
**BALLPARK DESIGN-BUILD
PROCUREMENT CONSULTANT AGREEMENT**

Between

**The City of San Diego, Redevelopment Agency
of the City of San Diego, Centre City
Development Corporation, Padres L. P. and
Padres Construction, L.P.**

January __, 2000

**BALLPARK DESIGN-BUILD
PROCUREMENT CONSULTANT AGREEMENT**

This Ballpark Design-Build Procurement Consultant Agreement (this "Agreement") is made as of this [___] day of January, 2000, among the City of San Diego (the "City"), the Redevelopment Agency of the City of San Diego (the "Agency"), the Centre City Development Corporation, ("CCDC"), Padres L.P., a Delaware limited partnership (the "Padres"), and Padres Construction, L.P., a California limited partnership ("PCL"). The City, the Agency, CCDC, PCL and the Padres are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, on August 4, 1998, the Padres signed that certain Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project with the City, the Agency and CCDC ("MOU"). Among other things, the MOU gave the Padres the right and obligation to be responsible for the design and construction of the Ballpark and the City, the Agency and CCDC the right and obligation to manage the Land Acquisition and the design and construction of the Infrastructure and the City-Provided Parking Facilities; and

WHEREAS, on December 1, 1998 the City Clerk certified to the San Diego City Council that at the statewide general election on November 3, 1998, at least fifty percent plus one votes were cast in favor of a ballot measure placed before the voters by the San Diego City Council authorizing the City to enter into the MOU; and

WHEREAS, on December 1, 1998, the City and the Agency, by their duly authorized representatives, signed the MOU; and

WHEREAS, on December 11, 1998, CCDC, by its authorized representative signed the MOU; and

WHEREAS, on March 31, 1999, the City and the Padres reached agreement on the sufficiency of assurances regarding the private ancillary development adjacent to the Ballpark, the conveyance of the first priority lien on the Padres' franchise, and the necessary additional funding source to the Ballpark Project budget ("Sufficient Assurances Agreements"); and

WHEREAS, in the November 1998 election, voters also amended the San Diego City Charter by adding Section 94.2 which provides as follows:

Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding contracts for the combined design and construction of public works pursuant to a process of competitive negotiation, provided the process of competitive negotiation is conducted as may otherwise be required by this Charter or the Municipal Code. The City Council shall establish by ordinance guidelines for the award, use and evaluation of such design-build contracts, and may set an amount below which the City Manager may award such contracts; and

WHEREAS, the City has adopted Ordinance Number O-18696 (the “Design-Build Alternative Procurement Ordinance”). The Design-Build Alternative Procurement Ordinance provides guidelines for the use, award, and evaluation of design-build contracts for certain complex public facilities; and

WHEREAS, the City has determined that the Ballpark is an appropriate project for use of the design-build procurement method contemplated by the Design Build Alternative Procurement Ordinance; and

WHEREAS, the construction of the Ballpark is an integral part of the redevelopment of the eastern portion of downtown San Diego, and without the construction of the Ballpark, the redevelopment of the eastern portion of downtown San Diego might not occur within an acceptable timeframe; and

WHEREAS, it is anticipated that (a) Persons providing debt or equity financing for the construction of the Ballpark will require that the Parties will have entered into written agreements describing, in greater detail than the MOU, the Parties’ respective rights and obligations with regard to construction and completion of the Ballpark, (b) such Persons will rely on such agreements in evaluating the risk inherent in such investment, and (c) without such agreements, such financing might not be forthcoming; and

WHEREAS, PCL is uniquely skilled to perform the obligations under this Agreement since:

- A. it is affiliated with the owner of a Major League Baseball team in San Diego; and
- B. it is properly incentivized to manage effectively the construction of the Ballpark because this Agreement requires PCL to bear cost overruns; and

WHEREAS, while PCL is managing the design and construction process, the Ballpark Design-Build Contractor, rather than PCL, will construct the Ballpark under the Ballpark Design-Build Construction Contract; and

WHEREAS, because of the complexity of the Ballpark, the most efficient way to construct the Ballpark is under Ballpark Design-Build Construction Contract let by the PCL on behalf of the City; and

WHEREAS, as contemplated by Article XL of the MOU, the Parties have agreed to more specifically set forth in this Agreement certain rights and obligations with respect to the construction of the Ballpark Project generally described in the MOU, together with certain other rights and obligations set forth in this Agreement, all to clarify and implement the MOU and the Parties fully intend this Agreement to be the definitive agreement among the Parties with respect to the matters set forth herein, fully effective upon execution by the Parties.

AGREEMENT

NOW, therefor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I.

DEFINITIONS AND USAGE

1.01 Definitions. When used in this Agreement, the capitalized terms set forth in this Section 1.01 shall have the meanings ascribed to such terms in this Section 1.01.

“Administering Agency” means the County of San Diego Department of Environmental Health or such other agency as shall be the Administering Agency for purposes of California Health & Safety Code Section 33459 et seq. with respect to the Ballpark.

“Agency” means The Redevelopment Agency of the City of San Diego.

“Agency Fund” means the funds held by the City Treasurer on behalf of the Agency to fund the Agency’s obligations under the MOU.

“Agency Investment” means the investment of Agency and CCDC funds towards the Ballpark Project, which will be used pursuant to Section 7.04.

“Agreement” means this Ballpark Design-Build Procurement Consultant Agreement.

“Allocated Cost” with respect to any item of Ballpark Property means the cost of such item of Ballpark Property, including without limitation, the cost of purchasing, designing, engineering, fabricating, transporting, constructing, installing, commissioning and testing such Ballpark Property or any other soft cost, that is properly allocated to such item of Ballpark Property in accordance with good accounting practices or good income tax practices.

“Ancillary Contracts” has the meaning assigned to such term in Section 4.03.

“Ancillary Development” means commercial, retail and residential development, including hotels, office buildings and associated parking, to be built within the District.

“Architect” means any of PCL’s architects or designers engaged to prepare drawings or specifications for any portion of the Ballpark.

“Area 1” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 1” on the Site Logistics Plan attached hereto, upon which portions of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Area 2a” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 2a” on the Site Logistics Plan attached hereto, upon which portions of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Area 2b” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 2b” on the Site Logistics Plan attached hereto, upon which portions

of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Area 3” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 3” on the Site Logistics Plan attached hereto, upon which portions of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Area 4a” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 4a” on the Site Logistics Plan attached hereto, upon which portions of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Area 4b” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 4b” on the Site Logistics Plan attached hereto, upon which portions of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Area 5” means that portion of the Ballpark Land (including parcels, streets and rights-of-way) referred to as “Area 5” on the Site Logistics Plan attached hereto, upon which portions of the Ballpark are to be constructed, as more particularly described on the Site Logistics Plan attached hereto.

“Ballpark” means the following improvements: an open-air, natural grass, state-of-the-art baseball facility, with multiple uses, and with a minimum capacity of approximately 42,000 seats to be constructed within the District on the Ballpark Land, and consisting of the ballpark structure itself, all interior improvements and all systems necessary for a fully functional first class Major League Baseball ballpark, the Park-at-the-Park, and the grounds and walkways immediately surrounding the ballpark structure.

“Ballpark Design-Build Construction Contract” has the meaning assigned to such term in Section 4.02.1.

“Ballpark Design-Build Contractor” has the meaning assigned to such term in Section 4.02.1.

“Ballpark Drawings and Specifications” has the meaning assigned to such term in Section 4.01(d).

“Ballpark Estimate” means the summary estimate of the total cost for the design and construction of the Ballpark, not exceeding \$267,500,000, including all hard and soft costs but not including any Land Acquisition Costs, Parking Facilities costs or Infrastructure costs, set forth on Exhibit A-1 attached hereto.

“Ballpark Land” means the land (including parcels, streets and rights-of-way) upon which the Ballpark is to be constructed, including Area 1, Area 2a, Area 2b, Area 3, Area 4a, Area 4b, and Area 5, or as more particularly described on the Site Logistics Plan attached hereto.

“Ballpark MOU Obligations” has the meaning assigned to such term in Section 2.01.

“Ballpark Project” means the Ballpark, Park-at-the-Park Mixed Use Parcels, Infrastructure (including Parking Facilities except for the Phase I Parking Facilities to the extent the Developer is responsible for the costs therefor) and Land Acquisition.

“Ballpark Property” has the meaning assigned to such term in Section 6.08.

“Base Map” means the map prepared by the City attached hereto as Exhibit B-2, as modified in accordance herewith.

“Bond Trustee” means the entity chosen by the City to act as bond trustee and depository bank pursuant to Section 7.07.

“Business Day” means a day other than a Saturday, Sunday or other day (a) which is a governmental holiday under the laws of the State of California; or (b) on which commercial banks are authorized or required to close under the laws of the State of California.

“California Public Records Act” means the California Public Records Act as codified at California Government Code Section 6250 et seq.

“Capital Expenditure Reserve Fund” means the fund to be established and controlled by the City and the Padres to hold funds reserved for payment of the costs of all labor and materials reasonably required to add, repair, restore or replace any structural components, systems components or integral parts of the Ballpark, which would customarily be treated as a capital item for federal income tax purposes.

“CCDC” means the Centre City Development Corporation, a California corporation.

“CEQA” means the California Environmental Quality Act.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Change Order” means any material change in the plans and specifications for the Ballpark.

“Change Order Documents” has the meaning assigned to such term in Section 4.04.

“City” means the City of San Diego, California.

“City Ballpark Construction Fund” means the Sub-Fund of the Design and Construction Fund entitled “City Ballpark Construction Fund” established pursuant to Section 7.02.

“City Cash Flow Schedule” means the estimated cash flow schedule for the Ballpark Project as mutually agreed by the Padres and the City.

“City Clerk” means the City Clerk for the City.

“City Consents” has the meaning assigned to such term in Section 9.07.

“City Default” has the meaning assigned to such term in Section 11.02.

“City Financing” has the meaning assigned to such term in Section 3.03.

“City Funds” has the meaning assigned to such term in Section 3.03.

“City Indemnified Parties” has the meaning assigned to such term in Section 10.04

“City Investment” means the investment of the City towards the Ballpark Project, which may include any monies obtained from other public sources, except as set forth in this Agreement, and which will be used pursuant to Section 7.04.

“City Land Acquisition/Infrastructure Construction Fund” means the Sub-Fund of the Design and Construction Fund entitled “City Land Acquisition/Infrastructure Construction Fund” established with the Bond Trustee pursuant to Section 7.02.

“City Manager” means the City Manager for the City.

“City Property” has the meaning assigned to such term in Section 6.08(b).

“City-Provided Parking Facilities” means the Parking Facilities except those components of the Parking Facilities that are to be paid for by the Developer as part of the Phase I Parking Facilities, as set forth on the Land Use Plan attached hereto.

“Code” means the Municipal Code of the City, as the same may be amended from time to time.

“Consultant” means a Party’s project manager, architect, contractor, subcontractor, vendor, supplier or other consultant (including the Architect, any Other Contractor, the Ballpark Design-Build Contractor and the Padres Project Manager and each of their respective subcontractors).

“Contract” means all contracts, easements, covenants and agreements to which any Person is a party or is otherwise bound.

“Controversy” means actions, suits, proceedings, hearings, arbitrations, investigations, inquiries, complaints, controversies, charges, judgments, orders, decrees, injunctions, rulings, counterclaims, cross-claims, claims, demands, causes of action, writs or assessments.

“DDS” means the City of San Diego Department of Development Services.

“Design and Construction Fund” means the account entitled “Design and Construction Fund” established pursuant to Section 7.02 together with any sub-accounts thereof (including the Padres Ballpark Investment Fund, the Padres Land Acquisition/Infrastructure Investment Fund, the City Ballpark Construction Fund, the City Land Acquisition/Infrastructure Construction Fund and the Other Public Agency Investment Fund).

“Design-Build Alternative Procurement Ordinance” has the meaning assigned to such term in the Recitals.

“Developer” means the master developer for “Phase I” (as such term is defined in the MOU) selected by the Padres and reasonably acceptable to the City, the Agency and CCDC.

“District” means the Ballpark District to be established by the City: (a) within, but not as a part of, the Centre City East Sub-area of the project and area established by the City Council for the City of San Diego on May 11, 1992, by the adoption of Ordinance No. O-17767 (commonly known as the “Centre City Redevelopment Project”), (b) which shall be located adjacent to the Gaslamp Quarter and across from the convention center expansion, and (c) which may or may not be a separate legal entity.

“Draw Request Book” means the collection of payment requests and supporting documentation assembled by a Party, pursuant to Section 7.05.

“EIR” means the Environmental Impact Report for the Ballpark Project.

“Encumbrance” means any Security Interest, restriction, covenant, reservation, right, easement, lease, other title or interest retention arrangement, and any other encumbrance of any nature whatsoever.

“Environmental Activity” means any storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into, or on the Project Site.

“Environmental Requirements” means all present and future federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative and judicial precedents (including CERCLA, the H&S Code, and regulations promulgated thereunder), orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to the environment or to any Hazardous Substance or Environmental Activity.

“Equitable Principles” means (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors’ rights, and (b) general principles of equity, including the possible unavailability of the remedy of specific performance and injunctive and other equitable relief

“Expected Opening Date” means the latest day calculated pursuant to the following formula: For each milestone identified on the Project Schedule, the date such milestone is actually achieved plus the number of calendar days specified opposite such milestone on the Project Schedule under the heading “Calendar Days Prior to Expected Opening Date;” provided, however, the Expected Opening Date shall be equitably extended if the construction or development of the Ballpark is delayed as a result of any Force Majeure Event or any act or omission by the City, the Agency, CCDC or any other Person controlled by or under common control with any of them.

“Final Baseline Ballpark Program” means the program description of the Ballpark referred to in Section 3.01 that has been approved by the Padres and the City, a copy of which is attached hereto as Exhibit D (as the same may be revised from time to time pursuant to Change Orders made in accordance herewith).

“Final Completion of the Ballpark” means: (a) that all areas of the Ballpark have been finished to the Padres’ reasonable satisfaction, including completion of all contractors’ punch list items, in accordance with the Final Baseline Ballpark Program and the plans for the Ballpark delivered by PCL to the City pursuant to Section 4.01 as modified by any Major Change Orders approved in accordance with Section 4.04 and any other Change Orders delivered by PCL to the City pursuant to Section 4.04, and the plans for the City-Provided Parking Facilities; (b) final certificates of occupancy have been issued for all portions of the Ballpark (other than the retail lease areas and those types of improvements for which the appropriate governmental authority does not issue certificates of occupancy); (c) the City has confirmed that all areas of the Ballpark conform with, or exceed in all material respects, the Final Baseline Ballpark Program (which confirmation shall not be unreasonably withheld or delayed); and (d) the Ballpark is ready for the playing, public exhibition, and broadcasting of Major League baseball.

“Financing Payment” shall have the meaning specified in the Ballpark Design-Build Construction Contract.

“Force Majeure Event” has the meaning assigned to such term in Section 11.05.

“Form of Ballpark Design-Build Construction Contract” means the Form of Ballpark Design-Build Construction Contract attached hereto as Exhibit L.

“Form of Payment and Performance Bond” means the Form of Payment and Performance Bond attached hereto as Exhibit G.

“Governmental Agency” means any governmental or quasi-governmental agency, board, bureau, commission, department, court, administrative, tribunal or other instrumentality or authority, and any public utility.

“H&S Code” means applicable provisions of the California Health and Safety Code, as amended.

“Hazardous Substance” means, at any time, (a) hazardous materials, hazardous wastes and hazardous or toxic substances as defined in CERCLA, the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 *et seq.*) or Sections 25281(d) or 25316 of the H&S Code at such time, (b) any “hazardous waste,” “infectious waste” or “hazardous material” as defined in Sections 25117, 25117.5 or 25501(j) of the H&S Code at such time, and (c) any additional substances or materials which at such time are classified or considered to be hazardous or toxic under the laws of the State of California or any other applicable laws relating to the Project Site.

“Indemnified Party” has the meaning assigned to such term in Section 10.06.

“Indemnifying Party” has the meaning assigned to such term in Section 10.06.

“Infrastructure” means the following improvements: roads, sidewalks, other public facilities, and public utilities related to the Ballpark and Parking Facilities, as listed and set forth in the Land Use Plan attached hereto.

“Infrastructure Estimate” means the summary estimate of total cost for the design and construction of the Infrastructure, but not including any Land Acquisition Costs, set forth in Exhibit A-2 attached hereto.

“Interim Financing” means the agreement on interim funding reached between the Parties as part of the Sufficient Assurances Agreements.

“Land Acquisition” means the acquisition of land necessary for construction of the Ballpark Project as more particularly described in the Site Logistics Plan attached hereto.

“Land Acquisition Costs” means the full cost of all land to be acquired for the Ballpark Project, either by fee simple title or other control, and either through negotiated purchase or eminent domain, including the cost of legal proceedings in eminent domain, and compensation for relocation, goodwill, fixtures, equipment, environmental remediation, and related costs, as described in the MOU.

“Land Acquisition Estimate” means the summary estimate of Land Acquisition Costs set forth in Exhibit A-3 attached hereto.

“Land Use Plan” means the land use plan prepared by CCDC and attached hereto as Exhibit B-3.

“Lien” means the first priority lien on the Padres’ franchise as set forth in Section XVIII of the MOU.

“Losses” has the meaning assigned to such term in Section 10.04.

“MOU” has the meaning assigned to such term in the Recitals.

“Major Change Order” means any Change Order that increases or decreases the anticipated cost of the Ballpark by more than \$750,000 or that results in a significant programmatic deviation between (a) the plans and specifications for the Ballpark and (b) the Final Baseline Ballpark Program or the Minimum Design Parameters.

“Minimum Daily Amount” means the lesser of \$55,000 per day or the daily accrued interest on the City Financing.

“Minimum Design Parameters” means the minimum design parameters and specific improvements for the Ballpark described on Exhibit E attached hereto (as the same may be revised from time to time pursuant to Change Orders made in accordance herewith).

“Notice to Proceed” means the Off-Site Post-City Financing Notice to Proceed, an Off-Site Pre-City Financing Notice to Proceed or a Project Site Notice to Proceed, as the case may be.

“Obstruction” with respect to any Project Site, means each man-made belowground obstruction, improvement or facility that reasonably may interfere with development or construction of any Anticipated Facility and each man-made aboveground obstruction, improvement or facility located at the Project Site; provided, however, that “Obstruction” shall not include any man-made belowground or above ground obstruction, improvement or facility located at the Western Metal Supply & Farmer’s Bazaar Building Parcel.

“Offeror” has the meaning assigned to such term in Section 4.03.

“Off-Site Post-City Financing Notice to Proceed” has the meaning assigned to such term in Section 3.04.

“Off-Site Pre-City Financing Notice to Proceed” has the meaning assigned to such term in Section 3.02.

“Off-Site Pre-City Financing Work” has the meaning assigned to such term in Section 3.02.

“Other Agency Investment Fund” means the Sub-Fund of the Design and Construction Fund entitled “Other Agency Investment Fund” established with the Bond Trustee pursuant to Section 7.02.

“Other Contractor” means any of PCL’s contractors performing work on the Ballpark Land (excluding the Ballpark Design-Build Contractor and its Subcontractors).

“Padres” means Padres L.P., a Delaware limited partnership.

“Padres Ballpark Investment Fund” means the Sub-Fund of the Design and Construction Fund entitled “Padres Ballpark Investment Fund” established pursuant to Section 7.02.

“Padres’ Consents” has the meaning assigned to such term in Section 8.07.

“Padres’ Default” has the meaning assigned to such term in Section 11.01.

“Padres Indemnified Parties” has the meaning assigned to such term in Section 10.05(a).

“Padres’ Interest in the Ballpark” means a 30% divided minority interest in the Ballpark, the specific components of which will be determined by mutual agreement of the Padres and the City pursuant to the MOU, but will generally include the facilities made available to suite licensees and other premium seat owners, the Padres’ offices and other spaces, and Ballpark fixtures and equipment.

“Padres Land Acquisition/Infrastructure Investment Fund” means the Sub-Fund of the Design and Construction Fund entitled “Padres Land Acquisition/Infrastructure Investment Fund” established pursuant to Section 7.02.

“Padres/Private Investment” means the investment or contribution of private persons or entities, including PCL and the Padres, and which will be used only for the purposes set forth in Section 7.04(a)(i).

“Padres Project Manager” means Hines Interests Limited Partnership or any alternative project manager designated from time to time by PCL.

“Padres Property” has the meaning assigned to such term in Section 6.08(a).

“Padres Use of Funds Schedule” means the estimated cash flow schedule for the Ballpark Project set forth on Exhibit C attached hereto.

