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ACT

THE DIRECT DEMOCRACY INSTITUTE

FOUNDED IN 1975

Date: October 7, 2002

To: Contracts Committee of the Chargers Task Force

Re: Initial Draft Issues and Question Regarding Legal Issues To Be Reviewed By The Contracts Committee

Introduction

This memorandum is an attempt to provide members of the Contracts Committee and others with my preliminary thoughts concerning issues that I believe should be addressed by our committee. It is a working document, and it makes no attempt to arrive at any conclusions.

When I first became involved in these issues in 1996, I attempted to warn the City about many of the provisions of the 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium (the "Agreement"). As time went by I tried to explain the obvious reverse incentives in the Agreement that could be expected to produce what from the City's point of view would be unintended results. My concerns were, sadly, rejected by people, such as the City Attorney and the editors of the San Diego Union-Tribune, who claimed that my concerns amounted to nothing more than worst-case scenarios that would never materialize.

The events of the last five years speak for themselves, but now my role has moved beyond warnings about what might go wrong. Therefore, this memorandum addresses the Agreement (as substantially amended in 1997) from a different point of view. My goal at this stage of affairs is to alert the City to language in the Agreement along with other factors that might provide the City with the means to avoid various problems inherent in the Agreement.

One would have thought that this task would have long ago been undertaken by the office of the City Attorney. Yet, the history of the City's response to the ticket guarantee as well as the City's initial response to activities of the Chargers a few months ago seems to demonstrate otherwise.

Perhaps, with the assistance of this committee, the Task Force can finally convince the City to mount the defense necessary to relegate the ticket guarantee to the insignificant financial commitment envisioned in the pro forma attached as

Exhibit F to the 1995 Agreement. More importantly, should we be successful, we will assist the City in holding the Chargers to the Chargers' contractual commitment of section 4 of the Agreement to keep the team playing here in San Diego through 2020.

It tentatively appears to me that substantive legal arguments can and should be made that the Chargers do not have the right to trigger a renegotiation of the contract with the City under current circumstances. This conclusion is tentative because the Task Force has been provided with few of the relevant facts and documents regarding the relationship between the Chargers and the City since negotiations commenced in 1994.

Second, even if the Chargers have the right to deliver a Renegotiation Notice, it appears to me that the nature of any demands made by the Chargers under the terms of Section 31 of the Agreement (the section I often refer to as the "Team Shopping Clause") are highly constrained. That is, any such demands by the Chargers must relate directly to the *specific* financial problem generating the respective Triggering Event.

Similarly, to the extent that it can reasonably be anticipated that such financial problems can be successfully resolved by future actions required to be taken by the Chargers under the terms of the Agreement, it would seem that the City would not be required by Section 31 to agree to modifications to the Agreement. For example, the Chargers could not compel the City to agree to modification of the Agreement if the Chargers' financial problems could be readily resolved if the Chargers in future seasons merely use "best efforts to ensure the maximum occupancy of the Stadium Premises by the public," as required of the Chargers by Section 7 of the Agreement.

Suggestions For Agenda For October 14 Meeting

In addition to those agenda items that have been suggested by other members of the Contracts Committee, I propose that the following matters be placed on our agenda for the October 14 meeting.

Information Gathering

In the normal process of reviewing a contract for the City of San Diego, one would expect to have the luxury of a candid and thorough discussion and review of the relevant facts and documents. For various reasons that discussion and review hasn't happened, and, as frustrating as it may be, it seems likely that the Task Force and the Contracts Committee will limited in its review to the actual language of the Agreement plus a few additional public documents.

That limitation should not be accepted without comment. I, therefore, propose that the Contracts Committee formally ask the City Attorney's office to prepare a list of all public documents and a statement of all relevant facts in the public record that in the opinion of the City Attorney are pertinent to the work of the Task Force and which

should be considered by the Contracts Committee and so cited in any report prepared by the Contracts Committee.

Prof. Stiglitz

I was pleased to learn that Prof. Stiglitz has agreed to assist the Contracts Committee. We might want to schedule him and discuss at the next meeting the questions that we would like him to address. Clearly, his assistance will require identification of key documents and facts that need to be made available to him for his review.

Negotiation Techniques

Negotiation is both an art and a science. There is, therefore, much that our Contracts Committee might do in advising the City regarding checks and balances that should be put in place to maximize the City's negotiating position with the Chargers should negotiations be required.

Donald F. Kettl's Sharing Power, Public Governance and Private Markets was one text recommended to me. I imagine there are many others.

