

DATE ISSUED: November 14, 2001

REPORT NO. 01-239 (Rev.)

ATTENTION: Honorable Mayor & City Council  
Docket of November 20, 2001

SUBJECT: Offering Document, Continuing Disclosure Agreement, Contract of Purchase and Certain Other Actions in Connection with the City's Ballpark and Redevelopment Project

### SUMMARY

#### Issues - Should the City Council:

1. Adopt a resolution authorizing and approving (a) a disclosure document (the "Offering Document") with respect to the issuance of Lease Revenue Bonds ("Ballpark Bonds") by the Public Facilities Financing Authority of the City of San Diego ("Authority") to finance a portion of the City's contribution to the Ballpark and Redevelopment Project ("Ballpark Project"); and (b) the sale of the Ballpark Bonds as tax-exempt obligations through a Contract of Purchase ("Purchase Contract") with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), involving an initial purchase of the Ballpark Bonds by Merrill Lynch, and, subject to certain restrictions, the subsequent placement of the Ballpark Bonds with a limited group of institutional investors, which may include an affiliate of Merrill Lynch?
2. Adopt a resolution authorizing and approving a Continuing Disclosure Agreement ("CDA") between the City and the trustee for the project with respect to the issuance of Ballpark Bonds by the Authority to finance a portion of the City's contribution to the Ballpark Project?
3. Adopt resolutions on behalf of the City and the Redevelopment Agency of the City ("Agency") authorizing and directing the execution of the Second Ballpark and Redevelopment Project Implementation Agreement ("Second Implementation Agreement")?
4. Adopt a resolution declaring the City's intent to reimburse itself for certain contributions to the Ballpark Project in the event refunding bonds are issued with

respect to the Ballpark Bonds?

5. Adopt a resolution authorizing the repayment of loans totaling \$40.2 million to the City, and the acceptance of loans totaling \$40.2 million from the Agency?
6. Adopt a resolution revising CIP # 39.228.0, Ballpark and Redevelopment Project; authorizing the appropriation of funds as detailed in the revised CIP, and set forth in Attachment A to this report, for the purpose of funding expenses associated with the City's contribution to the Ballpark Project; and on a temporary basis authorizing the City Manager and City Auditor and Comptroller to utilize available funds as necessary for these purposes, until such time as appropriated funds anticipated to come into the treasury for such purposes are available.
7. Adopt a resolution authorizing the City Manager, and the City Auditor and Comptroller to take certain actions, if necessary, to meet the City's obligations with respect to Ballpark Project costs if the City is unable to meet certain conditions relating to a surety bond policy for the Ballpark Bonds?
8. Adopt a resolution authorizing the City Manager, and the City Auditor and Comptroller to take certain actions on behalf of the City and the Agency, if necessary, to purchase and develop certain surface parking lots ("Surface Lots") related to the Ballpark Project if the San Diego Unified Port District ("Port") does not purchase the lots under the Purchase and Sale Agreement and Joint Escrow Instructions, dated October 1, 2001, between the City and the Port ("Purchase and Sale Agreement")?

Manager's Recommendations – Based on the information contained herein, in the presentation to the City Council, and in the Offering Document, if the City Council determines that it is in the best interests of the City, and that it is prudent and reasonable to move forward with the City's financing for the Ballpark Project, the City Manager recommends that the City Council:

1. Adopt a resolution authorizing and approving (a) an Offering Document with respect to the issuance of Ballpark Bonds by the Authority to finance a portion of the City's contribution to the Ballpark Project; and (b) the sale of the Ballpark Bonds as tax-exempt obligations through a Purchase Contract with Merrill Lynch involving an initial purchase of the Ballpark Bonds by Merrill Lynch, and, subject to certain restrictions, the subsequent placement of the Ballpark Bonds with a limited group of institutional investors including an affiliate of Merrill Lynch.
2. Adopt a resolution to authorizing and approving a CDA between the City and the trustee for the project with respect to the issuance of Ballpark Bonds by the Authority to finance a portion of the City's contribution to the Ballpark Project.
3. Adopt resolutions on behalf of the City and Agency authorizing and directing the execution of the Second Implementation Agreement.
4. Adopt a resolution declaring the City's intent to reimburse itself for certain contributions to the Ballpark Project in the event refunding bonds are issued with respect to the Ballpark Bonds.

5. Adopt a resolution authorizing the repayment of loans totaling \$40.2 million to the City, and the acceptance of loans totaling \$40.2 million from the Agency.
6. Adopt a resolution revising CIP # 39.228.0, Ballpark and Redevelopment Project; authorizing the appropriation of funds as detailed in the revised CIP, and set forth in Attachment A to this report, for the purpose of funding expenses associated with the City's contribution to the Ballpark Project; and on a temporary basis authorizing the City Manager and City Auditor and Comptroller to utilize available funds as necessary for these purposes, until such time as appropriated funds anticipated to come into the treasury for such purposes are available.
7. Adopt a resolution authorizing the City Manager, and the City Auditor and Comptroller to take certain actions on behalf of the City and the Agency, if necessary, to meet the City's obligations with respect to Ballpark Project costs if the City is unable to meet certain conditions relating to a surety bond policy for the Ballpark Bonds.
8. Adopt a resolution authorizing the City Manager, and the City Auditor and Comptroller to take certain actions on behalf of the City and the Agency, if necessary, to purchase and develop the Surface Lots if the Port does not purchase the lots under the Purchase and Sale Agreement.

Other Recommendations - None

Fiscal Impact –Approval and authorization of the Offering Document and the CDA will allow the City to move forward with the issuance of Ballpark Bonds to fund a portion of its contribution to the Ballpark Project. Under the proposed financing plan, the Tax-Exempt/Limited Placement Structure, the City's contribution to the Ballpark Project is expected to total approximately \$205.9 million; the annual financing payments on the Ballpark Bonds are estimated to total approximately \$ 13.9 million, and are payable from the City's general funds. Under current market conditions, the expected true interest cost is approximately 7.84%, due to pending litigation. The actual annual debt service and interest rate will be set at the time of sale.

To date, the City has authorized the expenditure of \$32.2 million for the project, of which \$3.8 million would be reimbursed with the proceeds of the Ballpark Bonds. Net of the \$3.8 million reimbursement, the cash allocated to the project to date totals \$28.4 million. It is proposed that the balance of the City's contribution be funded with additional cash (\$47.1 million) and the proceeds of the Ballpark Bonds (\$130.4 million). Acceptance of the Agency loan repayments would make \$40.2 million available to provide for the most substantial portion of the additional cash component of the City's contribution. Execution of the Second Implementation Agreement would increase the Agency's investment in the Ballpark Project by an additional \$15.4 million, for a total Agency investment in the Ballpark Project of \$76.4 million, plus \$8.5 million in certain contingent expenses.

