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SAN DIEGO COUNTY, CA

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Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

17 *Attorneys for Petitioners/Plaintiffs*

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN DIEGO

20 CITY OF SAN DIEGO and CYBELE L.
21 THOMPSON, in her official capacity as the
22 Director of the City of San Diego's Real Estate
23 Assets Department

24 Petitioners/Plaintiffs,

25 v.

26 ELIZABETH MALAND, in her official capacity
27 as City of San Diego City Clerk, and MICHAEL
28 VU, in his official capacity as San Diego County
Registrar of Voters,

Respondents/Defendants,

CATHERINE APRIL BOLING,
Real Party in Interest.

CASE NO.: 37-2018-00023295-CU-WM-CTL

**PETITION FOR WRIT OF MANDATE;
COMPLAINT FOR JUDICIAL
DECLARATION THAT PROPOSED
SOCCER CITY INITIATIVE CANNOT
LAWFULLY BE SUBMITTED TO
VOTERS; AND REQUEST FOR
INJUNCTIVE RELIEF TO RELIEVE
CITY OFFICIALS FROM OBLIGATION
TO SUBMIT INITIATIVE TO VOTERS
ON NOVEMBER 2018 BALLOT**

(CCP §§ 1085, 1060 and 526; Elections Code
§ 13314)

**ELECTION MATTER
EXPEDITED ACTION REQUESTED**

Petitioner/Plaintiff CITY OF SAN DIEGO alleges:

1 INTRODUCTION

2 Petitioners/Plaintiffs (“Petitioners”) City of San Diego and its Director of Real Estate
3 Assets Department ask the Court to determine whether a proposed initiative measure titled “San
4 Diego River Park and Soccer City Initiative” (“INITIATIVE”) may lawfully be submitted to the
5 voters of the City of San Diego in November 2018. The INITIATIVE is one of two proposed
6 initiatives that seek to seize control of one of the City’s largest remaining developable real estate
7 assets: the stadium site that was formerly home to the San Diego Chargers. While the right of
8 citizens to bring initiatives is an important democratic tool, it is not unfettered. The initiative
9 process cannot be used in a manner that conflicts with higher laws, nor can it be used to usurp
10 the administrative authority of the Mayor and Council to handle the affairs of the City for the
11 benefit of all its citizens.

12 Petitioners submit that the INITIATIVE cannot lawfully be presented to voters because it
13 suffers from several fatal flaws. First and foremost, the right of initiative extends only to
14 legislative actions and the INITIATIVE impermissibly directs a broad range of executive and
15 administrative actions that the voters have delegated to the Mayor in the San Diego City
16 Charter. The INITIATIVE seeks to take control of one of the City’s major real estate assets with
17 contract requirements that do not ensure that the City’s best interests are protected and which the
18 City Council itself could not impose, and it would impermissibly interfere with the Mayor and
19 City Council’s collective responsibility for the City’s finances, land use and planning, water use,
20 and public contracts. It substitutes private development decisions for oversight and management
21 by City officials for more than 200 acres of land – including the critical San Diego River area –
22 for decades, and impermissibly conflicts with state law requirements concerning land use and
23 environmental protection. Finally, the INITIATIVE may not be submitted to voters because its
24 most critical terms propose only the possibility of future legislative action and do not propose
25 enforceable legislative action.

26 The measure would require the Mayor to execute a 99-year lease (Lease) for 233 acres of
27 City-owned real property surrounding the SDCCU Stadium site (formerly Qualcomm Stadium)
28 and 20 acres of City-owned real property on Murphy Canyon Road (“PROPERTY”) to a

1 “Qualified Lessee” if the Lease meets certain requirements – those dictated by the INITIATIVE.
2 A “Qualified Lessee” is narrowly defined to be an entity that has been awarded a professional
3 soccer franchise, is currently under active consideration to be awarded such a franchise, or one
4 that owns or controls an entity meeting these requirements. There is only one known entity that
5 currently meets that definition – Major League Soccer San Diego Pursuit LLC – and that is the
6 entity that appears to be sponsoring the primary political action committee supporting the
7 INITIATIVE.

8 The INITIATIVE imposes dozens of requirements that must be part of the Lease and
9 locks in many protections for the Qualified Lessee, including the option to purchase almost 80
10 acres anywhere in the PROPERTY. The Qualified Lessee has an unlimited right to sublease and
11 key elements of the development of the PROPERTY are left to the Qualified Lessee. The
12 INITIATIVE cannot be amended without voter approval until 2033.

