

CITIZENS' TASK FORCE ON CHARGERS ISSUES

November 15, 2002

FINAL REPORT B CONTRACTS COMMITTEE

DISCLAIMER: THIS REPORT REPRESENTS SOLELY THE VIEWS OF THE TASK FORCE ON CHARGERS ISSUES. IT DOES NOT REFLECT THE VIEWS OF THE MAYOR, THE CITY COUNCIL, THE CITY ATTORNEY, OR ANY OTHER PERSON OR ENTITY.

Among the tasks which the Mayor and City Council have asked this Task Force to undertake, there are two which are addressed in part by the work of the Contracts Committee:

§ Determine all things that could be done to keep the Chargers in San Diego in a fiscally responsible way that the public will support;

§ Recommend what the City should do, if anything, to keep the Chargers in San Diego in a fiscally responsible way that the public will support.

Set out below are our views on the current contract between the City and the Chargers, and how that contract affects these issues. We make this report on the basis of publicly available information, our own analysis, and the helpful cooperation of the City Attorney, the City Manager, and our Sports Consultant. However, we wish to emphasize that we are not counsel to the City, and we do not have access to privileged documents and information which the City Attorney has properly kept out of our public process (and thus out of the hands of the Chargers). Nor have we undertaken the comprehensive legal research which one would undertake were one to litigate a dispute over this

contract on behalf of the City. Thus, we do not wish to, and cannot, "lawyer" the matter for the City. Rather, we undertake the task we were given B to identify and preview the issues for the Mayor and City Council based upon the publicly available data and our collective knowledge and wisdom.

I. SUMMARY OF CONCLUSIONS

\$ The Chargers have a contract with the City obligating them to play at Qualcomm Stadium until 2020, and the most direct way to keep the Chargers in town may be to enforce that contract. However, that contract has a clause which permits renegotiation in certain circumstances, and if good faith renegotiation is unsuccessful, early termination if the Chargers obtain an offer from another city which San Diego does not match.

\$ It is unclear whether the Chargers can trigger a renegotiation this year, but if they do, the City may be able to block any effort to terminate the contract with an expenditure of several million dollars.

\$ If the Chargers properly trigger their renegotiation rights, and good faith renegotiation does not lead to an agreement, the Chargers can look for a new home in the succeeding 18 months, and if they find one, need only give the City a narrow opportunity to match the offer from the other city. (If the Chargers leave, they must repay 60% of the City's remaining debt on the stadium renovations.)

\$ The ticket guarantee is providing the Chargers with the equivalent of free rent through the second home game of 2007, and the City is currently losing about \$10 million per year on the Stadium. For that reason, a new arrangement with the Chargers for a new or renovated stadium which relieves the City of this financial drain could, depending on terms, be more attractive than

enforcing the existing contract against the Chargers.

II. INTRODUCTION

The Chargers have played football in San Diego since 1961. They are under contract with the City to play their games at Qualcomm Stadium until 2020. However, the contract has clauses which may permit the Chargers to renegotiate that contract, and if renegotiation fails, potentially to terminate that contract as early as 2004. The Chargers have made public statements suggesting that they (a) could have "triggered" renegotiating last year, (b) will trigger it this year, (c) need a new stadium well before 2020 to ensure their long term economic viability and competitiveness, and (d) may leave San Diego if the City is unwilling to assist in building a new stadium for them.

In evaluating the situation facing the City, the first question to look at is the current contract with the Chargers. As noted above, the contract obligates the Chargers to play their games in Qualcomm Stadium until the year 2020, but has provisions which could permit the Chargers to end their contractual obligation to play at Qualcomm as early as 2004.

