

Due to the pendency of the Ballpark Litigation (as defined and described in "LITIGATION—Litigation Involving the Ballpark Project"), Orrick, Herrington & Sutcliffe LLP, Los Angeles, California and Webster & Anderson, Oakland, California ("Co-Bond Counsel"), are providing a qualified opinion as to whether the interest on the 2002 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and from State of California personal income taxes. Co-Bond Counsel express no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the 2002 Bonds. For additional information, see "TAX MATTERS" and "LITIGATION—Litigation Involving the Ballpark Project" herein and APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS and APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION hereto.

\$169,685,000
PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO
LEASE REVENUE BONDS, SERIES 2002
(Ballpark Project)

Dated: Date of Delivery

Due: February 15, as shown on the inside cover page hereto

The Public Facilities Financing Authority of the City of San Diego (the "Authority") is issuing its Lease Revenue Bonds, Series 2002 (Ballpark Project) (the "2002 Bonds") (i) to finance a portion of the cost of building a state-of-the-art baseball park (the "Ballpark") and a public park to be located adjacent to the Ballpark (the "Park") and, together with the Ballpark and the grounds and walkways immediately surrounding the Ballpark and the Park, the "Ballpark Facility"; (ii) to fund the Reserve Account for the 2002 Bonds; (iii) to pay costs of issuance with respect to the 2002 Bonds; (iv) to pay a portion of interest payable on the 2002 Bonds for the first 30 months from the date of issuance of the 2002 Bonds (with the balance being paid from Base Rental Payments payable under the Ballpark Facility Lease (as hereinafter defined)); and (v) to reimburse certain advances made by the City of San Diego (the "City"), Padres L.P. (the "Padres") and the Redevelopment Agency of the City (the "Redevelopment Agency") toward Ballpark Facility costs and related infrastructure costs (the Ballpark Facility and the related infrastructure, together with certain land acquisitions and improvements, are collectively referred to as, the "Ballpark Project"). In order to effect such financing, the Authority and the City will enter into a Ballpark Facility Lease, to be dated as of February 1, 2002 (the "Ballpark Facility Lease"), between the Authority, as lessor, and the City, as lessee, whereby the City will lease the Ballpark Facility and the land on which it is located, excluding certain improvements to be owned by the Padres (the "Leased Property"), from the Authority. The 2002 Bonds will be issued pursuant to an Indenture, to be dated as of February 1, 2002 (the "Indenture"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The 2002 Bonds are payable from and secured by a pledge of revenues, consisting primarily of lease payments to be paid by the City and received by the Authority with respect to the Leased Property (the "Base Rental Payments") and certain other monies as described in the Indenture (collectively, the "Revenues"). The Base Rental Payments are subject to abatement in the event of damage, destruction, condemnation or title defects with respect to the Leased Property, as more particularly described in the Ballpark Facility Lease. In addition, the City's obligation to pay full Base Rental Payments does not arise until substantial completion of the Ballpark Facility. A portion of the interest payable on the 2002 Bonds for the first 30 months from the date of issuance of the 2002 Bonds will be funded by the proceeds of the 2002 Bonds. It is contemplated that Base Rental Payments will directly fund the balance of current interest payable on the 2002 Bonds during such 30-month period and thereafter, subject to the terms of the Ballpark Facility Lease. Construction of the Ballpark Facility is currently scheduled for completion within 24 months after the issuance of the 2002 Bonds. However, should the completion of the Ballpark Facility be delayed beyond the above-referenced 30-month period, the City's duty to pay Base Rental Payments would be limited to approximately 35.3% of the debt service on the 2002 Bonds. For additional information, see "RISK FACTORS" herein.

Interest due on the 2002 Bonds is payable semiannually on February 15 and August 15 of each year (each, an "Interest Payment Date"), commencing August 15, 2002. For additional information regarding the 2002 Bonds, see "THE 2002 BONDS—Description of the 2002 Bonds" herein. The 2002 Bonds will be delivered in definitive form and shall remain in such form until the occurrence of certain events described in "PLAN OF DISTRIBUTION." The City shall make Base Rental Payments to the Trustee, as assignee of the Authority under the Assignment Agreement (as defined herein) for the use and possession of the Leased Property during each annual period. The Trustee shall deposit such Base Rental Payments in the Bond Fund established under the Indenture. Such Base Rental Payments, if paid in full, are designed, in both time and amount, to pay when due the principal of and interest on the 2002 Bonds. Pursuant to the Indenture, the Trustee will, on each Interest Payment Date, apply funds available in the Bond Fund, in the amounts required to make principal and interest payments due with respect to the 2002 Bonds.

The 2002 Bonds are subject to optional redemption (at par on or after February 15, 2005), mandatory and extraordinary redemption. For additional information regarding redemption of the 2002 Bonds, see "THE 2002 BONDS—Redemption Provisions" herein.

Payment of the principal of and interest on the 2002 Bonds when due will be insured by a financial guaranty insurance policy to be issued by Ambac Assurance Corporation (the "Bond Insurer") simultaneously with the delivery of the 2002 Bonds, subject to the terms of such policy as described herein.

Ambac

For additional information regarding the financial guaranty insurance policy, see "SECURITY AND SOURCES OF PAYMENTS FOR THE 2002 BONDS—Financial Guaranty Insurance Policy" herein. The Bond Insurer also has agreed to provide a forward commitment to provide a surety for one-half of the reserve requirement, subject to the conditions more fully described in Footnote 2 to the Table under the caption "SOURCES AND USES OF THE 2002 BOND PROCEEDS," and "SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS—Debt Service Reserve Account" herein.

INVESTMENT IN THE 2002 BONDS IS SUBJECT TO CERTAIN RISKS, INCLUDING LITIGATION RISKS AND COMPLETION RISKS AS FURTHER DESCRIBED IN "RISK FACTORS—LITIGATION RELATING TO THE BALLPARK PROJECT" AND "RISK FACTORS—BALLPARK PROJECT FUNDING AND COMPLETION RISKS" AND CERTAIN RESTRICTIONS ON RESALE, INCLUDING THE RIGHT OF FIRST REFUSAL BY THE UNDERWRITER, AS DESCRIBED IN "RISK FACTORS—THE 2002 BONDS ARE SUBJECT TO CERTAIN RESTRICTIONS ON RESALE AND A RIGHT OF FIRST REFUSAL AND THE EXERCISE OF CERTAIN CALL OPTIONS BY THE UNDERWRITER."

SEE "LITIGATION—LITIGATION AND A RELATED MATTER INVOLVING THE BALLPARK PROJECT" HEREIN AND APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS AND APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION HERETO FOR FURTHER INFORMATION REGARDING PENDING LITIGATION WHICH COULD AFFECT THE VALIDITY OF THE 2002 BONDS OR THE BALLPARK FACILITY LEASE AND THE AVAILABILITY OF THE EXEMPTION FROM FEDERAL AND CALIFORNIA PERSONAL INCOME TAXES FOR INTEREST ON THE 2002 BONDS. THE OPINION OF CO-BOND COUNSEL IS QUALIFIED AS BEING SUBJECT TO THE OUTCOME OF SUCH LITIGATION.

NEITHER THE 2002 BONDS NOR THE OBLIGATION OF THE CITY TO MAKE BASE RENTAL PAYMENTS UNDER THE BALLPARK FACILITY LEASE CONSTITUTES AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. THE AUTHORITY HAS NO TAXING POWER. NEITHER THE 2002 BONDS NOR THE OBLIGATION OF THE CITY TO MAKE SUCH BASE RENTAL PAYMENTS CONSTITUTES AN INDEBTEDNESS OF THE CITY. THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. FOR ADDITIONAL INFORMATION, SEE "SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS," AND "RISK FACTORS" HEREIN.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFERING DOCUMENT TO OBTAIN INFORMATION ESSENTIAL TO MAKING AN INFORMED INVESTMENT DECISION.

The 2002 Bonds are being offered to a limited group of sophisticated institutional investors, as described in "PLAN OF DISTRIBUTION." Under the terms of the plan of distribution and as described in "PLAN OF DISTRIBUTION," Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter") will have an independent right to optionally call the 2002 Bonds from investors and a right of first refusal to purchase the 2002 Bonds, and each investor must, among other things, execute and deliver an investor representation letter, substantially in the form of APPENDIX J—FORM OF INVESTOR REPRESENTATION LETTER hereto, prior to purchasing the 2002 Bonds.

The 2002 Bonds will be offered when, as and if executed, subject to the approval as to legality by Orrick, Herrington & Sutcliffe LLP, Los Angeles, California and Webster & Anderson, Oakland, California, Co-Bond Counsel, and to certain other conditions. The Co-Bond Counsel opinion is qualified as being subject to the outcome of the Ballpark Litigation. For additional information, see APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS and APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION hereto. Certain legal matters for the Authority and the City will be passed upon by Casey Gwinn, Esq., City Attorney of the City of San Diego and General Counsel to the Authority, for the Underwriter by its internal counsel and by O'Melveny & Myers LLP and for the Bond Insurer by its internal counsel. It is anticipated that the certificates for the 2002 Bonds will be available for delivery in New York, New York, on or about February 15, 2002.

Merrill Lynch & Co.

\$169,685,000

**PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO
LEASE REVENUE BONDS, SERIES 2002
(Ballpark Project)**

MATURITY SCHEDULE

| | | |
|----------------------|--|--------------------|
| \$ 18,460,000 | 7.15% Term Bond due February 15, 2012 | Price: 100% |
| \$ 48,940,000 | 7.60% Term Bond due February 15, 2022 | Price: 100% |
| \$102,285,000 | 7.70% Term Bond due February 15, 2032 | Price: 100% |

No dealer, broker, salesperson or other person has been authorized by the Authority or the City to give any information or to make any representations other than as contained herein and, if given or made, such other information or representations must not be relied upon as having been authorized by the Authority or the City. This Offering Document does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the 2002 Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Certain statements contained in this Offering Document reflect not historical facts but forecasts and "forward-looking statements." In this respect, the words "estimate," "project," "anticipate," "expect," "intend," "believe" and similar expressions are intended to identify forward-looking statements. All projections, forecasts, assumptions, expressions of opinions, estimates and other forward-looking statements, whether or not expressly so described or identified herein, are intended solely as forward-looking statements, are not to be construed as representations of fact and are qualified in their entirety by the cautionary statements set forth in this Offering Document. The summaries or references to the Indenture, the Ballpark Facility Lease, the Assignment Agreement, the Site Lease, the Continuing Disclosure Agreement, Principal Ballpark Project Documents and other documents, agreements and statutes referred to herein and the description of the 2002 Bonds included in this Offering Document, do not purport to be comprehensive or definitive, and such summaries, references and descriptions are qualified in their entirety by reference to each such document or statute. All references made to various documents herein are qualified in their entirety by reference to the actual forms thereof, copies of which are available upon request with payment of copying, mailing and handling charges by contacting the City at the following address: The City of San Diego, City Clerk, 202 "C" Street, MS 2A, San Diego, California 92101, Attention: City Clerk. All capitalized terms used in this Offering Document (unless otherwise defined herein) shall have the meanings set forth in the Indenture or the Ballpark Facility Lease.

Certain information set forth herein has been obtained from sources other than the City, the Redevelopment Agency, the Centre City Development Corporation or the Authority, which information is believed to be reliable, but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Authority or the City. The Underwriter has reviewed the information in this Offering Document in accordance with, and as a part of, its responsibility under federal securities laws, as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information and it is not to be construed as the promise or guarantee of the Underwriter. The information and expressions of opinions herein are subject to change without notice and neither the delivery of this Offering Document nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority or the City since the date hereof. This Offering Document is submitted in connection with the sale of the 2002 Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose.

**CITY OF SAN DIEGO
CITY COUNCIL**

Dick Murphy, Mayor

Scott Peters
Byron Wear
Toni Atkins
George Stevens

Brian Maienschein
Donna Frye
Jim Madaffer
Ralph Inzunza

CITY OFFICIALS

Michael T. Uberuaga
City Manager

Casey Gwinn
City Attorney

Ed Ryan
City Auditor and Comptroller

Patricia T. Frazier
Deputy City Manager

Charles Abdelnour
City Clerk

Mary E. Vattimo
City Treasurer

**PUBLIC FACILITIES FINANCING AUTHORITY
BOARD OF DIRECTORS**

Joseph W. Craver
Chairman

Samuel Brown
Vice Chairman

Michael T. Uberuaga

L. Renee Comeau
Secretary

Ed Ryan
Treasurer

CO-BOND COUNSEL

Orrick, Herrington & Sutcliffe LLP
Los Angeles, California

Webster & Anderson
Oakland, California

CO-FINANCIAL ADVISORS

Kitahata & Company
San Francisco, California

A.G. Edwards & Sons, Inc.
Cleveland, Ohio

Municipal Capital Management, Inc.
Los Angeles, California

TRUSTEE

Wells Fargo Bank, National Association
Los Angeles, California

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OFFERING DOCUMENT

\$169,685,000

**PUBLIC FACILITIES FINANCING AUTHORITY OF
THE CITY OF SAN DIEGO
LEASE REVENUE BONDS, SERIES 2002
(Ballpark Project)**

INTRODUCTION

This Offering Document, which includes the cover page and appendices hereto, is provided to furnish certain information in connection with the issuance and sale of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) in the aggregate principal amount of \$169,685,000 (the "2002 Bonds"). The 2002 Bonds, initially in certificated form, will be issued pursuant to an Indenture, to be dated as of February 1, 2002 (the "Indenture"), between the Public Facilities Financing Authority of the City of San Diego, a California joint powers agency (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "Trustee").

The Authority is a joint exercise of powers authority created by the City of San Diego (the "City") and the Redevelopment Agency of the City (the "Redevelopment Agency") pursuant to a Joint Exercise of Powers Agreement, dated May 14, 1991, as amended and restated. The purpose of the Authority is to assist with the financing of certain public capital facilities and improvements of the City or the Redevelopment Agency. The Authority is the issuer of the 2002 Bonds and the lessor of the Ballpark Facility (as defined below) and the land on which it is located, excluding certain improvements to be owned by the Padres (the "Leased Property") under the Ballpark Facility Lease, to be dated as of February 1, 2002 (the "Ballpark Facility Lease"), between the Authority, as lessor, and the City, as lessee. For additional information regarding the Authority and other participants in the development of the Ballpark Project, see "**PRINCIPAL PARTICIPANTS IN THE DEVELOPMENT OF THE BALLPARK PROJECT.**"

Purpose of the 2002 Bonds

The proceeds of the 2002 Bonds will be used: (i) to finance a portion of the cost of building a state-of-the-art baseball park (the "Ballpark") and a public park located adjacent to the Ballpark (the "Park") (the Park, the Ballpark and the grounds and walkways immediately surrounding the Ballpark and Park are together referred to as the "Ballpark Facility"); (ii) to fund the Reserve Account for the 2002 Bonds; (iii) to pay costs of issuance with respect to the 2002 Bonds; (iv) to pay a portion of interest payable on the 2002 Bonds during the first 30 months from the date of issuance of the 2002 Bonds (with the balance being paid from Base Rental Payments payable under the Ballpark Facility Lease); and (v) to reimburse certain advances made by the City, Padres L.P. (the "Padres") and the Redevelopment Agency toward Ballpark Facility costs and related infrastructure costs (the Ballpark Facility and the related infrastructure, together with certain land acquisitions and improvements are collectively referred to as, the "Ballpark Project").

The Redevelopment Project, the Ballpark Project and the Ballpark Facility

The Ballpark Project is part of a larger urban revitalization project to be located in the East Village neighborhood of downtown San Diego (the "Redevelopment Project") undertaken by the City, the Redevelopment Agency, the Centre City Development Corporation (the "CCDC"), the Padres and other private developers. In addition to the development of the Ballpark Project, the Redevelopment Project also contemplates the development of certain hotels, retail and residential facilities, office space, parking facilities and other improvements, described more fully in "**THE REDEVELOPMENT PROJECT.**"

The Ballpark Project consists of the Ballpark Facility, the acquisition of certain land for the Ballpark Facility and other related land acquisitions, improvements and infrastructure. When last submitted to the City Council in November 2001, the estimated overall budget for the Ballpark Project was \$449.4 million. Currently, the estimated cost of the Ballpark Project is approximately \$456.5 million. It is expected that the

estimated cost of the Ballpark Project will be funded from the following sources: \$130.4 million from the proceeds from the sale of the 2002 Bonds¹, \$76.4 million from the Redevelopment Agency, \$153.2 million from the Padres, up to \$21.0 million from the proceeds from the sale of certain surface parking lots and \$75.5 million from City equity. For additional information regarding the sources of funding for (and ability to fund) the Ballpark Project, see **"PLAN OF FINANCE FOR THE BALLPARK PROJECT."**

In connection with the Ballpark Project and the Redevelopment Project, a Memorandum of Understanding Concerning a Ballpark District, Construction of the Baseball Park and the Redevelopment Project (the "MOU") between the City, the Redevelopment Agency, the CCDC and the Padres, was approved by 59.6 percent of the citizens voting in the general election of the City of San Diego on November 3, 1998. The MOU provides for the acquisition, construction and installation of the Ballpark Project, hotels containing a minimum of 850 rooms, retail and residential facilities, office space, parking facilities and other improvements as more fully described herein. For additional information, see **"THE BALLPARK PROJECT"** and **"THE REDEVELOPMENT PROJECT."**

Pursuant to the MOU, the City shall provide not more than \$225.0 million toward the construction of the Ballpark Project. Certain components of the Ballpark Project will be constructed, installed and owned by the Padres, which have agreed to contribute approximately \$153.2 million toward the cost of the Ballpark Project (which amount includes (i) the difference between the original estimated cost of the Ballpark Facility of \$267.5 million and the current estimated cost of \$294.1 million* and (ii) a current estimate of approximately \$7.1 million in excess land acquisition costs). The Padres also will be responsible for any Ballpark Facility costs in excess of \$294.1 million* (except those costs associated with change orders requested by the City), certain additional excess land acquisition costs and certain excess infrastructure costs. Upon completion, the Padres will be responsible for the operation and management of the Ballpark Facility and the City will be responsible for contributing not more than \$3.5 million annually (subject to certain offsets and inflationary adjustments) to the operation and maintenance of the Ballpark Facility. For additional information regarding the Ballpark Facility, see **"THE BALLPARK FACILITY—Ownership," "THE BALLPARK FACILITY—Revenues and Expenses,"** and **"PLAN OF FINANCE FOR THE BALLPARK PROJECT."**

Risk Factors

See **"LITIGATION—Litigation Involving the Ballpark Project," APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS** and **APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION** for further information regarding issues raised in pending litigation which could affect the validity of the 2002 Bonds or the Ballpark Facility Lease, under which the Base Rental Payments provide the primary source of payments on debt service on the 2002 Bonds, and whether interest on the 2002 Bonds is exempt from federal and California personal income taxes.

This financing involves a number of other risk factors, some of which are specific to the City, and others that relate to lease financings generally. In addition, the 2002 Bonds are subject to certain restrictions on resale, including the right of first refusal by the Underwriter to purchase the 2002 Bonds and the potential exercise of certain call rights as to the 2002 Bonds by the Underwriter. For additional information, see **"RISK FACTORS," "PLAN OF DISTRIBUTION"** and **APPENDIX J—FORM OF INVESTOR REPRESENTATION LETTER.**

Security and Sources of Payment for the 2002 Bonds

The 2002 Bonds are payable from and secured by Revenues and certain amounts on deposit in the funds and accounts established under the Indenture. Revenues consist primarily of all Base Rental Payments made by the City pursuant to the Ballpark Facility Lease. Base Rental Payments shall be paid by the City from any and all legally available funds. The City's obligation to make full Base Rental Payments is subject to substantial completion of the Ballpark Facility, the possibility of the Ballpark Facility Lease being declared invalid, and to abatement if, by reason of material damage to, destruction or condemnation of, or title defects with respect to, the

¹ Net amount of available proceeds from the 2002 Bonds will be less than this amount and the difference reflects expected interest earnings on such proceeds and certain interest earnings on the Reserve Account.

* See **"THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract"** for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the commencement of construction.

Leased Property, there is substantial interference with the City's right to use and possess the Leased Property. For additional information, see "RISK FACTORS—Abatement" and "LITIGATION—Litigation Involving the Ballpark Project."

In addition, payment of the principal of and interest on the 2002 Bonds when due will be insured by a financial guaranty insurance policy to be issued by Ambac Assurance Corporation (the "Bond Insurer") simultaneously with the delivery of the 2002 Bonds. For additional information regarding the financial guaranty insurance policy, see "SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS—Debt Service Reserve Account" and "SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS— Financial Guaranty Insurance Policy."

Miscellaneous

This Introduction is not a summary of this Offering Document. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Offering Document, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Offering Document. The offering of the 2002 Bonds to potential investors is made only by means of the entire Offering Document.

Brief descriptions of Principal Participants in the Development of the Ballpark Project, Principal Documents, Schedule of Key Events, Sources and Uses of Bond Proceeds, Plan of Finance, Risk Factors, the Ballpark Project, Ballpark Project Insurance and Completion Guarantees, the Redevelopment Project, the 2002 Bonds, Security and Sources of Payment for the 2002 Bonds and various other topics follow. Such descriptions and summaries do not purport to be comprehensive or definitive. All references made to various documents herein are qualified in their entirety by reference to the actual forms thereof, copies of which are available upon request with payment of copying, mailing and handling charges by contacting the City at the following address: The City of San Diego, City Clerk, 202 "C" Street, MS 2A, San Diego, California 92101, Attention: City Clerk. All capitalized terms used in this Offering Document (unless otherwise defined herein) shall have the meanings set forth in the Indenture or the Ballpark Facility Lease.

A brief description of the City is provided in **APPENDIX A—THE CITY OF SAN DIEGO**. Certain audited financial statement information relating to the City's general funds is provided in **APPENDIX B—EXCERPTS FROM THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2001**. Summaries of the Indenture, a Site Lease to be executed between the City and the Authority (the "Site Lease"), the Ballpark Facility Lease, and the Assignment Agreement are provided in **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS**. Summaries of the MOU, the Ballpark Infrastructure Design/Build Agreement, the Joint Use and Management Agreement, the Ballpark Design/Build Procurement Consultant Agreement, the Ballpark Facility Design/Build Contract, the Guaranty Agreement, the Implementation Agreement, the Second Implementation Agreement, the MLB Commitment and the Custody Agreement (all as defined herein) are provided in **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS**. A copy of Orrick, Herrington & Sutcliffe LLP's legal analyses and opinions regarding issues raised in the pending litigation which could affect the validity of the Ballpark Facility Lease or the 2002 Bonds or the tax exemption for interest payable on the 2002 Bonds is provided in **APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS**. A form of the Continuing Disclosure Agreement of the City with respect to the 2002 Bonds is provided in **APPENDIX G—FORM OF CONTINUING DISCLOSURE AGREEMENT**. A form of the financial guaranty insurance policy is provided in **APPENDIX H—FORM OF FINANCIAL GUARANTY INSURANCE POLICY**. A form of Co-Bond Counsel's qualified legal opinion is provided in **APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION**. A form of Investor Representation Letter is provided in **APPENDIX J—FORM OF INVESTOR REPRESENTATION LETTER**.

PRINCIPAL PARTICIPANTS IN THE DEVELOPMENT OF THE BALLPARK PROJECT

Set forth below are brief descriptions of each of the principal participants in the development of the Ballpark Project. For additional information regarding the Ballpark Project and the various participants' roles, responsibilities and financial obligations with respect to such project, see "PLAN OF FINANCE FOR THE BALLPARK PROJECT," "THE BALLPARK PROJECT," "BALLPARK PROJECT INSURANCE AND

COMPLETION GUARANTEES," "THE BALLPARK FACILITY" and "THE REDEVELOPMENT PROJECT."

The Authority

The Public Facilities Financing Authority of the City of San Diego was established pursuant to a Joint Exercise of Powers Agreement, dated May 14, 1991, as amended and restated, between the City and the Redevelopment Agency. The purpose of the Authority is to assist with the financing of certain public capital facilities and improvements of the City or the Redevelopment Agency. The Authority has no taxing power. The Authority is the issuer of the 2002 Bonds and the lessor of the Leased Property under the Ballpark Facility Lease.

The City

With a population of approximately 1.3 million residents, the City is the seventh largest city in the nation and the second largest city in the State of California. The City's economic base consists of a diverse core of high tech industries, including telecommunications, bioscience and software development, complemented by defense and tourism, two mainstays of the City's economy. The City's traditional sectors of defense and tourism have historically realized steady growth. The City's defense industry, formerly concentrated in aerospace, is now almost entirely devoted to meeting the military's needs in the areas of information systems and applications of computer technology. There can be no assurance that the economy of the City will not be negatively affected by the slowing economies of the State of California and the United States, and the consequences of the recent attacks on New York, NY and Washington D.C./Arlington, VA (the "Attacks") and responses thereto. Since the Attacks, published newspaper articles have reported on staff layoffs and reduced work hours at hotels within the City due to lower occupancy rates and reduction of scheduled airline flights to and from the City due to reduced passenger loads. Due to the slowing economy, prior to the Attacks, for the first two months of the current fiscal year ended August 31, 2001, Transient Occupancy Tax ("TOT") revenues were down by approximately 6% from the same period in the prior fiscal year. Due to the Attacks and the continuing downturn in the economy, for the first five months ended November 30, 2001, TOT revenues were down by approximately 13.5% from the same period of the prior fiscal year. Sales Tax ("Sales Tax") revenues to the City for the first six months (ended December 31, 2001) of the current fiscal year were approximately 1% above the Sales Tax revenues received for the same period of the prior fiscal year. Through the first six apportionments (ended January 16, 2002) of Fiscal Year 2002, Property Tax ("Property Tax") revenues received by the City were up approximately 7% from the same period in the prior fiscal year. Motor Vehicle License Fee ("Motor Vehicle License Fee") revenues to the City for the first six months (ended December 31, 2001) of the current fiscal year were approximately 5% above the Motor Vehicle License Fee revenues received for the same period of the prior fiscal year. It is anticipated that the City Manager will present a report on the City's Fiscal Year 2002 financial status to the City Council during February 2002. This report will include an update on revenues and the impact of current economic conditions.

Subject to the uncertainties created by the slowing economies of the State of California and United States and the Attacks, the City believes that its visitor industry could benefit over time from the opening of the expansion to the San Diego Convention Center (the "Convention Center") in September 2001, which has approximately doubled the size of the facility.

The City, along with the Redevelopment Agency and the CCDC, are responsible for the planning and construction of the infrastructure component of the Ballpark Project. In addition, under the MOU, the City is responsible for contributing up to \$225.0 million to fund the construction of the Ballpark Project. However, the Redevelopment Agency agreed to assume responsibility for acquiring \$19.1 million worth of land and infrastructure costs that were previously part of the City's contribution to the Ballpark Project. As a result, the City's contribution to the Ballpark Project is currently not expected to exceed \$205.9 million. The City will have at least a 70% divided majority interest in the Ballpark Facility, and will contribute not more than \$3.5 million per year (subject to offsets and certain inflationary adjustments) for the operation and maintenance of the Ballpark.

The Padres

Padres L.P. is a Delaware limited partnership and the sole owner of the San Diego Padres Major League Baseball franchise (the "Franchise"). The Padres acquired the Franchise in 1994. The City was awarded the Franchise in 1968, and the Franchise has been located in the City continuously since the award. Under the MOU, the Padres are committed to play Major League Baseball games at the Ballpark while any of the 2002 Bonds remain

outstanding, up to 30 years, but in no event less than 22 years, and the Padres have an option to extend such period of time for two additional five-year terms. The Padres are responsible for the design and the construction of the Ballpark Facility. Under the Ballpark Design/Build Procurement Consultant Agreement, however, the City, the Padres, the Redevelopment Agency, CCDC, and Padres Construction, L.P. ("PCL"), an affiliate of the Padres, agreed that the Padres would delegate their obligations with respect to the design and construction of the Ballpark Facility under the MOU to PCL. The Padres will contribute approximately \$153.2 million toward the cost of the Ballpark Project (which amount includes (i) the difference between the original estimated cost of the Ballpark Facility of \$267.5 million and the current estimated cost of \$294.1 million* and (ii) approximately \$7.1 million in excess land acquisition costs). The Padres also will be responsible for any Ballpark Facility costs in excess of \$294.1 million* (except those costs associated with change orders requested by the City), certain additional excess land acquisition costs and certain excess infrastructure costs. The Padres will own improvements in and to the Ballpark Facility amounting up to, but not exceeding, 30% of the original Ballpark Facility estimate of \$267.5 million for the term of the Joint Use and Management Agreement, after which all portions of the Ballpark Facility owned by the Padres will automatically be transferred to the City. It is contemplated that the City Council of the City (the "City Council") will consider, in the near future, a proposal under which the Padres would also pay an additional \$6.0 million and receive title to land on which would be built a parking garage containing at least 1,000 parking spaces available for use for the Ballpark Facility (the "P1 Parking Garage"). Should the City Council not approve an agreement, the City will cause the land to be acquired, and lease it to the Padres which will still have the obligation to build the P1 Parking Garage.

Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to fund their remaining Ballpark Project financial obligations; there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations; and the Padres have not obtained commitments for their contemplated borrowings. Neither the City nor the Authority can make any prediction as to the ability of the Padres to obtain such borrowings.

The information contained herein regarding the Padres and their affiliates has been provided by the Padres and, except as otherwise noted and except for descriptions of the rights and duties of the Padres and their affiliates under agreements or undertakings to which the City or the Redevelopment Agency is a party, has not been verified by the City, the Redevelopment Agency or the Authority.

The Redevelopment Agency

The Redevelopment Agency was activated on May 6, 1958, by action of the City Council. At the same time, the City declared itself to be the Redevelopment Agency. The elected Mayor of the City (the "Mayor") and the members of the City Council also serve as members of the board of the Redevelopment Agency (the "Redevelopment Agency Board"), although the Redevelopment Agency is a separate, legally constituted body. The Redevelopment Agency is charged with the responsibility of eliminating blight within its redevelopment project areas through the process of redevelopment. The Redevelopment Agency is responsible for the acquisition of certain land associated with the Ballpark Project.

The Centre City Development Corporation

In August 1976, the City Council designated the CCDC as the operating manager of redevelopment projects in the downtown area of the City (the "Centre City"). As such, it is responsible for the planning, implementation, and administration of such projects. The CCDC currently manages the Horton Redevelopment Project and the Centre City Redevelopment Project. The CCDC is managed by a board of directors, appointed by the Mayor and the City Council, consisting of seven individuals, and a professional staff. The CCDC will coordinate the Redevelopment Agency's land acquisitions associated with the Ballpark Project and the development process for the private ancillary development surrounding the Ballpark Project. For additional information regarding litigation which may affect the validity of the 2002 Bonds and Ballpark Facility Lease, see, "**LITIGATION—Litigation Involving the Ballpark Project—*Simmons v. City of San Diego, et al.*—CCDC Director Matter.**"

* See "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

The San Diego Unified Port District

The San Diego Unified Port District (the "District") is a Port District established by special legislation in 1962. It currently operates San Diego International Airport/Lindbergh Field (the "Airport") as well as a variety of other facilities located within the tidelands trust property which was conveyed to the District by the City for use in furtherance of commerce, navigation, fisheries and regional recreation. Except for the operations of the Airport, the principal operations of the District are the leasing of tidelands trust property for development by private enterprise and for which the District receives rental income as lessor. The Ballpark Facility will be located close to the Convention Center, which is located on the tidelands trust property of the District. Subject to approval by the Executive Officer of the State Lands Commission, the City expects that the District will purchase, for up to \$21.0 million from its Car Rental Fee Fund, four surface parking lots that are located approximately two blocks east of the Ballpark Facility and within the vicinity of the Convention Center (the "Surface Parking Lots") from the City to serve the needs of the expanded Convention Center. However, this could be affected by the outcome of certain pending litigation against the District and the City relating to the District's commitment to purchase and the City's ability to sell the Surface Parking Lots (see "**RISK FACTORS—Ballpark Project Funding and Completion Risks—Litigation Affecting the Ballpark Project Could Cause Further Delays in Construction**"), any future litigation or the consequences of recently passed legislation under which the Airport operations of the District, including certain related assets and revenues, would be split off into a new and separate agency. In addition, since the Attacks, the District has offered alternative optional rental deferral programs to most of its tourist businesses and to hotel tenants, which alternatives could adversely affect the District's financial resources. If, due to litigation, economic conditions or otherwise, the District is unable to purchase the Surface Parking Lots, the City and the Redevelopment Agency would provide the funds necessary to develop the Surface Parking Lots.

The information contained herein regarding the District has been provided by the District and, except for descriptions of the rights and duties of the District under agreements or undertakings to which the City or the Redevelopment Agency is a party, has not been verified by the City, the Redevelopment Agency or the Authority.

PRINCIPAL DOCUMENTS

The following tables provide definitions and summary descriptions for each of the key documents relating to the issuance of the 2002 Bonds and the Ballpark Project.

Documents Relating to the Issuance of the 2002 Bonds

| <u>Document Name</u> | <u>Description</u> |
|-------------------------|--|
| Indenture | The Indenture, dated as of February 1, 2002, between the Authority and the Trustee, provides for the terms relating to the 2002 Bonds. |
| Site Lease | The Site Lease, dated as of February 1, 2002 (the "Site Lease"), between the City and the Authority, provides for the lease of the real property portion of the Ballpark Facility from the City to the Authority. Such real property, along with the Ballpark Facility, is subleased back to the City pursuant to the Ballpark Facility Lease. |
| Ballpark Facility Lease | The Ballpark Facility Lease, dated as of February 1, 2002, between the Authority and the City, provides for the lease of the Leased Property from the Authority to the City. Subject to substantial completion of the Ballpark Facility, the City will make full Base Rental Payments, subject to abatement, which will be used to pay debt service on the 2002 Bonds. |
| Assignment Agreement | The Assignment Agreement, dated as of February 1, 2002, between the Authority and the Trustee, governs the assignment of all rights to receive the Base Rental Payments under the Ballpark Facility Lease from the Authority to the Trustee. |

| <u>Document Name</u> | <u>Description</u> |
|--|--|
| Financial Guaranty Insurance Policy | The policy of insurance issued by the Bond Insurer which insures the payment of principal and interest when due on the 2002 Bonds. |
| Forward Commitment to Provide Reserve Account Surety | The forward commitment of the Bond Insurer to provide a surety to fund one-half of the Reserve Account. For additional information, see Footnote 2 to the Table under the caption " SOURCES AND USES OF THE 2002 BOND PROCEEDS. " |

Documents Relating to the Ballpark Project

| <u>Document Name</u> | <u>Description</u> |
|--|---|
| MOU | The Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project by and among the City, the Redevelopment Agency, the CCDC, and the Padres, approved by 59.6 percent of the citizens voting in the general election of the City on November 3, 1998, memorializes the agreement among the parties to the MOU of the essential terms and conditions regarding the ballpark and redevelopment project. The original expiration of the MOU was March 31, 2000 and has been extended on a number of occasions, most recently to February 19, 2002. |
| Ballpark Infrastructure Design/Build Agreement | The Ballpark Infrastructure Design/Build Agreement, dated as of December 14, 1999, which has since its date of execution, been amended or restated on a number of occasions, most recently on January 28, 2002 (the "Ballpark Infrastructure Design/Build Agreement"), between the City and Sverdrup Civil, Inc., provides for the performance by Sverdrup Civil, Inc. of the infrastructure related work in connection with the Ballpark Project. |
| Joint Use and Management Agreement | The Joint Use and Management Agreement, dated as of February 1, 2000 (the "Joint Use and Management Agreement"), between the City and the Padres, governs the rights and duties of the City and the Padres with respect to the use and operation of the Ballpark Facility. |
| Ballpark Design/Build Procurement Consultant Agreement | The Ballpark Design/Build Procurement Consultant Agreement, dated as of February 1, 2000 (the "Ballpark Design/Build Procurement Consultant Agreement") by and among the City, the Redevelopment Agency, the CCDC, the Padres, and Padres Construction, L.P., governs the selection of the entity for managing the design and construction process of the Ballpark Facility and provides for the implementation of the Ballpark Facility Design/Build Contract. |
| Ballpark Facility Design/Build Construction Contract | The Ballpark Facility Design/Build Construction Contract, dated as of February 1, 2000 (the "Ballpark Facility Design/Build Contract"), between Padres Construction, L.P. and San Diego Ballpark Builders (the "SDBB"), provides for the construction of the Ballpark Facility by the SDBB, a joint venture comprised of Clark Construction Group, Inc., Nielsen Dillingham Builders, and Douglas E. Barnhart, Inc. |
| Guaranty Agreement | The Guaranty Agreement Concerning the Ballpark Design/Build Procurement Consultant Agreement, dated as of February 1, 2000 (the "Guaranty Agreement"), from the Padres to and for the benefit of the City, the Redevelopment Agency, the CCDC, the Authority, and the Trustee, provides that the Padres will guarantee complete and timely payment and performance by Padres Construction, L.P. of all of Padres Construction, L.P.'s obligations and |

Document Name

Description

| | |
|--|---|
| | responsibilities under the Ballpark Design/Build Procurement Consultant Agreement. |
| Ballpark and Redevelopment Project Implementation Agreement | The Ballpark and Redevelopment Project Implementation Agreement, dated as of February 25, 2000 (the "Implementation Agreement"), by and among the City, the Redevelopment Agency, the CCDC, and the Padres, implements the purpose and intent of the MOU and modifies, in part, the rights and obligations of the parties as set forth in the MOU by addressing certain matters relating to the infrastructure improvements, land acquisition costs, the City's parking obligations, certain costs of environmental remediation, and other related matters. |
| Second Ballpark and Redevelopment Project Implementation Agreement | The Second Ballpark and Redevelopment Project Implementation Agreement, dated as of November 30, 2001 (the "Second Implementation Agreement"), by and among the City, the Redevelopment Agency, the CCDC, and the Padres, (i) implements the purpose and intent of the MOU; (ii) modifies, in part, the rights and obligations of the parties as set forth in the MOU; (iii) increases the Redevelopment Agency's investment in the Ballpark Project to \$76.4 million, plus an additional amount of \$8.5 million for certain contingent expenses; (iv) accepts a guaranty from John Moores and the Padres, more fully described in "THE REDEVELOPMENT PROJECT—Hotels;" and (v) releases the City's first priority lien and security interest in the Franchise vested by the Security Agreement, dated as of April 1, 1999, as amended by the Ballpark Design/Build Procurement Consultant Agreement (the "Security Agreement"), by and between the Padres and the City; among other things. |
| Reaffirmation Agreement | The Reaffirmation Agreement, dated as of December 20, 2001 (the "Reaffirmation Agreement"), by and among the City, the Redevelopment Agency, CCDC and the Padres, reaffirms each party's intent to be bound by the MOU and related agreements. |
| TOT Guaranty Agreement | The TOT Guaranty Agreement, dated as of December 20, 2001, provides for certain payments to the City if the Four Star Hotel (as defined herein) is not opened and operating by April 2004 and will not become operative unless the Redevelopment Agency and JMI Realty, Inc. ("JMIR") extend the Disposition and Development Agreement for the development of the Four Star Hotel to and including December 31, 2003. |
| MLB Commitment | The Irrevocable Guaranty Agreement, dated as of February 15, 2002 (the "MLB Commitment"), provides a guaranty from Major League Baseball, an unincorporated association ("MLB"), of up to \$45.8 million, payable upon written demand to MLB by the Custody Agent, with the consent of the Bond Insurer, promptly on or after April 1, 2002, to cover certain payment requirements of the Padres to the Design and Construction Fund if such requirements are not met by the Padres. The MLB Commitment will expire on October 1, 2002, if not previously called upon. |
| Custody Agreement | The Custody Agreement, dated as of February 15, 2002 (the "Custody Agreement"), by and among the City, the Redevelopment Agency, the Padres, Padres Construction, L.P., and Wells Fargo Bank, National Association, as custody agent, provides for deposits into and the priorities of withdrawals of funds from the Design & Construction Fund, the fund from which the remaining Ballpark Facility costs and certain land acquisition and infrastructure costs will be funded. |

See APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS, APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS, “SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS—Debt Service Reserve Account” and “SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS—Financial Guaranty Insurance Policy” for a more complete description of certain documents listed above.

SCHEDULE OF KEY EVENTS

The following table provides some key events and actual or projected dates relating to the issuance of the 2002 Bonds and the Ballpark Project. Certain unforeseen events could prevent the projected dates from occurring as scheduled.

| <u>Event</u> | <u>Actual/Projected Date</u> |
|--|--|
| MOU approved by San Diego voters..... | November 1998 (Actual) |
| Commencement of work on Infrastructure..... | January 2000 (Actual) |
| Commencement of work on Ballpark Facility..... | May 2000 (Actual) |
| Suspension of work on Ballpark Facility..... | October 2000 (Actual) |
| Guaranteed maximum cost established for the construction of the Ballpark Facility..... | November 2001 (Actual) |
| Guaranteed maximum price established for the Ballpark Infrastructure Design/Build Agreement..... | October 2001 (Actual) ⁽¹⁾ |
| Completion of land acquisition for footprint of the Ballpark Facility..... | January 2002 (Actual) |
| Recommencement of work on Ballpark Facility..... | Date of closing of the sale and issuance of the 2002 Bonds (Projected) |
| Substantial completion of the Infrastructure..... | Approximately 24 months after the closing date for the sale and issuance of the 2002 Bonds (Projected) |
| Substantial completion of the Ballpark Facility..... | Approximately 24 months after the closing date for the sale and issuance of the 2002 Bonds (Projected) |
| Approximate time through which a portion of the interest on the 2002 Bonds will be capitalized (the balance is payable from Base Rental Payments under the Ballpark Facility Lease)..... | Approximately 30 months after the closing date for the sale and issuance of the 2002 Bonds (Projected) |

(1) See “THE BALLPARK PROJECT—Infrastructure Work—Ballpark Infrastructure Design/Build Agreement” for additional information regarding the development and expiration of the guaranteed maximum price.

SOURCES AND USES OF THE 2002 BOND PROCEEDS

The estimated sources and uses of proceeds from the sale of the securities offered hereby are set forth below.

Sources

| | |
|------------------|-----------------------|
| Principal Amount | <u>\$ 169,685,000</u> |
| Total | <u>\$ 169,685,000</u> |

Uses

| | |
|---|-----------------------|
| Deposit to Design and Construction Fund | \$ 120,308,440 (1) |
| Deposit to Reserve Account | \$ 15,040,690 (2) |
| Interest Account | \$ 20,275,581 (3) |
| Costs of Issuance | \$ 11,990,132 (4) |
| Underwriter's Discount | <u>\$ 2,070,157</u> |
| Total | <u>\$ 169,685,000</u> |

- (1) Includes \$4,679,128 in reimbursements for Ballpark Project advances by the City, the Padres and the Redevelopment Agency.
- (2) It is expected that 50% of the amount deposited in the Reserve Account will fund the final draws of the City's funds in the Design and Construction Fund, provided the City can certify that the construction of the Ballpark Facility is on schedule, whereupon the Bond Insurer will issue a surety in an amount equal to such draw for the Reserve Account. If the City cannot certify that the construction of the Ballpark Facility is on schedule, the Bond Insurer will not issue a surety and the City will need to deposit from its general funds, into the Design and Construction Fund, an amount equal to 50% of the amount in the Reserve Account. An appropriation of an amount of up to one-half of the amount deposited in the Reserve Account, if necessary, has been authorized by the City Council.
- (3) Amount, which, together with expected interest income thereon and interest income on the Reserve Account, will fund a portion of interest payable on the 2002 Bonds for approximately 30 months from the date of delivery of the 2002 Bonds (with the balance being paid from Base Rental Payments payable under the Ballpark Facility Lease).
- (4) Costs of Issuance include fees and expenses of the Co-Financial Advisors, Co-Bond Counsel and the Trustee, expenses for obtaining ratings on the 2002 Bonds, Offering Document printing costs, the premium for the Financial Guaranty Insurance Policy, other costs related to the issuance of the 2002 Bonds, and litigation expenses incurred incident to the Ballpark Project. Costs of Issuance include approximately \$5.6 million that has been spent by the City to date, which amount is in addition to advances for certain Ballpark Project advances, and will be reimbursed to the City from the proceeds of the 2002 Bonds.

PLAN OF FINANCE FOR THE BALLPARK PROJECT

The Ballpark Project

The Ballpark Project consists of the Ballpark Facility, the acquisition of certain land for the Ballpark Facility and other related land acquisitions, improvements and infrastructure. The Ballpark Facility will occupy approximately 18 acres in the East Village neighborhood of downtown San Diego, bordered by J Street on the north, 7th Avenue on the west, 10th Avenue on the east, Park Boulevard on the south, and a frontage road along the railroad tracks between Park Boulevard and 7th Avenue. The Ballpark Facility is expected to hold up to 46,000 people by means of approximately 42,000 fixed seats, and the balance by means of a combination of standing room and picnic and lawn seating areas in the Park.

When last submitted to the City Council in November 2001, the overall budget for the Ballpark Project was \$449.4 million. Currently, the estimated cost of the Ballpark Project is approximately \$456.5 million. This estimate consists of \$294.1 million* for the construction of the Ballpark Facility, \$107.1 million¹ for the acquisition of land, which includes the Ballpark Facility footprint, \$51.3 million for infrastructure, and \$4.0 million for additional obligations under the Implementation Agreement, which includes costs relating to infrastructure and insurance.

Interim Expenditures

Set forth in the following table is information relating to (i) expenditures through January 15, 2002 on (a) the Ballpark Facility, (b) land acquisition relating to the Ballpark Project, (c) infrastructure work relating to the Ballpark Project, and (d) obligations under the Implementation Agreement; and (ii) the amounts spent by the City, the Redevelopment Agency and the Padres through such date. Certain amounts shown below are estimates and are provided from sources other than the City (the amounts of which have not been independently verified by the City and Authority).

Estimated Aggregate Expenditures Through January 15, 2002

| | |
|--|---------------------------------|
| Ballpark Facility (exclusive of land) | \$ 61,700,000 |
| Land Acquisition (inclusive of land for the Ballpark Facility) | \$ 85,000,000 |
| Infrastructure Work | \$ 19,500,000 ⁽¹⁾⁽²⁾ |
| Implementation Obligations | \$ <u>600,000</u> |
| Total | \$ <u>166,800,000</u> |

Estimated Sources of Payments for Expenditures Through January 15, 2002

| | |
|----------------------|-------------------------------------|
| City | \$ 32,200,000 ⁽²⁾⁽³⁾ |
| Redevelopment Agency | \$ 74,600,000 ⁽⁴⁾ |
| Padres | \$ <u>60,000,000</u> ⁽⁵⁾ |
| Total | \$ <u>166,800,000</u> |

- (1) This amount does not include \$16.0 million of certain utility relocation costs which will be the responsibility of the "dry utility" providers or the Padres.
- (2) This amount includes approximately \$2.3 million that (i) has been authorized for use by the City for certain infrastructure work and (ii) is currently being spent by the City.
- (3) Approximately \$3.8 million will be reimbursed from proceeds of the 2002 Bonds.
- (4) Approximately \$0.2 million will be reimbursed from proceeds of the 2002 Bonds.
- (5) Approximately \$0.6 million will be reimbursed from proceeds of the 2002 Bonds.

Under the MOU, the Ballpark Design/Build Procurement Consultant Agreement, and the Implementation Agreement, the Padres are required to fund all costs of the Ballpark Facility in excess of the original Ballpark Facility estimate of \$267.5 million and the Padres and the Redevelopment Agency are required to fund certain excess costs relating to land acquisitions for the Ballpark Project. For additional information, see "Sources of Funds from the Padres" and "THE BALLPARK PROJECT—Land Acquisition Program."

* See "THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the commencement of construction.

¹ For additional information regarding the aggregate values estimated by the Redevelopment Agency of properties yet to be sought through condemnation, see Footnote 2 to the Table under "THE BALLPARK PROJECT—Land Acquisition Program."

Sources and Uses of Ballpark Project Funds

The currently estimated sources and uses of funding for the Ballpark Project are as follows:

Sources

| | |
|--|-------------------------------|
| Proceeds from Sale of 2002 Bonds | \$ 130,400,000 ⁽¹⁾ |
| Redevelopment Agency | 76,400,000 ⁽²⁾ |
| Padres | 153,200,000 ⁽³⁾ |
| Proceeds from Sale of Surface Parking Lots | 21,000,000 ⁽⁴⁾ |
| City Equity | 75,500,000 ⁽⁵⁾ |
| Total | \$ 456,500,000 |

Uses

| | |
|--------------------------------------|-------------------------------|
| Ballpark Facility | \$ 294,100,000 ⁽⁶⁾ |
| Land Acquisition | 107,100,000 ⁽⁷⁾ |
| Infrastructure Work | 51,300,000 ⁽⁸⁾ |
| Implementation Agreement Obligations | 4,000,000 ⁽⁹⁾ |
| Total | \$ 456,500,000 |

- (1) Net amount of available proceeds from the 2002 Bonds will be less than this amount and the difference reflects expected interest earnings on such proceeds and certain interest earnings on the Reserve Account.
- (2) This does not include the possible need for as much as \$10.0 million for certain increases in land acquisition costs, if any, over \$110.0 million up to \$130.0 million, which amount the Redevelopment Agency has been authorized to spend by the execution of the Implementation Agreement. This amount is not reflected in the estimated amounts for the Ballpark Project set forth herein, but is authorized to be spent by the Redevelopment Agency, if necessary. The City, the Redevelopment Agency, the CCDC, and the Padres have approved an increase in the Redevelopment Agency's contribution to \$76.4 million, plus an additional \$8.5 million for certain contingent expenses, all under the Second Implementation Agreement.
- (3) This amount includes a current estimate of land acquisition costs in excess of \$100.0 million. The Padres are responsible for the first \$10.0 million in land acquisition costs in excess of \$100.0 million and fifty percent of any excess over \$110.0 million up to \$130.0 million. For additional information regarding the aggregate values estimated by the Redevelopment Agency of properties yet to be sought through condemnation, see Footnote 2 to the Table under "**THE BALLPARK PROJECT—Land Acquisition Program.**"
- (4) See "**PLAN OF FINANCE FOR THE BALLPARK PROJECT—Sources of Funds from the District**" for information regarding the purchase of the Surface Parking Lots by the District, or the City and the Redevelopment Agency.
- (5) This amount does not include \$21.0 million, which would be needed to finance the acquisition and improvements of the Surface Parking Lots if the District is unable for any reason to fund the same pursuant to the Parking Lot Purchase Agreement. It is expected that the City (subject to the City's overall financial commitment limit to the Ballpark Project of \$225.0 million) and the Redevelopment Agency would fund such amount. The City Council has authorized such amount for expenditure up to \$19.1 million (subject to such overall financial commitment limit), with the balance having been authorized for expenditure by the Redevelopment Agency.
- (6) See "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.
- (7) This amount includes \$6.0 million for the cost of the land acquisition for the P1 Parking Garage. It is contemplated that in the near future, the City Council will consider an amendment to the Implementation Agreement, which would reduce the land acquisition estimate by \$6.0 million to reflect the commitment of the Padres to purchase, for that amount, the land for the P1 Parking Garage. If such an arrangement is approved by the City Council, the amount of the Redevelopment Agency's commitment to sources would be reduced by an equal amount. Should that modification not occur, the City will cause the land for the P1 Parking Garage to be acquired with Redevelopment Agency funds and the Padres will lease the land from the City and construct the P1 Parking Garage. The Redevelopment Agency believes it has the current funds available to fund this cost if necessary.
- (8) The original estimated amount for Infrastructure Work as set forth in the MOU was \$61.6 million and included the construction costs for the P1 Parking Garage. Pursuant to the Implementation Agreement, the Padres assumed construction of the P1 Parking Garage, thereby reducing the Infrastructure Work estimate by \$10.3 million, which represents the estimated cost of constructing the P1 Parking Garage, but not the land cost.
- (9) It is contemplated that in the near future, the governing body of the Redevelopment Agency will approve an amendment to the Implementation Agreement whereby the Redevelopment Agency and the Padres will each pay an equal share of an anticipated additional \$6.5 million that will be required for certain environmental mitigation costs.

Details regarding the sources of funds for the respective contributions from the Padres, the Redevelopment Agency, and the District follow.

Sources of Funds from the Padres

Pursuant to the MOU and the Implementation Agreement, the Padres are to contribute at least \$153.2 million, which includes the Padres' portion of both the current land acquisition costs estimate of \$107.1 million and the current Ballpark Facility estimate of \$294.1 million*. As of January 15, 2002, the Padres have advised the City that they have expended approximately \$60.0 million (of which \$580,000 will be reimbursed to the Padres from the proceeds of the 2002 Bonds). In addition, MLB has agreed to provide the MLB Commitment, guaranteeing the Padres' funding obligation up to an amount of \$45.8 million. Pursuant to the Custody Agreement, if the Padres deliver cash or an acceptable letter of credit, or a combination thereof, equal to the amount of the MLB Commitment, prior to a draw thereon, the MLB Commitment will be released. In addition, the Padres may reduce their cash contribution, whether generated by cash or a draw on the MLB Commitment, by an amount equal to the face amount of any acceptable letter of credit deposited with the Custody Agent. For additional information, see **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Custody Agreement** and **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—MLB Commitment**. The Padres have advised the City that the funds for the Padres' contributions will come from (i) private franchise utility contributions; (ii) a cash equity contribution; (iii) contribution of food and beverage equipment; and (iv) debt financings. In addition, under the MOU, the Ballpark Design/Build Procurement Consultant Agreement, and the Implementation Agreement, the Padres are required to fund all costs in excess of the original Ballpark Facility estimate of \$267.5 million, certain excess costs of land acquisition, and certain excess infrastructure costs, if any, in connection with the Ballpark Project. The following is a table describing the funding sources of the Padres, or credits therefor, which are recognized by the MOU:

| Source ⁽¹⁾ | Amount |
|--------------------------------------|--|
| Cash | \$ 125.4 million ⁽²⁾⁽³⁾ |
| Private Utility In-Kind Contribution | \$ 16.0 million |
| Concessionaire Equipment Obligation | <u>\$ 11.8 million</u> |
| Total | \$ 153.2 million ⁽³⁾ |

- (1) The City has not independently verified the Padres' sources of funding.
- (2) Of this amount, approximately \$60.0 million has been expended as of January 15, 2002.
- (3) For additional information regarding the aggregate values estimated by the Redevelopment Agency of properties yet to be sought through condemnation, see Footnote 2 to the Table under "**THE BALLPARK PROJECT—Land Acquisition Program.**"

The Padres have executed and delivered to the City, the Security Agreement, dated as of April 1, 1999, which grants the City a first priority security lien on the Franchise to secure the Padres' obligation to deposit their first \$50.0 million into the Design and Construction Fund. The original Security Agreement was to remain in effect until such time as the Padres had fulfilled such funding obligation. Under the Ballpark Design/Build Procurement Consultant Agreement, the Security Agreement was amended also to secure funding of any cost overruns for the Ballpark Facility. However, under the Second Implementation Agreement, the City Council has approved an amendment to the Security Agreement, which will release the City's lien so as to accommodate a lien on the Franchise to be granted by the Padres in favor of MLB to secure the repayment by the Padres of up to \$45.8 million, which may be advanced by MLB under the MLB Commitment. Such MLB lien will continue so long as the MLB Commitment is outstanding or funded and not repaid by the Padres. At such time as the MLB lien is released, the City will re-file its lien as to the Padres' franchise, so as to provide security for Ballpark Facility construction cost overruns.

The MOU provides that agreements with private franchise utility companies for utility relocations and equipment will be credited to the Padres. The value of the relocation of utilities in connection with the Ballpark Project has been estimated at \$16.0 million. In addition to amounts spent to date by the Padres for which the Padres

* See "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

will not be reimbursed, the Padres have advised the City that they have executed and delivered a long-term contract with Sportservice Corporation, a major national provider of concession services, that would require the concessionaire to install food and beverage equipment valued at \$11.8 million.

The Padres have informed the City that they do not have a defined long-term financing plan and that, initially, funding for the remaining amounts expected to be needed to complete the Ballpark Facility on an interim basis, will be funded by short-term borrowings. Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to fund their remaining Ballpark Project financial obligations; there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations; and the Padres have not obtained commitments for their contemplated borrowings. Neither the City nor the Authority can make any prediction as to the ability of the Padres to obtain such borrowings. Should the Padres be unable to issue any or all of such notes and the Padres are unable to finance their obligation through other sources, the construction of and the expected completion date for the Ballpark Facility could be adversely affected. The MLB Commitment would be available to fund up to \$45.8 million of the Padres' funding commitment for the Ballpark Facility but would not be sufficient to cover cost overruns payable by the Padres over the current Ballpark Facility estimate of \$294.1 million,* nor would it cover any amounts due from the Padres for land acquisition or infrastructure cost overruns.

The Padres have advised the City that the Padres, in connection with their financing for the Ballpark Facility, may assign certain of their rights and obligations under the Joint Use and Management Agreement, to a wholly-owned subsidiary. Any such assignment would be accompanied by a guaranty in favor of the City by the Padres of the performance by their subsidiary of the Padres' obligations under the Joint Use and Management Agreement. The terms of such financing will not include the right of the Padres' lender to terminate the rights of either the Padres or their subsidiary to use and occupy the Ballpark Facility under the Joint Use and Management Agreement or any of the Ballpark Project related agreements, as a remedy in the event the Padres default in their repayment of their financing obligation.

Sources of Funds from the Redevelopment Agency

Initially, under the MOU, the Redevelopment Agency was to invest \$50.0 million in the Ballpark Project. This investment was previously increased to \$61.0 million in the Implementation Agreement, and was increased further to an aggregate of \$76.4 million by action of the City Council and the Redevelopment Agency taken on November 20, 2001 to increase the Redevelopment Agency's investment. This does not include an additional \$8.5 million approved by the Redevelopment Agency in November 2001 for use related to the Ballpark Project. For additional information regarding the sources of funds from the Redevelopment Agency for the Ballpark Project, see Footnote 2 to the Table under the caption "**Sources and Uses of Ballpark Project Funds.**" This also does not include approximately \$40.2 million which the Redevelopment Agency has repaid to the City for longstanding loans. (In December 2001, the Redevelopment Agency issued tax allocation bonds and used a portion of the proceeds to repay this amount to the City.) The City is using an equal amount of general funds as a part of its contribution for the Ballpark Project.

As of January 15, 2002, the Redevelopment Agency had expended approximately \$74.6 million for the Ballpark Project (of such amount expended, the Redevelopment Agency expects to be reimbursed for approximately \$0.2 million from the proceeds of the 2002 Bonds). The Redevelopment Agency expects to fund its entire commitment of \$76.4 million with equity and proceeds of existing bond issuances.

Sources of Funds from the District

The Ballpark Project includes certain parking improvements, including land acquisition and construction activities relating to the Surface Parking Lots. At the time the MOU was approved by the voters of the City in November 1998, it was recognized, that based upon the projected size of the Ballpark Project, an additional \$21.0 million would be needed for the Ballpark Project; as of that time a source had not been identified. Subsequently, as a result of negotiations between the City and the District, it was agreed that, subject to approval of the State Lands Commission, the District would acquire the Surface Parking Lots for a total price of \$21.0 million.

* See "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

The District has informed the City that the District believes that the development of the Surface Parking Lots is also needed to serve the Convention Center and the expansion of that facility. The original agreement was not approved by the State Lands Commission, which placed conditions upon future approval. The original agreement was replaced, incorporating provisions addressing the conditions required by the State Lands Commission, by the Purchase and Sale Agreement and Joint Escrow Instructions, dated October 1, 2001 (the "Parking Lot Purchase Agreement"), between the City and the District. The State Lands Commission delegated its approval authority to the Executive Officer of the State Lands Commission ("Executive Officer", who is considering the matter.

Pursuant to the Parking Lot Purchase Agreement, prior to the closing of the purchase transaction, the City must acquire or cause to be acquired the land for the Surface Parking Lots and improve the same to the reasonable satisfaction of the District by performing paving, striping, lighting, fencing, landscaping, and all other improvements necessary to cause the Surface Parking Lots to be suitable for use as surface parking facilities. Within 14 business days of approval by the Executive Officer, the District must pay the City the lesser of \$14.0 million or what has then currently accumulated in the District's Car Rental Fee Fund (the "Fund") (currently estimated by the District to be approximately \$10.3 million). To provide for the remaining funds, the District will deposit into an escrow account, funds as they continue to accumulate in the Fund (currently estimated by the District to be approximately \$3 million per year), to be drawn upon as needed by the City, provided that the City first demonstrates that it has acquired title to or legal right to possession of the Surface Parking Lots. The District must approve, in its reasonable discretion, any subsequent withdrawal from the escrow account. Subject to overall Executive Officer approval, the land comprising the Surface Parking Lots is to be condemned by the Redevelopment Agency using funds advanced by the District. In addition, to the extent the District has advanced sums from the Fund, the District also will finance the cost of the Surface Parking Lots improvements and adjacent infrastructure improvements. If the District is unable to purchase the Surface Parking Lots, the City (subject to the City's \$225.0 million overall maximum contribution to the Ballpark Project) and the Redevelopment Agency will purchase and develop the Surface Parking Lots but may scale back expected improvements thereon. The City Council has authorized the use of up to \$19.1 million in City funds (subject to such \$225.0 million overall maximum contribution) and the Redevelopment Agency has authorized the use of Redevelopment Agency funds, in the event that implementation of the Parking Lot Purchase Agreement is delayed or precluded. Hence, while the City is responsible to the District for delivery of the Surface Parking Lots pursuant to the Parking Lot Purchase Agreement, the funds necessary to acquire and develop the Surface Parking Lots are expected to be a combination of those of the District, the City and the Redevelopment Agency.

The City has not reviewed information as to the financial resources of the District available to purchase the Surface Parking Lots. There is currently pending against the District and the City, litigation challenging the power of the District to purchase and the power of the City to sell, the Surface Parking Lots. Additional litigation or legal challenges could occur. In addition, recently passed legislation, which will separate from the District, the Airport and related land and operations, could have a material adverse effect on the financial resources of the District. According to newspaper reports, upon signing the bill, the Governor requested the same be amended as promptly as possible to provide for District operational control of the Airport until at least 2004. There is no assurance such amending legislation will be enacted. On October 23, 2001, the Board of Commissioners for the District authorized a rent relief program for "tourist oriented tenants" (hotel operators, restaurants, specialty retailers, harbor excursions, vehicle tours, sport fishing, and rental car operators). One relief option permits the payment of only percentage rents during the period September 1, 2001 through February 28, 2002, and the deferral of payment of minimum rents during that period, should percentage rents be less than minimum rents. Any balance must be paid by the later of April 20, 2002 or 30 days following the end of a lease's current accounting year. Alternatively, such tenants could agree to postpone the due dates for September and October, 2001 rent payments, which are paid in arrears, for six months. While it is believed that this program could adversely affect the cash flow of the District, the City has no direct information from the District as to the result or impact of such rental payment deferral program.

As mentioned above, should pending or prospective litigation prevent the District or the City from performing under the Parking Lot Purchase Agreement; should approval not be obtained from the Executive Officer of the State Lands Commission; should the prospective financial resources of the District not be sufficient; or should there be a delay in the funding by the District due to the lack of accumulation of revenues in the Fund, then the City (within its \$225.0 million cap) and the Redevelopment Agency shall be collectively responsible for some or all of the \$21.0 million.

RISK FACTORS

The following is a discussion of certain risk factors, which should be considered, in addition to all other matters set forth in this Offering Document, in evaluating the investment quality of the 2002 Bonds. This discussion does not purport to be comprehensive or definitive.

Pending Litigation Could Affect the Validity of the 2002 Bonds and the Ballpark Facility Lease and the Tax Exemption of Interest on the 2002 Bonds

See “LITIGATION—Litigation Involving the Ballpark Project,” APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS, and APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION for information regarding the issues raised in pending legal challenges which could affect the validity of the 2002 Bonds or the Ballpark Facility Lease and whether the interest on the 2002 Bonds is excluded from federal and State of California personal income taxes. Should challenges as to the validity of the 2002 Bonds be successful, the City may not have a duty to make Base Rental Payments under the Ballpark Facility Lease, which Base Rental Payments are intended to provide debt service payments on the 2002 Bonds. Under such circumstances, the sole source for payment on the 2002 Bonds, other than the Reserve Account, would be the financial guaranty insurance policy issued by the Bond Insurer. Co-Bond Counsel are providing a qualified legal opinion as to the validity of the 2002 Bonds and the Ballpark Facility Lease as well as to interest on the 2002 Bonds being exempt from federal and California personal income taxes, as being subject to the outcome of such litigation. If the 2002 Bonds were held to be invalid, then there would not be a municipal obligation upon which interest could be paid, as a consequence of which interest on the 2002 Bonds, theretofore or thereafter received, would not be exempt from federal and California personal income taxes. Investors who do not report the interest as taxable income could be responsible for the payment of federal and personal income taxes as well as interest and penalties thereon.

Pending Litigation Potentially Adversely Affecting the General Funds of the City

See “LITIGATION—Litigation Potentially Adversely Affecting the General Funds of the City” regarding other litigation matters which potentially may have an adverse effect on the general funds of the City and, as a result, may adversely affect the City’s ability to make Base Rental Payments.

The 2002 Bonds are Subject to Certain Restrictions on Resale and Rights of First Refusal In Favor Of and the Exercise of Certain Call Options by the Underwriter

Resales and transfers of the 2002 Bonds are subject to various restrictions. These restrictions include limitations on who may be a buyer or transferee and on the minimum denomination of a sold or transferred 2002 Bond. In addition, the Underwriter will retain a right of first refusal on all resales or transfers of the 2002 Bonds by investors. As a result, investors may be limited in their ability to sell or transfer the 2002 Bonds. Such restrictions may also impact the sale price or transfer price of the 2002 Bonds. For additional information, see “PLAN OF DISTRIBUTION” and APPENDIX J—FORM OF INVESTOR REPRESENTATION LETTER.

In addition, if any of the 2002 Bonds, the Indenture or the Ballpark Facility Lease is held to be void or invalid by a final decision of a court of last resort in any of the Ballpark Litigation (as defined and described in “LITIGATION—Litigation Involving the Ballpark Project”), the Underwriter (at the direction of the City and with funds provided by the City) may call the 2002 Bonds from investors, provided that, among other things, such call must be exercised on not less than 30 days nor more than 60 days notice by the Underwriter to record holders and must be effective as of a date that is not more than 270 days following the date of entry of such final decision. If the 2002 Bonds are called by the Underwriter, investors will bear the risk of any then-available reinvestment opportunities. For additional information, see “PLAN OF DISTRIBUTION” and APPENDIX J—FORM OF INVESTOR REPRESENTATION LETTER.

Ballpark Project Funding and Completion Risks

The City’s obligation to pay approximately 64.7% of the Base Rental Payments is contingent upon the completion of the Ballpark Facility. Thus, any delays in the completion of the Ballpark Facility could have an adverse effect on the funds available for payment of debt service on the 2002 Bonds. Numerous factors, including, but not limited to, discovery of unforeseen site conditions, such as hazardous waste or soil conditions, work

stoppages, legal challenges, prolonged eminent domain proceedings, significant changes in the scope of the Ballpark Project or financial difficulties of contractors, could significantly delay or prevent completion of the Ballpark Project.

Prior to the substantial completion of the Ballpark Facility, a portion of the interest payable for the first 30 months from the date of issuance of the 2002 Bonds will be funded by the proceeds of the 2002 Bonds (with the balance being paid from Base Rental Payments payable under the Ballpark Facility Lease). See also "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding the availability of insurance payments equal to the daily current interest accrued on the 2002 Bonds for up to 184 days of current interest, if, as the result of any negligence or intentionally harmful act or omission by the contractor, substantial completion of the Ballpark Facility is delayed beyond a date that is 4 months and 60 days after the currently expected Substantial Completion Date (as defined herein) of 24 months after the closing date of the issuance and sale of the 2002 Bonds (subject to extension in the case of force majeure and subject to the requirement that PCL shall have fully utilized its contingency allocation in endeavoring to meet the timely performance of its contractual obligations and shall have mitigated losses incurred as a result of any negligent or intentionally harmful act or omission by a licensed general contractor under such a design/build construction contract). Amounts payable under the policy are reduced by any liquidated damages paid to PCL by SDBB, whether or not paid by PCL to the Trustee.

PCL has a similar obligation to pay Liquidated Damages (as defined herein), which obligation may be offset by payment of the insurance. This amount would be sufficient to cover approximately 6 months of interest on the 2002 Bonds. In addition, PCL is expected to obtain "delay in startup" business income insurance under which, if physical damage or destruction to the Ballpark occurs during construction from a covered peril and delays are encountered to reconstruct, there will be available "soft costs" insurance up to \$100.0 million; up to the first \$38.25 million of such amount will go to the Trustee to pay the interest that accrues on the 2002 Bonds during any delay in substantial completion of the Ballpark Facility beyond 730 days after the date of the first notice to proceed issued by the City after January 1, 2002 (the "Substantial Completion Date") (with a fifteen day waiting period, except for the peril of earthquake, for which the waiting period is thirty days) due to casualty and other perils covered by the policy, the principal ones of which are fire and earthquake. However, the amount available for soft costs coverage for delays resulting from earthquake damage during construction, as well as the amount available for reconstruction, in the aggregate is only \$100.0 million, and any soft costs amount available will be used first to pay up to \$38.25 million in interest payments on the 2002 Bonds. The policy is a standard builder's all-risk policy for the Ballpark Facility and certain parts of the Ancillary Development (as defined herein) known as "East Village Square." To the extent insurance is available under both policies, payment under the business income insurance of a "delay in startup" nature will occur first.

The insurance coverage, however, may be limited, depending on the reason and scope of delay. For additional information regarding the availability of insurance for the Ballpark Project, see "**BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES—Insurance Available for Completion of the Ballpark Project—Insurance on Design, Construction and Timely Completion of the Ballpark Facility.**"

Funding Risks

As described in "**PLAN OF FINANCE FOR THE BALLPARK PROJECT,**" each of the City, the Padres, the Redevelopment Agency, and subject to the approval of the Executive Officer of the State Lands' Commission, the District has an obligation to fund certain portions of the total Ballpark Project. The inability of any of the parties to finance its contribution could significantly delay or prevent the completion of the Ballpark Project. Specifically, the City does not have specific information on the means by which the District will finance its commitment or of its ability to do so. The City and Redevelopment Agency have funds available, if necessary, to replace the District's commitment. Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to fund their remaining Ballpark Project financial obligations or land acquisition or infrastructure cost overrun obligations; and there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations. The Padres have also advised the City they are still seeking funding commitments, part of the proceeds of which the Padres would use for their Ballpark Facility funding commitment. In the event the Padres are unable to fund their commitment or obtain interim funding, such inability could have an adverse impact on the completion of the Ballpark Project. The MLB Commitment would be available to fund up to \$45.8 million of the Padres funding commitment for the Ballpark Facility but would not be sufficient to cover cost overruns payable by the Padres over

the current estimated amount of \$294.1 million,* nor would the MLB Commitment cover any amounts due from the Padres for land acquisition or infrastructure cost overruns (currently estimated to be approximately \$7.1 million).

Acquisition of Land

As of January 15, 2002, approximately \$85.0 million (of which \$72.8 million has been spent by the Redevelopment Agency) has been spent for parcels that have been acquired or are in the process of being acquired or condemned for the Ballpark Project. The estimated cost for acquiring the remainder of the land and the estimated amount for related litigation and consultants' costs aggregate \$22.1 million, but in some instances may change based upon valuations which may be established in pending or future condemnation proceedings. See "**THE BALLPARK PROJECT—Land Acquisition Program**" for information regarding the land acquired and to be acquired by the Redevelopment Agency.

The current estimate of land acquisition costs is approximately \$107.1 million. Under the Implementation Agreement, the Padres are solely responsible for land acquisition costs above \$100.0 million up to a maximum total of \$110.0 million. If land acquisition costs exceed \$110.0 million, the Padres and the Redevelopment Agency are each required to pay 50% of additional land acquisition costs up to a maximum total of \$130.0 million. While the Redevelopment Agency believes it has sufficient funds to cover such costs, the inability of the Padres or the Redevelopment Agency to fund such costs could significantly delay or prevent completion of the Ballpark Project. Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to fund their remaining land acquisition obligations; there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations; and the Padres have not obtained commitments for their contemplated borrowings. Neither the City nor the Authority can make any prediction as to the ability of the Padres to obtain such borrowings.

Guaranteed Maximum Cost of the Budgeted Amount Under the Ballpark Facility Design/Build Construction Contract Does Not Include Certain Recommencement Costs and Delays in Recommencement of Construction Could Increase Costs

SDBB had committed to a guaranteed maximum cost with regard to components of the Ballpark Facility comprising all of the current Ballpark Facility construction estimate under the Ballpark Facility Design/Build Construction Contract. Although SDBB has provided a guaranteed maximum cost of \$233.4 million for the actual construction of the Ballpark, such amount does not include adjustments for certain suspension costs or price escalations accruing after October 1, 2001. An allowance for these costs and price escalations through February 13, 2002 is included in the \$294.1 million Ballpark Facility estimate by the deduction of up to \$3.0 million in contractually permissible, discretionary deductible items. The Padres have advised the City that costs associated with the delays in recommencement beyond February 13, 2002 could result in cost increases for the Ballpark Facility at the rate of approximately \$1.0 million or more a month for approximately 64% of the subcontracted work and cost increases for the balance of the subcontracted work that, while anticipated to be modest initially, could also increase significantly if such delays are substantial. There can be no assurance that the final costs of the Ballpark Facility will not exceed the current Ballpark Facility estimate of \$294.1 million, especially if recommencement is delayed substantially beyond February 13, 2002. See "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of the Ballpark Facility due to delays in the recommencement of construction. Although the Padres are responsible for any increase in the cost of development of the Ballpark Facility over the current Ballpark Facility estimate of \$294.1 million (except those increases in cost associated with change orders requested by the City), if the Padres are unable to fund any such cost overruns, the development and completion of the Ballpark Project may be delayed significantly and otherwise adversely impacted.

* See "**THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

Guaranteed Maximum Price Has Not Been Established For a Portion of the Budgeted Amount for the Infrastructure Work

Although a guaranteed maximum price has been established under the Ballpark Infrastructure Design/Build Agreement, it does not cover \$3.3 million of the Infrastructure budget which is outside the scope of the Ballpark Infrastructure Design/Build Agreement, and certain portions of the Infrastructure Work are anticipated to be shifted from the scope of the Ballpark Infrastructure Design/Build Agreement which would result in the loss of the guaranteed maximum price for such work. Under the Implementation Agreement, the Padres have agreed to pay up to \$500,000 in additional infrastructure costs, if the infrastructure budget is exceeded. If the cost for such work exceeds the budgeted amount, including the additional \$500,000 paid by the Padres, the City (subject to its \$225.0 million overall maximum contribution to the Ballpark Project), the Redevelopment Agency, the CCDC and the Padres must endeavor cooperatively to locate additional funding. Should such event occur, the inability of the parties to find additional funding could delay or prevent the completion of the Ballpark Project. See "**Funding Risks**" for information regarding the funding risks. For additional information regarding the Infrastructure Work, see "**THE BALLPARK PROJECT—Infrastructure Work**."

Parking

The Final Subsequent Environmental Impact Report for the Ballpark Project and Ancillary Development (the "FSEIR") requires that 2,383 new parking spaces be provided for Major League Baseball games played at the Ballpark Facility. If the 2,383 required spaces are not provided, an additional significant impact could result that would require further environmental review and mitigation to allow the Ballpark Facility to operate, which could potentially delay the opening of the Ballpark Facility. The City, CCDC, and the Padres are working together to identify and offer adequate parking to meet the requirements of the FSEIR and to coordinate that parking with what will be provided for use by the Ancillary Development projects. If the 2,383 new parking spaces are not provided, Base Rental Payments pursuant to the Ballpark Facility Lease may be subject to abatement as described in "**Abatement**."

Litigation Affecting the Ballpark Project Could Cause Further Delays in Completion

There has been substantial litigation brought against the City and the Redevelopment Agency (as well as the District), relating to the Ballpark Project. In addition, the City has brought actions of its own, one to prevent an initiative ballot measure seeking to terminate the City's obligations under the MOU and the other to validate certain ratifying actions taken by the City Council relating to the Ballpark Project. Litigation brought against the City and the Redevelopment Agency for the most part has been brought on behalf of specific plaintiffs by a single attorney (exclusive of litigation brought against the District, and in which the City is now a defendant, or which involved the adequacy of the FSEIR). This litigation has substantially delayed the issuance of the 2002 Bonds and the full funding of the City's investment in the Ballpark Project.

Exclusive of the condemnation proceedings (dealing solely with valuation) initiated by the Redevelopment Agency, a total of 16 separate lawsuits have been filed against the City (13 such suits) or by the City or Redevelopment Agency (three such suits). All of the cases that have gone to trial have been decided in favor of the City or Redevelopment Agency with two of such cases still on appeal, one case subject to appeal and one case awaiting trial. For additional information regarding the issues raised in the litigation relating to the Ballpark Project, see "**LITIGATION—Litigation Involving the Ballpark Project**," **APPENDIX F—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS** and **APPENDIX I—FORM OF CO-BOND COUNSEL QUALIFIED OPINION**.

In a letter dated September 20, 2001, the attorney who brought a significant number of the lawsuits relating to the Ballpark Project threatened taking future actions pertaining to the Ballpark Project. It is uncertain what the nature or form of any such action would be, if any, or what effects any such action might have on the completion of the Ballpark Project. In a letter dated January 7, 2002, the same attorney questioned whether the City was obligated to make payments to the Bond Insurer if the Bond Insurer were making debt service payments on the 2002 Bonds, implying that such payments by the City may be illegal. As was found in the Simmons case, no such obligation existed. For additional information, see "**LITIGATION—Litigation Involving the Ballpark Project—*Simmons v. City of San Diego, et al.***" The Padres have informed the City that, on January 8, 2002, the Padres filed a complaint for malicious prosecution against the same attorney, alleging that such attorney acted

maliciously in bringing numerous claims against the Padres, that several of the claims filed by the attorney were not supported by any facts indicating that the claims were tenable and that the attorney's true motivation for bringing the claims was to improperly derail or delay the Ballpark Project, and seeking relief for damages incurred in the form of litigation costs and attorney's fees, as well as punitive damages. According to the Padres, an amended complaint was filed on February 5, 2002 (adding similar allegations regarding the Other Allegations in Simmons) and served on or about February 6, 2002. There can be no assurance that the Padres' complaint will not be further amended or that any other action will not be taken, nor can any prediction be made as to the outcome of the litigation.

There is also litigation pending against the District and the City and currently awaiting a trial on the merits, which seeks to prevent the District from utilizing its funds to purchase and to prevent the City from conveying, the Surface Parking Lots. Other litigation may occur. If the District is not permitted to purchase the Surface Parking Lots for \$21.0 million, the City (subject to the City's \$225.0 million overall maximum contribution to the Ballpark Project) and the Redevelopment Agency will purchase and develop the Surface Parking Lots and may scale back on expected improvement costs. The City Council has authorized such amount for expenditure up to \$19.1 million (subject to the City's \$225.0 million overall maximum contribution to the Ballpark Project), with the balance having been authorized for expenditure by the Redevelopment Agency.

Should any pending litigation be decided adversely against the City or should there be any further litigation directly or indirectly to prevent the City from using funds toward the Ballpark Facility after the 2002 Bonds are issued, the completion of the Ballpark Facility could be delayed or prevented. A portion of the current interest payable on the 2002 Bonds for up to approximately the first 30 months from the date of issuance of the 2002 Bonds will be funded by the proceeds of the 2002 Bonds (with the balance being paid from Base Rental Payments under the Ballpark Facility Lease). Should litigation prevent the completion of the Ballpark Facility within this 30-month capitalized interest period, the City would only be under a duty to pay 35.3% of the Base Rental Payments under the Ballpark Facility Lease until it had substantial use and occupancy of the Ballpark Facility. However, should litigation declare the Ballpark Facility Lease invalid, the City would have no duty to make any Base Rental Payments. No prediction can be made as to the nature of any future litigation or the outcome thereof.

In the event the Ballpark Litigation (as defined and described in "**LITIGATION—Litigation Involving the Ballpark Project**") is decided in favor of the City, the Ballpark Facility may be eligible for a tax-exempt refunding and, if a tax-exempt refunding is then available and economic, it is expected the City would consider defeasing and redeeming the 2002 Bonds at the earliest possible date. The 2002 Bonds are subject to an optional call, at par plus accrued interest, but with no premium, on or after February 15, 2005. For additional information, see "**THE 2002 BONDS—Redemption Provisions—Optional Redemption.**" See also "**PLAN OF DISTRIBUTION**" for information regarding a call right in favor of the Underwriter with respect to the 2002 Bonds if the Ballpark Litigation is decided against the validity of the 2002 Bonds, the Indenture or Ballpark Facility Lease.

Seismic Risks and Other Events of Force Majeure

The Ballpark Project is located within a seismically active area, and damage from an earthquake can range from total destruction of the Ballpark Project, to destabilization or liquefaction of the soils, to little or no damage at all. PCL has obtained earthquake insurance for the Ballpark Facility and the East Village Square for coverage up to \$100.0 million annual aggregate during the construction of the Ballpark Facility. There is no guarantee that such insurance will fully cover any loss resulting from a seismic activity during the construction of the Ballpark Facility. In addition, the City is not required to maintain earthquake coverage pursuant to the terms of the Ballpark Facility Lease and it is therefore expected that the Padres will not be required to maintain such insurance under the Joint Use and Management Agreement.

Construction and operation of the Ballpark Project are also at risk from other events of force majeure, such as damaging storms, winds and floods, tsunamis, fires and explosions, strikes and lockouts (but excluding strikes or lockouts affecting Major League Baseball), sabotage, wars, blockades, riots and spills of hazardous substances, among other events. Construction and operations may also be stopped or delayed from non-casualty events such as discovery of archaeological artifacts, changes in law, revocation or revision of permits, and litigation, among other things.

Depending upon the nature and scope of military activities in which the United States becomes involved in response to the Attacks and responses thereto, it is possible that the completion of the Ballpark Facility could be delayed due to the availability of qualified labor or materials. Although it cannot be determined which, if

any, adverse effects may occur, all of the steel for the Ballpark Facility has been purchased and is on site and most of the remaining structural materials are believed to be available within the United States. While certain façade treatments of the Ballpark Facility are being sought from at least one Asian country, should the same be unavailable, a substitute material could be utilized.

As described in "Ballpark Project Funding and Completion Risks" and "BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES," capitalized interest is expected to provide a portion of the current interest payments for only up to approximately 30 months (with Base Rental Payments under the Ballpark Facility Lease funding the balance) and insurance policies may only provide limited additional funds for debt service on the 2002 Bonds and then only in limited circumstances. Also, availability of the insurance may be limited depending on the reason and scope of delay.

Limited Obligations

The Base Rental Payments are payable from the general funds of the City. Neither the 2002 Bonds nor the obligation of the City to make Base Rental Payments under the Ballpark Facility Lease constitutes an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The Authority has no taxing power. Neither the 2002 Bonds nor the obligation of the City to make such Base Rental Payments constitutes an indebtedness of the City, the State of California, or any political subdivision thereof, within the meaning of any constitutional or statutory debt limitation or restriction.

Limited Recourse Upon Default; No Acceleration of Base Rental

Failure by the City to make Base Rental Payments or other payments required to be made under the Ballpark Facility Lease, or failure by the City to comply with any other terms, covenants or conditions contained in the Ballpark Facility Lease or Indenture for a period of 30 days after written notice of such failure has been given by the Authority or the Trustee, constitutes an Event of Default under the Ballpark Facility Lease and permits the Authority or the Trustee to pursue any and all remedies available under the terms of the Ballpark Facility Lease. In the Event of a Default, notwithstanding anything in the Ballpark Facility Lease or in the Indenture to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE BASE RENTAL PAYMENTS OR OTHERWISE DECLARE ANY BASE RENTAL PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE, NOR SHALL THE AUTHORITY OR THE TRUSTEE HAVE ANY RIGHT TO REENTER OR RELET THE LEASED PROPERTY.

The enforcement of any remedies provided in the Ballpark Facility Lease and the Indenture could prove both expensive and time consuming. If the City defaults on its obligation to make Base Rental Payments with respect to the Leased Property, the Authority or the Trustee may commence an action to recover any unpaid Base Rental Payments and enforce, by writ of mandate, any other term or provision of the Ballpark Facility Lease. There is no remedy of acceleration of the total Base Rental Payments due over the term of the Ballpark Facility Lease, and the Trustee would be required to seek a separate judgment each year for that year's defaulted Base Rental Payments.

The enforceability of the rights and remedies of the registered owners of the 2002 Bonds and the obligations incurred by the City are also subject to the following: Title 11 of the United States Code (the "Bankruptcy Code") and applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the Federal or State government, if initiated, could subject the registered owners of the 2002 Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently entail risks of delay, limitation, or modification of the principal legal documents or their rights.

Limited Insurance Coverage

The Ballpark Facility Lease obligates the City to keep in force insurance against the loss and use of the Ballpark Facility as a result of damage to the Leased Property caused by fire, lightning, vandalism, sprinkler

system leakage, and boiler loss; there is no requirement to maintain earthquake insurance. The Ballpark Facility Lease also obligates the City to keep in force insurance against loss of use and occupancy of the Ballpark Facility as a result of any such damage for up to two years.

The City and the Authority make no representation as to the ability of any insurer to fulfill its obligations under any insurance policy obtained pursuant to the Ballpark Facility Lease and no assurance can be given as to the adequacy of any such insurance to fund necessary repairs or replacement or to pay principal of and interest on the 2002 Bonds when due. In addition, certain insurance may not be available for the Leased Property, and even if available, certain risks may not always be covered. For additional information regarding insurance on the Ballpark Project, see **"BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES."**

Bankruptcy Risks

The City is a unit of state government and therefore is not subject to the involuntary procedures of the Bankruptcy Code. However, pursuant to Chapter 9 of the Bankruptcy Code, the City may seek voluntary protection from its creditors for purposes of adjusting its debts. In the event the City were to become a debtor under the Bankruptcy Code, the City would be entitled to all of the protective provisions of the Bankruptcy Code as applicable in a Chapter 9 proceeding and an owner of a 2002 Bond would be treated as a creditor in a municipal bankruptcy. Among the adverse effects of such a bankruptcy might be: (i) the application of the automatic stay provisions of the Bankruptcy Code, which, until relief is granted, would prevent collection of payments from the City or the commencement of any judicial or other action for the purposes of recovering or collecting a claim against the City; (ii) the avoidance of preferential transfers occurring during the relevant period prior to the filing of a bankruptcy petition; (iii) the occurrence of unsecured or court-approved secured debt which may have a priority of payment superior to that of registered owners of 2002 Bonds; and (iv) the possibility of the adoption of a plan for the adjustment of the City's debt without the consent of all of the registered owners of 2002 Bonds, which plan may restructure, delay, compromise, or reduce the amount of the claim of the registered owners if the Bankruptcy Court finds that such a plan is fair and equitable. In addition, the Bankruptcy Code might invalidate any provision of the Ballpark Facility Lease or the 2002 Bonds that makes the bankruptcy or insolvency of the City an Event of Default.

General Funds/Base Rental Payments

Base Rental Payments are to be paid by the City from any and all general funds legally available to the City. In the event the City's revenue sources are less than its total Base Rental and other obligations, the City could choose to fund other municipal services before making Base Rental Payments. Should such a failure occur, it would be an Event of Default under the Ballpark Facility Lease and the Trustee could pursue available remedies. The same result could occur if, because of State Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues. The City's appropriations currently do not exceed the limitation on appropriations under Article XIII B of the California Constitution. For additional information regarding the City's limitation on appropriations, see **APPENDIX A—THE CITY OF SAN DIEGO—Limitations on Taxes and Appropriations.**

There are no legal limitations on the ability of the City to enter into other obligations that may constitute additional charges against its general funds. To the extent that additional obligations are incurred by the City, the general funds available to make Base Rental Payments may be decreased. The City is currently liable on other obligations payable from its general funds and may incur additional obligations payable from its general funds. For additional information regarding the City's other obligations, see **APPENDIX A—THE CITY OF SAN DIEGO—Bonded and Other Indebtedness.**

Abatement

Base Rental Payments may be abated in accordance with the Ballpark Facility Lease if there is substantial interference with the City's use and possession of any portion of the Leased Property due to damage, destruction, title defect, or condemnation. The amount of abatement shall be such that the resulting Base Rental Payments represent fair consideration for the use and possession of the remaining portions of the Leased Property as to which such damage, destruction, title defect or condemnation do not substantially interfere with the use and right of possession by the City. Such abatement shall continue for the period commencing with the date of the substantial interference due to damage, destruction, title defect or condemnation and ending with the substantial completion of the work of repair or replacement of the portions of the Leased Property so damaged, destroyed, defective, or

condemned. Such reduced or abated Base Rental Payments, together with other monies available to the Trustee, may not be sufficient, after exhaustion of applicable use and occupancy insurance proceeds and depletion of amounts in the Reserve Account and in the Interest and Principal Accounts of the Bond Fund, to pay principal of and interest on the 2002 Bonds in full or in a timely manner. The failure of the City to make Base Rental Payments because of an abatement would not, under such circumstances, constitute a default under the Ballpark Facility Lease.

Under the Ballpark Facility Lease, the City must maintain use and occupancy insurance coverage in an amount sufficient to make Base Rental Payments for a period of at least twenty-four months during which the use of the Leased Property is interrupted as a result of any of the hazards covered by the fire, lightning, and extended coverage insurance (which is expected to exclude earthquake coverage) which the City is required to maintain. Such insurance shall be maintained throughout the term of the Ballpark Facility Lease. There can be no assurance that in the event of such interruption any amounts will be payable pursuant to such insurance or will be adequate to cover Base Rental Payments abated or reduced during the period of interruption.

The Ballpark Facility Lease requires the City to apply casualty insurance proceeds to repair, reconstruct, or replace the Leased Property if to do so would fully restore the Leased Property. In the event that the casualty insurance proceeds are not sufficient to fully restore the Leased Property, the City may elect, but is not required, to budget and appropriate additional funds and fully restore the Leased Property, subject to complying with any applicable law or voter requirements. If the City does not make such election and the available casualty proceeds are at least sufficient to redeem all of the Outstanding 2002 Bonds, at par plus accrued interest, then the proceeds shall be used for that purpose. In the event the proceeds are not so sufficient, the City may elect, but is not required, to budget and appropriate additional funds so that the available casualty proceeds and such additional funds are sufficient to redeem all of the Outstanding 2002 Bonds at par plus accrued interest, in which case the same shall be used for this purpose. Further, the Ballpark Facility Lease provides that if there are not sufficient Net Proceeds received from casualty insurance so as to redeem all of the Outstanding 2002 Bonds and the City elects not to budget and appropriate additional funds necessary to redeem all of the Outstanding 2002 Bonds, then such proceeds will be used to repair, reconstruct, or replace the Leased Property. For additional information regarding the Ballpark Facility Lease and insurance available for the Ballpark Project, see **"BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES"** and **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—Ballpark Facility Lease.**

The amount of Net Proceeds received from an award in condemnation or payment under a title insurance policy will depend upon the extent of the condemnation of, or title defects relating to, the Leased Property. If any portion of the Leased Property has been affected by condemnation or a title defect which will result in an abatement of Base Rental Payments payable by the City under the Ballpark Facility Lease, then the Trustee shall use Net Proceeds available from condemnation or any policy of title insurance to redeem Outstanding 2002 Bonds.

Proposition 62

For a discussion of the potential impact of the Proposition 62 decision on the City's finances, see **APPENDIX A—THE CITY OF SAN DIEGO—Municipal Government and Financial Information.**

Proposition 218

On November 5, 1996, the voters of the State approved an initiative to amend the California Constitution known as the Right to Vote on Taxes Act ("Proposition 218"). Proposition 218 requires voter approval of general or special taxes imposed by the City, and subjects local taxes, assessments, fees and charges to the possibility of reduction or repeal through the initiative power. For a discussion of the potential impact of Proposition 218 on the City's finances, see **APPENDIX A—THE CITY OF SAN DIEGO—Municipal Government and Financial Information.**

Other Financial Matters

Due to recent economic downturns in the State of California and the United States and the consequences of the Attacks and responses thereto, it is possible that the general revenues of the City will decline, particularly those based on tourism and conventions. Due to the slowing economy, prior to the Attacks, for the first two months of the current fiscal year ended August 31, 2001, TOT revenues were down by approximately 6% from the same period in the prior fiscal year. Due to the Attacks and the continuing downturn in the economy, TOT

revenues for the first five months (ending November 30, 2001) were down by approximately 13.5% from the same period of the prior fiscal year. Sales Tax revenues to the City for the first six months (ended December 31, 2001) of the current fiscal year were approximately 1% above the Sales Tax revenues received for the same period of the prior fiscal year. Through the first six apportionments (ended January 16, 2002) of Fiscal Year 2002, Property Tax revenues received by the City were up approximately 7% from the same period in the prior fiscal year. Motor Vehicle License Fee revenues to the City for the first six months (ended December 31, 2001) of the current fiscal year were approximately 5% above the Motor Vehicle License Fee revenues received for the same period of the prior fiscal year. It is anticipated that the City Manager will present a report on the City's Fiscal Year 2002 financial status to the City Council during February 2002. This report will include an update on revenues and the impact of current economic conditions. However, at present, the magnitude of the TOT revision is unknown. See **"PRINCIPAL PARTICIPANTS IN THE DEVELOPMENT OF THE BALLPARK PROJECT—The City"** for information regarding newspaper articles describing events suggesting the reduction of tourism in the City since the Attacks. Furthermore, if the opening of the largest of the three hotel projects to be built by an affiliate of the Padres is delayed beyond April 1, 2004, the City will be relying upon an unsecured obligation of John Moores (the principal owner of the Padres) and the Padres to pay to the City "in lieu" payments for a portion of the expected (but not received) TOT revenues. For additional information, see **"THE REDEVELOPMENT PROJECT—Hotels."** Certain other financial matters may have a detrimental impact on the City's general funds, and, accordingly, may reduce the City's ability to make Base Rental Payments. See **"LITIGATION—Litigation Potentially Adversely Affecting the General Funds of the City"** for information regarding pending litigation which could adversely affect the City's general funds. See **APPENDIX A—THE CITY OF SAN DIEGO—Municipal Government and Financial Information—Fiscal Year 2000 and Vehicle License Fee Reduction** for information on the loss of vehicle license fee revenue by the City; **APPENDIX A—LIMITATIONS ON TAXES AND APPROPRIATIONS—Article XIII A of the California Constitution** for information regarding pending litigation in another County in California which could have possible adverse effects on the amount of property tax revenues available to the City; and **APPENDIX A—THE CITY OF SAN DIEGO—Bonded And Other Indebtedness—Proposed Additional General Fund Lease Commitments** for information on the possible incurrence by the City of additional financial obligations payable from the general funds on a parity with Base Rental Payments.

THE BALLPARK PROJECT

The Ballpark Project consists of the Ballpark Facility, the acquisition of certain land for the Ballpark Facility and other related land acquisitions, improvements and infrastructure. The Ballpark Facility will occupy approximately 18 acres in the East Village neighborhood of downtown San Diego, bordered by J Street on the north, 7th Avenue on the west, 10th Avenue on the east, Park Boulevard on the south, and a frontage road along the railroad tracks between Park Boulevard and 7th Avenue. The following discussion describes certain components of the Ballpark Project.

The origins of the Ballpark Project can be found in the MOU, which was executed by the City, upon direction given by the voters through the adoption of "Proposition C" in November 1998. The MOU in broad terms set parameters for the nature and scope of the project and imposed certain financial commitment limits, only some of which could be modified. In *City v. Dunkl* and *Zoebisch v. Abdelnour*, a California Court of Appeal found that the agreements implementing the MOU, such as the Implementation Agreement, were administrative acts and therefore not subject to voter initiative or voter referendum, and that the only legislative act was the MOU, which was approved by the voters.

Since the approval by the voters, there have been a number of changes or modifications to the rights and obligations of the parties set forth in the MOU. By virtue of increases in the construction costs, the estimated cost for the design and construction of the Ballpark Facility (which increase, the MOU requires the Padres to pay) has been increased from \$267.5 million to \$294.1 million* and may increase further. As a consequence of the terms of the Implementation Agreement and the Second Implementation Agreement, the total of the estimate for the Infrastructure Work (the "Infrastructure Estimate") is \$51.3 million. The current total estimate for land acquisition costs (the "Land Acquisition Estimate") has increased from \$100.0 million to \$107.1 million. Initially, under the MOU, the Redevelopment Agency was to invest up to \$50.0 million in the Ballpark Project. This investment has been previously increased to \$61.0 million, and has been increased further to an aggregate \$76.4 million by action of the City Council and the Redevelopment Agency taken on November 20, 2001 to increase the

* See *"Ballpark Facility Design/Build Contract"* for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

Redevelopment Agency's investment. This does not include an additional \$8.5 million approved by the Redevelopment Agency board in November 2001 for use related to the Ballpark Project. For additional information regarding the sources of funds from the Redevelopment Agency for the Ballpark Project, see Footnote 2 to the Table under the caption "**PLAN OF FINANCE FOR THE BALLPARK PROJECT—Sources and Uses of Ballpark Project Funds.**" Furthermore, the City's financing plan no longer contemplates reliance to pay debt service on the building of a convention center expansion "headquarters hotel" referred to in the MOU and its generation of TOT. In addition, the original obligation under the MOU of the City to purchase certain lands and develop the P1 Parking Garage has been modified pursuant to the Implementation Agreement such that the City will purchase or cause to be purchased the land for the P1 Parking Garage, which the City will lease to the Padres and on which the Padres will be required to build the P1 Parking Garage. In addition, it is contemplated that in the near future, the City Council will consider an amendment to the Implementation Agreement, which would further require the Padres (rather than the City) to purchase the land and construct the P1 Parking Garage. The expiry date of the MOU has been extended on a number of occasions with the current extension set to expire on February 19, 2002. Upon satisfaction of the conditions subsequent in the MOU, including those related to the City's funding obligation, the MOU is extended by its terms to the final maturity of the 2002 Bonds.

Pursuant to the MOU, the City Council may agree to amend or modify the MOU without a vote of the electorate only if the amendments or modifications do not materially (i) decrease the rights or increase the obligations of the City; (ii) increase the financial commitments of the City; or (iii) decrease revenue to the City. In the opinion of the City Attorney of the City, any changes heretofore made in the rights and obligations of the parties set forth in the MOU are valid and binding and do not require voter approval, and the City Council has so found.

Ballpark Facility

General

The current Ballpark Facility estimate is \$294.1 million*, which includes a guaranteed maximum cost for the construction budget under the Ballpark Facility Design/Build Construction Contract of \$233.4 million. See "**RISK FACTORS – Ballpark Project Funding and Completions Risks – Guaranteed Maximum Cost of the Budgeted Amount Under the Ballpark Facility Design/Build Construction Contract Does Not Include Certain Recommencement Costs and Delays in Recommencement of Construction Could Increase Costs**" for a discussion of the impact of the current delay (and possible future delays) in recommencement on such guaranteed maximum cost. The design for the Ballpark Facility, which includes all working drawings, is completed and is included in the Ballpark Facility Design/Build Construction Contract. The Ballpark is designed as a steel and concrete structure designed to fit into the general design of other nearby San Diego structures. The Ballpark Facility will have capacity for 46,000 spectators, with 42,000 fixed seats. The Ballpark Facility will have 60 to 63 luxury suites and player and fan amenities consistent with other newly constructed major league baseball parks. The Park, which will be located immediately adjacent to the Ballpark's center field, will be open to the public when there is not an event taking place and will be surrounded by new retail, office and, potentially, residential development.

Construction of the Ballpark Facility began in May 2000 and was suspended in October 2000 due to certain outstanding litigation related to the Ballpark Project. It is anticipated that the Ballpark Facility construction will recommence shortly after receipt by the City of the proceeds from the 2002 Bonds.

HOK Sport of Kansas City ("HOK") is the executive architect of the Ballpark Facility. HOK has been involved in more than 500 projects dedicated solely to sports architecture. The Major League Baseball parks designed by HOK include Comerica Park in Detroit, Michigan, Enron Field in Houston, Texas, and Pacific Bell Park in San Francisco, California.

Ballpark Facility Design/Build Contract

The City, acting exclusively by and through PCL, as its procurement consultant, (the City, in such capacity is referred to as the "Principal"), has entered into the Ballpark Facility Design/Build Contract with SDBB, a joint venture comprised of Clark Construction Group, Inc., a Maryland corporation, Nielsen Dillingham Builders, a Nevada corporation, and Douglas E. Barnhart, Inc., a California corporation.

* See "**Ballpark Facility Design/Build Contract**" for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

PCL has retained Hines Interests Limited Partnership (the "Development Manager") to act as the development manager for the construction of the Ballpark Facility. The Development Manager is a real estate development company with offices in 71 cities and 12 countries. Over the past forty years, the Development Manager has completed 552 projects totaling 143 million square feet. The Clark Construction Group, Inc. is a general contracting firm that has completed such sports facility projects as the FedEx Field in Washington, D.C. and the Oriole Park at Camden Yards in Baltimore, Maryland.

The Ballpark Facility Design/Build Contract requires SDBB to construct the Ballpark Facility based on working drawings and specifications of the architect selected by PCL. According to the Padres, SDBB had committed to a guaranteed maximum cost (the "GMC") with respect to the construction of all components of the Ballpark Facility for an aggregate amount of \$233.4 million under the Ballpark Facility Design/Build Contract, but this amount does not include adjustments for certain suspension costs or price escalations accruing after October 1, 2001. An allowance for these costs through February 13, 2002 is included in the current Ballpark Facility estimate of \$294.1 million. The current Ballpark Facility estimate is based upon the assumption that recommencement of work on the Ballpark would have occurred on or about January 1, 2002 and includes an estimate of approximately \$1.25 million for certain suspension costs accruing after October 1, 2001 and before January 1, 2002. The Padres, which are responsible for Ballpark Facility costs in excess of the current Ballpark Facility estimate of \$294.1 million, have advised the City that they were able to maintain the Ballpark Facility estimate at \$294.1 million for costs accruing up to February 13, 2002, by the deduction of up to \$3.0 million in contractually permissible, discretionary deductible items. The Padres have advised the City that costs associated with the current delay in recommencement beyond February 13, 2002 will result in cost increases for the Ballpark Facility at the rate of approximately \$1.0 million or more per month for approximately 64% of the subcontracted work and cost increases for the balance of the subcontracted work that, while anticipated to be modest initially, could also increase significantly if such delays are substantial. There can be no assurance that the final costs of the Ballpark Facility will not exceed the current Ballpark Facility estimate of \$294.1 million, especially if recommencement occurs significantly after February 13, 2002.

SDBB has committed in the Ballpark Facility Design/Build Contract to a contractor's contingency in an amount equal to \$9.75 million, which may be used only for (i) overtime necessary to meet the schedule; (ii) the purchase of items that may have been omitted from SDBB's awarded sub-contracts, but which nonetheless constitute the scope of work; and (iii) any other costs as mutually agreed to in writing by the Principal and SDBB. The amount for these contingencies is included in the current GMC of \$233.4 million.

Other components of the current Ballpark Facility estimate of \$294.1 million, which are not included in the GMC, include architecture and engineering fees and reimbursables, non-construction related costs associated with recommencement of construction, utility connection fees, permits and fees, certain insurance costs, a certain portion of the furniture, fixtures, and equipment, project office costs, and project management costs. A Principal's construction contingency, which is approximately \$6.0 million, and which is outside of the GMC, may be used by the Principal for a variety of costs, including but not limited to (i) cost increases over the GMC resulting from delays in construction which are not the result of the contractor's breach; (ii) scope changes; and (iii) errors and omissions on the drawings not covered by the Ballpark Facility Design/Build Contract.

To allow certain work to move forward prior to the receipt of proceeds from the 2002 Bonds, the City, the Padres, and PCL agreed that, at the Padres' risk, the notice to proceed with on-site construction related activities (the "Project Site Notice to Proceed") could be issued prior to the issuance of the 2002 Bonds. The City issued such Project Site Notice to Proceed in May 2000, and will issue a second Project Site Notice to Proceed upon the issuance of the 2002 Bonds. Approximately 21.0% of the current Ballpark Facility estimate of \$294.1 million had been spent as of January 15, 2002 on various portions of the Ballpark Facility, including all demolition activities, all foundation work, some portion of the underground utility work, partial construction of the concrete structure, and work relating to the creation of the main seating bowl of the Ballpark.

The expected Substantial Completion Date will be approximately 24 months after the closing of the sale and issuance of the 2002 Bonds, assuming that a second Project Site Notice to Proceed is issued on such date. The Substantial Completion Date may be extended if there is a delay caused by (i) failure of the City, the Development Manager, or PCL to perform any of their respective obligations under the Ballpark Facility Design/Build Contract (subject to any applicable cure periods) or any intentional or reckless malfeasance by the Principal or the Principal's agents or employees or the Principal's failure to make progress when due (including any applicable cure periods), or any other activity on the job site by the City, the Development Manager, or PCL which

delays certain critical paths of the work as described in the Ballpark Facility Design/Build Contract (which does not include actions of the City acting in its governmental capacity); (ii) unusual and extreme weather; (iii) war or national conflicts; (iv) fires; (v) floods not caused by SDBB; (vi) civil disturbances; (vii) embargoes; (viii) riot; (ix) vandalism caused by the City or its separate contractors; (x) sabotage caused by the City or its separate contractors; (xi) labor disputes; (xii) unavoidable casualties; or (xiii) changes in laws. These types of delays would not be covered by the Liquidated Damages.

Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to fund their remaining Ballpark Project financial obligations; there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations; and the Padres have not obtained commitments for their contemplated borrowings. Neither the City nor the Authority can make any prediction as to the ability of the Padres to obtain such borrowings. The MLB Commitment would be available to fund up to \$45.8 million of the Padres funding commitment for the Ballpark Facility but would not cover cost overruns payable by the Padres which results in an overall actual cost of the Ballpark Facility exceeding the current budgeted amount of \$294.1 million.* Under the Ballpark Design/Build Procurement Consultant Agreement, PCL has agreed to obtain an insurance policy pursuant to which the insurer will pay an amount equal to the daily current interest accrued on the 2002 Bonds for up to 184 days of current interest, if substantial completion of the Ballpark Facility is delayed beyond the date that is 4 months and 60 days after the currently expected Substantial Completion Date solely as a result of any negligent or intentionally harmful act or omission by SDBB, and subject to the requirement that PCL shall have fully utilized its contingency allocation in endeavoring to meet the timely performance of its contractual obligations and shall have mitigated losses incurred as a result of any negligent or intentionally harmful act or omission by a licensed general contractor under such a design/build construction contract. Amounts payable under the policy are reduced by any liquidated damages paid to PCL by SDBB, whether or not paid by PCL to the Trustee. The insurer may take up to 30 days to investigate a claim for payment. A force majeure event will not be the basis for a payment under the policy and could delay a payment under the policy beyond the time for which capitalized interest is available to pay a portion of interest on the 2002 Bonds. The Ballpark Design/Build Procurement Consultant Agreement provides that the City shall be an additional insured under such insurance policy and all proceeds under such insurance policy shall be paid to the Trustee. However, the City has waived its right to be an additional insured.

In addition, PCL is obtaining "delay in startup" business income insurance under which, if physical damage or destruction to the Ballpark occurs during construction from a covered peril and delays are encountered to reconstruct, there will be available "soft costs" insurance up to \$100.0 million; up to the first \$38.25 million of such amount will go to the Trustee to pay the interest that accrues on the 2002 Bonds during any delay in substantial completion of the Ballpark Facility beyond the Substantial Completion Date (with a fifteen day waiting period, except for the peril of earthquake, for which the waiting period is thirty days) due to casualty and other perils covered by the policy, the principal ones of which are fire and earthquake. However, the amount available for soft costs coverage for delays resulting from earthquake damage during construction, as well as the amount available for reconstruction, in the aggregate is only \$100.0 million, and any soft costs amount available will be used first to pay up to \$38.25 million in interest payments on the 2002 Bonds. The policy is a standard builder's all-risk policy for the Ballpark Facility and the East Village Square. To the extent insurance is available under both policies, payment under the business income insurance of a "delay in startup" nature will occur first. For additional information regarding insurance available for the Ballpark Project, see **"BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES—Insurance Available for Completion of the Ballpark Project."**

The Padres have guaranteed the obligations of PCL as outlined in the Ballpark Design/Build Procurement Consultant Agreement. See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Design/Build Procurement Consultant Agreement** for additional information regarding the Padres' guarantee of obligations of PCL.

See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Facility Design/Build Contract** for additional information on the Ballpark Facility Design/Build Contract.

* See *"Ballpark Facility Design/Build Contract"* for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

Chilled Water Facility

It is contemplated that the Ballpark Facility will not have its own chilled water facility, which is required for the operation of air conditioning within the Ballpark Facility. However, the Padres, JMI Realty, Inc. ("JMIR") or any of their affiliates has agreed to construct a common chilled water facility that will serve the Ballpark Facility, as well as other projects within the Ballpark Project and the Redevelopment Project. In connection with the development of such chilled water facility, it is further contemplated that the City will authorize the placement of pipes in the public rights-of-way without the requirement for a franchise agreement or imposition of a franchise fee, unless such chilled water facility begins to serve segments of the public other than the City facilities or the Padres' or JMIR's private developments, in which case a franchise agreement will be required. Failure of the Padres, JMIR, their affiliates, or any other party to provide a chilled water facility may result in the Ballpark Facility not having air conditioning until an alternative source is found. In anticipation of such an event, the Ballpark Facility is designed with connections for a temporary truck trailer mounted chiller that can provide cooling for the Ballpark Facility in the event that the chilled water facility is not available.

Infrastructure Work

General

The Ballpark Project includes roads, sidewalks, other public facilities, and public utilities related to the Ballpark Facility (the "Infrastructure Work"). Under the MOU, the City, the Redevelopment Agency, and the CCDC are responsible for the design and construction of the Infrastructure Work, the budget for which totals \$51.3 million, and includes, approximately: (i) \$27.6 million to cover the costs under the Ballpark Infrastructure Design/Build Agreement; (ii) approximately \$16.0 million for dry utility work, including the relocation of electrical, gas, cable, fiber optics, and telecommunications facilities, which is to be funded by the private franchise utility companies performing the work; (iii) \$2.6 million for planning and predevelopment work; and (iv) \$5.1 million for other costs, including City project administration costs, owner controlled insurance program costs, demolition costs, consultants' costs and other infrastructure improvements. As of January 15, 2002, expenditures for Infrastructure Work have totaled approximately \$19.5 million (of which \$15.1 million is associated with the Ballpark Infrastructure Design/Build Agreement). These amounts include approximately \$2.3 million that (i) has been authorized for use by the City for certain infrastructure work and (ii) is currently being spent by the City. See "**PLAN OF FINANCE FOR THE BALLPARK PROJECT**" for information regarding the sources of funding for the major components of the Ballpark Project, including the Infrastructure Work component.

Ballpark Infrastructure Design/Build Agreement

The Infrastructure Work to be performed under the Ballpark Infrastructure Design/Build Agreement includes certain demolition and removal of existing structures, coordination of dry utility relocation work, railroad modifications, and the construction of the Surface Parking Lots, new streets, streetscapes, and landscaping to support the Ballpark Project.

The Ballpark Infrastructure Design/Build Agreement provides for a set amount not-to-exceed \$27.6 million for a portion of the infrastructure work related to the Ballpark Project, which consists of two components: a guaranteed maximum price ("GMP") not-to-exceed \$26.5 million and certain reimbursable costs not-to-exceed \$1.1 million. The GMP is comprised of all hard construction costs and the fixed fee necessary for the construction and design of the work under the Ballpark Infrastructure Design/Build Agreement, and includes a contingency fund which may be available to fund change orders if it contains sufficient surplus as determined by the mutual agreement of the City and Sverdrup Civil, Inc., a Design and Construction Manager (the "DCM").

Further, it is expected that a certain portion of the Infrastructure Work estimated to cost approximately \$7.2 million currently within the scope of the Ballpark Infrastructure Design/Build Agreement is anticipated to be removed from the scope of the Ballpark Infrastructure Design/Build Agreement. The City expects to contract for such portion of the Infrastructure Work together with an additional \$3.3 million of Infrastructure Work currently outside the scope of the Ballpark Infrastructure Design/Build Agreement, and estimates that such portions of the Infrastructure Work will be completed by the Substantial Completion Date.

As of January 15, 2002, the City has expended approximately \$15.1 million under the Ballpark Infrastructure Design/Build Agreement for work which includes elements relating to the clearing of the Ballpark Facility footprint, which is a critical activity for the construction of the Ballpark Facility. This amount includes approximately \$2.3 million that has been authorized for use by the City for certain infrastructure work and is currently being spent by the City. Specific elements include demolition activities; work related to wet utilities; preparation of 100% of the design documents for the new public rights-of-way and 100% of the design documents for the Surface Parking Lots; preparation of the final GMP; and preparation of bidding plans and project procedures.

The Ballpark Infrastructure Design/Build Agreement provides that any costs in excess of the GMP shall be the sole responsibility of the DCM, unless the City approves a change order authorizing an increase in the GMP. The City will pay to the DCM compensation in installments based on a phased funding schedule agreed to by the City and the DCM. As an incentive to minimize costs, and complete the contracted work for less than the GMP, the City will pay the DCM an additional fee from funds remaining in the contingency fund subsequent to the completion of the work under the Ballpark Infrastructure Design/Build Agreement.

The anticipated substantial completion date for the work under the Ballpark Infrastructure Design/Build Agreement is March 31, 2002, which does not include approximately \$7.2 million in aggregate budgeted for Infrastructure Work that is anticipated to be removed from the Ballpark Infrastructure Design/Build Agreement. (The portion of the work that is anticipated to be removed from, or is outside the scope of, the Ballpark Infrastructure Design/Build Agreement is expected to be completed by the opening of the Ballpark Facility.) The March 31, 2002 date can only be extended by a change order approved by the City authorizing such extension. No extension of time will be granted by the City unless the DCM can demonstrate that the extension of the completion date was necessitated by unforeseeable causes beyond the control and without the fault or negligence of both the DCM and its contractors or suppliers. The Ballpark Infrastructure Design/Build Agreement also provides for up to 20 working days to account for weather delay or force majeure events affecting the ability of the DCM or its contractors, subcontractors, or suppliers to perform their respective work.

The Ballpark Infrastructure Design/Build Agreement obligates the DCM to provide performance and payment bonds in favor of the City. However, to avoid duplication of bond costs, the DCM, acting as the City's agent, is requiring subcontractors to provide performance and payment bonds for all demolition and construction work. The payment bonds will be in an amount equal to 80% of the GMP pertaining to such remaining work and will cover the performance by the DCM and its subcontractors of the Ballpark Infrastructure Design/Build Agreement work and payments owing by the DCM to its contractors and subcontractors. The City will reimburse the DCM for the bond premiums from the construction budget.

See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Infrastructure Design/Build Agreement** for additional information regarding the Ballpark Infrastructure Design/Build Agreement.

Land Acquisition Program

The current land acquisition estimate for the Ballpark Project totals approximately \$107.1 million. This estimate covers land assembly costs relating to property under the Ballpark Facility, certain new public rights-of-way, the parking facilities, and East Village Square, which is adjacent to the Park and is a component of the Redevelopment Project. The land assembly costs for such property includes the purchase price, the relocation of eligible tenants, goodwill payments for relocated businesses, and indirect expenses associated with acquisition of the property, all of which are included in the current estimate. The land has been, or will be acquired by condemnation or threat of condemnation by the Redevelopment Agency, or by negotiated sale by the Redevelopment Agency and the Padres. It is contemplated that the City Council will consider an amendment in the near future to the Implementation Agreement, which would reduce the land acquisition estimate by \$6.0 million to reflect the commitment of the Padres to purchase, for that amount, the land for the P1 Parking Garage. If such an arrangement is approved by the City Council, the amount required to be contributed to the Ballpark Project by the Redevelopment Agency will be reduced by an equal amount. See Footnote 7 to the Table under the caption "**PLAN OF FINANCE FOR THE BALLPARK PROJECT—Sources and Uses of Ballpark Project Funds,**" for additional information regarding the acquisition of land for the P1 Parking Garage. See "**THE REDEVELOPMENT PROJECT**" for additional information regarding East Village Square.

The following table shows, as of January 15, 2002, the status of land acquisitions the Ballpark Facility and the remainder of the Ballpark Project:

| | <u>Amount on Deposit, Paid or Expected to be Paid</u> |
|--|---|
| A. Ballpark Facility | |
| 1. Aggregate amount paid for parcels acquired and for which values have been agreed upon. | \$ 60,100,000 ⁽¹⁾ |
| 2. Amount of aggregate deposits paid for parcels acquired but for which there are valuation disputes. | \$ 0 |
| B. Remainder of the Ballpark Project | |
| 1. Aggregate amount paid for parcels acquired and for which values have been agreed upon. | \$ 22,200,000 |
| 2. Amount of aggregate deposits paid for parcels acquired but for which there are valuation disputes. | \$ 2,400,000 |
| 3. Aggregate values estimated by the Redevelopment Agency of properties yet to be sought through condemnation after issuance and sale of the 2002 Bonds. | <u>\$ 20,300,000</u> ⁽²⁾ |
| Subtotal | \$ 105,000,000 |
| C. Estimated Cost of Litigation and Consultants' Costs | \$ 2,100,000 |
| Total | <u>\$ 107,100,000</u> ⁽²⁾ |

(1) This amount does not include a claim filed in the amount of \$8.0 million for relocation costs by a property owner who has agreed to a value on the property in question and has conveyed title.

(2) According to the Redevelopment Agency, the current estimate for acquisition values for properties yet to be sought is a range between approximately \$18.3 million to \$20.3 million.

The Implementation Agreement specifies that the Padres will be solely responsible for land acquisition costs above \$100.0 million up to a maximum total acquisition cost of \$110.0 million. The Implementation Agreement specifies that, if necessary, the Padres will pay 50%, and the Redevelopment Agency will pay 50% of additional land acquisition costs in excess of \$110.0 million up to a maximum total acquisition cost of \$130.0 million. There is no agreement for payment should the maximum amount exceed \$130.0 million and if land acquisition costs were to exceed \$130.0 million, it may cause a delay in the completion of the Ballpark Project as more fully discussed in "RISK FACTORS—Ballpark Project Funding and Completion Risks."

According to current land acquisition estimates, the amount payable by the Padres for land acquisition costs in excess of \$100.0 million will be \$7.1 million. Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to perform their commitment to pay for such excess land acquisition costs; there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations; and the Padres have not obtained commitments for their contemplated borrowings. Neither the City nor the Authority can make any prediction as to the ability of the Padres to obtain such borrowings. The MLB Commitment does not cover this category of the Padres' obligation for land acquisition cost overruns.

Pursuant to the Ballpark Facility Lease, the City must deliver, or cause to be delivered, to the Trustee by the Closing Date a California Title Land Title Association leasehold policy or policies, or a commitment to such policy or policies, with respect to the Leased Property. See "**BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES**" for additional information pertaining to the required leasehold policy. The Redevelopment Agency conveyed fee title to all of the property that comprises the Ballpark Facility site to the City on January 25, 2002 and the City will obtain such title insurance required under the Ballpark Facility Lease on or before the Closing Date.

Permits and Licenses

The Parking Lot Purchase Agreement providing for the sale of the Surface Parking Lots by the City to the District must receive final approval by the Executive Officer of the California State Lands Commission before any funds can be distributed by the District. Notwithstanding the foregoing, all regulatory approvals needed for the Ballpark Project construction have been obtained.

BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES

Insurance Available for Completion of the Ballpark Project

Insurance on Design, Construction and Timely Completion of the Ballpark Facility

The Implementation Agreement provides that the Redevelopment Agency and the CCDC will procure a comprehensive insurance policy to cover unknown environmental risks or hazardous materials arising from sub-surface conditions discovered during the construction of the Ballpark Project. See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Implementation Agreement** for additional information regarding the insurance requirements under the Implementation Agreement.

In compliance with the Ballpark Design/Build Procurement Consultant Agreement, PCL is obtaining certain insurance policies, including the following:

(i)(a) Builder's standard all-risk insurance for the Ballpark Facility and East Village Square for all risks, including earthquakes and floods. The insurance policy, which is cancelable on 60 days notice, will cover up to \$382.0 million per occurrence (except for earthquakes, for which there is a \$100.0 million annual limit), and has a \$25,000 deductible per occurrence for all losses, except losses from floods and earthquakes. The deductible for losses resulting from floods is \$100,000 per occurrence, and the deductible for losses resulting from earthquakes is 5% of the value of the Ballpark Facility at the time of loss subject to a minimum of \$100,000 per occurrence.

(b) As part of the builder's standard all-risk policy, business income insurance of a "delay in startup" nature (builder's risk soft cost) in an amount of \$100.0 million,¹ including up to \$38.25 million due to the occurrence of casualty or similar perils covered by the policy, which includes fire and earthquake. All such business income insurance up to the lesser of, the interest that accrues on the 2002 Bonds during any delay in substantial completion of the Ballpark Facility beyond the Substantial Completion Date or \$38.25 million, shall be paid to the Trustee. The right to payment does not commence for a period of fifteen days after the delay event in the case of all perils (except for earthquakes, in which case the period is 30 days.)

(ii) Owner's protective professional indemnity insurance in an amount of \$25.0 million per claim and aggregate.

All insurance referred to in paragraphs (i) and (ii) is being obtained from a provider having a rating not less than A-VII from A.M. Best. PCL is a named insured under the builder's risk insurance and the business income insurance policies.

In addition, PCL is obtaining an insurance policy pursuant to which the insurer will pay an amount equal to the daily current interest accrued on the 2002 Bonds for up to 184 days of current interest, if substantial completion of the Ballpark Facility is delayed beyond the date that is 4 months and 60 days after the currently

¹ The agreement only requires \$38.25 million, but PCL is obtaining \$100.0 million.

expected Substantial Completion Date, solely as a result of any negligent or intentionally harmful act or omission by a licensed general contractor under a design/build construction contract entered into by PCL on behalf of the City for the design and construction of a portion of the Ballpark Facility (and in any event, not as a result of any force majeure event or any act or omission of the City, the CCDC, the Redevelopment Agency, any person controlled by or under common control with any of them, or any of their respective employees, shareholders, officers or directors). The policy requires that PCL shall have fully utilized its contingency allocation in endeavoring to meet the timely performance of its contractual obligations and shall have mitigated losses incurred as a result of any negligent or intentionally harmful act or omission by a licensed general contractor under such a design/build construction contract. Amounts under the policy may not be payable if PCL has not fully utilized its contingency allocation in endeavoring to meet the timely performance of its contractual obligations or has not mitigated losses incurred as a result of any negligent or intentionally harmful act or omission by a licensed general contractor under such a design/build construction contract. Amounts payable under the policy are reduced by any liquidated damages paid to PCL by SDBB, whether or not paid by PCL to the Trustee. As a consequence, the payment of such liquidated damages to the Trustee by PCL is subject to the credit worthiness of PCL, and no prediction can be made as to such creditworthiness. Notwithstanding the foregoing, PCL does not have an obligation to pay to the City or the Trustee, and the City and the Trustee shall have no right to, any amounts in respect of days of delay that occur after the first anniversary of the Substantial Completion Date. With respect to such insurance, the Trustee must be a named additional insured or loss payee, and all proceeds from such insurance shall be paid to the Trustee. The Trustee will use any such proceeds to make debt service payments on the 2002 Bonds. Amounts paid by such insurance obtained by PCL will offset PCL's obligation to pay Liquidated Damages. To the extent insurance is available under both policies, payment under the business income insurance of a "delay in startup" nature will occur first.

See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Design/Build Procurement Consultant Agreement** for additional information regarding the insurance requirements under the Ballpark Design/Build Procurement Consultant Agreement.

Insurance on Ballpark Infrastructure

In addition to the insurance requirements imposed on PCL under the Ballpark Design/Build Procurement Consultant Agreement, the City and the DCM are required to provide insurance under the Ballpark Infrastructure Design/Build Agreement.

Pursuant to the terms of the Ballpark Infrastructure Design/Build Agreement, the City will provide the DCM, its contractors and design subcontractors (the "OCIP Participants") with insurance policies, including the following:

- (i) Professional liability insurance, including pollution liability insurance, with an aggregate limit of \$5.0 million.
- (ii) Commercial general liability insurance in an amount of not less than \$2.0 million per occurrence, up to \$4.0 million annual aggregate.
- (iii) Workers' compensation and employers' liability insurance in an amount meeting any applicable statutory requirements.
- (iv) Excess liability insurance to cover up to \$98.0 million in excess of the commercial general liability insurance and the workers' compensation and employers' liability insurance.
- (v) "All risk" builders' risk insurance for any physical loss to property, but excluding coverage for any equipment, machinery, tools, or property of similar nature owned, rented, or used by the OCIP Participants which are not destined to become a permanent part of the infrastructure project covered by the Ballpark Infrastructure Design/Build Agreement.

OCIP Participants are required to provide insurance policies, including the following:

(i) Commercial general liability insurance for off-site activities in an amount of \$5.0 million per occurrence, up to \$10.0 million annual aggregate for the DCM, and \$1.0 million per occurrence up to \$2.0 million annual aggregate for contractors and design subcontractors.

(ii) Automobile liability insurance in an amount not less than \$1.0 million covering bodily injury and property damage for owned, non-owned, and hired automobiles and naming the City, its respective elected officials, officers, employees, agents and representatives as additional named insureds.

(iii) Workers' compensation and employers' liability insurance for off-site employees in an amount meeting any applicable statutory requirements.

(iv) Hazardous transporters pollution liability insurance if the DCM's work includes the transportation of hazardous or toxic chemicals, materials, substances, or any other pollutants in an amount not less than \$5.0 million combined single limit per occurrence/aggregate for bodily injury, property damage and remediation, with a deductible not greater than \$25,000 per claim unless approved by the City.

All insurance policies required under the Ballpark Infrastructure Design/Build Agreement must be obtained from an insurance provider that has at least an "A&V" rating from A.M. Best, is licensed to do business in the State of California, and has been approved by the City.

See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Infrastructure Design/Build Agreement** for additional information regarding the insurance requirements under the Ballpark Infrastructure Design/Build Agreement.

Performance and Completion Guarantees

Pursuant to the Guaranty Agreement from the Padres to and for the benefit of the City, the Redevelopment Agency, the CCDC, the Authority and the Trustee (collectively, the "Beneficiaries"), the Padres have guaranteed the complete and timely payment and performance by PCL of all of PCL's obligations and responsibilities under the Ballpark Design/Build Procurement Consultant Agreement.

The Guaranty Agreement provides that the Padres absolutely, irrevocably and unconditionally guarantee to the Beneficiaries, jointly and severally: (i) the full and prompt payment when due of each and all of the payments required to be credited or made by PCL under the Ballpark Design/Build Procurement Consultant Agreement (including all modifications, amendments, restatements, supplements, extensions and renewals thereof) to, or for the account of, the Beneficiaries, when the same shall become due and payable in accordance with their terms; and (ii) the full and timely performance and observance of all of the obligations under the Ballpark Design/Build Procurement Consultant Agreement.

Based on financial and certain other information provided by the Padres, without the infusion of capital or borrowing proceeds, the Padres will not be able to fund their obligations under the Guaranty Agreement; there are no current commitments by partners of the Padres to fund capital contributions necessary to fulfill the Padres' obligations; and the Padres have not obtained commitments for their contemplated borrowings. Neither the City nor the Authority can make any prediction as to the ability of the Padres to obtain such borrowings. The MLB Commitment would be available to fund up to \$45.8 million of the Padres funding commitment for the Ballpark Facility but would not be sufficient to cover cost overruns payable by the Padres over the current budgeted amount of \$294.1 million,* nor would it cover any amounts due from the Padres for land acquisition or infrastructure cost overruns.