What is obvious, however, is that in 1995 and *again* in 1997 the City wasn't just out-negotiated, but the City wasn't apparently even advised to include in the Agreement standard contractual terms such as minimal performance standards. Take Exhibit F in the Agreement as an example. Exhibit F is a pro forma for use in demonstrating the calculation of the ticket guarantee. Given that it shows a balance owing to the City at the end of the season, it would be reasonable to assume that the Chargers would have agreed in the negotiations to a cap on City liability, e.g., a cap of One Million Dollars over any three-year period.

Competent negotiating would have established caps and other performance standards or would have addressed (at the very least in the report of the City Manager to the City Council recommending the Agreement) the reasons why such protections were omitted.

Naturally, this topic is *not* suggested with the idea of unilaterally forcing the Chargers to renegotiate the existing Agreement. Instead, the point is that we should attempt to identify for the City the steps it must take in order to properly prepare for possible future negotiations with the Chargers so that any new agreement will avoid a repetition of the deplorable mistakes made in the past.

Charter Section 225

Charter section 225 was adopted in 1992 and mandates disclosure of financial interests of private parties doing business with the City.

So far as I am aware, the Chargers have never complied with Charter section 225. Our Contracts Committee should place this issue on the agenda to discuss the need for compliance with this Charter section prior to the City engaging in any future negotiations with the Chargers.

Burden of Demonstrating Change In Architectural Standards

In 1997 the Chargers represented in Section 3 of the Agreement that the plans for the $78 Million of improvements to the stadium incorporated *"a level of design and a quality of materials which are substantially equal to the design and materials used at the - newest and best constructed stadiums where NFL football is being played".*

Were objective criteria for meeting this goal put in writing? What was the role of the Chargers in creating these criteria? Were any studies prepared and made available to the City relating these criteria for the design and construction of the improvements to the revenues triggering the Team Shopping Clause of Section 31 of the Agreement?

Currently we are hearing from the NFL that significant changes in architectural standards for football stadiums have occurred since 1997. But, have such changes actually occurred? While the answer to that question might not be within the scope of work of the Contracts Committee, we can quite properly examine the legal effects of the Chargers' representations in the 1997 contract; the burden of persuasion that the purported material changes in architectural standards have occurred; the question of why any such material changes were not anticipated in 1997; and the question of the checks and balances in any future contract to avoid a repetition of any failure in 1997 to anticipate changes in standards.

Additionally, is there a direct correlation that can be objectively demonstrated between physical characteristics of stadiums designed under criteria established since 1997 and revenues the subject of the Team Shopping Clause of Section 31 of the Agreement? For which stadiums?

Finally, what testimony should the Task Force attempt to obtain from the architect of the 1.997 improvements, Leo A. Daily in connection with these potential defenses to any effort by the Chargers to force renegotiation?

Legal Principles

There are several legal principles that I believe are worth a brief mention even though obviously known to the attorneys on the Task Force.

The Implied Covenant of Good Faith and Fair Dealing

The Agreement makes various references to "good faith," i.e., in Section 5(c), Section 11(e), and Section 31(b), as well as in Sections 2, 3, and 5 of the 1997 amendments. Additionally, every contract subject to the laws of California is subject to an implied covenant of good faith and fair dealing. (See *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371 - 372.)

Several comments in the *Carma* case (pp. 371 - 373) are of particular interest in regards to the constraint this implied covenant imposes on various discretionary rights of the Chargers in the Agreement.

> The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith.
>
> In the case of a discretionary power, it has been suggested the covenant requires the party holding such power to exercise it "for any purpose within the reasonable contemplation of the parties at the time of formation-to capture opportunities that were preserved upon entering the contract, interpreted objectively." Notwithstanding the difficulty in devising a rule of all-encompassing generality, a few principles have emerged in the decisions. To begin with, breach of a specific provision of the contract is not a necessary prerequisite. [citation] Were it otherwise, the covenant would have no practical meaning, for any breach thereof would necessarily involve breach of some other term of the contract. [reference] Nor is it necessary that the party's conduct be dishonest. Dishonesty presupposes subjective immorality; the covenant of good faith can be breached for objectively unreasonable conduct, regardless of the actor's motive.
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> > FN 11. In this context, breach of the covenant of good faith has been characterized as an attempt by the party holding the discretionary power to use it to recapture opportunities forgone in contracting. "Bad faith performance occurs precisely when discretion is used to recapture opportunities forgone upon contracting-when the discretion-exercising party refuses to pay the expected cost of performance."