13 Because the INITIATIVE exceeds the limits of the right to act by initiative, the City has
14 determined it is necessary to seek relief from the duty to put the initiatives on the ballot in
15 November, and asks the Court to decide these fundamental issues related to the use of initiative
16 “contracts” to use, develop and/or dispose of important City-owned assets.

17 **THE NEED FOR PRE-ELECTION REVIEW IN THIS CASE**

18 Although the courts have sometimes expressed a preference for reviewing the legality of
19 initiatives after an election, the Supreme Court has made clear that pre-election judicial review
20 may be necessary and appropriate. Where, as here, the proposed initiative is beyond the voters’
21 power to act through initiative and impermissibly conflicts with State law and the City’s Charter,
22 the courts have a duty to remove the matter from the ballot. “The presence of an invalid measure
23 on the ballot steals attention, time and money from the numerous valid propositions on the same
24 ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure
25 is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the
26 legitimate use of the initiative procedure.” (*American Federation of Labor v. Eu* (1984) 36
27 Cal.3d 687, 697.)

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1 The illegality of the INITIATIVE is strictly a question of law and thus particularly suited
2 for pre-election review. Deferring review of the INITIATIVE until after the election would
3 potentially waste millions of dollars of taxpayer money incurred in the process of preparing such
4 an initiative for the ballot. It will cost taxpayers at least several hundred thousand dollars to
5 place the INITIATIVE on the November 2018 ballot (and an estimated additional \$3.4 million if
6 the City elects to print the INITIATIVE in its entirety), plus an additional amount in staff time
7 and resources to comply with all the elections procedures, respond to inquiries from the public,
8 and otherwise prepare for the election. Upon information and belief, the City will begin
9 incurring substantial costs related to preparation of the ballot materials beginning in mid- to late
10 July 2018. In addition, proponents and opponents of the measure will spend considerable sums
11 of money in support of their respective positions, and the measure is likely to create significant
12 divisions within the community.

13 Pre-election review is additionally important in this case because the INITIATIVE
14 provides for action on the part of the City immediately after the election in the event the
15 INITIATIVE is adopted. In the absence of pre-election review, the City is also prohibited as a
16 practical matter from making any decisions regarding this property as long as there is the
17 potential for submission to the voters.

18 In sum, pre-election review of the INITIATIVE is necessary and appropriate in this case.
19 As one appellate court has explained:

20 If an initiative ordinance is invalid, no purpose is served by submitting it to the
21 voters. The costs of an election – and of preparing the ballot materials necessary
22 for each measure – are far from insignificant. [] Proponents and opponents of a
23 measure may expend large sums of money during the election campaign.
24 Frequently, the heated rhetoric of an election campaign may open permanent rifts
25 in a community. That the people’s right to directly legislate through the initiative
26 process is to be respected and cherished does not require the useless expenditure
27 of money and creation of emotional community divisions concerning a measure
28 which is for any reason legally invalid.

(*Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1023-24.)

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1 Petitioners bring this action in order to obtain a judicial determination that the
2 INITIATIVE may not lawfully be submitted to voters, and to obtain an order relieving the City
3 and elections officials of any duty to place the INITIATIVE on the November 2018 ballot.

4 **ALLEGATIONS**

5 **PARTIES**

6 1. Petitioner/Plaintiff CITY OF SAN DIEGO is a California municipal corporation
7 operating under a city charter adopted in accordance with section 3 of article XI of the State
8 Constitution.

9 2. Petitioner/Plaintiff CYBELE L. THOMPSON, in her official capacity as the
10 Director of Real Estate Assets for the City of San Diego, is responsible for negotiating land sales
11 and leases on behalf of the Mayor and has a responsibility to maximize the value of, and return
12 on, City assets. THOMPSON is also a resident, registered voter, and taxpayer in the City of San
13 Diego.

14 3. Respondent/Defendant ELIZABETH MALAND is the San Diego City Clerk and
15 is sued in her official capacity only. MALAND has certified that the INITIATIVE received a
16 sufficient number of signatures and the City Council has directed that the INITIATIVE be
17 submitted to voters on a future ballot. MALAND is responsible for the conduct of elections
18 within the City of San Diego and, in conjunction with the County Registrar of Voters, will be
19 responsible for taking the actions necessary to place the INITIATIVE on the November 2018
20 general election ballot unless directed to do otherwise by this Court.