“Parent Company Guaranty” has the meaning assigned to such term in Section 12.17.

“Park-at-the-Park” means the following improvements: a park-like area, suitable for picnics, concerts, recreational events and observing events in the Ballpark, set amidst (but not including) a combination of retail, commercial and residential development located on the Ballpark Land adjacent to the Ballpark.

“Park-at-the-Park Mixed Use Parcels” means parcels R1, R2, R3, R4, and R5 as shown and referred to on the Land Use Plan.

“Parking Facilities” means a combination of surface and structured parking facilities constructed and configured to provide at least 5,000 revenue-controlled parking spaces to serve patrons of the Ballpark, as listed and set forth in the Land Use Plan attached hereto.

“Parties” means the City, CCDC, the Agency, the Padres and PCL.

“PCL” means Padres Construction, L.P., a Delaware limited partnership.

“Person” means any natural person, governmental authority, corporation, partnership, limited liability company, joint venture, trust, cooperative, association, or other entity of any kind.

“PFFA” means the Public Facilities Financing Authority of the City of San Diego, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.

“Phase I Parking Facilities” means the approximately 2,238 parking stalls (which consists of approximately 1,650 stalls for which the Developer will provide the land and improvements and approximately 588 stalls for which the Developer will provide the land and the City will provide the improvements, the cost of which City-provided improvements are included in the Infrastructure Estimate) as part of Phase I (as defined in the MOU), as described in the Land Use Plan attached hereto.

“Project Schedule” means the schedule of project milestones and the deadlines therefore, set forth on Exhibit F and referred to in Section 3.06(c).

“Project Site” means each of Area 1, Area 2a, Area 2b, Area 3, Area 4a, Area 4b or Area 5 of the Ballpark Land, as the case may be.

“Project Site Notice to Proceed” has the meaning assigned to such term in Section 3.05.

“Proposal” has the meaning assigned to such term in Section 4.02.3.

“Qualcomm Agreement” means an extension of the Padres’ use and occupancy agreement for Qualcomm Stadium, as more fully set forth in the MOU.

“Reimbursable Expenses” has the meaning assigned to such term in Section 7.06.

“Related Documents” means the MOU and all agreements, documents and instruments contemplated by this Agreement or the MOU to be executed and delivered by one or more of the Parties, in connection with the transactions contemplated by this Agreement or the MOU and all other documents executed and delivered by any Party, in connection with the transactions contemplated by this Agreement or the MOU.

“Request for Payment” means a request for a payment of funds from the Design and Construction Fund or the Agency Fund in the form attached hereto as Exhibit H made by a Party pursuant to Section 7.05.

“Response Deadline” has the meaning assigned to such term in Section 4.02.3.

“RFI” means request for information from pre-qualified Design-Build Contractors attached hereto as Exhibit O for the Ballpark Design-Build Construction Contract.

“Security Interest” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or otherwise), security interest or preferential arrangement of any kind whatsoever.

“Selection Criteria” has the meaning assigned to such term in Section 4.02.3.

“Site Logistics Plan” means the descriptions of project sites and site logistics plan attached hereto as Exhibit B-1.

“Subcontractor” means any subcontractor, subconsultant, vendor or supplier of any tier engaged by any Architect, the Ballpark Design-Build Contractor or any Other Contractor.

“Sub-Funds” has the meaning assigned to such term in Section 7.02.

“Substantial Completion of the Ballpark” means: (a) that the Padres’ offices, clubhouse and other exclusive spaces are ready for occupancy, (b) that all other areas of the Ballpark have been finished to the Padres’ reasonable satisfaction in accordance with the Final Baseline Ballpark Program and the plans for the Ballpark delivered by PCL to the City pursuant to Section 4.01 as modified by any Major Change Orders approved in accordance with Section 4.04 and any other Change Orders delivered by PCL to the City pursuant to Section 4.04, and the plans for the City-Provided Parking Facilities, subject only to contractors’ punch lists and (c) a

temporary certificate of occupancy has been issued for all portions of the Ballpark (other than the retail lease areas and for those types of improvements for which the appropriate governmental authority does not issue certificates of occupancy).

“Sufficient Assurances Agreements” means those agreements between the Parties reached on March 31, 1999, and attached to Resolution No. R-291450, on file in the Office of the City Clerk.

“Temporary Parking Parcels” means Parcel “P5”, “P6”, “B2” or “B3”, as the case may be, as shown on and referred to on the Land Use Plan attached hereto.

“Trust Indenture” means that certain Trust Indenture entered into by PFFA and Bond Trustee in connection with the City Financing.

“Western Metal Supply & Farmer’s Bazaar Building Parcel” means parcels 535-355-09 as shown and referred to on the Land Use Plan.

1.02 Usage. Terms defined in the singular in Section 1.01 may be used in the plural. Similarly, terms defined in the plural may be used in the singular. Unless the context of this Agreement clearly requires otherwise: (a) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; (b) references to one gender include all genders; (c) “including” is not limiting; (d) “or” has the inclusive meaning represented by the phrase “and/or”; (e) the words “hereof”, “herein”, “hereby”, “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (f) article, section, clause, Exhibit and Schedule references are to this Agreement unless otherwise specified; and (g) reference to any agreement (including this Agreement), document or instrument (but excluding all agreements, documents and instruments set forth on the Exhibits and Schedules attached hereto) means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

ARTICLE II.

ENGAGEMENT OF THE PADRES AND PCL

2.01 Engagement of the Padres and PCL.

(a) The Padres hereby delegate to PCL the obligations of the Padres with respect to the design and construction of the Ballpark under the MOU, as such obligations may be supplemented by this Agreement (the “Ballpark MOU Obligations”); provided that the Padres shall remain liable for the funding obligations under the MOU. PCL hereby accepts such delegation and agrees to perform the Ballpark MOU Obligations for the benefit of the City, the Agency and CCDC. The City, the Agency and CCDC hereby consent to the delegation of the Ballpark MOU Obligations to PCL and agree to accept performance by PCL of the Ballpark MOU Obligations.

(b) This Agreement is intended to be a “Procurement Agreement,” as such term is defined in Section 22.3402 of the Design-Build Alternative Procurement Ordinance. As such,

PCL shall manage the design and construction of the Ballpark on behalf of the City, as the "Procurement Consultant," as such term is defined in Section 22.3402 of the Design-Build Alternative Procurement Ordinance. In such capacity PCL shall:

(i) select the Architect for the Ballpark, and shall, or shall cause its Architect to, prepare detailed preliminary drawings and specifications for the Ballpark, as more particularly set forth in Section 4.01;

(ii) select the Ballpark Design-Build Contractor and cause the Ballpark Design-Build Contractor to complete the design of, and to construct, the Ballpark, as more particularly described in Section 4.02;

(iii) select the other Consultants in connection with the design and construction of the Ballpark, as more particularly described in Section 4.03.

(iv) perform its obligations hereunder so as to cause, and shall cause, the Ballpark to be completed (A) in a manner consistent (except as provided in any Change Order in accordance herewith) with the Final Baseline Ballpark Program and the Minimum Design Parameters and (B) in a manner otherwise consistent with applicable law; and

(v) use its good faith efforts to cause the Ballpark to be completed in accordance with the Project Schedule (subject to extension for any delay due to Force Majeure Events and as otherwise permitted hereunder).

(c) PCL shall use its good faith skills and abilities in performing the obligations hereunder in an expeditious and economical manner consistent with the interests of the City.

(d) PCL shall manage the design and construction of the Ballpark Project on behalf of the City with full power and authority to bind and act for and on behalf of the City as if PCL were the City itself; it being understood, however, that neither this Agreement, any Related Document, the relationship of the Parties as created by this Agreement and the Related Documents, nor the Parties' performance of their obligations under this Agreement or any Related Document shall be deemed or construed to create the relationship of a partnership or, a joint venture or any employer-employee relationship:

(i) between or among any of the Parties; or

(ii) between any Party and another Party's respective Consultants.

2.02 Limitations on Authority.

(a) Notwithstanding any provision in this Agreement to the contrary, neither PCL nor the Padres shall, without the prior written approval of the City, CCDC, or the Agency, as appropriate:

(i) retain attorneys on behalf of the City, CCDC, or the Agency, except as set forth in Section 4.02 or 10.06;

(ii) institute or defend lawsuits or other legal proceedings on behalf of the City, CCDC, or the Agency, except as set forth in Section 4.02 or 10.06; provided, however if the City fails to consent to the institution or defense by the Padres of any lawsuit or other legal proceeding on behalf of the City in connection with the Ballpark Design-Build Construction Contract, then PCL and the Padres shall be relieved of their respective obligations hereunder to the extent such failure impedes PCL's ability to satisfy such obligations, including obligations with respect to cost-overruns and completion of the Ballpark before the Expected Opening Date;

(iii) enter into any contract or agreement on behalf of the City, CCDC, or the Agency, or otherwise obligate the City, the Agency or CCDC in any way without the prior written consent of the City, the Agency or CCDC, as appropriate, except as set forth in Section 4.02, 4.03 or 10.06.

(iv) obligate the City to pay monies to any person or entity until the City Auditor and Comptroller has issued the appropriate certification pursuant to the City Charter;

(v) pledge the credit of the City, CCDC, or the Agency;

(vi) borrow money or execute any promissory note or mortgage, deed of trust, security agreement or other Encumbrance in the name of or on behalf of the City, CCDC, or the Agency;

(vii) release, compromise or settle any claim against the City, CCDC, or the Agency, except as set forth in Section 4.02, 4.03 or 10.06;

(viii) enter into or approve any Major Change Order without the prior written consent of the City, CCDC, or the Agency, if such consent is required under Section 4.04; or

(ix) commence any on-site construction on the Ballpark Project without receiving a Notice to Proceed from the City.

(b) The limitations set forth in this Section 2.02 shall be in addition to all other restrictions on the authority of PCL and the Padres set forth in this Agreement.

(c) The entering into and performance of the Ballpark Design-Build Construction Contract in accordance with Section 4.02 and the defense or settlement of any claim in accordance with Section 10.06 shall be deemed within the authority of PCL and the Padres set forth under this Agreement and shall not constitute a violation of any of the limitations on authority set forth in Section 2.02(a) or elsewhere in this Agreement.

ARTICLE III.

PROJECT DESCRIPTION AND SCHEDULE

3.01 Final Baseline Ballpark Program and Minimum Design Parameters. The Padres have submitted to the City, pursuant to the MOU, the Final Baseline Ballpark Program and Minimum Design Parameters. Any substantive modifications to the Final Baseline Ballpark Program or the Minimum Design Parameters attached hereto as Exhibits D and E, respectively, must be pursuant

to a Change Order approved in accordance with Section 4.04. If a Change Order is approved in accordance with Section 4.04 that modifies the Final Baseline Ballpark Program and Minimum Design Parameters, such modifications shall automatically be deemed incorporated into and become part of the Final Baseline Ballpark Program and Minimum Design Parameters for purposes of the MOU and this Agreement and Exhibits D and E shall automatically be deemed to have been amended to reflect such modification. The Final Baseline Ballpark Program and Minimum Design Parameters are intended to establish the minimum programmatic and qualitative standards for the Ballpark Project and the Padres, and, subject to Section 4.04, PCL shall have the right to exceed such minimum standards at their discretion without City approval.

3.02 Off-Site Pre-City Financing Notices to Proceed. The City shall issue notices in the form of Part 2 of Exhibit J (each such notice, an “Off-Site Pre-City Financing Notice to Proceed”) specifying the date for commencement of certain construction related activities for the Ballpark with respect to offsite fabrication of long lead time equipment and materials more particularly described on Part 1 of Exhibit J (with respect to each Off-Site Pre-City Financing Notice to Proceed, the “Off-Site Pre-City Financing Work”), on or before the deadline therefore specified on Part 1 of Exhibit J. PCL shall have the right to commence any off-site construction related activities for the Ballpark at its own initiative and expense (provided that such activities are consistent with this Agreement) and in the event the City issues any Off-Site Pre-City Financing Notice to Proceed, PCL shall be entitled to be reimbursed for any costs expended in connection therewith from the Design and Construction Fund pursuant to Article VII hereof.

3.03 City Financing. The City shall use its good faith efforts to obtain financing (the “City Financing”) for the Ballpark Project that:

(i) provides the City with funds (the “City Funds”) that are in an amount that is sufficient to satisfy the City’s investment obligations under the MOU with respect to the Ballpark; and

(ii) is on a fully tax-exempt basis, except for such financing based upon certain limited, agreed-upon Padres/Private Investment payments (which may at least include, at the Padres’ discretion, Padres’ revenue and/or other Padres’ sources, and net possessory interest and/or net property taxes), which financing need not be on a fully tax-exempt basis;

provided, however, that the City and the Agency shall obtain the City Financing when and only when the conditions precedent set forth in clause (a) of this Section 3.03 shall have been satisfied or waived in writing in accordance with clause (b) of this Section 3.03.

(a) Conditions Precedent to the City Financing:

(i) the City shall have the ability to obtain the City Financing on terms reasonably acceptable to the City;

(ii) the San Diego Unified Port District shall have provided written evidence of its commitment to provide additional investment in the Ballpark Project of \$21,000,000, or if the Port District is unable to provide such evidence, the City and the Padres shall obtain sufficient additional financing investments to fund the Ballpark Project in the amount of

\$411,000,000, unless the City and the Padres mutually agree, each acting in their sole discretion, to reduce the size of the Ballpark Project in light of the available funds;

(iii) the City and the Padres shall have agreed on the modified financial terms for the extension of the Qualcomm Agreement to address the consequences of the City-Chargers arrangement for the 2000 season and beyond;

(iv) the City shall have granted all discretionary approvals required for the construction and development of the Ballpark;

(v) all conditions for the issuance of at least one Project Site Notice to Proceed described in Section 3.05 (other than the City's issuance of the Off-Site Post-City Financing Notice to Proceed) shall have been satisfied;

(vi) all conditions for the issuance of a building permit for the Ballpark shall have been satisfied; and

(vii) full compliance with the California Environmental Quality Act shall have been achieved.

(b) All conditions precedent described in clause (a) of Section 3.03 are for the joint benefit of the Padres, PCL and the City and may only be waived pursuant to a writing executed by the Padres, PCL and the City.

3.04 Off-Site Post-City Financing Notice to Proceed. The City shall issue a notice in the form of Exhibit I (the "Off-Site Post-City Financing Notice to Proceed") to PCL specifying the date for the commencement of all construction related activities for the Ballpark that are not to be conducted on the Ballpark Land, when and only when the conditions precedent set forth in clause (a) of this Section 3.04 shall have been satisfied or waived in writing in accordance with clause (b) of this Section 3.04.

(a) Conditions Precedent to Issuance of the Off-Site Post-City Financing Notice to Proceed:

(i) the City shall have satisfied the conditions to obtaining the City Financing specified in Section 3.03(a);

(ii) the City shall have obtained the City Financing;

(iii) all City Funds shall have been placed in the Design and Construction Fund; and

(iv) the City Auditor and Comptroller shall have issued the appropriate certification with respect to the availability of such City Funds pursuant to the City Charter.

(b) All conditions precedent described in clause (a) of Section 3.04 are for the joint benefit of the Padres, PCL and the City and may only be waived pursuant to a writing executed by the Padres, PCL and the City.

3.05 Project Site Notice to Proceed. The City shall issue notices in the form of Exhibit K (each such notice, a “Project Site Notice to Proceed”) delivering PCL access to a particular Project Site in its entirety and specifying the date for commencement of all onsite construction related activities for the Ballpark on such Project Site, when and only when the conditions in clause (a) of this Section 3.05 shall have been satisfied with respect to such Project Site. Without limiting Section 3.06(b), if the City obtains the City Financing, then the City shall cause such conditions to be satisfied and shall issue the Project Site Notice to Proceed with respect to Area 1, upon issuance of the Off-Site Post-City Financing Notice to Proceed but in no event earlier than May 1, 2000; with respect to Area 2a, within sixty (60) days after the City delivers the Off-Site Post-City Financing Notice to Proceed; Area 2b, within one hundred (100) days after the City delivers the Off-Site Post-City Financing Notice to Proceed; with respect to Area 3, within ninety (90) days after the City delivers the Off-Site Post-City Financing Notice to Proceed; with respect to Area 4a, within sixty (60) days after the City delivers the Off-Site Post-City Financing Notice to Proceed; with respect to Area 4b, within one hundred and eighty (180) days after the City delivers the Off-Site Post-City Financing Notice to Proceed; and with respect to Area 5 upon issuance of the Off-Site Post-City Financing Notice to Proceed.

(a) Conditions Precedent to Issuance of Project Site Notice to Proceed with respect to any particular Project Site:

(i) the City, the Padres or PCL shall have acquired legal title to such Project Site;

(ii) the City shall have caused to be completed, at no expense to the Padres, PCL or any of their agents or affiliates, all Hazardous Substances remediation and environmental cleanup and response activities at such Project Site that the City and the Padres (or PCL) have agreed in writing will be completed by the City, the Agency or CCDC before construction of the Ballpark on such Project Site commences;

(iii) the City shall have caused to be removed from such Project Site each and every Obstruction that the City and the Padres (or PCL) have agreed in writing will be removed by the City, the Agency or CCDC before construction of the Ballpark on such Project Site commences; and

(iv) the City shall have rightfully issued the Off-Site Post-City Financing Notice to Proceed.

(b) All conditions precedent described in clause (a) of Section 3.05 are for the joint benefit of the Padres, PCL and the City and may only be waived pursuant to a writing executed by the Padres, PCL and the City.

3.06 Project Schedule.

(a) Neither the Padres, the Ballpark Design-Build Contractor nor PCL shall perform any off-site fabrication of the Ballpark unless and until the City issues an Off-Site Pre-City Financing Notice to Proceed or an Off-Site Post-City Financing Notice to Proceed in accordance with Section 3.02 or 3.04, respectively. Neither the Padres, the Ballpark Design-Build Contractor nor PCL shall perform any on-site construction of the Ballpark at any particular

Project Site unless and until the City issues a Project Site Notice to Proceed with respect to such Project Site in accordance with Section 3.05. Once the City has issued any particular Notice to Proceed, all costs and expenses incurred by the Padres, the Ballpark Design-Build Contractor and/or PCL in connection with any fabrication or construction related activities in accordance with this Agreement commenced pursuant to such Notice to Proceed shall be paid out of the Design and Construction Fund; or to the extent the Padres, the Ballpark Design-Build Contractor or PCL pays such costs and expenses, the Padres, the Ballpark Design-Build Contractor or PCL, as applicable, shall be reimbursed for such costs and expenses out of the Design and Construction Fund; in either case, in accordance with Article VII.

(b) The Parties desire and intend that PCL and the Ballpark Design-Build Contractor shall be entitled to commence off-site fabrication of the Ballpark and on-site construction of the Ballpark immediately upon the City's obtaining the City Financing and that all costs and expenses incurred by the Padres, the Ballpark Design-Build Contractor and/or PCL in connection with any fabrication or construction-related activities performed by PCL and the Ballpark Design-Build Contractor shall be paid out of the Design and Construction Fund. As such:

(i) If the City obtains the City Financing, then the City shall immediately thereafter cause the conditions precedent to the issuance of the Off-Site Post-City Financing Notice to Proceed specified in Section 3.04(a)(iii) and 3.04(a)(iv) to be satisfied or waived in accordance with Section 3.04(b) and shall issue the Off-Site Post-City Financing Notice to Proceed immediately upon confirmation from the Bond Trustee that the proceeds of the City Financing have been deposited into the Design and Construction Fund; and

(ii) If the City obtains the City Financing, then the City shall immediately thereafter cause the conditions precedent to the issuance of at least one of the Project Site Notices to Proceed for Area 1 or Area 5 specified in Section 3.05(a) to be satisfied or waived in accordance with Section 3.05(b) and shall issue at least one of these Project Site Notices to Proceed immediately upon confirmation from the Bond Trustee that the proceeds of the City Financing have been deposited into the Design and Construction Fund.

(c) Subject to all the other provisions of this Agreement, the general target timetable for the design and construction of the Ballpark Project is set forth on Exhibit F attached hereto (the "Project Schedule").

(d) The Parties shall work cooperatively and use their best efforts, to accomplish the construction of the Ballpark so that the Ballpark may be open as early as possible commensurate with reasonable financing expectations.

(e) PCL shall use good faith efforts to cause Substantial Completion of the Ballpark to occur with respect to all components of the Ballpark on or before the Expected Opening Date.

(f) PCL shall use good faith efforts to cause Final Completion of the Ballpark to occur with respect to all components of the Ballpark on or before one hundred eighty (180) days after the Substantial Completion of the Ballpark shall have occurred.

