

ORDINANCE NUMBER O- 18397 (NEW SERIES)

ADOPTED ON APR 07 1997

AN ORDINANCE AUTHORIZING THE AGREEMENT
CONVEYING NAMING RIGHTS TO SAN DIEGO JACK
MURPHY STADIUM BETWEEN QUALCOMM,
INCORPORATED AND THE CITY OF SAN DIEGO.

WHEREAS, on May 30, 1995, the City of San Diego ("City") and the Chargers Football Company and the Chargers Associates (collectively the "Chargers") entered into the Facilities Use and Occupancy Agreement, 1995 Agreement for the Partial Use and Occupancy of San Diego Jack Murphy Stadium, and the 1995 Agreement for Use and Occupancy of the Skybox Areas of San Diego Jack Murphy Stadium (collectively the "1995 Agreement"), which called, in part, for the Chargers to pay additional rent to the City and for the City to construct certain improvements to San Diego Jack Murphy Stadium ("Stadium") and a practice facility, in an amount not exceeding \$60 million. Copies of those documents are on file in the Office of the City Clerk as Document Nos. OO-18182-1, 2 and 3, respectively; and

WHEREAS, to accomplish the construction at the Stadium the City entered into certain agreements with the Public Facilities Financing Authority of the City of San Diego ("Financing Authority") whereby the City would lease the Stadium property to the Financing Authority, the Financing Authority would issue lease revenue bonds to finance the construction and would award a construction contract, and the Financing Authority would then lease the improved Stadium back to the City for a consideration sufficient to pay the debt financing on the lease revenue bonds; and

WHEREAS, the Financing Authority, after delay due to meritless legal challenges, issued

lease revenue bonds in an amount sufficient to make available \$60 million for the construction of the improvements to the Stadium and the practice facility; and

WHEREAS on December 10, 1996, pursuant to Resolution No. R-288213, the City authorized and empowered the Financing Authority to award a construction contract in the amount of \$55 million for the construction of improvements to the Stadium, contingent upon available financing; and

WHEREAS, on December 10, 1996, pursuant to Resolution No. FA-97-3, the Financing Authority awarded a construction contract to Nielsen-Dillingham Builders Joint Venture for the construction of improvements at the Stadium (the "Construction Contract"), contingent upon available financing; and

WHEREAS, on December 10, 1996, the City adopted Ordinance No. O-18365 which authorized certain amendments to the 1995 Agreement (the "Amendments") whereby, in part, the Chargers would pay additional rent to the City, and the City committed to construction of additional improvements to the Stadium, for which the Financing Authority would issue additional lease revenue bonds; and

WHEREAS, these amendments were necessitated in part by the delay resulting from litigation filed by various persons concerning the financing of improvements at the Stadium; and

WHEREAS, Ordinance No. O-18365 was successfully referred by a group of citizens and was therefore repealed by the City Council by the adoption of Ordinance No. O-18380 on February 3, 1997; and

WHEREAS, the repeal of Ordinance No. O-18365 effected only the repeal of the Amendments, which means that the City is no longer obligated to the Chargers to build the additional improvements with lease revenue bond financing and the Chargers are no longer

obligated to pay additional rent sufficient to finance the construction of those additional improvements; and

WHEREAS, the City still desires that the additional improvements to the Stadium authorized by the Financing Authority in the Construction Contract be constructed even though the City is under no obligation to the Chargers to do so; and

WHEREAS, there are insufficient monies in the initial issuance of lease revenue bonds for the Financing Authority to construct all the improvements at the Stadium contemplated in the 1995 Agreement and the additional improvements that the City and the Financing Authority desire to make at the Stadium pursuant to the Construction Contract; and

WHEREAS, a prominent local company, QUALCOMM, Incorporated ("QUALCOMM"), has offered to purchase the naming rights to the Stadium from the City for a period of twenty (20) years, the purchase of which will provide sufficient funds for the City to undertake all the improvements to the Stadium contemplated in the current Construction Contract between Nielsen-Dillingham Builders Joint Venture and the Financing Authority, but without the need for additional lease revenue bonds; and

WHEREAS, the City Manager has negotiated a term sheet with QUALCOMM which sets forth the basic terms and conditions for the purchase by QUALCOMM of the naming rights to the Stadium, and has negotiated a draft agreement incorporating those terms and conditions; and

WHEREAS, the City Council also desires to reach certain other agreements with the Chargers, Padres, L.P. ("Padres"), the National Football League ("NFL"), and certain other persons or organizations to implement the necessary agreement with QUALCOMM for the conveyance of the naming rights to the Stadium; and

WHEREAS, it is the express intention of the City Council that any documents attached as

Exhibits hereto, incorporated herein by reference or on file in the Office of the City Clerk comprise, together with the text of this Ordinance, the full action of the Council and are necessary for a full understanding of the Council's actions; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The City Manager be and he is hereby authorized and empowered to execute for and on behalf of the City of San Diego an Agreement Conveying Naming Rights to San Diego Jack Murphy Stadium ("Agreement") with QUALCOMM, Incorporated on the terms and conditions set forth in the draft agreement attached hereto as Exhibit A, together with such non-material, non-substantive changes as the City Manager shall approve as being necessary or in the best interests of the City and which, in the opinion of the City Attorney, do not: 1) increase the financial commitments or the scope of the obligations of the City, or 2) decrease revenue to the City, however, the City Manager shall be authorized to make such changes as are necessary to reduce the financial commitments or the scope of the obligations of the City.

Section 2. The fully executed Agreement shall be on file in the Office of the City Clerk as Document No. OO- 18397-1.

Section 3. The City Manager be and he is authorized and empowered to execute for and on behalf of the City any agreements with the Chargers, Padres, the NFL, or any other person or organization, ("Additional Agreements") solely necessary to implement the provisions of the Agreement, together with such non-material, non-substantive changes as the City Manager shall approve as being necessary or in the best interests of the City and which, in the opinion of the City Attorney, do not: 1) increase the financial commitments or the scope of the obligations of the City, or 2) decrease revenue to the City. Fully executed copies of any such Additional

Agreements shall be on file in the Office of the City Clerk as Document Nos.

OO- 18397-2 thru -8.