21 4. Respondent/Defendant MICHAEL VU is the San Diego County Registrar of
22 Voters and VU is sued in his official capacity only. VU is responsible for the conduct of
23 elections within the County of San Diego and will be responsible for taking the actions necessary
24 to place the INITIATIVE on the November 2018 general election ballot unless directed to do
25 otherwise by this Court.

26 5. Real Party in Interest CATHERINE APRIL BOLING is the proponent of the
27 INITIATIVE.

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1 **JURISDICTION**

2 6. The court has jurisdiction over Petitioners' request for a writ of mandate pursuant
3 to Code of Civil Procedure section 1085 and Elections Code section 13314.

4 7. The Court has jurisdiction over Petitioners' claim for declaratory relief pursuant
5 to Code of Civil Procedure section 1060.

6 8. The Court has jurisdiction over Petitioners' claim for injunctive relief pursuant to
7 Code of Civil Procedure sections 526 and 526a.

8 9. Venue is proper under Code of Civil Procedure section 393.

9 **BACKGROUND**

10 **Background on SDCCU Property**

11 10. The INITIATIVE focuses on the development of approximately 233 acres of
12 City-owned real property surrounding the San Diego County Credit Union ("SDCCU") Stadium
13 as well as 20 acres of City-owned real property and improvements on Murphy Canyon Road
14 (collectively, the "PROPERTY"). The SDCCU Stadium was known for many years as Jack
15 Murphy Stadium and, later, Qualcomm Stadium, where the San Diego Chargers played their
16 home games. The land on Murphy Canyon Road was previously the San Diego Chargers'
17 practice facility.

18 11. SDCCU Stadium is located immediately northwest of the Interstate 8 and
19 Interstate 15 interchange. The neighborhood surrounding the Stadium is known as Mission
20 Valley, a reference to Mission San Diego de Alcala (located to the east) and its placement in the
21 valley of the San Diego River. The Stadium is served by the SDCCU Stadium station of the San
22 Diego Trolley, accessible via the Green Line running toward Downtown San Diego to the west
23 and Santee to the east.

24 12. In January 2017, the San Diego Chargers announced that they were leaving the
25 San Diego area and relocating to Los Angeles. Since that time, the City has continued to operate
26 and maintain the SDCCU Stadium site.

27 13. A portion of the PROPERTY is owned by the City's Water and Sewer Enterprise
28 Funds and is permanently encumbered by two compensatory wetland mitigation sites. This

1 encumbrance restricts the use or development of the land because it requires preservation of
2 natural resources in perpetuity. The PROPERTY is also partially located over the San Diego
3 River aquifer and has been identified by the City as the location for future groundwater storage
4 and an injection/extraction facility. The PROPERTY also includes property that has been
5 identified by the City's Public Utilities Department as the site for a future wastewater re-cycling
6 facility that will create a new source of water for City residents.

7 14. In the view of City officials, the PROPERTY is one of the City's primary real
8 estate assets and represents one of the last opportunities for large-scale development in the City.

9 **Background on San Diego City Government**

10 15. The California Constitution provides: "For its own government, a county or city
11 may adopt a charter. . . The provisions of the charter are the law of the State and have the force
12 and effect of legislative enactments." (Cal. Const., art. XI, § 3.) City charters supersede general
13 law with respect to "municipal affairs." (See Cal. Const., art. XI, § 5.)

14 16. The City of San Diego is a charter city.

15 17. Until 2006, the San Diego City Charter ("Charter") delegated most executive and
16 administrative authority to the City Manager. In 2006, the Charter was amended to adopt a
17 "strong mayor" form of city government for a period of five years. In 2010, this change was
18 made permanent. Article XV, Section 260, provides that the "executive, authority, power and
19 responsibilities conferred upon the City Manager. . . shall be transferred to the Mayor, assumed,
20 and carried out by the Mayor."

21 18. The Charter reserves to the voters the right of initiative and referendum and
22 directs that the procedures shall be provided by ordinance. (Charter, Article II, § 23.) San Diego
23 Municipal Code ("SDMC") § 27.1001 provides that "[a]ny proposed legislative act or proposed
24 amendment or repeal of an existing legislative act may be submitted...by an initiative petition."

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THE INITIATIVE

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2 19. On March 2, 2017, Real Party in Interest as Proponent submitted her Notice of
3 Intent to circulate petitions in support of a proposed initiative titled “San Diego River Park and
4 Soccer City Initiative” (“INITIATIVE”). (A true copy of the text of the INITIATIVE, without
5 supporting exhibits, is attached as Exh. A.)