If the Chargers could terminate their contractual relationship, all that would stand in the way of their departure would be the availability of an alternative site and approval of the National Football League. As described below, there are other cities interested in an NFL team, although their viability as a relocation prospect is hard to gauge. In terms of NFL approval, although San Diego could certainly object to the movement of the Chargers to another city, the history of NFL decisions on this subject is not encouraging. Baltimore, Cleveland and Houston have lost long-time football teams in recent years (although each later got another team, after building a new stadium to host that team). Los Angeles lost two teams, one of long standing, and has yet to get one back. Indeed, Los

Angeles is one of the places the Chargers are rumored to be eyeing, although Al Davis (of the Oakland Raiders) has filed litigation claiming exclusive rights to the Los Angeles territory. Thus if the contract can be terminated, the Chargers may well leave.

\$ If the Chargers cannot escape the Contract until 2020, although the City should of course listen to any reasonable proposal from the Chargers regarding a new or renovated stadium, the City would be well within its contract rights (and municipal fiscal restraint) to suggest that the Chargers wait a decade or more for their new stadium or pay for their own new facility. Qualcomm Stadium might become one of the oldest in the NFL, but that is always the case somewhere. The Chargers did sign a contract which obligated the City to spend \$78 million¹ on renovations (and a new practice facility) and enter into a costly ticket guarantee in return for a commitment to stay until 2020. Modest changes might be negotiated (*e.g.*, improved locker rooms) as a show of good faith, or a creative win-win redevelopment plan (with little or no net public expenditures) might be crafted, but otherwise the City would be within its rights to ask the Chargers to live with their bargain (which benefits the team in many ways) or build their own stadium. Of course, since the City is losing approximately \$10 million per year at the stadium, a win-win new stadium/redevelopment deal might be more attractive than enforcing the existing contract. (When the Padres move out, stadium losses are expected to drop substantially, and when the ticket guarantee runs out after two games in 2007, the situation will get even more positive.)

\$ By contrast, if the Chargers could lawfully terminate their contract with the City in the short term, the situation facing the City is quite different. With the right to terminate, the Chargers

¹ Renovations cost \$66 million, the practice facility \$12 million, another \$6 million of "in kind" investment was made by the concessionaire, and \$8 million was for reserves and miscellaneous items, totaling \$92 million. We use the figure of \$78 million for convenience.

could seek a new or substantially renovated stadium with significant public funding as an incentive to stay, and could (in the "window" permitted by the contract) negotiate with other cities for competitive offers. In this scenario, the City could be faced with the stark choice of spending many millions of dollars or risking the loss of professional football. The magnitude of the risk is hard to gauge, as it depends on the true intent of the Chargers and the availability of an attractive alternative city, but the risk is there. Moreover, if the Chargers leave and the City tries to obtain another team, history suggests that the price will go up B obtaining a team is usually more expensive than keeping one.

Thus, this issue of leverage may well drive B and will certainly color B the analysis here. A binding contract may suggest to the City that no significant expenditures ought to be made at the request of the Chargers for many years, unless there is a clear net economic benefit to the City. A contract terminable by the Chargers may suggest a more flexible approach and force the City to deal with the questions of how valuable are the Chargers to the City, and how much the City should spend (if anything) to keep them.

* * *

This is, of course, a somewhat oversimplified introduction to the matter. It does not take into account other financial issues such as the ticket guarantee, which could become even more expensive if the Chargers play a "lame duck" season in San Diego, and it does not factor in the Chargers' obligation to repay the City for a portion of the debt service for the stadium renovations if they terminate the contract. It also does not take into account the benefits of the Super Bowl. Nevertheless, we believe that whether or not the Chargers can terminate the contract in the near future is a crucial threshold issue in this analysis, and thus we begin there.

III. OVERVIEW OF THE RELEVANT CONTRACT

In 1988, the Chargers and the City amended the pre-existing contract and provided for the Chargers to use what was then called Jack Murphy Stadium from 1988 to 2003. The contract provided for the Chargers to pay rent to the City, and had no ticket guarantee or renegotiation clause.