Best Efforts

In Section 7(a) of the Agreement, it is agreed that "... The Chargers shall use its best efforts to ensure the maximum occupancy of the Stadium Premises by the public."

Remarkably, the Agreement fails to set out any details regarding actions by the Chargers which would constitute "best efforts."

I have yet to find a California case that discusses this issue in depth; however, in *National Data Payment Systems, Inc. v. Meridian Bank (C.A.* 3 (Pa.) 2000) 212 F.3d 849, at 854, the court notes that "the duty of best efforts 'has diligence as its essence' and is 'more exacting' than the usual contractual duty of good faith." [citation]

Fundamentally, the question is one of fact (See *US Ecology, Inc. v: State of California* (2001) 92 Cal.App.4th 113, 136); and since we have access to few of the relevant facts, there is little at this point that we as a committee can say concerning whether or not the Chargers have adequately performed over the last five years under this covenant in the Agreement.

Parol Evidence Rule

The general rule is that the language of a contract speaks for itself. Therefore, evidence other than the language of the contract is excluded from consideration to vary or contradict the contract's terms. Nevertheless, such evidence may be received to aid in ascertaining the true intent of the parties where the written language of the contract is fairly susceptible of two or more constructions. *Hulse v. Juillard Fancy Foods Co.* (1964) 61 Cal.2d 571, 573.

Severe Financial Hardship

Mike Aguirre brought to the attention of the Task Force that the Chargers sent a letter to the community in early 1997 stating that Section 31 of the Agreement would be implemented by the Chargers only in the case of "severe financial hardship." I have been attempting to determine if there are additional public references to this assertion but so far have been unable to find any.

As parol evidence it is, nevertheless, an important point for the City to make in the event of future negotiations with the Chargers under the Section 31 Team Shopping Clause.

Additionally, regardless of the relevance of the Spanos letter in any possible litigation, the letter suggests at an early stage in the implementation of the Agreement an understanding by the Chargers that a "Triggering Event" would only occur in highly unusual circumstances.

Does it follow that Section 31 of the Agreement as actually drafted should be considered to constitute a mutual mistake? Was the formula for a "Triggering Event" mutually understood to require "severe financial hardship" as opposed to "normal"

variations in revenues such as variations resulting from voluntary agreements among NFL teams in a manner both anticipated and agreed to by the Chargers and the NFL?

Changed Circumstances

One of the most dramatic changes in the facts as represented in 1995 by the City Manager when he recommended the Agreement to the City Council is the reduction in the revenue stream from Qualcomm Stadium as a consequence of the Padres moving to the new facility in 2004.

In the May 12, 1995 Manager's Report, the City Manager states that projected *net* revenues to the City from the Padres at then-Jack Murphy Stadium were anticipated to grow from $900,000 in 1996 to $7,700,000 in 2010.

The Chargers were aware at the time that these projections were being utilized to induce the City Council to approve the Agreement. Yet, today we can reasonably anticipate that by 2010 the annual revenue to the City from the Padres will differ by considerably more than **$17,000,000** (that is, rather than *net revenue* in 2010 of $7,700,000, the annual *cost* of providing a playing field to the Padres by 2010 will be well in excess of $10,000,000 - when you include the City's financing and its maintenance liabilities under the contract with the Padres (Prop C)).

If you couple this dramatic change in the cash flow to the City anticipated when the Agreement was signed (1) with the similarly dramatic change asserted by the Chargers in the ability of the stadium design to meet the current needs of the team and (2) with the unanticipated cost of the ticket guarantee, does such a substantive change in circumstances and expectations impact in any manner the "good faith" that must be exhibited by the Chargers should the Chargers deliver a Renegotiation Notice under the terms of Section 31 of the Agreement?

I don't know the answer to this question. However, in order to research the issue it seems to me that once again that we are hampered by the lack of information provided by the City Attorney. At the very least, as a Task Force we need to identify and attempt to quantify each and every substantive change in circumstances since 1995 that has impacted the City financially in this transaction. At that point we may be able to determine whether and which changes in circumstances provide the City with negotiating leverage in the event the Chargers deliver a Renegotiation Notice.