Under the Ballpark Design/Build Procurement Consultant Agreement, PCL shall, at all times, ensure that the performance of the contractor under the Ballpark Facility Design/Build Contract and any other

* See **"THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract"** for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

contractors and subcontractors engaged by PCL for the construction of the Ballpark Facility 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 100% of the contract price to be paid to such contractor under the applicable construction services or other services agreement. Such bonds must name the City, the Redevelopment Agency, the CCDC, PCL, the Padres, and the Trustee as co-obligees.

See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Design/Build Procurement Consultant Agreement** and **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Guaranty Agreement** for additional information regarding the Guaranty Agreement.

Under the Ballpark Infrastructure Design/Build Agreement, the DCM is obligated to provide performance and payment bonds in favor of the City, each in an amount equal to 80% of the guaranteed maximum price for each funding phase. These bonds cover the performance by the DCM of the work contracted for under the Ballpark Infrastructure Design/Build Agreement and payments owing by the DCM to its contractors and subcontractors. However, to avoid duplication of bonding costs, the DCM, acting as the City's agent, is requiring subcontractors to provide performance and payment bonds for all demolition and construction work.

See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Ballpark Infrastructure Design/Build Agreement** for additional information regarding the completion and performance bonds to be provided by the DCM in connection with the Infrastructure Work.

Ballpark Project Insurance After Construction

The Ballpark Facility Lease requires the City to procure and maintain, or cause to be procured and maintained, throughout the term thereof for the Leased Property, insurance against the following risks in the following respective amounts (under the Joint Use and Management Agreement, the Padres have agreed to obtain sufficient insurance to satisfy the requirements of the Ballpark Facility Lease):

(i) Property insurance on an "all risk" form, insuring against loss or damage to the Leased Property caused by fire or lightning, with an extended coverage endorsement covering the risk of vandalism and malicious mischief, sprinkler system leakage and boiler loss. No earthquake coverage is required or will be obtained. The insurance described in this paragraph (i) shall be in an amount equal to the lesser of (a) the replacement cost (without deduction for depreciation) of improvements located or to be located on the Leased Property; or (b) the remaining unpaid principal amount of the 2002 Bonds (and any Additional Bonds) Outstanding plus the amount of use and occupancy insurance coverage described in paragraph (ii) below, except that such insurance may be subject to deductible clauses not to exceed the first one hundred thousand dollars (\$100,000) of the amount of any one loss. Insurance described in this paragraph (i) and in paragraph (ii) below may be in the form of a policy which covers the Leased Property and one or more additional parcels of real property insured by the City. Provided, however, that the amount of coverage available thereunder shall be at least equal to the cumulative replacement values of the Leased Property and any other such property which is the subject of a lease, installment purchase or other financing arrangement ("Financed Property") for which bonds, certificates of participation or other obligations shall have been issued ("Obligations"), plus the amount of use and occupancy coverage required by paragraph (ii) below; provided, however, that such amount of insurance allocated to the Ballpark Facility shall not be subject to reduction on account of claims made with respect to other properties. In the event the City elects to obtain insurance for the Leased Property and one or more additional parcels of real property and the amount of the insurance proceeds available to pay all claims thereunder is not sufficient to cover the replacement values of all such properties, then any such proceeds shall be used first to rebuild or repair the Leased Property and the Financed Property or to repay all Obligations, the 2002 Bonds, and any Additional Bonds.

(ii) Use and occupancy insurance against loss, total or partial, of the use and occupancy of the Leased Property as a result of any of the hazards covered by the insurance described in paragraph (i) immediately above, in an amount sufficient to pay the Base Rental Payments attributable to the Leased Property for a twenty-four month period; provided, however, that the amount of such insurance need not exceed the total remaining Base Rental Payments attributable to the Leased Property; and provided further, that such insurance may be part of a policy described in paragraph (i) above, which policy may provide that insurance proceeds paid for coverage described in paragraph (i) above may reduce amounts payable under coverage described in this paragraph

(ii) and vice-versa. The City may obtain use and occupancy insurance covering the Leased Property as well as other parcels of property owned by the City, provided that the cumulative amount thereof is at least equal to the cumulative amount of use and occupancy insurance required by the Ballpark Facility Lease and any similar agreements relating to the Financed Property in respect of which Obligations are outstanding. There can be no assurance that the coverage afforded by such insurance will be adequate to prevent a reduction in Base Rental Payments. For additional information, see “**RISK FACTORS—Abatement.**”

Any insurance policy issued pursuant to paragraph (i) above shall be so written or endorsed as to make losses, if any, payable to the City, the Authority, the Padres and the Trustee as their respective interests may appear and the net proceeds of the insurance described in paragraph (i) above shall be applied as provided in the Ballpark Facility Lease. The net proceeds, if any, of the insurance policy described in paragraph (i) above shall, to the extent that such proceeds are paid on account of loss or damage to the Leased Property, be payable to the Trustee and deposited in the Insurance Proceeds and Condemnation Awards Fund and applied as described in the Indenture. The net proceeds, if any, of the insurance policy described in paragraph (ii) above shall, to the extent that such proceeds relate to the use and occupancy of the Leased Property, be payable to the Trustee and deposited in the Bond Fund. Each insurance policy provided for in the Ballpark Facility Lease shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Authority and the Trustee without first giving written notice thereof to the Authority and the Trustee at least 60 days in advance of such intended cancellation or modification.

The City further covenants and agrees in the Ballpark Facility Lease to deliver or cause to be delivered to the Trustee on the Closing Date of the 2002 Bonds a California Land Title Association leasehold policy or policies, or a commitment for such policy or policies, with respect to the Leased Property with liability in the aggregate amount equal to the principal amount represented by the 2002 Bonds. Such policy or policies, when issued, will name the Trustee as the insured and will insure the leasehold estate of the Authority under the Site Lease and the City under the Ballpark Facility Lease in the Leased Property subject only to such exceptions as do not materially affect the City’s right to the use and occupancy of the Leased Property.

See **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—Ballpark Facility Lease—Maintenance; Taxes; Insurance and Other Charges; Enforcement of Agreements with Padres—Insurance** for additional information regarding the insurance requirements under the Ballpark Facility Lease.

THE BALLPARK FACILITY

Ownership

The Padres will own improvements in and to the Ballpark Facility amounting up to, but not exceeding, 30% of the original Ballpark Facility estimate of \$267.5 million for the term of the Joint Use and Management Agreement, after which all portions of the Ballpark Facility owned by the Padres will automatically be transferred to the City. The term of the Joint Use and Management Agreement is the later of 22 years or the expiration of the 2002 Bonds, but in no event greater than 30 years unless the Padres exercise their option to extend such term for up to two additional 5-year periods. Upon the termination of the Joint Use and Management Agreement for any reason other than a material default by the City, all portions of the Ballpark Facility property owned by the Padres (the “Padres’ Ballpark Property”) will be immediately and automatically deemed transferred to the City, free and clear of all liens or other obligations to any other party. In addition, the Padres have granted to the City a first priority lien on all Padres’ Ballpark Property to secure the Padres’ obligations under the Joint Use and Management Agreement, including the obligations to surrender the Padres’ Ballpark Property upon termination of the Joint Use and Management Agreement. The City has agreed to subordinate its first priority lien to lender and vendor contracts granted by the Padres to secure obligations owed in connection with the procurement of the Padres’ Ballpark Property, or to substitute liens granted to refinance or replace any such liens, provided such agreements contain appropriate recognition and attornment covenants, approved by the City. Such recognition and attornment covenants must provide that the City may assume all rights and obligations of the Padres under the lender or vendor agreements if either the Padres’ rights to use the Ballpark Facility are terminated because of the Padres’ default under the Joint Use and Management Agreement or the Padres’ rights under a lender or vendor agreement are terminated because of the Padres’ default thereunder. In addition, all liens against the Padres’ Ballpark Property must provide that they are subject and subordinate to the reversion of the Padres’ Ballpark Property to the City upon termination of the Joint Use and Management Agreement.

It is contemplated that the Padres, in connection with their financing for the Ballpark Facility, will assign their rights under the Joint Use and Management Agreement, to a wholly-owned subsidiary. Any such assignment would be accompanied by a guaranty in favor of the City by the Padres of the performance by their subsidiary of the Padres' obligations under the Joint Use and Management Agreement. The terms of such financing will not include the right of the Padres' lender to terminate the rights of either the Padres or their subsidiary to use and occupy the Ballpark Facility under the Joint Use and Management Agreement, as a remedy in the event the Padres default in their repayment of their financing obligation.

Management and Operation

Under the terms of the Joint Use and Management Agreement, the Padres will be responsible for all Ballpark Facility management. The Padres' management duties include maintaining the playing field and arranging for availability of utilities, cleaning and trash removal, 24-hour security and emergency maintenance, and repairs. With respect to maintenance and repairs of the playing field and other portions of the Leased Property, the Padres will be responsible for all work, including labor, supplies, materials, and equipment reasonably necessary for the cleaning and routine upkeep of the Ballpark Facility in order to preserve its condition. In particular, the Padres will be responsible for, among other things, day-to-day landscaping, all necessary preparation and conditioning of the playing field before and during all events, and periodic testing of building systems and emergency systems. The City will be responsible for paying certain expenses associated with the operation and maintenance of the Ballpark Facility, up to a maximum of \$3.5 million per year (subject to offsets and certain inflationary adjustments). See **APPENDIX D—SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS—Joint Use and Management Agreement** for a description of the specific adjustments and credits.

The Padres will also be responsible for providing certain services on days where the playing field or seating areas of the Ballpark Facility will be used for events which are open to the public. Such services include the provision and supervision of all personnel; the provision of management and crowd control within the Leased Property; the provision and supervision of first-aid personnel to operate the first-aid facilities of the Leased Property; and the provision of emergency medical assistance. In accordance with their management duties, the Padres may subcontract with third parties for the performance of any of their management obligations.

The Padres must deliver to the City, no later than three months prior to the opening date for the Ballpark Facility, a Ballpark Operations Guidelines and Policy Manual and a Maintenance and Procedures Manual detailing the Padres' proposed operating and maintenance procedures for the Ballpark Facility. The Padres must solicit the City's comments on each manual and must complete and deliver final versions of each manual to the City no later than the last day of the first Major League Baseball season in the Ballpark.

As part of their management responsibilities, the Padres will also be required to maintain insurance coverage, including commercial general liability insurance, comprehensive business automobile insurance, property insurance, excess liability insurance, use and occupancy and workers' compensation insurance, to cover the repair, restoration or replacement of the property owned by them and the Leased Property. In addition, the Padres must cause all contractors and subcontractors to maintain "all risk" builder's insurance, workers' compensation insurance and general commercial liability insurance.

Despite their broad management responsibilities, generally the Padres may not make capital improvements to the Ballpark Facility without the City's prior consent. If the Padres make such capital improvements without the City's prior approval, the City has the right to cause the Padres to remove them at the Padres' sole cost. In addition, the City retains the right, under the Joint Use and Management Agreement, to inspect the Ballpark Facility and all improvements thereon at least quarterly.

In the event that the City determines that the Padres have not fulfilled their management obligations, the City must give written notice to the Padres describing such failure to perform. In response to such notice, the Padres must either cure the default, or, if they disagree with the City's allegations, they may submit the dispute to arbitration. If the result of the arbitration favors the Padres, they may continue performing their management obligations undisturbed. If, on the other hand, the arbitrators find in favor of the City and the Padres have defaulted in their obligations twice in a single year and the Padres fail to cure such defaults within an allotted time, the City will have the right to terminate the Padres' management obligations. The Padres will, however, continue to be bound by all of the provisions of the Joint Use and Management Agreement, which do not relate to the management of the Ballpark Facility.

Revenues and Expenses

The Joint Use and Management Agreement provides that the Padres will pay the City rent for the Leased Property during the term of the Joint Use and Management Agreement at the rate of \$500,000 per year, subject to an upward adjustment every five years in accordance with the San Diego Consumer Price Index for all urban consumers (the "CPI") and subject to set-offs for delays. In addition, the Padres will pay to the City ground lease rent of \$300,000 per year, subject to a 5% increase every five years, for their use of the City-owned property on which the Padres will build the P1 Parking Garage. From this amount, the City will deposit \$250,000 annually, adjusted every 5 years for increases in CPI to a capital expenditure reserve fund established and controlled by the City and the Padres. If the City Council approves an amendment to the Implementation Agreement in conjunction with the purchase of the P1 Parking Garage site by the Padres for \$6.0 million, the Padres will assume the City's obligation to deposit \$250,000 annually to a capital expenditure reserve fund (without regard to adjustments for increases in CPI which will be eliminated), and the City will not be entitled to receive ground lease rent. In addition to the annual rental payments, the City will derive certain revenues from events in which it participates, excluding any major league baseball games. The annual rental payments and the revenues from events are not expected to fully offset such operation and maintenance expenses, as described below, committed by the City.

Under the terms of the Joint Use and Management Agreement, the City is also responsible for paying 70% of specified expenses associated with the operation and maintenance of the Ballpark Facility, up to a maximum of \$3.5 million per year (subject to annual upward adjustments in accordance with the CPI and set-offs for delays in the completion of the Ancillary Development Hotels as described more fully in "**THE REDEVELOPMENT PROJECT**"). In addition, the City will be responsible for certain incremental expenses incurred from events in which the City participates, including wages, benefits, and incidentals paid to event-day staff, event security, on-site first aid, and ambulance service; event publicity and marketing, concession services, event liability insurance, and custodial and maintenance personnel, among other expenses.

THE REDEVELOPMENT PROJECT

Located in the East Village neighborhood of downtown San Diego, the Ballpark Project is part of the largest redevelopment project in the City's history. While the Ballpark Facility is the cornerstone of the Redevelopment Project, pursuant to the MOU, the Redevelopment Project will also include the construction of hotels, office buildings, retail spaces, as well as residential development and associated parking (the "Ancillary Development"). The City could benefit financially from the Ancillary Development to the extent that any additional TOT is generated from the new hotels and sales tax revenues generated as a result of the new retail development. See "**Hotels**" below for information regarding possible delays in the construction of the Ancillary Development hotels. It is anticipated that property tax and possessory interest tax revenues will increase as a result of the Ancillary Development; however, such increases will benefit the Redevelopment Agency. See "**Revenues Generated from Ancillary Development**" for additional information regarding revenues related to the Ancillary Development and the unpredictability of such revenues. The components of the Redevelopment Project are outside of the scope of the Ballpark Project, and will not impact the City's obligation to make Base Rental Payments.

Under the MOU, the Padres are responsible for the design and development of the Phase I Ancillary Development ("Phase I"), and may select a master developer to carry out such activities. The Padres have retained, as the master developer, JMI Realty, Inc. ("JMIR") to be responsible for the design and development of all aspects of the Phase I.

Pursuant to the MOU, Phase I is to include at least: (i) 850 new hotel rooms; (ii) office complexes containing at least 600,000 square feet with associated parking; and (iii) retail development containing at least 150,000 square feet, although the Padres have the right to fine tune the type of development, provided that the Ancillary Development generates the previously agreed upon amount of TOT and tax increment revenues. The Padres have advised the City that the Padres may fine-tune Phase I to reduce by 400,000 square feet the office complexes and by 50,000 square feet the retail development and, instead, construct 900 apartments, lofts and townhouses. For additional discussion of these proposed changes, see "**LITIGATION—Litigation Involving the Ballpark Project—*Simmons v. City of San Diego, et al.* —MOU and CCDC Director Matter Challenges.**"

Hotels

It is currently anticipated that three hotels will be developed as part of Phase 1, containing an estimated combined total of approximately 850 rooms and 37 luxury condominiums. The information regarding the hotels has been provided by JMIR and has not been independently verified by the City.

The primary hotel is planned to be a high-end, high-rise hotel (the "Four Star Hotel") that, pursuant to a disposition and development agreement between the Redevelopment Agency and JMIR, will include approximately 512 rentable guest rooms, 120,500 gross square feet of residential condominium space, and approximately 150 on-site parking spaces (with use of up to 230 off-site parking spaces). The Four Star Hotel is also anticipated to contain 20,000 square feet of meeting space, and at least one full service three-meal restaurant. The Four Star Hotel will be located next to the Ballpark and directly across the street from the Convention Center, and is intended to cater to the convention, tourist, and group-business markets. It is anticipated that the Four Star Hotel will be connected to the Ballpark by a pedestrian bridge and its patrons will be able to make use of the Ballpark's meeting rooms and other facilities. The Redevelopment Agency has acquired full interest in the Four Star Hotel site and has settled all valuation claims with respect to the previous owner. It is anticipated that the site will be conveyed to the developer shortly after the issuance of the 2002 Bonds. Construction of the Four Star Hotel commenced in September 2000 and was suspended in April 2001. JMIR obtained a debt financing commitment for the hotel, which expired on November 30, 2001. JMIR has advised the City that JMIR expects a new financing commitment to be received shortly, which will be available through April 30, 2002. JMIR also has advised the City that unless they can obtain a substantial equity commitment from a third party investor, they will not proceed presently and any new debt financing commitment for the Four Star Hotel could lapse. JMIR has advised the City that JMIR has entered into a letter of intent and is currently in negotiations with a prospective operator for the Four Star Hotel which, it is contemplated, would also provide a sufficient equity interest (in return for an equity percentage ownership) so as to induce JMIR to proceed with the development of the Four Star Hotel. While there is no assurance that such negotiations will be successfully consummated, JMIR has advised the City that such negotiations would be completed, if at all, by not later than April 2002. If that were to occur, then construction would commence in May 2002 and substantial completion should occur by May 2004.

The second hotel will be a themed "boutique" hotel (the "Boutique Hotel"), and will be designed and managed by an operator, specializing in this type of hotel. Pursuant to a separate disposition and development agreement between the Redevelopment Agency and JMIR, the Boutique Hotel will contain approximately 203 all suite rooms, 6,000 square feet of retail/entertainment space, and 180 parking spaces. It is also anticipated that the Boutique Hotel will include a 10,000 square foot terrace with a pool, and 4,500 square feet of meeting space. The Redevelopment Agency acquired the hotel site through condemnation and all valuation and remediation issues with the previous owner have been resolved. CCDC is currently performing site remediation activities, and it is expected that the Redevelopment Agency will convey the site to the developer by June 2002. Construction of the Boutique Hotel is anticipated to be completed by April 2004. JMIR has not obtained financing commitments for this hotel.

The third hotel will be a smaller "boutique" hotel or a value-oriented hotel (the "Boutique/Value-Oriented Hotel"). The site for this hotel has been acquired, but will not be developed until the completion of Park Boulevard and other new roads located on the east side of the Ballpark. The Boutique/Value-Oriented Hotel will have approximately 135 rooms, 105 space public parking garage, and 6,000 square feet of retail facilities. The hotel site has been acquired by JMIR. Construction of the Boutique/Value-Oriented Hotel is anticipated to be completed sometime in 2005-2006. JMIR has not obtained financing commitments for this hotel.

Subsequent to the execution of the MOU, and pursuant to the Joint Use and Management Agreement, the Padres agreed that if any of the Phase I hotels are not completed by the date which is six months after the date upon which the Padres have a right to occupy certain portions of the Ballpark Facility, as more fully described in the Joint Use and Management Agreement, then the City shall be entitled to a set-off (the "Set-Off") against the City's annual obligation to pay up to \$3.5 million of specified expenses associated with the operation and maintenance of the Ballpark Facility (subject to certain offsets and inflationary adjustments) ("O&M Expenses") in specific amounts which are intended to offset TOT expected from the uncompleted Phase I hotels. See "**THE BALLPARK FACILITY—Revenues and Expenses**" for a more complete description of such expenses. The Joint Use and Management Agreement provides that the Set-Off will be calculated on a hotel by hotel basis, and the amount of the Set-Off for each respective hotel for a given fiscal year will be the highest amount of TOT projected for such hotel for such fiscal year as set forth in the Joint Use and Management Agreement. The City's entitlement to the Set-Off is subject to certain provisions, including a reduction in its amount in order to preserve the tax-exempt

status of the City's financing. The Second Implementation Agreement provided for, among other things, an amendment to the Set-Off that will aggregate the projected TOT for the Set-Off, rather than calculate it on a hotel-by-hotel basis.

Based on current levels of operations of the Padres in their existing facility (Qualcomm Stadium) as reflected in financial information provided by the Padres to the City, the financial results of the Padres would be adversely affected if the Set-Off were implemented in full. While the Padres have informed the City that the Padres believe that revenues from operations will increase in the new Ballpark Facility, nonetheless there can be no assurance that the full implementation of the Set-Off would not prospectively adversely affect the operating results of the Padres in the new Ballpark Facility.

As indicated above, neither the Padres nor JMIR have a financing commitment for the Boutique Hotel or the Boutique/Value-Oriented Hotel. In addition, they are negotiating a new financing commitment for the Four Star Hotel, which they will not use unless they obtain a substantial equity commitment from a third-party investor (they hope to obtain this commitment from the prospective operator). This could adversely affect the generation of TOT from these hotels, which amounts could be used to partially pay Base Rental Payments under the Ballpark Facility Lease (which would be used to partially pay debt service on the Ballpark Bonds).

As indicated above, the City is entitled to a Set-Off against its annual O&M Expenses in the event any of the Phase 1 hotels is not built. However, the parties have agreed that the total annual TOT projected to be produced by all the Phase 1 hotels, is expected to exceed the available annual Set-Off amount of O&M Expenses within three years of the opening of the Ballpark, if the hotels had been opened for operations in a timely fashion. Accordingly, the City has obtained an agreement (the "TOT Guaranty") with John Moores (the principal owner of the Padres) and the Padres, as co-obligors (the "Obligors"), whereby, if the Four Star Hotel is not open and operating by April 1, 2004 (regardless of whether the Ballpark is completed) then in August of 2004, and in August of each subsequent year, to and including August 2008, each of the Obligors would be obligated to pay to the City the amount, if any, by which an agreed-upon schedule of TOT for the prior fiscal year ending June 30, less TOT actually produced by the Phase 1 hotels in the same fiscal year, exceeds the City's annual O&M Expense for the same fiscal year. The TOT Guaranty will not become effective unless and until the Disposition and Development Agreement between the Redevelopment Agency and JMIR for the development of the Four Star Hotel has been extended to and including December 31, 2003, the date by which the Padres must present evidence of financing for the Four Star Hotel. The City believes that such extension will occur before the end of March 2002.

If the TOT Guaranty becomes effective, it will terminate upon the earlier of (a) the opening and commencement of operations of the Four Star Hotel; or (b) June 30, 2008. If the Disposition and Development Agreement between the Redevelopment Agency and JMIR for the development of the Four Star Hotel is extended beyond December 31, 2003, the TOT Guaranty will terminate upon the earlier of (a) the opening and commencement of operations for the Four Star Hotel; or (b) 54 months after the expiration of the Four Star Hotel Disposition and Development Agreement. Even if the TOT Guaranty is terminated, or does not become effective, the Set-Off will remain effective. The TOT Guaranty will be an unsecured obligation, and there is no limit on any additional obligations or indebtedness which either of the Obligors can incur while this commitment is outstanding. Based upon their current level of operations as reflected in financial information provided by the Padres, the Padres would be unable to perform under the TOT Guaranty if they were called upon to do so. While the Padres have informed the City that the Padres believe that revenues from operations will increase in the new Ballpark Facility, there can nonetheless be no assurance that the Padres would be able to perform the TOT Guaranty should they be called upon to do so. The City believes that John Moores currently would be able to perform the TOT Guaranty if it were currently in place. The amount of payments to the City under the TOT Guaranty (over and above the Set-Off) would range from a low of no payment for the years of 2004 and 2005 to a high of approximately \$900,000 for the year of 2008, when it expires.

For discussion regarding the revenues generated from the Ancillary Development, see "**Revenues Generated from Ancillary Development.**"

Mixed-Use Development

In addition to the hotels and the office complexes, the Ancillary Development provides for the development of the East Village Square. The East Village Square will surround the Park and will provide panoramic views of the Ballpark Facility. The design of the East Village Square includes two levels of

retail/restaurant space of approximately 100,000 square feet, office or residential space totaling approximately 200,000 square feet, and 336 subterranean parking spaces. Land acquisition costs relating to the East Village Square are included in the currently estimated amount for the land acquisition for the Ballpark Project. The Redevelopment Agency has acquired or has orders of immediate possession on all parcels comprising the East Village Square site, and is currently performing remediation activities with respect to some of the parcels. It is anticipated that the Redevelopment Agency will convey the parcels to the developer in December 2002. The East Village Square is anticipated to be completed by April 2004. The Padres have not yet secured any financing for the development of East Village Square.

P1 Parking Garage

The P1 Parking Garage is planned to be an approximately 1,109-space garage located on approximately 50,000 square feet of the block bounded by 10th Avenue, 11th Avenue, Island Avenue and J Street. One hundred-nine of the parking spaces are reserved for residential development on the remaining portion of the block. One thousand of the parking spaces will be dedicated to use for events at the Ballpark. The City will purchase or cause to be purchased the land for the P1 Parking Garage. Pursuant to the Implementation Agreement, the Padres will lease such land from the City and develop and construct the P1 Parking Garage. It is anticipated that construction will begin in April 2003 and be completed by March 2004. The City Council will consider an amendment to the Implementation Agreement which would require the Padres (rather than the City) to acquire the land for the P1 Parking Garage.

Other Parking

Additional parking will be available on the block bounded by 6th Avenue, 7th Avenue, K Street and L Street, which will provide some parking for the Four Star Hotel, either as surface parking or a subterranean structure. Parking on the surface of a subterranean structure will be available for use by the general public. The Redevelopment Agency owns the parking site.

Revenues Generated from Ancillary Development

When Phase 1 is completed, the City anticipates that certain revenues will be generated as a result of such new hotels from the TOT which is levied by the City on the hotel/motel rent of visitors staying in the City for less than one month. Although the City expects to receive such revenues, neither the timing nor the amount of these revenues can be predicted. In addition, while TOT revenues comprise a portion of the general funds from which Base Rental Payments will be made, neither TOT revenues (whether generated from the Phase 1 hotels or elsewhere) nor any other revenues of the City are pledged to pay Base Rental Payments or to the payment of the 2002 Bonds. See **APPENDIX A—THE CITY OF SAN DIEGO—Economic and Demographic Information—Tourism** for certain information about TOT. Due to the historical nature of this information, it does not reflect potential negative consequences of the recent downturn of the economies in the State of California and United States, or the potential negative impact on tourism and convention activity due to the Attacks. See **“PRINCIPAL PARTICIPANTS IN THE DEVELOPMENT OF THE BALLPARK PROJECT—The City”** for information regarding significant declines in TOT revenues for the first quarter of the current fiscal year as compared to the same period in the prior fiscal year. Further, if there are significant delays in construction of the Phase 1 hotels by the Padres or JMIR due to inability to obtain financing, the City will be entitled to the Set-Off, and the only direct payment the City will receive will be the amounts contemplated under the TOT Guaranty (if it becomes effective), both of which are based on an agreed-upon schedule of projected TOT for each of the Phase 1 hotels. See **“Hotels”** for a more complete description of the Set-Off and TOT Guaranty.

In addition to TOT, the City anticipates that Phase 1 will generate other tax revenues, such as sales tax and property tax revenues, the latter of which would financially benefit the Redevelopment Agency exclusively. While the City expects such revenues to be generated, neither the timing nor the amount can be predicted. Furthermore, while sales tax revenues comprise a portion of the general funds from which Base Rental Payments will be made, neither sales tax revenues nor any other revenues are pledged to the registered owners of the 2002 Bonds. See **APPENDIX A – THE CITY OF SAN DIEGO** for certain information about tax revenues.

THE 2002 BONDS

Description of the 2002 Bonds

The 2002 Bonds will be (i) executed and delivered in the aggregate principal amount of \$169,685,000; (ii) dated the date of delivery; (iii) payable as to interest from the date of delivery at the rates set forth on the inside cover page hereof, semi-annually on each February 15 and August 15 (each an "Interest Payment Date"), commencing August 15, 2002; and (iv) will mature on February 15 in each of the designated years and in the principal amounts shown on the inside cover page hereof. Initially, the 2002 Bonds will be delivered in certificated form in minimum denominations of \$1 million and integral multiples of \$5,000 in excess thereof. Under certain circumstances, certificates for the 2002 Bonds will be called in and thereafter transfers will occur through book-entry, as more fully described in **APPENDIX E – BOOK-ENTRY SYSTEM**, and sold in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof. For additional information regarding the circumstances under which certificates for the 2002 Bonds will be called in, see "**PLAN OF DISTRIBUTION**" and **APPENDIX J – FORM OF INVESTOR REPRESENTATION LETTER**.

Redemption Provisions

Extraordinary Redemption

The 2002 Bonds are subject to redemption, in whole or in part, on any date, from prepaid Base Rental Payments made by the City from Net Proceeds received by the City pursuant to the title insurance policies required to be maintained under the Ballpark Facility Lease or due to a casualty loss or award in eminent domain for any portion of the Leased Property, at a redemption price equal to the principal amount thereof together with accrued interest to the date fixed for redemption, without premium. The Ballpark Facility Lease requires the City to apply casualty insurance proceeds to repair, reconstruct or replace the Leased Property if to do so would fully restore the Leased Property. In the event that the casualty insurance proceeds are not sufficient to fully restore the Leased Property, the City may elect to budget and appropriate additional funds and fully restore the Leased Property. If the City does not make such an election and the available casualty proceeds are at least sufficient to redeem all of the Outstanding 2002 Bonds, at par plus accrued interest, then the proceeds shall be used for that purpose. In the event the proceeds are not so sufficient, the City may elect to budget and appropriate additional funds so that the available casualty proceeds and the additional funds are sufficient to redeem all of the Outstanding 2002 Bonds at par plus accrued interest. Further, the Ballpark Facility Lease provides that if there are not sufficient Net Proceeds received from casualty insurance so as to redeem all of the Outstanding 2002 Bonds and the City elects not to budget and appropriate additional funds necessary to redeem all of the Outstanding 2002 Bonds, then such proceeds will be used to repair, reconstruct, or replace the Leased Property. Its decision with respect to an award in condemnation or payment under a title insurance policy will depend upon the extent of the condemnation of, or title defects relating to, the Leased Property. If any portion of the Leased Property has been affected by condemnation or a title defect which will result in an abatement of Base Rental Payments payable by the City under the Ballpark Facility Lease, then the Trustee shall use Net Proceeds available from condemnation or any policy of title insurance to redeem Outstanding 2002 Bonds. For a discussion of the insurance required to be maintained by the City, see "**BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES**" and **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—Ballpark Facility Lease**.

Optional Redemption

All of the 2002 Bonds shall be subject to optional redemption prior to their respective stated maturities, at par plus accrued interest but with no premium, on any date on or after February 15, 2005 at the option of the Authority, in whole, or in part (in such maturities as are designated to the Trustee by the Authority no later than 45 days prior to the redemption date or, if the Authority fails to designate such maturities, on a proportional basis among maturities) on any date, from funds derived by the Authority from any source.

Mandatory Redemption

The 2002 Bonds maturing on February 15, 2012 are also subject to redemption prior to their stated maturity, in part by lot, from sinking account payments deposited in the Sinking Account, on each February 15 on or after February 15, 2006 at the principal amount thereof and interest accrued thereon to the date fixed for redemption, without premium, according to the following schedule:

| <u>Redemption Date (February 15)</u> | <u>Principal Amount Redeemed</u> |
|--|--------------------------------------|
| 2006 | \$ 2,125,000 |
| 2007 | 2,275,000 |
| 2008 | 2,435,000 |
| 2009 | 2,610,000 |
| 2010 | 2,800,000 |
| 2011 | 3,000,000 |
| •2012 | 3,215,000 |

*Maturity

The 2002 Bonds maturing on February 15, 2022 are also subject to redemption prior to their stated maturity, in part by lot, from sinking account payments deposited in the Sinking Account, on each February 15 on or after February 15, 2013 at the principal amount thereof and interest accrued thereon to the date fixed for redemption, without premium, according to the following schedule:

| <u>Redemption Date (February 15)</u> | <u>Principal Amount Redeemed</u> |
|--|--------------------------------------|
| 2013 | \$ 3,445,000 |
| 2014 | 3,705,000 |
| 2015 | 3,985,000 |
| 2016 | 4,290,000 |
| 2017 | 4,615,000 |
| 2018 | 4,965,000 |
| 2019 | 5,345,000 |
| 2020 | 5,750,000 |
| 2021 | 6,185,000 |
| •2022 | 6,655,000 |

*Maturity

The 2002 Bonds maturing on February 15, 2032 are also subject to redemption prior to their stated maturity, in part by lot, from sinking account payments deposited in the Sinking Account, on each February 15 on or after February 15, 2023 at the principal amount thereof and interest accrued thereon to the date fixed for redemption, without premium, according to the following schedule:

| Redemption Date (February 15) | Principal Amount Redeemed |
|----------------------------------|------------------------------|
| 2023 | \$ 7,160,000 |
| 2024 | 7,715,000 |
| 2025 | 8,305,000 |
| 2026 | 8,945,000 |
| 2027 | 9,635,000 |
| 2028 | 10,380,000 |
| 2029 | 11,175,000 |
| 2030 | 12,040,000 |
| 2031 | 12,965,000 |
| •2032 | 13,965,000 |

*Maturity

Method of Selection for Redemption

If less than all Outstanding 2002 Bonds are to be redeemed at any time from Net Proceeds, the Trustee shall use the net insurance proceeds or condemnation awards attributable to the portion of the Leased Property destroyed, damaged, stolen or taken, to redeem, on a pro rata basis among all maturities of 2002 Bonds, as directed in writing by the City, pursuant to the Ballpark Facility Lease. Subject to the foregoing, if less than all Outstanding 2002 Bonds maturing by their terms on any one date are to be so redeemed at any one time, the Trustee shall select the 2002 Bonds of such maturity date to be redeemed in any manner that it deems appropriate; provided, however, that if the remaining Base Rental Payments will not be reasonably level after such prepayment of Outstanding 2002 Bonds, the City shall deliver to the Trustee an Opinion of Counsel that the Ballpark Facility Lease will continue to be a valid and binding obligation of the City after such redemption.

Notice of Redemption

Notice of redemption shall be mailed by the Trustee, not less than 30 nor more than 60 days prior to the redemption date to (i) the respective registered owners of the 2002 Bonds designated for redemption at their addresses appearing on the registration books of the Trustee by first class mail; (ii) the Securities Depositories (if any); and (iii) the Information Services. Notice of redemption to the Securities Depositories and the Information Services shall be given by registered mail or by overnight delivery. Each notice of redemption shall state the date of such notice, the redemption price, the name and appropriate address of the Trustee, the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity is to be redeemed, the distinctive certificate numbers of the 2002 Bonds of such maturity to be redeemed and, in the case of 2002 Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said 2002 Bonds thereof and in the case of a 2002 Bond to be redeemed in part only, the specified portion of the principal amount thereof to be redeemed, together with interest accrued thereon to the redemption date, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such 2002 Bonds be then surrendered at the address of the Trustee specified in the redemption notice. As long as a book-entry method is used for the 2002 Bonds, such notice shall be sent by the Trustee to the Securities Depositories for the 2002 Bonds, initially the Depository Trust Company, New York, NY ("DTC") or its nominee. Beneficial owners of interests in the 2002 Bonds are to receive notification of such redemption as described in **APPENDIX E—BOOK-ENTRY SYSTEM**.

The Indenture provides that if notice of redemption has been duly given as provided in the Indenture and money for the payment of the redemption price of the 2002 Bonds called for redemption is held by the Trustee, then on the redemption date designated in such notice the 2002 Bonds shall become due and payable, and

from and after the date so designated, interest on the 2002 Bonds so called for redemption shall cease to accrue, and the registered owners of such 2002 Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

Failure by the Trustee to give notice to any one or more of the Information Services or Securities Depositories, or the insufficiency of any such notices, shall not affect the sufficiency of the proceedings for redemption. Failure by the Trustee to mail or otherwise provide notice of redemption to any one or more of the respective registered owners of any 2002 Bonds designated for redemption shall not affect the sufficiency of the proceedings for redemption with respect to the registered owners to whom such notice was mailed.

The terms of the notice for exercise of the Underwriter's independent call right will be governed by the Investor Representation Letter, in the form of **APPENDIX J**, to be signed by each investor. See "**Independent Call Right of Merrill Lynch, Pierce, Fenner & Smith Incorporated**" for additional information regarding the Underwriter's independent call right.

Independent Call Right of Merrill Lynch, Pierce, Fenner & Smith Incorporated

The 2002 Bonds are being offered to a limited group of sophisticated institutional investors, as described in "**PLAN OF DISTRIBUTION**." Apart from the call and redemption provisions of the Indenture, for a period up to 270 days from the time that any of the 2002 Bonds, the Indenture or the Ballpark Facility Lease is held to be invalid by the final decision of a court of last resort in any of the Ballpark Litigation (as defined and described in "**LITIGATION—Litigation Involving the Ballpark Project**"), Merrill Lynch, Pierce, Fenner & Smith Incorporated, the Underwriter, will have an independent right to call the 2002 Bonds from investors, provided that, among other things, such call right will be exercised on not less than 30 days nor more than 60 days notice to record holders and must be effective as of a date which is not more than 270 days following the date of entry of such final decision. The Underwriter will exercise its optional call right only at the direction of the City, with funds provided by the City. The City must give notice to the Underwriter of its intention to so fund the Underwriter within 180 days after the entry of any such final decision. Such call right by the Underwriter will be at a price of par plus accrued interest (but no premium). See "**PLAN OF DISTRIBUTION**" for additional information regarding the Underwriter's call right.

Debt Service Requirements

Base Rental Payments are required to be made by the City to the Trustee under the Ballpark Facility Lease and the Assignment Agreement, for the use and possession of the Leased Property during each annual period. The Trustee shall deposit such Base Rental Payments in the Bond Fund established under the Indenture. Such Base Rental Payments, if paid in full, will be sufficient, in both time and amount, to pay when due the principal of and interest on the 2002 Bonds. Pursuant to the Indenture, the Trustee will, on each Interest Payment Date, apply funds available in the Bond Fund in the amounts required to make principal and interest payments due on the 2002 Bonds.

The following table presents the debt service requirements with respect to the 2002 Bonds. For additional information, see "**SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS—Base Rental Payments Payable by the City**."

**Public Facilities Financing Authority
of the City of San Diego
Lease Revenue Bonds, Series 2002
(Ballpark Project)**

Debt Service Payment Schedule⁽¹⁾

| Bond Payment Dates | Principal | Interest⁽²⁾ | Total Debt Service | Fiscal Year Total Debt Service |
|-----------------------------------|-------------------------|-------------------------------|---------------------------|---|
| 08/15/02 | | 6,457,637.50 | 6,457,637.50 | |
| 02/15/03 | | 6,457,637.50 | 6,457,637.50 | 12,915,275.00 |
| 08/15/03 | | 6,457,637.50 | 6,457,637.50 | |
| 02/15/04 | | 6,457,637.50 | 6,457,637.50 | 12,915,275.00 |
| 08/15/04 | | 6,457,637.50 | 6,457,637.50 | |
| 02/15/05 | | 6,457,637.50 | 6,457,637.50 | 12,915,275.00 |
| 08/15/05 | | 6,457,637.50 | 6,457,637.50 | |
| 02/15/06 | 2,125,000.00 | 6,457,637.50 | 8,582,637.50 | 15,040,275.00 |
| 08/15/06 | | 6,381,668.75 | 6,381,668.75 | |
| 02/15/07 | 2,275,000.00 | 6,381,668.75 | 8,656,668.75 | 15,038,337.50 |
| 08/15/07 | | 6,300,337.50 | 6,300,337.50 | |
| 02/15/08 | 2,435,000.00 | 6,300,337.50 | 8,735,337.50 | 15,035,675.00 |
| 08/15/08 | | 6,213,286.25 | 6,213,286.25 | |
| 02/15/09 | 2,610,000.00 | 6,213,286.25 | 8,823,286.25 | 15,036,572.50 |
| 08/15/09 | | 6,119,978.75 | 6,119,978.75 | |
| 02/15/10 | 2,800,000.00 | 6,119,978.75 | 8,919,978.75 | 15,039,957.50 |
| 08/15/10 | | 6,019,878.75 | 6,019,878.75 | |
| 02/15/11 | 3,000,000.00 | 6,019,878.75 | 9,019,878.75 | 15,039,757.50 |
| 08/15/11 | | 5,912,628.75 | 5,912,628.75 | |
| 02/15/12 | 3,215,000.00 | 5,912,628.75 | 9,127,628.75 | 15,040,257.50 |
| 08/15/12 | | 5,797,692.50 | 5,797,692.50 | |
| 02/15/13 | 3,445,000.00 | 5,797,692.50 | 9,242,692.50 | 15,040,385.00 |
| 08/15/13 | | 5,666,782.50 | 5,666,782.50 | |
| 02/15/14 | 3,705,000.00 | 5,666,782.50 | 9,371,782.50 | 15,038,565.00 |
| 08/15/14 | | 5,525,992.50 | 5,525,992.50 | |
| 02/15/15 | 3,985,000.00 | 5,525,992.50 | 9,510,992.50 | 15,036,985.00 |
| 08/15/15 | | 5,374,562.50 | 5,374,562.50 | |
| 02/15/16 | 4,290,000.00 | 5,374,562.50 | 9,664,562.50 | 15,039,125.00 |
| 08/15/16 | | 5,211,542.50 | 5,211,542.50 | |
| 02/15/17 | 4,615,000.00 | 5,211,542.50 | 9,826,542.50 | 15,038,085.00 |
| 08/15/17 | | 5,036,172.50 | 5,036,172.50 | |
| 02/15/18 | 4,965,000.00 | 5,036,172.50 | 10,001,172.50 | 15,037,345.00 |
| 08/15/18 | | 4,847,502.50 | 4,847,502.50 | |
| 02/15/19 | 5,345,000.00 | 4,847,502.50 | 10,192,502.50 | 15,040,005.00 |
| 08/15/19 | | 4,644,392.50 | 4,644,392.50 | |
| 02/15/20 | 5,750,000.00 | 4,644,392.50 | 10,394,392.50 | 15,038,785.00 |
| 08/15/20 | | 4,425,892.50 | 4,425,892.50 | |
| 02/15/21 | 6,185,000.00 | 4,425,892.50 | 10,610,892.50 | 15,036,785.00 |
| 08/15/21 | | 4,190,862.50 | 4,190,862.50 | |
| 02/15/22 | 6,655,000.00 | 4,190,862.50 | 10,845,862.50 | 15,036,725.00 |
| 08/15/22 | | 3,937,972.50 | 3,937,972.50 | |
| 02/15/23 | 7,160,000.00 | 3,937,972.50 | 11,097,972.50 | 15,035,945.00 |
| 08/15/23 | | 3,662,312.50 | 3,662,312.50 | |
| 02/15/24 | 7,715,000.00 | 3,662,312.50 | 11,377,312.50 | 15,039,625.00 |
| 08/15/24 | | 3,365,285.00 | 3,365,285.00 | |
| 02/15/25 | 8,305,000.00 | 3,365,285.00 | 11,670,285.00 | 15,035,570.00 |
| 08/15/25 | | 3,045,542.50 | 3,045,542.50 | |
| 02/15/26 | 8,945,000.00 | 3,045,542.50 | 11,990,542.50 | 15,036,085.00 |
| 08/15/26 | | 2,701,160.00 | 2,701,160.00 | |
| 02/15/27 | 9,635,000.00 | 2,701,160.00 | 12,336,160.00 | 15,037,320.00 |
| 08/15/27 | | 2,330,212.50 | 2,330,212.50 | |
| 02/15/28 | 10,380,000.00 | 2,330,212.50 | 12,710,212.50 | 15,040,425.00 |
| 08/15/28 | | 1,930,582.50 | 1,930,582.50 | |
| 02/15/29 | 11,175,000.00 | 1,930,582.50 | 13,105,582.50 | 15,036,165.00 |
| 08/15/29 | | 1,500,345.00 | 1,500,345.00 | |
| 02/15/30 | 12,040,000.00 | 1,500,345.00 | 13,540,345.00 | 15,040,690.00 |
| 08/15/30 | | 1,036,805.00 | 1,036,805.00 | |
| 02/15/31 | 12,965,000.00 | 1,036,805.00 | 14,001,805.00 | 15,038,610.00 |
| 08/15/31 | | 537,652.50 | 537,652.50 | |
| 02/15/32 | 13,965,000.00 | 537,652.50 | 14,502,652.50 | 15,040,305.00 |
| TOTALS | \$169,685,000.00 | \$275,095,187.50 | \$444,780,187.50 | \$444,780,187.50 |

- (1) The Base Rental Payments under the Ballpark Facility Lease will be paid not later than three Business Days before each February 15 and August 15 of a fiscal year in amounts sufficient to pay when due the principal and interest on the 2002 Bonds. Principal and interest payments will be made in accordance with this Debt Service Payment Schedule.
- (2) A portion of interest payable on the 2002 Bonds for approximately 30 months from the date of issuance of the 2002 Bonds will be paid from the proceeds of the issuance of the 2002 Bonds (with the balance being paid from Base Rental Payments payable under the Ballpark Facility Lease).

Additional Bonds

The Authority may at any time issue Additional Bonds payable from Revenues as provided in the Indenture and secured by a pledge of Revenues on a parity with the pledge securing the Outstanding 2002 Bonds, subject to approval of the Bond Insurer and to the satisfaction of certain conditions set forth in the Indenture, including the following:

(i) The Authority shall be in compliance with all agreements and covenants contained in the Indenture and no event of default shall have occurred and be continuing under the Ballpark Facility Lease.

(ii) The issuance of such Additional Bonds shall have been authorized by the Authority and shall have been provided for by a Supplemental Indenture which shall specify, among other things, the following:

(a) The purpose for which such Additional Bonds are to be issued; provided, however, that proceeds of such Additional Bonds shall be applied solely for the purpose of (i) financing, acquiring, constructing, maintaining, operating, improving and leasing the Ballpark Project, including payment of all costs incidental to or connected with such financing (including interest during construction); (ii) increasing the Reserve Requirement; and/or (iii) refunding any Bonds or Additional Bonds, then Outstanding, including payment of all costs incidental to or connected with such refunding;

(b) The amount to be deposited from the proceeds of sale of such Additional Bonds in the Reserve Account, which amount shall be sufficient to cause the amount on deposit in the Reserve Account including any amount evidenced by a surety or other authorized credit instrument.

(iii) The Ballpark Facility Lease shall have been further amended so as to increase the aggregate Base Rental Payments payable by the City thereunder by an amount at least sufficient to pay the interest on and principal of such Additional Bonds as the same become due, subject to the limitation that the increase in Base Rental together with existing Base Rental Payments shall not in any year be in excess of the annual fair rental of the Leased Property determined as of the time the Additional Bonds are issued.

(iv) The Authority shall have received confirmation in writing from the Rating Agencies then providing a rating on any Outstanding Bonds that the issuance of such Additional Bonds will not, in and of itself, cause a downgrading or withdrawal of such rating. The Authority need not seek such a confirmation in writing for Additional Bonds issued for the purpose of refunding the Outstanding Bonds if the annual amount of interest and principal, including sinking fund payments, payable on the Additional Bonds does not exceed the corresponding amount of such payments on the Outstanding Bonds being refunded, provided that the term of the Additional Bonds does not exceed the term on the Outstanding Bonds being refunded.

Pursuant to the MOU, the City is to provide an investment of not more than \$225.0 million toward the construction of the Ballpark Project. Any increase in the City's financial commitments to the construction of the Ballpark Project above the \$225.0 million amount, including, if applicable, the issuance of Additional Bonds, would require the affirmative vote of a majority of the electorate of the City voting at an election held for that purpose. For additional information with respect to the issuance of Additional Bonds under the Indenture, see **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—The Indenture.**

LEASED PROPERTY

Pursuant to the Ballpark Facility Lease, the City will be obligated to make Base Rental Payments for the use and occupancy of the Leased Property. The Leased Property consists of the Ballpark Facility, and the land on which it is located (the "Site"), excluding certain components of the Ballpark Facility that are to be owned by the Padres.

The Redevelopment Agency acquired all of the property that comprises the Site, and conveyed such property to the City on January 25, 2002. The property comprising the Site has recently been appraised at \$60.0 million. See "**THE BALLPARK PROJECT—Land Acquisition Program**" for additional information regarding the land acquisition process and cost estimates.

Pursuant to the MOU, the City will severally own at least 70% of the Ballpark Facility, for which the current Ballpark Facility estimate totals \$294.1 million*. The Padres will own the balance of the improvement in and to the Ballpark Facility for the term of the Joint Use and Management Agreement, after which all portions of the Ballpark Facility owned by the Padres will automatically be transferred to the City. See **"The BALLPARK FACILITY—Ownership"** for additional information regarding the ownership of the Ballpark Facility.

The City and the Authority may amend the Ballpark Facility Lease to substitute additional real property and/or improvements (the "Substituted Property") for the existing Leased Property (a "Substitution") or to remove real property (including undivided interest therein) or improvements from the definition of Leased Property (a "Removal"), upon compliance with all of the conditions set forth in the Ballpark Facility Lease. After a Substitution or Removal, the portion of the Leased Property for which the Substitution or Removal has been effected shall be released from the leasehold encumbrance of the Ballpark Facility Lease.

SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS

Limited Obligations

See **"BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES—Insurance Available for Completion of the Ballpark Project—Insurance on Design, Construction and Timely Completion of the Ballpark Facility"** for information regarding the potential availability of insurance payments to pay current accrued interest on the 2002 Bonds. Once substantial completion has been achieved, debt service payments will be fully funded by Base Rental Payments payable under the Ballpark Facility Lease by the City from its general funds after using remaining capitalized interest. Neither the 2002 Bonds nor the obligation of the City to make Base Rental Payments under the Ballpark Facility Lease constitutes an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The Authority has no taxing power. Neither the 2002 Bonds nor the obligation of the City to make such Base Rental Payments constitutes an indebtedness of the City, the State of California or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. For additional information, see **"BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES—Ballpark Project Insurance After Construction."**

Pledged Revenues

The 2002 Bonds are payable from and secured by Revenues and certain amounts on deposit in the funds and accounts established under the Indenture. Revenues consist primarily of all Base Rental Payments made by the City pursuant to the Ballpark Facility Lease. Base Rental Payments shall be paid by the City from any and all legally available funds. The City has covenanted under the Ballpark Facility Lease to take such action as may be necessary to include all Base Rental Payments and certain additional rental payments ("Additional Rental Payments") due under the Ballpark Facility Lease in its operating budget for each fiscal year and to make all necessary appropriations for such Base Rental Payments and Additional Rental Payments and, to the extent permitted by law, the City covenants to take such action as may be necessary to amend or supplement the budget appropriations for payments under the Ballpark Facility Lease at any time and from time to time during any fiscal year in the event that the actual Base Rental Payments and Additional Rental Payments paid in any fiscal year exceeds the pro rata portion of the appropriations then contained in the City's budget. As set forth in the Indenture, all Revenues and amounts on deposit in the funds, accounts and subaccounts established under the Indenture (other than the Rebate Fund) are irrevocably pledged to payment of the principal of, premium, if any, and interest on the 2002 Bonds and any Additional Bonds Outstanding; provided, however, that out of Revenues there may be allocated such sums for such purposes as are expressly permitted by the Indenture.

The City's obligation to make Base Rental Payments is subject to substantial completion of the Ballpark Facility, the possible invalidity of the Ballpark Facility Lease, and to abatement if, by reason of material damage to, destruction or condemnation of, or title defect with respect to, the Leased Property, there is substantial interference with the City's right to use and possess the Leased Property. For additional information, see **"RISK FACTORS—Abatement"** and **"LITIGATION—Litigation Involving the Ballpark Project."** Further, any

* See **"THE BALLPARK PROJECT—Ballpark Facility—Ballpark Facility Design/Build Contract"** for information regarding potential increases in the cost of construction of the Ballpark Facility due to delays in the recommencement of construction.

damage occasioned by earthquakes during the term of Ballpark Facility Lease, would not be insured and therefore no rental interruption insurance would be available should an earthquake occur, since the City will not maintain earthquake insurance. For additional information, see **"RISK FACTORS—Seismic Risks and Other Events of Force Majeure."**

Base Rental Payments Payable by the City

The 2002 Bonds are payable from Base Rental Payments made by the City under the Ballpark Facility Lease for the use and possession of the Leased Property during each annual period. For additional information, see **"LEASED PROPERTY."** The Indenture requires that Base Rental Payments be deposited in the Bond Fund maintained by the Trustee. Pursuant to the Indenture, on February 15 and August 15 of each year, commencing August 15, 2002, the Trustee will apply amounts in the Bond Fund to make principal and interest payments with respect to the 2002 Bonds as the same shall become due and payable and in amounts sufficient to meet the payment schedule shown under **"THE 2002 BONDS—Debt Service Requirements."**

Pursuant to the Ballpark Facility Lease and the Assignment Agreement, the City is required to make Base Rental Payments to the Trustee three Business Days preceding each February 15 and each August 15 in each fiscal year during the term of the Ballpark Facility Lease, commencing August 15, 2002, in amounts sufficient to pay when due the principal and interest payments on the 2002 Bonds. Amounts received by the Trustee will be held as security for the payments due on the 2002 Bonds. The amount of Base Rental Payments is designed to be sufficient to pay principal of and interest and redemption premiums, if any, on the 2002 Bonds when due. The Ballpark Facility Lease also provides that Base Rental Payments shall be abated in whole or in part if there is substantial interference with the City's use and possession of any portion of the Leased Property due to damage, destruction, title defect or condemnation. The amount of abatement shall be such that the resulting Base Rental Payments represent fair consideration for the use and possession of the remaining portions of the Leased Property as to which such damage, destruction, title defect or condemnation does not substantially interfere with the use and right of possession by the City. Such abatement shall continue for the period commencing with the date of the substantial interference due to damage, destruction, title defect or condemnation and ending with the substantial completion of the work of repair or replacement of the portions of the Leased Property so damaged, destroyed, defective or condemned. For additional information, see **"RISK FACTORS—Abatement."**

Subject to the limitations noted herein, the City is obligated to make Base Rental Payments from any and all general funds legally available to the City, although the City's general funds are not pledged to secure the payment of Base Rental Payments. For certain economic, demographic and financial information relating to the City, see **APPENDIX A—THE CITY OF SAN DIEGO.** For certain audited financial statement information relating to the City's general funds, see **APPENDIX B—EXCERPTS FROM THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2001.**

Debt Service Reserve Account

The Reserve Account is established within the Bond Fund under the Indenture. The Reserve Account for the 2002 Bonds and any Additional Bonds shall each be funded in an amount as of any date of calculation equal to the least of: (i) 10% of the stated principal amount of the 2002 Bonds; (ii) Maximum Annual Debt Service for the current or any future Bond Year; or (iii) 125% of average Annual Debt Service (the "Reserve Requirement").

The City may satisfy all or part of the Reserve Requirement with a line of credit, letter of credit, insurance policy, surety, or other credit source deposited with the Trustee and rated not lower than Aa/AA by the Rating Agencies, subject to the further requirements of the Indenture. For additional information, see **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—The Indenture.**

All amounts in the Reserve Account shall be used and withdrawn by the Trustee for the purpose of replenishing the Interest Account or the Principal Account in such order, in the event of any deficiency at any time in either of such accounts, or for the purposes of paying the principal of and interest and redemption premiums, if any, on the 2002 Bonds and any Additional Bonds in the event that no other money of the Authority is lawfully available therefore, or for the retirement of all the 2002 Bonds and any Additional Bonds then Outstanding. All interest income received by the Trustee from the investment of moneys in the Reserve Account shall be transferred to the Interest Account of the Bond Fund; provided, however, that such interest income shall be transferred to the

Rebate Fund as and when required by the Indenture and retained in the Reserve Account to the extent that amounts therein have been transferred to make up a deficiency in the Interest Account or the Principal Account. For additional information, see **APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS**.

The Reserve Account for the 2002 Bonds will be funded initially from the proceeds of the 2002 Bonds in an amount of \$15,040,690. Fifty percent of the amount deposited in the Reserve Account may fund the last draw of the City funds in the Design and Construction Fund, subject to timely completion, whereupon the Bond Insurer will issue a municipal bond debt service reserve fund surety (the "Surety") for an equal amount for the Reserve Account.

The Surety provides that upon the later of (i) one (1) day after receipt by the Bond Insurer of a demand for payment executed by the Trustee certifying that provision for the payment of principal of or interest on the 2002 Bonds when due has not been made or (ii) the interest payment date specified in the demand for payment submitted to the Bond Insurer, the Bond Insurer will promptly deposit funds with the Trustee sufficient to enable the Trustee to make such payments due on the 2002 Bonds, but in no event exceeding the surety coverage, as defined in the Surety. Funds in the Reserve Account will be used before the Surety is drawn upon.

Pursuant to the terms of the Surety, the Surety coverage is automatically reduced to the extent of each payment made by the Bond Insurer under the terms of the Surety and subject to appropriation by the City Council after the Surety has been drawn upon, the City is required to reimburse the Bond Insurer for any draws under the Surety with interest at a market rate. Upon such reimbursement, the Surety are reinstated to the extent of each principal reimbursement up to but not exceeding the Surety coverage. The reimbursement obligation of the City is subordinate to the Authority's obligations with respect to the 2002 Bonds.

In the event the amount on deposit, or credited to the Reserve Account, exceeds the amount of the Surety, any draw on the Surety shall be made only after all the funds in the Reserve Account have been expended. In the event that the amount on deposit in, or credited to, the Reserve Account, in addition to the amount available under the Surety, include amounts available under a letter of credit, insurance policy, surety, or other such funding instrument (the "Additional Funding Instrument"), draws on the Surety and the Additional Funding Instrument, shall be made on a pro rata basis to fund the insufficiency. The Indenture provides that the Reserve Account shall be replenished in the following priority: (i) amounts necessary to fund the Reserve Account to the required level, after taking into account the amounts available under the Surety and the Additional Funding Instrument shall be paid from first available Revenues, and (ii) after all such amounts are paid in full, principal and interest on the Surety and on the Additional Funding Instrument shall be paid from next available Revenues on a pro rata basis.

The Surety does not insure against nonpayment caused by the insolvency or negligence of the Trustee.

For information regarding the Bond Insurer, see "**Financial Guaranty Insurance Policy.**"

Financial Guaranty Insurance Policy

The Bond Insurer has made a commitment to issue a financial guaranty insurance policy (the "Financial Guaranty Insurance Policy") relating to the 2002 Bonds effective as of the date of issuance of the 2002 Bonds. Under the terms of the Financial Guaranty Insurance Policy, the Bond Insurer will pay to The Bank of New York or any successor thereto (the "Insurance Trustee") that portion of the principal of and interest on the 2002 Bonds which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Financial Guaranty Insurance Policy). The Bond Insurer will make such payments to the Insurance Trustee on the later of the date on which such principal and interest becomes Due for Payment or within one business day following the date on which the Bond Insurer shall have received notice of Nonpayment from the Trustee. The insurance will extend for the term of the 2002 Bonds and, once issued, cannot be canceled by the Bond Insurer.

The Financial Guaranty Insurance Policy will insure payment only on stated maturity dates and on mandatory sinking fund installment dates in the case of principal, and on stated dates for payment, in the case of interest. If the 2002 Bonds become subject to mandatory redemption and insufficient funds are available for redemption of all outstanding 2002 Bonds, the Bond Insurer will remain obligated to pay principal of and interest on outstanding 2002 Bonds on the originally scheduled interest and principal payment dates including mandatory

sinking fund redemption dates. In the event of any acceleration of the principal of the 2002 Bonds, the insured payments will be made at such times and in such amounts as would have been made had there not been an acceleration. The Financial Guaranty Insurance Policy includes an endorsement that states that, as a clarification and not as a limitation of its obligations under the Financial Guaranty Insurance Policy, the Bond Insurer irrevocably waives and agrees not to assert any rights or defenses, to the extent such rights or defenses may be or become available to the Bond Insurer, to avoid payment of its obligations under the Financial Guaranty Insurance Policy due to the illegality, unenforceability or invalidity of the 2002 Bonds, and that all principal and interest on the 2002 Bonds that would have been payable by the Bond Insurer but for the illegality, unenforceability or invalidity of the 2002 Bonds will be deemed payable by the Bond Insurer for purposes of the Financial Guaranty Insurance Policy.

In the event the Trustee has notice that any payment of principal of or interest on the 2002 Bonds which has become Due for Payment and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the Bankruptcy Code in accordance with a final, nonappealable order of a court of competent jurisdiction, such registered owner will be entitled to payment from the Bond Insurer to the extent of such recovery if sufficient funds are not otherwise available.

The Financial Guaranty Insurance Policy does not insure any risk other than Nonpayment, as defined in the Financial Guaranty Insurance Policy. Specifically, the Financial Guaranty Insurance Policy does not cover:

- (i) payment on acceleration, as a result of a call for redemption (other than mandatory sinking fund redemption) or as a result of any other advancement of maturity;
- (ii) payment of any redemption, prepayment or acceleration premium; or
- (iii) nonpayment of principal or interest caused by the insolvency or negligence of any Trustee or Paying Agent, if any.

If it becomes necessary to call upon the Financial Guaranty Insurance Policy, payment of principal requires surrender of 2002 Bonds to the Insurance Trustee together with an appropriate instrument of assignment so as to permit ownership of such 2002 Bonds to be registered in the name of the Bond Insurer to the extent of the payment under the Financial Guaranty Insurance Policy. Payment of interest pursuant to the Financial Guaranty Insurance Policy requires proof of Bondholder entitlement to interest payments and an appropriate assignment of the Bondholder's right to payment to the Bond Insurer.

Upon payment of the insurance benefits, the Bond Insurer will become the owner of the 2002 Bond, appurtenant coupon, if any, or right to payment of principal or interest on such 2002 Bond and will be fully subrogated to the surrendering Bondholder's rights to payment.

In the event that the Bond Insurer were to become insolvent, any claims arising under the Financial Guaranty Insurance Policy would be excluded from coverage by the California Insurance Guaranty Association, established pursuant to the laws of the State of California.

Ambac Assurance Corporation

Ambac Assurance Corporation is a Wisconsin-domiciled stock insurance corporation regulated by the Office of the Commissioner of Insurance of the State of Wisconsin and licensed to do business in 50 states, the District of Columbia, the Territory of Guam and the Commonwealth of Puerto Rico, with admitted assets of approximately \$4,988,000,000 (unaudited) and statutory capital of approximately \$2,963,000,000 (unaudited) as of September 30, 2001. Statutory capital consists of the Bond Insurer's policyholders' surplus and statutory contingency reserve. Standard & Poor's Credit Markets Services, a Division of The McGraw-Hill Companies, Moody's Investors Service and Fitch, Inc. have each assigned a triple-A financial strength rating to the Bond Insurer.

The Bond Insurer has obtained a ruling from the Internal Revenue Service to the effect that the insuring of an obligation by the Bond Insurer will not affect the treatment for federal income tax purposes of interest

on such obligation and that insurance proceeds representing maturing interest paid by the Bond Insurer under policy provisions substantially identical to those contained in its financial guaranty insurance policy shall be treated for federal income tax purposes in the same manner as if such payments were made by the issuer of the 2002 Bonds.

The Bond Insurer makes no representation regarding the 2002 Bonds or the advisability of investing in the 2002 Bonds and makes no representation regarding, nor has it participated in the preparation of, the Offering Document other than the information supplied by the Bond Insurer and presented under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS—Financial Guaranty Insurance Policy" and under APPENDIX H—FORM OF FINANCIAL GUARANTY INSURANCE POLICY.

Available Information

The parent company of the Bond Insurer, Ambac Financial Group, Inc. (the "Company"), is subject to the informational requirements of the Securities Exchange Act of 1934, as amended, and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information may be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 and at the Commission's regional offices at Northwestern Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained from the public reference section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. In addition, the aforementioned material may also be inspected at the offices of the New York Stock Exchange, Inc. (the "NYSE") at 20 Broad Street, New York, New York 10005. The Company's Common Stock is listed on the NYSE.

Copies of the Bond Insurer's financial statements prepared in accordance with statutory accounting standards are available from the Bond Insurer. The address of the Bond Insurer's administrative offices and its telephone number are One State Street Plaza, 19th Floor, New York, New York 10004 and (212) 668-0340.

Incorporation of Certain Documents by Reference

The following documents filed by the Company with the Commission (File No. 1-10777) are incorporated by reference in this Offering Document:

- 1) The Company's Current Report on Form 8-K dated January 24, 2001 and filed on January 24, 2001;
- 2) The Company's Current Report on Form 8-K dated March 19, 2001 and filed on March 19, 2001;
- 3) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2000 and filed on March 28, 2001;
- 4) The Company's Quarterly Report on Form 10-Q for the fiscal quarterly period ended March 31, 2001 and filed on May 15, 2001;
- 5) The Company's Current Report on Form 8-K dated July 18, 2001 and filed on July 23, 2001;
- 6) The Company's Quarterly Report on Form 10-Q for the fiscal quarterly period ended June 30, 2001 and filed on August 10, 2001;
- 7) The Company's Current Report on Form 8-K dated and filed on September 17, 2001;
- 8) The Company's Current Report on Form 8-K dated and filed on September 19, 2001;
- 9) The Company's Current Report on Form 8-K dated and filed on October 22, 2001; and
- 10) The Company's Quarterly Report on Form 10-Q for the fiscal quarterly period ended September 30, 2001 and filed on November 14, 2001.

All documents subsequently filed by the Company pursuant to the requirements of the Securities and Exchange Act of 1934, as amended, after the date of this Offering Document will be available for inspection in the same manner as described above in "Available Information".

Ballpark Project Insurance

Proceeds from certain insurance policies obtained during and after the construction of the Ballpark Project as well as certain completion guarantees could provide additional sources of payment for the 2002 Bonds. See "BALLPARK PROJECT INSURANCE AND COMPLETION GUARANTEES" for additional information regarding such insurance and guarantees.

CONTINUING DISCLOSURE

The Authority has determined that no financial or operating data concerning the Authority is material to an evaluation of the offering of the 2002 Bonds or to any decision to purchase, hold or sell the 2002 Bonds and the Authority will not provide any such information. The City has undertaken all responsibilities for any continuing disclosure to registered owners of the 2002 Bonds as described below, and the Authority shall have no liability to the registered owners of the 2002 Bonds or any other person with respect to Rule 15c2-12(b)(5) of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule").

The City has covenanted for the benefit of registered owners and Beneficial Owners of the 2002 Bonds to provide certain financial information and operating data relating to the City by not later than 285 days following the end of the City's Fiscal Year (which Fiscal Year currently ends on June 30) (the "Annual Report"), commencing with the City's Annual Report for the fiscal year ended June 30, 2001, and to provide notices of the occurrence of certain enumerated events, if material. For the fiscal year ended June 30, 2001 Annual Report, the City will submit a copy of this Offering Document and the audited financial statements of the City for the same period to meet this obligation. Each Annual Report will be filed by the City with each Nationally Recognized Municipal Securities Information Repository and the State Repository. Currently, there is no State Repository. The notices of material events will be filed by the City with the Municipal Securities Rulemaking Board, each Nationally Recognized Municipal Securities Information Repository and the State Repository. The specific nature of the information to be contained in the Annual Report or the notices of material events is summarized in **APPENDIX G—FORM OF CONTINUING DISCLOSURE AGREEMENT**. The City has never failed to comply in all material respects with any previous undertakings with regard to said Rule to provide annual reports or notices of material events.

TAX MATTERS

Due to the pendency of the Ballpark Litigation (as defined and described in "**LITIGATION—Litigation Involving the Ballpark Project**"), Orrick, Herrington & Sutcliffe LLP ("Orrick"), Los Angeles, California and Webster & Anderson, Oakland, California (collectively, "Co-Bond Counsel"), are providing a qualified opinion as to whether the interest on the 2002 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and from State of California personal income taxes.

Subject to the outcome of the Ballpark Litigation in favor of the City, in the opinion of Co-Bond Counsel, based upon an analysis of existing laws, regulations, rulings, and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2002 Bonds, including original issue discount properly allocable to each owner thereof, if any, is excluded from gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes. With the same qualification, Co-Bond Counsel are of the further opinion that interest on the 2002 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Co-Bond Counsel observe that such interest would be included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Co-Bond Counsel is set forth in **APPENDIX I** hereto.

To the extent the issue price of any maturity of the 2002 Bonds is less than the amount to be paid at maturity of such 2002 Bonds (excluding amounts stated to be interest and payable at least annually over the term of such 2002 Bonds) the difference constitutes "original issue discount," the accrual of which, to the extent properly

allocable to each owner thereof, is treated as interest on the 2002 Bonds which is excluded from gross income for federal income tax purposes and State of California personal income taxes. For this purpose, the issue price of a particular maturity of the 2002 Bonds is the first price at which a substantial amount of such maturity of the 2002 Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the 2002 Bonds accrues daily over the term to maturity of such 2002 Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such 2002 Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such 2002 Bonds. Owners of the 2002 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2002 Bonds with original issue discount, including the treatment of purchasers who do not purchase such 2002 Bonds in the original offering to the public at the first price at which a substantial amount of such 2002 Bonds is sold to the public.

The 2002 Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) ("Premium Bonds") will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, if the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a purchaser's basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such purchaser. Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various requirements that must be met in order for interest on the 2002 Bonds to be excluded from gross income for federal income tax purposes. The City made representations related to certain of these requirements and has covenanted to comply with certain of these requirements, subject to the outcome of the Ballpark Litigation. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2002 Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2002 Bonds. The opinion of Co-Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Co-Bond Counsel have not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the 2002 Bonds may adversely affect the value of, or the tax status of interest on, the 2002 Bonds.

Certain requirements and procedures contained or referred to in the Indenture, the Tax Certificate and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the 2002 Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Co-Bond Counsel express no opinion as to any 2002 Bond or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of bond counsel other than Co-Bond Counsel.

Although Co-Bond Counsel are of the qualified opinion that interest on the 2002 Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the 2002 Bonds may otherwise affect a beneficial owner's federal or state tax liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the beneficial owner or the beneficial owner's other items of income or deduction. Co-Bond Counsel express no opinion regarding any such other tax consequences.

In addition, no assurance can be given that any future legislation, including amendments to the Code, if enacted into law, or changes in interpretation of the Code, will not cause interest on the 2002 Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the 2002 Bonds from realizing the full current benefit of the tax status of such interest. Prospective purchasers of the 2002 Bonds should consult their own tax advisors regarding any pending or proposed tax legislation. Further, no assurance can be given that the introduction or enactment of any such future legislation, or any action of the Internal Revenue Service ("IRS"), including but not limited to regulation, ruling, or selection of the 2002 Bonds for audit examination, or the course or result of any IRS examination of the 2002 Bonds, or obligations which present similar tax issues, will not affect the market price for the 2002 Bonds.

LEGAL OPINIONS

Co-Bond Counsel will render a qualified opinion with respect to the validity of the 2002 Bonds and as to whether the interest on the 2002 Bonds is excluded from gross income for federal and California personal income taxes as being subject to the outcome of the Ballpark Litigation (as defined and described in “**LITIGATION—Litigation Involving the Ballpark Project**”). A complete copy of the proposed opinion of Co-Bond Counsel is set forth in **APPENDIX I** hereto. Orrick has provided separate legal analyses and opinions relating to several of the issues raised in the Ballpark Litigation, as set forth in **APPENDIX F** hereto. Certain legal matters also will be passed upon for the Authority and the City by the City Attorney, for the Underwriter by its internal counsel and by O’Melveny & Myers LLP and for the Bond Insurer by its internal counsel.

LITIGATION

General

Other than as disclosed below, there is no litigation against the Authority or the City pending or, to the knowledge of the officers of the Authority and the City, threatened, in any court or other tribunal of competent jurisdiction, state or federal, in any way (i) restraining or enjoining the issuance, sale or delivery of any of the 2002 Bonds; (ii) questioning or affecting the validity of the 2002 Bonds; (iii) questioning or affecting the validity of any of the proceedings for the authorization, sale, execution or delivery of the 2002 Bonds; or (iv) questioning or affecting the validity or enforceability of the Ballpark Facility Lease or the Indenture. To the knowledge of the Authority, the City and the City Attorney, there are pending against the City lawsuits and claims arising in the ordinary course of the City’s activities which, taken individually or in the aggregate, could materially affect the City’s finances. However, other than as disclosed below, taking into account insurance and self-insurance reserves expected to be available to pay liabilities arising from such actions, the City does not expect any or all of such claims to have a material adverse effect on its ability to make Base Rental Payments when due.

Litigation Involving the Ballpark Project

There are two actions pending in which alleged conflicts of interest of a former City Council member (the “Member”) are addressed. The first of these actions is Skane v. City of San Diego (San Diego County Superior Court, Case No. GIC 752505), a taxpayers lawsuit (“Skane”), and the second is City of San Diego, et al. v. All Persons Interested (San Diego County Superior Court, Case No. GIC 763487) (“All Persons”), a validation action brought by the City. A third pending action, Simmons v. City of San Diego, et al. (San Diego County Superior Court, Case No. GIC 779299), (“Simmons”), is a purported “reverse” validation action (“Validation Action”) and a “citizen resident action” brought against the City, the Authority and others. The plaintiff in Simmons alleges that (i) the MOU has been changed in ways requiring voter approval and no such voter approval was obtained and (ii) a prohibited personal financial interest existed between a member of the Board of Directors of CCDC (the “Director”) and the Padres. Skane, All Persons and Simmons (collectively, the “Ballpark Litigation”) are discussed in more detail below.

In addition, there is pending litigation that could affect the City’s ability to sell the Surface Parking Lots. See “**RISK FACTORS—Ballpark Project Funding and Completion Risks—Litigation Affecting the Ballpark Project Could Cause Further Delays in Completion.**”

Skane v. City of San Diego

In the spring of 2000, prompted in part by newspaper articles, a taxpayer action was brought against the City and others alleging among other things that the Member had received financial remuneration from the Padres or controlling persons of the Padres in return for (a) divulging to the Padres the confidential deliberations by the City regarding its negotiations with the Padres, and (b) voting in favor of a variety of resolutions and an ordinance (both as a City Council member and as a member of the Board of the Redevelopment Agency) which approved a series of documents relating to the Ballpark Project, including the Ballpark Facility Lease, the Site Lease, the Assignment Agreement and the Indenture under which the 2002 Bonds are to be issued (collectively, the “Financing Documents”).

The plaintiff, among other things, alleged violations of California state law (the "Conflicts Law") which prohibits, among others, members of a city council having a prohibited financial interest in contracts made by them in their official capacity or by any body of which they are members. The Conflicts Law also provides that any contract made in violation of the prohibition section may be voided at the instance of any party except the "officer having an interest in the contract." Plaintiff sought to have the actions taken by the City Council and the Redevelopment Agency which, among other things, approved the Financing Documents and the 2002 Bonds, declared invalid and void under the Conflicts Law. The trial court, in response to motions by the City, concluded that merely receiving gifts and expectation of future gifts in exchange for voting in favor of the contracts which may benefit the Padres were not the type of indirect contractual interests that the Conflicts Law was intended to prohibit. Accordingly, the trial court summarily dismissed the action. The plaintiff in Skane has appealed from this dismissal to the Court of Appeal.

City of San Diego, et al. v. All Persons Interested

On January 29, 2001, the Member pled guilty to two misdemeanor violations of the California Political Reform Act (which is different from the Conflicts Law) and resigned from the City Council. In addition, in December 2000, four newly elected Council members and a newly elected mayor replaced four sitting Council members and the mayor, all of whose term limits had been reached. In February 2001, one additional new Council member was elected to fill the balance of the term of another Council member who was elected to the State Legislature. On March 6, 2001, the newly constituted City Council (with two incumbents from the prior Council) adopted an ordinance and a resolution, and the Redevelopment Agency adopted a resolution (collectively, the "Ratifying Acts"). The ordinance ratified the earlier ordinance which had approved the Financing Documents, the 2002 Bonds and the overall structure of the financing. The resolutions ratified a variety of other actions which the Council or the Redevelopment Agency had taken regarding the Ballpark Project or the Padres while the Member was sitting as a member of the City Council and as a member of the governing body of the Redevelopment Agency. Shortly after the adoption of the Ratifying Acts, the City and the Redevelopment Agency filed the All Persons action seeking to validate the Ratification Acts and all prior City and Redevelopment Agency actions ratified and approved by the Ratification Acts, including prior approvals of Financing Documents.

Subsequently, a citizen filed a motion to quash service of summons challenging sufficiency of the summons published by the City upon the commencement of All Persons, for uncertainty. Another citizen filed a demurrer which, among other things, alleged that the action of the City Council occurred more than sixty days prior to the validation complaint's filing and thus could not be validated under the relevant state law. That same citizen later filed a Cross-Complaint alleging (i) that the Member's conduct as to gifts and favors from the Padres or their owners violated the City's Charter (Section 94); and (ii) that the Council action and the contracts regarding the Padres or the Ballpark Project, authorized during the period the Member was a Council member, were void. A third citizen also answered the validation complaint. Through a series of summary actions by the trial court, it found that the summons was sufficiently specific and the City Council and the Board of the Redevelopment Agency, through the Ratification Acts, properly and legally ratified the acts of the prior City Council and Redevelopment Agency Board and effectively eliminated any taint specifically related to the Member arising under the Conflicts Law or the City's Charter. Appeals with the Court of Appeal have been filed by two of the citizens in All Persons.

The Court of Appeal review of Skane and All Persons has been consolidated and will be heard as a single appeal. The Court of Appeal will likely decide this appeal during 2002, and any decision could become final by the end of 2002 if the California State Supreme Court denies discretionary review. However, should the California State Supreme Court grant discretionary review of any Court of Appeal decision, a final resolution by that Court could take upwards of two more years after a final decision by a Court of Appeal. The time to final disposition could be even longer if the matters were sent back to a trial court for further proceedings and thereafter appealed again.

Simmons v. City of San Diego, et al.

MOU and CCDC Director Matter Challenges. On December 6, 2001, following a number of actions taken by the City Council on November 20, 2001 (collectively, the "November Resolutions"), the Complaint in Simmons was filed. On December 24, 2001, the complaint was amended by the First Amended Complaint which added causes of action relating to the matter described below under "CCDC Director Matter." The First Amended Complaint is hereinafter referred to as the "Complaint." The Complaint alleges that a variety of actions taken by the City Council involving changes to the rights and duties of the parties to the MOU relating to the Ballpark Project

were required by the MOU to have been submitted to the voters of the City for consideration, and the relationship between a Director ("Director") of CCDC and the Padres created a conflict of interest. The Complaint requested that the court (1) declare the November Resolutions, all contract and agreements referred to therein and all proceedings incident thereto taken or made for or in any way connected with the November Resolutions, invalid, null and void; (2) declare that any expenditures of any funds, as authorized by the November Resolutions, is illegal and to the extent made, should be repaid; (3) issue a temporary restraining order, preliminary and permanent injunction enjoining the City, the City Manager, the Authority and others from any and all acts in furtherance of the November Resolutions including, without limitation, the sale of the 2002 Bonds and the disbursement of proceeds of such sale; and (4) declare that the November Resolutions are, due to their illegality, invalid, null and void.

The November Resolutions which the City Council adopted provided for a number of things including the following: (1) accepted a revised plan of finance for the Ballpark Project containing a variety of changes that had occurred since approval of the MOU, and approved this Offering Document; (2) approved a continuing disclosure agreement, in which the City agreed to file certain information regarding the City and the 2002 Bonds with nationally recognized municipal securities information repositories; (3) authorized the City Manager to enter into a contract of purchase with the Underwriter under which the Underwriter is purchasing the 2002 Bonds from the Authority and to take all action necessary to consummate the lawful issuance of the 2002 Bonds and disbursement of proceeds; (4) approved an agreement which among other things, authorized the release by the City of its lien on the Padres Major League Baseball franchise, so that MLB could be provided with such a lien to secure any advances by it under a guaranty by MLB of the deposit by the Padres by April 1, 2002, of not less than \$47.6 million into the Design and Construction Fund, authorized the acceptance of a guaranty from the parent company of the Padres in return for the Padres being able to assign certain of its rights under the Joint Use and Management Agreement so as to accommodate financing by the Padres of its share of the Ballpark and part of the ancillary development, and authorized acceptance of the TOT Guaranty; (5) authorized an expenditure on the Ballpark Project of proceeds from the repayment of a loan by the City to the Redevelopment Agency, which loan was initially made by the City from a variety of sources including gasoline tax revenues; (6) authorized the City Manager and City Auditor/Comptroller to appropriate and expend funds from sources identified at their discretion (subject, in the case of the City, to not exceeding the \$225 million limit on Ballpark Project expenditures) to acquire land and construct the Surface Parking Lots if the District were unable to do so and to modify the scope of the program for such improvements if the total available funds are less than \$21.0 million (the current expected cost of such program.) Finally, the Authority's November Resolution approved this Offering Document, the contract of purchase with the Underwriter referenced above and the continuing disclosure agreement referenced above.

The specific nature of the material alleged claims stated in the Complaint are, in summary, as follows:

(1) That the City materially modified the MOU in a manner requiring voter approval by relieving the Padres from the ancillary development obligation of building 400,000 gross square feet of office complex and 50,000 square feet of retail space and all as described in a Manager's Report to the City Council regarding the November Resolutions replacing that with the obligation to build substantially fewer square feet of office space, a modest amount of increase of retail square footage and a number of residential units, not contemplated in the MOU;

(2) That the initial plan of finance of the City, prepared at the time the MOU was approved, relied upon the construction of a 1,000 room hotel on property of the District (the "Campbell Shipyard Hotel"), that the City received previous assurances that the same would proceed, but on November 20, 2001, the date of adoption by the City Council of its November Resolutions, the City had no sufficient assurances in that the revised plan of finance gave no effect to receipt of TOT from the Campbell Shipyard Hotel;

(3) That the City waived the obligation of the Padres to provide sufficient assurances to build 850 additional hotel rooms, as a consequence of which the City reduced the likelihood that the hotels will ever be built and that the City will ever realize TOT therefrom;

(4) That the City "abandoned" a commitment obtained under the MOU from the Padres to make payments to the City of up to \$2 million a year for up to ten years (with an overall cap of \$8 million) if certain levels of TOT were not achieved, and replaced that commitment with a guaranty "whose protections are substantially inferior";

(5) That the lien which the City obtained on the Padres Major League Baseball franchise was being released in violation of the MOU which does not permit its release until \$50 million of the Padres' funds have been deposited in the Design and Construction Fund for the Ballpark;

(6) That the contingent commitment of the City to expend up to \$21 million toward the Surface Parking Lots violated the MOU, even though the City expressly limited its obligation to staying within the "Ballpark Cap" of \$225 million;

(7) That other amendments to the MOU of which the Plaintiff was not aware also required voter approval and after discovery by the Plaintiff, the Plaintiff would amend the Complaint to so state; various alleged modifications to the MOU were not manifested in an appropriate writing; the various alleged modifications to the MOU in the aggregate required voter approval, if not individually; and the ballot question for Proposition C limited the City's source of funds for its contribution to the Ballpark Project; and

(8) That by virtue of the facts described below under "CCDC Director Matter" there was created a prohibited personal financial interest in Ballpark Project-related agreements on which he voted, and other Ballpark Project-related agreements, in violation of the Conflicts Law and section 94 and therefore voided such agreements and other Ballpark Project-related agreements; that by virtue of the Member's conflict of interest, all of the November Resolutions and all contracts and agreements referred to therein and all proceedings incident thereto taken for or in connection with the November Resolutions were without legislative authority, illegal and improper, and, that any expenditure of funds authorized by the November Resolutions was illegal.

CCDC Director Matter. In December, 2001, the Complaint in Simmons was amended to add an additional matter involving the Director. According to a Report of the City Manager of the City, dated December 13, 2001, facts had come to light suggesting that the Director had a business relationship with the Padres pursuant to which the Director purchased at wholesale various items of Padres' merchandise for resale in the Director's retail business. The business relationship apparently existed during the period of time in which CCDC was involved in planning and development of the Project, approved execution of the MOU and approved extensions of the MOU. According to the Report, the Director was a CCDC director from May 1993 to 1999 and again from December 2000 to present, and his current term expires in May 2003. Based on these facts, the issue arose as to whether the Director possessed a disabling conflict of interest with regard to actions taken in furtherance of the MOU and that as a result the MOU and the Ballpark Project-related agreements were potentially void or voidable.

In December 2001, the Director and the Padres exchanged letters (the "Letter Exchange") pursuant to which the Director terminated the business relationship with the Padres and the Padres agreed not to enter into any further business relationship with the Director. Also in December, 2001, each of the governing bodies of the City, the Redevelopment Agency, the Authority and CCDC adopted resolutions reaffirming their commitment to the implementation of the MOU and reaffirmed so as to ratify their efficacy as of the date of their original making, and continuing through the present and thereafter, all prior City, Redevelopment Agency, CCDC, Authority and Padres' actions taken under, in furtherance or effectuation of, and reliance on the MOU pursuant to any agreement, or amendment to any agreement, between two or more Parties to the MOU. In addition, each of the City, the Redevelopment Agency, CCDC and the Padres entered into a Reaffirmation Agreement dated as of December 1, 2001 pursuant to which each entity reaffirmed its continuing intent to be bound by the MOU and agreements executed and delivered in furtherance or effectuation thereof or in reliance thereon and declared its intent that all rights and duties thereunder should extend from the respective effective times of the MOU and each such agreement, and run thereafter since that time until the present, and hereafter. (Collectively, the adoption of the foregoing resolutions and execution and delivery of the Reaffirmation Agreement, are herein called the "Restoration and Ratification Events.")

In December 2001, after publication of the City Report, the plaintiff in Simmons amended his Complaint to allege that the activities of the Director vis-à-vis the Padres constitute a conflict of interest and therefore voided all of the agreements which CCDC had approved and executed, and even some that they did not such as the Indenture, the Facility Lease, and the Site Lease, and as a consequence sought the same relief with respect to the Director matter as was sought in the Complaint for Simmons, described in the last sentence of the first paragraph under the caption "MOU and CCDC Director Matter Challenges" above. Specifically, the plaintiff alleged that the Director's votes on the Ballpark Project delivered benefits to the Padres so as to keep the Padres in San Diego, thereby ensuring that the Director would be able to continue selling Padres merchandise for profit.

Other Allegations. Finally in January 25, 2002, another person appeared and alleged (the "Other Allegations") that due to the changes in the Ancillary Development obligations of the Padres described above, additional compliance by the City was needed with respect to the California Environmental Quality Act ("CEQA") before the adoption of the November Resolutions, the actions authorized under the November Resolutions required voter approval under the MOU, and that by virtue of the insurance policy of the Bond Insurer the City is somehow obligated to independently repay the Bond Insurer should the 2002 Bonds be declared invalid, in violation of the MOU.

Actions Taken by Trial Court. The Plaintiff brought the Simmons action as a "taxpayer's action" and as a "validation action." In a taxpayer's action, the basis of a court's jurisdiction is the appearance of the parties (i.e. personal jurisdiction). In a validation action, the basis of a court's jurisdiction is in rem, that is having jurisdiction over the subject matter, and that in part is established by the newspaper publication of a summons in which there must be stated a specified date on or before which interested persons who wish to be heard must appear (a "return date"). The Trial Court's order directing the publication of the summons to perfect jurisdiction as a validation action provided that there be published a summons in which the return date was specified as February 15, 2002. The summons which was in fact published stated that the return date was February 8, 2002.

The City sought a trial date in the action, as a taxpayer's action, of January 28, 2002, to which the Plaintiff objected. The Plaintiff sought a trial by jury and sought more time to prepare. The Trial Court rejected both of these requests. On January 28, 2002, a trial was held on the merits. The Trial Court again denied the Plaintiff's motion for a continuance, the Plaintiff and his counsel left the courtroom and the City elected to proceed with the case to a judgment on the merits subject to "proving up" its position. After a trial, the Trial Court concluded, and entered a Judgment to the same effect on January 30, 2002 (the "Judgment"), that there was substantial evidence to support findings by the City Council that none of the actions complained of which are described in clauses (1) through (7) above constituted changes to the MOU which required voter approval, there was no evidence presented as to alleged previously unknown modifications to the MOU, and the ballot question for Proposition C did not limit the City's source of funds for its contribution to the Ballpark Project.

With respect to the CCDC Director Matter, the Trial Court found and so stated in the Judgment that the complaint failed to state violations of the Conflicts Law and Section 94 in that either the alleged conflicts were too remote to be such a conflict or the Restoration and Ratification Events cured any possible violations.

With regard to the Other Allegations, the Trial Court found and so stated in the Judgment that the alleged requirement to comply with CEQA was incorrect in that the November Resolutions and the documents approved therein involved financial transactions that had no direct or indirect environmental impact and that nothing contained in the November Resolutions or the agreements approved by the November Resolutions made a commitment to a specific project within the Ancillary Development that would currently require environmental review. Finally, the Trial Court found and so stated in the Judgment that there was no evidence in the record that the City Council had entered into or intends to enter into any agreement with the Bond Insurer imposing any independent obligation on the part of the City to make payments if the 2002 Bonds are declared invalid.

On February 8, 2002, the City obtained a Validation Action judgment from the Trial Court (the "Second Judgment"), in which the Trial Court concluded that the published summons with a February 8, 2002 return date complied with applicable law, provided due notice to all persons interested and validly established February 8, 2002 as the controlling return date; the Trial Court also incorporated by reference the Judgment entered on January 30, 2002, including its findings and conclusions in the Judgment.

On February 8, 2002, apparently before the City obtained the Second Judgment, another person (the "Simmons Supporter") sought to file with the Trial Court a pleading which contained allegations which were the same as those contained in the Complaint and the Other Allegations, but the Office of the Clerk of the Court rejected the filing based upon the existence of the Judgment (the "Rejected Pleading"). The City is not aware of any attempt made by the Simmons Supporter to obtain leave from the Trial Court to file the Rejected Pleading or other comparable relief.

The Judgment and the Second Judgment could be appealed to the Court of Appeals and if such an appeal were taken, the Court of Appeals may not decide the case until sometime in 2003, and any decisions could become final during 2003 if the California Supreme Court denies discretionary review. However, should the California Supreme Court grant discretionary review of any Court of Appeals decision, the final resolution by that

Court could take upwards of two more years after a final decision by a Court of Appeals. The final disposition could be even longer if the matter were sent back to a trial court for further proceedings and thereafter appealed again.

Qualified Co-Bond Counsel Opinion

Co-Bond Counsel have qualified their opinion as to the validity of the Ballpark Facility Lease and the 2002 Bonds, as well as to interest on the 2002 Bonds being exempt from federal and California personal income taxes, as being subject to the outcome of Skane, All Persons and Simmons including the facts and the consequences described in "CCDC Director Matter" above. Should a court conclude that the Ratifying Acts were not effective to ratify acts which themselves may have been tainted by the Member's presence, and conclude that the nature of the interests of the Member alleged by the plaintiffs in Skane were sufficient interests in prohibited contracts to render them void, then such decisions could adversely affect the validity of the Financing Documents and the 2002 Bonds. Should a court ultimately find for the plaintiffs in Skane, All Persons or Simmons, then such decision could adversely affect the validity of the Financing Documents and the 2002 Bonds and the completion of the Ballpark Project. If the 2002 Bonds were held to be invalid, then there would not be a municipal obligation upon which interest could be paid, as a consequence of which interest on the 2002 Bonds, theretofore or thereafter received, would not be exempt from federal and California personal income taxes. In such circumstances, investors who do not report the interest on the 2002 Bonds as taxable income could be responsible for the payment of federal and California personal income taxes as well as interest and penalties thereon.

Legal Analyses and Opinions of Orrick, Herrington & Sutcliffe LLP

Alleged Conflict of Interest of Member. Orrick has provided to the City a legal analysis and opinion to the effect that although there is no case directly on point and the matter is not entirely free from doubt, and accordingly there can be no assurance that a particular court would not hold otherwise, based on and subject to all the analyses, assumptions, limitations and qualifications referred to therein, as of the date thereof, it is of the opinion that, if the matter were properly raised, briefed and presented to a court of last resort of competent jurisdiction, the court would hold that the Ratifying Acts were sufficient to avoid a successful challenge asserting that the Financing Documents were void or voidable under the Conflicts Law, and San Diego City Charter section 94 by virtue of any action taken by the Member. In this regard, Orrick states that it is aware of no conduct, prior events or any other circumstances (other than those specifically discussed therein) that potentially could constitute a conflict of interest, or the appearance of a conflict of interest, with respect to the City officials involved in the approval or authorization of the Project, the 2002 Bonds, the Financing Documents or the Ratifying Acts, and in this regard, it has relied upon the representation of the City, and therefore assumed, without investigation, that no such conflict of interest existed during any of the periods of time relevant therein with respect to any such City officials. The opinion addresses the validity of the Financing Documents under the Conflicts Law, and San Diego City Charter section 94. It does not address the outcome of the pending litigation or predict the context in which the opinions addressed therein may be presented to a court. Since the opinion only addresses the consequences of the actions taken by the City Council and the Redevelopment Agency in adopting the Ratification Acts as a means of preserving the validity of the Financing Documents in the face of the alleged conduct by the Member, Orrick does not address therein how a particular court would dispose of the litigation.

Orrick noted that a court's decisions regarding matters discussed in the legal analysis and opinion would be based on the court's own analysis and interpretation of the factual evidence before the court and of applicable legal principles. Furthermore, it is the understanding of the City and Orrick that the legal analysis and opinion provided is not intended to be a guaranty as to what the court would actually hold, but analysis and opinion as to the decision the court should reach if the issues as to the Conflicts Law and Section 94 were properly raised, presented and argued to it and the court followed what Orrick believes to be the applicable legal principles. A copy of the Orrick legal analyses and opinions relating to the issues raised in the Ballpark Litigation is attached as **APPENDIX F-1—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSIS AND OPINION RELATING TO LITIGATION INVOLVING A FORMER MEMBER OF THE SAN DIEGO CITY COUNCIL** to this Offering Document.

Simmons. Orrick has provided to the Authority and the City a legal analysis and opinion to the effect that although there is no reported appellate decision directly on point and the matter is not entirely free from doubt, and accordingly there can be no assurance that a particular court would not hold otherwise based on and subject to all of the analysis in the opinion and the assumptions, limitations and qualifications referred to in the

opinion, including assumptions regarding factual matters, and the limitation of the opinion to substantive consideration of the effectiveness of the November Resolutions, and the Restoration and Ratification Events, and the consequences of the Other Allegations, and noting it is not considering or analyzing any procedural issues or certain jurisdictional issues, or issues related to the Rejected Pleading or the consequences of its possible subsequent filing with the Trial Court as of the date of the legal analysis, and opinion, it is of the opinion that, if the matter were properly raised, briefed and presented to a court of last resort of competent jurisdiction, the court would hold that the November Resolutions and the Restoration and Ratification Events are effective, and therefore the plaintiff does not prevail on any of the causes of action stated in the Complaint, and that the person asserting the allegations under "Other Allegations" above does not prevail on those allegations. Orrick stated in the opinion that it was not considering or analyzing any procedural issues raised in Simmons such as a right to jury trial, the request by Plaintiff for which was denied, the request by the Plaintiff for a continuance, which request was denied, or the request by the Plaintiff to engage in discovery, which request was denied, or issues related to the perfection of jurisdiction as a validation action, including a discrepancy in the return date ordered by the Trial Court and the return date actually appearing in the published summons. Orrick also noted that it had not undertaken to verify independently, and had assumed, the accuracy of all factual matters with respect to Simmons including factual matters contained in the administrative record submitted by the City and accepted into evidence by the Trial Court and had relied exclusively on the Judgment as to factual findings. Further, Orrick has assumed that in the event the Simmons Supporter is able to have the Rejected Pleading reinstated in Simmons, in any trial or other disposition of the issues raised in the Rejected Pleading, the Trial Court will make the same findings as it did in the Judgment and Second Judgment or such findings are otherwise determined to be lawfully binding on the Simmons Supporter. Orrick expressed no opinion as to the outcome of the case if the facts and statements contained in the pleadings were amended or modified in the Trial Court or on or after appeal.

Orrick noted that a court's decision regarding matters discussed in the legal analysis and opinion would be based on the court's own analysis and interpretation of the factual evidence before the court and of applicable legal principles. Furthermore, it is the understanding of the City and Orrick that the legal analysis and opinion provided is not intended to be a guaranty as to what a court would actually hold, but an opinion as to the decision the court should reach if the issues discussed in the opinion were properly raised, presented and argued to it and the court followed what Orrick believed to be applicable legal principles. A copy of the Orrick legal analysis and opinions relating to the issues raised in Simmons is attached as **APPENDIX F-2—ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSIS AND OPINION RELATING TO THE ISSUES RAISED IN SIMMONS V. CITY OF SAN DIEGO, ET AL.**

Litigation Potentially Adversely Affecting the General Funds of the City

De La Fuente Border Business Park v. City of San Diego

On January 2, 2001, a San Diego County Superior Court jury returned a special verdict in the amount of \$94.5 million against the City. The jury award consisted of three parts: \$29.2 million for breach of a development agreement; \$25.5 million for inverse condemnation relating to planning of a regional airport; and, \$39.8 million for inverse condemnation relating to excessive traffic. Claims for interest, costs, and attorneys' fees could bring the total judgment to more than \$200.0 million.

The lawsuit arises out of a 1986 development agreement ("Development Agreement") between the City and Border Business Park, Inc., relating to the development of a 312-acre industrial park in Otay Mesa, a community within the boundaries of the City and just north of the United States-Mexican border. Plaintiff alleges the City engaged in a pattern of conduct aimed at thwarting the developer's rights under the Development Agreement which resulted in breaches of the Development Agreement and unconstitutional "takings" of private property for public use. Specifically, plaintiff claimed the City "took" plaintiff's property by: (i) publicly discussing a proposal to build an international airport in the Otay Mesa region; and (ii) diverting commercial truck traffic onto public streets adjacent to plaintiff's property.

The specific breaches of the Development Agreement alleged in the lawsuit include: changes in city-wide construction standards; denials of conditional use permits; delays in permit processing; imposition of Housing Trust Fund Fees; diversion of Development Impact Fees; and the mismanagement of adjacent City-owned property. The disclosure of plans for a new regional airport, and the diversion of border-bound traffic, which were the bases for the inverse condemnation awards, were also alleged as contract breaches.

Following the special verdict but before entry of the judgment, the trial judge disqualified himself from further proceedings in the case for allegedly failing to disclose personal relationships with one of the plaintiff's attorneys. The case was transferred to another judge outside of San Diego County who will sit for all purposes, including a new trial.

The City has retained two law firms to represent it in post trial motions and any appeals. Such motions and potential appeals pertain to the validity of the disqualified trial judge's pre-trial and trial rulings, and the validity of the underlying verdict.

As the result of a recent hearing on the City's post-trial motions before the newly assigned judge, the judge reduced the plaintiff's pre-judgment interest claim from \$144.0 million to about \$26.0 million. The court subsequently entered judgment on the verdict amount (\$94.5 million), plus the pre-judgment interest for a total of \$119.0 million.

The court then considered the City's post-trial motions. The court denied the City's motion for judgment notwithstanding the verdict and motion to set aside the verdict on the grounds of fraud. It did, however, grant the City a complete new trial on one legal theory, a contract claim, and set aside award of the damages on that theory (in the amount of \$29.2 million of the \$94.5 million). The court also found the contract claim largely barred by the time limits in the Government Claims Act.

The court denied the City a new trial on the remaining claims in the case for inverse condemnation, relating to the airport study and truck routing, finding that he needed to defer to the original judge on these matters. This has the effect of leaving in place \$65.3 million in inverse condemnation damages, plus approximately \$26.0 million in pre-judgment interest. The total judgment, including pre-judgment interest, is currently approximately \$91.3 million. Appellate counsel for the City has advised that the City should have no obligation to pay these amounts until the appeal is concluded, which will take at least eighteen months to two years. The City will also be responsible for any post-trial interest which will accrue at the rate of approximately 5.7% per annum, until any judgment is paid.

The City believes that its defense costs— both retroactive to the exhaustion of the self-insured retention of \$1.0 million and prospectively through appeal— will be paid in large part by one of the City's insurers. The City may have some coverage for damages under its policies of insurance but the amount and scope of the coverage is not presently known.

Despite the denial of certain of the post-trial motions, the City believes it has sound legal theories for its appeal; however, no assurance can be given that the City's pursuit of this challenge will be successful. In the event that the City is not successful on appeal, and on retrial, if any, the judgment, including any interest, will have to be paid from the City's treasury, most likely over a period of ten years with additional interest during that period, to the extent that there is not insurance coverage or a shortfall in coverage.

Because there is no final judgment at this time, given the court's partial grant of the City's new trial motion, the City has not included in its budget for the 2001-2002 fiscal year any moneys for the payment of any judgment in this case.

On November 7, 2001, the plaintiff filed a motion with the trial court asking that the City deposit in trust into the court, the full judgment amount of \$92.4 million which includes some post-judgment interest, pending the City's appeal.

At the hearing on the motion for deposit, the court denied the plaintiff's motion. Litigation counsel has advised the City that if the plaintiff is to seek discretionary review of the denial of the motion for deposit, the plaintiff must do so within approximately 60 days after entry of the order which was entered on November 19, 2001. As of the date hereof, no such discretionary review has been sought.

While the City believes that it will prevail in any appeal of the denial of the motion for deposit, there can be no assurance that either the trial court or an appellate court will not impose a duty to deposit. Should that occur, the City would expect to deposit the funds from general funds of the City, if it is unsuccessful in obtaining a favorable outcome in an appellate court. If the City must fund the full amount of the deposit from its general funds, this could have an adverse effect on its ability to fund its budgeted expenditure items.

Other Litigation

The plaintiffs in C.L. Trustees v. Lockheed Martin, et al., filed a class action lawsuit against Lockheed Martin, IMS ("Lockheed"), the City (which was named but not served as a defendant in the original complaint), and others regarding its traffic light enforcement program. The first amended complaint failed to name the City as a defendant. There can be no assurance that the complaint will not be further amended or that any other action will not be taken to include the City as a defendant in the future.

There are pending against the City, other lawsuits and claims arising in the ordinary course of the City's activities which, taken individually or in the aggregate, could materially affect the City's finances. However and except as noted above, taking into account insurance and self-insurance reserves expected to be available to pay liabilities arising from such actions, the City does not expect any or all of such claims to have a material adverse effect on its ability to make Base Rental Payments when due.

RATINGS

Fitch Ratings, Moody's Investors Service, Inc. and Standard & Poor's Ratings Services have assigned their municipal bond ratings of "AAA," "Aaa," and "AAA," respectively, to the 2002 Bonds with the understanding that, upon delivery of the 2002 Bonds, the Financial Guaranty Insurance Policy will be delivered by the Bond Insurer. These ratings reflect these rating agencies' views of the creditworthiness of the Bond Insurer. The ratings issued reflect only the views of such rating agencies, and any explanation of the significance of such ratings should be obtained from such rating agencies. There is no assurance that such ratings will be retained for any given period of time or that the same will not be revised downward or withdrawn entirely by such respective rating agencies if, in the judgment of such rating agencies, circumstances so warrant. Under its Continuing Disclosure Agreement (see **APPENDIX G—FORM OF CONTINUING DISCLOSURE AGREEMENT**), the City has agreed to give notice of rating changes as an enumerated event, if material, in the manner described in "**CONTINUING DISCLOSURE.**" Any downward revision or withdrawal of any rating obtained may have an adverse effect on the market price of the 2002 Bonds.

PLAN OF DISTRIBUTION

The 2002 Bonds offered hereby are to be purchased by Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter"). The Underwriter has agreed, subject to certain terms and conditions set forth in the Contract of Purchase, dated February 14, 2002, by and between the Underwriter, the Authority and the City, to purchase the 2002 Bonds for a purchase price of \$167,614,843 (being the principal amount of the 2002 Bonds less an underwriter's discount of \$2,070,157). In connection with certain agreements entered into prior to the City's selection of Merrill Lynch, Pierce, Fenner & Smith Incorporated as underwriter for the 2002 Bonds, it is anticipated that the Underwriter will make certain payments to Morgan Stanley & Co. Incorporated, Redwood Securities Group, Inc., and I.C. Rideau, Lyons & Co., Inc. in connection with the issuance of the 2002 Bonds. Such payments, if made, will be contingent upon the issuance of the 2002 Bonds.

In addition, the Underwriter has agreed that any sale or transfer of the 2002 Bonds will satisfy the following conditions (see **APPENDIX J – FORM OF INVESTOR REPRESENTATION LETTER** for additional description of such conditions):

(a) Each buyer or transferee (including each beneficial owner under a trust or custodial arrangement) will be a "qualified institutional buyer" within the meaning of Rule 144A of the Securities Act of 1933, as amended (the "Securities Act") (provided, however, that notwithstanding the definition of "qualified institutional buyer" provided in the Securities Act, each qualified institutional buyer of the 2002 Bonds must have an audited net worth of at least \$25 million).

(b) The 2002 Bonds will be delivered to each buyer or transferee in certificated form and in minimum denominations of \$1 million and integral multiples of \$5,000 in excess thereof.

(c) The resale or transfer will not cause the number of registered owners of the 2002 Bonds to exceed 32, as evidenced by the certificate register for the 2002 Bonds maintained by the Trustee and each

sale or transfer, in and of itself, will not cause the number of beneficial owners of the 2002 Bonds to exceed 32, assuming that such number was 32 or less before giving effect to such resale or transfer.

(d) The seller or transferee will cause each buyer or transferee to execute and deliver an Investor Representation Letter, in substantially the same form as **APPENDIX J—FORM OF INVESTOR REPRESENTATION LETTER**.

(e) The right of the Underwriter to call away such 2002 Bonds (as described in (g) below) will apply to each buyer or transferee.

(f) Each seller or transferor will deliver to the Trustee a Notice of Sale or Transfer, substantially in the form attached as Exhibit 1 to **APPENDIX J**, and, if the buyer or transferee is other than the Underwriter, will also deliver to the Trustee a Notice Regarding Right of First Refusal of Merrill Lynch and an Investor Representation Letter for such buyer or transferee, and the seller or transferor will receive confirmation from the Trustee that the Trustee is prepared to effect the sale or transfer contemplated by such Notice of Sale or Transfer, in accordance with the Indenture.

(g) In the event of an opinion, order, judgment or decree of a court of last resort to the effect that the 2002 Bonds, the Indenture or the Ballpark Facility Lease is void or invalid (the "Final Order"), entered in any of the Ballpark Litigation (as defined and described in "**LITIGATION – Litigation Involving the Ballpark Project**"), the Underwriter will have the right and option (at the direction of the City, with funds provided by the City) to call away all of the outstanding 2002 Bonds from all then-current registered owners, on a date (the "Call Date") that is not more than 270 days after the date of entry of the Final Order, on not less than 30 days nor more than 60 days notice by the Underwriter, and at a price equal to the principal amount of the 2002 Bonds to be called away, together with accrued interest thereon to the Call Date (but no premium). See **APPENDIX J – FORM OF INVESTOR REPRESENTATION LETTER** for additional information regarding the Underwriters optional call right.

If (i) within 240 days after the date of any Final Order, the Underwriter does not mail notice of its intention to call away the 2002 Bonds (as described in (g) above) or (ii) an unqualified Opinion of Counsel (as defined in the Indenture) dated the Closing Date (as defined in the Indenture) of the 2002 Bonds, addressed to the Authority and the City (with a reliance letter to the Underwriter), in substantially the form attached to the Indenture as Exhibit D, is delivered to the Authority, the City, the Underwriter and the Trustee, then, the Trustee will be requested by the Underwriter (with respect to (i) above) or by the Authority (with respect to (ii) above) to recover from registered owners all certificates evidencing the 2002 Bonds and, when so recovered, the Underwriter or the Authority, as appropriate, shall cause the Trustee to deliver a new certificate or certificates evidencing the 2002 Bonds, bearing new CUSIP numbers, to the Depository Trust Company, and thereafter transfers of the 2002 Bonds will be made by book-entry, as described more fully in **APPENDIX E – BOOK ENTRY**, and sold in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof to any number of investors of any type. The sale or transfer conditions set forth in (a) through (g) above shall lapse and shall be of no further force and effect upon such a conversion of the 2002 Bonds to book-entry. See **APPENDIX J – FORM OF INVESTOR REPRESENTATION LETTER**.

Right of First Refusal In Favor of the Underwriter

The Underwriter also has the right of first refusal to purchase the 2002 Bonds from any investor, on the same terms and conditions as any bona fide offer made to such investor, and such right will continue for a period of ten business days after the Underwriter receives written notice from such investor of the proposed terms of sale or transfer. If not exercised by the Underwriter within such ten business day period, by notice thereof to the investor, the right lapses as to that transaction, but would be applicable to any subsequent transaction by that investor (if not sold in accordance with the terms and conditions of the bona fide offer of which the Underwriter was notified) and any transferee. If the Underwriter does not accept the offer, the investor will cause the Underwriter to issue a Notice Regarding Right of First Refusal of Merrill Lynch, substantially in the form attached as Exhibit 2 to **APPENDIX J**, informing the Trustee that the Underwriter has declined such offer. See **APPENDIX J – FORM OF INVESTOR REPRESENTATION LETTER**.

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APPENDIX A

THE CITY OF SAN DIEGO

The information and expressions of opinion set forth herein have been obtained from sources believed to be reliable, but such information is not guaranteed as to accuracy or completeness. Statements contained herein which involve estimates, forecasts, or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts. The information and expressions of opinion herein are subject to change without notice, and neither delivery of this Offering Document nor any sale thereafter of the securities offered hereby shall under any circumstances create any implication that there has been no change in the affairs of the City or in any other information contained herein since the date of the Offering Document.

INTRODUCTION

With a total population of approximately 1.3 million in 2001, and a land area of 330 square miles, the City of San Diego (the "City") is the seventh largest city in the nation and the second largest city in California. The City is the county seat for the County of San Diego (the "County") and is the County's business and financial center.

Based on estimates published by the California Department of Finance, (the "Department"), the City's population grew by 7.5% between 1992 and 2001, for an average increase of approximately 8,700 annually. This rate of growth is less than previously published growth rates for the City, and the source of both is the Department. In September 2001, the Department published revised population estimates for the years 1991 through 1999, the effects of which were to increase the population estimate for the City in the year 1991 and to reduce the annual rates of growth in subsequent years.

A major factor in the City's growth is its quality of life. In addition to having a favorable climate, the City offers a wide range of cultural and recreational services to both residents and visitors. With mild temperatures year round, the City's numerous beaches, parks, tennis courts, and golf courses are in constant use.

Another factor in the City's growth is its diversified economy. Recent historical growth has been concentrated in four major areas: high tech manufacturing and research (including electronics, telecommunications, scientific instruments, drugs, and biomedical equipment); professional services; tourism; and international trade. Historically, the City has also benefited from a stable economic foundation composed of basic manufacturing (ship building, industrial machinery, television & video equipment, and printing & publishing), public and private higher education, health services, military, and local government.

ECONOMIC AND DEMOGRAPHIC INFORMATION

Data contained under this caption is intended to portray economic, demographic, and business trends within the City. While not constituting direct revenue sources as such, these trends help explain changes in revenue sources such as property taxes, sales taxes, and transient occupancy taxes, which could be affected by changes in economic conditions.

The economies of the State of California and the United States recently have been experiencing substantial declines in the rates of growth, and growing unemployment. In anticipation of a slowing local economy, the City has reduced the rates of growth for its General Fund revenues in the Fiscal Year 2002 budget as compared to the Fiscal Year 2001 budget. Due to the slowing economic conditions in the state and the nation, and the negative economic impacts associated with the attacks on New York, NY and Washington, D.C./Arlington, VA (the "Attacks"), as well as any related military response, no assurance can be given that the City will not experience declining economic conditions in the future.

Population

As set forth in Table 1 below, between January 1, 1992, and January 1, 2001, the City's population has increased by 87,100 (or by approximately 8,700 new residents annually in the ten year period).

Table 1
POPULATION GROWTH⁽¹⁾
Calendar Years 1992 through 2001

| <u>Calendar Year⁽²⁾</u> | <u>City of San Diego</u> | <u>Annual Growth Rate</u> | <u>County of San Diego</u> | <u>Annual Growth Rate</u> | <u>State of California</u> | <u>Annual Growth Rate</u> |
|------------------------------------|--------------------------|---------------------------|----------------------------|---------------------------|----------------------------|---------------------------|
| 1992 | 1,163,600 | 1.0% | 2,628,600 | 1.5% | 31,478,000 | 1.7% |
| 1993 | 1,171,400 | 0.7 | 2,646,600 | 0.7 | 31,858,000 | 1.2 |
| 1994 | 1,168,800 | -0.2 | 2,653,100 | 0.2 | 32,075,000 | 0.7 |
| 1995 | 1,167,700 | -0.1 | 2,657,800 | 0.2 | 32,223,000 | 0.5 |
| 1996 | 1,167,100 | -0.1 | 2,662,200 | 0.2 | 32,396,000 | 0.5 |
| 1997 | 1,178,000 | 0.9 | 2,692,800 | 1.1 | 32,743,000 | 1.1 |
| 1998 | 1,195,100 | 1.5 | 2,741,900 | 1.8 | 33,186,000 | 1.4 |
| 1999 | 1,218,300 | 1.9 | 2,789,600 | 1.7 | 33,660,000 | 1.4 |
| 2000 | 1,234,300 | 1.3 | 2,835,400 | 1.6 | 34,207,000 | 1.6 |
| 2001 | 1,250,700 | 1.3 | 2,883,600 | 1.7 | 34,818,000 | 1.8 |

(1) In September 2001, the Department published revised population estimates for the years 1991 through 1999, the effects of which were to increase population estimates for the City, the County, and the State of California in the year 1991 and to reduce the annual rates of growth in subsequent years.

(2) As of January 1 of the calendar year.

Source: State of California, Department of Finance

As indicated in the following table, attendance in kindergarten through grade 12 in the San Diego Unified School District grew moderately during the 1990's. The San Diego Unified School District's boundaries include 85% of the City of San Diego's land area.

Table 2
SAN DIEGO UNIFIED SCHOOL DISTRICT
ENROLLMENT⁽¹⁾
School Year 1996-1997 through 2000-2001

| <u>School Year</u> | <u>Enrollment</u> |
|--------------------|-------------------|
| 1996-1997 | 134,740 |
| 1997-1998 | 137,235 |
| 1998-1999 | 138,974 |
| 1999-2000 | 142,021 |
| 2000-2001 | 143,244 |

(1) Enrollment is defined as the number of K-12 students enrolled on a survey date in early October of the school year.

Source: San Diego Unified School District, Pupil Accounting

Employment Summary

As seen in Table 3, the City's unemployment rate for calendar year 2001 averaged 3.2%, up from a rate of 3.0% during calendar year 2000. The City's 2001 unemployment rate was below both the national rate of 4.8% and the State's rate of 5.2%. During 2001, average employment was up by approximately 11,200 from 2000 levels. These data reflect preliminary estimates, which will be revised at a future date.

Table 3
ESTIMATED AVERAGE ANNUAL EMPLOYMENT AND
UNEMPLOYMENT OF CITY OF SAN DIEGO RESIDENT LABOR FORCE
Calendar Years 1997 through 2001

| | <u>1997</u> | <u>1998</u> | <u>1999</u> | <u>2000⁽¹⁾</u> | <u>2001⁽¹⁾</u> |
|-----------------------------|-------------|-------------|-------------|---------------------------|---------------------------|
| Civilian Labor Force | | | | | |
| City of San Diego | | | | | |
| Employed | 562,400 | 583,610 | 603,210 | 624,560 | 635,800 |
| Unemployed | 25,400 | 21,670 | 19,580 | 19,630 | 20,900 |
| Unemployment Rates | | | | | |
| City | 4.3% | 3.6% | 3.1% | 3.0% | 3.2% |
| County | 4.2 | 3.5 | 3.1 | 3.0 | 3.1 |
| California | 6.3 | 5.9 | 5.2 | 4.9 | 5.2 |
| United States | 5.0 | 4.5 | 4.2 | 4.0 | 4.8 |

(1) Preliminary, subject to future revision.

Source: State of California Employment Development Department, Labor Market Information Division; and U.S. Department of Labor, Bureau of Labor Statistics

Table 4 provides the California Employment Development Department's estimates of total annual nonagricultural wage and salary employment by major industry in the County during the period 1997 to 2001. Annual employment information is not regularly compiled by sector for the City alone. As shown, total nonagricultural wage and salary employment in the County increased by 175,700 new jobs during this period. During calendar year 2001 alone, San Diego County added 33,400 new jobs.

However, as shown in Table 4, while San Diego County wage and salary employment grew at a rate of 2.8% during 2001, this rate of growth was slower than in prior years. For instance, wage and salary employment grew at a rate of 3.8% and 4.3% in the prior two years.

Table 4
SAN DIEGO COUNTY
WAGE AND SALARY EMPLOYMENT
Calendar Years 1997 through 2001

| INDUSTRY CATEGORY | <u>1997</u> | <u>1998</u> | <u>1999</u> | <u>2000</u> | <u>2001</u> |
|---|------------------|------------------|------------------|------------------|------------------|
| Mining | 400 | 300 | 300 | 400 | 400 |
| Construction | 53,000 | 61,800 | 67,000 | 70,400 | 73,300 |
| Manufacturing | 123,100 | 127,600 | 128,100 | 129,700 | 129,900 |
| Nondurable Goods | 34,000 | 35,800 | 36,500 | 37,800 | 37,900 |
| Durable Goods | 89,100 | 91,800 | 91,600 | 91,900 | 92,000 |
| Transportation, Communications, Utilities ⁽¹⁾ | 41,600 | 47,000 | 51,300 | 50,900 | 51,100 |
| Trade | 244,000 | 249,400 | 256,500 | 267,800 | 272,800 |
| Wholesale | 45,600 | 48,300 | 50,300 | 52,300 | 53,100 |
| Retail | 198,400 | 201,100 | 206,100 | 215,500 | 219,600 |
| Finance, Insurance, Real Estate | 60,900 | 65,300 | 68,700 | 69,800 | 71,200 |
| Services | 339,300 | 359,600 | 381,700 | 400,600 | 416,800 |
| Government | 192,000 | 194,500 | 199,300 | 206,800 | 214,500 |
| Federal | 44,600 | 43,300 | 42,500 | 42,600 | 41,100 |
| State and Local | 147,400 | 151,200 | 156,800 | 164,200 | 173,400 |
| TOTAL NONAGRICULTURAL⁽²⁾ | 1,054,200 | 1,105,500 | 1,152,900 | 1,196,500 | 1,229,900 |

(1) Includes trucking and transit services, telephone and broadcast/cables services, and gas and electric services.

(2) Figures may not add to total due to independent rounding.

Source: State of California Employment Development Department

Since the industry employment data referenced above is organized by standard industrial classification codes, employment in the various high tech categories, such as Telecommunications, Software and Biotechnology may not fall into a single employment sector alone. For example, some telecommunications firms appear in Manufacturing, while others appear in Services.

Several key industry categories exhibited strong employment growth in 2001. The Services sector (+16,200) alone represented approximately half of total employment growth for the County. Within the Services sector, Business Services and Engineering & Management continued to lead other components, with increases of 3,500 and 4,000 respectively. It should be noted that the Business Services and Engineering & Management components include many of the City's high tech employers. Other key employment growth sectors during 2001 included Construction (+2,900), Wholesale and Retail Trade (+5,000), and Government (+7,700).

The increase in the Government sector, which accounted for 17% of the total nonagricultural wage and salary employment in the County, occurred in State and local government agencies. Almost all of the increase in State and local government agencies is due to gains in public education and the Other Local Government category, which includes Special Districts and Indian Tribal Governments.

Taxable Sales

Taxable transactions at retail and other outlets in the City during calendar year 2000, the most recent year for which data are available from the California State Board of Equalization, totaled approximately \$16.1 billion, up 11.1% from 1999, and up 42.6% from 1996. Table 5 provides annual sales information by type of outlet for the period 1996 through 2000.

Table 5
CITY OF SAN DIEGO
TAXABLE TRANSACTIONS
Calendar Years 1996 through 2000
(in thousands)

| | <u>1996</u> | <u>1997</u> | <u>1998</u> | <u>1999</u> | <u>2000</u> |
|--|---------------------|---------------------|---------------------|---------------------|-------------------|
| RETAIL STORES | | | | | |
| Apparel | \$451,984 | \$485,551 | \$530,734 | \$542,041 | \$588,012 |
| General Merchandise | 1,304,649 | 1,354,698 | 1,436,535 | 1,597,102 | 1,794,468 |
| Food | 521,014 | 554,625 | 582,183 | 622,909 | 662,346 |
| Eating and Drinking | 1,307,079 | 1,380,894 | 1,496,032 | 1,603,968 | 1,772,507 |
| Home Furnishings and Appliances | 492,104 | 444,930 | 469,158 | 546,746 | 619,383 |
| Building Materials and Farm Implements | 469,293 | 603,365 | 716,231 | 809,022 | 944,386 |
| Auto Dealers & Supplies | 1,089,331 | 1,189,462 | 1,331,411 | 1,519,137 | 1,745,186 |
| Service Stations | 672,559 | 673,078 | 614,156 | 742,143 | 977,675 |
| Other | 1,555,020 | 1,686,807 | 1,790,441 | 1,948,871 | 2,173,098 |
| Total Retail Stores | 7,863,033 | 8,373,410 | 8,966,881 | 9,931,939 | 11,277,061 |
| All Other Outlets | 3,426,610 | 4,024,433 | 4,343,598 | 4,563,715 | 4,822,132 |
| TOTAL ALL OUTLETS | \$11,289,643 | \$12,397,843 | \$13,310,479 | \$14,495,654 | 16,099,193 |

Source: California State Board of Equalization

Tourism

According to the San Diego Chamber of Commerce, the visitor industry is the County's third largest industry in terms of income generation, behind manufacturing and the military. As shown in Table 6, visitor spending in the County totaled \$5.23 billion in 2000, up 29.1% from 1996 and up 7.1% from 1999. According to the San Diego Convention and Visitors Bureau, through the eleven months ended November 30, 2001, visitor spending was down 1.3% from the same period in 2000. This decline reflects the impact of the Attacks; according to the San Diego Convention and Visitors Bureau, through the eight months ended August 31, 2001, visitor spending was up 4.1% over the same period in 2000.

Table 6
SAN DIEGO COUNTY
TOTAL VISITOR SPENDING⁽¹⁾
Calendar Years 1996 through 2000
(in billions)

| <u>Calendar Year</u> | <u>Amount</u> |
|----------------------|---------------|
| 1996 | \$4.05 |
| 1997 | 4.37 |
| 1998 | 4.70 |
| 1999 | 4.88 |
| 2000 | 5.23 |

(1) Visitor spending is an estimate of total direct and indirect visitor expenditures as derived from the Visitor Activity Model/Visitor Profile Study prepared by CIC Research, Inc. for the San Diego Convention and Visitors Bureau.

Source: San Diego Convention and Visitors Bureau

As shown in Table 7, the City's transient occupancy tax ("TOT") revenues have grown approximately 46% between Fiscal Year 1997 and Fiscal Year 2001. Due to the slowing economy, prior to the Attacks, for the first two months of the current fiscal year ended August 31, 2001, TOT revenues were down by approximately 6% from the same period in the prior fiscal year. Due to the Attacks and the continuing downturn in

the economy, through November 30, 2001, TOT revenues were down by approximately 13.5% from the same five months in the prior fiscal year. It is anticipated that the City's Fiscal Year 2002 budget projection for TOT revenues will be revised in February 2002 to reflect the current downturn in the local economy. However, at present, the magnitude of the TOT revision is unknown.

Table 7
CITY OF SAN DIEGO
TRANSIENT OCCUPANCY TAX⁽¹⁾
Fiscal Years 1997 through 2001
(in thousands)

| <u>Fiscal Year</u> | <u>Amount</u> |
|--------------------|---------------|
| 1997 | \$ 75,476 |
| 1998 | 85,088 |
| 1999 | 92,128 |
| 2000 | 96,821 |
| 2001 | 109,879 |

(1) Includes both the General Fund portion of TOT (5.5¢ of 10.5¢) and the balance (5¢ of 10.5¢) allocated to Special Promotional Programs.

Source: City Auditor & Comptroller

The City is the focal point for tourism in the County. The Convention Center, approximately 70% of the County's hotel and motel rooms, and most of the County's major tourist attractions, including the world-renowned San Diego Zoo, the San Diego Wild Animal Park and Sea World, are located in the City. Other attractions located in the City include the Cabrillo National Monument on Point Loma, the historic Gaslamp Quarter in the downtown area, the Old Town State Park, and Balboa Park – home to the San Diego Zoo and a host of other cultural and recreational activities.

In addition to the many permanent attractions available to visitors, the City has also been host to a number of major events. The City annually hosts the Buick Invitational, a Professional Golfers' Association Tour Event played at the Torrey Pines Golf Course. Torrey Pines, which is owned and operated by the City of San Diego, is a world renowned golf course. In addition, since 1978, the City has annually hosted the Holiday Bowl, a post season contest of elite college football teams.

The City also hosted the America's Cup in 1992 and 1995, and the Super Bowl and World Series in 1998. In addition, the City was the site for the Republican National Convention held in August 1996. The Super Bowl is scheduled to return to San Diego in 2003.

Associated with the growth in tourism has been an increase in traffic through San Diego's Lindbergh Field International Airport. According to the San Diego Unified Port District, in 2000 there were 7.9 million arrivals, up by approximately 3.4% from 1999. In 1998, the San Diego Unified Port District completed a \$238 million expansion to the airport. Features of this expansion include an expanded terminal, a new pedestrian bridge, and improved roadways and parking lots.

In September 2001, the San Diego Convention Center expansion was completed, doubling the size of the existing facility to 2.6 million total gross square feet. The Convention Center has had a significant economic impact on the region since it opened in 1989.

Military

The military and related defense spending is the second most important component of the San Diego economy, with only manufacturing making a larger contribution to San Diego County's Gross Regional

Product. Prior to 1990, San Diego's civilian defense contractors were primarily concentrated in aerospace manufacturing. During the 1990's, the focus of local defense contracting shifted from aerospace manufacturing to research and development, with shipbuilding and repair remaining an important component. This transformation received additional impetus with the relocation to San Diego from Virginia of the Space and Naval Warfare Systems Command (SPAWAR) in 1997. SPAWAR is responsible for administering contracts to meet the Navy's continuing need for state-of-the-art command and communications systems.

According to the San Diego Chamber of Commerce, defense related expenditures (active duty payroll, retirement benefits and civilian contract awards) in the County during 2000 totaled \$9.8 billion, up from \$9.5 billion in 1999. With a total military and civilian payroll of \$3.72 billion in the federal fiscal year 2000, San Diego continued to lead all counties in the nation in terms of combined military and civilian payrolls. Total civilian defense contracts awarded to County-based businesses totaled \$2.9 billion during the federal fiscal year 2000, up 17.4% from the previous year. The Department of Defense also spent \$1.3 billion on base operation expenses, \$1.04 billion on retirement benefits, and another \$0.85 billion on various classified contracts, subcontracts, and other contracts of less than \$1,000 each. The San Diego Chamber of Commerce estimates that as of June 1, 2000, total active duty military personnel in the County totaled 103,127 and the total civilian employment was 21,200.

International Trade

The table below is from the International Trade Administration's *Exporter Location Series*. This information is compiled on a f.a.s (free alongside ship) basis and includes domestic exports and re-exports. The total value of exports from the County during 1999, the most recent year for which data are available, totaled approximately \$9.0 billion, up 4.7% from 1998.

Table 8
VALUATION OF EXPORTS
ORIGINATING IN SAN DIEGO COUNTY
Calendar Years 1995 through 1999
(in billions)

| <u>Calendar Year</u> | <u>Total Exports</u> |
|----------------------|----------------------|
| 1995 | \$5.9 |
| 1996 | 6.7 |
| 1997 | 7.8 |
| 1998 | 8.6 |
| 1999 | 9.0 |

Source: International Trade Administration

Major Employers

The City is host to a diverse mix of major employers representing industries ranging from education and health services, to diversified manufacturing, financial services, retail trade and amusement and recreation. Table 9 lists the City's major employers. The list is compiled from information presented in *Greater San Diego's Guide to Business & Industry*, a publication of the Greater San Diego Chamber of Commerce as well as information gathered by the City of San Diego. All of the businesses listed in the table have their main offices in the City, with many having branch offices and/or production facilities in other areas of the County. Accordingly, not all employees of these businesses work within the City.