ARTICLE IV.

CERTAIN OBLIGATIONS OF PCL AND THE PADRES

4.01 Design and Construction of Ballpark.

(a) Subject to the availability of funds from the Design and Construction Fund which may be used for design and construction of the Ballpark (and subject to Section 4.05), PCL shall be responsible for the design and construction of the Ballpark (either directly or through the Ballpark Design-Build Contractor), including, without limitation: (i) the development of all plans, designs, schemes, drawings and programs, for the Ballpark, and (ii) the selection of certain professionals as set forth in Section 4.01(c). Subject to Article XI, the City, the Agency and CCDC shall have the right to collaboratively participate in but not the right to approve or disapprove of any matters with respect to the design and construction of the Ballpark (except as allowed under Section 4.04 and the Ballpark Design-Build Construction Contract).

(b) PCL shall deliver copies of any and all plans, designs, schemes, drawings and programs with respect to the Ballpark to the City, the Agency and CCDC, promptly upon PCL's receipt thereof, for review and comment by the City, which review and comment shall be limited to compliance with the Final Baseline Ballpark Program and Minimum Design Parameters. The City shall provide to PCL its comments with respect to any documents delivered to the City for the City's review pursuant to this Section 4.01(b) within ten (10) Business Days after receiving such documents or such documents shall be deemed approved by the City, the Agency and CCDC. Except for immaterial changes substantially consistent with the prior documents delivered to the City, PCL shall not authorize any Consultant to incur any hard construction costs in respect of such documents or any material modifications thereto until (i) PCL has considered any comments delivered from the City during such ten (10) Business Day City review/comment period or (ii) the City, the Agency and CCDC has approved or been deemed to have approved such plans, designs, schemes, drawings and programs as described in the preceding sentence.

(c) PCL will select the Architect, the Ballpark Design-Build Contractor, and the other Consultants for the Ballpark.

(d) PCL shall, or shall cause its Architect to, prepare detailed preliminary drawings and specifications for the Ballpark (the "Ballpark Drawings and Specifications") in accordance with the Final Baseline Ballpark Program and the Minimum Design Parameters.

(e) Subject to the availability of funds from the Design and Construction Fund which may be used for the design and construction of the Ballpark and subject to any Change Order made in accordance herewith, PCL shall cause the Ballpark to be designed and constructed substantially in accordance with the Final Baseline Ballpark Program and the Minimum Design Parameters, and PCL shall be entitled to modify, or cause its Architect to modify, the Ballpark Drawings and Specifications (subject always to the provisions of this Agreement with respect to Change Orders).

4.02 Contracts.

4.02.1 Ballpark Design-Build Construction Contract Generally. The Parties intend that the portion of the design and construction of the Ballpark designated by PCL in the RFI will be performed by a licensed general contractor (the “Ballpark Design-Build Contractor”) under a design-build construction contract entered into by PCL on behalf of the City under the authority granted under Section 2.01(b) (the “Ballpark Design-Build Construction Contract”). It is generally intended that the Ballpark Design-Build Construction Contract will be in the form of the Form of Ballpark Design-Build Construction Contract attached hereto as Exhibit L. If PCL desires that the Ballpark Design-Build Construction Contract deviate from the Form of Ballpark Design-Build Construction Contract attached hereto as Exhibit L, then PCL shall notify the City of the nature of such deviations. If the City reasonably objects to any such proposed deviations, then the City shall deliver a notice describing in reasonable detail such objections to PCL within five (5) Business Days after receiving PCL’s notice of such proposed deviations. PCL shall not cause the Ballpark Design-Build Construction Contract so to deviate from the Form of Ballpark Design-Build Construction Contract attached hereto as Exhibit L, unless PCL shall have addressed the City’s objections, if any, to the reasonable satisfaction of the City. If the City fails to respond with its objections within such five (5) Business Day period, then the City shall be deemed to have accepted such deviations. Notwithstanding the foregoing, nothing in this Section 4.02.1 shall be deemed to limit PCL’s right to enter into change orders with respect to the Ballpark Design-Build Construction Contract once it is executed.

4.02.2 Work To Be Performed Under Ballpark Design-Build Construction Contract. The Ballpark Design-Build Construction Contract will require the Ballpark Design-Build Contractor to complete the design of and to construct the Ballpark based on the Ballpark Drawings and Specifications. Because the Ballpark Drawings and Specifications were not completed before the RFI was prepared and are not expected to be completed before the Ballpark Design-Build Construction Contract is let, the Ballpark Design-Build Construction Contract initially shall require the Ballpark Design-Build Contractor, on a guaranteed maximum price basis, to, with respect to the construction of the Ballpark, undertake organizational and logistical obligations similar to those customarily performed by general contractors in similar large projects, as described in Exhibit F to the Form of Ballpark Design-Build Construction Contract for the entire Ballpark (as the description of the Ballpark may change from time to time).

As the Ballpark Drawings and Specifications for other portions of the Ballpark are completed, the construction and completion of the engineering and design of such other portions of the Ballpark shall be included in the Ballpark Design-Build Construction Contract by change order. Subject to Section 4.04, PCL shall be entitled to enter into such change orders on behalf of the City without obtaining any consent or authorization from the City in addition to the authorization provided herein. In connection with such change orders under the Ballpark Design-Build Construction Contract, the Ballpark Design-Build Construction Contract will require the Ballpark Design-Build Contractor at PCL’s request to solicit bids from subcontractors (which may include members of the Ballpark Design-Build Contractor) for the construction and completion of the such portions of the Ballpark substantially as described in the Form of Ballpark Design-Build Construction Contract.

4.02.3 Competitive Negotiation of Ballpark Design-Build Construction Contract.

PCL shall competitively negotiate and let the Ballpark Design-Build Construction Contract on behalf of the City. In connection therewith, PCL shall be authorized to undertake any of the activities described in this Section 4.02.3 on behalf of the City.

(a) The criteria (the "Selection Criteria") by which the Ballpark Design-Build Contractor shall be selected from among the persons responding to the RFI (each, an "Offeror") have been established by PCL and are set forth in Attachment B of the RFI.

(b) PCL has established prequalification criteria for the selection of the Ballpark Design-Build Contractor in accordance with Section 22.3406 of the Design-Build Alternative Procurement Ordinance. The RFI has been made available only to selected prospective Offerors who are believed to meet the pre-qualification criteria described in the RFI.

(c) In anticipation of entering into this Agreement, PCL has prepared the RFI. The RFI includes, without limitation, the following items:

- (i) the Form of Ballpark Design-Build Construction Contract;
- (ii) a description of the Ballpark;
- (iii) the preliminary Ballpark Drawings and Specifications that have been prepared and completed as of June 29, 1999; and
- (iv) the Selection Criteria.

Each Offeror has been required to submit its written response to the RFI (each, a "Proposal") on or before October 27, 1999 (the "Response Deadline"), which can be extended at the sole discretion of PCL.

(d) PCL has commenced negotiations with one or more Offerors on behalf of the City under the Design-Build Alternative Procurement Ordinance, and the City hereby ratifies and approves of such actions, and PCL is hereby authorized to continue such negotiations on behalf of the City. PCL shall not be under any obligation: (i) to complete its negotiations with any Offeror, or (ii) to negotiate with any other Offeror. PCL may request that any or all Offerors resubmit revised Proposals based on negotiations with PCL. Based on such negotiations, resubmitted Proposals and the Selection Criteria, PCL may at any time select an Offeror as the Ballpark Design-Build Contractor to contract on the terms and as mutually agreed upon by PCL and the Ballpark Design-Build Contractor.

After PCL has selected the Ballpark Design-Build Contractor, PCL shall enter into the Ballpark Contract on behalf of the City on such terms and conditions.

(e) The City hereby finds the RFI to comply with the Design-Build Alternative Procurement Ordinance and the Design-Build Procurement method contemplated thereunder, and hereby, ratifies and approves the form of the RFI and all design and pre-construction activities performed by or on behalf of PCL and the Padres with respect to the Ballpark about which PCL or the Padres have noticed the City on or before the date of this Agreement

(including, without limitation, the preparation of the RFI and the commencement of the competitive selection process for the Ballpark Design-Build Construction Contract). All such design and pre-construction activities shall be deemed to constitute design and construction activities of PCL under this Agreement; provided, however, no such activities related to the preparation of the RFI shall be deemed to be actions of the City and all Consultants engaged in connection with the preparation of the RFI shall be deemed consultants of PCL and not the City.

4.02.4 Administration of Ballpark Design-Build Construction Contract. Without limiting Section 2.01 PCL shall monitor the performance of the Ballpark Design-Build Contractor under and administer the Ballpark Design-Build Construction Contract on behalf of the City. As such, and subject to the other terms of this Agreement, PCL shall have full power and authority to bind and act for, on account of and on behalf of the City as if PCL were the City itself for purposes of implementing the Ballpark Design-Build Construction Contract, including authorization to:

(a) negotiate and enter into change orders in connection with the Ballpark Design-Build Construction Contract; provided that any such change order that constitutes a Change Order hereunder shall be entered into or approved in accordance with the provisions of Section 4.04;

(b) authorize and approve payment requests in connection with the Ballpark Design-Build Construction Contract;

(c) enforce the City's rights and claims against the Ballpark Design-Build Contractor (including the right to institute or defend lawsuits or other legal proceedings on behalf of the City, retain attorneys on behalf of the City and release, compromise or settle any claim against the City (provided that the City has consented in writing to PCL's institution or defense of such lawsuit or legal proceedings on behalf of the City pursuant to Section 2.02(a)(ii)), and the right to commence, suspend and stop work);

(d) approve or reject work; and

(e) approve or disapprove any matter in connection with the Ballpark Design-Build Construction Contract.

This power to bind and act for, on account of and on behalf of the City shall be deemed to be a power coupled with an interest and shall be irrevocable until such time as a Padres Default shall have occurred and the City shall have delivered written notice to PCL under Section 11.03(b)(ii). Subject to applicable law, all Persons shall be entitled to rely on any action taken by PCL purportedly for or on behalf of the City in connection with the Ballpark Design-Build Construction Contract as if such action were taken by the City itself. All contracts to which the City will be a party must be approved as to form and legality by the City Attorney; provided, however, the City Attorney has already so approved the Ballpark Design-Build Construction Contract.

4.03 Ancillary Agreements. PCL shall be entitled to enter into additional contracts ("Ancillary Contracts") in its own name in connection with the design and construction of the Ballpark, including contracts (a) for the performance of professional services (e.g., Architect,

additional design, engineering, legal, project management, and testing services) necessary or appropriate for the completion of the Ballpark, (b) for the provision and installation of fixtures, furnishings and equipment appropriate for the completion of the Ballpark in accordance with the Final Baseline Ballpark Program and the Minimum Design Specifications. All costs and expenses incurred by PCL in connection with Ancillary Contracts shall be paid out of the Design and Construction Fund; or to the extent PCL pays such costs and expenses, PCL shall be reimbursed for such costs and expenses out of the Design and Construction Fund; in either case, in accordance with Article VII.

4.04 Change Orders Regarding Plans and Specifications for the Ballpark.

(a) Any Change Orders during construction of the Ballpark shall be subject to the approval of PCL. Subject to the provisions of this Section 4.04, PCL shall be entitled to undertake and effect Change Orders unilaterally.

(b) Prior to entering into or approving any Change Order, PCL shall deliver to the individual designated by the City (i) a reasonably detailed description of the change in the work to be performed, including all conceptual drawings, plans and specifications related thereto (including those to be delivered to the appropriate contractor for implementation of such Change Order); and (ii) a calculation of the additional costs (or savings, as applicable) resulting from implementing such Change Order, together with reasonable documentation supporting such calculation (collectively, the "Change Order Documents").

(c) Each Major Change Order shall be subject to, and PCL shall not enter into or approve any Major Change Order without first obtaining, the City's written approval or deemed approval of such Major Change Order in accordance with Section 4.04(d), except the City's approval shall not be required:

(i) to the extent such Major Change Order causes the anticipated total cost for the design and construction of the Ballpark to exceed the Ballpark Estimate, on the condition that prior to entering into, approving or otherwise implementing such Major Change Order, PCL satisfies its obligations under Section 4.04(b);

(ii) any Major Change Order made after the anticipated total cost for the design and construction of the Ballpark has exceeded the Ballpark Estimate, on the condition that prior to entering into, approving or otherwise implementing such Major Change Order, PCL satisfies its obligations under Section 4.04(b); or

(iii) any Major Change Order proposed by PCL after \$175,000,000 has been committed to the Ballpark Project and deposited into the Design and Construction Fund, on the condition that (A) such Major Change Order is necessary to stay within the Ballpark Estimate, and does not result in a material adverse impact on the Ballpark and on the fans' experience at the Ballpark, and (B) prior to entering into or approving such Major Change Order, PCL satisfies its obligations under Section 4.04(b).

Notwithstanding the foregoing, prior to entering into or approving any substantive Major Change Order that results in a significant programmatic deviation between (x) the plans and specifications for the Ballpark and (y) the Final Baseline Ballpark Program or the Minimum

Design Parameters, PCL shall provide the City with a description of such Major Change Order, and if the City notifies PCL of any comments with respect to such Major Change Order within five (5) Business Days after the City receives such description from PCL, then PCL shall consider the City's comments in good faith.

(d) PCL shall not enter into or approve all or any portion of any Major Change Order that is subject to the City's approval pursuant to Section 4.04(c) until such Major Change Order is approved or deemed approved by the City pursuant to this Section 4.04(d). Within five (5) Business Days after receipt by the individual designated by the City pursuant to Section 4.04(b) of all Change Order Documents related to any Major Change Order subject to the City's approval, the City shall deliver written notice to PCL either approving such Major Change Order or disapproving such Major Change Order and specifying the reasons for such disapproval. The City shall not unreasonably withhold such approval. If the City fails to deliver any such written notice within such five (5) Business Day period, then the City shall be deemed to have approved such Major Change Order. Once any Major Change Order that is subject to the City's approval is approved or deemed approved by the City, PCL shall be permitted to enter into or approve such Major Change Order, on the condition that such Major Change Order is implemented substantially in accordance with the Change Order Documents delivered by PCL to the individual designated by the City pursuant to Section 4.04(b) with respect thereto.

4.05 Ballpark Cost Overruns and Savings.

(a) The Padres and PCL shall be solely responsible for any and all design and construction costs for the Ballpark exceeding the Ballpark Estimate and amounts necessary to satisfy such excess costs shall be deposited into and paid from the Design and Construction Fund.

(b) The City and the Padres hereby amend that certain Security Agreement dated as of April 1, 1999 between the Padres, as debtor, and the City, as secured party, to provide that (i) the "Obligations" (as defined in the Security Agreement) secured thereby include (in addition to the Obligations currently described therein) the Padres' Obligations to fund, or to cause one or more other non-governmental entities to fund, the Padres/Private Investment pursuant to Section 7.03(a)(ii) and to fund cost overruns pursuant to this Section 4.05 (including cost overruns resulting from the implementation of any Change Order causing the anticipated total cost of the Ballpark to exceed the Ballpark Estimate), (ii) such Security Agreement shall terminate on the date on which the Obligations have been performed in full, and (iii) the amount of the Obligations under the MOU and hereunder secured by such Security Agreement shall be limited to \$50,000,000, and any proceeds of any disposition or sale of the Collateral (as defined in the Security Agreement) pursuant to the Security Agreement to the extent in excess of \$50,000,000 shall neither be paid to nor be retained by the City. The effectiveness of this Section 4.05(b) shall be subject to the condition that it shall have been approved by The National League of Professional Baseball Clubs and Major League Baseball, as applicable, which approval will be obtained by the Padres before the City obtains the City Financing; provided, however, if The National League of Professional Baseball Clubs or Major League Baseball conditions its respective approval in any way that would reasonably be expected to materially and adversely affect the City's rights concerning the Security Agreement or the security interests created thereby, the City and the Padres shall promptly thereafter meet and confer and use their

respective best reasonable efforts to agree on replacement security for the Obligation described in clause (i) of this Section 4.05(b). The City shall not be required to obtain the City Financing unless and until the City and the Padres agree on such replacement security and it is approved by the National League of Professional Baseball Clubs and Major League Baseball, if such approval is required.

(c) If the actual cost to design and construct the Ballpark is less than the Ballpark Estimate, the first \$5,000,000 of any such savings shall be deposited into the Capital Expenditure Reserve Fund; provided that no proceeds from the City Financing shall be deposited into the Capital Expenditure Reserve Fund. Any additional savings over and above the first \$5,000,000 shall be shared equally by PCL and the City.

4.06 Local and Minority Participation Goals

(a) In connection with the design and construction of the Ballpark, PCL shall use its good-faith efforts to maximize the use of local contractors, subcontractors and workers. For the purposes of this Section, PCL shall have been deemed to have acted in “good faith” notwithstanding that PCL shall have considered the cost and quality impacts to the Ballpark that otherwise would be achieved by using any local and non-local contractors, subcontractors and workers.

(b) PCL shall, and shall ensure that its contractors and subcontractors: (i) do not discriminate against any employee or applicant for employment on any basis prohibited by law; (ii) provide equal opportunity in all employment practices; (iii) comply with the provisions of the City of San Diego equal employment opportunity program set forth in the Code, Chapter II, Article 2, Division 27; (iv) submit to the City either a work force report or an equal employment opportunity plan as required by Section 22.2705 of the Code; and (v) permit the City’s Equal Employment Opportunity Contractor Program staff to monitor and review compliance with the equal opportunity employment provisions provided in this Section 4.06.

4.07 Mechanic’s Liens.

(a) PCL shall not suffer or permit any liens to be enforced against the Ballpark or Ballpark Land by reason of (i) work done by PCL or caused to be done by PCL in or to the Ballpark or the Ballpark Land, and (ii) materials furnished for or in connection with such work at the request of PCL

(b) If any mechanic’s or materialmen’s lien shall be filed against the Ballpark or the Ballpark Land on account of any (i) work done by PCL or under the Ballpark Design-Build Construction Contract or caused to be done by PCL in or to the Ballpark or the Ballpark Land, or (ii) materials furnished for or in connection with such work at the request of PCL or under the Ballpark Design-Build Construction Contract, then, within thirty (30) days thereafter, PCL shall immediately give the City written notice thereof and either: (A) cause the same to be removed of record within thirty (30) days thereafter, or (B) within thirty (30) days thereafter post a bond in the amount of 150% of the amount of such lien, in form and substance reasonably acceptable to the City, unless any foreclosure action to enforce such liens actually commences, in which case, PCL shall cause such lien to be removed of record or post such bond within five (5) days after

the commencement of such foreclosure action. PCL shall indemnify and defend the City and hold it harmless from any costs, expenses or actions in connection with any such liens.

4.08 Hazardous Substances.

(a) All Hazardous Substances remediation shall be governed by the Master Work Plan, East Village Remediation Area, dated July 31, 1999 and any applicable soil management plan approved by the County Department of Environmental Health.

(b) Generally, PCL shall be responsible for the on-site management of all Hazardous Substances and waste generated and used by PCL and its Consultants in the construction of the Ballpark on each Project Site from the period commencing on the date on which the City issues the Project Notice to Proceed with respect to such Project Site and terminating on the date Substantial Completion of the Ballpark has been achieved. PCL shall be identified to any Governmental Agency as the party responsible for generation, treatment, storage and disposal of all Hazardous Substances and wastes generated or used by PCL and its Consultants in the construction of the Ballpark during such period (and, therefore, PCL shall be designated as the “generator” on all manifests relating to all such Hazardous Substances and wastes). The City shall be responsible for the on-site management of all Hazardous Substances and waste generated and used by the City, the Agency and CCDC and their respective Consultants in the following activities (such activities, the “City Development Activities”): (i) the development, construction and operation of the Ballpark on each Project Site prior to the date on which the City issues the Project Notice to Proceed with respect to such Project Site and (ii) the development, construction and operation of the Infrastructure and the Land Acquisition. The City shall be identified to any Governmental Agency as the party responsible for the generation, treatment, storage and disposal of all Hazardous Substances and wastes generated or used by the City, the Agency and CCDC and their respective Consultants in the City Development Activities (and, therefore, the City shall be designated as the “generator” on all manifests relating to all such Hazardous Substances and wastes). If PCL discovers, encounters or is notified of the existence of any known or unknown Hazardous Substances existing on, above or below any Project Site as of the date the City issues the Project Site Notice to Proceed, then PCL shall promptly notify the City thereof and cordon off the area containing such Hazardous Substances.