Auditing Financial Data Underlying Triggering Event

On September 30 I sent a letter to Dan Barrett raising a variety of issues regarding the financial data that might underlie any "Triggering Event." A summary of those issues follows:

- During the presentation by Mr. Barrett at the last Contracts Committee meeting on September 23, he made clear the impossibility of a definitive financial analysis at this time of the ability of the Chargers on December 1, 2001, to trigger the renegotiation clause of Section 31 of the Agreement due to the unavailability of a variety of financial information kept confidential by the Chargers and the NFL.

- As I have examined the Agreement over the past week, it has become more and more obvious that a thorough *evaluation* of any right of the Chargers to trigger a renegotiation under the Section 31 Team Shopping Clause *requires* the City and the Task Force, among other things, to obtain extensive financial information (1) from the Chargers, (2) from the NFL, and, quite possibly, (3) from all the other NFL teams.

- Given that the Chargers can deliver a Renegotiation Notice as early as December 1, 2002, well prior to that date the Task Force should prepare a list of the financial information that will be required, and, as well, have in place a process to immediately review the financial information upon receipt.

Triggering Event

An analysis of Section 31 of the Agreement can be broken down into at least six elements.

1. Preparations to respond to a Renegotiation Notice.

2. Review of a Renegotiation Notice to determine if it complies with the terms of the Agreement and acceptance or rejection of the notice accordingly.

3. Negotiations following acceptance of a Renegotiation Notice.

4. Monitoring any contacts by the Chargers with third parties during the initial 90-day period for negotiations.

5. Acceptance or rejection of any demands by the Chargers to renegotiate the terms of the Agreement.

6. Implementation of any accepted modifications to the Agreement or further implementation of the provisions of Section 31 in the event an agreement cannot be reached between the City and the Chargers to modify the Agreement during the initial 90-day period following the receipt of a Renegotiation Notice. In such a circumstance, Section 3 1 provides for an 18-month period during which the Chargers can seek a letter of intent from third parties for presentation to the City.

Rather than attempt to engage at this point in time in a detailed examination of the legal issues arising in connection with each of these elements, I will limit this memorandum to raising a number of questions that I believe need to be answered before a specific legal analysis can be prepared.

The focus of these questions is on the first three elements of the process. Depending upon the answers to some of the questions, other may become more relevant or even irrelevant. To answer these questions, however, I cannot overstress the need to have as many of the documents and as much information as possible from the public record - information that has not to date been forthcoming.

What contractual duties of the Chargers qualify the right of the Chargers to deliver a Renegotiation Notice?

What is the scope of the financial problem that a Triggering Event is meant to reflect? Is the problem triggered by a minor change in revenues or does the trigger require a catastrophic change? That is, does the trigger merely reflect the normal rise and fall of revenues over a three-to-four year period and so is it a statistical inevitability that evens out and actually disappears when revenues are averaged over such a period of time? Is this the reason behind the definition of a "Triggering Year"?

To what extent will reasonably anticipated increases in revenues, e.g., from television broadcast rights, over the next decade impact the Chargers vis a vis the financial calculation of the Triggering Event as well as the relevance of the amounts constituting a Triggering Event to the ability of the Chargers to compete with other NFL teams?

To what extent is it possible for the Chargers to manipulate revenues at will to generate a Triggering Event? Is there any evidence of such selfserving manipulation of revenues?

What reasonable efforts are required of the Chargers by the duty of good faith and fair dealing to take steps to avoid a Triggering Event? Have the Chargers over the last five years utilized best efforts to utilize the physical plant at Qualcomm to maximize revenues?

How does the trigger relate to the other 31 NFL teams? How many of those teams would experience a "Triggering Event" if the same formula were to be applied to their revenues in the same year? Is there any objective evidence that the financial sums involved substantially impact the ability of NFL teams to compete with each other?

To the extent that all the relevant financial information that the City has a

right to demand from the Chargers, the NFL, and other NFL teams in not fully disclosed in a timely manner, does such a failure constitute a defense the City can raise to the Chargers' implementation of the Section 31 Team Shopping Clause?

To what extent is the Triggering Event an anomaly of financial agreements among NFL teams agreed to by the Chargers? Have there been in material changes in those agreements since 1995?

What financial disclosures can be demanded by the City from the Chargers as a prerequisite to the Chargers exercising the right to deliver a Renegotiation Notice?

What substantive changes can be identified as occurring since 1995 which have impacted the Triggering Event calculations?

What is the total extent of the City's expenditures relating to Qualcomm Stadium since 1995 which financially benefited the Chargers, including capital expenses, maintenance, and other expenditures such as the ticket guarantee?

What expenditures have been made by other government or private entities since 1995 which financially benefited the Chargers?

