

December 13, 2001

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

REAFFIRMATION AND RATIFICATION OF PRIOR CITY OF SAN DIEGO AND
REDEVELOPMENT AGENCY ACTIONS, CONTRACTS AND AGREEMENTS
CONCERNING THE BALLPARK AND REDEVELOPMENT PROJECT

INTRODUCTION

This Report will summarize the circumstances surrounding certain purchase transactions [Transactions] between a member [Member] of the Board of Directors [Board] of the Centre City Development Corporation [CCDC] and Padres L.P. [Padres]. The information set forth herein has been recently conveyed by the Member, Mr. Harold "Gil" Johnson, to representatives of the City of San Diego [City]. The Member previously sought and received legal advice from the former and current General Counsel of CCDC that the Transactions did not constitute violations of certain California conflict of interest laws. Nevertheless, in an abundance of caution and in order to avoid even the appearance of impropriety, it is the recommendation of the City Attorney and bond counsel for the City's proposed bond transaction for the Ballpark and Redevelopment Project [Project] that the City Council and Board of Directors of the Redevelopment Agency of the City act to reaffirm prior actions authorizing contracts or agreements, and ratify such prior contracts and agreements related to the Project, as more fully set forth in the draft resolutions prepared for City Council and Board consideration, and that the City Manager and Executive Director be authorized and directed to execute an agreement evidencing the reaffirmance and ratification.

BACKGROUND

The Member was first appointed to the Board of CCDC by the City Council in May of 1993. His first term expired in May of 1996, and he was appointed to serve a second term, expiring in May of 1999. The Member could not be reappointed to the Board because of term limits applicable to Directors (no more than two consecutive three-year terms). The Member was reappointed to the Board in November of 2000 to fill a vacancy caused by the resignation of a different Director, which was permissible because the Member was not on the Board for the mandatory period before reappointment (one year). The Member's current term will expire in May of 2003.

The Member is in the retail business and, with his spouse, owns and controls a California Corporation, Procurement Concepts, Inc. [PCI], which engages in certain retail business, the ownership and operation of gift and news shops. In about 1996, Padres approached the Member regarding the sale of certain Padres' merchandise. Beginning in 1996 or 1997, from time-to-time PCI would purchase merchandise from Padres at Padres' cost plus a 10% markup. PCI would then resell the merchandise at its stores, located at four different locations in San Diego and Chula Vista.¹ At these stores, PCI sells other merchandise from local entities and attractions such as the San Diego Chargers and Olympic Training Center, and also sells Sees Candy and

Hallmark Cards pursuant to franchises with those companies.

PCI purchased the Padres' merchandise by invoice, and not pursuant to a written distribution or franchise agreement. The Member reported that the price he paid to Padres for the merchandise, not including the markup, for each of the indicated years was as follows:

1997 -	\$1,091.53
1998 -	\$ 0.00
1999 -	\$5,106.81
2000 -	\$1,936.14
2001 -	\$3,595.96

In making these purchases, PCI dealt with one employee of the Padres, a "merchandise manager" or similarly titled employee, and not with the partners or management of Padres. While the Member would sometimes see Mr. John Moores (principal partner of Padres), Mr. Larry Lucchino (minority partner and former President and Chief Executive Officer of Padres) or Mr. Charles Steinberg (former employee of Padres) at various civic functions from time-to-time, the Member had no business dealings with anyone else associated with Padres, nor social interaction such as lunches or dinners.

Some of the Padres' merchandise purchased by PCI was available from other distributors, and the Member did not know if other retail entities were purchasing Padres' merchandise directly from Padres.

The Member reported that at no time was he lobbied by persons from the Padres' organization to vote in a particular way concerning the Project, and that he has neither received any gifts from nor have any promises been made to him by any member of the Padres' organization. The Member also reported that PCI's retail business was never a topic of conversation between him and Mr. Moores, Mr. Lucchino or Mr. Steinberg. In addition, the Member reported that at no time while he has been a member of the Board has anyone ever said anything to suggest that the Member could gain any business advantage of any kind based upon how he voted or acted as a Board member, nor has any such communication been attempted indirectly through his spouse, nor has he ever tried to broker his position as a Board member for personal gain.

The Member reported that redevelopment of downtown is important to him, and that he is proud of his years of public service. The Member reported that he was prepared to sever any business relationship with Padres to permit the Project to move forward, but that he feels strongly that he has acted properly, especially because he sought legal advice from the General Counsel of CCDC regarding this matter.

ANALYSIS

The City and the Project have been faced with conflict of interest issues before, involving a former Council member. While no evidence of a criminal conflict of interest was ever found, and a civil judgment has been entered in favor of the City that no conflict of interest existed in that matter², significant delay was experienced by the City, Agency, CCDC and Padres in their attempts to move forward with the Project while an investigation was conducted. You may recall that following the conclusion of that criminal investigation, and the Council member's resignation from the City Council, the City undertook a curative action in an attempt to make the

conflict of interest allegations in the civil suit irrelevant. That curative action was a ratification by the City, Agency and CCDC of all previous contracts and agreements entered into pursuant to the MOU. The curative nature of that action was verified by a Superior Court judgment in the case *City v. All Persons Interested*, case no. GIC763487.³

In this case, the City's bond counsel is recommending that the curative action be undertaken in an abundance of caution, even though the General Counsel of CCDC has opined that no violation of certain conflict of interest laws has occurred. The curative action will permit the Project to move forward without the need to await the outcome of the anticipated litigation we believe will once again be filed by the opponents of the Project regarding this matter.

To effectively undertake a curative action, several things must occur. First, the Member and Padres must agree that any direct or indirect business relationship between them or any related entities must be severed immediately. Second, the Member and Padres must agree that no future direct or indirect business relationship will exist between them or any related entity. Finally, the City, Agency and CCDC must reaffirm prior actions taken pursuant to, in furtherance or effectuation of, or in reliance on the Memorandum of Understanding [MOU], which authorized contracts or agreements regarding the Project, and must ratify such prior contracts or agreements entered into pursuant to, in furtherance or effectuation of, or in reliance on the MOU so as to declare their continuous efficacy from the date of their making and continuing hereafter. The resolutions before the City Council and Agency Board of Directors on December 14, 2001, undertake such reaffirmation and ratification, and authorize and direct the City Manager to execute for and on behalf of the City and Agency a Reaffirmation Agreement that memorializes the reaffirmation of all parties to the MOU to be bound by its terms, and to continue to undertake their respective rights and obligations pursuant to the MOU and the ratified agreements.

We are pleased to report that the Member has informed Padres by letter dated December 12, 2001, that from and after that date neither the Member nor any related enterprise will directly or indirectly engage in any business activity with Padres or any related Padres' business enterprise, and by return letter dated December 13, 2001, Padres have concurred in the representations and understandings set forth in the Member's letter of December 12, 2001, and made its own representations that neither Padres nor any related Padres' business enterprise will directly or indirectly engage in any business activity with the Member or any related enterprise. These representations and understandings between the Member and Padres will permit the City, Agency and CCDC to effectively undertake the recommended precautionary curative action.

RECOMMENDATION

The Member, Mr. Johnson, has undertaken a courageous action, to bring forward this matter so that the City, Agency and CCDC may proceed to take a precautionary curative action before the Project will experience needless delay as a result of further meritless litigation filed by opponents of the Project. The cooperation of the Member and Padres, to sever any existing business relationship and forego any future business relationship, direct or indirect, allows this precautionary curative action to proceed. We recommend that you adopt the resolutions before you today.

Respectfully submitted,

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City Attorney

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