In 1994, discussions began over a new and extended contract between the City and the Chargers. We have heard, but cannot confirm, that the Chargers raised the issue of a new stadium, but that was rejected by the City. Discussions then focused on improvements and expansion of the stadium to accommodate both the Chargers' desires for a larger capacity and certain improvements (including luxury suites and club seating) and also to keep the Stadium in contention for future Super Bowls, which required more seats. (The Super Bowl was first played in San Diego in 1988; it returned in 1998, and is being played here again in January 2003; there are no guarantees that San Diego would obtain another Super Bowl in any particular year with a new stadium, but it is unlikely it will obtain another one without a new or improved stadium.)

These discussions led, in 1995, to a new contract being executed and approved by the City Council and the Chargers.² It provided for, among many other features, (a) expansion and various improvements in the stadium; (b) the "ticket guarantee"; and (c) an expiration date of 2020, but with a "trigger" clause pursuant to which the Chargers may in some circumstances demand renegotiation, and possibly terminate the Contract.

² The 1995 Contract is attached as Exhibit A.

Litigation was filed challenging the 1995 contract. Ultimately, revisions to the 1995 agreement were agreed to in 1997, with the purchase of naming rights to the stadium by Qualcomm Inc. providing the funds to solve certain of the financial challenges facing the deal.³

Thus, the contract we are dealing with today is the 1995 agreement as modified in 1997 (referred to hereafter as "the Contract"). It would be fair to say -- indeed, an understatement -- that the 1995-97 Contract has not worked out well for the City. The ticket guarantee has cost the City millions of dollars. The trigger/renegotiation clause threatens to cost the City more, and possibly permit the Chargers to leave town. And notwithstanding contract language suggesting that the renovations would bring Qualcomm up to state of the art,⁴ the NFL, the Chargers, and certain professional architects and contractors assert that Qualcomm Stadium is out of date already, and that single-purpose football-only stadiums are far superior to Qualcomm. Thus, with the benefit of hindsight, the Contract is highly unfortunate and the \$78 million renovation and practice facility may have been uneconomic.

Of course, the City must live up to its lawful contractual obligations, and we will not dwell on criticizing those who entered the 1995-97 Contract. Whether portions of the Contract were the result of poor negotiations, or whether the Contract was a reasonable idea which in hindsight has not worked out, it is the Contract under which we must operate, and it is the language of that Contract and the law of California which will govern the leverage issue identified above.⁵

³ The 1997 Contract Revisions are attached as Exhibit B.

⁴ The actual contract language, Sec. 3(a)(i)(3), provides that the modified stadium should "incorporate a level of design and material used at the newest and best constructed stadiums where NFL football is being played as of the date construction ... is commenced."

⁵ Our reference to the law of California is meant to suggest that doctrines such as unconscionability, breach of the covenant of good faith and fair dealing, and other doctrines, may permit a court to interpret the contract more favorably to the City than its literal language.

IV. MECHANICS OF THE "TRIGGER" CLAUSE

For purposes of analyzing the leverage of the Chargers as against the City, the so-called "trigger" clause is crucial. Section 31 of the Contract, entitled "Renegotiation Rights," provides that if a certain financial ratio called a "triggering event" occurs, the Chargers may send a notice to the City demanding renegotiation of the contract. The details are as follows:

* * *

A triggering event occurs when, on December 1 of any year, the sum of:

1. the actual "Team Salary" (as such terms are defined in Article XXIV, Section 6 of the 1993 Collective Bargaining Agreement except as calculated on a cash basis) of the Chargers for such year; plus
 2. the total actual benefit payments provided by the Chargers to its players for such year; plus
 3. the total actual benefit payments provided by the NFL to the Chargers' players for such year;
- exceeds the "Team Salary Cap" for that year.

Relevant definitions in the agreement are as follows:

"Team Salary Cap" shall mean for any year, on a cash basis, 75% of the Defined Gross Revenues for such year, divided by the number of teams playing in the NFL during such year."