Section 4. Any monies received from QUALCOMM may be appropriated and expended for the purposes of the Project and to effectuate the purposes of this Ordinance.

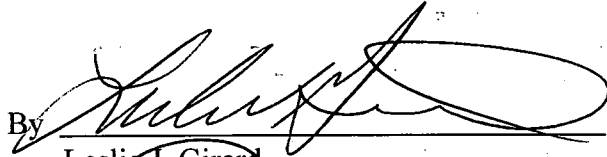
Section 5. The City Manager or his designee, the Assistant City Manager or any Deputy City Manger, the City Attorney, any Assistant City Attorney or Deputy City Attorney, the City Clerk, Assistant City Clerk or any Deputy City Clerk (each a "Designated Officer"), and each of them acting alone or together, are hereby authorized and directed, for and in the name of and on behalf of the City, to take such actions, and to execute such documents and certificates as may be necessary to effectuate the purposes of this Ordinance.

Section 6. The City Clerk shall cause notice of the public Hearing to be held on March 17, 1997, at 2 p.m. at the regular meeting place of the City Council of the City of San Diego, on the adoption of this Ordinance to be published at least ten (10) days in advance of such public hearing in the San Diego Daily Transcript, a daily newspaper of general circulation, published and circulated in the City of San Diego, as required by Section 99 of the City Charter.

Section 7. The City Clerk is hereby directed to cause publication of notice of the adoption of the Ordinance for five (5) consecutive days in the San Diego Daily Transcript, a daily newspaper of general circulation published and circulated in the City/County of San Diego, as required by California Government Code section 6040.1, within fifteen (15) days from the passage hereof pursuant to California Government Code section 6547.2.

Section 8. This Ordinance shall take effect and be in force on the thirtieth day from
and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Leslie J. Girard
Assistant City Attorney

LJG:js:smf
02/28/97
03/14/97 REV.
Or.Dept:Mayor
O-97-92
Form=o&t.frm

Rec'd 4/7/97

AGREEMENT CONVEYING NAMING RIGHTS

RECITALS

This Agreement Conveying Naming Rights to San Diego Jack Murphy Stadium ("Agreement") is made and entered into by and between the City of San Diego ("City") and QUALCOMM Incorporated ("QUALCOMM").

WHEREAS, the City is interested in conveying the right to name that facility now known as San Diego Jack Murphy Stadium ("Stadium") for sufficient consideration; and

WHEREAS, QUALCOMM is interested in acquiring that right; and

WHEREAS, QUALCOMM and the City desire to enter into this Agreement in order to: (1) provide sufficient funds to complete the current Stadium renovation; (2) ensure that the City remains a major league City; (3) ensure that the renovation proceed uninterrupted; and (4) ensure that Super Bowl XXXII remains in the City; and

WHEREAS, QUALCOMM enters into this Agreement contingent upon the renovation continuing on an uninterrupted basis, and on certain other conditions, including without limitation, that payment not be made until the appeal period in Henderson v. City, Superior Court Case No. 706794 over the renovation is completed and the National Football League ("NFL") confirms that the Super Bowl XXXII will be held at the Stadium; and

WHEREAS, in consideration for entering into this Agreement, it is expected that QUALCOMM will be treated as a major stakeholder (like the Chargers and Padres) in the Stadium.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Term

The term of this Agreement shall be from the Effective Date (as defined in Section XIII A) until a date which is twenty years after the Effective Date.

ARTICLE II
NAMING RIGHTS

- A. As of the Effective Date of this Agreement, the City hereby grants to QUALCOMM the exclusive right to name the Stadium "QUALCOMM STADIUM" and hereby agrees, at its sole cost and expense, to immediately name the Stadium "QUALCOMM STADIUM." QUALCOMM, or an assignee as provided in Article VIII, may subsequently rename the Stadium to another name chosen by QUALCOMM or the assignee, subject to the prior written approval by the City, which approval shall not be unreasonably withheld. Provided, however, that any name change shall be effectuated pursuant to a resolution adopted by the City Council. This Agreement, on the part of QUALCOMM, is expressly conditioned upon the adoption and effectiveness of an appropriate resolution renaming the Stadium "QUALCOMM STADIUM", which the City will accomplish on or before the Effective Date.
- B. 1. As of the Effective Date, the City shall, at its sole cost and expense, cause any and all existing signage or identification at the Stadium and any other location, including street or directional signs within the City limits that identifies the name of the Stadium to be changed to "QUALCOMM STADIUM." Within a reasonable time following the Effective Date, the City shall, at its sole cost and expense, also cause any and all City or Stadium Authority materials and information that contain a reference to the name of the Stadium, including, without limitation, pamphlets, documents, Stadium maps and brochures, to be changed to refer to "QUALCOMM STADIUM." As of the Effective Date, the City shall only use advertising, promotional, or informational materials or documents that refer to the name of the Stadium with the name "QUALCOMM STADIUM." The City shall also require, as part of any future agreements for the use and occupancy of the Stadium ("Future Agreements"), that any future users or tenants not subject to any existing agreement for the use and occupancy of the Stadium ("Future

Tenants”) use only such materials or documents that refer to the name of the Stadium only with the name “QUALCOMM STADIUM.” The City shall take all actions necessary to assure QUALCOMM that any reference to the name of the Stadium, and informational material provided, distributed, or supported or otherwise utilized by the City containing a reference to the name of the Stadium, shall refer to the Stadium solely as “QUALCOMM STADIUM,” and that the City has made the necessary provisions in Future Agreements for reference to the Stadium by Future Tenants.

2. The City hereby designates that certain area described on Exhibit “A,” attached hereto and by this reference incorporated herein, as “Jack Murphy Field.” QUALCOMM and the City agree that any and all signs, documents, informational materials, press releases and publicity of the City, Stadium Authority and any Future Tenants shall use the name “Jack Murphy Field” only in the context and on the terms set forth in Exhibit “A”.
3. Subject to the rules and regulations of CALTRANS, within thirty (30) days of the Effective Date, at the City’s sole cost and expense, all existing directional and informational signs (including, without limitation, all entrance signs) which contain the name Jack Murphy Stadium or any variation thereof, located in the public right-of-way, streets and highways shall be altered to refer to the Stadium only as “QUALCOMM STADIUM.”
4. Not later than sixty (60) days following the Effective Date, the City shall rename “Stadium Way” to “QUALCOMM WAY” in accordance with applicable procedures. QUALCOMM shall pay all reasonable costs and expenses for new signs and their installation located in the public right-of-way, and on streets and highways, related to the name change to “QUALCOMM WAY,” however, the City shall pay all maintenance and repair costs. Within ninety (90) days of the Effective Date, the City shall use its best efforts to cause CALTRANS to change any and all existing signs

referring to the Stadium name located on any highways or freeways to refer to the Stadium as "QUALCOMM STADIUM".

