

DATE ISSUED: January 10, 2003

REPORT NO: 03-008

ATTENTION: Honorable Mayor and City Council
Docket of January 13, 2003

SUBJECT: Item 202: In The Matter Of the 1995 Agreement For The Partial Use And Occupancy Of Qualcomm Stadium between the City and the San Diego Chargers.

SUMMARY

This report from the City Manager and City Attorney addresses the above-referenced item on the City Council docket for Monday, January 13, 2003.

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]. 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]. 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.

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 Original Agreement).¹ Pursuant to the terms of the Agreement, and subject to the satisfaction of the conditions set forth in it, the

¹In sum, the Renegotiation provisions provide that the Chargers could send the City a Renegotiation Notice any time between December 1, 2002, and January 29, 2003. The sending of the notice starts a process in which the parties must negotiate regarding potential amendments to the Agreement for a period of 90 days and which, if the negotiations are unsuccessful, is followed by an 18 month period during which the team may solicit offers from other venues.

Chargers have the right to send a Renegotiation Notice at any time between December 1, 2002, and January 29, 2003.

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. Pursuant to the terms of the Agreement, the Chargers could send a Renegotiation Notice prior to the completion by the Task Force of its assignment.

On December 16, 2002, special counsel to the Chargers, Mark Fabiani, issued a statement, a copy of which is enclosed as Attachment 1. In that statement, Mr. Fabiani, on behalf of the Chargers, 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. 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.²

The Task Force considered this proposal at a meeting on December 23, 2002. By a 14-1 vote, the Task Force recommended that the City agree to the Chargers' proposal on the condition that no other modifications or changes be made to the Agreements.

A draft Supplement Number Two to the 1995 Agreement has been prepared for City Council consideration, and is enclosed as Attachment 3. The proposed Supplement changes the commencement date for the sixty (60) day period during which the Chargers may send a Renegotiation Notice from December 1, 2002, to March 1, 2003, only for the current Triggering Year. In all other respects, the Agreement remains the same, and the rights and obligations of the City and the Chargers are not otherwise modified. In significant part, the Triggering Event must still have existed as of December 1, 2002, in order for the Chargers to send the Renegotiation Notice.

There remains the possibility, however, that the approval of the proposed Supplement may be challenged through litigation or referendum.³ In such event, the Chargers would be at risk of waiving the right to send a Renegotiation Notice (if the conditions are met) if a notice is not sent by January 29, 2003. In order to protect against this possibility, it is proposed that the City Council authorize the execution of a Saving Agreement, a draft of which is enclosed as Attachment 4. The Saving Agreement provides that if the Supplement Number Two is found invalid, ineffective or unenforceable for any reason, then, and only under that circumstance, the Saving Agreement is considered the Renegotiation Notice and is deemed sent as of January 29, 2003. The ninety (90) day

²In light of questions raised about the effect of the December 16 statement, the Chargers subsequently confirmed that the statement did not constitute a Renegotiation Notice pursuant to the Agreement. A copy of the Chargers' letter to that effect is enclosed as Attachment 2.

³In the opinion of the City Attorney, the approval of the Supplement Number Two is an administrative act, not a legislative act, and therefore is not subject to a referendum.

negotiating period that follows the sending of the notice would commence on the date of the determination that the supplement is invalid, with credit given for days actually spent in negotiations if a Renegotiation Notice is sent after March 1, 2003. In sum, the Saving Agreement would return the parties to the status quo prior to January 29, 2003, if the Supplement Number Two is determined invalid or ineffective. The Saving Agreement does not affect the rights or obligations of the parties in any other way.

RECOMMENDATION

Approval of the Supplement Number Two is in the best interests of the City and the Task Force. It will permit the Task Force to complete its assignment and transmit its report to the City Council for consideration and possible action prior to the time in which the Chargers could send a Renegotiation Notice. In all other respects the relative rights and obligations of the parties remain the same. If the Chargers send a Renegotiation Notice pursuant to the terms of the Agreement, the City Council will thus have the benefit of the Task Force report in considering a response to the notice. The only contingency is the possibility that the Supplement is challenged or is otherwise found invalid or ineffective. In such a case, the proposed Saving Agreement in essence preserves the status quo as of January 29, 2003, permits the Chargers to otherwise exercise its rights under the Agreement, and does not negatively impact the rights or obligations of the parties.

The City Manager and City Attorney recommend that the City Council approve the Supplement Number Two and the Saving Agreement.

Respectfully submitted,

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Deputy City Manager

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Assistant City Attorney

Attachments:

Note: Attachments 1 & 2 are not available in electronic format. Copies of the attachments are available for review in the Office of the City Clerk.

1. December 16, 2002, statement of Mark Fabiani
2. December 17, 2002, letter from Allan Mutchnick
3. [Draft Supplement Number Two](#)
4. [Draft Saving Agreement](#)