Table 9
CITY OF SAN DIEGO
MAJOR EMPLOYERS⁽¹⁾
As of January 1, 2001

| Employer | Product/Service |
|--|------------------------------|
| 10,000 or More Employees: | |
| San Diego Unified School District | Education |
| University of California, San Diego | Higher Education |
| 5,000 - 9,999 Employees: | |
| Kaiser Permanente | Health Care |
| Pacific Bell | Utility |
| Qualcomm | Wireless Communications |
| San Diego Community College District | Higher Education |
| Scripps Health | Health Care |
| Sharp Health Care | Health Care |
| 3,000 - 4,999 Employees: | |
| Ace Parking | Parking Stations and Garages |
| ADDECO Employment Services | Employment Services |
| Children's Hospital and Health Care | Health Care |
| Cubic Corporation | Electronic Systems |
| National Steel & Shipbuilding Company | Shipbuilding, Repair |
| Palomar Pomerado Health System | Health Care |
| Samsung | Electronics |
| San Diego Gas & Electric/Sempra Energy | Utility |
| San Diego State University | Higher Education |
| Science Applications International Corporation | Research and Development |
| Seaworld of California | Entertainment |
| Sony Technology Center | Electronics |
| UCSD Health Care | Health Care |
| United Parcel Service | Delivery Service |
| University of San Diego | Higher Education |
| 2,000 - 2,999 Employees: | |
| Jack in the Box Inc. | Restaurants |
| Hewlett Packard Company | Electronic Instruments |
| Manpower Temporary Services | Employment Services |
| Nordstrom | Department Store |
| Solar Turbines | Gas Turbine Manufacturing |
| Scripps Research Institute | Biomedical Research |
| YMCA of San Diego County | Family Recreation |
| Zoological Society of San Diego | Entertainment |

(1) Does not include various major public employers, including the City, the County, and the federal government with a combined total county employment of 110,000 as of January 1, 2001.

Source: Greater San Diego Chamber of Commerce and City of San Diego

Effective Buying Income

Table 10 shows the per capita Effective Buying Income (EBI) for the City, the County, the State, and the United States for calendar years 1996 through 2000.

Table 10
PER CAPITA EFFECTIVE BUYING INCOME⁽¹⁾
Calendar Years 1996 through 2000

| <u>Calendar Year</u> | <u>City of San Diego</u> | <u>County of San Diego</u> | <u>State of California</u> | <u>United States</u> |
|----------------------|--------------------------|----------------------------|----------------------------|----------------------|
| 1996 | 15,139 | 14,975 | 15,068 | 15,555 |
| 1997 | 15,804 | 15,618 | 15,797 | 16,281 |
| 1998 | 16,291 | 16,101 | 16,299 | 16,895 |
| 1999 | 17,443 | 17,270 | 17,245 | 17,691 |
| 2000 | 19,238 | 19,498 | 19,081 | 18,426 |

(1) Effective Buying Income is defined as the aggregate of wages, salaries, interest earnings, and all forms of public assistance income (such as Social Security and unemployment compensation) less personal tax payments, contributions to Social Security, and the value of income "in kind" from food stamps, public housing subsidies, medical care etc. Effective Buying Income is a proxy for "disposable" or "after-tax" income.

Source: Sales & Marketing Management Magazine "Survey of Buying Power"

Building Permits

Table 11 provides a summary of the building permit valuations, and the number of new dwelling units authorized in the City, for Fiscal Years 1997 through 2001. The valuation of non-residential permits includes both private, commercial construction and publicly funded, non-tax generating projects.

Table 11
CITY OF SAN DIEGO
BUILDING PERMIT VALUATIONS
AND NUMBER OF DWELLING UNITS
Fiscal Years Ended June 30, 1997 through 2001

| | <u>1997</u> | <u>1998</u> | <u>1999</u> | <u>2000</u> | <u>2001</u> |
|--------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Valuation (in thousands) | | | | | |
| Residential | \$541,443 | \$890,476 | \$857,747 | \$1,185,999 | \$1,181,385 |
| Nonresidential | 478,887 | 576,170 | 783,106 | 960,479 | 693,687 |
| Total | <u>\$1,020,330</u> | <u>\$1,466,646</u> | <u>\$1,640,853</u> | <u>\$2,146,478</u> | <u>\$1,875,072</u> |
| Number of New Dwelling Units: | | | | | |
| Single Family | 2,197 | 3,032 | 2,612 | 2,084 | 2,075 |
| Multiple Family | <u>1,014</u> | <u>3,018</u> | <u>2,856</u> | <u>5,662</u> | <u>3,829</u> |
| Total | <u>3,211</u> | <u>6,050</u> | <u>5,468</u> | <u>7,746</u> | <u>5,904</u> |

Source: City of San Diego, Planning and Development Review Department

Business Development Program

The City actively supports economic development and job creation activities. A key element of these activities is the Business Expansion and Retention Program (BEAR Program), a proactive effort on the part of

the City to work directly with businesses to retain local firms and help them expand their investment and job growth. This program was created in 1995 by integrating the City's existing business development activities to provide centralized coordination and data management, and to expand operational relationships with partnership agencies such as the Economic Development Corporation and Sempra Energy. BEAR Program components include Business Incentives, Targeted Assistance, sales and use tax rebates through the Business Cooperation Program, Business Outreach, and Business Finance.

A further element of the City's overall business development effort has focused on streamlining the permitting process and, when feasible, eliminating or reducing fees and permits. A major component of this streamlining effort has been the creation of a "one-stop" permitting center which has in most cases reduced development permit processing time by one-half. The center eliminates the need for permit applicants to seek approval from several City departments by consolidating the review and permit process.

The City also operates the Office of Small Business which provides a broad range of assistance programs for the many small businesses in the City. In 1995, the City Council reduced the annual Business License Tax for all businesses with 12 or fewer employees to a flat fee of \$34 per business with no per employee charge. The City charges an annual fee of \$125 plus \$5 per employee for businesses with 13 or more employees.

Transportation

San Diego has a well-developed highway system. Access in and out of the region is provided by five major freeways running north and south and three freeways running east and west.

Public transportation through the City and surrounding communities is provided by the San Diego Metropolitan Transit Development Board ("MTDB"). The San Diego Trolley, Inc. operates a fleet of electric trolleys that provides transportation for commuters and tourists from downtown San Diego to San Ysidro (adjacent to Tijuana), and from downtown San Diego to the southern part of the County and East County. The East Line extension to Santee was completed in 1996. This 3.6-mile extension connects the cities of El Cajon and Santee. The trolley also provides service from downtown San Diego to the waterfront area, including the Convention Center. An extension providing additional service from downtown to the historical Old Town section of the City was completed in 1996. In addition, the Mission Valley extension, which connects Old Town with Qualcomm Stadium and the Mission Valley shopping area, ending at the Mission San Diego, opened in 1997.

Construction has begun on the 6-mile Mission Valley East Trolley Extension. The project, scheduled for completion in 2004, will extend east from Qualcomm Stadium connecting Mission Valley with San Diego State University, La Mesa, and East County. The extension will include four new trolley stops, including a subterranean station at San Diego State University. The project is estimated to cost approximately \$435 million, including \$330 million in appropriations from the federal government.

A 43-mile Coaster Commuter rail line from Oceanside to downtown San Diego came into service in 1995. This line links communities along the coast from Oceanside to Del Mar with downtown San Diego and is operated by North County Transit District ("NCTD").

Proposition A, voter approved in November 1987, authorized a one-half cent increase to the local sales tax to fund transportation improvements for the San Diego region. Through Fiscal Year 2001, the City has been allocated approximately \$245 million in Proposition A funds and expects to receive an additional \$26.8 million for Fiscal Year 2002.

State Propositions 108/111/116, voter approved in June 1990, increased the State gas tax and authorized the sale of rail bonds. The revenues generated from these measures are to be used to implement a comprehensive Statewide transportation funding program. Through Fiscal Year 2001, the City has received approximately \$92.8 million in Proposition 111 funds and expects to receive an additional \$7.6 million for Fiscal Year 2002. Revenues from this source supplement the City's street maintenance and resurfacing program and other street related services, including traffic light and signal maintenance, median maintenance and traffic engineering to ensure efficient traffic flow.

MUNICIPAL GOVERNMENT AND FINANCIAL INFORMATION

Governmental Organization

The City is a charter city and operates under the Council-Manager form of government. The City Council is comprised of eight members elected by district to serve overlapping four-year terms. The Mayor, who presides over the City Council, is elected at large to serve a four-year term. The City Council, which acts as the City's legislative and policy-making body, selects the City Manager, who is the City's chief administrator and is responsible for implementing the policies and programs adopted by the City Council.

Accounting Practices

The City's accounting policies conform to generally accepted accounting principles applicable to governmental entities. The City's Governmental Funds and Expendable Trust and Agency Funds use the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recorded when both available and measurable. Certain fines and forfeitures, however, are recorded when received as they are not susceptible to accrual. Expenditures are recognized when the related liability is incurred except for (1) principal of and interest on general long-term debt, which are recognized when due, and (2) employee annual leave and claims and judgments for litigation and self-insurance which are recorded in the period due and payable. Proprietary Fund, Pension Trust, and Nonexpendable Trust Funds use the accrual basis of accounting. Under the accrual basis of accounting, revenues are recognized when earned, and expenses are recorded when incurred.

The City prepares financial statements annually in conformity with generally accepted accounting principles for governmental entities which are audited by an independent certified public accountant. The annual audit report is generally available about 180 days after the June 30 close of each fiscal year. The City's most recent general purpose financial statements for the Fiscal Year ended June 30, 2000, were audited by Calderon, Jaham & Osborn, CPAs.

Budgetary Process

The City's annual budget, which is adopted in July and published in October, is the culmination of the annual budget process which begins in the fall of the preceding year. Public input on service and program priorities is solicited. This input serves as part of the City Council's priority setting for the development of the budget.

Based upon City Council budget priorities, departments submit operating and capital improvement project requests to the City Manager for review by the Financial Management Department. The City Manager evaluates and prioritizes the program requirements, determines funding availability, and develops a balanced budget as required by the City Charter. This proposed balanced budget is published and presented to the City Council by their first meeting in May.

During May and June, the Mayor and City Council conduct budget meetings to review the Proposed Budget. Public comment is received at this time. The budget meetings are conducted as Council workshops focusing on policy issues.

As required by the City Charter, the City Council adopts the Annual Budget and Appropriation Ordinance no earlier than the date of the first Council meeting in July and no later than the last meeting in July. The adoption of the Appropriation Ordinance requires two noticed public hearings which are usually held on consecutive days. The Annual Tax Rate Ordinance is adopted no later than the last City Council meeting in August.

The Financial Management Department works closely with the City Auditor and Comptroller to monitor fund balances, as well as revenue projections, throughout the fiscal year. Variations from budget or plans are alleviated in a number of ways, including expenditure reductions or deferrals. As another technique of accomplishing budgetary control, the City also maintains an encumbrance accounting system, under which purchase orders, contracts, and other commitments for the expenditure of funds are recorded in order to reserve that portion of the applicable appropriation.

In addition, a new budget review function has been created within the office of the City Auditor and Comptroller to provide independent budget analysis to the Mayor and members of the City Council. The

purpose of this new function, created at the request of the Rules, Finance and Intergovernmental Relations Committee of the City Council, is to help the Mayor and City Council gain an in-depth understanding of City departments, programs, and activities in order to set effective policies and priorities for the City. It is anticipated that the Rules, Finance and Intergovernmental Relations Committee of the City Council will select specific City departments and programs to be reviewed on an ongoing basis. Ultimately, when completed, departmental reviews will be used to guide the City's future priorities.

Restructuring

In order to focus additional resources on long-range planning, the prevention of storm water pollution, the maintenance of City facilities, and the human resource needs of the City, the City Manager implemented several structural changes effective January 2001. These organizational changes place additional emphasis on these priorities, while continuing to meet the City's other high priorities. This restructuring involved only minor accounting changes.

Five Year Summary of Financial Results

Tables 12 and 13 present the Balance Sheet and the Revenue and Expenditure statements of the City's General Fund for Fiscal Years 1997 through 2001 in the format presented in the Comprehensive Annual Financial Report.

Table 12
CITY OF SAN DIEGO
BALANCE SHEET FOR THE GENERAL FUND
Fiscal Years 1997 through 2001
(in thousands)

| | <u>1997</u> | <u>1998</u> | <u>1999</u> | <u>2000</u> | <u>2001</u> |
|---|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| ASSETS | | | | | |
| Cash or Equity in Pooled Cash & Investments | \$13,342 | \$23,516 | \$16,005 | \$24,708 | \$48,777 |
| Receivables: | | | | | |
| Taxes – Net | 26,142 | 27,739 | 27,491 | 30,182 | 32,431 |
| Accounts – Net | 23,992 | 26,392 | 29,856 | 32,805 | 38,016 |
| Claims – Net | 30 | 41 | 9 | 36 | 16 |
| Notes | 182 | -- | -- | -- | -- |
| Accrued Interest | 1,915 | 2,451 | 1,745 | 2,744 | 3,011 |
| From Other Funds | 76,808 | 82,923 | 94,547 | 109,686 | 87,135 |
| From Other Agencies | 67 | 613 | 1,068 | 1,068 | 1,635 |
| Advances to Other Funds | 8,346 | 4,570 | 6,771 | 9,920 | 10,628 |
| Advances to Other Agencies | 350 | 350 | 350 | 350 | 350 |
| Prepaid and Reimbursable Items & Deposits | <u>315</u> | <u>357</u> | <u>302</u> | <u>1,161</u> | <u>152</u> |
| Total Assets | \$151,489 | \$168,952 | \$178,144 | \$212,660 | \$222,151 |
| LIABILITIES | | | | | |
| Accounts Payable | 2,923 | 2,135 | 2,461 | \$2,927 | \$2,057 |
| Accrued Wages and Benefits | 11,807 | 14,793 | 16,598 | 21,923 | 27,445 |
| Due to other Funds | 768 | -- | -- | -- | -- |
| Deferred Revenue | 30,669 | 29,590 | 30,934 | 33,904 | 37,942 |
| Contracts and Notes Payable | <u>76,808</u> | <u>82,000</u> | <u>88,500</u> | <u>99,500</u> | <u>77,000</u> |
| Total Liabilities | \$122,975 | \$128,518 | \$138,493 | \$158,254 | \$144,444 |
| FUND EQUITY | | | | | |
| Reserves: | | | | | |
| Reserved for Encumbrances | \$6,376 | \$9,181 | \$9,542 | \$11,628 | \$11,150 |
| Reserved for Advances & Deposits | 8,696 | 4,920 | 7,121 | 10,270 | 10,978 |
| Unreserved: | | | | | |
| Designated for Unrealized Gains | | 396 | | | 2,287 |
| Designated for Subsequent Year's Expenditures | 1,430 | 1,936 | 1,818 | 2,927 | 2,132 |
| Undesignated | <u>12,012</u> | <u>24,001</u> | <u>21,170</u> | <u>29,536</u> | <u>51,160</u> |
| Total Fund Equity | <u>\$28,514</u> | <u>\$40,434</u> | <u>\$39,651</u> | <u>\$54,406</u> | <u>\$77,707</u> |
| Total Liabilities & Fund Equity | <u>\$151,489</u> | <u>\$168,952</u> | <u>\$178,144</u> | <u>\$212,660</u> | <u>\$222,151</u> |

Source: City of San Diego Comprehensive Annual Financial Report

Table 13
CITY OF SAN DIEGO
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE FOR THE GENERAL FUND
Fiscal Years 1997 through 2001 (in thousands)

| | <u>1997</u> | <u>1998</u> | <u>1999</u> | <u>2000</u> | <u>2001</u> |
|---|--------------------------|-------------------------|--------------------------|--------------------------|--------------------------|
| REVENUES: | | | | | |
| Property Taxes | \$114,841 | \$123,012 | \$130,624 | \$144,288 | \$158,585 |
| Sales Taxes | 104,327 | 117,985 | 128,339 | 130,240 | 142,069 |
| Other Local Taxes | 69,165 | 83,796 | 86,968 | 94,809 | 109,151 |
| Licenses and Permits | 21,750 | 19,272 | 20,630 | 20,693 | 22,154 |
| Fines, Forfeitures and Penalties | 17,125 | 16,170 | 23,613 | 28,410 | 29,776 |
| Revenues from Use of Money and Property | 27,673 | 30,789 | 29,940 | 34,429 | 40,841 |
| Revenues from Federal Agencies | 912 | 2,081 | 2,026 | 1,644 | 787 |
| Revenues from Other Agencies | 47,758 | 51,522 | 55,697 | 83,821 | 87,262 |
| Charges for Current Services | 71,884 | 67,825 | 70,244 | 77,469 | 84,156 |
| Other Revenue | <u>2,299</u> | <u>2,871</u> | <u>2,526</u> | <u>2,777</u> | <u>2,606</u> |
| Total Revenues | <u>\$477,734</u> | <u>\$515,323</u> | <u>\$550,607</u> | <u>\$618,580</u> | <u>\$677,387</u> |
| EXPENDITURES: | | | | | |
| Current: | | | | | |
| General Government | \$62,134 | \$64,725 | \$67,405 | \$69,400 | \$79,800 |
| Community and Economic Development | 13,037 | 13,967 | 14,740 | 14,661 | 19,778 |
| Public Safety | 283,683 | 295,762 | 315,231 | 348,869 | 369,607 |
| Libraries | 18,911 | 20,677 | 21,824 | 22,820 | 26,494 |
| Park, Recreation and Culture | 40,469 | 41,561 | 44,910 | 49,850 | 56,748 |
| Public Works | 80,141 | 66,931 | 70,413 | 76,300 | 80,999 |
| Employee Relations and Special Projects | 802 | 633 | 723 | 637 | 548 |
| Development Services | 4,415 | -- | -- | -- | -- |
| Miscellaneous and Unallocated | 1,835 | 2,260 | 2,505 | 1,881 | 1,367 |
| Debt Service: | | | | | |
| Interest | <u>3,307</u> | <u>3,683</u> | <u>4,894</u> | <u>5,213</u> | <u>4,616</u> |
| Total Expenditures | <u>\$508,734</u> | <u>\$510,199</u> | <u>\$542,645</u> | <u>\$589,631</u> | <u>\$639,957</u> |
| EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES | <u>\$(31,000)</u> | <u>\$5,124</u> | <u>\$7,962</u> | <u>\$28,949</u> | <u>\$37,430</u> |
| OTHER FINANCING SOURCES (USES) | | | | | |
| Transfers from Proprietary/ Fiduciary Funds | \$5,072 | \$1,918 | \$1,574 | \$2,117 | \$4,074 |
| Transfers from Other Funds | 32,333 | 37,729 | 28,369 | 30,511 | 29,236 |
| Transfers from Component Unit | -- | 554 | 588 | 324 | 86 |
| Transfers to Proprietary Funds | (2,092) | (8,352) | (15,816) | (18,976) | (14,274) |
| Transfers to Other Funds | <u>(5,667)</u> | <u>(25,592)</u> | <u>(24,365)</u> | <u>(27,520)</u> | <u>(32,601)</u> |
| Transfers to Component Unit | -- | (900) | (900) | (650) | (650) |
| TOTAL OTHER FINANCING SOURCES (USES) | <u>\$29,646</u> | <u>\$5,357</u> | <u>(\$10,550)</u> | <u>(\$14,194)</u> | <u>(\$14,129)</u> |
| EXCESS (DEFICIENCY) OF REVENUES AND OTHER FINANCING SOURCES OVER EXPENDITURES AND OTHER FINANCING USES | <u>(\$1,354)</u> | <u>\$10,481</u> | <u>(\$2,588)</u> | <u>\$14,755</u> | <u>\$23,301</u> |
| FUND BALANCE AT JULY 1 | | | | | |
| | <u>\$28,818</u> | <u>\$28,514</u> | <u>\$40,434</u> | <u>\$39,651</u> | <u>\$54,406</u> |
| Cumulative Effect of a Change in Accounting Principle | -- | 314 | -- | -- | -- |
| Residual Equity Transfers from Other Funds | <u>1,050</u> | <u>1,125</u> | <u>1,805</u> | -- | -- |
| FUND BALANCE AT FOLLOWING JUNE 30 | <u>\$28,514</u> | <u>\$40,434</u> | <u>\$39,651</u> | <u>\$54,406</u> | <u>\$77,707</u> |

(1) In connection with restructuring in Fiscal Year 1998, expenditures for engineering permit functions of the General Fund were shifted to the Enterprise Fund component of Development Services.

Source: City of San Diego Comprehensive Annual Financial Report

The following table presents the operating budget summary for Fiscal Years 2000 through 2002.

Table 14
CITY OF SAN DIEGO
OPERATING BUDGET SUMMARY
Fiscal Years 2000 - 2002⁽¹⁾

| | Actual Results in A Budget Format Fiscal Year 2000 | Adopted Budget Fiscal Year 2001 | Adopted Budget Fiscal Year 2002 |
|--|--|------------------------------------|------------------------------------|
| REVENUE SOURCES: | | | |
| Property Tax | \$144,072,407 | \$159,873,991 | \$169,443,711 |
| Sales Tax ⁽²⁾ | 130,239,960 | 139,488,202 | 141,571,382 |
| Transient Occupancy Tax | 50,922,148 | 55,307,161 | 61,920,984 |
| Property Transfer Tax | 5,289,675 | 5,188,876 | 5,613,652 |
| Licenses and Permits | 20,650,202 | 19,268,771 | 21,207,271 |
| Fines, Forfeitures and Penalties | 28,281,481 | 26,269,059 | 29,728,069 |
| Interest Earnings | 11,120,141 | 4,900,000 | 5,900,000 |
| Franchises | 36,597,204 | 37,212,875 | 45,518,854 |
| Other Rents and Concessions | 24,837,390 | 23,791,594 | 26,592,805 |
| State Motor Vehicle License Fees | 61,256,139 | 64,759,082 | 70,310,886 |
| Other Revenue from Agencies ⁽³⁾ | 25,866,530 | 13,038,054 | 9,063,054 |
| Charges for Current Services | 75,311,770 | 63,806,153 | 67,291,812 |
| Transfers from Other Funds | 37,381,766 | 47,041,725 | 40,624,985 |
| Other Revenue | 707,863 | 957,968 | 872,968 |
| Prior Year Fund Balance | <u>15,000,000</u> | <u>15,750,000</u> | <u>31,700,000</u> |
| Total General Fund Revenues | <u>\$667,534,676</u> | <u>\$676,653,511</u> | <u>\$727,360,433</u> |
| EXPENDITURES: | | | |
| Public Safety | \$341,877,010 | \$358,025,368 | \$379,210,941 |
| Parks and Recreation | 53,525,493 | 59,495,101 | 63,667,045 |
| Sanitation and Health | 37,391,808 | 38,704,285 | 41,929,081 |
| Transportation | 27,432,590 | 30,090,228 | 28,301,397 |
| Library | 24,211,364 | 27,675,365 | 32,758,024 |
| Neighborhood Services | 24,316,980 | 27,672,563 | 30,877,221 |
| Operations Support | 95,523,665 | 97,960,062 | 107,582,988 |
| Internal Support/Management | <u>35,677,809</u> | <u>36,733,138</u> | <u>43,033,736</u> |
| Total General Fund Expenditures | <u>\$639,956,719</u> | <u>\$676,356,110</u> | <u>\$727,360,433</u> |

(1) The budget is prepared on the modified accrual basis of accounting except that (i) encumbrances outstanding at year-end are considered as expenditures and (ii) the increase/decrease in reserve for advances and deposits to other funds and agencies are considered as additions/deductions of expenditures.

(2) Includes Proposition 172 Safety Sales Tax.

(3) Includes approximately \$12.93 million in Tobacco Settlement Revenues (TSRs) received by the City during Fiscal Year 2000, of which \$2.25 million was budgeted for General Fund purposes during Fiscal Year 2000 and approximately \$1.6 million was allocated to unappropriated reserves for Fiscal Year 2000. Of the approximately \$9.1 million remaining TSRs received during Fiscal Year 2000, approximately \$5.75 million is included in the Prior Year Fund Balance amount for Fiscal Year 2001, with the remaining \$3.35 million to be allocated to unappropriated reserves for Fiscal Year 2001. TSRs received by the City during Fiscal Year 2001 are budgeted in Fiscal Year 2002.

Source: City of San Diego, Financial Management Department

Fiscal Year 2000

The actual Total General Fund Revenues, presented in a budget format equivalent to Table 14, for Fiscal Year 2000 equaled \$667.5 million, \$65.8 million or 10.9% above the actual results for Fiscal Year 1999. The following table shows the change in actual major revenue sources for Fiscal Year 2000 over Fiscal Year 1999.

Change in Major Revenue Sources *Actual Results Fiscal Year 2000 over Fiscal Year 1999⁽¹⁾*

| | | |
|------------------------------|---|-------|
| • Property Tax | + | 10.4% |
| • Sales Tax | + | 7.3% |
| • Transient Occupancy Tax | + | 5.1% |
| • Motor Vehicle License Fees | + | 12.0% |

(1) The above percentages reflect overall growth in these revenue sources, and include allocations to the General Fund for Property Tax, and Total City Sales Tax, excluding Proposition 172 Safety Sales Tax, and Total City Transient Occupancy Tax.

Source: City of San Diego, Financial Management Department

Fiscal Year 2001

The actual Total General Fund Revenues, presented in a budget format equivalent to Table 14, for Fiscal Year 2001 equaled \$725.8 million, which represents an increase of \$58.3 million or 8.7% more than the actual results for Fiscal Year 2000, and \$49.4 million or 7.3% more than the adopted budget for Fiscal Year 2001. The following table shows the change in actual major revenue sources for Fiscal Year 2001 over Fiscal Year 2000.

Change in Major Revenue Sources *Actual Results Fiscal Year 2001 over Fiscal Year 2000⁽¹⁾*

| | | |
|------------------------------|---|-------|
| • Property Tax | + | 9.8% |
| • Sales Tax | + | 8.5% |
| • Transient Occupancy Tax | + | 13.5% |
| • Motor Vehicle License Fees | + | 9.7% |

(1) The above percentages reflect overall growth in these revenue sources, and include allocations to the General Fund for Property Tax, and Total City Sales Tax, excluding Proposition 172 Safety Sales Tax, and Total City Transient Occupancy Tax.

Source: City of San Diego, Financial Management Department

Actual Total General Fund Expenditures, presented in a budget format equivalent to Table 14, for Fiscal Year 2001 equaled \$686,234,635, an increase of \$46.3 million or 7.2% more than the actual results for Fiscal Year 2000, and \$9.9 million or 1.5% more than the adopted budget for Fiscal Year 2001.

Fiscal Year 2002 (Adopted Budget)

Under the City's Fiscal Year 2002 adopted budget, Total General Fund Revenues equal \$727.4 million, up \$1.6 million or 0.2%, from Fiscal Year 2001 actual results. The adopted budget assumes that San Diego will experience slower economic growth in Fiscal Year 2002 than in prior years. Slower economic growth is projected due to declining consumer confidence and the uncertain impact of higher energy prices to businesses and households. Further, the budget was prepared before the Attacks and has not been amended to reflect the potential consequences of the Attacks. The City did not include any revenues from the State for local fiscal relief in its budget for Fiscal Year 2002. Below are budgeted rates of change for the major revenues.

Projected Change in Major Revenue Sources
Fiscal Year 2002 Budget Growth Rates⁽¹⁾

| | | |
|------------------------------|---|------|
| • Property Tax | + | 7.4% |
| • Sales Tax | + | 5.0% |
| • Transient Occupancy Tax | + | 6.0% |
| • Motor Vehicle License Fees | + | 5.0% |

(1) The above percentages reflect overall growth in these revenue sources (based on Fiscal Year 2001 year-end projections), and include allocations to the General Fund for Property Tax, and Total City Sales Tax, excluding Proposition 172 Safety Sales Tax, and Total City Transient Occupancy Tax.

Source: City of San Diego, Financial Management Department

Although the Fiscal Year 2002 adopted budget anticipated slower economic growth than in prior years, aggregate revenue collections to date have come in below budgeted levels due to the Attacks and the recent economic downturn. Due to the slowing economy, prior to the Attacks, for the first two months of the current fiscal year ended August 31, 2001, TOT revenues were down by approximately 6% from the same period in the prior fiscal year. Due to the Attacks and the continuing downturn in the economy, through November 30, 2001, TOT revenues were down by approximately 13.5% from the same five months in the prior fiscal year. Sales Tax revenues to the City for the first six months (ended December 31, 2001) of the current fiscal year were approximately 1% above the Sales Tax revenues received for the same period in the prior fiscal year. Through the first six apportionments (ended January 16, 2002) of Fiscal Year 2002, Property Tax revenues received by the City were up approximately 7% from the same period in the prior fiscal year. Motor Vehicle License Fee revenues to the City for the first six months (ended December 31, 2001) of the current fiscal year were approximately 5% above the Motor Vehicle License Fee revenues received for the same period of the prior fiscal year. It is anticipated that the City Manager will present a report on the City's Fiscal Year 2002 financial status to the City Council during February 2002. This report will include an update on revenues and the impact of current economic conditions.

The Fiscal Year 2002 adopted budget includes \$727.4 million in Total General Fund Expenditures. This represents an increase of \$51.0 million or 7.5% from the prior year's adopted budget. Under the adopted budget, Public Safety spending would increase to \$379.2 million, an increase of \$21.2 million or 5.9% from the previous budget. This increased public safety spending would provide for 20 more police officers, 3.5 new lifeguards, and an additional fire recruit academy. The budget would also include funding for 27.5 new positions in the Library Department to extend hours at several branch libraries throughout the City.

Vehicle License Fee Reduction

The State's vehicle license fee ("VLF") is an annual fee on the ownership of a registered vehicle in California. Automobiles, motorcycles, pick-up trucks, commercial trucks and trailers, rental cars, and taxicabs are all subject to the VLF. VLF revenues are distributed by the State to cities and counties. Approximately three-fourths of VLF revenues (one-half to cities and one-half to counties) can be used for any lawful purpose, with the remaining funds allocated to counties to pay for "realignment" health and social services programs. Under the State of California's Vehicle License Fee Law, beginning January 1, 1999, the vehicle license fee was permanently reduced from 2.0% to 1.5%. The law also provided for a one-year reduction to 1.3% for vehicles with a payment due date during calendar year 2000. Subsequently, the law was amended to continue the rate at 1.3% through calendar year 2002 and provide for an additional reduction to 0.65% (also through calendar year 2002), which will be returned to taxpayers in the form of a rebate. Beginning in 2003, the vehicle license fee will be reduced on a permanent basis to 0.65%.

To ensure that local governments are not impacted by the fee reductions, State law provides for an offset from the State's General Fund equal to the amount of the reduction. Under the offset provisions, the State's General Fund pays local governments for lost VLF revenues on a dollar per dollar matching basis, from state General Fund revenues. The repayment funds are continuously appropriated, and do not need to be approved in the annual budget process. A statutory, continuous appropriation, however, is not a firm guarantee of a continuing replacement and the repayment is subject to the availability of monies for transfer from the State's General Fund. Thus, in future years, there could be a loss by local governments of State revenues to offset lost VLF fees.

The City received approximately \$67.2 million in VLF revenues for the Fiscal Year ending June 30, 2001, a 9.7% increase over the prior year's actual receipts. For the Fiscal Year 2002 budget, VLF revenues are projected at approximately \$70.3 million. VLF fees represent approximately 9.7% of the Fiscal Year 2002 Total General Fund Revenues and are the third largest revenue source (after property taxes and sales taxes).

Energy Conservation and Management

California is currently in the midst of an unprecedented energy crisis that is causing significant economic impacts for the City of San Diego, its residents and businesses. The nature of the crisis is highly volatile and changes every day. This section discusses the impact of the current energy situation on the City of San Diego's revenues and expenditures as well as the potential effects to the economy.

The current energy problem was initiated by a 1996 state deregulation plan developed by the California State Legislature. The plan deregulated the wholesale price of electricity but not the retail price based on the assumption that wholesale prices would remain low. Additionally, the California Public Utilities Commission adopted rules preventing investor-owned utilities such as San Diego Gas and Electric (SDG&E) from entering into long-term agreements to purchase electricity at fixed rates, forcing them to purchase electricity on what is now a highly volatile spot market. As a result, in calendar years 2000 and 2001, Californians paid significantly more for electricity than the year before and the State's major utility companies were brought to the verge of, and/or filed for bankruptcy protection.

The dramatic increase in energy costs has had an impact on the City's expenditures for energy. In Fiscal Year 2000, the City's General Fund paid approximately \$5.1 million for energy (electricity and natural gas). In Fiscal Year 2001, the General Fund budget for energy totaled of \$6.4 million. Due to the significant increase in energy costs since June 2000, actual energy expenditures for Fiscal Year 2001 were \$9.3 million, or \$2.9 million more than the budgeted amount.

The budget impact of higher energy costs has been offset to a certain extent by an increase in franchise fees received by the City. SDG&E operates under a 50 year City franchise that was granted in 1970. The City and SDG&E recently have reached an agreement for the remaining 20 years of the franchise, under which, SDG&E pays a franchise fee to the City equal to 3% of its gross in-city sales of natural gas and electricity. This agreement is subject to final approval by the California Public Utilities Commission.

The City's General Fund receives 75% of the revenues derived from this franchise fee. For Fiscal Year 2000, the General Fund received \$22.2 million in franchise fees from SDG&E, or \$1.5 million above the budgeted amount. For Fiscal Year 2001, the City's General Fund adopted budget included \$22.5 million in franchise fees from SDG&E. However, due to the recent increase in energy prices, for Fiscal Year 2001, the General Fund received approximately \$5.2 million more than was budgeted. The Fiscal Year 2002 General Fund budget includes \$31.4 million in franchise fees from SDG&E.

The California Department of Water Resources (the "DWR") has been purchasing power on behalf of a number of utilities, including SDG&E, and under recently enacted legislation is deemed to be selling the same to the customers of the utilities. The City believes that SDG&E will continue to pay franchise fees based upon the revenue from the sale of DWR power to SDG&E customers and expects some clarification on this issue from the California Public Utilities Commission.

In February 2001, the City Manager established a centralized Energy Conservation and Management Program. The goal of the program is to achieve energy independence for the City. The Energy Conservation and Management Program will develop and oversee an energy conservation plan for City facilities, identify incentives to encourage conservation in new private development, develop a public education program, study the feasibility of forming a municipal utility district in cooperation with the County of San Diego, analyze the City's ability to employ renewable energy sources, and review and advocate energy legislation that benefits the City of San Diego and the community.

In the short term, State expenditures for purchases of energy and or energy production and transmission facilities will reduce State funds available for other programs, including transfers to local governments. In Fiscal Year 2001, the City received \$4.3 million in transfers from the State for local fiscal relief. The City's share of this funding was originally estimated at \$5.0 million for Fiscal Year 2002. However, due to the State's increased

energy expenditures, the City did not include any such transfers from the State in its budget for Fiscal Year 2002. Ultimately, the State eliminated transfers to local governments for fiscal relief from its 2002 budget.

Higher energy costs for businesses and households could also reduce income and therefore tax payments to the State and the City. Over the longer term, increased energy costs on individuals and businesses statewide, and the effect of such increased costs on the prices of other goods, services, transportation and housing, may reduce the attractiveness of the State for future investment and even induce business and individuals to relocate elsewhere.

Property Taxes

The County assesses property and collects secured and unsecured property taxes for the cities, school districts, and special districts within the County, including the City. Once the property taxes are collected, the County conducts its internal reconciliation for accounting purposes and distributes the City's share of such taxes to the City, generally within a couple of weeks. Prior to distribution, the moneys are deposited in an account established on behalf of the City in the County Treasurer's Investment Pool (the "Pool"). If the County and/or the Pool were at any time to become subject to bankruptcy proceedings, it is possible that City property taxes held in the Pool, if any, could be temporarily unavailable to the City. In the event of such an occurrence, General Fund revenue requirements could be met through the use of other City funds. Ad valorem taxes are subject to constitutional limits as discussed under the section "**LIMITATIONS ON TAXES AND APPROPRIATIONS.**"

Taxes are levied for each fiscal year on taxable real and personal property which is situated in the City as of the preceding January 1. For assessment and collection purposes, property is classified either as "secured" or "unsecured" and is listed accordingly on separate parts of the assessment roll. The "secured roll" is that part of the assessment roll containing the taxes on which there is a lien on real property sufficient, in the opinion of the County Assessor, to secure payment of the taxes. Other property is assessed on the "unsecured roll."

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of the fiscal year. If unpaid, such taxes become delinquent on December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. If not paid, the property is subject to default. Such property may be redeemed by payment of the delinquent taxes and the delinquent penalty, plus a redemption penalty of 1.5% per month from July 1 of the following year to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County Tax Collector.

Property taxes on the unsecured roll are due as of the March 1 lien date and become delinquent, if unpaid, on August 31 of the fiscal year. A 10% penalty attaches to delinquent taxes on property on the unsecured roll, and an additional penalty of 1.5% per month begins to accrue beginning November 1 of the fiscal year. The taxing authority has four ways of collecting unsecured personal property taxes: (a) a civil action against the taxpayer; (b) filing a certificate in the office of the County Clerk specifying certain facts in order to obtain a judgment lien on certain property of the taxpayer; (c) filing a certificate of delinquency for record in the County Recorder's Office, in order to obtain a lien on certain property of the taxpayer; and (d) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee.

A supplemental assessment occurs upon a change of ownership of existing property and for new construction upon completion. A supplemental tax bill is issued for the difference in property value resulting from the increase in assessed value prorated for the remainder of the year.

Effective July 1, 1988, Assembly Bill 454, Chapter 921, eliminated the reporting of the unitary valuations pertaining to public utilities such as San Diego Gas and Electric and Pacific Telephone. In lieu of the property tax on these previously included assessed valuations, the City now receives from the State (through the County) an amount of unitary revenue based upon the unitary property tax received in the prior year.

Table 15 presents assessed valuation within the City for each of the last ten fiscal years ending June 30, 2002.

Table 15
ASSESSED VALUATION
Fiscal Years Ended June 30, 1993 through 2002
(in thousands except for percentages)⁽¹⁾

| <u>Fiscal Year</u> <u>Ending</u> <u>June 30</u> | <u>Secured</u> <u>Property</u> | <u>Unsecured</u> <u>Property</u> | <u>Gross Total</u> | <u>Less</u> <u>Exemptions</u> ⁽²⁾ | <u>Net Assessed</u> <u>Valuations</u> ⁽³⁾ | <u>Annual Assessed</u> <u>Valuation</u> <u>% Change</u> |
|---|-----------------------------------|-------------------------------------|--------------------|---|---|---|
| 1993 | \$59,787,900 | \$4,059,854 | \$63,847,754 | \$2,099,768 | \$61,747,986 | 3.40 |
| 1994 | 60,586,129 | 4,218,892 | 64,805,021 | 2,360,741 | 62,444,280 | 1.13 |
| 1995 | 60,939,995 | 4,371,923 | 65,311,918 | 2,420,027 | 62,891,891 | 0.72 |
| 1996 | 61,793,760 | 4,303,198 | 66,096,958 | 2,489,507 | 63,607,451 | 1.14 |
| 1997 | 61,893,902 | 4,353,543 | 66,247,445 | 2,355,174 | 63,892,271 | 0.45 |
| 1998 | 63,562,588 | 4,988,950 | 68,551,538 | 2,910,753 | 65,640,785 | 2.74 |
| 1999 | 68,648,609 | 5,337,916 | 73,986,525 | 2,994,814 | 70,991,711 | 8.15 |
| 2000 | 75,788,751 | 5,852,822 | 81,641,573 | 2,987,620 | 78,653,953 | 10.79 |
| 2001 | 82,195,239 | 6,347,101 | 88,542,340 | 3,249,480 | 85,292,860 | 8.44 |
| 2002 | 89,259,317 | 6,838,926 | 96,098,243 | 3,572,188 | 92,526,055 | 8.48 |

(1) Includes both locally assessed and State assessed utility property.

(2) Excludes homeowners' and business inventory exemptions.

(3) Net assessed valuation for tax rate purposes. Includes both locally assessed and State assessed utility property.

Source: City of San Diego Comprehensive Annual Financial Report, Fiscal Year 2001

Table 16 shows the City's secured tax collections for each of the ten fiscal years ended June 30, 2001.

Table 16
SECURED TAX LEVIES AND COLLECTIONS
Fiscal Years Ended June 30, 1992 through 2001
(in thousands except for percentages)

| <u>Fiscal</u> <u>Year</u> <u>Ending</u> <u>June 30</u> | <u>Tax Levy</u> ⁽¹⁾ | <u>Current</u> <u>Year</u> <u>Collections</u> | <u>Current Year</u> <u>Collections as</u> <u>Percentage of</u> <u>Current Tax Levy</u> | <u>Total Tax</u> <u>Collections</u> | <u>Total Collections</u> <u>as Percentage of</u> <u>Current Tax Levy</u> ⁽²⁾ |
|---|--------------------------------|---|---|--|---|
| 1992 | \$127,143 | \$121,308 | 95.41% | \$125,153 | 98.43% |
| 1993 | 120,574 | 114,821 | 95.23 | 119,867 | 99.41 |
| 1994 | 109,881 | 105,911 | 96.39 | 110,738 | 100.78 |
| 1995 | 109,754 | 104,295 | 95.03 | 108,192 | 98.58 |
| 1996 | 111,281 | 108,137 | 97.18 | 110,513 | 99.31 |
| 1997 | 111,719 | 108,676 | 97.28 | 110,563 | 98.96 |
| 1998 | 116,912 | 114,311 | 97.78 | 117,429 | 100.44 |
| 1999 | 127,846 | 124,267 | 97.20 | 126,923 | 99.28 |
| 2000 | 141,963 | 137,859 | 97.11 | 140,225 | 98.78 |
| 2001 | 155,060 | 150,900 | 97.32 | 153,406 | 98.93 |

(1) Commencing in Fiscal Year 1993, by action of the State Legislature, there was a permanent shift of some property taxes from cities to schools.

(2) Total Collections include unpaid taxes from previous years' tax levies collected in the current fiscal year.

Source: City of San Diego Comprehensive Annual Financial Report for Fiscal Year 2001.

Table 17 indicates the ten largest secured and unsecured property taxpayers in the City.

Table 17
PRINCIPAL PROPERTY TAXPAYERS IN CITY OF SAN DIEGO⁽¹⁾
Tax Roll for Fiscal Year 2001-2002
(in thousands, except for percentages)

| <u>Taxpayers</u> | <u>Type of Business</u> | <u>Assessed Valuation</u> ⁽²⁾⁽³⁾ | <u>Percentage of Net Assessed Valuation</u> ⁽³⁾ | <u>Amount of Tax</u> ⁽⁴⁾ |
|-----------------------------|-------------------------|---|--|-------------------------------------|
| Qualcomm | Electronics | \$435,799 | 0.48% | \$4,851 |
| Equitable Life Assurance | Investment | 351,261 | 0.39 | 3,876 |
| Kilroy Realty LP | Real Estate | 330,059 | 0.36 | 3,462 |
| Sea World | Entertainment | 265,000 | 0.29 | 2,947 |
| Pacific Gateway | Developer | 245,411 | 0.27 | 2,728 |
| Sony Corp. of America | Electronics | 227,386 | 0.25 | 2,313 |
| University Towne Center LLC | Shopping Center | 220,291 | 0.24 | 2,448 |
| Solar Turbines | Electronics | 211,069 | 0.23 | 2,336 |
| Horton Plaza LLC | Shopping Center | 188,312 | 0.21 | 2,131 |
| Pardee Construction Co. | Developer | <u>133,376</u> | <u>0.15</u> | <u>2,151</u> |
| | | \$2,607,964 | 2.86% | \$29,243 |

(1) This table excludes public utilities, including San Diego Gas & Electric Company, Pacific Bell, and American Telephone and Telegraph, because valuations within the City cannot be readily determined.

(2) Total assessed valuation includes both secured and unsecured property.

(3) Using total Net Assessed Valuation of \$91,142,819,000, which excludes homeowners' exemptions.

(4) The City receives approximately 17.2% of total taxes paid.

Source: County of San Diego Assessor's Office

LIMITATIONS ON TAXES AND APPROPRIATIONS

Article XIII A of the California Constitution

Section 1(a) of Article XIII A of the California Constitution limits the maximum ad valorem tax on real property to 1% of full cash value (as defined in Section 2 of Article XIII A), to be collected by each county and apportioned among the county and other public agencies and funds according to law. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to ad valorem taxes to pay interest or redemption charges on (a) indebtedness approved by the voters prior to July 1, 1978, or (b) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition. Section 2 of Article XIII A defines "full cash value" to mean "the County Assessor's valuation of real property as shown on the 1975/76 tax bill under full cash value or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year or to reflect a reduction in the consumer price index or comparable data for the area under the taxing jurisdiction, or reduced in the event of declining property values caused by substantial damage, destruction, or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that notwithstanding any other law, local agencies may not levy any ad valorem property tax except to pay debt service on indebtedness approved by the voters as described above.

In addition, legislation enacted by the California Legislature to implement Article XIII A provides that all taxable property is shown at full assessed value as described above. In conformity with this procedure, all taxable property value included in this Offering Document (except as noted) is shown at 100% of assessed value and all general tax rates reflect the \$1 per \$100 of taxable value.

On June 3, 1986, California voters approved an amendment to Article XIII A, which added an additional exemption to the 1% tax limitation imposed by Article XIII A. Under this amendment to Article XIII A, local governments and school districts may increase the property tax rate above 1% for the period necessary to retire new general obligation bonds, if two-thirds of those voting in a local election approve the issuance of such bonds and the money raised through the sale of the bonds is used exclusively to purchase or improve real property.

In the June 1990 election, the voters of the State approved amendments to Article XIII A permitting the State Legislature to extend the replacement dwelling provisions applicable to persons over 55 to severely disabled homeowners for a replacement dwelling purchase or newly constructed on or after June 5, 1990, and to exclude from the definition of "new construction" triggering reassessment improvements to certain dwellings for the purpose of making the dwelling more accessible to severely disabled persons. In the November 1990 election, the voters of the State approved an amendment of Article XIII A to permit the State Legislature to exclude from the definition of "new construction" seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies constructed or installed in existing buildings after November 6, 1990. Since 1990, the voters have approved several other minor exemptions from the reassessment provisions of Article XIII A.

Article XIII B of the California Constitution

Article XIII B of the California Constitution limits the annual appropriations of the State and of any city, county, school district, authority or other political subdivision of the State to the level of appropriations for the prior fiscal year, as adjusted for changes in the cost of living, population, and services for which the fiscal responsibility is shifted to or from the governmental entity. The "base year" for establishing this appropriations limit is Fiscal Year 1979 and the limit is adjusted annually to reflect changes in population, consumer prices and certain increases or decreases in the cost of services provided by these public agencies.

Appropriations of an entity of local government subject to Article XIII B generally include any authorizations to expend during a fiscal year the proceeds of taxes levied by or for the entity, exclusive of certain State subventions, refunds of taxes and benefit payments from retirement, unemployment insurance and disability insurance funds. "Proceeds of Taxes" include, but are not limited to, all tax revenues, most State subventions and the proceeds to the local government entity from (a) regulatory licenses, user charges, and user fees (to the extent that such proceeds exceed the cost reasonably borne by such entity) and (b) the investment of tax revenues. Article XIII B provides that if a governmental entity's revenues in any year exceed the amounts permitted to be spent, the excess must be returned by revising tax rates or fee schedules over the subsequent two years.

Article XIII B does not limit the appropriation of money to pay debt service on indebtedness existing or authorized as of January 1, 1979, or for bonded indebtedness approved thereafter by a vote of the electors of the issuing entity at an election held for that purpose.

In the June 1990 election, the voters of the State approved Proposition 111, which amended the method of calculating State and local appropriations limits. Proposition 111 made several changes to Article XIII B, three of which are reflected in the City's annual computation of its appropriation limit. First, the term "change in the cost of living" was redefined as the change in the California per capita personal income ("CPCPI") from the preceding year. Previously the lower of the CPCPI or the United States Consumer Price Index was used. Second, the appropriations limit for the fiscal year was recomputed by adjusting the Fiscal Year 1987 limit by the CPCPI for the three subsequent years. Third, Proposition 111 excluded appropriation for "all qualified capital outlay projects, as defined by the Legislature" from the definition of "appropriations subject to limitation."

Article XIII B allows voters to approve a temporary waiver of a government's Article XIII B limit. Such a waiver is often referred to as a "Gann limit waiver." The length of any such waiver is limited to four years. In June 1990, San Diego voters approved a four-year increase in the City's Article XIII B limit (for Fiscal Years 1992 through 1995). In the November 1994 election, San Diego voters approved another four-year increase in the City's Article XIII B limit (for Fiscal Years 1996 through 1999). The Gann limit waiver does not provide any additional revenues to the City or allow the City to finance additional services. The City's appropriations limit for Fiscal Year 2002 was established at \$603,258,862. It is estimated that the City will be under the Gann Limit by approximately \$43.8 million. The impact of the appropriations limit on the City's financial needs in the future is unknown.

Both Articles XIII A and XIII B, as well as Articles XIII C and XIII D described below, were adopted as measures that qualified for the ballot pursuant to California's constitutional initiative process. From time to time other initiative measures could be adopted, affecting the ability of the City to increase revenues and to increase appropriations.

Articles XIII C and XIII D of the California Constitution

On November 5, 1996, the voters of the State approved Proposition 218, known as the "Right to Vote on Taxes Act." Proposition 218 added Articles XIII C and XIII D to the California Constitution, which contain a number of provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges. The interpretation and application of certain provisions of Proposition 218 will ultimately be determined by the courts with respect to some of the matters discussed below. It is not possible at this time to predict with certainty the future impact of such interpretations. The provisions of Proposition 218, as so interpreted and applied, may affect the City's ability to raise revenues for certain programs and obligations.

Proposition 218 (Article XIII C) requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City require a majority vote and taxes for specific purposes, even if deposited in the City's General Fund, require a two-thirds vote. Further, any general purpose tax which the City imposed, extended or increased, without voter approval, after December 31, 1994, may continue to be imposed only if approved by a majority vote in an election which must be held within two years of November 5, 1996. The City has not so imposed, extended or increased any such taxes which are currently in effect.

Article XIII C also expressly extends the initiative power to give voters the power to reduce or repeal local taxes, assessments, fees and charges, regardless of the date such taxes, assessments, fees and charges were imposed. Article XIII C expands the initiative power to include reducing or repealing assessments, fees, and charges, which had previously been considered administrative rather than legislative matters and therefore beyond the initiative power. This extension of the initiative power is not limited by the terms of Article XIII C to fees imposed after November 6, 1996 and absent other legal authority could result in the retroactive reduction in any existing taxes, assessments, or fees and charges.

The voter approval requirements of Proposition 218 reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase such taxes in the future to meet increased expenditure needs.

Proposition 218 (Article XIII D) also added several new provisions relating to how local agencies may levy and maintain "assessments" for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that the assessment must confer a "special benefit," as defined in Article XIII D, over and above any general benefits conferred, and (iii) a majority protest procedure which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party. "Assessment" in Article XIII D is defined to mean any levy or charge upon real property for a special benefit conferred upon the real property. This definition applies to landscape and maintenance assessments for open space areas, street medians, streetlights and parks. If the City is unable to continue to collect assessment revenues for a particular program, the program might have to be curtailed and/or funded by the City's General Fund. Given the approval requirements imposed by Proposition 218, the City is unable to predict whether it will be able to continue to collect assessment revenues for these programs in light of Proposition 218. Since these programs represent additional services, to the extent such assessment revenues cannot be collected, the City Manager would recommend to the City Council that such programs be curtailed rather than supported with amounts in the General Fund. Based upon advice from the City Attorney, the City does not believe that it would be obligated to maintain such programs from the General Fund. Through October 1, 2001, the City has conducted 34 mail ballot assessment elections, of which all but one were approved by the property owners.

The City currently has 18 Business Improvement Districts ("BIDs") located throughout the City for the purpose of providing improvements intended to encourage business growth within the boundaries of the BID. The BIDs are financed by assessments paid by businesses operating within the BID. Of the 18 BIDs, 17 currently levy assessments. In addition, the City has a Property based Business Improvement District to supplement

maintenance within the Downtown area. The Howard Jarvis Taxpayers Association ("HJTA") challenged the City's policy for BID formation, contending that the fees collected should be considered a "special tax" under Proposition 218 and that as such, should only be established after a two-thirds vote.

The City's position was that the fees collected are neither "special taxes" nor "property related assessments" since the BIDs were formed under the Parking and Business Improvement Act of 1989, and the assessments are collected from the businesses based on the fact that the businesses are located within and benefiting from the BID, and the ownership in the property on which the businesses are located is not a consideration. On March 27, 1998, the City's position was affirmed by a San Diego Superior Court. HJTA appealed the Superior Court's ruling to the 4th District Court of Appeal. On May 19, 1999, the 4th District Court of Appeal affirmed the Superior Court ruling in favor of the City's position. Although HJTA appealed the appellate court ruling to the California Supreme Court, the Court unanimously rejected the petition for review and the case is now final.

In addition, Proposition 218 (Article XIII D) added several provisions affecting "fees" and "charges," defined for purposes of Article XIII D to mean "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by a local government upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service." All new and existing property related fees and charges must conform to requirements prohibiting, among other things, fees and charges which (i) generate revenues exceeding the funds required to provide the property related service, (ii) are used for any purpose other than those for which the fees and charges are imposed, (iii) are for a service not actually used by, or immediately available to, the owner of the property in question, or (iv) are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Depending on the interpretation of what constitutes a "property related fee" under Article XIII D, there could be future restrictions on the ability of the City's General Fund to charge its enterprise funds for various services provided. Further, before any property related fee or charge may be imposed or increased, written notice must be given to the record owner of each parcel of land affected by such fee or charge. The City must then hold a hearing upon the proposed imposition or increase, and if written protests against the proposal are presented by a majority of the owners of the identified parcels, the City may not impose or increase the fee or charge. Moreover, except for fees or charges for sewer, water and refuse collection services, or fees for electrical and gas service, which are not treated as "property related" for purposes of Article XIII D, no property related fee or charge may be imposed or increased without majority approval by the property owners subject to the fee or charge or, at the option of the local agency, two-thirds voter approval by the electorate residing in the affected area. The City has a number of enterprise funds which are self supporting from fees and charges that may ultimately be determined to be property related for purposes of Article XIII D, e.g. the Sewer Enterprise Fund and the Water Enterprise Fund. The fees and charges of all City enterprise funds may be determined to be fees and charges subject to the initiative power referred to in Article XIII C, as described below. In the event that fees and charges cannot be appropriately increased or are reduced pursuant to exercise of the initiative power, the City may have to decide whether to support any deficiencies in these enterprise funds with moneys from the General Fund or to curtail service, or both.

In addition to the enterprise funds discussed above, the City's stormwater program is funded with fees, which may ultimately be determined to be property related for purposes of Articles XIII C and D. The City is a co-permittee under a National Pollution Discharge Elimination System Permit ("NPDES Permit") for its stormwater program. Pursuant to the NPDES Permit, the City is obligated to undertake substantial capital improvements and implement new operations and maintenance procedures for its stormwater program ("NPDES Permit Requirements"). At the present time, the City is working on a plan of finance for such NPDES Permit Requirements. If the City is not able to increase its stormwater fees to pay for the NPDES Permit Requirements, or if such fees are reduced pursuant to the exercise of the initiative power of Article XIII C, the City will have to identify a plan of finance for same. Such plan of finance may include General Fund moneys not previously identified.

Proposition 218 (Article XIII C) also removes many of the limitations on the initiative power in matters of reducing or repealing any local tax, assessment, fee or charge. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City's General Fund. "Assessments," "fees" and "charges" are not defined in Article XIII C, and it is unclear whether these terms are intended to have the same meanings for purposes of Article XIII C as for Article XIII D described above. If not, the scope of the initiative power under Article XIII C potentially could include any General Fund local tax, assessment, or fee not received from or imposed by the federal or State government or derived from investment income.

Statutory Spending Limitations

A statutory initiative ("Proposition 62") was adopted by the voters of the State at the November 4, 1986, General Election which (a) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency's legislative body and by a majority of the electorate of the governmental entity, (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within the jurisdiction, (c) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax is imposed, (d) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIII A, (e) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities, and (f) requires that any tax imposed by a local governmental entity on or after March 1, 1985, be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988. The requirements imposed by Proposition 62 were upheld by the California Supreme Court in *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal.4th 220; 45 Cal.Rptr.2d 207 (1995).

The City believes that, notwithstanding the *Guardino* decision, the provisions of Proposition 62 do not apply to charter cities. The extent of the application of the decision to taxes authorized prior to the date of the decision is also undecided.

The City has effected certain tax increases after the enactment of Proposition 62 in 1986 and pursuant to such increases has collected approximately \$274.7 million through June 30, 2001. The City did not increase existing taxes or impose new taxes during Fiscal Year 2001.

While in the opinion of the City Attorney the provisions of Proposition 62 do not apply to charter cities, this position is being challenged by various groups in other jurisdictions and may be the subject of future litigation. If ultimately found valid and applicable to charter cities, Proposition 62 could affect the ability of the City to continue the imposition of certain taxes, such as sales and transient occupancy taxes, and may further restrict the City's ability to raise revenue.

Proposed City Voter Initiative

An initiative proposing an amendment to the San Diego City Charter has qualified to be submitted to the City voters for the March 5, 2002, election. Specifically, this initiative asks the voters whether the charter should be amended to require that any increase in an existing general tax or imposition of any new general tax be levied by the City Council only if the proposed levy has been approved by a two-thirds vote of the qualified electors voting on the proposed tax measure. If approved, the ability of the City to increase general taxes and raise revenues could be restricted since current state law (Proposition 218) only imposes a majority vote for increases in general taxes.

LABOR RELATIONS

Most City employees are represented by one of four labor organizations. Currently, the American Federation of State and County Municipal Employees (Local 127) represents approximately 2,120 employees; The Municipal Employees Association (the "MEA") and unrepresented employees (who are a part of the MEA bargaining unit for contract purposes) represents approximately 4,475 employees; The Police Officers Association (the "POA") represents approximately 2,050 employees; and the International Association of Firefighters (Local 145) represents approximately 1,000 employees.

Labor agreements are in place with all employee unions through June 30, 2002. The POA received a 2% increase effective July 1, 2000, and a 5% increase effective July 1, 2001. Local 145 received a 4% increase effective July 1, 2000, and a 5% increase effective July 1, 2001. MEA and Local 127 received a 2% increase effective July 1, 2000, and a 2% increase effective December 23, 2000; a 5% increase will become effective December 23, 2001.

PENSION PLAN

All full-time City employees participate with the full-time employees of the San Diego Unified Port District (the "District") in the City Employees' Retirement System ("CERS"). CERS is a public employee retirement system that acts as a common investment and administrative agent for the City and the District. Through various benefit plans, CERS provides retirement benefits to all general, safety (police and fire), and legislative members.

The CERS plans are structured as defined benefit plans in which benefits are based on salary, length of service, and age. City employees are required to contribute a percentage of their annual salary to CERS. State legislation requires the City to contribute to CERS at rates determined by actuarial valuations.

The City's last actuarial valuation dated June 30, 2000 stated the funding ratio (Valuation of Assets available for Benefits to Total Actuarial Accrued Liability), of the CERS fund to be 97.3%. The CERS fund has an Unfunded Actuarial Accrued Liability (UAAL) of \$68.959 million as of June 30, 2000. The UAAL is the difference between total actuarial accrued liabilities of \$2.528 billion and assets allocated to funding of \$2.459 billion. The UAAL is amortized over a 30-year period, which started July 1, 1991, with each year's amortization payment reflected as a portion of the percentage of payroll representing the employer's contribution rate. As of June 30, 2000, there were 21 years remaining in the amortization period.

INSURANCE, CLAIMS, AND LITIGATION

Workers' Compensation And Long-Term Disability

The City is self-insured for Workers' Compensation and Long-term Disability. The City's self-insured liability for Workers' Compensation and Long-term Disability is accounted for in the Self Insurance Fund. The Self Insurance Fund for Workers' Compensation and Long-Term Disability is supported by contributions from each of the City's operating funds. These contributions are determined by multiplying an annually established rate by the gross salaries payable from each of the City's operating funds. As of June 30, 2001, there is a fund equity deficit in the Self Insurance Fund of approximately \$29,281,000. It is anticipated that individual claim settlements will be funded through participating operating fund contributions subsequent to the filing of a claim and prior to its settlement.

Employee Group Health Insurance

Employee Group Health coverage is provided to employees and retirees by third party group health insurance carriers through an annual "cafeteria plan" selection process.

Public Liability Insurance

The City carries public liability insurance in the amount of \$54 million in excess of the City's \$1 million self-insured retention. This means that the City may pay up to the first \$1 million in any one insured public liability loss and that insured losses above \$1 million and up to \$54 million are paid by the City's public liability insurance. The City's public liability insurance is purchased in layers, jointly with a number of counties in the California State Association of Counties - Excess Insurance Authority ("CSAC-EIA"), however, there is no sharing of policy limits with other members of CSAC-EIA for public liability claims. The City budgets for public liability claims on an annual basis. The City has incurred total annual liability claims and liability insurance premium payments as shown below in Table 18.

Table 18
CITY OF SAN DIEGO
LIABILITY CLAIMS⁽¹⁾ AND PREMIUMS
Fiscal Years ended June 30, 1997 through 2001

| <u>Fiscal Year</u> | <u>Liability Claims Expenses and Settlement Costs</u> | <u>Liability Premium Payments</u> |
|--------------------|---|---------------------------------------|
| 1997 | \$ 7,228,465 | \$1,575,162 |
| 1998 | 9,970,097 | 1,209,474 |
| 1999 | 7,202,644 | 1,103,009 |
| 2000 | 9,639,750 | 1,105,678 |
| 2001 | 13,394,697 | 1,071,330 |

(1) The City's portion of settlement and investigation expenses for third party public liability claims, and other litigation expenses.

Source: City of San Diego, Risk Management

Property Insurance

The City participates in the joint purchase of property insurance including rental interruption and flood insurance through the CSAC-EIA pool; this does not include Earthquake insurance. This joint purchase of the City's "all risk" property insurance, insuring approximately \$2 billion of City property, provides coverage for loss to City property up to approximately \$400 million per occurrence, with a \$25,000 deductible. This limit of insurance includes coverage for rental interruption for lease financed locations. The City also carries boiler and machinery coverage. There is no sharing of limits among the City and member counties of the CSAC-EIA pool, unless the City and member counties are mutually subject to the same loss. Limits and coverages may be adjusted periodically in response to requirements of bond financed projects and in response to changes in the insurance marketplace.

Earthquake Insurance

Earthquake coverage is provided for the City Hall building and certain City lease financed locations in the amount of \$75 million, including coverage for rental interruption caused by Earthquake. Earthquake coverage is subject to the greater of a 5% or \$50,000 per unit deductible, effective through March 31, 2002. The City's earthquake coverage is purchased jointly and shared with the member counties in the CSAC-EIA pool. Due to the potential for geographically concentrated earthquake losses, the CSAC-EIA pool is geographically diverse to minimize any potential sharing of coverage in the case of an earthquake. Depending upon the availability and affordability of such earthquake insurance, the City may elect not to purchase such coverage in the future, or the City may elect to increase the deductible or reduce the coverage from present levels.

Employee Dishonesty and Faithful Performance Insurance

The City is a public agency subject to liability for the dishonest acts, and negligent acts or omissions of its officers and employees acting within the scope of their duty ("employee dishonesty" and "faithful performance"). The City participates in the joint purchase of insurance covering employee dishonesty and faithful performance through the CSAC-EIA pool. Coverage is provided in the amount of \$10 million per occurrence subject to a \$25,000 deductible.

INVESTMENT OF FUNDS

The Treasurer of the City of San Diego, in accordance with the Charter of the City of San Diego, is responsible for investing the unexpended cash in the Treasurer's pooled operating investment fund (the "Investment Pool" or the "City Pool"). Responsibility for the daily investment of funds in the City Pool is delegated to the City's Chief Investment Officer. The City is the only participant in the City Pool; there are no other City Pool participants either voluntary or involuntary. The investment objectives of the City Pool are preservation of capital, liquidity and return.

Oversight and Reporting Requirements

The City Treasurer provides an investment report on a monthly basis to the City Manager, the City Auditor and Comptroller and the City Council and annually presents a statement of investment policy (the "Investment Guidelines") to the City Manager, the City Council and the City Manager's Investment Advisory Committee. The Investment Advisory Committee was established in 1990 and is comprised of the City Auditor and Comptroller, a Deputy City Manager and three investment professionals from the private sector. The Committee is charged with oversight responsibility to review on an ongoing basis the Investment Guidelines and practices of the City Treasurer and recommend changes. Investments in the City Pool are audited by an independent firm of certified public accountants as part of the overall audit of the City's financial statements.

The City's investment section uses outside services to provide investment portfolio valuations and accounting and reporting services. The service provides monthly portfolio valuation, investment performance statistics and other statistical security reports, which are distributed to the City Treasurer accounting section and the City Auditor and Comptroller's office for review and reconciliation. The City Treasury accounting section prepares a series of monthly reports, which includes portfolio market valuation, and distributes these to the Mayor, City Council, City Manager and other officials.

Authorized Investments

Investments in the City Pool are governed by State law and further restricted by the City's Investment Guidelines. The Guidelines have been written with safety of principal being the foremost objective. Permitted investments include U.S. Treasury securities, U.S. Agency securities, corporate medium term notes, money market instruments and the Local Agency Investment Fund (California State Pool). Reverse repurchase agreements ("reverse repos") are restricted to 20% of the base value of the portfolio and are governed by various maturity restrictions as well. A reverse repo is a transaction in which the City Pool sells a security and concurrently agrees to buy it back from the same party at a later date for a price that includes an interest component for the City Pool's use of the money. The main operating funds of the City are being managed in two separate portfolios. In its management of the "Liquidity" portfolio, comprising about 35% of total funds, the City invests in a variety of debt securities with maturities ranging from one day to one year. The remaining 65% of funds are managed in a separate "Core" portfolio that consists of a variety of debt securities ranging from one day to five years; performance is measured against the Merrill Lynch 1 to 3 year U.S. Treasury Index. Safety of principal and liquidity are the paramount considerations in the management of both portfolios.

The Pool does not engage in securities lending transactions. As per a review of archived documents from April 1999 to present, the City's pooled investment fund has not had any investments in any securities issued by PG&E, SDG&E or Southern California Edison.

Pool Liquidity and Other Characteristics

The City Pool (including both the "Liquidity" and the "Core" portfolios) is highly liquid. As of December 31, 2001, approximately 16% of the pool investments mature within 59 days, 17% within 90 days and 26% within 181 days (on a cumulative basis). As of December 31, 2001, the Pool had a weighted average maturity of 1.66 years (605 days) and its weighted yield was 4.17%. For purposes of calculating weighted average maturity, the City Treasurer treats investments in the State-wide Local Agency Investment Fund (California State Pool) as maturing within one day. The Liquidity portfolio had a duration of 0.42 years as of December 31, 2001, and the Core portfolio had a duration of 1.63 years as of December 31, 2001. Duration is a measure of the price volatility of the portfolio and reflects an estimate of the projected increase or decrease in the value of the portfolio based upon a decrease or increase in interest rates. Accordingly, the Liquidity portfolio should decrease in market value by 0.42% for every 1% increase in market interest rates while the Core portfolio should decrease in market value by 1.63% for every 1% increase in market interest rates. The City Pool's composition is designed with a goal of having sufficient liquid funds available to meet disbursement requirements. The composition and value of investments under management in the City's Investment Pool will vary from time to time depending on cash flow needs of the City, maturity or sale of investments, purchase of new securities, and fluctuations in interest rates.

Table 19
CITY OF SAN DIEGO POOLED OPERATING INVESTMENT FUND ⁽¹⁾
at December 31, 2001
(Unaudited)

| <u>Investment Instrument</u> | <u>Book Value</u> | <u>Market Value</u> | <u>Percent of Total ⁽¹⁾</u> |
|--|------------------------|------------------------|--|
| U.S. Treasury Bills and Notes | \$ 416,720,426 | \$ 415,245,313 | 31.04% |
| Federal Agency Securities | 666,076,574 | 679,450,017 | 49.60 |
| Medium Term Notes (Corporate) ⁽²⁾ | 116,735,099 | 120,237,879 | 8.69 |
| Money Market Instruments ⁽³⁾ | 130,345,262 | 130,412,331 | 9.71 |
| Local Agency Investment Fund | 12,892,036 | 12,892,036 | 0.96 |
| NET ASSETS | <u>\$1,342,769,397</u> | <u>\$1,358,237,576</u> | <u>100.00%</u> |

(1) Based on Book Value.

(2) These notes consist of both fixed & floating interest rate securities. The notes with floating interest rates are reset at intervals ranging from one day to three months.

(3) These securities consist of commercial paper, negotiable certificates of deposit, term and overnight repurchase agreements, banker's acceptances, bank notes and/or thrift notes.

Source: City of San Diego, Office of the City Treasurer

Derivatives

As of December 31, 2001, and at least since October 14, 1997, the City's Investment Pool has had no assets invested in structured notes or derivatives prohibited in California Government Code 53601. As of December 31, 2001, the City has \$7,122,811 invested in a simple step-up security purchased on November 9, 2001. The City Treasurer defines a derivative as a financial instrument whose value is derived from an underlying asset, price, index or rate, e.g., options, futures or interest rate swaps. A structured note is an investment instrument that can contain within its structure various combinations of derivatives such as imbedded calls and interest rate swaps that will offer returns to an investor within a defined set of parameters and interest rate scenarios, e.g., step-ups, multiple-indexed notes, inverse floaters or leveraged constant maturity notes. The City Treasurer does not define fixed rate notes, debentures with call features or single index non-leveraged floating rate notes, e.g. monthly LIBOR plus or minus a spread, as structured notes. The City Treasurer limits structured notes eligible for purchase to those investments which, at the time of purchase, have no risk of principal loss if held to maturity and offer an estimated return at purchase that exceeds the return on a comparable fixed term investment in the judgment of the City's Investment Officer. The City Treasurer does not allow the purchase of securities that have a negative amortization of principal. In addition, recently enacted California law prohibits the purchase by local governments of inverse floaters, range notes or interest only strips derived from pools of mortgages.

Reverse Repurchase Agreements

Although the City from time to time uses reverse repos, as of December 31, 2001, and since September 18, 1996, the City has had no reverse repos in the City Pool. The Investment Guidelines require that all proceeds of a reverse repo be reinvested in securities whose maturity date or coupon reset date match the maturity of the reverse repo. The Investment Guidelines limit the use of reverse repurchase agreements to 20% of the base value of the City Pool. The City's reverse repo program is monitored daily and reported monthly, as described above under "Oversight and Reporting Requirements".

BONDED AND OTHER INDEBTEDNESS

General

The City has never failed to pay principal of or interest on any of its debts or lease obligations when due. The City has issued bonds or entered into installment purchase contracts secured by and payable out of loans and installment sale contracts, in order to provide conduit financing for single and multi-family housing,

industrial development, and 501(c)(3) non-profit corporations. These bonds and certificates of participation are not secured by City general funds or revenues.

Long-Term Obligations

As of June 30, 2001, the City had \$63,595,000 aggregate principal amount of long-term general obligation bonded indebtedness outstanding and \$388,475,000 aggregate principal amount of long-term general fund lease obligations outstanding. The following table is a schedule, by years, of principal and interest payments required to be made by the City or its oversight entities with respect to future obligations, as of June 30, 2001. The City has not incurred any long-term General Fund obligations since June 30, 2001.

Table 20
CITY OF SAN DIEGO
GENERAL OBLIGATION AND GENERAL FUND LEASE OBLIGATIONS
As of June 30, 2001
(in thousands)

| <u>Fiscal Year</u> <u>Ending June 30</u> | <u>General</u> <u>Obligation</u> <u>Bonds</u> | <u>General</u> <u>Fund Lease</u> <u>Obligations</u> | <u>Total</u> <u>Principal and</u> <u>Interest Payable</u> |
|---|---|---|---|
| 2002 | 9,268 | 37,238 | 46,506 |
| 2003 | 9,395 | 35,244 | 44,639 |
| 2004 | 9,525 | 35,288 | 44,813 |
| 2005 | 9,645 | 35,359 | 45,004 |
| 2006 | 9,777 | 32,815 | 42,592 |
| Thereafter | <u>36,260</u> | <u>508,156</u> | <u>544,416</u> |
| Subtotal | 83,870 | 684,100 | 767,970 |
| Less Interest Portion | <u>(20,275)</u> | <u>(295,625)</u> | <u>(315,900)</u> |
| Total Principal Portion | <u>\$63,595</u> | <u>\$388,475</u> | <u>\$452,070</u> |

The following provides a summary list of outstanding general obligation bonds and General Fund lease commitments as of June 30, 2001.

| | <u>Principal</u> <u>Outstanding</u> |
|---|--|
| <u>General Obligation Bonds</u> | |
| 1994 – Open Space Park Facility District Refunding | \$45,520 |
| 1991 – Public Safety Communications | <u>18,075</u> |
| Total Principal of General Obligation Bonds | <u>\$63,595</u> |
| <u>General Fund Lease Commitments</u> | |
| <u>Certificates of Participation</u> | |
| 1993 – Balboa Park/Mission Bay Park Capital Improvements | \$21,040 |
| 1996A – Balboa Park/Mission Bay Park Capital Improvements | 26,975 |
| 1996B – Balboa Park/Mission Bay Park Capital Improvements Refunding | 10,720 |
| 1991 – Misdemeanor Pre-arraignment Detention Facility/Wackenhut | 1,900 |
| <u>Lease Revenue Bonds</u> | |
| 1993 – City/MTDB Authority for Old Town Trolley Extension | 16,430 |
| 1994 – City/MTDB Authority Refunding - Police CIP and Bayside Extension | 40,505 |
| 1996 – Stadium Improvements | 65,905 |
| 1998 – Convention Center Expansion Authority | <u>205,000</u> |
| Total Principal of General Fund Lease Commitments | <u>\$388,475</u> |

Source: City of San Diego, Auditor and Comptroller

Prior Years' Defeasance of Debt

In prior years, the City, the San Diego Stadium Authority, the Redevelopment Agency, and the Facilities and Equipment Leasing Corporation defeased certain General Fund obligations by placing the proceeds of refunding bonds in an irrevocable trust to provide for all future debt service payments on the old bonds, through certain applicable redemption dates or maturity. Accordingly, the trust account assets and the liability for the defeased bonds are not included in the City's financial statements. As of June 30, 2001, \$68,090,000 of defeased bonds are still held by investors.

Proposed Additional General Fund Lease Commitments

From time to time the City issues debt to fund various capital improvements and projects. During the fiscal year ending June 30, 2002, the City contemplates the issuance of approximately \$18 million in general fund obligations to fund the rehabilitation and construction of fire stations throughout the City. The total project cost is estimated at approximately \$31.1 million with additional funding to come from a combination of cash, state funds, equipment leases, and bond proceeds in future fiscal years. On February 21, 2001, the San Diego City Council approved a conceptual financing plan for the improvements; however, an ordinance to issue bonds has not been authorized.

Short-Term Borrowings

The City has issued tax anticipation notes since the mid-1960's (except for Fiscal Year 1979) in anticipation of receipt of taxes and other General Fund revenues. The following table presents a 10-year history of the City's short-term borrowings:

Table 21
CITY OF SAN DIEGO
SHORT-TERM BORROWINGS
Fiscal Years Ended June 30, 1993 through 2002

| <u>Fiscal Year Ended June 30</u> | <u>Principal Amount</u> |
|--------------------------------------|-------------------------|
| 1993 | \$102,000,000 |
| 1994 | 100,500,000 |
| 1995 | 68,000,000 |
| 1996 | 53,000,000 |
| 1997 | 73,500,000 |
| 1998 | 82,000,000 |
| 1999 | 88,500,000 |
| 2000 | 99,500,000 |
| 2001 | 77,000,000 |
| 2002 | 73,000,000 |

Source: City of San Diego, Auditor and Comptroller

OPERATING LEASE COMMITMENTS

The City has entered into various General Fund lease arrangements under which the City must make annual payments to occupy buildings necessary for City operations. The table below is a schedule by years of future minimum rental payments required under such leases entered into by the City that have initial or remaining noncancellable lease terms in excess of one year, as of June 30, 2001.

Table 22
CITY OF SAN DIEGO
FUTURE MINIMUM RENTAL PAYMENTS
GENERAL FUND OPERATING LEASE COMMITMENTS

| <u>Fiscal Year Ending June 30</u> | <u>Rent Payable</u> |
|-----------------------------------|---------------------|
| 2002 | \$5,913,218 |
| 2003 | 4,924,290 |
| 2004 | 2,057,269 |
| 2005 | 1,858,148 |
| 2006 | 1,843,564 |
| Thereafter | <u>14,177,597</u> |
| Total Minimum Payments | <u>\$30,774,086</u> |

Source: City of San Diego, Auditor and Comptroller and Real Estate Assets Department

Overlapping Debt and Debt Ratios

Table 23 presents a statement of direct and overlapping bonded debt of the City as of October 1, 2001. Revenue bonds, tax allocation bonds and special assessment bonds are not included in the tabulation; lease revenue obligations payable from the City's General Fund or equivalent sources are included.

The City contains numerous school districts and special purpose districts, such as for water and sanitation, many of which have issued general obligation bonds. Some of the issues may be payable from self-supporting enterprises or revenue sources other than property taxation.

The City periodically issues special assessment or Community Facilities District Mello-Roos bonds on behalf of petitioning developers or citizens when the City determines that the public facilities to be financed are of a defined extraordinary benefit to the City. These bonds are secured by property owner assessments or special taxes. As of June 30, 2001, there were six 1915 Act District bond issues with aggregate outstanding principal of \$47,167,000 and two Community Facilities District (Mello-Roos) bond issues with outstanding principal of \$116,830,000. In order to take advantage of a favorable interest rate environment, in February 1999, seven 1915 Act assessment districts were consolidated into one reassessment district through the issuance of lien refunding revenue bonds under the Marks-Roos Bond Local Pooling Act of 1985. Before this refunding, all seven 1915 Act assessment districts had outstanding bonds issued between 1987 and 1992. As of June 30, 2001, there was \$33,785,000 in outstanding Marks-Roos revenue bonds associated with this refunding.

The reserve funds for each of the City's outstanding 1915 Act District and Community Facilities District bond issues were fully funded as of June 30, 2001. Although the City is not in any way obligated to make debt service payments for either 1915 Act or Community Facilities District bond issues, the City has in the past taken proactive measures to protect bondholders.

Table 23
CITY OF SAN DIEGO
STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT
as of February 1, 2002

CITY OF SAN DIEGO

2001-02 Assessed Valuation: \$96,293,256,580
 Redevelopment Incremental Valuation: 3,745,715,442
 Adjusted Assessed Valuation: \$92,547,541,138

| <u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u> | <u>% Applicable</u> | <u>Debt 2/1/02</u> |
|--|---------------------|----------------------------|
| San Diego County Water Authority | 49.320% | \$ 1,588,104 |
| Metropolitan Water District | 8.751 | 46,159,775 |
| Southwestern Community College District | 17.425 | 6,970,000 |
| San Diego Unified School District | 99.910 | 489,548,890 |
| San Diego Unified School District Lease Tax Obligations | 99.910 | 129,008,788 |
| Sweetwater Union High School District | 21.122 | 8,026,360 |
| San Ysidro School District | 91.277 | 17,739,685 |
| Other High School and School Districts | Various | 8,422,043 |
| City of San Diego | 100. | 16,920,000 |
| City of San Diego 1915 Act Bonds | 100. | 44,647,389 |
| San Diego Open Space Park Facilities District No. 1 | 100. | 41,175,000 |
| San Diego Community Facilities District No. 1 | 100. | 54,640,000 |
| City of San Diego Community Facilities District No. 2, Improvement Area Nos. 1 and 3 | 100. | 60,370,000 |
| North City West School District Community Facilities District | 100. | 72,460,000 |
| Poway Unified School District Community Facilities District No. 1 and 10 | 100. | 87,195,000 |
| San Dieguito Union High School District Community Facilities District No. 95-1 | 81.063 | 15,288,415 |
| Sweetwater Union High School District Community Facilities Districts | 5.014-100. | 2,887,275 |
| Other Special District 1915 Act Bonds | Various | <u>1,151,734</u> |
| TOTAL GROSS DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT | | \$1,104,198,458 |
| Less: San Diego Open Space Park Facilities District No. 1 (100% self-supporting) | | <u>41,175,000</u> |
| TOTAL NET DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT | | \$1,063,023,458 |
| <u>DIRECT AND OVERLAPPING GENERAL FUND OBLIGATION DEBT:</u> | | |
| San Diego County General Fund Obligations | 47.542% | \$241,326,074 |
| San Diego County Pension Obligations | 47.542 | 134,496,318 |
| San Diego Superintendent of Schools Certificates of Participation | 47.542 | 1,009,079 |
| San Diego Community College District General Fund Obligations | 99.906 | 43,998,602 |
| San Diego Unified School District Certificates of Participation | 99.910 | 46,028,537 |
| Sweetwater Union High School District Certificates of Participation | 21.122 | 5,520,235 |
| Del Mar Union School District Certificates of Participation | 78.727 | 9,966,838 |
| San Ysidro School District Certificates of Participation | 91.277 | 9,033,826 |
| South Bay Union School District Certificates of Participation | 61.003 | 3,086,752 |
| Other School, High School and Community College District Certificates of Participation | Various | 8,613,394 |
| City of San Diego General Fund Obligations and MTDB Authority | 100. | 378,095,000 |
| Otay Municipal Water District Certificates of Participation | 7.410 | <u>1,975,877</u> |
| TOTAL GROSS OVERLAPPING GENERAL FUND OBLIGATION DEBT | | \$883,150,532 |
| Less: Otay Municipal Water District Certificates of Participation | | 1,975,877 |
| Grossmont Union High School District Certificates of Participation (100% self-supporting from tax increment revenues) | | <u>67,757</u> |
| TOTAL NET OVERLAPPING GENERAL FUND OBLIGATION DEBT | | \$881,106,898 |
| GROSS COMBINED TOTAL DEBT | | \$1,987,348,990 (1) |
| NET COMBINED TOTAL DEBT | | \$1,944,130,356 |

(1) Excludes tax and revenue anticipation notes, revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.

(Continued)

Ratios to 2001-02 Assessed Valuation:

| | |
|---|-------|
| Direct Debt (\$16,920,000)..... | 0.02% |
| Total Gross Direct and Overlapping Tax and Assessment Debt..... | 1.15% |
| Total Net Direct and Overlapping Tax and Assessment Debt..... | 1.10% |

Ratios to Adjusted Assessed Valuation:

| | |
|--|-------|
| Gross Combined Direct Debt (\$436,190,000) (1) | 0.47% |
| Net Combined Direct Debt (\$395,015,000)..... | 0.43% |
| Gross Combined Total Debt | 2.15% |
| Net Combined Total Debt..... | 2.10% |

| | |
|---|-------------------|
| (1) City | \$ 16,920,000 |
| City Authorities and Certificates of Participation | 378,095,000 |
| San Diego Open Space Park Facilities District No. 1 | <u>41,175,000</u> |
| | \$436,190,000 |

STATE SCHOOL BUILDING AID REPAYABLE AS OF 6/30/01: \$3,341,589

Source: California Municipal Statistics, Inc.

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APPENDIX B

**EXCERPTS FROM THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE
FISCAL YEAR ENDED JUNE 30, 2001**

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CALDERON, JAHAM & OSBORN

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INDEPENDENT AUDITORS' REPORT

The Honorable Mayor, Members of the
City Council and City Manager of the
City of San Diego, California

We have audited the accompanying general-purpose financial statements and the combining and individual fund and account group financial statements of the City of San Diego, California, as of and for the year ended June 30, 2001, as listed in the foregoing table of contents. These general-purpose financial statements are the responsibility of the City of San Diego, California management. Our responsibility is to express an opinion on these general-purpose financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the general-purpose financial statements referred to above present fairly, in all material respects, the financial position of the City of San Diego, California, as of June 30, 2001, and the results of its operations and cash flows of its proprietary fund types and nonexpendable trust funds for the year then ended in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the combining and individual fund and account group financial statements referred to above present fairly, in all material respects, the financial position of each of the individual funds and account groups of the City of San Diego, California, as of June 30, 2001, and the results of operations of such funds and cash flows of its individual proprietary fund types and nonexpendable trust funds for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued a separate report dated November 21, 2001, on our consideration of the City of San Diego's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants.

Our audit was performed for the purpose of forming an opinion on the general-purpose financial statements of the City of San Diego, California, taken as a whole and on the combining and individual fund and account group financial statements. The information listed as supporting schedules and statistical data in the table of contents is presented for purposes of additional analysis and is not a required part of the general-purpose financial statements of the City of San Diego, California. Such information, except for that portion marked "unaudited" on which we express no opinion, has been subjected to the auditing procedures applied in the audit of the general-purpose, combining and individual fund and account group financial statements and, in our opinion, is fairly stated in all material respects in relation to the financial statements of each of the respective individual funds and account groups, taken as a whole.

November 21, 2001

Caldron, Jaham + Osborn

GENERAL PURPOSE FINANCIAL STATEMENTS

THESE STATEMENTS PROVIDE A SUMMARY OVERVIEW OF THE FINANCIAL POSITION OF ALL FUNDS AND ACCOUNT GROUPS AND OF THE OPERATING RESULTS BY FUND TYPES. THEY ALSO SERVE AS AN INTRODUCTION TO THE MORE DETAILED STATEMENTS AND SCHEDULES THAT FOLLOW.

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GENERAL PURPOSE FINANCIAL STATEMENTS

IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD, THE FOLLOWING COMBINED STATEMENTS ARE PRESENTED:

Combined Balance Sheet - All Fund Types, Account Groups and Discretely Presented Component Units.

Combined Statement of Revenues, Expenditures and Changes in Fund Balances - All Governmental Fund Types, Expendable Trust Funds and Discretely Presented Component Unit.

Combined Statement of Revenue, Expenditures and Changes in Undesignated Fund Balances - Budget and Actual (Budgetary Basis) - Budgeted Governmental Fund Types.

Combined Statement of Revenues, Expenses and Changes in Retained Earnings/Fund Balances - All Proprietary Fund Types and Similar Trust Funds and Discretely Presented Component Units.

Combined Statement of Cash Flows - All Proprietary Fund Types and Nonexpendable Trust Fund and Discretely Presented Component Units.

Combined Statement of Changes in Plan Net Assets.

Notes to Financial Statements.

Required Supplementary Information:

- Pension Trust Funds Analysis of Funding Progress - Last Six Fiscal Years.

COMBINED BALANCE SHEET - ALL FUND TYPES, ACCOUNT GROUPS AND DISCRETELY PRESENTED COMPONENT UNITS
 June 30, 2001
 (In Thousands)

| | Governmental Fund Types | | | | Proprietary Fund Types | |
|---|-------------------------|-------------------|---------------------|-------------------|------------------------|-------------------|
| | General | Special Revenue | Debt Service | Capital Projects | Enterprise | Internal Service |
| ASSETS AND OTHER DEBITS | | | | | | |
| Cash or Equity in Pooled Cash and Investments | \$ 48,777 | \$ 262,029 | \$ 4,498 | \$ 352,349 | \$ 691,979 | \$ 71,703 |
| Cash or Equity in Pooled Cash and Investments - Nonexpendable Trust | --- | --- | --- | --- | --- | --- |
| Cash With Custodian/Fiscal Agent | --- | 305 | 19,951 | 3 | 64 | --- |
| Cash With Custodian/Fiscal Agent - Nonexpendable Trust | --- | 94 | --- | --- | --- | --- |
| Investments at Fair Value | --- | 94 | 150,398 | 54,522 | --- | --- |
| Receivables: | | | | | | |
| Taxes - Net | 32,431 | 7,199 | --- | --- | --- | --- |
| Accounts - Net | 38,016 | 7,717 | --- | 7 | 78,099 | 1,813 |
| Claims - Net | 16 | 42 | --- | --- | --- | 11 |
| Special Assessments - Net | --- | 458 | 492 | --- | 15 | --- |
| Notes | --- | 18,290 | --- | 12,577 | --- | --- |
| Contributions | --- | --- | --- | --- | --- | 2,703 |
| Accrued Interest | 3,011 | 2,395 | 98 | 4,884 | 9,478 | 165 |
| Grants | --- | 14,774 | --- | 24,690 | 11,620 | --- |
| Loans | --- | --- | --- | --- | --- | --- |
| Loans to Redevelopment Agency | --- | 576 | --- | --- | --- | --- |
| From Other Funds | 87,135 | 3,157 | 200 | 39,867 | 19,223 | --- |
| From Primary Government | --- | --- | --- | --- | --- | --- |
| From Other Agencies | 1,635 | 327 | 1,529,195 | 48 | --- | --- |
| Securities Sold | --- | --- | --- | --- | --- | --- |
| Advances to Other Funds | 10,628 | 10,861 | --- | 609 | 37,060 | 330 |
| Advances to Other Agencies | 350 | 3,726 | --- | --- | --- | --- |
| Inventories of Water in Storage | --- | --- | --- | --- | 12,799 | --- |
| Inventories | --- | --- | --- | --- | 1,117 | 3,475 |
| Land Held for Resale | --- | 7,507 | --- | 59,092 | --- | --- |
| Prepaid and Reimbursable Items and Deposits | 152 | 248 | 1,397 | --- | 136,470 | 459 |
| Restricted Assets: | | | | | | |
| Cash or Equity in Pooled Cash and Investments - | | | | | | |
| Interest and Redemption Funds | --- | --- | --- | --- | 20,818 | --- |
| Cash with Custodian/Fiscal Agent | --- | --- | --- | --- | 47 | --- |
| Deferred Charges | --- | --- | --- | --- | 29,934 | --- |
| Fixed Assets - Net | --- | --- | --- | --- | 3,457,465 | 67,292 |
| Amount Available for Payment of | | | | | | |
| General Long-Term Debt | --- | --- | --- | --- | --- | --- |
| Amount to be Provided for Retirement of | | | | | | |
| General Long-Term Debt | --- | --- | --- | --- | --- | --- |
| TOTAL ASSETS AND OTHER DEBITS | \$ 222,151 | \$ 339,705 | \$ 1,706,229 | \$ 548,648 | \$ 4,506,188 | \$ 147,951 |

The accompanying notes are an integral part of the financial statements.

THE CITY OF SAN DIEGO

ANNUAL FINANCIAL REPORT

| Fiduciary Fund Types | Account Groups | | Totals Primary Government | Component Unit | Component Unit | Component Unit | Totals Reporting Entity |
|----------------------|------------------|----------------------|---------------------------|---|------------------------------|--|-------------------------|
| | Trust and Agency | General Fixed Assets | (Memorandum Only) | San Diego Convention Center Corporation | San Diego Housing Commission | San Diego Medical Services Enterprise, LLC | (Memorandum Only) |
| \$ 338,339 | \$ --- | \$ --- | \$ 1,769,674 | \$ 2,840 | \$ 7,357 | \$ 1,044 | \$ 1,780,915 |
| 139 | --- | --- | 139 | --- | --- | --- | 139 |
| 3 | --- | --- | 20,326 | --- | --- | --- | 20,326 |
| 389 | --- | --- | 389 | --- | --- | --- | 389 |
| 3,020,352 | --- | --- | 3,225,366 | --- | 28,418 | --- | 3,253,784 |
| --- | --- | --- | 39,630 | --- | --- | --- | 39,630 |
| 6,454 | --- | --- | 132,106 | 3,630 | 855 | 3,484 | 140,075 |
| --- | --- | --- | 69 | --- | --- | --- | 69 |
| --- | --- | --- | 965 | --- | --- | --- | 965 |
| --- | --- | --- | 30,867 | --- | 63,761 | --- | 94,628 |
| 10,641 | --- | --- | 13,344 | --- | --- | --- | 13,344 |
| 12,529 | --- | --- | 32,560 | --- | 5,449 | --- | 38,009 |
| --- | --- | --- | 51,084 | --- | --- | --- | 51,084 |
| 24,061 | --- | --- | 24,061 | --- | --- | --- | 24,061 |
| --- | --- | --- | 576 | --- | --- | --- | 576 |
| --- | --- | --- | 149,582 | --- | --- | --- | 149,582 |
| --- | --- | --- | --- | 1,026 | 540 | --- | 1,566 |
| --- | --- | --- | 1,531,205 | 39 | 3,107 | --- | 1,534,351 |
| 20,708 | --- | --- | 20,708 | --- | --- | --- | 20,708 |
| --- | --- | --- | 59,488 | --- | --- | --- | 59,488 |
| --- | --- | --- | 4,076 | --- | --- | --- | 4,076 |
| --- | --- | --- | 12,799 | --- | --- | --- | 12,799 |
| --- | --- | --- | 4,592 | --- | 97 | --- | 4,689 |
| --- | --- | --- | 66,599 | --- | --- | --- | 66,599 |
| 40 | --- | --- | 138,766 | 898 | 5 | 3 | 139,672 |
| --- | --- | --- | 20,818 | 5,003 | 754 | --- | 26,575 |
| --- | --- | --- | 47 | --- | --- | --- | 47 |
| --- | --- | --- | 29,934 | --- | --- | --- | 29,934 |
| 265 | 1,618,858 | --- | 5,143,880 | 24,655 | 93,528 | --- | 5,262,063 |
| --- | --- | 216,370 | 216,370 | --- | --- | --- | 216,370 |
| --- | --- | 2,312,695 | 2,312,695 | 10,315 | --- | --- | 2,323,010 |
| \$ 3,433,920 | \$ 1,618,858 | \$ 2,529,065 | \$ 15,052,715 | \$ 48,406 | \$ 203,871 | \$ 4,531 | \$ 15,309,523 |

Continued on next page

COMBINED BALANCE SHEET - ALL FUND TYPES, ACCOUNT GROUPS AND DISCRETELY PRESENTED COMPONENT UNITS
 June 30, 2001
 (In Thousands)

| | Governmental Fund Types | | | | Proprietary Fund Types | |
|--|-------------------------|-------------------|---------------------|-------------------|------------------------|-------------------|
| | General | Special Revenue | Debt Service | Capital Projects | Enterprise | Internal Service |
| LIABILITIES | | | | | | |
| Accounts Payable | \$ 2,057 | \$ 5,669 | \$ 27 | \$ 4,339 | \$ 50,140 | \$ 3,922 |
| Accrued Wages and Benefits | 27,445 | 1,377 | -- | -- | 23,997 | 8,971 |
| Other Accrued Liabilities | -- | 74 | -- | -- | 3,186 | -- |
| Employees' 401(k) Plans | -- | -- | -- | -- | -- | -- |
| Liability Claims | -- | -- | -- | -- | 7,045 | 37,366 |
| Matured Bonds, Notes and Interest Payable | -- | -- | 2 | -- | 47 | -- |
| Interest Accrued on Long-Term Debt | -- | -- | -- | -- | 15,310 | 279 |
| Long-Term Debt Due Within One Year | -- | -- | -- | -- | 29,929 | 4,742 |
| Due to Other Funds | -- | 43,389 | -- | 27,691 | 441 | -- |
| Due to Component Unit | -- | 1,566 | -- | -- | -- | -- |
| Due to Other Agencies | -- | 202 | -- | 149 | 2,404 | -- |
| Deferred Revenue | 37,942 | 52,934 | 1,529,564 | 16,017 | 43,086 | 3 |
| Advances from Other Funds | -- | 609 | 635 | -- | -- | 57,914 |
| Deposits/Advances from Others | -- | -- | -- | -- | 4,567 | -- |
| Sundry Trust Liabilities | -- | 2,266 | -- | 3,523 | -- | -- |
| Estimated Landfill Closure and Postclosure Care | -- | -- | -- | -- | 9,920 | -- |
| Capital Lease Obligations | -- | -- | -- | -- | 6,939 | 17,100 |
| Net Pension Liabilities | -- | -- | -- | -- | 4,433 | 876 |
| Securities Purchased | -- | -- | -- | -- | -- | -- |
| Contracts and Notes Payable | 77,000 | -- | -- | -- | 1,497,856 | -- |
| Loans Payable | -- | -- | -- | -- | -- | -- |
| Bonds Payable | -- | -- | -- | -- | -- | -- |
| TOTAL LIABILITIES | 144,444 | 108,086 | 1,530,228 | 51,719 | 1,699,300 | 131,173 |
| FUND EQUITY AND OTHER CREDITS | | | | | | |
| Investment in General Fixed Assets | -- | -- | -- | -- | -- | -- |
| Contributed Capital | -- | -- | -- | -- | 1,630,032 | 226 |
| Retained Earnings (Deficit): | | | | | | |
| Reserved for Claims and Contingencies | -- | -- | -- | -- | -- | 1,096 |
| Reserved for General Long-Term Claims | -- | -- | -- | -- | -- | (29,281) |
| Unreserved | -- | -- | -- | -- | 1,176,856 | 44,737 |
| Fund Balances: | | | | | | |
| Reserved for Land Held for Resale | -- | 7,507 | -- | 59,092 | -- | -- |
| Reserved for Encumbrances | 11,150 | 34,181 | -- | 117,274 | -- | -- |
| Reserved for Advances and Deposits | 10,978 | 11,328 | -- | -- | -- | -- |
| Reserved for Nonexpendable Trust | -- | -- | -- | -- | -- | -- |
| Reserved for Pension Benefits | -- | -- | -- | -- | -- | -- |
| Reserved for Debt Service | -- | 41,563 | 174,807 | -- | -- | -- |
| Unreserved: | | | | | | |
| Designated for Unrealized Gains | 2,287 | 1,409 | 1,194 | 2,268 | -- | -- |
| Designated for Subsequent Years' Expenditures | 2,132 | 42,643 | -- | 193,078 | -- | -- |
| Undesignated | 51,160 | 92,988 | -- | 125,217 | -- | -- |
| TOTAL FUND EQUITY AND OTHER CREDITS | 77,707 | 231,619 | 176,001 | 496,929 | 2,806,888 | 16,778 |
| TOTAL LIABILITIES AND FUND EQUITY AND OTHER CREDITS | \$ 222,151 | \$ 339,705 | \$ 1,706,229 | \$ 548,648 | \$ 4,506,188 | \$ 147,951 |

The accompanying notes are an integral part of the financial statements.

| Fiduciary Fund Types | Account Groups | | Totals Primary Government | Component Unit | Component Unit | Component Unit | Totals Reporting Entity |
|-------------------------|---------------------|----------------------------|---------------------------------|---------------------------|--|------------------------------------|---|
| | Trust and Agency | General Fixed Assets | General Long-Term Debt | (Memo- randum Only) | San Diego Convention Center Corporation | San Diego Housing Commission | San Diego Medical Services Enterprise, LLC |
| \$ 4,382 | \$ --- | \$ --- | \$ 70,536 | \$ 1,107 | \$ 1,996 | \$ 1,187 | \$ 74,826 |
| 342 | --- | 52,122 | 114,254 | 1,185 | 1,818 | --- | 117,257 |
| --- | --- | --- | 3,260 | 2,772 | 1,449 | --- | 7,481 |
| 105,269 | --- | --- | 105,269 | --- | --- | --- | 105,269 |
| --- | --- | 44,963 | 89,374 | --- | --- | --- | 89,374 |
| --- | --- | --- | 49 | 9,500 | --- | --- | 9,549 |
| --- | --- | --- | 15,589 | --- | --- | --- | 15,589 |
| --- | --- | --- | 34,671 | --- | --- | --- | 34,671 |
| 78,061 | --- | --- | 149,582 | --- | --- | --- | 149,582 |
| --- | --- | --- | 1,566 | --- | --- | --- | 1,566 |
| --- | --- | --- | 2,755 | --- | 1,188 | 1,561 | 5,504 |
| 267 | --- | --- | 1,679,813 | 2,005 | 6,154 | --- | 1,687,972 |
| 330 | --- | --- | 59,488 | --- | --- | --- | 59,488 |
| 10,456 | --- | --- | 15,023 | 3,600 | 867 | --- | 19,490 |
| 13,695 | --- | --- | 19,484 | --- | --- | --- | 19,484 |
| --- | --- | --- | 9,920 | --- | --- | --- | 9,920 |
| --- | --- | 13,233 | 37,272 | --- | --- | --- | 37,272 |
| 75 | --- | 25,599 | 30,983 | --- | --- | --- | 30,983 |
| 204,146 | --- | --- | 204,146 | --- | --- | --- | 204,146 |
| --- | --- | 41,900 | 1,616,756 | --- | 8,411 | --- | 1,625,167 |
| --- | --- | 3,250 | 3,250 | --- | --- | --- | 3,250 |
| --- | --- | 2,347,998 | 2,347,998 | --- | --- | --- | 2,347,998 |
| 417,023 | --- | 2,529,065 | 6,611,038 | 20,169 | 21,883 | 2,748 | 6,655,838 |
| --- | 1,618,858 | --- | 1,618,858 | 24,655 | 81,568 | --- | 1,725,081 |
| --- | --- | --- | 1,630,258 | --- | --- | 20 | 1,630,278 |
| --- | --- | --- | 1,096 | --- | --- | --- | 1,096 |
| --- | --- | --- | (29,281) | --- | --- | --- | (29,281) |
| --- | --- | --- | 1,221,593 | --- | 100,420 | 1,763 | 1,323,776 |
| --- | --- | --- | 66,599 | --- | --- | --- | 66,599 |
| 4,292 | --- | --- | 166,897 | --- | --- | --- | 166,897 |
| --- | --- | --- | 22,306 | --- | --- | --- | 22,306 |
| 12,339 | --- | --- | 12,339 | --- | --- | --- | 12,339 |
| 2,996,760 | --- | --- | 2,996,760 | --- | --- | --- | 2,996,760 |
| --- | --- | --- | 216,370 | --- | --- | --- | 216,370 |
| 30 | --- | --- | 7,188 | --- | --- | --- | 7,188 |
| 700 | --- | --- | 238,553 | 3,582 | --- | --- | 242,135 |
| 2,776 | --- | --- | 272,141 | --- | --- | --- | 272,141 |
| 3,016,897 | 1,618,858 | --- | 8,441,677 | 28,237 | 181,988 | 1,783 | 8,653,685 |
| \$ 3,433,920 | \$ 1,618,858 | \$ 2,529,065 | \$ 15,052,715 | \$ 48,406 | \$ 203,871 | \$ 4,531 | \$ 15,309,523 |

**COMBINED STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES
ALL GOVERNMENTAL FUND TYPES, EXPENDABLE TRUST FUNDS AND DISCRETELY PRESENTED COMPONENT UNIT
Year Ended June 30, 2001
(In Thousands)**

| | General |
|---|------------------|
| REVENUES | |
| Property Taxes | \$ 158,585 |
| Special Assessments | --- |
| Sales Taxes | 142,069 |
| Other Local Taxes | 109,151 |
| Licenses and Permits | 22,154 |
| Fines, Forfeitures and Penalties | 29,776 |
| Revenue from Use of Money and Property | 40,841 |
| Revenue from Federal Agencies | 787 |
| Revenue from Other Agencies | 87,262 |
| Revenue from Private Sources | --- |
| Charges for Current Services | 84,156 |
| Other Revenue | 2,606 |
| TOTAL REVENUES | 677,387 |
| EXPENDITURES | |
| Current: | |
| General Government | 79,800 |
| Community and Economic Development | 19,778 |
| Public Safety | 369,607 |
| Libraries | 26,494 |
| Parks, Recreation and Culture | 56,748 |
| Public Works | 80,999 |
| Housing and Community Development | --- |
| Public Transportation | --- |
| Employee Relations and Special Projects | 548 |
| Miscellaneous and Unallocated | 1,367 |
| Cost of Issuance, Bonds and Notes | --- |
| Capital Projects | --- |
| Debt Service: | |
| Principal Retirement | --- |
| Interest | 4,616 |
| TOTAL EXPENDITURES | 639,957 |
| EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES | 37,430 |
| OTHER FINANCING SOURCES (USES) | |
| Transfers from Proprietary/Fiduciary Funds | 4,074 |
| Transfers from Other Funds | 29,236 |
| Transfers from Component Unit | 86 |
| Transfers from Primary Government | --- |
| Transfers to Proprietary Funds | (14,274) |
| Transfers to Other Funds | (32,601) |
| Transfers to Component Unit | (650) |
| Proceeds from Loans Payable | --- |
| Proceeds from Special Assessment Bonds | --- |
| Proceeds from Tax Allocation Bonds | --- |
| TOTAL OTHER FINANCING SOURCES (USES) | (14,129) |
| EXCESS (DEFICIENCY) OF REVENUES AND OTHER FINANCING SOURCES OVER EXPENDITURES AND OTHER FINANCING USES | 23,301 |
| Fund Balances at Beginning of Year | 54,406 |
| Residual Equity Transfers from (to) Other Funds | --- |
| FUND BALANCES AT END OF YEAR | \$ 77,707 |

The accompanying notes are an integral part of the financial statements.

| Governmental Fund Types | | | Fiduciary Fund Type | Totals Primary Government | Component Unit San Diego Convention Center Corporation | Totals Reporting Entity |
|-------------------------|--------------|------------------|---------------------|---------------------------|--|-------------------------|
| Special Revenue | Debt Service | Capital Projects | Expendable Trust | (Memorandum Only) | | (Memorandum Only) |
| \$ 20,033 | \$ 16,934 | \$ 6,249 | \$ --- | \$ 201,801 | \$ --- | \$ 201,801 |
| 9,026 | 9,749 | --- | --- | 18,775 | --- | 18,775 |
| 38,008 | --- | 41,647 | --- | 221,724 | --- | 221,724 |
| 84,026 | --- | --- | --- | 193,177 | --- | 193,177 |
| 4,470 | --- | 8,179 | --- | 34,803 | --- | 34,803 |
| 3,125 | --- | 1 | --- | 32,902 | --- | 32,902 |
| 32,580 | 11,685 | 23,239 | 722 | 109,067 | 7,348 | 116,415 |
| 35,938 | --- | 3,411 | --- | 40,136 | --- | 40,136 |
| 30,721 | 94,538 | 10,347 | --- | 222,868 | 2,508 | 225,376 |
| 20,667 | 632 | 56,284 | 212 | 77,795 | --- | 77,795 |
| 17,625 | --- | --- | --- | 101,781 | 13,860 | 115,641 |
| 3,118 | --- | 5,820 | --- | 11,544 | 1,182 | 12,726 |
| 299,337 | 133,538 | 155,177 | 934 | 1,266,373 | 24,898 | 1,291,271 |
| 7,740 | 132 | 8,320 | --- | 95,992 | --- | 95,992 |
| 8,052 | --- | --- | --- | 27,830 | --- | 27,830 |
| 36,948 | --- | 25 | 10 | 406,590 | --- | 406,590 |
| 4,870 | --- | --- | 183 | 31,547 | --- | 31,547 |
| 58,175 | --- | 1,272 | 117 | 116,312 | 25,502 | 141,814 |
| 71,279 | --- | 279 | 1 | 152,558 | --- | 152,558 |
| 13,580 | --- | 61 | --- | 13,641 | --- | 13,641 |
| 8 | --- | --- | --- | 8 | --- | 8 |
| 7,878 | --- | --- | 9 | 8,435 | --- | 8,435 |
| 4 | --- | --- | --- | 1,371 | --- | 1,371 |
| --- | 2,155 | 1,899 | --- | 4,054 | --- | 4,054 |
| 18,334 | --- | 449,435 | 5,604 | 473,373 | 3,808 | 477,181 |
| 1,475 | 52,758 | --- | --- | 54,233 | --- | 54,233 |
| 1,620 | 119,094 | --- | --- | 125,330 | --- | 125,330 |
| 229,963 | 174,139 | 461,291 | 5,924 | 1,511,274 | 29,310 | 1,540,584 |
| 69,374 | (40,601) | (306,114) | (4,990) | (244,901) | (4,412) | (249,313) |
| 145 | --- | 1,400 | --- | 5,619 | --- | 5,619 |
| 101,575 | 42,819 | 62,578 | --- | 236,208 | --- | 236,208 |
| 1,050 | --- | --- | --- | 1,136 | --- | 1,136 |
| --- | --- | --- | --- | --- | 6,638 | 6,638 |
| (743) | --- | (613) | --- | (15,630) | --- | (15,630) |
| (170,659) | (2,274) | (30,674) | --- | (236,208) | --- | (236,208) |
| (11,733) | --- | --- | --- | (12,383) | --- | (12,383) |
| --- | --- | 222 | --- | 222 | --- | 222 |
| --- | 4,575 | 56,264 | --- | 60,839 | --- | 60,839 |
| 42,996 | 13,394 | --- | --- | 56,390 | --- | 56,390 |
| (37,369) | 58,514 | 89,177 | --- | 96,193 | 6,638 | 102,831 |
| 32,005 | 17,913 | (216,937) | (4,990) | (148,708) | 2,226 | (146,482) |
| 199,239 | 158,088 | 713,866 | 10,099 | 1,135,698 | 1,356 | 1,137,054 |
| 375 | --- | --- | --- | 375 | --- | 375 |
| \$ 231,619 | \$ 176,001 | \$ 496,929 | \$ 5,109 | \$ 987,365 | \$ 3,582 | \$ 990,947 |

**COMBINED STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN UNDESIGNATED FUND BALANCES
BUDGET AND ACTUAL (BUDGETARY BASIS) - BUDGETED GOVERNMENTAL FUND TYPES
Year Ended June 30, 2001
(In Thousands)**

| | General Fund | |
|---|---------------------------------|------------------|
| | Actual on Budgetary Basis | Budget |
| REVENUES | | |
| Property Taxes | \$ 158,585 | \$ 159,874 |
| Special Assessments | — | — |
| Sales Taxes | 142,069 | 139,696 |
| Other Local Taxes | 109,151 | 99,709 |
| Licenses and Permits | 22,154 | 19,512 |
| Fines, Forfeitures and Penalties | 29,776 | 27,143 |
| Revenue from Use of Money and Property | 38,554 | 32,038 |
| Revenue from Federal Agencies | 787 | 875 |
| Revenue from Other Agencies | 87,262 | 75,151 |
| Revenue from Private Sources | — | — |
| Charges for Current Services | 84,156 | 80,580 |
| Other Revenue | 2,606 | 3,390 |
| Excess Revenue Appropriated | — | 4,508 |
| TOTAL REVENUES | 675,100 | 642,476 |
| EXPENDITURES | | |
| Current: | | |
| General Government | 82,528 | 85,534 |
| Community and Economic Development | 20,643 | 21,244 |
| Public Safety | 373,175 | 380,181 |
| Libraries | 27,094 | 27,557 |
| Parks, Recreation and Culture | 59,153 | 62,419 |
| Public Works | 84,118 | 87,543 |
| Housing and Community Development | — | — |
| Public Transportation | — | — |
| Employee Relations and Special Projects | 548 | 636 |
| Miscellaneous and Unallocated | 1,418 | 1,550 |
| Capital Projects | — | — |
| Debt Service: | | |
| Principal Retirement | — | — |
| Interest | 4,616 | 4,616 |
| TOTAL EXPENDITURES | 653,293 | 671,280 |
| EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES | 21,807 | (28,804) |
| OTHER FINANCING SOURCES (USES) | | |
| Transfers from Proprietary/Fiduciary Funds | 5,552 | 11,897 |
| Transfers from Other Funds | 29,236 | 35,465 |
| Transfers from Component Unit | 86 | 86 |
| Transfers to Proprietary Funds | (14,274) | (14,274) |
| Transfers to Other Funds | (32,601) | (32,601) |
| Transfers to Component Unit | (650) | (650) |
| TOTAL OTHER FINANCING SOURCES (USES) | (12,651) | (77) |
| EXCESS (DEFICIENCY) OF REVENUES AND OTHER FINANCING SOURCES OVER EXPENDITURES AND OTHER FINANCING USES | 9,156 | (28,881) |
| Fund Balances Undesignated at July 1, 2000 | 29,536 | 29,536 |
| Reserved for Encumbrances at July 1, 2000 | 11,628 | 11,628 |
| Reserved for Debt Service at July 1, 2000 | — | — |
| Reserved for Debt Service at June 30, 2001 | — | — |
| Designated for Subsequent Years' Expenditures at July 1, 2000 | 2,972 | 2,972 |
| Designated for Subsequent Years' Expenditures at June 30, 2001 | (2,132) | — |
| FUND BALANCES UNDESIGNATED AT June 30, 2001 | \$ 51,160 | \$ 15,255 |

The accompanying notes are an integral part of the financial statements.

| Budgeted Special Revenue Funds | | Budgeted Debt Service Funds | | Budgeted Capital Projects Funds | | Totals (Memorandum Only) | | |
|-----------------------------------|-----------|---------------------------------|----------|------------------------------------|----------|---------------------------------|------------|--|
| Actual on Budgetary Basis | Budget | Actual on Budgetary Basis | Budget | Actual on Budgetary Basis | Budget | Actual on Budgetary Basis | Budget | Variance Favorable (Unfavorable) |
| \$ 4,714 | \$ 4,415 | \$ 2,358 | \$ 2,361 | \$ -- | \$ -- | \$ 165,657 | \$ 166,650 | \$ (993) |
| 8,919 | 9,027 | -- | -- | -- | -- | 8,919 | 9,027 | (108) |
| 35,968 | 40,180 | -- | -- | 5,558 | 1,108 | 183,595 | 180,984 | 2,611 |
| 84,026 | 80,407 | -- | -- | -- | -- | 193,177 | 180,116 | 13,061 |
| 1,140 | 1,534 | -- | -- | -- | -- | 23,294 | 21,046 | 2,248 |
| 3,017 | 2,409 | -- | -- | -- | -- | 32,793 | 29,552 | 3,241 |
| 16,932 | 15,095 | 168 | 101 | 497 | 21 | 56,151 | 47,255 | 8,896 |
| -- | -- | -- | -- | 3,195 | 11,453 | 3,982 | 12,328 | (8,346) |
| 14,551 | 14,956 | -- | -- | 9,974 | 16,589 | 111,787 | 106,696 | 5,091 |
| 122 | 42 | -- | -- | 3 | 3 | 125 | 45 | 80 |
| 17,066 | 16,298 | -- | -- | -- | -- | 101,222 | 96,878 | 4,344 |
| 825 | 2,878 | -- | -- | 4,183 | 3,187 | 7,614 | 9,455 | (1,841) |
| -- | -- | -- | -- | -- | -- | -- | 4,508 | (4,508) |
| 187,280 | 187,241 | 2,526 | 2,462 | 23,410 | 32,361 | 888,316 | 864,540 | 23,776 |
| 1,287 | 1,510 | -- | -- | 256 | 2,445 | 84,071 | 89,489 | 5,418 |
| -- | -- | -- | -- | -- | -- | 20,643 | 21,244 | 601 |
| 19,110 | 21,101 | -- | -- | -- | -- | 392,285 | 401,282 | 8,997 |
| -- | -- | -- | -- | -- | -- | 27,094 | 27,557 | 463 |
| 62,359 | 74,725 | -- | -- | 218 | 2,202 | 121,730 | 139,346 | 17,616 |
| 61,064 | 68,410 | -- | -- | -- | -- | 145,182 | 155,953 | 10,771 |
| 6,631 | 7,515 | -- | -- | -- | -- | 6,631 | 7,515 | 884 |
| 11 | 130 | -- | -- | -- | -- | 11 | 130 | 119 |
| -- | -- | -- | -- | -- | -- | 548 | 636 | 88 |
| -- | -- | -- | -- | -- | -- | 1,418 | 1,550 | 132 |
| 5,710 | 13,377 | -- | -- | 15,438 | 29,752 | 21,148 | 43,129 | 21,981 |
| -- | -- | 2,095 | 2,095 | -- | -- | 2,095 | 2,095 | -- |
| -- | -- | 1,498 | 1,498 | -- | -- | 6,114 | 6,114 | -- |
| 156,172 | 186,768 | 3,593 | 3,593 | 15,912 | 34,399 | 828,970 | 896,040 | 67,070 |
| 31,108 | 473 | (1,067) | (1,131) | 7,498 | (2,038) | 59,346 | (31,500) | 90,846 |
| 145 | 131 | -- | -- | -- | -- | 5,697 | 12,028 | (6,331) |
| 65,761 | 71,563 | 1,069 | 1,069 | 8,540 | 8,540 | 104,606 | 116,637 | (12,031) |
| 1,050 | 1,000 | -- | -- | -- | -- | 1,136 | 1,086 | 50 |
| (743) | (743) | -- | -- | -- | -- | (15,017) | (15,017) | -- |
| (107,917) | (110,889) | -- | -- | (13,452) | (13,452) | (153,970) | (156,942) | 2,972 |
| (5,043) | (5,170) | -- | -- | -- | -- | (5,693) | (5,820) | 127 |
| (46,747) | (44,108) | 1,069 | 1,069 | (4,912) | (4,912) | (63,241) | (48,028) | (15,213) |
| (15,639) | (43,635) | 2 | (62) | 2,586 | (6,950) | (3,895) | (79,528) | 75,633 |
| 44,344 | 44,260 | -- | -- | 3,694 | 3,694 | 77,574 | 77,490 | 84 |
| 13,148 | 13,148 | -- | -- | 2,796 | 2,796 | 27,572 | 27,572 | -- |
| -- | -- | 2,993 | 2,993 | -- | -- | 2,993 | 2,993 | -- |
| -- | -- | (2,995) | (2,995) | -- | -- | (2,995) | (2,995) | -- |
| 11,351 | 11,351 | -- | -- | 1,787 | 1,787 | 16,110 | 16,110 | -- |
| (8,324) | -- | -- | -- | (3,724) | -- | (14,180) | -- | (14,180) |
| \$ 44,880 | \$ 25,124 | \$ -- | \$ (64) | \$ 7,139 | \$ 1,327 | \$ 103,179 | \$ 41,642 | \$ 61,537 |

**COMBINED STATEMENT OF REVENUES, EXPENSES AND CHANGES IN RETAINED EARNINGS/FUND BALANCES
ALL PROPRIETARY FUND TYPES AND SIMILAR TRUST FUNDS AND DISCRETELY PRESENTED COMPONENT UNITS**

Year Ended June 30, 2001

(In Thousands)

Proprietary Fund Types

| | Enterprise | Internal Service |
|--|---------------------|-----------------------------|
| OPERATING REVENUES | | |
| Earnings on Investments | \$ --- | \$ --- |
| Sale of Water | 195,706 | --- |
| Charges for Services | 315,378 | 52,001 |
| Contributions | 4 | 42,639 |
| Revenue from Use of Property | 3,442 | --- |
| Usage Fees | 53,518 | 30,326 |
| Other | 19,675 | 2,365 |
| TOTAL OPERATING REVENUES | 587,723 | 127,331 |
| OPERATING EXPENSES | | |
| Benefit and Claim Payments | --- | 47,306 |
| Maintenance and Operations | 286,346 | 45,444 |
| Cost of Materials Issued | 319 | 22,911 |
| Cost of Water Purchased | 103,321 | --- |
| Taxes | 7,803 | --- |
| Administration | 123,758 | 15,917 |
| Depreciation and Amortization | 59,080 | 11,103 |
| TOTAL OPERATING EXPENSES | 580,627 | 142,681 |
| OPERATING INCOME (LOSS) | 7,096 | (15,350) |
| NONOPERATING REVENUES (EXPENSES) | | |
| Earnings on Investments | 54,388 | 980 |
| Federal Grant Assistance | 398 | --- |
| Other Agency Grant Assistance | 831 | --- |
| Debt Service Interest Payments | (72,534) | (561) |
| Cost of Issuance of Long - Term Debt | (1,204) | --- |
| Gain (Loss) on Sale/Retirement of Fixed Assets | (2,260) | (547) |
| Distribution to Partner | --- | --- |
| Other | 13,687 | 4,951 |
| TOTAL NONOPERATING REVENUES (EXPENSES) | (6,694) | 4,823 |
| INCOME (LOSS) BEFORE OPERATING TRANSFERS | 402 | (10,527) |
| Operating Transfers In | 284 | 4,212 |
| Transfers from Governmental Funds | 613 | 15,017 |
| Transfers from Primary Government | --- | --- |
| Operating Transfers Out | (2,349) | (2,147) |
| Transfers to Governmental Funds | (2,755) | (2,116) |
| Transfers to Primary Government | --- | --- |
| NET INCOME (LOSS) | (3,805) | 4,439 |
| Retained Earnings/Fund Balances at Beginning of Year as Restated | 1,181,036 | 12,113 |
| Residual Equity Transfers to Other Funds | (375) | --- |
| RETAINED EARNINGS/FUND BALANCES AT END OF YEAR | \$ 1,176,856 | \$ 16,552 |

The accompanying notes are an integral part of the financial statements.

| Fiduciary Fund | Totals Primary Government | Component Unit | Component Unit | Totals |
|------------------------|---------------------------------|------------------------------------|---|----------------------|
| Nonexpendable Trust | (Memo- randum Only) | San Diego Housing Commission | San Diego Medical Services Enterprise, LLC | (Memorandum Only) |
| \$ 1,563 | \$ 1,563 | \$ -- | \$ -- | \$ 1,563 |
| -- | 195,706 | -- | -- | 195,706 |
| 63 | 367,442 | 6,711 | 31,123 | 405,276 |
| -- | 42,643 | -- | -- | 42,643 |
| -- | 3,442 | -- | -- | 3,442 |
| -- | 83,844 | -- | -- | 83,844 |
| -- | 22,040 | 4,328 | 392 | 26,760 |
| 1,626 | 716,680 | 11,039 | 31,515 | 759,234 |
| -- | 47,306 | -- | -- | 47,306 |
| 44 | 331,834 | 67,877 | 30,624 | 430,335 |
| -- | 23,230 | -- | -- | 23,230 |
| -- | 103,321 | -- | -- | 103,321 |
| -- | 7,803 | -- | -- | 7,803 |
| 4 | 139,679 | 15,868 | -- | 155,547 |
| -- | 70,183 | 2,219 | -- | 72,402 |
| 48 | 723,356 | 85,964 | 30,624 | 839,944 |
| 1,578 | (6,676) | (74,925) | 891 | (80,710) |
| -- | 55,368 | 3,012 | 106 | 58,486 |
| -- | 398 | 73,602 | -- | 74,000 |
| -- | 831 | -- | -- | 831 |
| -- | (73,095) | (615) | -- | (73,710) |
| -- | (1,204) | -- | -- | (1,204) |
| -- | (2,807) | -- | -- | (2,807) |
| -- | -- | -- | (1,050) | (1,050) |
| -- | 18,638 | 206 | -- | 18,844 |
| -- | (1,871) | 76,205 | (944) | 73,390 |
| 1,578 | (8,547) | 1,280 | (53) | (7,320) |
| -- | 4,496 | -- | -- | 4,496 |
| -- | 15,630 | -- | -- | 15,630 |
| -- | -- | 5,095 | 650 | 5,745 |
| -- | (4,496) | -- | -- | (4,496) |
| (748) | (5,619) | -- | -- | (5,619) |
| -- | -- | -- | (1,136) | (1,136) |
| 830 | 1,464 | 6,375 | (539) | 7,300 |
| 11,509 | 1,204,658 | 94,045 | 2,302 | 1,301,005 |
| -- | (375) | -- | -- | (375) |
| \$ 12,339 | \$ 1,205,747 | \$ 100,420 | \$ 1,763 | \$ 1,307,930 |

COMBINED STATEMENT OF CASH FLOWS
ALL PROPRIETARY FUND TYPES AND NONEXPENDABLE TRUST FUND AND DISCRETELY PRESENTED COMPONENT UNITS
Year Ended June 30, 2001
(In Thousands)

| | Proprietary Fund Types | |
|--|------------------------|------------------|
| | Enterprise | Internal Service |
| CASH FLOWS FROM OPERATING ACTIVITIES | | |
| Operating Income (Loss) | \$ 7,096 | \$ (15,350) |
| Adjustments to Reconcile Operating Income (Loss) to Net Cash Provided By (Used For) Operating Activities: | | |
| Earnings on Investments Included in Operating Income | --- | --- |
| Depreciation and Amortization | 59,080 | 11,103 |
| Changes in Assets and Liabilities: | | |
| (Increase) Decrease in Receivables: | | |
| Accounts and Special Assessments - Net | 16,137 | (253) |
| Claims - Net | --- | 24 |
| Notes - Net | --- | --- |
| Contributions | --- | (2,703) |
| From Other Funds | (11,175) | --- |
| From Other Agencies | --- | --- |
| From Primary Government | --- | --- |
| (Increase) Decrease in Inventories | (2,864) | (189) |
| (Increase) Decrease in Prepaid and Reimbursable Items and Deposits | 91,628 | (358) |
| Increase (Decrease) in Accounts Payable | (5,635) | (431) |
| Increase (Decrease) in Accrued Wages and Benefits | 2,261 | 1,414 |
| Increase (Decrease) in Other Accrued Liabilities | 285 | --- |
| Increase (Decrease) in Liability Claims | 1,862 | 1,093 |
| Increase (Decrease) in Due to Other Funds | (1,449) | --- |
| Increase (Decrease) in Due to Other Agencies | 3 | --- |
| Increase (Decrease) in Deferred Revenue | 19,862 | (543) |
| Increase (Decrease) in Net Pension Liabilities | 1,207 | 244 |
| Increase (Decrease) in Estimated Landfill Closure and Postclosure Care | 814 | --- |
| Distribution to Partner | --- | --- |
| Other Nonoperating Revenue (Expenses) | 13,687 | 4,951 |
| NET CASH PROVIDED BY (USED FOR) | | |
| OPERATING ACTIVITIES | 192,799 | (998) |
| CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES | | |
| Residual Equity Transfers to Other Funds | (375) | --- |
| Operating Transfers In | 284 | 4,212 |
| Transfers from Governmental Funds | 613 | 15,017 |
| Transfers from Primary Government | --- | --- |
| Operating Transfers Out | (2,349) | (2,147) |
| Transfers to Governmental Funds | (2,755) | (2,116) |
| Transfers to Primary Government | --- | --- |
| Operating Grants Received | 4,609 | --- |
| Proceeds from Advances and Deposits | 487 | 5,741 |
| Payments for Advances and Deposits | (3,162) | (16) |
| NET CASH PROVIDED BY (USED FOR) | | |
| NONCAPITAL FINANCING ACTIVITIES | (2,648) | 20,691 |

The accompanying notes are an integral part of the financial statements.

| Fiduciary Fund Type | Totals Primary Government (Memorandum Only) | Component Unit San Diego Housing Commission | Component Unit San Diego Medical Services Enterprise, LLC | Totals (Memorandum Only) |
|---------------------|--|--|--|-----------------------------|
| \$ 1,578 | \$ (6,676) | \$ (74,925) | \$ 891 | \$ (80,710) |
| (1,563) | (1,563) | --- | --- | (1,563) |
| --- | 70,183 | 2,219 | --- | 72,402 |
| 1 | 15,885 | 60 | (1,009) | 14,936 |
| --- | 24 | --- | --- | 24 |
| --- | --- | (4,827) | --- | (4,827) |
| --- | (2,703) | --- | --- | (2,703) |
| --- | (11,175) | --- | --- | (11,175) |
| --- | --- | (1,051) | --- | (1,051) |
| --- | --- | 1,588 | --- | 1,588 |
| --- | (3,053) | (9) | --- | (3,062) |
| --- | 91,270 | 161 | 6 | 91,437 |
| --- | (6,066) | 108 | (63) | (6,021) |
| --- | 3,675 | 30 | --- | 3,705 |
| --- | 285 | 323 | --- | 608 |
| --- | 2,955 | --- | --- | 2,955 |
| --- | (1,449) | --- | --- | (1,449) |
| --- | 3 | (167) | 24 | (140) |
| --- | 19,319 | 1,131 | --- | 20,450 |
| --- | 1,451 | --- | --- | 1,451 |
| --- | 814 | --- | --- | 814 |
| --- | --- | --- | (1,050) | (1,050) |
| --- | 18,638 | 206 | --- | 18,844 |
| 16 | 191,817 | (75,153) | (1,201) | 115,463 |
| --- | (375) | --- | --- | (375) |
| --- | 4,496 | --- | --- | 4,496 |
| --- | 15,630 | --- | --- | 15,630 |
| --- | --- | 5,095 | 650 | 5,745 |
| --- | (4,496) | --- | --- | (4,496) |
| (748) | (5,619) | --- | --- | (5,619) |
| --- | --- | --- | (1,136) | (1,136) |
| --- | 4,609 | 73,602 | --- | 78,211 |
| --- | 6,228 | --- | --- | 6,228 |
| --- | (3,178) | --- | --- | (3,178) |
| (748) | 17,295 | 78,697 | (486) | 95,506 |

Continued on next page

**COMBINED STATEMENT OF CASH FLOWS
ALL PROPRIETARY FUND TYPES AND NONEXPENDABLE TRUST FUND AND DISCRETELY PRESENTED COMPONENT UNITS
Year Ended June 30, 2001
(In Thousands)**

| | Proprietary Fund Types | |
|---|------------------------|------------------|
| | Enterprise | Internal Service |
| CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES | | |
| Proceeds from Issuance of Long-Term Debt | \$ 185,417 | \$ 7,264 |
| Proceeds from Contributed Capital | 38,059 | --- |
| Acquisition of Fixed Assets | (265,403) | (20,315) |
| Proceeds from the Sale of Fixed Assets | 346 | 1,171 |
| Principal Payment on Capital Lease | (1,469) | (5,366) |
| Principal Paid on Long-Term Debt | (25,132) | --- |
| Interest Paid on Long-Term Debt | (72,653) | (550) |
| NET CASH PROVIDED BY (USED FOR) CAPITAL AND RELATED FINANCING ACTIVITIES | (140,835) | (17,796) |
| CASH FLOWS FROM INVESTING ACTIVITIES | | |
| (Purchase)Sale of Investments | --- | --- |
| Interest and Dividends Received on Investments | 53,073 | 951 |
| NET CASH PROVIDED BY (USED FOR) INVESTING ACTIVITIES | 53,073 | 951 |
| Net Increase (Decrease) in Cash and Cash Equivalents | 102,389 | 2,848 |
| Cash and Cash Equivalents at Beginning of Year | 610,519 | 68,855 |
| CASH AND CASH EQUIVALENTS AT END OF YEAR | \$ 712,908 | \$ 71,703 |

The accompanying notes are an integral part of the financial statements.

| Fiduciary Fund Type | Totals Primary Government | Component Unit | Component Unit | Totals |
|---------------------|---------------------------|------------------------------|--|-------------------|
| Nonexpendable Trust | (Memorandum Only) | San Diego Housing Commission | San Diego Medical Services Enterprise, LLC | (Memorandum Only) |
| \$ --- | \$ 192,681 | \$ --- | \$ --- | \$ 192,681 |
| --- | 38,059 | --- | --- | 38,059 |
| --- | (285,718) | (1,219) | --- | (286,937) |
| --- | 1,517 | --- | --- | 1,517 |
| --- | (6,835) | (110) | --- | (6,945) |
| --- | (25,132) | --- | --- | (25,132) |
| --- | (73,203) | (615) | --- | (73,818) |
| --- | (158,631) | (1,944) | --- | (160,575) |
| (319) | (319) | 2,373 | --- | 2,054 |
| 1,061 | 55,085 | 3,012 | 106 | 58,203 |
| 742 | 54,766 | 5,385 | 106 | 60,257 |
| 10 | 105,247 | 6,985 | (1,581) | 110,651 |
| 518 | 679,892 | 1,126 | 2,625 | 683,643 |
| \$ 528 | \$ 785,139 | \$ 8,111 | \$ 1,044 | \$ 794,294 |

**COMBINED STATEMENT OF CHANGES IN PLAN NET ASSETS
PENSION TRUST FUNDS
Year Ended June 30, 2001
(In Thousands)**

| | Pension Trust |
|--|--------------------------|
| ADDITIONS | |
| Contributions | \$ 175,958 |
| Earnings on Investments | (59,271) |
| Other Income | 371 |
| TOTAL OPERATING ADDITIONS | 117,058 |
| DEDUCTIONS | |
| Benefit and Claim Payments | 191,585 |
| Administration | 6,252 |
| Depreciation | 28 |
| TOTAL OPERATING DEDUCTIONS | 197,865 |
| NET INCREASE | (80,807) |
| NET ASSETS AT BEGINNING OF YEAR | 3,080,256 |
| NET ASSETS AT END OF YEAR | \$ 2,999,449 |



NOTES TO THE FINANCIAL STATEMENTS

YEAR ENDED JUNE 30, 2001

1: SUMMARY OF SIGNIFICANT POLICIES

The City of San Diego (the "City") adopted its charter on April 7, 1931 and operates as a municipality in accordance with State laws. The City is governed by an elected nine member City Council, including the Mayor. Residents of the City are provided with a wide range of services including parks, recreation, police, fire, water and sewer services.