5. The City agrees to, and shall require as part of all Future Agreements that all Future Tenants agree to, the following:
 - a. All press releases, publicity, and references to the Stadium within the control of the City or the Future Tenants by all media announcements, web sites, Internet and other communications regarding the Stadium will be only to "QUALCOMM STADIUM."
 - b. All forms of media, including, without limitation, television and radio, will be notified to refer to the Stadium only as "QUALCOMM STADIUM."
 - c. All press releases, publicity, and references to the Stadium within the control of the City or the Future Tenants, including television, radio and public address announcers, shall be only to "QUALCOMM STADIUM."
 - d. All media, press release, publicity, or announcements within the control of the City or the Future Tenants shall refer to the name "Jack Murphy Field" only in the context and on the terms set forth in Exhibit "A" attached hereto.
6. a. Within thirty (30) days of the Effective Date, the City shall install new signage and maintain and repair such signage at the Stadium, at its sole cost and expense, identifying the Stadium as "QUALCOMM STADIUM" at locations identified as follows: (i) the marquis sign at the entrance to the Stadium, provided however that this marquis sign may include a reference to "Jack Murphy Field;" (ii) over the main entrance to the Stadium; (iii) on top of the existing scoreboard at the east end of the Stadium; and (iv) on the new scoreboard to be installed at the west end of the Stadium. Within such same time period, and subject to the Padres and Chargers approval, the City

shall install, at no cost or expense to QUALCOMM, additional signs identifying the Stadium as "QUALCOMM STADIUM" as follows: (v) two (2) hand painted signs on the inside of the Stadium on the ledge immediately below the Loge Level, at specific locations to be determined as part of the Signage Plan referred to below, provided however that these signs may be replaced by backlit signs upon the agreement of both parties; and (vi) two (2) signs on the exterior of the Stadium at specific locations to be determined as part of the Signage Plan, provided that any such exterior signs shall comply with the City's sign ordinance (San Diego Municipal Code section 95.0100 et seq.). The City shall thereafter repair and maintain such signs at its sole cost and expense. The City shall, at its sole cost and expense, cause all other existing internal and external signage at the Stadium, which has the name Jack Murphy Stadium to be renamed "QUALCOMM STADIUM." Except as provided in this Agreement, the City shall not erect any new signs at the Stadium that refer to Jack Murphy Field without the prior written consent of QUALCOMM. QUALCOMM shall have the option to install, at its sole cost and expense for such installation and maintenance, one (1) additional sign other than those installed by the City, designed to provide a reference to "QUALCOMM STADIUM" from an aerial view. The City shall maintain all such signs in a first class condition and shall effectuate any and all repairs needed for all signs described above, whether installed by the City or QUALCOMM, as soon as reasonably practicable provided that, solely as to the aerial sign discussed above, the cost of maintenance shall be borne by QUALCOMM. At all times QUALCOMM shall have the right, at its sole cost and expense, to purchase advertising at the Stadium subject to existing agreements for the sale of advertising at the Stadium between the City, Padres and Chargers.

b. On or before the Effective Date or May 1, 1997, whichever is earlier, and subject to the provisions of Section IIB6a, above, QUALCOMM and the City shall meet and confer in good faith and mutually agree on a signage plan for the Stadium and the surrounding area which is intended to assure maximum television, aerial and spectator coverage and which will address the following matters:

- (i) The exact size, design and location of signs (signs will include QUALCOMM's logos) identifying the Stadium as "QUALCOMM STADIUM."
- (ii) The exact size, design and location of any signs identifying Jack Murphy Field.
- (iii) The location of the Jack Murphy statue discussed in Section IIIB below.
- (iv) NFL and MLB regulations which may affect signage.
- (v) Contractual obligations with the Padres, NFL and the Chargers existing as of the date of this Agreement.
- (vi) Rights of the City to allow Future Tenants to sell advertising signs at the Stadium in the event the Chargers and/or the Padres vacate use of the Stadium.

The City Council reserves the right to review and approve the signage plan, although the Council may delegate that function to the City Manager. If QUALCOMM and the City are unable to agree to such matters within the time period referenced above, then QUALCOMM may terminate this Agreement at its sole discretion and option. Following such termination neither party shall have any rights or further obligations hereunder.

7. (a) Except for rights which the Padres and the Chargers currently have under the existing Chargers Occupancy Agreement and the Padres Occupancy Agreement, the City shall not cause or allow any third parties to have any "Naming Rights" for any part of the Stadium

during the term of this Agreement without QUALCOMM's prior written consent which shall not be unreasonably withheld, except if such Naming Rights involve another telecommunications company, in which such event QUALCOMM may withhold its consent in its sole discretion. To the extent the City has any approval rights to the Chargers or Padres granting any Naming Rights under the Chargers Occupancy Agreement and the Padres Occupancy Agreement, the City shall not grant such approval without QUALCOMM's prior written consent, which shall not be unreasonably withheld, except if such approval involves another telecommunications company, in which such event QUALCOMM may withhold its consent in its sole discretion. "Naming Rights" shall mean any and all rights to name all or any part of the Stadium, including without limitation, any and all seating levels or areas of the Stadium. Notwithstanding anything to the contrary herein, the City shall not cause or allow any third parties to have any "Naming Rights" for the entire Stadium.