(c) The City shall, as soon as is reasonably practicable, deliver or cause to be delivered to PCL for each Project Site, the Project Site Certificates of Completion, as defined by the Polanco Redevelopment Act, from the Administering Agency under H&S Code Section 33459 et seq. and closure or “no further action” letters contemplated by the Master Workplan, East Village Redevelopment Area, dated July 30, 1999. PCL shall cooperate with the City, the Agency and CCDC to allow them to undertake all actions necessary to satisfy the obligations described in the foregoing sentence during construction of the Ballpark; provided, however, the Expected Opening Date shall be equitably adjusted to reflect any resulting delay in the construction of the Ballpark.

4.09 General Contract Provisions. PCL shall, at all times:

(a) ensure that the performance of the Ballpark Design-Build Contractor and any other contractors and subcontractors engaged by PCL for the construction of the Ballpark is

assured by payment and performance bonds, or equivalent insurance coverage reasonably acceptable to the City, (i) from providers who are listed on U.S. Treasury Circular 570 as approved sureties; and (ii) in an amount equal to at least one-hundred percent (100%) of the contract price to be paid to such contractor under the applicable services construction or other services agreement and in form and substance substantially similar to the Form of Payment and Performance Bond attached hereto as Exhibit G (or such other form as may be reasonably acceptable to the City), and that name the City, the Agency, CCDC, PCL, the Padres, and Bond Trustee as co-obligees (provided that redundant or duplicate bonding of contractors and subcontractors with regard to the same portions of the work shall not be required);

(b) ensure that each contract executed in its name in connection with design and construction of the Ballpark:

(i) expressly states that the City, the Agency, CCDC and Bond Trustee are third-party beneficiaries under such contract and that upon receipt by any party to such contract (other than PCL) of written notice from the City of a Padres' Default and notice that PCL's rights under such contract have been assigned to the City, such party agrees to attorn to the City with respect to its performance under such contract;

(ii) contains dispute resolution provisions generally as set forth in Article XI;

(iii) contains customary provisions regarding retainages acceptable to PCL in its discretion; and

(iv) expressly states that upon the Consultant's default and a resulting termination of such contract, the Consultant shall deliver to PCL and the City copies of, and assign (or cause to be assigned) to PCL and the City all rights to, any and all designs, drawings, specifications, reports, studies (including seismic, environmental, soils, and other similar reports and studies), and all other plans prepared by (or caused to be prepared by) such Consultant in connection with the Ballpark Project.

4.10 As-Built Drawings. PCL shall provide the City with an electronic or reproducible copy of each as-built drawing for the Ballpark upon receipt of such drawing from the respective Consultant.

ARTICLE V.

CERTAIN OBLIGATIONS OF THE CITY, THE AGENCY AND CCDC

5.01 MOU Obligations. The Padres, the City, the Agency and CCDC acknowledge and agree, except as implemented and clarified hereby, that each of their obligations and covenants under the MOU continue in full force and effect. The continued effectiveness of this Agreement is conditioned upon the continued effectiveness of the MOU, and in the event that MOU shall terminate, this Agreement shall terminate and be of no further force and effect (except for those provisions which expressly by their terms survive termination) and in the event this Agreement shall terminate, the provisions of the MOU with respect to the Padres' design and construction of the Ballpark Project shall terminate and be of no further force and effect.

5.02 Assistance with Approvals and Related Administrative Activities. Subject to applicable law, the City and the Agency will provide reasonable assistance to PCL in connection with obtaining and maintaining any governmental approvals or permits required by the City and the Agency with respect to the Ballpark Project, including the undertaking of administrative acts within their respective jurisdictions necessary to facilitate construction of the Ballpark Project. PCL shall be required to obtain and maintain all applicable approvals and permits from all Governmental Agencies for construction of the Ballpark. The City and CCDC shall expedite and give first priority status to the processing of PCL's plan checks, permits and inspections, as required to maintain the Project Schedule with the understanding that PCL shall be required to pay all standard fees of DDS and that PCL shall not be required to pay any additional incremental fees for expediting the review and approval process. DDS and PCL shall use their respective best efforts to agree on a schedule for the submission, review and approval by DDS, of plans and specifications for the Ballpark ("Ballpark Plans"). If (a) PCL fails to submit any Ballpark Plans to DDS for review and approval in accordance with the agreed schedule, but with the use of overtime DDS can review and approve such Ballpark Plans in accordance with the agreed schedule notwithstanding such failure, and PCL requests that DDS use such overtime or (b) PCL notifies DDS that PCL desires to accelerate the agreed schedule and the City is able, with the use of overtime, to review and approve such Ballpark Plans in accordance with PCL's accelerated schedule, then in either case, DDS shall use such overtime, and PCL shall pay all incremental overtime expenses that result therefrom. The City and CCDC shall cause an authorized representative of the City or CCDC, as applicable, to sign any document traditionally signed or required to be signed by applicable law or policy of the authority having jurisdiction over the preparation of such documentation by the owner of property (rather than a contractor or consultant performing work on or with respect to such property) including the Storm Water Pollution Prevention Plan and any soil manifests or other documents with respect to Hazardous Substances on or affecting the Ballpark Land as required by Section 4.08. This requirement shall be satisfied if the Owner of the affected property, if not a Party, signs such document.

5.03 Land Acquisition.

(a) The City shall keep the Padres and PCL apprised of its Land Acquisition efforts. The City shall deliver a separate written notice to the Padres and PCL within two (2) Business Days after each of the following events has occurred:

- (i) a Project Site is acquired;
- (ii) all Obstructions have been removed from a particular Project Site; or
- (iii) all Hazardous Substances remediation and environmental cleanup and response activities have been completed at a particular Project Site and the Project Site Certificates of Completion have been delivered to PCL.

(b) The Padres and PCL shall keep the City apprised of their land acquisition efforts in connection with the Ballpark Land. The Padres and PCL shall deliver a separate written notice to the City within two (2) Business Days after the Padres acquire any portion of the Ballpark Land.

5.04 Non-Interference with PCL Consultants. Unless a Padres Default shall have occurred and the City shall have delivered written notice to PCL under Section 11.03(b)(ii), neither the City, the Agency nor CCDC shall interfere (a) with PCL's relationship with the Ballpark Design-Build Contractor or PCL's Consultants or (b) with PCL's management and implementation of the Ballpark Design-Build Construction Contract (except as expressly permitted under this Agreement or the Ballpark Design-Build Construction Contract).

5.05 Site Logistics Plan and Base Map. The City, the Agency and CCDC have reviewed and approved the Site Logistics Plan attached hereto as Exhibit B-1. The City, the Agency and CCDC have prepared the Base Map attached hereto as Exhibit B-2 and that the Base Map generally depicts the area where PCL shall cause the Ballpark Design-Build Contractor to construct the Ballpark. Subject to the following sentence, the City may modify the Base Map to reflect changes in the proposed development of the Ballpark Project until the City Council has approved a final Base Map. The City shall notify PCL upon the City's becoming aware of any event or circumstance that necessitates any modification to the Base Map and the City shall not modify the Base Map without first obtaining PCL's written consent to such modification which consent will not be unreasonably held or delayed. Upon the City Council's approval of the final Base Map, each of the City, the Agency and CCDC shall be deemed to have represented to PCL that PCL may rely on the accuracy of such final Base Map in constructing the Ballpark.

5.06 Employee Parking. The City shall make available to PCL, the Consultants, and their respective agents and employees, the Parking Facilities identified on the Land Use Plan as the "Temporary Parking Parcels" for parking and temporary storage purposes. PCL and the Consultants will reasonably cooperate with the City's project manager to allow for the improvements to be constructed on the Parking Facilities to proceed in accordance with the Project Schedule. Notwithstanding the foregoing, PCL and the City shall work cooperatively to find alternative locations for parking and temporary storage for PCL, and at all times after July 31, 2000 during which the City shall own or control one or more of the Temporary Parking Parcels, the City shall make available to PCL, the Consultants and their respective agents and employees an area for parking and temporary storage purposes equal to (a) the space available for parking and temporary storage in excess of one Temporary Parking Parcel, up to one additional Temporary Parking Parcel, and (b) at least fifty percent (50%) of any additional areas located on such Temporary Parking Parcels (i.e. excess of two Temporary Parking Parcels) that are then available to, or used by, the City, for parking or temporary storage. Any Temporary Parking Parcel shall be deemed available for parking and temporary storage purposes if such Temporary Parking Parcel is free of surface Obstructions, substantially level, and appropriate for use as parking or temporary storage facilities. The Padres and/or PCL shall be entitled to take actions to secure any Temporary Parking Parcel or portion thereof (including constructing fencing) and to enhance the surface of any Temporary Parking Parcel or portion thereof for their intended use.

ARTICLE VI.

CERTAIN MUTUAL OBLIGATIONS OF THE PARTIES

6.01 Monthly Progress Reports, Budgets and Meetings.

(a) On the 15th day of each calendar month included in the period commencing on the date of this Agreement and continuing through the calendar month following completion of the Ballpark Project (or, with respect to any such 15th day, if such 15th day is not a Business Day, then the next succeeding Business Day):

(i) PCL shall deliver to the City, CCDC, and the Agency monthly progress reports and budget comparisons in form and detail reasonably acceptable to the City, the Agency and CCDC for the Ballpark for the immediately preceding calendar month or similar reporting period, and

(ii) the City shall deliver to PCL monthly progress reports and budget comparisons in form and detail reasonably acceptable to PCL for the Infrastructure and Land Acquisition related to the Ballpark Project for the immediately preceding calendar month.

Each Party hereby agrees that the other Party may deliver copies of such reports and comparisons to its respective lenders as necessary to comply with such Party's disclosure obligations under its financing documents.

(b) On the third Tuesday of each calendar month included in the period commencing on the date of this Agreement and continuing through the calendar month following completion of the Ballpark Project (or, with respect to any such third Thursday, if such day is not a Business Day, then on the next succeeding Business Day) each Party shall cause at least one representative of such Party to meet at such time and place as the Parties may mutually agree to meaningfully discuss the progress of the Ballpark Project, and specifically to attempt to keep design and construction of the Ballpark Project on schedule and keep the total cost of design and construction of the Ballpark Project from exceeding the Ballpark Project Estimate.

6.02 Access to Project Books and Records.

(a) Upon delivery to any Party of at least five (5) Business Days advance written notice, any Party, at its own cost and expense, shall have the right to review and audit the books and records of such notified Party concerning any monies due and owing to the requesting Party, or concerning the expenditure of funds received from the requesting Party or from the Design and Construction Fund. This right does not extend to books and records that do not, in any way, relate to or concern (a) the accounting of monies as may be owed to the Parties from each other, or the expenditure of monies received from any other Party (including from the Design and Construction Fund), or (b) the Design and Construction Fund. Upon the request of the City, PCL shall authorize the City to audit the books of the Ballpark Design-Build Contractor in accordance with the Ballpark Design-Build Construction Contract.

(b) Notwithstanding any provision in this Agreement or the MOU to the contrary, the City may withhold its approval of any disbursement from the Design and Construction Fund or

any Sub-Fund until the City and its agents and advisors have been afforded the right to review and audit any books and records of PCL or the Padres concerning any funds disbursed at the request of PCL or the Padres from the Design and Construction Fund or any Sub-Fund.

6.03 Cooperation Among Construction Managers and Contractors. PCL and the Padres may retain, at their sole cost, whatever design and construction expertise they may require in connection with the Infrastructure improvements. The City may retain, at its sole cost, whatever design and construction expertise it may require in connection with the Ballpark Project. Each Party will ensure that its Consultants work cooperatively with the other Parties' Consultants and promptly provide all design and construction documents and other design and construction information reasonably requested by any other Party's Consultants. Any Party that requests, or whose Consultants request, any such design or construction documents or other design and construction information shall reimburse the Party who provided, or caused its Consultants to provide, such design or construction documents or design or construction information for all costs of reproducing such design or construction documents or other information promptly upon written demand therefor.

6.04 Mutual Access to Ballpark Project.

(a) Upon the issuance of each Project Site Notice to Proceed with respect to a particular Project Site, the City, the Agency or CCDC, as appropriate, shall be deemed to have granted to PCL and its Consultants a non-exclusive right-of-entry over, through and under all of such Project Site for the purpose of constructing the Ballpark in accordance with this Agreement. The City shall not suffer or permit any other Person to interfere with the PCL's exercise of such right to use such Project Site. Such right-of-entry shall automatically terminate upon the earlier to occur of: (i) the Final Completion of Construction of the Ballpark; or (ii) the effective date of any lease, use or other occupancy agreement between the City and the Padres whereby the Padres are permitted to occupy the Ballpark.

(b) PCL shall permit the City, CCDC, the Agency and their Consultants to have reasonable access to the Ballpark Project during its construction for the purpose of inspecting the Ballpark Project, subject to any necessary safety precautions.

(c) Upon the issuance of the first Project Site Notice to Proceed, the City, the Agency and CCDC, as appropriate, shall be deemed to have granted to PCL and its Consultants a non-exclusive right-of-entry over, through and under the Infrastructure and the Ballpark Land for the purpose of constructing the Ballpark in accordance with this Agreement. Such right-of-entry shall automatically terminate upon the earlier to occur: (i) the Final Completion of the Construction of the Ballpark, or (ii) the effective date of any lease, use or other occupancy agreement between the City and the Padres whereby the Padres are permitted to occupy the Ballpark.

(d) The City, CCDC and the Agency shall permit PCL and its Consultants to have reasonable access to the Infrastructure during its construction for the purpose of inspecting the Infrastructure, subject to any necessary safety precautions.

6.05 Compliance with Law. Each Party shall be responsible for compliance with all laws and regulations that may apply to the construction, use and operation of the Ballpark Project to the extent that such Party is responsible for that aspect of the Ballpark Project. PCL shall have the lead responsibility during the Ballpark design and construction for ensuring compliance with all licensing, permitting and construction requirements, and with the design and access requirements of the federal Americans with Disabilities Act and any similar laws. To the extent the Parties purchase insurance or obtain contract protection with respect to construction of the Ballpark Project, PCL and the City shall each ensure that the other Party has the same protections available to it with respect to coverage, including insurance and contract protection from general contractors, architects and other Ballpark Project professionals, from claims resulting from the Americans with Disabilities Act and any similar laws (if such protection can be obtained without significant additional cost; however, the additional Party may elect to pay any such significant additional cost); provided, however, that PCL shall be responsible for any such claim in the event that the City provides PCL with written notice of a violation of such laws and PCL has the responsibility to remedy such violation and fails for any reason to remedy such violations. All actions required by this Agreement shall be subject to all requirements of law, including any required hearings and findings.

6.06 Coordination with Phase I. The Parties hereto shall use their good-faith efforts to coordinate all design and construction of the Ballpark Project with the design and construction of "Phase I" (as defined in and contemplated under the MOU).

6.07 Tax-Exempt Financing. Notwithstanding anything to the contrary contained in this Agreement, the Parties will work together to maximize the amount of tax-exempt financing for the Ballpark Project.

6.08 Padres' Interest in the Ballpark. The Padres and the City will each own divided interests in the items that comprise the Ballpark (excluding land) (the "Ballpark Property"). Ownership of the Ballpark Property will be allocated between the Padres and the City so that:

(a) Ballpark Property owned by the Padres ("Padres Property") will have an Allocated Cost equal to 30% of the Allocated Cost for the entire Ballpark ; and

(b) Ballpark Property owned by the City ("City Property") will have an Allocated Cost equal to 70% of the Allocated Cost for the entire Ballpark.

Padres Property, from time to time, shall include all Ballpark Property described in Exhibit "Q", as supplemented from time to time in accordance herewith. City Property, from time to time, shall include all Ballpark Property that is not Padres Property.

Based on the Parties' collective expectations of the Allocated Costs of the Ballpark Property, the Parties have described on Exhibit "Q" the Ballpark Property that will be Padres Property. However, the Parties acknowledge that the actual Allocated Cost of the Ballpark Property described on Exhibit "Q" may be greater than or less than 30% of the Allocated Cost of the entire Ballpark. This might occur if the actual Allocated Cost of the Ballpark Property described on Exhibit "Q" is greater than or less than \$80,250,000, or if the actual Allocated Cost of the other Ballpark Property is greater than or less than \$187,250,000. If, from time to time, it

becomes reasonably apparent that the reasonably anticipated Allocated Cost of the Ballpark Property described in Exhibit "Q" (as it may be supplemented from time to time in accordance herewith) will be greater than or less than 30% of the reasonably anticipated Allocated Cost for the entire Ballpark, then Exhibit "Q" shall be supplemented (by adding or removing Ballpark Property to or from such Exhibit) so that the reasonably anticipated Allocated Cost of the Ballpark Property described in Exhibit "Q", as so supplemented, equals 30% of the reasonably anticipated Allocated Cost of the entire Ballpark. If any Party believes that Exhibit "Q" should be supplemented, and so notifies the other Parties, a representative of the Padres and the City Manager will promptly meet, reasonably confer and use their respective best efforts to agree how to supplement Exhibit "Q." Any agreed supplement to Exhibit "Q" shall be executed by the Padres' representative and the City Manager and shall be binding on all of the Parties. If the City Manager and the Padres' representative fail to agree on a supplement to Exhibit "Q" within fifteen (15) days of their first meeting, then any Party may invoke the dispute resolution procedures described in Section 11.06. Notwithstanding the foregoing, any supplement to Exhibit "Q" (even if determined by dispute resolution) must not, in the view of nationally recognized bond counsel selected by the City, adversely affect the tax-exempt status of the City Financing.

6.09 Delay Payments.

(a) PCL shall pay the Minimum Daily Amount to the City for each day (up to one-hundred eighty (180) days in the aggregate) that Substantial Completion of the Ballpark is delayed beyond the date that is six (6) months after the Expected Opening Date solely as a result of any negligent or intentionally harmful act or omission of PCL or any Person that controls, is controlled by or is under common control with PCL (and in any event, not as a result of any Event of Force Majeure or any act or omission of the Ballpark Design-Build Contractor, the City, CCDC, the Agency, any Person controlled by or under common control with any of them, or any of their respective employees, shareholders, officers or directors). The Parties expressly agree that the insurance described in Section 10.01(b) and in Section 10.08 shall be primary with respect to PCL's obligations under this Section 6.09(a) and PCL shall have no obligation to pay any amount to the City under this Section 6.09(a) for any day of delay for which the City also is entitled to be paid under Section 10.01(b) or Section 10.08. Notwithstanding the foregoing, PCL shall have no obligation under this Section 6.09(a) to pay any amounts to the City in respect of days of delay that occur after the first anniversary of the Expected Opening Date.

(b) Any delay liquidated damages payable by the Ballpark Design-Build Contractor for failure to achieve Substantial Completion of the Ballpark on or before the deadline therefor pursuant to the Ballpark Design-Build Construction Contract shall be for the benefit of the Padres and, if received by the City, shall be held by the City in trust for the Padres and paid to the Padres within five (5) days after receipt thereof.

ARTICLE VII.

FINANCING

7.01 Agency Fund. The Agency has established and shall maintain with the City Treasurer the Agency Fund to account for certain receipts and disbursements for the Ballpark Project in accordance with the MOU.

7.02 Design and Construction Fund. The City shall establish and maintain with the Bond Trustee the Design and Construction Fund and the following sub-funds (“Sub-Funds”) of the Design and Construction Fund to account for certain receipts and disbursements for the Ballpark Project in accordance with the MOU and the Trust Indenture:

- (a) City Ballpark Construction Fund;
- (b) City Land Acquisition/Infrastructure Construction Fund;
- (c) Other Public Agency Investment Fund;
- (d) Padres Ballpark Investment Fund; and
- (e) Padres Land Acquisition/Infrastructure Investment Fund.

7.03 Management of Funds.

(a) Deposits into the Design and Construction Fund and the Agency Fund.

(i) The City, the Bond Trustee, the Padres and PCL shall enter into a separate mutually agreed disbursement agreement consistent with the MOU, the Sufficient Assurances Agreements and this Agreement regarding use and disbursement of funds from the Design and Construction Fund and each Sub-Fund.