The accounting policies of the City conform to accounting principles generally accepted in the United States of America ("GAAP") as applicable to governmental units. The following is a summary of the more significant of such policies:

a. Scope of Financial Reporting Entity

As required by GAAP, these financial statements present the government and its component units, entities for which the government is considered to be financially accountable.

Blended component units, although legally separate entities, are, in substance, part of the government's operations and so data from these units are combined with data of the primary government. Component units should be included in the reporting entity financial statements using the blending method if either of the following criteria are met:

- i. The component unit's governing body is substantively the same as the governing body of the primary government (the City).
- ii. The component unit provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefits the primary government even though it does not provide services directly to it.

Included within the reporting entity as blended component units:

- Centre City Development Corporation
- City of San Diego Metropolitan Transit Development Board Authority (a joint-powers agency)
- Convention Center Expansion Financing Authority
- Public Facilities Financing Authority
- Redevelopment Agency of the City of San Diego
- San Diego Data Processing Corporation
- San Diego Facilities and Equipment Leasing Corporation
- San Diego Industrial Development Authority
- San Diego Open Space Park Facilities District #1
- Southeastern Economic Development Corporation

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

A brief description of each blended component unit follows:

- Centre City Development Corporation, Inc. is a not-for-profit public benefit corporation organized in 1975 by the City to administer certain redevelopment projects in downtown San Diego and to provide redevelopment advisory services to the Redevelopment Agency of the City of San Diego. Centre City Development Corporation's budget and Governing Board are approved by the City Council and services are provided exclusively to the City.
- City of San Diego Metropolitan Transit Development Board Authority was established in 1988 by a joint exercise of powers agreement between the City and the San Diego Metropolitan Development Board. The City of San Diego Metropolitan Transit Development Board Authority was created to acquire, construct, maintain, repair, manage, operate and control facilities, to provide public capital improvements including public mass transit guideways, public transit systems and related transportation facilities primarily benefiting the City. The City appoints two Councilmembers to the Governing Board and the San Diego Metropolitan Development Board appoints one. The Authority provides services almost entirely to the City.
- The Convention Center Expansion Financing Authority (the "Authority") is a joint powers authority formed under and pursuant to Section 6500 et seq. of the California Government Code and a Joint Exercise of Powers Agreement dated as of May 1, 1996, between the City and the San Diego Unified Port District (the "District"). The Authority was established to assist the City and the District with respect to the financing, acquisition and construction of an expansion to the existing convention center. The Governing Board is administered by the Mayor, the City Manager, the District Director and a member of the Board of District Commissioners.
- The Public Facilities Financing Authority was established in 1991 by a joint exercise of powers agreement between the City and the Redevelopment Agency of the City of San Diego to acquire, construct, maintain, repair, manage, operate and control facilities for public capital improvements. The Public Facilities Financing Authority provides services exclusively to the City.
- The Redevelopment Agency of the City of San Diego was established by the City in 1958 in order to provide a method for revitalizing deteriorating and blighted areas of the City and began functioning in 1969 under the authority granted by the community redevelopment law. The City Council is the Governing Board and the Redevelopment Agency of the City of San Diego provides services exclusively to the City.
- San Diego Data Processing Corporation was formed in 1979 as a not-for-profit public benefit corporation for the purpose of providing data processing services to public agencies, primarily the City, which is the sole member. The San Diego Data Processing Corporation's budget and Governing Board are approved by the City Council. San Diego Data Processing Corporation provides services almost exclusively to the City.
- The San Diego Facilities and Equipment Leasing Corporation is a not-for-profit public benefit corporation established in 1987 by the City for the purpose of acquiring and leasing to the City real and personal property to be used in the municipal operations of the City. The City Council is the Governing Board and the benefit is exclusively to the City.
- The San Diego Industrial Development Authority was established in 1983 by the City for the purpose of providing an alternate method of financing to participating parties for economic development purposes. The City Council is the Governing Board and benefit is exclusively to the City.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

- The San Diego Open Space Park Facilities District #1 was established in 1978 by the City for the purpose of acquiring open space properties to implement the Open Space Element of the City's General Plan. The boundaries are contiguous with the City's. The City Council is the Governing Board and the benefit is exclusively to the City.
- Southeastern Economic Development Corporation, Inc. is a not-for-profit public benefit corporation organized in 1980 by the City to administer certain redevelopment projects in southeast San Diego and to provide redevelopment advisory services to the Redevelopment Agency of the City of San Diego. Southeastern Economic Development Corporation's budget and Governing Board are approved by the City Council and services are provided exclusively to the City.

Discretely presented component units, also legally separate entities, have financial data reported in a separate column from the financial data of the primary government to demonstrate they are financially and legally separate from the primary government. Component units should be discretely presented in the reporting entity financial statements when neither of the above two criteria are met.

Included within the reporting entity as discretely presented component units:

- San Diego Convention Center Corporation ("SDCCC")

SDCCC is a not-for-profit public benefit corporation originally organized to market, operate and maintain the San Diego Convention Center. On July 1, 1993, SDCCC assumed similar responsibility for the San Diego Concourse as well. The City is a sole member of SDCCC and acts through the San Diego City Council in accordance with the City Charter and the City's Municipal Code. The City appoints seven voting members out of the nine-member Board of Directors of SDCCC. The City is liable for any operating deficits and would be secondarily liable for any debt issuances of SDCCC (currently, there is no debt outstanding). SDCCC is discretely presented because it provides services direct to the citizenry.

- San Diego Housing Commission ("SDHC")

SDHC, a government agency was formed by the City of San Diego, under ordinance No. 2515 on December 5, 1978 in accordance with the Housing Authority Law of the State of California. SDHC primarily serves low income families by providing rental assistance payments, rental housing, loans and grants to individuals and not-for-profit organizations and other services. SDHC is discretely presented because it provides services directly to the citizenry.

- San Diego Medical Services Enterprise, LLC ("SDMSE")

The SDMSE was organized on May 2, 1997 to provide emergency medical services and medical transportation services to the citizens of San Diego. Operations began July 1, 1997. The SDMSE partners are the City of San Diego and Rural Metro of San Diego, Inc., a wholly owned subsidiary of Rural Metro Corporation (a private corporation). The SDMSE governing board is comprised of five members, three of whom are appointed by the City. The City is financially obligated for any deficits and debt of SDMSE up to a maximum of \$6,500,000 over five years. The SDMSE is discretely presented because it provides services direct to the citizenry.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

Complete financial statements for each of the individual component units may be obtained from the City Auditor and Comptroller's office.

Each blended and discretely presented component unit has a June 30 year end.

b. Basis of Presentation

The accounts of the City are organized on the basis of funds or account groups, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund balance/retained earnings, revenues and expenditures/expenses. The various funds are summarized by type in the financial statements. The following fund types and account groups are used by the City:

GOVERNMENTAL FUND TYPES

Governmental Fund Types are those through which most governmental functions of the City are financed. The acquisition, use, and balances of the City's expendable financial resources and the related liabilities (except those accounted for in Proprietary Fund Types) are accounted for through Governmental Fund Types. The measurement focus is upon determination of financial position and changes in financial position, rather than upon net income determination. The following are the City's Governmental Fund Types:

General Fund - The General Fund is the general operating fund of the City. It is used to account for all financial resources, except those required to be accounted for in another fund.

Special Revenue Funds - Special Revenue Funds are used to account for the proceeds of specific revenue sources (other than those for expendable trusts or for major capital projects) that are legally restricted to expenditures for specific purposes.

Debt Service Funds - Debt Service Funds are used to account for the accumulation of resources for, and the payment of, general long-term debt principal, interest and related costs.

Capital Projects Funds - Capital Projects Funds are used to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by Proprietary Fund Types and certain trust funds).

PROPRIETARY FUND TYPES

Proprietary Fund Types are used to account for the City's ongoing organizations and activities which are similar to those often found in the private sector and are accounted for on the flow of economic resources measurement focus and use the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred. The City adopts all applicable Financial Accounting Standards Board ("FASB") Statements and Interpretations issued on or before November 30, 1989, in accounting and reporting for its proprietary operations unless those pronouncements conflict with or contradict Governmental Accounting Standards Board ("GASB") pronouncements. The measurement focus is upon determination of net income, financial position and changes in cash flows. The following are the City's Proprietary Fund Types:

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

Enterprise Funds - Enterprise Funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises - where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.

Internal Service Funds - Internal Service Funds are used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the City, or to other governmental units, on a cost-reimbursement basis.

FIDUCIARY FUND TYPES

Fiduciary Fund Types are used to account for assets held by the City in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds:

Trust and Agency Funds - Trust and Agency Funds include Expendable, Nonexpendable, Pension Trust and Agency Funds. Nonexpendable and Pension Trust Funds are accounted for and reported in the same manner as Proprietary Fund Types since capital maintenance is critical. Expendable Trust and Agency Funds are accounted for and reported similar to Governmental Fund Types.

ACCOUNT GROUPS

Account Groups are used to establish accounting control and accountability for the City's general fixed assets and general long-term debt. The following are the City's account groups:

General Fixed Assets Account Group - This account group is established to account for all fixed assets of the City, other than those accounted for in the Proprietary Fund Types.

General Long-Term Debt Account Group - This account group is established to account for all long-term debt of the City, except for that accounted for in the Proprietary Fund Types.

c. Basis of Accounting

Governmental Fund Types, Expendable Trust and Agency Funds:

The modified accrual basis of accounting is followed in the Governmental Fund Types, Expendable Trust and Agency Funds. Under the modified accrual basis of accounting, revenues are recorded when susceptible to accrual, i.e., both measurable and available. Available means collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period.

Revenues which are considered susceptible to accrual include real and personal property taxes, other local taxes, refuse collection franchise fees, fines, forfeitures and penalties, motor vehicle license fees, interest and state and federal grants and subventures. In applying the susceptible to accrual concept to state and federal revenues, the legal and contractual requirements of the numerous individual programs are used as guidance.

Licenses and permits, charges for services, and miscellaneous revenues are recorded as revenues when received in cash because they are generally not measurable until actually received.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

Expenditures are recognized when the related fund-liability is incurred except for (1) principal and interest of general long-term debt which are recognized when due; and (2) employee annual leave and claims and judgments from litigation and self-insurance which are recorded in the period due and payable since such amounts will not currently be liquidated with expendable available financial resources. The total future liability is reflected in the General Long-Term Debt Account Group.

SDCCC, a discretely presented component unit, is accounted for under the modified accrual basis of accounting.

Proprietary Fund Types, Pension Trust and Nonexpendable Trust Funds:

The accrual basis of accounting is used in all Proprietary Fund Types, Pension Trust and Nonexpendable Trust Funds. Under the accrual basis of accounting, revenues are recognized when earned, and expenses are recorded when incurred. Estimated unbilled revenues from the Water and Sewer Utility (Enterprise) Funds are recognized at the end of each Fiscal Year. This estimated amount is based on billings during the month following the close of the Fiscal Year.

The City reports deferred revenue on its combined balance sheet. Deferred revenues arise when a potential revenue does not meet both the "measurable" and "available" criteria for recognition in the current period. Deferred revenues also arise when resources are received by the City before it has a legal claim to them, as when grant monies are received prior to the incurrence of qualifying expenditures. In subsequent periods when both revenue recognition criteria are met, or when the City has a legal claim to the resources, the liability for deferred revenue is removed from the combined balance sheet and revenue is recognized.

SDHC, a discretely presented component unit, is accounted for under the accrual basis of accounting.

SDMSE, a discretely presented component unit, is accounted for under the accrual basis of accounting.

d. Property Taxes

The County of San Diego (the "County") bills and collects property taxes on behalf of numerous special districts and incorporated cities, including the City. The City's collection of current year's taxes are received through periodic apportionments from the County.

The County's tax calendar is from July 1 to June 30. Property taxes attach as a lien on property on March 1. Taxes are levied on July 1 and are payable in two equal installments on November 1 and February 1, and become delinquent after December 10 and April 10, respectively.

Since the passage of California's Proposition 13, beginning with Fiscal Year 1978-79 general property taxes are based either on a flat 1% rate applied to the 1975-76 full value of the property or on 1% of the sales price of any property sold or of the cost of any new construction after the 1975-76 valuation. Taxable values of properties (exclusive of increases related to sales and new construction) can rise at a maximum of 2% per year.

This Proposition 13 limitation on general property taxes does not apply to taxes levied to pay the debt service on any indebtedness approved by the voters prior to June 6, 1978 (the date of passage of Proposition 13).

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

Property tax revenue is recognized in the Fiscal Year for which the taxes have been levied, provided the taxes are received within 60 days of the end of the Fiscal Year. Property taxes received after this date are not considered available as a resource that can be used to finance the current year operations of the City and, therefore, are not recorded as revenue until collected.

The City provides an allowance for uncollected property taxes of 3% of the outstanding balance which is reflective of historical collections.

e. Budgetary Data

On or before the first meeting in May of each year, the City Manager submits to the City Council a proposed operating and capital improvements budget for the Fiscal Year commencing July 1. Such budget includes annual budgets for the following funds:

General Fund**Special Revenue Funds:****City of San Diego:**

Acquisition, Improvement and Operation

Environmental Growth Funds:

Two-Thirds Requirement

One-Third Requirement

Police Decentralization

Public Transportation

Qualcomm Stadium Operations

Special Gas Tax Street Improvement

Street Division Operations

Transient Occupancy Tax

Zoological Exhibits

Other Special Revenue

Centre City Development Corporation

Southeastern Economic Development Corporation

Debt Service Funds:**City of San Diego:**

Pre-Arrestment Detention Facility

Public Safety Communications Project

Capital Projects Funds:**City of San Diego:**

Capital Outlay

Public hearings are then conducted to obtain citizen comments on the proposed budget. During the month of July the budget is legally adopted through passage of an appropriation ordinance by the City Council.

Budgets are prepared on the modified accrual basis of accounting except that (1) encumbrances outstanding at year-end are considered as expenditures and (2) the increase/decrease in reserve for advances and deposits to other funds and agencies are considered as additions/deductions of expenditures.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

The City budget is prepared net of obligations under reverse repurchase agreement interest expense. For budgetary purposes, obligations under reverse repurchase agreement interest expense is considered a reduction of interest earnings.

Budgetary control for the City's General Fund is exercised at the salaries and wages and non-personnel expenditures level. Budgetary control for the other budgeted funds, including those of certain component units, is maintained at the total fund appropriation level. All amendments to the adopted budget require City Council approval except as delegated in the Annual Appropriation Ordinance.

Reported budget figures are as originally adopted or subsequently amended plus prior year continuing appropriations. Such budget amendments during the year, including those related to supplemental appropriations, did not cause these reported budget amounts to be significantly different than the originally adopted budget amounts. Appropriations lapse at year-end to the extent that they have not been expended or encumbered. The supplemental budgetary appropriations made in all funds were not material.

The following is a reconciliation of the excess (deficiency) of revenues over expenditures prepared on the GAAP basis to that prepared on the budgetary basis (in thousands):

| | <u>General Fund</u> | <u>Special Revenue Funds</u> | <u>Debt Service Funds</u> | <u>Capital Projects Funds</u> |
|---|-------------------------|--------------------------------------|-----------------------------------|---------------------------------------|
| Excess (Deficiency) of Revenues and Other Financing Sources over Expenditures and Other Financing Uses - GAAP Basis | \$23,301 | \$ 32,005 | \$17,913 | (\$216,937) |
| Add (Deduct) - (Excess) Deficiency of Revenues and Other Financing Sources Over Expenditures and Other Financing Uses - GAAP Basis for Non-Budgeted Funds | 0 | (31,045) | (17,892) | 220,587 |
| Budgeted Funds: | | | | |
| Deduct: | | | | |
| Encumbrances Outstanding, June 30, 2001 | (11,150) | (17,521) | 0 | (1,052) |
| Reserved for Advances and Deposits, June 30, 2001 | (10,978) | (11,315) | 0 | 0 |
| Designated for Unrealized Gains, June 30, 2001 | (2,287) | (409) | (19) | (12) |
| Add - Reserved for Advances and Deposits, June 30, 2000 | <u>10,270</u> | <u>12,646</u> | <u>0</u> | <u>0</u> |
| Excess (Deficiency) of Revenues and Other Financing Sources Over Expenditures and Other Financing Uses - Budgetary Basis | <u>\$ 9,156</u> | <u>(\$15,639)</u> | <u>\$ 2</u> | <u>\$ 2,586</u> |

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

f. Encumbrances

Encumbrance accounting, under which purchase orders, contracts and other commitments for the expenditure of funds are recorded in order to reserve that portion of the applicable appropriation, is employed as an extension of formal budgetary control in the budgeted Governmental Fund Types.

Encumbrances outstanding at year-end are reported as reservations of fund balances since the commitments will be honored through subsequent years' continuing appropriations. Encumbrances do not constitute expenditures or liabilities for GAAP reporting purposes.

g. Investments

At July 1, 1997, the City and its blended and discretely presented component units adopted GASB Statement No. 31, "Accounting and Financial Reporting for Certain Investments and for External Investment Pools," which requires certain investments to be reported at fair value. At June 30, 2001, all such investments are presented at fair value.

h. Inventories

Inventories, which consist of both water in storage and operating supplies, are valued at the lower of cost or market. Such inventories are expensed when consumed.

i. Restricted Assets

Proceeds from debt issuances, funds set aside for payment of Enterprise Fund revenue bonds and SDHC deposits servicing low interest construction and rehabilitation loans made by various banks are classified as restricted assets since their use is limited by applicable bond indentures.

The City is required by state and federal laws and regulations to make annual contributions to finance the closure and postclosure care of its Miramar landfill. Such contributions are presented in the Enterprise Fund financial statements as restricted cash or equity in pooled cash and investments.

j. Land Held for Resale

All property purchases by the Redevelopment Agency are charged to Capital Outlay Expenditures. Land held for resale is capitalized in the Special Revenue and Capital Projects Funds on the lower of acquisition cost or estimated resale value. Fund balances and reserved amounts are equal to the carrying value of land held for resale because such assets are not available to finance the Agency's current operations.

k. Fixed Assets

General Fixed Assets:

General fixed assets are those acquired for general governmental purposes. Assets purchased are recorded as expenditures in the Governmental Fund Types and capitalized at cost in the General Fixed Assets Account Group. Donated fixed assets are recorded in general fixed assets at estimated fair market value at the date of donation. Certain assets for which actual costs are not practically determined have been valued on the basis of a professional valuation which determined their estimated historical cost.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

Fixed assets comprising the infrastructure of the City, including roads, bridges, pools, curbs and gutters, streets and sidewalks, drainage systems, and lighting systems, have not been capitalized. Such infrastructure assets normally are immovable and of value only to the City. Therefore, the purpose of stewardship and cumulative accountability for capital expenditures is satisfied without recording these assets.

No depreciation has been provided on general fixed assets.

Proprietary Fund Type Fixed Assets:

Fixed assets owned by the Proprietary Fund Types are stated at cost if purchased or constructed, or at estimated fair market value if received as a donation. Depreciation has been provided over the estimated useful lives using the straight-line method. The estimated useful lives are as follows:

| | |
|--|-------------|
| Structures and improvements | 30-40 years |
| Plants, dams, canals, laterals and equipment | 3-150 years |

l. Interagency Current Receivables, Payables and Long-Term Debt

For reporting purposes, the City considers interagency long-term loans to be operating transfers. Accordingly, "loans receivable" are classified as "transfers out" while "loans payable" are classified as "transfers in". Interest on loans are recorded only when due. Loan amounts, including interest, are noted in the footnotes to this report. When loans are repaid, such transactions are also recorded as "transfers out" (typically from the Debt Service Fund) and "transfers in," and the loan balance is reduced in the footnotes. Interagency current receivables and payables are classified as accounts "receivable from" and "due to" other funds.

m. Long-Term Liabilities

Long-term liabilities expected to be financed in future years from Governmental Fund Types are accounted for in the General Long-Term Debt Account Group. Long-term liabilities of all Proprietary Fund Types are accounted for in their respective funds.

n. Employee Annual Leave

The City provides combined annual leave to cover both vacation and sick leave. It is the City's policy to permit employees to accumulate between 6.25 weeks and 17.5 weeks, depending on hire date, of earned but unused annual leave. Accumulation of these earnings will be paid to employees upon separation from service.

In addition, sick leave earned through August 1981 by employees hired prior to July 1, 1975 is payable upon separation under the following conditions: (1) 50% of the employee's accrued amount upon retirement or death, or (2) 25% of the employee's accrued amount upon resignation.

In Governmental Fund Types and Expendable Trust Funds, the costs for annual leave that are expected to be liquidated with expendable available financial resources is reported as an expenditure and a fund liability of the governmental fund that will pay it. Amounts not expected to be liquidated with expendable available financial resources are reported in the General Long-Term Debt Account Group. No expenditure is reported for these amounts. In Proprietary Fund Types, annual leave benefits are recorded as a liability in the period earned.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

o. Claims and Judgments

In Governmental Fund Types, the costs of claims and judgments are recorded as expenditures when payments are made. The liability for anticipated future claims is recorded in the General Long-Term Debt Account Group in recognition of the City's obligation to fund such costs from future operations. In Proprietary Fund Types, the costs of claims and judgments are recorded when the liability is incurred and measurable.

p. Fund Equity

Portions of fund equity have been reserved for specific purposes. Reservations were created to either (1) satisfy legal covenants that require a portion of the fund balance to be segregated or (2) identify the portion of the fund balance that is not appropriate for future expenditures.

Designated fund balance indicates that portion of fund equity for which the City has made tentative plans.

Undesignated fund balance indicates that portion of fund equity which is available for appropriation in future periods.

q. Statement of Cash Flows

All of the related City's restricted and unrestricted "Cash or Equity in Pooled Cash and Investments" and "Cash with Custodian/Fiscal Agent" are classified as cash and cash equivalents, since they are readily convertible to known amounts of cash or are so close to their maturity that they present an insignificant risk of changes in value because of fluctuations in interest rates.

A summary of noncash investing, capital and financing activities for the year ended June 30, 2001 is as follows (in thousands):

| | Enterprise | Internal Service |
|---------------------------------|-----------------|------------------|
| Non-Cash Fixed Assets Additions | | |
| Donated Assets | \$ 151 | \$ 0 |
| Capital Lease | 2,310 | 6,691 |
| Developer Contributed Assets | <u>30,619</u> | <u>0</u> |
| Total | <u>\$33,080</u> | <u>\$6,691</u> |

SDHC's investments had a difference between the carrying amount of \$21,379,143 and fair value of \$21,426,980 equal to \$47,837. SDHC did not adjust its books as the difference was deemed immaterial.

r. Memorandum Only - Total Columns on Combined Statements

Amounts in the "Total - Memorandum Only" columns in the combined financial statements are presented to aggregate financial data. The total includes fund types and account groups that use different bases of accounting and the captions "Amount Available for Payment of General Long-Term Debt" and "Amount to be Provided for Retirement of Long-Term Debt" which are not assets in the usual sense.

1. SUMMARY OF SIGNIFICANT POLICIES (Continued)

Data in these columns do not present financial position or results of operations in conformity with GAAP, nor is such data comparable to a consolidation. Interfund eliminations have not been made in the aggregation of this data.

s. Comparative Data

Comparative total data for the prior year have been presented in the accompanying combining financial statements in order to provide an understanding of changes in the City's financial position and operations. However, comparative data have not been presented in the combined statements because their inclusion would make certain statements unduly complex and difficult to understand.

t. Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amount of certain assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the related reported amounts of revenues and expenses during the reporting period.

Actual results could differ from those estimates. Management believes that the estimates are reasonable.

u. Reclassification

Certain prior year amounts have been reclassified to conform with current year presentation.

2. CASH AND INVESTMENTS

As provided for by the Government Code, the cash balance of substantially all funds are pooled and invested by the City Treasurer for the purpose of increasing interest earnings through investment activities. The respective funds' shares of the total pooled cash and investments are included in the accompanying combined balance sheet under the caption "Cash or Equity in Pooled Cash and Investments." Interest earned on pooled investments is deposited to certain participating funds based upon each fund's average daily deposit balance during the allocation period with all remaining interest deposited to the General Fund.

"Cash With Custodian/Fiscal Agent" represents funds held by bank trustees on behalf of the City and its component units. For several component units, the purpose of these accounts is to invest cash related to certain outstanding long-term debts and to distribute principal and interest payments to debtholders. For other component units and the City, the purpose of these accounts is solely to distribute principal and interest payments to debtholders.

"Investments at Fair Value" represent investments of the City and San Diego City Employees Retirement System (SDCERS). Reporting of investments at fair value is in accordance with GASB's 25, 27, and 31 "Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans," "Accounting for Pensions by State and Local Governmental Employers," and "Accounting and Financial Reporting for Certain Investments and for External Investment Pools," respectively.

SDCERS has, via a securities lending authorization agreement, authorized a fiscal agent to lend its securities to broker-dealers and banks pursuant to a form of loan agreement.

During the Fiscal Year, the fiscal agent lent Domestic and International Fixed Income and Equity Portfolios and received cash (United States and foreign currency), securities issued or guaranteed by the United States

2. CASH AND INVESTMENTS (Continued)

government, sovereign debt rated A or better, Canadian provincial debt, convertible bonds, and irrevocable letters of credit as collateral. The fiscal agent did not have the ability to pledge or sell collateral securities delivered absent a borrower default. Borrowers were required to deliver collateral for each loan equal to: (i) in the case of loaned securities denominated in United States dollars or whose primary trading market was located in the United States or sovereign debt issued by foreign governments, 101.5% of the market value of the loaned securities; and (ii) in the case of loaned securities not denominated in United States dollars or whose primary trading market was not located in the United States, 104.5% of the market value of the loaned securities.

SDCERS did not impose any restrictions during the Fiscal Year on the amount of the loans that the fiscal agent made on its behalf and the fiscal agent indemnified SDCERS by agreeing to purchase replacement securities or return cash collateral in the event borrower failed to return a loaned security or pay distributions thereon. There were no such failures by any borrowers to return loaned securities or pay distributions thereon during the Fiscal Year. Moreover, there were no losses during the Fiscal Year resulting from a default of the borrowers or the fiscal agent.

During the Fiscal Year, SDCERS and the borrowers maintained the right to terminate all securities lending transactions on demand. The cash collateral received on each loan was invested, together with the cash collateral of other qualified tax-exempt plan lenders, in a collective investment pool. As of June 30, 2001, such investment pool had an average duration of 75 days and an average weighted maturity of 548 days. Because the loans were terminable at will, their duration did not generally match the duration of the investments made with cash collateral. On June 30, 2001, SDCERS had no credit risk exposure to borrowers. The collateral held and the market value of securities on loan for SDCERS as of June 30, 2001 were \$180,088,057 and \$174,806,297, respectively.

Aggregate cash and investments are as follows at June 30, 2001 (in thousands):

| | <u>Total</u> |
|--|--------------------|
| Cash or equity in pooled cash and investments | \$1,769,813 |
| Cash with custodian/fiscal agent, including restricted cash with custodian | 20,762 |
| Investments at fair value | 3,225,366 |
| Restricted pooled cash and investments | <u>20,818</u> |
| Total | <u>\$5,036,759</u> |

Deposits

At June 30, 2001, the carrying amount of the City's cash or equity in pooled cash deposits (cash, non-negotiable certificates of deposit and money market funds) was approximately \$243,029,824 and the net balance per various financial institutions was approximately \$254,563,634 the difference of which is substantially due to deposits in transit and outstanding checks. Of the balance in financial institutions, approximately \$455,472 was covered by federal depository insurance and approximately \$248,431,295 was uninsured. Such uninsured deposits are with financial institutions which are individually legally required to have government deposits collateralized with government securities held by the pledging financial institution's trust departments in the government's name. The market value of such pledged securities must equal at least 110% of the government's deposits.

At June 30, 2001, "Cash with Custodian/Fiscal Agent" (approximately \$20,762,000) was held by the trust departments of various banks and was not covered by federal depository insurance or collateralized by securities owned by the bank.

2. CASH AND INVESTMENTS (Continued)

Deposits - SDCCC

On June 30, 2001, the carrying amount of SDCCC's cash deposits was \$5,315,828 and the bank balance was \$6,669,483. Of the bank balance, \$100,000 was covered by federal depository insurance. The remainder was covered by collateral held by financial institutions which are individually required by state law to have governmental deposits collateralized at a rate of 110% of the deposit. The collateral is considered to be held in the name of SDCCC.

At the end of each business day, all balances over a target balance are automatically transferred and invested in a taxable money market mutual fund which invests in a portfolio of high-quality, short-term securities consistent with SDCCC's investment policy. These invested funds are not insured or guaranteed by the FDIC or the U.S. Government, are not obligations of the bank, and are not guaranteed by the bank.

Deposits - SDHC

On June 30, 2001, the carrying amount of the SDHC of cash deposits was \$7,327,780 and the bank balances was \$8,130,299. Of the bank balances, \$500,000 is insured. When the balances exceed \$500,000, the funds are collateralized according to state statutes, which require depositories having public funds on deposit to maintain a pool of securities with the agent of depository having a market value of at least 100% of all public funds on deposit.

Deposits - SDMSE

On June 30, 2001, the carrying amount of SDMSE's cash lock box deposits was approximately \$1,044,010 and the bank balance was \$994,813. Of the bank balance, \$100,000 was covered by federal depository insurance. The remaining balance was uninsured.

Investments

In accordance with the charter of the City of San Diego and under authority granted by the City Council, the City Treasurer is responsible for investing the unexpended cash in the City treasury. This investment policy applies to all of the investment activities of the City, except for the Pension Trust Funds (for which policies are noted below), the proceeds of certain debt issues which are managed and invested by trustees appointed under indenture agreements and the assets of trust funds which are placed in the custody of the Funds Commission by Council ordinance. All financial assets of all other funds are administered in accordance with the provisions noted here.

The City may transact business only with banks, savings and loans, and investment securities dealers who are primary dealers regularly reporting to the New York Federal Reserve Bank. Exceptions to this rule can be made only upon written authorization of the City Treasurer. Authorized cash deposits and investments are governed by state law, as well as by the City's own written investment policy. Within the context of these limitations, permissible investments include (1) obligations of the U.S. government and federal agencies, (2) commercial paper rated A-1 by Standard & Poor's Corporation or P-1 by Moody's Commercial Paper Record, (3) bankers' acceptances, (4) negotiable and/or non-negotiable certificates of deposit and non-negotiable time deposits issued by a nationally or state chartered bank or a state or federal savings and loan association, (5) repurchase and reverse repurchase agreements, (6) the local agency investment fund established by the state treasurer, (7) financial futures contracts in any of the other authorized investments which are used to offset an existing financial position and not for outright speculation, (8) mortgage securities purchased under an agreement to resell, (9) medium-term corporate notes of a maximum of five years maturity issued by corporations operating within the United States and (10) shares of beneficial interest issued by diversified management companies, as defined in Section 23701m of the Revenue and Taxation Code.

2. CASH AND INVESTMENTS (Continued)

All non-negotiable time certificates of deposit are to be fully collateralized with mortgages or eligible securities in accordance with state law.

The City invests in the State of California Local Agency Investment Fund ("LAIF"), a State of California external investment pool. LAIF determines fair value on its investment portfolio based on market quotations for those securities where market quotations are readily available and based on amortized cost or best estimate for those securities where market value is not readily available. The City valued its investments in LAIF as of June 30, 2001 by multiplying its account balance with LAIF times a fair value factor determined by LAIF. This fair value factor was determined by dividing all LAIF participants total aggregate fair value by total aggregate amortized cost.

Accordingly, as of June 30, 2001, the City's investments in LAIF at fair value amounts to \$12,614,834 using a LAIF value factor of 1.002237525.

The LAIF has oversight by the local Investment Advisory Board. The LAIF Board consists of five members as designated by statute. All securities are purchased under the authority of the Government Code Section 16430 and 16480.4.

The City, through its Investment Policy, has identified the safety of principal as the foremost objective of the City. Each investment transaction shall seek to ensure that capital losses are avoided, whether from securities default, broker-dealer default, or erosion of market value. The City shall seek to preserve principal by mitigating the two types of risk, credit risk and market risk.

Credit Risk shall be mitigated by investing in only very safe securities and by diversifying the investment portfolio so that failure of any one issuer would not unduly harm the City's cash flow.

Market Risk shall be mitigated by limiting the average maturity of the City's portfolio to three years and the maximum maturity of any one security in the portfolio to five years, and by structuring the portfolio with an adequate mix of highly liquid securities and maturities to meet major cash outflow requirements. Trading is prohibited when cash or securities are not available to pay for the securities being purchased. The taking of short positions, that is, selling securities which the City does not own, is also prohibited. It is explicitly recognized herein, however, that in a diversified portfolio, occasional measured losses are inevitable, and must be considered within the context of the overall investment return.

The following investments below are additionally restricted as to percentage of the cost value of the portfolio in any one issuer name up to a maximum of 5%. The total cost value invested in any one issuer name will not exceed 5% of an issuer's net worth. An additional 5%, or a total of 10%, of the cost value of the portfolio in any one issuer name can be authorized upon written approval of the City Treasurer.

- Bankers Acceptances
- Commercial Paper
- Negotiable Certificates of Deposit
- Repurchase Agreements
- Reverse Repurchase Agreements
- Local Agency Investment Fund

Ineligible Investments not described in the City's Investment Policy, including, but not limited to, common stocks and long-term corporate notes/bonds are prohibited from use in the portfolio. A copy of the City's Investment Policy may be obtained from the City Treasurer's office.

2. CASH AND INVESTMENTS (Continued)

Investments for the Pension Trust Fund are authorized to be made by the Board of Administration of the City Employees' Retirement System in accordance with the charter of the City. The Board is authorized to invest in any bonds or securities which are allowed by general law for savings banks. The Board has further restricted the authorized investments to those believed by independent investment counsel to be appropriate for investment by trust funds operating under the "prudent man" rule as set forth in state law.

These investments include, but are not limited to, bonds, notes or other obligations, real estate investments, common stocks, preferred stocks and pooled vehicles. Investments can also be made in financial futures contracts in any of the other authorized investments which are used to offset an existing financial position and not for outright speculation.

Investment policies permit the Pension Trust Fund to invest in financial futures contracts. Financial futures contracts, which are recorded at market value, are not hedges of existing assets, and changes in the market value of the contract result in recognition of a gain or loss.

A copy of the Pension Trust Fund's investment policy may be obtained from the Retirement office.

Reverse Repurchase Agreements

Investment policies permit the City to enter into reverse repurchase agreements which is a sale of securities with a simultaneous agreement to repurchase them in the future at the same price plus a contract rate of interest. The market value of the securities underlying reverse repurchase agreements normally exceeds the cash received providing the dealers a margin against a decline in the market value of the securities. If the dealers default on their obligations to resell these securities to the City or provide securities of cash or equal value, the City could suffer an economic loss equal to the difference between the market value plus accrued interest of the underlying securities and the reverse repurchase agreement obligation, including accrued interest payable. In fiscal year 2001, however, the City did not enter into any reverse repurchase agreements. As such, there was no such credit exposure at year-end.

The City's investments at June 30, 2001, that can be specifically identified as to credit risk are categorized as described below including required disclosures for securities lending (in thousands):

Category 1: Insured or registered, with securities held by the City or its agent in the City's name.

Category 2: Uninsured and unregistered, with securities held by the counterparty's trust department or agent in the City's name.

Category 3: Uninsured and unregistered, with securities held by the counterparty, or by its trust department or agent but not in the City's name.

2. CASH AND INVESTMENTS (Continued)

Investments that are not subject to credit risk categorization, but that require fair value disclosure are also presented below (in thousands):

| | Category | | | Fair Value |
|---|--------------------|------------------|------------|--------------------|
| | 1 | 2 | 3 | |
| U.S. government and agency securities | \$1,308,469 | \$102,002 | \$0 | \$1,410,471 |
| Commercial paper | 137,688 | 0 | 0 | 137,688 |
| Equity securities (stocks): | | | | |
| - Not on securities loan | 1,401,784 | 0 | 0 | 1,401,784 |
| - On securities loan for securities collateral | 181 | 0 | 0 | 181 |
| Corporate bonds/notes | 127,619 | 0 | 0 | 127,619 |
| Fixed income (bonds) | 797,034 | 0 | 0 | 797,034 |
| Repurchase Agreements | 64,550 | 0 | 0 | 64,550 |
| Negotiable CD's | 10,014 | 0 | 0 | 10,014 |
| | <u>\$3,847,339</u> | <u>\$102,002</u> | <u>\$0</u> | <u>\$3,949,341</u> |
| Investments not subject to categorization: | | | | |
| Fixed income (bonds) on securities loan for cash collateral | | | | 18,587 |
| Equity securities (stocks) on securities loan for cash collateral | | | | 156,039 |
| Investment with California Local Agency Investment Fund | | | | 12,587 |
| Mutual funds | | | | 473,595 |
| Real estate/mineral interest funds | | | | 156,010 |
| Mortgage Notes | | | | 1,618 |
| Other | | | | 5,190 |
| Total investments | | | | <u>\$4,772,967</u> |

2. CASH AND INVESTMENTS (Continued)

Included in the preceding table are investments under the Pension Trust Fund - City Employees Retirement System (SDCERS) with required disclosures for securities lending (in thousands). Following below are those investments specifically attributable to SDCERS:

| | <u>Category</u> | | | <u>Fair Value</u> |
|---|--------------------|-------------|-------------|--------------------|
| | <u>1</u> | <u>2</u> | <u>3</u> | |
| U.S. government and agency securities | \$ 797,034 | \$ 0 | \$ 0 | \$ 797,034 |
| Equity securities (stocks): | | | | |
| - Not on securities loan | 1,401,784 | 0 | 0 | 1,401,784 |
| - On securities loan for securities collateral | <u>181</u> | <u>0</u> | <u>0</u> | <u>181</u> |
| | <u>\$2,198,999</u> | <u>\$ 0</u> | <u>\$ 0</u> | <u>\$2,198,999</u> |
| Investments not subject to categorization: | | | | |
| Fixed income (bonds) on securities loan for cash collateral | | | | 18,587 |
| Equity securities (stocks) on securities loan for cash collateral | | | | 156,038 |
| Real estate/mineral interest funds | | | | 156,010 |
| Mortgage Notes | | | | <u>1,618</u> |
| Total investments | | | | <u>\$2,531,252</u> |

Summary of Investments - SDHC

Investments that are not subject to credit risk categorization, but that require fair value disclosure are also presented below (in thousands):

| | <u>Category</u> | | | <u>Fair Value</u> |
|---|-----------------|-------------|-------------|-------------------|
| | <u>1</u> | <u>2</u> | <u>3</u> | |
| Commercial paper | <u>\$7,039</u> | <u>\$ 0</u> | <u>\$ 0</u> | <u>\$ 7,039</u> |
| | <u>\$7,039</u> | <u>\$ 0</u> | <u>\$ 0</u> | <u>\$ 7,039</u> |
| Investments not subject to categorization: | | | | |
| Investment with California Local Agency Investment Fund | | | | <u>21,379</u> |
| Total investments | | | | <u>\$28,418</u> |

Summary of Deposits and Investments

Following is a summary of the carrying amount of cash deposits and investments at June 30, 2001 (in thousands):

| | |
|----------------------------------|--------------------|
| Cash and pooled cash deposits | \$ 243,030 |
| Cash with custodian/fiscal agent | 20,762 |
| Investments | <u>4,772,967</u> |
| Total | <u>\$5,036,759</u> |

3. FIXED ASSETS

General Fixed Assets

A summary of changes in general fixed assets for the year ended June 30, 2001 is as follows (in thousands):

| | Balance July 1, 2000 | Additions | Adjustments and Transfers | Deletions | Balance June 30, 2001 |
|--------------------------------|-------------------------|------------------|---------------------------------|-------------------|--------------------------|
| Land | \$ 450,304 | \$ 36,716 | \$ 0 | (\$6,020) | \$ 481,000 |
| Structures and Improvements | 497,514 | 41,011 | 199 | (9,281) | 529,443 |
| Equipment | 180,480 | 18,999 | 4,290 | (7,449) | 196,320 |
| Subtotal | 1,128,298 | 96,726 | 4,489 | (22,750) | 1,206,763 |
| Construction in Progress | 332,810 | 126,289 | (4,291) | (42,713) | 412,095 |
| Total | <u>\$1,461,108</u> | <u>\$223,015</u> | <u>\$ 198</u> | <u>(\$65,463)</u> | <u>\$1,618,858</u> |

The following is a summary of general fixed assets for SDCCC at June 30, 2001 (in thousands):

| | Balance July 1, 2000 | Additions | Retirements | Balance June 30, 2001 |
|-----------------------------------|-------------------------|----------------|----------------|--------------------------|
| Furniture, Fixtures and Equipment | \$ 5,901 | \$2,298 | \$ 3 | \$ 8,202 |
| Leasehold Improvements | 15,173 | 1,509 | (229) | 16,453 |
| Total | <u>\$21,074</u> | <u>\$3,807</u> | <u>(\$226)</u> | <u>\$24,655</u> |

Proprietary Fund Type Fixed Assets

A summary of Proprietary Fund Type Fixed Assets at June 30, 2001 is as follows (in thousands):

| | Enterprise Funds | Internal Service Funds |
|---------------------------------|---------------------|---------------------------|
| Land and Buildings | \$50,600 | \$ 1,383 |
| Property, Plant and Equipment | 1,402,438 | 118,850 |
| Other | 976,780 | 0 |
| Construction in progress | 1,606,504 | 11,885 |
| Total | 4,036,322 | 132,118 |
| Less - Accumulated depreciation | (578,857) | (64,826) |
| Total, net | <u>\$3,457,465</u> | <u>\$ 67,292</u> |

3. FIXED ASSETS (Continued)

Trust and Agency Fund Type Fixed Assets

The following is a summary of fixed assets at June 30, 2001 (in thousands):

| | Balance <u>July 1, 2000</u> | <u>Additions</u> | <u>Deletions</u> | Balance <u>June 30, 2001</u> |
|--------------------------|--------------------------------|------------------|------------------|---------------------------------|
| Equipment | \$553 | \$ 0 | \$0 | \$553 |
| Accumulated depreciation | <u>(260)</u> | <u>(28)</u> | <u>0</u> | <u>(288)</u> |
| Total | <u>\$293</u> | <u>(\$28)</u> | <u>\$0</u> | <u>\$265</u> |

San Diego Housing Commission

The following is a summary of fixed assets at June 30, 2001 (in thousands):

| | Balance <u>July 1, 2000</u> | <u>Additions</u> | <u>Deletions</u> | Balance <u>June 30, 2001</u> |
|--------------------------------|--------------------------------|------------------|------------------|---------------------------------|
| Land | \$ 38,723 | \$ 770 | \$0 | \$39,493 |
| Structures and Improvements | 76,394 | 0 | 0 | 76,394 |
| Equipment | 2,509 | 555 | 0 | 3,064 |
| Construction in Progress | <u>6,263</u> | <u>(106)</u> | <u>0</u> | <u>6,157</u> |
| Subtotal | 123,889 | 1,219 | 0 | 125,108 |
| Accumulated depreciation | <u>(29,362)</u> | <u>(2,218)</u> | <u>0</u> | <u>(31,580)</u> |
| Total | <u>\$94,527</u> | <u>(\$999)</u> | <u>\$0</u> | <u>\$93,528</u> |

Construction In Progress

A summary of construction in progress (CIP) at June 30, 2001 is as follows (in thousands):

| | |
|-----------------------------------|--------------------|
| General Fixed Asset Account Group | \$ 412,095 |
| Enterprise Funds: | |
| Airports | 762 |
| Environmental Services | 77,160 |
| Golf Course | 5,899 |
| Sewer Utility | 1,137,078 |
| Water Utility | <u>385,605</u> |
| Total Enterprise Funds | 1,606,504 |
| Internal Service Funds: | |
| Central Garage and Machine Shop | <u>11,885</u> |
| Total Construction in Progress | <u>\$2,030,484</u> |

3. FIXED ASSETS (Continued)

The Sewer Utility Fund and Water Utility Fund CIP of \$1,137,078,059 and \$385,605,000 respectively, represent 75% of total CIP for the year ended June 30, 2001.

The Sewer Utility's construction plans for various projects were estimated to cost approximately \$178,106,000. As of June 30, 2001, the Sewer Utility's contractual commitments for the projects totaled approximately \$75,809,000.

The Water Utility's construction plans for various projects were estimated to cost approximately \$129,593,000. As of June 30, 2001, the Water Utility's contractual commitments for the projects totaled approximately \$77,764,000.

4. GENERAL LONG-TERM DEBT

General long-term debt consists of general obligation bonds, revenue bonds, certificates of participation ("COP"), special assessment/Mello-Roos bonds with governmental commitment, tax allocation bonds, contracts payable, notes payable, loans payable, capital lease obligations, pension obligations, liability claims (also see Note 18 and Note 19 for more information on contingencies and third party debt) and accrued annual leave. A summary of these obligations as recorded in the General Long-Term Debt Account Group as of June 30, 2001 is as follows (in thousands):

4. GENERAL LONG-TERM DEBT (Continued)

| <u>Type of Obligation</u> | <u>Interest Rates</u> | <u>Maturity Date</u> | <u>Original Amount</u> | <u>Balance Outstanding June 30, 2001</u> |
|--|-----------------------|----------------------|------------------------|--|
| <u>General Obligation Bonds:</u> | | | | |
| Open Space Park Refunding Bonds, Series 1994 | 5.0-6.0% | 2009 | \$ 64,260 | \$45,520 |
| Municipal Improvement Bonds, Series 1991 | 5.1-6.65 | 2012 | 25,500 | <u>18,075</u> |
| Total General Obligation Bonds | | | | <u>\$63,595</u> |
| <u>Revenue Bonds/COPs:</u> | | | | |
| Public Facilities Financing Authority Sewer Revenue Bonds, Series A & B 1997 | 3.7-5.61 | 2027 | 250,000 | 233,455 |
| Public Facilities Financing Authority Stadium Lease Revenue Bonds, Series 1996 A | 6.2-7.45 | 2027 | 68,425 | 65,905 |
| Public Facilities Financing Authority Sewer Revenue Bonds, Series 1995 | 3.9-6.0 | 2025 | 350,000 | 323,935 |
| Public Facilities Financing Authority Sewer Revenue Bonds, Series 1993 | 2.8-5.25 | 2023 | 250,000 | 213,185 |
| Metropolitan Transit Development Board Authority Lease Revenue Refunding Bonds, Series 1994 | 4.25-5.625 | 2009 | 66,570 | 40,505 |
| Metropolitan Transit Development Board Authority Lease Revenue Bonds, Series 1993 | 4.5-5.375 | 2023 | 19,515 | 16,430 |
| San Diego Facilities Equipment Leasing Corp. Certificates of Participation Refunding, Series 1996B | 4.0-5.7 | 2011 | 11,720 | 10,720 |
| San Diego Facilities Equipment Leasing Corp. Certificates of Participation, Series 1996A | 4.0-5.6 | 2010 | 33,430 | 26,975 |
| San Diego Facilities Equipment Leasing Corp. Certificates of Participation, Series 1993 | 3.9-5.6 | 2023 | 27,985 | 21,040 |
| Certificates of Participation, Series 1991 | 8.0 | 2002 | 8,500 | 1,900 |
| Public Facilities Financing Authority Sewer Revenue Bonds, Series A & B 1999 | 3.50-5.125 | 2029 | 315,410 | 307,715 |
| Public Facilities Financing Authority Refunding, 1999A & B | 3.75-5.1 | 2017 | 38,145 | 33,785 |
| San Diego Facilities & Equipment Leasing Corp. Certificates of Undivided Interests, Series 1998 | 4.0-5.375 | 2029 | 385,000 | 385,000 |
| Convention Center Expansion Authority Lease Revenue Bonds, Series 1998A | 3.8-4.875 | 2018 | 205,000 | 205,000 |
| Centre City Parking Revenue Bonds, Series 1999A | 4.5-6.4 | 2025 | 12,105 | <u>12,105</u> |
| Total Revenue Bonds/COPs | | | | <u>\$1,897,655</u> |

4. GENERAL LONG-TERM DEBT (Continued)

| <u>Type of Obligation</u> | <u>Interest Rates</u> | <u>Maturity Date</u> | <u>Original Amount</u> | <u>Balance Outstanding June 30, 2001</u> |
|---|-----------------------|----------------------|------------------------|--|
| <u>Special Assessment/Mello-Roos Bonds with Governmental Commitment:</u> | | | | |
| 1915 Act Via De La Valle Improvement Bonds, issued October 1986 | 6.0-6.8% | 2003 | \$ 2,115 | \$ 210 |
| 1915 Act De La Fuente Business Park Phase I Improvement Bonds, issued April 1989 | 7.0-7.7 | 2014 | 4,897 | 3,160 |
| 1915 Act International Business Center Project Improvement Bonds, Issued September 1990 | 6.1-7.4 | 2015 | 4,172 | 2,810 |
| 1915 Act Otay Mesa Industrial Park Improvement Bonds, issued May 1992 | 5.5-7.95 | 2013 | 2,235 | 595 |
| 1915 Act De La Fuente Business Park Phase II Improvement Bonds, issued July 1992 | 4.0-7.1 | 2017 | 5,987 | 4,940 |
| Special Tax Bonds, 1998 Series Miramar Ranch North, issued July 1998 | 3.75-5.375 | 2020 | 59,465 | 56,460 |
| Reassessment District Bonds, Series 1999 | 4.86-7.857 | 2018 | 38,145 | 35,452 |
| Special Tax Bonds, 2000 Series Santaluz issued November 2000 | 6.333 | 2031 | 60,370 | <u>60,370</u> |
| Total Special Assessment/Mello-Roos Bonds With Governmental Commitment | | | | <u>\$163,997</u> |
| <u>Tax Allocation Bonds:</u> | | | | |
| Centre City Redevelopment Project Tax Allocation Refunding Bonds Series 1992, issued October 1992 | 3.0-6.0% | 2009 | \$ 36,935 | \$22,080 |
| Centre City Redevelopment Project Tax Allocation Bonds, Series 1993A & B, issued November 1993 | 4.875-6.5 | 2018 | 54,350 | 38,176 |
| Gateway Center West Redevelopment Project Tax Allocation Bonds, Series 1995, issued June 1995 | 7.8-9.75 | 2013 | 1,400 | 1,090 |
| Mount Hope Redevelopment Project Tax Allocation Bonds, Series 1995A & B issued June 1995 | 4.4-8.2 | 2020 | 5,155 | 4,720 |
| Southcrest Redevelopment Project Tax Allocation Bonds, Series 1995, issued June 1995 | 4.75-6.5 | 2020 | 3,750 | 2,930 |
| Horton Plaza Tax Allocation Refunding Bonds Series 1996 A & B | 3.8-6.625 | 2017 | 22,800 | 19,920 |

4. GENERAL LONG-TERM DEBT (Continued)

| <u>Type of Obligation</u> | <u>Interest Rates</u> | <u>Maturity Date</u> | <u>Original Amount</u> | <u>Balance Outstanding June 30, 2001</u> |
|---|-----------------------|----------------------|------------------------|--|
| Centre City Redevelopment Tax Allocation Bonds, Series 1999 A, B, C, Issued March 1999 | 3.0-6.25 | 2024 | 50,650 | 50,265 |
| City Heights Redevelopment Tax Allocation Bonds, Series 1999 A & B, Issued April 1999 | 4.5-6.4 | 2028 | 15,830 | 15,830 |
| Southcrest Redevelopment Project Tax Allocation Bonds, Series 2001, Issued May 2001 | Various | 2025 | 1,860 | 1,845 |
| Centre City Redevelopment Project Tax Allocation Bonds, Series 2000A & B, Issued April 2000 | Various | 2024 | 27,490 | 27,490 |
| Central Imperial Redevelopment Project Tax Allocation Bonds, Series 2000, Issued May 2000 | Various | 2030 | 3,395 | 3,380 |
| North Bay Redevelopment Project Tax Allocation Bonds, Series 2000, Issued October 2000 | Various | 2031 | 20,000 | 20,000 |
| Horton Plaza Redevelopment Project Tax Allocation Bonds, Series 2000, Issued November 2000 | Various | 2022 | 15,025 | <u>15,025</u> |
| Total Tax Allocation Bonds | | | | <u>222,751</u> |
| Total Bonds Payable | | | | <u>2,347,998</u> |
| <u>Contracts Payable:</u> | | | | |
| Contract Payable to City of National City, dated March 1987 | 7.5 | 2002 | 2,171 | 624 |
| Contract Payable to County of San Diego, dated June 1987 | 11.0 | 2013 | 423 | 90 |
| Contract Payable to SDSU Foundation, dated December 1991 | 5.6 | 2010 | 1,598 | 1,598 |
| Contract Payable to MTDB, dated January 2000 | 4.1 | 2015 | 1,626 | <u>1,626</u> |
| Total Contracts Payable | | | | <u>3,938</u> |
| <u>Notes Payable:</u> | | | | |
| Notes payable to San Diego Association of Governments, various dates | Various | Various | 45,797 | 26,382 |

4. GENERAL LONG-TERM DEBT (Continued)

| <u>Type of Obligation</u> | <u>Interest Rates</u> | <u>Maturity Date</u> | <u>Original Amount</u> | <u>Balance Outstanding June 30, 2001</u> |
|--|-----------------------|----------------------|------------------------|--|
| Note payable to Horton, dated December 1991 | 0 | 2002 | 34 | 34 |
| Note payable to Lorren Daro, dated March 1995 | 8.0 | 2005 | 257 | 123 |
| Note payable to David Engel, dated December 1994 | 6.0 | 2004 | 4,800 | 4,800 |
| Note payable to Wal-Mart, dated June 1998 | 4.9 | 2017 | 1,308 | 1,308 |
| Note payable to City Heights, Not yet dated | 6.0 | 2011 | 5,315 | <u>5,315</u> |
| Total Notes Payable | | | | <u>37,962</u> |
| <u>Loans Payable:</u> | | | | |
| JMI Padres - Centre City | 8.0 | 2009 | 3,272 | <u>3,250</u> |
| Total Loans Payable | | | | <u>3,250</u> |
| Capital Lease Obligations | | | | 13,233 |
| Pension Obligations | | | | 25,599 |
| Liability Claims | | | | 44,963 |
| Accrued Annual Leave | | | | <u>52,122</u> |
| Total General Long-Term Debt | | | | <u>\$2,529,065</u> |

The following is a summary of changes in general long-term debt for the year ended June 30, 2001 (in thousands):

| | <u>Balance July 1, 2000</u> | <u>Additions</u> | <u>Retirements</u> | <u>Balance June 30, 2001</u> |
|-------------------------------------|-----------------------------|------------------|--------------------|------------------------------|
| General Obligation Bonds | \$ 68,700 | \$ 0 | \$ 5,105 | \$ 63,595 |
| Revenue Bonds/COPs | 1,933,440 | 0 | 35,785 | 1,897,655 |
| Special Assessment/Mello-Roos Bonds | | | | |
| With Governmental Commitment | 108,180 | 60,370 | 4,553 | 163,997 |
| Tax Allocation Bonds | 171,101 | 56,415 | 4,765 | 222,751 |
| Contracts Payable | 1,697 | 2,241 | 0 | 3,938 |
| Notes Payable | 33,606 | 6,657 | 2,301 | 37,962 |
| Loans Payable | 5,972 | 0 | 2,722 | 3,250 |
| Capital Lease Obligations | 14,284 | 0 | 1,051 | 13,233 |
| Pension Obligations | 24,264 | 1,335 | 0 | 25,599 |
| Liability Claims | 32,983 | 11,980 | 0 | 44,963 |
| Accrued Annual Leave | <u>48,275</u> | <u>3,847</u> | <u>0</u> | <u>52,122</u> |
| Total | <u>\$2,442,502</u> | <u>\$142,845</u> | <u>\$56,282</u> | <u>\$2,529,065</u> |

4. GENERAL LONG-TERM DEBT (Continued)

Additions to general long-term debt for Contracts, Notes and Loans Payable may differ from Proceeds reported on the Statement of Revenues, Expenditures and Changes in Fund Balances due to funding received in prior Fiscal Years being converted to long-term debt through contingent contractual terms.

The following is a summary of changes in general long-term debt for SDCCC at June 30, 2001 (in thousands):

| | Balance July 1, 2000 | Additions | Retirements | Balance June 30, 2001 |
|----------------------|-------------------------|---------------|----------------|--------------------------|
| Accrued Annual Leave | \$ 669 | \$ 146 | \$ 0 | \$ 815 |
| Notes Payable | <u>10,000</u> | <u>0</u> | <u>(500)</u> | <u>9,500</u> |
| Total Long-Term Debt | <u>\$ 10,669</u> | <u>\$ 146</u> | <u>(\$500)</u> | <u>\$ 10,315</u> |

General obligation bonds are secured by a pledge of the full faith and credit of the City or by a pledge of the City to levy ad valorem property taxes without limitation.

Revenue bonds are secured by a pledge of specific revenue generally derived from fees or service charges related to the operation of the project being financed.

COPs provide long-term financing through a lease agreement, installment sales agreement, or loan agreement that does not constitute indebtedness under the state constitutional debt limitation and is not subject to other statutory requirements applicable to bonds.

Special assessment and Mello-Roos bonds are issued by the City to provide funds to make certain public improvements in special assessment and Mello-Roos districts created by the City. These bonds are secured by property owner assessments with the City having ultimate commitment for the obligation.

The annual requirements to amortize such long-term debt outstanding as of June 30, 2001, including interest payments to maturity, are as follows (in thousands):

| Year Ending June 30, | General Obligation Bonds | Revenue Bonds/ COPs | Special Assessment/ Mello-Roos Bonds | Tax Allocation Bonds | Contracts Payable | Notes Payable | Loans Payable | Capital Lease Obligations |
|----------------------------|--------------------------------|---------------------------|---|----------------------------|----------------------|------------------|------------------|---------------------------------|
| 2002 | \$ 11,078 | \$ 143,438 | \$ 13,161 | \$ 17,396 | \$ 4,123 | \$ 3,458 | \$ 567 | \$ 4,670 |
| 2003 | 9,428 | 141,999 | 13,679 | 17,670 | 230 | 3,596 | 305 | 3,901 |
| 2004 | 9,566 | 142,060 | 13,739 | 17,763 | 229 | 3,596 | 330 | 2,580 |
| 2005 | 9,699 | 142,136 | 14,012 | 17,847 | 229 | 8,228 | 356 | 1,853 |
| 2006 | 9,841 | 139,600 | 14,100 | 17,967 | 229 | 3,271 | 384 | 1,416 |
| Thereafter | <u>34,260</u> | <u>2,686,013</u> | <u>232,851</u> | <u>303,768</u> | <u>1,495</u> | <u>29,829</u> | <u>4,598</u> | <u>306</u> |
| Subtotal | 83,872 | 3,395,246 | 301,542 | 392,411 | 6,535 | 51,978 | 6,540 | 14,726 |
| Less Interest | <u>(20,277)</u> | <u>(1,497,591)</u> | <u>(137,545)</u> | <u>(169,660)</u> | <u>(2,597)</u> | <u>(14,016)</u> | <u>(3,290)</u> | <u>(1,493)</u> |
| Total | <u>\$ 63,595</u> | <u>\$ 1,897,655</u> | <u>\$ 163,997</u> | <u>\$ 222,751</u> | <u>\$ 3,938</u> | <u>\$ 37,962</u> | <u>\$ 3,250</u> | <u>\$ 13,233</u> |

Installment Purchase Agreement

The City and the Public Facilities Financing Authority ("PFFA") entered into an installment purchase agreement for the acquisition, construction, installation, and improvement of its wastewater system. PFFA obtained financing for the project through issuance of bonds secured by installment payments to be made by the City. The City has pledged revenues from its wastewater system to finance these installment payments in an amount equal to the principal and interest requirements for the associated bonds.

4. GENERAL LONG-TERM DEBT (Continued)

Defeasance of Debt

In July 1998, the Miramar Ranch North Community Facilities District #1 issued \$59,465,000 in Special Tax Refunding Bonds, Series 1998. The proceeds of the bonds were used to refund the remaining outstanding Community Facilities District #1 Special Tax Bonds, 1991 Series A and 1995 Series B. The Refunded Bonds are considered defeased and the corresponding liability has been removed from the General Long-Term Debt Account Group. The refunding transaction resulted in total economic gain or present value savings of approximately \$7,130,000 over the refunded indebtedness. In addition, the refunding resulted in a cash flow difference of approximately \$13,492,000.

At June 30, 2001, \$68,090,000 of defeased bonds including those defeased in prior years are still outstanding.

5. PROPRIETARY FUND TYPE LONG-TERM DEBT

Proprietary Fund Type long-term debt as of June 30, 2001 is comprised of the following (in thousands):

| Type of Obligation | Interest Rates | Maturity Date | Original Amount | Balance Outstanding June 30, 2001 |
|--|----------------|---------------|-----------------|-----------------------------------|
| <u>Notes Payable:</u> | | | | |
| Installment Purchase Agreement, 1993 | 2.8-5.25% | 2023 | \$250,000 | \$ 213,185 |
| Installment Purchase Agreement, 1995 | 3.9-5.0 | 2025 | 350,000 | 323,935 |
| Installment Purchase Agreement, 1997 | 3.7-5.61 | 2027 | 250,000 | 233,455 |
| Installment Purchase Agreement, 1998 | 4.0-5.375 | 2028 | 385,000 | 385,000 |
| Installment Purchase Agreement, 1999 | 3.9-5.0 | 2029 | 315,410 | 307,715 |
| Total Notes Payable | | | | <u>\$1,463,290</u> |
| <u>Loans Payable:</u> | | | | |
| Loan Payable to County of San Diego | 0 | N/A | 100 | 100 |
| Loan Payable to Water Resources Control Board | 0 | N/A | 17,156 | 60,122 |
| Total Loans Payable | | | | <u>60,222</u> |
| Line-of-Credit with Sanwa Bank | Various | | | 4,169 |
| Capital Lease Obligations for Various Equipment, Various Dates | Various | Various | Various | 28,885 |
| Liability Claims | | | | 44,411 |
| Accrued Annual Leave | | | | 16,381 |
| Pension Liability | | | | 5,309 |
| Total Proprietary Fund Type Debt | | | | <u>\$1,622,667</u> |

5. PROPRIETARY FUND TYPE LONG-TERM DEBT (Continued)

Annual requirements to amortize such long-term debt as of June 30, 2001, including interest payments to maturity, are as follows (in thousands):

| <u>Year Ending June 30,</u> | <u>Notes Payable</u> | <u>Capital Lease Obligations</u> |
|------------------------------------|--------------------------|--|
| 2002 | \$102,428 | \$7,326 |
| 2003 | 102,418 | 7,482 |
| 2004 | 102,424 | 6,451 |
| 2005 | 102,430 | 5,217 |
| 2006 | 102,426 | 3,702 |
| Thereafter | <u>2,130,165</u> | <u>2,659</u> |
| Total | 2,642,291 | 32,837 |
| Less-Amounts Representing Interest | <u>(1,179,001)</u> | <u>(3,952)</u> |
| Total | <u>\$1,463,290</u> | <u>\$28,885</u> |

6. DISCRETELY PRESENTED COMPONENT UNIT LONG-TERM DEBT

Discretely presented component unit long-term debt as of June 30, 2001 is comprised as follows (in thousands):

San Diego Housing Commission

| <u>Type of Obligation</u> | <u>Interest Rates</u> | <u>Maturity Date</u> | <u>Original Amount</u> | <u>Balance Outstanding June 30, 2001</u> |
|--|---------------------------|--------------------------|----------------------------|--|
| Note payable to Washington Mutual, dated June 1995 | Various | 2011 | \$4,725 | \$4,332 |
| Note payable to Bank of America, dated February 1985 | 5.0-10.2% | 2025 | 3,789 | 3,383 |
| Note payable to Redevelopment Agency dated March 1992 | 0.0 | 2022 | 696 | <u>696</u> |
| Total Notes Payable | | | | <u>\$8,411</u> |

Annual requirements to amortize such long-term debt as of June 30, 2001 to maturity, are as follows (in thousands):

| <u>Year Ending June 30,</u> | |
|-----------------------------|----------------|
| 2002 | \$ 127 |
| 2003 | 133 |
| 2004 | 140 |
| 2005 | 147 |
| 2006 | 154 |
| Thereafter | <u>7,710</u> |
| Total | <u>\$8,411</u> |

Interest is not included due to the rates being variable. These rates are based upon the Federal Home Loan Bank of San Francisco 11th District Cost of Funds Index plus 1.95%.

7. INTERAGENCY LONG-TERM DEBT

Long-term debt between the City and its component units has been eliminated in this report. During the year, the Redevelopment Agency of the City of San Diego has repaid \$6,047,005 of principal and \$10,842,889 of interest to the City and the City has advanced \$11,403,368 to the Agency. Interest of 10.5% totaling \$14,465,444 was accrued to the amounts owed for the year. At June 30, 2001, interagency loans (including interest) were as follows (in thousands):

| | <u>Loans and Note Receivable</u> | <u>Loans and Note Payable</u> |
|---|--------------------------------------|-----------------------------------|
| City of San Diego | \$256,351 | \$ 0 |
| Redevelopment Agency of the City of San Diego | <u>0</u> | <u>256,351</u> |
| Total | <u>\$256,351</u> | <u>\$256,351</u> |

8. LEASE COMMITMENTSOperating Leases

The following is a schedule of future minimum rental payments required under operating leases entered into by the City for property that has initial or remaining non-cancelable lease terms in excess of one year as of June 30, 2001 (in thousands):

| <u>Year Ending June 30,</u> | |
|-----------------------------|-----------------|
| 2002 | \$11,017 |
| 2003 | 7,535 |
| 2004 | 3,031 |
| 2005 | 2,832 |
| 2006 | 2,589 |
| Thereafter | <u>17,050</u> |
| Total | <u>\$44,054</u> |

Rent expense as related to operating leases was \$11,103,181 for the year ended June 30, 2001.

Capital Leases

The City has entered into various capital leases for equipment, vehicles and property. A schedule of future minimum lease payments under capital leases as of June 30, 2001 is provided in Notes 4 and 5. These lease agreements qualify as capital leases for accounting purposes and, therefore, have been recorded at the present value of the future minimum lease payments as of the inception date in the general fixed assets account group.

Lease Revenues

The City has operating leases for certain land, buildings and facilities with tenants and concessionaires who will provide the following minimum annual lease payments (in thousands):

8. LEASE COMMITMENTS (Continued)

| <u>Year Ending June 30,</u> | |
|-----------------------------|------------------|
| 2002 | \$ 21,874 |
| 2003 | 21,464 |
| 2004 | 20,668 |
| 2005 | 20,029 |
| 2006 | 19,717 |
| Thereafter | <u>591,217</u> |
| Total | <u>\$694,969</u> |

This amount does not include contingent rentals which may be received under certain leases of property on the basis of percentage returns. Contingent rentals amounted to \$37,276,359 in the year ended June 30, 2001.

9. DEFERRED COMPENSATION PLANCity of San Diego

The City offers its employees a deferred compensation plan created in accordance with Internal Revenue Code Section 457. The plan, available to all full-time City employees, permits them to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death, disability or an unforeseeable emergency. All assets and income of the deferred compensation plan are held in trust for the exclusive benefit of plan participants and their beneficiaries.

Fair value of the plan assets was \$116,760,663 at June 30, 2001.

10. PENSION PLANS

The City has a defined benefit plan and various defined contribution pension plans covering substantially all of its employees.

DEFINED BENEFIT PLAN**a. Plan Description**

All of the City and the San Diego Unified Port District (the "District") full-time employees participate in the San Diego City Employees' Retirement System ("SDCERS").

SDCERS is a public employee retirement system established in 1927 by the City and administered by a Board of Administration (the "Board") to provide retirement, disability, death and survivor benefits for its members.

In 1963, through an agreement between the City and the District, employees of the District became members of SDCERS.

The Plan is a defined benefit plan which covers all eligible employees of the City and the District. The Plan is a multiple-employer public employee retirement system that acts as a common investment and administrative agent for the City and the District. As a defined benefit plan, retirement benefits are determined primarily by a member's age at retirement, the length of membership service and the member's final compensation earnable based on the highest one-year period.

10. PENSION PLANS (Continued)

The Plan provisions applicable to general members are generally applicable to the District's general members and those applicable to lifeguard members are generally applicable to the District's safety members.

All full-time City and District employees are eligible to participate in the Plan. Salaried classified employees become members of the system upon employment. Salaried unclassified employees hired on or after August 11, 1995 become members upon employment.

SDCERS is considered part of the City of San Diego's financial reporting entity and is included in the City's financial reports as a pension trust fund.

SDCERS issues a stand-alone financial report which is available at its office located at 401 B Street, Suite 400, San Diego, California 92101.

b. Funding Policy

SDCERS' funding policy provides for periodic employer contributions at actuarially determined rates that, expressed as percentages of annual covered payroll, are designed to accumulate sufficient assets to pay benefits when due. The normal cost and actuarial accrued liability are determined using the projected unit credit actuarial funding method. Unfunded actuarial accrued liabilities are being amortized as a level percent of payroll over a period of 30 years (20 years remaining).

Employees are required to contribute a percentage of their annual salary to the Plan. Contributions vary according to age at entry into the plan and salary. The City and the District contribute a portion of the employees' share and the remaining amount necessary to fund the system based on an actuarial valuation at the end of the preceding year under the projected unit credit method of actuarial valuation. Prior to June 30, 1993, contributions were based on the entry age normal cost method of valuation.

During the period July 1, 2000 to June 30, 2001 contributions totaling \$81,914,000 (\$45,553,000 employer and \$36,361,000 employee) were made. Of the employer contributions, \$36,443,000 was applied to normal cost and \$9,110,000 was applied to unfunded accrued liability. All of the employer offset contributions were applied to normal cost.

In 1996 the City Council approved proposed changes to the San Diego City Employees' Retirement System (SDCERS) which included changes to retiree health insurance, plan benefits, employer contribution rates and system reserves. The proposal included a provision to assure the funding level of the system would not drop below a level the Board's actuary deems reasonable in order to protect the financial integrity of the SDCERS. A citizen required vote on the changes related to retiree health insurance passed overwhelmingly in 1996. In 1997, the active members of the SDCERS voted and approved the changes. Portions of the proposal requiring SDCERS Board approval (employer rates and reserves) were approved after review and approval by its independent fiduciary counsel and consultation with the actuary. The San Diego Municipal Code was then amended to reflect the changes.

The changes provide the employer contribution rates be "ramped up" to the actuarially recommended rate in .50 percent increments over a ten year period at such time it was projected that the Projected Unit Credit (PUC) and Entry Age Normal (EAN) rates would be equal and the SDCERS would convert to EAN. The actuary calculated the present value of the difference between the employer contribution rate and actuarial rates over the ten year period and this amount was funded in a reserve. This "Corridor" funding method is unique to the SDCERS and therefore is not one of the six funding methods formally sanctioned by the GASB for expending purposes. As a result for June 30, 2001, the actuary rates are reported to be \$30,983,000 more than paid by the City which, technically per GASB 27 effective for periods beginning

10. PENSION PLANS (Continued)

after June 15, 1997, is to be reported as a Net Pension Obligation (NPO) even though the shortfall is funded in a reserve. The actuary believes the Corridor funding method is an excellent method for the City and that it will be superior to the PUC funding method. The actuary is in the process of requesting the GASB to adopt the Corridor funding method as an approved expending method which would then eliminate any reported NPO.

c. Annual Required Contribution

The annual required contribution for the current year was determined as part of the June 30 actuarial valuation using the projected unit credit actuarial funding method. The actuarial assumptions included (a) an 8.0% investment rate of return and (b) projected salary increases of 4.75% per year. Both (a) and (b) included an inflation rate of 4.5%. The actuarial value of assets was determined using techniques that smooth the effects of short-term volatility in the market value of investments over a five-year period. The unfunded actuarial accrued liability is being amortized as a level percentage of projected payroll on an open basis. The remaining amortization period at June 30, 2001 was 20 years.

d. Three-Year Trend Analysis

The following table shows the City's Annual Pension Cost (APC) and the percentage of the APC contributed for the most current year available and preceding years (in thousands):

| <u>Fiscal Year Ending</u> | <u>APC</u> | <u>Percentage of APC Contributed</u> | <u>Net Pension Obligation</u> |
|---------------------------|------------|--------------------------------------|-------------------------------|
| 6/30/98 | \$40,863 | 75.81% | \$15,124 |
| 6/30/99 | 44,008 | 78.32 | 23,046 |
| 6/30/00 | 50,044 | 78.66 | 30,983 |

e. Net Pension Obligation Three Year-Trend Analysis

The following table shows the calculation of the City's NPO for the most current year available and preceding years (in thousands):

| <u>Fiscal Year Ending</u> | <u>Actuarial Required Contribution (ARC)</u> | <u>Interest on NPO</u> | <u>ARC Adjustment</u> | <u>Amortization Factor</u> | <u>APC</u> | <u>Contributions Made</u> | <u>Change in NPO</u> | <u>NPO</u> |
|---------------------------|--|------------------------|-----------------------|----------------------------|------------|---------------------------|----------------------|------------|
| 6/30/98 | \$40,660 | \$ 478 | \$ 275 | 21.69 | \$40,863 | \$30,979 | \$9,149 | \$15,124 |
| 6/30/99 | 43,504 | 1,210 | 706 | 21.41 | 44,008 | 34,467 | 7,922 | 23,046 |
| 6/30/00 | 49,276 | 1,844 | 1,076 | 21.41 | 50,044 | 39,364 | 7,937 | 30,983 |

DEFINED CONTRIBUTION PLANS

- a. Pursuant to the City's withdrawal from the Federal Social Security System effective January 8, 1982, and to the Federal Government's mandate of a Social Security Medicare tax for all employees not covered by Social Security hired on or after April 1, 1986, the City established the Supplemental Pension Savings Plan ("SPSP"), a defined contribution plan administered by American Express Trust Company, Minneapolis, MN, which provides pension benefits for eligible full-time employees. In a defined contribution plan, benefits depend solely on amounts contributed to the plan plus investment earnings. Employees are eligible to participate from the date of employment. State legislation requires that both the employee and the City contribute an amount equal to 3% of the employee's total salary each month. Participants in the plan hired before April 1, 1986 and on or after April 1, 1986 may voluntarily contribute up to an additional 4.5% and 3.05%, respectively, of total salary.

10. PENSION PLANS (Continued)

The City also contributes an amount equal to the employee voluntary contributions. The City's contributions for each employee (and interest allocated to the employee's account) are fully vested after five years of continuous service. City contributions for, and interest forfeited by, employees who leave employment before five years of service are used to reduce the City's contribution requirement.

The City and the covered employees contributed approximately \$41,556,000 for the year ending June 30, 2001. As of June 30, 2001, fair value of Plan assets totaled approximately \$390,319,000. SPSP is considered part of the City of San Diego's financial reporting entity and is included in the City's financial reports as a Pension Trust Fund.

In addition, the City established a 401(k) Plan effective July 1, 1985. The plan is a defined contribution plan administered by American Express Trust Company, Minneapolis, MN, to provide pension benefits for all eligible full-time employees. Employees are eligible to participate twelve months after the date of employment. Employees make contributions to their 401(k) accounts through payroll deductions, and may also elect to have the City contribute to their 401(k) accounts through the City's Employees' Flexible Benefits Program.

The employees' 401(k) contributions were calculated pursuant to various combination arrangements. The covered employees and the City contributed approximately \$19,316,000 during the Fiscal Year.

As of June 30, 2001, fair value of Plan assets totaled approximately \$104,909,000. The 401(k) Plan is considered part of the City of San Diego's financial reporting entity and is included in the City's financial reports as an Agency Fund.

- b. Centre City Development Corporation ("CCDC") has a Money Purchase Pension Plan covering all full-time permanent employees. The plan is a defined contribution plan under which benefits depend solely on amounts contributed to the plan plus investment earnings. Employees are eligible to participate on the first day of the month following 90 days after their date of employment. During each plan year, CCDC contributes quarterly an amount equal to 8% of the total quarterly compensation for all employees. CCDC's contributions for each employee are fully vested after six years of continuous service.

CCDC's total payroll in Fiscal Year 2001 was approximately \$2,445,056. CCDC contributions were calculated using the base salary amount of approximately \$2,326,716. CCDC made the required 8% contribution, amounting to approximately \$186,137 (net of forfeitures) for Fiscal Year 2001.

In addition, CCDC has a Tax Deferred Annuity Plan covering current and previous full-time permanent employees. The plan is a defined contribution plan. Employees are eligible to participate the first day of the month following 90 days after their date of employment. During each plan year, CCDC contributes semi-monthly an amount equal to 10% of the total semi-monthly compensation for all employees.

CCDC's contributions for each employee are fully vested at time of contribution.

CCDC's total payroll in Fiscal Year 2001 was approximately \$2,445,056. CCDC contributions were calculated using the base salary amount of approximately \$2,326,716. CCDC made the required 10% contribution amounting to approximately \$232,671 for Fiscal Year 2001. The Tax Deferred Annuity Plan includes amounts deposited by employees prior to CCDC becoming a contributor to the Plan.

The fiduciary responsibilities of CCDC consist of making contributions and remitting deposits collected.

10. PENSION PLANS (Continued)

- c. The San Diego Convention Center Corporation Money Purchase Pension Plan (the "Plan") became effective January 1, 1986. The Plan is a qualified defined contribution plan and, as such, benefits depend on amounts contributed to the plan plus investment earnings and allocated forfeitures, less allowable plan expenses. The Plan covers employees not otherwise covered through a collective bargaining unit agreement. Employees are eligible at the earlier of the date on which they complete six months of continuous full-time service, or the twelve-month period beginning on their hire date (or any subsequent plan year) during which they complete 1,000 hours of service. A plan year is defined as a calendar year. Plan balances for each eligible employee are vested gradually over five years of continuing service with an eligible employee becoming fully vested after five years. Forfeitures and Plan expenses are allocated in accordance with Plan provisions.

Required contributions were calculated using the covered compensation amount of approximately \$8,806,412. SDCCC has funded the required contribution as of June 30, 2001.

For the Fiscal Year ended June 30, 2001, pension expense for the Plan amounted to \$863,187. SDCCC records pension expense during the Fiscal Year based upon estimated covered compensation.

SDCCC offers its employees a Deferred Compensation Plan (the "Deferred Plan") created in accordance with Internal Revenue Code Section 457. The Deferred Plan, available to all employees, permits them to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death, disability, or an unforeseeable emergency.

SDCCC funds the deferred compensation through investments in various mutual funds administered by an insurance company. Until paid or made available to the employee or other beneficiary, such investments and all related earnings thereon are solely the property and right of SDCCC (without being restricted to the provisions of benefits under the Deferred Plan), subject only to the claims of SDCCC's general creditors. Participants under the Deferred Plan have only the right to receive benefits in an amount equal to the balance of their account. SDCCC is of the opinion that it has no liability for the losses under the Deferred Plan but does have the duty of due care that would be required of an ordinary prudent investor. SDCCC believes that it is unlikely that it will use the Deferred Plan's assets to satisfy claims of creditors in the future.

- d. San Diego Data Processing Corporation ("SDDPC") has accrued and set aside funds in a money market account to provide employees who transferred from the City to SDDPC with retirement benefits approximately equal to those under the City's retirement plan. As of June 30, 2001 and 2000, the balance in the account was \$121,798 and \$115,453, respectively.

The balance at June 30, 2001 consisted of the total estimated liability plus interest earned on the account since its establishment in Fiscal Year 1991.

In addition, SDDPC has in effect a Money Purchase Pension Plan ("the Plan") covering substantially all employees. The plan is a defined contribution plan, wherein benefits depend solely on amounts contributed to the plan plus investment earnings. Employees are eligible to participate from the date of employment. During each plan year, SDDPC contributes monthly an amount equal to 20% of the total monthly compensation for all employees. SDDPC contributions for each employee are fully vested after four years of continuous service.

SDDPC's total payroll in Fiscal Year 2001 and 2000, was approximately \$22,871,911 and \$20,686,496, respectively. As all employees are substantially covered, SDDPC contributions were calculated using this base salary amount. SDDPC made the required 20% contribution amounting to approximately \$4,247,425 and \$4,150,505 for Fiscal Years 2001 and 2000 respectively.

10. PENSION PLANS (Continued)

- e. San Diego Housing Commission ("SDHC") provides pension benefits for all of its full-time employees through a defined contribution plan. Employees are eligible to participate on the first day of their employment. The SDHC contributes an amount equal to 14% of the employee's base salary semi-monthly. The SDHC's contributions for each employee (and interest allocated to the employee's account) are fully vested after four years of continuous service. The SDHC contributions for, and interest forfeited by, employees who leave employment before four years of service are used to reduce the SDHC's contribution requirement.

SDHC made the required 14% contribution, amounting to approximately \$1,493,970 for Fiscal Year 2001 based on covered payroll of approximately \$10,374,262.

SDHC offers its employees a deferred compensation plan created in accordance with Internal Revenue Code Section 457. The plan, available to all full-time SDHC employees, permits them to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death, disability or an unforeseeable emergency.

Fair value of the Plan assets was \$18,856,838 at June 30, 2001.

- f. Southeastern Economic Development Corporation ("SEDC") has a Simplified Employee Pension Plan covering all full-time, permanent employees. The plan is a defined contribution plan. Employees are eligible to participate on the first day of the month following 90 days after their date of employment. During each plan year, SEDC contributes monthly an amount equal to 12% of the employee's base salary. Beginning July 1, 1998, SEDC contributed an additional monthly amount equal to 15% of the base salary for management employees. Such contributions are fully vested upon contributions.

SEDC's total payroll in Fiscal Year 2001 was approximately \$762,500. SEDC contributions were calculated using the base salary amount of approximately \$692,000. SEDC made the required 12% contribution, amounting to approximately \$93,600 for Fiscal Year 2001.

11. POST RETIREMENT HEALTH INSURANCE

In addition to providing pension benefits, the City of San Diego Municipal Code provides certain health care insurance benefits for retired general and safety members of SDCERS who retired on or after October 6, 1980. At June 30, 2001, approximately 2,435 eligible retirees received benefits.

Certain health care insurance benefits were established during Fiscal Year 1995 for eligible retirees who retired prior to October 6, 1980 or who were otherwise not eligible to receive City-paid health care insurance as of June 30, 1994. At June 30, 2001, approximately 648 eligible retirees received benefits.

Currently, expenses for post-employment healthcare benefits are recognized as they are paid. For the Fiscal Year ended June 30, 2001, expenditures of approximately \$7,207,018 were recognized for such health care benefits.

Substantially all of the City's general and safety members of SDCERS may become eligible for those benefits if they reach normal retirement age and meet service requirements as defined while working for the City.

12. INTERFUND RECEIVABLE AND PAYABLE BALANCES

Interfund working capital advances balances at June 30, 2001 are as follows (in thousands):

| Fund | Advances from Other Funds | Advances to Other Funds |
|--|------------------------------|----------------------------|
| General Fund | \$ 0 | \$10,628 |
| Special Revenue Funds: | | |
| City of San Diego: | | |
| Acquisition, Improvement and Operation | 0 | 349 |
| Environmental Growth | 0 | 848 |
| Street Division Operations | 0 | 9,574 |
| Other Special Revenue (Budgeted) | 0 | 77 |
| Other Special Revenue (Unbudgeted) | 0 | 13 |
| Centre City Development Corporation | 450 | 0 |
| Southeastern Economic Development Corporation | <u>159</u> | <u>0</u> |
| Total Special Revenue Funds | <u>609</u> | <u>10,861</u> |
| Debt Service: | | |
| City of San Diego: | | |
| Other Special Assessments | 13 | 0 |
| San Diego Open Space Park Facilities District #1 | <u>622</u> | <u>0</u> |
| Total Debt Service Funds | <u>635</u> | <u>0</u> |
| Capital Projects Funds: | | |
| Redevelopment Agency | <u>0</u> | <u>609</u> |
| Total Capital Projects Funds | <u>0</u> | <u>609</u> |
| Enterprise Funds: | | |
| City of San Diego: | | |
| Airports | 0 | 201 |
| Development Services | 0 | 108 |
| Environmental Services | 0 | 4,538 |
| Golf Course | 0 | 762 |
| Recycling | 0 | 3,535 |
| Sewer Utility | 0 | 13,902 |
| Water Utility | <u>0</u> | <u>14,014</u> |
| Total Enterprise Funds | <u>0</u> | <u>37,060</u> |
| Internal Service Funds: | | |
| City of San Diego: | | |
| Central Garage and Machine Shop | 52,547 | 36 |
| Central Stores | 3,282 | 46 |
| Engineering and Capital Projects | 0 | 165 |
| Print Shop | 0 | 59 |
| Self Insurance | 2,085 | 0 |
| Miscellaneous Internal Services | <u>0</u> | <u>24</u> |
| Total Internal Service Funds | <u>57,914</u> | <u>330</u> |
| Trust and Agency Funds: | | |
| City of San Diego: | | |
| Other Miscellaneous Agency | <u>330</u> | <u>0</u> |
| Total | <u>\$59,488</u> | <u>\$59,488</u> |

12. INTERFUND RECEIVABLE AND PAYABLE BALANCES (Continued)

Interfund receivable and payable balances at June 30, 2001 are as follows (in thousands):

| Fund | Due from Other Funds | Due to Other Funds |
|---|-------------------------|-----------------------|
| General Fund | \$ 87,135 | \$ 0 |
| Special Revenue Funds: | | |
| City of San Diego: | | |
| Environmental Growth | 0 | 4,665 |
| Qualcomm Stadium Operations | 0 | 2,399 |
| Transient Occupancy Tax | 3,157 | 3,800 |
| Other Special Revenue (Budgeted) | 0 | 609 |
| Other Special Revenue (Unbudgeted) | 0 | 1,449 |
| Redevelopment Agency | 0 | 30,467 |
| Total Special Revenue Funds | <u>3,157</u> | <u>43,389</u> |
| Debt Service Funds: | | |
| City of San Diego: | | |
| Redevelopment | 200 | 0 |
| Total Debt Service Funds | <u>200</u> | <u>0</u> |
| Capital Projects Funds: | | |
| City of San Diego: | | |
| Capital Outlay | 700 | 9,600 |
| Other Construction | 9,600 | 0 |
| Convention Center Expansion Financing Authority | 0 | 758 |
| Redevelopment Agency | 29,567 | 0 |
| San Diego Facilities and Equipment Leasing Corporation | 0 | 17,333 |
| Total Capital Projects Funds | <u>39,867</u> | <u>27,691</u> |
| Enterprise Funds: | | |
| City of San Diego: | | |
| Development Services | 1,449 | 441 |
| Environmental Services | 441 | 0 |
| Sewer Utility | 0 | 0 |
| Water Utility | 17,333 | 0 |
| Total Enterprise Funds | <u>19,223</u> | <u>441</u> |
| Trust and Agency Funds: | | |
| Other Miscellaneous Agency | 0 | 78,061 |
| Total Trust and Agency Funds | <u>0</u> | <u>78,061</u> |
| Total | <u>\$149,582</u> | <u>\$149,582</u> |
| Primary Government and Component Unit | | |
| Component Unit - SDCCC | \$ 1,026 | \$ 0 |
| Component Unit - SDHC | 540 | 0 |
| Primary Government - Transient Occupancy Tax | 0 | 1,026 |
| Primary Government - Other Special Revenue (Unbudgeted) | 0 | 540 |
| | <u>\$ 1,566</u> | <u>\$ 1,566</u> |

13. ENTERPRISE FUNDS SEGMENT INFORMATION

The City maintains Enterprise Funds which provide airport, sewer, water and other services. Segment information for the year ended June 30, 2001 is as follows (in thousands):

| | <u>Airports</u> | <u>The Centre</u> | <u>City Store</u> | <u>Develop- ment Services</u> | <u>Environ- mental Services</u> | <u>Subtotal</u> |
|---|-----------------|-------------------|-------------------|---------------------------------------|---|-----------------|
| Operating Revenues | \$ 3,442 | \$ 0 | \$ 753 | \$38,897 | \$ 33,933 | \$77,025 |
| Operating Expenses before Depreciation & Amortization | 2,241 | 0 | 705 | 42,289 | 28,500 | 73,735 |
| Depreciation & Amortization | 476 | 0 | 1 | 856 | 494 | 1,827 |
| Operating Income (Loss) | 725 | 0 | 47 | (4,248) | 4,939 | 1,463 |
| Operating Transfers In | 1 | 0 | 0 | 72 | 13 | 86 |
| Transfers In from Governmental Funds | 0 | 0 | 0 | 584 | 0 | 584 |
| Operating Transfers Out | (8) | 0 | 0 | (132) | (172) | (312) |
| Transfers Out to Governmental Funds | 0 | 0 | 0 | (467) | (59) | (526) |
| Nonoperating Revenue | 444 | 0 | 12 | 1,365 | 4,118 | 5,939 |
| Nonoperating Expense | 0 | 0 | 0 | (150) | (18) | (168) |
| Net Income (Loss) | 1,162 | 0 | 59 | (2,976) | 8,821 | 7,066 |
| Grant Revenues (Expenses) | 125 | 0 | 0 | 0 | 0 | 125 |
| Capital Contributions | 126 | 0 | 0 | 0 | 0 | 126 |
| Net Fixed Asset Additions (Deletions) | 272 | 0 | 0 | (335) | 10,893 | 10,830 |
| | 0 | (3) | 0 | (87) | (19) | (109) |
| Net Working Capital | 5,912 | 0 | 261 | (1,481) | 30,188 | 34,880 |
| Total Assets | 15,572 | 0 | 298 | 13,640 | 150,459 | 179,969 |
| Total Equity | 15,361 | 0 | 276 | 726 | 137,611 | 153,974 |
| Long-Term Liabilities: | | | | | | |
| Other | 37 | 0 | 0 | 841 | 10,719 | 11,597 |

13. ENTERPRISE FUNDS SEGMENT INFORMATION (Continued)

| | Subtotal (Previous Page) | Golf Course | Recycling | Sewer Utility | Water Utility | San Diego Data Processing Corporation | Grand Total |
|---|--------------------------------|----------------|------------|--------------------|------------------|--|--------------------|
| Operating Revenues | \$77,025 | \$8,083 | \$19,554 | \$ 214,431 | \$ 211,385 | \$ 57,245 | \$587,723 |
| Operating Expenses before Depreciation & Amortization | 73,735 | 5,115 | 12,742 | 168,026 | 211,372 | 50,557 | 521,547 |
| Depreciation & Amortization | 1,827 | 210 | 625 | 37,776 | 12,529 | 6,113 | 59,080 |
| Operating Income (Loss) | 1,463 | 2,758 | 6,187 | 8,629 | (12,516) | 575 | 7,096 |
| Operating Transfers In | 86 | 1 | 25 | 105 | 67 | 0 | 284 |
| Transfers In from Governmental Funds | 584 | 0 | 0 | 29 | 0 | 0 | 613 |
| Operating Transfers Out | (312) | (27) | (24) | (773) | (1,213) | 0 | (2,349) |
| Transfers Out to Governmental Funds | (526) | (1,252) | (20) | (187) | (270) | (500) | (2,755) |
| Nonoperating Revenue | 5,939 | 472 | 997 | 34,516 | 28,176 | 73 | 70,173 |
| Nonoperating Expense | (168) | (58) | 0 | (57,543) | (18,975) | (123) | (76,867) |
| Net Income (Loss) | 7,066 | 1,894 | 7,165 | (15,224) | (4,731) | 25 | (3,805) |
| Grant Revenues (Expenses) | 125 | 0 | 0 | 199 | 905 | 0 | 1,229 |
| Capital Contributions | 126 | 151 | 0 | 33,888 | 34,515 | 0 | 68,680 |
| Net Fixed Asset Additions (Deletions) | 10,830 (109) | 379 (12) | 2,716 0 | 141,686 (3,061) | 116,882 (34) | 1,107 0 | 273,600 (3,216) |
| Net Working Capital | 34,880 | 6,390 | 16,289 | 397,152 | 371,084 | (3,456) | 822,339 |
| Total Assets | 179,969 | 14,773 | 24,901 | 2,872,820 | 1,390,033 | 23,692 | 4,506,188 |
| Total Equity | 153,974 | 14,182 | 17,391 | 1,663,382 | 946,009 | 11,950 | 2,806,888 |
| Long-Term Liabilities: | | | | | | | |
| Other | 11,597 | 93 | 6,658 | 1,117,131 | 384,057 | 4,179 | 1,523,715 |

14. CONTRIBUTED CAPITAL - PROPRIETARY FUNDS

During the year ended June 30, 2001, contributed capital increased (decreased) by the following amounts (in thousands):

| Source | Enterprise Funds | | | | | | | Internal Service Funds |
|--|------------------|----------------------|------------------------|--------------|--------------|------------------|------------------|---------------------------------|
| | Airports | Development Services | Environmental Services | Golf Course | Recycling | Sewer Utility | Water Utility | Central Garage and Machine Shop |
| Capacity Charges | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$ 0 | \$16,639 | \$ 16,581 | \$ 0 |
| Developer-Capital Improvements | 0 | 0 | 0 | 0 | 0 | 16,345 | 16,216 | 0 |
| Federal Grant - Capital Improvements | 0 | 0 | 0 | 0 | 0 | 654 | 278 | 0 |
| Federal Grant - Capital Reimbursements | 110 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Government - General Fixed Assets | 0 | 0 | 0 | 151 | 0 | 0 | 0 | 0 |
| Government - Capital Infusion | 0 | 0 | 0 | 0 | 0 | 581 | 1,440 | 0 |
| Contribution in Aid | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Government - Capital Reimbursement | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Meters and Services | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| State Grant - Capital Reimbursements | <u>16</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>(331)</u> | <u>0</u> | <u>0</u> |
| Total Increases (Decreases) | 126 | 0 | 0 | 151 | 0 | 33,888 | 34,515 | 0 |
| Contributed Capital, July 1, 2000 | <u>10,968</u> | <u>371</u> | <u>243</u> | <u>21</u> | <u>327</u> | <u>924,208</u> | <u>625,214</u> | <u>226</u> |
| Contributed Capital, June 30, 2001 | <u>\$11,094</u> | <u>\$371</u> | <u>\$243</u> | <u>\$172</u> | <u>\$327</u> | <u>\$958,096</u> | <u>\$659,729</u> | <u>\$226</u> |

15. RISK MANAGEMENT

The City is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters which may render the City liable to the public and to its employees. The Self Insurance Fund, an Internal Service Fund, was created to provide coverage against such risks up to a maximum of \$3.0 million for each workers' compensation claim and \$1.0 million for each general or automobile claim.

In addition, the City maintains an excess liability insurance policy whereby the City pays the first \$1,000,000 per occurrence. Amounts in excess of \$1,000,000 up to \$24,000,000 per occurrence are covered by the insurance. Any amounts over \$24,000,000 per occurrence would be paid by the City.

15. RISK MANAGEMENT (Continued)

The City is self-insured for workers' compensation, long-term disability and certain employee group health coverages. Each participating fund contributes an amount equal to an actuarially determined rate times the gross salaries of the fund. These payments are treated as operating expenditures in the contributing funds and operating revenues in the receiving funds.

All funds of the City participate in the program and make payments to the Self Insurance Fund based on actuarial estimates of the amounts needed to pay prior and current year claims and to establish a reserve for catastrophic losses.

Estimated liabilities for liability claims have been set up in the Self-Insurance Fund, Sewer Utility Fund, Water Utility Fund, as well as in the General Long-Term Debt Account Group. These amounts represent the City's determination of the probable ultimate cost of the claims. Property insurance is maintained on selected capital assets based upon various factors including management's assessment of the risks of loss.

The estimated liabilities as of June 30, 2001 are determined by the City based on recommendations from an independent actuarial evaluation. The liabilities are based on estimates of the ultimate costs of claims (including future claim adjustment expenses) that have been reported but not settled and claims that have been incurred but not reported (IBNR).

A reconciliation showing current and prior year activity is presented below (in thousands):

| | <u>Public Liability</u> | <u>City's Liability Under Worker's Comp, Long- Term Disability, & Group Health Insurance</u> | <u>Total</u> |
|---------------------------------|-----------------------------|--|-----------------|
| Balance July 1, 1999 | \$ 41,025 | \$ 33,733 | \$ 74,758 |
| Claims and Changes in Estimates | 6,781 | 34,478 | 41,259 |
| Claim Payments | <u>(9,640)</u> | <u>(31,938)</u> | <u>(41,578)</u> |
| Balance June 30, 2000 | 38,166 | 36,273 | 74,439 |
| Claims and Changes in Estimates | 27,237 | 23,830 | 51,067 |
| Claim Payments | <u>(13,395)</u> | <u>(22,737)</u> | <u>(36,132)</u> |
| Balance June 30, 2001 | <u>\$52,008</u> | <u>\$37,366</u> | <u>\$89,374</u> |

During the current year, there were no significant reductions in insurance coverage from the prior year. For each of the past three Fiscal Years, the settlements have not exceeded insurance coverage.

16. FUND DEFICIT

The Internal Service Funds have a net fund equity surplus of approximately \$16,552,000 at June 30, 2001. This balance includes a fund equity deficit in the Self Insurance Fund of approximately \$29,300,000 which represents unfunded estimated claims and claim settlements related to worker's compensation, long-term disability and certain employee group health coverages. It is anticipated that individual claim settlements will be funded through user charges subsequent to the filing of a claim and prior to its settlement.

17. COMMITMENTS

At June 30, 2001, \$77,000,000 of Tax Anticipation Notes issued during Fiscal Year 2000-01 were still outstanding. Monies for full redemption of these notes were fully segregated in a separate repayment fund at June 30, 2001 and subsequently used to redeem the notes on October 2, 2001. The liability for these notes is shown in the General Fund. On July 2, 2001, the City issued \$73,000,000 of Tax Anticipation Notes to finance Fiscal Year 2001-02 General Fund cash flow requirements.

The City is currently obligated to transfer up to two-thirds of the annual franchise tax receipts in the Environmental Growth Fund (a Special Revenue Fund) to the San Diego Open Space Park Facilities District #1 (the "District") Fund (a Debt Service Fund) for the payment of debt service on the District's outstanding general obligation bonds. Such required debt service on the District's outstanding bond obligations of \$45,520,000 at June 30, 2001 is approximately \$7,178,358 for each of the subsequent five years ending June 30, 2006.

The City has guaranteed the payment of a revolving line of credit in the maximum amount of \$7,500,000 on behalf of various individuals through Wells Fargo Bank regarding the CDBG Housing Loan Leveraging Program. As of June 30, 2001, approximately \$1,225,229 of total leveraged loans are still outstanding.

The Sewer Utility's construction plans for various projects are estimated to cost approximately \$178,106,000. As of June 30, 2001, the Utility's contractual commitments for the projects totaled approximately \$75,809,000. The Utility intends to finance the contractual commitments with approved State and Federal grants, service charges and the Installment Purchase Agreement.

The Water Utility's construction plans for various projects are estimated to cost approximately \$129,592,554. As of June 30, 2001, the Utility's contractual commitments for the projects totaled approximately \$77,763,634. The Utility intends to finance the contractual commitments with reserves and service charges.

18. CONTINGENCIES

The City has received federal and state grants for specific purposes that are subject to review and audit by the grantor agencies. Such audits could lead to requests for reimbursement to the grantor agency for expenditures disallowed under terms of the grant. City management believes such disallowances, if any, would not have a material effect on the City's financial position.

In September 1989, legislation was adopted (Assembly Bill No. 2080) which requires the Redevelopment Agency of the City of San Diego to fund Low and Moderate Housing Activity equivalent to at least 20% of tax increment revenue received after Fiscal Year 1985. In October 1990, the Agency adopted a nine-year plan to fully fund the retroactive 20% requirement (Resolution No.'s 1911, 1912, and 1913). At June 30, 2001, the 20% requirement was fully funded.

Proposition 218 was approved by the voters in November 1996 and could limit the City's ability to collect new taxes and fees. This measure requires a voter majority approval for all taxes used for "general government purposes" and a two-thirds voter approval for "special taxes" used for defined purposes. Proposition 218 repeals any such taxes imposed after January 1, 1995, that fail to meet these requirements. If the City is unable to continue to collect these revenues, the services and programs funded with these revenues would be reduced or eliminated.

During 1997 the City entered into a ten year agreement with the San Diego Chargers professional football team which included a clause whereby the City would generally provide stadium rent credits to the San Diego Chargers for the value of unsold tickets up to 60,000 for any home game.

18. CONTINGENCIES (Continued)

In February 2000, a rainstorm partially dislodged a 3000 pound manhole cover leading to blockage in a sewer main in a remote canyon near San Diego State University. As a result, 34 million gallons of sewage spilled into the San Diego River. The proposed \$3,400,000 fine from the Regional Water Quality Control Board is currently being appealed.

De La Fuente Business Park, Inc. v. City of San Diego.

This lawsuit, filed in 1995, involves allegations of breach of contract and inverse condemnation brought by an Otay Mesa developer. The jury returned a verdict of \$94.5 million in favor of the plaintiff. Subsequent motion for a new trial resulted in a reduction of the verdict to \$65.3 million. However, interest is accruing and is already valued at \$26.5 million. The case is presently on appeal. The City's exposure could range from \$0-125 million.

Glickman v. City of San Diego.

This is a challenge to the City's red light photo enforcement program. No trial date has been set. If plaintiffs prevail, they will seek reimbursement to all drivers who paid traffic fines resulting from tickets issued pursuant to the red light enforcement program. The total of that reimbursement could be \$4-5 million.

19. THIRD PARTY DEBT

The City has authorized the issuance of certain bonds, in its name, to provide tax exempt status because it perceives a substantial public benefit will be achieved through the use of the proceeds. The City has also authorized Section 108 loans from the Department of Housing and Urban Development. The following describes the various types of such third party debt:

Mortgage and Revenue Bonds

Single Family Mortgage Revenue Bonds have been issued to provide funds to purchase mortgage loans secured by first trust deeds on newly constructed and existing single-family residences. The purpose of this program is to provide low interest rate home mortgage loans to persons of low or moderate income who are unable to qualify for conventional mortgages at market rates. Multi-Family Housing Revenue Bonds are issued to provide construction and permanent financing to developers of multi-family residential rental projects located in the City to be partially occupied by persons of low or moderate income.

Industrial Development Revenue Bonds

Industrial Development Revenue Bonds have been issued to provide financial assistance for the acquisition, construction, and installation of facilities for industrial, commercial or business purposes to mutually benefit the citizens of the City of San Diego.

1911 Act Special Assessment Bonds

1911 Act Special Assessment Bonds have been issued to provide funds for the construction or acquisition of public improvements, and/or the acquisition of property for public purposes, for the benefit of particular property holders within the City. Each bond is secured by a lien on a specific piece of property. As of June 30, 2001, the status of all third party bonds issued is as follows (in thousands):

19. THIRD PARTY DEBT (Continued)

| | <u>Issued</u> | <u>Outstanding</u> |
|--------------------------------|----------------------|----------------------|
| Mortgage Revenue | \$469,146,940 | \$465,570,480 |
| Industrial Development Revenue | 366,805,000 | 357,381,000 |
| 1911 Act Special Assessment | <u>184,419</u> | <u>103,945</u> |
| Totals | <u>\$836,136,359</u> | <u>\$823,055,425</u> |

These bonds do not constitute an indebtedness of the City. The bonds are payable solely from payments made on and secured by a pledge of the acquired mortgage loans, certain funds and other monies held for the benefit of the bondholders pursuant to the bond indentures, property liens and other loans. In the opinion of City officials, these bonds are not payable from any revenues or assets of the City, and neither the full faith and credit for the taxing authority of the City, the state, or any political subdivision thereof is obligated to the payment of principal or interest on the bonds. In essence, the City is acting as an agent for the property owners/bondholders in collecting and forwarding the funds. Accordingly, no liability has been recorded in the City's General Long-Term Debt Account Group.

Section 108 Loans

The City has received Section 108 loans from the Department of Housing and Urban Development, to be repaid with future years Community Development Block Grant entitlements. Accordingly, no liability has been recorded in the City's General Long -Term Debt Account Group. As of June 30, 2001, \$26,615,000 remains outstanding.

20. CLOSURE AND POSTCLOSURE CARE COST

State and federal laws and regulations require that the City of San Diego place a final cover on its Miramar landfill site when it stops accepting waste and perform certain maintenance and monitoring functions at the site for thirty years after closure. Although closure and postclosure care costs will be paid only near or after the date that the landfill stops accepting waste, the City reports a portion of these closure and postclosure care costs as an operating expense in each period based on landfill capacity used as of each balance sheet date.

The \$9,920,000 reported as landfill closure and postclosure care liability at June 30, 2001 represents the cumulative amount reported to date based on the use of 59.7% of the estimated capacity of the landfill.

The City will recognize the remaining estimated cost of closure and postclosure care of \$6,709,297 as the remaining estimated capacity is filled. These amounts are based on what it would cost to perform all closure and postclosure care in 1999. The City expects to close the landfill in the year 2003. Actual cost may be higher due to inflation, changes in technology, or changes in regulations.

The City is required by state and federal laws and regulations to make annual contributions to finance closure and postclosure care. The City is in compliance with these requirements, and, at June 30, 2001 cash or equity in pooled cash and investments of \$20,696,000 is held for this purpose. This is reported as restricted assets on the balance sheet. The City expects that future inflation costs will be paid from interest earnings on these annual contributions. However, if interest earnings are inadequate or additional postclosure care requirements are determined (due to changes in technology or applicable laws or regulations, for example), these costs may need to be covered by charges to future landfill users or from other sources.

21. OPERATING AGREEMENTS

City of San Diego and San Diego Data Processing Corporation

In September 1979, the San Diego Data Processing Corporation (SDDPC) entered into an operating agreement with the City. Under the terms of the agreement, as amended, SDDPC has agreed to provide data processing and services needed to support the operational and planning requirements of the City.

The rates charged for the various services are subject to adjustment each Fiscal Year. Included in data processing services revenue for the year ended June 30, 2001 and 2000 are \$24,475,142 and \$25,292,141, respectively, of revenue earned from the City under this agreement.

The operating agreement also requires SDDPC to purchase computer equipment, computer maintenance, various contractual services and other reimbursed expenses as a part of the service it provides to the City. The City then reimburses SDDPC the costs associated with these expenses. Such transactions are not considered to be revenues and expenses of SDDPC and are excluded from its statements of revenues, expenses and retained earnings. The amount of these expenditures for the years ended June 30, 2001 and 2000 are \$24,475,142 and \$25,292,141, respectively. SDDPC earned \$1,492,806 and \$1,583,210 in general and administrative fees from such transactions for year ended June 30, 2001 and 2000, respectively.

The operating agreement was amended during fiscal 1988 to have SDDPC provide and operate telecommunications services for the City. The rates for the various services are subject to adjustment each Fiscal Year.

San Diego Geographical Information System

In Fiscal Year 1998, a five-year services agreement was finalized between SDDPC and SANGIS.

Included in SDDPC's data processing services revenue are the following amounts relating to SANGIS for the years ended June 30, 2001 and 2000, respectively:

| | <u>2001</u> | <u>2000</u> |
|-------------|------------------|------------------|
| City-SANGIS | \$248,923 | \$410,374 |
| Totals | <u>\$248,923</u> | <u>\$410,374</u> |

Complete financial statements for each of the individual component units may be obtained from the City Auditor and Comptroller's office.

Automated Regional Justice Information System

On July 1, 1997, SDDPC renewed, through June 30, 2002, its agreement with a joint powers agency known as the Automated Regional Justice Information System ("ARJIS") whose main purpose is to pursue development of computerized law enforcement systems in the region.

Under the agreement, SDDPC is to provide data processing services to ARJIS at rates which, on an annual basis, are equivalent to those charged to other governmental entity clients. Included in SDDPC's data processing services revenue is approximately \$2,788,516 and \$2,809,396 relating to ARJIS for the years ended June 30, 2001 and 2000, respectively.

State of California

During Fiscal Year 1999, the SDDPC entered into an agreement with the State of California Department of Information Technology to provide data processing services. SDDPC's data processing services revenue for the year ended June 30, 2001 was approximately \$291,261.

21. OPERATING AGREEMENTS (Continued)San Diego Medical Services Enterprise, LLC

On July 1, 1997, the City entered into an operating agreement with San Diego Medical Services Enterprise, LLC ("SDMSE") to provide emergency medical services and emergency medical transportation services. Under the agreement, the City made an advance of \$500,000 to SDMSE to cover initial costs associated with emergency medical transports. In addition, the City agreed to provide an annual subsidy of \$900,000 to the LLC in the first two years of the five-year term of the EMS Agreement. In the remaining three years, the annual subsidy shall be \$650,000, totaling \$3.75 million over the five-year term of the EMS Agreement.

22. SUBSEQUENT EVENTS

- a. On July 2, 2001, the City issued the \$73,000,000 Fiscal Year 2001-2002 Tax Anticipation Notes.
- b. On October 2, 2001, the City paid off the \$53,000,000 Fiscal Year 2000-2001 Tax Anticipation Notes, Series A.
- c. On October 2, 2001, the City paid off the \$24,000,000 Fiscal Year 2000-2001 Tax Anticipation Notes, Series B.
- d. The City is preparing to issue approximately \$170,000,000 of Lease Revenue Bonds through the Public Facilities Financing Authority of the City of San Diego to finance a portion of the cost of building a state-of-the-art baseball park, a portion of a public park located adjacent to the baseball park, possible acquisition of certain land for the baseball park and other related land acquisitions, improvements and infrastructure.

23. PRIOR PERIOD ADJUSTMENTS

Interest received from the Bond Acquisition funds for the Sewer Utility and Water Utility Enterprise Funds were not recognized in previous fiscal years. The fiscal year 2000 financial statements have been restated to reflect the additional revenues received. The effect of this adjustment was an increase of \$62,704,000 to Prepaid and Reimbursable Items and Deposits and Unreserved Earnings resulting in restated June 30, 2000 balance of \$361,080,000 and \$1,181,036,000, respectively.

23. PRIOR PERIOD ADJUSTMENTS (Continued)

The following is a reconciliation of the retained earnings (in thousands):

| | <u>Sewer</u> | <u>Water</u> |
|--|------------------|------------------|
| Retained earnings at beginning of year as previously stated | \$684,891 | \$263,926 |
| Interest Adjustment | <u>35,619</u> | <u>27,085</u> |
| Retained earnings at beginning of year as restated | <u>\$720,510</u> | <u>\$291,011</u> |

APPENDIX C

SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

The following is a summary of certain provisions of the Indenture, the Ballpark Facility Lease, the Assignment Agreement and the Site Lease which are not described elsewhere in this Offering Document. These summaries do not purport to be to be complete or definitive and reference should be made to such documents for a full and complete statement of their provisions. All capitalized terms not defined in this Offering Document have the meanings set forth in the Indenture.

DEFINITIONS

The following are definitions of certain terms used in this Offering Document.

“Additional Bonds” means all lease revenue bonds or refunding lease revenue bonds of the Authority authorized by and at any time Outstanding pursuant to the Indenture and executed, issued and delivered in accordance with the Indenture, other than the 2002 Bonds.

“Additional Rental” means all amounts designated as additional rental and payable by the City pursuant to the Ballpark Facility Lease.

“Agency” means the Redevelopment Agency of the City of San Diego, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California.

“Agreement” shall mean the Amended and Restated Joint Exercise of Powers Agreement, dated as of January 11, 1999, between the City and the Agency creating the Public Facilities Financing Authority of the City of San Diego, as originally executed and as it may be amended or supplemented from time to time in accordance with the terms thereof.

“Annual Debt Service” means, for any Bond Year, the sum of (1) the interest payable on all Outstanding Bonds in such Bond Year, assuming that all Outstanding Serial Bonds are retired as scheduled and that all Outstanding Term Bonds, if any, are redeemed or paid from the Sinking Account as scheduled (except to the extent that such interest is to be paid from the proceeds of the sale of any Bonds), (2) the principal amount of all Outstanding Serial Bonds, if any, maturing by their terms in such Bond Year, and (3) the principal amount of all Outstanding Term Bonds, if any, required to be redeemed or paid in such Bond Year (together with the redemption premiums, if any, thereon).

“Assignment Agreement” means that certain Assignment Agreement, dated as of February 1, 2002, by and between the Authority and the Trustee, providing for the assignment by the Authority of certain rights contained in the Ballpark Facility Lease, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Authority” means the Public Facilities Financing Authority of the City of San Diego, a joint powers agency created by the City and the Agency pursuant to California Government Code Sections 6500 et seq. and the Agreement.

“Authorized Denominations” means, subject to the provisions of the Indenture described under the heading “Initial 2002 Bonds -- Authorized Denominations; Restriction on Transfer of 2002 Bonds” below for so long as such provisions are applicable, \$5,000 and any integral multiple thereof.

“Ballpark” means the baseball park to be constructed on the Site, exclusive of Padres Improvements.

“Ballpark Design-Build Procurement Consultant Agreement” means that certain Ballpark Design-Build Procurement Consultant Agreement, dated as of February 1, 2000, by and among the City, the Agency, the

Centre City Development Corporation, the Padres and Padres Construction, L.P., as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Ballpark Facility” means the Ballpark, the Park and the Site.

“Ballpark Facility Lease” means that certain Ballpark Facility Lease, dated as of February 1, 2002, between the City and the Authority under which the Authority subleases to the City the Ballpark Facility, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Base Rental Payments” means all amounts payable by the City as the Base Rental pursuant to the Ballpark Facility Lease.

“Beneficial Owner” means any person who has the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Bond Fund” means the fund by that name established pursuant to the Indenture.

“Bond Year” means the period from February 15 to the following February 14.

“Bonds” means the 2002 Bonds and all Additional Bonds.

“Business Day” means a day of the year which is not a Saturday or Sunday, or a day on which banking institutions located in California or Minnesota are required or authorized to remain closed, or on which the New York Stock Exchange is closed.

“Capitalized Interest Account” means the account by that name established pursuant to the Indenture.

“CC&Rs” means any written covenants, conditions and restrictions, maintenance agreements or reciprocal easement agreements affecting the Ballpark Facility and/or property adjacent thereto in form and substance acceptable to the City, as the same may from time to time be amended, supplemented or modified.

“Certificate of Completion” means a Certificate of the City filed with the Trustee, stating that the Ballpark being financed with the proceeds of the Bonds has been acquired, constructed, installed and improved and that all Construction Costs have been paid or provided for.

“Certificate of the Authority” means an instrument in writing signed by the Chair, the Treasurer or the Secretary of the Authority, or by any other officer or authorized delegate of the Authority duly authorized by the Authority for that purpose.

“Certificate of the City” means an instrument in writing signed by the City Manager of the City, or by any other officer of the City duly authorized by the City for that purpose.

“City” means the City of San Diego, a municipal corporation duly organized and existing under its charter and the laws of the State.

“Claim” shall have the meaning contained in the Ballpark Facility Lease.

“Closing Date” means the date which the 2002 Bonds are initially issued.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury issued thereunder, and in this regard reference to any particular section of the Code shall reference to all successors to such section of the Code.

"Construction Costs" means all costs of acquiring, constructing, installing or improving the Project, including, but not limited to:

(i) all costs which the Authority or the City shall be required to pay to a manufacturer, vendor or contractor or any other person under the terms of any contract or contracts for the acquisition, construction, installation or improvement of the Project;

(ii) obligations of the Authority, the City or others incurred for labor and materials (including obligations payable to the Authority, the City or others for actual out-of-pocket expenses of the Authority, the City or others) in connection with the acquisition, construction, installation or improvement of the Project, including reimbursement to the Authority, the City or others for all advances and payments made in connection with the Project prior to or after delivery of the Bonds;

(iii) the costs of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect during the course of acquisition, construction, installation or improvement of the Project;

(iv) all costs of engineering and architectural services, including the actual out-of-pocket costs of the Authority or the City for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees and sales commissions, and for supervising acquisition, construction, installation and improvement, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction, installation or improvement of the Project; and

(v) any sums required to reimburse the Authority or the City for advances made by the Authority or the City for any of the above items or for any other costs incurred and for work done by the Authority or the City which are properly chargeable to the acquisition, construction, installation or improvement of the Project.

"Construction Fund" means the fund by that name established pursuant to the Indenture.

"Continuing Disclosure Agreement" means that certain Continuing Disclosure Agreement between the City and the Trustee, dated as of February 1, 2002, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority relating to the issuance, sale and delivery of the Bonds and the execution and delivery of the Indenture, the Site Lease and the Ballpark Facility Lease, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee (including legal fees), financing discounts, legal fees and charges, insurance fees and charges, Credit Facility fees and charges, financial and other professional consultant fees, costs of rating agencies or credit ratings, fees for transportation and safekeeping of the Bonds and charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established pursuant to the Indenture.

"Credit Facility" means any line of credit, letter of credit, insurance policy, surety bond or other credit source deposited with the Trustee pursuant to the Indenture.

"Damaged Improvements" shall have the meaning contained in the Ballpark Facility Lease.

"Default" shall have the meaning contained in the Ballpark Facility Lease.

"Defeasance Securities" means (a) Federal Securities which are not callable for redemption prior to their maturity for any person other than the owner thereof and (b) other Permitted Investments (i) which either are not callable for redemption prior to their maturities by any person other than the owner thereof or for which an option to redeem prior to maturity has previously been irrevocably exercised (or an irrevocable covenant to exercise such option has previously been made by the person entitled to exercise such option) and the redemption date of such securities has thereby been irrevocably fixed prior to the use of any such securities as Defeasance Securities,

and (ii) which at the time of their initial use as Defeasance Securities are rated in the highest generic rating category by S&P or Moody's.

"Design-Build Construction Contract" means that certain Ballpark Facility Design/Build Construction Contract, dated as of February 1, 2000, by and between Padres Construction, L.P. and San Diego Ballpark Builders, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms of the Ballpark Facility Lease.

"Event of Default" shall have the meaning contained in the Indenture.

"Expiry Date" means February 15, 2032, except as extended or sooner terminated pursuant to the Ballpark Facility Lease.

"Federal Securities" means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations for which the full faith and credit of the United States of America are unconditionally pledged for the payment of interest and principal, or securities evidencing direct ownership interests in such obligations or in specified portions of the interest on or principal of such obligations that are held by a custodian in safekeeping on behalf of the owners of such securities.

"Financial Guaranty Insurance Policy" or "Municipal Bond Insurance Policy" shall mean the financial guaranty insurance policy issued by the Insurer insuring the payment when due of the principal of and interest on the 2002 Bonds as provided therein.

"Financial Newspaper" means The Wall Street Journal or The Bond Buyer or any other newspaper or journal printed in the English language publishing financial news and selected by the City, whose decision shall be final and conclusive.

"Financing Documents" means the Ballpark Facility Lease, the Site Lease, the Indenture and the Assignment Agreement.

"Fiscal Year" means each annual period of the Authority which, as of the date of the Indenture, is the period from July 1 to the following June 30.

"Fitch" means Fitch Ratings, or any successor credit rating agency selected by the Authority.

"Guaranty Agreement" means the Guaranty Agreement Concerning the Ballpark Design/Build Procurement Consultant Agreement, dated as of February 1, 2000, from the Padres to and for the benefit of the City, the Agency, the Centre City Development Corporation, the Authority and the Trustee.

"Implementation Agreement" means that certain Ballpark and Redevelopment Project Implementation Agreement, dated as of February 25, 2000, by and among the City, the Agency, the Centre City Development Corporation and the Padres.

"Indenture" means the Indenture, dated as of February 1, 2002, between the Authority and the Trustee, providing for the terms and conditions of the Bonds, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

"Insurance Trustee" shall have the meaning contained in the Indenture.

"Insurer" means Ambac Assurance Corporation, a Wisconsin-domiciled stock insurance company.

"Interest Account" means the account by that name established pursuant to the Indenture.

"Interest Payment Date" means each February 15 and August 15 commencing August 15, 2002.

“Joint Use and Management Agreement” means that certain Joint Use and Management Agreement, dated as of February 1, 2002, by and between the City and the Padres, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“Lease Year” means the period from each February 15 to and including the following February 14, during the term of the Ballpark Facility Lease; except that the initial Lease Year means the period from the Closing Date to and including February 14, 2003.

“Leased Property” means, initially, the Ballpark Facility but the Leased Property may be changed from time to time by Removal or Substitution as provided in the Ballpark Facility Lease.

“Maximum Annual Debt Service” means the largest Annual Debt Service during the period from the date of such determination through the final maturity date of any Outstanding Bonds.

“Moody’s” means Moody’s Investors Service, Inc., or any successor credit rating agency selected by the Authority.

“MOU” means that certain Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project by and among the City, the Agency, the Centre City Development Corporation, and the Padres, approved by 59.6 percent of the citizens voting in the general election of the City of San Diego on November 3, 1998, memorializing the agreement among the parties to the MOU of the essential terms and conditions regarding the ballpark and redevelopment project as originally adopted, as amended and supplemented to the Closing Date, and as it may from time to time be amended or supplemented by agreement.

“Net Proceeds” means, collectively, the net proceeds of any insurance or condemnation award resulting from any damage or destruction of any portion of the Leased Property payable in accordance with the Ballpark Facility Lease.

“Operating Budget” shall have the meaning contained in the Ballpark Facility Lease.

“Opinion of Counsel” means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the Authority or the City.

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions regarding disqualified bonds in the Indenture) all Bonds theretofore or thereupon executed by the Authority and authenticated and delivered by the Trustee pursuant to the Indenture including, but not limited to, 2002 Bonds as described in the Indenture, except:

- (i) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;
- (ii) Bonds paid or deemed to have been paid within the meaning of the Indenture; and
- (iii) Bonds in lieu of or in substitution for which other Bonds shall have been executed by the Authority and authenticated and delivered pursuant to the Indenture.

“Owner” means any person who shall be the registered owner of any Outstanding Bond, as shown on the registration books required to be maintained by the Trustee pursuant to the Indenture.

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

“Padres Agreements” means the Ballpark Design-Build Procurement Consultant Agreement, the Design-Build Construction Contract, the Joint Use and Management Agreement, the CC&Rs, Guaranty Agreement, the Implementation Agreement, the Second Implementation Agreement and the Security Agreement.

“Padres Improvements” means those improvements on the Site which are identified in the Joint Use and Management Agreement as being owned by the Padres.

“Park” means the public park to be located on the Site.

“Permitted Encumbrances” means, as of any particular time:

- (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to the Ballpark Facility Lease, permit to remain unpaid;
- (ii) the Site Lease, the Ballpark Facility Lease, the Assignment Agreement, the Joint Use and Management Agreement and the CC&Rs, as each may be amended from time to time;
- (iii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law;
- (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, which exist of record as of the Closing Date; and
- (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions, all of a non-monetary nature, established following the date of recordation of the Ballpark Facility Lease and to which the Authority and the City consent in writing.