6 20. On May 22, 2017, Respondent MALAND certified to the City Council that the
7 petitions in support of the INITIATIVE contained a sufficient number of signatures to qualify for
8 either adoption by the City Council or presentation to City voters.

9 21. On June 19, 2017, MALAND presented her certification of the INITIATIVE to
10 the City Council. The Municipal Code provides that upon certification, the City Council shall
11 either adopt the INITIATIVE without alteration, or submit the INITIATIVE, without alteration,
12 to City voters for their consideration. (SDMC §§ 27.1034, 27.1035.)

13 22. On June 19, 2017, the Council voted to submit the proposed INITIATIVE to the
14 voters on a future ballot. Pursuant to SDMC section 27.1037, the INITIATIVE must be
15 submitted to the San Diego voters at or before a special election consolidated with the next City-
16 wide General Election ballot to be held in November 2018 unless a court orders otherwise.

17 23. The proposed INITIATIVE would require the Mayor to execute a 99-year lease
18 for approximately 233 acres of City-owned real property surrounding the SDCCU Stadium site
19 and 20 acres of City-owned real property on Murphy Canyon Road (“PROPERTY”) to a
20 “Qualified Lessee” if a Lease is presented that meets certain conditions as set forth in the
21 INITIATIVE.

22 24. A “Qualified Lessee” is defined as an entity that has been awarded a professional
23 soccer franchise for the San Diego market, has submitted an application and is currently under
24 active consideration to be awarded such a franchise, or an entity that owns or controls an entity
25 meeting these requirements. There is only one known entity that currently meets that definition
26 – Major League Soccer San Diego Pursuit LLC.

27 25. If a “Qualified Lessee” does not submit a proposed lease meeting the
28 requirements of the INITIATIVE to the City within one year from the effective date of the

1 INITIATIVE, the Mayor may offer the Lease to an entity that has a collegiate football program
2 or an entity with a “highest level or premier” professional sports franchise.

3 26. The INITIATIVE would require the value of the 99-year lease to be determined
4 as of March 2017, regardless of the value at the time the lease is executed and without
5 consideration of any of the land use changes caused by the INITIATIVE. The INITIATIVE
6 provides several factors to be considered in determining the fair market value of the leasehold
7 interest and provides that if the value is negative, the rent shall be \$10,000. The INITIATIVE
8 provides for payment in full in a lump-sum payment due 30 days after the lease is executed.

9 27. The INITIATIVE includes a General Plan amendment, a new Specific Plan,
10 amendments to the Municipal Code, amendments to several existing Community Plans, and a
11 Development Agreement. The INITIATIVE contemplates, but does not specifically require,
12 development of a joint use stadium; a 34-acre River Park; neighborhood parks and athletic fields;
13 office and retail space; 4,800 multi-family residential units; and 450 hotel rooms. It does not
14 specify the location of any particular uses and does not require development to be phased in any
15 particular way. The INITIATIVE would also require the Lease to set aside a 16-acre site for 5
16 years for a possible football stadium and provides the Qualified Lessee with an option to
17 purchase up to 79.9 acres of the Qualified Lessee’s choosing.

18 28. The INITIATIVE requires the Mayor to consider any applications for a Lease
19 submitted within 7 days of the INITIATIVE’S effective date “without waiting for other
20 applications.” The Mayor must respond to any application within 10 days. If a Qualified Lessee
21 presents a proposed Lease that meets the requirements of the INITIATIVE, “the Mayor shall
22 request that the City Attorney prepare a final Lease...with such modifications that the Mayor
23 deems necessary and that do not alter or vary the standards of [the ordinance proposed in the
24 INITIATIVE] and the Specific Plan.” The Mayor’s approval is termed “ministerial.”

25 29. The INITIATIVE provides that if the stadium is not built within 7 years, the City
26 may take steps to terminate the Lease, but termination is not automatic and the City’s rights to
27 the PROPERTY would be subject to the rights of any subleases in effect at that time. In addition,

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1 the 7-year period is tolled by various events, including litigation, unforeseen conditions, delays
2 attributable to changes in the law, or the failure to obtain necessary permits.

3 30. Termination of the Lease would not affect the provisions of the Municipal Code
4 which are provided in the INITIATIVE, nor would they allow the City to amend the General
5 Plan, the Specific Plan or the Community Plans that would be amended by the INITIATIVE
6 without a public vote, creating significant restrictions on the City's ability to take any action with
7 the PROPERTY until 2033.

8 31. The INITIATIVE does not require the Lessee to develop the River Park but does
9 require the Lessee to provide up to \$40 million for expenditures related to the Park. That amount
10 drops to \$20 million if the lease is not signed by December 31, 2017 – which did not occur.