In which years since 1994 did the Chargers experience a Triggering Event?

Is it possible for a triggering event to occur in a fiscal year in which the Chargers generate a net profit?

Is it possible for a triggering event to occur in a year in which the Chargers made it into the playoffs? Into the Super Bowl?

What impact did this increase in ticket prices this season have on the Triggering Event calculations?

What impact has the ticket guarantee had on the Triggering Event calculations?

Is Section 31 limited by the ticket guarantee? That is, can payments under the ticket guarantee be credited against any payments from the City that otherwise would be required to remedy the financial problems reflected in a Triggering Event?

Why was the ticket guarantee limited to 10 years? Why is the delivery of a Renegotiation Notice permitted to be given up to five separate times during the term of the Agreement? Does this multiple exercise reflect an understanding that the amounts involved to remedy the problem would be insignificant in amount, particularly in light of the ticket guarantee?

Why hasn't significantly more signal been sold within the stadium?

What. was the financial impact of the agreement reached in 1998 as reflected in the memoranda exchanged between Mayor Golfing and the Chargers?

In the opinion of the Chargers, which teams in the NFL are currently experiencing severe financial hardship and why?

Does the NFL have a definition in common use for the term "severe financial hardship"?

What was the specific consideration in the Agreement for the Team Shopping Clause in Section 31? Has there been a failure of any of that consideration?

What representations were made by the Chargers to induce the City to agree to the Team Shopping Clause in Section 31? Have any of those representations proved to be in error? How and why?

How was the Section 4 term set? Was it understood by the City and the Chargers in 1995 and again in 1997 that the improvements to Qualcomm Stadium would be adequate through 2020?

What was the understanding in 1995 and again in 1997 by the City and the Chargers regarding the Padres utilization of Qualm Stadium? Was the City's decision to construct the Padres a separate stadium an unexpected financial benefit to the Chargers?

What direct financial losses will be incurred by the City should the team leave Qualcomm Stadium?

What financial impacts can be expected to affect third parties should the team leave Qualcomm Stadium?

What procedures must be following by the City upon receipt of a Renegotiation Notice? What is the timing of those procedures?

How would the City go about rejecting a Renegotiation Notice?

What are the specific contractual duties of the Chargers following the delivery of a Renegotiation Notice?

Naturally, the questions can go on and on. If the Chargers are required to merely deliver a letter of intent, is the City's response similarly limited to a letter of intent in the event a definitive response would not be possible within 90 days? Is the City's obligation to respond extended by, and subject to, the outcome of any election required by Charter section 90.3?

Ticket Guarantee

From a variety of perspectives, the ticket guarantee in Section 9 of the Agreement has proven a disaster without any redeeming qualities. The following important questions are raised by the poor sales figures for Chargers tickets as reflected by the extraordinary financial impact on the City of the ticket guarantee.

Has the City made a reasonable effort to review and implement responses to the concerns expressed by the San Diego County Grand Jury in its report in 1998 regarding the ticket guarantee? For example, does the fact that the City purchases tickets four days prior to the game and so create a virtual "sellout" significantly reduce potential sales?

Is the lack of sales of guaranteed tickets a result of a failure by the Chargers to "use its best efforts to ensure the maximum occupancy of the Stadium Premises by the public" as required by Section 7 (a) of the Agreement?

Was this same clause violated by the Chargers when ticket prices for tickets subject to the ticket guarantee were raised this year?

Have the Chargers complied with the covenant of good faith and fair dealing in working with the City since 1997 to alleviate the impact of the ticket guarantee?

Was the retention by the Chargers of the 1000 promotional tickets under the terms of Section 9 (a) of the Agreement further evidence that all responsibility for marketing tickets the subject of the ticket guarantee was the responsibility of the Chargers?

Is the Exhibit F pro forma evidence that the City and the Chargers never contemplated that the ticket guarantee would generate significant financial liability on the part of the City? Is Exhibit F, therefore, further evidence that the Chargers undertook all responsibility for marketing tickets?

Pursuant to Section 21 of the Agreement, has the City audited financial documents of the Chargers related to Chargers' expenditures for marketing? If so, have those expenditures reflected "best effort" marketing program each year since 1997?

Is the cost of the ticket guarantee in substantial part a consequence of the City's decision to purchase tickets prior and so avoid imposition of the NFL's blackout rule?

Was the financial impact on the City in part a result of the understanding reached in August and September of 1998 in memoranda issued by Mayor Golding and the Chargers, respectively?