As more fully described under Part VI, “Financing Structure/Plan,” below, the bond insurer for the project has agreed to provide a forward commitment for a surety bond covering one-half of the debt service reserve fund, and the Ballpark Bonds have been structured to reflect this commitment. However, the commitment is subject to certain conditions such that, if the City is unable to meet the conditions, the surety bond will not be provided and the City must allocate an amount equivalent to the proposed surety (approximately \$7.0 million) from its general funds to meet its obligations with respect to Ballpark Project costs. Also, if the Port does not, or cannot, complete the purchase of the Surface Lots, and the City and the Agency take on that obligation, the City (subject to its \$225.0 million overall maximum contribution to the Ballpark Project) and the Agency must allocate not more than \$21.0 million in the aggregate to cover the costs to purchase and improve the lots (if less than \$21.0 million is available in the aggregate, the improvements will be reduced in scope). Authorizations to undertake these actions, if such actions are necessary, are included in the issues presented for City Council consideration.

## BACKGROUND

On November 3, 1998, approximately 60 percent of the citizens voting in the general election approved Proposition C, which was an ordinance that authorized the City to enter into a Memorandum of Understanding Between the City, the Agency, the Centre City Development Corporation, and Padres L.P. Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project (the “MOU”). The MOU outlines the responsibilities of each party to the MOU, and provides for the acquisition of land and construction of a Ballpark, a public park to be located adjacent to the Ballpark (“Park at the Park,” and, together with the Ballpark, the “Ballpark Facility”), and related infrastructure, as well as construction of certain ancillary development.

The Ballpark Project, and the ancillary development related to it, is part of a larger urban revitalization project located in the East Village neighborhood of downtown San Diego. The Ballpark Facility will occupy approximately 18 acres, and will be bordered by J Street on the north, 7th Avenue on the west, 10th Avenue on the east, Park Boulevard on the south, and a frontage road along the railroad tracks between Park Boulevard and 7th Avenue. The Ballpark is expected to hold up to 46,000 people by means of approximately 42,000 fixed seats, and the balance by means of a combination of standing room and picnic and lawn seating areas in the Park at the Park. The Ballpark will be an open air, natural grass, state-of-the-art, multiple-use facility.

This report, as originally issued on November 2, 2001, contemplated the sale of *taxable* lease revenue bonds in a public offering (the “Taxable/Public Offering Structure”). However, the report indicated that “...the City’s underwriting team, led by Merrill Lynch & Co., may be able to sell the Ballpark Bonds in a private placement as tax-exempt bonds to investors (which may include one or more of the underwriters) who would be willing to take the risk of the outcome of litigation.” Subsequent to the issuance of the report, the City’s Financing Team continued discussions with its underwriting team to explore the feasibility of such an alternative structure. Consequently, a financing structure involving the placement of tax-exempt bonds with a limited group of institutional investors was developed (the “Tax-Exempt/Limited Placement Structure”). See Section VI. D.

## DISCUSSION

### I. Documents to be Approved by the City Council

The documents that the City Council would approve through the actions presented for consideration include the Offering Document, the CDA, and the Second Implementation Agreement. These documents are briefly described below.

A. The Offering Document is similar to a preliminary official statement (Offering Document). It is used by the issuer and underwriter to describe the proposed issue prior to the final determination of interest rates and offering prices. It is used to market the bonds and to fully disclose all facts that would be of interest to potential buyers of the Ballpark Bonds. The Offering Document contains extensive information about the financial and economic condition of the City and the overall bond financing, including the purpose of the bond issue, the security pledged to back the bonds, the call provisions, the nature of bond counsel's opinion, outstanding litigation, and other credit risks. In addition, the City Council will be asked to approve modifications to the previously approved contract of purchase for the Ballpark Bonds, reflecting changes in the proposed structure for the Bonds.

B. The Continuing Disclosure Agreement (CDA) is an agreement between the City and the trustee pursuant to which the City is obligated to make secondary market disclosure--including the provision of information regarding the City's fiscal health, and project and financing related information--on an annual basis to comply with federal securities regulations.

C. The Second Implementation Agreement modifies the rights and obligations of the parties to the MOU to provide for: 1) a \$15.4 million increase in the Agency's contribution to the Ballpark Project, which results in a total Agency contribution of \$76.4 million, plus \$8.5 million in other contingent expenses; 2) a release of the City's lien on Padres L.P.'s franchise in favor of a guaranty by Major League Baseball of a significant portion of Padres L.P.'s obligation to deposit funds into the Design and Construction Fund (necessary for the City to obtain bond insurance); 3) an unsecured guaranty by John Moores and Padres L.P. as co-obligors to provide payments to the City if certain projected hotel Transient Occupancy Tax ("TOT") is not generated; and 4) an extension of the MOU. The resolution authorizing the execution of the Second Implementation Agreement will also authorize the City Manager to negotiate and approve the assignment of certain Padres L.P. rights and obligations under the Joint Use and Management Agreement to facilitate the financing of Padres L.P.'s obligations, subject to minimum conditions for the protection of the City and the bond trustee. The City Manager will also be authorized to execute additional extensions of the MOU if necessary prior to the receipt of bond proceeds.

## II. Ballpark Project Budget

The current total estimated budget for the Ballpark Project is \$449.4 million. The proposed funding sources and uses for the project are depicted below:

<u>Sources</u>	
City	\$205.9 million <sup>1</sup>
Agency	76.4 million <sup>2</sup>
Padres L.P./Private Sources	146.1 million <sup>3</sup>
Port	<u>21.0 million</u>
Project Total	\$449.4 million

  

<u>Uses</u>	
Ballpark Facility	\$294.1 million <sup>4</sup>
Land Acquisition	100.0 million
Infrastructure Work	51.3 million
Other	<u>4.0 million</u> <sup>5</sup>
Project Total	\$449.4 million

(1) Under the MOU, the City is to provide a maximum of \$225.0 million to the construction of the Ballpark Project. The City has elected to have the Agency fund \$19.1 million of its contribution, thereby reducing the City's contribution to \$205.9 million .

(2) The Agency is currently authorized to contribute \$61.0 million toward the Ballpark Project, plus an additional \$10.0 million in contingent land acquisition costs. Execution of the Second Implementation Agreement will increase the Agency's contribution to \$76.4 million, plus the \$10.0 million of contingent land acquisition costs, plus an additional \$8.5 million in other contingent expenses.

(3) Major League Baseball has been requested to provide a guaranty of Padres L.P.'s obligation to deposit approximately \$47.8 million of this sum into the Design and Construction Fund, necessary for the City to obtain bond insurance. If provided, the guaranty calls for Major League Baseball to make the deposit if Padres L.P. has not made the deposit by April 1, 2002. In consideration of this guaranty, it is proposed that the City will release its lien on the Padres L.P. franchise until such time as the guaranty is not effective, at which time the City's lien will be reinstated to cover cost overruns.

(4) See the Offering Document, "**BALLPARK PROJECT – Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of the Ballpark Facility by virtue of delays in the resumption of the construction of the Ballpark Facility.

(5) Includes costs relating to soil remediation, removal of abandoned underground utilities, one-time sewer capacity charge, and costs related to an unknown environmental risk insurance policy.

