

DATE ISSUED: July 2, 2004

REPORT NO. 04-147

ATTENTION: Honorable Mayor and City Council  
Docket of July 12, 2004

SUBJECT: Supplement Numbers Seven and Eight To The 1995 Agreement For  
Partial Use And Occupancy Of San Diego Jack Murphy Stadium

#### SUMMARY

Issues: 1. Should the City Council authorize the City Manager to execute Supplement Number Seven to extend the negotiation period with the San Diego Chargers (“Chargers”) through and including August 1, 2004?

2. Should the City Council authorize the City Manager to execute Supplement Number Eight to implement the term sheet authorized to be conveyed to the Chargers by the City Council on April 26, 2004 (the “Term Sheet”)? Supplement Number Eight is intended to accomplish the following objectives:

- a) Eliminate the Attendance Guaranty immediately and permanently;
- b) Eliminate renegotiation rights;
- c) Keep the Chargers in San Diego at least through the 2008 NFL season;
- d) Obtain a substantial termination fee if the agreement is terminated before 2020;
- e) Resolve the litigation between the Chargers and the City; and,
- f) Provide the City and the Chargers with a foundation to explore a long-term solution for the Chargers to remain in San Diego, subject to voter approval.

Manager's Recommendation: 1. Authorize the City Manager to execute Supplement Number Seven to extend the negotiation period through and including August 1, 2004.

2. Authorize the City Manager to execute Supplement Number Eight to implement the Term Sheet authorized to be conveyed to the Chargers by the City Council on April 26, 2004.

Other Recommendations: None

Fiscal Impact: This action does not increase City expenditures related to the Chargers' use and occupancy of Qualcomm Stadium. For a detailed explanation of the fiscal impact of the proposed supplement, please see the discussion below.

## BACKGROUND

On May 30, 1995 the City and Chargers Football Company, a California limited partnership (as predecessor-in-interest to the Chargers) entered into the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium (the "Agreement"), a copy of which is on file in the Office of the City Clerk as Document Number OO-18182-1. Pursuant to the Agreement, the City agreed to make certain improvements (the "Improvements") to the San Diego Jack Murphy Stadium, now known as Qualcomm Stadium (the "Stadium"). In order to facilitate completion of the Improvements, the City and the Chargers entered into Supplement Number One to the Agreement dated as of April 7, 1997.

On July 23, 2002 the City appointed a Citizens' Task Force on Chargers Issues (the "Task Force") to, among other things, determine what can be done "to keep the Chargers in San Diego in a fiscally responsible way that the public will support." In order to give the Task Force ample time to complete its work prior to the commencement of the renegotiation process under the Agreement, the parties entered into Supplement Number Two to the Agreement dated January 28, 2003.

On March 4, 2003, pursuant to the terms of the Agreement, the Chargers delivered to the City a notice invoking the renegotiation provisions of the Agreement (the "Renegotiation Notice"). The City has not acknowledged whether the Renegotiation Notice was valid or invalid. The delivery of the Renegotiation Notice, however, commenced a ninety (90) day negotiation period during which the City and Chargers were to negotiate for an amendment to the Agreement to address a defined set of circumstances. In order to extend the length of such negotiation period by an additional ninety (90) calendar days, the City and the Chargers entered into Supplement Number Three to the Agreement dated May 20, 2003. Subsequent to Supplement Number Three, the City and the Chargers have entered into three additional supplements (numbers Four, Five and Six) that collectively extended the length of the negotiation period through July 15, 2004.

On November 25, 2003, the Chargers filed a lawsuit against the City in the Superior Court for the County of Los Angeles entitled *Chargers Football Company, LLC v. City of San Diego*, seeking a declaration that the Renegotiation Notice was valid. The case was subsequently transferred to the Superior Court for the County of San Diego and the City filed a cross

complaint seeking, among other things, a declaration that the Renegotiation Notice was not valid (collectively, the “Litigation”).

The negotiations between the City and the Chargers have resulted in a proposed agreement that modifies a number of the provisions of the Agreement, the approval of which would settle the Litigation.