To what extent has the San Diego International Sports Council honored its commitments to the City as referred to in Section 9 of the Agreement? What assistance is anticipated by the City from the San Diego International Sports Council over the future term of the ticket guarantee?

Is the cost of the ticket guarantee indicative of the size of the market in the San Diego region, a market too small to support the increased number of seats resulting from the 1997 expansion? As a result, can it now be said that the expansion was a $78 Million mistake? Where does the responsibility for that mistake lie?

If the expansion of the number of seats was the problem, at what point might the San Diego regional market for tickets finally match supply?

Is there any evidence that the problem with ticket sales relates to the physical facilities at Qualcomm Stadium? If so, what evidence exists regarding this issue?

If the problem with ticket sales is the result of the physical condition of Qualcomm Stadium, does the problem reflect a breach of the representation in Section 3 of the Agreement that the architectural plans and new construction would "incorporate a level of design and a quality of materials which are substantially equal to the design and materials used at the newest and best constructed stadiums where NFL football is being played" as of 1976-1997?

What was the result of the good faith negotiations required by Section 3 of the 1997 contract requiring that "prior to the commencement of the 2000 Pre-Season, the City and the Chargers shall meet in good faith to evaluate lowering the playing field or otherwise eliminating or minimizing the obstructed view of the field level seats."

To what extent has this issue of "the obstructed view of the field level seats" impacted ticket sales? What would the cost of resolving "the obstructed view of the field level seats" been in comparison to the financial liabilities incurred by the City under the ticket guarantee?

Does the failure of tickets to sell in any manner reflect a breach of Section 11 of the Agreement requiring the City to maintain Qualcomm Stadium "in good order, condition and repair as a state of the art facility in accordance with the highest industry standards"?

In the event that the Chargers commence negotiating with a third party under the terms of Section 31 of the Agreement in circumstances that suggest to the public that the team might move from San Diego, what impact could be expected on ticket sales? Is there a "best efforts" marketing program that can be designed to offset that impact? If the impact cannot be offset, what is the potential liability of the City under the remaining teen of the ticket guarantee?

Ultimately, in response to the extraordinary liabilities incurred as a consequence of the ticket guarantee, should the City conduct an inquiry to determine if those liabilities have been incurred as a result of a failure of the Chargers to fulfill commitments under the Agreement, particularly the commitment to utilize "best efforts" to fill the stadium? Such an inquiry could be expected to answer the question of whether or not the City has grounds for giving the Chargers a written notice of default (pursuant to the provisions of Section 25 (a) of the Agreement providing for notice of default)?

Summary

In 1997 the City made a $78,000,000 investment in Qualcomm Stadium at the behest of both the Chargers and the Padres. Since then millions of dollars in interest payments have been made on the debt incurred, and the City has incurred over $30,000,000 in liabilities under the terms of the ticket guarantee.

Soon after the City made its final commitment to the Qualcomm Stadium investment in 1997, the Padres informed the City that the team was no longer willing to use Qualcomm and successfully demanded a new stadium. Shortly after the 1998 vote on Prop C, the Chargers began complaining that, even with the $78 Million investment and even assuming that the Padres would eventually have a separate facility, Qualcomm was fundamentally flawed as a stadium; and the Chargers have by now been joined by the NFL in the assertion that Qualcomm Stadium must immediately be demolished and replaced with a new stadium if the Chargers are to have any hope of competing within the NFL.

So, what went wrong? How did this astonishing financial mistake come about? What can we learn from it in order that a mistake of this magnitude not be repeated in the future by the City Council if the Chargers successfully bring the City *once again* to the bargaining table?

We were told as citizens in 1995, and again in 1997, that the City had identified and *met* the needs of the Chargers *and* the Padres. Apparently we were misinformed so that now we are as a Task Force being asked to suggest what our city can do to retain the

Chargers in San Diego under terms acceptable to the community. Given the history, surely it is imperative that our answer to that question attempt to solve the problem this time for a period greater than a mere three or four years.

But, initially, the best answer, should it prove feasible, is the *same* answer given to the community by the Chargers when challenged on the ticket guarantee: A contract is a contract!

Section 4 of the Agreement commits the Chargers to San Diego through 2020. Our first goal should be to assist the City in every way reasonably possible to enforce that commitment without further negotiation under the Section 31 Team Shopping Clause.

That goal appears to me at the moment to be reasonably possible, and so that's where I intend to devote my attention and my energies for the moment.

Sincerely,

J. Bruce Henderson