“Permitted Investments” means any of the following to the extent then permitted by law and the Indenture:

- (i) United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations of, or obligations guaranteed directly or indirectly by, the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or any Federal Reserve Bank) or securities or other instruments evidencing direct ownership interests in such obligations or in specified portions of the interest on or principal of such obligations, which shall be held by a custodian on behalf of such owners;
- (ii) (A) obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Federal Home Loan Mortgage Corporation, the Resolution Funding Corporation, the Federal Farm Credit System, the Student Loan Marketing Association or the Tennessee Valley Authority, or (B) obligations, participations or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Federal National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal), or (C) guaranteed portions of Small Business Administration notes, or (D) participations or other instruments of or issued by a federal agency or a United States of America government-sponsored enterprise; provided, however, that prior to investing in investments described in this clause, the City shall have provided to the Trustee a Certificate of the City that such investment shall have been approved for investment under the Indenture by the Rating Agencies;
- (iii) bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by members of the Federal Reserve System and which are drawn on any bank the short-term obligations of which are of the highest letter and numerical rating category as provided by the Ratings Agencies; provided that purchases of eligible bankers acceptances may not exceed 270 days' maturity;
- (iv) commercial paper of “prime” quality of the highest ranking or of the highest letter and numerical rating as provided by the Ratings Agencies, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an “A” or higher rating for the issuer's unsecured debentures, other than commercial paper, as provided by the Ratings Agencies; provided that purchases of eligible commercial paper may not exceed 270 days maturity;
- (v) certificates of deposit, whether negotiable or non-negotiable, issued by a state or national bank (including the Trustee or its affiliates) or a state or federal savings and loan association, provided that such certificates of deposit shall be either (A) continuously and fully insured by the Federal Deposit Insurance

Corporation or (B) have maturities of not more than 365 days and issued by any state or national bank or a state or federal savings and loan association, the short term obligations of which are rated in the highest short term letter and numerical rating category by the Rating Agencies;

(vi) any repurchase agreement with any state or national bank (including the Trustee or its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than "AA" or whose commercial paper is rated no lower than "F-1" by Fitch, if then rating the Bonds, no lower than "P-1" by Moody's, if then rating the Bonds, and no lower than "A-1" by S&P, if then rating the Bonds, (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; (1) the term of such repurchase agreement is less than one year or due on demand; (2) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (3) the market value of the collateral is maintained at levels acceptable to the Rating Agencies as evidenced by a Certificate of the City delivered to the Trustee; (4) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; (5) the repurchase agreement securities must be either obligations of, or fully guaranteed as to principal and interest by, the United States of America or any agency of the United States of America, certificates of deposit or bankers' acceptances; and (6) repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with "retail customers" which falls under the jurisdiction of the Securities Investors Protection Corporation; provided that: (1) the market value of the collateral is maintained at levels acceptable to the Rating Agencies as evidenced by a Certificate of the City delivered to the Trustee; (2) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (3) the Trustee has a perfected first priority security interest in the collateral; (4) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (5) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(vii) certificates, notes, warrants, bonds or other evidence of indebtedness of the State of California or of any political subdivision or public agency thereof which are rated in the highest short-term rating category or within one of the two highest long term rating categories of the Rating Agencies (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(viii) for amounts less than \$10,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank including affiliates of the Trustee, or state or federal savings and loan association in the State of California, fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof;

(ix) investments in taxable government money market portfolios restricted to obligations with an average maturity of one year or less, issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States of America and rated in either of the two highest rating categories by the Rating Agencies, including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services;

(x) guaranteed investment contracts or funding agreements fully collateralized at all times with permitted collateral from domestic or Canadian insurance companies or insurance holding companies rated at least "Aa3" or "AA-" as to claims paying ability by the Rating Agencies, U.S. branches of foreign banks rated at least "Aa3" or "AA-" by the Rating Agencies, domestic banks rated at least "A2" or "A" by the Rating Agencies, or, if such agreement is in a repurchase format, registered broker/dealers subject to SIPC or primary government security dealers rated, or whose parent is rated, at least "A3" or "A-" by the Rating Agencies and, in any case, if the investment contracts or funding agreements with such securities dealers, commercial banks or insurance companies is unconditionally guaranteed by an entity meeting the respective foregoing rating requirements, such rating shall be deemed the rating of such securities dealers, commercial banks or insurance companies and, in measuring the maturity of an investment under this subsection (x), such maturity shall be deemed to be the time at which the investment can be liquidated by the Trustee at par plus accrued interest without the payment of any penalty;

(xi) shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California which consists exclusively of investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State of California, as it may be amended; and

(xii) any other investment approved in writing by the Insurer.

“Project” means the Ballpark, the Park, the acquisition of land for the Ballpark and the Park and, subject to the limitations set forth in the Ballpark Facility Lease other land, improvements and infrastructure located adjacent to the Ballpark Facility.

“Rating Agencies” means Moody’s, S&P or Fitch, or in the event that Moody’s, or S&P, or Fitch no longer maintains a rating on the Bonds, any other nationally recognized bond rating agency then maintaining a rating on the Bonds, but, in each instance, only so long as Moody’s, S&P or Fitch or other nationally recognized rating agency then maintains a rating on the Bonds.

“Rebate Fund” shall have the meaning contained in the Indenture.

“Rebate Requirement” with respect to a series of Bonds shall have the meaning set forth in the applicable Tax Certificate.

“Redemption Account” means the account by that name established pursuant to the Indenture.

“Removal” means the release of all or a portion of the Leased Property from the leasehold of the Ballpark Facility Lease as provided in the Ballpark Facility Lease.

“Reserve Account” means the account by that name established pursuant to the Indenture.

“Reserve Requirement” means, as of any date of calculation, the least of (i) 10% of the stated principal amount of the Bonds, (ii) Maximum Annual Debt Service for the current or any future Bond Year, or (iii) 125% of average Annual Debt Service. For purposes of determining if the amount on deposit in the Reserve Account equals the Reserve Requirement, any Credit Facility shall be deemed to be a deposit in the face amount or stated amount of such Credit Facility, less any unreimbursed drawings or other amounts not reinstated under such Credit Facility.

“Revenues” means all Base Rental Payments made pursuant to the Ballpark Facility Lease and interest or profits from the investment of money in any fund, account or subaccount (other than the Rebate Fund) pursuant to the Indenture.

“Second Implementation Agreement” means that certain Second Ballpark and Redevelopment Project Implementation Agreement, dated as of November 30, 2001, by and among the City, the Agency, the Centre City Development Corporation and the Padres.

“Security Agreement” means that certain Security Agreement, dated as of April 1, 1999, as amended by the Ballpark Design-Build Procurement Consultant Agreement, by and between the Padres and the City.

“Serial Bonds” means Bonds for which no sinking fund payments are provided.

“Sinking Account” means the account by that name established within the Principal Account pursuant to the Indenture.

“Site” means the real property described in an exhibit to the Ballpark Facility Lease.

“Site Lease” means that certain Site Lease, dated as of February 1, 2002, by and between the City and the Authority under which the City leases the Site to the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

“S&P” means Standard & Poor’s Ratings Services, or any successor credit rating agency selected by the Authority.

“State” means the State of California.

“Substitution” means the release of all or a portion of the Leased Property from the leasehold of the Ballpark Facility Lease, and the lease of substituted real property and improvements under the Ballpark Facility Lease as provided in the Ballpark Facility Lease.

“Supplemental Indenture” means any indenture then in full force and effect which has been duly executed and delivered by the Authority and the Trustee amendatory of the Indenture or supplemental to the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized under the Indenture.

“Tax Certificate” means the Tax Certificate delivered by the Authority at the time of the issuance and delivery of a series of Bonds, as the same may be amended or supplemented in accordance with its terms.

“Term Bonds” means Bonds which are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

“Trustee” means Wells Fargo Bank, National Association, a national banking association existing under and by virtue of the laws of the United States of America, or any other association or corporation which may at any time be substituted in its place as provided in the Indenture.

“2002 Bonds” means all lease revenue bonds of the Authority authorized by and at any time Outstanding pursuant to the Indenture and issued, executed and delivered on the Closing Date in accordance with the Indenture.

“Written Request of the Authority” means a request in writing signed by the Chair, the Treasurer or the Secretary of the Authority, or by any other officer or authorized delegate of the Authority duly authorized by the Authority for that purpose.

“Written Request of the City” means a request in writing signed by the City Manager of the City, or by any other officer of the City duly authorized by the City for that purpose.

THE INDENTURE

The Indenture sets forth certain terms of the 2002 Bonds, the nature and extent of the security for the 2002 Bonds, various rights of the Owners of the 2002 Bonds, rights, duties and immunities of the Trustee and the rights and obligations of the Authority. Certain provisions of the Indenture are summarized below. Other provisions are summarized in this Offering Document under the captions “THE 2002 BONDS” and the “SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS.” This summary does not purport to be complete or definitive and is qualified in its entirety by reference to the full terms of the Indenture.

Equal Security

In consideration of the acceptance of the Bonds by the Owners thereof, the Indenture shall be deemed to be and shall constitute a contract between the Authority and the Trustee for the benefit of the Owners from time to time of all Bonds authorized, issued, executed and delivered under the Indenture and then Outstanding to secure the full and final payment of the interest on and principal of and redemption premiums, if any, with respect to all Bonds which may from time to time be authorized, issued, executed and delivered under the Indenture, subject to the agreements, conditions, covenants and provisions contained in the Indenture; and all agreements and covenants set forth in the Indenture to be performed by or on behalf of the Authority shall be for the equal and proportionate benefit, protection and security of all Owners of the Bonds without distinction, preference or priority as to security or otherwise of any Bonds over any other Bonds by reason of the number or date thereof or the time of authorization, sale, issuance, execution or delivery thereof or for any cause whatsoever, except as expressly provided in the Indenture or the Bonds.

Issuance of Additional Bonds

Conditions for the Issuance of Additional Bonds. The Authority may at any time issue Additional Bonds payable from the Revenues as provided in the Indenture and secured by a pledge of the Revenues as provided in the Indenture equal to the pledge securing the Outstanding Bonds theretofore issued under the Indenture, but only subject to the following specific conditions, which are made conditions precedent to the issuance of any such Additional Bonds by the Indenture:

(a) The Authority shall be, as evidenced by a Certificate of the Authority, in compliance with all agreements and covenants contained in the Indenture and no Event of Default shall have occurred and be continuing under the Ballpark Facility Lease.

(b) The issuance of such Additional Bonds shall have been authorized by the Authority and shall have been provided for by a Supplemental Indenture which shall specify the following:

(1) the purpose for which such Additional Bonds are to be issued; provided, however, that the proceeds of such Additional Bonds shall be applied solely for the purpose of (i) financing, acquiring, constructing, maintaining, operating, improving and leasing the Project, including payment of all costs incidental to or connected with such financing (including interest during construction); (ii) increasing the Reserve Requirement; and/or (iii) refunding any Bonds then Outstanding, including payment of all costs incidental to or connected with such refunding;

(2) the authorized principal amount and designation of such Additional Bonds;

(3) the dated date and the maturity dates of, and the sinking fund payment dates, if any, for such Additional Bonds; provided, however, that (i) each maturity and sinking fund date shall fall upon February 15; (ii) all such Additional Bonds of like maturity shall be identical in all respects, except as to number and denomination; and (iii) serial maturities for Serial Bonds or sinking fund payments for Term Bonds, or any combination thereof, shall be established to provide for the retirement of such Additional Bonds on or before their respective longest maturity dates;

(4) the interest payment dates for such Additional Bonds, which shall be Interest Payment Dates;

(5) the redemption premiums, if any, and the redemption terms, if any, for such Additional Bonds;

(6) the amount, if any, to be deposited from the proceeds of sale of such Additional Bonds in the Interest Account;

(7) the amount, if any, to be deposited from the proceeds of sale of such Additional Bonds in an escrow fund or construction fund;

(8) the amount to be deposited from the proceeds of sale of such Additional Bonds in the Reserve Account, which amount shall be sufficient to cause the amount on deposit in the Reserve Account to equal the Reserve Requirement upon the issuance of such Additional Bonds;

(9) the forms of such Additional Bonds; and

(10) such other provisions as are necessary or appropriate and not inconsistent with the Indenture.

(c) The Ballpark Facility Lease shall have been further amended so as to increase the aggregate Base Rental Payments payable by the City thereunder by an amount at least sufficient to pay the interest on and principal of such Additional Bonds as the same become due, subject to the limitation that the increase in Base Rental Payments together with existing Base Rental Payments shall not in any year be in excess of the annual fair rental of the Leased Property determined as of the time the Additional Bonds are issued.

(d) The Authority shall have received confirmation in writing from the Rating Agencies (if any) that the issuance of such Additional Bonds will not, in and of itself, cause a downgrading or withdrawal of such rating. The Authority shall not seek such a confirmation in writing if the annual amount of interest and principal, including sinking fund payments, payable on the Additional Bonds, does not exceed the corresponding amount of such payments on the Outstanding Bonds being refunded, provided, however, that the term of the Additional Bonds does not exceed the term on the Outstanding Bonds being refunded.

Nothing contained in the Indenture shall limit the issuance of any lease revenue bonds of the Authority payable from the Revenues and secured by a pledge of the Revenues if, after the issuance and delivery of such lease revenue bonds, none of the Bonds theretofore issued under the Indenture will be Outstanding.

Procedure for the Issuance of Additional Bonds. The Authority may, at any time, execute Additional Bonds for issuance under the Indenture and deliver them to the Trustee, and thereupon such Additional Bonds shall be authenticated and delivered by the Trustee to the purchaser thereof upon the Written Request of the Authority, but only upon receipt by the Trustee of the following documents or money or securities, all of such documents dated or certified, as the case may be, as of the date of delivery of such Additional Bonds by the Trustee (unless the Trustee shall accept any of such documents bearing a prior date):

(a) an executed copy of the Supplemental Indenture authorizing the issuance of such Additional Bonds;

(b) a Written Request of the Authority as to the delivery of such Additional Bonds;

(c) an Opinion of Counsel to the effect that (i) the Authority has the right and power to execute and deliver the Supplemental Indenture and the Supplemental Indenture has been duly and lawfully executed and delivered by the Authority, is in full force and effect and is valid and binding upon the Authority and enforceable in accordance with its terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights and by equitable principles) and no other authorization for the execution and delivery thereof is required; (ii) the Supplemental Indenture creates the valid pledge of the Revenues which it purports to create as provided therein, subject to the application thereof to the purposes and on the conditions permitted by the Indenture; (iii) such Additional Bonds are valid and binding special obligations of the Authority, enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights and by equitable principles) and the terms of the Indenture and entitled to the benefits of the Indenture, and such Additional Bonds have been duly and validly authorized, executed, issued and delivered in accordance with the Indenture; (iv) the amendments to the Ballpark Facility Lease required by the Indenture have been duly authorized, executed and delivered and are valid and binding upon the Authority and the City and enforceable in accordance with its terms (except as enforcement may be limited by bankruptcy insolvency, reorganization and other similar laws relating to the enforcement of creditors' rights and by equitable principles); and (v) the issuance of such Additional Bonds will not adversely affect the exclusion from gross income for federal tax purposes of interest on the Bonds then Outstanding;

(d) a Certificate of the Authority certifying that the conditions for the issuance of such Additional Bonds contained in the Indenture have been complied with and satisfied; and

(e) such further documents, opinions, money or securities as are required by the provisions of the Supplemental Indenture providing for the issuance of such Additional Bonds.

Certain Funds

Costs of Issuance Fund. The Trustee shall hold the moneys in the Costs of Issuance Fund and shall disburse such moneys from time to time to pay Costs of Issuance. The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time upon receipt by the Trustee of a Written Request of the City or Authority (signed (i) by the Chair, Vice-Chair, the Treasurer or the Secretary of the Authority, or (ii) by either of the City Treasurer or any Financing Services Manager and either of the Assistant Auditor and Comptroller or Accounting Division Manager), which may be sent to the Trustee by facsimile, that:

- (1) states with respect to each disbursement to be made:
 - (A) the requisition number,
 - (B) the name and address of the person, firm or corporation to whom payment is due,
 - (C) the amount to be disbursed, and
 - (D) that each obligation therein has been properly incurred, and is a proper charge against the Costs of Issuance Fund and has not been the basis of any previous disbursement;
- (2) specifies in reasonable detail the nature of the obligation; and
- (3) is accompanied by a bill or statement of account for each obligation.

The Trustee shall hold the moneys in the Costs of Issuance Fund and disburse such moneys therefrom in accordance with the Indenture. The Trustee shall, upon a Written Request of the City or Authority, which may be sent to the Trustee by facsimile, wire the funds to be disbursed to the City or the Authority in accordance with instructions contained in such Written Request of the City or the Authority.

Upon (i) of the date 180 days after the Closing Date amounts in excess of \$282,012.94 then remaining in the Costs of Issuance Fund, and (ii) the date of receipt of a Certificate of the City stating that all Costs of Issuance have been paid any amount then remaining in the Costs of Issuance Fund, such amounts shall be transferred by the Trustee to the Construction Fund until such time as the Certificate of Completion is delivered to the Trustee and thereafter to the Reserve Account to the extent amounts in the Reserve Account have been withdrawn to pay debt service on the Bonds and any amount remaining thereafter in the Costs of Issuance Fund shall be transferred to the Interest Account; provided, however, that investment earnings or equivalent amount may be transferred to the Rebate Fund as provided in the Indenture under the provisions relating to the Rebate Fund.

Construction Fund. The Trustee shall hold the moneys in the Construction Fund and shall disburse such moneys therefrom to pay the costs of the Project. Such disbursements shall be made from time to time upon receipt of a Written Request of the City on behalf of the Authority (in the form as set forth as in an exhibit to the Indenture, signed by a Deputy City Manager or Director, Special Projects and Assistant Auditor Comptroller or Accounting Division Manager) which:

- (1) states with respect to each disbursement to be made:
 - (A) the requisition number,
 - (B) the name and address of the person, firm or authority to whom payment is due,
 - (C) the amount to be disbursed, and
 - (D) that each obligation therein has been properly incurred, and is a proper charge against the Construction Fund and has not been the basis of any previous disbursement;
- (2) specifies in reasonable detail the nature of the obligation; and
- (3) is accompanied by a bill or statement of account for each obligation.

If, after payment by the Trustee of all Written Requests of the City on behalf of the Authority and delivery to the Trustee of a Certificate of Completion, there shall remain any balance of money in the Construction

Fund, all money so remaining shall be transferred first to the Reserve Account to the extent necessary to make the amount on deposit therein equal to the Reserve Requirement, and thereafter to the accounts of the Interest Account.

Revenues

Pledge of Revenues. All Revenues and amounts on deposit in the funds, accounts and subaccounts established under the Indenture (other than amounts on deposit in the Rebate Fund created pursuant to the Indenture) are irrevocably pledged to the payment of the interest on and principal and redemption price, if any, of the Bonds as provided in the Indenture, and the Revenues shall not be used for any other purpose while any of the Bonds remain Outstanding; provided, however, that out of the Revenues there may be allocated such sums for such purposes as are expressly permitted by the Indenture.

The Trustee shall be entitled to and shall receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as agent of the Trustee and shall forthwith be paid by the Authority to the Trustee.

Receipt and Deposit of Revenues in the Bond Fund. In order to carry out and effectuate the pledge contained in the Indenture, the Trustee agrees and covenants that all Revenues when and as received shall be received in trust under the Indenture for the benefit of the Owners and shall be deposited when and as received in the Bond Fund. All Revenues shall be accounted for through and held in trust in the Bond Fund, and the Authority shall have no beneficial right or interest in any of the Revenues except only as provided in the Indenture. All Revenues, whether received by the Authority in trust or deposited with the Trustee as provided in the Indenture, shall nevertheless be allocated, applied and disbursed solely to the purposes and uses set forth in the Indenture, and shall be accounted for separately and apart from all other accounts, funds, money or other resources of the Authority.

Establishment and Maintenance of Accounts for Use of Money in the Bond Fund. Subject to the Indenture, all money in the Bond Fund shall be set aside by the Trustee in the following respective special accounts within the Bond Fund (each of which is created by the Indenture and each of which the Trustee covenants and agrees to maintain) in the following order of priority:

- (1) Interest Account,
- (2) Principal Account,
- (3) Reserve Account,
- (4) Redemption Account; and
- (5) Capitalized Interest Account

All money in each of such accounts shall be held in trust by the Trustee and shall be applied, used and withdrawn only for the purposes authorized in the Indenture.

Interest Account. Subject to the Indenture, on or before each Interest Payment Date, the Trustee shall set aside first from the Capitalized Interest Account and then from the Bond Fund and deposit in the Interest Account that amount of money which, together with any money contained in the Interest Account, is equal to the aggregate amount of interest becoming due and payable on all Outstanding Bonds on such Interest Payment Date.

No deposit need be made in the Interest Account if the amount contained in the Interest Account is at least equal to the aggregate amount of interest becoming due and payable on all Outstanding Bonds on such interest payment date.

All money in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

Principal Account. On or before February 15 of each year, beginning on February 15, 2006, the Trustee shall set aside from the Bond Fund and deposit in the Principal Account an amount of money equal to the aggregate principal amount of all Outstanding Serial Bonds maturing on such February 15, plus the aggregate amount of all sinking fund payments required to be made with respect to the Term Bonds on such February 15. No deposit need be made in the Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal of all Outstanding Serial Bonds maturing by their terms on such February 15, plus the aggregate amount of all sinking fund payments required to be made on such February 15, for all Outstanding Term Bonds.

The Trustee shall establish and maintain within the Principal Account a separate subaccount for the Term Bonds of each series and maturity, designated as the "_____ Bonds Sinking Account" (the "Sinking Account"), inserting therein the series and maturity (if more than one such subaccount is established for such series) designation of such Bonds. With respect to each Sinking Account, on each mandatory sinking account payment date established for such Sinking Account, the Trustee shall apply the mandatory sinking account payment required on that date to the redemption (or payment at maturity, as the case may be) of Term Bonds of the series and maturity for which such Sinking Account was established, upon the notice and in the manner provided in the Indenture or in the Supplemental Indenture pursuant to which such series of Bonds were issued; provided that, at any time prior to giving such notice of such redemption, the Trustee may apply moneys in such Sinking Account at the written direction of the City to the purchase of Term Bonds of such series and maturity at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be determined by the City, except that the purchase price (excluding accrued interest) shall not exceed the redemption price that would be payable for such Bonds upon redemption by application of such mandatory sinking account payment. If, during the twelve-month period immediately preceding said mandatory sinking account payment date, the Trustee has purchased Term Bonds of such series and maturity with moneys in such Sinking Account, such Bonds so purchased shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking account payment.

All money in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds as they shall become due and payable, except that any money in any Sinking Account shall be used and withdrawn by the Trustee only to purchase or to redeem or to pay Term Bonds for which such sinking account was created.

Reserve Account. All amounts deposited into the Reserve Account shall be used only for the purposes set forth in the Indenture while any of the Bonds remain Outstanding and are irrevocably pledged by the Indenture to the payment of the interest, principal and redemption premiums, if any, with respect to the Bonds.

On or before February 15 of each year, beginning on February 15, 2005, the Trustee will set aside from the Bond Fund and deposit in the Reserve Account that amount of money which shall be required to maintain the Reserve Account in the full amount of the Reserve Requirement or such larger amount as shall be required to be maintained in the Reserve Account by any Supplemental Indenture. No deposit need be made in the Reserve Account so long as there shall be on deposit therein a sum equal to at least the amount required by the Indenture to be on deposit therein.

All money in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of replenishing the Interest Account or the Principal Account in such order, in the event of any deficiency at any time in either of such accounts, or for the purposes of paying the interest, principal or redemption premiums, if any, with respect to the Bonds in the event that no other money of the Authority is lawfully available therefor, or for the retirement of all the Bonds then Outstanding, except that so long as the Authority is not in default under the Indenture. All interest income received by the Trustee on investment of moneys in the Reserve Account shall be transferred first to the Rebate Fund to the extent required pursuant to the Indenture, as set forth in a Written Request of the Authority or the City to the Trustee, and thereafter to the Interest Account; provided, however, that such interest income shall be retained in the Reserve Account to the extent that amounts therein have been transferred in accordance with the Indenture to make up a deficiency in the Interest Account or the Principal Account; and provided further, the amounts in the Reserve Account in excess of the then current Reserve Requirement shall be transferred to the Construction Fund until such time as the Certificate of Completion is delivered to the Trustee, and thereafter to the Interest Account.

At any time that amounts in the Reserve Account are to be withdrawn pursuant to the Indenture, the Trustee shall withdraw such amounts from any subaccounts therein as specified in a Written Request of the City. In the absence of such Written Request of the City, the Trustee shall withdraw amounts in each such subaccount on a pro rata basis.

Notwithstanding anything in the Indenture to the contrary, at the option of the Authority or the City, amounts required to be held in the Reserve Account may be withdrawn, in whole or in part, upon the deposit of a Credit Facility with the Trustee, in a stated amount equal to the amounts so withdrawn; provided that at the time of such deposit the unsecured obligations of the Credit Facility are rated not lower than "Aa/AA" by the Rating Agencies and that prior to the deposit of such Credit Facility, the Rating Agencies shall be notified of such proposed withdrawal and the deposit of such Credit Facility shall not result in a withdrawal or downgrading of any rating of the Bonds then in effect by the Rating Agencies. Any such withdrawn moneys shall be transferred to the Interest Account or Principal Account or to a special account to be established for the payment of any fees in connection with obtaining such Credit Facility or to the Construction Fund to pay the costs of the Project or to the City for any other purpose, all at the option of the City. In the event a Credit Facility only partially replaces amounts on deposit in the Reserve Account, amounts remaining in the Reserve Account shall be exhausted first before the Credit Facility is drawn upon and any reimbursements to or for the benefit of the Reserve Account shall first be used to replace amounts paid from the Reserve Account and then to reimburse draws on the Credit Facility.

Redemption Account. In addition to the above accounts, the Trustee shall establish and maintain within the Bond Fund, when required, a special account designated the "Redemption Account." All money in the Redemption Account shall be held in trust by the Trustee and shall be applied, used and withdrawn only for the purposes authorized as described under this heading. Any Net Proceeds which, in accordance with a Written Request of the City or the Authority delivered to the Trustee pursuant to the Indenture and all other amounts received by the Trustee in connection with the redemption of the Bonds pursuant to the Indenture (except for any amounts for sinking fund redemptions pursuant to the Indenture) are to be used to redeem Bonds shall be deposited by the Trustee in the Redemption Account. The Trustee shall, on the scheduled redemption date, withdraw from the Redemption Account and pay to the Owners entitled thereto an amount equal to the redemption price of the Bonds to be redeemed on such date.

Capitalized Interest Account. Moneys in the Capitalized Interest Account shall only be used to pay a portion of interest on the Bonds until the earlier of the filing of the Certificate of Completion with the Trustee or the date set forth in the Indenture. Upon receipt of the Certificate of Completion, the Trustee shall transfer any remaining balance in the Capitalized Interest Account not required for the payment of interest on the 2002 Bonds prior to the date upon which the Certificate of Completion has been filed with the Trustee to the Bond Fund.

Any delinquent Base Rental Payments and any proceeds of rental interruption insurance with respect to the real property encumbered by the Ballpark Facility Lease shall be applied first to the Interest Account for the immediate payment of interest payments past due and then to the Principal Account for immediate payment of principal payments past due according to the tenor of any Bond, and then to the Reserve Account to the extent necessary to make the amount on deposit therein equal to the Reserve Requirement. Any remaining money representing delinquent Base Rental Payments and any proceeds of rental interruption insurance shall be deposited in the Bond Fund to be applied in the manner provided in the Indenture.

Investment of Moneys in Funds and Accounts. Moneys in the Bond Fund, the Costs of Issuance Fund, the Construction Fund and any accounts and subaccounts therein shall, upon the Written Request of the City or the Authority at least two Business Days before the investment, be invested by the Trustee in Permitted Investments. In the absence of a Written Request of the City or the Authority, the Trustee may invest moneys in such funds and accounts in Permitted Investments described in subparagraph (ix) of the definition of Permitted Investments. The obligations in which moneys in the said funds, accounts and subaccounts are invested shall mature on or prior to the date on which such moneys are estimated to be required to be paid out under the Indenture. The obligations in which moneys in the Reserve Account are so invested shall be invested in obligations maturing no later than seven years in the case of the Outstanding Bonds and any Additional Bonds (unless a different maturity is specified in the related Supplemental Indenture) after the date of investment, except that obligations in the Reserve Account may mature at a date which is more than the specified maximum if the Authority or the Authority and the City shall have entered into an agreement with a corporation, partnership or other business enterprise, having unsecured long-term credit ratings provided by the Rating Agencies, which at the time are "Aa" or higher as provided by Moody's, if then rating the Bonds, and "AA" as provided by S&P, if then rating the Bonds, under

which the provider of the agreement will agree to purchase, at the amortized cost thereof to the Authority, such obligations in the event that obligations in the Reserve Account must be sold to pay principal of or interest on Bonds including Bonds that are redeemed in accordance with the Indenture or in the case of Additional Bonds in accordance with any mandatory sinking fund redemption or redemption from Net Proceeds. Any interest, income or profits from the deposits or investments of all funds, accounts and subaccounts under the Indenture (except the Rebate Fund and the Reserve Account to the extent required to be maintained therein or transferred pursuant to the Indenture) shall be deposited (i) prior to the delivery to the Trustee of the Certificate of Completion, to the Construction Fund or, at the election of the City as set forth in a Written Request of the City, to the Interest Account, to pay interest on the Bonds when and as the same shall become due and payable, and (ii) thereafter, first to the Reserve Account to the extent required to maintain the Reserve Requirement, and thereafter to the Interest Account. For purposes of determining the amount of deposit in any fund, account or subaccount held under the Indenture, all Permitted Investments credited to such fund or account shall be valued, on or about December 1 during each year that Bonds are Outstanding, at the cost thereof (adjusting for any amortized premium or discount to maturity). Except as otherwise provided under this heading, Permitted Investments representing an investment of moneys attributable to any fund, account or subaccount and all investment profits or losses thereon shall be deemed at all times to be a part of said fund, account or subaccount. The Trustee shall maintain records with respect to each investment, including: (i) purchase date; (ii) purchase price; (iii) any accrued interest paid; (iv) face amount; (v) coupon rate; (vi) periodicity of interest payments; (vii) disposition price; (viii) any accrued interest received; and (ix) disposition date. The Trustee will furnish the Authority and the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee under the Indenture. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee under the Indenture. The Trustee may act as principal or agent in the acquisition or disposition of investments, and to the extent permitted under the Tax Certificate may commingle the funds, accounts and subaccounts established under the Indenture for investment purposes. The Trustee shall have no liability or responsibility for any loss resulting from any investment made in accordance with the provisions of the Indenture.

Covenants of the Authority and the Trustee

Punctual Payment and Performance. The Authority will punctually pay the interest on and the principal of and redemption premiums, if any, to become due on every Bond issued under the Indenture in strict conformity with the terms of the Indenture and of the Bonds, and will faithfully observe and perform all the agreements and covenants contained in the Indenture and in the Bonds.

Against Encumbrances. The Authority will not make any pledge of or place any charge or lien upon the Revenues except as provided in the Indenture, and will not issue any bonds, notes or obligations payable from the Revenues or secured by a pledge of or charge or lien upon the Revenues except the Bonds.

Against Sale or Disposition of the Leased Property. Except as provided in the Ballpark Facility Lease, the Authority will not sell or otherwise dispose of the Leased Property, enter into any agreement which impairs the use of the Leased Property or any part thereof necessary to secure adequate Revenues for the payment of the interest on and principal of and redemption premiums, if any, with respect to the Bonds, or which would otherwise impair the rights of the Owners with respect to the Revenues.

Tax Covenants; Rebate Fund. In addition to the other funds and accounts created pursuant to the Indenture, the Trustee shall establish and maintain a fund separate from any other fund or account established and maintained under the Indenture designated the "Rebate Fund" (the "Rebate Fund"). Within the Rebate Fund, the Trustee shall maintain such accounts or subaccounts as are specified in a Written Request of the City or the Authority to the Trustee pursuant to the Tax Certificate. The Trustee shall deposit moneys in the Rebate Fund pursuant to a Written Request of the City or the Authority. Subject to the transfer provisions provided below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement, for payment to the federal government of the United States of America, and none of the City, the Authority, the Trustee or the Owner of any Bond shall have any right in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by the provisions described under this heading and by the Tax Certificate (which is incorporated in the Indenture by reference). The Trustee shall be deemed conclusively to have complied with the provisions of the Indenture and the Tax Certificate if it follows the Written Request of the City or the Authority, including supplying all necessary information in the manner provided in the Tax Certificate, and except as otherwise expressly provided in the Indenture, shall not be required to take any actions under the Indenture in the absence of written directions by the City or the Authority, and shall have no

liability or responsibility to enforce compliance by the City or the Authority with the terms of the Tax Certificate or the provisions described under this heading. The Trustee agrees to comply with all Written Requests of the City or the Authority given pursuant to the Tax Certificate.

Upon a Written Request of the City or the Authority, an amount shall be deposited into the Rebate Fund by the Trustee from deposits by the Authority, if and to the extent required, so that the balance of the amount on deposit thereto shall be equal to the Rebate Requirement. Computations of the Rebate Requirement shall be furnished by or on behalf of the City and the Authority in accordance with the Tax Certificate. The City shall provide the Trustee with written evidence that the computation of the Rebate Requirement has been made.

The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to the Indenture, other than from moneys held in the funds and accounts created under the Indenture or from other moneys provided to it by the City or the Authority.

The Trustee shall invest all amounts held in the Rebate Fund in Permitted Investments as directed by a Written Request of the City or the Authority. Money, including investment earnings, shall not be transferred from the Rebate Fund except as provided below.

Upon receipt of a Written Request of the City or the Authority, the Trustee shall remit part or all of the amounts in the Rebate Fund to the United States of America, as so directed. In addition, if the City or the Authority so directs, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or fund as directed by the Written Request of the City or the Authority. Any funds remaining in the Rebate Fund in excess of the Rebate Requirement as of the end of any Bond Year shall be transferred to the Interest Account of the Bond Fund.

Notwithstanding any other provision of the Indenture, including, in particular, the provisions regarding defeasance contained in the Indenture, the obligation to remit the Rebate Requirement to the United States and to comply with all other requirements of the provisions described under this heading and the Tax Certificate shall survive the defeasance or payment in full of the Bonds.

The Authority shall not use or permit the use of any proceeds of the Bonds and any Additional Bonds or any funds of the Authority, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any other action or actions, which would cause the Bonds or any Additional Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or obligations subject to federal income taxation because they are "federally guaranteed" within the meaning Section 103(h) of the Internal Revenue Code of 1954, as amended (the "1954 Code"), or Section 149(b) of the Code and any such applicable regulations promulgated from time to time thereunder. The Authority shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The Authority shall comply with all requirements of Sections 148 and 149(b) of the Code to the extent applicable to the 2002 Bonds.

The Authority specifically covenants to comply with the provisions and procedures of the Tax Certificate.

The Authority shall not use or permit the use of any proceeds of the Bonds or any funds of the Authority, directly or indirectly, in any manner, and shall not take or omit to take any action that would cause any of the Bonds to be treated as an obligation not described in Section 103(a) of the Code.

Notwithstanding any provisions of the Indenture, if the Authority shall provide to the Trustee an Opinion of Counsel to the effect that any specified action required under the provisions of the Indenture regarding Tax Covenants and Rebate Fund is no longer required or that some further or different action is required to maintain the exclusion from gross income for federal income tax purposes of interest with respect to the 2002 Bonds, the Trustee, the Authority and the City may conclusively rely on such opinion in complying with the requirements of the Indenture, and, notwithstanding the provisions of the Indenture regarding Amendment, the covenants under the Indenture regarding Tax Covenants and Rebate Fund shall be deemed to be modified to that extent.

Payment of Claims. The Authority will pay and discharge or cause to be paid and discharged any and all lawful claims for labor, materials or supplies which, if unpaid, might become a legal charge or lien upon the Leased Property or the Revenues or any part thereof or upon any funds under the control of the Authority or the

Trustee superior to or on a parity with the charge and lien upon the Revenues securing the Bonds, or which might impair the security of the Bonds.

Payment of Taxes and Compliance with Governmental Regulations. The Authority will pay and discharge or cause to be paid and discharged all applicable taxes, assessments and other governmental charges that may be levied, assessed or charged upon the Leased Property or any part thereof or upon the Revenues or any part thereof promptly as and when the same shall become due and payable. The Authority will duly observe and conform with all valid applicable regulations and requirements of any governmental authority relative to the use of the Leased Property or any part thereof, but the Authority shall not be required to comply with any such regulations or requirements so long as the application or the validity thereof shall be contested in good faith.

Insurance. The Authority will maintain or cause to be maintained insurance with respect to the Leased Property as required by the Ballpark Facility Lease.

Insurance Proceeds and Condemnation Awards; Title Insurance. The Trustee shall receive all moneys which may become due and payable under any insurance policies obtained pursuant to the Ballpark Facility Lease and pursuant to any condemnation awards in a separate fund to be established and maintained by the Trustee and designated the "Insurance Proceeds and Condemnation Awards Fund," and shall apply the proceeds of such insurance as provided in the Ballpark Facility Lease. The Trustee shall permit withdrawals of said proceeds from time to time upon receiving the Written Request of the City, stating that the City or the Authority has expended moneys or incurred liabilities in an amount equal to the amount therein requested to be paid over to it for the purpose of repair, reconstruction or replacement, and specifying the items for which such moneys were expended, or such liabilities were incurred, in such reasonable detail as the Trustee may in its discretion require.

The Trustee shall not be responsible for the sufficiency of any insurance required by the Ballpark Facility Lease and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the City. Delivery to the Trustee of the schedule of insurance policies under the Ballpark Facility Lease shall not confer responsibility upon the Trustee as to the sufficiency of coverage or amounts of such policies. The Trustee may request, in writing, that the City deliver to the Trustee certificates or duplicate originals or certified copies of each insurance policy described in the schedule required to be delivered by the City to the Trustee pursuant to the Ballpark Facility Lease.

Proceeds of any policy of title insurance received by the Trustee in respect of the Leased Property shall be applied and disbursed by the Trustee as follows:

(1) If the City determines that the title defect giving rise to such proceeds has not materially affected the operation of the Leased Property and will not result in an abatement of Base Rental Payments payable by the City under the Ballpark Facility Lease, such proceeds shall at the election of the City as set forth in a Written Request of the City, be deposited in the Redemption Account and such proceeds shall be applied to cause the redemption of Outstanding Bonds in the manner provided in the Indenture or in the Construction Fund and utilized to improve or enhance the remaining Leased Property; or

(2) If any portion of the Leased Property has been affected by such title defect, and if the City determines that such title defect will result in an abatement of Base Rental Payments payable by the City under the Ballpark Facility Lease, then the Trustee shall immediately deposit such proceeds in the Redemption Account and such proceeds shall be applied to cause the redemption of Outstanding Bonds in the manner provided in the Indenture.

Account Records and Reports. The Authority will keep or cause to be kept proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocation and application of the Revenues, and such books shall be available for inspection by the Trustee, at reasonable hours and under reasonable conditions. Not more than six months after the close of each Fiscal Year, the Authority shall furnish or cause to be furnished to the Trustee a complete financial statement covering receipts, disbursements, allocation and application of Revenues for such Fiscal Year, and including a profit and loss statement and balance sheet. The Authority shall also keep or cause to be kept such other information as is required under the Tax Certificate.

Ballpark Facility Lease and Other Documents. The Authority will at all times maintain and vigorously enforce all of its rights under the Ballpark Facility Lease, and will promptly collect all rents and charges due for the use of the Leased Property as the same become due under the Ballpark Facility Lease, and will promptly and vigorously enforce its rights against any tenant or other person who does not pay such rents or charges as they become due under the Ballpark Facility Lease. The Authority will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation, abatement or termination of the Ballpark Facility Lease by the respective lessees thereunder.

Other Liens. The Authority will keep the Leased Property free from judgments, mechanics' and materialmen's liens (except those arising from the acquisition, construction and installation of the Leased Property and except Permitted Encumbrances) and free from all liens, claims, demands and encumbrances of whatsoever prior nature or character to the end that the security for the Bonds provided in the Indenture will at all times be maintained and preserved free from any claim or liability which, in the judgment of the Trustee (and its determination thereof shall be final), might hamper the Authority in conducting its business or interfere with the City's use and occupancy of the Leased Property, and the Trustee at its option (after first giving the Authority ten days' written notice to comply therewith and failure of the Authority to so comply within such period) may defend against any and all actions or proceedings in which the validity of the Indenture is or might be questioned, or may pay or compromise any claim or demand asserted in any such action or proceeding; provided, however, that in defending such actions or proceedings or in paying or compromising such claims or demands the Trustee shall not in any event be deemed to have waived or released the Authority from liability for or on account of any of its agreements and covenants contained in the Indenture, or from its liability under the Indenture to defend the validity of the Indenture and the pledge of the Revenues made in the Indenture and to perform such agreements and covenants.

Prosecution and Defense of Suits. The Authority will promptly from time to time take or cause to be taken such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Leased Property, whether now existing or hereafter developing, and shall prosecute or cause to be prosecuted all such suits, actions and other proceedings as may be appropriate for such purpose and shall indemnify and hold the Trustee harmless from all loss, cost, damage and expense, including attorney's fees, which it may incur by reason of any such defect, cloud, suit, action or proceeding.

The Authority will defend against every suit, action or proceeding except those arising out of the wrongful, willful act or actions of the Trustee at any time brought against the Trustee upon any claim arising out of the receipt, application or disbursement of any of the Revenues or involving the rights of the Trustee under the Indenture; provided, however, that the Trustee at its election may appear in and defend any such suit, action or proceeding.

Further Assurances. Whenever and so often as requested to do so by the Trustee, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by the Indenture.

Continuing Disclosure. Pursuant to the Ballpark Facility Lease, the City has undertaken all responsibility for compliance with continuing disclosure requirements, and the Authority shall have no liability to the Owners or any other person with respect to S.E.C. Rule 15c2-12. The Trustee covenants and agrees under the Indenture that it will comply with and carry out all of its obligations under the provisions of the Continuing Disclosure Agreement and the provisions regarding continuing disclosure contained in the Ballpark Facility Lease. Notwithstanding any other provision of the Indenture, failure of the City or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee may (and, upon payment of its fees and expenses, including counsel fees, and receipt of indemnity satisfactory to it, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under the Ballpark Facility Lease, or to cause the Trustee to comply with its obligations under the Indenture.

Trustee

Duties, Immunities and Liabilities of Trustee. The Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in the Indenture and no implied duties or obligations shall be read into the Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

So long as no Event of Default has occurred and is continuing, the Authority may remove the Trustee at any time and shall remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with the Indenture, or shall become incapable of acting, or shall commence a case under any bankruptcy, insolvency or similar law, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take control or charge of the Trustee or its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee, and thereupon shall appoint a successor Trustee by an instrument in writing.

The Trustee may resign by giving written notice of such resignation to the Authority and by giving notice of such resignation by mail, first class postage prepaid, to the Owners at the addresses listed in the bond register. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing.

Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and shall have accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee, at the expense of the Authority, or any Owner (on behalf of himself and all other Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under the Indenture shall signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee in the Indenture; but, nevertheless, at the written request of the Authority or of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under the Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in the Indenture. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in the Indenture, such successor Trustee shall mail a notice of the succession of such Trustee to the trusts under the Indenture by first class mail, postage prepaid, to the Owners at their addresses listed in the bond register.

Any Trustee appointed under the provisions of the Indenture shall be a trust company corporation or bank having the powers of a trust company, having a corporate trust office in California, having a combined capital and surplus of at least seventy-five million dollars (\$75,000,000), and subject to supervision or examination by federal or state authority. If such bank corporation or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of the Indenture the combined capital and surplus of such bank corporation or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of the Indenture in the subsection regarding the Trustee, the Trustee shall resign immediately in the manner and with the effect specified in the Indenture.

For such time as the Financial Guaranty Insurance Policy shall be in full force and effect and so long as Insurer is not in default under its Financial Guaranty Insurance Policy (i) the Trustee may be removed at any time, at the request of Insurer, for any breach of the Trust set forth in the Indenture; (ii) Insurer shall receive prior written notice of any Trustee resignation; (iii) every successor Trustee appointed pursuant to the Indenture shall be a trust company or bank in good standing located in or incorporated under the laws of the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$75,000,000 and acceptable to Insurer; and (iv) no removal, resignation or termination of the Trustee shall take effect until a successor, acceptable to Insurer, shall be appointed.

No provision in the Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties under the Indenture if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

The Trustee shall not be responsible for the sufficiency, timeliness or enforceability of the Revenues.

The Trustee shall not be accountable for the use or application by the Authority, the City or any other party of any funds which the Trustee has released under the Indenture.

The Trustee may employ attorneys, agents or receivers in the performance of any of its duties under the Indenture and shall not be answerable for the misconduct of any such attorney, agent or receiver selected by it with reasonable care.

Rights of Owners. Notwithstanding any other provision of the Indenture, in determining whether the rights of the Owners will be adversely affected by any action taken pursuant to the terms and provisions of the Indenture, the Trustee shall consider the effect on the Owners as if there were no Financial Guaranty Insurance Policy.

Amendment of the Indenture

The Indenture and the rights and obligations of the Authority and of the Owners may be amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in the Indenture, are filed with the Trustee. No such amendment shall (i) extend the maturity of or reduce the interest rate on or otherwise alter or impair the obligation of the Authority to pay the interest on or principal of or redemption premium, if any, on any Bond at the time and place and at the rate and in the currency provided in the Indenture without the express written consent of the Owner of such Bond; (ii) permit the creation by the Authority of any pledge of the Revenues as provided in the Indenture superior to or on a parity with the pledge created by the Indenture for the benefit of the Bonds; (iii) modify any rights or obligations of the Trustee without its prior written assent thereto; or (iv) modify any provision of the Indenture expressly recognizing or granting rights in or to the Insurer in any manner which affects the rights of the Insurer under the Indenture without its prior written assent thereto.

The Indenture and the rights and obligations of the Authority and of the Owners may also be amended at any time by a Supplemental Indenture which shall become binding upon adoption without the consent of any Owners, but only to the extent permitted by law and after receipt of an approving Opinion of Counsel and only for any one or more of the following purposes:

(1) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained in the Indenture or in regard to questions arising under the Indenture which the Authority may deem desirable or necessary and not inconsistent with the Indenture and which shall not materially adversely affect the interests of the Owners; or

(2) to make any other change or addition to the Indenture which shall not materially adversely affect the interests of the Owners or the Insurer, or to surrender any right or power reserved in the Indenture or conferred in the Indenture on the Authority; or

(3) to provide for the issuance of any Additional Bonds and to provide the terms of such Additional Bonds, subject to the conditions and upon compliance with the procedure set forth in the Indenture.

Events of Default and Remedies of Holders

Events of Default. Any one or more of the following events shall be called an "Event of Default" under the Indenture:

(a) default shall be made in the due and punctual payment of the interest on any Bond when and as the same shall become due and payable;

(b) default shall be made in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed or by proceedings for redemption;

(c) default shall be made by the Authority in the performance of any of the other agreements or covenants required in the Indenture to be performed by the Authority, and such default shall have continued for a period of 60 days after the Authority shall have been given notice in writing of such default by the Trustee; or

(d) the Authority shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the Authority seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

Proceedings by Trustee. Subject to the Indenture, upon the happening and continuance of any Event of Default the Trustee in its discretion may, and at the written request of the Owners of not less than 25% in aggregate principal amount of Bonds Outstanding shall, do the following:

(1) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners and require the Authority to enforce all rights of the Owners of Bonds, including the right to require the Authority to receive and collect Revenues and to enforce its rights under the Ballpark Facility Lease and to require the Authority to carry out any other covenant or agreement with Owners of Bonds and to perform its duties under the Indenture;

(2) bring suit upon the Bonds;

(3) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners; and

(4) as a matter of right, have a receiver or receivers appointed for the Revenues and the issues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Notwithstanding the foregoing, neither the Indenture nor the Bonds provide for the remedy of acceleration of principal or interest due with respect to the Bonds prior to their stated due dates, and the rights of the Authority and its successors, including the Trustee, under the Ballpark Facility Lease are limited such that there is no right to reclaim possession of the Leased Property notwithstanding the occurrence of an Event of Default.

Effect of Discontinuance of Abandonment. In case any proceeding taken by the Trustee on account of any default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Authority, the Trustee and the Owners shall be restored to their former positions and rights under the Indenture, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Rights of Owners. Anything in the Indenture to the contrary notwithstanding, subject to the limitations and restrictions as to the rights of the Owners in the Indenture, upon the happening and continuance of any Event of Default, the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have the right upon providing the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under the Indenture.

The Trustee may refuse to follow any direction that conflicts with law or the Indenture or that the Trustee determines is prejudicial to rights of other Owners or would subject the Trustee to personal liability.

Restriction on an Owners' Action. In addition to the other restrictions on the rights of Owners to request action upon the occurrence of an Event of Default and to enforce remedies set forth in the Indenture, no Owner of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any trust under the Indenture, or any other remedy under the Indenture or on said Bonds, unless such Owner previously shall have given to the Trustee written notice of an Event of Default as provided in the Indenture and unless the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request of the Trustee to institute any such suit, action, proceeding or other remedy, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers in the Indenture granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of the Indenture or for any other remedy under the Indenture; it being understood and intended that no one or more Owners of the Bonds secured by the Indenture shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Indenture, or to enforce any right under the Indenture or under the Bonds, except in the manner in the Indenture provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner in the Indenture provided, and for the equal benefit of all Owners of Outstanding Bonds; subject, however, to the provisions of the Indenture.

Waiver of Events of Default; Effect of Waiver. The Trustee shall waive any Event of Default under the Indenture and its consequences and rescind any declaration of acceleration, upon the written request of the Owners of at least a majority in aggregate principal amount of all Outstanding Bonds. If any Event of Default shall have been waived as provided in the Indenture, the Trustee shall promptly give written notice of such waiver to the Authority and shall give notice thereof by first class mail, postage prepaid to all Owners of Outstanding Bonds if such Owners had previously been given notices of such Event of Default; but no such waiver, rescission and annulment shall extend to or affect any subsequent Event of Default, or impair any right or remedy consequent thereon.

No delay or omission of the Trustee or of any Owner of the Bonds to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by the Indenture to the Trustee and to the Owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Application of Moneys. Any moneys received by the Trustee pursuant to the Indenture, together with any moneys which upon the occurrence of an Event of Default are held by the Trustee in any of the funds and accounts under the Indenture (other than the Rebate Fund and other than moneys held for Bonds not presented for payment) shall, after payment of all fees and expenses of the Trustee, and the fees and expenses of its counsel, be applied as follows:

- (1) unless the principal of all of the Outstanding Bonds shall be due and payable,

FIRST: to the payment of the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND: to the payment of the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of the Indenture), in the order of their due dates and, if the amount available shall not be sufficient to pay in full the principal of and premium, if any, on such Bonds due on any particular date, then to the payment ratably, according to the amount due on such date, to the persons entitled thereto without any discrimination or privilege; and

THIRD: to be held for the payment to the persons entitled thereto as the same shall become due of the principal of, interest, and premium, if any, on the Bonds, which may thereafter become due either at maturity or upon call for redemption prior to maturity and, if the amount available shall not be sufficient to pay in full such principal and premium, if any, due on any particular date, together with interest then due and owing thereon, payment shall be made in accordance with the FIRST and SECOND paragraphs.

(2) if the principal of all of the Outstanding Bonds shall be due and payable, to the payment of the principal, and premium, if any, and interest then due and unpaid upon the Outstanding Bonds without preference or priority of any of principal, premium or interest over the others or of any installment of interest, or of any Outstanding Bond over any other Outstanding Bond, ratably, according to the amounts due respectively for principal, premium, and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective amounts of interest specified in the Outstanding Bonds.

Whenever moneys are to be applied pursuant to the provisions of the Indenture, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. The Trustee shall give, by mailing by first class mail as it may deem appropriate, such notice of the deposit with it of any such moneys.

Consent of the Insurer Upon Default. Anything in the Indenture to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined in the Indenture and during such time as the Financial Guaranty Insurance Policy shall be in full force and effect and so long as the Insurer is not in default under the Financial Guaranty Insurance Policy, the Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners or the Trustee for the benefit of the Owners under the Indenture.

Defeasance

Discharge of Bonds. If the Authority shall pay or cause to be paid or there shall otherwise be paid to the Owners of all Outstanding Bonds the interest thereon and the principal thereof and the redemption premiums, if any, thereon at the times and in the manner stipulated in the Indenture and therein, then the Owners of such Bonds shall cease to be entitled to the pledge of the Revenues as provided in the Indenture, and all agreements, covenants and other obligations of the Authority to the Owners of such Bonds under the Indenture shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver to the Authority all money or securities held by it pursuant to the Indenture which are not required for the payment of the interest on and principal of and redemption premiums, if any, on such Bonds.

Subject to the provisions of the Indenture, when any of the Bonds shall have been paid and if, at the time of such payment, the Authority shall have kept, performed and observed all the covenants and promises in such Bonds and in the Indenture required or contemplated to be kept, performed and observed by the Authority or on its part on or prior to that time, then the Indenture shall be considered to have been discharged in respect of such Bonds and such Bonds shall cease to be entitled to the lien of the Indenture and such lien and all covenants, agreements and other obligations of the Authority under the Indenture shall cease, terminate, become void and be completely discharged as to such Bonds.

Notwithstanding the satisfaction and discharge of the Indenture or the discharge of the Indenture in respect of any Bonds, those provisions of the Indenture relating to the maturity of the Bonds, interest payments

and dates thereof, tender and exchange provisions; exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, and the duties of the Trustee in connection with all of the foregoing, remain in effect and shall be binding upon the Trustee and the Owners of the Bonds and the Trustee shall continue to be obligated to hold in trust any moneys or investments then held by the Trustee for the payment of the principal of, redemption premium, if any, and interest on the Bonds, to pay to the Owners of Bonds the funds so held by the Trustee as and when such payment becomes due. Notwithstanding the satisfaction and discharge of the Indenture or the discharge of the Indenture in respect of any Bonds, those provisions of the Indenture contained in the section relating to the tax-exempt status of interest on the Bonds and relating to the compensation and indemnification of the Trustee shall remain in effect and shall be binding upon the Trustee and the Authority.

Any Outstanding Bonds shall prior to the maturity date or redemption date thereof be deemed to have been paid within the meaning of and with the effect expressed in the Indenture if (i) in case any of such Bonds are to be redeemed on any date prior to their maturity date, the Authority shall have given to the Trustee in form satisfactory to it irrevocable instructions to mail, on a date in accordance with the provisions of the Indenture, notice of redemption of such Bonds on said redemption date, said notice to be given in accordance with the Indenture; (ii) there shall have been deposited with the Trustee either (A) money in an amount which shall be sufficient or Defeasance Securities which are not subject to redemption prior to maturity except by the holder thereof (including any such Defeasance Securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), the interest on and principal of which when paid will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall, as verified by an independent Certified Public Accountant, be sufficient to pay when due the interest to become due on such Bonds on and prior to the maturity date or redemption date thereof, as the case may be, and the principal of and redemption premiums, if any, with respect to such Bonds; and (3) in the event such Bonds are not by their terms subject to redemption within the next succeeding 60 days, the Authority shall have given the Trustee in form satisfactory to it irrevocable instructions to mail as soon as practicable, a notice to the Owners of such Bonds that the deposit required by clause (ii) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with the Indenture and stating the maturity date or redemption date upon which money is to be available for the payment of the principal of and redemption premiums, if any, on such Bonds. Defeasance Securities deposited with the Trustee may be replaced with other Defeasance Securities and profits, gains, income and any other economic benefits arising from such substitution shall inure to the benefit of, and be paid to, the City.

Notwithstanding anything in the Indenture to the contrary, in the event that the principal and/or interest due on the 2002 Bonds shall be paid by Insurer pursuant to the Financial Guaranty Insurance Policy, the 2002 Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Authority, and the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Authority to the registered owners shall continue to exist and shall run to the benefit of Insurer, and Insurer shall be subrogated to the rights of such registered owners.

Unclaimed Money. Anything contained in the Indenture to the contrary notwithstanding, and subject to applicable law, any money held by the Trustee in trust for the payment and discharge of any of the Bonds which remains unclaimed for two years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for redemption prior to maturity, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee shall be repaid by the Trustee to the Authority as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the Authority for the payment of such Bonds; provided, however, that before being required to make any such payment to the Authority, the Trustee shall, upon the Written Request of the Authority and at the expense of the Authority, cause to be published once a week for two successive weeks in a Financial Newspaper, a notice that such money remains unclaimed and that, after a date named in such notice, which date shall not be less than 30 days after the date of the first publication of each such notice, the balance of such money then unclaimed will be returned to the Authority.

Financial Guaranty Insurance Policy

Payments Under the Financial Guaranty Insurance Policy. For such time as the Financial Guaranty Insurance Policy shall be in full force and effect, the Authority and the Trustee shall comply with the following provisions:

(a) At least one Business Day prior to all Interest Payment Dates the Trustee will determine whether there will be sufficient funds in the funds and accounts to pay the principal of or interest on the 2002 Bonds on such Interest Payment Date. If the Trustee determines that there will be insufficient funds in such funds or accounts, the Trustee shall so notify Insurer. Such notice shall specify the amount of the anticipated deficiency, the 2002 Bonds to which such deficiency is applicable and whether such 2002 Bonds will be deficient as to principal or interest, or both. If the Trustee has not so notified Insurer at least one day prior to an Interest Payment Date, Insurer will make payments of principal and interest due on the 2002 Bonds on or before the first day next following the date on which Insurer shall have received notice of nonpayment from the Trustee.

(b) The Trustee shall, after giving notice to Insurer as provided in (a) above, make available to Insurer and, at Insurer's discretion, to The Bank of New York, as insurance trustee for Insurer or any successor insurance trustee (the "Insurance Trustee"), the registration books kept by the Trustee pursuant to the Indenture and all records relating to the funds and accounts maintained under the Indenture.

(c) The Trustee shall provide Insurer and the Insurance Trustee with a list of registered owners of 2002 Bonds entitled to receive principal or interest payments from Insurer under the terms of the Financial Guaranty Insurance Policy, and shall make arrangements with the Insurance Trustee (i) to mail checks or drafts to the registered owners of 2002 Bonds entitled to receive full or partial interest payments from Insurer and (ii) to pay principal upon 2002 Bonds surrendered to the Insurance Trustee by the registered owners of 2002 Bonds entitled to receive full or partial principal payments from Insurer.

(d) The Trustee shall, at the time it provides notice to Insurer pursuant to (a) above, notify registered owners of 2002 Bonds entitled to receive the payment of principal or interest thereon from Insurer (i) as to the fact of such entitlement; (ii) that Insurer will remit to them all or a part of the interest payments next coming due upon proof of Owner entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment; (iii) that should they be entitled to receive full payment of principal from Insurer, they must surrender their 2002 Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such 2002 Bonds to be registered in the name of Insurer) for payment to the Insurance Trustee, and not the Trustee; and (iv) that should they be entitled to receive partial payment of principal from Insurer, they must surrender their 2002 Bonds for payment thereon first to the Trustee who shall note on such 2002 Bonds the portion of the principal paid by the Trustee and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

(e) In the event that the Trustee has notice that any payment of principal of or interest on a 2002 Bond which has become Due for Payment and which is made to an Owner by or on behalf of the Authority has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee shall, at the time Insurer is notified pursuant to (a) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from Insurer to the extent of such recovery if sufficient funds are not otherwise available, and the Trustee shall furnish to Insurer its records evidencing the payments of principal of and interest on the 2002 Bonds which have been made by the Trustee and subsequently recovered from registered owners and the dates on which such payments were made.

(f) In addition to those rights granted Insurer under the Indenture, Insurer shall, to the extent it makes payment of principal of or interest on 2002 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Financial Guaranty Insurance Policy, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the Trustee shall note Insurer's rights as subrogee on the registration books kept by the Trustee pursuant to the Indenture, upon receipt from Insurer of proof of the payment of interest thereon to the registered owners of the 2002 Bonds; and (ii) in the case of subrogation as to claims for past due principal, the Trustee shall note Insurer's rights as subrogee on the registration books kept by

the Trustee pursuant to the Indenture, upon surrender of the 2002 Bonds by the registered owners thereof together with proof of the payment of principal thereof.

Consent of Insurer in Addition to Owner Consent. Unless otherwise provided in the Indenture, Insurer's consent shall be required in addition to Owner consent, when required, for the following purposes: (i) execution and delivery of any supplemental Indenture or any amendment, supplement or change to or modification of the Ballpark Facility Lease; (ii) removal of the Trustee and selection and appointment of any successor trustee; and (iii) initiation or approval of any action not described in (i) or (ii) above which requires Owner consent.

Consent of Insurer in the Event of Insolvency. Any reorganization or liquidation plan with respect to the City must be acceptable to Insurer. In the event of any reorganization or liquidation, Insurer shall have the right to vote on behalf of all Owners who hold Insurer-insured bonds absent a default by Insurer under the applicable Financial Guaranty Insurance Policy insuring such 2002 Bonds.

Initial 2002 Bonds

Special Provisions Applicable to Initial 2002 Bonds. Notwithstanding any provision in the Indenture to the contrary, the 2002 Bonds initially issued under the Indenture shall be subject to the provisions set forth in the Indenture described under this heading "Initial 2002 Bonds". Such provisions shall lapse and shall be of no further force and effect upon conversion of the 2002 Bonds to book-entry in accordance with the provisions described under subheading "Conversion to Book-Entry" below. Capitalized terms used in the provisions described under this heading "Initial 2002 Bonds" and not otherwise defined under the heading "DEFINITIONS" shall have the meanings set forth for such terms in the Form of Investor Letter of Representations attached to this Offering Document as Appendix J.

Authorized Denominations; Restrictions on Transfer of 2002 Bonds. "Authorized Denominations" means \$1,000,000 and any integral multiple of \$5,000 in excess thereof. Except for the initial authentication and delivery of the Bonds to Merrill Lynch, the Trustee shall not register the transfer of any 2002 Bonds on the bond registration books or otherwise unless: 1) the Trustee shall have received an executed original of the prospective purchaser's Investor Representation Letter in the form attached to this Offering Document as Appendix J (the "Investor Representation Letter"); 2) the prospective purchaser delivers to the Trustee a Notice of Sale or Transfer (the "Notice of Sale or Transfer"), substantially in the form attached as Exhibit I to the Investor Representation Letter, and, if the buyer or transferee is other than Merrill Lynch, also delivers to the Trustee the Notice Regarding Right of First Refusal of Merrill Lynch (the "Refusal Letter"), substantially in the form attached as Exhibit 2 to the Investor Representation Letter, and the Trustee, upon examination of the Notice of Sale or Transfer and, if applicable, the Refusal Letter, determines that the information indicated under each of the headings "Purchaser," "CUSIP," "Maturity Date," "Par Amount," "Coupon," "Offer Price" and "Settlement Date" on the Notice of Sale or Transfer are identical to the information indicated under the corresponding headings under such Refusal Letter; and 3) the Trustee shall have examined the bond registration books and determined that such transfer or resale will not cause the total number of the record owners of the Bonds to be greater than 32 and the certificates for the 2002 Bonds will be in minimum denominations of \$1,000,000 and integral multiples of \$5,000 in excess thereof.

Special Optional Call. In the event a Final Order is entered in any of the Ballpark Litigation, Merrill Lynch shall have the right and option (at the direction of the City or the Authority, with funds provided by the City or the Authority) to call away all of the outstanding 2002 Bonds from all then-current registered owners, including the Purchaser, on the Call Date, on not less than 30 days nor more than 60 days notice by Merrill Lynch, and at a price equal to the principal amount of the 2002 Bonds to be called away, together with accrued interest thereon to the Call Date. Merrill Lynch will mail, first-class postage pre-paid, notice (the "Call Notice") of its intention to call away all of the outstanding 2002 Bonds to each registered owner of the 2002 Bonds (in whose name any 2002 Bonds are registered with the Trustee as of the close of business on the business day prior to the date on which Merrill Lynch mails such Call Notice). If Merrill Lynch exercises this call option, the Purchaser shall deliver or cause to be delivered, as instructed by the Trustee or Merrill Lynch, all 2002 Bonds registered in the name of or beneficially owned by, the Purchaser, in exchange for the Purchaser's receipt of the call price for such 2002 Bonds.

Conversion to Book-Entry. If (i) within 240 days after the date of any Final Order, Merrill Lynch does not mail the Call Notice, as set forth in the provisions of the Indenture described under the heading "Special Optional Call" above, or (ii) an Opinion of Counsel dated the Closing Date of the 2002 Bonds addressed to the

Authority, the City and Merrill Lynch in the form attached to the Indenture is delivered, then, in either such case, the conditions to resale and transfer set forth in the Indenture described under the heading "Authorized Denominations; Restrictions on Transfer of 2002 Bonds" shall no longer be applicable, Merrill Lynch shall no longer have the call option described under the heading "Special Optional Call," the Trustee shall upon the request of Merrill Lynch (with respect to (i) above) or by the Authority (with respect to (ii) above) recover from registered owners all certificates evidencing the 2002 Bonds and, when so recovered, the Trustee shall deliver a new certificate or certificates evidencing the 2002 Bonds, bearing new CUSIP numbers, to the Depository Trust Company, and thereafter transfers of the 2002 Bonds will be made by book-entry in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof. In the case of either (i) or (ii) above, the Purchaser shall deliver, as instructed by the Trustee pursuant to this Section 11-A.04, all certificates evidencing the 2002 Bonds held by the Purchaser.

Legend to be Placed on the 2002 Bonds. While the restrictions set forth in the Indenture described under the heading "Authorized Denominations; Restrictions on Transfer of 2002 Bonds" above are in place and Merrill Lynch continues to have the call option provided in the Indenture described under the heading "Special Optional Call," the following legend shall be placed on each of the 2002 Bonds:

"NO RESALE OR OTHER TRANSFER OF THIS BOND SHALL BE MADE UNLESS SUCH RESALE OR TRANSFER IS MADE IN ACCORDANCE WITH THE FORM OF INVESTOR REPRESENTATION LETTER ATTACHED TO THE OFFERING DOCUMENT AS APPENDIX J (THE "INVESTOR REPRESENTATION LETTER"). IN ACCORDANCE WITH THE INVESTOR REPRESENTATION LETTER, ANY SUCH RESALE OR OTHER TRANSFER OF THIS BOND SHALL BE SUBJECT TO THE FOLLOWING RESTRICTIONS: (A) THE HOLDER OF THIS BOND SHALL FIRST OFFER SUCH SALE OR OTHER TRANSFER OF THIS BOND TO MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED ("MERRILL LYNCH") (AND MERRILL LYNCH SHALL HAVE 10 BUSINESS DAYS TO ACCEPT SUCH OFFER BY GIVING NOTICE TO THE HOLDER HEREOF) AND, IF MERRILL LYNCH DOES NOT ACCEPT SUCH OFFER, THE HOLDER HEREOF SHALL CAUSE MERRILL LYNCH TO EXECUTE AND DELIVER TO THE HOLDER HEREOF A NOTICE REGARDING RIGHT OF FIRST REFUSAL OF MERRILL LYNCH (THE "REFUSAL LETTER"), SUBSTANTIALLY IN THE FORM OF EXHIBIT 2 TO THE INVESTOR REPRESENTATION LETTER, TO BE DELIVERED TO THE TRUSTEE, INFORMING THE TRUSTEE THAT MERRILL LYNCH HAS DECLINED SUCH OFFER; (B) THE BUYER OR TRANSFEREE (INCLUDING EACH BENEFICIAL OWNER UNDER A TRUST OR CUSTODIAL ARRANGEMENT) SHALL BE A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT") (PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE DEFINITION OF "QUALIFIED INSTITUTIONAL BUYER" PROVIDED IN THE 1933 ACT, SUCH BUYER OR TRANSFEREE MUST HAVE AN AUDITED NET WORTH OF AT LEAST \$25.0 MILLION), (C) THE SOLD OR TRANSFERRED BONDS SHALL BE DELIVERED TO THE BUYER OR TRANSFEREE IN CERTIFICATED FORM AND IN MINIMUM DENOMINATIONS OF \$1 MILLION AND INTEGRAL MULTIPLES OF \$5,000 IN EXCESS THEREOF; (D) THE SALE OR OTHER TRANSFER OF THIS BOND SHALL NOT (i) CAUSE THE NUMBER OF REGISTERED OWNERS OF THE BONDS TO EXCEED 32, AS EVIDENCED BY THE CERTIFICATE REGISTER FOR THE BONDS MAINTAINED BY THE TRUSTEE OR (ii) IN AND OF ITSELF, CAUSE THE NUMBER OF BENEFICIAL OWNERS OF THE BONDS TO EXCEED 32, ASSUMING SUCH NUMBER WAS 32 OR LESS BEFORE GIVING EFFECT TO SUCH RESALE OR TRANSFER; (E) THE HOLDER OF THIS BOND SHALL CAUSE THE BUYER OR TRANSFEREE (OTHER THAN MERRILL LYNCH) TO EXECUTE AND DELIVER AN INVESTOR REPRESENTATION LETTER, (F) THE RIGHT OF MERRILL LYNCH TO CALL AWAY THE BONDS, AS DESCRIBED BELOW, SHALL APPLY TO THE BUYER OR TRANSFEREE; AND (G) THE HOLDER OF THIS BOND SHALL DELIVER TO THE TRUSTEE A NOTICE OF SALE OR TRANSFER, SUBSTANTIALLY IN THE FORM OF EXHIBIT 1 TO THE INVESTOR REPRESENTATION LETTER, AND, IF THE BUYER OR TRANSFEREE IS OTHER THAN MERRILL LYNCH, SHALL ALSO DELIVER TO THE TRUSTEE THE REFUSAL LETTER AND THE INVESTOR REPRESENTATION LETTER OF SUCH BUYER OR TRANSFEREE, AND THE HOLDER HEREOF RECEIVES CONFIRMATION FROM THE TRUSTEE THAT THE TRUSTEE IS PREPARED TO EFFECT THE RESALE OR TRANSFER CONTEMPLATED BY THE NOTICE OF SALE OR TRANSFER, IN ACCORDANCE WITH THE INDENTURE.

IN THE EVENT OF AN OPINION, ORDER, JUDGMENT OR DECREE OF A COURT OF LAST RESORT TO THE EFFECT THAT THE BONDS, THE INDENTURE OR THE BALLPARK FACILITY LEASE IS VOID OR INVALID (THE "FINAL ORDER"), ENTERED IN ANY OF SKANE V. CITY OF SAN

DIEGO (SAN DIEGO COUNTY SUPERIOR COURT, CASE NO. GIC 752505), CITY OF SAN DIEGO, ET AL. V. ALL PERSONS INTERESTED (SAN DIEGO COUNTY SUPERIOR COURT, CASE NO. GIC 763487) AND SIMMONS V. CITY OF SAN DIEGO, ET AL. (SAN DIEGO COUNTY SUPERIOR COURT, CASE NO. GIC 779299), MERRILL LYNCH SHALL HAVE THE RIGHT AND OPTION (AT THE DIRECTION OF THE CITY OF SAN DIEGO, WITH FUNDS PROVIDED BY THE CITY OF SAN DIEGO) TO CALL AWAY ALL OF THE OUTSTANDING BONDS FROM ALL THEN-CURRENT REGISTERED OWNERS, INCLUDING THE HOLDER HEREOF, ON A DATE (THE "CALL DATE") THAT IS NOT MORE THAN 270 DAYS AFTER THE ENTRY OF THE FINAL ORDER, ON NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS NOTICE BY MERRILL LYNCH, AND AT A PRICE EQUAL TO THE PRINCIPAL AMOUNT OF THE BONDS TO BE CALLED AWAY, TOGETHER WITH ACCRUED INTEREST THEREON TO THE CALL DATE."

Miscellaneous

Liability of Authority Limited to Revenues. Notwithstanding anything contained in the Indenture, the Authority shall not be required to advance any money derived from any source of income other than the Revenues as provided in the Indenture for the payment of the interest on or principal of or redemption premiums, if any, on the Bonds or for the performance of any agreements or covenants contained in the Indenture. The Authority may, however, advance funds for any such purpose so long as such funds are derived from a source legally available for such purpose without incurring an indebtedness.

The Bonds shall be limited obligations of the Authority and shall be payable solely from the Revenues and amounts on deposit in the funds and accounts established under the Indenture (other than amounts on deposit in the Rebate Fund created pursuant to the Indenture). The Bonds do not constitute a debt or liability of the City or of the State of California and neither the faith and credit of the City nor of the State are pledged to the payment of the principal of or interest on the Bonds.

Benefits of the Indenture Limited to Parties. Nothing contained in the Indenture, expressed or implied, is intended to give to any person other than the Authority, the Trustee, Insurer and the Owners any right, remedy or claim under or by reason of the Indenture. Any agreement or covenant required in the Indenture to be performed by or on behalf of the Authority or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Authority, the Trustee, Insurer and the Owners of the Bonds.

The Insurer as Third Party Beneficiary. To the extent that the Indenture confers upon or gives or grants to Insurer any right, remedy or claim under or by reason of the Indenture, Insurer is explicitly recognized as being a third-party beneficiary under the Indenture and may enforce any such right remedy or claim conferred, given or granted under the Indenture.

SITE LEASE

The Site Lease sets forth certain terms and conditions of the lease of the Site by the City to the Authority. Certain provisions of the Site Lease are summarized below. The summary does not purpose to be complete or definitive and is qualified in its entirety by reference to the full terms of the Site Lease.

Lease of the Site

The City by the Site Lease leases to the Authority and the Authority by the Site Lease rents and hires from the City, on the terms and conditions set forth in the Site Lease, the Site. Capitalized terms used in the Site Lease and not otherwise defined shall have the meanings given such terms pursuant to the Ballpark Facility Lease and if such terms are not defined in the Ballpark Facility Lease, then such terms shall have the meanings given such terms pursuant to the Indenture.

Term

The term of the Site Lease shall commence on the Closing Date and shall end on the Expiry Date, unless such term is sooner terminated as provided in the Site Lease. If prior to the Expiry Date, all rental payable under the Ballpark Facility Lease shall have been paid, or provision therefor has been made in accordance with the Indenture, the term of the Site Lease shall end the first Business Day thereafter or ten (10) days after written notice

by the Authority to the City in accordance with the Site Lease to the effect that the rental payable under the Ballpark Facility Lease is fully paid and all Bonds have been fully paid, whichever is earlier.

The term of the Site Lease shall not be extended beyond the Expiry Date except as otherwise provided in the Ballpark Facility Lease.

Rent

The Authority shall pay to the City an advance rent of \$1.00 as full consideration for the Site Lease over its term. The Authority by the Site Lease waives any right that it may have under the laws of the State of California to receive a rebate of such rent in full or in part in the event there is a substantial interference with the use and right of possession by the Authority of the Site or portion thereof as a result of material damage, destruction or condemnation.

Purpose

The Authority shall use the Site solely for the purpose of subleasing the same to the City; provided, however, that in the event of default by the City under the Ballpark Facility Lease, the Authority may exercise the remedies provided in the Ballpark Facility Lease.

Owner in Fee

The City covenants that it has the right to lease the Site under the Site Lease free and clear of all liens, claims or encumbrances which affect marketability.

Assignment and Subleases

The Authority may not, without the prior written consent of the City, assign its rights under the site Lease or sublet the Site, except as contemplated by the Ballpark Facility Lease and as security for the Bonds and any Additional Bonds.

Right of Entry

The City reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Termination

The Authority agrees, upon the termination of the Site Lease, to quit and surrender the Site in the same good order and condition as the same was in at the time of commencement of the term under the Site Lease, reasonable wear and tear excepted, and agrees that any additions, improvements or alterations to the Site at the time of the termination of the Site Lease shall remain thereon and title thereto shall vest in the City.

Default

In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of the Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of the Site Lease and the Ballpark Facility Lease shall be deemed to occur as a result thereof; provided, prior to the Expiry Date, the City shall have no power to terminate the Site Lease by reason of any default on the part of the Authority, if such termination would affect or impair any assignment of the Ballpark Facility Lease then in effect between the Authority and the Trustee.

Quiet Enjoyment

The Authority at all times during the term of the Site Lease shall peaceably and quietly have, hold and enjoy the Site without suit, trouble or hindrance from the City.

Eminent Domain

In the event the whole or any portion of the Site is taken by eminent domain proceedings, any interests of the Authority shall be recognized in accordance with the Ballpark Facility Lease.

Amendments

The Site Lease may be amended for the purpose of effecting a Substitution or Removal, as further described in the Ballpark Facility Lease.

BALLPARK FACILITY LEASE

The Ballpark Facility Lease sets forth certain terms and conditions of the lease of the Leased Property by the Authority to the City. Certain provisions of the Ballpark Facility Lease are summarized below. Other provisions are summarized in the Offering Document under the captions "SECURITY AND SOURCES OF PAYMENT FOR THE 2002 BONDS" and "THE LEASED PROPERTY." The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the full terms of the Ballpark Facility Lease.

The Leased Property

Lease of the Leased Property. The Authority by the Ballpark Facility Lease leases to the City, and the City by the Ballpark Facility Lease rents and hires from the Authority, the Leased Property on the conditions and terms set forth in the Ballpark Facility Lease. The City by the Ballpark Facility Lease agrees and covenants that during the term of the Ballpark Facility Lease, except as provided in the Ballpark Facility Lease, it will use the Leased Property for public purposes so as to afford the public the benefits contemplated by the Ballpark Facility Lease and so as to permit the Authority to carry out its agreements and covenants contained in the Ballpark Facility Lease and in the Indenture, and the City by the Ballpark Facility Lease further agrees and covenants that during the term of the Ballpark Facility Lease that it will not abandon or vacate the Leased Property.

Quiet Enjoyment. The parties to the Ballpark Facility Lease mutually covenant that the City, so long as it observes and performs the agreements, conditions, covenants and terms required to be observed or performed by it contained in the Ballpark Facility Lease and is not in default under the Ballpark Facility Lease, shall at all times during the term of the Ballpark Facility Lease peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Authority.

Right of Entry and Inspection. The Authority shall have the right to enter the Leased Property and inspect the Leased Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the Authority's rights or obligations under the Ballpark Facility Lease and for all other purposes.

Prohibition Against Encumbrance or Sale. The City and the Authority will not create or suffer to be created any mortgage, pledge, lien, charge or encumbrance upon the Leased Property, except Permitted Encumbrances. The City and the Authority will not sell or otherwise dispose of the Leased Property or any property essential to the proper operation of the Leased Property, except as otherwise provided in the Ballpark Facility Lease. Notwithstanding anything to the contrary contained in the Ballpark Facility Lease, the City may assign, transfer or sublease any and all of the Leased Property or its other rights under the Ballpark Facility Lease, provided that (i) the rights of any assignee, transferee or sublessee shall be subordinate to all rights of the Authority under the Ballpark Facility Lease; (ii) no such assignment, transfer or sublease shall relieve the City of any of its obligations under the Ballpark Facility Lease; (iii) the assignment, transfer or sublease shall not result in a breach of any covenant of the City contained in any other section of the Ballpark Facility Lease; (iv) any such assignment, transfer or sublease shall by its terms expressly provide that the fair rental value of the Leased Property for all purposes shall be first allocated to the Ballpark Facility Lease, as the same may be amended from time to time before or after any such

assignment, transfer or sublease; and (v) no such assignment, transfer or sublease shall confer upon the parties thereto (other than the City) any remedy which allows reentry upon the Leased Property.

Liens. In the event the City shall at any time during the term of the Ballpark Facility Lease cause any improvements to the Leased Property to be constructed or materials to be supplied in or upon or attached to the Leased Property, the City shall pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon, about or relating to the Leased Property and shall keep the Leased Property free of any and all liens against the Leased Property or the Authority's interest therein. In the event any such lien attaches to or is filed against the Leased Property or the Authority's interest therein, and the enforcement thereof is not stayed or if so stayed such stay thereafter expires, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City shall forthwith pay and discharge or cause to be paid and discharged such judgment.

Substitution or Removal of Leased Property. The City and the Authority may amend the Ballpark Facility Lease to substitute additional real property and/or improvements (the "Substituted Property") for existing Leased Property or to remove real property (including undivided interests therein) or improvements from the definition of Leased Property, upon compliance with all of the conditions set forth below. After a Substitution or Removal, the part of the Leased Property for which the Substitution or Removal has been effected shall be released from the leasehold under the Ballpark Facility Lease.

No Substitution or Removal shall take place under the Ballpark Facility Lease until the City delivers to the Authority and the Trustee the following:

(1) a Certificate of the City containing a description of all or part of the Leased Property to be released and, in the event of a Substitution, a description of the Substituted Property to be substituted in its place;

(2) a Certificate of the City stating that the annual fair rental value of the Leased Property after a Substitution or Removal, in each year during the remaining term of the Ballpark Facility Lease, is at least equal to the maximum annual Base Rental Payments attributable to the Leased Property prior to said Substitution or Removal, as determined by the City on the basis of an appraisal of the Leased Property after said Substitution or Removal conducted by a member of the American Institute of Real Estate Appraisers or the American Society of Appraisers designated by the City;

(3) an Opinion of Counsel to the effect that the amendments to the Ballpark Facility Lease contemplating Substitution or Removal have been duly authorized, executed and delivered and constitute the valid and binding obligations of the City and the Authority enforceable in accordance with their terms;

(4) in the event of a Substitution, a policy of title insurance in an amount equal to the same proportion of the principal amount as the Base Rental Payments for the Substituted Property bears to the total Base Rental Payments (as shown in a Certificate of the City), insuring the leasehold estate of the Authority under the Site Lease and the City under the Ballpark Facility Lease in the Substituted Property (except any portion thereof which is not real property) subject to Permitted Encumbrances, together with an endorsement thereto making said policy payable to the Trustee for the benefit of the Owners of the Bonds;

(5) in the event of a Substitution, an opinion of the City Attorney of the City to the effect that the exceptions, if any, contained in the title insurance policy referred to in (4) above do not interfere with the beneficial use and occupancy of the Substituted Property described in such policy by the City for the purposes of leasing or using the Substituted Property;

(6) an Opinion of Counsel that the Substitution or Removal does not cause the interest with respect to the Bonds to be includable in gross income of the Owners thereof for federal income tax purposes;

(7) a Certificate of the City stating that the City has complied with the covenants contained in the Indenture with respect to the Substituted Property; and

(8) evidence that the City has delivered to each of the Rating Agencies then rating the Bonds, if any, copies of the certificates and appraisal described in clauses (1) and (2) above, and evidence from each of the Rating Agencies then rating the Bonds, if any, that such Substitution or Removal, in and of itself, will not result in a reduction of its rating on the Bonds from the rating which then prevails.

Construction Acquisition and Installation of the Project; Revocable Delegation. The City by the Ballpark Facility Lease agrees to cause the Project to be constructed, acquired and installed as agent of the Authority. The City shall enter into contracts and provide for, as agent of the Authority, the complete construction, acquisition and installation of the Project. The City by the Ballpark Facility Lease agrees that it will cause the construction, acquisition and installation of the Project to be diligently performed. Notwithstanding the foregoing, pursuant to the Ballpark Design-Build Procurement Consultant Agreement the City has delegated to Padres Construction, L.P., acting as agent for the City, the authority to enter into contracts for the construction, acquisition and installation of the Project, and the City has reserved the power to revoke such authority if Padres Construction, L.P. defaults in the performance of its obligations to diligently construct and install the Project and in such event, the City shall use its best efforts to finish construction of the Ballpark Facility, under the contracts negotiated by the Padres, Padres Construction, L.P. or otherwise.

Term of the Ballpark Facility Lease

Commencement of the Ballpark Facility Lease. The term of the Ballpark Facility Lease shall commence on the Closing Date, and shall end on the Expiry Date, unless the Expiry Date is extended or is sooner terminated as provided in the Ballpark Facility Lease. If on the Expiry Date, the stated rental payable under the Ballpark Facility Lease shall not be fully paid and all Bonds shall not be fully paid and defeased, or if the rental payable under the Ballpark Facility Lease shall have been abated at any time or for any reason, then the term of the Ballpark Facility Lease shall be extended until the first Business Day following the day the rental payable under the Ballpark Facility Lease shall be fully paid and all Bonds shall be fully paid and defeased, except that the term of the Ballpark Facility Lease shall in no event be extended beyond February 15, 2042. If prior to the Expiry Date, the rental payable under the Ballpark Facility Lease shall be fully paid and all Bonds shall have been fully paid or defeased in accordance with the Indenture, the term of the Ballpark Facility Lease shall end the first Business Day thereafter or ten (10) days after written notice by the City to the Authority to the effect that the rental payable under the Ballpark Facility Lease shall be fully paid and all Bonds have been fully paid, whichever is earlier, and the Ballpark Facility Lease shall thereupon terminate.

The City shall take possession of the Leased Property on the Closing Date and the obligation of the City to pay Base Rental Payments and Additional Rental shall commence on the Closing Date, subject to the limitations set forth in the Indenture.

Tax Covenants; Continuing Disclosure

Tax Covenants. The City will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code and specifically the City will not directly or indirectly use or make any use of the proceeds of the Bonds or any other funds of the City or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code or obligations subject to federal income taxation because they are "federally guaranteed" as provided in Section 149(b) of the Code, as applicable. The City, with respect to the proceeds of the Bonds and such other funds, will comply with all requirements of such sections of the Code to the extent that such requirements are, at the time, applicable and in effect; provided, however, that if the City shall obtain an Opinion of Counsel to the effect that any action required under this heading is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code, as applicable, the City may rely conclusively on such opinion in complying with the provisions of the Ballpark Facility Lease. In the event that at any time the City is of the opinion that for purposes of this heading it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee under the Indenture or otherwise the City shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

The City by the Ballpark Facility Lease specifically agrees to ensure that the following requirements are met:

(1) No more than 5% of the Leased Property or the Project (determined both on the basis of space and cost) shall be used in the trade or business of one or more non-governmental persons (not including the portion of the proceeds properly allocable to facilities expected to be used by an organization described in Section 501(c)(3) of the Code), except to the extent contemplated by the Tax Certificate.

(2) The City will not invest or allow to be invested proceeds of the Ballpark Facility Lease, the Bonds at a yield in excess of the yield on the Bonds, except to the extent allowed under the Tax Certificate.

(3) The City will rebate or cause to be rebated any amounts due to the federal government, as provided in the Tax Certificate.

Continuing Disclosure. The City by the Ballpark Facility Lease covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of the Ballpark Facility Lease, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an event of default under the Ballpark Facility Lease. However, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or Owners of at least 25% aggregate principal amount in Outstanding 2002 Bonds, shall, after providing the Trustee security and indemnification satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby) or any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under the Ballpark Facility Lease.

Rental Payments

Rental Payments. The City agrees to pay to the Authority, its successors or assigns, without deduction or offset of any kind, as rental for the use and occupancy of the Leased Property, the following amounts at the following times:

(a) Base Rental. The City shall pay to the Authority rental under the Ballpark Facility Lease as Base Rental Payments with respect to the Leased Property at the times and in the amounts set forth in the Base Rental Payment schedule attached as an exhibit to the Ballpark Facility Lease and incorporated therein. The obligation of the City to pay Base Rental Payments (and Additional Rental) shall commence on the Closing Date. Until such time as a temporary certificate of occupancy has been received with regard to the Ballpark, and a Certificate of Completion has been delivered to the Trustee, the obligation to pay more than 35.3% of Base Rental Payments and Additional Rental shall be limited solely to amounts on deposit in the Interest Account of the Bond Fund established pursuant to the Indenture in the case of Base Rental Payments, and, if the Interest Account is exhausted, the Reserve Account of the Bond Fund, and the Cost of Issuance Account, in the case of Additional Rental, and the City will have no obligation to make Base Rental Payments or Additional Rental from any other source. Subject to the foregoing, the City shall deposit with the Authority not later than the third Business Day preceding each February 15 and August 15, commencing August 15, 2002, the Base Rental Payment due on such February 15 or August 15, as the case may be and the same shall be held by the Authority as security for the Base Rental Payments due on such dates. Notwithstanding the foregoing, in the event the City receives liquidated damages occasioned by the delay of the completion of the Ballpark beyond the contractually agreed upon date, the purpose of which liquidated damages is to defray some or all of the amounts payable as debt service on Bonds, the same shall be deposited with the Trustee in the Bond Fund to pay principal and/or interest on the 2002 Bonds in accordance with the terms of the Indenture.

(b) Additional Rental. Subject to the limitations set forth in paragraph (a), the City shall also pay, as rental under the Ballpark Facility Lease in addition to the Base Rental Payments, to the Authority or the Trustee, as provided in the Ballpark Facility Lease, such amounts in each year as shall be required for the payment of all costs and expenses incurred by the Authority in connection with the execution, performance or enforcement of the Ballpark Facility Lease or the assignment of the Ballpark Facility Lease pursuant to the Assignment Agreement, the Indenture or the respective interests in the Leased Property and the lease of the Leased Property by the Authority to the City under the Ballpark Facility Lease, including but not limited to all fees, costs and expenses and all administrative costs of the Authority relating to the Leased Property including, without limiting the generality of the foregoing, salaries and wages of employees, overhead, insurance premiums, taxes and assessments (if any),

expenses, compensation and indemnification of the Trustee (to the extent not paid or otherwise provided for out of the proceeds of the sale of the Bonds), fees of auditors, accountants, attorneys or engineers, insurance premiums, and all other reasonable and necessary administrative costs of the Authority or charges required to be paid by it to comply with the terms of the Bonds or the Indenture.

(1) The foregoing Additional Rental shall be billed to the City by Authority or the Trustee from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Authority, the Trustee or the Trustee on behalf of the Authority for one or more of the items above described, or that such amount is then so payable for such items. Amounts so billed shall be paid by the City not later than the latest time as such amounts may be paid without penalty or, if no penalty is associated with a late payment of such amounts, within 30 days after receipt of a bill by the City for such amounts.

(2) The Authority may issue bonds and may enter into leases to finance facilities other than the Leased Property. The administrative costs of the Authority shall be allocated among said facilities and the Leased Property, as provided in the Ballpark Facility Lease. Any taxes levied against the Authority with respect to the Leased Property, the fees of the Trustee, and any other expenses directly attributable to the Leased Property shall be included in the Additional Rental payable under the Ballpark Facility Lease. Any taxes levied against the Authority with respect to real property other than the Leased Property, the fees of any trustee or paying agent under any resolution securing bonds of the Authority or any trust agreement or indenture other than the Indenture, and any other expenses directly attributable to any facilities other than the Leased Property shall not be included in the administrative costs of the Leased Property and shall not be paid from the Additional Rental payable under the Ballpark Facility Lease. Any expenses of the Authority not directly attributable to any particular project of the Authority shall be equitably allocated among all such projects, including the Leased Property, in accordance with sound accounting practice. In the event of any question or dispute as to such allocation, the written opinion of an independent firm of certified public accountants, employed by the Authority to consider the question and render an opinion thereon, shall be final and conclusive determination as to such allocation. The Trustee may conclusively rely upon a Certificate of the Authority in making any determination that costs are payable as Additional Rental under the Ballpark Facility Lease, and shall not be required to make any investigation as to whether or not the items so requested to be paid are expenses of operation of the Leased Property.

(c) Consideration.

(1) Such payments of Base Rental Payments and Additional Rental for each Lease Year or portion thereof during the term of the Ballpark Facility Lease shall constitute the total rental for such Lease Year or portion thereof and shall be paid or payable by the City for and in consideration of the right of the use and possession of, and the continued quiet use and enjoyment of, the Leased Property. On the Closing Date, the City shall deliver a Certificate to the Authority and the Trustee which shall set forth the minimum annual fair rental value of the Leased Property after giving effect to the completion of the Project. The parties to the Ballpark Facility Lease have agreed and determined that the annual fair rental value of the Leased Property is not less than the maximum Base Rental Payments payable under the Ballpark Facility Lease in any year. In making such determinations of annual fair rental value, consideration has been given to a variety of factors including the costs of the improvements located or to be located on the Leased Property, other obligations of the parties under the Ballpark Facility Lease, the uses and purposes which may be served by the improvements on the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(2) The parties to the Ballpark Facility Lease acknowledge that the parties to the Ballpark Facility Lease may amend the Ballpark Facility Lease from time to time to increase the Base Rental Payments payable under the Ballpark Facility Lease so that Additional Bonds may be issued pursuant to the Indenture. The proceeds of such Additional Bonds shall be used as provided in the Indenture. Notwithstanding anything to the contrary contained in the Ballpark Facility Lease, the Ballpark Facility Lease may not be amended in a manner such that the sum of Base Rental Payments, including Base Rental Payments payable pursuant to such amendment, and Additional Rental with respect to Outstanding Bonds and Additional Bonds in any year is in excess of the annual fair rental value of the Leased Property

and other land and improvements leased to the City under the Ballpark Facility Lease after giving effect to the application of proceeds of any Additional Bonds issued in connection therewith.

(d) Payment; Credit. Each installment of Base Rental Payments payable under the Ballpark Facility Lease shall be paid in lawful money of the United States of America to or upon the order of the Authority at the principal corporate trust office of the Trustee in Los Angeles, California, or such other place as the Trustee shall designate. Any such installment of rental accruing under the Ballpark Facility Lease which shall not be paid when due shall remain due and payable until received by the Trustee, except as provided in the Ballpark Facility Lease, and to the extent permitted by law shall bear simple interest at the rate of ten percent per annum from the date when the same is due under the Ballpark Facility Lease until the same shall be paid. Notwithstanding any dispute between the City and the Authority, the City shall make all rental payments when due, without deduction or offset of any kind, and shall not withhold any rental payments pending the final resolution of any such dispute. In the event of a determination that the City was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall, at the option of the City, be credited against subsequent rental payments due under the Ballpark Facility Lease or be refunded at the time of such determination. Amounts required to be deposited by the City with the Trustee pursuant to the Ballpark Facility Lease on any date shall be reduced to the extent of amounts on deposit on such date in the Interest Account or the Principal Account held under the Indenture.

Annual Budgets; Reporting Requirements. The City covenants to take such action as may be necessary to include all Base Rental Payments and Additional Rental payments due under the Ballpark Facility Lease in its operating budget for each fiscal year commencing after the date of the Ballpark Facility Lease (an "Operating Budget") and to make all necessary appropriations for such Base Rental Payments and Additional Rental payments. In addition, to the extent permitted by law, the City covenants to take such action as may be necessary to amend or supplement the budget appropriations for payments under the Ballpark Facility Lease at any time and from time to time during any fiscal year in the event that the actual Base Rental Payments and Additional Rental paid in any fiscal year exceeds the pro rata portion of the appropriations then contained in the City's budget.

Rental Abatement. Except to the extent of (i) amounts held by the Trustee in the Interest Account, Principal Account or the Reserve Account of the Bond Fund, (ii) amounts received in respect of use and occupancy insurance, and (iii) amounts, if any, otherwise legally available to the Trustee for payments in respect of the Bonds, during any period in which, by reason of material damage, destruction, title defect or condemnation there is substantial interference with the use and possession by the City of any portion of the Leased Property, rental payments due under the Ballpark Facility Lease with respect to the Leased Property shall be abated to the extent that the annual fair rental value of the portion of the Leased Property in respect of which there is no substantial interference is less than the annual Base Rental Payments and Additional Rental, in which case rental payments shall be abated only by an amount equal to the difference. In the event the City shall assign, transfer or sublease any or all of the Leased Property or other rights under the Ballpark Facility Lease, as permitted by the Ballpark Facility Lease, for purposes of determining the annual fair rental value available to pay Base Rental Payments and Additional Rental, annual fair rental value of the Leased Property shall first be allocated to the Ballpark Facility Lease as provided in the provisions of the Ballpark Facility Lease regarding prohibition against encumbrance or sale. Any abatement of rental payments pursuant to the Ballpark Facility Lease shall not be considered an event of default as defined in the Ballpark Facility Lease, but shall result in the extension of the Expiry Date by a period equal to the period of abatement for which Base Rental Payment has not been paid in full (but in no event later than February 15, 2042), and Base Rental Payment for such extension period shall be equal to the unpaid Base Rental payments during the period of abatement but without interest thereon. The City waives the benefits of California Civil Code Sections 1932(2) and 1933(4) and any and all other rights to terminate the Ballpark Facility Lease by virtue of any such interference and the Ballpark Facility Lease shall continue in full force and effect. Such abatement shall continue for the period commencing with the date of such damage, destruction, title defect or condemnation and ending with the substantial completion of the work of repair or replacement of the portions of the Leased Property so damaged, destroyed, defective or condemned.

In the event that rental is abated, in whole or in part, pursuant to the Ballpark Facility Lease due to damage, destruction, title defect or condemnation of any part of the Leased Property and the City is unable to repair, replace or rebuild the Leased Property from the Net Proceeds, if any, the City agrees to apply for and to use its best efforts to obtain any appropriate state and/or federal disaster relief in order to obtain funds to repair, replace or rebuild the Leased Property.

Prepayment of Base Rental Payments. Subject to the provisions of the Ballpark Facility Lease, the City may prepay, from Net Proceeds received by it pursuant to the Ballpark Facility Lease, all or any portion of the components of Base Rental Payments relating to any portion of the Leased Property then unpaid on any date, in whole or in part, so that the aggregate annual amounts of Base Rental Payments which shall be payable after such prepayment date shall as nearly as possible increase or decrease to no greater extent from year to year than did annual Base Rental Payments before giving effect to such prepayment of Base Rental Payments, with respect to the portion of the Leased Property so prepaid.

The City may prepay, from any source of available moneys and in accordance with the provisions of the Indenture, all or any part (in an integral multiple of an Authorized Denomination) of the Base Rental Payments then unpaid so that the aggregate annual amounts of Base Rental Payments under the Ballpark Facility Lease which shall be payable after such prepayment date shall as nearly as possible increase or decrease to no greater extent from year to year than did annual Base Rental Payments before giving effect to such prepayment of Base Rental Payments, at a prepayment amount equal to the principal component prepaid plus accrued interest thereon to the date of prepayment plus any applicable premium.

Before making any prepayment pursuant to the Ballpark Facility Lease, at least 45 days before the prepayment date the City shall give written notice to the Authority and the Trustee describing such event, specifying the order of Principal Payment Dates and specifying the date on which the prepayment will be made, which date shall be not less than 30 nor more than 60 days from the date such written notice is given to the Authority and the Trustee.

Obligation to Make Rental Payments. The agreements and covenants on the part of the City contained in the Ballpark Facility Lease shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the agreements and covenants contained in the Ballpark Facility Lease agreed to be carried out and performed by the City.

THE OBLIGATION OF THE CITY OF SAN DIEGO TO MAKE BASE RENTAL PAYMENTS DOES NOT CONSTITUTE AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE BONDS NOR THE OBLIGATION TO MAKE BASE RENTAL PAYMENTS CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

Additional Bonds. In addition to the 2002 Bonds to be issued under the Indenture the Authority may, from time to time, but only upon satisfaction of the conditions to the issuance of Additional Bonds set forth in the Indenture, enter into a Supplemental Indenture to execute and deliver Additional Bonds on a parity with the 2002 Bonds and any previously issued Additional Bonds (unless otherwise provided in the related Supplemental Indenture), the proceeds of which may be used as provided in the Indenture and as provided in the Supplemental Indenture; provided that prior to or concurrently with the issuance of the Additional Bonds, the City and the Authority shall have entered into an amendment to the Ballpark Facility Lease providing for an increase in the Base Rental Payments to be made under the Ballpark Facility Lease subject to the limitations set forth in the Ballpark Facility Lease.

Maintenance; Taxes; Insurance and Other Charges; Enforcement of Agreements with Padres

Maintenance of the Leased Property by the City. The City agrees that, at all times during the term of the Ballpark Facility Lease, it will, at its own cost and expense, maintain, preserve and keep the Leased Property and every portion thereof in good repair, working order and condition and that it will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. The Authority shall have no responsibility in any of these matters or for the making of additions or improvements to the Leased Property.

Taxes, Other Governmental Charges and Utility Charges. The parties to the Ballpark Facility Lease contemplate that the Leased Property will be used for public purposes by the City and, therefore, that the Leased Property will be exempt from all taxes presently assessed and levied with respect to real and personal

property, respectively. In the event that the use, possession or acquisition by the City or the Authority of the Leased Property is found to be subject to taxation in any form, the City will pay during the term of the Ballpark Facility Lease, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Property and any other property acquired by the City in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Leased Property, as well as all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Property; provided, however, that with respect to any governmental charges or taxes that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are accrued during such time as the Ballpark Facility Lease is in effect.

Insurance. From and after the time the City is obligated to make Base Rental Payments from sources other than amounts on deposit in the Interest Account or the Reserve Account of the Bond Fund under the Indenture, the City shall procure or cause to be procured and maintain or cause to be maintained throughout the term of the Ballpark Facility Lease for the Ballpark Facility insurance against the following risks in the following respective amounts:

(1) Insurance against loss or damage to the Leased Property caused by fire and lightning but exclusive of earthquake, with an extended coverage endorsement covering the risk of vandalism and malicious mischief, sprinkler system leakage and boiler loss. The insurance described in this paragraph (1) shall be in an amount equal to the lesser of (A) replacement cost (without deduction for depreciation) of improvements located or to be located on the Leased Property; or (B) the remaining unpaid principal amount of Bonds Outstanding plus the amount of use and occupancy coverage described in paragraph (2) below, except that such insurance may be subject to deductible clauses of not to exceed the first one hundred thousand dollars (\$100,000) of the amount of any one loss. Insurance described in this paragraph (1) and in paragraph (2) below may be in the form of a policy which covers the Leased Property and one or more additional parcels of real property insured by the City; provided that the amount of coverage available thereunder shall be at least equal to the cumulative replacement values of the Leased Property and any other such property which is the subject of a lease, installment purchase or other financing arrangement ("Financed Property") for which bonds, certificates of participation or other obligations shall have been issued ("Obligations") plus the amount of use and occupancy coverage required by paragraph (2) below; in the event the City elects to obtain insurance for the Leased Property and one or more additional parcels of real property and the amount of the insurance proceeds available to pay all claims thereunder is not sufficient to cover the replacement values of all such properties, then any such proceeds shall be used first to rebuild or repair the Leased Property and all Financed Properties or to repay all Obligations and the Bonds.

(2) Use and occupancy insurance against loss, total or partial, of the use and occupancy of the Ballpark as a result of any of the hazards covered by the insurance required by the Ballpark Facility Lease, in an amount sufficient to pay the Base Rental Payments attributable to the Ballpark Facility for a twenty-four month period; provided, that the amount of such insurance need not exceed the total remaining Base Rental Payments; provided further, that such insurance may be part of a policy permitted under paragraph (1) above, which policy may provide that insurance proceeds paid for coverages contemplated by paragraph (1) above may reduce amounts payable under coverage required by this paragraph (2), and vice-versa; the City may obtain use and occupancy insurance covering the Ballpark as well as other parcels of property owned by the City, provided that the cumulative amount thereof is at least equal to the cumulative amount of use and occupancy insurance required by the Ballpark Facility Lease and any agreements relating to Financed Property in respect of which Obligations are outstanding.

The City shall adjust all moneys which may become due and payable under any policies contemplated the Ballpark Facility Lease, may compromise any and all claims thereunder and shall cause the deposit of the Net Proceeds with the Trustee for application as provided in the Ballpark Facility Lease or in the Indenture. The Trustee shall not be responsible for the sufficiency of any insurance required in the Ballpark Facility Lease. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the City.

Any insurance policy issued pursuant to the Ballpark Facility Lease shall be so written or endorsed as to make losses, if any, payable to the City, the Authority, the Padres and the Trustee as their respective interests may appear and the Net Proceeds of the insurance required by the Ballpark Facility Lease shall be applied as provided in the Ballpark Facility Lease. The net proceeds, if any, of the insurance policy described in the Ballpark Facility Lease shall, to the extent that such proceeds are paid on account of loss or damage to the Leased Property,

be payable to the Trustee and deposited in the Insurance Proceeds and Condemnation Awards Fund and applied as described in the Indenture. The net proceeds, if any, of the insurance policy described in the Ballpark Facility Lease shall, to the extent that such proceeds relate to the use and occupancy of the Leased Property, be payable to the Trustee and deposited in the Bond Fund. Each insurance policy provided for in the Ballpark Facility Lease shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Authority and the Trustee without first giving written notice thereof to the Authority and the Trustee at least 60 days in advance of such intended cancellation or modification.

The City shall file a certificate with the Authority and the Trustee not later than April 1 of each year, commencing from and after the time the City is obligated to make Base Rental Payments from sources other than amounts on deposit in the Interest Account or the Reserve Account of the Bond Fund under the Indenture, certifying that the insurance required by the Indenture is in full force and effect and that the Trustee and the Authority are named as loss payees on each insurance policy which the Ballpark Facility Lease requires to be so endorsed.

Advances. In the event the City shall fail to maintain the full insurance coverage required by the Ballpark Facility Lease or shall fail to keep the Leased Property in good repair and operating condition, the Authority may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Authority shall become Additional Rental, which amounts the City agrees to pay within 30 days of a written request therefor, together with interest thereon at the maximum rate allowed by law.

Title Insurance. The City covenants and agrees to deliver or cause to be delivered to the Trustee on the Closing Date a CLTA leasehold policy or policies, or a commitment for such policy or policies, with respect to the Leased Property with liability in the aggregate amount equal to the principal amount represented by the Bonds. Such policy or policies, when issued, shall name the Trustee as the insured and shall insure the leasehold estate of the Authority under the Site Lease and the City under the Ballpark Facility Lease in the Leased Property subject only to such exceptions as do not materially affect the City's right to the use and occupancy of the Leased Property.

Enforcement of Padres Agreements. The City shall enforce all of the Padres Agreements. To the extent that the Padres or Padres Construction, L.P. fail to perform in any material respect any of the Padres Agreements, the City will use its best efforts to (i) finish, or caused to be finished, construction of the Ballpark Facility, under the contracts negotiated by the Padres, Padres Construction, L.P. or otherwise; and (ii) if deemed appropriate by the City, in its sole discretion, remove the Padres Construction, L.P. from possession of the Project. To the extent that the Padres or Padres Construction, L.P. fail to perform in any material respect any of the Padres Agreements, the City, at its sole option, may terminate any such Padres Agreements. Notwithstanding the foregoing and anything to the contrary expressed or implied in the Ballpark Facility Lease or otherwise, the City shall have no obligation to contribute any amounts to the construction, acquisition, or improvement of the Project or any part thereof beyond what is available from time to time from proceeds of the 2002 Bonds, except as otherwise disclosed in this Offering Document.

Damage, Destruction, Title Defect and Condemnation

Damage, Destruction, Title Defect and Condemnation; Use of Net Proceeds. If prior to the termination of the term of the Ballpark Facility Lease (i) the Ballpark Facility or any improvements in or on the Ballpark Facility are damaged (each of which is called "Damaged Improvements" in the Ballpark Facility Lease) by a peril covered by a policy of insurance described in the Ballpark Facility Lease (an "Insured Peril"); or (ii) title to, or the temporary use of, the Ballpark Facility or any portion thereof or the estate of the City or the Authority in the Ballpark Facility or any portion thereof is defective or shall be taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority, then the City and the Authority will cause the Net Proceeds of any insurance claim (other than rental interruption insurance pursuant to the Ballpark Facility Lease which shall be directly transferred to the Trustee for deposit in the Bond Fund pursuant to the Ballpark Facility Lease) or condemnation award to be transferred to the Trustee for deposit in the Insurance Proceeds and Condemnation Awards Fund established pursuant to the Indenture and applied as follows:

(1) *Net Proceeds Exceeding Costs.* Within 120 days of the date of said Insured Peril, the City shall obtain a written estimate(s) of the (i) cost of the repair, replacement and reconstruction of the Damaged Improvements (collectively referred to in the Ballpark Facility Lease as the "Reconstruction"); and (ii) Net Proceeds available to pay such costs. Copies of such estimate(s) shall be made available to the Trustee at the Trustee's request. If the 120 day period is insufficient to obtain said estimates, the period shall be reasonably extended by the City Manager of the City. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property) exceed the estimated costs of Reconstruction, the Damaged Improvements shall be repaired, replaced and reconstructed to the same or better quality as existed before the damage occurred. The City shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage. Any balance of Net Proceeds remaining after the Reconstruction has been completed shall be transferred to the Trustee with directions to apply the proceeds to the Redemption Account established under the Indenture to redeem Outstanding Bonds in the manner provided by the Ballpark Facility Lease.

(2) *Costs Exceeding Net Proceeds.* If the estimated costs of Reconstruction exceed the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property), the City, in its sole discretion, may elect to budget and appropriate to the Reconstruction the amount of such excess, whether the same is greater or less than the estimated excess, and to manage the Reconstruction as set forth in the Ballpark Facility Lease. The City shall exercise this election by written notice thereof delivered to the Trustee within 30 days after the City obtains said written estimate(s).

(3) *Net Proceeds Sufficient to Redeem All Bonds.* If the City does not exercise the election to reconstruct pursuant to the Ballpark Facility Lease and Net Proceeds are at least sufficient to redeem all Outstanding Bonds pursuant to the Indenture, such Net Proceeds shall be transferred to the Trustee with directions to apply the proceeds to the Redemption Account established under the Indenture to redeem all Outstanding Bonds in the manner provided by the Indenture. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property) exceed the amount necessary to redeem all Outstanding Bonds, the City shall be entitled to the amount of proceeds remaining after redemption of all Outstanding Bonds ("Excess Proceeds") and shall have the option (i) to distribute the Excess Proceeds to the Reconstruction and to manage the Reconstruction pursuant to the Ballpark Facility Lease; or (ii) if required by law or if the City so elects, to demolish any remaining improvements on the Site and remove all debris from the site.

(4) *Net Proceeds Insufficient to Redeem All Bonds.* If the City does not exercise the election to reconstruct pursuant to the Ballpark Facility Lease and Net Proceeds are insufficient to redeem all Outstanding Bonds pursuant to the Indenture, the City, in its sole discretion, may elect to budget and appropriate funds to cause the redemption of the remaining Outstanding Bonds and the Net Proceeds, together with such funds, shall be transferred to the Trustee with directions to apply the proceeds to the Redemption Account established under the Indenture to redeem all Outstanding Bonds in the manner provided by the Indenture; provided, that if the City elects not to appropriate funds for the redemption of the remaining Outstanding Bonds, the City shall apply Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property) to the Reconstruction. If the City, in its sole discretion, elects to budget or appropriate funds for the redemption of the remaining Outstanding Bonds, the City shall transfer such funds to the Trustee for deposit in the Redemption Account established pursuant to the Indenture.

(5) *Management of Reconstruction.* If the Ballpark Facility or any part thereof becomes Damaged Improvements, the City shall promptly cause, manage and supervise the Reconstruction. Nothing in the Ballpark Facility Lease shall be construed to preclude the City and the Padres from cooperating in the Reconstruction of any of the Damaged Improvements, including executing a joint contract for the Reconstruction under which the Padres may act as the agent for the City, subject to revocation if the Padres does not diligently pursue the Reconstruction.

The proceeds of any policy of title insurance or condemnation award received by the Trustee in respect of the Leased Property shall be applied in accordance with the Indenture.

Assignment and Indemnification

Assignment by Authority. The parties understand that certain of the rights of the Authority under the Ballpark Facility Lease will be assigned to the Trustee pursuant to the Assignment Agreement and accordingly

the City agrees to make all payments due under the Ballpark Facility Lease to the Trustee, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of the Ballpark Facility Lease or otherwise) that the City may from time to time have against the Authority. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Authority or the Trustee to protect their interests in the Leased Property during the term of the Ballpark Facility Lease.

Assignment by City. The Ballpark Facility Lease and the interest of the City in the Leased Property may not be assigned or encumbered by the City except as permitted by the Ballpark Facility Lease.

Indemnification. The City shall, to the full extent permitted by law, indemnify, protect, hold harmless, save and keep harmless the Authority and the Trustee and their respective directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of or as the result of entering into the Financing Documents, and the acquisition, construction, operation, use, condition, or possession of the Project and any portion thereof, including:

(a) any accident in connection with the operation, use, condition or possession of the Project and any portion thereof, resulting in damage to property or injury to or death to any person including, without limitation, any Claim alleging latent and other defects, whether or not discoverable by the City or the Authority;

(b) patent, trademark or copyright infringement as a consequence of the operation of the Project and any portion thereof;

(c) strict liability in tort as a consequence of the operation of the Project and any portion thereof;

(d) any environmental law or regulation as a consequence of the operation of the Ballpark Facility;

(e) delivery, storage or release of hazardous materials at the Project or any part thereof, or the contamination of property arising therefrom; and

(f) the Trustee's acceptance or administration of the trusts imposed by the Indenture, including performance of the Trustee's duties, to the extent provided in the Ballpark Facility Lease;

except that the City shall not indemnify or be obligated to indemnify for a Claim arising out of or relating to any act or omission of the Padres arising from the operation of the Ballpark Facility.

Default

Default. The following events shall be "Events of Default" under the Ballpark Facility Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in the Ballpark Facility Lease, any one or more of the following events:

(1) The City shall fail to deposit with the Trustee any Base Rental Payment required to be so deposited by the close of business on the day such deposit is required pursuant to Ballpark Facility Lease, provided, that the failure to deposit any Base Rental Payments abated pursuant to the Ballpark Facility Lease shall not constitute an Event of Default;

(2) Subject to the provisions set forth below, the City shall fail to pay any item of Additional Rental when the same shall become due and payable pursuant to the Ballpark Facility Lease; or

(3) The City shall breach any other terms, covenants or conditions contained in the Ballpark Facility Lease or in the Indenture, and shall fail to remedy any such breach with all reasonable dispatch within a period of 30 days after written notice thereof from the Authority to the City; provided, however, that if the failure

stated in the notice cannot be corrected within such period, then the Authority shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such period and is diligently pursued until the default is corrected.

Upon the happening of any Event of Default, the Authority or its assignee, subject to the terms of the Ballpark Facility Lease, may exercise only those remedies granted to it under the Ballpark Facility Lease and no other. Such remedies shall consist solely and exclusively of commencing an action to recover any amount of unpaid amounts of Base Rental Payments then due and owing under the Ballpark Facility Lease or to seek by writ of mandate (1) the performance by the City of any action which the City failed to take which resulted in an Event of Default, or (2) the prevention of action by the City the occurrence of which resulted in an Event of Default; **PROVIDED, HOWEVER, THE AUTHORITY SHALL NOT HAVE ANY RIGHTS OF RE-ENTRY UPON OR RECOVERY OF POSSESSION OF THE LEASED PROPERTY, AND THE AUTHORITY, FOR ITSELF AND ASSIGNS WAIVES BY THE BALLPARK FACILITY LEASE ANY AND ALL SUCH RIGHTS OF RE-ENTRY AND RECOVERY AND AGREES TO KEEP THE BALLPARK FACILITY LEASE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE OCCURRENCE OF AN EVENT OF DEFAULT OR AN EVENT WHICH WITH THE PASSAGE OF TIME OR THE GIVING OF NOTICE OR BOTH COULD BECOME AN EVENT OF DEFAULT.**

The Authority expressly waives the right to receive any amount from the City pursuant to Section 1951.2(a)(3) of the California Civil Code.

In addition to any default resulting from breach by the City of any agreement, condition, covenant or term of the Ballpark Facility Lease, if (i) the City's interest in the Ballpark Facility Lease or any part thereof be assigned, sublet or transferred without the written consent of the Authority (except as otherwise permitted by the Ballpark Facility Lease), either voluntarily or by operation of law; or (ii) the City or any assignee shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the City shall make a general or any assignment for the benefit of its creditors; or (iii) the City shall abandon or vacate the Leased Property or any portion thereof (except as permitted by the Ballpark Facility Lease); then in each and every such case an Event of Default shall be deemed to have occurred under the Ballpark Facility Lease.

The City and Authority and its successors and assigns shall honor the exclusive rights of the City under the Ballpark Facility Lease to use the Leased Facility.

Miscellaneous

Third Party Beneficiaries. The Trustee is by the Ballpark Facility Lease designated as a third party beneficiary under the Ballpark Facility Lease for the purpose of enforcing any of the rights under the Ballpark Facility Lease assigned to the Trustee under the Assignment Agreement and for the purpose of the Trustee enforcing its own rights.

Net Lease. It is the purpose and intent of the Authority and the City that lease payments under the Ballpark Facility Lease shall be absolutely net to the Authority so that the Ballpark Facility Lease shall yield to the Authority the lease payments, free of any charges, assessments or impositions of any kind charged, assessed or imposed on or against the Leased Property, and without counterclaim, deduction, defense, deferment or set-off by the City except as in the Ballpark Facility Lease specifically otherwise provided. The Authority shall not be expected or required to pay any such charge, assessment or imposition, or be under any obligation or liability under the Ballpark Facility Lease except as expressly set forth in the Ballpark Facility Lease, and all costs, expenses and obligations of any kind relating to the maintenance and operation of the Leased Property which may arise or become due during the term of the Ballpark Facility Lease shall be paid by the City.

Amendments to Ballpark Facility Lease and Padres Agreements. The Ballpark Facility Lease may be amended in writing as may be mutually agreed by the Authority and the City, subject to the written approval of the Trustee; provided, however, that no such amendment which materially adversely affects the rights of the Owners

shall be effective unless it shall have been consented to by the Owners of more than 50% in principal amount of the Bonds Outstanding, and provided further, that no such amendment shall (i) extend the payment date of any Base Rental Payment, or reduce the interest, principal or prepayment premium component of any Base Rental Payment, without the prior written consent of the Owner of each Bond so affected; or (ii) reduce the percentage of the value of the Bonds Outstanding the consent of the Owners of which is required for the execution of any amendment of the Ballpark Facility Lease.

The Ballpark Facility Lease and the rights and obligations of the Authority and the City under the Ballpark Facility Lease may also be amended or supplemented at any time by an amendment of the Ballpark Facility Lease or supplement to the Ballpark Facility Lease which shall become binding upon execution without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the agreements, conditions, covenants and terms required by the Authority or the City to be observed or performed in the Ballpark Facility Lease and other agreements, conditions, covenants and terms thereafter to be observed or performed by the Authority or the City, or to surrender any right or power reserved in the Ballpark Facility Lease to or conferred in the Ballpark Facility Lease on the Authority or the City, and which in either case shall not materially adversely affect the interests of the Owners;

(2) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained in the Ballpark Facility Lease or in regard to questions arising under the Ballpark Facility Lease which the Authority or the City may deem desirable or necessary and not inconsistent with the Ballpark Facility Lease, and which shall not materially adversely affect the interests of the Owners;

(3) to effect a Substitution or Removal in accordance with the Ballpark Facility Lease;

(4) to facilitate the issuance of Additional Bonds as provided in the Ballpark Facility Lease;

or

(5) to make any other addition, amendment or deletion which does not materially adversely affect the interests of the Owners.

Unless otherwise provided under this heading, the Insurer's consent shall be required in addition to Owner consent, when required, for the execution and delivery of any amendment, supplement or change to or modification of the Ballpark Facility Lease.

The Padres Agreements and the rights and obligations of the City or the Padres thereunder may also be amended or supplemented at any time by an amendment thereof or supplement thereto which shall become binding upon execution without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the agreements, conditions, covenants and terms required by the Padres to be observed or performed therein and other agreements, conditions, covenants and terms thereafter to be observed or performed by the Padres, or to surrender any right or power reserved therein to or conferred therein on the Padres, and which in either case shall not materially adversely affect the interests of the Owners;

(2) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained therein or in regard to questions arising thereunder which the City may deem desirable or necessary and not inconsistent therewith, and which shall not materially adversely affect the interests of the Owners;

(3) to facilitate the issuance of Additional Bonds as provided in the Ballpark Facility Lease;

or

(4) to make any other addition, amendment or deletion which does not materially adversely affect the interests of the Owners.

Discharge of City. Upon the payment to the Owners of all Outstanding Bonds in accordance with the Indenture, all of the obligations of the City under the Ballpark Facility Lease shall thereupon cease, terminate and become void and shall be discharged and satisfied; provided, however, if any Outstanding Bonds shall be deemed to have been paid by virtue of a deposit contemplated by the Indenture, then the obligation of the City under the Ballpark Facility Lease to make Base Rental Payments shall continue in full force and effect until all Outstanding Bonds have in fact been paid, but such payments shall be made solely and exclusively from moneys and securities deposited with the Trustee as contemplated by the Indenture, and that shall be the sole source of satisfaction of the City's obligation to make Base Rental Payments. The time period for giving notice by the City to the Authority and the Trustee specified in the Ballpark Facility Lease shall not apply incident to the payment to the Owners of all Outstanding Bonds and Additional Bonds in accordance with the Ballpark Facility Lease, including the Indenture.

ASSIGNMENT AGREEMENT

The Assignment Agreement sets forth certain terms and conditions of the assignment of the Base Rental Payments to the Trustee. Certain provisions of the Assignment Agreement are summarized below. The summary does not purpose to be complete or definitive and is qualified in its entirety by reference to the full terms of the Assignment Agreement.

Assignment

The Authority, for good and valuable consideration, the receipt of which is acknowledged by the Assignment Agreement, does by the Assignment Agreement unconditionally grant, transfer and assign to the Trustee without recourse (i) all its rights to receive the Base Rental Payments (as defined in the Ballpark Facility Lease) under and pursuant to the Ballpark Facility Lease, (ii) the right to take all actions under the Ballpark Facility Lease as lessor, (iii) the right of access more particularly described in the Ballpark Facility Lease subject to the limitations provided therein which eliminate any right of re-entry as a remedy upon the occurrence of an Event of Default under the Ballpark Facility Lease, and (iv) any and all other rights and remedies of the Authority in the Ballpark Facility Lease as lessor thereunder; provided, that so long as no default in payment of Base Rental Payments under the Ballpark Facility Lease shall have occurred or be continuing, the Authority shall have and may exercise all rights of the Authority under the Ballpark Facility Lease other than the right to receive the Base Rental Payments.

Acceptance

The Trustee by the Assignment Agreement accepts the foregoing assignment for the benefit of the owners of the Bonds, subject to the conditions and terms of the Indenture, and all such Base Rental Payments shall be applied and all such rights so assigned shall be exercised by the Trustee as provided in the Indenture.

Conditions

The Assignment Agreement shall confer no rights and shall impose no obligations upon the Trustee beyond those expressly provided in the Indenture.

California Law

The Assignment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California.

APPENDIX D

SUMMARY OF PRINCIPAL BALLPARK PROJECT DOCUMENTS

The following is a brief summary of certain provisions of the MOU, the Ballpark Infrastructure Design/Build Agreement, the Joint Use and Management Agreement, the Ballpark Design/Build Procurement Consultant Agreement, the Ballpark Facility Design/Build Contract, the Guaranty Agreement, the Implementation Agreement, the Second Implementation Agreement, the Reaffirmation Agreement, the TOT Guaranty, the MLB Commitment and the Custody Agreement (collectively, the "Principal Ballpark Project Documents"). Such summaries are not to be considered full statements pertaining to the Principal Ballpark Project Documents. Reference is directed to the Principal Ballpark Project Documents for the complete text thereof, copies of which are available upon request with payment of copying, mailing and handling charges by contacting the City at the following address: The City of San Diego, City Clerk, 202 "C" Street, MS 2A, San Diego, California 92101, Attention: City Clerk.

Definitions

Except as otherwise defined in this summary of the Principal Ballpark Project Documents, the terms previously defined in this Offering Document have the respective meanings previously given. In addition, the following terms have the following meanings when used in this summary.

"Acceptable Letter of Credit" means an irrevocable direct pay letter of credit (i) issued by a bank or other financial institution acceptable in all respects, including, without limitation, credit rating, to Ambac and the City, (ii) in form, substance and duration acceptable to Ambac and the City and (iii) identifying the Custody Agent as beneficiary.

"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 Redevelopment Agency to fund the Redevelopment Agency's obligations under the MOU.

"Agency Investment" means the investment of Redevelopment Agency funds toward the Ballpark Project as set forth in Section XVII of the MOU.

"Ambac" means Ambac Assurance Corporation, a Wisconsin-domiciled stock insurance company.

"Authority" means the Public Facilities Financing Authority of the City of San Diego, a joint powers agency created by the City and the Agency pursuant to California Government Code Sections 6500 et seq.

"Ballpark Design/Build Contractor" means the general contractor designated by PCL to design and construct the Ballpark Facility.

"Ballpark District" a Ballpark District established pursuant to the MOU.

"Ballpark Estimate" means the summary estimate of the total cost for the design and construction of the Ballpark Facility, including all hard and soft costs but not including any Land Acquisition Costs, parking facilities costs or Infrastructure Work costs.

"Ballpark Land" means the land (including parcels, streets and rights-of-way) upon which the Ballpark is to be constructed as more particularly described on the Site Logistics Plan attached to the Procurement Agreement.

"Bond Counsel Review" means an opinion by bond counsel retained by the City at no expense to the Padres, as to whether an action proposed by the Padres would cause the securities issued by the City not to

qualify for tax-exempt status under federal law, such opinion to be rendered within ten (10) business days after notification by the Padres to the City of the proposed action.

"Bonds" means all lease revenue bonds of the Authority authorized by and at any time Outstanding pursuant to the Indenture and issued, executed and delivered in accordance with the Indenture.

"Capital Expenditure" means the cost of all labor and materials reasonably required to install, construct or upgrade any structural components, systems components, or integral parts of the Ballpark Facility, which would customarily be treated as a capital item for federal income tax purposes, including Improvements Costs.

"CCDC" shall mean the Centre City Development Corporation.

"Centre City 2001A Arbitrage Construction Fund" means the Sub-Fund of the Design and Construction Fund entitled "Centre City 2001A Arbitrage Construction Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement.

"Certificate of Completion" means a Certificate of the City filed with the Trustee, stating that the Ballpark being financed with the proceeds of the City Financing has been acquired, constructed, installed and improved and that all construction costs have been paid or provided for.

"Change Order" means any material change in the plans and specifications for the Ballpark Facility.

"City Ballpark Construction Fund" means collectively, (i) the City 2002 Bond Financing Construction Fund, (ii) the City Cash Construction Fund, (iii) the Convention Center 1998 Arbitrage Construction Fund, (iv) the Horton 2000 Arbitrage Construction Fund and (v) the Centre City 2001A Arbitrage Construction Fund.

"City 2002 Bond Financing Construction Fund" means the Sub-Fund of the Design and Construction Fund entitled "City 2002 Bond Financing Construction Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement and which is the same as and constitutes the Construction Fund as defined in and established pursuant to Section 4.01 of the Indenture.

"City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund" means the Sub-Fund of the Design and Construction Fund entitled "City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement.

"City Cash Construction Fund" means the Sub-Fund of the Design and Construction Fund entitled "City Cash Construction Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement.

"City Event" means any event at the Ballpark Facility conducted or authorized by the City, or conducted by any other person authorized and sponsored by the City, that would be a 70/30 Event but for an "opt-out" by the Padres pursuant to the Joint Use and Management Agreement, and that is not included within the definition of Padres Games and Events.

"City Exclusive Use Areas" means (i) the City's Offices within the Ballpark Facility and (ii) other areas with the Ballpark Facility which, by mutual and reasonable agreement to the parties are of such nature that the City requires exclusive rights of use and occupancy year-round throughout the term.

"City Financing" means financing reasonably acceptable to the City for its investment in the Ballpark Project.

"City Land Acquisition/Infrastructure Cash Fund" means the Sub-Fund of the Design and Construction Fund entitled "City Land Acquisition/Infrastructure Cash Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement.

"City Land Acquisition/Infrastructure Construction Fund" means collectively, (i) the City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund and (ii) the City Land Acquisition/Infrastructure Cash Fund.

"City Property" means that certain real property on which the Ballpark Facility will be constructed pursuant to the Design-Build Agreement and the City's entire interest in the Ballpark Facility, including the City's interest in all improvements, additions, alterations, furnishings, fixtures, equipment and installations constructed or installed on the real property, or added thereto, that are subleased by PFFA to the City pursuant to the Ballpark Facility Lease, and the City's interest in all improvements, additions, alterations, furnishings, fixtures, equipment and installations subsequently constructed or installed upon that real property as set forth in the Joint Use and Management Agreement, but excluding from the foregoing definition all of the Padres Property.

