

July 11, 2002

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

THIRD BALLPARK AND REDEVELOPMENT PROJECT IMPLEMENTATION
AGREEMENT; CITY AND AGENCY DOCKET FOR JULY 16, 2002

INTRODUCTION

Before the City Council on July 16, 2002, for consideration on behalf of both the City and the Redevelopment Agency [Agency], is an action related to the Ballpark and Redevelopment Project [Project]; approval of a Third Ballpark and Redevelopment Project Implementation Agreement [Third Implementation Agreement]. This action appears on the City Council docket as item number 333, and on the Agency docket as item number 1. This Report provides the background for your consideration of those actions.

BACKGROUND

On November 3, 1998, the electorate of the City approved Ordinance No. O-18613 [Ordinance] which authorized and directed the City to enter into the MOU with the Agency, Centre City Development Corporation [CCDC], and Padres L.P. [Padres] “Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project” within the Centre City East (East Village) Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project. The Ordinance provided that it was the intent of the electorate that the Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the Ordinance.

Following the vote on Proposition C, the MOU was executed by the City, the Agency, CCDC and Padres [collectively “Parties”]. On January 31 and February 1, 2000, the City Council approved a number of agreements related to the Project. These included the Ballpark and Redevelopment Project Implementation Agreement [First Implementation Agreement]. The First Implementation Agreement modified certain of the rights and responsibilities of the Parties in a manner consistent with the MOU. In particular, the Agency agreed to increase its contribution to the Project by \$11 million (from \$50 to \$61 million) plus it agreed to pay for one-half of the land acquisition costs, if necessary, between \$110 and \$130 million. Padres agreed to construct two parking structures previously the responsibility of the City and Agency (the P-1 and R-7 structures). Padres agreed to lease the R-7 lot from the Agency, and the P-1 lot from the City, in order to construct and operate the parking structures. From the rent received for the P-1 lot, the City was to deposit \$250,000 annually into the Capital Expenditure Reserve Fund for the Ballpark. Padres would control parking at both structures and receive all revenues. Padres also agreed to pay for land acquisition costs between \$100 and \$110 million, plus one-half of such costs between \$110 and \$130 million. The First Implementation Agreement also addressed some minor matters between the Parties involving infrastructure, budget management, and remediation

of hazardous materials.

On November 20, 2001, the City Council approved a number of other matters related to the Project including authorizing and directing, on behalf of the City and Agency, the execution of the Second Ballpark and Redevelopment Project Implementation Agreement [Second Implementation Agreement]. The Second Implementation Agreement increased the Agency's contribution to the Project by \$15.4 million (to \$76.4 million) and authorized an additional \$8.5 million in contingent expenses.

On April 22, 2002, the City Council, acting on behalf of the Agency, approved revisions to the Disposition and Development Agreement for the Omni Hotel, one of the required hotel developments by Padres in connection with the Project. Those revisions modified the obligations of Padres and the Agency with regard to the R-7 parking structure, essentially reverting to the status prior to the First Implementation Agreement where the above grade R-7 parking structure will be a project of the Agency, and a below grade parking structure to serve the Omni Hotel will be a JMI Realty responsibility. The Agency will be responsible for the construction and operation of the above grade, 1000 space structure, but will receive all revenue and Padres will have no rights with regard to parking in the R-7 structure.

Padres have indicated that they wish to own outright the P-1 lot, for purposes of constructing and operating the P-1 parking structure. In addition, the Project related documents do not provide for the expense of certain mitigation measures identified in the Mitigation, Monitoring and Reporting Program [MMRP] set forth in the certified Supplemental Environmental Impact Report [SEIR] for the Project. The proposed Third Implementation Agreement addresses these and other matters.

PROPOSED TERMS OF THE THIRD IMPLEMENTATION AGREEMENT

The Third Implementation Agreement provides for four substantive matters, and one clean-up matter. The first substantive matter is the proposed agreement that Padres own outright the P-1 lot. The P-1 parking structure was originally a City project, to be paid for at City (not Agency) expense as part of the Project. The land acquisition cost was originally estimated and budgeted at \$6 million, and the structure was estimated to cost a little over \$10 million. The First Implementation Agreement benefitted the City because Padres agreed to be responsible for construction of the structure, shifting the risk of cost overruns to Padres¹. The current proposal, that Padres own outright the P-1 lot, will further benefit the City because the risk of overruns in the land acquisition cost is also shifted to Padres, City funds may be utilized for other necessary expenses associated with the Project, and the overall land acquisition budget may be reduced by the originally budgeted cost to acquire the lot (\$6 million).