(ii) Each of the City, the Agency and the Padres shall deposit funds (or cause funds to be deposited) into the Design and Construction Fund in the amounts and at the times such Party is required to do so as set forth in the MOU, the Sufficient Assurances Agreements, and this Agreement (after accounting for any amounts permitted to be credited against such deposits in accordance with the terms of the MOU and the Sufficient Assurances Agreements, which amounts shall be credited against the Parties' deposits in the order in which such deposits otherwise would be due). Such funds shall be deposited into Sub-Funds of the Design and Construction Fund as follows:

(A) Subject to clause (ii) above, \$186,500,000 of the City Investment shall be deposited by the City into the City Ballpark Construction Fund;

(B) Subject to clause (ii) above, \$38,500,000 of the City Investment shall be deposited by the City into the City Land Acquisition/Infrastructure Construction Fund;

(C) Subject to clause (ii) above, \$81,000,000 of the Padres/Private Investment less the value, as reasonably determined by the Padres and the City, of the in-kind contributions to the construction and development of the Ballpark, made, or arranged to be made, by the Padres shall be deposited by the Padres into the Padres Ballpark Investment Fund;

(D) Subject to clause (ii) above, the amount of the Padres/Private Investment calculated under the MOU less \$81,000,000 shall be deposited by the Padres into the Padres Land Acquisition/Infrastructure Investment Fund; and

(E) Subject to clause (ii) above, any other investment funds with respect to the Land Acquisition or Infrastructure shall be deposited into the Other Agency Investment Fund.

(iii) In addition, subject to clause (ii) above, the Agency Investment shall be deposited into the Agency Fund.

(iv) All payments from any Consultant to the Padres or the City (other than liquidated damages for delay as specified in Section 6.09 hereof), including as reimbursement or repayment of amounts initially paid from the Design and Construction Fund shall be redeposited into the appropriate Sub-Fund of the Design and Construction Fund.

(b) All payments for the costs of the Ballpark Project shall be made out of the Design and Construction Fund and the Agency Fund unless specifically agreed otherwise by the Parties in writing. Funds will be disbursed in accordance with Section 7.05.

(c) The City shall, in accordance with generally accepted accounting principals in effect in the United States from time to time, establish a system to account for, and shall maintain records of all funds deposited into or withdrawn from the Agency Fund and the Design and Construction Fund (and each individual Sub-Fund thereof), together with all investment earnings on such funds or Sub-Funds and each Party's total investment in the Project (including in-kind payments). The City shall also maintain for PCL's inspection (i) reasonably detailed records of all disbursements from the Agency Fund and the City Land Acquisition/Infrastructure Construction Fund, (ii) a reasonably detailed reconciliation of all funds disbursed from the Agency Fund or the City Land Acquisition/Infrastructure Construction Fund against the Land Acquisition Estimate or the Infrastructure Estimate, as applicable, and (iii) copies of all invoices and other reasonable evidence that the respective Party's payee is entitled to any amounts paid out of the Design and Construction Fund or the Agency Fund at the request of CCDC, the Agency or the City. Contemporaneously with any deposit of funds by any Party (other than the City) into the Design and Construction Fund (and each individual Sub-Fund thereof), such Party shall deliver written notice thereof to the City. Immediately upon the City's obtaining the City Financing, the City shall deposit the proceeds thereof into the appropriate Sub-Funds of the Design and Construction Fund as required by Section 7.05(a). The City shall deliver the appropriate certification of the City Auditor and Comptroller with respect to the availability of such funds pursuant to the City Charter immediately after the deposit of such funds.

(d) Subject to the investment restrictions set forth in Section 7.03(e):

(i) the City shall have the exclusive right to direct the investment of: (A) all funds in the Padres Land Acquisition/Infrastructure Investment Fund; and (B) all funds in the City Ballpark Construction Fund, the City Land Acquisition/Infrastructure Construction Fund, and the Other Agency Investment Fund;

(ii) the Padres or PCL shall have the exclusive right to direct the investment of all funds in the Padres Ballpark Investment Fund; and

(iii) the Agency shall have the exclusive right to direct the investment of all funds in the Agency Fund.

Each Party shall reimburse the Design and Construction Fund for all losses arising out of investments that it has directed under this Section 7.03(d).

(e) The City may invest funds in the City Ballpark Construction Fund, the City Land Acquisition/Infrastructure Construction Fund, the Padres Land Acquisition/Infrastructure Fund, the Other Agency Investment Fund and the Agency Fund pursuant to Section 7.03(d), on the condition that such funds may be invested only in those investments in which the City is permitted to invest its own funds pursuant to the laws of the State of California and the City's internal investment guidelines, subject to any additional investment restrictions set forth in any documents executed and delivered by the City, the Agency or CCDC in connection with public financing of the City Investment or the Agency Investment, including any bond indenture or supplement thereto. Interest earned on the City Ballpark Construction Fund, the City Land Acquisition/Infrastructure Construction Fund and the Agency Fund shall be used in accordance with the covenants pertaining to the respective bond issuances.

(f) PCL and the Padres shall deliver to the City any power of attorney or other authorizations reasonably requested by the City to allow the City to control the investment of funds in the Padres Land Acquisition/Infrastructure Investment Fund in accordance with Section 7.03(d).

(g) Subject to Section 7.05, each of the Parties shall be entitled to receive out of the Design and Construction Fund, in accordance with Section 7.04(a), reimbursement of any design expenses and other soft costs incurred by it to the extent such costs were or are incurred solely in connection with the Ballpark Project and are set forth in the Ballpark Project Estimate (including, without limitation, such Party's legal, accounting, consulting and other professional fees and expenses incurred solely in connection with the planning and negotiation process for the Ballpark Project or the negotiation and preparation of all agreements and documents required to implement the MOU, and that are set forth in the Ballpark Project Estimate), whether incurred before or after the date hereof.

7.04 Use of Funds.

(a) Subject to the provisions of this Agreement:

(i) any funds in the Padres Ballpark Investment Fund may be used only to pay costs of design and construction of the Ballpark; and

(ii) any funds in the Padres Land Acquisition/Infrastructure Fund may be used only to pay costs of design and construction of the Infrastructure and Land Acquisition Costs, and specifically will be used to acquire the Park-at-the-Park Mixed Use Parcels;

(iii) any funds in the City Ballpark Construction Fund may be used only to pay costs of design and construction of the Ballpark (whether incurred before or after the City obtains the City Financing), including, without limitation: (A) to pay such costs whether incurred by the City, the Padres, the Agency or CCDC; (B) reimbursement of amounts advanced by the City or the Padres, up to the amount of costs and expenses incurred in connection with the design and construction of the Ballpark (including soft costs) paid before the City obtains the City Financing; (C) design expenses and soft costs described in Section 7.03(g); and (D) arbitrage rebates required under the Internal Revenue Code of 1986, as amended;

(iv) any funds in the City Land Acquisition/Infrastructure Construction Fund will be used only to pay costs of design and construction of the Infrastructure and Land Acquisition Costs, including, without limitation: (A) reimbursement of amounts advanced by the City or the Padres, up to the amount of the Land Acquisition Costs and Infrastructure Costs paid before the City obtains the City Financing; (B) design expenses and soft costs described in Section 7.03(g); and (C) arbitrage rebates required under the Internal Revenue Code of 1986, as amended; and

(v) any funds in the Agency Fund may be used only to pay Land Acquisition Costs, including, without limitation: (A) development expenses and soft costs described in Section 7.03(g) and (B) arbitrage rebates required under the Internal Revenue Code of 1986, as amended.

(b) Notwithstanding Section 7.04(a), all construction hard costs for Padres Property shall be satisfied out of the Padres Ballpark Investment Fund, and all construction hard costs for City Property shall be satisfied out of the City Ballpark Construction Fund. The Padres agree to deposit the necessary funds to construct Padres Property when and as needed to construct and complete the Ballpark.

(c) Except as otherwise provided in Section 4.05:

(i) the Padres and PCL shall not be required to pay more than:

(A) \$81,000,000 for purposes of paying costs of design and construction of the Ballpark; or

(B) \$34,000,000 for purposes of paying Land Acquisition Costs and costs of design and construction of the Infrastructure; and

(ii) the City, the Agency and CCDC shall be not required to pay more than:

(A) \$186,500,000 for purposes paying costs of design and construction of the Ballpark; or

(B) \$88,500,000 for purposes of paying Land Acquisition Costs and costs of design and construction of the Infrastructure.

7.05 Requests for Payment.

(a) No funds shall be disbursed from the Design and Construction Fund unless pursuant to a request for payment in the form of Exhibit H (a “Request for Payment”) that has been executed by a Party, and unless and until the City Auditor has provided the certification required by the City Charter as to the availability of funds. Any Request for Payment shall: (i) contain a reasonably detailed itemization of the costs and expenses that are the subject of such Request for Payment and a schedule comparing such costs and expenses to the Ballpark Project Estimate, (ii) include any applicable schedules of values relating to any work for which such payment is requested; (iii) include such documents and other data substantiating the applicant’s right to payment as the City or PCL may reasonably require, including, without limitation copies of requisitions or invoices from contractors, architects, material suppliers or other parties, (iv) reflect applicable retainages; (v) contain a separately itemized statement of any allowances included in the Request for Payment with supporting data attached; and (vi) contain a certification of the Party making such request that, to such Party’s knowledge, (A) the information contained in such request is accurate, (B) for Requests for Payment submitted by PCL, the work for which such payment is requested is consistent with the Ballpark Program (as it may have been modified by Change Order) and (C) the payment requested reflects amounts actually expended or owed in connection with the development or construction of the Ballpark Project. The City will promptly process each Request for Payment that complies with the foregoing requirements pursuant to the City Charter. Immediately upon the City’s processing of any Request for Payment submitted by the Padres or PCL, the City shall cause the Bond Trustee to disburse amounts from the proper Sub-Fund of the Design and Construction Fund to PCL, to the extent such Sub-Fund has been credited with sufficient funds. The City may, but shall have no obligation to, verify the accuracy of any information contained in any Request for Payment submitted by PCL or verify that such Request for Payment complies with the applicable contract documents. PCL may, but shall have no obligation to, verify the accuracy of any information contained in any Request for Payment submitted by the City, the Agency or CCDC, or verify that such Request for Payment complies with the applicable contract documents

(b) The City’s authorized representatives shall be entitled to inspect copies of all signed contracts and other agreements between PCL and any Consultant (including any Ancillary Contracts) at PCL’s offices during normal working hours and upon reasonable notice. The City’s representatives may take notes with respect to the contents of such contracts and other agreements, but the City shall ensure that the City’s representatives neither copy nor otherwise make a record of the contents of any such contract or other agreement. If the City chooses to allow its representatives to take notes with respect to any such contract or other agreement, then the City shall cause its representatives to limit the content of such notes to:

- (i) the name of such contract or other agreement;
- (ii) the identity of the parties to such contract or other agreement;

- (iii) a two or three sentence description of the subject matter of such contract or other agreement;
- (iv) a description or transcription of any provision of such contract or other agreement that the City reasonably believes violates any provision of this Agreement;
- (v) a description of any provision that this Agreement requires to be included in such contract or other agreement that is not so included; and
- (vi) a description of the payment terms of such Agreement.

PCL shall bear all risks that such documents are subject to the California Public Records Act (the "PRA"). Upon request, the City shall provide PCL with signed copies of contracts, either interim or final, between the City, the Agency or CCDC and their respective Consultants. Requests for Payment shall not include requests for amounts the Party does not intend to pay to the architect, contractor, material supplier, other Consultant, or other party providing work or incurring expenses that are the subject of such Request for Payment, because of a dispute or any other reason.

(c) The submittal of any Request for Payment shall constitute a representation by the Party making such request that (i) all work on the Ballpark Project under the direction of the Party making the application for which payments have previously been made from the Design and Construction Fund is free and clear of all Security Interests and Encumbrances in favor of any and all Consultants, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to such work, and (ii) the Party making the application has received executed original lien waivers and releases from each contractor, subcontractor, or materialman providing in excess of \$100,000 in labor or materials to the Ballpark Project for all work on the Ballpark Project under the direction of the Party making the application for which payments have previously been made from the Design and Construction Fund, or in lieu thereof, commercially reasonable security against any claims made by such contractor, subcontractor or materialman for amounts owing to such contractor, subcontractor or materialman.

(d) The requesting Party shall: (i) receive all payment requests from Consultants by the end of each month, (ii) review all such requests for appropriateness according to respective agreements or accepted proposals, and (iii) assemble payment requests and supporting documentation into the Draw Request Book, including an accounting of billed and paid expenses compared to the Padres Use of Funds Schedule or the City's Cash Flow Schedule as appropriate.

(e) If PCL or the Padres are requesting payment from the Design and Construction Fund, the Padres Project Manager shall submit one (1) copy of the draft Draw Request Book to the City by the 10th calendar day of the month. By the 15th calendar day of the month, PCL shall submit one (1) copy of the final Draw Request Book, along with a Request for Payment, to the City for payment. To the extent sufficient funds are available in the applicable Sub-Fund of the Design and Construction Fund, the City Manager shall ensure that all obligations approved by PCL and set forth in the Request for Payment are satisfied in a timely manner, but in any event not later than the earlier of the 28th calendar day or last Business Day of the same month during which the Draw Request Book was received by the City. The City may withhold the

approval of any Request for Payment only if and to the extent the Request for Payment fails to satisfy the requirements of Section 7.05(a).

(f) The Padres Use of Funds Schedule and the City Cash Flow Schedule represent an estimate of the order, amounts and dates for the deposit and disbursement of funds into and from the Design and Construction Fund and Agency Fund; it is the intent of the parties that the City shall not disapprove any Request for Payment solely because the timing or amount of such Request for Payment exceeds the order, amounts or dates for disbursements identified in the Padres Use of Funds Schedule or the City Cash Flow Schedule.

(g) If the City or the Agency is requesting payment from the Padres Land Acquisition/Infrastructure Investment Fund, the Padres Ballpark Investment Fund, or the City Ballpark Construction Fund, it shall submit two (2) draft Draw Request Books to PCL by the 10th calendar day of the month. By the 15th calendar day of the month, the City, as applicable, shall submit two (2) copies of its final Draw Request Book, along with a Request for Payment, to PCL. If the City or the Agency is requesting payment from the City Land Acquisition/Infrastructure Construction Fund or the Other Public Agency Investment Fund, it shall submit to PCL by the 15th calendar day of the month, two (2) copies of its final Draw Request Book, along with a Request for Payment. Notwithstanding anything herein to the contrary, in no event shall the City, CCDC, or the Agency request payment from the Agency Fund or the Design and Construction Fund for any item not included in the Land Acquisition Estimate or Infrastructure Estimate. Further, notwithstanding anything herein to the contrary, in no event shall the City, CCDC or the Agency request payment for any item included in the Land Acquisition Estimate or the Infrastructure Estimate in an amount that exceeds the line item amount identified for such item on the Land Acquisition Estimate or Infrastructure Estimate without consultation with the Padres and PCL.

(h) Upon receipt of any funds from the Design and Construction Fund or the Agency Fund, the Party receiving such funds shall promptly pay the appropriate Consultants or other Persons that performed the work or provided the materials that were the subject of respective Request for Payment, unless such amounts shall have already been paid. When such Party makes any such payments, it shall obtain (or cause its contractor to obtain) executed original lien waivers from the contractor and each subcontractor providing in excess of \$100,000 in labor or materials to the Ballpark Project for the portion of the work covered by such payment, or in lieu thereof commercially reasonable security against claims made by such contractor or subcontractor for amounts owing to such contractor or subcontractor.

7.06 Reimbursable Expenses. If this Agreement (i) terminates in accordance with Section 5.01(b) or (ii) is terminated by any Party due to a Padres' Default or a City Default prior to the City issuing at least one of the Project Site Notices to Proceed for Area 1 or Area 5 then:

(a) the City shall purchase certain land from the Padres, as and to the extent set forth in the Sufficient Assurances Agreements;

(b) the Parties shall use their good-faith efforts to, within ninety (90) days after the effective date of such termination, agree upon the sum of: (i) the amount of funds only, if any, provided to the Ballpark Project under Article VII up to the date of such termination; and (ii) the

amount of all expenses (including, without limitation, the legal, accounting, consulting, due diligence, testing and exploratory work and any other professional fees and expenses) incurred by the Parties solely and directly in connection with the design of the Ballpark Project, any Off-Site Pre-City Financing Work pursuant to an Off-Site Pre-City Financing Notice to Proceed, or the negotiation and preparation of the MOU, this Agreement, any other agreements and any design documents related to the Ballpark Project, that are set forth in the Ballpark Project Estimate and that are incurred by the Parties up to the effective date of such termination as evidenced by appropriate documentation (collectively, the “Reimbursable Expenses”);

(c) the Parties’ liability for Reimbursable Expenses shall be as set forth in the MOU;

(d) each Party shall pay, its respective share of such Reimbursable Expenses to the appropriate parties in accordance with a mutually acceptable plan of payment to be reasonably negotiated among the Parties; and

(e) notwithstanding the foregoing, the Reimbursable Expenses shall not include the value of any construction or other development provided by any other agency or entity other than the Padres, PCL, the City, the Agency, CCDC and the Consultants, employees and agents of each of them.

7.07 Selection of Trustee. The City shall have the right to select a bank to serve as the bond trustee under the Trust Indenture and the depository for the Design and Construction Fund and Sub-Funds referenced in Section 7.02 (the “Bond Trustee”); provided, however, that such bank:

(a) meets the following criteria:

(i) has sufficient experience in corporate trust matters on similar projects;

(ii) has a corporate trust office in California;

(iii) has combined capital and surplus of at least \$50,000,000; and

(iv) maintains Moody’s Investors Service and Standard & Poor’s long term ratings of A2 and A respectively; or

(b) shall be reasonably acceptable to the Padres.

ARTICLE VIII.

REPRESENTATIONS AND WARRANTIES OF PCL AND THE PADRES

PCL and the Padres represent and warrant to the City, the Agency and CCDC, the following as of the date of this Agreement:

8.01 Organization and Standing. PCL is a duly organized and validly existing limited partnership in good standing under the laws of the State of California, and has the power and authority to own, lease and operate its assets and properties and is qualified to do business and is in good standing in the State of California. The Padres are a duly organized and validly existing

limited partnership in good standing under the laws of the State of Delaware, and has the power and authority to own, lease and operate its assets and properties and is qualified to do business and is in good standing in the State of California.

8.02 Authorization.

(a) PCL and the Padres each have the full right, power and authority (and no provision in PCL's partnership agreement or other governing documents, nor any provision in the Padres' partnership agreement or other governing documents prohibits or limits the ability of PCL or the Padres) to enter into this Agreement and the Related Documents to which it is a party and to consummate or cause to be consummated all of the transactions and to fulfill all of the obligations contemplated to be consummated or fulfilled by it hereunder and thereunder.

(b) The execution and delivery of this Agreement and the Related Documents to which PCL or the Padres are a party and the due consummation by PCL and the Padres of the transactions contemplated to be consummated by them hereby and thereby have been duly authorized by the partners of PCL and the Padres.

(c) This Agreement and each Related Document to which PCL or the Padres are a party constitute the legal, valid and binding agreement of PCL or the Padres, as appropriate, and are enforceable against PCL or the Padres, as appropriate, in accordance with their terms, except that enforcement may be limited by Equitable Principles.

8.03 Absence of Contractual or Other Restrictions. Provided all Padres' Consents are obtained, neither the execution and delivery by PCL or the Padres of this Agreement or any of the Related Documents to which they are a party nor the consummation by PCL and the Padres of the transactions contemplated to be consummated by them hereby or thereby will:

(a) violate or conflict with, or constitute a default under, or result in the termination of, or accelerate the performance required by: (i) any Contract, lease, or other arrangement to which PCL or the Padres are a party or are otherwise bound or (ii) any debt or obligation of PCL or the Padres; or

(b) result in the creation or imposition of any Security Interest or other Encumbrance upon any assets of PCL or the Padres, except as set forth in this Agreement or in the MOU; or

(c) conflict with or result in a violation of any of the licenses and permits or any governmental or quasi-governmental statute, law, judgment, decree, order, regulation or rule applicable to PCL or the Padres.