To reflect the current estimated budget for the Ballpark Project, which is displayed above, and the current proposed City financing plan (see Part VI, "Financing Structure/Plan," below), it is necessary to revise CIP Project No. 39-228.0, Ballpark and Redevelopment Project. Attachment A provides the details on the revisions that would be made to CIP Project No. 39-228.0, if approved by the City Council.

### III. Development Responsibilities

Responsibilities for the development of the Ballpark Project are allocated among the various parties by certain agreements related to the project. Generally, the City is responsible for the planning and construction of infrastructure improvements, the Agency is responsible for the acquisition of land, and Padres L.P. is responsible for building the Ballpark Facility. In addition, Padres L.P. (or developers designated by Padres L.P.) have committed to, and are responsible for, the construction of the ancillary development.

#### A. Infrastructure Work

The infrastructure work includes demolition and removal of existing structures, design and construction of new roads, realignment of existing roads, streetscapes and landscapes, parking lots, and public utilities to support the Ballpark Project. The City has engaged Sverdrup Civil, Inc. (“Sverdrup”) as the design and construction manager, and Sverdrup will perform most of the work on behalf of the City. Additionally, the dry utility (telephone, cable television, fiber, gas and electric) work is being performed by the respective utility companies.

Currently, through four phases of funding approved since August 1999, expenditures for City infrastructure work, including certain advances made by Padres L.P. and the Agency, total approximately \$19.5 million (this amount includes \$3.4 million of funding that is currently being expended). Work performed to date includes clearing of the Ballpark Facility footprint, which is a critical activity for construction of the Ballpark Facility. Activities completed to date include: demolition activities; work related to wet utilities; preparation of 100% of the design documents for the new public rights-of-way and 90% of the design documents for the Surface Lots; preparation of the final Guaranteed Maximum Price (“GMP”) with respect to the Ballpark Infrastructure Design/Build Agreement with Sverdrup (“Infrastructure Agreement”); and preparation of bidding plans and project procedures.

The contract amount of the Infrastructure Agreement was set not-to-exceed \$27.6 million<sup>1</sup>, and consists of two components: a GMP not to exceed \$26.5 million and certain reimbursable costs not to exceed \$1.1 million. The GMP was executed in October 2001. It is expected that a certain portion of the infrastructure work to be performed under the Infrastructure Agreement, which is estimated to cost approximately \$5.9 million, may be removed from the scope of the Infrastructure Agreement. The City expects to separately contract for this portion of the infrastructure work, together with an additional \$3.3 million of infrastructure work currently outside the scope of the Infrastructure Agreement.

#### B. Land Acquisition

The Agency is responsible for the acquisition of land associated with the Ballpark Project. The land acquisition budget totals \$100.0 million, a portion of which is funded by the Agency (\$72.5 million) and the remainder by the other parties involved. This budget covers land assembly costs relating to property under the Ballpark Facility, certain new public rights-of-way, the P1 Parking

<sup>1</sup> The Infrastructure Agreement includes certain work outside of the scope of the Ballpark Project; the total not-to-exceed contract amount, which includes such work in addition to the Ballpark Project Infrastructure Work, is \$30.2 million. The portion of the not-to-exceed contract amount that is related to the Ballpark Project Infrastructure Work totals \$27.6 million.

Garage, the Surface Lots, and East Village Square, which is adjacent to the Park at the Park and is a component of the ancillary development. The land assembly budget includes the purchase price, the cost to relocate eligible tenants, goodwill payments for relocated businesses, indirect expenses associated with acquisition of the property, and remediation as required. A large

portion of the land required for the Ballpark Project, including all of the land associated with the Ballpark Facility, has been acquired by the Agency and JMIR-Downtown Acquisition, LLC. All of the property comprising the Ballpark Facility footprint is to be conveyed to the City prior to, or concurrent with, the closing on the City's financing for the project. Attachment B provides information, as of October 22, 2001, regarding the status of land acquisitions for the Ballpark Project.

In the event that land acquisition costs exceed the budgeted amount, the Implementation Agreement specifies that Padres L.P. will be solely responsible for land acquisition costs above \$100.0 million up to a maximum total acquisition cost of \$110.0 million. The Implementation Agreement further provides that, if necessary, Padres L.P. will pay 50%, and the Agency will pay 50% of additional land acquisition costs in excess of \$110.0 million up to a maximum total acquisition cost of \$130.0 million.

### C. Ballpark Facility

Padres L.P. is responsible for the design and the construction of the Ballpark Facility, which includes the Park at the Park, and any cost overruns on this facility. Under the Ballpark Design/Build Procurement Consultant Agreement, however, the City, Padres L.P., the Agency, CCDC, and Padres Construction, L.P. ("PCL"), an affiliate of Padres L.P., agreed that Padres L.P. would delegate its obligations with respect to the design and construction of the Ballpark Facility to PCL. The City, acting exclusively by and through PCL as its procurement consultant, entered into the Ballpark Facility Design/Build Contract (the "D/B Contract") with San Diego

Ballpark Builders ("SDBB"), a joint venture comprised of Clark Construction Group, Inc., Nielsen Dillingham Builders, and Douglas E. Barnhart. PCL also retained Hines Interests Limited Partnership ("Hines") to act as the construction manager for the development of the Ballpark Facility.

Construction of the Ballpark Facility commenced in May 2000, when the City issued a Project Site Notice to Proceed. Expenditures to date related to the Ballpark Facility total approximately \$59.7 million, of which the City has contributed approximately \$14.5 million. Ballpark construction was suspended on October 2, 2000. Approximately 20.3% of the currently estimated Ballpark Facility budget has been spent as of October 22, 2001 on various portions of the Ballpark Facility, including all demolition activities, all foundation work, some portion of the underground utility work, partial construction of the concrete structure, and work relating to the creation of the main seating bowl of the Ballpark. It is anticipated that the City will issue a second Project Site Notice to Proceed upon the issuance of the Ballpark Bonds.

The Ballpark Facility Design/Build Contract requires SDBB to construct the Ballpark Facility based on working drawings and specifications of the architect selected by PCL. As of September 28, 2001, SDBB has committed to a Guaranteed Maximum Cost ("GMC") with respect to components of the Ballpark Facility comprising approximately 64% of the total estimated cost under the Ballpark Facility Design/Build Contract.



The currently estimated Ballpark Facility budget was based upon the assumption that recommencement of work on the Ballpark would occur on or about October 1, 2001. Since it is likely that work will not recommence until shortly after proceeds from the sale of the 2001 Bonds are received, as more fully discussed in the Offering Document, it is expected that the pricing for components for which the GMC has been achieved will have to be renegotiated to account for the delay, and GMC commitments for remaining components still need to be negotiated. The City has been advised that costs associated with these delays could result in cost increases for the Ballpark Facility. Previously, the delay associated with the project caused costs to increase at the rate of approximately \$1.1 million or more a month. It is currently expected by Padres L.P. that the completion of negotiations for a portion of such adjustments and commitments will occur in November, 2001. . While Padres L.P., which is responsible for Ballpark Facility costs in excess of the Current Ballpark Facility Estimate, has advised the City that they will seek to mitigate potential increased costs associated with the delays by the use of discretionary deductions from the construction contract amount, there can be no assurance that the final costs of the Ballpark Facility will not exceed the Current Ballpark Facility Estimate.

