
**SUPPLEMENT NUMBER NINE TO THE
1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY
OF SAN DIEGO JACK MURPHY STADIUM**

between

**CHARGERS FOOTBALL COMPANY, LLC
a California limited liability company**

And

**THE CITY OF SAN DIEGO,
a municipal corporation**

DATED: May __, 2006

**SUPPLEMENT NUMBER NINE TO THE
1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF
SAN DIEGO JACK MURPHY STADIUM**

THIS SUPPLEMENT NUMBER NINE TO THE 1995 AGREEMENT FOR PARTIAL USE AND OCCUPANCY OF SAN DIEGO JACK MURPHY STADIUM (“Supplement Number Nine”) is made and entered into on May ___, 2006, at San Diego, California, by and between the CITY OF SAN DIEGO, a municipal corporation (the “City”), and the CHARGERS FOOTBALL COMPANY, LLC, a California limited liability company (the “Chargers”).

RECITALS

A. On May 30, 1995 the City and Chargers Football Company, a California limited partnership (as predecessor-in-interest to the Chargers) (the “Partnership”) entered into the 1995 Agreement for Partial Use And Occupancy Of San Diego Jack Murphy Stadium, a copy of which is on file in the Office of the City Clerk as Document Number OO-18182-1 (the “Original Agreement”). Pursuant to the Original Agreement, the City agreed to make certain improvements (the “Improvements”) to San Diego Jack Murphy Stadium now known as Qualcomm Stadium (the “Stadium”).

B. In order to facilitate the completion of the Improvements, the City and the Partnership entered into that certain Supplement Number One To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of April 7, 1997 (“Supplement Number One”).

C. The City appointed a Citizens’ Task Force on Chargers Issues (the “Task Force”) to, among other things, determine what can be done “to keep the Chargers in San Diego in a fiscally responsible way that the public will support.” In order to give the Task Force ample time to complete its work prior to the commencement of the renegotiation process under the Original Agreement, the Parties (as defined below) entered into that certain Supplement Number Two To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of January 28, 2003 (“Supplement Number Two”).

D. On March 4, 2003, the Chargers delivered a Renegotiation Notice to the City (the “March Renegotiation Notice”). The ninety (90) day negotiation period referenced in Paragraph (b)(ii) and the first clause of the first sentence of Paragraph (b)(iii) of Section 31 of the Original Agreement commenced on March 4, 2003. In order to extend the length of such negotiation period by an additional ninety (90) calendar days, the Parties entered into that certain Supplement Number Three To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of May 20, 2003 (“Supplement Number Three”). In order to extend the length of such negotiation period by an additional eight (8) months beyond the extension date agreed in Supplement Number Three, the Parties entered into that certain Supplement Number Four To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of August 7, 2003 (“Supplement Number Four”). In order to extend the length of such negotiation period by an additional forty-five (45) days beyond the extension date agreed in Supplement Number Four, the Parties entered into that certain

Supplement Number Five To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium, dated as of April 26, 2004 (“Supplement Number Five”). In order to extend the length of such negotiation period by an additional thirty (30) days beyond the extension date agreed in Supplement Number Five, the Parties entered into that certain Supplement Number Six To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium dated as of June 15, 2004 (“Supplement Number Six”). In order to extend the length of such negotiation period to and including August 1, 2004, the Parties entered into that certain Supplement Number Seven To The 1995 Agreement For Partial Use And Occupancy Of San Diego Jack Murphy Stadium dated as of July 12, 2004 (“Supplement Number Seven”). On July 26, 2004, the Parties entered into that certain Supplement Number Eight to the 1995 Agreement for Partial Use and Occupancy of San Diego Jack Murphy Stadium. The Original Agreement, as supplemented by Supplement Number One, Supplement Number Two, Supplement Number Three, Supplement Number Four, Supplement Number Five, Supplement Number Six, Supplement Number Seven and Supplement Number Eight is hereinafter referred to as the “Agreement” and the Agreement as supplemented by this Supplement Number Nine is hereinafter referred to as the “New Agreement”. All references to “this Agreement” that appear within this Supplement Number Nine (each of which is a provision that will become part of the New Agreement) shall mean and refer to the New Agreement. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Chargers and the City hereby agree as follows:

1. New Definition.

1.1 The following definition is hereby added to Section 1 of the Agreement:

"Permitted Territory" shall mean any site within the boundaries of the County of San Diego, including, but not limited to, any site within any city located in the County of San Diego.