"Defined Gross Revenues" shall mean the aggregate revenues received or to be received on an accrual basis, for or with respect to any 'League Year' (as such term is defined in Article I, Section 1 of the 1993 CBA), during the term of this Agreement by the NFL and all NFL Teams (and their

designees), from the following sources only: (i) regular season, pre-season, and post-season gate receipts (net of admission taxes, and surcharges paid to a stadium or municipal authorities which are deducted for purposes of calculating gate receipts subject to revenue sharing), including ticket revenue from 'luxury boxes,' suites and premium seating subject to gate receipt sharing among NFL Teams; and (ii) proceeds from the sale, license, or other conveyance of the right to broadcast for exhibit NFL pre-season, regular season, and play-off games on network and national cable television (which by way of example only, would currently include all revenues generated from NFL television contracts with FOX, NBC, ABC, TNT and ESPN). For the purposes of this Agreement only, Defined Gross Revenues does not include any proceeds from the sale, license, or conveyance of the right to broadcast or exhibit NFL pre-seasons, regular seasons, and play-off games to and on any other source, including, without limitation, local television, pay television, satellite encryption, international broadcasts, radio, or any other means of distribution."⁶

* * *

No one will know with certainty whether the Chargers can or will trigger until at least December 1, when they can send a trigger notice, and the City can in turn ask for proof that the trigger has been met. The information available to us thus far is as follows. The Chargers have indicated informally that they could have triggered last year and will be able to trigger this year by several million dollars. Prof. Rosentraub testified before the Task Force that, according to the best figures available to him (from the Players Union) the Chargers cannot trigger this year.⁷

⁶ It is interesting to note that "Defined Gross Revenues" as defined in this contract are different from the same term as defined in the NFL Collective Bargaining Agreement.

⁷ Professor Rosentraub's analysis is attached as Exhibit C.

A curious overlay to this issue is that the trigger has been described by the Chargers as requiring "severe financial hardship,"⁸ and this language has been picked up by the public and the press, but we do not believe that a team triggering under this contract term is necessarily in severe financial hardship. However, it is unclear whether a court would engraft that interpretation upon the mathematical formula provided by the trigger clause. Ambiguities in the trigger clause might be resolved consistently with a "hardship" standard, if such ambiguities were found.

Further elements of Section 31 relate to timing and procedure for a "trigger":

1. The Chargers cannot trigger and demand renegotiation every year, but rather, can do so only once between 2000-2002, once between 2003 and 2006, once between 2007 and 2010, once between 2011 and 2014, and once between 2015 and 2018. Because the Chargers have not demanded negotiation in 2000 or 2001, they can do it this year (2002), and again next year or in one of the succeeding three years.

2. If the Chargers wish to trigger renegotiation, they must do so in the 60 days after the December 1 on which the triggering event exists. Thus, if they want to trigger this season, they must send their renegotiation demand letter between December 1, 2002 and January 29, 2003.

3. If the Chargers trigger renegotiation, the Contract provides for a ninety day period in which the City and the Chargers must negotiate in good faith "to offset the impact on the Chargers of the Triggering Event." The meaning of this language is crucial, and is discussed below.

4. If the City and the Chargers have a successful negotiation, any new agreement would modify the 1995-97 contract, at least until such time as the Chargers "triggered" renegotiation again.

⁸ For example, attached hereto as Exhibit D is a letter from Dean Spanos to season ticket holders containing this language. We believe this letter was written in January 1997 but have not confirmed that date. Ms. Jeanne Bonk of the Chargers made a virtually identical statement in a letter to the editor in January 1997.

5. If the City and the Chargers have an unsuccessful negotiation, the contract provides that the Chargers will then have an 18-month period in which they may "shop" the team to other cities. (The Contract actually provides that the Chargers may begin to shop the team immediately upon sending the renegotiation demand, but in practical effect, unless negotiations between the City and the team are unsuccessful, the Chargers cannot terminate the agreement and thus cannot move.)

6. If the Chargers sign a letter of intent to move to another City during that 18 month period, the City has another 90 day period in which to match "the financial and overall economic terms of the other City." It is important to keep these two 90 day periods separate B they have very different purposes.