For additional information regarding the guaranteed maximum costs, see the Offering Document, “RISK FACTOR-Ballpark Project Funding and Completion Risks-Guaranteed Maximum Cost Has Been Only Established for a Portion of the Budgeted Amount under the Ballpark Facility Design/Build Construction Contract.”

Ballpark Project expenditures through October 22, 2001 are as follows:

<u>Sources:</u>	
City	\$32.2 million <sup>1</sup>
Agency	59.6 million
Padres L.P./Private Sources	<u>68.9 million</u>
Project Total	\$160.7 million
 <u>Uses:</u>	
Ballpark Facility	\$59.7 million
Land Acquisition	80.8 million
Infrastructure Work	19.5 million <sup>1</sup>
Other	<u>0.7 million <sup>2</sup></u>
Project Total	\$160.7 million

(1) This amount includes \$3.4 million that had been previously authorized for use by the City Council for certain infrastructure work and is currently being expended on such work.

(2) Includes costs relating to soil remediation, removal of abandoned underground utilities, one-time sewer capacity charge, and costs related to an insurance policy covering unknown environmental risks.

#### D. Port – Surface Lots

Subject to approval of the Executive Officer of the State Lands Commission, it is expected that the Port will purchase the Surface Lots for \$21.0 million; the Surface Lots are located two blocks east of the Ballpark and within the vicinity of the San Diego Convention Center. The Port believes that the development of additional public parking is also needed to serve the San Diego Convention Center. However, the purchase could be affected by the outcome of certain pending litigation against the Port, as more fully described below. If the Port does not purchase the

Surface Lots, the City (subject to the City's \$225 million maximum contribution to the project) and the Agency will jointly purchase and develop the Surface Lots, and may scale back on expected improvements. If the Port cannot purchase the Surface Lots, the actions presented would authorize the City Manager and the City Auditor and Comptroller, acting on behalf of the City and the Agency, to take the necessary actions to acquire and improve the Surface Lots. Such actions include authorization for the City Auditor and Comptroller, subject to certification that funds are on deposit and available, to appropriate necessary funds into CIP No. 39-228.0 (subject to the City's maximum contribution of \$225 million to the project) for the acquisition and improvement of the Surface Lots.

#### E. Ancillary Development

Padres L.P., or developers designated by Padres L.P., is responsible for the development of the ancillary development ("Phase 1 Ancillary Development") relating to the Ballpark Project. Padres L.P. has retained JMI Realty, Inc. ("JMIR") as the master developer; JMIR will be responsible for the design and development of all aspects of the Phase 1 Ancillary Development. Pursuant to the MOU, the ancillary development will include the construction of hotels, office space, retail space, residential development, and associated parking. Under the MOU, Padres L.P. has the right to fine-tune the mix of ancillary development so long as the TOT generated by, and the assessed values of, the ancillary development are, at minimum, equivalent to the amounts stated in an attachment to the Sufficient Assurances Resolution adopted on March 31, 1999 (Resolution No. R -291450). The minimum required assessed value of the Ancillary Development to be generated in April 2004 (the current expected opening date for the Ballpark) is \$311 million. It is currently expected that the Phase 1 Ancillary Development will include, at least, the following:

- 1) Four Star Hotel<sup>1</sup> – This four-star, high rise hotel of 512 rooms will be located next to the Ballpark and directly across the street from the San Diego Convention Center. The Agency has acquired full interest in the hotel site and has settled all valuation claims with respect to the previous owner. It is anticipated that the site will be conveyed to the developer after the issuance of the Ballpark Bonds. Construction on the hotel commenced in September 2000 and was suspended in April 2001. It is anticipated that the hotel will be open by April 1, 2004. JMIR, however, has advised the City that (a) its loan commitment for this hotel expires on November 30, 2001, and JMIR currently does not have in place a significant equity component, over and above the loan commitment itself (the "equity commitment"); (b) that it will not close on the loan commitment if it does not obtain the equity commitment; and (c) it is continuing to seek alternative sources to satisfy this equity commitment, although there can be no assurance that it will be obtained by November 30, 2001. If the loan commitment expires, there is no assurance that a new loan commitment, or any equity commitment, will be obtained.

- 2) Boutique Hotel<sup>1</sup> – This hotel will be a themed “Boutique” hotel, and will be located across from the northwest corner of the Ballpark. It will contain approximately 203 all suite rooms. The Agency acquired this hotel site through condemnation and all valuation and remediation issues with respect to the previous owner have been resolved. The Agency is currently performing site remediation activities and it is expected that it will convey the site to the developer by June 2002. Construction is expected to be completed by April 2004. JMIR has not obtained financing for this hotel.
- 3) Boutique/Value-Oriented Hotel<sup>1</sup> – The third hotel will be a smaller “boutique” hotel or a “value-oriented” hotel. The hotel will be located on the east side of the Ballpark, and adjacent to the new Park Boulevard. The site has been acquired, but will not be developed until completion of the new Park Boulevard and other new roads located on the east side of the Ballpark. The hotel will have approximately 135 rooms and is expected to be completed sometime in 2005-2006. JMIR has not obtained financing for this hotel.
- 4) East Village Square – East Village Square (“EVS”) will surround the Park at the Park and will provide panoramic views of the Ballpark. Currently, the plans for EVS include two levels of retail/restaurant space totaling approximately 100,000 square feet, office or residential space totaling 200,000 square feet, and 336 subterranean parking spaces. The Agency has acquired, or has orders of immediate possession for, all parcels comprising the EVS site, and is currently performing remediation activities with respect to some of the parcels. It is anticipated that the Agency will convey the parcels to the developer in December 2002. EVS is anticipated to be completed by April 2004.
- 5) Parking – The ancillary development parking is anticipated to include the construction of the P1 Parking Garage, which is to include approximately 1,109 spaces (109 of which will serve an adjacent Agency residential project). This facility is currently expected to be completed by March 2004. In addition, some on-site parking is planned in connection with the Phase 1 Ancillary Development hotels, and with regard to EVS.