## DISCUSSION

The body of this report focuses on the terms of Supplement Number Eight, which is to be approved by the introduction and adoption of an ordinance. In order to accommodate the timeline required for a first and second reading, the negotiation period should be extended to and including August 1, 2004. Supplement Number Seven, also before the City Council for consideration, provides for that extension. If the ordinance authorizing the execution of Supplement Number Eight is introduced, the City Council should approve the resolution authorizing the execution of Supplement Number Seven.

The approval and execution of Supplement Number Eight will **preclude** the need for the Litigation. Accordingly, the ordinance authorizing the execution of Supplement Number Eight also conveys to the City Manager the authority to execute an appropriate mutual release and settlement agreement to the Litigation.

Following is a summary of the substantive provisions of Supplement Number Eight which appear in the order set forth in the Term Sheet.

### A. Pending Litigation

Recital E contemplates that upon the execution of Supplement Number Eight the City and the Chargers will enter into a separate agreement to settle and dismiss the Litigation.

### B. Term and Early Termination

Section 1.4 addresses the term of the Agreement and certain rights the Chargers will have to terminate the Agreement prior to the end of the 2020 NFL football season.

#### (1) Term.

(a) The Chargers covenant to play all home games at the Stadium through the 2020 NFL season subject to clearly defined early termination rights.

(b) If the Chargers breach this covenant the remedies of specific performance and injunctive relief are available to the City.

(2) Early Termination

(a) The Chargers have the right to terminate the Agreement any time after the 2008 NFL season by:

(i) Delivering a notice to the City.

(ii) Simultaneously tendering the applicable fee as set forth below without deduction, offset or credit of any kind.

<u>Early Termination Notice</u> <u>Delivered On or Between:</u>	<u>Termination Fee:</u>
2/1/2009 and 5/1/2009	\$56,275,000
2/1/2010 and 5/1/2010	54,670,000
2/1/2011 and 5/1/2011	25,820,000
2/1/2012 and 5/1/2012	23,980,000
2/1/2013 and 5/1/2013	22,015,000
2/1/2014 and 5/1/2014	19,900,000
2/1/2015 and 5/1/2015	17,630,000
2/1/2016 and 5/1/2016	15,195,000
2/1/2017 and 5/1/2017	12,575,000
2/1/2018 and 5/1/2018	9,760,000
2/1/2019 and 5/1/2019	6,740,000
2/1/2020 and 5/1/2020	3,490,000

*Note: This schedule differs slightly from that set forth in the approved **Term Sheet** to more accurately reflect the outstanding balance of the City's bonds in 2009 and 2010, and the declining balance of the Chargers' obligation thereafter.*

(iii) If the Chargers exercise the early termination right, the City will receive the appropriate termination fee and the City will retain **the debt** service reserve account for the Stadium bonds (\$5.8 million).

(b) Payment of the termination fee is an absolute, unconditional obligation of the Chargers—payable even if the City breaches the Agreement.

(c) The Chargers also have the right to terminate the Agreement without payment of a termination fee in two limited circumstances where the Stadium becomes uninhabitable:

(i) Dangerous Condition. If after the 2009 NFL season (commencing January 1, 2010) a condition exists at the Stadium that poses an immediate threat to the public health, safety or welfare and ten percent (10%) or more of the seats become uninhabitable; and

(ii) Damage. If at any time during the Agreement ten percent (10%) or more of the seats in the Stadium become uninhabitable as a result of physical

damage (e.g. by fire, earthquake or other casualty).

(d) In both uninhabitability circumstances:

(i) the determination of uninhabitability must be made by an arbitration panel and upheld on appeal in order for the Chargers to avoid payment of the termination fee; and

(ii) the City has the right to remediate the uninhabitable conditions and preclude the Chargers from terminating the Agreement.

(e) If the Chargers allege an uninhabitable condition, the Chargers have the right to play home games at another facility pending the determination of uninhabitability by the arbitration panel; however the Agreement remains in full force and effect.

C. Renegotiation Rights.

Section 31 of the Agreement (Renegotiation Rights) has been eliminated and replaced with certain provisions regarding exclusivity (see paragraph G, below).

D. Attendance Guaranty.

Section 1.2 deletes the Attendance Guaranty provisions of the Agreement in their entirety.

