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REPORT TO THE COMMITTEE ON BUDGET AND FINANCE

COST-RECOVERY REVIEW OF THE CONTRACTS WITH PADRES,
CHARGERS AND AZTECS

INTRODUCTION

This report is written in response to a request from Committee Members regarding the City's ability to recover City-costs associated with existing contracts between the City of San Diego and the Padres for use of Petco Park, and with the Chargers Football Company [Chargers] and San Diego State University [Aztecs] for use of Qualcomm Stadium. Each contract will be reviewed individually below.

DISCUSSION

I. Contract Between Padres and the City of San Diego.

The JOINT USE AND MANAGEMENT AGREEMENT [JUMA] between the City and the Padres dated February 1, 2000, contains the following two sections applicable to the issue of cost-recovery fees related to PETCO Park:

7.6.2 The City shall be responsible for all usual and customary City operations in connection with all Events, including traffic and public safety personnel outside the Ballpark Structure in accordance with current practice at Qualcomm Stadium as of the Effective Date.

7.7.3 If either the City or the Padres requires more than "usual and customary" City operations or personnel in connection with any Event, and intends to have the Padres bear the cost or expense of such additional operations or personnel, the rates to be charged by the City for such operations or services shall be reasonably agreed to by the parties on a case-by-case basis.

The service level provided by the City as of February 1, 2000, is what can be charged to the Padres under the JUMA. Therefore, cost recovery fees for operations or personnel beyond what was "usual and customary" as of February 1, 2000, may not be charged to the Padres unless

they agree to the charges. These charges must be negotiated on a case-by-case basis under JUMA section 7.7.3.

II. Contract Between the Chargers Football Company and the City of San Diego (1995 Agreement For Partial Use and Occupancy of San Diego Jack Murphy Stadium and All Supplements Thereto) [Contract].

A. Contract Term

The Contract with the Chargers expires upon termination of the last day of the 2020 regular football season, unless the Chargers elect to terminate the Contract early. Early termination may be accomplished under specific provisions set forth in the Contract. (See the 2004 Supplement Number Eight to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium.)

B. Contract Consideration

Assuming that the Chargers do not elect to terminate the Contract early, the Contract requires that the Chargers pay to the City, as the maximum aggregate consideration, a set amount for each pre-determined period of years for each Regular Football Season (i.e., \$2,500,000 for years 2004 through 2013; \$3,000,000 for years 2014 through 2016; and \$4,000,000 for years 2017 through 2020). An additional payment for post-season games is also provided for said consideration being based upon a formula using dollars received by the Chargers.

C. Police and Fire/Rescue Costs

In addition to the above-stated “consideration” payments, the Chargers are responsible for City costs associated with providing police, and arguably Fire/Rescue, under the following Contract provisions:

1) The Chargers are responsible for payment of “amounts customarily paid to the City pursuant to existing agreements for services (e.g. police) provided by the City for Home Games.” (See 2004 Supplement Number Eight to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium, at page 16, Section 1.5, referring to the new section 8(b)(i) of the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium.

2) The Chargers are responsible for payment of “amounts customarily paid to the City for services (e.g. Police) provided by the City for Home Games.” (See 2004 Supplement Number Eight

to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium, at page 19, Section 1.8, referring to the new section 8(g) 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium.)

3) If the Chargers “elect to have San Diego police officers assist with crowd control and security enforcement at the Stadium” (meaning inside the Stadium), “the overtime hourly wage costs associated with providing such San Diego police officers shall be divided equally between the City and the Chargers.” (See 1995 Agreement For Partial Use and Occupancy of San Diego Jack Murphy Stadium, at page 51, Section 12(a).)

4) “In connection with each Home Game, the Chargers shall pay for all costs incurred in connection with all ushers, ticket and customer service personnel, announcers, banners and decorations and **first-aid**” [emphasis added]. (See 1995 Agreement For Partial Use and Occupancy of San Diego Jack Murphy Stadium, page 53, Section 14(a).)

Historically, the City has not invoiced the Chargers for Fire/Rescue costs. However, if such costs are customarily paid to the City, the City could seek reimbursement from the Chargers for those Fire-Rescue costs. And, citing the provision set forth above in “4)”, the City could assert that Fire-Rescue costs are a form of “first-aid,” and as such, the Fire-Rescue costs are the Chargers’ responsibility.

D. Operation and Maintenance Costs

The operation and maintenance costs for Qualcomm Stadium which are associated with the Chargers’ use of the Stadium for *Home Games* are not recoverable pursuant to the following term of the Contract:

Except as otherwise expressly provided herein, the Chargers shall not be liable for any costs with respect to the operation and maintenance of the Stadium. (See 1995 Agreement For Partial Use and Occupancy of San Diego Jack Murphy Stadium, page 53, section 14 (a).)

There are no other provisions within the Contract that provide for the Chargers being responsible for operation and maintenance costs of the Stadium for Home Games. However, some City costs for *non-game days* are recoverable, pursuant to the following term of the Contract:

With respect to the Chargers' use of the Stadium Premises on non-game days, "the Chargers shall pay for the direct cost of all personnel and equipment needed at the Stadium Premises," but "the Chargers shall not be liable for utility costs or any other costs in connection with the operation and maintenance of the Stadium in connection with such events." (See 1995 Agreement For Partial Use and Occupancy of San Diego Jack Murphy Stadium, page 53, section 14 (b).)

E. Conclusion

Other than the provisions discussed above, the City has no right to recover any City costs associated with the Chargers' use of Qualcomm Stadium during the term of the now-existing Contract with the Chargers.

III. Contract Between San Diego State University and the City of San Diego.

The Aztecs' contract has expired. The new contract, which is currently going through final negotiations with Aztecs' representatives, has been written to include full cost-recovery for police, fire/rescue, and other City services.

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