2. Amendment of the Agreement.

The Chargers and the City hereby amend and restate Section 31 of the Agreement in its entirety to read as follows:

31. Negotiations to Relocate Franchise.

- (a) Prior to January 1, 2007, neither the Chargers acting through an Affiliate (as defined below) nor any member of the Chargers owning more than a three percent (3%) membership interest in the Chargers, manager of Chargers Football Company, LLC, officer (excluding only the Chief Marketing Officer, Vice President of Football Operations and Executive Vice President and General Manager) or any member of a board of directors of or Special Counsel to the Chargers, any person or entity controlling, controlled by or under common control with any of the foregoing, or any attorney, representative or agent of the Chargers with actual authority from any of the foregoing (any of the preceding an

“Affiliate”) shall engage in any discussions, communications or negotiations, preliminary or otherwise, over the terms and conditions of a Chargers' relocation to any stadium or facility not in the Permitted Territory, including, but not limited to, stadium financing, lease or other proposed transaction terms. Prior to January 1, 2007 the Chargers shall not enter into an agreement with any third party, public entity, developer, or the NFL (or any third party acting as agent for any of the foregoing), concerning relocation of the Chargers to any stadium or facility not in the Permitted Territory. If the Chargers send a letter to person(s) affiliated with a prospective stadium site or facility not in the Permitted Territory relating to the Chargers' obligations with respect to relocation under this Section 31(a), the Chargers will send a true and correct courtesy copy of each such letter to the City; however, failure to send such copy shall not result in any penalty or right on the part of the City to claim damages.

(i) Provided that neither the Chargers nor any Affiliate has solicited the offer or communication, if the Chargers (or any Affiliate) are approached by any party concerning relocation, it shall not be a breach of the covenant in the preceding paragraph for the Chargers (or any Affiliate) to inform that party, without elaboration or other discussion, that the Chargers are not able to relocate prior to the end of the 2008 Regular Football Season and are not able to negotiate, discuss or communicate, with respect to relocation outside of the Permitted Territory prior to January 1, 2007;

(ii) it shall not be a breach of the covenant in the preceding paragraph for the Chargers or any Affiliate to receive offers, solicitations or other communications from third parties concerning the possibility of relocating the Franchise to another stadium or facility not in the Permitted Territory, provided that, (A) neither the Chargers nor any Affiliate has solicited the offer, solicitation or other communication, (B) after ascertaining the nature of any written offer, solicitation or communication, the Chargers provide written notice thereof to the City and return to the sender all documents that constitute such offer, solicitation or communication and (C) with respect to all such offers, solicitations or communications, the Chargers do not directly or indirectly engage in any further negotiations with such third parties;

(iii) it shall not be a breach of the covenant in the preceding paragraph for the Chargers or any Affiliate to attend and participate in NFL owners' meetings or committee meetings at which relocation and/or the building or financing of and lease terms for stadiums are topics or to vote on proposed resolutions relating thereto (provided that the Chargers or any such Affiliate are not present during and do not participate in any discussions at such meetings or vote on proposed resolutions that specifically relate to relocation of the Chargers); neither shall it be deemed a breach, in and of itself, if, after such resolutions have been adopted and

assuming full compliance by the Chargers with the provisions of this Section 31(a), the Chargers subsequently do relocate to a stadium or facility pursuant to lease terms that previously had been approved by such resolutions; and

(iv) it shall not be a breach of the covenant in the preceding paragraph for the Chargers or any Affiliate to comment on the potential relocation of the Chargers in a general manner (e.g. state that the Chargers will probably relocate if a new stadium is not built in the Permitted Territory or that the Chargers may consider relocating at some future time) or to make perfunctory statements (e.g. thanking representatives of a potential relocation site for their interest or stating that the Chargers may consider a potential relocation site outside of the Permitted Territory after January 1, 2007).

The term "communications" as used in this Section 31(a) shall include without limitation making any offer (even if conditional, non-binding or revocable in any manner), responding to any offer (other than as expressly set forth above), or providing information concerning any possible relocation. The term "relocation" as used in this Section 31(a) shall be deemed to include any action that might limit or preclude the obligation of the Chargers to play their Home Games in the Stadium Premises before or after the 2008 Regular Football Season.