11 32. No agreements negotiated by the City may amend the terms of the INITIATIVE
12 and its provisions cannot be amended until 2033, except by another public vote. However, the
13 INITIATIVE appears to allow the Lessee to depart from the new Municipal Code provisions “to
14 satisfy the requirements of an applicable professional sports league or otherwise facilitate the
15 development of the Property in accordance with the Specific Plan.”

16 33. Under the guise of an ordinance, the INITIATIVE places approximately 100 lease
17 terms for the PROPERTY into the Municipal Code; these terms would therefore be required by
18 law and not subject to negotiation.

19 34. The INITIATIVE attempts to define as ministerial all future approvals by the
20 Mayor and City staff, including development permits, in order to avoid future review of those
21 determinations under the California Environmental Quality Act (CEQA). In addition, the
22 INITIATIVE contains a Development Agreement, which provides that the City shall not require
23 the developer to obtain any further discretionary approvals or permits beyond those contemplated
24 in that Agreement.

25 35. The City estimates that it will cost at least several hundred thousand dollars to
26 place the INITIATIVE on the November 2018 ballot, if only the first 20 pages of the
27 INITIATIVE are printed (as permitted by the San Diego Elections Code). If the City elects to
28 print the INITIATIVE in its entirety, the City Clerk estimates that it will cost the City an

1 additional \$3.4 million in printing costs, far in excess of the City Clerk's projected \$1.8 million
2 overall budget for election costs. The majority of the costs will be for printing, which will begin
3 in mid- to late July 2018.

4 **The INITIATIVE Contains Administrative Provisions**
5 **That Are Not Permissible for an Initiative**

6 36. The right of citizens to act through initiative has long been construed to extend
7 only to legislative acts and not to administrative or executive acts. (Cal. Const., art. II, § 11;
8 Charter, Article II, § 23; SDMC § 27.1001; *Citizens for Jobs & the Economy v. County of*
9 *Orange* (2002) 94 Cal.App.4th 1311, 1332; *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th
10 384, 399.)

11 37. Although the INITIATIVE includes zoning amendments, which are typically
12 considered legislative in nature, it also includes an amendment to the Municipal Code that is not
13 legislative in nature but instead specifies a number of administrative requirements applicable
14 only to this PROPERTY.

15 38. The INITIATIVE directs the Mayor to take executive action to "negotiate" and
16 execute a lease (and potentially sell currently unidentified real property) when in reality the
17 INITIATIVE supplants that authority by directing that the lease and sale involve a narrowly-
18 defined purchaser for specific purposes on price terms and other critical elements provided by
19 the INITIATIVE. In so doing, it is prescribing administrative or executive action that is
20 impermissible for an initiative. Likewise, the INITIATIVE bypasses the Mayor's executive
21 authority by including the approval of a non-negotiated Development Agreement.

22 39. The INITIATIVE would amend the Municipal Code to provide certain "standards"
23 for future approvals. These standards, although termed "legislative," would "replace and
24 supersede" existing "standards, procedures and policies" for this PROPERTY only. It would
25 essentially replace the normal administrative process for redevelopment projects with a new
26 administrative process for this PROPERTY. However, that process purports to define many
27 required actions at a level of detail that would allow it to characterize the actions as ministerial,
28 but in doing so the INITIATIVE attempts to exercise administrative authority.

1 access the aquifer. It would also force the City to relocate a future wastewater recycling facility
2 that has been planned for a site included in the PROPERTY.

3 52. The terms of the INITIATIVE could not be varied or amended until 2033 without
4 further voter approval, even if the contemplated project fails to materialize for any reason. Even
5 without a Lessee coming forward, the City's potential right to terminate the Lease is not
6 available for at least 7 years – or longer if extended because of litigation or other circumstances.
7 And the termination right does not affect the zoning changes and the amendments to the
8 Municipal Code, which would remain in place and restrict the City's ability to manage this
9 property in the best interests of the citizens until at least 2033.

10 **The INITIATIVE Fails To Enact an Enforceable**
11 **Legislative Act And Is Unreasonably Vague**

12 53. An initiative can only enact an enforceable legislative act; it cannot merely
13 provide the preconditions or directions for a legislative act to take place in the future.

14 54. The INITIATIVE provides that a Lease would be executed with a major league
15 soccer franchise if certain conditions are met. It does not require or guarantee that such a Lease
16 will occur or that the PROPERTY will, in fact, be developed for use by a major league soccer
17 team. Nor does it guarantee that the other development will occur, particularly the development
18 of the River Park.