8.04 Litigation and Proceedings. Except for the cases of *Mailhot v. Abdelnour*, California Court of Appeal Case No. D032123; *Mailhot v. City of San Diego*, San Diego Superior Court Case No. 728676; *Mailhot v. City of San Diego*, San Diego Superior Court Case No. 734367, *CARE v. City of San Diego*, San Diego Superior Court Case No. 730641; *AFJR Partnership, LP v. City of San Diego, et al.*, San Diego Superior Court Case No. 731542; *Columbia Sussex Corporation v. City of San Diego, et al.*, San Diego Superior Court Case No. 731543; *Powder Actuated Tools, Inc. dba United Fastner Company and Mark Kenney v. City of San Diego, et al.*, San Diego Superior Court Case No. 731544; *San Diego Refrigerated Services, Inc. and Edward*

F. Plant v. City of San Diego, et al., San Diego Superior Court Case No. 731540; *Redevelopment Agency of City of San Diego v. AFJR Partnership aka AFJR, et al.*, San Diego Superior Court Case No. 731566-1; *Redevelopment Agency of City of San Diego v. 5th & K, LLC, et al.*, San Diego Superior Court Case No. 731576-1; *Redevelopment Agency of City of San Diego v. Carolyn M. Filipponi, et al.*, San Diego Superior Court Case No. 731572-1; *Redevelopment Agency of City of San Diego v. Knoxage Cuyamaca Water Co., et al.*, San Diego Superior Court Case No. 731577-1; *Redevelopment Agency of City of San Diego v. Edward F. Plant, et al.*, San Diego Superior Court Case No. 731570-1; *Redevelopment Agency of City of San Diego v. Western Bay, et al*, San Diego Superior Court Case No. 731568-1; *Coalition Advocating Redevelopment Excellence v. the City of San Diego*, San Diego Superior Court Case No. 739410; *San Diego Hotel Co., LLC v. Redevelopment Agency of the City of San Diego*, San Diego Superior Court Case No. 739330; and *San Diego Hotel Co., LLC dba The Clarion Bay View Hotel v. Redevelopment Agency of the City of San Diego, et al.*, Superior Court Case No. 740880, there is no Controversy pending to which PCL or the Padres are a party or, to the knowledge of PCL or the Padres, threatened against PCL or the Padres which challenges the validity of this Agreement, the MOU or the transactions contemplated hereunder or thereunder, or otherwise seeks to prevent, directly or indirectly, the consummation of such transactions [**TO BE UPDATED AT EXECUTION**].

8.05 Consents and Approvals. Provided all Padres' Consents are obtained, no consent, approval or authorization of any Person, nor any declaration, filing or registration with any governmental authority or other Person (except for governmental approvals required for design and construction of the Ballpark Project) is required to be made or obtained by PCL or the Padres in connection with the execution, delivery and performance by PCL and the Padres of the transactions contemplated to be consummated by them hereunder.

8.06 Bankruptcy. Neither PCL or the Padres have:

- (a) made a general assignment for the benefit of creditors;
- (b) filed any voluntary petition for bankruptcy or suffered the filing of a voluntary petition by its creditors;
- (c) suffered the appointment of a receiver to take possession of all or substantially all of its assets;
- (d) suffered the attachment or other judicial seizure of all or substantially all, of its assets; or
- (e) made an offer of settlement, extension or composition to its creditors generally.

8.07 Consents and Notices.

(a) Schedule 8.07 attached hereto sets forth all consents that must be obtained by PCL and the Padres from, and all notices that must be given by PCL and the Padres to (collectively the "Padres' Consents"), any Person so that the execution and delivery of this Agreement and the Related Documents by PCL and the Padres and the consummation by them of the transactions contemplated to be consummated by them hereby and thereby, will not

(i) result in the breach, termination, cancellation, acceleration or suspension of any Contract, promissory note or security document; or (ii) result in the violation of any applicable law.

(b) The Padres have obtained and delivered to the City true, accurate and complete copies of all consents and approvals of Major League Baseball as may be required for the Padres to enter into and perform their obligations under this Agreement and all Related Documents, including, without limitation, all consents and approvals which may be required from The National League of Professional Baseball Clubs or the Commissioner of Major League Baseball.

ARTICLE IX.

REPRESENTATIONS AND WARRANTIES OF THE CITY, THE AGENCY AND CCDC

Each of the City, the Agency and CCDC represent and warrant to PCL and the Padres, the following, as applied and related to them, of the date of this Agreement:

9.01 Organization and Standing. The City is duly organized and validly existing and has the power and authority to own, lease and operate its assets and properties and is qualified to do business and is in good standing in the State of California. The Agency is duly organized and validly existing and has the power and authority to own, lease and operate its assets and properties and is qualified to do business and is in good standing in the State of California. CCDC is a duly organized and validly existing corporation under the laws of the State of California, and has the power and authority to own, lease and operate its assets and properties and is qualified to do business and is in good standing in the State of California.

9.02 Authorization.

(a) This Agreement is in its final form and is one of a series of agreements that the City, the Agency and/or CCDC will enter into in connection with obtaining funding for the Ballpark. Each of the City, the Agency and CCDC has the full right, power and authority to enter into this Agreement (and no provision in its governing documents prohibits or limits the ability of the City, the Agency or CCDC from entering into this Agreement and the Related Documents to which it is a party) and to consummate or cause to be consummated all of the transactions and to fulfill all of the obligations contemplated to be consummated or fulfilled by it hereunder and thereunder.

(b) The execution and delivery of this Agreement and the Related Documents to which the City, the Agency or CCDC is a party and the due consummation by the City, the Agency and CCDC of the transactions contemplated to be consummated by them hereby and thereby have been duly authorized by all necessary governmental action of the City and the Agency, and by the board of directors and shareholders of CCDC.

(c) This Agreement and each Related Document to which the City, the Agency or CCDC is a party constitute the legal, valid and binding agreement of such Party and are enforceable against such Party in accordance with their terms, except that enforcement may be limited by Equitable Principles.

9.03 Absence of Contractual or Other Restrictions. Provided all City Consents are obtained, neither the execution and delivery by the City, the Agency and CCDC of this Agreement or any of the Related Documents to which it is a party nor the consummation by the City, the Agency and CCDC of the transactions contemplated to be consummated by them hereby or thereby will:

(a) violate or conflict with, or constitute a default under, or result in the termination of, or accelerate the performance required by: (i) any Contract, lease, or other arrangement to which the City, the Agency or CCDC is a party or is otherwise bound or (ii) any debt or obligation of the City, the Agency or CCDC; or

(b) result in the creation or imposition of any Security Interest or other Encumbrance upon any assets of the City, the Agency or CCDC, except as set forth in this Agreement or in the MOU; or

(c) conflict with or result in a violation of any of the licenses and permits or any governmental or quasi-governmental statute, law, judgment, decree, order, regulation or rule applicable to the City, the Agency or CCDC.

9.04 Litigation and Proceedings. Except for the cases of *Mailhot v. Abdelnour*, California Court of Appeal Case No. D032123; *Mailhot v. City of San Diego*, San Diego Superior Court Case No. 728676; *Mailhot v. City of San Diego*, San Diego Superior Court Case No. 734367, *CARE v. City of San Diego*, San Diego Superior Court Case No. 730641; *AFJR Partnership, LP v. City of San Diego, et al.*, San Diego Superior Court Case No. 731542; *Columbia Sussex Corporation v. City of San Diego, et al.*, San Diego Superior Court Case No. 731543; *Powder Actuated Tools, Inc. dba United Fastner Company and Mark Kenney v. City of San Diego, et al.*, San Diego Superior Court Case No. 731544; *San Diego Refrigerated Services, Inc. and Edward F. Plant v. City of San Diego, et al.*, San Diego Superior Court Case No. 731540; *Redevelopment Agency of City of San Diego v. AFJR Partnership aka AFJR, et al.*, San Diego Superior Court Case No. 731566-1; *Redevelopment Agency of City of San Diego v. 5th & K, LLC, et al.*, San Diego Superior Court Case No. 731576-1; *Redevelopment Agency of City of San Diego v. Carolyn M. Filippini, et al.*, San Diego Superior Court Case No. 731572-1; *Redevelopment Agency of City of San Diego v. Knoxage Cuyamaca Water Co., et al.*, San Diego Superior Court Case No. 731577-1; *Redevelopment Agency of City of San Diego v. Edward F. Plant, et al.*, San Diego Superior Court Case No. 731570-1; *Redevelopment Agency of City of San Diego v. Western Bay, et al.*, San Diego Superior Court Case No. 731568-1; *Coalition Advocating Redevelopment Excellence v. the City of San Diego*, San Diego Superior Court Case No. 739410; *San Diego Hotel Co., LLC v. Redevelopment Agency of the City of San Diego*, San Diego Superior Court Case No. 739330; and *San Diego Hotel Co., LLC dba The Clarion Bay View Hotel v. Redevelopment Agency of the City of San Diego, et al.*, Superior Court Case No. 740880, there is no Controversy pending to which the City, the Agency or CCDC is a party or, to the knowledge of the City, the Agency or CCDC, threatened against the City, the Agency or CCDC which challenges the validity of this Agreement, the MOU or the transactions contemplated hereunder or thereunder, or otherwise seeks to prevent, directly or indirectly, the consummation of such transactions [**TO BE UPDATED AT EXECUTION**].

9.05 Consents and Approvals. Provided all City Consents are obtained, no consent, approval or authorization of any Person, nor any declaration, filing or registration with any governmental

authority or other Person (except for governmental approvals required for design and construction of the Ballpark Project) is required to be made or obtained by the City, the Agency or CCDC in connection with the execution, delivery and performance by the City, the Agency and CCDC of the transactions contemplated to be consummated by them hereunder.

9.06 Bankruptcy. Neither the City, the Agency nor CCDC has:

- (a) made a general assignment for the benefit of creditors;
- (b) filed any voluntary petition for bankruptcy or suffered the filing of a voluntary petition by its creditors;
- (c) suffered the appointment of a receiver to take possession of all or substantially all of its assets;
- (d) suffered the attachment or other judicial seizure of all or substantially all, of its assets; or
- (e) made an offer of settlement, extension or composition to its creditors generally.

9.07 Consents and Notices. Schedule 9.07 attached hereto sets forth all consents that must be obtained by the City, the Agency and CCDC from, and all notices that must be given by the City, the Agency and CCDC to (collectively the "City Consents"), any Person so that the execution and delivery of this Agreement and the Related Documents by the City, the Agency and CCDC and the consummation by them of the transactions contemplated to be consummated by them hereby and thereby, will not (a) result in the breach, termination, cancellation, acceleration or suspension of any Contract, promissory note or security document; or (b) result in the violation of any applicable law.

ARTICLE X.

INSURANCE AND INDEMNIFICATION

10.01 Insurance (Ballpark Design-Build Contractor and its Subcontractors)

(a) PCL shall not allow the Ballpark Design-Build Contractor (or any of its Subcontractors) to begin any construction on the Ballpark until (i) such Ballpark Design-Build Contractor or Subcontractor has (A) obtained all policies of insurance required of it under the Design-Build Construction Contract and (B) provided a copy of each such policy to the City and (ii) if PCL and the Ballpark Design-Build Contractor have determined to proceed with an owner controlled insurance program, PCL has obtained all insurance required thereunder. All insurance proceeds and payments from any Person (including any Consultant), in either case, with respect to the destruction of or damage to the Ballpark Project shall be paid into the appropriate Sub-Fund of the Design and Construction Fund for the construction or repair of the Ballpark.

(b) PCL shall obtain one or more policies of insurance pursuant to which the insurer will pay at least the Minimum Daily Amount for each day (up to one-hundred eighty (180) days in the aggregate) that Substantial Completion of the Ballpark is delayed beyond the date that is

six (6) months after the Expected Opening Date solely as a result of any negligent or intentionally harmful act or omission by the Ballpark Design Build Contractor (and in any event, not as a result of any Force Majeure Event or any act or omission of the City, CCDC, the Agency, any Person controlled by or under common control with any of them, or any of their respective employees, shareholders, officers or directors). The City and the Bond Trustee shall be additional insureds under such insurance and all proceeds under such insurance shall be paid to the City. Notwithstanding the foregoing, PCL shall have no obligation under this Section 10.01(b) to pay to the City or the Bond Trustee, and the City and the Bond Trustee shall have no right to, any amounts in respect of days of delay that occur after the first anniversary of the Expected Opening Date.

10.02 Insurance (Other Contractors and their Subcontractors). PCL shall not allow any Other Contractor (or any of such Other Contractor's Subcontractors) to begin any construction or installation at the Ballpark Land (a) until the policies of insurance described on Exhibit M have been obtained by, on behalf of or for such Other Contractor or Subcontractor and (b) a copy of each such policy has been provided to the City. All insurance proceeds and payments from any Consultant, in either case, with respect to the destruction of or damage to the Ballpark shall be paid into the Design and Construction Fund for the construction or repair of the Ballpark.

10.03 Insurance (Architects and their Subcontractors). PCL shall not allow on-site construction of the Ballpark to commence pursuant to drawings and specifications prepared by any Architect (or any of such Architect's Subcontractors) until such Architect or Subcontractor has: (a) obtained all policies of insurance described on Exhibit N and (b) provided a copy of each such policy to the City. Notwithstanding the foregoing, PCL may, in its sole discretion, elect to purchase a project specific professional liability insurance policy in an amount of at least \$7,500,000 in lieu of requiring the Architect to provide professional liability insurance under Section A of Exhibit N.

10.04 Indemnification by the Padres and PCL. To the extent permitted by law, each of the Padres and PCL hereby agree to indemnify, defend and hold harmless the City, the Agency, CCDC, their Consultants and their respective directors, officers, employees and agents (collectively, the "City Indemnified Parties") from and against any and all liabilities, claims, demands, obligations, losses, actions and causes of action whatsoever, including without limitation reasonable attorneys' fees and expenses, court costs and costs and expenses incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character (collectively, "Losses"), arising out of, related to, or in connection with: (a) the failure of PCL or the Padres to perform their obligations under this Agreement or any Related Document executed; (b) the breach of any of the representations or warranties of PCL or the Padres set forth in Article IX; (c) lawsuits concerning the applicability of the PRA to documents possessed by PCL or the Padres and described in Section 7.05(b); or (d) third-party claims with respect to the design or construction of the Ballpark; in each case, except to the extent such Losses arise out of the gross negligence or willful misconduct of the City Indemnified Parties.

10.05 Indemnification by the City, the Agency and CCDC.

(a) To the extent permitted by law, the City, the Agency or CCDC hereby agree to indemnify, defend and hold harmless the Padres, PCL, their Consultants and their respective directors, officers, employees and agents (collectively, the “Padres Indemnified Parties”) from and against any and all Losses arising out of, related to, or in connection with: (i) the failure of the City, the Agency or CCDC to perform its obligations under this Agreement or any Related Document hereafter executed; or (ii) the breach of any of the representations or warranties of the City, the Agency or CCDC set forth in Article X; (iii) third-party claims with respect to the design and construction of the Infrastructure and Parking Facilities to be delivered by the City; (iv) the Land Acquisition by the City, the Agency or CCDC (the foregoing indemnity shall not apply to make the City, the Agency or CCDC liable for Land Acquisition Costs in excess of the amounts set forth in the MOU); or (v) compliance with CEQA requirements; in each case, except to the extent such Losses arise out of the gross negligence or willful misconduct of the Padres Indemnified Parties.

(b) The City shall indemnify, defend and hold harmless the Padres Indemnified Parties from and against any and all Losses suffered or incurred by the Padres Indemnified Parties as a result of:

(i) Any environmental remediation or cleanup activities by the City or CCDC in connection with the Ballpark Project;

(ii) Any claim, demand, suit, cause of action, investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, or other third party, whether or not meritorious, which directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (i) through (iii) of this Section 10.05; and

(iii) The City’s failure to consent to the institution or defense by the Padres or PCL of any lawsuit on behalf of the City in connection with the Ballpark Design-Build Construction Contract or the City’s failure to bring or bringing of any such lawsuit itself, including any additional costs of completing the Ballpark.

10.06 Procedures for Indemnification. Any Person eligible for indemnification under Sections 10.04 and 10.05 above (each, the “Indemnified Party”) shall give notice to the Party or Parties obligated under such Section to indemnify such Indemnified Party (each, an “Indemnifying Party”) each time that, and within ten (10) days after, the Indemnified Party becomes aware of any fact or circumstance which would reasonably be expected to give rise to an obligation to indemnify under such Section 10.04 or 10.05, which notice shall be accompanied by a copy of any claim made which may result in such obligation to indemnify. The Indemnifying Party shall have the right and obligation to assume the defense (with counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnified Party) or settlement of any such claim in respect of which it is obligated to provide indemnity hereunder; provided that the Indemnifying Party shall not settle or compromise any such claim without the Indemnified Party’s prior written consent thereto (such consent not to be unreasonably withheld or delayed), unless the terms of such settlement or compromise discharge and release the Indemnified Party from any and all

liabilities and obligations thereunder; provided, further, that PCL and the Padres shall neither institute nor defend any lawsuit on behalf of the City Indemnified Parties without the prior written consent of the City (which consent shall not be unreasonably withheld or delayed), and if the City does not give its consent to such lawsuit or institutes such lawsuit itself, PCL and the Padres shall be relieved of their indemnity obligations described in this Article 10 and shall be relieved of their cost overrun obligations regarding the Ballpark Project for all costs arising out of such lawsuit. Notwithstanding the foregoing, the Indemnified Party at all times shall have the right, at its option and expense, to participate fully in the defense or settlement of such claim, and if the Indemnifying Party does not proceed diligently to commence to defend or settle such claim within fifteen (15) days after its receipt of notice of the assertion or commencement thereof, then the Indemnified Party shall have the right, but not the obligation, to undertake the defense or settlement of such claim for the account and at the risk of the Indemnifying Party and the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make to such claim. The parties agree that, for the purpose of enforcing any right of indemnity hereunder, the Indemnified Party may join the Indemnifying Party in any third-party claim as to which such right of indemnity would or might apply. The parties shall cooperate fully in defending or settling any third-party claim.

10.07 Limitations on Liability. Notwithstanding any other provision herein to the contrary other than as expressly provided in Section 11.05(c), no Party shall be responsible or held liable to any other Party under contract, or in tort, warranty (express or implied) or any other theory of law or equity for any incidental, special, punitive, indirect or consequential loss or damage of any nature.

10.08 Builder's Risk Insurance. Prior to the commencement of construction, PCL shall cause to be obtained on behalf of the Parties builder's standard all-risk insurance for the Ballpark for the full replacement cost of the Ballpark with a "builder's risk completed value non-reporting form" including collapse, sink hole, subsidence, off-site coverage, transit, testing and startup. Deductibles greater than \$50,000 must be approved by the City acting reasonably.

Builder's risk coverage for earthquakes and floods (OIC) shall be obtained for the lesser of (a) the probable maximum loss caused by any earthquake or flood, as determined by a reputable consultant engaged by PCL promptly after the date hereof, or (b) one-half (1/2) of the replacement cost of the Ballpark (to the extent such insurance may be obtained at commercially reasonable cost), but in no event less than \$50,000,000. The flood and earthquake coverage shall have a deductible no greater than five percent (5%) of the value of the Ballpark at the time of loss.

PCL shall also obtain business income insurance of a "delay in startup" nature (builder's risk soft cost) in a minimum amount not less than \$38,250,000 and with a deductible not longer than thirty (30) days.

All such insurance shall be obtained from a provider having a rating not less than A-VII from A.M. Best. The City, the Padres and PCL shall be named insureds under the builder's risk insurance and the business income insurance. All proceeds of such builder's risk insurance shall be paid into the Design and Construction Fund to be used for the construction, repair or reconstruction of the Ballpark. All proceeds of the business income insurance up to the interest

that accrues on the City Financing during any delay in Substantial Completion of the Ballpark beyond the Expected Completion Date shall be paid to the Bond Trustee on behalf of the City.

ARTICLE XI.

DEFAULT AND REMEDIES

11.01 Padres' Default.

(a) A "Padres' Default" shall mean:

(i) a material failure by PCL or the Padres to perform any of their material covenants or obligations set forth in this Agreement (including but not limited to failure to comply with Section 4.04 (as it relates to Major Change Orders), failure to dispose of mechanics' liens as provided in Section 4.07 or failure to obtain payment and performance bonds in accordance with Section 4.08) or a material breach by PCL or the Padres of any of their material representations or warranties (including but not limited to as set forth in Section 8.03) set forth in Article VIII, if such failure or breach would reasonably be expected to have a material adverse effect on the Ballpark Project and is not cured within thirty (30) days after delivery from the City, the Agency or CCDC to PCL or the Padres, as appropriate, of written notice of such failure or breach; provided, however, if such failure or breach is not reasonably susceptible to cure within thirty (30) days, PCL or the Padres, as applicable, shall have such additional time to cure as reasonably required to effect such cure;

(ii) a material failure by PCL or the Padres to perform any of their material covenants or obligations set forth in any Related Document (including, without limitation any material document with respect to financing the Ballpark entered into by PCL or the Padres) or a material breach by PCL or the Padres of any of their material representations or warranties set forth in any Related Document, if such failure or breach would reasonably be expected to have a material adverse effect on the Ballpark Project and remains uncured after giving effect to any notice and cure provisions expressly set forth in such Related Document; provided, however, that if such Related Document does not expressly set forth any notice and cure provisions, such failure or breach by PCL or the Padres shall not be deemed a "Padres' Default" hereunder unless such failure or breach is not cured within thirty (30) days after delivery from the City, the Agency or CCDC to PCL or the Padres, as appropriate, of written notice of such failure or breach; provided, however, if such failure or breach is not reasonably susceptible to cure within thirty (30) days, PCL or the Padres, as applicable, shall have such additional time to cure as reasonably required to effect such cure;

(iii) PCL or the Padres shall (A) admit in writing their inability to pay their debts generally as they become due; (B) make an assignment of all or a substantial part of its property for the benefit of creditors; (C) apply for or consent to or acquiesce in the appointment of a receiver, trustee or liquidator of PCL or the Padres of all or a substantial part of their property or their interest under this Agreement; or (D) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency law or an arrangement with creditors, or take advantage of any insolvency law or file an answer admitting

or failing to deny the material allegations of a petition filed against PCL or the Padres in any bankruptcy, reorganization or insolvency proceedings;

(iv) the filing against PCL or the Padres of any involuntary proceeding in bankruptcy or under any other insolvency law if such matter is not dismissed or vacated within sixty (60) days;

(v) the appointment of a receiver, trustee or liquidator of PCL or the Padres of all or a substantial part of their property or their interest under this Agreement, if such appointment is not vacated within fifteen (15) days; or

(vi) the Padres shall cease to be in good standing in Major League Baseball if such failure to be in good standing is not cured within thirty (30) days after delivery from the City, the Agency or CCDC to the Padres of written notice of such failure.