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<sup>1</sup> Under a Joint Use and Management Agreement (“JUMA”) between the City and Padres L.P., Padres L.P. agreed that if the construction of any of these hotels is not completed by a date six months after which Padres L.P. has the right to occupy certain portions of the Ballpark Facility, the City is entitled to certain set-offs to the City’s obligation to make operation and maintenance payments. In particular, the failure to timely complete the construction of a hotel would entitle the City to a set-off against the City’s annual obligation to pay up to \$3.5 million of certain operation and maintenance expenses (“O&M Expense”) related to the Ballpark Facility (subject to adjustment as prescribed in the JUMA). Any such set-offs would be subject to an overall annual limit that is equivalent to the O&M Expense payable for a particular year by the City. The financial projections which accompany this report assume that the Four Star Hotel and the Boutique Hotel are to open by April of 2004, although they may open earlier or later. The Boutique/Value-Oriented Hotel is not planned to be open until later, due to market conditions, but the City will utilize the set-off described above. The Second Implementation Agreement accepts from John Moores (principal owner of Padres L.P.) and Padres L.P. as co-obligors (“Obligors”) a guaranty (“TOT Guaranty”) that calls for the annual payment to the City by the Obligors of a sum equal to the amount by which the projected total annual TOT of all the Phase 1 hotels, minus TOT actually produced by the Phase I hotels, exceeds the annual available O&M Expense set-off. The TOT Guaranty will be effective if the Four Star Hotel is not open by April 1, 2004 and shall terminate on the earlier of: a) the opening of the Four Star Hotel; or b) 54 months after the expiration of the Disposition and Development Agreement for the Four Star Hotel (“Four Star DDA”), provided that the TOT Guaranty will become effective only if the Four Star DDA is extended to and including December 31, 2003.

- 6) Residential – Residential development will include Island Village, a two-phase project, totaling over 900 apartments, lofts and townhomes, and over 25,000 square feet of retail space. The project will span four city blocks, surrounded by Market Street, Island Street, 9<sup>th</sup> Avenue and 13<sup>th</sup> Avenue. The project will be completed in two phases, with final completion of the first phase expected in April of 2004.

#### IV. Second Implementation Agreement

The Second Implementation Agreement increases the Agency's contribution to the Ballpark Project from \$61 million to \$76.4 million, plus certain contingent land acquisition costs previously approved in the potential amount of \$10 million, and also authorizes certain other contingent costs in the amount of \$8.5 million.

In addition, the Second Implementation Agreement provides for the release of the City's first priority lien and security interest in the Padres' franchise in favor of a guaranty by Major League Baseball ("MLB Guaranty") of the Padres' obligation to deposit a significant portion (\$47.8 million) of its contribution to the Ballpark Project into the Design and Construction Fund, required in order for the City to obtain municipal bond insurance. The MLB Guaranty is potentially more favorable to the City than the lien, as it allows the City to obtain municipal bond insurance and provides a more readily available source of funding. Padres L.P. has already contributed more than \$50 million toward the Ballpark Project, and under the terms of the MOU the City's lien would be released, although Padres L.P. had agreed to extend the coverage of the lien to protect the City regarding cost overruns for the Ballpark Facility. To maintain this protection regarding cost overruns, the lien can be reinstated immediately after the MLB Guaranty is released. Finally, the Second Implementation Agreement will extend the MOU from November 30, 2001 to a specific date in December sufficient to allow the City to obtain its bond proceeds.

The resolution authorizing the execution of the Second Implementation Agreement authorizes the City Manager to negotiate and approve the assignment of certain rights and obligations of Padres L.P. under the Joint Use and Management Agreement to facilitate the financing of Padres L.P.'s obligations under the MOU. The City and Padres L.P. previously entered into the Joint Use and Management Agreement to set forth in more detail the rights and obligations of each other in the use and management of the Ballpark. The Joint Use and Management Agreement permits Padres L.P. to create a wholly owned subsidiary to manage the Ballpark, and permits other assignments upon written agreement. Padres L.P. will finance certain of its obligations under the MOU by issuing "senior secured notes." Padres L.P. desires to secure these notes with the revenue derived by Padres L.P. from the Ballpark (revenues in which the City has no claim or interest such as concessions and advertising). Padres L.P. anticipates securing its financing in late December of 2001. To accommodate the financing needs of Padres L.P., the City Manager will be authorized to negotiate and approve the appropriate assignment subject to certain minimum conditions including the following: 1) the assignment be to a wholly owned subsidiary of Padres L.P. and the subsidiary remained wholly owned by Padres L.P.; 2) Padres L.P. providing a parent company guaranty (similar to the guaranty for the Design Build Procurement Consultant Agreement); and 3) such other conditions as appropriate to preserve the rights of the City under the MOU, and the rights of the trustee under the bond indenture. The City Manager will also be authorized to execute further extensions of the MOU if necessary prior to the receipt of bond proceeds.

## V. Litigation

### A. Summary of Pending Cases

There has been substantial litigation with respect to the Ballpark Project. Exclusive of condemnation cases filed by the Agency solely concerning the value of land, a total of 14 separate lawsuits have been filed, each in some way seeking to halt the entire Ballpark Project or otherwise impact elements of it. In all but four of the cases, the City or Agency prevailed summarily on the merits, and the decision of the trial court was either not appealed, or was ultimately affirmed on appeal.

There are four cases pending. Two of these cases are virtually identical. The first case is a challenge by a private citizen, Harvey Furgatch, to the validity of the prior agreement between the City and the Port for the purchase of the Surface Lots. The second case is a challenge to the validity of the current agreement pertaining to the Surface Lots. Both cases are pending in the trial court.

The remaining two cases are also related, but not identical. The first case (Skane v. City) is an additional case filed by the lawyer who has brought a substantial number of the suits challenging the Ballpark Project, contending that all actions taken by a prior City Council regarding the Ballpark Project were invalid due to an alleged conflict of interest by a former Councilmember (the "Member"). The trial court ruled summarily in favor of the City, finding as a matter of law, that there was no prohibited conflict of interest on the part of the Member or any other Councilmember. That case is currently on appeal to the Fourth District Court of Appeal. The last pending case (City v. All Persons Interested) is a "validation action" filed by the City following a vote by the newly constituted City Council (with District 6 still vacant) ratifying the previous City Council actions. The same lawyer, again acting on behalf of a client, appeared in the case contending that the ratifying vote was ineffective. Two other voters also appeared in the case. The trial court ruled summarily in favor of the City; however, the matter has been appealed to the Fourth District Court of Appeal.

In a letter dated September 20, 2001, this same lawyer has threatened taking future actions pertaining to the Ballpark Project. It is uncertain what the form of such action would be, if any, or what effects it may have on the completion of the Ballpark Project.

### B. Impact of Litigation on Marketing of Ballpark Bonds

Due to the outstanding litigation concerning the Ballpark Project, there is some uncertainty over the validity of the Ballpark Bonds, as well as the tax status of the Ballpark Bonds. As a result of the pendency of Skane v. City and City v. All Persons Interested, if the City Council chooses to proceed at this time, the City's co-bond counsel, Orrick, Herrington & Sutcliffe LLP and Webster & Anderson, must qualify its opinion regarding the validity of the Ballpark Bonds as being subject to the outcome of these cases. When there is no pending litigation relating to a bond issue, or other challenge to the validity of the municipal bond, the bond counsel's opinion is "unqualified." An unqualified opinion means that the opinion that the bonds are valid, and that the interest paid is exempt from taxes, is not qualified by any circumstance. When litigation is pending that questions the validity of the bonds and their tax-exempt status, the opinion is "qualified."