19 55. The INITIATIVE is structured like an offer to lease (and potentially purchase up
20 to 79.9 acres of) the PROPERTY on certain terms that provide a “path” for the development but
21 it does not and cannot require the city to enter into these agreements. It thus fails to set forth an
22 enforceable legislative act.

23 56. The INITIATIVE also includes terms that are fundamentally inconsistent and
24 provides inadequate information to the voters about critical issues. For example, the
25 INITIATIVE states in several places that the Lease may not vary or amend its terms, but it also
26 states that if the Mayor determines that any provisions impermissibly invade his authority, he
27 “may exercise such executive or administrative authority in the manner permitted by
28 law...including without limitation” to determine the appropriate contents of the Lease and

1 whether or not to execute the Lease. These terms, as well as other terms including, but not
2 limited to, the City's ability to retake possession of the PROPERTY are so vague as to render
3 them unintelligible to voters considering the INITIATIVE. This failure renders the INITIATIVE
4 invalid.

5 **FIRST CAUSE OF ACTION**

6 **(Writ of Mandate)**

7 57. Petitioners re-allege and incorporate herein by reference paragraphs 1 through 56,
8 inclusive, of the Petition/Complaint as though fully set forth herein.

9 58. The INITIATIVE is invalid for several reasons including, but not limited to, the
10 following:

- 11 a. The INITIATIVE impermissibly directs administrative or executive action
12 rather than legislative action;
- 13 b. The INITIATIVE impermissibly interferes with the Mayor and City
14 Council's authority over core governmental functions including, but not
15 limited to, fiscal planning, land use, and water use;
- 16 c. The INITIATIVE violates State law including, but not limited to,
17 Government Code section 65865 and the California Environmental
18 Quality Act;
- 19 d. The INITIATIVE violates the San Diego City Charter including, but not
20 limited to Article XV, sections 260 and 265;
- 21 e. The INITIATIVE fails to adopt an enforceable legislative act; and is
22 unconstitutionally vague and indefinite with regard to key elements.

23 59. Respondents/Defendants have a ministerial duty to submit the INITIATIVE to the
24 City's voters on or before the November 6, 2018 general election ballot. Upon information and
25 belief, absent a judicial order directing otherwise, Respondents/Defendants will take action to
26 place the INITIATIVE before the voters in November 2018 despite its invalidity.

27 60. Absent a judicial order directing otherwise, upon information and belief,
28 Respondents/Defendants will take the actions necessary to include the INITIATIVE on the

1 November 6, 2018, general election ballot, including preparation of the ballot materials,
2 beginning in mid- to late July 2018.

3 61. Petitioners have a beneficial interest in ensuring that an invalid initiative measure,
4 such as the INITIATIVE, not be placed on the November 6, 2018, general election ballot and
5 have no plain, speedy, or adequate remedy in the ordinary course of law.

6 **SECOND CAUSE OF ACTION**

7 **(Declaratory Relief)**

8 62. Petitioners re-allege and incorporate herein by reference paragraphs 1 through 61,
9 inclusive, of the Petition/Complaint as though fully set forth herein.

10 63. An actual, present controversy exists as to whether the INITIATIVE can lawfully
11 be submitted to voters for the reasons set forth in Paragraph 57.

12 64. A judicial declaration pursuant to Code of Civil Procedure section 1060 is
13 necessary and appropriate at this time in order to determine the rights of the parties and in
14 particular whether the INITIATIVE may lawfully be submitted to the voters of the City and
15 whether Defendants/Respondents should be relieved of the legal obligation to submit the matter
16 to the voters. In addition, a judicial declaration is necessary at this time to prevent the waste of
17 taxpayer funds that will be required to place a matter before the voters that cannot lawfully be
18 enacted.

19 **THIRD CAUSE OF ACTION**

20 **(Injunctive Relief)**

21 65. Petitioners/Plaintiffs re-alleges and incorporates herein by reference paragraphs 1
22 through 64, inclusive, of the Petition/Complaint as though fully set forth herein.

23 66. Allowing voters to consider the INITIATIVE would involve a significant waste of
24 public resources and would irreparably harm the residents of the City within the meaning of
25 Code of Civil Procedure sections 526 and 526a. Pecuniary compensation would not afford
26 adequate relief, and injunctive relief is therefore required.