(b) Upon the occurrence of a Padres' Default, the City, the Agency or CCDC shall have the rights and remedies set forth in Section 11.03.

11.02 City Default.

(a) A "City Default" shall mean:

(i) a material failure by the City, the Agency or CCDC to perform any of its material covenants or obligations set forth in this Agreement or a material breach by the City the Agency or CCDC of any of its material representations or warranties set forth in Article X, if such failure or breach would reasonably be expected to have a material adverse effect on the Ballpark Project and is not cured within thirty (30) days after delivery from PCL or the Padres to the City, the Agency or CCDC, as appropriate, of written notice of such failure or breach; provided, however, if such failure or breach is not reasonably susceptible to cure within thirty (30) days, the City, the Agency or CCDC, as applicable, shall have such additional time to cure as reasonably required to effect such cure;

(ii) a material failure by the City, the Agency or CCDC to perform any of its material covenants or obligations set forth in any Related Document or a material breach by the City, the Agency or CCDC of any of its material representations or warranties set forth in any Related Document, if such failure would reasonably to be expected to have a material adverse effect on the Ballpark Project and remains uncured after giving effect to any notice and cure provisions expressly set forth in such Related Document; provided, further, that if such Related Document does not expressly set forth any notice and cure provisions, such failure or breach by the City, the Agency or CCDC shall not be deemed a "City Default" hereunder unless such failure or breach is not cured within thirty (30) days after delivery from PCL or the Padres to the City, the Agency or CCDC, as appropriate, of written notice of such failure or breach; provided, however, if such failure or breach is not reasonably susceptible to cure within thirty (30) days, the City, the Agency or CCDC, as applicable, shall have such additional time to cure as reasonably required to effect such cure;

(iii) the City, the Agency or CCDC shall (A) admit in writing its inability to pay its debts generally as they become due; (B) make an assignment of all or a substantial part of

its property for the benefit of creditors; (C) apply for or consent to or acquiesce in the appointment of a receiver, trustee or liquidator of the City, the Agency or CCDC of all or a substantial part of its property or its interest under this Agreement; or (D) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency law or an arrangement with creditors, or take advantage of any insolvency law or file an answer admitting or failing to deny the material allegations of a petition filed against the City, the Agency or CCDC in any bankruptcy, reorganization or insolvency proceedings;

(iv) the filing against the City, the Agency or CCDC of any involuntary proceeding in bankruptcy or under any other insolvency law if such matter is not dismissed or vacated within sixty (60) days;

(v) the appointment of a receiver, trustee or liquidator of the City, the Agency or CCDC of all or a substantial part of its property or its interest under this Agreement, if such appointment is not vacated within fifteen (15) days;

(vi) the failure of the City to issue the Off Site Post City Financing Notice to Proceed and at least one of the Project Site Notices to Proceed immediately upon the City's obtaining the City Financing; or

(vii) the failure of the City to satisfy the conditions precedent to obtaining the City Financing described in Section 3.03 before the City obtains the City Financing.

(b) Upon the occurrence of a City Default, PCL and the Padres shall have the rights and remedies set forth in Section 11.04.

11.03 Remedies Upon Padres' Default.

(a) Upon the occurrence of a Padres' Default, the City shall have the rights and remedies set forth in this Agreement in addition to all other remedies they may have at law or in equity, and none of the rights and remedies set forth in this Agreement, whether or not exercised by the City, the Agency or CCDC, shall preclude the exercise of any other right or remedy whether set forth in this Agreement or existing at law or in equity.

(b) Upon the occurrence of a Padres' Default:

(i) upon PCL's receipt of written notice from the City, PCL shall cease to be the "Procurement Consultant" under the Design-Build Alternative Procurement Ordinance and all authority of PCL as "Procurement Consultant" shall be vested in the City. The City shall have the right thereafter to control all development and construction of the Ballpark;

(ii) upon PCL's receipt of written notice from the City, PCL shall assign (or caused to be assigned) to the City any rights of PCL, the Padres and their affiliates, to any Architects agreements, the Design-Build Construction Contract, other construction contracts, other agreements related to the design and construction of the Ballpark, and agreements concerning or relating in any way to revenue derived from the use or occupancy of the Ballpark, to which PCL, the Padres or any of their affiliates are a party, as directed by the City;

(iii) upon PCL's receipt of written notice from the City, PCL shall deliver to the City copies of, and assign (or cause to be assigned) to the City, all rights to any and all designs, drawings, specifications, reports, studies (including seismic, environmental, soils and other similar reports or studies), and all other plans prepared by (or caused to be prepared by) PCL or its affiliates in connection with the Ballpark Project;

(iv) the City may, upon fifteen (15) days' prior written notice to the Padres and PCL, terminate this Agreement, the MOU and any other then-executory Related Documents; and

(v) the City shall have a right to an action for damages, specific performance or both.

11.04 Remedies Upon City Default.

(a) Upon the occurrence of a City Default, PCL and the Padres shall have the rights and remedies set forth in this Agreement in addition to all other remedies they may have at law or in equity, and none of the rights and remedies set forth in this Agreement, whether or not exercised by PCL or the Padres shall preclude the exercise of any other right or remedy whether set forth in this Agreement or existing at law or in equity.

(b) Upon the occurrence of a City Default:

(i) PCL or the Padres may, upon 15 days' prior written notice to the City, terminate this Agreement, the MOU and any other then-executory Related Documents; and

(ii) PCL and the Padres shall have a right to an action for damages, specific performance or both.

11.05 Force Majeure.

(a) Should any of the Parties be delayed in or prevented, in whole or in part, from performing any obligation or condition required by this Agreement by reason of a Force Majeure Event, that Party shall be excused from performing that obligation or condition for so long as the Party is delayed or prevented from performing, and for a period of thirty (30) calendar days thereafter, and any affected deadlines (including deadlines for performance of obligations hereunder) shall be similarly extended.

(b) For purposes of this Agreement, "Force Majeure Event" means any of the following events which prevents a Party from performing any obligation under this Agreement or that delays construction or development of the Ballpark: any act of God, strike, lockout or other industrial disturbance during the design or construction only of the Ballpark Project, (but not including a strike or lockout by Major League Baseball players or umpires during the design or construction only of the Ballpark Project); act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide, earthquake, fire, storm, flood, or washout; any act of God, strike, lockout or other industrial disturbance (including a strike or lockout by Major League Baseball players or umpires after completion of the design and construction of the Ballpark Project); title dispute, or any other litigation, including the inability to timely obtain judgments in eminent domain or timely obtain possession through eminent

domain; governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed or the costs of proceeding (but, with respect to the City, the Agency and CCDC only, not including any City laws or ordinances, and including for the benefit of the Padres and PCL only, the existence of any Hazardous Substance or any Obstruction on, above or below any Project Site; any initiative or referendum; and failure to obtain any necessary federal, state, city or county governmental approval. The Parties acknowledge that an order of a court of competent jurisdiction barring the disbursement of funds from the Design and Construction Fund is the only event described in this Section 11.05(b) that can properly prevent the City from causing funds to be disbursed from the Design and Construction Fund upon the proper application therefor in accordance with Section 7.05 hereof, and as such, only such a court order shall constitute a Force Majeure Event excusing the City's obligation to cause such a disbursement to occur, and that all other Force Majeure Events described above were intended and shall be construed to apply only to performance of non-monetary covenants and not to the simple payment of money.

(c) The City agrees that in connection with the design and construction of the Ballpark, the Padres, PCL, the Ballpark Design-Build Contractor and each Consultant shall be subject only to those building codes and similar ordinances and regulations of the City together with any related fees (for example, building permit fees), that are in each case in effect when the City approves this Agreement.

11.06 Dispute Resolution.

(a) Notwithstanding any other provision to the contrary in this Agreement, the dispute resolution procedures set forth in this Section shall be the exclusive means for resolving disputes among the Parties arising under, relating to or affecting this Agreement or any Related Document, including without limitation the interpretation of this Section and the performance or breach of this Agreement or any Related Document (each a "Dispute").

(b) Upon the occurrence of a Dispute, any Party to such Dispute may deliver written notice (a "Dispute Notice") to the other Parties to such Dispute. Upon receipt of such Dispute Notice: (i) each Party shall use good-faith efforts to cause a meeting to occur among the Parties to the Dispute within five (5) days after such Parties' receipt of such Dispute Notice; and (ii) each Party to the Dispute shall send a representative, with authority to act on behalf of such Party with respect to all matters involving the Dispute, to such meeting; and (iii) the Parties shall use good-faith efforts to resolve such Dispute within five (5) days after such Parties' receipt of such Dispute Notice.

(c) If after delivery of any Dispute Notice, the relevant Parties fail to resolve such Dispute within the five (5)-day period set forth in Section 11.06(b) (as such period may be extended by mutual written agreement of the relevant Parties), then at any time within the 30-day period following expiration of such 5-day period (as such period may be extended by mutual written agreement of the relevant Parties), any Party to such Dispute may submit the Dispute to non-binding mediation by delivering written demand (a "Mediation Demand") therefor to such other Parties and delivering a copy of such Mediation Demand to the American Arbitration Association ("AAA"). All non-binding mediation pursuant to this Section 11.06(c) shall proceed as follows:

(i) such mediation shall occur in San Diego, California before a single mediator.

(ii) such mediation shall be governed by the laws of the State of California and shall be conducted in accordance with the Commercial Mediation Rules of AAA.

(iii) within five (5) days after such Parties' receipt of a Mediation Demand, such Parties shall jointly request AAA to appoint a qualified and available mediator on or before fifteen (15) days after AAA's receipt of such Mediation Demand. To be qualified, a mediator must have at least ten (10) years of substantial experience in real estate development and finance matters and have no prior business or professional relationship with any Party. To be available, a mediator must generally be available to conduct the mediation within the twenty 20-day period following selection of the mediator.

(iv) the parties to the Dispute shall share the filing fee and neutral costs of any mediation equally, but shall bear separately all other costs (including attorneys' fees, travel costs, etc.).

(v) each party to the Dispute shall send at least one representative to the mediation conference who has full power and authority to act on its behalf and enter into binding agreements on its behalf.

(vi) such mediation shall be commenced and concluded within thirty (30) days after the selection of the three-person meditation panel.

(d) If, with respect to any Dispute, after completion of the mediation proceedings described in Section 11.06(c), any Party is not satisfied with the resolution of such Dispute, such Party may proceed with any action it may be entitled to take at law or in equity.

ARTICLE XII.

MISCELLANEOUS

12.01 Notices. Any notice to be given to any party pursuant to any provision of this Agreement shall be in writing, shall be (a) hand delivered to such party, (b) sent by telecopy to the telecopy number for such party listed below, or (c) sent by Federal Express or other nationally-recognized overnight courier service to the address of such party set forth below, and, if hand delivered, shall be deemed received when delivered, if telecopied, shall be deemed received upon confirmation of receipt either telephonically or by facsimile, and if sent by Federal Express or other nationally-recognized overnight courier service, shall be deemed received one Business Day after having been deposited with Federal Express or other nationally-recognized overnight courier service if designated for next day delivery addressed as follows:

For the City: City Manager
 202 "C" Street, Mail Station 9A
 San Diego, California 92101

with a copy to:

City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101

For PCL
or the Padres:

San Diego Padres
8880 Rio San Diego Drive, Suite 400
San Diego, California 92108
P.O. Box 122000
San Diego, California 92112
Attn: Lawrence Lucchino, President & Chief Executive Officer

with a copy to:

San Diego Padres
8880 Rio San Diego Drive, Suite 400
San Diego, California 92108
P.O. Box 122000
San Diego, California 92112
Attn: Robert Vizas

For the Agency:

Redevelopment Agency for the City of San Diego
202 "C" Street, Mail Station 9A
San Diego, California 92101
Attn: Executive Director

with a copy to:

General Counsel
1200 Third Avenue, Suite 1620
San Diego, California 92101

For CCDC:

Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, California 92101
Attn: President

with a copy to:

Kemp & Pratt
550 West C Street
San Diego, California 92101
Attn: Bea Kemp, General Counsel

Any Party, by notice given as provided above, may change the address or telecopy number to which future notices shall be sent. Notwithstanding the foregoing, each Party shall personally deliver any notice to which this Agreement requires the recipient Party to respond within ten (10) days.

12.02 No Assignment. No Party may assign any of its rights or obligations under this Agreement without first obtaining the prior written consent of all the other Parties (such consent not to be unreasonably withheld or delayed).

12.03 Successors and Assigns. Subject to the provisions of Section 12.02, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No other party shall have the right to enforce this Agreement.

12.04 No Third Party Beneficiaries; Agency. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns, the Padres Indemnified Parties and the City Indemnified Parties; provided that third parties are entitled to rely on the agency relationship between PCL and the City described in Section 2.01(b). The agency set forth in Section 2.01(b) shall be deemed to be a power coupled with an interest and shall be irrevocable until such time as a Padres Default shall have occurred and the City shall have delivered written notice to PCL under Section 11.03(b)(ii).

12.05 Survival. The representations, warranties, indemnities and other covenants set forth in this Agreement shall be deemed to be continuing and shall survive opening of the Ballpark and termination of this Agreement and shall remain binding upon and inure to the benefit of the parties hereto and, subject to the provisions of Section 12.02, their respective successors and assigns.

12.06 Costs of Legal Proceedings. If any party institutes legal proceedings with respect to this Agreement or the MOU, the prevailing party shall be entitled to court costs and reasonable attorneys' fees incurred by such party in connection with such legal proceedings. The "prevailing party" shall be determined, at the conclusion of any trial or appeal, if applicable, by the Person before whom the dispute was brought, based upon an assessment of which Party's major arguments or positions taken in the mediation, arbitration, suit or proceeding could fairly be said to have prevailed over the other Party's major arguments or positions on major disputed issues, in the final decision of the court or any appellate court.

12.07 Entire Agreement. This Agreement together with the Exhibits and Schedules attached hereto and the Related Documents represents the entire agreement between the parties hereto with respect to the subject matter hereof and all prior agreements, understandings or negotiations shall be deemed merged herein. No representations, warranties, promises or agreements, express or implied, shall exist between the parties, except as stated herein or in the Related Documents. If there is any conflict or inconsistency between and the terms and conditions of the MOU, and the terms and conditions of this Agreement or any other Related Document, the terms and conditions of this Agreement or such Related Document, as applicable, shall control, unless the result thereof would be to: (a) materially decrease the rights or increase the obligations of the City; (b) materially increase the financial commitments of the City; or (c) materially decrease the revenue to the City, in which case the terms of the MOU shall control. Except for those

provisions of the MOU expressly implemented and clarified by this Agreement, the MOU shall continue in full force and effect.

12.08 No Oral Modifications. No amendments or modifications to this Agreement shall be made or deemed to have been made unless in writing executed and delivered by the Party to be bound thereby.

12.09 Severability. If any term, provision, condition or covenant of this Agreement, any Related Document or the application thereof to any Person or circumstances shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement, the Related Documents and the application of such term, provision, condition or covenant in any other jurisdiction or to Persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement, the Related Documents shall be valid and enforceable to the fullest extent permitted by law.

12.10 Time of the Essence. All of the provisions of this Agreement regarding time for performance are of the essence.

12.11 Headings and Captions for Convenience. The headings and captions and contained in this Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

12.12 Exhibits and Schedules Incorporated. All exhibits and schedules referred to in this Agreement shall be deemed incorporated in this Agreement by reference.

12.13 Submission to Jurisdiction. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA OR ANY COURT OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF SUCH COURTS. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO EACH OF THE OTHER PARTIES AT ITS ADDRESS PROVIDED HEREIN, SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING.

12.14 Failure or Delay. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand

on any Party in any case entitles such Party to any other or further notice or demand in similar or other circumstances.

12.15 Memoranda. Each Party shall have the right to record a memorandum of any terms and conditions of this Agreement, and each Party shall promptly execute, have acknowledged and deliver any such memorandum as may be reasonably requested by any other Party.

12.16 Further Assurances. Each Party shall from time to time, at the request of any other Party, execute and deliver to such other Party such documents and instruments and take such other actions as such other Party may reasonably request, in order to more effectively consummate the transactions contemplated hereby.

12.17 Parent Company Guaranty. Simultaneously with the execution and delivery of this Agreement, the Padres and PCL shall execute and deliver to the City a guaranty agreement (the "Parent Company Guaranty") in the form attached hereto as Exhibit "P." The Parent Company Guaranty shall set forth the Padres' guaranty of PCL's performance of their obligations under this Agreement.

12.18 Counterparts and Facsimile Delivery. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. Execution copies of this Agreement may be delivered by facsimile and the parties hereto agree to accept and be bound by facsimile signatures hereto. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party, any facsimile or telecopy document is to be re-executed in original form by the parties who executed the facsimile or telecopy document. No party may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section.

12.19 Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of California.

12.20 Relationships. PCL, the Padres and the City recognize that this Agreement and the various other agreements now in existence or to be hereafter executed between them create a special relationship of trust and confidence between the respective parties due to the fact that PCL is a wholly owned entity of the Padres and will be acting in a professional capacity on behalf of the City in providing the services and performing the obligations set forth in this Agreement. PCL, the Padres and the City recognize that due to the special fiduciary relationship which PCL is assuming toward the City, it is the intention of this Agreement to impose, and of PCL to accept, the special and additional duties of trust and confidence expressly created hereby (but not by implication as a result of PCL's status as the City's agent). PCL and the City will exercise, with respect to each other, the highest standards of good faith and fidelity. Further, PCL recognizes the obligation to cooperate in all respects with the City in the planning, design, bidding and construction phases of the Project. PCL expressly agrees that the interests of the

City shall not be subordinate to any other interests in the performance of PCL's obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE CITY OF SAN DIEGO, CALIFORNIA

By: _____
Name: _____
Title: _____

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

By: _____
Name: _____
Title: _____

THE CENTRE CITY DEVELOPMENT CORPORATION, a California corporation

By: _____
Name: _____
Title: _____

PADRES L.P., a Delaware limited partnership

By: _____
Name: _____
Title: _____

PADRES CONSTRUCTION, L.P., a Delaware limited partnership

By: San Diego Ballpark LLC, a Delaware limited liability company, as general partner

By: Padres L.P., a Delaware limited partnership, as manager

By: Padres Inc., a Delaware corporation, as general partner

By: _____
Name: _____
Title: _____

By: Padres L.P., a Delaware limited partnership, as limited partner

By: Padres Inc., a Delaware corporation, as general partner

By: _____
Name: _____
Title: _____

I HEREBY APPROVE the form and legality of the foregoing Ballpark Design-Build Procurement Consultant Agreement this _____ day of _____, 2000.