- (b) Except for: (i) rights of the parties under the signage plan referred to in Section IIB6b above; and (ii) the rights of the Chargers and Padres to sell or provide signage and advertising at the Stadium to other third parties pursuant to the terms of the Chargers Occupancy Agreement and Padres Occupancy Agreement existing as of the date hereof and the terms of agreements to be entered into between the Chargers, the Padres, the City and QUALCOMM pursuant to Sections XIB2 and XIB3, the City shall not cause or allow any third parties to have any signage rights on or within the Stadium during the term of this Agreement without the express written consent of QUALCOMM, which consent shall not be unreasonably withheld. Except as may be allowed under subsections (i) or (ii) above, in no event shall City grant or allow any signage rights to other telecommunications companies.

8. As used herein, "Stadium" shall mean that certain City owned facility used for various sports, athletic, entertainment, business, concerts, exhibits, conventions, meetings and events located in the Mission Valley area of San Diego as more particularly described and shown on Exhibit "A," including any improvements or additions which are subsequently made part of the Stadium. "Stadium" shall include all areas and components of such facility beginning inward from the existing curb adjacent to the facility, including without limitation, all seating areas, Plaza Level concourse, ticket sales offices, walkways, sidewalks, scoreboards, ancillary improvements and playing fields within and comprising the total facility. "Stadium" does not include improvements or additions which may be physically connected to the Stadium structure provided that such improvements or additions lie outside what is now the existing outer wall of the Stadium which contains the gates and entryways to the Stadium, and further provided that such improvements and additions are not utilized as part of Stadium operations.
9. QUALCOMM shall own all rights to the name "QUALCOMM STADIUM" and may seek registration of any service marks, trademarks, and logos used in connection with such name or any variation thereof. Any and all reference to use of the name "QUALCOMM STADIUM" herein shall also mean and refer to any service marks, trademarks or logos designed and approved by QUALCOMM. Provided, however, that the use of the "QUALCOMM STADIUM" logo at the Stadium is subject to any governing rules and regulations of the NFL, MLB or NCAA existing as of the effective date of this Agreement.
10. In the event QUALCOMM renames the Stadium pursuant to Section IIA above, QUALCOMM shall, at its sole cost and expense, pay all costs and expenses associated with:

- (a) Altering any signage at the Stadium, directional signs located in the public right of way, streets and highways to bear the new name of the Stadium; and
- (b) Altering any City materials and information concerning the Stadium, including without limitation, pamphlets, documents, Stadium maps and brochures existing as of the time of the renaming, to bear the new name of the Stadium.

ARTICLE III

QUALCOMM'S OBLIGATIONS

- A. QUALCOMM shall pay to the City the sum of Eighteen Million Dollars (\$18,000,000) on or before the Effective Date to be used by the City for the renovation of the Stadium ("Renovation Funds"). The City shall, upon receipt of the Renovation Funds, immediately place the funds into a separate segregated account, apart and distinct from other City general funds and/or other funds to be used for expansion of the Stadium ("Renovation Funds Account"). Subject to the conditions set forth in Article XI, the City shall only use the Renovation Funds for payment of costs and expenses on the renovation of the Stadium, as such renovation is more particularly described in Exhibit "B," attached hereto and by this reference incorporated herein, ("Renovation Work") and for no other purpose or use whatsoever. Renovation Funds may be transferred to the Public Facilities Financing Authority of the City of San Diego to pay costs of the Renovation Work. At QUALCOMM's request, the City shall provide information or documents showing how the Renovation Funds were expended.
- B. QUALCOMM, in the spirit of civic regard for Jack Murphy, shall pay up to a maximum of fifty thousand dollars (\$50,000) on a matching basis toward an appropriate statue or other memorial to Jack Murphy at the QUALCOMM STADIUM. QUALCOMM shall pay up to such Fifty Thousand Dollars (\$50,000) amount within thirty (30) days after the City has provided evidence to QUALCOMM

that the City has in its possession Fifty Thousand Dollars (\$50,000) in matching funds for such statue or memorial and has irrevocably committed such funds for such statue or memorial. A sign referring to Jack Murphy Field may be placed at the location of the Jack Murphy statue or memorial.

- C. Subject to compliance by the Chargers with the agreement set forth in Section XIB3, beginning with the 1997 Pre-Season and Regular Football Season, QUALCOMM shall purchase and the Chargers shall provide two hundred sixty-eight (268) general admission season tickets for Chargers home games through and including the 2001 Pre-Season and Regular Football Season in addition to the tickets for the QUALCOMM Suite referenced in Section IVA, below.

ARTICLE IV

SKYBOX RIGHTS

During the term of this Agreement, the following shall apply:

- A. QUALCOMM shall be provided a reserved skybox suite for all events at the Stadium, including without limitation, Chargers, Padres, Holiday Bowl and Super Bowl games ("QUALCOMM Suite") with a minimum of forty-one (41) seats on the terms set forth in Exhibit "C" and by this reference incorporated herein. The QUALCOMM Suite shall be at a location as described on Exhibit "C." QUALCOMM shall be required to buy forty-one (41) tickets for the QUALCOMM Suite for Chargers games at prices charged to all other suite holders and QUALCOMM shall have the option to buy up to forty-one (41) tickets for the QUALCOMM Suite for Padres games, at prices charged to all other suite holders. For all other events and uses at the Stadium, QUALCOMM shall have the option to buy general admission tickets for use of the QUALCOMM Suite only in the amount requested for any such event by QUALCOMM, but not to exceed forty-one (41) tickets.
- B. For all events at the Stadium, including without limitation, Padres, Chargers and SDSU games, QUALCOMM shall receive fifteen (15) passes to the QUALCOMM

Suite at no cost or charge. In addition, QUALCOMM shall receive a minimum of two (2) field passes at no cost or charge for all events at the Stadium for which field passes are given, including without limitation, all Chargers games, if such field passes are available. The City shall use its best efforts to provide QUALCOMM more field passes as requested by QUALCOMM, if available.