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PRAYER

WHEREFORE, Plaintiffs/Petitioners pray for relief as follows:

1. That this Court issue a Peremptory Writ of Mandate commanding Respondents/Defendants to refrain from taking any action to present the INITIATIVE to City voters.
2. That this Court declare that the INITIATIVE may not lawfully be presented to City voters;
3. That this Court issue a permanent injunction prohibiting the INITIATIVE from being considered on the November 6, 2018, general election ballot;
4. For such other and further relief as the court deems proper.

Dated: May 11, 2018

MARA W. ELLIOTT, City Attorney

By: 

M. TRAVIS PHELPS
Chief Deputy City Attorney
Attorneys for Petitioners/Plaintiffs

Dated: May 11, 2018

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Richard C. Miadich

By: 

DEBORAH B. CAPLAN
Attorneys for Petitioners/Plaintiffs

EXHIBIT A

Be it ordained by the People of the City of San Diego:

SECTION 1. Title.

This initiative measure ("Initiative") shall be known and may be cited as the "San Diego River Park and Soccer City Initiative."

SECTION 2. Findings, Purpose, and Intent.

A. Findings. The People of the City of San Diego find and declare the following:

1. The People of the City of San Diego (the "City") desire to provide a feasible and fiscally and environmentally responsible path for the development of the existing stadium site located at 9449 Friars Road (the "Existing Stadium Site") for the purposes of providing a river park, transit-oriented mixed-use development, and a professional sports or joint-use professional soccer/San Diego State University ("SDSU") football stadium, with the option for a stand-alone professional football franchise stadium;
2. The cost of maintaining the existing stadium and surrounding lands is very expensive, as is the demolition or dismantling of the existing stadium. In addition, the City has certain lease commitments relating to the existing stadium that exist until approximately 2018. The City is faced with major deferred maintenance and annual operating costs to maintain the existing stadium as well as large unfunded costs for its demolition and removal;
3. The People of the City of San Diego desire to exercise our reserved power of initiative under the California Constitution and the San Diego Municipal Code for the City to establish the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan ("Specific Plan"), which shall provide for the orderly redevelopment of the Existing Stadium Site and other property formerly used for professional football, as well as property adjacent to the Existing Stadium Site ("Existing-Adjacent Property") (collectively, "Property") in a manner that provides significant public benefits for the San Diego community;
4. In addition, the People of the City of San Diego desire to exercise our reserved power of initiative under the California Constitution and the San Diego Municipal Code for the City to adopt the Development Agreement Concerning the San Diego River Park and Soccer City Development in Mission Valley, San Diego ("San Diego River Park and Soccer City Development Agreement"), which shall provide for a feasible and fiscally and environmentally responsible path for development of the Property
5. The Specific Plan provides for transit-oriented mixed-use development on the Property, including a 34-acre river park, 12 acres of active use playing fields, 9 acres of neighborhood parks, a sports stadium, approximately 2.4 million square feet of office space, 740,000 square feet of retail space, 4,800 multi-family homes, 450 hotel rooms, and an option for a stand-alone football stadium for a professional football franchise, all with a pedestrian link to the existing Metropolitan Transit System ("MTS") Green Line transit center;
6. Development is designed to create a San Diego River park consistent with past governmental planning efforts which would unify the City's urban setting with the natural environment. An interconnected system of parks linked by open space, multi-use pathways, and green corridors are planned for the Existing Stadium Site to reflect the San Diego River pattern as it weaves its way to the ocean;
7. The proposed development on the Existing Stadium Site will provide economic opportunities, including creating construction and permanent jobs in the Mission Valley area and the City, generating new business for local hotels and restaurants through the creation of a sports and entertainment tourism destination, and encouraging the creation of new businesses in the City and the surrounding area;
8. The People of the City of San Diego further desire that the athletic training facility located at 4020 Murphy Canyon Road ("Murphy Canyon Training Facility Site"), which

project construction costs or stadium project cost overruns; 2) the City shall not pay for any stadium project operating costs, maintenance, or capital improvement expenses; 3) the City shall be reimbursed for reasonable costs incurred by the City in providing game/event day public safety and traffic management related to stadium events; and 4) a developer shall pay the development fees specified in the Specific Plan to the City;

19. The design and development restrictions and environmental mitigation measures set forth in the Specific Plan are intended to address the potential environmental impacts associated with the construction, operation, maintenance, management, and financing of the development of the Property;
20. The People of the City of San Diego find that the development of the Property will provide important public recreational uses, and that the private uses of the Property further the City's goals and policies of transit-oriented, mixed use development that implements the City of Villages Strategy and the City's greenhouse gas reduction goals; and
21. Implementation of this Initiative will protect the public health, safety, and welfare, and enhance the quality of life for the People of the City of San Diego.