The proposed transaction is that Padres will pay to the Agency the funds necessary to acquire the lot; the Agency will use its powers of condemnation to acquire the lot and subsequently transfer title to the lot to Padres; and Padres will construct and operate the lot (to be open by opening day for the Ballpark). The parking structure will contain at least 1000 spaces to be available for Ballpark parking to satisfy the requirements of the SEIR. In addition, the proposed agreement provides that the Agency will retain title to a parcel on the block of at least 10,000 sq. ft. on which the Agency, through CCDC, will cause the construction of a housing project. The parking structure will contain additional parking spaces (up to 109) to serve the housing project. The Agency will pay, on a pro-rata basis, the cost to build the 109 spaces, and will own and control those spaces.

The second substantive matter is a corollary to the first; because Padres will own outright the P-1 lot, the previously estimated and budgeted cost to acquire the lot should be removed from the Project land acquisition budget, and all land acquisition budget numbers should be adjusted downward accordingly by the budgeted \$6 million needed to acquire the lot. Thus the Project land acquisition budget will be \$94 million (down from \$100 million), the Padres being responsible for land acquisition costs above \$94 million to \$104 million, and the Agency and Padres sharing such costs above \$104 million to \$124 million.²

The third substantive matter is the proposed agreement relating to expenses to implement the MMRP. The SEIR identified a number of potential impacts which did not directly involve modifications to the Ballpark, or operating conditions at the Ballpark. These potential impacts included noise and light impacts on surrounding development, and certain traffic impacts. Mitigation measures were identified in the MMRP to address these potential impacts. None of the Project related agreements address the financial responsibility for such mitigation measures, and neither the SEIR nor MMRP address with clarity the financial responsibility for such expenses.

The Parties have accordingly identified the mitigation measures that need to be addressed in a further agreement, and have proposed a sharing of such expenses by Padres and the Agency as follows:³

1. Padres (or JMI Realty) will pay one-half, and the Agency will pay one-half, of the direct costs to (a) conduct a detailed lighting study of surrounding development and implement any necessary mitigation measures (MMRP nos. 8.2-2 and 8.3-1), and (b) conduct a detailed acoustic study and implement any necessary mitigation

measures (MMRP no. 9.2-1), on the condition that the Agency's total liability for both these expenses is capped at \$3 million.⁴

2. Padres (or JMI Realty) will pay one-half, and the Agency will pay one-half (with no expense cap), of the cost to restripe A Street from east of Tenth Avenue to Eleventh Avenue to add turn lanes (MMRP no. 13.2-1), and the cost to signalize the intersection of 17th Street and Imperial Avenue, signalize the intersection of 17th Avenue and J Streets, and widen and restripe 17th Avenue to provide turn lanes (MMRP no. 13.2-2).
3. The Agency will be solely responsible for other traffic mitigation measures identified in MMRP nos. 13.1-2, 13.1-3, 13.1-4, 13.1-5, 13.1-6, 13.2-3 and 13.2-5, which consist primarily of studies, with subsequently identified mitigation measures implemented on an as-needed basis.

CCDC indicates that these expenses on the part of the Agency (estimated at \$3-6 million total) may be absorbed in the Agency's and CCDC's budget for next year. Additional mitigation measures to be implemented on an as-needed basis will be addressed as necessary in future budgets.

The fourth substantive matter addressed in the Third Implementation Agreement is the annual \$250,000 payment into the Capital Expenditure Reserve Fund. Because the City will no longer be receiving rent from Padres for the lease of the P-1 lot, from which the City previously agreed to make the required deposits, Padres have agreed to make the annual deposits.

The clean-up matter addressed in the Third Implementation Agreement makes all other Project related documents consistent with the DDA for the Omni Hotel regarding the responsibility for the R-7 lot and parking structure.

RECOMMENDATION

Staff recommends that the City and Agency authorize the execution of the Third Implementation Agreement. The Agreement has significant benefits for the City and Agency; it: shifts liability for cost overruns related to the acquisition of the P-1 lot to Padres; reduces the land acquisition budget for the Project; addresses unknown contingent liabilities related to mitigation measures while shifting certain overrun exposure regarding those expenses to Padres; and releases the City from the obligation to make annual deposits into the Capital Expenditure Reserve Fund.

CITY ATTORNEY OPINION

In the opinion of the City Attorney's Office, approval of the Third Implementation Agreement does not violate the MOU as it does not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City. In this regard, we adopt and incorporate herein by reference City Attorney Opinion No. 2001-1, dated November 19, 2001, and rendered in connection with the matters before the City Council on November 20, 2001. A copy of that opinion is attached hereto (without its voluminous attachments).

Respectfully submitted,

CASEY GWINN, City Attorney

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By

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Attachments (2)
RC-2002-11