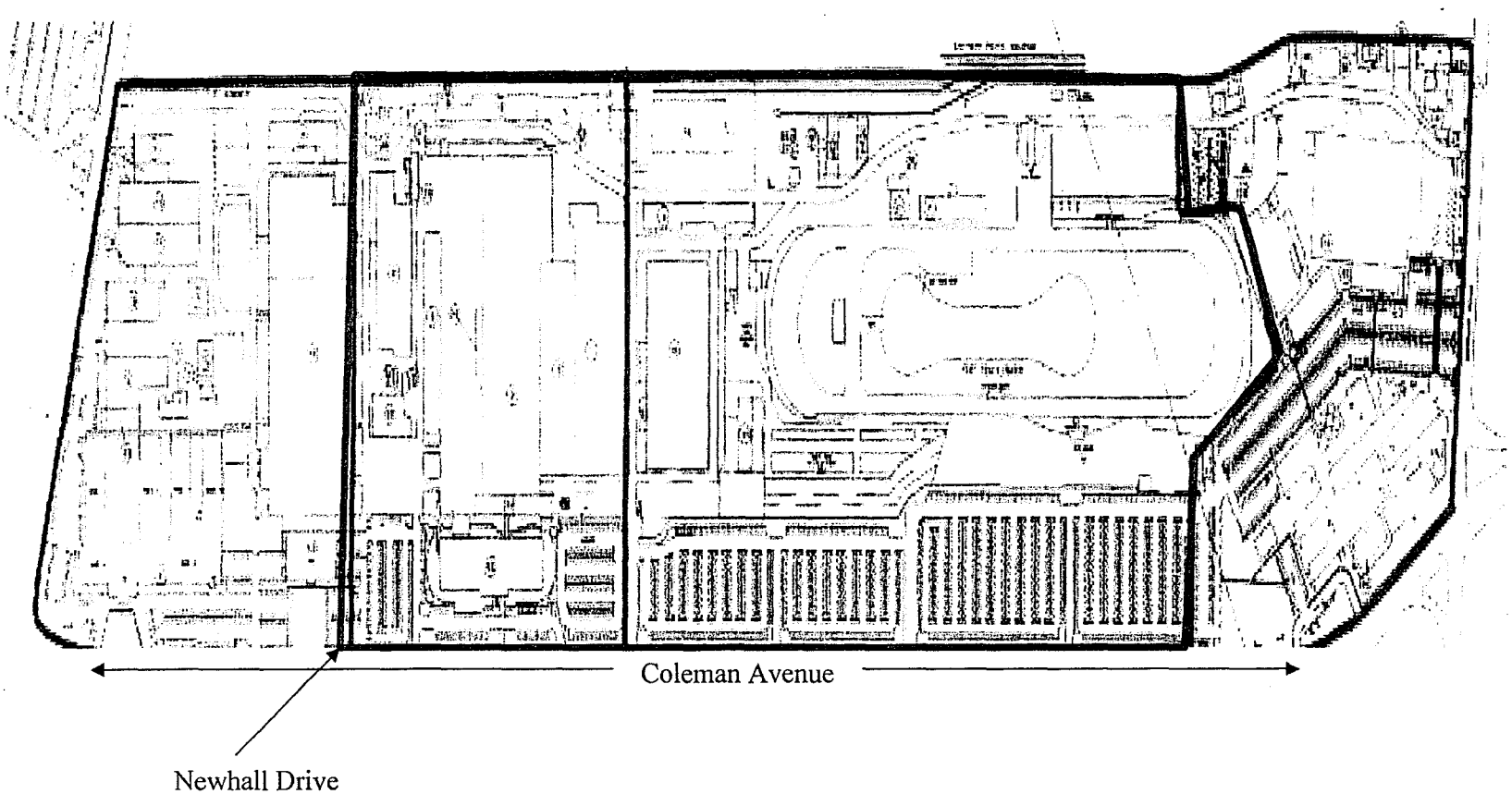
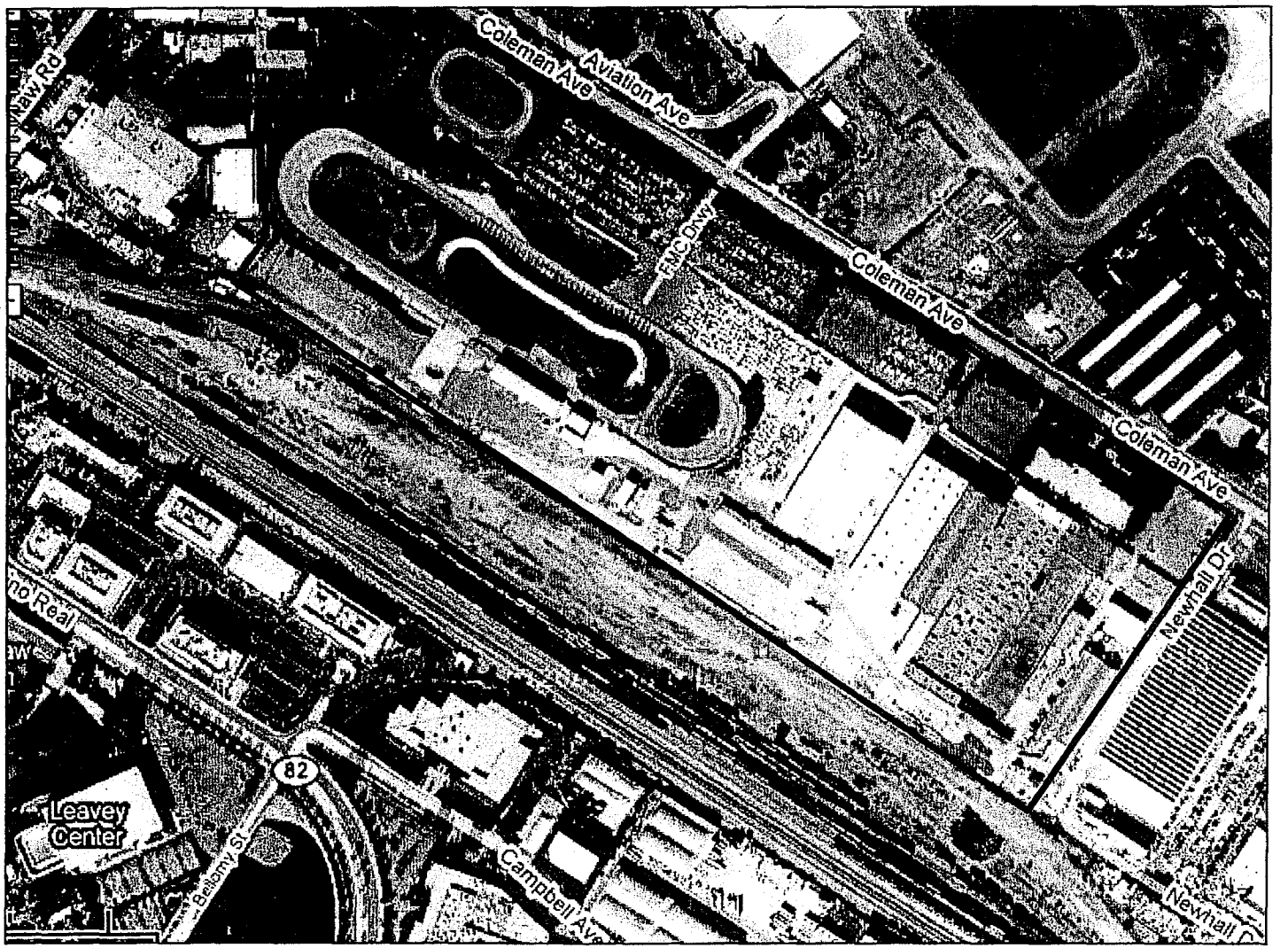
Attachment
iStar Property



Attachment
Airport West Property (Formerly FMC)



Attachment
Airport West Property (Formerly FMC)