

(R-2003-921)

RESOLUTION NUMBER R- 297602

ADOPTED ON JAN 28 2003

WHEREAS, on May 30, 1995, the San Diego City Council [City Council] adopted Ordinance No. O-18182 authorizing the City Manager to execute on behalf of the City of San Diego [City] the 1995 Agreement for the Partial Use and Occupancy of [then] San Diego Jack Murphy Stadium [Original Agreement] between the City and the Chargers Football Company [Chargers]; and

WHEREAS, on April 7, 1997, the City Council adopted Ordinance No. O-18398 which authorized the City Manager to execute on behalf of the City the Supplement Number One to the 1995 Agreement [Supplement Number One]; and

WHEREAS, the Original Agreement and Supplement Number One [collectively "the Agreement"] provided in part for the expansion of (now) Qualcomm Stadium [Stadium], and the use and occupancy of the Stadium by the Chargers under certain terms and conditions; and

WHEREAS, the Agreement also provided for certain renegotiation rights on the part of the Chargers, to be exercised under defined circumstances and at defined times, initiated by the sending of a Renegotiation Notice (as defined in the Agreement); and

WHEREAS, pursuant to the terms of the Agreement, and subject to the satisfaction of the conditions in them, the Chargers have the right to send a Renegotiation Notice at any time between December 1, 2002, and January 29, 2003; and

WHEREAS, on June 18, 2002, by Resolution No. R-296701, the City Council established the Citizens Task Force on Chargers Issues [Task Force] to examine and report back to the City Council by February 15, 2003, on a number of issues related to the Chargers and the National Football League; and

WHEREAS, the Chargers have proposed that the commencement of the period during which the Chargers may send the Renegotiation Notice be postponed from December 1, 2002 to March 1, 2003; and

WHEREAS, such a postponement would permit the Task Force to complete its work and report back to the City Council prior to the time in which the Chargers could send the Renegotiation Notice; and

WHEREAS, on December 23, 2002, the Task Force, by a 14-1 vote, recommended that the City agree to the Chargers' proposal on the condition that no other modifications or changes be made to the Agreement; and

WHEREAS, on January 13, 2003, the City Council, by a 6-2 vote, approved execution of the Supplement Number Two but referred the matter of the related Saving Agreement to the Task Force for consideration and recommendation; and

WHEREAS, the Task Force considered the Saving Agreement at its meeting of January 16, 2003, and by a 13-1 vote (with one member absent) recommended that the City Council approve the Saving Agreement but also recommended that the City Council reconsider the issue of indemnification after further consultation with and advice from the City Attorney; and

WHEREAS, it is necessary and appropriate to provide for a Saving Agreement in the event the proposed action is found invalid, ineffective or unenforceable for any reason; and

WHEREAS, the City Attorney continues to recommend against any indemnification requirement in the Saving Agreement; and

WHEREAS, the proposed action is administrative in nature and not legislative; and

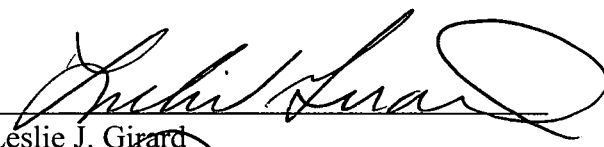
WHEREAS, the proposed action is in the best interests of the City and the Task Force, and does not increase the financial commitments or the scope of the obligations of the City;

NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the foregoing Recitals are true and correct, and the City Council so finds and determines as being in the best interests of the City.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed to execute for and on behalf of the City the Saving Agreement with the Chargers, attached hereto as Exhibit 1. When the document is fully executed it shall be kept on file in the Office of the City Clerk as Document No. RR- **297602**

APPROVED: CASEY GWINN, City Attorney

By   
Leslie J. Girard  
Assistant City Attorney

1/28/03  
Or.Dept:Rules  
R-2003-921  
Form=r-t.frm

January \_\_, 2003

Re: 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium, dated May 30, 1995 (as amended, the "Agreement"), between the City of San Diego (the "City") and the San Diego Chargers (the "Chargers")


Dear Gentlemen:

As of the date hereof, the Chargers and the City have entered into Supplement Number Two to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium (the "Supplement Number Two"). All capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Agreement. Pursuant to the Supplement Number Two, the City and the Chargers have agreed to change the sixty day period within which the Chargers can deliver a Renegotiation Notice to the City following a Trigger Event on December 1, 2002.

The City and the Chargers acknowledge that one or more parties may attempt to invalidate the Supplement Number Two by litigation, referendum or other means. By way of this letter, the City and the Chargers wish to protect against any prejudice from such litigation or other action, without modifying the rights of the parties in any respect except for the timing of the Renegotiation Notice, or otherwise affecting their respective positions with regard to the intent or meaning of the provisions of the Agreement. Thus, the parties have agreed as follows.

If for any reason whatsoever (including, without limitation, a determination by a court of competent jurisdiction either by final judgment not subject to appeal or pursuant to interim order that is not stayed), the Supplement Number Two is invalidated or is found to be void or becomes unenforceable (any such event being referred to herein as a "Condition Subsequent"), then, and only under such circumstance, as of the date of such Condition Subsequent: (i) this letter shall serve as the Chargers' Renegotiation Notice pursuant to Section 31(b)(i) of the Agreement and shall be deemed delivered to the City by the Chargers as of January 29, 2003, and (ii) the ninety (90) day negotiation period referenced in Section 31(b)(ii) of the Agreement shall commence as of the date of such Condition Subsequent and shall continue for a period equal to ninety (90) days thereafter less the number days, if any, that have actually elapsed (as of the date of the Condition Subsequent) in a negotiation period commenced pursuant to the Agreement as modified by the Supplement Number Two. Notwithstanding the foregoing, in the event that the Condition Subsequent occurs after April 30, 2003, and the Chargers have not theretofore delivered a Renegotiation Notice to the City in accordance with the Agreement as modified by Supplement Number Two, then there shall be no deemed delivery of the Renegotiation Notice pursuant to the preceding sentence. In all other respects, the rights and obligations of the Chargers and the City shall remain unchanged by this letter, including, without limitation, the respective positions of the parties regarding the enforceability or meaning of section 31 of the

EXHIBIT 1

 297602

Agreement and the ability of the City to contest the occurrence of the Triggering Event on any legal, factual or other ground which would have been available to it had notice been given by January 29, 2003.

The City and the Chargers further acknowledge and agree that until such time that a Condition Subsequent occurs, if ever, this letter shall be of no force or effect.

Very truly yours,

CHARGERS FOOTBALL COMPANY, LLC

By:

\_\_\_\_\_  
Dean A. Spanos  
President

ACKNOWLEDGED AND AGREED TO AS  
OF THE DATE FIRST WRITTEN ABOVE

THE CITY OF SAN DIEGO

By:

\_\_\_\_\_  
Michael Uberuaga  
City Manager


I HEREBY APPROVE the form and legality of the foregoing letter this \_\_ day of  
January, 2003.

CASEY GWINN, City Attorney

By:

\_\_\_\_\_  
Leslie J. Girard  
Assistant City Attorney

EXHIBIT 1

 297602