7. If a letter of intent from another city is properly presented, and the City does not "match" within the 90 day period, the Chargers may terminate the contract. If the Chargers do so, they must pay to the City 60% of the debt remaining on the expansion and improvement of the Stadium, minus certain credits. In no event can the Chargers terminate before February 2004.

Thus, if the Chargers legitimately "trigger," the City has two opportunities to avoid a contract termination B the "renegotiation" period and the "matching" period.

V. INTERPRETATION AND APPLICATION OF THE "TRIGGER" CLAUSE

A form of "worst case analysis" is to take the Chargers at their word, and to assume that they will send a trigger notice this year, claiming that they have met the trigger by several million dollars.

Upon receipt of such a trigger letter, the City will have several options, none mutually exclusive of one another:

1. It could demand backup for, or could challenge, whether the Chargers have in fact

triggered, and by what amount. This would seem to be necessary due diligence in any circumstance.⁹

2. The City could also question the meaning of the trigger clause itself. Many feel that the clause is unfair and one-sided, and permits the Chargers to trigger whenever they wish, without regard to any financial hardship, making the Chargers' commitment to play at Qualcomm until 2020 illusory. This is a complex and difficult legal issue, appropriate for analysis by counsel to the City, but it must be kept in mind that both the City and the Chargers were sophisticated contracting entities with legal counsel, and for either party to challenge the contract will be difficult. As a Chargers officer has said in referring to the ticket guarantee, "A deal is a deal." This approach may help the City in places and hurt the City elsewhere, but it is an approach likely to be favored by the courts absent strong legal justification to the contrary.

⁹ Mr. Bruce Henderson, a member of this Committee, has circulated three letters containing suggestions for questions to be asked and data to be gathered in the course of "auditing" a trigger letter. The letters are attached hereto as Exhibits E1 through E3. We urge the City Attorney to review these letters and carefully consider the suggestions.

3. *The 90 day good faith negotiation period is very important.* Although the press and those who objected to the 1995-97 contract have referred to Section 31 as an "escape clause," and suggest that the Chargers will be able to leave town if they trigger, we do not read the contract that way. The contract provides for a 90 day period in which the parties are to negotiate in good faith "*to offset the impact on the Chargers of the Triggering Event.*" Thus, as an example, if the Chargers "trigger" by \$5 million (meaning that the sum of the three specified figures is \$5 million more than the "Team Salary Cap") it would appear that an offer by the City to pay the Chargers \$5 million would fully "offset the impact on the Chargers of the Triggering Event." (Arguments might be constructed by the City in support of a lower number, and possibly the Chargers will argue for a higher number, with a more aggressive interpretation of "offset," but at this stage we are comfortable that a \$5 million offer would suffice.) Should the Chargers reject such an offer and instead demand something more, such as a new stadium, that does not appear to us to be good faith negotiation over an "offset" to the impact of the triggering event. A court ultimately could force the Chargers to accept such an offer, and more important block them from shopping the team or leaving town in the face of such an offer. To put it another way, if the Chargers decline an offer of \$5 million in these circumstances, a court could rule that the only reason the renegotiation failed was the Chargers' bad faith, and thus the Chargers do not get to benefit (by shopping the team) from their lack of good faith. Thus an offer of the maximum "offset" at some point during the negotiation period is an important strategy by which the City could try to preempt any move to another City.¹⁰

¹⁰ Our analysis assumes that an effort by the Chargers to leave town in a manner contrary to their contract would be blocked by a Court. It is possible that a court would decline to grant an injunction, awarding the City damages instead for breach of contract, but the most recent case on the subject, involving the proposed "contraction" of the Minnesota Twins, supports issuance of

Of course, the City may not be willing to pay this sum (whether it is \$5 million or some other figure) and the Chargers may contest this reading of the agreement, but this analysis suggests that the widely held view that the trigger is an escape clause is too pessimistic. If our legal analysis is correct, and even if the Chargers are right on the trigger figures, the City could solve its "Charger problem" for this year with an offer of the trigger amount.

