

DATE ISSUED: January 24, 2003

REPORT NO: 03-015

ATTENTION: Honorable Mayor and City Council Docket of
January 28, 2003

SUBJECT: Item 200: In the Matter of the 1995 Agreement for the Partial Use and Occupancy of Qualcomm Stadium between the City of San Diego and the San Diego Chargers: Saving Agreement to the Supplement Number Two (continued from the meeting of January 13, 2003).

SUMMARY

This report from the City Manager and City Attorney addresses the above-referenced item on the City Council docket for Tuesday January 28, 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.

Pursuant to the terms of the Agreement, at any time from December 1, 2002, through and including January 29, 2003, the Chargers may send the City a Renegotiation Notice. If the conditions which permit the notice to be sent are met, the notice begins a process by which the team and the City must first negotiate regarding the terms of the Agreement, but which may ultimately allow the team to seek a new venue outside San Diego and terminate the Agreement.

On December 16, 2002, on behalf of the Chargers, Mark Fabiani issued a statement proposing that the period during which the team may send the Renegotiation Notice be deferred from the period December 1, 2002, through January 29, 2003, to the period from March 1, 2003, through April 29, 2003. On December 23, 2002, the Citizens Task Force [Task Force] on Chargers Issues, by a 14-1 vote, recommended that the City Council approve the proposal.

The matter was considered by the City Council on January 13, 2003, along with a related Saving Agreement, which would protect the Chargers from waiving its right to send a Renegotiation Notice in the event the proposal to postpone the Renegotiation Notice window was found invalid or otherwise unenforceable. The City Council approved the postponement, embodied in a document entitled Supplement Number Two, but referred the matter of the Saving Agreement to the Task Force. The Task Force considered the matter on January 16, 2003, and by a 13-1 vote (with one member absent) the Task Force recommended that the City Council authorize execution of the version of the Saving Agreement attached to this Report (and the draft resolution) as Exhibit 1. That version has additional language making clear that the parties are not waiving any rights or obligations under the Agreement by the execution of the Saving Agreement, except as specifically set forth, including with respect to the City, the ability to contest the existence of the Triggering Event as set forth in the Agreement. Attached to this Report as Exhibit 2 is a strikeout version of the Saving Agreement which highlights the additional language from the version presented to the City Council on January 13. In addition, the Task Force recommended that the City Council reconsider the issue of indemnification from the Chargers in the event of litigation after further consultation with the City Attorney. The City Attorney recommended against any indemnification requirement at the meeting on January 13, and maintains that recommendation.

RECOMMENDATION

Approval of the Saving Agreement is in the best interests of the City and the Task Force. It is a necessary corollary to the Supplement Number Two which 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. As previously described, 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,

Bruce A. Herring
Deputy City Manager

Leslie J. Girard
Assistant City Attorney

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments:

1. Draft Saving Agreement
2. Strikeout of draft Saving Agreement