"Commencement Date" means the date on which the Padres have the right to occupy either (i) Padres Offices or (ii) the playing field and a substantial part of the seating bowl within the Ballpark Facility.

"Construction Fund Requisition" shall have the meaning assigned to said term in the Indenture.

"Convention Center 1998 Arbitrage Construction Fund" means the Sub-Fund of the Design and Construction Fund entitled "Convention Center 1998 Arbitrage Construction Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement.

"Custody Agent" shall mean Wells Fargo Bank, National Association, in its capacity as custody agent under the Custody Agreement.

"Custody Agreement" means that certain Custody Agreement made as of February 15, 2002, by and among the City, Agency, Padres, PCL and Custody Agent.

"Design and Construction Fund" means the fund entitled "Design and Construction Fund" established with the Custody Agent pursuant to Article VII of the Procurement Agreement and Section 3.01 of the Custody Agreement, which is comprised of the Sub-Funds thereof established with Custody Agent pursuant to Article VII of the Procurement Agreement and Section 3.01 of the Custody Agreement.

"Final Baseline Ballpark Program" means the program description of the Ballpark Facility submitted by the Padres to, and approved by, the City (as the same may be revised from time to time).

"Guaranteed Amount" shall mean the sum of \$45,817,000.

"Horton 2000 Arbitrage Construction Fund" means the Sub-Fund of the Design and Construction Fund entitled "Horton 2000 Arbitrage Construction Fund" established with the Custody Agent pursuant to Section 3.01 of the Custody Agreement.

"Improvements" means any alterations, modifications, additions, or other construction, development, or improvement of any part of the Ballpark Facility, other than maintenance and repairs.

"Improvement Costs" means the cost of all labor and materials reasonably required to construct, develop and install permitted Improvements.

"Indenture" means the Indenture, dated as of February 1, 2002, between the Authority and the Trustee, providing for the terms and conditions of the Bonds, as originally executed and as it may from time to time be amended or supplemented in accordance with the terms thereof.

"Infrastructure" means the following improvements: roads, sidewalks, other public facilities, and public utilities related to the Ballpark.

"Infrastructure Estimate" means an estimate of the total cost for the development and construction of the Infrastructure Work but not including any Land Acquisition Costs.

"Land Acquisition Costs" means the full cost of all land to be acquired for the Ballpark, 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.

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

"Major League Baseball" means professional baseball organized under the Major League Agreement dated January 21, 1921, as amended, restated or extended from time to time, between The National League of Professional Baseball Clubs, The American League of Professional Baseball Clubs and each of their member clubs.

"Major League Baseball Game" shall mean (a) any Major League Baseball exhibition, regular season or post-season game, except for exhibition games played during any regularly scheduled Major League Baseball spring-training season, or (b) any All-Star game which the Padres have requested, through application or otherwise, be played within the boundaries of the City.

"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 Facility submitted by the Padres to and approved by the City (as the same may be revised from time to time).

"MLB" shall mean the Office of the Commissioner of Baseball, an unincorporated association.

"MLB Guaranty" shall mean that certain Irrevocable Guaranty Agreement dated as of February 15, 2002 made by MLB to the Custody Agent for the benefit of Ambac.

"MOU" means that certain Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project by and among the City, the Agency, the Centre City Development Corporation, and the Padres, approved by 59.6 percent of the citizens voting in the general election of the City of San Diego on November 3, 1998, memorializing the agreement among the parties to the MOU of the essential terms and conditions regarding the ballpark and redevelopment project as originally adopted, as heretofore amended and supplemented, and as it may from time to time be amended or supplemented by agreement.

"Naming Rights" means the contractual right to have a name associated with the Ballpark Project, whether for the Ballpark Facility and/or the Ballpark Project as a whole or for specific areas within the Ballpark Facility and/or the Ballpark Project.

"Off-Site Post-City Financing Notice to Proceed" means certain notices issued by the City to PCL specifying the date for the commencement of all construction related activities for the Ballpark Facility that are not to be conducted on the Site when and only when certain conditions precedent set forth in the Ballpark Design/Build Procurement Consultant Agreement have been satisfied or waived.

"Other Public Agency Investment Fund" means the Sub-Fund of the Design and Construction Fund entitled "Other Public Agency Investment Fund" established with the Custody Agent pursuant to Article VII of the Procurement Agreement.

"Padres" means the 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 with the Custody Agent pursuant to Article VII of the Procurement Agreement.

"Padres Games and Events" shall mean any and all (a) Major League Baseball Games, (b) Padres-Sponsored Baseball Events, and (c) events at the Ballpark Facility that would be 70/30 Events but for an "opt-out" by the City pursuant to the Joint Use and Management Agreement.

"Padres Land Acquisition/Infrastructure Investment Fund" means the Sub-Fund of the Design and Construction Fund entitled "Padres Land Acquisition/Infrastructure Investment Fund" established with the Custody Agent pursuant to Article VII of the Procurement Agreement.

"Padres Offices" means the offices within the Ballpark Facility substantially as shown on Exhibit D of the Joint Use and Management Agreement.

"Padres/Private Investment" means the investment or contribution of private persons or entities, including the Padres, towards the Ballpark Project, as set forth in Section XVIII of the MOU.

"Padres Property" means property owned by the Padres which constitutes the Padres' ownership interest in the Ballpark Facility.

"Padres-Sponsored Baseball Event" means any baseball game or baseball-related event at the Ballpark Facility, other than Major League Baseball Games, which is conducted or sponsored either by the Padres or by Major League Baseball, including without limitation baseball fantasy camps and clinics.

"Parties" shall mean the parties to the Custody Agreement other than the Custody Agent.

"PCL" shall mean Padres Construction L.P., a California limited partnership.

"Permitted Investments" means any of the following to the extent then permitted by law and the Indenture:

- (i) United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations of, or obligations guaranteed directly or indirectly by, the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or any Federal Reserve Bank) or securities or other instruments evidencing direct ownership interests in such obligations or in specified portions of the interest on or principal of such obligations, which shall be held by a custodian on behalf of such owners;
- (ii) (A) obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Federal Home Loan Mortgage Corporation, the Resolution Funding Corporation, the Federal Farm Credit System, the Student Loan Marketing Association or the Tennessee Valley Authority, or (B) obligations, participations or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Federal National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal), or (C) guaranteed portions of Small Business Administration notes, or (D) participations or other instruments of or issued by a federal agency or a United States of America government-sponsored enterprise; provided, however, that prior to investing in investments described in this clause, the City shall have provided to the Trustee a Certificate of the City that such investment shall have been approved for investment under the Indenture by the Rating Agencies;
- (iii) bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by members of the Federal Reserve System and which are drawn on any bank

the short-term obligations of which are of the highest letter and numerical rating category as provided by the Ratings Agencies; provided that purchases of eligible bankers acceptances may not exceed 270 days' maturity;

- (iv) commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided by the Ratings Agencies, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an "A" or higher rating for the issuer's unsecured debentures, other than commercial paper, as provided by the Ratings Agencies; provided that purchases of eligible commercial paper may not exceed 270 days maturity;
- (v) certificates of deposit, whether negotiable or non-negotiable, issued by a state or national bank (including the Trustee or its affiliates) or a state or federal savings and loan association, provided that such certificates of deposit shall be either (A) continuously and fully insured by the Federal Deposit Insurance Corporation or (B) have maturities of not more than 365 days and issued by any state or national bank or a state or federal savings and loan association, the short term obligations of which are rated in the highest short term letter and numerical rating category by the Rating Agencies;
- (vi) any repurchase agreement with any state or national bank (including the Trustee or its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than "AA" or whose commercial paper is rated no lower than "F-1" by Fitch, if then rating the Bonds, no lower than "P-1" by Moody's, if then rating the Bonds, and no lower than "A-1" by S&P, if then rating the Bonds, (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; (1) the term of such repurchase agreement is less than one year or due on demand; (2) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (3) the market value of the collateral is maintained at levels acceptable to the Rating Agencies as evidenced by a Certificate of the City delivered to the Trustee; (4) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; (5) the repurchase agreement securities must be either obligations of, or fully guaranteed as to principal and interest by, the United States of America or any agency of the United States of America, certificates of deposit or bankers' acceptances; and (6) repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with "retail customers" which falls under the jurisdiction of the Securities Investors Protection Corporation; provided that: (1) the market value of the collateral is maintained at levels acceptable to the Rating Agencies as evidenced by a Certificate of the City delivered to the Trustee; (2) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (3) the Trustee has a perfected first priority security interest in the collateral; (4) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (5) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;
- (vii) certificates, notes, warrants, bonds or other evidence of indebtedness of the State of California or of any political subdivision or public agency thereof which are rated in the highest short-term rating category or within one of the two highest long term rating categories of the Rating Agencies (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);
- (viii) for amounts less than \$10,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank including affiliates of the Trustee, or state or federal savings and loan association in the State of California, fully

insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof;

- (ix) investments in taxable government money market portfolios restricted to obligations with an average maturity of one year or less, issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States of America and rated in either of the two highest rating categories by the Rating Agencies, including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services;
- (x) guaranteed investment contracts or funding agreements fully collateralized at all times with permitted collateral from domestic or Canadian insurance companies or insurance holding companies rated at least "Aa3" or "AA-" as to claims paying ability by the Rating Agencies, U.S. branches of foreign banks rated at least "Aa3" or "AA-" by the Rating Agencies, domestic banks rated at least "A2" or "A" by the Rating Agencies, or, if such agreement is in a repurchase format, registered broker/dealers subject to SIPC or primary government security dealers rated, or whose parent is rated, at least "A3" or "A-" by the Rating Agencies and, in any case, if the investment contracts or funding agreements with such securities dealers, commercial banks or insurance companies is unconditionally guaranteed by an entity meeting the respective foregoing rating requirements, such rating shall be deemed the rating of such securities dealers, commercial banks or insurance companies and, in measuring the maturity of an investment under this subsection (x), such maturity shall be deemed to be the time at which the investment can be liquidated by the Trustee at par plus accrued interest without the payment of any penalty;
- (xi) shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California which consists exclusively of investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State of California, as it may be amended; and
- (xii) any other investment approved in writing by Ambac.

"Phase 1" means the first phase of Ancillary Development which, subject to the credit available for Substitute Ancillary Development and the Padres' "fine tuning" rights, shall include at least: a) a 150 room extended stay hotel and 700 additional new hotel rooms with associated parking; b) office complexes containing at least 600,000 gross square feet with associated parking; and c) retail development containing at least 150,000 gross square feet.

"Premium Seats" means those certain seats in the Ballpark Facility more particularly described in Exhibit G of the Joint Use and Management Agreement.

"Private Suites" means all the private suites in the Ballpark Facility more particularly described in Exhibit H of the Joint Use and Management Agreement.

"Procurement Agreement" shall mean that certain Ballpark Design-Build Procurement Consultant Agreement dated as of February 1, 2000 by and among the City, Agency, CCDC, Padres and PCL.

"Project Schedule" means the schedule of project milestones and the deadlines therefore set forth in Exhibit F of the Ballpark Design/Build Procurement Consultant Agreement.

"Project Site Notice to Proceed" means certain notices issued by the City to PCL, delivering PCL access to a particular site of the Ballpark Facility in its entirety and specifying the date for commencement of all onsite construction related activities for the Ballpark Facility on such specified portion of the Site when and only when certain conditions in the Ballpark Design/Build Procurement Consultant Agreement have been satisfied with respect to such specified portion of the Site.

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

"Related Documents" means the MOU and all agreements, documents and instruments contemplated by the Procurement Agreement, the Sufficient Assurance Agreements or the MOU to be executed and delivered by one or more of the Parties, in connection with the transactions contemplated by the MOU, the Procurement Agreement or the Sufficient Assurances Agreements and all other documents executed and delivered by any Party, in connection with the transactions contemplated by the MOU, the Procurement Agreement or the Sufficient Assurances Agreements.

"Request for Disbursement" means a written request by the City to the Custody Agent for a disbursement of funds from the Design and Construction Fund in the form attached to the Custody Agreement as Exhibit A or Exhibit B, as applicable.

"Request for Payment" means a request for payment of funds from the Design and Construction Fund made pursuant to Section 7.05 of the Procurement Agreement.

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

"70/30 Event" means any event conducted at the Ballpark Facility which is not included within the definition of City Event or Padres Game or Event, or which the parties mutually agree, by reason of their joint sponsorship or authorization of it, should be considered a 70/30 Event, rather than being treated as a City Event or Padres Game or Event.

"Sub-Fund" shall mean a segregated account of the Design and Construction Fund.

"Substitute Ancillary Development" means development and construction of hotel and/or retail properties by other developers in the area in Centre City East of a type comparable to the Phase I hotel and/or retail development and construction, which hotel and/or retail properties shall be credited against the Padres' commitment for the Phase I hotel and/or retail development and construction; provided, however, that the same TOT revenue and net available tax increment revenue reasonably expected to be generated by the Substitute Ancillary Development is at least the same as the TOT revenue and net available tax increment revenue reasonably expected to be generated by the comparable Phase I Development. Notwithstanding the above, in no event shall the Phase I Development retail adjacent to the Park be less than 100,000 gross square feet and the Substitute Ancillary Development shall not include any development which has been proposed to the CCDC, and for which plans and drawings have been created by the developer but yet submitted to the CCDC, as of August 4, 1998.

"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 of the City of San Diego.

"Trustee" means Wells Fargo Bank, National Association, a national banking association existing under and by virtue of the laws of the United States of America, or any other association or corporation which may at any time be substituted in its place as provided in the Indenture.

The Memorandum Of Understanding

The MOU outlines the major terms and conditions agreed upon among the parties to the development of the ballpark and redevelopment project. The MOU provides for the establishment of a Ballpark District, and includes agreements on construction of the Ballpark Project, ownership, operations, revenue, expense sharing, funding and financing.

The MOU was placed on the ballot for citywide vote on November 3, 1998 and by a vote of 59.6%, authorized and directed the City to enter into the MOU. Although definitive documentation has been

developed and executed by the parties to the MOU regarding the Ballpark Project, the MOU continues as the controlling document regarding the development of the Ballpark Project.

The MOU originally was set to expire on March 31, 2000 if certain conditions subsequent had not occurred as contemplated by the MOU. Subsequently, the expiration date of the MOU has been extended to February 15, 2002.

Ballpark Costs

The MOU established a financing plan for the Ballpark Project, keyed by the establishment of the Ballpark Estimate of \$267,500,000 and the maximum amount of the City's investment in the Ballpark Project of \$225,000,000. Investment in the Ballpark Project by other parties to the MOU, including the Redevelopment Agency, may increase with the cost of the Ballpark Project, but the level of the City's investment is capped at \$225,000,000 pursuant to the MOU and the subsequent approval of the City electorate.¹ The Padres are solely responsible for funding all development and construction costs in excess of the Ballpark Estimate.

The MOU outlines the obligations of the Padres to design and construct the Ballpark Facility. The Padres have final approval rights as to the design and construction of the Ballpark Facility, with the participation and collaboration of the City, the Redevelopment Agency, and CCDC.

Land Acquisition, Parking, and Infrastructure Costs

Pursuant to the MOU, except for the costs to be paid as part of the Padres/Private Investment, the City or the Redevelopment Agency was to be responsible for all Land Acquisition Costs, the development and construction of parking facilities, and costs to construct necessary infrastructure related to the Ballpark Project up to a cap of \$143,500,000. The MOU allows the Padres to purchase necessary land through negotiated purchase in advance of land acquisition by the City or the Redevelopment Agency. If the Padres purchase land prior to the City or the Redevelopment Agency, it must sell the land upon the City's request to the City, the Redevelopment Agency for the price for which the Padres purchased the land, plus any customary acquisition or financing costs. The MOU sets forth conditions precedent for the acquisition of land:

- (i) The City and the Redevelopment Agency have obtained funds from their financing of choice (i.e. lease revenue bonds, certificates of participation, or other) to meet their respective investment obligations for land acquisition costs, and all applicable statute of limitations for bringing any action challenging the financing have passed, or a bridge loan or other interim financing is obtained in an amount sufficient for the City and the Redevelopment Agency to meet their respective investment obligations for Land Acquisition Costs (which such Parties will use their best efforts to obtain) until such time as funds from their financing of choice are obtained.
- (ii) The Padres have provided the security for the Padres/Private Investment.
- (iii) The City receives sufficient assurances from the Padres and/or others that Phase I (including any Substitute Ancillary Development) and the 1,000 room convention center expansion hotel will proceed and have the potential to generate the required new public revenue to help finance the City and the Redevelopment Agency investments.

Under the MOU, the Padres were not to be responsible for the development or construction of public parking facilities associated with the Ballpark Project but the design, configuration and operation of the public parking facilities were to be subject to the Padres' reasonable approval. Subject to Bond Counsel Review, the Padres were to be responsible for selecting and contracting with any third-party parking operators for the parking facilities. The Padres retained the right to operate the public parking facilities with net revenue from such public parking facilities being shared. The City was to retain such revenue from City Events and the Padres were to retain net revenue from Padres Games and Events. During the term of the Padres' occupancy of the Ballpark Facility, the first \$250,000 (increased every five (5) years by cumulative CPI since the previous CPI increase, if any) of annual

¹ CCDC has no independent investment obligation pursuant to the MOU or related agreements. CCDC implements and manages the Agency Investment.

net parking revenue generated through any non-event public use of the Public Parking Facilities, was to be deposited into a capital expenditure reserve fund established and controlled by the City and the Padres; any excess in such annual net parking revenue is to be paid to the City.

If actual costs of infrastructure, land acquisition, and development of public parking facilities were to exceed \$143,500,000, the City, the Redevelopment Agency, the CCDC and the Padres shall endeavor cooperatively to locate additional funding.

Project Ownership and Investment of the Parties

The City and the Padres shall own the Ballpark Facility jointly, with respective divided ownership interests of 70% and 30%. The City, the Redevelopment Agency, and the Padres each will invest in the Ballpark Project. The City is to participate up to the maximum investment of \$225,000,000. The City may choose, in its sole discretion, the type of financing and sources of revenue to support its investment. Pursuant to the MOU, the Agency Investment was not to be more than \$50,000,000, to be generated by a combination of equity and real property tax increment financing. The Agency Investment is to be targeted toward infrastructure and land acquisition. The Padres investment is set at \$115,000,000, subject to revisions in the estimated cost to complete the Ballpark Project. The City agreed in the MOU to facilitate certain of the Padres/Private Investment subject to the City's reasonable acceptance. The MOU required the Padres to provide the City with a first priority lien upon the Padres' National League franchise, which lien would be released upon the deposit of the first \$50,000,000 in funding deposited by the Padres. The MOU also noted that additional funding in the amount of \$21 million required to complete the financing plan was not yet identified. The parties to the MOU all agreed to work collaboratively to identify the needed additional funding.

General Operation and Use of the Ballpark

The Padres commit to play Major League Baseball games at the Ballpark Facility for the duration of the financing instrument used by the City to finance (and refinance, provided that such refinancing does not increase the term of the financing instrument or adversely affect in any other way the Padres' obligations) the Ballpark Project, or for thirty (30) years, whichever period expires first; provided that in no event shall the Padres' occupancy be for less than twenty-two (22) years. The Padres shall have two five-year options to extend the lease term on the same terms (but without additional options) and conditions. To exercise these options, the Padres must provide one-year prior written notification to the City.

The Padres will be prohibited from relocating the Padres' franchise to a location other than San Diego, or from playing home games at any facility other than the Ballpark Facility except for certain agreed upon games which may be played as home games outside of the continental U.S. and in Asia.

The Padres shall pay as rent to the City, for the right to use and occupy the Ballpark Facility the sum of \$500,000 each Padres' fiscal year. Such rent is payable semi-annually and is to be increased every five years by the cumulative CPI since the previous CPI increase.

The Padres will manage and operate the Ballpark Facility for both Padres Games and Events (up to 125 days per year) and for City Events (up to 240 days per year). The City and the Padres shall share certain joint ownership expenses based on the respective ownership percentages, with the City paying 70% of those expenses and the Padres paying 30%. The City's share of such expenses shall be limited to \$3,500,000 in the first year of operation, and increased annually thereafter by the CPI. The City and the Padres shall each be responsible for the incremental Ballpark Facility expenses for their own events. The Padres are responsible for funding all Capital Expenditures to the extent funding is not available in a capital expenditure reserve fund established and controlled by the City and the Padres.

The Padres shall retain all fees paid to obtain concession rights within the Ballpark Project. The Padres shall retain all revenue from the sale of advertising and sponsorships within the Ballpark Project. The Padres shall retain funds obtained from Naming Rights. The Padres have the exclusive right to establish premium seat ownership rights at the Ballpark Facility. Also, the Padres shall retain revenue from premium seat ownership fees, founders' fees or related construction contributions.

Phase 1 and Other Ancillary Development

The portion of the Ancillary Development known as Phase 1 will include the construction of hotels, office buildings, retail space, as well as residential development and associated parking. Phase 1 includes the construction of a 150 room extended stay hotel and 700 additional new hotel rooms with associated parking; office complexes containing at least 600,000 gross square feet with associated parking; and retail development containing at least 150,000 gross square feet. The MOU provides that the Phase 1 developer (chosen by the Padres) may adjust its MOU obligations to meet market conditions as it plans the development of Phase 1 ("Fine Tuning"), subject to the conditions that (1) the TOT and real property tax increment generated by Phase 1 be at least what was agreed upon by the parties on or before February 14, 1999, and (2) to the extent the property for Phase 1 was acquired from the Redevelopment Agency, any changes are consistent with the fair reuse value analysis for the properties and applicable laws.

The overall size, location and design of Phase 1 will be designed by the Padres and/or developer, subject to negotiations with CCDC, and the City's and the Redevelopment Agency's approval as required by law. If the Redevelopment Agency acquired the land needed for Phase 1 with the developer's approval, the developer was to loan the Redevelopment Agency the necessary funds to pay the costs for such purchase, but not to exceed \$25,000,000.¹ If Phase 1 does proceed, the Redevelopment Agency will allow the developer to purchase the land.

Conditions Subsequent

The respective obligations of the parties are contingent on certain conditions subsequent which could be waived by the parties. The conditions subsequent include the City and the Redevelopment Agency's ability to obtain financing reasonably acceptable to the City on a fully tax-exempt basis; full compliance with the California Environmental Quality Act; the Padres' continued ability to pay its debts as due and avoid insolvency; the parties reaching agreement on the schedule of disbursements from the Design & Construction Fund; the delivery by the Padres of sufficient assurances regarding the Phase 1 Ancillary Development by April 1, 1999; the Padres/Private Investment is secured by providing the City with a first priority lien on the Padres' national league franchise; certain land acquisitions have been completed; and certain initial City financing has been executed.

Option to Purchase and Right of First Refusal

If the City proposes to sell its interest in the Ballpark Facility during the term of the occupancy by the Padres, the City will first give the Padres a written offer to sell the City's interest to the Padres. If the Padres propose to sell its interest, other than in connection with a sale of the Padres' franchise or to an entity controlled by the Padres, the City will have a right to approve such sale.

This summary is meant to merely highlight, generally, the major terms and conditions of the MOU. This summary must be read in conjunction with the MOU and does not constitute a change of any terms and conditions found in the MOU. Please refer to the complete MOU for a discussion of the full terms and conditions evidencing the definitive agreement between the parties on these matters.

Ballpark Infrastructure Design/Build Agreement, dated as of December 14, 1999 and as amended or restated on a number of occasions

The Ballpark Infrastructure Design/Build Agreement outlines the rights and obligations of the parties in the development of the design and construction of certain infrastructure work related to the Ballpark Project. The City has engaged the DCM to design and provide the City with certain infrastructure work, including the demolition of existing structures, relocation of utility infrastructure and construction of parking lots, parking structures, new streets, streetscape and landscaping to support the Ballpark Project.

¹ This loan was later determined to be unnecessary and, by mutual agreement of the parties, not consummated.

Cost and payment of the project

The GMP of the cost for the project is not to exceed \$26.5 million¹ and will include all hard construction costs necessary to provide a fully completed and functional project. Any costs in excess of the GMP will be the sole responsibility of the DCM unless approved by the City. The contract amount (composed of the GMP and reimbursable costs) will not exceed \$27.6 million. Reimbursable costs include DCM reimbursable bond premiums, reimbursable insurance premiums, deductibles and broker fees required by the project but not covered by OCIP, reimbursable permit costs, reimbursable warranty extensions, reimbursable EOCP consultant, reimbursable utility specialist, reimbursable soils and hazardous materials remediation costs, reimbursable community relations consultant, reimbursable archeologist/palaeontologist consultant, and reimbursable additional services. Total compensation to be paid to the DCM by the City will be paid according to different funding phases.

Schedule of the project

The project will be performed in 4 general phases: design, bidding, construction and start-up. The DCM may subcontract services to qualified, appropriately licensed and sufficiently experienced architects, contractors, engineers and other professionals with the written consent of the City. The DCM will still be obligated and responsible under the agreement.

Work Risks and Restrictions, Competitive Bidding Requirement

The DCM agrees to fully assume all risk and costs of such risks associated with the performance of the project, except for the following risks which are assumed by the City: (1) design changes that are requested by the City after approval of certain construction documents or establishment of the GMP, and are beyond the scope of the requirements in the criteria; (2) materially different site conditions from those reasonably anticipated after completion of the design phase; and (3) third party litigation for which the DCM is not responsible.

The DCM will not perform any actual construction without specific authorization from the City. Work not specifically authorized by the City to be performed by the DCM must satisfy the competitive bidding requirements set forth in the Charter and Municipal Code of the City of San Diego. The DCM is authorized to act as the agent of the City for the limited purpose of conducting the competitive bidding in accordance with the Charter and Municipal Code of San Diego. In all other capacities, the DCM is an independent contractor.

Project Site Conditions

The City has not made any investigation (other than expressly stated in the agreement) of subsurface conditions in areas where work is to be performed and makes no warranty of such subsurface conditions or latent physical conditions. The DCM will do its own exploration as to the subsurface or latent physical conditions at the project site.

It will be the DCM's responsibility to determine the location and depth of all utilities, including service connections. The DCM will bear all costs of repair or replacement of any damaged utility.

Additional Services

The City has the right to direct the DCM to perform additional services beyond those specified in the agreement. For additional services, the DCM will be paid the actual cost of the additional services, on an hourly basis at hourly rates which will be actual payroll times a multiplier for the contractor and the DCM staff (but never over \$150 per hour).

¹ The Ballpark Infrastructure Design/Build Agreement refers to a GMP of \$29.1 million, which amount includes (i) \$26.5 million for infrastructure work for the Ballpark Project; and (ii) an amount for other infrastructure work outside the scope of the Ballpark Project and not included in the Ballpark Project budget.

Bonds and Insurance

The DCM will furnish performance and payment bonds, issued by sureties which are admitted insurers in the State of California with the City designated as the obligee, as security for the faithful performance and payment of all of the DCM's obligations under the agreement. The performance bond shall be in the amount of 80% of the GMP for each funding phase. The payment bond shall be in the amount of 80% of the GMP for each funding phase.

The City has insured this project under an owner controlled insurance program ("OCIP"), which will provide certain insurance coverage for the OCIP Participants engaged in the performance of professional services or work for the project. However, the OCIP is not intended to provide a complete insurance program to the OCIP Participants. All dividends or refunds payable under the programs and policies of insurance, and any proceeds therefrom obtained pursuant to the OCIP belong to the City.

The City will provide to the DCM and its design subcontractors, a project professional liability policy including pollution liability with a project aggregate limit of \$5 million. A \$25,000 per claim deductible will be the responsibility of the DCM. The City will also provide to the OCIP Participants, primary commercial general liability insurance covering bodily injury, personal injury and property damage liability in the amount of not less than \$2 million per occurrence and \$4 million annual aggregate. The OCIP Participants will be responsible for payment of the deductible. The City will also provide excess liability policies affording \$98 million limits in excess of the commercial general liability and workers compensation/employers liability limits afforded on the underlying policies. The OCIP participants will be covered under the applicable laws relating to workers compensation and employers liability insurance for all of their employees working on the project. The City will also provide a policy of "all risk" builders risk insurance.

The OCIP Participants will, for the life of this agreement, pay for and maintain the following policies: commercial general liability insurance covering operations which are not covered by the OCIP, automobile liability insurance in an amount not less than \$1 million combined single limit per accident, workers compensation insurance and employers liability insurance covering the employees who are not normally engaged in work at the policy site and whose compensation is not part of the field payroll or who are otherwise excluded under the OCIP, and hazardous transporters pollution liability insurance not less than \$5 million combined single limit per occurrence/aggregate for bodily injury, property damage and remediation. All insurance required shall be carried by responsible insurance companies that have been given at least an "A&V" rating by AM BEST, are licensed to do business in the State of California, and have been approved by the City.

Warranties and Guarantees

The DCM warrants and guarantees to the City that materials and equipment incorporated in the project will be new unless otherwise specified and that all work will be in accordance with the construction documents and will not be defective. The warranty period will start when the certificate of substantial completion is issued and extend for one year after that date or whatever longer period may be prescribed by laws, regulations or other guarantees.

Indemnification

The DCM will indemnify the City, the Redevelopment Agency, CCDC, and the District, as well as the officials, agents, officers and employees of each of the above entities from all claims arising out of the DCM's performance, breach, or negligent acts or omissions under this agreement.

This summary is meant to merely highlight, generally, the major terms and conditions of the Ballpark Infrastructure Design/Build Agreement and related amendments. This summary must be read in conjunction with the Ballpark Infrastructure Design/Build Agreement and related amendments and does not constitute a change of any terms and conditions found in the Ballpark Infrastructure Design/Build Agreement and related amendments. Please refer to the complete Ballpark Infrastructure Design/Build Agreement and related amendments for a discussion of the full terms and conditions evidencing the definitive agreement between the parties on these matters.

Joint Use and Management Agreement

The Joint Use and Management Agreement governs the day-to-day use and occupancy of the Ballpark Facility, outlines obligations of the parties regarding scheduling of events, revenue sharing for such events, obligations to pay expenses of operating the Ballpark Facility, defines rights of access and promotion related to the Ballpark Facility, and the cleaning, maintenance, and capital repair of the Ballpark Facility. The City Council adopted Resolution Number R-292706 on February 1, 2000, authorizing the execution of the Joint Use and Management Agreement.

The Joint Use and Management Agreement sets forth the clear priority of the terms, covenants, and provisions of the Site Lease, the Ballpark Facility Lease, the Indenture, and the MOU.

Term and Rent

The term of the Joint Use and Management Agreement shall expire on the earlier of:

- (i) the date the agreement is terminated in accordance with its terms or is otherwise terminated by written agreement of the City and the Padres, or upon termination prior to the Commencement Date of the obligations of the parties under the MOU in accordance with the terms of the MOU or by agreement of the parties to the MOU; or
- (ii) the date that is the later of twenty-two years after the Commencement Date or the earlier of the expiration date of the initial City Financing (including refinancing) or thirty years after the Commencement Date.

The Padres have the option to extend the agreement for two five-year terms by delivering a written notice of intent to renew at least 365 days prior to the end of that term. The Padres are obligated to pay rent to the City in recognition for the rights granted to it by the City. Annual rent will be \$500,000 subject to adjustment after each five-year interval in an amount equal to the percentage increase, if any, in the CPI for that five-year interval. The rent is payable semi-annually.

Use and Occupancy

The Padres shall be entitled to use the Ballpark Facility for such events and activities as may be permitted by law, including:

- (i) up to 125 days during each calendar year included in the term for Padres Games and Events;
- (ii) the year-round operation, maintenance and repair of the Ballpark Facility;
- (iii) the installation and construction of Improvements;
- (iv) the occupancy and operation of the Padres Offices for general office and administrative purposes;
- (v) the sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items normally considered "concessions";
- (vi) the promotion, marketing, and licensing of Private Suites;
- (vii) the sale of advertising; and
- (viii) any and all other activities which, from time to time during the term, are associated with, are customarily conducted in connection with, or are related to, the conduct of the business of a Major League Baseball team.

The City shall be entitled to use the Ballpark Facility for such events and activities as may be permitted by law, including:

- (i) up to 240 days during each calendar year included in the term for City Events;
- (ii) the installation and construction of Improvements to the City Exclusive Use Areas at reasonable times and after reasonable notice to the Padres as manager of the Ballpark Facility; and
- (iii) the occupancy and operation of the City Exclusive Use Areas for their intended purposes.

Scheduling and Accounting

The City and the Padres agree to recognize and in good faith, attempt to accommodate the legitimate interests of the other with respect to the scheduling of Events at the Ballpark Facility. The Padres will establish and maintain the master calendar for Events at the Ballpark Facility and an accounting system that tracks separate and joint expenses and revenues. The agreement sets out the scheduling priorities and the respective allocation of revenues for the different events.

Management, Maintenance, Repair and Improvements

The Padres are responsible for all Ballpark Facility management. Upon notice from the City to the Padres of two (2) alleged defaults of the Padres' performance of material Ballpark Facility management obligations and failure of the Padres to cure the alleged defaults, the parties shall enter binding arbitration to determine their respective rights. If the arbitration decision rendered determines that the Padres did fail to timely perform the Padres' material Ballpark Facility management obligations and failed to cure such defaults, then the City can terminate the Ballpark Facility management responsibilities of the Padres and select a nationally recognized management company to manage the Ballpark Facility. Any such termination of Ballpark Facility management responsibilities will not have any effect on the Padres' tenancy, rent and other rights and obligations.

The Padres will also be responsible for performing the day-to-day landscaping and maintenance of the playing field and other portions of the Ballpark Facility. Furthermore, the Padres will provide regular cleaning and trash removal services, utilities, supervising personnel, crowd control and management services, emergency medical assistance, security guards and night watchmen, all necessary emergency maintenance and repairs and improvements which directly affect the public's safety. The City will be responsible for traffic and public safety personnel, and other customary City operations.

Ownership and Operating Expenses

The Padres will provide and bear all costs of acquisition of all Padres Property and all taxes relating the property. Upon the expiration of the term of the agreement or any earlier termination of the agreement, all Padres Property will be automatically transferred to the City, without further consideration, free and clear of all liens and obligations.

Joint Ballpark ownership expenses include the following costs associated with the maintenance, repair, operation, use and ownership of the Ballpark Facility:

- (i) wages, salaries, and benefits of all year-round event staff, year-round maintenance, repair, operations and security staff, together with taxes and insurance related thereto;
- (ii) the cost of all supplies and materials used by the Padres in the routine maintenance, repair and operation of the Ballpark Facility;
- (iii) the cost of all utilities for the Ballpark Facility;
- (iv) the costs of all routine maintenance, repair, and upkeep for the Ballpark Facility;
- (v) the assessments imposed upon the owner of the underlying Ballpark Facility;

- (vi) the costs of all insurance;
- (vii) the costs of all professional fees; and
- (viii) any common area maintenance costs related to the Ballpark Facility;

For each fiscal year, the City shall pay to the Padres the amount (the "City Share of Joint Ballpark Expenses") equal to the lesser of:

- (i) seventy percent (70%) of the joint ownership expenses for such fiscal year; or
- (ii) the City's joint expense cap for such fiscal year.

For the fiscal year that includes the Commencement Date, the City's joint expense cap shall be three million five hundred thousand dollars (\$3,500,000) increased in each subsequent year by the percentage increase, if any, in (i) the CPI for the period which includes January 1 in such fiscal year, over (ii) the CPI for the period which includes January 1 in the previous fiscal year.

Approved Capital Expenditures shall be paid for with funds on deposit in the capital expenditure reserve fund, created by the Joint Use and Management Agreement. The City is responsible for the deposit of funds, if any, generated from net revenue from public parking, up to \$250,000 annually. The Padres shall be responsible for the timely payment of (i) all approved Capital Expenditures that cannot be paid out of the then-remaining balance in the capital expenditure reserve fund.

The Joint Use and Management Agreement sets forth the Padres' rights and obligations to install fixtures and equipment owned by the Padres into the Ballpark Facility. The Padres may not remove such items and must repair or replace the items when damaged. Such fixtures and equipment, the Padres Property, reverts to the ownership of the City upon the termination of the Joint Use and Management Agreement. Due to the reversionary interest of the City in the Padres Property, the Padres have granted a first priority lien on such Padres Property to the City (subject to certain restrictions on foreclosure as set forth in the agreement and certain priority granted to lenders or vendors in connection with the acquisition and installation of the Padres Property by the Padres).

Concessions, Advertising, Naming Rights, and Broadcasting

The Padres shall have the right and obligation to select concessionaires for the Ballpark Facility, negotiate and enter into concession agreements for the Ballpark Facility to provide concession services for all events occurring during the term of the agreement. Generally, all concession commissions payable in connection with concessions at Padres' Games and Events shall be retained by the Padres, while all concession commissions payable in connection with concessions at City Events shall be remitted to the City.

The Padres shall have the exclusive right to sell advertising within all parts of the Ballpark Facility, including, subject to all applicable laws, advertising outside the Ballpark Facility, and on the exterior of the Ballpark Facility and/or its systems.

All broadcast fees related to Padres' Games and Events shall be retained and exclusively controlled by the Padres. Broadcast fees for all City Events shall be retained and exclusively controlled by the City.

The Padres shall have the exclusive right to solicit for and enter into agreements granting persons rights to have a name or names associated with all or any portion of the Ballpark Facility on the condition that: (a) the Padres right to so solicit and enter into any such agreement, and the naming rights granted to any person shall not extend beyond the term; (b) the City may elect that any such agreement or naming right is not terminable by the City upon default by the Padres under the Joint Use and Management Agreement; and (c) each name associated with all or any portion of the Ballpark Facility shall be tasteful and not be a cause for embarrassment to the City. The Padres may retain all funds derived before or during the term from the sale of naming rights.

Non-Relocation of the Team and Sale of the Franchise

Generally, the Padres shall not allow any Major League Baseball Game in which it acts as the home team to be played in any facility other than the Ballpark Facility without first obtaining the written approval of the City, which approval may be withheld in its sole and absolute discretion. The Padres may, however, without the City's consent, play a certain number of games outside the continental U.S. and in Asia. During the period after the opening date and for the remainder of the term, the Padres agrees that it will not relocate the team to a location other than the City of San Diego, California.

The Padres have the right to transfer ownership of the Padres' franchise during the term to the extent permitted by Major League Baseball, without the City's consent; provided, however, that in connection with such sale, the new franchise owner must (i) concurrently acquire all of the Padres rights and obligations in, to and under the franchise and the Joint Use and Management Agreement, and (ii) concurrently agree in writing to assume all of the Padres' obligations under the Joint Use and Management Agreement for the remainder of the term.

Insurance and Subrogation

The Padres shall obtain and maintain throughout the term, sufficient insurance to satisfy the requirements of the Site Lease, Ballpark Facility Lease, Recognition and Attornment Agreements, Offering Document, Indenture and all documents related to the issuance of the 2002 Bonds plus the following specific requirements:

- (a) commercial general liability insurance covering the Ballpark Facility and operations with a combined single limit of \$1,000,000 per occurrence;
- (b) excess liability insurance on an "occurrence" form providing a combined bodily injury and property damage limit of \$50,000,000 per occurrence, subject to annual aggregate of \$50,000,000;
- (c) comprehensive business automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1,000,000 per occurrence covering all of the Padres owned, hired and non-owned automobiles;
- (d) property insurance upon the City Property and the Padres Property on an "all-risk of loss" form, including coverage for earthquakes consistent with the requirements of the Ballpark Design/Build Procurement Consultant Agreement (the unavailability of earthquake insurance shall be considered an event of force majeure for so long as it is unavailable), in an amount equal to the greater of (i) the full replacement cost of the Ballpark Facility or (ii) the then current principal amount of outstanding 2002 Bonds. The deductible shall not exceed the lesser of the maximum amount of deductibles permitted by the Site Lease, Ballpark Facility Lease, Recognition and Attornment Agreements, Offering Document, Indenture and all documents related to the issuance of the 2002 Bonds, or \$250,000;
- (e) State of California workers compensation insurance with a minimum of \$1,000,000 of employer's liability coverage; and
- (f) use and occupancy insurance to the extent required in Section 6.03(a)(ii) of the Ballpark Facility Lease.

Right of First Refusal

If during the term of this agreement, the City proposes to sell the City Property to any third party, the City will first make a written offer to sell the property to the Padres on the same terms and conditions as to the third party.

Indemnification

The Padres and the City have certain indemnity obligations to the other parties arising out of the agreement.

Default and Remedies

The occurrence of any one or more of the following events constitutes a default by the Padres under this Agreement:

- (a) failure to pay any sums payable by the Padres to the City for more than 20 days after notice from the City that payment is due;
- (b) failure by the Padres to observe or perform any other covenant, agreement, condition, or provision for more than 30 days after notice from the City;
- (c) The Padres admit in writing their inability to pay the Padres' debts as they mature or make an assignment for the benefit of creditors, the appointment of a receiver, or bankruptcy, reorganization, receivership, arrangement, insolvency, or liquidation.

The City, as a remedy, may:

- (a) enforce the provisions of the Joint Use and Management Agreement by suit or suits in equity or at law for the specific performance of any covenant or agreement;
- (b) recover monetary damages and all moneys due and not yet paid;
- (c) utilize all California statutory remedies; and
- (d) seek any other relief to the extent permitted by law.

Until such time as a Padres' default is cured, the City may offset any obligation the City otherwise might have to make deposits or payments into the capital expenditure reserve fund and the Padres right to repayment of any interest-free advance shall be tolled.

The Padres further acknowledge that the City will be irreparably harmed by the Padres breach of the exclusive venue, non-relocation, and sale of the franchise covenants and accordingly, the Padres acknowledge and agree that the City has no adequate remedy at law for such breach and therefore in the event of such breach, the City shall, without posting any bond, be entitled to seek and obtain an injunction from any court of competent jurisdiction, to enjoin any violation of these covenants.

The occurrence of any one or more of the following events constitutes a default by the City under the Joint Use and Management Agreement:

- (a) failure to pay any material sums payable for more than twenty (20) days after notice;
- (b) failure of the City to observe or perform any other material covenant or agreement for thirty (30) days after notice;
- (c) a trustee or receiver is appointed for the City for a significant part of its property; or
- (d) bankruptcy, reorganization, receivership provisions are undertaken against the City.

The Padres may enforce the provisions of the Joint Use and Management Agreement and may enforce and protect the rights of the Padres by a suit or suits in equity or law for the specific performance of any covenant or agreement contained herein, including recovery of monetary damages (including consequential damages). The Padres may take action to fund City obligations in this event, but may not undertake their rights to

terminate the agreement until a second uncured material default by the City of material covenants has taken place within a single calendar year.

Upon any breach of the Joint Use and Management Agreement by either the City or the Padres, the non-breaching party may set-off such damages as it reasonably determines was sustained, against such payments as the non-breaching party owes or will owe to the other party under the Joint Use and Management Agreement (including, without limitation, the City share of joint ownership expenses, incremental expenses associated with City Events and rent payable by the Padres). Notwithstanding the foregoing, (a) the Padres shall have no set-off right against City Event and 70/30 Event revenues; (b) the City shall not have the right to effect a set-off as a consequence of a failure of the Padres to complete the Phase 1 hotels except to the extent of the City share of the joint ownership expenses; and (c) nothing in the Joint Use and Management Agreement is intended to exculpate a party for damages suffered by the other party (including interest at the default rate) in the event that it affirmatively is determined by a court or arbiter that the first party wrongfully effected a set-off.

This summary is meant to merely highlight, generally, the major terms and conditions of the Joint Use and Management Agreement. This summary must be read in conjunction with the Joint Use and Management Agreement and does not constitute a change of any terms and conditions found in the Joint Use and Management Agreement or the MOU. Please refer to the complete Joint Use and Management Agreement for a discussion of the full terms and conditions evidencing the definitive agreement between the City and the Padres on these matters.

Ballpark Design/Build Procurement Consultant Agreement

The Padres have created a California limited partnership to carry out its construction obligations under the MOU. PCL, pursuant to ordinance guidelines established by the City pursuant to the November 1998 election (the "Design/Build Alternative Procurement Ordinance") will serve as construction manager for the Ballpark Project. The City Council adopted Resolution Number R-292707 on February 1, 2000, authorizing the execution of the Ballpark Design/Build Procurement Consultant Agreement. The Redevelopment Agency adopted Resolution Number R-03094 on February 1, 2000, authorizing the execution of the Ballpark Design/Build Procurement Consultant Agreement. On February 1, 2000, the City and the Padres executed the Ballpark Design/Build Procurement Consultant Agreement.

PCL Obligations

The Ballpark Design/Build Procurement Consultant Agreement delegates the obligations of the Padres in the MOU to PCL and outlines the parameters from which PCL will manage the construction process for the Ballpark Facility on behalf of the City. The Ballpark Design/Build Procurement Consultant Agreement does not lessen the financial obligations of the Padres under the MOU. PCL's obligations as set forth in the Ballpark Design/Build Procurement Consultant Agreement include:

- (i) The selection of the architect for the Ballpark Facility;
- (ii) Selection of the Ballpark Design/Build Contractor;
- (iii) Selection of other consultants in connection with the design and construction of the Ballpark Facility;
- (iv) Cause completion of the Ballpark Facility in conjunction with the Final Baseline Ballpark Program and the Minimum Design Parameters;
- (v) Use good faith efforts to cause the Ballpark Facility to be completed in accordance with the Project Schedule; and
- (vi) Manage the design and construction of the Ballpark Project on behalf of the City subject to the limitations of the Ballpark Design/Build Procurement Consultant Agreement.

Conditions Precedent to City Financing

The Ballpark Design/Build Procurement Consultant Agreement sets forth certain timelines from which the City, PCL, and the Padres will proceed with the design and construction of the Ballpark Facility. The design and construction timelines related to Ballpark Facility construction are affected by the City's financing. Pursuant to the Ballpark Design/Build Procurement Consultant Agreement, the conditions precedent under which the City will proceed with its financing are as follows:

- (i) The City shall have the ability to obtain the City Financing on terms reasonably acceptable to the City;
- (ii) The District shall have provided written evidence of its commitment to provide additional investment to the Ballpark Project of \$21 million or otherwise, the City and the Padres must mutually find a financing partner to provide funds;
- (iii) The City and the Padres shall have agreed on modified financial terms regarding the extension of the Qualcomm Stadium Agreement;
- (iv) The City shall have granted all discretionary approvals required for the construction of the Ballpark Facility;
- (v) All conditions for the issuance of at least one Project Site Notice to Proceed (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 Facility shall have been satisfied; and
- (vii) Full compliance with the California Environmental Quality Act shall have been achieved.

Construction and Completion

PCL is responsible for causing the design and construction of the Ballpark with the right of participation (but not the right to approve or disapprove) by the City, the Redevelopment Agency and CCDC. PCL will monitor the performance of the Ballpark Design-Build Contractor and administer the Ballpark Design-Build Construction Contract (as defined in the Ballpark Design/Build Procurement Consultant Agreement) on behalf of the City. PCL will have the authority to bind and act for the City for purposes of implementing the Ballpark Design-Build Construction Contract.

PCL is entitled, pursuant to the limitations of the Ballpark Design/Build Procurement Consultant Agreement, to undertake and affect change orders without the consent of the City, except for Major Change Orders, which must receive the approval of the City. PCL is obligated to notify the City of all Change Orders by forwarding plans and specifications to the City pursuant to the Ballpark Design/Build Procurement Consultant Agreement.

The Padres and PCL shall be solely responsible for any and all design and construction costs for the Ballpark exceeding the Ballpark Estimate. The Ballpark Design/Build Procurement Consultant Agreement states that proceeds necessary to fund Ballpark Facility design and construction costs in excess of the Ballpark Estimate must be deposited into the Design and Construction Fund prior to the execution of the work. The auditor and comptroller of the City (the "City Auditor") must provide a certification that funds are available in the appropriate account of the Design and Construction Fund prior to the execution of the work. The Ballpark Design/Build Procurement Consultant Agreement amends the Security Agreement by providing a first priority security interest in the Padres franchise up to \$50,000,000 such that the Security Agreement now secures the Padres and PCL obligations to fund costs in excess of the Ballpark Estimate. PCL will not permit any liens to be enforced against the Ballpark Facility or the land upon which the Ballpark Facility is to be constructed due to work done by PCL.

The Ballpark Design/Build Procurement Consultant Agreement sets forth specific listings of the property owned by the Padres and the City pursuant to the MOU. The City will own a divided ownership percentage of 70%, and the Padres will own a divided ownership percentage of 30%.

The Ballpark Design/Build Procurement Consultant Agreement establishes a procedure for PCL to pay to the City the Minimum Daily Amount for each day up to 180-days that substantial completion of the Ballpark Facility is delayed beyond the date that is six months after the Expected Opening Date, solely as a result of any negligent or intentional harmful act or omission of PCL or any entity that controls, is controlled by or is under common control with PCL. The Minimum Daily Amount is the equivalent of the lesser of \$55,000 per day or the daily accrued interest on the City Financing. Any delay liquidated damage payments provided by the Design/Build Contractor shall be the property of the Padres. PCL must obtain an insurance policy insuring the payment of the Minimum Daily Amount.

Ballpark construction costs shall be paid from the Design and Construction Fund and the Agency Fund. The MOU, the Ballpark Design/Build Procurement Consultant Agreements, and the documents attached to the "Sufficient Assurances" Resolution, Resolution No. R-291450, adopted by the City Council on March 31, 1999, in conjunction with the Indenture, shall govern deposits and any disbursement from the Design and Construction Fund and the Agency Fund. Subject to their obligations to pay for Ballpark Facility cost overruns, the Padres and PCL will not be required to pay more than (a) \$81,000,000 for costs of design and construction of the Ballpark Facility, or (b) \$34,000,000 for land acquisition costs and costs of design and construction of the infrastructure and the City, the Redevelopment Agency and CCDC will not be required to pay more than (a) \$186,500,000 for costs of design and construction of the Ballpark, or (b) \$88,500,000 for land acquisition costs and costs of design and construction of the infrastructure.

PCL shall not allow the Ballpark Design/Build Contractor (or any subcontractor) to begin any construction on the Ballpark Facility until all policies of insurance required by the Design/Build contracts and the Design/Build construction contract have been provided to the City. In addition:

- (i) 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 180 days) that substantial completion of the Ballpark Facility is delayed beyond the date that is six 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;
- (ii) PCL shall obtain professional liability insurance in an amount of at least \$7,500,000 so long as PCL has not required the architects or any of such architects to obtain insurance pursuant to the Ballpark Design/Build Procurement Consultant Agreement;
- (iii) PCL shall cause the procurement of a policy of builder's standard all-risk insurance for the Ballpark Facility for the full replacement cost of the Ballpark Facility;
- (iv) Builder's risk coverage for earthquakes and floods 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, or (b) one-half of the replacement cost of the Ballpark Facility (to the extent such insurance may be obtained at commercially reasonable cost), but in no event less than \$50,000,000; and
- (v) Builder's risk "delay-in-startup" insurance in an amount not less than \$38,250,000 shall also be provided by PCL.

All insurance referred to in paragraphs (iii), (iv) and (v) above 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 "delay-in-startup" insurance. All proceeds of builder's risk insurance, other than the "delay-in-startup" insurance shall be paid into the Design and Construction Fund. The "delay-in-startup" insurance shall be paid to the Trustee and used to fund interest payments on the City Financing.

The City, the Redevelopment Agency, and CCDC have certain indemnification obligations under this agreement.

This summary is meant to merely highlight, generally, the major terms and conditions of the Ballpark Design/Build Procurement Consultant Agreement. This summary must be read in conjunction with the Ballpark Design/Build Procurement Consultant Agreement and does not constitute a change of any terms and conditions found in the Ballpark Design/Build Procurement Consultant Agreement or the MOU. Please refer to the complete Ballpark Design/Build Procurement Consultant Agreement for a discussion of the full terms and conditions evidencing the definitive agreement between the City and the Padres on these matters.

Ballpark Facility Design/Build Contract

The Ballpark Facility Design/Build Construction Contract ("Ballpark Facility Design/Build Contract") governs the terms under which SDBB will perform construction work on the Ballpark Project. SDBB is a joint venture comprised of Clark Construction Group, Inc., Nielsen Dillingham Builders and Douglas E. Barhart, Inc. Each entity comprising SDBB is jointly and severally liable for all liabilities of each entity under the Ballpark Facility Design/Build Contract. The City, the City's bond trustee, the Redevelopment Agency, CCDC, the Padres and PCL are all third party beneficiaries to this agreement. The term architect ("Architect") shall refer to any of the following entities: the architectural firm of Hellmuth, Obata & Kassabaum, Inc., the architectural firm of Antoine Predock Architect FAIA, the architectural firm of Andrew Spurlock Martin Poirier, the architectural firm of Forte Design, the structural engineering firm of Thornton-Tomasetti Engineers & Designers, the mechanical, electrical, plumbing and fire protection engineering firm of M-E Engineers, the civil engineering firm of Project Design Consultants, the geotechnical engineering firm of Law Crandall, the audio/video consulting firm of Wrightson, Johnson, Haddon & Williams, the food service consulting firm of DGA Design, the building controls consulting firm of HMA Consulting, Inc., the communication/integrated information system consulting firm of PrimeNet, the vertical transportation consulting firm of Persohn Hahn, or the environmental graphics design firm of David Ashton Associates.

Construction

Under the Ballpark Facility Design/Build Contract, work will be performed pursuant to and consistent with certain documents that have been provided to SDBB such as drawings of the project, specifications for the work, a contractor's table of organization, a contractor's site logistics plan, and a project schedule, among other documents. All materials furnished and used in the project will be new.

SDBB will also conduct site excavation for which the Principal will not be liable. SDBB is responsible for the design and construction of all earth retention systems necessary for the project. Each month, SDBB will submit to the Principal, PCL, the Development Manager and the City, an application for payment and a revised detailed schedule reflecting the previous month's activities and the next month's anticipated activities.

SDBB is allowed to subcontract work to sub-contractors, but SDBB remains liable for the enforcement and administration of prices covered by such sub-contracts. Sub-contractors must prepare and submit complete drawings for the installation of the design/build work to SDBB and the Principal for review and approval by the Architect. SDBB will be responsible to the Principal for loss, damage and expense suffered by the Principal on account of any error or omission of the sub-contractor in the design and engineering of the design/build work.

Time Obligations and Schedules

SDBB agreed to achieve substantial completion of all design/build work by April 1, 2002 and final completion within a reasonable time thereafter. The deadlines may be extended for certain events such as, the failure by the Principal, PCL, the City, or the Development Manager to perform any of their respective obligations, unusual and extreme weather, war or national conflicts, fires covered by the builder's risk policy, floods not caused by SDBB, civil disturbances, embargoes, riot, vandalism or sabotage caused by the Principal or other contractors, labor disputes, unavoidable casualties, or changes in laws and must be extended due to delays experienced in obtaining full funding for the project. SDBB may be reimbursed for any costs incurred as a result of the delays and adjustments may be made to the GMC (subject to certain exceptions and restrictions). If SDBB fails to achieve substantial completion of the work in a timely fashion, SDBB will pay to the Principal, liquidated damages in the amount of \$35,000 for each regular season Major League Baseball home game that is not played at the Ballpark due to the late substantial completion of the work, but no more than \$3,500,000 in aggregate. The liquidated damages are the sole and exclusive remedy of the Principal for late substantial completion of the work. The parties agreed to

terms for the suspension of work in the Contract Modification dated September 27, 2000, which amended the Ballpark Facility Design/Build Contract.

Guaranteed Maximum Cost

In full consideration for the full and complete performance of the work, the Principal will pay to SDBB, the lesser of (a) the GMC, as adjusted by change order or (b) the total of the final certified costs of the work plus contractor's fee as adjusted by change order. The principal components of the GMC include: (i) construction costs; (ii) the contractor's fee; (iii) general conditions (the contractor's costs to support the on-site work performed by the sub-contractors); (iv) certain insurance costs; (v) a certain portion of furniture, fixtures, and equipment; (vi) payment and performance bonds; and (vii) a contractor's contingency.

Liens

No laborer's, materialmen's, mechanic's or similar liens are permitted to be filed on any of the work or property by subcontractors. If any such lien or claim is filed and SDBB does not cause such lien to be released or discharged, then the Principal can pay all necessary sums and deduct the amount from the GMC. SDBB subordinates all contractor's, laborer's, mechanic's, materialmen's and similar liens that it may have or acquire, to liens securing payment of sums borrowed by the Principal. SDBB may not enter into any contract for the supply of materials or services which would grant a security interest or right of possession to any person or entity with respect to the work or job site.

This summary is meant to merely highlight, generally, the major terms and conditions of the Ballpark Facility Design/Build Contract. This summary must be read in conjunction with the Ballpark Facility Design/Build Contract and does not constitute a change of any terms and conditions found in the Ballpark Facility Design/Build Contract. Please refer to the complete Ballpark Facility Design/Build Contract for a discussion of the full terms and conditions evidencing the definitive agreement between the parties on these matters.

Guaranty Agreement

Under the Guaranty Agreement, the Padres guarantee the obligations of PCL, in connection with PCL's obligations under the Ballpark Design/Build Procurement Consultant Agreement. The City Council adopted Resolution Number R-292699 on January 31, 2000, authorizing the execution of the Guaranty Agreement. The Redevelopment Agency adopted Resolution Number R-03090 on January 31, 2000, authorizing the execution of the Guaranty Agreement. The Guaranty Agreement takes effect on the effective date of the Ballpark Design/Build Procurement Consultant Agreement and shall remain in full force and effect until all obligations have been fully paid and performed in accordance with their terms.

PCL is the affiliate of the Padres established by the Padres to carry out its development obligations pursuant to the MOU more completely outlined in the Ballpark Design/Build Procurement Consultant Agreement. The Padres' obligations, as defined in the Guaranty Agreement, refer to amounts payable by, and the performance, covenants, and agreements (whether direct, indirect or by assignment) of, PCL under the Ballpark Design/Build Procurement Consultant Agreement. The beneficiaries of the Guaranty Agreement are the City, the Redevelopment Agency, the CCDC, the Authority, and the Trustee, jointly and severally.

The Padres absolutely, irrevocably and unconditionally guarantee the beneficiaries, jointly and severally: a) the full and prompt payment when due of each and all of the payments required to be credited or made by PCL under the Ballpark Design/Build Procurement Consultant Agreement (including all modifications, amendments, restatements, supplements, extensions, and renewals thereof) to, or for the account of, beneficiaries, when the same shall become due and payable in accordance with their terms, and b) the full and timely performance and observance of all obligations.

The Guaranty Agreement constitutes a guarantee of payment and performance when due, and not of collection. Any obligation of PCL, not met, will result in the right of the beneficiaries to move directly against the Padres without proceeding against PCL, including making any effort of collection against PCL or filing suit to enforce performance or collection. The obligations of the Padres under the Guaranty Agreement are absolute, irrevocable, and unconditional and shall remain in full force and effect until the obligations have been fully

discharged in accordance with their respective terms, and shall not be subject to counterclaim, set-off, deduction or defense.

The Guaranty Agreement is not, and is not to be, subordinate to any other document or agreement of the Padres or PCL and the obligations of the Padres survive any sale or transfer of PCL by the Padres or any Padres' affiliates of any of their respective interests in PCL now or hereafter owned.

This summary is meant to merely highlight, generally, the major terms and conditions of the Guaranty Agreement. This summary must be read in conjunction with the Guaranty Agreement and does not constitute a change of any terms and conditions found in the Guaranty Agreement. Please refer to the complete Guaranty Agreement for a discussion of the full terms and conditions evidencing the definitive agreement between the parties on these matters.

Implementation Agreement

The Implementation Agreement clarifies and implements portions of the MOU addressing certain financial and development responsibilities with respect to infrastructure and land acquisition costs related to the Ballpark Project and the Redevelopment Project. In addition, the Implementation Agreement provides for additional funding for the Ballpark Project on the part of the Padres and the Redevelopment Agency (acting through the CCDC). The Implementation Agreement is fully consistent with the MOU and does not materially increase or decrease the rights or increase the revenue or obligations of the City. The City Council adopted Resolution Number R-292703 on January 31, 2000, authorizing the execution of the Implementation Agreement. The Redevelopment Agency adopted Resolution Number R-03091 on January 31, 2000, authorizing the execution of the Implementation Agreement. The Implementation Agreement is effective as of February 25, 2000 and will be in effect for as long as the MOU is effective.

Development of Parking Facilities

In the Implementation Agreement, the Padres agreed to increase their financial obligations with respect to certain infrastructure and other construction costs, thereby enabling the City to reallocate a portion of its contribution to the project from infrastructure to land acquisition, and enabling the Redevelopment Agency, acting through the CCDC, to reallocate funds from other redevelopment activities to accommodate an increase in the land acquisition budget above initial estimates. Specifically, the Padres have agreed to develop public parking facilities on certain parcels of property where the City and/or the Redevelopment Agency previously held those obligations. The budget allocation previously held by the City (for the P1 Parking Garage parcel) has been redirected to fund increased costs of land acquisition. This action in the Implementation Agreement also serves to satisfy the City's MOU obligation to provide 1,000 revenue controlled parking spaces to the Padres. The City and/or the Redevelopment Agency will acquire the respective parking development parcels and will lease the ground to the Padres for development of the Padres' public parking facilities in exchange for annual lease payments to the City and to the Redevelopment Agency for the respective parcels. The term of the ground leases will be co-extensive with the term of the Joint Use and Management Agreement for the Ballpark. The City, the Redevelopment Agency, and the CCDC agree to use their good faith efforts to cooperate with the Padres in their efforts to obtain construction and permanent financing for the development and construction of the parking facilities.

Land Acquisition Cost Obligations

The City agreed via the Implementation Agreement to re-allocate the budget previously earmarked for the development of the P1 Parking Garage to the funding of land acquisition costs in excess of the original budget. In addition, the Redevelopment Agency agreed to fund additional land acquisition costs. The Redevelopment Agency shall be responsible for land acquisition costs above \$92.2 million up to a maximum of the current estimate of \$100 million. Land acquisition cost savings (under \$100 million) will be allocated by the City, or the Redevelopment Agency, as appropriate, to infrastructure needs in the Ballpark District. The Padres shall be solely responsible for land acquisition costs above \$100 million up to a maximum land acquisition cost of \$110 million. If necessary, the Padres agree to pay 50%, and the Redevelopment Agency and the CCDC agree to pay 50% of additional land acquisition costs in excess of \$110 million up to a maximum of \$130 million. The parties to the Implementation Agreement agree to use their best good faith efforts to identify and procure an insurance policy

to cover land acquisition costs, if any, above \$100 million with the Padres and the Redevelopment Agency/CCDC agreeing to each pay 50% of the premium cost for such insurance policy.¹

The Padres agree, in the Implementation Agreement, that it shall be the responsibility of the Padres and the master developer to gain access to certain necessary parcels to commence construction of the Ballpark. The Padres further agree that should the Padres or the master developer purchase certain land, the Padres or the master developer shall carry such land until the City has obtained its permanent financing, at which time it shall be sold to the City at the acquisition price on a lot-by-lot basis plus reasonable carrying costs as agreed to by the Parties, but not including any overhead or other such allocable soft costs.

Various Infrastructure Matters

A settlement with the Environmental Health Coalition identified Ballpark operating requirements to be imposed upon the Padres that would require the payment of an up-front sewer capacity charge not contemplated by the MOU. The Padres shall pay 50% of such additional charge and the Redevelopment Agency shall pay 50% of such additional charge.

To clarify the MOU's requirements with respect to the delivery of land, the Redevelopment Agency shall pay for the cost of removing abandoned utilities as reasonably required to construct the Ballpark Project (but not including any parking facilities).

If the costs associated with the Infrastructure Work exceed the budget and contingency amounts provided in the Infrastructure Estimate, the Padres shall pay up to \$500,000 in additional infrastructure costs. The Padres agree to assume responsibility for additional costs, if any, resulting from new, specific increases in the scope of work, if unilaterally requested by the Padres. The Redevelopment Agency acting in collaboration with the CCDC will assume responsibility for additional costs, if any, resulting from new, specific increases in the scope of work, if unilaterally requested by the City, the Redevelopment Agency, or the CCDC.

Remediation for unknown environmental hazards are to be protected against by the application of a comprehensive policy for insurance to cover unknown environmental risks or hazardous materials arising from sub-surface conditions discovered during construction of the Ballpark Project. The Redevelopment Agency shall be responsible for 100% of the cost of the premium for such a policy. The Padres shall pay 50% of the deductible, up to a maximum of \$250,000 for each occurrence under such insurance policy, and the Redevelopment Agency shall pay the balance of any such deductible.

The Implementation Agreement extends the MOU expiration date to September 28, 2000 (the termination of the MOU has since been further extended by additional agreement).

This summary is meant to merely highlight, generally, the major terms and conditions of the Implementation Agreement. This summary must be read in conjunction with the Implementation Agreement and does not constitute a change of any terms and conditions found in the Implementation Agreement or the MOU. Please refer to the complete Implementation Agreement for a discussion of the full terms and conditions evidencing the definitive agreement between the City and the Padres on these matters.

Second Ballpark and Redevelopment Project Implementation Agreement

The Second Ballpark and Redevelopment Project Implementation Agreement, dated as of November 30, 2001 (the "Second Implementation Agreement"), by and among the City, the Redevelopment Agency, the CCDC, and the Padres, (i) implements the purpose and intent of the MOU; (ii) modifies, in part, the rights and obligations of the parties as set forth in the MOU; (iii) increases the Redevelopment Agency's investment in the Ballpark Project to \$76.4 million, plus an additional amount of \$8.5 million for certain contingent expenses; (iv) accepts a guaranty from John Moores and the Padres; and (v) releases the City's first priority lien and security interest in the Franchise vested by the Security Agreement to the MLB Commitment; among other things.

¹ By mutual agreement, this insurance policy was deemed unnecessary and not procured.

Reaffirmation Agreement

The Reaffirmation Agreement, dated as of December 20, 2001 (the "Reaffirmation Agreement"), by and among the City, the Redevelopment Agency, CCDC and the Padres, reaffirms each party's intent to be bound by the MOU and related agreements.

TOT Guaranty Agreement

Dated as of December 20, 2001, the TOT Guaranty Agreement will provide for certain payments to the City if the Four Star Hotel is not opened and operating by April 2004 and will not become operative unless the Redevelopment Agency and JMIR extend the Disposition and Development Agreement for the development of the Four Star Hotel to and including December 31, 2003.

MLB Commitment

The Irrevocable Guaranty Agreement, dated as of February 1, 2002 (the "MLB Commitment") by MLB for the benefit of Wells Fargo Bank, National Association, in its capacity as custodian under the Custody Agreement (the "Custodian") is a commitment by MLB to fund up to \$45.8 million of the amount the Padres have committed to the Ballpark Project.

Guaranty

MLB guarantees to the Custodian, for the benefit of the Bond Insurer, that upon written demand made upon MLB on or after April 1, 2002, MLB will pay to the Custodian the amount by which the Padres and Padres Construction, L.P. ("Padres Construction") are obligated to pay to the Custodian (the "Required Deposit Amount") minus the aggregate amount previously received by the Custodian from or for the account of either or both the Padres or Padres Construction for deposit into the Padres Ballpark Investment Fund as established by the Ballpark Design/Build Procurement Consultant Agreement.

Termination

The MLB Commitment will terminate upon the first to occur of: (a) payment by MLB to the Custodian of the amount demanded by the Custodian or (b) receipt by the Custodian from or for the account of either or both of the Padres or Padres Construction of the Required Deposit Amount.

Custody Agreement

The Custody Agreement sets forth the agreement of the Parties regarding certain rights and obligations with respect to the deposit, investment and disbursement of funds in the Design and Construction Fund for construction of the Ballpark Project, together with certain other rights and obligations relating thereto to implement certain arrangements contemplated in Article VII of the Procurement Agreement. This summary does not purport to be complete or definitive and is qualified in its entirety by reference to the full terms of the Custody Agreement.

Engagement of the Custody Agent

(a) The City appoints the Custody Agent as agent and bailee for the purpose of receiving the funds from or on behalf of the City, Agency, Padres or PCL to be deposited in the Design and Construction Fund and holding, investing and disbursing such funds for and on behalf of the Parties per terms of the Custody Agreement. The Custody Agent agrees to hold said funds for such purpose, as agent and bailee.

(b) The Custody Agent will not be liable to any Party, except for gross negligence or willful misconduct in the performance of its obligations under the Custody Agreement.

(c) The Custody Agent may rely and will be protected in acting or refraining from acting in good faith upon any written notice, instruction or request furnished to it under the Custody Agreement and believed by it to be genuine and to have been signed and presented to it by the proper party.

(d) The Custody Agent will maintain the Design and Construction Fund in accordance with the terms of the Custody Agreement so long as it acts as the trustee under the Indenture. As compensation for its duties under the Custody Agreement, the Custody Agent will charge (i) an acceptable fee of \$250, due at the execution and delivery of the Custody Agreement and (ii) an annual administration fee of \$750, payable in advance, commencing on the execution and delivery of the Custody Agreement. In addition, the Custody Agent will be reimbursed for its out-of-pocket expenses.

(e) The Parties acknowledge that the Custody Agent is concurrently acting as Trustee under the Indenture. Notwithstanding anything contained in the Custody Agreement to the contrary, the Custody Agreement will not be construed to require the Custody Agent to do any act or omit to do any act contrary to or in violation of the duties or obligations of the Trustee under the Indenture.

Design and Construction Fund

The Custody Agent will establish and maintain the Design and Construction Fund which is comprised of the following segregated Sub-Funds to account for certain receipts and disbursements for the Ballpark project:

- (a) City 2002 Bond Financing Construction Fund;
- (b) City Cash Construction Fund;
- (c) Convention Center 1998 Arbitrage Construction Fund;
- (d) Horton 2000 Arbitrage Construction Fund;
- (e) Centre City 2001A Arbitrage Construction Fund;
- (f) City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund;
- (g) City Land Acquisition/Infrastructure Cash Fund;
- (h) Other Public Agency Investment Fund;
- (i) Padres Ballpark Investment Fund; and
- (j) Padres Land Acquisition/Infrastructure Investment Fund.

Deposit and Management of Funds

Deposits into the Design and Construction Fund.

Each of the City and the Padres will deposit funds (or cause funds to be deposited) with the Custody Agent for deposit into the Design and Construction Fund in the amounts and at the times set forth below. Such funds will be deposited into the Sub-Funds of the Design and Construction Fund as follows and Custody Agent will not commingle the funds in any such Sub-Fund with any other funds:

(A) On or prior to the date of the Custody Agreement, the sum of \$115,629,312.26 will be deposited by the City with the Custody Agent for deposit into the City 2002 Bond Financing Construction Fund;

(B) On or prior to the date of the Custody Agreement, the sum of \$1,539,940.44 will be deposited by the City with the Custody Agent for deposit into the City Cash Construction Fund;

(C) On or prior to the date of the Custody Agreement, the sum of \$6,870,000 will be deposited by the City with the Custody Agent for deposit into the Convention Center 1998 Arbitrage Construction Fund;

(D) On or prior to the date of the Custody Agreement, the sum of \$334,102 will be deposited by the City with the Custody Agent for deposit into the Horton 2000 Arbitrage Construction Fund;

(E) On or prior to the date of the Custody Agreement, the sum of \$35,846,352 will be deposited by the City with the Custody Agent for deposit into the Centre City 2001A Arbitrage Construction Fund;

(F) On or prior to the date of the Custody Agreement, the sum of \$4,679,128 will be deposited by the City with the Custody Agent for deposit into the City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund;

(G) Subsequent to the date of the Custody Agreement, the City may deposit funds with the Custody Agent for deposit into the City Land Acquisition/Infrastructure Cash Fund;

(H) Prior to the date of the Custody Agreement, the Padres caused the sum of \$2,743,249.57 to be deposited with the Custody Agent for deposit into the Padres Ballpark Investment Fund. On or prior to March 31, 2002, an additional sum of \$45,817,000 will be deposited by the Padres with the Custody Agent for deposit into the Padres Ballpark Investment Fund;

(I) On or prior to the date of the Custody Agreement, the Padres has caused the sum of \$10,280,000 to be deposited with the Custody Agent for deposit into the Padres Land Acquisition/Infrastructure Investment Fund; and

(J) Subsequent to the date of the Custody Agreement, when funds become available to the City for such purposes, the City will deposit the sum of approximately \$10,300,000 with the Custody Agent for deposit into the Other Public Agency Investment Fund. Thereafter, the City may deposit additional funds from time to time with the Custody Agent for deposit into the Other Public Agency Investment Fund.

(K) The City will cause the Trustee to deposit \$7,520,345 into the City 2002 Bond Financing Construction Fund upon the City's receipt of authorization by Ambac to release one-half of the debt service reserve funded by the City at the closing of the City Financing; provided, however, that if the City will be unable to deliver the certifications required by Ambac to authorize the release of said funds (the "Required Certifications") from the debt service reserve, the City will deposit \$7,520,345 into the City 2002 Bond Financing Construction Fund from other City funds upon the City's determination of its inability to deliver the Required Certifications.

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

During the course of the administration of the construction of the Ballpark Project and the funding thereof, it may be necessary, for administrative purposes, for the City to (i) reallocate funds from one Sub-Fund to another, (ii) divide an existing Sub-Fund into two or more Sub-Funds or (iii) establish additional Sub-Funds of the Design and Construction Fund. In such event, upon the request of the City, the Parties and the Custody Agent shall enter into an amendment of the Custody Agreement in form and substance reasonably acceptable to each of them in respect of any such reallocation, division or additional Sub-Funds.

All funds to be expended on the Ballpark Project by the City or the Padres after the date hereof pursuant to the Procurement Agreement and which funds are not designated per the terms of the Custody Agreement to be deposited into a Sub-Fund (i.e., amounts relating to cost overruns on Land Acquisition Costs, Infrastructure costs or Ballpark construction costs or the reconciliation of the same among the Parties), will be deposited by the applicable party with the Custody Agent for deposit into the applicable Sub-Fund or a new Sub-Fund, if applicable and agreed to by the Parties.

Investment of Funds in the Construction and Design Fund

The City has the right to direct the Custody Agent to invest funds on deposit in the City 2002 Bond Financing Construction Fund in Permitted Investments. The City has the right to direct the Custody Agent to

invest funds on deposit in the City Cash Construction Fund, the Convention Center 1998 Arbitrage Construction Fund, the Horton 2000 Arbitrage Construction Fund, the Centre City 2001A Arbitrage Construction Fund, the City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund, the City Land Acquisition/Infrastructure Cash Fund, the Other Public Agency Investment Fund and the Padres Land Acquisition/Infrastructure Fund in accordance with the terms of Section 7.03 of the Procurement Agreement by providing the Custody Agent with written investment instructions which shall state that the investment instructions contained therein comply with Section 7.03 of the Procurement Agreement and otherwise are in form and substance reasonably satisfactory to the Custody Agent. The Custody Agent has no obligation or responsibility to determine whether any investment instruction provided by the City complies with Section 7.03 of the Procurement Agreement and the Custody Agent has no liability hereunder in connection therewith.

The Padres and PCL have the right to direct the Custody Agent to invest funds on deposit in the Padres Ballpark Investment Fund in accordance with Section 7.03 of the Procurement Agreement by providing Custody Agent with written investment instructions which shall state that the investment instructions contained therein comply with Section 7.03 of the Procurement Agreement and otherwise are in form and substance reasonably satisfactory to the Custody Agent. The Custody Agent has no obligation or responsibility to determine whether any investment instruction provided by the Padres or PCL complies with Section 7.03 of the Procurement Agreement and Custody Agent has no liability hereunder in connection therewith.

The Custody Agent will deliver monthly reports to the Parties indicating the balances then on deposit in the Design and Construction Fund and the Sub-Funds and, if applicable, the investments that such funds have been invested in and the interest, earnings or returns on such investments.

The Custody Agent has no obligation to invest funds held in any Sub-Fund in any investment if the City, Padres or PCL, as applicable, shall fail to direct the Custody Agent in writing as to any such investment as provided in the Custody Agreement. The Custody Agent has no liability to any Party or any other Person (a) for any investment made at the direction of the City, Padres or PCL, as applicable, (b) for any reasonable delay in effectuating any investment direction, (c) for any failure of any investment to achieve an anticipated or targeted rate of return, or (d) for any taxes or fees incurred by reason of such investment, and the Party directing such investment shall promptly pay all such taxes and fees upon request by the Custody Agent. The City, Padres and PCL will protect, defend, indemnify and hold harmless the Custody Agent from and against any and all loss, cost, expense or damage that the Custody Agent may incur by reason of any of the matters described in the preceding sentence or otherwise relating to or arising out of the investment of funds in the Sub-Funds pursuant to Sections 3.02(b) or (c) of the Custody Agreement, except to the extent caused by the Custody Agent's gross negligence or willful misconduct. Upon demand therefor from the Custody Agent, each Party shall reimburse the applicable Sub-Fund of the Design and Construction Fund for all, losses arising out of investments that such Party has directed under Sections 3.02(b) or (c) of the Custody Agreement. Interest or dividends earned on the funds in a Sub-Fund will be retained in such Sub-Fund and will be disbursed by the Custody Agent with the other funds in such Sub-Fund in accordance with the terms of the Custody Agreement.

Except for the Security Interest in favor of the bond holders granted under the Financing Documents in respect of the funds in the City 2002 Bond Financing Construction Fund, neither any Party nor Custody Agent shall grant a Security Interest on the funds in the Design and Construction Fund or any Sub-Fund and any attempt to do so shall be null and void.

Order of Disbursement of Funds in the Construction and Design Fund

In respect of the order of disbursement of funds for the construction of the Ballpark facilities, (i) the funds deposited by the City or the Agency in the Sub-Funds of the Design and Construction Fund pursuant to subsections 3.02(a)(i)(A) through 3.02(a)(i)(E) of the Custody Agreement will be subject to disbursement, until such funds are exhausted, prior to the disbursement of the funds deposited by the Padres or PCL into the Padres Ballpark Investment Fund; (ii) thereafter, the funds deposited by or on behalf of the Padres or PCL into the Padres Ballpark Investment Fund shall be disbursed until such funds are exhausted; and (iii) thereafter, the funds deposited by the City into the Sub-Fund of the Design and Construction Fund pursuant to subsection 3.02(a)(i)(K) of the Custody Agreement will be disbursed until such funds are exhausted.

In respect of the order of disbursement of funds for Land Acquisition Costs and Infrastructure costs, (i) the funds deposited by the City or the Agency in the Sub-Funds of the Design and Construction Fund

pursuant to subsections 3.02(a)(i)(F) and 3.02(a)(i)(G) of the Custody Agreement will be subject to disbursement, until such funds are exhausted, prior to the disbursement of the funds deposited by the Padres or PCL into the Padres Land Acquisition/Infrastructure Investment Fund; and (ii) thereafter, the funds deposited by or on behalf of the Padres or PCL into the Padres Land Acquisition/Infrastructure Investment Fund shall be disbursed until such funds are exhausted.

The funds deposited with the Custody Agent for deposit into the Other Public Agency Investment Fund pursuant to subsection 3.02(a)(i)(J) of the Custody Agreement will be disbursed from time to time as instructed by the City.

Major League Baseball Guaranty

If on or prior to March 31, 2002, the Padres has not deposited the Guaranteed Amount into the Padres Ballpark Investment Fund as required pursuant to the second sentence of Section 3.02(a)(i)(H) of the Custody Agreement, promptly after April 1, 2002, the Custody Agent, with the prior consent of Ambac, will make a demand on MLB pursuant to and in accordance with the terms of the MLB Guaranty for funds in an amount equal to the difference between (i) the Guaranteed Amount and (ii) the total of the funds deposited by the Padres in the Padres Ballpark Investment Fund after the date of the Custody Agreement (excluding the \$2,743,249.57 deposited into said Sub-Fund on or prior to the date of the Custody Agreement). If MLB fails to deposit the funds demanded by the Custody Agent, the Custody Agent shall, at the direction of Ambac, take any and all necessary action, including legal proceedings, to enforce the terms of the MLB Guaranty, provided that in such event, as a condition to the Custody Agent's agreement to undertake any such action, the Custody Agent shall receive from Ambac such indemnification or other arrangements as the Custody Agent may reasonably require. Notwithstanding the foregoing, if on or prior to March 29, 2002, the Padres have delivered to the Custody Agent an Acceptable Letter of Credit with a face amount equal to the difference between (i) the Guaranteed Amount and (ii) the total of the funds deposited by the Padres in the Padres Ballpark Investment Fund after the date hereof (excluding the \$2,743,249.57 deposited into said Sub-Fund on or prior to the date of the Custody Agreement), the Custody Agent shall return the original MLB Guaranty to MLB and the obligations of MLB thereunder shall be released. At any time after the Guaranteed Amount has been deposited into the Padres Ballpark Investment Fund (whether deposited by the Padres or by a draw on the MLB Guaranty) the Padres will have the right to elect to have all or a portion of the funds then on deposit in the Padres Ballpark Investment Fund released to the Padres upon the delivery by the Padres to the Custody Agent of an Acceptable Letter of Credit with a face amount equal to the amount of the funds to be released from the Padres Ballpark Investment Fund.

Requests for Disbursements of Funds in the Design and Construction Fund

Funds in the Design and Construction Fund and the Sub-Funds thereof shall be disbursed by the Custody Agent as set forth below.

The Parties will comply with the disbursement procedures and requirements set forth in Section 7.05 of the Procurement Agreement. The City and the Custody Agent, in its capacity as Trustee under the Indenture, will comply with the procedures and requirements set forth in the Indenture for the disbursement of funds from the City 2002 Bond Financing Construction Fund. Once the City has processed a Request for Payment pursuant to Section 7.05 of the Procurement Agreement, funds from the Design and Construction Fund and the Sub-Funds thereof shall be disbursed by the Custody Agent only pursuant to a written request therefore signed by an authorized representative of the City in the form of either (i) Exhibit A attached to the Custody Agreement (in cases where the proceeds of the requested disbursement shall be delivered to or as directed by the Padres or PCL) or (ii) Exhibit B attached to the Custody Agreement (in cases where the proceeds of the requested disbursement shall be delivered to or as directed by the City, Agency or CCDC) (in either case, a "Request for Disbursement"). Each Request for Disbursement shall: (i) have attached as Exhibit 1 thereto a copy of the Request for Payment which is the subject of such Request for Disbursement and (ii) have attached as Exhibit 2 thereto, a completed Construction Fund Requisition as required by the Indenture if the subject Request for Disbursement calls for disbursement of funds from the City 2002 Bond Financing Construction Fund. The Custody Agent will promptly process each Request for Disbursement that complies with the foregoing requirements and will disburse funds in accordance therewith from the proper Sub-Fund of the Design and Construction Fund to the City, Agency or PCL, as applicable, to the extent such Sub-Fund has sufficient funds then on deposit therein, within three (3) business days after its receipt of such Request for Disbursement amounts; provided that if there are insufficient funds in any such Sub-Fund, the Custody Agent will disburse all funds therein and promptly thereafter provide written notice to the Parties of such

insufficiency. The Custody Agent has no obligation to verify the accuracy of any information contained in any Request for Disbursement or verify that the Request for Payment or Construction Fund Requisition attached thereto complies with the applicable Related Documents.

Upon receipt of any funds from the Design and Construction Fund, the Party receiving such funds shall promptly pay the appropriate vendors, contractor, consultants or other persons that performed the work or provided the materials that were the subject of respective Request for Disbursement, unless such amounts shall have already been paid. When such Party makes any such payments, it shall obtain (or cause its contractor to obtain) and provide copies to all Parties of executed original stop notice 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.

If, after the disbursement of funds in the Design and Construction Fund pursuant to all Requests for Disbursements submitted by the City and the delivery by the City to the Custody Agent of the Certificate of Completion, there are funds remaining in the Design and Construction Fund, all remaining funds in (i) the City 2002 Bond Financing Construction Fund, the City Cash Construction Fund, the Convention Center 1998 Arbitrage Construction Fund, the Horton 2000 Arbitrage Construction Fund, the Centre City 2001A Arbitrage Construction Fund, the City Ballpark 2002 Bond Financing Land Acquisition/Infrastructure Fund, the City Land Acquisition/Infrastructure Cash Fund and the Other Public Agency Investment Fund will be transferred by the Custody Agent pursuant to instructions provided by the City and (ii) all remaining funds in the Padres Ballpark Investment Fund and the Padres Land Acquisition/Infrastructure Investment Fund will be transferred by the Custody Agent pursuant to instructions provided by the Padres.

Conflict with Procurement Agreement or Indenture

With the exception of (i) the establishment of the Sub-Funds of the Design and Construction Fund as set forth in Section 3.01 of the Custody Agreement and (ii) the Design and Construction Fund deposit amounts described in Section 3.02(a) of the Custody Agreement, all conflicts between the interpretation of the Custody Agreement and the Procurement Agreement will be resolved in favor of the Procurement Agreement.

All conflicts between the interpretation of the Custody Agreement and the Indenture will be resolved in favor of the Indenture.

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APPENDIX E

BOOK-ENTRY SYSTEM

General. Initially, the 2002 Bonds will be delivered in definitive form. In the event the 2002 Bonds are converted to book-entry form, the Depository Trust Company, New York, NY ("DTC") will act as securities depository for the 2002 Bonds. The 2002 Bonds will be issued as fully registered certificates, without coupons, registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered 2002 Bond will be issued for the 2002 Bonds in the aggregate principal amount of each maturity, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

Purchases of 2002 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2002 Bonds on DTC's records. The ownership interest of each actual purchaser of each 2002 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2002 Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the 2002 Bonds, except in the event that use of the book-entry system for the 2002 Bonds is discontinued.

To facilitate subsequent transfers, all 2002 Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of 2002 Bonds with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2002 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2002 Bonds are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to Cede & Co. If less than all of the 2002 Bonds within an issue are being prepaid, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be prepaid.

Neither DTC nor Cede & Co. will consent or vote with respect to the 2002 Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2002 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal and interest with respect to the 2002 Bonds will be made to DTC. DTC's practice is to credit Direct Participants' accounts on a payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on a payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, the City or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the 2002 Bonds at any time by giving reasonable notice to the Authority or the Trustee, or the Authority may decide to discontinue use of the system of book-entry transfers through DTC. Under such circumstances, in the event that a successor securities depository is not obtained, certificates are required to be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority and the City believe to be reliable, but neither the Authority nor the City takes any responsibility for the accuracy thereof. The Authority and the City cannot and do not give any assurances that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (i) payments of interest, principal or premium, if any, with respect to the 2002 Bonds; (ii) certificates representing ownership interest in or other confirmation or ownership interest in the 2002 Bonds; or (iii) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the 2002 Bonds, or that they will do so on a timely basis or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Offering Document. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC Participants are on file with DTC.

Discontinuation of Book-Entry System; Payment to Beneficial Owners. In the event that the book-entry system described above is no longer used with respect to the 2002 Bonds, the following provisions will govern the payment, registration, transfer, exchange and replacement of the 2002 Bonds.

The principal with respect to the 2002 Bonds will be payable in lawful money of the United States of America upon presentation and surrender of the 2002 Bonds at the principal corporate trust office of the Trustee. Interest on the 2002 Bonds will be paid by the Trustee by check mailed to the person whose name appears on the registration books of the Trustee as the registered owner, and to that person's address appearing on the registration books as of the close of business on the last day of the month immediately preceding the Interest Payment Date.

Any 2002 Bond may be exchanged at the principal corporate trust office of the Trustee for a like aggregate principal amount of 2002 Bonds. A 2002 Bond may be transferred on the registration books by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of the 2002 Bond at the principal corporate trust office of the Trustee together with an assignment executed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Trustee. Upon such transfer, the Authority shall execute and the Trustee shall authenticate and deliver a new 2002 Bond of a like aggregate principal amount.

The Trustee shall not be required to register the transfer or exchange of any 2002 Bond (i) during any period commencing on the day which is five Business Days before the date on which 2002 Bonds are to be selected for redemption and ending on such date of selection; or (ii) which has been selected for redemption in whole or in part. For every transfer and exchange of the 2002 Bonds, the Trustee may charge the Beneficial Owner a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

APPENDIX F

ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSES AND OPINIONS

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APPENDIX F-1

ORRICK, HERRINGTON & SUTCLIFFE LLP LEGAL ANALYSIS AND OPINION RELATING TO LITIGATION INVOLVING A FORMER MEMBER OF THE SAN DIEGO CITY COUNCIL

February 15, 2002

City Council of the City
of San Diego, California

Re: Public Facilities Financing Authority of the City of San Diego
Lease Revenue Bonds (Ballpark Facility), Series 2002

Dear Ladies and Gentlemen:

We are acting as bond counsel in connection with the proposed issuance and sale by the Public Facilities Financing Authority of the City of San Diego (the "Authority") of \$169,685,000 aggregate principal amount of Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds (Ballpark Facility), Series 2002 (the "2002 Bonds"), pursuant to an Indenture, dated as of February 1, 2002 (the "Indenture"), between the Authority and a corporate trustee to be named therein as trustee (the "Trustee"). The Indenture provides that the 2002 Bonds are issued for the purpose of financing a portion of the cost of building a baseball park, a public park to be located adjacent to the ballpark, and certain other related land acquisitions, improvements and infrastructure (the "Ballpark Project"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

You have requested our opinion as to whether certain actions taken by the Council of the City of San Diego (the "City Council") and the Redevelopment Agency of the City of San Diego (the "Agency") with respect to contracts supporting the above-referenced 2002 Bonds, namely, the Site Lease, by and between the City of San Diego (the "City") and the Authority, the Ballpark Facility Lease by and between the City and the Authority, the Indenture, and the Assignment Agreement (collectively, the "Financing Agreements"), are sufficient to avoid a successful claim that the Financing Agreements are void or voidable under California Government Code section 1090 ("Section 1090") or San Diego City Charter section 94 ("Section 94"), all as more fully described herein.

We have delivered our final legal opinion as co-bond counsel (the "Final Bond Opinion") concerning the validity of the 2002 Bonds and certain other matters dated the date hereof and addressed to the Authority. With your permission, we incorporate herein all the assumptions and qualifications contained in the Final Opinion and apply all such assumptions and qualifications to the opinion expressed herein.

I. Introduction

On November 3, 1998, the voters of the City of San Diego approved Proposition C, which adopted an ordinance that authorized and directed the City to enter into the Memorandum of Understanding ("MOU") among the City, the San Diego Padres (the "Padres"), the Agency and the Centre City Development Corporation regarding the Ballpark Project. Following execution of the MOU and subsequent actions of the City, numerous lawsuits were initiated concerning the Ballpark Project.¹

¹ All but four of these lawsuits have been finally resolved.

II. Description Of Facts

After the passage of Proposition C and execution of the MOU, the City Council adopted numerous ordinances and resolutions, and Agency resolutions,² to implement the MOU and related development plans involved in the Ballpark Project. Among the actions taken by the City Council were certain ordinances and resolutions authorizing and approving the Financing Agreements and the 2002 Bonds. On January 31, 2000, the City Council adopted Ordinance No. 0-18747 and Resolution No. R-292697, which authorized the City to finance its portion of the Ballpark Project through lease revenue bonds. Specifically, Resolution No. R-292697 authorized the underwriting agreement related to the 2002 Bonds. Ordinance No. 0-18747 authorized the issuance by the Authority of up to \$299,000,000 in lease revenue bonds (i.e., the 2002 Bonds) and the four contracts necessary to issue the 2002 Bonds (i.e., the Financing Agreements).

Subsequently, information became public suggesting that a certain member of the City Council (the "Member"), had accepted certain gifts and favors from an owner of the Padres (the "Owner"), during the period of time in which the City Council took numerous actions related to the Ballpark Project, including the City Council's January 31, 2000 approval of the 2002 Bonds and the Financing Agreements. Based on this information, it was alleged by Ballpark Project opponents that the Member possessed a disabling conflict of interest with regard to City Council actions taken in furtherance of the Ballpark Project, and that as a result, all City Council actions, and the contracts authorized thereunder, including the Financing Agreements, were void as a matter of law. On January 29, 2001, the Member pled guilty to two misdemeanor violations of the Political Reform Act (Government Code section 87100 *et seq.*) and resigned the Member's seat on the City Council.³

On March 6, 2001, a newly constituted City Council adopted Ordinance No. 0-18927 and Resolution No. R-294638, and the Agency adopted Resolution No. R-03306 (the "Ratification Acts") (only 2 members of the 7 sitting members of the City Council⁴ who approved the Ratification Acts were members of the City Council when the Member participated in and voted on matters related to the Ballpark Project). By the Ratification Acts, the City Council purported to validate, ratify and approve as of the date of their original making the MOU (as an Agency contract), all prior City Council and Agency ordinances and resolutions related to Ballpark Project contracts, and those contracts and agreements previously authorized, including the Financing Agreements. Along with listing the specific ordinances and/or resolutions ratified, the Ratification Acts provided, in pertinent part:

WHEREAS, as authorized and directed by the Ordinance [Proposition C] and the MOU, the parties to the MOU, their officers, employees and agents, have, in good faith, undertaken certain administrative and non-legislative actions to implement the MOU, including, without limitation on the part of the City and Agency, the adoption of ordinances and resolutions which authorized certain contracts and agreements between some or all of the parties to the MOU, their agents, successors or assigns; and

WHEREAS, a question has arisen regarding the validity of the actions of the City and Agency authorizing contracts and agreements as a result of alleged conflicts of interest on the part of one member of the City Council, which body sits as both the City Council of the City and Board of Directors of the Agency; and . . .

WHEREAS, despite the opinion of the City as set forth above, and solely in order to put to rest any doubt about the validity of the action authorizing contracts and agreements, it is now appropriate for the City Council to validate and ratify any and all previous actions of the City which authorized contracts and agreements related to the Project. . . .

² The City Council sits as the Agency's governing board and is the body that adopts all Agency resolutions.

³ The Member's guilty plea did not involve the conflict of interest provisions pursuant to Government Code section 1090 or City Charter section 94. Rather, the Member pled guilty to violating the Political Reform Act for willful failure to report gifts in excess of the limits provided under that Act.

⁴ At the time of the approval of the Ratification Acts, there were two vacancies on the City Council, one occasioned by the Member's resignation, and the other occasioned by the election of a council member to a state-wide office.

BE IT ORDAINED,⁵ by the Council of the City of San Diego as follows:

Section 1. The following ordinances [Ordinances] are hereby re-adopted, validated or ratified as necessary to reaffirm their validity, and the validity of the contracts and agreements authorized by them, commencing with their respective times of adoption, and to effectuate their continuing validity, and the continuing validity of the contracts and agreements authorized by them: No 0-18747.

Section 2. All other official acts taken on behalf of the City as of the respective times of such actions, pursuant to authorization given by each of the Ordinances, and all other acts of the City, the City Council, and the City's officers, employees or agents implementing, related to or otherwise in furtherance of the Ordinance, MOU, the Project or any of the Ordinances, and to the maximum extent required by law, are hereby validated, ratified and approved, so as to declare their validity commencing with their respective times of adoption, and to effectuate their continuing validity. . . .

San Diego City Council Ordinance No. 0-18927, March 6, 2001. The Ratification Acts were adopted by unanimous vote of the City Council.

On March 7, 2001, the City and Agency filed a validation action pursuant to Civil Procedure Code section 860 *et seq.* (the "Litigation") specifically seeking to validate against a challenge under Section 1090 the Ratification Acts and all prior City actions approved by the Ratification Acts, including the 2002 Bonds and the Financing Agreements. In the validation action, the City sought to validate specific City actions and the contracts authorized thereunder "insofar as they are duly adopted and not subject to further challenge under Government Code section 1092." The matters sought to be validated included, among others, the ordinances and resolutions adopted by the City Council which authorized the Financing Agreements and the 2002 Bonds. The City asserted that regardless of any taint created by the Member's alleged conflict of interest on these and other prior City Council actions, the Ratification Acts served to validate the City's actions with regard to the Ballpark Project and to validate and reaffirm all contracts and agreements previously authorized pursuant to those City actions.

III. Analysis Of The Validity Of The Financing Agreements Under Sections 1090 and 1092 and Section 94.

This opinion addresses the validity of the Financing Agreements under Government Code sections 1090 and 1092, and San Diego City Charter section 94. It does not address the outcome of the Litigation or predict the context in which the opinions addressed herein may be presented to a court. A description of the proceedings involved in the Litigation is attached in Annex 1. Since this opinion only addresses the consequences of the actions taken by the City Council and the Agency in adopting the Ratification Acts as a means of preserving the validity of the Financing Agreements in the face of the alleged conduct by the Member, we do not address herein how a particular court would dispose of the Litigation.⁶

A. The Validity of the Financing Agreements Under Section 1090.

The Ratification Acts were adopted "solely in order to put to rest any doubt about the validity of the actions authorizing contracts and agreements" related to the Ballpark Project. Ballpark Project opponents created the doubt as to the validity of the City's actions based on the Member's alleged conflict of interest under

⁵ This is a recital from the Ratification Act which was a City Ordinance. The Ratification Act which was a resolution by the City Council contained substantially identical language but in a resolution format.

⁶ The City is being represented in the Litigation by the Office of the City Attorney for the City of San Diego (the "City Attorney") and Luce, Forward, Hamilton & Scripps, LLP. Our firm has not been involved in the Litigation and does not expect to be involved in any aspect of the Litigation. We have familiarized ourselves with the Litigation by undertaking the following measures: (1) Interviewed lawyers in the Office of the City Attorney and Luce, Forward, Hamilton & Scripps, LLP, who were responsible for the Litigation; (2) Reviewed the pleadings and authorities which the parties to the Litigation filed, or cited in documents filed, with the trial court; and (3) Reviewed the findings and opinion rendered by the trial court. We have not undertaken to verify independently, and have assumed, the accuracy of all factual matters with respect to the Litigation and the Ballpark Project.

Government Code sections 1090 and 1092, raising the possibility that the Financing Agreements potentially could be void due to the Member's participation in the Ballpark Project authorizations by the City Council.

1. Government Code Section 1090 and 1092.

Government Code section 1092 provides, in pertinent part:

Every contract made in violation of any of the provisions of Section 1090⁷ may be avoided at the instance of any party except the officer interested therein.

Cal. Gov't Code § 1092. The case law provides that contracts made in violation of Section 1090 are void, not merely voidable. See Thompson v. Call, 38 Cal. 3d 633, 646 n. 15 (1985) ("California courts have generally held that a contract in which a public officer is interested is void, not merely voidable."); Millbrae Ass'n for Residential Survival v. City of Millbrae, 262 Cal. App. 2d 222, 262 (1968) ("A contract or transaction entered into in violation of [Section 1090] is invalid."). Thus, with proof that the Member in fact possessed a prohibited financial interest under Section 1090, the Financing Agreements would have been void.

Moreover, under Section 1090, whether or not an official abstains from voting on a contract or from participating in discussions regarding a contract in which they are financially interested is irrelevant to its validity. Thompson, 38 Cal. 3d at 649 ("California courts have consistently held that the public officer cannot escape liability for a section 1090 violation merely by abstaining from voting or participating in discussions or negotiations."). Membership on a public body that adopts a contract may establish a presumption that the interested official participated in making the contract or influenced other members of the body to do so, despite the official's actual non-participation. Id. In short, a public body simply may not adopt a contract in which one of its members possesses a financial interest under Section 1090.

In the present situation, however, the Member resigned from the City Council prior to the City Council's March 6, 2001 adoption of the Ratification Acts. As such, the Ratification Acts were free from any potential taint created by the Member's prior conduct. Thus, unless the alleged taint created by the Member's participation in the City Council's original actions could not as a matter of law be cured by the Ratification Acts, the prior actions of the City Council and the contracts authorized thereunder, including the Financing Agreements, were validated and reaffirmed through the Ratification Acts adopted by the newly constituted City Council.

2. The Ratification Acts Validated the Financing Agreements Under Sections 1090 and 1092.

As noted above, the newly constituted City Council adopted the Ratification Acts on March 6, 2001, purportedly readopting, reaffirming and validating all prior City actions related to the Ballpark Project, and in particular the prior authorization of the Financing Agreements and 2002 Bonds. Controlling California case law supports the conclusion that the Ratification Acts effectively validated the Financing Agreements.

In Los Angeles Dredging Co. v. City of Long Beach, 210 Cal. 348 (1938), the California Supreme Court addressed the issue of whether a city could validly ratify a contract that was executed by its city manager without the prior authority of the city council. During a construction project originally awarded through competitive bidding, the city manager entered two oral contracts related to emergency situations that had arisen in the project. Los Angeles Dredging, 210 Cal. at 350-52. Under the Los Angeles City Charter, any emergency contract required the prior affirmative vote of five members of the city council. Id. at 358. At the time of the contracts, the city manager was therefore without authority to enter into such agreements and the contracts were unenforceable. Id.

⁷ Government Code section 1090 provides:

Members of the Legislature, state, county, district, judicial district, and city officers and employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Cal. Gov't Code § 1090.

Subsequently, the city council expressly confirmed the city manager's authority to enter the contracts and ratified the contracts in the manner required under the charter. Id. In rejecting the city's argument that the contracts could not be enforced, the Supreme Court explained:

The rule that a void municipal contract cannot be ratified is, as already pointed out, confined to contracts which are beyond the powers of the municipality, or those in which some prescribed formality has irrevocably been disregarded. Such contracts cannot be ratified for a twofold reason: Ratification must be based upon a previously existing power to make the particular contract; and ratification must be made in the manner prescribed for the making of such contract. [. . .]

[W]hile municipalities should receive the full protection of the limitations thus placed upon the doctrine of ratification, there is no reason why the doctrine should be repudiated where municipalities are concerned. And to repudiate the doctrine is, in effect, precisely what defendant asks this court to do. The contracts were of a type which the city undoubtedly had power to make. [. . .] The only requirement that did apply was that the city manager be authorized by resolution and affirmative vote of five members of the council. The resolution was ultimately adopted by such a vote. In other words, the contracts were within the power of the municipality, and the ratification was in the manner prescribed for the making of the contract. Upon such ratification the contracts became binding upon the city as fully as though they had been previously entered into in the prescribed manner.

Los Angeles Dredging, 210 Cal. at 359-60.

In the present situation, the Ratification Acts create the same validating effect under Section 1090. We have relied on the City's representation that each of the prior City ordinances, resolutions and contracts authorized thereunder related to the Ballpark Project were within the City's power to adopt, and that the Ratification Acts were duly adopted in the prescribed manner by which the City Council was required to adopt ordinances, resolutions and authorize contracts. In addition, the Ratification Acts were adopted by a newly constituted City Council without the potential taint from the Member's presence. Any taint created by the Member's alleged conflict of interest had been removed by her resignation prior to the time the Ratification Acts were adopted. For all these reasons, under Los Angeles Dredging, the Ratification Acts effectively reaffirmed and validated under Section 1090 prior City actions related to the Ballpark Project, including the City Council's authorization as to the 2002 Bonds and the Financing Agreements.

Similarly, in Baker v. City of Palo Alto, 190 Cal. App. 2d 744 (1961), the Palo Alto City Council adopted a contract pursuant to which the city would purchase property from private landowners. Baker, 190 Cal. App. 2d at 747. The city's action was challenged as violating the California Constitution and the Palo Alto City Charter. Id. The City Council subsequently placed the issue in front of the voters, who approved the contract by referendum. The city and the landowners thereafter reexecuted the contract. Id. at 748.

Plaintiffs in Baker argued "that the 'void' contract could not be reexecuted and the acts under it adopted," claiming that the "requisite dates of performance had passed" and that the city must perform all authorizing acts again from the beginning of the process. Id. at 756-57. The appellate court rejected this argument, stating:

We do not see the need for the ritual of reperformance. Upon the removal of the city's disability by the vote of the referendum, the city had full power to enter into the contract. [. . .] The city could, like any other party, retroactively adopt prior acts or fix retroactive dates of execution of the contract. [. . .] To require the parties to perform again the acts taken under the contract would be to call for idle and empty ceremonies.

Id. at 757. See Robbins v. Pacific Eastern Corp., 8 Cal. 2d 241, 278 (1937) ("Contracts which are illegal only because of the place or time of their making may be later adopted at places or times when or where they are not

unlawful.”). As in Baker, after the City’s “disability” had been removed by the Member’s resignation, the newly constituted City Council pursuant to the Ratification Acts effectively validated under Section 1090 each prior City action related to the Ballpark Project, including the Financing Agreements.⁸ See also Green v. City of Stuart, 81 F.2d 968 (5th Cir. 1936) (contract adopted when member of commission possessed financial interest in contract effectively ratified by commission after conflicted member resigned from position).

B. The Validity Of The Financing Agreements Under Section 94.

1. The Legal Effect of Section 94 is Identical to Section 1090.

City Charter section 94 provides:

No officer, whether elected or appointed, of the City of San Diego shall be or become directly or indirectly interested in, or in the performance of, any contract with or for the City of San Diego . . .

All contracts entered into in violation of this Section shall be void and shall not be enforceable against said City.

San Diego City Charter § 94. Although Section 94 closely mirrors Government Code sections 1090 and 1092, Section 94 does differ in some respects. First, Section 94 provides that any contract made in violation of the section is void. Section 1092 uses the phrase “may be avoided,” though because the case law has consistently interpreted section 1092 as voiding a contract, in effect there is no meaningful difference. See Thompson, 38 Cal. 3d at 646 n. 15.

Section 94 prohibits any “interest” in a contract, as opposed to a “financial interest” in a contract that is prohibited by Section 1090, which suggests that the category of disabling conflicts of interests encompassed under Section 94 may be broader than under Section 1090. Gov’t Code § 1090. Even assuming that to be the case, however, in the present situation the Member possessed a “financial” interest in the Ballpark Project-related contracts if the Member possessed any interest at all, thus again, this difference in language between the sections does not constitute a significant difference in effect.

Finally, Section 94 precludes any City officer from being interested “in, or in the performance of” any City contract. Section 1090 does not refer to “the performance” of a contract. Gov’t Code § 1090. Again, because the challenged City actions are related to the approval, authorization or making of contracts, as opposed to the actual performance of any contracts, the difference in language should be of no effect in the current context.

⁸ In Stigall v. City of Taft, 58 Cal. 2d 565 (1962), the California Supreme Court invalidated a municipal contract under Section 1090 despite the resignation prior to the adoption of the contract of the city councilman who possessed a prohibited financial interest. Stigall, 58 Cal. 2d 568-70. The Supreme Court reasoned that the councilman’s participation in the planning, preliminary discussions and compromises related to the contract violated Section 1090 and his resignation prior to the approving vote did not cure the violation. The situation in Stigall, however, is distinguishable in several ways. In Stigall, the councilman with the prohibited financial interest resigned only minutes prior to the approving vote and had fully participated in the discussion and approval process short of actually voting. Id. To hold that the councilman’s resignation immediately prior to the vote cured the defect created by his conflict of interest would exalt form over substance and eviscerate the policies underlying Section 1090. In contrast, the Member in the present situation resigned several months prior to approval of the Ratification Acts and did not participate in the discussions related to and the approval of the Ratification Acts. In addition, the Ratification Acts were adopted by a newly constituted City Council substantially comprised of members that had not participated in the prior approvals and were thus free of any potential taint or appearance of influence related to the Member. Moreover, prior to the adoption of the Ratification Acts, the issues related to the Ballpark Project and the Member’s conduct were heavily scrutinized by the San Diego media and political organizations, as well as within numerous judicial proceedings, which necessarily resulted in a careful and thorough evaluation of the issues by the newly constituted City Council prior to their approval of the Ratification Acts. And lastly, the Ratification Acts constitute the City Council’s affirmation of previously authorized acts (*i.e.*, the Ballpark Project and the related actions and agreements were approved twice), as opposed to the first and only approval of the city contract that was at issue in Stigall. For all of these reasons, Stigall is distinguishable from the present situation.

It should be noted that the Ratification Acts themselves were broad enough to apply to any potential conflict of interest encompassed by Section 94. Ordinance 0-18927 states:

WHEREAS, a question has arisen regarding the validity of the actions of the City and Agency authorizing contracts and agreements as a result of alleged conflicts of interest on the part of one member of the City Council, which body sits as both the City Council of the City and Board of Directors of the Agency; and . . .

WHEREAS, despite the opinion of the City as set forth above, and solely in order to put to rest any doubt about the validity of the action authorizing contracts and agreements, it is now appropriate for the City Council to validate and ratify any and all previous actions of the City which authorized contracts and agreements related to the Project.

Ordinance 0-18927, at 2.⁹ The enacting provisions of the Ratification Acts do not refer or limit their application in any way to Section 1090. As such, the reaffirmation as to any potential conflict of interest of the prior City ordinances, resolutions and contracts adopted thereunder, as embodied in the Ratification Acts, is applicable to a conflict of interest asserted pursuant to Section 94.

2. The Ratification Acts Validated the Financing Agreements Under Section 94.

Although there is no appellate court decision specifically holding that the legal effect of City Charter section 94 is identical to Government Code section 1090, one California appellate court has addressed a conflict of interest situation under both sections. In City Council v. McKinley, 80 Cal. App. 3d 204 (1978), the Fourth Appellate District examined an alleged conflict of interest regarding a city landscaping contract and found a disabling conflict of interest under both Section 1090 and Section 94. Although the suit apparently was brought only under Section 94, the court, having concluded that the contract violated Section 94, turned to Section 1090, explaining:

For the reasons stated above it is clear the proposed contract would also violate the provisions of Government Code section 1090. . . . The law of this state is that public officers shall not have a personal interest in any contract made in their official capacity. The charter provisions of the City of San Diego are in harmony with the established policy of this state in this regard . . .

The proposed contract violates San Diego City Charter section 94 as well as Government Code section 1090.

McKinley, 80 Cal. App. 3d at 213. The language of Section 94 substantially mirrors Section 1090 except as to certain portions which should not be significant in the present context. Based on the discussion in McKinley, and the fundamentally similar language and purpose of the two sections, Section 94 should be interpreted by a court as being legally identical in effect as Section 1090. As noted above, the Ratification Acts were broadly worded and would be applicable to a conflict of interest raised under both Section 1090 and Section 94. Because the Ratification Acts were adopted by a newly constituted City Council, free of any potential taint created by the Member's alleged conflict of interest, the ordinances, resolutions and contracts reaffirmed pursuant to the Ratification Acts, including the Financing Agreements, were effectively validated under Section 94 in the same manner as under Section 1090. See Section III.A.

OPINION

Although there is no case directly on point and the matter is not entirely free from doubt and accordingly there can be no assurance that a particular court would not hold otherwise, based on and subject to all of the foregoing, including the limitations and qualifications referred to herein, as of the date hereof, we are of the opinion that, if the matter were properly raised, briefed and presented to a court of last resort of competent jurisdiction, the court would hold that the Ratification Acts were sufficient to avoid a successful challenge asserting

⁹ The Ratification Acts that were resolutions contain identical language.

that the Financing Agreements were void or voidable under Government Code sections 1090 and 1092, and San Diego City Charter section 94 by virtue of any action taken by the Member. In this regard, we are aware of no conduct, prior events or any other circumstances (other than those specifically discussed herein or in another opinion delivered by us this date) that potentially could constitute a conflict of interest, or the appearance of a conflict of interest, with respect to the City officials involved in the approval or authorization of the Ballpark Project, the 2002 Bonds, the Financing Agreements or the Ratification Acts, and in this regard, we have relied upon the representation of the City, and therefore assumed, without investigation, that no such conflict of interest existed during any of the periods of time relevant herein with respect to any such City officials.

We note that a court's decisions regarding matters discussed herein would be based on the court's own analysis and interpretation of the factual evidence before the court and of applicable legal principles. Furthermore, it is our and your understanding that the opinion provided above is not intended to be a guaranty as to what the court would actually hold, but an opinion as to the decision of a court of last resort if the issues as to Section 1090 and Section 94 were properly raised, presented and argued to it and the court followed what we believe to be the applicable legal principles. The opinion set forth above is given as of the date hereof and we have undertaken no obligation to update this opinion or otherwise to advise you of any changes in law or any facts or circumstances that may hereafter occur or come to our attention that could affect such opinion. The analyses and conclusions above are premised upon, and limited to, the law and the facts in effect as of the date of this letter.

This letter is addressed to the City and is exclusively and entirely for its benefit in connection with the issuance of the 2002 Bonds.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per

Annex 1

The following outlines the factual and procedural background of the City of San Diego's (the "City") validation action entitled City of San Diego et al. v. All Persons Interested, et al., (San Diego County Superior Court Case No. GIC 763487) (the "Litigation") in which the City sought to validate, among other City actions and contracts, the Financing Agreements.¹

I. The Litigation.

On March 7, 2001, the City and Agency filed the Litigation, a validation action pursuant to Civil Procedure Code section 860 *et seq.* seeking to validate against a challenge under Government Code section 1090 the Ratification Acts and all prior City actions approved by the Ratification Acts, including the 2002 Bonds and the Financing Agreements. The City's prayer requested, in pertinent part:

3. That the Court find the Memorandum of Understanding among the City, Agency, CCDC, and Padres, LP and all other contracts and agreements to which Ordinance No. 0-18927, City Resolution No. R-294638, or Agency Resolution No. R-03306 apply are valid and binding agreements of City, Agency, and PFFA [the Authority] insofar as they are duly adopted and not subject to further challenge under Government Code section 1092. Without limitation, the following contracts adopted in City Ordinance No. 0-18747 will be valid and binding obligations of City and PFFA according to their respective terms: the Site Lease by and between City and PFFA pursuant to which City will lease to PFFA land acquired by Agency and conveyed to the City; the Ballpark Facility Lease between City as sublessee and PFFA pursuant to which City will lease back from PFFA the same land subject to the Site Lease (with improvements) and make Base Rental Payments in amounts sufficient to pay a debt service on lease revenue bonds to be issued by PFFA; the Indenture, by which the lease revenue bonds will be issued, and the Assignment Agreement, by which PFFA will assign certain of its rights under the Ballpark Facility Lease to the Indenture Trustee as security for the bonds.

4. That the Court find that all persons are hereby permanently enjoined and restrained from the institution of any action or proceeding challenging, among other things, the validity of Ordinance No. 0-18927, City Resolution No. R-294638, Agency Resolution No. R-03306 or any contract or agreement subject thereto.

Complaint, City of San Diego, et al. v. All Persons Interested, et al., San Diego County Superior Court, Case No. GIC 763478, at 3-4.² On March 8, 2001, the Superior Court issued its Order for Publication of Summons on Complaint for Validation, pursuant to which notice of the Litigation was published daily for three weeks in the San Diego Union Tribune as required under Government Code section 6063. A copy of the complaint, summons and Order for Publication of Summons also was served directly on J. Bruce Henderson, the attorney involved in numerous lawsuits challenging the Ballpark Project.

On April 16, 2001, Richard Rider ("Rider") filed a motion to quash service of summons challenging the sufficiency of the summons published by the City on grounds that it was too uncertain (i.e., did not state with sufficient specificity those matters to be validated) to be effective in conferring the trial court with *in rem* jurisdiction.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the attached opinion. See also note 6 in the attached opinion regarding the source of the information contained in this Annex 1.

² The City did not specifically seek to validate the Ratification Acts or the ordinances and contracts thereunder as to section 94.

On April 16, 2001, Harvey Furgatch ("Furgatch") filed a demurrer to the complaint and a motion to strike. Furgatch's motion to strike was limited to striking the City's prayer for costs against any person appearing to contest the validation action. Furgatch demurred to the complaint asserting that it was too uncertain to provide proper notice as to what matters were being validated, and that many of the City Council's actions occurred more than sixty days prior to the validation complaint and thus could not be validated beyond the sixty day statute of limitations pursuant to section 860 *et seq.*

On April 16, 2001, Edward Teyssier ("Teyssier"), represented by Bruce Henderson, answered the City's validation complaint. Teyssier asserted fourteen affirmative defenses challenging the efficacy of the complaint and the City Council's actions sought to be validated thereunder on grounds, among others, of noncompliance with environmental requirements, disclosure violations under the San Diego City Charter, uncertainty of the summons, and the alleged conflict of interest possessed by the Member under both section 1090 and San Diego City Charter section 94.³

The City and Agency responded to each of the pleadings described above. Of note, the City demurred to and moved to strike in part Teyssier's answer, attacking six of the affirmative defenses advanced by Teyssier. These defenses were attacked as irrelevant and beyond the narrow scope of the City's validation action – that the Ratification Acts and the City Council actions and contracts authorized thereunder were not subject to challenge under Government Code section 1090 based on the Member's alleged conflict of interest.

On May 31, 2001, the City and Agency moved for summary judgment on their validation complaint. The City argued on summary judgment that the Ratification Acts immunized from attack under section 1090 all prior City Council actions and the contracts authorized thereunder by approval and ratification of such matters by an untainted City Council. Free from any alleged conflict of interest, and reaffirmed as of the date of their original approval, the City argued that all of the acts taken by the City Council to implement the Ballpark Project, including approval of the 2002 Bonds and the Financing Agreements, could not be subject to invalidation based on an alleged violation of section 1090 by a former city council member.

Following the trial court's overruling of his demurrer (noted below), on June 27, 2001 Furgatch filed a cross-complaint against the City and Agency asserting violations of San Diego City Charter section 94, as well as another cause of action under section 1090. Like section 1090, San Diego City Charter section 94 prohibits city officials, including City Council members, from being directly or indirectly interested in any City contract or the performance thereof, and expressly voids any contract entered into in violation of this section. Furgatch alleged that the Member's conduct as to the gifts and favors from an Owner violated section 94, and that as a result all City Council actions and the contracts authorized thereunder during the period of time the Member was involved in Ballpark Project related approvals were void.

Due to the procedural timing in the Litigation, the City's first motion for summary judgment did not address Furgatch's cross-complaint. Subsequently, on July 6, 2001, the City moved for summary judgment as to Furgatch's cross-complaint.

II. The Trial Court Outcome

On May 24, 2001, the trial court denied Rider's motion to quash service of summons. Rider subsequently failed to file a pleading responsive to the complaint, and his default was entered on June 13, 2001. The trial court entered the default of "all persons interested" on June 11, 2001, as a procedural matter confirming judgment against all persons who did not answer the validation complaint. On June 20, 2001, the trial court overruled Furgatch's demurrer to the complaint. The trial court granted the City's motion to strike the six challenged affirmative defenses asserted by Teyssier in his answer.

On June 28, 2001, following a hearing on the matter, the trial court issued its decision granting the City's motion for summary judgment on its validation complaint. The trial court found that the Ratification Acts effectively ratified and reaffirmed against attack under section 1090 each of the City Council's ordinances and resolutions, as well as all of the contracts and agreements authorized pursuant to those City actions, related to the Ballpark Project. The trial court stated, in part:

³ The Padres also answered the complaint, stating their desire to participate in the matter but that they supported, rather than contested, the validation of the City's actions and contracts.

THE COURT FINDS PLAINTIFFS PROPERLY AND LEGALLY RATIFIED THE ACTS OF THE PRIOR CITY COUNCIL BY "READOPTING" THE SUBJECT CONTRACTS, RESOLUTIONS AND ORDINANCES BY THE NEW CITY COUNCIL, ABSENT VOTES FROM [THE MEMBER]. BECAUSE [THE MEMBER] IS THE SUBJECT OF THE ALLEGED CONFLICTS OF INTEREST UNDER GOVERNMENT CODE SECTIONS 1090 AND 1092, RE-ADOPTING THE FORMER COUNCIL'S ACTIONS AS TO EACH CONTRACT, RESOLUTION, AND ORDINANCE EFFECTIVELY AMELIORATES ANY ALLEGED TAIN SPECIFICALLY RELATING TO [THE MEMBER]. [. .]

ESSENTIALLY, THE COURT IS RULING ON THE VALIDATION OF ALL CONTRACTS, RESOLUTIONS, AND ORDINANCES RE-ADOPTED BY THE NEW CITY COUNCIL, WITHOUT ANY TAIN FROM CIRCUMSTANCES SURROUNDING [THE MEMBER]. THE COURT'S RULING HEREIN WOULD PRECLUDE ANY FUTURE CHALLENGE TO THE SUBJECT ACTIONS BASED ON THE VALIDITY OF THOSE CONTRACTS AND ANY CONFLICT OF INTEREST AS TO [THE MEMBER].

Trial Court Ruling After Hearing, June 28, 2001, J. McConnell, presiding. The trial court entered judgment on June 29, 2001, in which it declared twenty-seven specific City actions taken to implement the Ballpark Project, as well as each contract and agreement related to or authorized by those City actions, including the MOU and the Financing Agreements, to be valid and binding and not subject to further attack under section 1090. The judgment further provided:

All Persons and defendants Rider, Teyssier, and Furgatch are hereby permanently enjoined and restrained from the institution of any action or proceeding challenging the validity of the Ratification Acts or, as to any claim based on Government Code section 1090 to 1092, the Downtown Redevelopment Contracts.⁴

Trial Court Judgment, entered June 29, 2001, J. McConnell, presiding. The judgment specifically excepted from its scope Furgatch's cross-complaint.

On August 9, 2001, the trial court granted the City's motion for summary judgment as to Furgatch's cross-complaint. The trial court ruled that because Furgatch sought only to invalidate the MOU and the subsequent City actions in furtherance thereof, as opposed to the Ratification Acts, Furgatch's cross-complaint was barred as untimely under the 60 day statute of limitations provided under the validation statutes. *See* Cal. Civ. Proc. Code §§ 862, 869. It was undisputed that the City's last act in furtherance of the MOU occurred on December 12, 2000, thus the 60 day limitations period expired on February 10, 2001, well before Furgatch filed his cross-complaint. Accordingly, the trial court concluded Furgatch's attack of such actions was untimely, and granted the City's motion for summary judgment.

On July 26, 2001, Teyssier filed a Notice of Appeal as to the trial court's ruling granting the City's motion for summary judgment as to its validation complaint. On September 6, 2001, Furgatch filed a Notice of Appeal as to the trial court's ruling granting the City's motion for summary judgment on his cross-complaint.

⁴ The "Downtown Redevelopment Contracts" are defined in the judgment as those twenty-seven contracts in furtherance of the Ballpark Project.

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APPENDIX F-2

ORRICK, HERRINGTON & SUTCLIFFE LLP
LEGAL ANALYSIS AND OPINION RELATING TO THE ISSUES RAISED IN
SIMMONS V. SAN DIEGO, ET AL.

February 15, 2002

Public Facilities Financing Authority
of the City of San Diego

City Council of the City
of San Diego, California

Re: Public Facilities Financing Authority of the City of San Diego
Lease Revenue Bonds (Ballpark Facility), Series 2002

Dear Ladies and Gentlemen:

We are acting as co-bond counsel in connection with the proposed issuance and sale by the Public Facilities Financing Authority of the City of San Diego (the "Authority") of \$169,685,000 aggregate principal amount of Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds (Ballpark Facility), Series 2002 (the "2002 Bonds"), pursuant to an Indenture, dated as of February 1, 2002 (the "Indenture"), between the Authority and a corporate trustee to be named therein as trustee (the "Trustee"). The Indenture provides that the Bonds are issued for the purpose of financing a portion of the cost of building a baseball park, a public park to be located adjacent to the ballpark, and certain other related land acquisitions, improvements and infrastructure (the "Ballpark Project"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture or in the Offering Document dated February 14, 2002, relating to the 2002 Bonds (the "Offering Document").

On December 6, 2001, following a number of actions taken by the City Council of the City of San Diego (the "City") on November 20, 2001, and by the Public Facilities Financing Authority of the City of San Diego ("PFFA") on November 29, 1991, relating to the 2002 Bonds (collectively, the "November Resolutions"), an action was brought entitled *Simmons v. City of San Diego, et al.*, San Diego County Superior Court (Case No. GIC 779299) (hereinafter, the "Action" or the "Litigation"). The title of the Action as described in the Complaint is "Complaint To Invalidate Public Action; To Prevent The Unlawful Expenditure Of Public Funds; For Injunction And Declaratory Relief." The Litigation was brought pursuant to the Validation Law, California Code of Civil Procedure (the "Code") Section 860 et seq., and, alternatively, as a taxpayer action pursuant to Section 526a of the Code.

The original complaint filed in the Action was amended on December 24, 2001 by a First Amended Complaint which added causes of action relating to the matter described below under "Introduction and Background -- CCDC Director Matter." The First Amended Complaint is hereinafter referred to as the "Complaint." The Complaint alleges that by virtue of a variety of actions taken by the City Council involving changes to the rights and duties of the parties to the MOU, as hereinafter defined, relating to the Ballpark Project, which were required by the MOU to have been submitted to the voters of the City for consideration and they were not, and the relationship between a Director ("Director") of Centre City Development Corporation ("CCDC") and the Padres, L.P. ("Padres"), which will occupy the Ballpark Project, as described below, the court (a) declare the November Resolutions, all the contracts and agreements referred to therein and all proceedings incident thereto taken or made for or in any way connected with the November Resolutions, invalid, null and void; (2) declare that any expenditure of funds, as authorized by the November Resolutions, is illegal and, to the extent made, should be repaid; (3) issue a temporary restraining order, preliminary injunction and permanent injunction, enjoining the City, the City Manager, the Authority and others from any and all acts in furtherance of the November Resolutions,

including, without limitation, the sale of the 2002 Bonds and the disbursement of the proceeds of such sale; and (4) declare that the November Resolutions are, due to their illegality, invalid, null and void.

Introduction And Background.

On November 3, 1998, the voters of the City approved Proposition C, an ordinance that authorized and directed the City to enter into the Memorandum Of Understanding (the "MOU") among the City, the Redevelopment Agency of the City of San Diego (the "Agency"), the CCDC and the Padres (collectively, the "Parties").

After the passage of Proposition C, the Parties executed the MOU. The MOU was executed by the City Manager on behalf of the City (as authorized and directed by the Ordinance approved by Proposition C (the "Ordinance")), the Executive Director of the Agency on behalf of the Agency (as authorized by an Agency resolution), the President of CCDC on behalf of CCDC (as authorized by a CCDC resolution), and the President and CEO of the Padres on behalf of the Padres. Pursuant to the terms of the MOU, the MOU became effective with the execution by the Parties. The MOU provided that it would expire on March 31, 2000 unless otherwise agreed in writing by the Parties or certain conditions subsequent were deemed satisfied pursuant to the terms of the MOU, which were found by the City Council to be satisfied on March 31, 1999. It has been extended a number of times since then, most recently to February 19, 2002.

November Resolutions. The November Resolutions which the City Council adopted provided for a number of things including the following: (1) accepted a revised plan of finance for the Ballpark Project containing a variety of changes that had occurred since approval of the MOU, and approved the Offering Document; (2) approved a continuing disclosure agreement, in which the City agreed to file certain information regarding the City and the 2002 Bonds with nationally recognized municipal securities information repositories; (3) authorized the City Manager to enter into a contract of purchase with the Underwriter under which the Underwriter is purchasing the 2002 Bonds from the Authority and to take all action necessary to consummate the lawful issuance of the 2002 Bonds and disbursement of proceeds; (4) approved an agreement which among other things, authorized the release by the City of its lien on the Padres' Major League Baseball Franchise, so that Major League Baseball ("MLB") could be provided with such a lien to secure any advances by it under a guaranty by MLB of the deposit by the Padres by April 1, 2002, of not less than \$47.6 million into the Design and Construction Fund, authorized the acceptance of a guaranty from the parent company of the Padres in return for the Padres being able to assign certain of its rights under the Joint Use and Management Agreement so as to accommodate financing by the Padres of its share of the Ballpark Project and part of the ancillary development, and authorized acceptance of the TOT Guaranty; (5) authorized an expenditure on the Ballpark Project of proceeds from the repayment of a loan by the City to the Agency, which loan was initially made by the City from a variety of sources including gasoline tax revenues; (6) authorized the City Manager and City Auditor/Comptroller to appropriate and expend funds from sources identified at their discretion (subject, in the case of the City, to not exceeding the \$225 million limit on Ballpark Project expenditures) to acquire land and construct the Surface Parking Lots if the San Diego Unified Port District were unable to do so, and to modify the scope of the program for such improvements if the total available funds are less than \$21.0 million (the current expected cost of such program.) Finally, the Authority's November Resolution approved the Offering Document, the contract of purchase with the Underwriter referenced above and the continuing disclosure agreement referenced above.