If the Chargers breach this Section 31(a), then, subject to Section 31(b) of this Agreement, (C) the City shall be entitled (in addition to the liquidated damages set forth in the following Clause (B)) to specific performance and injunctive relief and (D) the Chargers shall be obligated to pay to the City immediately the sum of Three Million Dollars (\$3,000,000) per breach, in cash or other immediately available, funds (which payment shall not reduce or affect in any manner the Chargers obligation to pay a Termination Fee pursuant to Section 4 of this Agreement). A breach of this Section 31(a) shall be determined with reference to a Metropolitan Statistical Area ("MSA") as defined by the Federal Office of Management and Budget for use by federal statistical agencies and as delineated in the Sales and Marketing Management's 2003 Survey of Buying Power and Media Markets and, regardless of the number of prospective stadium sites within a MSA or the number of communications, conversations or writings upon which a claim of breach is based, only one breach per MSA shall be deemed to have occurred hereunder. The Chargers' maximum liability for all claims of liquidated damages under this Section 31(a), regardless of the number of breaches, shall not cumulatively exceed Fifteen Million Dollars (\$15,000,000). The City shall not be entitled to prove or recover any other damages of any kind or nature whatsoever for breach of this Section 31(a).

THE PARTIES AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY'S DAMAGE BY REASON OF THE CHARGERS' BREACH OF THIS SECTION 31(a).

ACCORDINGLY, THE PARTIES AGREE THAT IT WOULD BE REASONABLE AT SUCH TIME TO AWARD THE CITY "LIQUIDATED DAMAGES" FOR EACH BREACH IN THE AMOUNT OF \$3,000,000. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING AMOUNT IS REASONABLE AS LIQUIDATED DAMAGES AND SHALL BE THE CITY'S SOLE AND EXCLUSIVE DAMAGE REMEDY IN LIEU OF ANY OTHER DAMAGE REMEDY AT LAW (BUT NOT IN LIEU OF SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF) TO WHICH THE CITY MIGHT OTHERWISE BE ENTITLED BY REASON OF THE CHARGERS' BREACH OF THIS SECTION 31(a). NO PERSON OTHER THAN THE CITY SHALL HAVE ANY RIGHTS AS A THIRD PARTY BENEFICIARY OF THIS AGREEMENT TO CLAIM LIQUIDATED DAMAGES FOR A BREACH BY THE CHARGERS OF THIS SECTION 31(a).

City's Initials

Chargers' Initials

(b) If the City notifies the Chargers in writing that the City has cause to believe (which cause shall be described with reasonable specificity in such notice) that there has been a breach of Section 31(a) of this Agreement, and if the Chargers provide the City (within twenty (20) calendar days thereafter) with an affidavit of Dean Spanos (or if Dean Spanos is no longer an officer of the Chargers, then his successor as CEO/President) in which Dean Spanos (or his successor) declares, under penalty of perjury, both individually and on behalf of the Chargers, that such matters (that gave rise to the City's belief of a breach) are not true, that there has been no breach of Section 31(a) of this Agreement, and that no Affiliate of the Chargers has knowledge of the alleged breach, then, if the City elects to pursue such breach with the filing of a complaint or giving of an Arbitration Notice, the City shall be required to prove such breach with written documentation or communications from, or procured by and communicated to, the Chargers or an Affiliate, copies of which must be attached to the complaint or Arbitration Notice. A third party affidavit or unilateral memorandum, by itself, shall not qualify as written documentation or communications. Delivery of such affidavit to the City shall be in the sole discretion of the Chargers and Dean Spanos (or his successor). No inference shall be drawn from the Chargers electing or not electing to use this affidavit process, and the fact that the Chargers elect not to use this affidavit process shall not be admissible as evidence in any judicial or arbitration proceeding.

(c) The City understands and acknowledges that the NFL, as part of its business, assesses potential NFL markets and otherwise generally engages in activities relating to team location, relocation and stadium construction and renovation on behalf of itself and its member clubs. The City further acknowledges that the NFL is currently assessing the Los Angeles,

California market with the intent of relocating an existing but, as of the date hereof, undesignated NFL franchise to, or establishing a de novo expansion franchise in, that market. The City hereby agrees that the NFL shall not be liable to the City with respect to any such activities.