CASEY GWINN, City Attorney

By: _____
Leslie J. Girard
Assistant City Attorney

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND USAGE..... 3

 1.01 Definitions 3

 1.02 Usage..... 13

ARTICLE II. ENGAGEMENT OF THE PADRES AND PCL..... 13

 2.01 Engagement of the Padres and PCL..... 13

 2.02 Limitations on Authority..... 14

ARTICLE III. PROJECT DESCRIPTION AND SCHEDULE..... 15

 3.01 Final Baseline Ballpark Program and Minimum Design Parameters 15

 3.02 Off-Site Pre-City Financing Notices to Proceed 16

 3.03 City Financing..... 16

 3.04 Off-Site Post-City Financing Notice to Proceed 17

 3.05 Project Site Notice to Proceed 18

 3.06 Project Schedule..... 18

ARTICLE IV. CERTAIN OBLIGATIONS OF PCL AND THE PADRES 20

 4.01 Design and Construction of Ballpark..... 20

 4.02 Contracts..... 21

 4.03 Ancillary Agreements 23

 4.04 Change Orders Regarding Plans and Specifications for the Ballpark. 24

 4.05 Ballpark Cost Overruns and Savings. 25

 4.06 Local and Minority Participation Goals 26

 4.07 Mechanic’s Liens..... 26

 4.08 Hazardous Substances..... 27

 4.09 General Contract Provisions..... 27

 4.10 As-Built Drawings 28

ARTICLE V. CERTAIN OBLIGATIONS OF THE CITY, THE AGENCY AND CCDC..... 28

 5.01 MOU Obligations..... 28

 5.02 Assistance with Approvals and Related Administrative Activities 29

 5.03 Land Acquisition..... 29

 5.04 Non-Interference with PCL Consultants 30

 5.05 Site Logistics Plan and Base Map..... 30

 5.06 Employee Parking 30

ARTICLE VI. CERTAIN MUTUAL OBLIGATIONS OF THE PARTIES 31

 6.01 Monthly Progress Reports, Budgets and Meetings..... 31

 6.02 Access to Project Books and Records..... 31

 6.03 Cooperation Among Construction Managers and Contractors..... 32

 6.04 Mutual Access to Ballpark Project. 32

 6.05 Compliance with Law 33

 6.06 Coordination with Phase I 33

 6.07 Tax-Exempt Financing 33

6.08 Padres’ Interest in the Ballpark..... 33

6.09 Delay Payments. 34

ARTICLE VII. FINANCING..... 35

7.01 Agency Fund..... 35

7.02 Design and Construction Fund 35

7.03 Management of Funds..... 35

7.04 Use of Funds..... 37

7.05 Requests for Payment..... 39

7.06 Reimbursable Expenses..... 41

7.07 Selection of Trustee 42

ARTICLE VIII. REPRESENTATIONS AND WARRANTIES OF PCL AND THE PADRES. 42

8.01 Organization and Standing 42

8.02 Authorization. 43

8.03 Absence of Contractual or Other Restrictions 43

8.04 Litigation and Proceedings 43

8.05 Consents and Approvals..... 44

8.06 Bankruptcy..... 44

8.07 Consents and Notices. 44

ARTICLE IX. REPRESENTATIONS AND WARRANTIES OF THE CITY, THE
AGENCY AND CCDC..... 45

9.01 Organization and Standing 45

9.02 Authorization. 45

9.03 Absence of Contractual or Other Restrictions 46

9.04 Litigation and Proceedings 46

9.05 Consents and Approvals..... 46

9.06 Bankruptcy..... 47

9.07 Consents and Notices 47

ARTICLE X. INSURANCE AND INDEMNIFICATION..... 47

10.01 Insurance (Ballpark Design-Build Contractor and its Subcontractors) 47

10.02 Insurance (Other Contractors and their Subcontractors)..... 48

10.03 Insurance (Architects and their Subcontractors)..... 48

10.04 Indemnification by the Padres and PCL..... 48

10.05 Indemnification by the City, the Agency and CCDC. 49

10.06 Procedures for Indemnification 49

10.07 Limitations on Liability..... 50

10.08 Builder’s Risk Insurance 50

ARTICLE XI. DEFAULT and REMEDIES..... 51

11.01 Padres’ Default. 51

11.02 City Default. 52

11.03 Remedies Upon Padres’ Default..... 53

11.04 Remedies Upon City Default..... 54

11.05 Force Majeure. 54

11.06 Dispute Resolution..... 55

ARTICLE XII. MISCELLANEOUS..... 56

12.01 Notices..... 56

12.02 No Assignment 58

12.03 Successors and Assigns 58

12.04 No Third Party Beneficiaries; Agency 58

12.05 Survival..... 58

12.06 Costs of Legal Proceedings 58

12.07 Entire Agreement 58

12.08 No Oral Modifications..... 59

12.09 Severability 59

12.10 Time of the Essence 59

12.11 Headings and Captions for Convenience 59

12.12 Exhibits and Schedules Incorporated 59

12.13 Submission to Jurisdiction..... 59

12.14 Failure or Delay 59

12.15 Memoranda..... 60

12.16 Further Assurances..... 60

12.17 Parent Company Guaranty..... 60

12.18 Counterparts and Facsimile Delivery 60

12.19 Governing Law 60

12.20 Relationships..... 60

TABLE OF EXHIBITS AND SCHEDULES

Exhibit A-1	Ballpark Estimate
Exhibit A-2	Infrastructure Estimate
Exhibit A-3	Land Acquisition Estimate
Exhibit B-1	Description of Project Sites and Site Logistics Plan
Exhibit B-2	Base Map
Exhibit B-3	Land Use Plan
Exhibit C	Padres Use of Funds Schedule
Exhibit D	Final Baseline Ballpark Program
Exhibit E	Minimum Design Parameters
Exhibit F	Project Schedule
Exhibit G	Form of Payment and Performance Bond
Exhibit H	Form of Request for Payment
Exhibit I	Form of Off-Site Post-City Financing Notice to Proceed
Exhibit J	Part 1 – Description of Off-Site Pre-City Financing Work
Exhibit J	Part 2 – Form of Each Off-Site Pre-City Financing Notice to Proceed
Exhibit K	Form of Project Site Notice to Proceed
Exhibit L	Form of Ballpark Design-Build Construction Contract
Exhibit M	Other Contractor Acquired Insurance
Exhibit N	Architect-Provided Insurance
Exhibit O	Form of RFI
Exhibit P	Form of Parent Guaranty
Exhibit Q	Padres Property
Schedule 8.07	Padres’ Consents
Schedule 9.07	City’s Consents

EXHIBIT A-1
BALLPARK ESTIMATE

EXHIBIT A-2
INFRASTRUCTURE ESTIMATE

EXHIBIT A-3

LAND ACQUISITION ESTIMATE

EXHIBIT B-1

DESCRIPTION OF PROJECT SITES AND SITE LOGISTICS PLAN

EXHIBIT B-2
BASE MAP

**EXHIBIT B-3
LAND USE PLAN**

EXHIBIT C

PADRES USE OF FUNDS SCHEDULE

EXHIBIT D

FINAL BASELINE BALLPARK PROGRAM

EXHIBIT E
MINIMUM DESIGN PARAMETERS

EXHIBIT F
PROJECT SCHEDULE

<u>Milestone</u>	<u>Expected Date</u>	<u>Calendar Days Prior to Expected Opening Date</u>
1. Procurement Package No. 1 Off-Site Pre-City Financing Notice to Proceed	Earlier of March 12, 2000, or the effective date of this Agreement.	The greater of 780 days or the number of days between the effective date of this Agreement and May 2, 2002.
2. Procurement Package No. 2 Off-Site Pre-City Financing Notice to Proceed	12-Mar-00	780
3. Off-Site Post-City Financing Notice to Proceed	01-May-00	730
4. Project Site Notice to Proceed for Area 5	01-May-00	730
5. Project Site Notice to Proceed for Area 1	01-May-00	730
6. Project Site Notice to Proceed for Area 2a	01-Jul-00	669
7. Project Site Notice to Proceed for Area 4a	01-Jul-00	669
8. Project Site Notice to Proceed for Area 3	01-Aug-00	669
9. City Sewer System Available to Ballpark	01-Aug-00	638
10. Project Site Notice to Proceed for Area 2b	09-Aug-00	638
11. City Storm Water System Available to Ballpark	01-Nov-00	546
12. Project Site Notice to Proceed for Area 4b	01-Nov-00	546
13. Permanent Power Available to Ballpark	19-Jan-01	467
14. City Curb and Gutter Work Complete Around Perimeter of Project Site	01-Sep-01	242
15. Ballpark Opening Date	01-May-02	0
16. Substantial Completion of the Ballpark	01-May-02	0
17. Final Completion of the Ballpark	28-Oct-02	(180)

EXHIBIT G

FORM OF PAYMENT AND PERFORMANCE BOND

_____, a _____, as principal, and _____,
a corporation authorized to do business in the State of California, as Surety, hereby obligate themselves,
their successors and assigns, jointly and severally, to The City of San Diego, a municipal corporation, and
Padres Construction, L.P., in the sum of

_____ (\$_____) for the faithful performance of the annexed contract and in the sum of _____
_____ (\$_____) for the benefit of laborers and materialmen designated below.

Conditions:

If the Principal shall faithfully perform the annexed contract for _____
_____, San Diego, California, then the obligation
herein with respect to a faithful performance shall be void; otherwise it shall remain in full force.

If the Principal shall promptly pay all persons, firms and corporations furnishing materials for or
performing labor in the execution of this contract, and shall pay all amounts due under the California
Unemployment Insurance Act with respect to such labor, then the obligation herein with respect to
laborers and materialmen shall be void; otherwise it shall remain in full force.

The obligation herein with respect to laborers and materialmen shall inure to the benefit of all
persons, firms and corporations entitled to file claims under the provisions of section 3082 et seq. of the
Civil Code of the State of California.

Changes in the terms of the annexed contract or specifications accompanying same or referred to
therein shall not affect the Surety's obligation on this bond, and the Surety hereby waives notice of same.

The Surety shall pay reasonable attorney's fees should suit be brought to enforce the provisions
of this bond.

Dated _____

Approved as to Form and Legality _____
_____ Principal

Casey Gwinn, City Attorney

By _____ Deputy City Attorney By _____ Surety

By _____ Attorney-in-fact

Approved: _____
_____ Contract Services _____ Local Address of Surety

Bond No. _____ Premium \$ _____

EXHIBIT H

FORM OF REQUEST FOR PAYMENT

[Date]

[Via hand delivery]
[Via recognized and reputable priority mail or courier service, with delivery receipt requested]
[Via facsimile, with transmission confirmation]

Mr. Bruce Herring
Assistant City Manager
202 "C" Street MS #9A
San Diego, CA 92101

Re: Ballpark Project – Request for Payment No. _____

Dear Bruce:

This Request for Payment is submitted pursuant to Section 7.05 of the Ballpark Design-Build Procurement Consultant Agreement by and among the City of San Diego (the "City"), the Redevelopment Agency of the City of San Diego (the "Agency"), the Centre City Development Corporation ("CCDC"), Padres, L.P., a Delaware limited partnership (the "Padres"), and Padres Construction, L.P., a California limited partnership ("PCL"), dated as of January __, 2000 (the "Agreement"). Defined terms used herein shall have the meaning assigned to them in the Agreement.

Please find attached Request for Payment No. ____ with respect to the design and construction of the Ballpark Project. This Request for Payment, in the amount of \$[_____] has been submitted by [Requesting Party] and has been reviewed and approved for payment by [Requesting Party].

Sincerely,

[REQUESTING PARTY]

By: _____
Name: _____
Title: _____

[REVIEWED AND APPROVED:]

Padres Construction, L.P.,
a California limited partnership

By: _____
Name: _____
Title: _____

EXHIBIT I

FORM OF OFF-SITE POST-CITY FINANCING NOTICE TO PROCEED

[City of San Diego Letterhead]

[Date]

[Via recognized and reputable priority mail or courier service, with delivery receipt requested]
[Via facsimile, with transmission confirmation]

Padres Construction, L.P.
8880 Rio San Diego Drive, Suite 400
San Diego, CA 92108
P.O. Box 122000
San Diego, CA 92112
Attention: [_____]

Re: Ballpark - Off-Site Post-City Financing Notice to Proceed

Dear Sir or Madam:

This letter is issued pursuant to Section 3.04 of the Ballpark Design-Build Procurement Consultant Agreement by and among the City of San Diego (the “City”), the Redevelopment Agency of the City of San Diego (the “Agency”), the Centre City Development Corporation (“CCDC”), Padres, L.P., a Delaware limited partnership (the “Padres”), and Padres Construction, L.P., a California limited partnership (“PCL”), dated as of January __, 2000 (the “Agreement”). Defined terms used herein shall have the meaning assigned to them in the Agreement.

The City hereby directs PCL to cause all construction related activities for the Ballpark that are not to be conducted on the Ballpark Land to be commenced.

Sincerely,

City of San Diego

By: _____
Name: _____
Title: _____

EXHIBIT J

PART 1 – DESCRIPTION OF OFF-SITE PRE-CITY FINANCING WORK

<u>Description</u>	<u>Deadline for Issuance of Off-Site Pre-City Financing Notice to Proceed</u>
1. Offsite Pre-City Financing Work including general conditions work to be self performed by the Ballpark Design-Build Contractor (Procurement Package No. 1).	Earlier of March 12, 2000, or the effective date of this Agreement.
2. Offsite Pre-City Financing Work including all structural work, earthwork, deep foundations, underground utilities and certain miscellaneous metals work and metal stairs but excluding cast in place concrete (Procurement Package No. 2).	March 12, 2000

EXHIBIT J

PART 2 - FORM OF EACH OFF-SITE PRE-CITY FINANCING NOTICE TO
PROCEED

[City of San Diego Letterhead]

[Date]

[Via recognized and reputable priority mail or courier service, with delivery receipt requested]
[Via facsimile, with transmission confirmation]

Padres Construction, L.P.
8880 Rio San Diego Drive, Suite 400
San Diego, CA 92108
P.O. Box 122000
San Diego, CA 92112
Attention: [_____]

Re: Ballpark Off-Site Pre-City Financing Notice to Proceed

Dear Sir or Madam:

This letter is issued pursuant to Section 3.02 of the Ballpark Design-Build Procurement Consultant Agreement by and among the City of San Diego (the “City”), the Redevelopment Agency of the City of San Diego (the “Agency”), the Centre City Development Corporation (“CCDC”), Padres, L.P., a Delaware limited partnership (the “Padres”), and Padres Construction, L.P., a California limited partnership (“PCL”), dated as of _____ (the “Agreement”). Defined terms used herein shall have the meaning assigned to them in the Agreement.

The City hereby directs PCL to cause those construction related activities for the Ballpark described in Exhibit A [**TO BE ATTACHED**] to this Off-Site Pre-City Financing Notice to Proceed (the “Off-Site Pre-City Financing Work”) to be commenced.

Sincerely,

City of San Diego

By: _____
Name: _____
Title: _____

EXHIBIT K

FORM OF PROJECT SITE NOTICE TO PROCEED

[City of San Diego Letterhead]

[Date]

[Via recognized and reputable priority mail or courier service, with delivery receipt requested]
[Via facsimile, with transmission confirmation]

Padres Construction, L.P.
8880 Rio San Diego Drive, Suite 400
San Diego, CA 92108
P.O. Box 122000
San Diego, CA 92112
Attention: [_____]

Re: Ballpark – Project Site Notice to Proceed

Dear Sir or Madam:

This letter is issued pursuant to Section 3.05 of the Ballpark Design-Build Procurement Consultant Agreement by and among the City of San Diego (the “City”), the Redevelopment Agency of the City of San Diego (the “Agency”), the Centre City Development Corporation (“CCDC”), Padres, L.P., a Delaware limited partnership (the “Padres”), and Padres Construction, L.P., a California limited partnership (“PCL”), dated as of January __, 2000 (the “Agreement”). Defined terms used herein shall have the meaning assigned to them in the Agreement.

The City hereby delivers PCL access to Area [_____] of the Ballpark Land (the “Project Site”) and directs PCL to cause all onsite construction related activities for such Project Site to be commenced and completed.

Sincerely,

City of San Diego

By: _____
Name: _____
Title: _____

EXHIBIT L

FORM OF BALLPARK DESIGN-BUILD CONSTRUCTION CONTRACT

EXHIBIT M

OTHER CONTRACTOR ACQUIRED INSURANCE

PCL shall cause the following insurances to be obtained and maintained for the Other Contractors and their Subcontractors for all times when they are performing work on the Ballpark Land:

- 1) Workers Compensation insurance in amounts as required by statute.
- 2) Employers Liability insurance in an amount not less than \$1,000,000 each accident.
- 3) Commercial General Liability insurance on an occurrence basis in an amount of not less than \$1,000,000 per occurrence annual aggregate combined single limit for bodily injury (including death) and property damage. Such Commercial General Liability insurance shall include, but not be limited to, the following coverages:
 - Premises, operations and elevators.
 - Independent Contractors.
 - Broad form property damage.
 - Personal Injury.
 - Blanket contractual liability.
 - Blanket fire and explosion legal liability.
 - Liquor liability exclusion deleted.
 - Explosion, collapse and underground hazard included.
 - Products liability.
 - Completed operations coverage for 5 years after completion and acceptance of the Work.
- 4) Commercial Automobile liability insurance on an occurrence basis covering all hired, owned and non-owned vehicles in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury (including death) and property damage. If any Other Contractor is a transporter of hazardous materials, such transporter's Automobile Liability policy shall have all pollution exclusions deleted.
- 5) Fire and extended coverage including theft on equipment, tools and materials owned or rented by any Other Contractor or any Other Contractor's Subcontractor in an amount sufficient to fully protect against loss.

The insurance policies required in the above sub-paragraphs 3), 4), 5) and 6) of this Exhibit shall name the Padres, PCL, Hines Interests Limited Partnership, the City, CCDC, the Bond Trustee and the Agency (each, an "Additional Insured") as additional insureds and be

DRAFT

1/26/00

endorsed to be primary and non-contributory with any insurance otherwise carried by any Additional Insured. All insurance required hereunder a) shall be written with insurers authorized to do business in the State of California and rated A- IX by AM Best & Co. or better; b) shall provide to any Additional Insured 30 days advance written notice of reduction, cancellation or non-renewal and; c) except for professional liability, shall waive all rights of subrogation against each Additional Insured.

EXHIBIT N

ARCHITECT-PROVIDED INSURANCE

A. PROFESSIONAL LIABILITY INSURANCE

During the entire term that the consultant agreement between Padres and the Architect (the "Architect Agreement") shall remain in effect and for a period of two (2) years after Final Completion of the Ballpark, the Architect, at Architect's sole cost and expense, shall obtain and maintain a policy or policies of professional liability insurance with limits of not less than \$7,500,000 applying solely to the Ballpark and covering the Architect's services relating to the Ballpark.

The Architect shall require all of its Subcontractors to (i) maintain professional liability insurance in the amounts to be approved by the Padres, each occurrence and annual aggregate to apply solely to the Ballpark and in accordance with the terms and conditions of this paragraph A, and (ii) comply with all other provisions of this Exhibit.

B. WORKER'S COMPENSATION, LIABILITY AND VALUABLE PAPERS INSURANCE

During the entire term that the Architect Agreement shall remain in effect, the Architect and its Subcontractors, at their sole cost and expense, shall obtain and maintain the following insurances:

- 1) Workers Compensation insurance in amounts as required by statute.
- 2) Employers Liability insurance in an amount not less than \$1,000,000 each accident/\$10,000,000 annual aggregate.
- 3) Commercial General Liability insurance on an occurrence basis in an amount of not less than \$2,000,000 per occurrence/\$10,000,000 annual aggregate combined single limit for bodily injury (including death) and property damage. Such Commercial General Liability insurance shall include, but not be limited to, the following coverages:
 - Blanket contractual coverage;
 - Personal and advertising injury;
 - Independent contractors;
 - Explosion, collapse and underground hazards (x, c, u) included.
- 4) Commercial Automobile liability insurance on an occurrence basis covering all hired, owned and non-owned vehicles in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury (including death) and property damage.

- 5) Valuable Papers insurance to protect against destruction of valuable papers and records on an all-risk basis for the full replacement cost thereof.

The insurance policies required in the above sub-paragraphs 3) and 4) of this Section B of this Exhibit shall name the Padres, Hines Interests Limited Partnership, acting in its capacity as the "Development Manager" under the Architect Agreement, the City, CCDC and the Agency (each, an "Additional Insured") as additional insureds and be endorsed to be primary and non-contributory with any insurance otherwise carried by any Additional Insured. All insurance required hereunder a) shall be written with insurers authorized to do business in the State of California and rated A- IX by AM Best & Co. or better; b) shall provide to any Additional Insured 30 days advance written notice of reduction, cancellation or non-renewal and; c) except for professional liability, shall waive all rights of subrogation against each Additional Insured.

- C. PCL may, at its sole election, purchase project specific professional liability insurance with limits not less than \$7,500,000 applying solely to the Ballpark and covering the Architect's and its Subcontractors services relating to the Ballpark.

EXHIBIT O
FORM OF RFI

EXHIBIT P
FORM OF PARENT GUARANTY

EXHIBIT Q
PADRES PROPERTY