Although we recognize that such a payment could be unpopular given the ticket guarantee and other circumstances, this might be a prudent step given the alternatives B a demand for a new stadium, the potential for a lame duck team generating a huge ticket guarantee obligation, etc. The Mayor and City Council must prepare themselves to deal promptly and professionally with this "offset" issue in the 90 day renegotiation period, and arm their negotiators with authority to move forward promptly and efficiently. Expert accountants, sports consultants, and others may need to be retained to assure that this important matter is handled expertly.

Unfortunately, even if the Chargers trigger this year, they can trigger again once in the next four years. Would the City pay another seven figure amount at that time? Could it be more? Theoretically, the City may have to "offset" the trigger five times in 18 years. Again, this sounds expensive, but it may pale in comparison to the alternative cost of keeping the Chargers by building or renovating a stadium, or obtaining another team after the Chargers leave. This is essentially a business decision relating to how valuable it is to have NFL football in San Diego, and whether the City will spend additional public money to keep the Chargers. It is a calculated risk, because we do not know (a) whether other cities will in fact woo the Chargers, and (b) whether the Chargers will be able to trigger every four years, and at what monetary level. But we underscore that offsetting the

an injunction.

trigger may well be the cheapest way to keep the Chargers in town, short term and long term.

4. If an "offset" deal cannot be made with (or judicially imposed upon) the Chargers, Section 31 does then become an escape clause. The Chargers will be free to shop themselves to other cities for 18 months, with San Diego having a right to match any letter of intent entered by the Chargers with another city. To keep the Chargers from leaving, the City will have to "match the financial and overall economic terms of the proposed third party transaction" in another 90 day window. Our view is that, if the Chargers get an attractive offer from another City, this "match" window will likely be of much less benefit to the City than the prior "renegotiation" period. If, for example, the Chargers provide a letter of intent offering the building of a new stadium with substantial public financing, it will be very challenging for San Diego to be in a position to match in 90 days. A large public expenditure for a football stadium would likely require substantial City Council discussion and a referendum, and the prospect of placing the matter on the ballot and obtaining a favorable result in 90 days is nil. Whether the City could match through City Council action, subject to approval through a referendum, is not clear, but even that would take quite a bit of City Council analysis and debate on such a controversial matter. Moreover, the history of relocations suggests that a new city hungry for a team pays "top dollar" (new stadium with substantial public money) and the prospect of getting San Diego to "match" such a "sweetheart" offer at all, let alone quickly, is slim.¹¹

Thus, although we place great value on the City's rights in the first renegotiation period (the "offset" negotiation), by contrast we believe that this subsequent "match" period will be problematic

¹¹ If Los Angeles is the city involved, public statements suggest that a stadium there might be privately financed, presenting a somewhat different situation.

for the City. The proverbial horse will be out of the barn. Only by keeping the "horse" in the "barn" (through the offset negotiation) can one count on still having the horse a season or two later.

VI. THE TICKET GUARANTEE

The ticket guarantee provides that, for every game from the beginning of the contract through the second home game of 2007, if the Chargers do not sell 60,000 general admission tickets, the City will pay the shortfall, or credit it against the rent. "General admission tickets" is a defined term which excludes premium seating. The contract also provides that the San Diego International Sports Council will assist in marketing Chargers tickets.

Because of the poor performance of the team in the last several years, and the difficulties in selling exhibition game tickets in any season, the City has paid substantial amounts on the ticket guarantee, or purchased large quantities of tickets in lieu of paying the guarantee.¹²

The rent payments and ticket guarantee losses for each year of the contract are as follows:

CHARGERS RENT/TICKET GUARANTEE INFORMATION¹³

YEAR (season)	GROSS RENT	TICKETS PURCHASED/ RENT CREDITS	NET RENT
1997 (1)	\$5.0 million	\$1.4 million	\$3.6 million

¹² If there is going to be a shortfall, it is advantageous to the City to buy the tickets to avoid the shortfall, rather than leave them unsold, because the City then gets back 10% of the ticket sales as additional rent plus \$2 per ticket as a surcharge. A further wrinkle is that if the City buys the tickets 72 hours before the game and creates a "sellout," the game is on local TV, but if the City delayed its purchases, the Chargers might sell more tickets when word of the TV blackout hit the press. A consistent pattern of late purchases might generate more advance sales as well. How this would play with the populace is unclear.