The effects of the uncertainty regarding the validity for the Ballpark Bonds can be mitigated to a

large extent by the use of municipal bond insurance, which guarantees the payment of debt service on the bonds in the event the City cannot pay for any reason. In other words, the insurer assumes the risk, which would otherwise be borne by investors, of the bonds being declared invalid. However, if the insurer is required to make debt service payments under the insurance policy, it will seek recovery of such payments from the City. Ambac Assurance Corporation (“AMBAC”), one of the major bond insurers in the municipal finance arena, has agreed to provide bond insurance on the Ballpark Bonds (subject to certain conditions), and has submitted a bid of 1.35 % on total debt service over the life of the bond issue, which equates to a premium of approximately \$5.6 million on a \$166.3 million issuance. This is a non-refundable premium, which is paid at the time of issuance, and reflects the heightened risk the insurer is taking; however, AMBAC has agreed to roll the policy over into a subsequent bond issue without additional charge if, and when, the City refunds the Ballpark Bonds.

To compare this bid for insurance to other City financings which had unqualified opinions, the City paid .26% on total debt service, or \$1.04 million, for bond insurance on the \$205.0 million Convention Center expansion lease revenue bonds, and .36% on total debt service, or \$630,000, for bond insurance on the \$68.4 million issuance of Stadium expansion lease revenue bonds. The cost of bond insurance is a function of market conditions, and, based on current market conditions, the premiums on these issuances would likely be higher. A more recent benchmark may be a City/County of San Francisco lease revenue bond issuance to acquire an office building; on this particular transaction, AMBAC submitted a bid of .65% on total debt service.

It is understood that there will be some pricing impacts due to bondholder security issues raised by the outstanding litigation; however, because of the availability of municipal bond insurance, these impacts are small relative to the impact of tax status uncertainty. This uncertainty arises from the challenge to the validity of the Ballpark Bonds. If there is no municipal obligation (i.e., if the Ballpark Bonds and the Facility Lease are successfully challenged), then there is no available tax exemption since the predicate for the tax exemption is the existence of a municipal obligation. The tax-exempt municipal market operates on the assumption that interest on municipal bonds is exempt from federal income taxation (and often State income taxation). Because the interest income on municipal bonds is tax-exempt, investors receive a lower yield relative to similar securities that pay interest which is subject to federal income taxation. In evaluating the tax-exempt status of municipal bonds, investors rely on bond counsel’s opinion that the bonds are validly issued and the interest received by investors from the municipal bonds is exempt from taxation. This provides investors comfort that an independent law firm has reviewed the procedures involved in the transaction and are confident that the issue meets Internal Revenue Code standards for tax-exempt interest.

Nearly every municipal bond in the market is issued with an unqualified bond opinion. An unqualified bond opinion is bond counsel’s opinion that, based on the known facts and circumstances, the bonds are valid and the interest paid on the bonds is exempt from state and federal income tax. Although it is not a guarantee of validity or tax-exemption, an unqualified opinion provides sufficient comfort to investors so that they are willing to purchase municipal bonds at reduced interest rates as compared to taxable securities.

The Offering Document contemplates that the Ballpark Bonds would be initially sold entirely to Merrill Lynch and, subject to certain restrictions, Merrill Lynch may then place the Ballpark Bonds with a limited group of institutional investors, which may include an affiliate of Merrill Lynch, all of which would be willing to take the risk of the outcome of the litigation. However, even those investors willing to accept the risk that the Ballpark Bonds might be deemed taxable will probably insist on a premium above tax-exempt interest rates due to the additional risk of taxability.

In either case, if litigation is decided favorably to the City, and the City is otherwise then in compliance with tax rules related to the Ballpark Bonds, then co-bond counsel could issue, at that point, an opinion that would be unqualified as to the tax-exempt nature of interest and the market would be so advised. Further, it is likely that the Ballpark Bonds could be redeemed after resolution of the litigation and refunded by bonds bearing a lower interest rates, assuming that the tax rules regarding sport facilities have not changed in the interim to preclude tax-exempt financing, and depending on market conditions.

As a result of these circumstances, the interest rates on the Ballpark Bonds will be higher than the City's traditional tax-exempt interest rates. Historically, the City has enjoyed these traditional tax-exempt rates when it has a standard bond counsel opinion, which is not qualified. While this structure mitigates the risk of a claim against the City by bondholders because of potential adverse tax treatment on the bonds, it increases the City's borrowing costs.

Another factor that would increase the borrowing costs is that the Ballpark Bonds may include an optional refunding feature that would allow the Ballpark Bonds to be called at par at a date substantially earlier than the maturity date thereof. An early call, such as in three years, is unusual. Tax-exempt lease revenue bonds usually have a ten-year call protection. Accordingly, an early call feature such as three years would likely impact the interest rate on the Ballpark Bonds.

Depending on market conditions at the time of any such call and refunding, the City's annual financing payments could significantly decrease in the future. For example, based on current market conditions, a tax-exempt Ballpark Bonds financing (with an unqualified opinion) would result in an estimated annual financing payment of \$10.7 million, as compared to an estimated annual financing payment of \$13.9 million for Ballpark Bonds issued at tax-exempt rates (with a qualified opinion).

## VI. Financing Structure/Plan

### A. Financing Vehicle

The intended financing vehicle for the City's contribution to the Ballpark Project is lease revenue bonds with an abatement structure. Under an abatement structure, the City's duty to make lease payments abates if the facility cannot be used; this applies even if the reason the facility cannot be used is beyond the control of the City. An ordinance (the "Financing Ordinance") approving the financing documents related to this structure was adopted by the City Council on January 31, 2000. Also, on March 6, 2001, the City Council adopted an ordinance and a resolution that ratified the actions the City Council had taken earlier when it adopted the Financing Ordinance and had taken other actions (these actions are the subject of one of the litigation matters City v All Persons Interested).

Lease revenue bonds are based on a lease arrangement between two entities: a governmental entity and, typically, a non-profit agency, financing authority, or joint powers authority which issues the bonds. In the case of the Ballpark Project, it is intended that the Authority be utilized for the purpose of issuing the bonds to finance a portion of the City's contribution to the Ballpark Project.

The Authority was established through a Joint Exercise of Powers Agreement between the City and the Agency. The Authority is administered by a Commission that is comprised of three members of the public, the City Manager, and the City Auditor and Comptroller. The Ballpark Bonds would be issued utilizing a "lease, lease-back" structure. Under the proposed financing structure, the City would ground lease, to the Authority, the Ballpark Facility site. The Authority would then lease, to the City, the Ballpark Facility site and the Ballpark, exclusive of the components Padres L.P. will own (which is equivalent to up to 30% of the original cost of the Ballpark Facility as set forth in the MOU) (the "Leased Assets"). The lease payments to be paid by the City will be assigned by the Authority, as lessor, to the trustee for the Ballpark Bonds, which will be obligated to make debt service payments to bond owners. The financing documents previously approved by the City Council, which describe more fully the terms under which this financing and leasing would be conducted, include the Site Lease, the Ballpark Facility Lease, the Assignment Agreement, and the Indenture.