CCDC Director Matter. According to a Report of the City Attorney of the City, dated December 13, 2001, facts had come to light suggesting that the Director had a business relationship with the Padres pursuant to which the Director purchased at wholesale various items of Padres' merchandise for resale in the Director's retail business. The business relationship apparently existed during the period of time in which CCDC was involved in planning and development of the Ballpark Project, approved execution of the MOU and approved extensions of the MOU. According to the Report, the Director was a CCDC director from May 1993 to 1999 and again from December 2000 to present, and his current term expires in May 2003. Based on these facts, the issue arose as to whether the Director possessed a disabling conflict of interest with regard to actions taken in furtherance of the MOU and that as a result the MOU and the Ballpark Project-related agreements were potentially void or voidable.

In December 2001, the Director and the Padres exchanged letters (the "Letter Exchange") pursuant to which the Director terminated the business relationship with the Padres and the Padres agreed not to enter into any further business relationship with the Director. Also in December, 2001, each of the governing bodies of the City, the Agency, the Authority and CCDC adopted resolutions reaffirming their commitment to the implementation

of the MOU and reaffirmed so as to ratify their efficacy as of the date of their original making, and continuing through the present and thereafter, all prior City, Agency, CCDC, Authority and Padres' actions taken under, in furtherance or effectuation of, and reliance on the MOU pursuant to any agreement, or amendment to any agreement, between two or more Parties to the MOU. In addition, each of the City, the Agency, CCDC and the Padres entered into a Reaffirmation Agreement dated as of December 1, 2001 pursuant to which each entity reaffirmed its continuing intent to be bound by the MOU and agreements executed and delivered in furtherance or effectuation thereof or in reliance thereon and declared its intent that all rights and duties thereunder should extend from the respective effective times of the MOU and each such agreement, and run thereafter since that time until the present, and hereafter. (Collectively, the Reaffirmation Agreement and the adoption of the foregoing resolutions are herein called the "Restoration and Ratification Events.")

Specific Complaint Allegations.

The specific nature of the material alleged claims stated in the Complaint are, in summary, as follows:

(1) That the City materially modified the MOU in a manner requiring voter approval by relieving the Padres from the Ancillary Development obligation of building 400,000 gross square feet of office complex and 50,000 square feet of retail space and, all as described in the Manager's Report, as hereinafter defined, replacing that with the obligation to build substantially fewer square feet of office space, a modest amount of increase of retail square footage and a number of residential units, not contemplated in the MOU;

(2) That the initial plan of finance of the City, prepared at the time the MOU was approved, relied upon the construction of a 1,000 room hotel on property of the District (the "Campbell Shipyard Hotel"), that the City received previous assurances that the same would proceed, but on November 20, 2001, the date of adoption by the City Council of its November Resolutions, the City had no sufficient assurances in that the revised plan of finance gave no effect to receipt of transient occupancy taxes ("TOT") from the Campbell Shipyard Hotel;

(3) That the City waived the obligation of the Padres to provide sufficient assurances to build 850 additional hotel rooms, as a consequence of which the City reduced the likelihood that the hotels will ever be built and that the City will ever realize TOT therefrom;

(4) That the City "abandoned" a commitment obtained under the MOU from the Padres to make payments to the City of up to \$2 million a year for up to ten years (with an overall cap of \$8 million) if certain levels of TOT were not achieved, and replaced that commitment with a guaranty "whose protections are substantially inferior";

(5) That the lien which the City obtained on the Padres' Major League Baseball franchise was being released in violation of the MOU which does not permit its release until \$50 million of the Padres' funds have been deposited in the Design and Construction Fund for the Ballpark Project;

(6) That the contingent commitment of the City to expend up to \$21 million toward the Surface Parking Lots violated the MOU, even though the City expressly limited its obligation to staying within the "Ballpark Cap" of \$225 million;

(7) That other amendments to the MOU of which the Plaintiff was not aware also required voter approval and after discovery by the Plaintiff, the Plaintiff would amend the Complaint to so state; various alleged modifications to the MOU were not manifested in an appropriate writing; the various alleged modifications to the MOU in the aggregate required voter approval, if not individually; and the ballot question for Proposition C limited the City's source of funds for its contribution to the Ballpark Project; and

(8) That by virtue of the facts described above under the caption "CCDC Director Matter" above there was created a prohibited personal financial interest in Ballpark Project-related agreements on which the Director voted, and other Ballpark Project-related agreements, in violation of California Government Code Sections 1090 and 1092 (the "Conflicts Law"), and Section 94 of the City Charter ("Section 94") and therefore voided such agreements and other Ballpark Project-related agreements; that by virtue of the Director's conflict of interest, all of the November Resolutions and all contracts and agreements referred to therein and all proceedings incident thereto taken for or in connection with the November Resolutions were without legislative authority, illegal and improper,

and, that any expenditure of funds authorized by the November Resolutions was illegal. The Conflicts Law prohibits, among others, members of a governing body of a local agency (which has been construed to apply to CCDC) from having a prohibited financial interest in contracts made by them in their official capacity or any body of which they are members. The Conflicts Law also provides that any contract made in violation of the prohibition section may be voided at the instance of any party except "the officer having an interest in the contract." Section 94 has a similar provision.

Other Allegations.

Finally in January of 2002, another person appeared and alleged (the "Other Allegations") that due to the changes in the ancillary development obligations of the Padres described above, additional compliance by the City was needed with respect to the California Environmental Quality Act ("CEQA") before the adoption of the November Resolutions, the actions authorized under the November Resolutions required voter approval under the MOU, and that by virtue of the insurance policy of the Bond Insurer the City is somehow obligated to independently repay the Bond Insurer should the 2002 Bonds be declared invalid, in violation of the MOU.

Actions Taken By Trial Court.

As noted above, Plaintiff brought the Action as a "taxpayer's action" and as a "validation action" pursuant to the Validation Law. The basis of a court's jurisdiction in a taxpayer's action is the appearance of the parties (i.e. personal jurisdiction). The basis of a court's jurisdiction under the Validation Law is *in rem*, which in part is established by the newspaper publication of a summons pursuant to Government Code section 6063. The published summons must state a specified date on or before which interested persons who wish to be heard must appear and file a responsive pleading (a "return date"). On December 31, 2001, the Trial Court issued its Order for Publication of Summons. Pursuant to the Trial Court's order, the return date to be contained in the summons was specified as February 15, 2002. The summons which was in fact published stated that the return date was February 8, 2002. Publication of the summons was under the exclusive control of the Plaintiff.

The City sought a trial date in the Action as a taxpayer's action of January 28, 2002, to which the Plaintiff objected. The Plaintiff sought a trial by jury and sought more time to prepare. The Trial Court rejected both of these requests.

On January 28, 2002, a trial was scheduled on the merits. After the Trial Court denied the Plaintiff's renewed motion for a continuance, the Plaintiff and his counsel left the courtroom and the City elected to proceed with the case to a judgment on the merits subject to "proving up" its position. After a trial, the Trial Court concluded, and entered a Judgment on January 30, 2002 (the "Judgment"), that there was substantial evidence to support findings by the City Council that none of the actions complained of which are described in clauses (1) through (7) above constituted changes to the MOU which required voter approval, there was no evidence presented as to alleged previously unknown modifications to the MOU, and the ballot question for Proposition C did not limit the City's source of funds for its contribution to the Ballpark Project.

With respect to the CCDC Director Matter, the Trial Court found and so stated in the Judgment that the complaint failed to state violations of the Conflicts Law and Section 94 in that either the alleged conflicts were too remote to be such a conflict or the Restoration and Ratification Events cured any possible violations.

With regard to the Other Allegations, the Trial Court found and so stated in the Judgment that the alleged requirement to comply with CEQA was incorrect in that the November Resolutions and the documents approved therein involved financial transactions that had no direct or indirect environmental impact and that nothing contained in the November Resolutions or the agreements approved by the November Resolutions made a commitment to a specific project within the Ancillary Development that would currently require environmental review. Finally, the Trial Court found and so stated in the Judgment that there was no evidence in the record that the City Council had entered into or intends to enter into any agreement with the Bond Insurer imposing any independent obligation on the part of the City to make payments if the 2002 Bonds are declared invalid.

Post Trial Actions

On February 8, 2002, after the close of business of the Trial Court, the City obtained a validation action judgment from the Trial Court (the "Second Judgment"), in which the Trial Court concluded that the

published summons with a February 8, 2002 return date complied with applicable law, provided due notice to all persons interested, and validly established February 8, 2002 as the date by which any interested person was required to appear and file a responsive pleading. Because no other persons had appeared, the Trial Court entered the Second Judgment. In the Second Judgment, the Trial Court also incorporated by reference the Judgment entered on January 30, 2002, including its findings and conclusions in the Judgment.

The City has advised us that on February 8, 2002, apparently before the City obtained the Second Judgment, another person (the "Simmons Supporter") sought to file with the Trial Court a pleading which contained allegations which were the same as those contained in the Complaint in Simmons and the Other Allegations, but the Office of the Clerk of the Court rejected the filing based upon the existence of the Judgment (the "Rejected Pleading"). The City has indicated that it is not aware of any attempt made by the Simmons Supporter to obtain leave from the Trial Court to file the Rejected Pleading or other comparable relief.

ANALYSIS

I. General.

You have requested our opinion, in the context of the Litigation, of the effectiveness of the November Resolutions, and the Restoration and Ratification Events and the consequences of the allegations under "Other Allegations" above when considered on the merits by a Court of Appeal, as a court of last resort. We are not considering or analyzing any procedural issues raised in the Litigation such as a right to a jury trial, the request by the Plaintiff for which was denied, the request by the Plaintiff for a continuance, which request was denied, or the request by the Plaintiff to engage in discovery, which request was denied, or issues related to the perfection of jurisdiction under the Validation Law, including a discrepancy in the date ordered by the Trial Court, and the date actually appearing in the Summons, by which interested persons must appear and file a responsive pleading, or issues related to the Rejected Pleading or the consequences of its possible subsequent filing with the Trial Court.

We have familiarized ourselves with the Litigation by taking the following measures:

- (1) interviewed lawyers who are responsible for the Litigation in the law firm of Luce, Forward, Hamilton & Scripps LLP and the Office of the City Attorney of the City;
- (2) reviewed the pleadings and authorities which the Parties to the Litigation have filed and cases cited in documents filed, with the Trial Court;
- (3) reviewed the Public Agency Record (the "Administrative Record") submitted by the City and accepted into evidence by the Trial Court;
- (4) reviewed the findings and opinions rendered by the Trial Court; and
- (5) undertaken our own independent research of the law which we believe applicable to the Litigation.

We have not undertaken to verify independently, and have assumed, the accuracy of all factual matters with respect to the Litigation, including factual matters contained in the Administrative Record, and have relied exclusively on the Judgment of the Trial Court as to factual findings. Further, we have assumed that in the event the Simmons Supporter is able to have the Rejected Pleading reinstated in the Litigation, in any trial or other disposition of the issues raised in the Rejected Pleading, the Trial Court will make the same findings as it did in the Judgment and Second Judgment or such findings are otherwise determined to be lawfully binding on the Simmons Supporter. No opinion is expressed herein as to the outcome if the facts and statements contained in the pleadings are amended or modified in the Trial Court or on or after appeal.

This opinion is limited to actions which may be taken by a court of last resort in its review on the substantive merits of the Judgment entered by the Trial Court in the Litigation. Further, as noted above, this opinion does not consider or analyze any procedural issues or certain jurisdictional issues raised in the Litigation. Should the Court of Appeal remand this matter to a Trial Court for further proceedings, no opinion is expressed herein regarding what may occur in a Trial Court on remand, or thereafter. Further, we incorporate all assumptions and

qualifications in our final legal opinion of even date concerning the validity of the 2002 Bonds and apply the same (except for the qualification therein relating to the Litigation) to the opinion expressed herein to the extent relevant.

II. The Challenge To The November Resolutions Under The Voter Approval Requirements Of The MOU.

A summary of the pertinent provisions of the November Resolutions are set forth below in the following table.

| Resolution No. | Description of Action |
|---|---|
| R-295760 | Accepted the terms of a new Plan of Finance for the Ballpark Project; approved a preliminary disclosure document for the Bonds and authorized the City Manager to prepare a final disclosure document in connection with the issuance and sale of the Bonds. |
| R-295761 | Authorized the City Manager to enter into a Restated Contract of Purchase among the City, the Authority and the prospective Underwriter (Merrill Lynch) of the Bonds and to take all action necessary to consummate the lawful issuance of the Bonds and the disbursement of proceeds. |
| R-295762 | Approved a continuing disclosure agreement, which related to the City's obligation to file certain information regarding the City and the Bonds with national securities repositories. |
| R-295763 | Authorized the City Manager to negotiate the assignment of certain rights and obligations of Padres under the Joint Use and Management Agreement under which the Padres will occupy the Ballpark Project, so as to accommodate financing by the Padres; authorized the acceptance of a guaranty from the parent company of the Padres in connection with the assignment; approved Second Ballpark and Redevelopment Project Implementation Agreement; authorized the acceptance of a transient occupancy tax guaranty in the form attached to the Resolution. |
| R-295766 | Authorized the expenditure on the Ballpark Project of proceeds of the repayment of loan by the City to the Agency, which loan was made in part from gasoline tax revenues of the City. |
| R-295767 | Authorized the City Manager and City Auditor/Comptroller to appropriate and expend \$7 million from the general fund of the City and deposit the same in the Design and Construction Fund for the Ballpark Project. |
| R-295768 | Authorized the City Manager and the City Auditor/Comptroller to appropriate and expend funds from sources at their discretion, to acquire land and construct four surface parking lots in the event the San Diego Unified Port District is unable to purchase the same from the City for \$21 million. |
| FA-2002-5 (of the Board of Commissioners of the Authority) | Approved the form of preliminary and final offering document, Restated Contract of Purchase among the Authority, the City and Merrill Lynch for the sale of the Bonds and approved the continuing disclosure agreement approved by the City Council. |

As a consequence of the adoption of the November Resolutions, the Plaintiff alleged that there were manifest a number of violations of the voter requirements relating to MOU amendments.

A. The Appropriate Legal Standard Is Substantial Evidence Review.

1. The City Council Found That The November Resolutions Did Not Constitute A Material Adverse Change Requiring Voter Approval.

In the primary charging allegations of the Complaint, Paragraphs 27.A through 27.F, the Plaintiff alleged that in a variety of ways, without voter approval, the MOU was amended or modified to (1) decrease the rights or increase the obligations of the City; (2) increase the financial commitments of the City; or (3) decrease revenue to the City, and this required voter approval which was not obtained.¹ Under Resolution No. R-295763, which approved a Second Ballpark and Redevelopment Project Implementation Agreement (“Second Implementation Agreement”), pursuant to the MOU, the City Council made, *inter alia*, the following Recitals and finding:

“... WHEREAS, modifications to the rights and obligations of the Parties as set forth in the MOU may be authorized without a vote by the City’s electorate if such modifications do not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease the revenue of the City; and

“WHEREAS, to the extent that any action authorized and directed by this resolution, or heretofore approved by the Council, is deemed to modify the rights and obligations of the Parties as set forth in the MOU, the same was intended as such and such actions did not, and do not, individually or in the aggregate, materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease the revenue to the City:

“NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Diego that the foregoing Recitals are true and correct and the City Council so finds and determines as being in the best interests of the City”

Thus, on November 20, 2001, the earlier date of the various governance actions Plaintiff challenged and a date on or after which Plaintiff alleged that a number of allegedly ineffective MOU amendments occurred, the City Council made findings that whatever amendment or modification had occurred to the MOU or rights and duties provided for under the MOU did not require voter approval.

2. The City Council’s Findings With Respect To The November Resolutions Are Properly Subject To Substantial Evidence Review.

In *City of San Diego v. Dunkl*, 86 Cal. App. 4th 384, 402 (2001), involving this same MOU, the court found that all actions taken to implement the MOU as approved by Proposition C were administrative, not legislative, in nature. The court stated:

In Prop. C, as approved by the voters, it is stated that the ordinance and the MOU it authorizes constitute the legislative acts establishing city policy on these matters and also provide the ways and means for implementation of the policy by such necessary and appropriate administrative and non-legislative acts. Prop. C further authorizes the City to enter into amendments for modification or to carry out the necessary agreements as determined by the city council to be in the best interests of the City, subject to the criteria that the rights of the City shall not be decreased and its obligations increased. The language of Prop. C gives the City the authority to determine its best interests by applying that criteria.

Id. at 401.

¹ For clarity and brevity, the three conditions stated above with respect to modifications or amendments requiring voter approval under the MOU will be referred to collectively herein as “material adverse changes.”

Clearly, Prop. C declared certain legislative policy and directed that certain events take place to implement that policy, as ways and means of carrying out the policy.

Id. at 402. The November Resolutions and findings of the City Council referred to above are also administrative actions taken to implement the policies established by Proposition C and the MOU. Inasmuch as the actions in furtherance of the implementation of the MOU were held to be administrative, not legislative, they are deemed "adjudicatory" in nature for purpose of review thereof by a court. See *Strumsky v. San Diego Cty. Employees Retirement Ass'n*, 11 Cal. 3d 28, 35 n.2 (1974) ("[A] legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of facts.")

Although the Action was not characterized as administrative mandamus, because it called into question, and review, administrative decisions of the City Council, the governing board of the City, as well as decisions of the governing board of PFFA, such decisions to the extent fact-based are properly reviewed by examining the findings supporting the decisions and determining whether substantial evidence supports the findings in light of the record as a whole. *Breneric Associates v. City of Del Mar* (1999) 69 Cal. App. 4th 166; *N.T. Hill, Inc. v. City of Fresno* (1999) 72 Cal. App. 4th 977, 987, fn.6. Substantial evidence is credible evidence that a reasonable person might accept as adequate. *Id.* A challenger to an administrative decision bears the burden of showing that no substantial evidence exists to support the findings. The court's task is determine whether substantial evidence exists in light of the whole record, including evidence that may detract from the agency's decision, but a court will not substitute its independent judgment on the evidence, instead deferring to the findings and inferences drawn by the local agency based on the evidence in the record. *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 503.

Generally, substantial evidence to support administrative or adjudicatory decisions may be found in the administrative record, which includes all documentation in the City file related to the matter. (See Code Civ. Proc. § 1094.6, subd. (c).) Staff reports, statements of staff and decision makers at the public hearing, and testimony received by the decision making body may, without more, constitute substantial evidence. (*Carson Harbor Village, Ltd. v. City of Carson Mobile Home Park Rental Review Bd.* (1999) 70 Cal. App. 4th 281, 295-296; *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330; *City of Carmel by the Sea v. Monterey County Board of Supervisors* (1977) 71 Cal. App. 3d 84, 91-92.)

3. The Trial Court Admitted The Administrative Record And Applied Substantial Evidence Review.

The Trial Court found that the City Council's findings and decisions with respect to the November Resolutions, as challenged by the Complaint, were properly subject to substantial evidence review based on the Administrative Record. The Trial Court stated:

The court hereby concludes:

1. Paragraph 27 of the FAC [First Amended Complaint] raises the issue whether substantial evidence supports the City Council's determination that the Resolutions and the contracts approved by them do not "materially 1) decrease the rights or increase the obligations of the City pursuant to the MOU; 2) increase the financial commitments of the City pursuant to the MOU; or 3) decrease the revenue to the City pursuant to the MOU." [...] The primary role of the Court in addressing the allegations of paragraph 27 is to determine whether the City Council had before it substantial evidence to support findings made in the Resolutions. Substantial evidence review is a legal analysis, not a fact finding process.

The Trial Court thereafter certified and admitted into evidence the Administrative Record submitted by the City pursuant to the certification of the City Attorney. Among the materials contained in the Administrative Record before the City Council and admitted in the Trial Court were the following documents and information, which are summarily described herein.

In City Attorney Opinion No. 2001-1 dated November 19, 2001, the City Attorney of the City concluded that none of the actions previously taken by the City Council, nor any agreements previously approved by the City Council, nor any of those on the City Council's agenda for which the meeting at which November Resolutions were adopted, constituted material adverse changes under Section XXXVIII of the MOU. The revised Plan of Finance and the preliminary disclosure document, both of which the City Council approved in Resolution R-295760, addressed certain issues raised by the Complaint. The Manager's Report, No. 01-239 (REV) dated November 14, 2001 (the "Manager's Report"), which was submitted to the Council to support a number of the November Resolutions adopted on November 20, 2001, addressed a number of the concerns expressed by the Plaintiff. For example, at pages 10 and following of the Manager's Report, under the caption "E. Ancillary Development," 1) through 3), it is stated that either the developer did not have financing commitments for the various hotels involved or that as to the hotel for which it did have a commitment, the same was about to expire and there could be no assurance that there would be a new one. The Manager's Report also discusses in note 1 on page 11 the "TOT Guaranty" and TOT Setoff. In detailing the plan of finance at pages 17 and following in the Manager's Report, the expected sources of funding for debt service were described. In Attachment to the Manager's Report, there is a table containing expenditures by revenue source (projected) and the expenditure of gas tax funds is noted as the fourth category of expenditure with a footnote explaining the mechanism by which gas tax funds are expended. Following the table is an explanation of the modification with respect to the City's commitments. Similarly, there is a description of the modification of the Agency's commitments as well as the Padres' commitment. There is also a discussion of the \$21 million shortfall in the original budget and how it is planned to be filled, indicating a backup commitment by each of the Agency and the City but, in the case of the City, only to the maximum amount permitted under Section XV of the MOU for commitments to the Ballpark Project (i.e. \$225 million). In the disclosure document, approved for content accuracy by the City Council, at page 25 under the caption "the Ballpark Project," it is recited that the financing plan no longer contemplated any reliance on the building of a convention center expansion "headquarters hotel" referred to in the MOU to generate TOT revenue. The disclosure document also notes the opinion of the City Attorney and the Council actions described above. In addition to the documentary materials before the City Council, there was public comment both in favor of and in opposition to the matters considered by the City Council, a record of which was contained in the Administrative Record submitted to the Trial Court.

The Trial Court also summarized the Administrative Record before it, stating:

2. The Administrative record shows that the City Council, in finding that the Resolutions and prior acts of the City did not cause material adverse changes pursuant to the MOU, relied upon, among other things, the City Attorney's opinion, the City Manager's report, the oral and slide reports by City staff on November 20, 2001 (both spontaneous and in response to City Council members' questions), statements made by involved parties and interested members of the public on November 20, 2001, the City Council's awareness of the changes in the MOU reflected in the Resolutions and contracts approved by them, and the revised plan of finance and the preliminary disclosure document, prepared by the City's bond counsel. All of these sources of information are proper evidence upon which the City council may base its findings and are contained in the certified administrative record.

Thereafter, the Trial Court applied the substantial evidence standard based on the Administrative Record, and found generally, with respect to paragraph 27 of the Complaint, as follows:

3. The evidence before the City Council established, among other things, the following summary facts about the Resolutions and the contracts approved by them. The core of the City's revised financing is PFFA's selling an estimated amount of approximately \$166,290,000 par value in lease revenue bonds. This will generate an estimated amount of approximately \$130,400,000 in proceeds that the City will invest in the Ballpark Project as defined in the MOU ("Project"). In addition, the City has made and will make equity – that is, unfinanced – investment of \$75,500,000. The total estimated amount of approximately \$205,900,000 is less than the City's \$225,000,000 investment cap under the MOU. Accordingly, the City's annual rental payments under the lease revenue financing will be less than what the City could have incurred if it had

decided to finance and invest the full \$225,000,000, which it could have done under the MOU. The City could, however, be called upon to invest another \$19,100,000, reaching the investment cap, if the sale of certain real property to the San Diego Unified Port District is not completed. The Agency investment is \$76,400,000, up considerably from the \$50,000,000 anticipated in the MOU. Nothing in the MOU prohibits the Agency from making an additional investment, and that investment benefits the City. Padres' investment is currently estimated at \$146,100,000, up considerably from the \$115,000,000 anticipated in the MOU. Nothing in the MOU prohibits Padres from making an additional investment, and that investment benefits the City. The projections for net Transit [sic] Occupancy Tax gain to the City from the Project have risen from \$1,300,000 per year as of November 1998 to \$2,300,000. Thus, there is no evidence that the financial effect of the Resolutions and the contracts approved by them involve any material adverse changes pursuant to the MOU.

B. The Trial Court Properly Found That Substantial Evidence In The Record Supported The City Council's Findings And Decisions With Respect To Each Of The Specific Matters Challenged In Paragraph 27 Of The Complaint.

Plaintiff challenged in the Complaint various specific matters undertaken pursuant to the November Resolutions, alleging in each case that the specific matter violated the voter approval requirements under the MOU. Plaintiff made these allegations individually in subparagraphs of paragraph 27 of the Complaint. The Trial Court ruled specifically as to each subparagraph, finding that substantial evidence in the record supported the City's action with respect to each challenged matter.

I. Paragraph 27.A.

In Paragraph 27.A of the Complaint, Plaintiff challenged certain proposed alterations, which were described in the Manager's Report, to the Ancillary Development as originally contemplated under the terms of the MOU. Specifically, Plaintiff alleged that the City had "materially modified the MOU by relieving the Padres from the obligation of building 400,000 gross square feet of office complexes (66% of the MOU-required amount) and 50,000 gross square feet of retail development (33% of the MOU-required amount)." Plaintiff further alleged that the City materially modified the Phase I development by allowing the construction of residential units in a development known as "Island Village," while the MOU previously contemplated the construction of additional retail space and hotel rooms.

Plaintiff claimed that these alleged modifications violated Section XXXVIII of the MOU because they constituted material adverse changes by "reducing the property tax increment and increasing the infrastructure development costs of the City." From this, Plaintiff contended that the City violated the voter approval requirements provided under the MOU.

a. Ancillary Development Under The MOU And As Presently Planned.

The MOU provides that the Padres will undertake "Ancillary Development" within the Ballpark District, including "the construction of hotels, office buildings, retail space, as well as residential development and associated parking." Specifically, the MOU provides that the first phase of Ancillary Development ("Phase I") include at least (a) a 150-room extended stay hotel and 700 additional new hotel rooms with associated parking; (b) office complexes containing at least 600,000 gross square feet with associated parking; and (c) retail development containing at least 150,000 gross square feet. As the MOU notes, "Phase I, guaranteed by the Padres, is a predicate and critical to the overall financing of the City and Agency investments in the Ballpark Project"

Pursuant to the MOU, the Developer (selected by Padres) has the right to fine-tune the specific components of the Ancillary Development. Under the MOU, this right is conditioned upon "the Transient Occupancy Tax generated by, and the assessed values of, the Ancillary Development being at the completion of Ballpark Project construction at least what such amounts would have been as agreed upon by the parties on or before February 14, 1999" On March 31, 1999, pursuant to the "Sufficient Assurances" Resolution (Resolution R-291450), the Padres and the City determined that the assessed values and TOT revenue requirements for the

Ancillary Development (with Ballpark Project completion in 2004) are approximately \$311 million and \$3.1 million, respectively.

Subsequent to the execution of the MOU, according to the Manager's Report, the Padres indicated that they intend to "fine tune" their planned Ancillary Development to include less office space and more residential units than originally detailed in the MOU. The following is a comparison of the Ancillary Development as originally provided in the MOU and the most current Padres' proposal as recited in the Manager's Report:

| | <u>MOU</u> | <u>Current Padres' Proposal</u> |
|-------------------|------------|---------------------------------|
| Hotel Rooms | 850 | 850 |
| Office s/f | 600,000 | 175,000 |
| Retail s/f | 150,000 | 170,522 |
| Residential Units | No set # | 1,210 |

Based on these proposed alterations, Plaintiff contended that the City violated the terms of the MOU by materially modifying the MOU in a way that constitutes a material adverse change requiring voter approval.

b. The Trial Court Found That There Was Substantial Evidence In The Record That The City Had Not Waived Or Decreased Any Of Its Rights Against Padres With Respect To Ancillary Development.

Under the terms of the MOU, Padres (or the Developer selected by the Padres) possesses the right to alter the specific plans with respect to Ancillary Development. Section XXXI.A. of the MOU provides, in part:

The Developer will have the right to fine-tune its mix of hotel, office, retail, residential and other development space within the District at any time prior to the completion of Phase 1 The Developer's right to fine-tune the mix of development properties is conditioned upon (1) the Transient Occupancy Tax ("TOT") generated by, and the assessed values of, the Ancillary Development being at the completion of Ballpark construction at least what such amounts would have been as agreed upon by the parties on or before February 14, 1999. ...

Before the Trial Court, the City did not dispute that the specific development properties within the Ancillary Development could change from what was originally provided pursuant to the MOU. However, based on the Administrative Record, the Trial Court concluded that there was substantial evidence to support the City's determination that the prospective alterations to the Ancillary Development as mentioned in the Manager's Report did not constitute a material adverse change requiring voter approval. The Trial Court stated:

4. The matters alleged in paragraph 27A of the FAC do not establish any material adverse changes pursuant to the MOU and the record contains substantial evidence to support the City's determination there was no material adverse change. The City has not released any obligation of Padres to provide the Ancillary Development. The MOU provides for the fine tuning of the mix of commercial, residential, and retail development within the Ancillary Development. Substantial evidence in the record establishes that Padres' current plan for the Ancillary Development provides at least the increased assessed property tax value and net transient occupancy tax gain contemplated at the time of the City Council's findings of March 31, 1999. The maintenance and operating expense recapture provided in the Joint Use and Management Agreement and the TOT Guaranty do not release any obligation of Padres but provide the City enhanced protection and explicit remedies in the event that the hotel elements of the Ancillary Development are not completed when, upon completion of the Ballpark (as defined in the MOU), the City's obligation to pay rent for the Ballpark will be fully in force.

Based on the Administrative Record before the Trial Court, and the terms of the MOU with respect to Ancillary Development, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City Council's determination that the proposed alterations to the Ancillary Development did not constitute material adverse changes requiring voter approval under the MOU.

2. Paragraph 27.B.

The gravamen of the allegations in Paragraph 27.B are (a) the initial financing plan of the City as set forth in Attachment A to the MOU relied, *inter alia*, upon the development and construction of a 1,000 room Campbell Shipyard Hotel, (b) that the MOU required that the City receive sufficient assurances that the same would proceed and (c) that, as of November 20, 2001, the date of passage of November Resolutions by the City there were no such sufficient assurances in that the revised financial plan of the City gave no effect to receipt of transient occupancy tax ("TOT") revenue from a Campbell Shipyard Hotel. This, according to Plaintiff, amounted to a material adverse change requiring voter approval under the MOU.

a. The Trial Court Found That There Was Substantial Evidence In The Record Supporting The City's Determination That The MOU Did Not Require The Development Of The Campbell Shipyard Hotel As Part Of The City's Revised Financing Plan.

Section XV of the MOU, entitled "CITY INVESTMENT," provides in pertinent part:

Subject to the other provisions of this MOU, the City shall provide not more than \$225,000,000 towards the construction of the Ballpark Project. These funds shall be provided based upon the financing of the City's choice (i.e., lease revenue bonds, certificates of participation, or other). The City shall determine in its sole discretion the sources of revenue to support its investment; however, existing sources of revenue in the City's general fund, and other non-general fund sources are available to support its investment.

Section XVI of the MOU, entitled "CITY FINANCING PLAN," provides in pertinent part:

The City's current pro forma for its investment in the Ballpark Project includes an annual financing payment to support a lease-revenue type financing . . . The City believes that additional new development will occur in and around the [Ballpark] District, including additional new hotel development on and around the San Diego Unified Port District's 10th Avenue Marine Terminal, which will provide new revenue to the City's general fund not currently in the City's pro forma. Such additional new hotel development is not confirmed or committed at the present time, and thus cannot support the City's annual financing payments.

Section XVI of the MOU reserves the City's right to adjust its pro forma in the future to include revenues from development on and around the Tenth Avenue Marine Terminal, and expresses the City's conceptual support for such new development. Nonetheless, such development was not guaranteed or required under the terms of the MOU. Attachment F to the MOU requires the Padres to pay up to \$2 million per year over ten years in the event the Campbell Shipyard Hotel was not developed presently, which further demonstrates that there was in the MOU no assurance the hotel would be within the final City financing plan. By its terms, the obligation of the Padres under Attachment F ends if there is construction and operation of 2,500 hotel rooms on the Tenth Avenue Marine Terminal property, including the Campbell Shipyard Hotel.

Based on these provisions of the MOU and the Administrative Record, the Trial Court concluded that substantial evidence supported the City's determination that its revised financing plan did not constitute a material adverse change requiring voter approval without regard for the development of the Campbell Shipyard Hotel. The Court ruled:

5. The matters alleged in paragraph 27B of the FAC do not establish any material adverse changes pursuant to the MOU and the record contains substantial evidence to support the City's determination there was no material

adverse change. Substantial evidence in the record shows that construction of a Campbell Shipyard Hotel was neither an obligation of any party to the MOU nor a condition to the performance of any party to the MOU. Attachment F to the MOU provided the only certainty of revenue to the City from any events relating to a potential Campbell Shipyard Hotel, and (as a matter of law and by admission of Padres), Attachment F remains in full force and effect.

Based on the Administrative Record before the Trial Court, and the terms of the MOU with respect to the City's financing plan and pro forma, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City Council's determination that its revised financing plan and the November Resolutions related thereto did not constitute material adverse changes requiring voter approval under the MOU.

b. Plaintiff's "Sufficient Assurances" Allegations Failed As A Matter Of Law.

Plaintiff also alleged in Paragraph 27.B (as well as in other subparagraphs generally) that the City was required under the MOU to make findings as of November 20, 2001 that it had received "sufficient assurances" with respect to the building of the Campbell Shipyard Hotel. The Trial Court ruled as to Plaintiff's "sufficient assurances" allegations in its ruling on Paragraph 27.C, finding as a matter of law that such continuing assurances were not required under the MOU. The analysis of this issue in this opinion is discussed immediately below with respect to subparagraph 27.C, but is also applicable and dispositive of Plaintiff's "sufficient assurances" allegation with respect to this subparagraph.

3. Paragraph 27.C.

In Paragraph 27.C of the Complaint, Plaintiff alleged that the City waived the Padres' obligation to provide "sufficient assurances" to build 850 additional hotel rooms as provided under the terms of the MOU, and as a result had improperly proceeded toward financing the Ballpark Project in violation of the MOU. Specifically, Plaintiff alleged that:

[A]s of November 20, 2001, the Padres had no willingness and/or ability to fund construction of the 850 additional new hotel rooms itself; had no outside investors or financing to fund construction of the 850 new hotel rooms, and based upon the lack of progress in construction, could not possibly build the hotels by the required March 31, 2002 deadline. Notwithstanding the Padres' failure to provide the required assurances, the City has nevertheless authorized the sale of bonds and proceeded with the Ballpark Project. [The] absence of such assurances substantially reduces the likelihood that the hotels will ever be built and greatly increases the likelihood that the City will never realize a \$6.2 million annual increase in Transient Occupancy Taxes; plus the property tax increment and anticipated sales tax increases.

Plaintiff asserted that this alleged result violates the terms of the MOU as being a material adverse change subject to voter approval.

a. "Sufficient Assurances" Under The MOU.

Phase 1 of Ancillary Development as originally provided in the MOU required construction of hotels with at least 850 additional new hotel rooms. Under the MOU, the Padres were required to provide the City on or before March 31, 1999 with "sufficient assurances" that the required hotels would be built and would "have the potential to generate the tax increment and Transient Occupancy Tax revenue necessary to help the City and Agency investments." This condition under the MOU was satisfied by the Padres as of March 31, 1999, as reflected in the "Sufficient Assurances" Resolution of that date. (Resolution No. R-291450.)

According to the Manager's Report, Padres currently intend to build three hotels: (1) a four-star high-rise hotel with 512 rooms, located next to the Ballpark; (2) a boutique hotel with 203 rooms, located across from the northwest corner of the Ballpark; and (3) a boutique or value-oriented hotel with 135 rooms, located on the east side of the Ballpark. None of the hotels currently have financing.

b. "Sufficient Assurances" Under The MOU Is Not A Continuing Obligation.

In an unpublished appellate decision in *Currie v. City of San Diego*, 4th District Court of Appeal No. D035891 (San Diego Superior Court No. GIC 743443), a citizen filed a reverse validation action challenging, under this same MOU, the City Council's adoption of an ordinance authorizing the issuance of not more than \$299 million in bonds to finance the City's obligations on the Ballpark Project. Among other things, the plaintiff alleged that the City did not have "sufficient assurances," as required by the MOU, regarding the development of the Campbell Shipyard Hotel. The Plaintiff sought a judicial declaration that this condition of the MOU had failed and that accordingly the bond ordinance could not be effective without voter approval. The court in *Currie* rejected the plaintiff's claim, stating:

Prop. C and the MOU confided [sic] such implementing decisions to City administration, including a determination of whether adequate assurances had been rendered. Under the structure of the MOU and Prop. C, a decision had to be made before April 1, 1999. Accordingly, the trial court here was correct in concluding that even if there were some later changes in circumstances regarding available revenue stream for financing, the fact that such later questions had been raised did not negate or contradict the resolution's prior statement that the conditions had been satisfied as of that time. (However, the City does not claim on appeal that it reserved the right to redetermine the status of those particular conditions at a later time.)

Currie, pp. 23-24. The MOU, as interpreted by the court in *Currie*, did not require a finding that the "sufficient assurances" continue beyond the date provided under the terms of the MOU.²

c. The Trial Court Found That There Was Substantial Evidence That The City Received The "Sufficient Assurances" Required Under The MOU With Respect To The 850 Hotel Rooms.

Under Section XXXIII.B.2 of the MOU, the City's obligations were contingent on, among other things, receiving "sufficient assurances" from Padres that Phase 1 development would be substantially complete as of Opening Day (originally planned to be March 2002). On March 31, 1999, pursuant to Resolution R-291450, the City found and declared that it had received from Padres "sufficient assurances" with respect to Phase 1 development, including the 850 hotel rooms at issue in the Complaint. Under the terms of the MOU, nothing more than the "sufficient assurances" was required. The City received these "sufficient assurances" in a timely manner, thus this condition in the MOU has been previously satisfied.

The Trial Court, in ruling as to Plaintiff's "sufficient assurances" allegations, stated:

The matters alleged in paragraph 27C of the FAC do not establish any material adverse changes pursuant to the MOU and the record contains substantial evidence to support the City's determination there was no material adverse change. The requirement of "sufficient assurances" by April 1, 1999 was a condition that was satisfied by City Resolution No. R-291450, and it is not a continuing obligation. As a matter of law and by admission of Padres, the City has not released any obligation of Padres to provide the hotels embraced in the Phase I development. Substantial evidence of Padres' admissions of its continuing obligation is in the record.

Based on the Administrative Record before the Trial Court, and the terms of the MOU with respect to the requirement of "sufficient assurances," under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City's determination that the City had received "sufficient assurances" to the extent required under the MOU and that the Padres' obligation to complete

² It should be noted that, as mentioned above, the *Currie* decision was not published and unpublished decisions may not be cited as precedent in subsequent actions. However, in a subsequent validation action, *Currie* may be considered in determining whether or not it had a binding effect as against any other person, such as the Plaintiff, seeking to raise the same issue or claim. Cal. Civ. Proc. Code § 870.

the development contemplated under Phase I continued such that the November Resolutions did not constitute a material adverse change requiring voter approval.

4. Paragraph 27.D.

In Paragraph 27.D, Plaintiff alleged that the obligations of the Padres under Attachment F to the MOU were "abandoned" and replaced by a guaranty "whose protections are substantially inferior." Plaintiff further alleged that this purported modification of the MOU constituted a material adverse change requiring voter approval.

a. The Trial Court Found Substantial Evidence Exists In The Record That The Obligations Of Attachment F Continued.

In ruling on Plaintiff's allegations in paragraph 27.D, the Trial Court as a matter of law and based on substantial evidence in the record found that the City had not "abandoned" the protections it derived from Attachment F to the MOU. The Trial Court ruled:

7. The matters alleged in paragraph 27D of the FAC do not establish any material adverse changes pursuant to the MOU and the record contains substantial evidence to support the City's determination there was no material adverse change. As a matter of law and by admission of Padres' Exhibit F of the MOU remains in full force and effect.

Based on the Administrative Record before the Trial Court, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City's determination that the City had not abandoned the protections it derived from Attachment F, that the Padres' obligations under Attachment F continued in full force and effect, and that the November Resolutions did not constitute a material adverse change requiring voter approval.

5. Paragraph 27.E.

Plaintiff alleged in Paragraph 27.E that the lien in favor of the City on the Padres' National League franchise, required by Section XVIII of the MOU, was released by the City in violation of the terms of Section XVIII. Plaintiff alleged that this constituted a material adverse change requiring voter approval.

a. The Trial Court Found That There Was Substantial Evidence In The Record That The Condition Precedent To The Release Of The Lien Had Been Satisfied.

Section XVIII of the MOU provides that on or before April 1, 1999 the Padres were to provide the City with a first priority lien on their National League Franchise, to be released by the City upon the deposit by the Padres/private sector of \$50 million in the Design and Construction Fund. The Design and Construction Fund, under the terms of the MOU, is the fund from which expenditures for the Ballpark Project were to be made.

Although the Design and Construction Fund has never been created due to the delay in obtaining City's financing, the Trial Court found that the record contained substantial evidence that Padres had invested more than \$50,000,000 toward Ballpark Project expenditures and that substantial evidence existed supporting the City's determination that the release of the lien did not constitute a material adverse change. The Trial Court ruled:

8. The matters alleged in paragraph 27E of the FAC do not establish any material adverse changes pursuant to the MOU and the record contains substantial evidence to support the City's determination there was no material adverse change. There is substantial evidence in the record that Padres has invested more than \$50,000,000 in the Project, entitling it to release of the lien on its franchise securing that sum. The other security transactions referred to in the Resolutions and the contracts approved by them enhance the City's security for Padres' investment over \$50,000,000 for the Ballpark and certain land cost

overruns, which the MOU did not require to be subject to the lien on Padres' National League Franchise.

Based on the Administrative Record before the Trial Court, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City's determination that the release of the lien of the Padres' National League Franchise did not constitute a material adverse change requiring voter approval.

6. Paragraph 27.F.

In Paragraph 27.F, Plaintiff alleged that Section V of the MOU provides that \$21 million of the \$143.5 million Ballpark Project land acquisition and infrastructure budget "must be derived from a source other than the City, CCDC, or Padres/Private sources." Plaintiff further alleged that the City's adoption of Resolution No. R-295768 violated Sections V and XIX of the MOU by authorizing the expenditure of funds "in the event \$21 million from [the Port] or other public or quasi-public sources is not funded." Plaintiff further alleged that the City's action was a material adverse change requiring voter approval, and that Resolution No. R-295768 constituted an unlawful delegation of authority to the City Manager.

a. The Parties Compliance With MOU Provisions Regarding The \$21 Million Shortfall.

The MOU provides that "the City shall not provide more than \$225,000,000 towards the construction of the Ballpark Project." The MOU also requires a Padres/Private Sector investment of at least \$115 million and an Agency investment of \$50 million. At the time the MOU was executed, the Ballpark Project Estimate was \$411 million. This left a shortfall of \$21 million that neither the Padres, the City, nor the Agency was obligated to pay. The MOU provides that "the City and the Padres will cooperatively endeavor to obtain" from other public and quasi-public sources the \$21 million in added value needed to reach the Ballpark Project Estimate of \$411 million.

After the execution of the MOU, the City and the San Diego Unified Port District (the "Port") entered a Purchase and Sale Agreement and Joint Escrow Instructions, dated October 1, 2002, by which the Port agreed to purchase surface lots two blocks east of the Ballpark Project (the "Surface Lots") for \$21 million. However, certain pending litigation against the Port or other vicissitudes could prevent the Port's purchase of the Surface Lots.

On November 20, 2001, the City adopted Resolution R-295768, which authorized the City Manager and City Auditor/Comptroller, in the event the Purchase and Sale Agreement with the Port cannot be implemented, to acquire and improve the Surface Lots, subject to the MOU's \$225 million limit on the City's contribution to the Ballpark Project. The resolution further provided that if the total available funds for this purpose were less than \$21 million, the City Manager may modify the scope of the program for the improvements contemplated by the Purchase and Sale Agreement with the Port.

Pursuant to Resolution No. R-295768, the City's maximum contribution to the Ballpark Project remains capped at \$225 million, and the City Manager's authority to acquire and develop the Surface Lots is subject to the \$225 million limit. The Resolution provides that if the funds available to the City under the \$225 million limit are less than \$21 million, the City Manager will correspondingly scale back the improvements of the Surface Lots.

Section V of the MOU does not mandate that \$21 million of the Land Acquisition and Infrastructure budget "must be derived" from a source other than the City, CDCC or the Padres. Section V is a summary of the status of the budget at the time the MOU was prepared, and reflects that the Parties' combined financial commitments under the MOU left a \$21 million gap in the \$411 million Ballpark Project Estimate. Section XIX of the MOU provides that the City and the Padres "will cooperatively endeavor to obtain" the \$21 million in added value from other public and quasi-public sources.

b. The Trial Court Found There Was Substantial Evidence That The City And Padres Have Satisfied The Terms Of The MOU Regarding The \$21 Million Shortfall And That Resolution R-295768 Was Not A Material Adverse Change.

With respect to Plaintiff's allegations in paragraph 27.F, the Trial Court ruled:

9. The matters alleged in paragraph 27F of the FAC do not establish any material adverse changes pursuant to the MOU and the record contains substantial evidence to support the City's determination there was no material adverse change. The MOU provides on that "the City and Padres will cooperatively endeavor to obtain" \$21,000,000 additional funding for the Project. There is substantial evidence in the record that such funding could come from any source, subject only to the City's \$225,000,000 investment cap. There is substantial evidence in the record that the City and Padres have, up to November 20, 2001, performed the obligations of the MOU by obtaining the contract by which the San Diego Unified Port District will buy certain real property for \$21,000,000. If that transaction is not successful and no other source is found, the City would not be committed to invest in the Project more than the \$225,000,000 cap.

Based on the Administrative Record before the Trial Court, and the provisions of the MOU regarding the \$21 million in additional funding, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City's determination that its potential funding of the Surface Lots up to its investment cap did not constitute a material adverse change requiring voter approval.

c. Plaintiff's Allegation Regarding Unlawful Delegation Of Authority To The City Manager Does Not Implicate The City's Financing.

As noted, Plaintiff's final allegation in paragraph 27.F was that Resolution No. R-295768 constituted an unlawful delegation of authority to the City Manager.

The Trial Court did not expressly rule as to this issue. To the extent that there was a delegation of authority, the appropriateness thereof was not pertinent or relevant to the relief sought by the Plaintiff. The gravamen of the Complaint was that the City Council's approval of the expenditure of up to \$21 million to acquire and construct certain parking lots was a material adverse change in violation of the MOU. As discussed above, the Trial Court ruled that the record contained substantial evidence demonstrating that this was incorrect. The means by which the challenged actions occur are not germane to Plaintiff's primary allegations of the Complaint, and do not affect the validity of the City's financing of the Ballpark Project.

C. Paragraph 28.

In Paragraph 28, the Plaintiff alleged that there were unspecified other modifications or amendments not alleged in the Complaint that constituted material adverse changes. At trial, the Plaintiff presented no evidence of any uncharged modifications or amendments.

In light of the Administrative Record before the Trial Court, the Trial Court ruled:

10. Paragraph 28 of the FAC alleges there are unspecified material adverse changes. The record contains no evidence of any such material adverse change.

Based on the Administrative Record before the Trial Court, and the Plaintiff's failure to present at trial any evidence of other modifications or amendments, the Trial Court properly found the record did not contain evidence to support Plaintiff's allegations as to uncharged material adverse changes.

D. Paragraph 29.

In Paragraph 29, the Plaintiff alleged that the City violated the MOU requirement in Section XXXVIII that modifications or amendments to the MOU be manifested in a writing signed by all parties. Plaintiff alleged that the City had violated this provision by not making available for public scrutiny signed agreements manifesting all modifications and amendments.

Section XXXVIII of the MOU provides that modifications to the MOU must be memorialized in a writing signed by all parties. This provision of the MOU is for the benefit of the parties thereto, and does not confer legal standing on a non-party to challenge modifications. Plaintiff's allegations as to "public scrutiny" implicate the City's obligations with respect to provisions of law regarding public access to agency hearings and decisions, and are not applicable to Section XXXVIII of the MOU.

In ruling as to Paragraph 29, the Trial Court concluded:

11. As to Paragraph 29 of the FAC, persons who are not parties to the MOU have no basis to assert rights under paragraph XXXVIII of the MOU, which requires amendments to be in writing signed by the Parties. No evidence was offered to suggest that there is any oral amendment to the MOU.

Based on the Administrative Record before the Trial Court, and the absence of any evidence as to oral modifications or amendments, the Trial Court properly found that the Plaintiff did not have a legally cognizable interest in enforcing Section XXXVIII of the MOU.

E. Paragraph 30.

In Paragraph 30, the Plaintiff alleged that the modifications and amendments individually alleged in Paragraph 27 constituted in the aggregate a material adverse change in violation of the MOU.

The Trial Court ruled:

12. Paragraph 30 of the FAC alleges that the individual alleged adverse changes in paragraph 27 and its subparagraphs collectively constitute a material adverse change. The Court finds this allegation untrue and reiterates paragraphs 1 through 9, *ante*.

Based on the Administrative Record before the Trial Court, and the Court's specific findings and conclusions as to Plaintiff's individual allegations of material adverse changes, the Trial Court properly found that substantial evidence in the record exists supporting the City Council's determination that its actions in the aggregate did not constitute a material adverse change.

F. Paragraph 31.

Plaintiff alleged in Paragraph 31 that the Proposition C ballot question limited the City's sources of revenue for the Ballpark Project to redevelopment funds and certain hotel tax revenues. Plaintiff asserted that the City's proposed use of Gas Tax funds as a source of revenue for the Ballpark Project, as set forth in Resolution R-295766, violated the "limitations" of Proposition C.

1. Proposition C And The MOU Provided The City With Discretion To Determine The Source Of Funding Its Ballpark Project Investment.

The gravamen of Plaintiff's allegations in paragraph 31 were whether or not the language of the ballot question, if inconsistent with the MOU, governed the source of funding by the City for its part in the Ballpark Project. The City Council presented to the voters for consideration a package entitled "Proposition C," a copy of which is attached hereto in its entirety. The proposition "package" consisted of a ballot question, an ordinance which, if there were sufficient "yes" votes on the ballot question, would be passed, and the MOU which, if the ordinance was passed, was to be executed on behalf of the City by the City Manager. As previously held in *City of*

San Diego v. Dunkl, 86 Cal. App. 4th 384 (2001), the action of the voters in voting "yes" on Proposition C was a legislative act implementing the policy embodied in the ordinance and the MOU, and the City's subsequent actions implementing the same were administrative acts.

In a number of places in the MOU it is clear that the City under the MOU is reserving its full discretion as to the source of funding for its contributions to the Ballpark Project. For example, in Section XV entitled "City Investment," it is stated that:

The City shall determine in its sole discretion the sources of revenue to support its investment; however existing sources of revenue in the City's general fund, and other non-general fund sources are available to support its investment.

In addition, Section XVI of the MOU, entitled "City Financing Plan," provides:

The City's current pro forma for its investment in the Ballpark project includes an annual financing payment to support a lease-revenue type financing such as lease revenue bonds." The City's annual financing payment would be based in part upon certain existing revenue in the City's general fund and certain new revenue to the City's general fund as a result of Phase One. The City believes that additional new development in and around the district [meaning the Ballpark district], including additional new hotel development on and around the San Diego Unified Port District's Tenth Avenue Marine Terminal, which will provide new revenue to the City's general fund not currently in the City's pro forma. Such additional new hotel development is not confirmed or committed at the present time, and thus cannot support the City's annual financing payment; however, the City believes it is appropriate that in the future, its annual financial payment be based, to the greatest extent possible, upon revenue equal to an amount of new revenue to come in to the City's general fund.

Accordingly, the City reserves the right to adjust its pro forma and the boundaries of the District in the future Any such adjustments would enable the City to base its annual financial payments, in part, upon an amount of revenue equal to the amounts of new additional revenue to the general fund resulting from development on and around the [Marine Terminal] rather than an amount equal to an amount of existing revenues or growth in those existing revenues. . . .

Finally, the Impartial Analysis of the ballot measure, prepared by the Office of the City Attorney provided in pertinent part:

. . . The project cost will be \$411 million. The Padres will invest \$115 million, which may come from various private sources including naming rights, concession rights, and Padres' equity. The City will invest \$225 million. Although not specifying the source of City funds, the [MOU] indicates that existing and future general fund revenue may be used to finance the City's investment. The Padres will provide certain protection to the City for some of the future revenues. The [Redevelopment] Agency and [CCDC] will invest \$50 million, from a combination of existing funds and real property tax increment. Additional funding or project value of \$21 million must be secured, or the project scaled back in that amount.

. . . The ballpark cost will be \$267.5 million and the Padres must pay any construction costs over that amount [&] The City will own 70 [percent] of the ballpark, the Padres 30 [percent]. The Padres must play at the ballpark for 30 years or until the ballpark bonds are retired, whichever is earlier, but at least 22 years, after which time the City will own 100 [percent] of the ballpark. The Padres will operate the ballpark and pay \$500,000 annually (plus C.P.I.) in rent. The City's share of annual operating expenses (expected to be \$9-10 million) is

capped at \$3.5 million (plus C.P.I.); the Padres pay all annual operating expenses over the City's cap

Under the terms of the MOU, which was part of the voter package which voters received to consider when evaluating the ballot question for Proposition C, the MOU fully reserved to the City the right to use its own discretion as to what sources of revenue would fund its commitment to the Ballpark Project.

2. Proposition C And The Terms Of The MOU Control Over The Ballot Question.

The ballot question for Proposition C stated, in pertinent part "Shall an ordinance be adopted authorizing the City of San Diego to . . . construct a multiple use ballpark, provided that (1) the City's participation require no new taxes, is capped, and also limited to redevelopment funds and an amount equivalent to certain hotel tax revenue;" Accordingly, the essence of the question presented by Plaintiff was whether the language of the ballot question in any way limited the terms and policy of the MOU relating to the City's discretion as to funding sources.

The unpublished opinion in *Mailhot v. Abdelnour*, Court of Appeal, Fourth Appellate District (D032123), San Diego Superior Court (No. 723318) is instructive on this point. In this action, Mailhot filed a petition for writ relief based on his complaint for declaratory and injunctive relief against the City Clerk, which had alleged that the ordinance, MOU and the ballot question contained misleading statements.

Comparing the language of Proposition C with the language of Section XV of the MOU, the Court stated:

The MOU does not limit the City to a specific type of funding for the ballpark project. Section XV of the MOU provides the City's \$225,000 [sic] investment "shall be provided based upon the financing of the City's choice (i.e., lease revenue bonds, certificates of participation, or other). The City shall determine in its sole discretion the sources of revenue to support its investment; however, existing sources of revenue in the City's general fund [] and other non-general fund sources are available to support its investment." Section XVI of the MOU noted the City anticipated that new hotel development in the ballpark area would provide sufficient revenue to pay its project obligations "in the future."

We agree that an inconsistency existed between the ballot question and the MOU with regard to the source of funds to support the City's investment. The MOU does not limit the City to any particularly source of funds, but the ballot question states the City's investment is limited to "redevelopment funds and an amount equivalent to certain hotel tax revenue [.]" We conclude, however, that the inaccuracy in the ballot question does not merit vitiation of the Proposition C election.

Mailhot, p.23 [emphasis added]. To reach this result, the court necessarily concluded that the ballot question could not supersede the terms of Proposition C and the MOU themselves.

As additional support for its holding, the Court cited the declaration of Mary Vattimo, a City special projects director, which explained the contested language in the ballot question:

In referring to these revenues, the term "equivalent to" is used as a means of measurement. Financings supported by TOT are not a pledge of specific TOT but, rather, of an amount of the City's General Fund (into which TOT is placed) equal to a certain amount of TOT; thus the term "equivalent to" is used as a means to measure the amount of General Fund revenue supporting the financing.

3. The Ballot Question Does Not Carry The Force Of Law.

Moreover, ballot questions do not have the force and effect of law. See *Friends of the Sierra Madre v. City of Sierra Madre* (2001) 25 Cal. 4th 165, 175. Ballot questions are concise summaries of the proposed measure on which the voters are to decide. See San Diego Muni. Code ' 27.0103. The purpose of ballot questions and ballot analyses that accompany a measure placed before the voters is to summarize the measure and to assist the voters in understanding the nature of the measure itself. *Lungren v. Superior Court* (1996) 48 Cal. App. 4th 435, 439. If a ballot measure is enacted, the measure itself becomes the law and the ballot question or analysis accompanying the measure has no legal effect. See *Friends of Sierra Madre*, 25 Cal. 4th at 175; *Jenkins v. County of Los Angeles* (1999) 74 Cal. App. 4th 524, 531.

Accordingly, Plaintiff's reliance on the ballot question as a legal limitation as to the source of funds available to the City for its Ballpark Project contribution was fundamentally erroneous. The ballot question submitted to the voters with Proposition C, and the specific language it contained, do not carry the force of law. *Friends of the Sierra Madre*, 25 Cal. 4th at 175. Pursuant to the voter's approval, Proposition C, not the ballot question, became the law enacted by the San Diego electorate. See *Id.*; *Horwath v. City of Palo Alto* (1989) 212 Cal. App. 3d 766, 774. Thus, the language contained in the ballot question, even if interpreted as referring to the source of funds available for the City's contribution, is not the law and does not limit the sources from which the City can derive its investment.

4. The Trial Court Ruled That The Ballot Question Did Not Limit The City's Source Of Funding For Its Investment.

In ruling as to Paragraph 31, the Trial Court concluded:

As to paragraph 31 of the FAC, the Proposition C ballot question does not limit the text of the measure or the MOU. The MOU explicitly provides that the City may fund its investment from any source of revenue in its sole discretion.

Based on the provisions of Proposition C and the MOU, which were contained in the Administrative Record before the Trial Court, and the case law discussed above, the Trial Court properly held that the ballot question does not limit the City's discretion in determining the source of funding for its Ballpark Project investment.

III. Challenge Regarding The Alleged Conflict Of Interest Of CCDC Member.

A. Plaintiff's Allegations That An Alleged Conflict Of Interest Invalidated CCDC and City Actions In Furtherance Of The MOU.

See the "Introduction and Background – CCDC Director Matter" above for general information regarding this matter.

B. The Trial Court Ruling As To The Conflict Of Interest.

1. The Plaintiff's Allegations.

The Plaintiff on December 24, 2001 amended the Complaint and asserted a cause of action contending that the alleged conflict of interest of the Director invalidated the November Resolutions, prior extensions of the MOU, and numerous Ballpark Project-related agreements previously executed in implementation of the MOU. The Plaintiff asserted that, under the Conflicts Law and Section 94, all such November Resolutions and Ballpark Project-related contracts were invalid as a matter of law due to the alleged disabling conflict of interest.

³ *Mailhot* is not a published opinion and as such cannot be cited as precedent. However, for purposes of projecting how an appellate court should act, *Mailhot* is relevant since if the Litigation is appealed it will be heard in the Fourth District Court of Appeal.

Specifically, the Plaintiff alleged, in pertinent part:

37. [...] Johnson's aforesaid votes furthered the interests of the PADRES in the Ballpark and Redevelopment Project by, inter alia, delivering to the PADRES economic benefits, so as to keep the PADRES in San Diego, **thereby ensuring that he would be able to continue selling PADRES' baseball-related merchandise for a profit at his gift stores.** (emphasis supplied).

38. [...] Johnson's votes in favor of the said contracts and agreements supported, actively furthered and advanced the PADRES' present and future economic interests, **thereby ensuring the franchise's continued presence in San Diego and consequently, Johnson's continued profits from the sale of PADRES merchandise at his gift stores.** (emphasis supplied).

Based on these allegations, the Plaintiff contended that Johnson's interest in receiving future economic benefits as the result of the Ballpark Project constituted an unlawful conflict of interest, and that therefore, the November Resolutions and the Ballpark Project-related agreements specified in the Complaint were void under the Conflicts Law and Section 94.

2. The Administrative Record Related To The Letter Exchange And The Restoration And Ratification Events.

As described above in the "Introduction and Background – CCDC Director Matter," the City, City Council, Agency, CCDC, Authority and Padres undertook the Restoration and Ratification Events in order to cure any potential invalidity related to the November Resolutions and Ballpark Project-related agreements resulting from the Director's alleged conflict of interest. Prior to the Restoration and Ratification Events, the Director and the Padres entered into the Letter Exchange, pursuant to which each relinquished the business relationship at issue and committed not to enter into any business relationship in the future. Each of the public agency resolutions adopted as part of the Restoration and Ratification Events expressly acknowledged the existence of the Letter Exchange and the commitments the Director and the Padres undertook therein, as well as the existence and execution of the Reaffirmation Agreement. The Administrative Record before the Trial Court contained each such resolution and an executed copy of the Reaffirmation Agreement.⁴

3. The Trial Court Ruling.

At trial, the Plaintiff failed to introduce evidence in support of the allegations in the Complaint as to the Director's alleged conflict of interest. Based on the Administrative Record and applicable California case law, the Trial Court ruled that, as a matter of law, Plaintiff's allegations did not state a cause of action under the Conflicts Law or Section 94. The Trial Court held:

14. As to the second cause of action of the FAC, the complaint fails to state a violation of Government Code section 1090 or City Charter section 94. [...] Further, the following acts were taken to ratify all relevant agreements: City Resolution No. 295896 (December 14, 2001); Agency Resolution No. R-03419 (December 14, 2001); PFFA Resolution No FA-2002-6 (December 14, 2001); CCDC Resolution No 2001-06. Those resolutions and the contract approved by them cured any possible invalidity.

⁴ The Administrative Record also contained the report of the City Attorney, dated December 13, 2001, in which the City Attorney described for the City Council the factual background as to the Director's business relationship with the Padres, the City Attorney's analysis as to the conflict of interest issues, and the precautionary curative actions such as the Letter Exchange and the Restoration and Ratification Events.

C. The Letter Exchange And The Restoration And Ratification Events Cured Any Potential Invalidity Of CCDC, City, City Council, Agency, and Padres' Actions In Furtherance Of The MOU Under The Conflicts Law.

The Letter Exchange and the Restoration and Ratification Events were undertaken in order to put to rest any doubt about the efficacy of the City, City Council, Agency, CCDC and Padres' actions taken under, or in furtherance or effectuation of, or in reliance on, the MOU. Uncertainty as to such actions arose based on the Director's potential conflict of interest under the Conflicts Law. As noted, the Plaintiff alleged in the Complaint that the Director's interest in deriving future economic benefit based on the Ballpark Project due to his retail sales relationship with the Padres constituted a prohibited financial interest under the Conflicts Law and Section 94.

I. The Conflicts Law.

Government Code Section 1090 provides:

Members of the Legislature, state, county, district, judicial district, and city officers and employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Cal. Gov't Code § 1090. Section 1090 prohibits any financial interest in a contract, whether direct or indirect, made by a public officer in their official capacity. See *People v. Honig*, 48 Cal. App. 4th 289, 314-15 (1996) ("The instant statutes are concerned with any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the [city]."). In determining whether such an interest exists, Section 1090 is to be broadly construed. *Id.* ("[T]he term 'financially interested' in Section 1090 cannot be interpreted in a restricted and technical manner.")

Government Code Section 1092 provides, in pertinent part:

Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein.

Cal. Gov't Code § 1092. The case law provides that contracts made in violation of Section 1090 are void, not merely voidable. See *Thompson v. Call*, 38 Cal. 3d 633, 646 n. 15 (1985) ("California courts have generally held that a contract in which a public officer is interested is void, not merely voidable."); *Millbrae Ass'n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 262 (1968) ("A contract or transaction entered into in violation of [Section 1090] is invalid."). Thus, with proof that the Director in fact possessed a prohibited financial interest under the Conflicts Law, the actions taken by CCDC with respect to the MOU potentially may have been void.⁵

Under the Conflicts Law, whether or not an official abstains from voting on a contract or from participating in discussions regarding a contract in which they are financially interested is irrelevant to its validity. *Thompson*, 38 Cal. 3d at 649 ("California courts have consistently held that the public officer cannot escape liability for a Section 1090 violation merely by abstaining from voting or participating in discussions or negotiations."). Membership on a public body that adopts a contract may establish a presumption that the interested official participated in making the contract or influenced other members of the body to do so, despite the official's actual non-participation. *Id.* In short, a public body simply may not adopt a contract in which one of its members possesses a financial interest under the Conflicts Law.

⁵ In prior opinions unrelated to the present situation, the City Attorney has concluded that the CCDC and its members are subject to the conflict of interest provisions provided pursuant to the Conflicts Law. The issue as to whether the Conflicts Law and Section 94 apply in the first instance to the CCDC and the Director is not addressed herein.

2. The Letter Exchange Eradicated Any Potential Financial Interest Under The Conflicts Law.

In the present situation, the Director possessed a business relationship with the Padres through which the Director as the result of the Ballpark Project had the potential to obtain financial gains not necessarily available to the general public. Such an interest potentially constitutes a prohibited financial interest under the Conflicts Law.

However, prior to the Restoration and Ratification Events, the Director, pursuant to the Letter Exchange, separated himself entirely from his business relationship with the Padres and committed not to resume or enter into any other business relationship with the Padres or its affiliates from the date of the Letter Exchange forward. In turn, the Padres, and on behalf of its affiliates, agreed in the Letter Exchange not to resume or enter into any further business relationship with the Director. Accordingly, as of the date the Letter Exchange was completed, December 13, 2001, the Director no longer possessed a business relationship or any other financial relationship or interest with the Padres from which he could potentially gain future economic benefits, as was alleged by the Plaintiff.⁶

The case law interpreting and enforcing the Conflicts Law supports the conclusion that a public official's rejection or divestment of a potentially prohibited financial interest removes his disability from participating in the making of public contracts that are related to the interest formally possessed. Once the prohibited financial interest is eliminated, the public official no longer possesses any interest that potentially could create a conflict of interest or the appearance of a conflict of interest, thus the prophylactic purposes of the Conflicts Law are no longer implicated.

In *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191 (1980), a member of the city council owned a concession with which the city contracted. *Bailey*, 103 Cal. App. 3d at 194. The city council person had purchased the concession prior to being elected to the city council. *Id.* However, during the city council person's term in office, the concession contract came up for renewal pursuant to which the city council would be required to approve certain financial terms. *Id.* at 195. The city refused to renew the contract asserting that to do so would violate Section 1090 and the Fourth District Court of Appeal upheld the city's position. *Id.* at 197. In discussing the harsh result the Conflicts Law required, the Court stated:

In the present case, [...] it is conceded [that the council member's] integrity is above reproach and we sympathize with her position of having to choose between remaining on the Council or continuing as owner of the Concession.

Id. (emphasis supplied). As the Court's statement makes clear, pursuant to the Conflicts Law, the council member was confronted with the choice of resigning from the city council and retaining her interest in the concession, or remaining on the city council and completely divesting herself of her interest in the concession. Based on the Court's analysis, had the city council member chosen to divest herself of her interest in the concession, the Conflicts Law would not have been violated by the city council's renewal of a contract in which the council member was no longer interested. *Id.*

Decisions of other California courts similarly demonstrate that the complete divestment of a prohibited financial interest removes the prohibitions created by the Conflicts Law. In *Fraser-Yamor Agency, Inc. v.*

⁶ For purposes of this opinion, we rely on the representations of the City, the Director and the Padres that the Director possesses no relationship with the Padres other than the relationship discussed herein that potentially creates a conflict of interest under Section 1090 or any other provision of law, and we opine herein only as to the facts as detailed above. Further, we are not aware of information with respect to any other member of the Agency, City Council, CCDC, or any other City official or employee (other than is addressed in this or other opinions delivered by us this date) that potentially could create a conflict of interest under the Conflicts Law or any other provision of law, and we have not undertaken any investigation to determine if any such facts exist other than to obtain copies of questionnaires signed by each of the present and certain former directors indicating that, except with respect to the Director, none of the current directors have and none of the former directors had, during their tenure, any business relationship with the Padres or any partners, directors, officers or certain other affiliates thereof.

County of Del Norte, 68 Cal. App. 3d 201 (1977), the First District Court of Appeal found a Section 1090 violation where the interested public official had not sufficiently divested himself of the prohibited financial interest. The plaintiff, a member of the county board of supervisors, was a co-owner of an insurance agency with which the county placed its insurance business. *Fraser-Yamor*, 68 Cal. App. 3d at 205. Aware of the potential conflict issue, the plaintiff prior to assuming his position as a county supervisor attempted to divest himself of the potentially prohibited interest. To do so, the plaintiff and his agency partners amended their business agreement to specify that the plaintiff would not participate, directly or indirectly, in any profits or losses arising out of the insurance business with the county. *Id.* at 210. Nonetheless, the Court concluded that Section 1090 had been violated because the plaintiff had not entirely divested himself of his interest in the agency, stating:

Although Fraser did not receive any part of these commissions he nevertheless continued to have a direct financial interest in the business affairs of the agency and to be an active participant in the conduct of its business. We do not apprehend that Fraser divested himself of his financial interest in the agency merely because he did not share in the commissions derived by the agency from the county's insurance business or merely because none of these commissions were used to defray the operating expenses of the agency. Fraser has and has had an investment in the agency represented by his partnership and shareholder interests. His interest in the agency and in any contracts from which it derives a pecuniary benefit is clearly a financial one because the financial success of the agency inures to his personal benefit.

Id. at 214-15. The inescapable conclusion from the Court's analysis is that, had the county supervisor entirely divested himself of the prohibited financial interest, the potential that he would act based on personal considerations would have been eliminated and the Conflicts Law would not have been violated.

Similarly, the California Supreme Court has indicated that a Conflicts Law violation can be avoided where the public officer divests himself of the opportunity presented by a business transaction which would otherwise constitute a prohibited conflict of interest. In *Thompson v. Call*, 38 Cal. 3d 633 (1985), a city councilman sold a parcel of real property to a developer that had entered into a redevelopment project with the city of San Francisco. *Thompson*, 38 Cal. 3d at 638-41. As part of the redevelopment project, the developer conveyed the parcel, along with other parcels, to the city for use as a public park. *Id.* The city council previously had voted to approve the redevelopment project at issue. *Id.* In upholding the trial court's finding that the councilman had violated the Conflicts Law, the Supreme Court noted that the councilman could have easily avoided the violation, explaining:

In the instant case, Call was under no compulsion to negotiate with or sell the parcel to IGC. He could have simply informed IGC that to sell his land to the city, using IGC as a conduit, would place him in a conflict-of-interest situation; he would thereby have avoided any interaction with IGC which might implicate him in the [redevelopment] plan.

Id. at 650 n.25. By negating the financial interest itself, the councilman in *Thompson*, as with the public officials in *Bailey* and *Fraser-Yamor*, could have eliminated any conflict of interest and precluded the application of Section 1090. See also *People v. Darby*, 114 Cal. App. 2d 412, 426 (1952) ("A board member must refrain from intentionally causing himself to be interested in a contract and if by chance he discovers he is interested prior to official action he should divest himself of such interest or avoid criminal liability by resigning from his office.").

In the present situation, the Plaintiff alleged that the Director was in violation of the Conflicts Law due to his interest in gaining future economic benefits from the retail sales of Padres' merchandise as the result of the Padres continuing presence in San Diego and the Ballpark Project. However, pursuant to the Letter Exchange, the Director has presently and forever divested himself of the business relationship he possessed with the Padres, and has covenanted that he will not enter into any other business relationship with the Padres or its affiliates in the future. In turn, the Padres, and on behalf of its affiliates, have pursuant to the Letter Exchange terminated its business relationship with the Director and have similarly agreed not to enter in the future other business relationships with the Director. As such, the business relationship between the Director and the Padres that created the possibility of future economic benefits on behalf of the Director, as alleged by the Plaintiff, and that potentially constituted on the part of the Director a prohibited financial interest under the Conflict Laws, has been entirely

eliminated. As illustrated by *Bailey and Thompson*, the Director has in fact divested himself of the prohibited financial interest that according to the Plaintiff had implicated the Conflict Laws, and under the authority of these cases, has thereby eliminated the potential that a disabling conflict of interest exists with respect to CCDC actions related to the Restoration and Ratification Events, the MOU and Ballpark Project-related agreements. Moreover, because the Director has entirely divested himself of this interest (and covenanted against obtaining any other such interest), under *Fraser-Yamor*, the Director has sufficiently, and in fact totally, divested himself of the financial interest with respect to the MOU and Ballpark Project-related agreements and thereby eliminated the potential that a conflict of interest exists under the Conflicts Law. Accordingly, pursuant to and as of the date of the Letter Exchange, the Director no longer possessed a financial interest that potentially violates or implicates the Conflicts Law.

D. The Letter Exchange And The Restoration And Ratification Events Cured Any Potential Invalidity Of CCDC, City, City Council, Agency, And Padres' Actions In Furtherance Of The MOU Under Section 94.

Section 94, similar to the Conflicts Law prohibits any City official from being interested in a City contract. Based on the Director's potential economic benefit from his business relationship with the Padres that might be attendant with the benefits to the Padres of the Ballpark Project, the possibility arises that the Director possessed a disabling conflict of interest with respect to the MOU and Ballpark Project-related agreements under Section 94 as well as under the Conflicts Law. As discussed in detail below, the legal result in this situation with respect to the City Charter is the same as with respect to the Conflicts Law.

I. The Legal Effect of Section 94 is Identical to Section 1090.

Section 94 provides:

No officer, whether elected or appointed, of the City of San Diego shall be or become directly or indirectly interested in, or in the performance of, any contract with or for the City of San Diego . . .

All contracts entered into in violation of this Section shall be void and shall not be enforceable against said City.

Although Section 94 closely mirrors the Conflicts Law, Section 94 does differ in some respects. First, Section 94 provides that any contract made in violation of the section is void. The Conflicts Law uses the phrase "may be avoided." Cal. Gov't Code § 1092. However, because the case law has consistently interpreted the Conflicts Law as voiding a contract, there is in effect no meaningful difference between the provisions. *See Thompson*, 38 Cal. 3d at 646 n. 15.

Section 94 prohibits any "interest" in a contract, as opposed to a "financial interest" in a contract that is prohibited by the Conflicts Law. (Cal. Gov't Code § 1090) This suggests that the category of disabling conflicts of interests encompassed under Section 94 may be broader than under the Conflicts Law. Even assuming that to be the case, however, in the present situation the Director possessed a "financial" interest in the MOU if the Director possessed any interest at all, thus again, this difference in language between the provisions does not constitute a significant difference in effect.

Finally, Section 94 precludes any City officer from being interested "in, or in the performance of" any City contract. The Conflicts Law does not refer to "the performance" of a contract. (Cal. Gov't Code § 1090) In the present situation, this difference in language does not constitute a significant difference in effect because the Director's financial interest derived from a merchandizing business relationship with the Padres that was not related to the performance of the MOU.

Although there is no appellate court decision specifically holding that the scope and legal effect of Section 94 is identical to the Conflicts Law, one California appellate court has addressed a conflict of interest situation under both sections. In *City Council v. McKinley*, 80 Cal. App. 3d 204 (1978), the Fourth Appellate District examined an alleged conflict of interest regarding a city landscaping contract and found a disabling conflict of interest under both the Conflicts Law and Section 94. Although the suit apparently was brought only under

Section 94, the court, having concluded that the contract violated Section 94, turned to the Conflicts Law, explaining:

For the reasons stated above it is clear the proposed contract would also violate the provisions of Government Code section 1090. . . . The law of this state is that public officers shall not have a personal interest in any contract made in their official capacity. The charter provisions of the City of San Diego are in harmony with the established policy of this state in this regard

The proposed contract violates San Diego City Charter Section 94 as well as Government Code Section 1090.

McKinley, 80 Cal. App. 3d at 213. The language of Section 94 substantially mirrors the Conflicts Law except as to certain portions which are not significant in the present context. Based on the discussion in *McKinley*, and the fundamentally similar language and purpose of the two sections, Section 94 can be interpreted in the present situation as being legally identical in effect as the Conflicts Law.

2. The Letter Exchange Eradicated Any Potential Financial Interest Under Section 94.

As discussed above, pursuant to the Letter Exchange the Director totally and entirely divested himself of the business relationship with the Padres that created the potential of future economic benefit, and both the Director and the Padres, as well as Padres' affiliates, committed not to enter into other business relationships in the future. As such, the financial interest that was allegedly possessed by the Director that potentially created a disabling conflict of interest under the Conflicts Law has been eliminated. Under California case law, the elimination of a prohibited financial interest removes the potential that a conflict of interest exists and makes inapplicable the provisions that prohibit and penalize such conflicts. *See* Section III.C. Because in this situation the scope and legal effect of Section 94 is identical to the Conflicts Law, pursuant to and as of the date of the Letter Exchange, the Director no longer possessed a potentially prohibited interest that violates or implicates Section 94.⁷

E. Analysis Of The Restoration And Ratification Events With Respect To CCDC, City, City Council, Agency, And Padres' Actions In Furtherance Of The MOU.

In furtherance of and to implement the Ordinance and the MOU, and in order to eliminate any doubt as to the efficacy of the MOU, the November Resolutions, and Ballpark Project-related agreements, the City, the City Council, the Agency, the CCDC and the Padres, and their respective governing bodies, undertook the Restoration and Ratification Events.

1. The Restoration And Ratification Events And City Authority To Undertake Them.

Proposition C, passed by the voters in November 1998, provides:

[I]t is the intent of the People of the City of San Diego [People] that this ordinance and the Memorandum of Understanding it authorizes constitute the legislative acts that establish policy for the City on these matters, and provide the ways and means **for the implementation of that policy** by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of this ordinance.

Proposition C at 2 (emphasis supplied). Under Proposition C and the MOU, the City Council is empowered and directed on behalf of the City to take the actions that are necessary and appropriate to carry out and implement the

⁷ As noted, Section 94 precludes City officials from possessing any interest, as opposed to exclusively a financial interest, in a City contract. We are not aware of any interest possessed by the Director, or any other City official, other than the interest discussed herein (and within any other opinion delivered by us this date), and provide this opinion on the assumption that no such unknown interest exists.

purposes and intent established by Proposition C and the MOU.⁸ Pursuant to the authority provided by Proposition C and the MOU, and the respective organic authority of each of the Parties, on December 14, 2001, the Parties and their governing bodies implemented one or more of the Restoration and Ratification Events.

2. The Restoration and Ratification Events Were In Furtherance Of And Implement The Mandate Of The Ordinance And The MOU And Reaffirmed The Efficacy Of The MOU And Ballpark Project-Related Agreements.

As discussed in detail above, on December 13, 2001, the Director and the Padres completed the Letter Exchange by which the Director totally and completely divested himself of his business relationship with the Padres, thereby eliminating any possibility the he could derive future economic benefit as the result of the MOU and Ballpark Project-related agreements. The Plaintiff had alleged that such an interest created a disabling conflict of interest under the Conflicts Law and Section 94. Subsequent to the Letter Exchange, and thus after the Director's potential conflict of interest had been eradicated, the City, the City Council, the Agency, the CCDC and the Padres, and their governing bodies, undertook the Restoration and Ratification Events. Under California case law, once the potentially disabling impediment (i.e., the Director's business relationship with the Padres) was removed, the City, City Council, Agency, CCDC and the Padres could validly reaffirm and approve their respective actions in furtherance of the MOU and Ballpark Project-related agreements to ensure that any potential defect was effectively removed.⁹ Based on this case law, and the Administrative Record, the Trial Court held that the Restoration and Ratification Events operated to cure any potential invalidity as alleged by Plaintiff.

⁸ Proposition C provides, in pertinent part:

Section 2. That, following the adoption of this ordinance and approval of the MOU by the voters of the City, the City Council be and it is hereby authorized to enter into any amendments, or agree to any modifications, to the MOU that in its judgement are in the best interests of the City, Agency, and CCDC only if any such amendments or modifications do not materially: (1) decrease the rights or increase the obligations of the City; (2) increase the financial commitments of the City; or (3) decrease revenue to the City.

Section 3. That the City be and it is hereby authorized and directed to enter into the agreements necessary to implement the provisions of this ordinance and the MOU, and to carry out their purposes and intent; provided, however, that any such agreements are determined by the City Council to be in the best interests of the City, Agency and CCDC and do not materially: (1) decrease the rights or increase the obligations of the City pursuant to the MOU; (2) increase the financial commitments of the City pursuant to the MOU; or (3) decrease revenue to the City pursuant to the MOU.

⁹ This situation is distinguishable from that addressed in Stigall v. City of Taft, 58 Cal. 2d 565 (1962). In Stigall, the California Supreme Court invalidated a municipal contract under the Conflicts Law despite the resignation prior to the adoption of the contract of the city councilman who possessed a prohibited financial interest. Stigall, 58 Cal. 2d at 568-70. The Supreme Court reasoned that the councilman's participation in the planning, preliminary discussions and compromises related to the contract violated Section 1090 and his resignation prior to the approving vote did not cure the violation. The situation in Stigall, however, is distinguishable. In Stigall, the councilman, despite his resignation, continued after the approval of the city contract to hold the prohibited financial interest in the contract that was approved by the city council. His attempt to avoid the effect of the Conflicts Law by resigning prior to the approving vote (he resigned only minutes before) was ineffective because he continued, going forward, to hold and benefit from the financial interest he possessed. Combining his continued interest with the pretense of resignation, the Court easily found a violation. Here, however, subsequent to the execution of the Letter Exchange, the Director no longer possessed, as alleged by the Plaintiff, any expectation of future economic benefit as the result of his business relationship with the Padres. Thus, the violation Plaintiff alleged and against which the Conflicts Law is designed to protect no longer existed, in fact or potentially, due to the Director's total divestment of his potential financial interest. In short, the Director no longer possessed the alleged financial interest thus the Conflicts Law was no longer implicated. To the extent the Director participated in CCDC actions prior to the Letter Exchange, the Restoration and Ratification Events (by all Parties) after the Director no longer possessed the alleged financial interest in future economic benefits

In *Los Angeles Dredging Co. v. City of Long Beach*, 210 Cal. 348 (1938), the California Supreme Court addressed the issue of whether a city could validly ratify a contract that was executed by its city manager without the prior authority of the city council. During a construction project originally awarded through competitive bidding, the city manager entered two oral contracts related to emergency situations that had arisen in the project. *Los Angeles Dredging*, 210 Cal. at 350-52. Under the Los Angeles City Charter, any emergency contract required the prior affirmative vote of five members of the city council. *Id.* at 358. At the time of the contracts, the city manager was therefore without authority to enter into such agreements and the contracts were unenforceable. *Id.*

Subsequently, the city council expressly confirmed the city manager's authority to enter the contracts and ratified the contracts in the manner required under the charter. *Id.* In rejecting the city's argument that the contracts could not be enforced, the Supreme Court explained:

The rule that a void municipal contract cannot be ratified is, as already pointed out, confined to contracts which are beyond the powers of the municipality, or those in which some prescribed formality has irrevocably been disregarded. Such contracts cannot be ratified for a twofold reason: Ratification must be based upon a previously existing power to make the particular contract; and ratification must be made in the manner prescribed for the making of such contract. [. . .]

[W]hile municipalities should receive the full protection of the limitations thus placed upon the doctrine of ratification, there is no reason why the doctrine should be repudiated where municipalities are concerned. And to repudiate the doctrine is, in effect, precisely what defendant asks this court to do. The contracts were of a type which the city undoubtedly had power to make. [. . .] The only requirement that did apply was that the city manager be authorized by resolution and affirmative vote of five members of the council. The resolution was ultimately adopted by such a vote. In other words, the contracts were within the power of the municipality, and the ratification was in the manner prescribed for the making of the contract. Upon such ratification the contracts became binding upon the city as fully as though they had been previously entered into in the prescribed manner.

Los Angeles Dredging, 210 Cal. at 359-60.

In the present situation, the Restoration and Ratification Events create the same validating effect under Conflicts Law and Section 94, and the Trial Court expressly so found. We have relied on the City's representation that each of the respective City, Agency, and CCDC ordinances, resolutions or contracts authorized thereunder related to the Ballpark Project were within each entity's power to adopt and were adopted in the prescribed manner, and that the Restoration and Ratification Events were duly undertaken in the prescribed manner by which each entity was required to undertake such acts. The Restoration and Ratification Events occurred subsequent to the Director's relinquishment of his expectation as to future economic benefit resulting from his business relationship with the Padres and thus subsequent to his complete divestment of the potential financial interest the Plaintiff alleged he possessed in the MOU and Ballpark Project-related agreements. As such, at the time the Restoration and Ratification Events occurred, the Director's potential conflict of interest had been eradicated by operation of the Letter Exchange. Accordingly, under *Los Angeles Dredging*, the Restoration and Ratification Events effectively reaffirmed as against the Conflicts Law and Section 94 such prior City, City Council, Agency, and CCDC actions in furtherance of the MOU and Ballpark Project-related agreements.

Similarly, in *Baker v. City of Palo Alto*, 190 Cal. App. 2d 744 (1961), the Palo Alto City Council adopted a contract pursuant to which the city would purchase property from private landowners. *Baker*, 190 Cal. App. 2d at 747. The city's action was challenged as violating the California Constitution and the Palo Alto City Charter. *Id.* The City Council subsequently placed the issue in front of the voters, who approved the contract by referendum. The city and the landowners thereafter reexecuted the contract. *Id.* at 748.

removes the inference of prior taint with which the Stigall Court was concerned. Accordingly, Stigall is distinguishable from the present situation and should not control.

Plaintiffs in *Baker* argued “that the ‘void’ contract could not be reexecuted and the acts under it adopted,” claiming that the “requisite dates of performance had passed” and that the city must perform all authorizing acts again from the beginning of the process. *Id.* at 756-57. The appellate court rejected this argument, stating:

We do not see the need for the ritual of reperformance. Upon the removal of the city’s disability by the vote of the referendum, the city had full power to enter into the contract. [. . .] The city could, like any other party, retroactively adopt prior acts or fix retroactive dates of execution of the contract. [. . .] To require the parties to perform again the acts taken under the contract would be to call for idle and empty ceremonies.

Id. at 757. See *Robbins v. Pacific Eastern Corp.*, 8 Cal. 2d 241, 278 (1937) (“Contracts which are illegal only because of the place or time of their making may be later adopted at places or times when or where they are not unlawful.”). As in *Baker*, after the CCDC’s “disability” had been removed by the Director’s relinquishment of his potential financial interest, the City, City Council, Agency and CCDC pursuant to the Restoration and Ratification Events effectively reaffirmed as against the Conflicts Law and Section 94 each of their respective prior actions in furtherance of the MOU and Ballpark Project-related agreements.

IV. Other Allegations; Challenge Regarding CEQA And The Policy Of Insurance For The 2002 Bonds.

A. The Allegations Asserted By Osborne.

On or about January 24, 2002, Ballpark Project opponent Gardner Osborne (“Osborne”) filed in the Action an answer in which he asserted affirmative defenses challenging the Ballpark Project and the November Resolutions. Osborne first contended that the Ballpark Project development mix approved by the City Council in the November Resolutions substantially changed the environmental impact that would be created by the Ballpark Project from that which was approved pursuant to the previously conducted Environmental Impact Report, thus mandating further environmental review. Osborne based his challenge on the MOU which provides that the Ballpark Project will fully comply with the requirements of the CEQA. Osborne also asserted an affirmative defense in which he contended that the policy of insurance to be obtained in relation with the 2002 Bonds increased the City’s obligations under the MOU in the event the Bonds were invalidated, which he contended violated the MOU modification and amendment provisions requiring voter approval. Osborne sought to enjoin the City from preventing him in a subsequent validation action from asserting issues related to the policy of insurance because the policy was not yet publicly disclosed.

B. Analysis Of The Trial Court Ruling.

1. The CEQA Challenge.

At trial, the City submitted to the Trial Court its Request For Judicial Notice – Environmental Documents, which contained the Ballpark Project-related materials produced during the previously conducted Environmental Impact Report and other ancillary environmental compliance matters. The Trial Court granted the City’s request for judicial notice of these materials, and accepted these documents into evidence as augmentation to the Administrative Record before the Trial Court.

The Trial Court ruled that the November Resolutions and the actions or agreements approved thereunder did not constitute events that potentially implicated CEQA or necessitated subsequent environmental review. The Trial Court held:

15. Osborne contended that the Resolutions and the contracts approved by them violate the MOU because the MOU requires the parties to comply with CEQA, and the November 20, 2001 actions commit the parties to a project that requires CEQA review. Each component of the Ancillary Development (as defined in the MOU) is subject to a Final Subsequent Environmental Impact Report that requires Secondary Studies for individual ancillary developments in accordance with the Agency’s CEQA guidelines. The Resolutions and the contracts approved by them involve financial transactions that have no direct or

indirect environmental impact. Nothing in the Resolutions or the contracts, approved by them makes a commitment to a specific project within the Ancillary Development that would require environmental review at this time.

Based on the Administrative Record before the Trial Court, and as augmented by the City's Request for Judicial Notice – Environmental Documents, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City Council's determination that the November Resolutions and the contracts approved thereunder did not necessitate subsequent environmental review under CEQA and that the same did not constitute material adverse changes requiring voter approval under the MOU.

2. The Bond Insurance Policy Challenge.

At trial, the City submitted to the Trial Court a specimen of the policy of insurance to be issued by the Ambac Assurance Corporation with respect to the 2002 Bonds. The Trial Court accepted the policy of insurance into evidence as augmentation to the Administrative Record before the Trial Court.

The Trial Court found that there was no evidence in the record to support Osborne's contention that the policy of insurance created a material adverse change. The Trial Court ruled:

16. Osborne contended that he should not be enjoined from future litigation as to the financial guaranty insurance policy to be issued by Ambac Assurance Corporation if the financing transaction closes. A specimen of that policy is part of the augmented certified record. It was used by staff in preparing presentations to the City Council but was not provided to the City Council. In the structure of this transaction, the financial guaranty insurance policy is a contract by which Ambac agrees to pay the obligations of PFFA under the bonds if PFFA fails to do so. There is no evidence in the record that the City Council has entered into or intends to enter into any agreement with Ambac that would amount to a material adverse change pursuant to the MOU and the record contains substantial evidence to support the City's determination that there was no material adverse change.

Based on the Administrative Record before the Trial Court, and as augmented by the specimen policy of insurance, under the substantial evidence standard, the Trial Court properly found that substantial evidence exists in the record supporting the City Council's determination that the policy of insurance to be obtained with respect to the 2002 Bonds did not constitute material adverse change requiring voter approval under the MOU.

OPINION

Although there is no reported appellate decision directly on point and the matter is not entirely free from doubt and accordingly there can be no assurance that a particular court would not hold otherwise, based on and subject to all of the foregoing, including the assumptions, limitations and qualifications referred to herein, including assumptions regarding factual matters, our reliance exclusively on the Judgment of the Trial Court as to factual findings, and our assumptions that in any trial or other disposition of the issues raised in the Rejected Pleading, the Trial Court will make the same findings as it did in the Judgment and the Second Judgment, or that such findings are otherwise determined to be lawfully binding on the Simmons Supporter and the limitation of this opinion to substantive consideration of the effectiveness of the November Resolutions, the Restoration and Ratification Events, and the consequences of the Other Allegations, and noting again that we are not considering or analyzing any procedural issues, certain jurisdictional issues, or issues related to the Rejected Pleading, as of the date hereof, we are of the opinion that, if the matter were properly raised, briefed and presented to a court of last resort of competent jurisdiction, the court would hold that the November Resolutions and the Restoration and Ratification Events are effective, and therefore the Plaintiff does not prevail on any of the causes of action stated in the Complaint, and that the person asserting the allegations under "Other Allegations" above does not prevail on those allegations.

We note that a court's decisions regarding matters discussed herein would be based on the court's own analysis and interpretation of the factual evidence before the court and of applicable legal principles. Furthermore, it is our and your understanding that the opinion provided above is not intended to be a guaranty as to what the court would actually hold, but an opinion as to the decision of a court of last resort if the issues discussed

herein were properly raised, presented and argued to it and the court followed what we believe to be the applicable legal principles. The opinion set forth above is given as of the date hereof and we have undertaken no obligation to update this opinion or otherwise to advise you of any changes in law or any facts or circumstances that may hereafter occur or come to our attention that could affect such opinion. The analyses and conclusions above are premised upon, and limited to, the law and the facts in effect as of the date of this letter.

This letter is addressed to the Authority and the City and is exclusively and entirely for their respective benefits in connection with the issuance of the Bonds. It may not be relied upon by anyone other than the Authority and the City.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per

Enclosure

Proposition C

(This proposition will appear on the ballot in the following form.)

PROP C AUTHORIZING REDEVELOPMENT AND A BALLPARK. Shall an ordinance be adopted authorizing the City of San Diego to enter into agreements to redevelop an area of downtown, and construct a multiple use ballpark, provided that: 1) the City's participation requires no new taxes, is capped, and also limited to redevelopment funds and an amount equivalent to certain hotel tax revenue; and 2) the San Diego Padres guarantee substantial private contributions, pay all ballpark construction cost overruns, and play in San Diego until 2024?

AN ORDINANCE AUTHORIZING REDEVELOPMENT AND CONSTRUCTION OF A BALLPARK

WHEREAS, on December 30, 1996, the Mayor's Task Force on Padres Planning [Mayor's Task Force] was established by the Mayor to "develop and help implement a strategic plan that enables the San Diego Padres Baseball Club [Padres] to operate on a sound business basis and as a contributing corporate citizen of San Diego for the foreseeable future;" and

WHEREAS, on September 19, 1997, the Mayor's Task Force issued its report concluding, in part, that a new baseball-oriented facility was necessary for the Padres to have the opportunity to remain competitive and to become financially stable; and

WHEREAS, on September 30, 1997, the City of San Diego Task Force on Ballpark Planning [Citizen's Task Force] was established to recommend to the Mayor and City Council a site and financing alternatives for a new baseball-oriented facility within the City of San Diego; and

WHEREAS, after numerous public hearings and debate, the Citizen's Task Force issued its report on January 29, 1998, recommending, in part, that the proposed new facility be located in the South Embarcadero area of the City of San Diego and that the City enter into negotiations regarding the planning, construction and operation of such a new facility, but recognizing that the new facility should be part of a larger redevelopment effort in the Centre City East area of San Diego; and

WHEREAS, the City, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation and the Padres have been negotiating regarding such matters since that time; and

WHEREAS, on July 14, 1998, the City and the Padres jointly presented the essential terms of an agreement to be submitted to the voters regarding the new ballpark and the necessary redevelopment to be built concurrently with the new ballpark; and

WHEREAS, those essential terms include an investment from the Padres and private sector of \$115 million, an investment from the City of \$225 million, an investment from the Redevelopment Agency of \$50 million, and numerous protections for the City's general fund including caps on both the City's investment and contribution for annual operating expenses, and a protection regarding certain general fund revenues; and

WHEREAS, the Citizen's Task Force has reviewed and unanimously approved the essential terms of the proposed agreement; and,

WHEREAS, it is the intent of the People of the City of San Diego [People] that this ordinance and the Memorandum of Understanding it authorizes constitute the legislative acts that establish policy for the City on these matters, and provide the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of this ordinance; and

WHEREAS, it is the further intent of the People that this ordinance and the Memorandum of Understanding it authorizes not provide for entitlements in land or development, such entitlements being the subject of other actions by public entities or of permits to be sought at later times; and

Environmental Quality Act be fully complied with in the implementation of the matters set forth in this ordinance and the Memorandum of Understanding it authorizes; NOW, THEREFORE,

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN DIEGO as follows:

Section 1. That the City Manager be and he is hereby authorized and directed to execute for and on behalf of the City of San Diego the Memorandum of Understanding between the City of San Diego [City], the Redevelopment Agency of the City of San Diego [Agency], the Centre City Development Corporation [CCDC], and Padres L.P. [Padres] concerning a ballpark district, construction of a baseball park, and a redevelopment project [MOU], the form of which is attached hereto as Exhibit A and which is incorporated into this ordinance and made a part of it. When fully executed, the MOU shall be on file in the office of the City Clerk as Document No. OO-18565.

Section 2. That, following the adoption of this ordinance and approval of the MOU by the voters of the City, the City Council be and it is hereby authorized to enter into any amendments, or agree to any modifications, to the MOU that in its judgement are in the best interests of the City, Agency and CCDC only if any such amendments or modifications do not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City.

Section 3. That the City be and it is hereby authorized and directed to enter into the agreements necessary to implement the provisions of this ordinance and the MOU, and to carry out their purposes and intent; provided, however, that any such agreements are determined by the City Council to be in the best interests of the City, Agency and CCDC and do not materially: 1) decrease the rights or increase the obligations of the City pursuant to the MOU; 2) increase the financial commitments of the City pursuant to the MOU; or 3) decrease revenue to the City pursuant to the MOU.

Section 4. This ordinance shall become effective on the date of its adoption by a majority of the voters of the City of San Diego voting at an election held for that purpose.

THE CITY OF SAN DIEGO,
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,
THE CENTRE CITY DEVELOPMENT CORPORATION,
AND
PADRES L.P.
CONCERNING A BALLPARK DISTRICT,
CONSTRUCTION OF A BASEBALL PARK, AND A
REDEVELOPMENT PROJECT

RECITALS

WHEREAS, the San Diego Padres Baseball Club has been a valued community asset since joining The National League of Professional Baseball Clubs in 1969; and

WHEREAS, Padres L.P. ("Padres"), the current owner, purchased the team in 1994 and has worked diligently to improve the image of the Club in the community and to contribute to the quality of life in San Diego; and

WHEREAS, a City of San Diego ("City") task force, after thorough investigation and analysis, determined that the development and construction of a baseball park ("Ballpark") is important to providing the Padres with the opportunity for long-term economic and competitive viability; and

WHEREAS, the City believes that the development and construction of a Ballpark will provide a significant and much needed catalyst for revitalization and continuing redevelopment of downtown San Diego; and

WHEREAS, the Padres are willing to make a significant investment in the Ballpark, to make the \$115,000,000 investment in the Ballpark Project described in Section XVIII, and to commit to remain in San Diego for an expected 30 years, but in no event less than 22 years, from the Opening Date; and

WHEREAS, it has always been understood between the Parties that the Ballpark would be more than just a Ballpark, but will be a significant redevelopment project including private development in the underdeveloped vicinity of the Ballpark; and

WHEREAS, the City, the Redevelopment Agency of the City of San Diego ("Agency"), and the Centre City Development Corporation ("CCDC") are willing to make significant investments in the Ballpark and redevelopment around the Ballpark; and

WHEREAS, the Padres are willing to assume the responsibility for and make development of the Ballpark-contingent upon contemporaneous, significant commercial redevelopment in the vicinity of the Ballpark; and

WHEREAS, the Parties agree that the following principles are central to the terms and conditions of this MOU: a) no new or increased taxes will be imposed to pay for construction of the Ballpark Project; b) the Ballpark Project will be funded through a public/private partnership, with substantial private-sector investment in addition to the public investment; c) Ballpark operations will be "privatized" to reduce public costs; d) tax-exempt financing will be used to the greatest extent possible for the Ballpark Project; and

WHEREAS, the terms of this MOU contain numerous protections for the City's general fund, including caps on the expenses of the City for operating costs and investments in the Ballpark, land and infrastructure, and a protection from the Padres regarding certain revenue streams; and

WHEREAS, the Parties have concluded that the proposed public/private partnership for the Ballpark and associated redevelopment is in the best interests of the Parties and the citizens of San Diego; and

WHEREAS, on July 14, 1998, the Parties agreed to the essential terms and conditions regarding the subject matter described herein to be presented to the electorate, and it is the purpose of this MOU to memorialize such agreements, subject to a vote of the electorate;

I. PURPOSE AND INTENT

The purpose and intent of this Memorandum of Understanding ("MOU") is to provide for the establishment of a Ballpark District ("District"), the construction of a Ballpark within the District, and the construction of new development in the District, all within an underdeveloped area of downtown San Diego. It is the intent of the Parties that this MOU and its authorizing ordinance which are being voted on by the electorate constitute the only legislative act necessary to establish policy for the City and the Agency on these matters, and provide the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent provided for herein.

It is the further intent of the Parties that this MOU not provide for entitlements in land or development, such entitlements being the subject of other actions by public entities or of permits to be sought at later times. It is also the intent of the Parties that the requirements of the California Environmental Quality Act be fully complied with in the implementation of the matters set forth in this MOU. The Parties intend that the planning, development and construction of the projects set forth in this MOU be a cooperative, mutual endeavor in which the Parties actively participate and work together, in good faith and with due diligence - a public/private partnership.

II. DEFINITIONS

"Agency" means the Redevelopment Agency of the City of San Diego.

"Agency Investment" means the investment of Agency and CCDC funds towards the Ballpark Project as set forth in Section XVII.

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

"Ballpark" means an open-air, natural grass, state-of-the-art baseball facility, with multiple uses, and with approximately 42,000 seats and the Outfield Park, to be constructed in the District, and consisting of the ballpark structure itself, all fixtures and systems, the Outfield Park, and the grounds and walkways immediately surrounding the ballpark structure.

"Ballpark Estimate" means an estimate of the total cost for the development and construction of the Ballpark, including all hard and soft costs but not including any Land Acquisition Costs, Parking Facilities costs or Infrastructure costs.

"Ballpark Project" means the Ballpark, Outfield Park Retail Parcels (as defined in Section XVIII), Infrastructure and Parking Facilities (except for the Phase 1 Parking Facilities to the extent the Developer is responsible for the costs therefor), including Land Acquisition Costs.

"Ballpark Project Estimate" means an estimate of the total cost for the development and construction of the Ballpark Project.

"Bond Counsel Review" means an opinion by bond counsel retained by the City at no expense to the Padres, as to whether an action proposed by the Padres would cause the securities issued by the City not to qualify for tax-exempt status under federal law, such opinion to be rendered within ten (10) business days after notification by the Padres to the City of the proposed action.

"Capital Expenditure" means the cost of all labor and materials reasonably required to 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. By way of example only and not as a limitation: structural components include all foundations, structural members, piers, walls, roofs and ramps; systems components include scoring systems, video boards, heating, ventilating, air conditioning, plumbing, electrical, gas and water systems, escalators and elevators; integral parts include the Public Parking Facilities.

"Capital Expenditure Reserve Fund" means the fund established for Capital Expenditures as set forth in Section XXII.G.

"CCDC" means the Centre City Development Corporation.

"Centre City Redevelopment Project" means that project and area, and its associated plan, established by the City Council on May 11, 1992, by the adoption of Ordinance No. O-17767.

"Centre City Redevelopment Plan" means the plan for the Centre City Redevelopment Project.

"Certification Date" means the date on which the San Diego City Clerk certifies to the 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 City Council authorizing the City to enter into this MOU.

"City" means the City of San Diego.

"City Council" means the San Diego City Council.

"City Events" means those events conducted by the City (including City-sponsored 3rd party events) as set forth in Section XXII.C.

"City Investment" means the investment of the City towards the Ballpark Project as set forth in Section XVI, which may include any monies obtained from other public sources, except as set forth in this MOU.

"Concession Rights" means the contractual right to sell any kind of food, beverage or novelties at the Ballpark.

"C.P.I." means the San Diego Consumer Price Index for all urban consumers (CPI-U).

"Design & Construction Fund" means the fund described in Section XX.

"Developer" means the master developer for Phase 1 selected by the Padres and reasonably acceptable to the City, Agency and CCDC.

"Developer Rights Fees" means any fees paid by a private developer in consideration for the opportunity to participate in Phase 1.

"District" means the Ballpark District to be established pursuant to this MOU.

"Final Baseline Ballpark Program" means the program for the Ballpark as set forth in Section VII.

"Final Completion of the Ballpark Project" means that the Ballpark Project is ready for the playing and public exhibition of Major League Baseball.

"Force Majeure Event" means any of the following events which prevents a party from performing any obligation under this MOU: any act of God, strike, lockout or other industrial disturbance during the development or construction only of the Ballpark Project, but not including a strike or lockout by Major League Baseball players or umpires; 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 (except as expressly provided above); title dispute, or 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 not including any City laws or ordinances); any initiative or referendum; and failure to obtain any necessary federal, state or county governmental approval.

"Incremental Ballpark Expenses" means specific event related expenses for the respective operations of City Events, and Padres Games and Events at the Ballpark, as set forth in Section XXII.F.

"Infrastructure" means roads, sidewalks, other public facilities, and public utilities related to the Ballpark and Parking Facilities, as listed and set forth in Attachment A.

"Infrastructure Estimate" means an estimate of the total cost for the development and construction of Infrastructure but not including any Land Acquisition Costs.

"Joint Ballpark Ownership Expenses" means the shared expense between the City and the Padres of owning and managing the Ballpark, as set forth in Section XXII.E.

"Land Acquisition Costs" means the full cost of all land to be acquired for the Ballpark Project, as set forth and described in Attachment B, 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 and related costs.

"Land Acquisition Estimate" means an estimate of Land Acquisition Costs.

"Major Change Order" means any change order exceeding \$750,000 or resulting in a significant programmatic deviation from the Final Baseline Ballpark Program.

"MOU" means this Memorandum of Understanding.

"Naming Rights" means the contractual right to have a name associated with the Ballpark Project, whether for the Ballpark and/or Ballpark Project as a whole or for specific areas within the Ballpark and/or Ballpark Project.

"Opening Date" means the first scheduled home game of the 2002 National League Championship Season (or any exhibition game occurring no more than two weeks prior thereto), or such earlier date as is possible and mutually determined by the Padres and the City.

"Outfield Park" means a park-like area, suitable for picnics and observing events in the Ballpark, set amidst (but not including) a combination of retail, commercial and residential development located adjacent to the Ballpark.

"Padres" means Padres L.P.

"Padres' Games and Events" means those events conducted by the Padres as set forth in Section XXII.C.

"Padres/Private Investment" means the investment or contribution of private persons or entities, including the Padres, towards the Ballpark Project, as set forth in Section XVIII of this MOU.

"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 Attachment B.

"Parking Facilities Estimate" means an estimate of the total cost for the development and construction of the Parking Facilities, but not including any Land Acquisition Costs.

"Party" or "Parties" means a party or the parties, respectively, to this MOU.

"Phase 1" means the first phase of Ancillary Development which, subject to the credit available for Substitute Ancillary Development, shall include at least: a) a 150 room extended stay hotel and 700 additional new hotel rooms with associated parking; b) office complexes containing at least 600,000 gross square feet with associated parking; and c) retail development containing at least 150,000 gross square feet.

"Phase 1 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 as part of the Infrastructure Estimate) provided by Padres or the Developer as part of Phase 1, as described in Attachment B.

"Public Parking Facilities" means Parking Facilities not including Phase 1 Parking Facilities, as described in Attachment B.

"Stabilization Reserve Fund" means the fund described in Section XXXIV and Attachment F.

"Substantial Completion of the Ballpark Project" means that the Padres' offices, clubhouse and other exclusive spaces are ready for occupancy, and that all other areas of the Ballpark Project have been finished to the Padres' reasonable satisfaction, subject only to contractors' punch lists.

"Substitute Ancillary Development" means development and construction of hotel and/or retail properties by other developers in the area in Centre City East shown on Attachment C, of a type comparable to the Phase 1 hotel and/or retail properties, which hotel and/or retail properties shall be credited against the Padres' commitment for Phase 1 hotel and/or retail development and construction; provided, however, that the same Transient Occupancy Tax revenue and net available tax increment revenue reasonably expected to be generated by the Substitute Ancillary Development is at least the same as the Transient Occupancy Tax revenue and net available tax increment revenue reasonably expected to be generated by the comparable Phase 1 development. Notwithstanding the above, in no event shall the Phase 1 retail adjacent to the Outfield Park be less than 100,000 gross square feet and the Substitute Ancillary Development shall not include any development which has been proposed to CCDC, and for which plans and drawings have been created by the developer but not yet submitted to CCDC, as of August 4, 1998.

"Transient Occupancy Taxes" means taxes paid by users of hotel and motel rooms within the City, as more fully set forth in San Diego Municipal Code section 35.0101, et seq.

"Value Engineering" means a process of reviewing the program, design, plans and specifications for the Ballpark Project for the purpose of reducing costs wherever possible.

III. EFFECTIVE DATE AND TERMINATION

The City Manager shall be directed and authorized to sign this MOU on behalf of the City on the Certification Date. The Padres shall execute this MOU no later than August 3, 1998, and, by its signature on this MOU, the Padres irrevocably accept the terms of this MOU and agree to be bound by it if the Certification Date occurs, in which case the City Manager, the Agency and CCDC shall execute and deliver this MOU to the Padres. This MOU shall become effective upon its execution by all Parties and, unless otherwise agreed to in writing by the Parties, shall expire on March 31, 2000, unless the Conditions Subsequent set forth in Section XXXIII are satisfied, in which case this MOU shall continue in force and effect for the same term as any lease or other agreement for the use and occupancy of the Ballpark entered into between the City and the Padres pursuant to this MOU.

IV. BALLPARK DISTRICT

The City shall establish the District within, but not as a part of, the Centre City East Sub-area of the Centre City Redevelopment Project ("Centre City East"). The District shall be located adjacent to the Gaslamp Quarter and across from the Convention Center expansion. The boundaries of the District shall be established by the City Council, with the participation of the Padres, but shall generally be the boundaries of Centre City East south of Market Street. The Centre City Redevelopment Plan is not amended by this action to incorporate the District within it; however, the Agency and CCDC shall be responsible for the same activities within the District as for the Centre City Redevelopment Project.

The District initially shall be established for planning purposes only, and not as a separate legal entity. However, the City Council shall have the discretion to establish the District as a separate legal entity in the future, and to establish any necessary or appropriate legal entity to oversee planning or activities within the District (provided such entity includes the representation of the Padres), or the Agency may cause the Centre City Redevelopment Plan and Project to be amended to incorporate the District. The City Council may change the District's boundaries at its sole discretion, when, in its judgement, circumstances warrant or require a change, provided that any change in the boundaries of the District shall not affect the Ballpark Project, the Padres' obligations pursuant to the MOU, or Phase 1 without the consent of the Padres.

V. SUMMARY OF BALLPARK PROJECT COSTS AND FUNDING

The following is a summary only of the Ballpark Project costs and funding:

| | |
|--------------------------------------|----------------------|
| 1. Costs: | |
| Ballpark | \$267,500,000 |
| Land Acquisition and Infrastructure | <u>\$143,500,000</u> |
| Total | \$411,000,000 |
| 2. Funding: | |
| Ballpark: | |
| Padres/Private | \$ 81,000,000 |
| City | <u>\$186,500,000</u> |
| Total | \$267,500,000 |
| Land Acquisition and Infrastructure: | |
| Padres/Private | \$ 34,000,000 |
| City/CCDC | \$ 88,500,000 |
| Other | <u>\$ 21,000,000</u> |
| Total | \$143,500,000 |

VI. BALLPARK PROJECT

The Ballpark Project shall be planned and constructed within the District. Subject to the approvals of the City and Agency as required by law, the precise location, orientation, footprint and configuration of the Ballpark Project within this District will be determined by the City and Padres. Any future changes made by the City in the boundaries of the District shall not materially affect either the Ballpark Project or Phase 1 without the mutual consent of the City and Padres. The Padres and the City shall collaborate in the planning of the Ballpark Project. The City and the Agency shall be responsible for the adoption of the plans and other legal documents, and the undertaking of the administrative acts within their respective jurisdictions necessary to facilitate construction of the Ballpark Project, as more fully set forth in this MOU.

The Ballpark Project Estimate shall not exceed \$411,000,000. The ability of the Parties to proceed with the Ballpark Project is specifically contingent upon funds in the amount of the Ballpark Project Estimate being secured as more fully set forth in this MOU.

VII. BALLPARK

The Ballpark shall be constructed within the District. The Padres or its agents shall be responsible for the design and construction of the Ballpark, including the selection of architects, contractors and project/construction managers. The Ballpark shall be designed in all its aspects for the playing and public exhibition of Major League Baseball in accordance with plans, designs, and programs approved by the Padres, and developed by or at the direction of the Padres; provided, however, that the City, Agency and CCDC shall have the opportunity to collaboratively participate in the design of the Ballpark, and that the development of the Ballpark shall be subject only to the approvals of the City or Agency as required by law.

The Padres will be responsible for developing all plans, designs, schemes, drawings and programs for the construction of the Ballpark, but the City, Agency and CCDC shall have the right to participate in the planning process. The Padres shall have final approval of the program, design, plans, specifications and timetable for construction of the Ballpark and, not later than February 1, 1999, shall provide to the City, Agency and CCDC a complete set of all documents evidencing and comprising the Final Baseline Ballpark Program. The City shall have the right to further review and comment on the Final Baseline Ballpark Program, and will provide any recommendations to the Padres on or before March 1, 1999.

The Ballpark Estimate shall not exceed \$267,500,000. The Padres shall be solely responsible for any and all development and construction costs for the Ballpark exceeding the Ballpark Estimate. Any change orders to the Final Baseline Ballpark Program during Ballpark construction shall be subject to the Padres' approval. Except for any change orders that cause the cost of the Ballpark to exceed, or that are made once the cost of the Ballpark exceeds, the Ballpark Estimate (which excess cost shall be paid by the Padres), any Major Change Order shall be subject to the City's approval, which will not be unreasonably withheld and which will be given, or presumed, within five (5) business days after written notice to the City of the Major Change Order. Once funds for Ballpark construction have been committed in the amount of \$175,000,000, no such City approval will be required if the change order is deemed necessary to stay within the Ballpark Estimate, provided such change order does not result in a material adverse impact on the Ballpark and on the fan's experience at the Ballpark. If the actual cost to develop 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; any additional savings over and above the first \$5,000,000 shall be shared equally by the Padres and the City.

The Opening Date shall be in 2002. Notwithstanding the foregoing, but subject to the other terms and conditions of this MOU, the Parties shall work cooperatively and use their best, good faith efforts to accomplish the construction of the Ballpark so that the Ballpark may be open as early as possible. The Padres, City, Agency and CCDC shall each have no liability to the other Parties for failure to meet the Opening Date, provided they proceed with due diligence and in good faith, and meet their respective obligations regarding the acquisition of land and completion of infrastructure for the Ballpark Project as set forth in Sections IX and XI.

VIII. CONSTRUCTION ARRANGEMENTS FOR THE BALLPARK PROJECT

The Padres will select the architect, general contractor and project/construction manager for the Ballpark and Phase 1 Parking Facilities. The City, Agency or CCDC will select the architect, general contractor and construction manager for its Infrastructure and the Public Parking Facilities. The City, Agency or CCDC may elect to use for the construction of Infrastructure and Parking Facilities (to the extent the City is responsible for the construction of such Facilities) the architects and general contractors selected by the Padres. Subject to compliance with applicable law, the Parties will make these selections in order to meet the schedule set forth in Attachment E.

The Parties will provide each other with monthly progress reports and budget comparison statements throughout the Land Acquisition, Infrastructure and Ballpark construction process, and shall meet at least monthly to ensure that the Ballpark Project is on schedule and within budget. The Padres may retain whatever construction expertise they require in connection with the Infrastructure improvements, and the City, Agency and CCDC may retain whatever construction expertise they require in connection with the Ballpark Project. The Parties will ensure that their contractors work together cooperatively.

IX. LAND ACQUISITION COSTS

Subject to the cap set forth in Section XII, and except for the costs to be paid as part of the Padres/Private Investment, the City, Agency or CCDC shall be responsible for all Land Acquisition Costs, using monies available for the Ballpark Project as set forth in this MOU, and for making the land available for the construction of the Ballpark within such time that the Ballpark may be open by the Opening Date. Except as otherwise expressly provided in this MOU, the Padres shall not be responsible, either directly or as guarantor, for any Land Acquisition Costs.

The Parties acknowledge that it is desirable that the land necessary for the construction of the Ballpark Project be obtained by negotiated purchase, and the Parties shall work cooperatively and in good faith to so acquire such land. However, if the necessary land cannot be acquired by negotiated purchase within such time that the Ballpark may be open by the Opening Date, the City or Agency shall exercise their powers of eminent domain (subject to any requirements of law, including hearings and findings) where necessary to secure the land within such time as is necessary to meet the Opening Date.

The Padres may acquire the necessary land through negotiated purchase at any time, and the Padres will collaborate with the City, Agency and CCDC in this regard. If the Padres acquire any such land, the Certification Date occurs and this MOU becomes effective, to effectuate the purposes of this Section, the Padres shall sell the land, upon the City's request, to either the City, Agency or CCDC for the price for which the Padres purchased the land, plus any customary acquisition and financing costs.

The Padres acknowledge that a significant portion of the land necessary to construct the Ballpark Project may have to be acquired through the exercise of the City's or Agency's power of eminent domain, and that there can be no assurance that the required eminent domain proceedings will be successful or, even if successful, that they will be concluded in a timely fashion or that possession of the necessary land will be obtained in a timely fashion. The necessary eminent domain proceedings shall be subject to the *force majeure* provisions of this MOU.

The Agency and CCDC will continue to perform the services necessary to expedite the Land Acquisition, entitlement process and design of the Ballpark and Phase 1, including (a) performing all site due diligence necessary to complete the EIR, complete the relocation plan, prepare Land Acquisition offers, and complete the environmental studies necessary for Phase 1, (b) preparing the District and Ballpark boundary survey and description, including preparing a base map to be used by the Ballpark design team prior to the start of schematic design, (c) engaging a design/consulting team to design and plan the utility relocations and public roadway improvements, and (d) performing all planning and preparation necessary to commence with condemnation, including preparing all Land Acquisition offers, notices and relocation plans and obtaining all necessary approvals (subject to any requirements of law, including hearings and findings).

Nothing in this MOU shall require the City, Agency or CCDC to incur any expense or obligation (except as expressly provided below) in connection with Land Acquisition Costs under this Section unless and until all the following have occurred:

A. The City, Agency and CCDC have obtained funds from their financing of choice (i.e. lease revenue bonds, certificates of participation, or other) to meet their respective investment obligations for Land Acquisition Costs, and all applicable statute of limitations for bringing any action challenging the financing have passed, or a bridge loan or other interim financing is obtained in an amount sufficient for the City, Agency and CCDC to meet their respective investment obligations for Land Acquisition Costs (which such Parties will use their best efforts to obtain) until such time as funds from their financing of choice are obtained.

B. The Padres have provided the security for the Padres/Private Investment as set forth in Section XVIII.

C. The City receives sufficient assurances from the Padres and/or others that Phase 1 (including any Substitute Ancillary Development) and the 1,000 room Convention Center Expansion hotel will proceed and have the potential to generate the required new public revenue to help finance the City and Agency Investments.

X. PARKING

Subject to the cap set forth in Section XII, the City, Agency or CCDC shall be responsible for all costs incurred in connection with the development and construction of the Parking Facilities, except for those costs to be paid by the Developer for the Phase 1 Parking Facilities. Except as

otherwise expressly provided herein, the Padres shall not be responsible, either directly or as guarantor, for the development or construction of the Public Parking Facilities. The design, configuration and operation of the Parking Facilities shall be subject to the Padres' reasonable approval. For the duration of the Ballpark occupancy agreement, the Public Parking Facilities shall accept validation, for 2 hours, at no cost to the Padres and/or their customers and/or patrons, to accommodate visitors to the Padres' offices and purchasers of Padres' merchandise and advance tickets. In addition, for the first 15 years of the Ballpark occupancy agreement, Lot P1 of the Public Parking Facilities shall accept validation, for 3 hours, at no cost to the Padres, the Developer, the Phase 1 retail tenants and/or their customers and/or patrons, to accommodate customers and patrons of the retail portions of Phase 1.

Subject to Bond Counsel Review, the Padres shall be responsible for selecting and contracting with any third-party operator(s) engaged to operate the Parking Facilities year-round. Any fee paid by such parking operator(s) for the right to operate the Parking Facilities shall be retained by the Padres.

Subject to Bond Counsel Review, any amounts invested by a parking operator in the construction, installation or equipping of the Public Parking Facilities may be applied on a dollar-for-dollar basis toward the satisfaction of the Padres' obligation to make the Padres/Private Investment.

The Padres shall establish all prices for parking at the Parking Facilities during Padres' Games and Events. The City shall establish all prices for parking at the Public Parking Facilities during City Events, with the Padres' reasonable concurrence.

The Padres shall cause the Public Parking Facilities to be open to the public for general parking at non-event times, at competitive prices established by the City with the Padres' reasonable concurrence.

All expenses associated with the operation of the Public Parking Facilities, including all fees and expenses owed to the parking operator, shall be paid out of the gross revenue from the Public Parking Facilities. The contract with the parking operator shall provide that any expenses that exceed revenue are the parking operator's sole responsibility.

Net revenue from the operation of the Public Parking Facilities (i.e. gross revenue less all fees and operating expenses incurred in compliance with the parking operator's agreement) shall be shared, with the City retaining such revenue from City Events (on a net basis, after payment of all incremental Ballpark Expenses for such events), and the Padres retaining such revenue from Padres' Games and Events. Parking revenue generated through any use of the Phase 1 Parking Facilities shall be retained by the Padres or the Developer. During the term of the Padres' occupancy of the Ballpark, the first \$250,000 (increased every five (5) years by cumulative C.P.I. since the previous C.P.I. increase (if any)) of annual net parking revenue generated through any non-event public use of the Public Parking Facilities, shall be deposited into the Capital Expenditure Reserve Fund; any excess in such annual net parking revenue shall be paid to the City.

XI. INFRASTRUCTURE

Subject to the cap set forth in Section XII, the City, Agency and CCDC shall be responsible for the planning and construction of, and all costs for, Infrastructure, as defined and set forth in Attachment A; provided, however, that the franchise utilities shall be responsible for making certain Infrastructure improvements (i.e., dry utility relocation) that are included within the Padres/Private Investment. The City agrees to work with the Padres and the private franchise utilities and take all steps necessary to provide that the private franchise utilities will relocate their respective systems and pay all costs therefor. In the event that such costs exceed the amount allocated for such costs on Attachment A, and the private franchise utilities pay for the full amount of such costs, the Ballpark Project Estimate and the Padres/Private Investment shall each be increased by the amount of such excess. In the event that such costs are less than the amount allocated for such costs on Attachment A, and the private utilities pay for the full amount of such costs, the Ballpark Project Estimate and the Padres/Private Investment shall each be reduced by the amount of such difference. In the event the amount of costs paid by the private franchise utilities is less than the total amount of such costs, such difference shall (a) be paid for out of the Padres/Private Investment to the extent that the total amount of such costs is less than the amount allocated for such costs on Attachment A and (b) be treated in the same manner as the other Infrastructure costs to the extent that the total amount of such costs exceeds the total amount allocated for such

costs on Attachment A. Except as otherwise expressly provided herein, the Padres shall not be responsible, either directly or as guarantor, for any infrastructure. The City or the Agency may contract with any entity for the construction of infrastructure and may use a guaranteed maximum price contract.

XII. CAP ON EXPENSES FOR LAND ACQUISITION, PARKING AND INFRASTRUCTURE

The total of the Infrastructure Estimate and Land Acquisition Estimate shall be \$143,500,000. Except as specifically provided in this MOU, the City, Agency, CCDC and Padres shall collectively not be required to spend more than \$143,500,000 for Land Acquisition Costs and Infrastructure. If actual costs will exceed this cap, the City, Agency, CCDC and Padres shall endeavor cooperatively to locate additional funding. If actual costs are less than this cap, the City, Agency and CCDC shall (a) use any such savings to pay any Excess Land Cost (as defined in Section XXXI.C), (b) with any remaining savings being used to pay Off-Site Costs (as defined in Section XXXI.E), and (c) with any remaining savings being retained by the City, Agency and CCDC. Notwithstanding the cap on the total cost of Land Acquisition and Infrastructure set forth in this Section, the City shall be obligated to provide the Parking Facilities (other than any costs associated with the Phase 1 Parking Facilities to be paid by the Developer).

XIII. PREPARATION OF ESTIMATES

On or before January 1, 1999, the Padres will develop and submit to the City the Ballpark Estimate. On or before January 1, 1999, the City, Agency or CCDC will develop and submit to the Padres the Infrastructure and Land Acquisition Estimates, and estimate for the Public Parking Facilities. Prior to the establishment of these estimates, the program, design, plans and specifications for the Ballpark and the Infrastructure, Land Acquisition and Public Parking Facilities shall have been Value Engineered by the City and Padres.

XIV. TIMETABLE FOR DEVELOPMENT AND CONSTRUCTION

Subject to all other provisions of this MOU, the general target timetable for the development and construction of the Ballpark Project shall be as set forth in Attachment E, which may be amended by mutual agreement of the Parties from time to time.

XV. CITY INVESTMENT

Subject to the other provisions of this MOU, the City shall provide not more than \$225,000,000 towards the construction of the Ballpark Project. These funds shall be provided based upon the financing of the City's choice (i.e., lease revenue bonds, certificates of participation, or other). The City shall determine in its sole discretion the sources of revenue to support its investment; however, existing sources of revenue in the City's general fund, and other non-general fund sources are available to support its investment. Any additional agreements between the Parties for Land Acquisition Costs, Infrastructure, Parking Facilities and the ownership, operation, maintenance, use and occupancy of the Ballpark shall be structured in such a manner that any financing of the City investment for the Ballpark Project will be on a fully tax-exempt basis. The City investment is also contingent upon the City receiving the assurances set forth in Section IX.C and XXXIII.B.

XVI. CITY FINANCING PLAN

The City's current pro forma for its investment in the Ballpark Project includes an annual financing payment to support a lease-revenue type financing, such as lease revenue bonds. The City's annual financing payment would be based in part upon certain existing revenue in the City's general fund and certain new revenue to the City's general fund as a result of Phase 1. The City believes that additional new development will occur in and around the District, including additional new hotel development on and around the San Diego Unified Port District's 10th Avenue Marine Terminal, which will provide new revenue to the City's general fund not currently in the City's pro forma. Such additional new hotel development is not confirmed or committed at the present time, and thus cannot support the City's annual financing payments; however, the City believes it appropriate that, in the future, its annual financing payment be based, to the greatest extent possible, upon revenue equal to an amount of new revenue to the City's general fund.

Accordingly, the City reserves the right to adjust its pro forma and the boundaries of the District in the future, provided that any such adjustments have no adverse effect on the Padres' rights or obligations. Any such adjustments would enable the City to base its annual financing payments, in part, upon an amount of revenue equal to amounts of additional new revenue to the general fund resulting from development on and around the 10th Avenue Marine Terminal, rather than an

amount equal to an amount of existing revenues or growth in those existing revenues. For this reason, and because of the general benefits additional new development on and around the 10th Avenue Marine Terminal will bring to the City, the City and Padres conceptually support efforts of the Port District to stimulate or undertake such additional new development. Because Phase 1, guaranteed by the Padres, is a predicate and critical to the overall financing of the City and Agency investments in the Ballpark Project, nothing in this Section modifies or alters the obligation of the Padres with respect to Phase 1 (including any Substitute Ancillary Development).

XVII. AGENCY INVESTMENT

Toward the Ballpark Project, the Agency and CCDC shall provide not more than \$50,000,000. The Agency investment shall be a combination of equity and real property tax increment financing. Agency or CCDC money shall only be invested in Infrastructure and/or used for Land Acquisition Costs. Any additional agreements between the Parties for Land Acquisition Costs, Infrastructure, Parking Facilities and the ownership, operation, maintenance, use and occupancy of the Ballpark shall be structured in such a manner that any financing of the Agency investment for the Ballpark Project will be on a fully tax-exempt basis. The Agency investment is also contingent upon the receipt of the assurances set forth in Section IX.C and XXXIII.B.