ARTICLE V

ADDITIONAL RIGHTS AND OBLIGATIONS OF PARTIES

- A. During the term of this Agreement, the City, acting by and through its City Council, City Manager, or any other agent or representative, shall not take any action, including without limitation, any actions to propose or support an initiative measure, or adopt without putting to a vote of the electorate an initiative measure brought by any third party or parties, whether private person, corporation or other entity of any form or organization, to remove the name QUALCOMM (or any other name consented to by the City at QUALCOMM's request) from the Stadium, or in any way deprive QUALCOMM of the rights conveyed by this Agreement. The City expressly agrees that QUALCOMM retains any and all remedies under the law, including, but not limited to, injunctive relief and specific performance, for a violation of this Section VA.
- B. QUALCOMM shall not take any action to breach its obligations under this Agreement.
- C. In the event that, during the term of this Agreement:
 - 1. a. an initiative petition which seeks: (i) to remove, change or add to the name QUALCOMM (or any other name requested by QUALCOMM and consented to by the City) from the Stadium, or (i) in any way to deprive QUALCOMM of the rights conveyed by this Agreement, is circulated or sought by any third party or parties, whether private person, corporation or other entity of any form or organization; and
 - b. that initiative measure qualifies for an election; and

c. is adopted by the electorate;

or

2. a. a lawsuit to which the City, its officers, employees or agents is filed which, if lost by the defendant(s), would result in the termination of this Agreement or otherwise deprive QUALCOMM of the material benefits conveyed by this Agreement; and
- b. the plaintiff(s) in such a lawsuit ultimately prevail in such a manner that this Agreement is terminated or QUALCOMM is otherwise deprived of the material benefits conveyed by this Agreement,

such actions shall be deemed a breach of this Agreement on the part of the City. In such event, the City shall pay to QUALCOMM the following amounts as liquidated damages ("Liquidated Damages"):

3. From the Effective Date to and including January 31, 1998, the entire amount of the Renovation Funds, plus interest at the legal rate, plus all costs of QUALCOMM in constructing and installing its signs under this Agreement.
4. From and including February 1, 1998, to and including the end of the term of this Agreement, the Liquidated Damages amount shall be an amount equal to the Renovation Funds, plus interest at the legal rate, reduced on February 1 of each year beginning February 1, 1998, in equal annual amounts over the remaining term of this Agreement, plus all costs of QUALCOMM in constructing and installing its signs under this Agreement.

The City and QUALCOMM expressly acknowledge and agree that should QUALCOMM be deprived of the rights conveyed by this Agreement on account of the breaches specified above, QUALCOMM would be materially damaged. The City and QUALCOMM agree that it would be impractical and extremely difficult at this time to estimate the amount of the damages to QUALCOMM upon such event and therefore agree that, after negotiations, the Liquidated Damages amount constitutes their best estimate of damages to QUALCOMM under each respective circumstance, based upon all known relevant facts, and that the provisions set forth herein are

reasonable under all circumstances as of the date of this Agreement. The parties intend that such amounts shall constitute liquidated damages under the provisions of Civil Code Section 1671. Accordingly, the City and QUALCOMM agree that if either such event occurs, the Liquidated Damages amount shall constitute liquidated damages to QUALCOMM under this Agreement and shall be QUALCOMM's sole remedy for damages for the City's breach under this Section VIB. The City expressly agrees that QUALCOMM retains, at its choice, any and all rights under law, including, but not limited to, injunctive relief or specific performance, in lieu of an award of damages for a breach of this Section VIC. By initialing the space provided below, the City and QUALCOMM expressly acknowledge that they have read, understand and agree to the provisions above and that they have agreed that the above terms are fair and equitable.

QUALCOMM _____

CITY _____

- D. In the event during the term of this Agreement, the City builds, constructs or in any way participates in the construction or building of any new stadium to be utilized by the Chargers or any successor NFL football team during the term of this Agreement, QUALCOMM shall be entitled to a pro rata return of the Renovation Funds utilizing the formula contained in Section VC4. QUALCOMM shall be given the opportunity to match any bonafide offer to name such new Stadium "QUALCOMM STADIUM" or such other name designated by QUALCOMM and consented to by the City. Subject to the immediately preceding sentence, the decision to name any such new Stadium shall be at the sole discretion of the City.
- E. In the event during the term of this Agreement, the Chargers Occupancy Agreement is terminated, or the Chargers otherwise cease using the Stadium, and the City enters into an agreement with any other NFL football team or other professional football team, for the use and occupancy of the Stadium, the City shall take all actions

necessary to require such new football team to adhere to the agreements of the Chargers as provided in Article IV and Article XI of this Agreement.

- F. The City shall use its best efforts to cause the Metropolitan Transit District Board ("MTDB") to utilize the QUALCOMM STADIUM name in connection with MTDB's trolley line to the Stadium and to MTDB's station at the Stadium, and to erect any appropriate signage for such name.

ARTICLE VI

OTHER OBLIGATIONS

- A. The City shall support QUALCOMM in its efforts to receive the same consideration as from the Chargers and Padres as to publicity, promotional considerations and exclusive wireless telecommunications provisions by the Holiday Bowl or any similar NCAA event held at the Stadium.
- B. The City represents and warrants that it: (i) owns the right to name the Stadium and the naming to be accomplished pursuant to this Agreement is in accord with all applicable laws, regulations and ordinances of the City; (ii) this Agreement and all documents delivered pursuant hereto has been duly authorized, executed and delivered by the City will be a legal, valid, binding and enforceable obligation of the City; do not violate any provision of any agreement or judicial order to which the City is a party to, or which it is subject, and no consents or actions of any other parties, entities or governmental bodies or agencies is required to this Agreement or the actions of the City to be carried out pursuant hereto; and (iii) the only entities with which the City has agreements with for the partial use and occupancy of the Stadium in excess of one month are the Chargers, Padres, SDSU, Service America and the Holiday Bowl.

ARTICLE VII
INDEMNIFICATION

The City shall defend, indemnify and hold QUALCOMM harmless from and against any and all claims, damages, losses, causes of action, costs, and expenses, including reasonable attorney's fees and costs, arising or resulting from: (i) any injuries to persons or damages to property arising out of or alleged to arise out of the use of, or attendance at any event at the Stadium, including without limitation any Chargers, Padres or SDSU games, or any special events, except as to any such claims, damages, losses, causes of action, costs, or expenses arising solely out of the conduct of QUALCOMM, its officers, employees, guests or agents; and (ii) any challenges, litigation, appeals, and referendums which seek to prevent, limit, set aside or terminate this Agreement, the Renovation Work, or the change of the name of the Stadium to "QUALCOMM STADIUM," or any other rights granted to QUALCOMM hereunder. Notwithstanding the above, City shall not be obligated to spend any funds in violation of state law which governs expenditures of funds in connection with referendums.