¹³ These figures include only the rent and the ticket guarantee; other items such as debt service are not included.

1998 (2)	\$5.5 million	\$3.9 million	\$1.6 million
1999 (3)	\$5.7 million	\$6.1 million	(\$0.4 million)
2000 (4)	\$6.25 million	\$7.97 million	(\$1.72 million)
2001 (5)	\$6.4 million	\$5.99 million	\$0.04 million
TOTAL	\$28.85 million	\$25.36 million	\$3.5 million

The ticket guarantee obviously has been quite unfortunate for the City. The Chargers have gotten the Stadium essentially rent free, and the debt service on the bonds is being made without benefit of any significant net rent payments. The City is losing approximately \$10 million per year in running the Stadium. Further, the ticket guarantee has perverse incentives B no specific provisions requiring the Chargers to market the team at any particular level, no limits on ticket price increases (which have occurred).¹⁴

Several observations can be made about the ticket guarantee.

First, it is costing the City a lot of money, and efforts should be made to negotiate our way out of it.

Second, the City should evaluate whether the Chargers are meeting their contractual obligations to use best efforts to ensure the maximum occupancy of the stadium as provided by Section 7 of the Contract.

Third, it should not be repeated in any future contract.

Fourth, it is likely to continue to make Qualcomm Stadium a losing proposition into 2007,

¹⁴ Further background on the ticket guarantee is contained in the report of the San Diego County Grand Jury, attached hereto as Ex. F, and the City's response thereto, attached hereto as Ex. G.

providing some incentive to reach agreement with the Chargers on a different agreement, a new or renovated stadium, or any other solution to this cash drain.

Fifth, the ticket guarantee will end in 2007, and if the Chargers remain in San Diego through 2020, the profitability of the contract should change markedly for that period of time.

VII. POSSIBLE LITIGATION

We would be remiss if we did not identify the various points at which litigation might ensue, and its potential impact. There was litigation over the 1995-97 Chargers-City Contract, there was litigation over the new Ballpark for the Padres, there was litigation when the Raiders moved from Oakland to L.A., and again when they moved back, and there was litigation when the Minnesota Twins recently were threatened with "contraction." These are but a few examples. A city faced with losing its team may well sue; an owner denied the right to move may well sue; and citizens who object to expenditures on a new stadium or renovation may sue.

We believe that an effort by the Chargers to leave town without a lawful cancellation of their contractual obligations could be met with litigation seeking an injunction, with a reasonable chance of success, by the City. We also believe that litigation by the City seeking to block a move may, even without an injunction, make it more difficult for the Chargers to make a deal with another city, because of the "cloud" placed over the move. Finally, that NFL relocation standards suggest that breaches of binding contracts should be avoided, although the NFL has been hesitant to block franchise moves.

VIII. CONCLUSIONS AND RECOMMENDATIONS

It appears likely that the Chargers will send a "trigger" letter in 2002, and possibly again in

2003 or soon thereafter. If this occurs, the City will have to be prepared to audit the trigger figures, negotiate in good faith over the offset, and litigate the meaning of the trigger clause if necessary to prevent the Chargers from pushing the City into the "shopping" and "match" period. We believe that this will require careful work and cooperation among the Mayor, City Council, City Manager and City Attorney.

We urge the Mayor, City Council, City Manager and City Attorney and any outside consultants to begin preparation immediately for the crucial 90 day renegotiation period by identifying in advance any informational, legal or political challenges which will be presented in negotiating and, if necessary, litigating, in this crucial time period. Effective negotiation (or litigation) in this period may well be the key to retaining the Chargers at a modest incremental expense.