Provisions of the lease would require the City to budget and make lease payments in each year in which the City has use of the Leased Assets. Although the City will not have use of a significant portion of the Leased Assets while the Ballpark Facility is being constructed, it will have use of the Ballpark Facility site. For the portion of the Leased Assets that may be occupied (i.e., the Ballpark Facility site), the City will begin making interest payments approximately six months after the issuance of the Ballpark Bonds. The interest payable with respect to the portions of the Leased Assets that the City will not have use of during the construction period must be funded with the proceeds of the bond issuance (i.e., with capitalized interest).

#### B. Bond Issuance Size

Based upon current estimates, the bond issuance size is approximately \$166.3 million. After funding a required debt service reserve fund ("DSRF"), providing for capitalized interest to fund a portion of the interest payments during construction, funding the costs to issue the bonds, including the cost of bond insurance, and using interest earned on the construction fund during construction of the Ballpark Project, approximately \$130.4 million would be available to contribute to the Ballpark Project. This amount (\$130.4 million), combined with a cash contribution of \$75.5 million, would constitute a \$205.9 million contribution to the Ballpark Project by the City. The cash contribution is comprised of \$28.4 million that the City has contributed to the Ballpark Project to date and an additional \$47.1 million cash contribution. The actions presented for your consideration include one that would authorize the revisions to the Ballpark and Redevelopment Project CIP, and the appropriation of certain funds, including those that would provide for a portion of the cash component of the City's proposed financing plan. The actions presented also include one that would authorize the City to accept certain loan repayments from the Agency totaling \$40.2 million.



### C. Surety Bond

The Ballpark Bonds structure also reflects a forward commitment, provided by AMBAC, for a surety bond covering one-half of the DSRF requirement (the DSRF requirement is equivalent to the maximum annual debt service on the bonds). (The financing documents previously approved by the City Council authorize the use of a surety for some or all of the DSRF.) A surety bond policy is a commitment issued by a municipal bond insurance company that is deposited in the DSRF in lieu of cash, and, like a DSRF, offers security for a bond issue. The surety provides that, in the event a required financing payment is not made on a timely basis, monies would be advanced by the bond insurer to make the payment. The monies advanced are then repaid by the issuer to the bond insurer. Subject to certain conditions, AMBAC's surety bond would be issued just prior to the City's final draw on construction fund monies. The conditions include a requirement that the City certify 15 days prior to the anticipated final draw date, but no earlier than 90 days prior to the anticipated date of occupancy of the Ballpark Facility, that construction of the facilities is on schedule and the facilities will be occupied no later than 30 months after the closing date on the Ballpark Bonds. With the surety, the amount of the bond proceeds initially deposited in the construction fund would be reduced by an amount equivalent to one-half of the amount of the DSRF, or approximately \$7.0 million. This would occur due to the City's anticipation that it would be able to draw out one-half of the DSRF upon the appropriate certification to AMBAC. However, the certification to AMBAC can be completed no earlier than 90-days prior to substantial completion of the Ballpark Facility, and the certification must be to the effect that the Ballpark Facility is on schedule and will be occupied no later than 30 months after the closing date of the Ballpark Bonds. Accordingly, the City and Padres L.P. have agreed the last \$7.0 million of the City's commitment to the Design and Construction Fund may be deposited no earlier than 90 days prior to use and occupancy (which is currently expected to occur in December 2003 if the Ballpark Bonds are issued in December 2001). If for any reason the City is unable to meet AMBAC'S conditions with respect to the bond surety, it must allocate an amount equivalent to the surety from its general funds to meet its final obligation with respect to Ballpark Project costs. In other words, having not funded the design and construction fund by approximately \$7.0 million from the DSRF, the City would need to identify and allocate that amount out of the its general funds. If such an event were to occur, the actions presented would authorize the City Manager and the City Auditor and Comptroller to take the necessary actions to ensure the City meets its final draw obligation with respect to Ballpark Project costs. Such actions include authorization for the City Auditor and Comptroller, subject to certification that such funds are on deposit and available, to appropriate necessary funds to meet this obligation. If the surety is given, the City will have to enter into a Reimbursement Agreement with the bond insurer agreeing, subject to future appropriation, to reimburse the insurer for any draw on the surety, plus interest.

### D. Plan of Finance

The Offering Document contemplates a financing structure involving the placement of tax-exempt bonds with a limited group of institutional investors (the “Tax-Exempt/Limited Placement Structure”). Specifically, the Tax-Exempt/Limited Placement Structure assumes that the Ballpark Bonds would be initially sold entirely to Merrill Lynch, and, subject to certain restrictions, Merrill Lynch could subsequently place the Ballpark Bonds with a limited group of investors having a net worth of \$25 million or more. The Ballpark Bonds would still be issued with a qualified legal opinion. Merrill Lynch would assume the risk of claims against the City and related persons occasioned by loss in value or taxability of interest on the Ballpark Bonds should the Ballpark Bonds be declared invalid as a result of the pending litigation. This indemnity runs to claims, which may be made by owners of the Ballpark Bonds as well as the Internal Revenue Service.

In addition, Merrill Lynch would agree that if the Ballpark Bonds are held invalid (due to pending litigation), by a court of last resort, and if requested by the City 180 days thereafter to seek to pay off the Ballpark Bonds (even though the bonds were declared invalid and the Ambac insurance policy would be guaranteeing the coupon rate on the bonds). Merrill Lynch would call the Bonds away from investors then holding the bonds, at par plus accrued interest, using funds provided by the City and redeliver the same to the City. Merrill Lynch would agree to do this so that the Ballpark Bonds could be purchased by the City from Merrill Lynch. Should the City not ask Merrill Lynch to do so within 180 days after the Ballpark Bonds are declared invalid, then there would be no further call rights, although the City could negotiate individually with bondholders to seek to call the Ballpark Bonds.

#### E. Annual Lease Payments

Under current market conditions, the expected true interest cost (a measure of the interest cost of an issue that accounts for the time value of money and which is adjusted to include costs of issuance relating to the bonds, such as the cost for bond insurance) (“interest rate”) on Ballpark Bonds sold with a qualified bond opinion, and utilizing the Tax-Exempt/Limited Placement Structure, is approximately 7.84%; this rate assumes a three year early call provision that would allow the Ballpark Bonds to be refunded if litigation is resolved in favor of the City, and if an unqualified legal opinion is obtained. The estimated annual lease payments for the Ballpark Bonds would be approximately \$13.9 million. The actual interest rate and annual debt service will be determined at the time of the sale. By comparison, under the Taxable/Public Offering Structure, the true interest cost and the annual lease payments were estimated to be 8.83%, and \$15.5 million respectively. By further comparison, if the Ballpark Bonds could be issued with an unqualified legal opinion the annual lease payments and the true interest rate cost were estimated to be \$10.7 million and 5.68%, respectively. (See Appendix C for additional information regarding this financing comparison). Interest rates at the time of issuance will determine the amount of the annual payments.