ARTICLE VIII
ASSIGNMENT

- A. This Agreement and the right to rename the Stadium pursuant to Section IIA may not be assigned, sold, transferred, bartered, or otherwise exchanged by QUALCOMM, with or without consideration, and whether voluntarily or as part of a sale of QUALCOMM to, merger of QUALCOMM with, or acquisition of QUALCOMM by another corporation or business entity (such actions hereinafter collectively referred to as an "Assignment"), without the prior express written consent of the City. Notwithstanding the foregoing, if, and only if, QUALCOMM, or a significant portion of QUALCOMM's business or corporate structure, is sold to, or purchased, merged or otherwise acquired under any circumstances by another telecommunications company, the City's consent to an Assignment of this Agreement, and consent to a renaming of the Stadium pursuant to Section IIA, shall not be unreasonably withheld

or delayed provided, however, that any renaming of the Stadium pursuant to this Section VIIIA shall be consistent with the telecommunications business of the Assignee. In the event that QUALCOMM requests an Assignment of this Agreement to such other telecommunications company, the City shall first have the right, in lieu of granting its consent, to repurchase the naming rights conveyed pursuant to this Agreement for an amount equal to the Renovation Funds plus interest at the legal rate, reduced on the anniversary of the Effective Date in each year beginning on the Effective Date, in equal amounts over the remaining term of the Agreement, plus all costs of QUALCOMM in constructing and installing its signs under this Agreement. This right of repurchase must be exercised by the City within sixty (60) days following written notice from QUALCOMM requesting an Assignment of this Agreement.

- B. In the event this Agreement is Assigned as set forth in Section VIIIA above, by QUALCOMM to a third party, QUALCOMM or its assignee shall pay, at its sole cost and expense, all costs and expenses associated with:
1. Altering any signage at the Stadium, or directional signs located in the public right of way, streets and highways, to bear the new name of the Stadium assignee; and
 2. Altering any and all City materials and information concerning the Stadium, including, without limitation, pamphlets, documents, Stadium maps and brochures, existing as of the effective date of the Assignment, to bear the name of the assignee.
- C. This Agreement shall be binding on and inure to the benefit of the heirs, legal representatives, successors in interest, and assigns of the parties.
- D. The provisions of this Article VIII are expressly applicable to any Assignment pursuant to a voluntary or involuntary bankruptcy filing by QUALCOMM. In the event that a bankruptcy trustee maintains or any court shall hold that this Agreement may be Assigned in bankruptcy without the consent of the City, the City shall have

the right to repurchase the naming rights conveyed by the Agreement as set forth in Section VIIIA, above.

ARTICLE IX

SUPERSEDURE/ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral. This Agreement may be amended or modified only by a written amendment signed by both parties. This Agreement supersedes and replaces in its entirety any and all other term sheets or documents between the parties, including without limitation, the Term Sheet approved by the City Council, a copy of which is attached as Exhibit "A" to Resolution No. _____ and on file in the office of the City Clerk as Document No. RR-_____, and the Draft Agreement Conveying Naming Rights attached as Exhibit "A" to Ordinance No. _____.

ARTICLE X

CALIFORNIA LAW

This Agreement shall be governed by and be construed according to the laws of the State of California. The City and QUALCOMM covenant and agree to submit to the personal jurisdiction of any state or federal court in the State of California for any dispute, claim, or matter arising out of or related to this Agreement.

ARTICLE XI

CONDITIONS PRECEDENT

- A. The use and release of the Renovation Funds by the City pursuant to Section IIIA, is contingent upon the occurrence of the following events:
1. The City's continued uninterrupted Renovation Work on the Stadium as more specifically described in Exhibit "B," through May 1, 1997;

2. That all appeal periods have run on that certain lawsuit entitled Henderson vs. City of San Diego, filed in San Diego County Superior Court Case No. 706794;
3. That all appeals and referendum periods have run without any challenges or referendum petitions being filed to any actions, resolutions or ordinances by the City Council of the City for: (a) approval of this Agreement; or (b) actions or approvals to rename the Stadium "QUALCOMM STADIUM."
4. That all statute of limitations have run without any litigation being brought to attack, prevent, delay or set aside the resolution or ordinances of the City for: (a) approval of this Agreement; (b) approvals or actions to rename the Stadium "QUALCOMM STADIUM;" or (c) actions approving commencement or continuation of the Renovation Work.

If the above conditions are not satisfied or waived by QUALCOMM by May 15, 1997, all Renovation Funds shall be returned to QUALCOMM, if QUALCOMM so requests, and the City may at its sole discretion rename the Stadium. If QUALCOMM does not request a return of the Renovation Funds by the close of business on May 15, 1997, the satisfaction of any and all conditions set forth above shall be deemed waived by QUALCOMM.

- B. The payment of the Renovation Funds by QUALCOMM pursuant to Section IIIA is contingent upon the following agreements being signed on or before the Effective Date.
1. The NFL signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM with regard to QUALCOMM's rights with regard to Super Bowl XXXII and other Super Bowls which may be held at the Stadium.
 2. The Padres signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM with regard to QUALCOMM's rights to signage, naming rights, tickets, sponsorship, parking and publicity.

3. The Chargers signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM with regard to QUALCOMM's rights to signage, naming rights, tickets, sponsorship, parking and publicity.
4. SDSU signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM regarding publicity and advertising.
5. ConVis signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM regarding publicity and advertising.
6. Holiday Bowl signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM regarding tickets, signage, publicity and passes.
7. Service America signing a legally binding written agreement with the City and QUALCOMM on terms acceptable to QUALCOMM regarding publicity and items used in food service.
8. QUALCOMM, the City, the Padres and the Chargers agreeing upon a signage plan acceptable to QUALCOMM in accordance with Section IIB6.

If the above conditions are not satisfied by the Effective Date, QUALCOMM shall have no obligation to pay the Renovation Funds.