E. Rent (Including Post-Season).

The Chargers will pay rent for the regular season and for any post-season in accordance with the schedule set forth in the Term Sheet, as set forth below, on a game by game basis, reduced by credits the City is obligated to give the Chargers pursuant to the settlement of the ADA litigation over the Stadium, and other currently existing credits. The Chargers shall continue to receive all net revenues from Chargers' home games, including the City's rights to any concessions revenues from Chargers' home games.

(a)	NFL Season	Rent
	2004 – 2012	\$2.5 Million
	2013 – 2016	\$3.0 Million
	2017 – 2020	\$4.0 Million
(b)	Post Season	10% of gross gate receipts

F. Maintenance.

(1) **The** City remains obligated to maintain the Stadium throughout the term of Agreement.

(2) Specific maintenance items are set forth in the Agreement but the amount spent on maintenance remains in the discretion of the City.

(3) The “**state-of-the art**” standard contained in the Agreement is eliminated.

(4) If the City fails to properly maintain the Stadium, the Chargers have a right to commence an arbitration and seek early termination of the Agreement; however,

(a) The Chargers remedies are limited to specific performance and injunctive relief;

(b) The City has the right to cure any maintenance default; and

(c) Even if the Chargers are permitted to terminate the Agreement, the Chargers must pay the termination fee for the year in which termination occurs.

(5) The Chargers have limited rights to perform emergency and home game routine maintenance on behalf of the City and seek reimbursement.

G. Exclusivity.

(1) Chargers and their key owners, members, officers and directors, their agents and affiliates are prohibited from negotiating or entering into any agreement concerning relocation prior to January 1, 2007. **Minority owners and other** employees acknowledge and agree in writing that they are not authorized and are precluded from any such negotiations.

(2) A course of conduct **is set forth** for the Chargers to deal with inquiries and relocation proposals prior to January 1, **2007**.

(3) The Chargers are permitted to participate in NFL meetings and to vote on resolutions dealing with relocation of other teams or in general, but are prohibited from participating in NFL meetings where relocation of the Chargers is a topic.

(4) The City agrees not to sue the NFL and its other member clubs for their dealings with the Chargers concerning relocation, but the Chargers remain liable for their dealings with the NFL if the non-negotiation covenant is breached.

(5) For breach of the exclusivity provision, the City is entitled to:

(a) specific performance and injunctive relief; and

(b) \$3.0 million in liquidated damages for each Charger breach (per “Metropolitan Statistical Area”) to a maximum of \$15.0 million.

H. Long Term Stadium Development Option. The City and the Chargers will confer on the development and financing of a new stadium but neither party is obligated. Any agreed upon proposal will be subject to a vote of the public.

I. Training Facilities. The Chargers existing contractual arrangements preclude relocation of training facilities to San Diego in the near term.

J. Franchise Name. The Chargers will "predominantly use" San Diego in public pronouncements, subject to NFL rules.

K. Dispute Resolution.

(1) All disputes under the Agreement are subject to an expedited arbitration process (including appellate review).

(2) In disputes involving the physical condition of the Stadium, at least two of the three arbitrators must have construction or engineering training.

### **Summary**

Supplement Number Seven is an extension to the existing negotiation period, which expires on July 15, 2004, to **and including** August 1, 2004 to allow adequate time for the introduction and adoption of the ordinance authorizing execution of Supplement Number Eight. Supplement Number Eight is the result of negotiations between the City and the Chargers, consistent with the Term Sheet. The agreement is intended to accomplish the following objectives:

1. Eliminate the Attendance Guaranty immediately and permanently;
2. Eliminate renegotiation rights;
3. Keep the Chargers in San Diego at least through the 2008 NFL season;
4. Obtain a substantial termination fee if the agreement is terminated before 2020;
5. Resolve the litigation between the Chargers and the City; and
6. Provide the City and the Chargers with a foundation to explore a long-term solution for the Chargers to remain in San Diego, subject to voter approval.

Approval of Supplement Number Eight by City Council and execution by the City Manager will provide for the settlement and dismissal of the Litigation. It is recommended that Supplement Number Eight be introduced, and that Supplement Number Seven be adopted.

ALTERNATIVE

Do not introduce Supplement Number Eight, and do not adopt Supplement Number Seven.

Respectfully Submitted,

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Bruce A. Herring  
Deputy City Manager

Attachments: 1. [Supplement Number Seven](#)  
2. [Supplement Number Eight](#)