#### F. Resolution of Intent to Reimburse

In the event that the Ballpark Bonds are issued and subsequently refunded (subject to being able to comply with certain complex tax rules, which it may not be able to satisfy), the City may be able to reimburse itself from the proceeds of the refunding bonds for certain portions of the cash investment component of the City’s contribution to the project. To preserve the City’s ability to do this; however, it must adopt a resolution declaring its intent to reimburse itself for certain contributions to the Ballpark Project. Adoption of the resolution would not compel the City to reimburse itself from the refunding bond proceeds, but would give the City the ability to do so,

when, and if, it issues refunding bonds, and if it otherwise qualifies to do so.

#### G. Financing Pro Forma

The City's annual lease payments, and annual operation and maintenance payments of up to \$3.5 million (subject to annual upward adjustments in accordance with the San Diego Consumer Price Index for all urban customers [the "CPI"] and set-offs for delays in the completion of the Ancillary Development Hotels) would be funded, in part, with certain existing revenue in the City's general funds, and certain new revenue in the City's general funds that is anticipated to be generated as a result of the Ancillary Development relating to the Ballpark Project. The intended funding sources are as follows (also see Appendix D, which contains a Financing Pro Forma):

- (a.) revenues in an amount equivalent to receipts from the tax on existing hotel rooms;
- (b.) revenues in an amount equivalent to receipts from the tax on new, additional hotel rooms from Ballpark Project related development (a minimum of 850 hotel rooms)\*;
- (c.) Revenues in an amount equivalent to receipts from the tax on hotel rooms generated from hotels in the immediate vicinity of the District (529 rooms);
- (d.) \$500,000 in annual rent (subject to an upward adjustment every five years in accordance with the CPI) from the Padres; and
- (e.) interest income from the debt service reserve fund and fund balances.

Of course, the amount of TOT generated could be adversely affected if the City tourist and convention center business is adversely affected by the downturn in the State and national economies, as well as by the events of September 11, 2001, and any response thereto.

#### VII. Schedule

If the City Council approves the actions related to the Offering Document and the CDA, it is anticipated that the Authority would sell the Ballpark Bonds in early December 2001. The bond closing (receipt of bond proceeds) would occur in mid-December 2001.

#### CONCLUSION

If the City proceeds with the issuance of the Ballpark Bonds while litigation relating to the project is outstanding, and with a qualified legal opinion, the bonds would be issued at higher interest rates and with higher costs of issuance (thus resulting in higher annual lease payments) than for a transaction with an unqualified legal opinion. Full resolution of the litigation with respect to the Ballpark Project could take up to, or exceed, three years. Of course, there can be no assurance that additional litigation would not be brought challenging the validity of the Ballpark Bonds or any similar bond offering.

The benefits to proceeding with the issuance of the Ballpark Bonds now include: (1) continued

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\* See Part III.E.1., "Ancillary Development" – 1) Four Star Hotel" above and related footnote, for information on possible City entitlements if the completion dates of any or all of these hotels is delayed, and the Financing Plan assumptions related thereto.

project price escalation could be curtailed; although Padres L.P. is responsible for any such price escalations with respect to the Ballpark Facility, such continued price escalations could impact the viability of the project for Padres L.P., or could result in a scaled-back project scope; (2) the redevelopment of East Village could proceed without additional delay, and the benefits accrued from tax increment and TOT revenues generated from the redevelopment would occur sooner provided Padres L.P. obtains financing for the Four Star, Boutique, and Boutique/Value Oriented Hotels in a timely manner, and national economic and political conditions do not continue to deteriorate.; and (3) it could help mitigate the possibility that the Ballpark Project is not completed at all.

The Offering Document and Purchase Contract provide for the issuance of tax-exempt Ballpark Bonds that would initially be purchased entirely by Merrill Lynch, and that may be held in a Merrill Lynch portfolio for an indeterminate period of time. Merrill Lynch would have the right to subsequently sell the Ballpark Bonds in a limited offering, subject to the investor restrictions and indemnity provisions described above.

The benefits to issuing Ballpark Bonds under the Tax-Exempt/Limited Placement Structure, as compared to the Taxable/Public Offering Structure, include:

- (1) Interest rates for the Tax-Exempt/Limited Placement Structure are estimated to be lower than the Taxable/Public Offering Structure (\$13.9 million per year versus \$15.5 million per year); and
- (2) Merrill Lynch will bear the pending litigation risks relating to the tax status of the Ballpark Bonds, and indemnify the City against potential claims by the Bond owners (and the IRS) for any back taxes or penalties due, as well as loss in value to reflect that interest on the Bonds is not tax-exempt, because of a declaration of invalidity of the Ballpark Bonds.

If the Ballpark Bonds are declared void by a court of last resort, there would be no municipal obligation, but rather, only an obligation of AMBAC to make payments of principal and interest. With no municipal obligation, interest on the Bonds may not be tax-exempt and investors could be exposed to having to pay taxes for prior and subsequent years, together with some interest and penalties thereon. In addition, since the Bonds are going to be priced below a taxable rate, the impact of an invalidity ruling, making interest on the Bonds taxable, would mean that the rate on the Bonds would not be a market rate for taxable bonds. Therefore, the value of the Bonds would likely drop to accommodate for that difference. Merrill Lynch would be covering that risk to the City as well.

The Tax Exempt/Limited Placement Structure also provides for a three-year optional par call provision, which was also contemplated for the Taxable/Public Offering Structure. This would allow the Ballpark Bonds to be redeemed (after successful resolution of the litigation), and refunded by bonds bearing a lower interest rate, assuming the tax rules regarding sport facilities have not changed in the interim to preclude tax-exempt financing, and depending on municipal bond market conditions. Should the Ballpark Bonds be held invalid, it is unlikely that the call provision would be effective. However, Merrill Lynch has agreed with the City that Merrill Lynch will impose a call right on the Bonds, which would be exercised by Merrill Lynch at a price of par plus accrued interest. Merrill Lynch will agree to exercise this call right if requested by the City to do so by the City within 180 days from the time of a final determination that the

Bonds are invalid, and the City thereafter provides funds to Merrill Lynch.

## ALTERNATIVES

- 1) Do not approve the Offering Document, the CDA, and the Second Implementation agreement in connection with the Ballpark Project. If the documents are not approved, the City could not move forward with the bond financing.
- 2) Do not approve the Offering Document, the CDA, and the Second Implementation Agreement in connection with the Ballpark Project, and direct the City Manager to return with these documents at a later date, after all litigation relating to the validity of the bonds has been resolved in favor of the City and an unqualified legal opinion has been provided by the City's bond counsel for the Ballpark Project. It is estimated that resolution of all litigation could take three years, or longer.

Respectfully submitted,

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Michael T. Uberuaga  
City Manager

Attachments:           (A) [Revision to CIP No. 39-228.0, Ballpark and Redevelopment Project](#)  
                              (B) [Status of Land Acquisition as of October 22, 2001](#)  
                              (C) [Ballpark and Redevelopment Project Financing Comparison](#)  
                              (D) [Ballpark Pro Forma](#)  
                              (D1) [Explanation of Line for Attachment D](#)