ARTICLE XII

MISCELLANEOUS PROVISIONS

- A. **Effectiveness.** The Effective Date of this Agreement shall be a date thirty (30) days after adoption of the ordinance approving this Agreement and upon execution by both parties.
- B. **Notices.** Any notice, demand, request, consent, approval and any other communications (any of the foregoing, a "Notice") required, permitted, or desired, to be given hereunder shall be in writing sent by registered or certified mail, postage

prepaid, return receipt requested or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in a Notice delivered in accordance with the provisions of this Section. Any such Notice shall be deemed to have been received three (3) business days after the date such Notice is mailed or on the date of delivery by hand or courier addressed to the parties as follows (provided that neither the City nor QUALCOMM shall be deemed to have received any Notice not actually received):

If to the City: City Manager
 City of San Diego
 City Administration Building
 202 "C" Street
 San Diego, California 92101

and City Attorney
 City of San Diego
 1200 Third Avenue, Suite 1620
 San Diego, California 92101

If to
QUALCOMM: QUALCOMM, INCORPORATED
 6455 Lusk Boulevard
 San Diego, California 92121
 Attn: Harvey White, President

With a copy to: Steven R. Altman
 QUALCOMM, INCORPORATED
 6455 Lusk Boulevard
 San Diego, California 92121

And To: Peterson & Price, APC
 530 B Street, Suite 2300
 San Diego, California 92101

- C. **Section Headings.** The section headings are inserted herein only as a matter of convenience and for reference, and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

- D. **Time.** Time is of the essence hereof, and every term, covenant and condition shall be deemed to be of the essence hereof, and any breach by the City or QUALCOMM shall be deemed to be of the very substance of the Agreement.
- E. **No Partnership.** Nothing herein contained shall make, or be construed to make the City or QUALCOMM a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.
- F. **Singular and Plural.** Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.
- G. **Payment.** All payments to the City under the terms of this Agreement shall be made payable to the City Treasurer, and submitted to the City Manager.
- H. **Waiver.** The failure of the City or QUALCOMM to enforce a particular provision of this Agreement shall not constitute a waiver of that provision or condition or its enforceability by the City or QUALCOMM.
- I. **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or QUALCOMM to be performed or observed shall be deemed to be both covenants and conditions. All covenants and rights of the parties as set forth in this Agreement shall be in full force and effect during the entire term of this Agreement.
- J. **Attorney Fees.** If any legal action or any other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which that party may be entitled.
- K. **Definitions.** The following means and definitions shall apply to words used herein:
1. "Days" shall mean calendar days.
 2. "Padres" shall mean the Padres, L.P.
 3. "ConVis" shall mean the San Diego Convention & Visitor's Bureau.

4. "Holiday Bowl" shall mean the San Diego Bowl Game Association.
5. "SDSU" shall mean San Diego State University.
6. "NFL" shall mean the National Football League.
7. "MLB" shall mean Major League Baseball.
8. "NCAA" shall mean the National Collegiate Athletic Association.
9. "Pre-Season" shall mean, as set forth in the Chargers Occupancy Agreement, the period from the first regularly scheduled Chargers pre-season game to the last regularly scheduled pre-season game of the Chargers in the Stadium, as established by the annual schedule of the NFL.
10. "Regular Football Season" shall mean, as set forth in the Chargers Occupancy Agreement, the period from the first professional football game scheduled in the Stadium by the NFL between the Chargers and any other NFL member, the outcome of which shall be included in determining the participants in the Super Bowl, as established by the annual schedule of the NFL, including post-season games, but excluding the Super Bowl.
11. "Stadium" shall have the meaning assigned thereto in Section IIB8 hereof.
12. "Chargers" shall mean the Chargers Football Company.
13. "Super Bowl" shall mean the football game to determine the championship team of the NFL.
14. "Chargers Occupancy Agreement" shall mean the 1995 Agreement for Partial Use & Occupancy of San Diego Jack Murphy Stadium, as amended or supplemented, a copy of which is on file in the Office of the City Clerk as Document No. RR-18182-2.
15. "Renovation Funds" shall have the meaning assigned thereto in Section IIIA hereof.
16. "Renovation Funds Account" shall have the meaning assigned thereto in Section IIIA hereof.
17. "Effective Date" shall have the meaning assigned thereto in Section XIIA hereof.

18. "Padres Occupancy Agreement" shall mean the Agreement for Partial Use & Occupancy of Jack Murphy Stadium, as amended or supplemented, a copy of which is on file in the Office of the City Clerk as Document No. RR-269870.
19. "Naming Rights" shall have the meaning assigned thereto in Section IIB7 hereof.
20. "Assignment" shall have the meaning assigned thereto in Section VIIIA hereof.

- L. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- M. **No Third-Party Rights.** Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its City Manager pursuant to Ordinance No. _____ authorizing such execution, and by QUALCOMM.

Dated this _____ day of _____, 1997.

THE CITY OF SAN DIEGO

By: _____

Jack McGrory
City Manager

Dated this _____ day of _____, 1997.

QUALCOMM, INCORPORATED

By: _____

Irwin M. Jacobs
Chief Executive Officer

Harvey White
President

APPROVED AS TO FORM AND LEGALITY.

Dated this _____ day of _____, 1997.

CASEY GWINN, City Attorney
CITY OF SAN DIEGO

By: _____

Leslie J. Girard
Assistant City Attorney

Dated this _____ day of _____, 1997.

QUALCOMM, INCORPORATED

By: _____

Steven R. Altman
Senior Vice President and General Counsel

EXHIBIT "A"

1. Description of Jack Murphy Field. Those areas which are outside the boundaries of the Stadium and which include the parking lot, driveway and road approaching and surrounding the Stadium, as more particularly shown on Exhibit A-1 attached hereto.
2. Description of Stadium. See Exhibit A-1 attached hereto.
3. Use of "Jack Murphy Field" Name. Without the express written approval of QUALCOMM, the name "Jack Murphy Field" shall only be utilized when referring to the Jack Murphy Field area described above. The name Jack Murphy Field shall not be used in connection with or at the end of the name QUALCOMM STADIUM in the context of professional or NCAA sporting events at the Stadium. For example, there shall be no reference to the Stadium as "QUALCOMM STADIUM at Jack Murphy Field," or any variation thereof, in connection with a Chargers, Padres or Aztecs game, or the Holiday Bowl or Super Bowl. No part of the Stadium shall be referred to as Jack Murphy Field.