Accordingly, the City hereby waives and shall not assert any claim (based on any theory of liability whatsoever, whether in tort or contract, by statutory liability or common law) against the NFL (including its member clubs other than the Chargers, any entity affiliated with the NFL, and any officer, director, shareholder, partner, owner, or employee of any of the foregoing) seeking legal or equitable relief as a result of any dealings of the NFL with the Chargers. The City also acknowledges and agrees that the NFL (including its member clubs other than the Chargers) is a third party beneficiary entitled to directly assert the protections and waivers afforded in this Section 31(c); the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability. Further, if the City, notwithstanding the foregoing waiver, seeks any legal or equitable relief against the NFL (including its member clubs other than the Chargers) based on or relating in any way to the dealings of the NFL (including its member clubs other than the Chargers) with the Chargers, agrees that such matter shall be subject to arbitration at the election of the NFL (including its member clubs other than the Chargers). Nothing in this paragraph shall be construed to limit in any way the Chargers' liability for dealing with the NFL (including its member clubs other than the Chargers) in breach of Section 31(a) of this Agreement.

(d) On or after January 1, 2007, the Chargers shall have the right to negotiate and enter into an agreement with any third party for the Chargers' use of a stadium or facility not in the Permitted Territory for any Regular Football Season or portion thereof after the end of the 2008 Regular Football Season. In connection therewith, the Chargers and the City acknowledge and agree that negotiation or execution of an agreement by the Chargers on or after January 1, 2007, with respect to the relocation of the Franchise after the end of the 2008 Regular Football Season to any stadium or facility not in the Permitted Territory, shall not be a breach of this Agreement. The City hereby waives the right to assert against the Chargers or any such third party any claim for damage or liability (based on any theory of liability whatsoever, whether in tort or contract, by statutory liability or common law) or to seek injunctive relief, with respect to any such negotiations that occur, or agreement that is executed, between the Chargers and any third party on or after January 1, 2007; the absolute waiver of such claims is not limited in any manner by the failure to enumerate herein any claim or theory of liability. Further, even if negotiations leading up to a third party agreement commence prior to January 1, 2007, the City shall not be entitled to enjoin or prohibit the Chargers from relocating the Franchise after the end of the 2008 Regular Football Season. However, if the Chargers breach the covenant set forth

in this Section 31(d), then the provisions of Section 31(a) (except (C) thereof) and 31(b) shall apply to such breach.

3. General Provisions.

3.1 Representations, Warranties and Covenants.

Each Party represents, warrants and covenants to the other Party that it has all necessary power and authority to enter into this Supplement Number Nine and has taken all action necessary to consummate the transactions contemplated by this Supplement Number Nine and to perform its obligations hereunder, including having obtained, prior to the date of this Supplement Number Nine, any necessary consents from third parties, including (with respect to the Chargers only) any necessary consent from the NFL.

3.2 Effect of Supplement. In the event of any inconsistency between the Agreement and this Supplement Number Nine, the terms of this Supplement Number Nine shall prevail. Except as expressly set forth herein, the terms and conditions of the Agreement and the rights and obligations of the Parties shall remain unmodified and in full force and effect. The Agreement, as supplemented and modified by this Supplement Number Nine, represents the entire agreement between the Parties hereto with respect to the subject matter thereof and supersedes all other written and oral agreements with respect to such subject matter.

3.3 Governing Law. This Supplement Number Nine shall be construed in accordance with, and the transactions described herein shall be governed by, the laws of the State of California as to all issues, including, without limitation, issues of validity, interpretation, effect, performance and remedies.

3.4 Amendments. This Supplement Number Nine may not be amended or modified, except in writing signed by the Parties hereto.

3.5 Headings. Section headings used herein are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Supplement Number Eight.

3.6 Capitalized Terms. Capitalized terms contained herein shall have the meaning assigned to them in the Agreement.

3.7 Counterparts. This Supplement Number Nine may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, and all of which shall together constitute but one and the same instrument.

3.8 Precedence of New Agreement. This Supplement Number Nine does not amend or modify any Ancillary Agreement. However, to the extent any term or provision of an Ancillary Agreement is inconsistent with any term or provision of this Agreement, the New Agreement shall control.

3.9 Effective Date. This Agreement shall be effective as of _____, 2006.

IN WITNESS WHEREOF, this Supplement Number Nine is executed on the date first written above by The City of San Diego, acting by and through its Mayor, pursuant to Ordinance No. _____, authorizing such execution, and by the Chargers.

THE CITY OF SAN DIEGO

By: _____
Jerry Sanders
Mayor

CHARGERS FOOTBALL COMPANY, LLC,
a California limited liability company

By: _____
Dean A. Spanos
President / CEO

I HEREBY APPROVE the form and legality of the foregoing Supplement Number Nine this ____ day of _____ 2006.

MICHAEL J. AGUIRRE, City Attorney

By: _____