XVIII. PADRES/PRIVATE INVESTMENT

Towards the Ballpark Project, the Padres and the private sector shall make an investment of \$115,000,000. The Padres/Private investment may include, but may not necessarily be limited to, monies from Naming Rights; sponsorships; Concession Rights; vendors; founding partners and other fan programs; capitalized Padres' revenue and/or other Padres' sources; capitalized property and/or possessory interest taxes, net of all currently existing set-aside requirements (e.g., housing, county and school district); Developer Rights Fees; Padres' equity; private franchise utility contributions for utility relocations and equipment; and private donations and grants; and also interest on all such monies, and amounts expended by the Padres for the costs referred to in Section XLII (to the extent such costs are included in the Ballpark Project Estimate). Specific funding levels by source will be determined by the Padres and private sector. The City shall assist and collaborate with the Padres in the effort to obtain such private sector funds. The sale by the Padres of any rights relating to the Ballpark Project (i.e., Naming Rights and Concession Rights) shall not extend beyond the Padres' term of occupancy of the Ballpark.

The City shall cause the financing of obligations secured by certain of these private 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), provided that the financing is reasonably acceptable to the City and the Padres provide appropriate assurances of such payments reasonably acceptable to the City, its bond underwriters, rating agencies and bond insurers; reimburse the City for the reasonable and necessary financing costs; and do not, during the term of any financing, contest the imposition or amount of any taxes used as security for such financing if the effect of success on such contest would render the City, in the City's discretion, unable to satisfy all obligations therefrom and coverage requirements associated with such a financing. The City shall maximize the amount of such proceeds from this financing by issuing the obligations at market rates, including only usual and customary financing charges and reserves, and on mutually agreed-upon terms. At the Padres' request, the City shall consider approving the refinancing of such obligations in the future if market conditions allow for improved borrowing terms, provided that the Padres reimburse the City for the reasonable and necessary financing costs of such refinancing. If the Padres elect to finance all or any part of the Padres/Private investment without City involvement, payment of all debt service associated with such borrowings shall be the Padres' sole responsibility.

Approximately \$81,000,000 (30% of the Ballpark Estimate) of the Padres/Private investment will be used for Ballpark construction; the balance will be used for Infrastructure and Land Acquisition Costs in a mutually agreed upon manner, but will include the private franchise utility contributions for utility relocation and equipment, and acquisition of the Outfield Park retail parcels (parcels R1, R2, R3, R4, and R5), as shown and referred to on Attachment B ("Outfield Park Retail Parcels"). If acquired in accordance with the terms of this MOU, title to the Outfield Park Retail Parcels will be conveyed to the Padres in consideration for the Padres' investment in Land Acquisition Costs as set forth in this Section XVIII. Retail Parcels R-3 and R-5 will be delivered to the Padres with the existing buildings on APN 535-352-12 and APN 535-353-11 in an "as is condition," and Retail Parcels R-1, R-2 and R-4 and the balance of Retail Parcels R-3 and R-5 will be delivered to the Padres as a clean site, ready for development. The Outfield Park Retail Parcels and Outfield Park will be subject to mutually agreed-upon appropriate reciprocal easement agreements, and operating and maintenance covenants to protect the respective interests of the Parties.

On or before April 1, 1999, the Padres will provide the City with a first priority lien on the Padres' National League franchise, to be released promptly upon the deposit by the Padres/private sector of \$50,000,000 in the Design & Construction Fund.

XIX. OTHER REQUIRED FINANCING INVESTMENTS

The City and the Padres will cooperatively endeavor to obtain from other public and quasi-public sources commitments to provide funds or financing for land, parking, transportation, infrastructure improvements, or other value reasonably acceptable to the Parties, sufficient to provide the \$21 million in added value needed to reach the Ballpark Project Estimate of \$411 million. The Parties will also work collaboratively to obtain other general assistance from other public and quasi-public sources.

XX. DESIGN & CONSTRUCTION FUND

The City and the Padres shall establish the Design & Construction Fund as an interest bearing account. All payments for the costs of the Ballpark Project shall be made out of the Design & Construction Fund unless otherwise specifically agreed to in writing by the Parties. Within the Design & Construction Fund, separate accounts will be established for the Padres/Private Investment and the City Investment. The Agency Investment will be deposited into a separate fund. The City and the Padres will control the investments in their respective accounts; provided, however, that the City shall control the investments in the Padres' account to the extent such investments are allocated to Land Acquisition and Infrastructure. Expenditures for the Ballpark out of the Design & Construction Fund shall be under the joint control of the City and the Padres; provided, however, that the City and Padres shall establish, no later than December 1, 1998, a mechanism to ensure that all obligations approved by the Padres are satisfied in a timely and efficient manner. With the exception of other costs to be paid as part of the Padres/Private Investment, and the expenditures for the Ballpark out of the Design and Construction Fund, all other expenditures shall be under the sole control of the City. The City Investment and Agency Investment shall be deposited into their respective funds as soon as available. Notwithstanding the foregoing, the City will deposit, from its initial financing proceeds, at least \$215,000,000 into the Design & Construction Fund by the later of May 31, 1999, or 30 days after the certification of the Environmental Impact Report for the Ballpark and any necessary land use changes; provided, however, that the City, Agency and Padres shall use their best efforts to obtain such certification and financing proceeds as soon as reasonably possible. The Padres/Private Investment shall be deposited into the Design & Construction Fund in eight (8) equal quarterly payments commencing in June, 2000, subject to acceleration for any exigencies in the financing plan as reasonably determined by the City and the Padres. Interest earned on each account within the Design & Construction Fund shall count towards the Parties' respective funding requirements. The Parties will confer in good faith and agree, no later than December 1, 1998, on an estimated schedule of cash disbursements from the Design & Construction Fund, including the timing and amount of the bridge loan, to be provided or arranged by the City, Agency or CCDC necessary to meet the requirements of the schedule, but in no event shall such funds be disbursed prior to the Certification Date. As soon as expenses for the design and construction of the Ballpark Project are incurred, but no earlier than the Certification Date, payments of such expenses shall be funded by Agency equity and/or a bridge loan or other interim financing obtained by the City, Agency and CCDC (the type of financing to be at the City's discretion) to meet their respective investment obligations for the Ballpark Project, until such time as funds from their financing of choice are obtained. In the event the Padres elect not to proceed with the Ballpark Project on or before April 1, 1999, reimbursement shall take place based on the Parties' pro rata share of the Ballpark Project Estimate less the amount of other required financing investments as described in Section XIX.

In the event the Conditions Subsequent set forth in Section XXXIII have not been satisfied by March 31, 2000, or such other date as the Parties mutually agree in writing, any funds remaining in the Design & Construction Fund accounts shall be returned to the respective Parties and any assets purchased for a Party with such Party's funds will be distributed to such Party.

XXI. OWNERSHIP OF THE BALLPARK

The Ballpark shall be owned by the City and the Padres. The Padres shall have a 30% divided minority interest, and the City shall have a 70% divided majority interest. The specific Ballpark components owned by the Padres will be determined by mutual agreement and set forth in the Final Baseline Ballpark Program, but will generally include the facilities made available to suite licensees and other premium seat owners, Padres' offices and other spaces, and Ballpark fixtures and equipment, as well other items to be determined in accordance with this Section XXI. The City and Padres will each be entitled to the tax benefits, if any, with respect to its ownership interest in the Ballpark.

The Padres' ownership interest in the Ballpark will transfer automatically to the City, without further consideration, and free and clear of all encumbrances, upon the expiration of the Padres' occupancy agreement for the Ballpark. To effectuate the purpose of this provision, the Padres shall execute and escrow the necessary documents upon execution of the Ballpark occupancy agreement.

Property and general liability insurance for the Ballpark shall be obtained in conjunction with the operation and management of the Ballpark, and the expense of such insurance shall be shared, as set forth in Section XXII.E.

XXII. OCCUPATION, OPERATION AND MANAGEMENT OF BALLPARK

A. Term of Occupancy

The Padres will commit to play Major League Baseball games at the Ballpark for the duration of the financing instrument used by the City to finance (and refinance, provided that such refinancing does not increase the term of the financing instrument or adversely affect in any other way the Padres' obligations) the Ballpark Project, or for thirty (30) years, whichever period expires first; provided that in no event shall the Padres' occupancy be for less than twenty-two (22) years. The Padres shall have two (2) five (5) year options to extend the lease term on the same terms (but without additional options) and conditions. To exercise these options, the Padres must provide one (1) year prior written notification to the City.

The Padres will be prohibited from relocating the Padres' franchise to a location other than San Diego, or from playing home games at any facility other than the Ballpark except as expressly provided herein and except for temporary relocation necessitated by casualty damage to the Ballpark, for the duration of any agreement for occupancy of the Ballpark between the Padres and the City.

The Padres will have the right to transfer ownership of the Padres' franchise during the term of any occupancy agreement for the Ballpark to the extent permitted by Major League Baseball, without any restrictions imposed by the City, so long as the new franchise owner agrees in writing prior to the transfer to assume all of the Padres' obligations under the occupancy agreement for the Ballpark for the balance of its term.

B. Rent

The Padres shall pay as rent to the City, for the right to use and occupy the Ballpark, the sum of \$500,000 each Padres' fiscal year (pro-rated, based on the Opening Date through November 1, in the year of the Opening Date) in equal semi-annual payments in July and December, commencing in the first year of the Padres' occupancy of the Ballpark and increased every five (5) years by cumulative C.P.I. since the previous C.P.I. increase (if any).

C. General Operation and Use of the Ballpark

The Padres will manage and operate the Ballpark, for both Padres' Games and Events and City Events as provided herein. The Padres shall have the right to use the Ballpark for up to 125 days each calendar year for Padres' Games and Events, including without limitation Padres' games, fantasy camps, baseball games and clinics, concerts and other events conducted by Major League Baseball clubs, each calendar year. The City shall have the right, without obligation to pay rent, to use the Ballpark for 240 days each calendar year for City Events, including without limitation Convention Center and other public uses, subject to priority of scheduling as described below.

The Padres will play all of their home games, whether exhibition, regular season or post-season, at the Ballpark, except that: 1) the Padres may play up to three (3) home games each season outside the continental U.S., such as in Hawaii or Mexico; and 2) the Padres may play, every three (3) years, one home series not exceeding five (5) games (in lieu of five (5) home games) in Asia.

No amateur or professional football games shall be played at the Ballpark. City Events shall not include any professional softball or baseball games. City Events may include amateur or high school softball or baseball games with the reasonable consent of the Padres.

City Events may take place year-round, provided that no City Events shall be held on the playing field during the Major League Baseball season or during the period from February 1 until opening day of each season (to protect spring turf growth on the playing field) without the Padres' reasonable consent. City Events shall have scheduling priority during the off-season and the Padres shall have scheduling priority during the period February 1 until the end of the Major League Baseball season (including the post-season if the Padres are participants therein). The Padres will actively assist the City in operating City Events so as to maximize the City's net revenue from those events.

The Padres will not schedule, without the City's prior written consent (which shall not be unreasonably withheld), any Padres' non-game events at the Ballpark estimated to attract more than 10,000 spectators on days that events have previously been scheduled at Qualcomm Stadium.

The Padres will make every reasonable effort to keep Major League Baseball an affordable family recreation activity at the Ballpark and will provide attractive and meaningful programs designed to keep Major League Baseball affordable for families in San Diego, including providing senior, military and children discount programs during each year of the Padres' occupancy of the Ballpark.

D. Management Responsibilities

The Padres shall be responsible for operating and managing the Ballpark for all events at the Ballpark in a first class manner. Subject to Bond Counsel Review, the Padres may, at their option, establish a separate management company owned and controlled by the Padres for the purpose of providing management services for the Ballpark in accordance with the terms set out herein. The expense of such operation and management shall be shared as set forth herein. Any rights fees paid by third-party contractors for the acquisition of rights to provide services in connection with the Ballpark Project shall be retained by the Padres. The Padres shall not enter into any contract or grant any rights with respect to the operation of the Ballpark Project that extend beyond the Padres term of occupancy of the Ballpark or are not terminable by the City upon default by the Padres under any agreement for the occupancy of the Ballpark.

E. Joint Ballpark Ownership Expenses

The City and the Padres shall share Joint Ballpark Ownership Expenses based on their respective ownership percentages, with the City paying 70% of those expenses and the Padres paying 30%; provided, however, that the City's annual share of such expenses shall be limited to \$3,500,000 in the first year of operation, and increased annually thereafter by the C.P.I. Payments by the City of its share of Joint Ballpark Ownership Expenses shall be made in 2 equal payments, on February 1 (or 3 months after the start of the Padres' fiscal year) and August 1 (or 6 months after the first payment) of each year based on the Padres' good faith estimate of the total Joint Ballpark Ownership Expenses and the City's share thereof; provided, however, that the City's payment for Joint Ballpark Ownership Expenses in the year of the Opening Date shall be paid on a pro rata basis (based on the Opening Date through November 1) in two equal payments on July 1 and November 1 in the year of the Opening Date. The Padres shall provide such estimate to the City on or before December 15 of the prior calendar year. The Padres will provide the City with a final reconciliation of the total Joint Ballpark Ownership Expenses and the City's share thereof together with any refund or request for additional payment within sixty (60) days after the end of the Padres' fiscal year. Joint Ballpark Ownership Expenses consist of: 1) salaries and benefits for year-round Ballpark supervisory staff; 2) property and general liability insurance for the Ballpark and its fixtures; 3) professional fees, including legal and accounting fees and expenses, for professional services paid to unaffiliated third parties directly related to the management of the Ballpark; 4) salaries and benefits for year-round event operations supervisors who supervise all Ballpark events; 5) utility costs for the Ballpark; 6) salaries and benefits for year-round repair and maintenance staff; 7) repairs and maintenance for the Ballpark and its fixtures, equipment and systems; 8) routine maintenance and upkeep for the Ballpark, including year-round cleaning and janitorial costs; 9) year-round security costs; 10) year-round field maintenance and landscaping costs; and 11) any other customary year-round, non-event specific expenses.

F. Incremental Ballpark Expenses

The City and the Padres shall each be responsible for the Incremental Ballpark Expenses for their own events. The Padres shall be responsible for Incremental Ballpark Expenses incurred in connection with Padres' Games and Events, and which consist of the following: 1) wages, benefits and incidentals paid to all event-day staff, including, without limitation, ushers, ticket-takers, ticket-sellers and fan assistance personnel; 2) event security; 3) on-site first aid and ambulance service; 4) event publicity and marketing; 5) concession services; 6) required licenses and permits; 7) event liability insurance; 8) video board and scoreboard event staff, entertainment and event production costs; 9) public address system operations; 10) post-event cleaning and trash removal; 11) custodial staff and maintenance personnel during events, such as electricians, plumbers, and air-conditioning, elevator and escalator service personnel, sound system and field crew, and scoreboard and video board maintenance personnel; 12) any costs for the preparation and set-up for games and events, including the cost for one-time upgrades to the facility such as the provision of electricity to a particular location; and 13) any other event expenses not part of Joint Ballpark Ownership Expenses.

The City shall be responsible for all Incremental Ballpark Expenses incurred in connection with City Events, including all event expenses of the type listed above for Padres' Games and Events. Incremental Ballpark Expenses incurred for City Events shall be paid in the first instance out of the revenue received by the City from that event (i.e., ticket, concession and parking revenue generated by City Events). The City shall also be responsible for all usual and customary City operations in connection with all Ballpark events, including traffic and public safety personnel outside the Ballpark in accordance with current practice.

G. Capital Expenditures

The City will designate all Capital Expenditures, if any, with the Padres' reasonable concurrence. Such Capital Expenditures shall be paid for in the first instance with funds on deposit in the Capital Expenditure Reserve Fund, to be established and controlled by the City and Padres. Capital Expenditures shall be made to preserve the Ballpark in first-class Major League Baseball condition. The Padres shall submit to the City, on or before November 1 of each year, a proposed budget of anticipated Capital Expenditures for the succeeding year. The proposed budget shall provide a detailed statement of the need for and cost of proposed Capital Expenditures. The City shall provide its response to the proposed budget on or before January 1 of the succeeding calendar year. In the event of an emergency requiring a Capital Expenditure or other Capital Expenditure not identified in the budget, the Padres shall notify the City as soon as possible after the discovery of the emergency or need for the Capital Expenditure, and the Padres and the City shall work together in good faith to address the need for the Capital Expenditure.

The first \$5,000,000 in Ballpark construction cost savings below the Ballpark Estimate shall be deposited into the Capital Expenditure Reserve Fund. The first \$250,000 (increased every five (5) years by cumulative C.P.I. since the previous C.P.I. increase (if any)) in net annual parking revenue generated through any non-event public use of the Public Parking Facilities shall be deposited by the City into the Capital Expenditure Reserve Fund. Interest income generated by the Capital Expenditure Reserve Fund shall constitute part of such fund. Any funds on balance in the Capital Expenditure Reserve Fund at the expiration of the Padres' occupancy agreement for the Ballpark shall belong to the City.

The Padres shall be responsible for Capital Expenditures that cannot be paid for in full out of the then remaining balance in the Capital Expenditure Reserve Fund. Any such amounts paid by the Padres shall be treated as an interest-free loan to the Capital Expenditure Reserve Fund, which shall be repaid to the Padres the following year using deposits made by the City, subject to the limitations set forth above, provided and to the extent that the balance in the Capital Expenditure Reserve Fund exceeds \$500,000. At the conclusion of the term of the Padres' occupancy agreement for the Ballpark, the Padres shall ensure through an independent qualified third party that all necessary capital improvements have been completed and that there are no deferred maintenance items.

XXIII. CONCESSIONS

The Padres will select and contract with one or more concessionaires to provide concession services for all events at the Ballpark. To the extent legally permitted, the Ballpark concessionaires selected by the Padres shall have the exclusive right to offer concession services within the entire Ballpark Project, including the walkways surrounding the admissions gates and the Parking Facilities. Any amounts invested by a concessionaire in the construction, installation or equipping of the concession facilities for the Ballpark may be applied on a dollar-for-dollar basis toward satisfaction of the Padres/Private Investment.

The Ballpark concessionaires shall pay the same rates of commissions for concessions at City Events as are paid at Padres' Games and Events. The Padres shall determine all food, beverage and novelty items to be sold by the Ballpark concessionaires, and shall approve all prices for such products. The Padres shall consult with the City before approving products and prices for sale at City Events. The City shall have the right to sell its novelties at its events.

All fees paid to obtain Concession Rights within the Ballpark Project shall be retained by the Padres. All concession commissions payable in connection with concessions at Padres' Games and Events shall be paid to the Padres. Subject to any commissions due to the Padres from the sale of Padres' related merchandise, all concession commissions payable in connection with concessions at City Events shall be paid to the City on a net basis, after payment of all Incremental Ballpark Expenses for such events.

XXIV. ADVERTISING

The Padres shall have the exclusive right to sell advertising within all parts of the Ballpark Project, including (subject to all applicable laws) outside the Ballpark and on the exterior structure of the Ballpark and/or its systems. Unless otherwise determined by the Padres in its contracts with advertisers, all advertising sold by the Padres shall be displayed at the Ballpark Project at all events.

Advertising sold and/or otherwise provided by the Padres for display in or within the Ballpark may not be covered or obstructed without the Padres' consent. The City's Events shall not have title sponsors who are competitors of the exclusive Ballpark advertisers or sponsors. No sponsor of a City Event may remove or obstruct any Ballpark advertising sold by the Padres, or display temporary advertising signage of any type that conflicts with the Padres' advertising arrangements for the Ballpark.

All revenue from the sale of advertising and sponsorships within the Ballpark shall be retained by the Padres, except for permissible temporary advertising and sponsorships in connection with City Events.

XXV. NAMING RIGHTS

Funds obtained from Naming Rights shall be retained by the Padres. The Padres shall have the exclusive right to solicit for and contract with persons or entities interested in purchasing Naming Rights (except with respect to the Public Parking Facilities). Any name proposed to be associated with the Ballpark shall be tasteful and not be a cause for embarrassment to the City and, to ensure this protection shall be subject to the City's consent (which will not be unreasonably withheld or delayed).

XXVI. UTILITIES

The Padres will be responsible for contracting with utility companies to provide all utility services for the Ballpark. Any rights fees or other revenue generated by those arrangements shall be retained by the Padres.

XXVII. PRIVATE SUITES

The Padres will have the exclusive right to license the private suites in the Ballpark for all events at the Ballpark, and to retain all resulting licensing revenue. The Padres shall determine the amount of all suite license fees and the costs of related amenities.

The Padres may grant private suite licensees the exclusive right to use their suites during all Ballpark events. Suite licensees will have the option, but not the obligation, to buy tickets to City Events as part of the suite license package, provided that such licensees shall not be admitted to such events without purchasing such tickets.

Revenue, if any, from the sale of admission tickets to the exterior seats of such private suites will be shared, with the City receiving such revenue from City Events on a net basis (after payment of all Incremental Ballpark Expenses for such events), and the Padres receiving such revenue for Padres' Games and Events.

XXVIII. PREMIUM SEATS

The Padres shall have the exclusive right to establish premium seat ownership rights at the Ballpark, and to determine all license fees and ticket prices for such seating, including but not limited to club seat ownership fees, one-time founders' fees or construction contributions associated with the purchase of such seating. All revenue from all premium seat ownership fees, founders' fees or related construction contributions shall be retained by the Padres.

Revenue from the sale of admission tickets to premium seating will be shared, with the City receiving such revenue for City Events on a net basis (after payment of all Incremental Ballpark Expenses for such events), and with the Padres receiving such revenue for Padres' Games and Events.

XXIX. USER FEES

The Padres shall have the exclusive right to charge a per-ticket user fee per paid admission for tickets to Padres' Games and Events. If the Padres charge such fee, they shall be accounted for separately by the Padres. Any such fee may be used for the purpose of providing funding for the Padres/Private Investment, either directly or by functioning as collateral for financing.

XX. COMPLIANCE WITH LAWS

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. The Padres 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, the Padres 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, each Party may elect to pay any such significant additional cost); provided, however, that the Padres shall be responsible for any such claims in the event that the City provides the Padres with written notice of a violation of such laws and the Padres have the responsibility to remedy such violations and fail for any reason to remedy such violations. All actions required by this MOU shall be subject to all requirements of law, including any required hearings and findings.

All Parties to this MOU shall assure that equal opportunities are provided in contracting, subcontracting and employment regardless of race, color, religion, sex, sexual orientation or national origin.

XXXI. CONSTRUCTION OF PHASE 1 AND OTHER ANCILLARY DEVELOPMENT

A. Components of Ancillary Development.

The Ancillary Development will include the construction of hotels, office buildings, retail space, as well as residential development and associated parking. The Developer will have the right to fine-tune its mix of hotel, office, retail, residential and other development space within the District at any time prior to the completion of Phase 1 (provided the Developer completes Phase 1 as required by this MOU) in order for the development program to respond to market conditions, subject only to the following sentence. The Developer's right to fine-tune the mix of development properties is conditioned upon (1) the Transient Occupancy Tax generated by, and the assessed values of, the Ancillary Development being at the completion of Ballpark construction at least what such amounts would have been as agreed upon by the parties on or before February 14, 1999 (although the Parties shall endeavor to agree on an interim preliminary pro forma with respect to such amounts on or before November 30, 1998) and (2) to the extent the property for Phase 1 was acquired from the Agency, any such changes being consistent with the fair reuse value analysis for the properties; provided that any such changes after the execution of the DDA shall be subject to any applicable laws. The Padres/Developer shall have the right to transfer all or part of these rights and obligations to an entity reasonably acceptable to the City and Agency, and the parties recognize that market demand shall be the critical determinant in the ability of the Padres/Developer to commit by April 1, 1999 to the high level of Phase 1 development contemplated. The Developer shall substantially complete Phase 1 and obtain an appropriate certificate of occupancy on or before March 31, 2002, and shall use its good faith, best efforts to accomplish this on or before January 31, 2002.

B. Location of Phase 1.

Phase 1 will be located within the boundaries of the District. The overall size and location of Phase 1, and the locations and configurations for each structure comprising it, will be designed by the Padres and/or the Developer, subject to negotiations with CCDC, and the City's and Agency's approval as required by law. The Substitute Ancillary Development must be located in the area set forth on Attachment C.

C. Developer's Purchase of Land.

If the Agency purchases or uses its powers of eminent domain to acquire all or any part of the land needed for Phase 1, and the Developer approves the terms on which such purchases are to be made, the Developer agrees to advance to the Agency, after the Certification Date, sufficient funds necessary to pay all costs for such purchase not to exceed \$25,000,000 in the aggregate ("Loans"). The Agency shall not be required to exercise its powers of eminent domain to acquire any property needed for Phase 1 to the extent that the cost of such property exceeds the available Loan proceeds. The Parties shall use their good faith best efforts in attempting to structure the Loans so that they are fully tax-exempt and are collateralized by a deed of trust. Costs shall include all funds necessary to pay for the land, including without limitation buildings, improvements, fixtures, equipment, relocation costs, goodwill and other costs associated with the acquisition of the properties ("All-in Costs").

In the event Phase 1 does not proceed for any reason, the Agency agrees to repay the Loans together with interest at a market rate, from funds available to the Agency amortized over a 10 year period. The Loans will be secured by a deed of trust on the properties purchased with the proceeds of such Loans; be the obligation of the Agency; and contain such other terms as are reasonably acceptable to the Agency and the Developer. The Developer and the Agency will use their good faith best efforts in attempting to structure the financing so as to make the Loans salable by the Developer in the secondary market.

In the event Phase 1 does proceed, the Agency (after review of all information customarily submitted by a developer) will permit the Developer to purchase the land at the lowest of its fair market value, its fair reuse value, or the Agency's All-In Costs, in accordance with and to the fullest extent permitted by law. If the Agency's All-In Costs turn out to be the lowest of those three amounts, but applicable law does not permit a sale at less than the lower of fair market value or fair reuse value, then the Agency will utilize the amount of the excess paid by the Developer over the All-In Costs ("Excess Land Cost"), on a parcel-by-parcel and dollar-for-dollar basis, for infrastructure and public improvement costs within the District (excluding dry utility costs), and for other development by the Developer, consistent with applicable law. Notwithstanding the foregoing, if there is one developer of Phase 1, the Excess Land Cost may be determined on an aggregate and dollar-for-dollar basis, for infrastructure and public improvement costs within the District (excluding dry utility costs), and for other development by the Developer, consistent with applicable law, as determined by the Developer. In the event of excess credit pursuant to the previous provision, the Agency and the Developer shall in good faith reach an equitable solution, to the fullest extent permitted by applicable law. The Agency and the Developer shall work cooperatively to determine the fair reuse value of such land within thirty (30) days after the Agency receives all information customarily required by the Agency. If the price for the land paid by the Developer is less than the Agency's All-In Costs for such land, the Developer shall finance such difference on the same terms as the Loans (including interest at a market rate); provided, however, that the Agency shall replace the trust deed with other collateral reasonably acceptable to the Developer (e.g., a pledge of tax increment) (for the Agency will no longer own the land previously encumbered by the trust deed), and the Loans re-collateralized in that manner again will be the obligation of the Agency; and contain such other terms as are reasonably acceptable to the Agency and the Developer. The Developer and the Agency will use their good faith best efforts in attempting to structure the financing so as to make the Loans salable by the Developer in the secondary market, which the Parties acknowledge is a material term of the loans.

D. Developer Rights within the District.

For a period from the date of the MOU until three (3) years after the Opening Date, the Agency shall consult with the Developer on any Request For Proposal/Request For Qualifications ("RFP/RFQ") prior to issuance on the nature and scope of the RFP/RFQ. Such consultation shall apply for the blocks shown on Attachment D. For a period from the date of the MOU until three (3) years after the Opening Date, the Developer shall have an option (subject to Agency approval as provided below) to submit a proposal to acquire a site (or sites) from the Agency for development consistent with applicable law within the area shown on Attachment D, but only after Agency's review of all information customarily submitted by a developer, and only if such development is consistent with the applicable Planned District Ordinance ("PDO") requirements, and is economically feasible for the Agency in its judgment. If the Agency determines not to enter into a DDA on the terms proposed by the Developer on any such site(s), for a period of one year after such determination, if the Agency offers any incentives for development to any other developer on such site(s) that are greater than that which was offered to the Agency by the Developer, then the Developer shall have a Right Of First Refusal ("ROFR") for such development on such site(s) and with such incentives; provided, however, that if the Agency makes a counter offer to the Developer, which the Developer rejects, then the Agency may also offer to any other developer on such site(s) the same incentives (or less favorable incentives) as counter-offered to and turned down by the Developer, without being subject to the Developer's ROFR. The foregoing is subject to the provisions of Section XXXI.P.

E. Land Acquisition Process for Phase 1.

Except with respect to land purchased by the Padres/Developer, the Agency shall purchase and/or use its powers of eminent domain (subject to any requirements of law, including hearings and findings) to acquire title to or full control of all land required for Phase 1 (and if agreed upon between the City and the Developer after a request by the Developer and good faith consideration by the Agency, also for subsequent related development).

Regardless of whether the Agency or Developer purchases the land required for Phase 1, the Agency and Developer agree to negotiate in good faith for the payment of the Off-Site Costs (as defined below) based on the fair reuse value of each individual project parcel. If, based on a reasonable fair reuse value analysis conducted by the Agency, the Developer's project is deemed to be unable to sustain the Off-Site Costs, then the Agency shall pay such Costs if the combined Land Acquisition and Infrastructure Estimates exceed the actual costs for Land Acquisition and Infrastructure; if there is no such excess the Agency will treat the Developer as it customarily treats other developers with respect to other issues. Off-Site Costs consist of only the costs for the streetscape improvements adjacent to the Developer's individual projects and the costs of any wet utility relocations not paid by other sources.

F. Master Developer.

The Padres shall have the right to select and contract with the Developer, including the right to negotiate for and retain all Developer Rights Fees and to include such fees in the Padres/Private Investment. The City agrees that the Padres may act as principal in the Developer to be formed by the Padres and other entities.

G. Necessary Development Agreements.

The City, Agency and the Padres, or the City, Agency and the Developer, shall promptly negotiate and enter into either (a) a Development Agreement and a separate Disposition and Development Agreement concerning Phase 1, or (b) a combined DA/DDA, on or before the date the PDO is adopted. These agreements shall give the Padres/Developer all requisite authority allowed under law to contract with developers for Phase 1. To the extent not previously accomplished, following the execution of those agreements, the Parties shall proceed expeditiously to process any remaining necessary land use changes, acquire the parcels needed for Phase 1 and to design and begin construction. The Padres and/or the Developer may request an amendment to the existing Centre City PDO generally consistent with the ROMA Urban Plan 4g Draft such that the Ballpark Project and Phase 1 development can be built. The amended PDO may establish standards for design within the District. The amended PDO may also provide flexibility to select among multiple alternative uses of blocks, and may permit the transfer of FAR among blocks in order to respond to market conditions, each with CCDC's concurrence, which will not be unreasonably withheld. The City agrees to consider expeditiously (but no later than 2 weeks before the date by which the Developer has to commit to Phase 1) and in good faith the adoption of the requested amendment. If the City does not adopt an amendment acceptable to the Padres and Developer, the Padres and Developer may decline to proceed with Phase 1, in which case the City and/or Padres may decline to proceed with the Ballpark Project.

H. Parity in Development Rights and Opportunities.

The Parties recognize the importance of the success of Phase 1 to the redevelopment of Centre City East, and the Parties therefore commit to each other to treat Phase 1 as projects of the highest priority. Accordingly, from the execution of the DA/DDA through the completion of Phase 1, the Agency and CCDC will treat the Developer as the primary and best development partner with which such Parties work. If the Agency or CCDC enters into a DA, DDA, owner participation agreement and/or similar development incentive agreement with a developer regarding development of a product type comparable to that required for Phase 1 that, when taken as a whole and fairly considered, contain rights more favorable than those given to the Developer, the Agency shall adjust the Developer's rights accordingly.

I. Tax Issues.

Subject to any requirements of law (including any hearings and findings), the City or its designees agree to use the tax increment or an equivalent amount, net of any currently existing set-asides, pass through agreements and other obligations of the Agency, generated by Phase 1, including incremental property taxes, and Transient Occupancy Tax receipts, first to defray the public cost of the Ballpark Project to the extent required in this MOU and thereafter will consider in good faith such funds for reinvestment for public improvements within the District.

J. Fee and Tax Waivers.

In connection with the construction of Phase 1, and to the fullest extent permitted by law, the City and Agency shall waive and/or discount for the Developer the imposition of all taxes and fees customarily imposed on developers in their capacity as developers and/or their projects.

K. Liens on New Taxes.

For the duration of the Ballpark occupancy agreement, if the City imposes, either directly or indirectly, any new or increased taxes, fees or assessments against the Padres with respect to the Ballpark Project (such as new or increased admission, ticket or entertainment taxes, sales taxes on admissions or tickets, parking taxes, transportation taxes or assessments, utility taxes, facility benefit assessments, possessory interest taxes or personal property taxes) above and beyond those already required to be paid under or already established by existing law as of August 4, 1998, then the Padres shall receive full credit for the amounts of such new or increased taxes, fees or assessments paid by the Padres against sums otherwise owed to the City under the Ballpark occupancy agreement or the DA/DDA (or other consideration in the event such sums are not sufficient to offset the required credit). The previous sentence shall not apply to (a) any new or increased taxes, fees or assessments already required to be paid under or already established by existing law as of August 4, 1998; (b) any assessments imposed pursuant to a favorable vote of taxpayers within an assessment district including the Ballpark Project, in which the Padres participate as a voter; and (c) any new or increased taxes, fees or assessments which are "generally applicable." In order to qualify as "generally applicable," a new or increased tax, fee or assessment (1) must apply City-wide; (2) must be payable by a substantial number of taxpayers in addition to the Padres; and (3) must not be an admission, ticket, entertainment or similar tax, fee or assessment.

L. Development Assistance.

The City shall promptly enter into an Economic Incentive Agreement with the Developer under City Council Policy 900-12, through which all permitted Enterprise Zone and other incentives, to the extent the proposed development meets the required criteria, including permit assistance and (as allowed by law) housing-impact fee waivers, shall be made available to the Developer, to the fullest extent allowed by law. The Agency agrees to give favorable consideration, to the extent permitted by applicable law (if all other applicable criteria are also met), to proposals from the Developer for the development of low and moderate income housing in the District, by which the Developer may use an amount equivalent to that portion of the Agency's 20% set-aside housing fund attributable to tax increment from Phase 1, for the year in which the proposal is made. In all cases, however, such proposals shall be subject to Agency review and approval as required by applicable law and as considered economically feasible in the Agency's judgement.

M. Expedited Development Processing.

To the fullest extent permitted by law, the City and CCDC shall expedite and give first-priority status to its processing of the Developer's land use, zoning and permit applications, the Developer's construction drawings, plans and specifications, and all similar or related submissions by the Developer concerning Phase 1.

N. Ballpark Protection Zone.

As part of the Centre City PDO amendment described above, the City and CCDC shall, subject to any necessary public hearings and compliance with applicable law, establish a zone extending around the entire perimeter of the Ballpark, as set forth in Attachment G, which will be treated as a "Ballpark Protection Zone" for purposes of Phase 1 and all further development subsequently authorized by the City. Within this zone, architectural and development controls will be addressed to protect the sight lines, shadow impact, general operation, architectural image and commercial value and integrity of the Ballpark.

O. Further Actions.

The DA/DDA(s) for Phase 1 will contain a provision stating that the Padres, Developer, City and CCDC/Agency agree to take any and all further actions as may be reasonably required or appropriate to evidence or effect the intent and purposes of the rights and obligations regarding Phase 1 and any subsequent related development, including without limitation collaborating to ensure the success of the redevelopment of Centre City East, Phase 1 and any subsequent related development, and collaborating with public and/or quasi-public entities and/or private landowners to obtain their support for Phase 1 and any subsequent related development.

P. Sports Arena.

If the City/CCDC/Agency decides to construct a sports arena in San Diego, and the Padres (and/or any entity in which the Padres and/or its principals have an ownership interest) have a commitment from the NBA, NHL or team owner for an existing NBA or NHL franchise to relocate

San Diego or any NBA or NHL expansion franchise to be located in San Diego within 3 years of the date of such commitment ("Commitment"), the City shall (subject to any existing right of the current sports arena operator to operate and manage a new sports arena in San Diego) negotiate exclusively with the Padres concerning the rights to own, construct, use and/or operate that sports arena before conducting discussions of those issues with any other potential owners, developers, operators, managers or occupants. In the event the negotiations between the City and Padres do not lead to an agreement, the City/CCDC/Agency shall provide the Padres with a right of first refusal with respect to any such agreement to be entered into between the City and a third party, provided that at the time of the exercise of such a right, the Padres have a Commitment and are not in default under the Ballpark occupancy agreement. The rights of negotiation and first refusal under this paragraph must be exercised, if at all, during the first 10 years of the Padres occupancy of the Ballpark.

XXXII. EXTENSION OF TERM AT QUALCOMM STADIUM

The Padres will extend their use and occupancy of Qualcomm Stadium through the end of the 2001 Major League Baseball season or until the Ballpark opens for play. Such extension shall be governed by the same terms as apply to the Padres' current occupancy of Qualcomm Stadium, as reflected in the September 25, 1996, agreements between the Padres and the City, as modified by mutually agreed-upon financial terms to address the consequences of the City-Chargers arrangements for the 2000 season and beyond. The City and Padres acknowledge the existence of the City-Chargers agreement, and agree that the agreed-upon modifications for this extension, which will be contained in a fully integrated agreement not subject to any other agreement, cannot be inconsistent with the terms of the City-Chargers agreement. Unless otherwise agreed upon, the necessary agreement for the extension will be reached no later than October 1, 1998.

After the Padres occupy the Ballpark, the Padres will have, at no additional cost, access to the current Padres store (subject only to any agreement the City reaches with the National Football League for use of facilities for any Super Bowl), parking at Qualcomm Stadium (as provided below), and appropriately equipped ticket windows at Window C and offices to allow patrons of Qualcomm Stadium to buy tickets to Padres' games and other Ballpark events. On days Padres Games or Events are scheduled at the Ballpark, 2,500 parking spaces shall be available for patrons of the Padres (subject to Chargers' games and other high attendance events at Qualcomm Stadium); on all other days, a reasonable number of parking spaces shall be available to accommodate purchasers of tickets and patrons of the Padres store.

XXXIII. CONDITIONS SUBSEQUENT

A. The respective obligations of the Parties as set forth in this MOU are contingent upon the following (unless waived by the Parties):

1. The City's and Agency's ability to obtain financing for the Ballpark Project on terms reasonably acceptable to the City and 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). Notwithstanding anything to the contrary contained in this MOU, the Parties will work together to maximize the amount of tax-exempt financing.
2. Occurrence of the Certification Date.
3. Full compliance with the California Environmental Quality Act has occurred.
4. The feasibility of completing Land Acquisition, environmental approvals, Parking Facilities and Infrastructure for the Ballpark Project within the cap set forth in Section XII is confirmed by April 1, 1999.
5. The ability of the City and Padres to obtain by April 1, 1999, sufficient additional financing investments, as set forth in Section XIX, to fund the Ballpark Project, or the Padres' agreement by that date to reduce the size of the Ballpark Project in light of the available funds.
6. The City and Padres agreeing on financial terms for the extension of the use and occupancy agreement for Qualcomm Stadium by October 1, 1998, as set forth in Section XXXII.
7. The Padres' continued good standing in Major League Baseball and Major League Baseball's approval of the terms of the MOU and the terms of any Ballpark occupancy agreement (to the extent such agreements exist on or before March 31, 2000).
8. The Padres' continued ability to pay its debts when and as due, and avoid insolvency or any form of voluntary or involuntary bankruptcy.

9. The Parties reaching agreement on the schedule of disbursements from the Design & Construction Fund, as set forth in Section XX.

B. The obligations of the City, Agency and CCDC, as set forth in this MOU, are additionally contingent upon the following (unless waived by the City, CCDC and the Agency):

1. The City receives from the Padres and/or others, by April 1, 1999, the assurances set forth in Section IX.C.

2. The City receives from the Padres and/or Developer, by April 1, 1999, assurances that Phase 1 (including any Substitute Ancillary Development) will be substantially complete on or before March 31, 2002, and have the potential to generate the tax increment and Transient Occupancy Tax revenue necessary to help support the City and Agency Investments.

3. The Padres/Private Investment is secured as set forth in Section XVIII.

4. The State of California, on or before September 1, 1999, not eliminating Vehicle License Tax revenues (or any alternative revenue source substituted for such revenues as a result of negotiations between the State legislature and Governor, or as determined by the State legislature) to the City, or reducing those revenues to the City in an amount constituting more than 5% of the City's general fund budget at the time the reduction is effective; provided, however, that if this condition subsequent is not satisfied, the City shall reimburse the Padres in full for any out-of-pocket expenses incurred by the Padres up to that time for the Ballpark Project. Upon any such reimbursement, the Padres shall assign and deliver to the City all designs, plans, reports, renderings and other materials owned or controlled by the Padres and relating to the Ballpark Project to the extent any such materials were paid for by the reimbursement.

C. The obligations of the Padres, as set forth in this MOU, are additionally contingent upon the following (unless waived by the Padres):

1. The Padres commitment by April 1, 1999, to fund or obtain financing for all or part of the Padres/Private Investment.

2. Land acquisition is completed as set forth in Attachment E.

3. The initial City financing is executed as set forth in Attachment E.

4. The Padres' ability to provide the necessary assurances to the City by April 1, 1999, that Phase 1 (including any the Substitute Ancillary Development) will proceed.

XXXIV. CREDIT ENHANCEMENT

The City intends to establish a Stabilization Reserve Fund for its financing of choice for the Ballpark Project. The Padres shall deposit certain sums into the Stabilization Reserve Fund from time to time under the circumstances and terms set forth in Attachment F.

XXXV. PADRES COVENANTS

In the unlikely event that the Padres file for bankruptcy protection, this MOU, and any lease or other agreement between the Parties regarding the Ballpark Project or Ballpark shall immediately be null and void, and the Padres' ownership in the Ballpark shall immediately revert to the City, unless specifically agreed to in writing by the City, Agency and CCDC.

In the construction of the Ballpark and Phase 1, the Padres shall use its good faith efforts to maximize the use of local contractors, sub-contractors and workers.

Should the City decide to transfer its ownership interest in the Ballpark Project, or lose that ownership interest as a result of foreclosure or similar action, the Padres will attorn to the finance instrument holders, or to any other transferee of the City who acquires the City's ownership, so long as the Padres are provided with a non-disturbance agreement in form and substance reasonably acceptable to the Padres.

XXXVI. CITY AND AGENCY COVENANTS

The City and the Agency covenant that, if there is no default of any lease or other agreement for the Padres' use and occupancy of the Ballpark beyond any applicable grace and cure periods, during the term of any such agreement the Padres shall quietly enjoy possession of the Ballpark pursuant to this MOU or any such agreement without hindrance or interference by the City or Agency, or any party claiming by, through or under them, on the dates and during the times it is entitled to such possession pursuant to the terms of such occupancy agreement, except as otherwise required by law.

XXXVII. OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL

If, at any time during the term of a lease or other agreement between the City and the Padres for the use and occupancy of the Ballpark, the City proposes to sell its interest in the Ballpark to a third party, the City shall first give the Padres a written offer to sell the City's interest in the Ballpark to the Padres on the same terms and conditions on which the City proposes to sell its interest in the Ballpark to such third party. The Padres shall have a period of 90 days to accept or reject the City offer. In addition, if at any time during the term of any lease or other agreement, the Padres wish to purchase the City's interest in the Ballpark and/or the City contemplates a sale of its interest in the Ballpark, the City shall negotiate exclusively and in good faith with the Padres to sell its interest in the Ballpark to the Padres for a period of 60 days before negotiating with other potential purchasers of the City's interest.

If, at any time during the term of any occupancy agreement for the Ballpark, the Padres propose to sell its interest in the Ballpark to a third party, other than in connection with a sale of the Padres' franchise or to an entity controlled by the Padres and/or its partners, the City shall have a right to approve such sale.

XXXVIII. MODIFICATIONS TO MOU

Except as specifically set forth in this MOU, this MOU may not be modified or amended without the affirmative vote of a majority of the electorate of the City voting at an election held for that purpose. The City Council may agree to amend or modify this MOU without a vote of the electorate only if such amendments or modifications do not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City. Any modifications or amendments to this MOU must be in writing and signed by all the Parties.

XXXIX. IMPLEMENTATION

Subject to compliance with the California Environmental Quality Act and any other applicable laws, the Parties shall take all lawful actions, and enter into all legal agreements, within their respective jurisdictions, necessary to implement the purpose and intent of this MOU. Unless specifically directed or prohibited to act in a particular manner by this MOU, each Party shall have the discretion, within its respective jurisdiction, to implement this MOU in the manner that, in its best judgement, is in its best interests.

Prior to the Certification Date, the Padres shall have obtained such consents and approvals of Major League Baseball as may be necessary for the Padres to enter into and perform its obligations under this MOU and the additional documents required by this MOU (to the extent such documents exist at such time).

In light of the public vote and the Padres' guarantee of various aspects of the City's financing plan, the City shall share with the Padres the composition of the public funding sources and the Padres shall share with the City, on or before the Certification Date, the composition of the private funding sources.

XL. BINDING EFFECT AND ENFORCEABILITY

Although the planning, construction, operation, management, use and occupancy of the Ballpark, Ballpark Project and Phase 1 shall be subject to the terms of more definitive agreements, which will encompass issues not addressed in this MOU, the Parties agree that the terms of this MOU will be incorporated into such other agreements. The Parties further acknowledge and agree that this MOU reflects the basic business deal between the Parties and is intended to be binding on the Parties, their respective successors and assigns; however, this MOU shall be binding on the Parties only as to the matters set forth in this MOU, and shall not bind the Parties regarding any other future proposal for the construction of a ballpark or other development anywhere in the City.

XLI. FORCE MAJEURE

Should any of the Parties be delayed in or prevented, in whole or in part, from performing any obligation or condition required by this MOU 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 calendar days thereafter, and any affected deadlines shall be similarly extended.

XLII. COSTS FOR NEGOTIATIONS AND PREPARATION OF DOCUMENTS

Each Party shall be solely responsible for its own legal, accounting, consulting and other professional fees and expenses incurred in connection with the planning and negotiating process

for the Ballpark Project, and the negotiation and preparation of all agreements and documents required to implement the terms herein. If the Ballpark Project proceeds, the City, Agency, CCDC and Padres will be entitled to receive out of the Design and Construction Fund any existing development expenses and other soft costs, including those set forth in this Section XLII, related solely to the Ballpark Project (to the extent such costs are included in the Ballpark Project Estimate).

XLIII. NOTICE

Any notice, demand, complaint, request, or other submission under this MOU shall be in writing and shall be given by personal delivery to the persons designated below, with copies delivered as indicated, or by US Mail, Certified, return receipt requested, with copies mailed as indicated.

For the City:

City Manager
202 "C" Street
San Diego, CA 92101

Copy:

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

For the Agency:

Executive Director
202 "C" Street
San Diego, CA 92101

Copy:

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

For CCDC:

President
225 Broadway, Ste. 1100
San Diego, CA 92101

Copy:

Bea Kemp, General Counsel
Kemp & Pratt
550 West C Street
San Diego, CA 92101

For the Padres:

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

Copy:

Alan Ostfield, Vice President & General Counsel
San Diego Padres
8880 Rio San Diego Drive, Suite 400
San Diego, CA 92108
P.O. Box 122000
San Diego, CA 92112

XLIV. COUNTERPARTS

This agreement may be executed in any number of separate counterparts and by each of the Parties in separate counterparts, each counterpart constituting an original, and all such counterparts constituting but one and the same agreement.

XLV. POSSESSORY INTEREST TAXES

The use and occupancy of the Ballpark or Ballpark Project may create possessory interests subject to taxation by the State of California. The City, Agency and CCDC shall have no liability for such possessory interest taxes. Any further or additional agreements regarding the Ballpark or Ballpark Project shall contain a provision that relieves the City, Agency and CCDC of any liability for possessory interest taxes for the use or occupancy of the Ballpark or Ballpark Project.

XLVI. REVIEW AND AUDIT

At its own cost and expense, each Party shall have the right to review and audit, upon reasonable notice, the books and records of any other Party concerning any monies due and owing to the requesting Party, or concerning the expenditure of funds received from the requesting Party. This right does not extend to books and records that do not, in any way, relate to or concern

accounting of monies as may be owed to the Parties from each other, or the expenditure of monies received from any other Party. Any additional agreement contemplated or required by this MOU shall contain appropriate provisions to implement this Section.

XLVII. OTHER PROVISIONS

The other documents required or contemplated by this MOU shall contain such other provisions, representations, warranties, covenants and indemnities as are customarily included in similar documents related to the development, construction and operation of Major League Baseball facilities.

XLVIII. SUCCESSORS AND ASSIGNS

This MOU shall be binding upon and shall inure to the benefit of the Parties and their respective assigns; provided, however, that the Padres shall have no right to assign this MOU or its rights hereunder prior to the Opening Date.

XLIX. GOVERNING LAW

This MOU shall be governed by and construed according to the laws of California.

SAN DIEGO PADRES

CITY OF SAN DIEGO

By:

Lawrence Lucchino
President & Chief Executive Officer

By:

Michael T. Ueberuaga
City Manager

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

CENTRE CITY DEVELOPMENT
CORPORATION

By:

Michael T. Ueberuaga
Executive Director

By:

Peter Hall
President

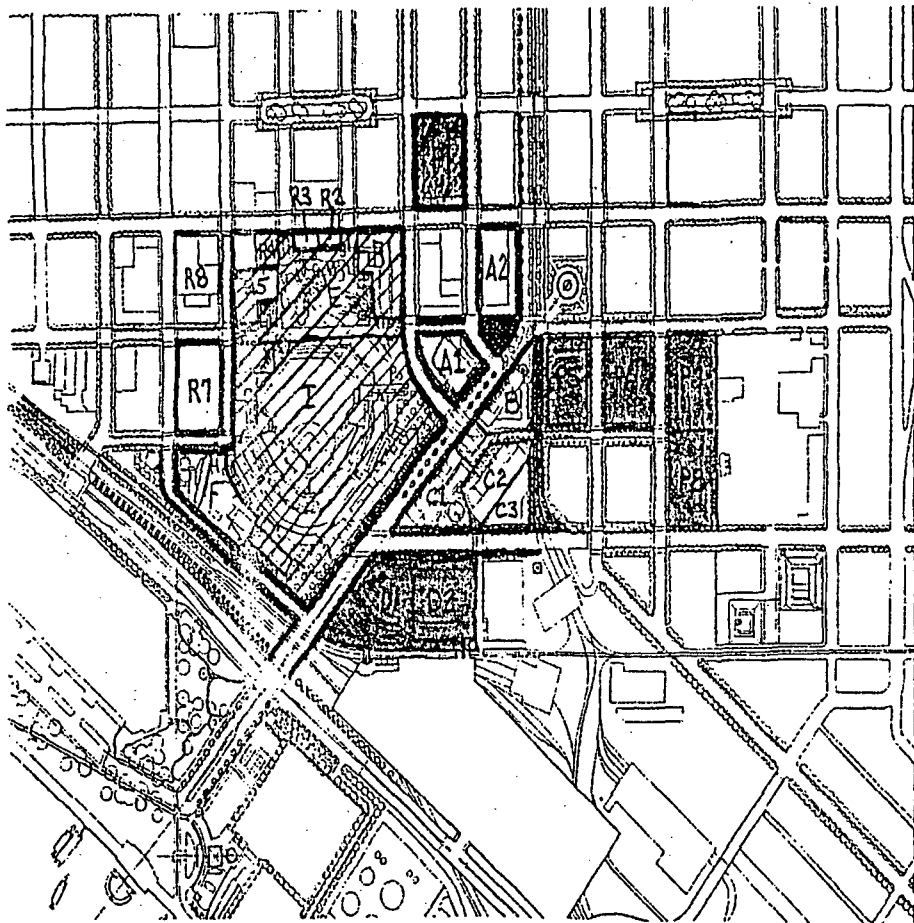
I HEREBY APPROVE the form and legality of the foregoing Memorandum of Understanding this
day of _____, 1998.

CASEY GWINN, City Attorney

By:

Leslie J. Girard
Assistant City Attorney

**ATTACHMENT A
MAP OF INFRASTRUCTURE IMPROVEMENTS**



A BALLPARK DISTRICT FOR SAN DIEGO

INFRASTRUCTURE IMPROVEMENTS

- City/Ballpark Project Road Improvements and Utilities Relocation
- City/Ballpark Project Streetscape Improvements
- Private Developer /CCDC Streetscape Improvements
- City/Ballpark Project Park & Plaza Improvements (striped is sitework only)
- Surface Parking Lots - Phase I
- Structured Parking - Phase I
- Coaster Improvements

**ATTACHMENT A-1
BALLPARK PROJECT AREA
INFRASTRUCTURE EXPENSE SUMMARY**

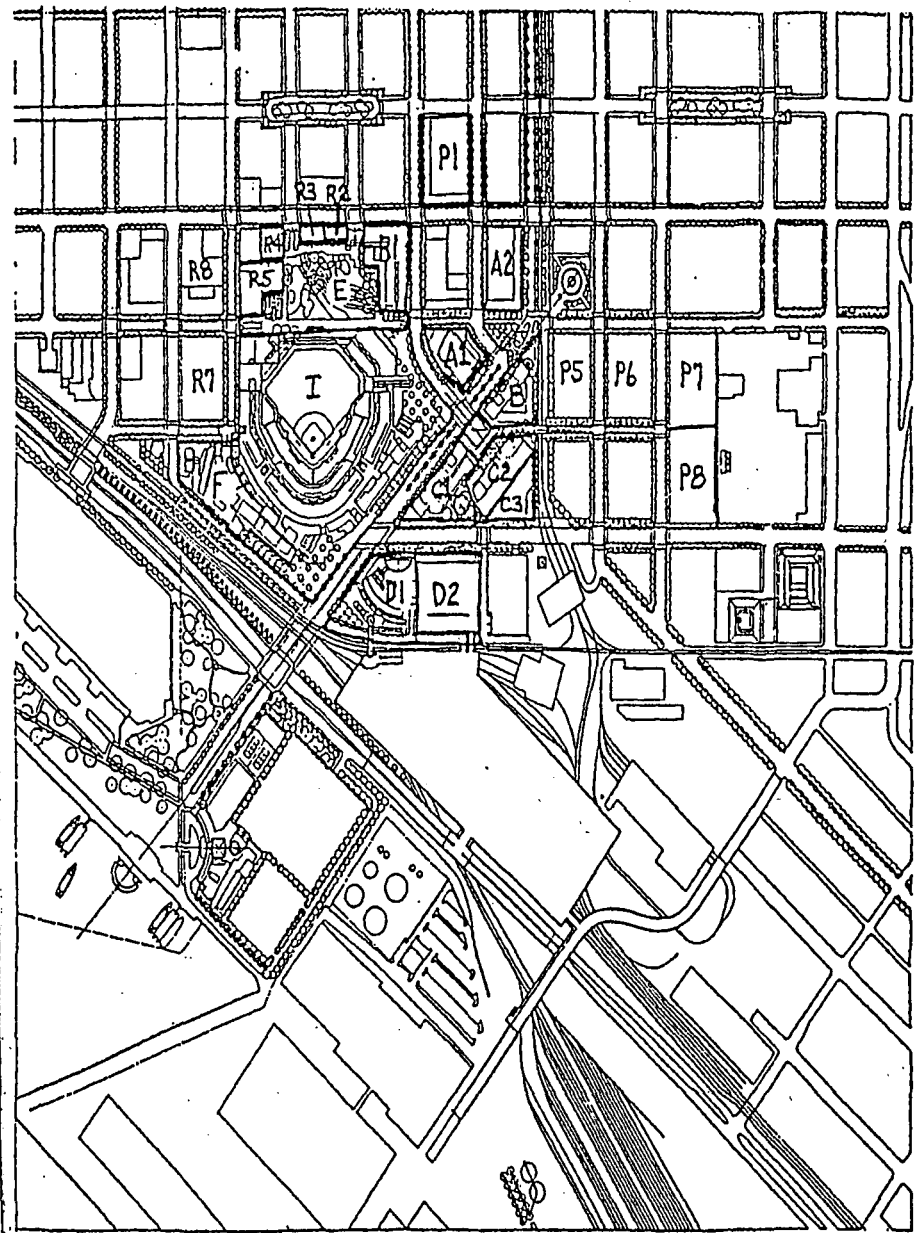
| <u>Project Infrastructure Improvements</u> | | <u>Total Project Costs</u> |
|---|--------------|----------------------------|
| 1. Public Roadways | | \$8,265,196 |
| 2. Ballpark parcel Site Work (Demo & Abatement) | | \$2,190,015 |
| 3. Park and Plaza Site Work & Improvements | | \$2,553,735 |
| 4. Parking Improvements | | |
| Surface Parking Improvements | | |
| D1 | \$646,000 | |
| D2 | \$530,000 | |
| P5 | \$500,000 | |
| P6 | \$500,000 | |
| P7 | \$500,000 | |
| P8 | \$500,000 | |
| Bldg. Abatement & Demo for P1 & P5-P8 lots | \$1,811,500 | |
| Structured Parking Improvements (P1) | \$10,000,000 | |
| Parking Equipment Allowance | \$750,000 | |
| Parking Improvements Subtotal: | | \$15,737,500 |
| 5. Subsurface Hazardous Materials Allowance | | \$1,000,000 |
| 6. Transit System Improvements | | \$400,000 |
| 7. Site Utilities | | \$14,376,000 |
| 8. Permits & Fees | 3% | \$1,335,673 |
| 9. Architecture & Engineering | 8% | \$3,561,796 |
| 10. Escalation | 10% | \$4,452,245 |
| 11. Planning & Predevelopment | | \$2,590,000 |
| 12. City Project Administration | | \$1,281,000 |
| 13. Contingency | | \$3,845,740 |
| Total Infrastructure Costs | | \$61,588,900 |

**ATTACHMENT A-2
ROADWAY IMPROVEMENT DETAIL**

Ballpark Project:

| Street | Segment | Direction |
|--------------------------|---------------------|-----------------|
| J St | 7th - 8th (1/2) | south |
| | 10th - 11th | north |
| | Intersection | 8/J |
| | Intersection | 9/J |
| | Intersection | 10/J |
| | Intersection | 11/J |
| | roadway | 7th - 8th |
| | roadway | 8th - 9th |
| | roadway | 9th - 10th |
| | roadway | 10th - 11th |
| K St | 10th - 11th | north |
| | roadway | 10th - 11th |
| L St | 6th - 7th (1/3) | south |
| | Drop Off Dr. | north-east |
| Drop Off Dr. | L St - Park (1/2) | south-west |
| | L St - Park | L - Park |
| Imperial | Park - Trolley | south |
| | roadway | Park/Trolley |
| Park Blvd | Drop Off - Imperial | north-west |
| | Intersection | Park/Imperial |
| | Imperial - 10th | north-west |
| | Intersection | 10th/Park |
| | Intersection | 11th/Park |
| | 11th - K St | north-west |
| | Intersection | K/Park |
| | roadway | Drop - Imperial |
| | roadway | Imperial - 10th |
| | roadway | 10th - K |
| | median | diagonal |
| | Demo & Abatement | Park Blvd. |
| | Intersection | Harbor/Park |
| Intersection | Trolley/Park | |
| Drop Off Dr - Imperial | south-east | |
| 11th Ave | Island - J St | west |
| | K St - Park | east |
| | roadway | J - K |
| 10th Ave | roadway | K - Park |
| | Island - J St | east |
| | K St - Park | west |
| 7th Ave | intersection | 10/K |
| | roadway | J - K |
| | roadway | K - Park |
| 7th Ave | K St - L St | east |
| | L St - Hotel | east |
| | roadway | J - K |
| | roadway | K - L |
| | roadway | L - Hotel |
| J - K St (existing bldg) | east | east |

**ATTACHMENT B
LAND ACQUISITION PARCELS**



A BALLPARK DISTRICT

**ATTACHMENT B - 1
BALLPARK PROJECT AREA
LAND ACQUISITION EXPENSE SUMMARY**

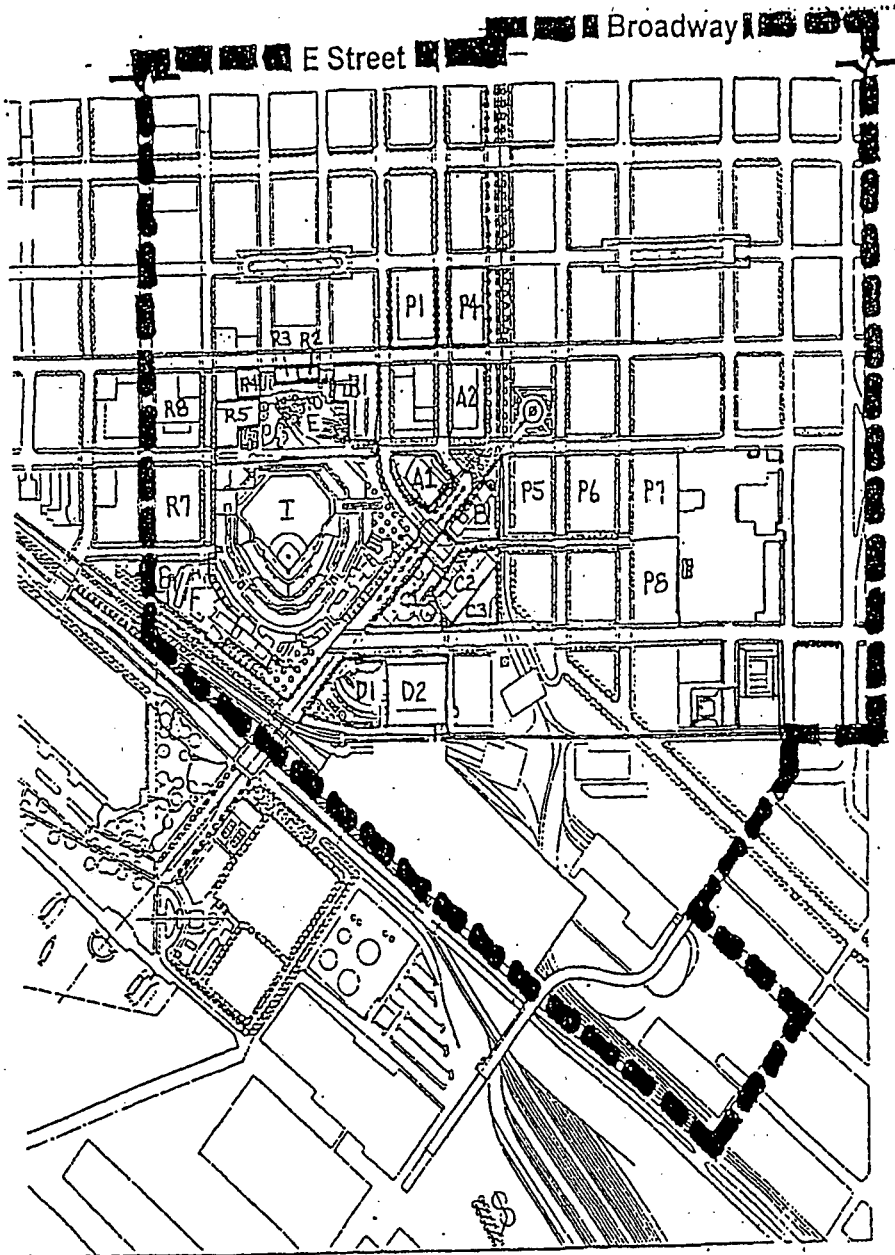
| <u>Project Parcel Acquisition</u> | <u>Estimated Acquisition Cost</u> |
|---|-----------------------------------|
| Base Project - Ballpark, Outfield Park and Outfield Park Retail Parcels - Parcels I, E and R1-R5 respectively | \$49,583,000 |
| Base Parking - Parcels P1, P5, P6, P7 and P8 | <u>\$12,556,000</u> |
| Total Land Cost Before Contingency | \$62,139,000 |
| Land Cost Contingency | <u>\$19,772,100</u> |
| Total Land Acquisition Costs | \$81,911,100 |

**ATTACHMENT B-2
SUMMARY OF 5,000 PARKING SPACES *
REQUIRED TO BE PROVIDED BY THE CITY
IN ADDITION TO OTHER PRIVATELY OWNED SPACES**

| | <u>Site</u> | <u># Spaces</u> |
|--|-------------|---------------------|
| 1,800 publicly purchased land and developed surface and structured spaces: | | |
| | P1 | 1,000 |
| | P5 | 200 |
| | P6 | 200 |
| | P7 | 200 |
| | P8 | <u>200</u> |
| Subtotal | | 1,800 |
| 588 privately purchased land, publicly developed spaces: | | |
| | D1 | 323 |
| | D2 | <u>265</u> |
| Subtotal | | 588 |
| 1,000 other existing spaces: | | 1,000 |
| 1,650, privately purchased and developed structured spaces: | | |
| | A1 | 350 |
| | A2 | 800 |
| | C1 | 150 |
| | C3 | <u>350</u> |
| Subtotal | | 1,650 |
| TOTAL | | <u>5,038</u> |

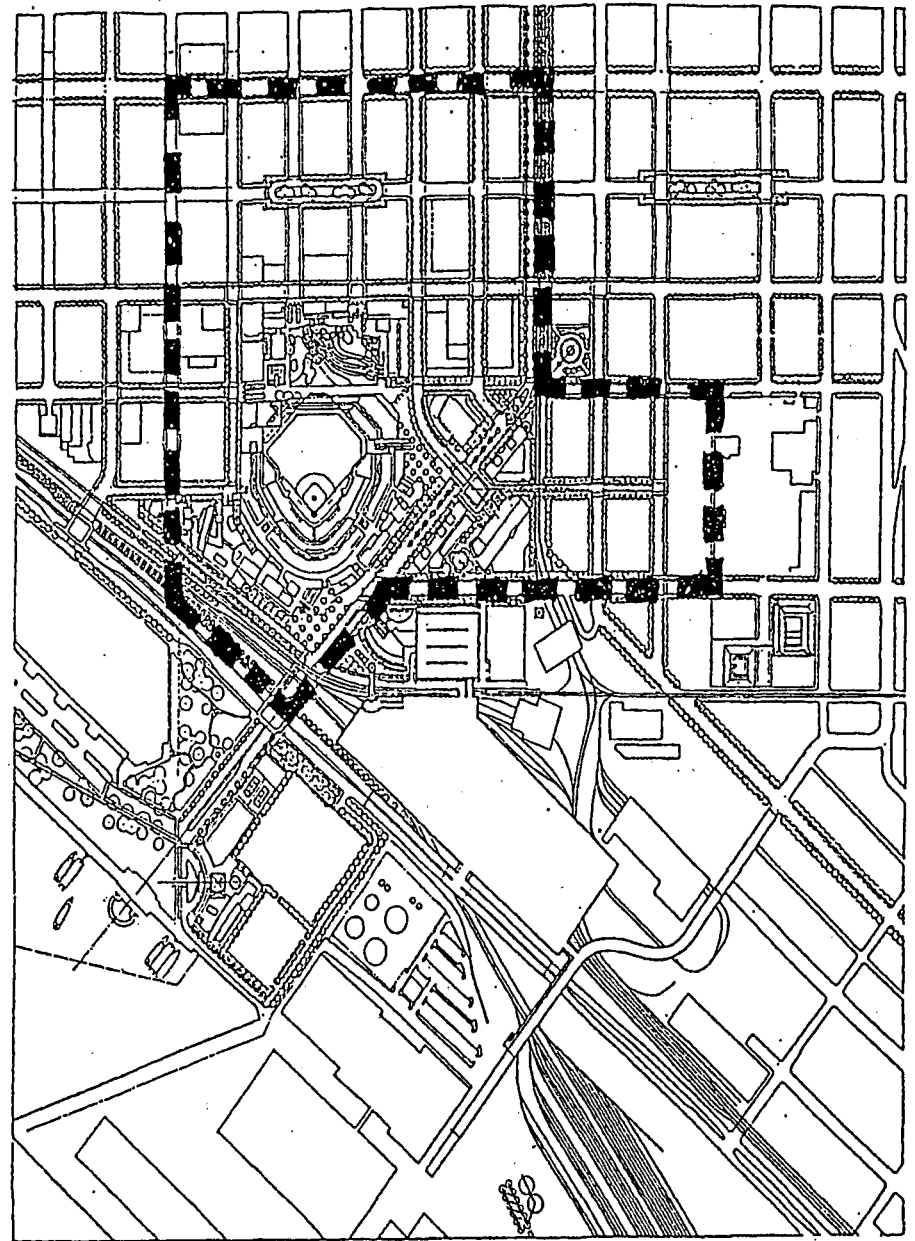
* There are approximately 12,000 additional parking spaces within a 15 minute walk of the Ballpark for a total of over 17,000 stalls.

ATTACHMENT C
HOTEL CREDIT ZONE



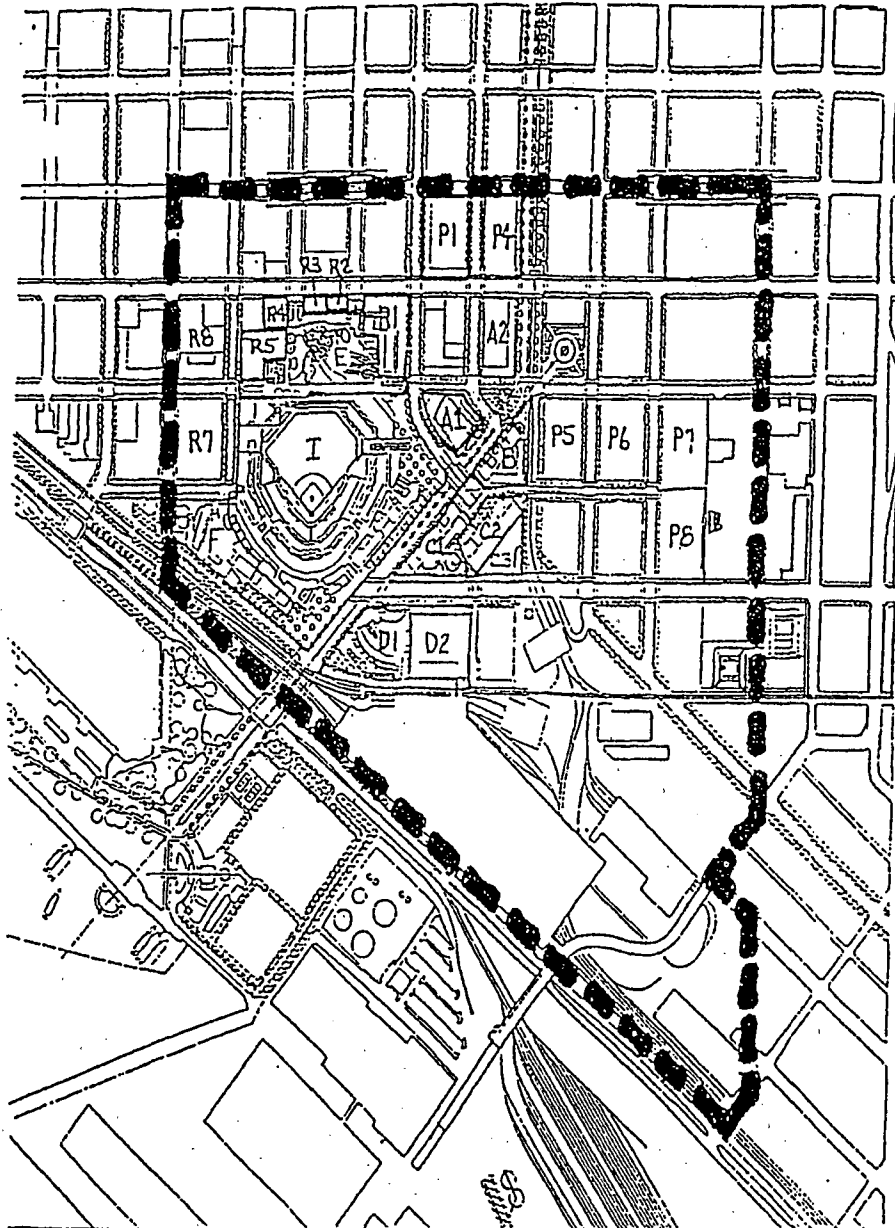
SOUTH EMBARCADERO CONCEPT
A BALLPARK DISTRICT

ATTACHMENT C-1
SUBSTITUTE ANCILLARY RETAIL DEVELOPMENT



A BALLPARK DISTRICT

ATTACHMENT D
RFP/RFQ ZONE



A BALLPARK DISTRICT

ATTACHMENT E
GENERAL TARGET TIMETABLE

| | |
|---------|--|
| 8/3/98 | Padres execute MOU. |
| 8/4/98 | City Council approves ballot measure for submission to voters. |
| 10/1/98 | Terms agreed for extension at Qualcomm Stadium. |
| 11/3/98 | Ballpark Project vote. |
| 12/3/99 | Certification Date. |
| 1/1/99 | Budget Estimates for Ballpark, Land, Public Parking and Infrastructure finalized. |
| 2/1/99 | Finalize Baseline Ballpark Program and minimum design standards. |
| 2/14/99 | Finalize estimate of property/possessory interest tax and Transient Occupancy Tax revenue for Ballpark and Phase 1. |
| 3/15/99 | City comments on Final Baseline Ballpark Program and minimum design standards. |
| 4/1/99 | Finalize binding agreement with Padres, Developer and/or others for Phase 1 and receive assurances for Substitute Ancillary Development (if any) and 1,000 room Convention Center Expansion hotel. |
| 4/1/99 | Receive commitments for Other Required Financing Investments (\$21 million). |
| 4/1/99 | Receive Padres first priority lien on National League Franchise. |
| 4/1/99 | Execution of DDA or DA for Phase 1. |
| 4/1/99 | Begin land acquisition. |
| TBD | Finalize EIR and PDO amendment (if any). |
| TBD | Ballpark groundbreaking. |
| TBD | Execute City financing - 45 days after latter of certification of EIR, or adoption of PDO amendment. |
| 6/1/00 | Padres deposit first of eight (8) quarterly payments - subject to acceleration. |
| 2/1/02 | Substantial Completion of Ballpark Project. |
| 3/1/02 | Operational start-up of Ballpark. |
| 3/31/02 | Substantial Completion and Certificate of Occupancy for Phase 1. |
| 4/1/02 | Opening Date. |
| 10/1/02 | Deposit Ballpark construction savings (if any), up to \$5 million, into Capital Expenditure Reserve Fund. |

**BALLPARK AND REDEVELOPMENT PROJECT
PADRES PROTECTION OF REVENUES**

- Term:** Ten years (FY 2002 through FY 2011 — using FY 2000 as the first base year for the rolling three-year calculation)
- Termination Events:** Construction and operation of 2,500 hotel rooms on the 10th Avenue Marine Terminal property, including the Campbell Shipyard Hotel
- Maximum Total Guarantee:** \$8 million over 10 years
- Maximum Annual Guarantee:** \$2.0 million
- Purpose:** Replenish the City Stabilization Reserve Fund (the "Fund"), which is equivalent to one-half the annual financing payment. The Fund is established to offset any fluctuations in revenue sources used to support the payment on the financing.
- The Padres protection would provide funds to replenish the Fund in the event that the average revenue growth over the three previous years is less than 8% and it is necessary to use the Fund to make a portion of the annual payment on the financing.
- Padres Payment:** The Padres payment amount would be the lesser of the following calculation on the current fiscal year or on the last three years as illustrated in Exhibit 1 of this Attachment and would be made ninety (90) days after written notice to the Padres of the amount determined by the 1year/3year formula, as illustrated by Exhibit 1.
- The Padres payment would be based on the ratio of the annual financing payment to the total receipts from the tax on hotel rooms. This ratio would then be applied to the shortfall in receipts from the tax on hotel rooms. The shortfall would be the difference between actual receipts from the tax on hotel rooms and the projected receipts from the tax on hotel rooms based upon an annual growth rate of 8%.
- Reimbursement to the Padres:** The Padres will be reimbursed with interest (at the Padres lowest cost of capital as certified by an independent certified public accountant) when receipts from the tax on hotel rooms grows at a rate greater than 8%.
- The reimbursement to the Padres will be based on the ratio of the annual financing payment to the total receipts from the tax on hotel rooms. This ratio would then be applied to the surplus in receipts from the tax on hotel rooms. The surplus would be the difference between actual receipts from the tax on hotel rooms and projected receipts from the tax on hotel rooms based upon an annual growth rate of 8%.
- Annual Payment Adjustments:** To maintain the tax exempt status on any financing by any Party, any and all payment adjustments called for herein will be made through monetary additions to (or subtractions from) the Joint Ballpark Ownership Expenses provided for in Section XXII of the MOU, provided said adjustments shall be identical to the amounts called for herein.
- Conditions to the Padres Protection of Revenues:**
- i) The City is not in default on any City obligations under the agreement for use and occupancy of the ballpark.
 - ii) Any Padre payment does not exceed the maximum annual protection amount of \$2 million.
 - iii) The sum of the current year Padre payment plus previous payments does not exceed the maximum aggregate protection amount of \$8 million.

Example:

If in 2005, growth in receipts from the tax on hotel rooms is 6% and the average growth in receipts from the tax on hotel rooms for the preceding three Fiscal Years was less than 8%, then a payment by the Padres to the Stabilization Reserve Fund would be required.

| Year | Projected Receipts | Percent Change | Actual Receipts | Percent Change | Shortfall |
|--------------|--------------------|----------------|-----------------|----------------|-----------|
| 2002 | \$120.1 | | \$120.1 | | \$0 |
| 2003 | \$129.7 | 8% | \$126.1 | 5% | (\$3.6) |
| 2004 | \$136.2 | 8% | \$134.9 | 7% | (\$1.3) |
| 2005 | \$145.7 | 8% | \$143.0 | 6% | (\$2.7) |
| 3-Year Total | | | | | (\$7.6) |

Padres Payment would be the lesser of the following calculations:

Hypothetical Option 1:

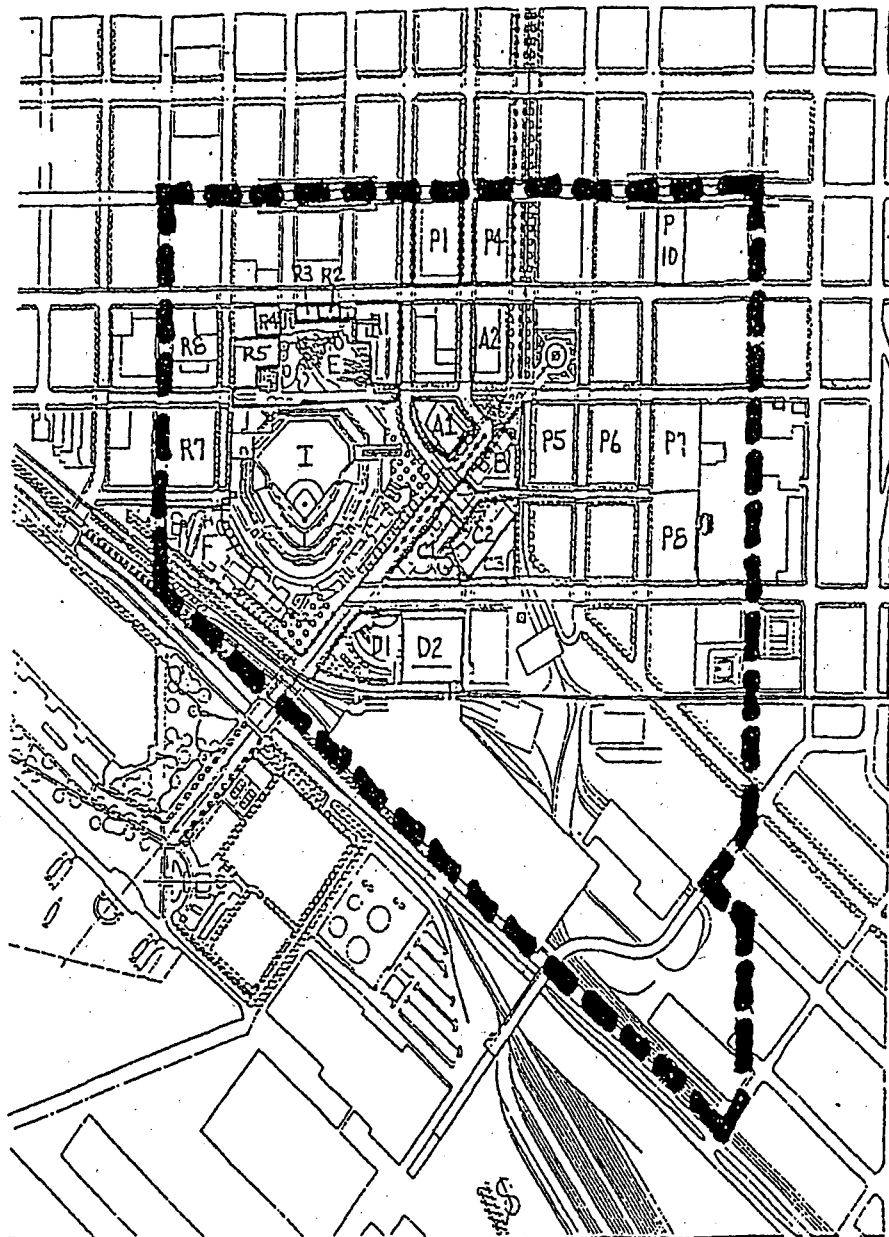
- (1) The Shortfall between projected receipts and actual receipts equals \$2.7 million for 2005.
- (2) The project financing payment (\$20.7 million) is 14% of total receipts from the tax on hotel rooms (\$143 million) in 2005.
- (3) The Padre Payment would equal \$380,000, which is 14% of the \$2.7 million Shortfall.

Hypothetical Option 2

- (1) The Shortfall between projected receipts and actual receipts for three years (2003 through 2005) is \$7.6 million.
- (2) The project financing payment (\$20.7 million) is 14% of total receipts from the tax on hotel rooms (\$143 million) in 2005.
- (3) The Padre Payment would equal \$1.06 million, which is 14% of the \$7.6 million Shortfall.

Thus, under these scenarios, the Padres would pay \$380,000, which is the lesser of the two options.

ATTACHMENT G
BALLPARK PROTECTION ZONE



A BALLPARK DISTRICT

CITY ATTORNEY'S IMPARTIAL ANALYSIS

This ordinance authorizes the City of San Diego [City] to enter into a Memorandum of Understanding [Memorandum] and related agreements with the San Diego Padres [Padres], the Redevelopment Agency of the City of San Diego [Agency], and the Centre City Development Corporation [Corporation] to undertake a major redevelopment project and construction of a baseball park in a Ballpark District [District] within the current downtown redevelopment area.

If approved, the Memorandum will provide the following: The District will be established in the area generally east of the Gaslamp Quarter and near the Convention Center expansion. The project cost will be \$411 million. The Padres will invest \$115 million, which may come from various private sources including naming rights, concession rights, and Padres' equity. The City will invest \$225 million. Although not specifying the source of City funds, the Memorandum indicates that existing and future general fund revenue may be used to finance the City's investment. The Padres will provide certain protection to the City for some of the future revenues. The Agency and Corporation will invest \$50 million, from a combination of existing funds and real property tax increment. Additional funding or project value of \$21 million must be secured, or the project scaled back in that amount.

The Padres will design and construct the ballpark, with the City's participation. Opening day is targeted for April, 2002. The ballpark cost will be \$267.5 million and the Padres must pay any construction costs over that amount. The City, Agency and Corporation will generally be responsible for all land acquisition and infrastructure costs, which will be capped at \$143.5 million, subject only to an exception that the Padres receive game-time revenue from 5,000 parking spaces near the ballpark, which spaces will augment approximately 12,000 spaces near the District.

The City will own 70% of the ballpark, the Padres 30%. The Padres must play at the ballpark for 30 years or until the ballpark bonds are retired, whichever is earlier, but at least 22 years, after which time the City will own 100% of the ballpark. The Padres will operate the ballpark and pay \$500,000 annually (plus C.P.I.) in rent. The City's share of annual operating expenses (expected to be \$9-10 million) is capped at \$3.5 million (plus C.P.I.); the Padres pay all annual operating expenses over the City's cap. The Padres will generally be responsible for capital expenditures. The Padres will retain all revenue from their use of the ballpark. The City will retain net revenue generated by events sponsored by the City.

The Padres are required to arrange for substantial private redevelopment immediately surrounding the ballpark, to generate new revenue to support the City's, Agency's and Corporation's investment. To facilitate the required redevelopment, the private developer will be given certain rights and opportunities, consistent with all laws. Numerous conditions must be satisfied for the project to proceed, including full compliance with the California Environmental Quality Act and the City's receipt of assurances that the private redevelopment will proceed and generate the necessary revenue.

ARGUMENT IN FAVOR OF PROPOSITION C

YES ON C: REDEVELOPMENT WORKS FOR ALL OF US!

Over \$400 million in private investment can transform the Ballpark District from a tax drain into a tax gain for San Diego neighborhoods.

- Horton Plaza, the Convention Center and Gaslamp Quarter have proven redevelopment pays off for San Diego taxpayers.
- The Ballpark District is a final step in revitalization of downtown, creating a dynamic new neighborhood which will produce over 6,000 jobs and over \$1 million per year in new sales tax revenue.

No new or increased taxes, no impact on existing city services or facilities.

- The city's share can be taken from redevelopment funds generated by downtown development, tourist taxes from new hotels built near the Ballpark, and a portion of the one-half cent of tourist tax established in 1994 to pay for a sports facility at this site.
- Conservative growth projections show adequate funds are also available for central library construction and existing services and facilities funded by tourist taxes.

Guarantees shift major risk from taxpayers to private investors.

- The Padres guarantee \$115 million for Ballpark project, plus \$300 million of private investment for redevelopment of a 26-square-block district.
- Padres are responsible for all Ballpark construction cost overruns.
- City costs for infrastructure and operating expenses of the Ballpark are capped and limited.
- Padres are required to stay in San Diego until 2024.

Affordable family entertainment, improved access, and a downtown of which we can be proud.

- Padres guarantee there will continue to be affordable seats for San Diegans.
- Proximity to freeways, the Trolley and city street grid, along with over 14,000 nearby parking spaces, ensure quick, convenient access.
- 1.2 million square feet of new high-tech office space, housing, restaurants, retail establishments, and a tree-lined avenue linking Balboa Park to San Diego Bay make the Ballpark a catalyst for a great new downtown.

PETER Q. DAVIS
Chair, Centre City Development Corp.

ANNE L. EVANS
Chairman
Greater San Diego Chamber of Commerce

BONNIE BREITENSTEIN
President, East Village Association

MICHAEL J. AGUIRRE
Taxpayer advocate

SUSAN GOLDING
Mayor, City of San Diego

ARGUMENT AGAINST PROPOSITION C

From the same politicians that brought us the Charger ticket guarantee, we now get an even bigger boondoggle - An obligation to the taxpayers for \$700 million over 30 years to be paid from assumed tax revenues from 2500 nonexistent hotel rooms. Don't get fooled again.

Libraries, police, infrastructure, arts and cultural activities should have priority over an unnecessary ballpark that would gobble up valuable and historic downtown property. A new ballpark would create a traffic nightmare with expensive and inadequate parking.

Redevelopment for affordable housing in the East Village is undermined by this ballpark proposal.

Unlike the convention center, the Padres won't draw tourists. "A professional baseball team provides a debatable economic benefit to a community and probably provides no net fiscal benefit." (San Diego Taxpayers Association, 2/5/98).

The Padres won't leave; they have nowhere to go. No baseball team has left a city in 26 years.

Expect ticket prices to rise at least 30%, across the board, as in other cities, with premium seats costing much more. Typical Padre fans will be priced out of seats, if they can find any.

Even IF the Padres get their new ballpark, it is doubtful they will remain "competitive" for long - UNLESS they control player salaries. Under the conditions of the Memorandum Of Understanding, it is almost certain the Padres will require additional subsidies.

Smart voters have rejected taxpayer-financed stadiums in San Francisco, Birmingham, Toledo, Milwaukee, Pittsburgh, Minnesota and North Carolina.

The San Francisco Giants went to using private funds. If the Padres want a new ballpark, they should build it themselves.

Should San Diego taxpayers be forced to subsidize multimillionaire team owners, overpaid athletes and those sitting in tax deductible corporate "luxury suites?"

Don't mortgage OUR City for the sake of a playground we can't afford.

STOP THIS BALLPARK. Vote NO on Proposition C.

CHRIS MICHAELS
Co-Chair
Strike Three on Proposition C

SCOTT McLACHLAN
President
Citizens Organized Against
Sports Team Subsidies

KENT C. WILSON
President
Peoples East Village Association (PEVA)

ROBERT SIMMONS
Professor of Law - USD (Ret.)

JOEL FOX
President
Howard Jarvis Taxpayers Association

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APPENDIX G

FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Disclosure Agreement"), dated as of February 1, 2002, is executed and delivered by the City of San Diego (the "City") and Wells Fargo Bank, National Association (the "Trustee") in connection with the issuance of \$169,685,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (the "Bonds"). The Bonds are being issued pursuant to an Indenture, dated as of February 1, 2002 (the "Indenture"), between the Public Facilities Financing Authority of the City of San Diego (the "Authority"), a public entity and agency duly organized and existing pursuant to a joint exercise of powers agreement between the City and the Redevelopment Agency of the City of San Diego, and the Trustee. The Bonds will be payable from base rental payments to be made by the City pursuant to a Ballpark Facility Lease, dated as of February 1, 2002 (the "Facility Lease"), between the Authority and the City. Pursuant to Section 6.14 of the Indenture and Section 4.03 of the Facility Lease, the City and the Trustee covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the City and the Trustee for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule (defined below). The City and the Trustee acknowledge that the Authority has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement, and has no liability to any person, including any Owner or Beneficial Owner of the Bonds, with respect to the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Beneficial Owner" shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

"Disclosure Representative" shall mean the City Manager of the City or his or her designee, or such other officer or employee as the City shall designate in writing to the Trustee from time to time.

"Dissemination Agent" shall mean the Deputy City Manager of the City, acting in his or her capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

"National Repository" shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. The National Repositories currently approved by the Securities and Exchange Commission are set forth at:

<http://www.sec.gov/info/municipal/nrmsir.htm>.

"Participating Underwriter" shall mean the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Repository" shall mean each National Repository and the State Repository, if any.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State" shall mean the State of California.

"State Repository" shall mean any public or private repository or entity designated by the State as the state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Agreement, there is no State Repository.

SECTION 3. Provision of Annual Reports:

(a) The City shall, or shall cause the Dissemination Agent to, not later than 285 days after the end of the City's fiscal year (which fiscal year presently ends June 30), commencing with the report for the fiscal year ended June 30, 2001, provide to each Repository, to Ambac Assurance (so long as the Municipal Bond Insurance Policy shall be in full force and effect and so long as Ambac Assurance is not in default under its Municipal Bond Insurance Policy) and to the Trustee (if the Trustee is not the Dissemination Agent) an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. For the fiscal year ended June 30, 2001 Annual Report, the City shall submit to the Dissemination Agent a copy of the Offering Document for the Bonds and the audited financial statements of the City for the same period to meet its obligations pursuant to this section 3 (a). If by such date the Trustee has not received a copy of the Annual Report, the Trustee shall contact the City and the Dissemination Agent to inquire if the City is in compliance with the first sentence of this subsection (a). The Trustee shall have no duty or obligation to review such Annual Report. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that the audited financial statements of the City may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to the Repositories, the City shall provide the Annual Report to the Dissemination Agent (if other than the City or an employee of the City).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the Repositories by the date required in subsection (a), the Trustee shall send a notice to each Repository, Ambac Assurance Corporation (so long as the Municipal Bond Insurance Policy shall be in full force and effect and so long as Ambac Assurance Corporation is not in default under its Municipal Bond Insurance Policy) and the Municipal Securities Rulemaking Board and the State Repository, if any, in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and the State Repository, if any; and

(2) file a report with the City, the Authority and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing all the Repositories to which it was provided.

SECTION 4. Content of Annual Reports. The City's Annual Report shall contain or include by reference the following:

(a) The audited financial statements of the City for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated from time to time by the Financial Accounting Standards Board or as otherwise required by applicable State law. If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the

Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Offering Document, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Updates of information contained in the following tables and under the following captions in Appendix A to the Offering Document, dated February 14, 2002, relating to the Bonds:

- (1) Table 7 – CITY OF SAN DIEGO TRANSIENT OCCUPANCY TAX.
- (2) Table 11 - CITY OF SAN DIEGO BUILDING PERMIT VALUATION AND NUMBER OF DWELLING UNITS.
- (3) Table 12 - CITY OF SAN DIEGO BALANCE SHEET FOR THE GENERAL FUND.
- (4) Table 13 - CITY OF SAN DIEGO STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE FOR THE GENERAL FUND.
- (5) Table 14 - CITY OF SAN DIEGO OPERATING BUDGET SUMMARY (ACTUAL, ADOPTED).
- (6) Table 15 - ASSESSED VALUATION.
- (7) Table 16 - SECURED TAX LEVIES AND COLLECTIONS.
- (8) Table 17 - PRINCIPAL PROPERTY TAXPAYERS IN CITY OF SAN DIEGO.
- (9) Information under the caption "LABOR RELATIONS."
- (10) Information under the caption "PENSION PLAN."
- (11) Information under the caption "INSURANCE, CLAIMS, AND LITIGATION - Workers' Compensation and Long-Term Disability."
- (12) Table 18 - CITY OF SAN DIEGO LIABILITY CLAIMS AND PREMIUMS.
- (13) Table 19 - CITY OF SAN DIEGO POOLED OPERATING INVESTMENT FUND
- (14) Information under the caption "INVESTMENT OF FUNDS-- Pool Liquidity and Other Characteristics."
- (15) Table 20 - CITY OF SAN DIEGO GENERAL OBLIGATION AND GENERAL FUND LEASE OBLIGATIONS.
- (16) Table 21 - CITY OF SAN DIEGO SHORT-TERM BORROWINGS.
- (17) Table 22 - CITY OF SAN DIEGO FUTURE MINIMUM RENTAL PAYMENTS GENERAL FUND OPERATING LEASE COMMITMENTS.
- (18) Table 23 - STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT.

(c) Updates of the information contained in the following tables or under the following captions in the Offering Document, dated February 14, 2002, relating to the Bonds; provided, however, that in each

case, such information shall be provided in each Annual Report covering periods at or prior to Substantial Completion of the Ballpark Facility:

- (1) Table entitled "SCHEDULE OF KEY EVENTS."
- (2) Information and tables under the caption "PLAN OF FINANCE FOR THE BALLPARK PROJECT- The Ballpark Project- *Interim Expenditures.*"
- (3) Information under the caption "PLAN OF FINANCE FOR THE BALL PARK PROJECT - Sources of Funds from the District."
- (4) Information under the caption "RISK FACTORS - Ballpark Project Funding and Completion Risks - *Acquisition of Land.*"
- (5) Description of any material new litigation affecting the Ballpark Project which is not in the Offering Document.
- (6) Updates of the status of litigation - *Skane v. City of San Diego* (San Diego County Superior Court, Case No. GIC 752505); *City of San Diego, et al. v. All Persons Interested* (San Diego County Superior Court, Case No. GIC 763407); and *Simmons v. City of San Diego, et al.* (San Diego Superior Court, Case No. GIC 779299).
- (7) Updates of the following information under the caption "THE BALLPARK PROJECT" relating to the construction of the Ballpark Facility: (i) changes in the Ballpark Facility estimate for construction of the Ballpark Facility; (ii) changes in the percentage of components for which the GMC has been achieved; and (iii) changes in the status of completion of Infrastructure Work, changes in the Infrastructure Work budget, and changes in the percentage of completion of Infrastructure Work.
- (8) Table entitled "Land Acquisition Status as of January 15, 2002."
- (9) Information under the caption "THE REDEVELOPMENT PROJECT - Hotels" regarding the status of construction of the hotels and opening dates thereof.

(d) Any or all of the items listed above may be included by specific reference to other documents, including Offering Documents or official statements of debt issues of the City or debt issues with respect to which the City is an "obligated person" (as defined by the Rule), which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final Offering Document or official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) modifications to rights of Bondholders;
- (4) optional, contingent or unscheduled bond calls;
- (5) defeasances;

- (6) rating changes;
- (7) adverse tax opinions or events adversely affecting the tax-exempt status of the Bonds;
- (8) unscheduled draws on the debt service reserves reflecting financial difficulties;
- (9) unscheduled draws on credit enhancements reflecting financial difficulties;
- (10) substitution of credit or liquidity providers, or their failure to perform;
- (11) release, substitution or sale of property securing repayment of the Bonds.

(b) The Dissemination Agent shall, as soon as reasonably practicable after obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Disclosure Representative, inform such person of the event, and request that the City promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f) and promptly direct the Dissemination Agent whether or not to report such event to the Bondholders. In the absence of such direction, the Dissemination Agent shall not report such event unless otherwise required to be reported by the Dissemination Agent to the Bondholders under the Indenture. The Dissemination Agent may conclusively rely upon such direction (or lack thereof). For purposes of this Disclosure Agreement, "actual knowledge" of the occurrence of such Listed Events shall mean actual knowledge by the Dissemination Agent if other than the Trustee, and if the Dissemination Agent is the Trustee, then by the officer at the corporate trust office of the Trustee with regular responsibility for the administration of matters related to the Indenture. The Dissemination Agent shall have no responsibility to determine the materiality of any of the Listed Events.

(c) Whenever the City obtains knowledge of the occurrence of a Listed Event, whether because of a notice from the Trustee pursuant to subsection (b) or otherwise, the City shall as soon as possible determine if such event would be material under applicable federal securities laws.

(d) If the City has determined that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the City shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (f).

(e) If in response to a request under subsection (b), the City determines that the Listed Event would not be material under applicable federal securities laws, the City shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the City to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the Municipal Securities Rulemaking Board and the Repositories with a copy to the City. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (5) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.

SECTION 6. Termination of Reporting Obligation. The City's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the City's obligations under the Facility Lease are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the City and the original City shall have no further responsibility hereunder. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(f).

SECTION 7. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be

responsible in any manner for the content of any notice or report prepared by the City pursuant to this Disclosure Agreement.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the City and the Trustee may amend this Disclosure Agreement (and the Trustee shall agree to any amendment so requested by the City *provided* the Trustee shall not be obligated to enter into any such amendment that modifies or increases its duties or obligations hereunder), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(f), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the City shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the City or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee, at the written request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent funds in an amount satisfactory to the Trustee have been provided to it or it has been otherwise indemnified to its satisfaction from any cost, liability, expense or additional charges and fees of the Trustee whatsoever, including, without limitation, fees and expenses of its attorneys, or any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Trustee, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture or the Facility Lease, and the sole remedy under this Disclosure Agreement in the event of any failure of the City or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Obligated Person: City of San Diego

Name of Bond Issue: Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds,
Series 2002 (Ballpark Project)

Date of Issuance: February 15, 2002

NOTICE IS HEREBY GIVEN that the City of San Diego has not provided an Annual Report with respect to the above-named Bonds as required by Section 6.14 of the Indenture, dated as of February 1, 2002, between the Public Facilities Financing Authority of the City of San Diego and Wells Fargo Bank, National Association and Section 4.03 of the Ballpark Facility Lease, dated as of February 1, 2002, between the City and the Public Facilities Financing Authority of the City of San Diego. [The City anticipatés that the Annual Report will be filed by _____.]

Dated: _____

Wells Fargo Bank, National Association
on behalf of the City of San Diego

By: _____
Authorized Officer

cc: City of San Diego
Ambac Assurance Corporation

APPENDIX H

FORM OF FINANCIAL GUARANTY INSURANCE POLICY

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Financial Guaranty Insurance Policy

Obligor:

Policy Number:

Obligations:

Premium:

Ambac Assurance Corporation (Ambac), a Wisconsin stock insurance corporation, in consideration of the payment of the premium and subject to the terms of this Policy, hereby agrees to pay to The Bank of New York, as trustee, or its successor (the "Insurance Trustee"), for the benefit of the Holders, that portion of the principal of and interest on the above-described obligations (the "Obligations") which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Obligor.

Ambac will make such payments to the Insurance Trustee within one (1) business day following written notification to Ambac of Nonpayment. Upon a Holder's presentation and surrender to the Insurance Trustee of such unpaid Obligations or related coupons, uncanceled and in bearer form and free of any adverse claim, the Insurance Trustee will disburse to the Holder the amount of principal and interest which is then Due for Payment but is unpaid. Upon such disbursement, Ambac shall become the owner of the surrendered Obligations and/or coupons and shall be fully subrogated to all of the Holder's rights to payment thereon.

In cases where the Obligations are issued in registered form, the Insurance Trustee shall disburse principal to a Holder only upon presentation and surrender to the Insurance Trustee of the unpaid Obligation, uncanceled and free of any adverse claim, together with an instrument of assignment, in form satisfactory to Ambac and the Insurance Trustee duly executed by the Holder or such Holder's duly authorized representative, so as to permit ownership of such Obligation to be registered in the name of Ambac or its nominee. The Insurance Trustee shall disburse interest to a Holder of a registered Obligation only upon presentation to the Insurance Trustee of proof that the claimant is the person entitled to the payment of interest on the Obligation and delivery to the Insurance Trustee of an instrument of assignment, in form satisfactory to Ambac and the Insurance Trustee, duly executed by the Holder or such Holder's duly authorized representative, transferring to Ambac all rights under such Obligation to receive the interest in respect of which the insurance disbursement was made. Ambac shall be subrogated to all of the Holders' rights to payment on registered Obligations to the extent of any insurance disbursements so made.

In the event that a trustee or paying agent for the Obligations has notice that any payment of principal of or interest on an Obligation which has become Due for Payment and which is made to a Holder by or on behalf of the Obligor has been deemed a preferential transfer and theretofore recovered from the Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court of competent jurisdiction, such Holder will be entitled to payment from Ambac to the extent of such recovery if sufficient funds are not otherwise available.

As used herein, the term "Holder" means any person other than (i) the Obligor or (ii) any person whose obligations constitute the underlying security or source of payment for the Obligations who, at the time of Nonpayment, is the owner of an Obligation or of a coupon relating to an Obligation. As used herein, "Due for Payment", when referring to the principal of Obligations, is when the scheduled maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments), acceleration or other advancement of maturity; and, when referring to interest on the Obligations, is when the scheduled date for payment of interest has been reached. As used herein, "Nonpayment" means the failure of the Obligor to have provided sufficient funds to the trustee or paying agent for payment in full of all principal of and interest on the Obligations which are Due for Payment.

This Policy is noncancelable. The premium on this Policy is not refundable for any reason, including payment of the Obligations prior to maturity. This Policy does not insure against loss of any prepayment or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Ambac, nor against any risk other than Nonpayment.

In witness whereof, Ambac has caused this Policy to be affixed with a facsimile of its corporate seal and to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding upon Ambac by virtue of the countersignature of its duly authorized representative.

President



Secretary

Effective Date:

Authorized Representative

THE BANK OF NEW YORK acknowledges that it has agreed to perform the duties of Insurance Trustee under this Policy.

Authorized Officer of Insurance Trustee

Ambac

Ambac Assurance Corporation
c/o CT Corporation Systems
44 East Mifflin Street, Madison, Wisconsin 53703
Administrative Office:
One State Street Plaza, New York, New York 10004
Telephone: (212) 668-0340

Endorsement

Policy for:

Attached to and forming part of Policy No.:

Effective Date of Endorsement:

In the event that Ambac Assurance Corporation were to become insolvent, any claims arising under the Policy would be excluded from coverage by the California Insurance Guaranty Association, established pursuant to the laws of the State of California.

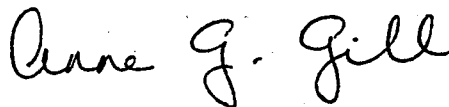
Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

In Witness Whereof, Ambac has caused this Endorsement to be affixed with a facsimile of its corporate seal and to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding upon Ambac by virtue of the countersignature of its duly authorized representative.

Ambac Assurance Corporation



President



Secretary

Authorized Representative

Endorsement

Policy for:

Attached to and forming part of Policy No.:

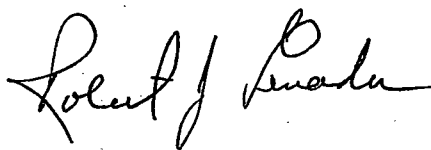
Effective Date of Endorsement:

As a clarification and not as a limitation of its obligations hereunder, Ambac hereby irrevocably waives and agrees not to assert any rights or defenses, to the extent such rights and defenses may be or become available to Ambac, to avoid payment of its obligations under this Policy due to the illegality, unenforceability or invalidity of the Obligations. All principal of and interest on the Obligations that would have become Due for Payment but for the illegality, unenforceability or invalidity of the Obligations shall be deemed "Due for Payment" for purposes of this Policy.

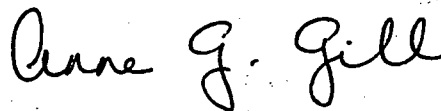
Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

In Witness Whereof, Ambac has caused this Endorsement to be affixed with a facsimile of its corporate seal and to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding upon Ambac by virtue of the countersignature of its duly authorized representative.

Ambac Assurance Corporation



President



Secretary

Authorized Representative

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APPENDIX I

FORM OF CO-BOND COUNSEL QUALIFIED OPINION

Orrick, Herrington & Sutcliffe LLP
777 South Figueroa Street, Suite 3200
Los Angeles, California 90017

Webster & Anderson
469 Ninth Street, Suite 240
Oakland, California 94607

[Date of Delivery]

City of San Diego
202 C Street
San Diego, California 92101

Public Facilities Financing Authority
202 C Street
San Diego, California 92101

Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds,
Series 2002 (Ballpark Project) (Final Opinion)

Ladies and Gentlemen:

We have acted as co-bond counsel in connection with the issuance of \$169,685,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (the "2002 Bonds"). The 2002 Bonds are being issued pursuant to an Indenture, dated as of February 1, 2002 (the "Indenture"), between the Public Facilities Financing Authority of the City of San Diego (the "Authority"), a public entity and agency duly organized and existing pursuant to an Amended and Restated Joint Exercise of Powers Agreement dated as of January 11, 1999, between the City of San Diego (the "City") and the Redevelopment Agency of the City of San Diego, and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The 2002 Bonds will be payable from Base Rental Payments to be made by the City pursuant to a Ballpark Facility Lease, dated as of February 1, 2002 (the "Facility Lease"), between the Authority as lessor and the City as lessee. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and the Facility Lease.

In such connection, we have reviewed the Indenture, the Facility Lease, a Site Lease dated as of February 1, 2002 (the "Site Lease") between the City as lessor and the Authority as lessee, an Assignment Agreement dated as of February 1, 2002, from the Authority to the Trustee, the Tax Certificate, dated the date hereof (the "Tax Certificate"), certificates of the City, the Authority, the Trustee and others, an opinion of the City Attorney, an opinion of counsel to the Authority, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

Certain agreements, requirements and procedures contained or referred to in the Indenture, the Facility Lease, the Site Lease, the Tax Certificate and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the 2002 Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. No opinion is expressed herein as to any Bond or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of counsel other than ourselves.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected

by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur. Our engagement with respect to the 2002 Bonds has concluded with their execution and delivery, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Authority and the City. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Facility Lease, the Site Lease and the Tax Certificate, including, without limitation, certain covenants and agreements, compliance with which is necessary to assure that future actions, omissions or events will not cause the interest on the 2002 Bonds to be included in gross income for federal income tax purposes.

In addition, we call attention to the fact that the rights and obligations under the 2002 Bonds, the Indenture, the Facility Lease, the Site Lease and the Tax Certificate and their enforceability are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against charter cities in the State of California. We express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real estate or personal property described in or subject to the lien of the Indenture, the Facility Lease, the Site Lease, or the accuracy or sufficiency of the description contained therein, or the scope of remedies available to enforce liens on such property. Further, we express no opinion herein as to (i) the outcome of Skane v. City of San Diego (San Diego County Superior Court, Case No. GIC 752505) or City of San Diego v. All Persons Interested (San Diego County Superior Court, Case No. GIC 763487) or Simmons v. City of San Diego (San Diego County Superior Court Case No. GIC 779299) ("Simmons" and collectively, the "Litigation") or (ii) the consequences of the attempted filing of pleadings (the "Rejected Pleadings") on February 8, 2002 with respect to Simmons, which pleadings were rejected by the office of the Clerk of the Court. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Offering Document or other offering material relating to the 2002 Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, and subject further to the effects of the outcome of the Litigation including, but not limited to, Simmons as regards the Rejected Pleadings, as of the date hereof we are of the following opinions:

1. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Authority. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the 2002 Bonds, of the Base Rental Payments and any other amounts (including proceeds of the sale of the 2002 Bonds) held by the Trustee in any fund or account established pursuant to the Indenture, except the Rebate Fund and the Costs of Issuance Fund, subject to the provisions of the Indenture permitting the application thereof for other purposes and on the terms and conditions set forth therein.

2. The Facility Lease and the Site Lease have each been duly executed and delivered by, and constitutes the valid and binding obligation of, the City. The obligation of the City to make Base Rental Payments under and during the term of the Facility Lease, in accordance with the terms thereof, constitutes a valid and binding obligation of the City payable from funds of the City lawfully available therefor.

3. Assuming due authorization, execution and delivery of the Indenture and the 2002 Bonds by the Trustee, the 2002 Bonds are entitled to the benefits of the Indenture.

4. Interest on the 2002 Bonds, including original issue discount, if any, is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the 2002 Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings in calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the 2002 Bonds.

ORRICK, HERRINGTON & SUTCLIFFE LLP

WEBSTER & ANDERSON

per

per

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APPENDIX J

FORM OF INVESTOR REPRESENTATION LETTER

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Attention: Public Finance Department
250 Vesey Street
4 World Financial Center
9th Floor
New York, New York 10080

Public Facilities Financing Authority
of the City of San Diego
202 C Street
San Diego, California 92101

City of San Diego
202 C Street
San Diego, California 92101

Re: \$169,685,000 Public Facilities Financing Authority of the City of San Diego
Lease Revenue Bonds, Series 2002 (Ballpark Project)

Ladies and Gentlemen:

The undersigned (the "Purchaser"), in consideration of \$ _____ aggregate principal amount of the 2002 Bonds (as defined below) and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, is delivering this letter in connection with an offering of the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project), as described in the Offering Document, dated February 14, 2002, relating to the 2002 Bonds, and any amendments or supplements thereto (collectively, the "Offering Document"). As used herein, the above-referenced bonds, and any bondholder interests in the Financial Guaranty Insurance Policy (as defined in the Offering Document) relating thereto, are collectively referred to as, the "2002 Bonds." Capitalized terms used and not defined herein shall have the same meanings set forth in the Offering Document.

The Purchaser hereby acknowledges, represents and agrees that:

1. The Purchaser is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended (the "1933 Act"), (provided, however, that notwithstanding the definition of "qualified institutional buyer" provided in the 1933 Act, the Purchaser has an audited net worth of at least \$25.0 million).
2. Any purchase of the 2002 Bonds by the Purchaser will be for not more than one account and will be with a view towards investing and not with a view to distributing the 2002 Bonds.
3. The Purchaser has such knowledge and experience in financial and business matters that the Purchaser is capable of evaluating the merits and risks of purchasing the 2002 Bonds and the Purchaser is able to bear the economic risks of, and an entire loss of, the Purchaser's investment in the 2002 Bonds.
4. The Purchaser has had an opportunity to obtain and has had access to such financial and other information, including information regarding Skane v. City of San Diego (San Diego County Superior Court, Case No. GIC 752505), City of San Diego, et al. v. All Persons Interested (San Diego County Superior Court, Case No. GIC 763487) and Simmons v. City of San Diego, et al. (San Diego County

Superior Court, Case No. GIC 779299) (collectively, the "Ballpark Litigation"), as the Purchaser has deemed necessary or advisable to make an informed investment decision.

5. The Purchaser has reviewed information regarding the Ballpark Litigation. The Purchaser understands that should the challenges as to the validity of the 2002 Bonds be successful, the City of San Diego (the "City") may not have a duty to make Base Rental Payments under the Ballpark Facility Lease (each as defined in the Offering Document), which Base Rental Payments are intended to provide debt service payments on the 2002 Bonds. In addition, the Purchaser understands that if the 2002 Bonds, the Indenture (as defined in the Offering Document) or the Ballpark Facility Lease is found by a court of last resort to be void or invalid as a result of the Ballpark Litigation, the interest on the 2002 Bonds may not be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") or from State of California personal income taxes.

6. The Purchaser shall not resell or otherwise transfer any 2002 Bonds or interests therein unless, with respect to each such resale or other transfer:

a. the Purchaser first offers such resale or transfer of such 2002 Bonds to Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") (and Merrill Lynch shall have 10 business days to accept such offer by giving notice to the Purchaser at the address specified below) and, if Merrill Lynch does not accept such offer, the Purchaser causes Merrill Lynch to execute and deliver to the Purchaser, a Notice Regarding Right of First Refusal of Merrill Lynch (the "Refusal Letter"), substantially in the form attached hereto as Exhibit 2, informing the Trustee (as defined in the Offering Document) that Merrill Lynch has declined such offer;

b. the buyer or transferee is a "qualified institutional buyer" within the meaning of Rule 144A of the 1933 Act (provided, however, that notwithstanding the definition of "qualified institutional buyer" provided in the 1933 Act, such buyer or transferee must have an audited net worth of at least \$25.0 million) or a custodian or a trustee for a custodial arrangement or trust, each of the beneficial owners of which is required to be such a "qualified institutional buyer";

c. the resold or transferred 2002 Bonds are delivered to the buyer or transferee in certificated form and in minimum denominations of \$1 million and integral multiples of \$5,000 in excess thereof;

d. the resale or transfer of such 2002 Bonds does not (i) cause the number of registered owners of the 2002 Bonds to exceed 32, as evidenced by the certificate register for the 2002 Bonds maintained by the Trustee or (ii) in and of itself, cause the number of beneficial owners of the 2002 Bonds to exceed 32, assuming such number was 32 or less before giving effect to such resale or transfer;

e. the Purchaser causes the prospective beneficial owner (whether or not such beneficial owner will be the registered owner) of such 2002 Bonds (other than Merrill Lynch) to execute and deliver an Investor Representation Letter (the "Investor Representation Letter"), substantially in the form of this letter and Appendix J to the Offering Document (additional blank copies of the Investor Representation Letter may be obtained from Merrill Lynch at the address set forth below); provided that, if the buyer or transferee is a custodian or trustee as described in paragraph (b) of this Section 6, such Investor Representation Letter may be modified to (i) identify the custodial arrangement or the trust for which the buyer or transferee is the custodian or trustee, and (ii) cause references to "the Purchaser" to be representations of the seller or transferor concerning the custodial arrangement or the trust or the beneficial owners of such custodial arrangement or trust;

f. the right of Merrill Lynch to call away such 2002 Bonds, as described in Paragraph 7 below, applies to the buyer or transferee; and

g. the Purchaser delivers to the Trustee a Notice of Sale or Transfer, substantially in the form attached hereto as Exhibit I, and, if the buyer or transferee is other than Merrill Lynch, also delivers to the Trustee the Refusal Letter and the Investor Representation Letter, and the Purchaser receives confirmation from the Trustee that the Trustee is prepared to effect the resale or transfer contemplated by the Notice of Sale or Transfer, in accordance with the Indenture.

7. In the event of an opinion, order, judgment or decree of a court of last resort to the effect that the 2002 Bonds, the Indenture or the Ballpark Facility Lease is void or invalid (the "Final Order"), entered in any of the Ballpark Litigation, Merrill Lynch shall have the right and option (at the direction of the City, with funds provided by the City) to call away all of the outstanding 2002 Bonds from all then-current registered owners, including the Purchaser, on a date (the "Call Date") that is not more than 270 days after the date of entry of the Final Order, on not less than 30 days nor more than 60 days notice by Merrill Lynch, and at a price equal to the principal amount of the 2002 Bonds to be called away, together with accrued interest thereon to the Call Date. Merrill Lynch will mail, first-class and postage pre-paid, notice (the "Call Notice") of its intention to call away all of the outstanding 2002 Bonds to each registered owner of the 2002 Bonds (in whose name any 2002 Bonds are registered with the Trustee as of the close of business on the business day prior to the date on which Merrill Lynch mails the Call Notice). If Merrill Lynch exercises this call option, the Purchaser shall deliver or cause to be delivered, as instructed by the Trustee or Merrill Lynch, all 2002 Bonds registered in the name of, or beneficially owned by, the Purchaser, in exchange for the Purchaser's receipt of the call price for such 2002 Bonds.

8. If (i) within 240 days after the date of any Final Order, Merrill Lynch does not mail the Call Notice, as set forth in Paragraph 7 above, or (ii) an unqualified Opinion of Counsel (as defined in the Indenture) dated the Closing Date (as defined in the Indenture) of the 2002 Bonds, addressed to the Public Facilities Financing Authority of the City of San Diego (the "Authority") and the City (with a reliance letter to Merrill Lynch), in substantially the form attached to the Indenture as Exhibit D, is delivered to the Authority, the City, Merrill Lynch and the Trustee, then, the Trustee will be requested by Merrill Lynch (with respect to (i) above) or by the Authority (with respect to (ii) above) to recover from registered owners all certificates evidencing the 2002 Bonds and, when so recovered, Merrill Lynch or the Authority, as appropriate, shall cause the Trustee to deliver a new certificate or certificates evidencing the 2002 Bonds, bearing new CUSIP numbers, to the Depository Trust Company, and thereafter transfers of the 2002 Bonds will be made by book-entry in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof. In the case of either (i) or (ii) above, the Purchaser shall deliver, as instructed by the Trustee pursuant to this Paragraph 8, all certificates evidencing the 2002 Bonds held by the Purchaser. The provisions of Paragraphs 6 and 7 above shall lapse and shall be of no further force and effect upon conversion of the 2002 Bonds to book-entry in accordance with this Paragraph 8.

9. To the extent permitted by law, the Purchaser agrees not to assert any claim in any forum whatsoever against any of the Authority, the City and Merrill Lynch or any of their respective officers, directors, council members, agents and employees for losses, damages or expenses resulting from any claim that amounts may be due or owing, or become due or owing, to the Internal Revenue Service, the California Franchise Tax Board, or any other state or local government for taxes, penalties or interest as a consequence of the 2002 Bonds, the Indenture or the Ballpark Facility Lease being held void or invalid and the 2002 Bonds becoming taxable due to the outcome of any of the Ballpark Litigation.

10. While the restrictions set forth in Paragraph 6 above are in place and Merrill Lynch continues to have the call option described in Paragraph 7 above, the following legend shall be placed on each of the 2002 Bonds:

"NO RESALE OR OTHER TRANSFER OF THIS BOND SHALL BE MADE UNLESS SUCH RESALE OR TRANSFER IS MADE IN ACCORDANCE WITH THE FORM OF INVESTOR REPRESENTATION LETTER ATTACHED TO THE OFFERING DOCUMENT AS APPENDIX J (THE "INVESTOR REPRESENTATION LETTER"). IN ACCORDANCE WITH THE INVESTOR REPRESENTATION LETTER, ANY SUCH RESALE OR OTHER TRANSFER OF THIS BOND SHALL BE SUBJECT TO THE FOLLOWING RESTRICTIONS: (A) THE HOLDER OF THIS BOND SHALL FIRST OFFER SUCH SALE OR OTHER

TRANSFER OF THIS BOND TO MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED ("MERRILL LYNCH") (AND MERRILL LYNCH SHALL HAVE 10 BUSINESS DAYS TO ACCEPT SUCH OFFER BY GIVING NOTICE TO THE HOLDER HEREOF) AND, IF MERRILL LYNCH DOES NOT ACCEPT SUCH OFFER, THE HOLDER HEREOF SHALL CAUSE MERRILL LYNCH TO EXECUTE AND DELIVER TO THE HOLDER HEREOF A NOTICE REGARDING RIGHT OF FIRST REFUSAL OF MERRILL LYNCH (THE "REFUSAL LETTER"), SUBSTANTIALLY IN THE FORM OF EXHIBIT 2 TO THE INVESTOR REPRESENTATION LETTER, TO BE DELIVERED TO THE TRUSTEE, INFORMING THE TRUSTEE THAT MERRILL LYNCH HAS DECLINED SUCH OFFER; (B) THE BUYER OR TRANSFEREE (INCLUDING EACH BENEFICIAL OWNER UNDER A TRUST OR CUSTODIAL ARRANGEMENT) SHALL BE A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT") (PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE DEFINITION OF "QUALIFIED INSTITUTIONAL BUYER" PROVIDED IN THE 1933 ACT, SUCH BUYER OR TRANSFEREE MUST HAVE AN AUDITED NET WORTH OF AT LEAST \$25.0 MILLION), (C) THE SOLD OR TRANSFERRED BONDS SHALL BE DELIVERED TO THE BUYER OR TRANSFEREE IN CERTIFICATED FORM AND IN MINIMUM DENOMINATIONS OF \$1 MILLION AND INTEGRAL MULTIPLES OF \$5,000 IN EXCESS THEREOF; (D) THE SALE OR OTHER TRANSFER OF THIS BOND SHALL NOT (i) CAUSE THE NUMBER OF REGISTERED OWNERS OF THE BONDS TO EXCEED 32, AS EVIDENCED BY THE CERTIFICATE REGISTER FOR THE BONDS MAINTAINED BY THE TRUSTEE OR (ii) IN AND OF ITSELF, CAUSE THE NUMBER OF BENEFICIAL OWNERS OF THE BONDS TO EXCEED 32, ASSUMING SUCH NUMBER WAS 32 OR LESS BEFORE GIVING EFFECT TO SUCH RESALE OR TRANSFER; (E) THE HOLDER OF THIS BOND SHALL CAUSE THE BUYER OR TRANSFEREE (OTHER THAN MERRILL LYNCH) TO EXECUTE AND DELIVER AN INVESTOR REPRESENTATION LETTER, (F) THE RIGHT OF MERRILL LYNCH TO CALL AWAY THE BONDS, AS DESCRIBED BELOW, SHALL APPLY TO THE BUYER OR TRANSFEREE; AND (G) THE HOLDER OF THIS BOND SHALL DELIVER TO THE TRUSTEE A NOTICE OF SALE OR TRANSFER, SUBSTANTIALLY IN THE FORM OF EXHIBIT 1 TO THE INVESTOR REPRESENTATION LETTER, AND, IF THE BUYER OR TRANSFEREE IS OTHER THAN MERRILL LYNCH, SHALL ALSO DELIVER TO THE TRUSTEE THE REFUSAL LETTER AND THE INVESTOR REPRESENTATION LETTER OF SUCH BUYER OR TRANSFEREE, AND THE HOLDER HEREOF RECEIVES CONFIRMATION FROM THE TRUSTEE THAT THE TRUSTEE IS PREPARED TO EFFECT THE RESALE OR TRANSFER CONTEMPLATED BY THE NOTICE OF SALE OR TRANSFER, IN ACCORDANCE WITH THE INDENTURE.

IN THE EVENT OF AN OPINION, ORDER, JUDGMENT OR DECREE OF A COURT OF LAST RESORT TO THE EFFECT THAT THE BONDS, THE INDENTURE OR THE BALLPARK FACILITY LEASE IS VOID OR INVALID (THE "FINAL ORDER"), ENTERED IN ANY OF SKANE V. CITY OF SAN DIEGO (SAN DIEGO COUNTY SUPERIOR COURT, CASE NO. GIC 752505), CITY OF SAN DIEGO, ET AL. V. ALL PERSONS INTERESTED (SAN DIEGO COUNTY SUPERIOR COURT, CASE NO. GIC 763487) AND SIMMONS V. CITY OF SAN DIEGO, ET AL. (SAN DIEGO COUNTY SUPERIOR COURT, CASE NO. GIC 779299), MERRILL LYNCH SHALL HAVE THE RIGHT AND OPTION (AT THE DIRECTION OF THE CITY OF SAN DIEGO, WITH FUNDS PROVIDED BY THE CITY OF SAN DIEGO) TO CALL AWAY ALL OF THE OUTSTANDING BONDS FROM ALL THEN-CURRENT REGISTERED OWNERS, INCLUDING THE HOLDER HEREOF, ON A DATE (THE "CALL DATE") THAT IS NOT MORE THAN 270 DAYS AFTER THE ENTRY OF THE FINAL ORDER, ON NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS NOTICE BY MERRILL LYNCH, AND AT A PRICE EQUAL TO THE PRINCIPAL AMOUNT OF THE BONDS TO BE CALLED AWAY, TOGETHER WITH ACCRUED INTEREST THEREON TO THE CALL DATE.

11. THIS LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

12. Any notice or request to be delivered to Merrill Lynch shall be delivered to the following address: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Attention: Ed Sisk, 250 Vesey Street, 4 World Financial Center, 9th Floor, New York, New York 10080, (212) 449-9938, (212) 449-9856 facsimile, with copies to the following address: Merrill Lynch, Pierce, Fenner & Smith Incorporated, Attention: Municipal Markets General Counsel, 250 Vesey Street, 4 World Financial Center, 9th Floor, New York, New York 10080, (212) 449-0383, (212) 449-9856 facsimile. Any notice to be delivered to the Trustee shall be delivered to the following address: Wells Fargo Bank, National Association, 707 Wilshire Boulevard, Los Angeles, CA 90071, Attention: Account Administrator.

The Purchaser hereby represents that the Purchaser has full power and authority to make the foregoing acknowledgements, representations and agreements. The Purchaser acknowledges and agrees that Merrill Lynch, the Authority, the City, the Trustee and others may rely upon the Purchaser's acknowledgements, representations and agreements set forth herein, and the Purchaser agrees to notify Merrill Lynch and the Trustee in writing, within 10 business days, if any of the Purchaser's acknowledgements, representations or agreements set forth herein cease to be true, correct and complete.

Very truly yours,

Name of Purchaser

By: _____
Name: _____
Title: _____

Address for Notices:

Dated: _____

EXHIBIT 1
FORM OF
NOTICE OF SALE OR TRANSFER

Wells Fargo Bank, National Association

Ladies and Gentlemen:

In connection with the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (the "2002 Bonds"), the undersigned (the "Holder"), hereby notifies Wells Fargo Bank, National Association, as Trustee (the "Trustee") under the Indenture, dated as of February 1, 2002, between the Public Facilities Financing Authority of the City of San Diego and the Trustee, that the Holder of the 2002 Bonds described below intends to resell or otherwise transfer such 2002 Bonds to the purchaser identified below (the "Purchaser") and the Purchaser has accepted such offer, subject to fulfillment of all terms and conditions applicable to such resale or other transfer. Enclosed herewith, unless the Purchaser is Merrill Lynch, are an executed Notice Regarding Right of First Refusal of Merrill Lynch and an Investor Representation Letter executed by the Purchaser.

Purchaser (Beneficial Owner): _____

Initial Registered Owner (if other than Purchaser): _____

CUSIP: _____

Maturity Date: _____

Par Amount: _____

Coupon: _____

Offer Price: _____

Settlement Date: _____

Name of Holder

By: _____

Name:
Title:

Date:

EXHIBIT 2
FORM OF
NOTICE REGARDING RIGHT OF FIRST REFUSAL OF
MERRILL LYNCH

Wells Fargo Bank, National Association

Ladies and Gentlemen:

In connection with the Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002 (Ballpark Project) (the "2002 Bonds"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") hereby notifies Wells Fargo Bank, National Association, as Trustee (the "Trustee") under the Indenture, dated as of February 1, 2002, between the Public Facilities Financing Authority of the City of San Diego and the Trustee, that the holder of the 2002 Bonds described below has offered to resell or transfer such 2002 Bonds to Merrill Lynch in accordance with the terms set forth below, and Merrill Lynch has declined to accept such offer:

Holder (Registered Owner): _____

CUSIP: _____

Maturity Date: _____

Par Amount: _____

Coupon: _____

Offer Price: _____

Settlement Date: _____

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: _____

Name:

Title:

Date:

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Execution and Delivery

The execution and delivery of this Offering Document has been duly authorized by the Authority.

PUBLIC FACILITIES FINANCING AUTHORITY OF
THE CITY OF SAN DIEGO

By: _____


Joseph W. Craver, *Chairman*