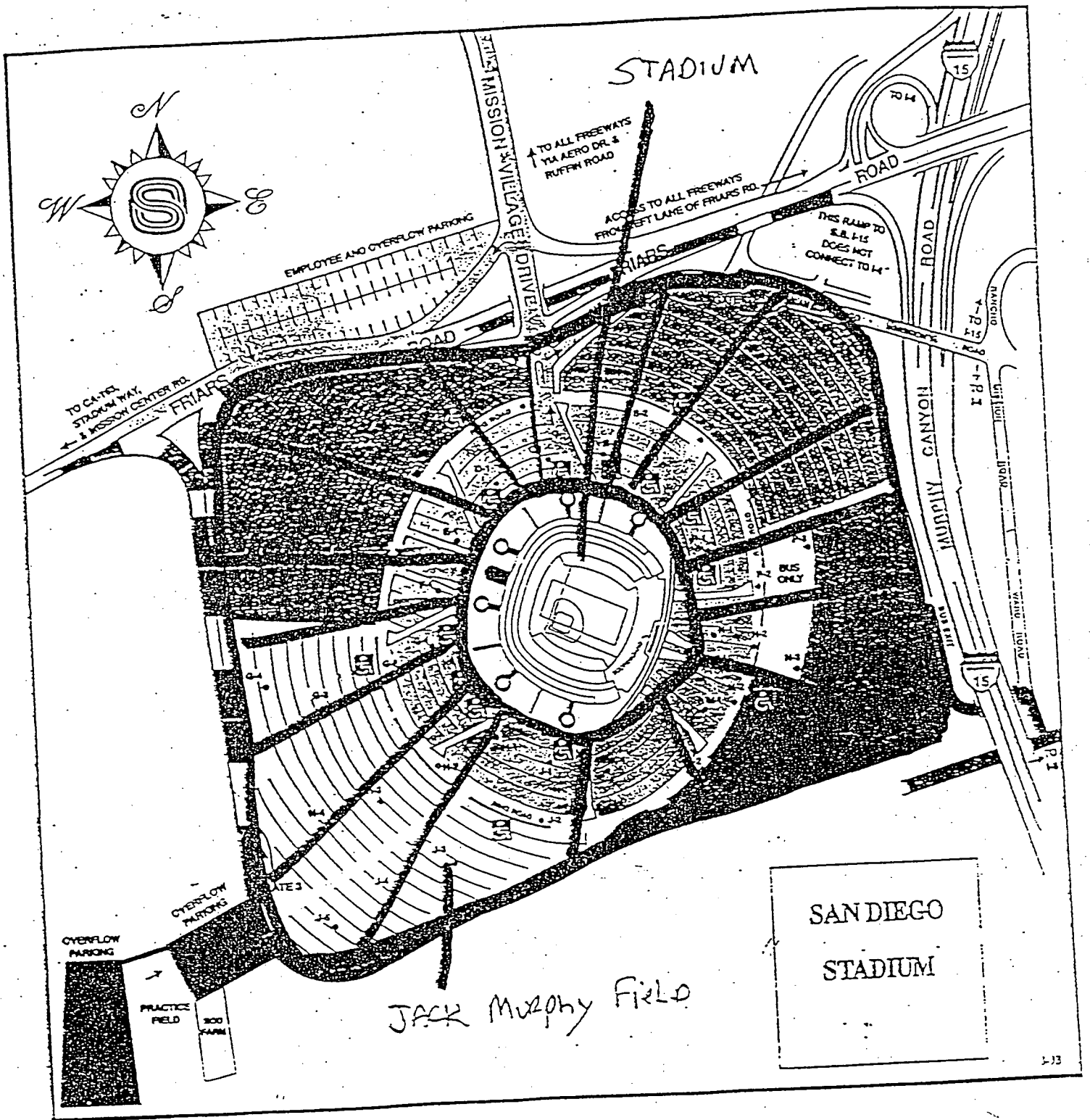


EXHIBIT "B"

DESCRIPTION OF RENOVATION WORK FOR STADIUM

That work as described in that certain Construction Contract between the City of San Diego and Nielson-Dillingham dated _____ and on file in the City Clerk's office as Document No. _____.

EXHIBIT "C"

LOCATION OF QUALCOMM SUITE

The Qualcomm Suite shall be at the Loge Level, consisting of Box 9A (twelve (12) seats) and Box 9B (twelve (12) seats) and seventeen (17) club seats immediately in front of Boxes 9A and 9B, as shown on the map attached hereto as Exhibit C-1.

Except for the costs of tickets, food and beverages, Box 9A shall be provided at no cost or charge to QUALCOMM for all events at the Stadium (which shall include a waiver by the Chargers of any license fee).

With respect to Box 9B, QUALCOMM shall pay an annual charge so long as the Chargers or successor NFL team play in the Stadium, which shall include any license fees. QUALCOMM shall also pay the costs of tickets, food and beverages. With respect to the club seats, QUALCOMM shall pay for the costs of tickets, food and beverages.

QUALCOMM shall pay the costs of construction to modify the suite to create one suite out of where there was previously two suites. The City shall pay all other costs to construct the box, including restroom(s), to make the suite ready for furnishings and use by QUALCOMM. The City shall credit QUALCOMM an amount equivalent to furnishings normally supplied to other suiteholders for QUALCOMM's use in furnishing its suite, which is approximately \$35.00 a square foot.

EXHIBIT "D"

SIGNAGE RIGHTS

1. The Chargers shall have the right to sell or provide signage and advertising at the Stadium to other third parties pursuant to the terms of the Chargers Occupancy Agreement existing as of the date hereof and the terms of an agreement to be entered into between the Chargers, the City and QUALCOMM pursuant to Section XIIB3.

2. The Padres shall have the right to sell or provide signage and advertising at the Stadium to other third parties pursuant to the terms of the Padres Occupancy Agreement existing as of the date hereof and the terms of an agreement to be entered into between the Padres, the City and QUALCOMM pursuant to Section XIIB2.

3. The NFL shall have the right to sell or provide signage at the Stadium to other third parties pursuant to the terms of any agreement as of the date hereof between the NFL and the City.