B. Purpose and Intent. The People of the City of San Diego further find and declare that our purpose and intent in enacting this Initiative is to:

1. (a) Adopt the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan and San Diego River Park and Soccer City Development Agreement; (b) establish an objective set of legislative standards and a specified process for the lease and sale option of the Property to implement and enforce the Specific Plan; (c) make conforming amendments to the General Plan, San Diego Municipal Code, Mission Valley Planned District Ordinance, and to the Mission Valley and Kearny Mesa Community Plans; and (d) authorize the City, pursuant to an established set of guiding legislative policies and minimum requirements, to take any and all actions to permit and implement the development, construction, operation, maintenance, management, and private financing of the proposed stadium and mixed-use development project.
2. Take all actions described in subsection (1) regardless of whether any provision of the Initiative is found to be invalid.

SECTION 3. City of San Diego General Plan Amendments.

A. Land Use and Community Planning Element Amendments.

The Land Use and Community Planning Element of the General Plan of the City of San Diego is hereby amended as follows (new language to be inserted into the General Plan is shown as underlined text, language to be deleted is shown in ~~strikethrough text~~, text in regular or bold type reflects the existing General Plan text and is provided for informational/reference purposes):

Figure LU-2, General Plan Land Use and Street System, on page LU-15, is amended to designate the Existing Stadium Site and the Existing-Adjacent Property from "Commercial Employment, Retail, & Services" to "Multiple Use," and the Murphy Canyon Training Facility Site from "Industrial Employment" to "Commercial Employment, Retail, & Services," as depicted on page A-3 of **Exhibit A**.

B. Mobility Element Amendments.

The Mobility Element of the General Plan of the City of San Diego is hereby amended as follows (new language to be inserted into the General Plan is shown as underlined text, language to be deleted is shown in ~~strikethrough text~~, text in regular or bold type reflects the existing General Plan text and is provided for informational/reference purposes):

Figure ME-1, Transit Land Use Connections, on page ME-4, is amended to re-designate the Existing Stadium Site and the Existing-Adjacent Property from "Commercial Employment, Retail, & Services" to "Multiple Use," and the Murphy Canyon Training Facility Site from "Single Family Residential and Other Uses" to "Commercial," as depicted on page A-7 of **Exhibit A**.

Planned Elements Section, Land Use Development Guidelines at page 42 is amended as follows:

Residential development should be in the form of generally self-contained areas. The following proposals are intended to achieve this concept:

3. Employ the Planned Development Permit (PDP) approach to residential and/or commercial development to encourage a mix of housing types and densities, integration of commercial uses, and flexibility in site arrangement. Residential use will be allowed to occur without the use of PDP permit as specified by a Specific Plan or up to a maximum density of 14 dwelling units to the acre. However, higher densities of up to 73 dwelling units may be obtained through the Planned Development approach. This approach will ensure residents that higher density development will provide open space and recreational facilities

...

13. Permit medium- to medium-high density residential developments (up to 73 units per acre) in conjunction with commercial facilities, through the utilization of PRD/PCD permits, or as specified by a Specific Plan.

Figure 4, Existing Zoning at page 44 is amended to include the Specific Plan zoning on the Existing Stadium Site and Existing-Adjacent Property, as depicted on page C-5 of **Exhibit C**.

Figure 5, Land Use at page 45 is amended to change the Existing Stadium Site and Existing-Adjacent Property zoning designation from "Commercial Recreation" and "Visitor Commercial" to "Multi-use," as depicted on page C-9 of **Exhibit C**.

Planned Elements Section, Land Use Re-Use Development Proposals at page 56 is amended as follows:

2. Environmental Problems

- Environmentally sensitive issues should be addressed in each precise development plan or Specific Plan. These should include but not be limited to the following: air quality; flood hazards; high quality habitats and adjacent open space systems; hillside preservation and conservation; carrying capacity of the local street system and the impact of Jack Murphy San Diego Stadium.

Figure 10, Specific Plan/Multiple Use Areas at page 66 is amended to include the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan, as depicted on page C-12 of **Exhibit C**.

Planned Elements Section, Transportation Development Guidelines at page 78 is amended to include the following footnote:

DEVELOPMENT GUIDELINES²

Regional Highways

- Complete SR-52 and SR-125 to provide an alternate route from East San Diego County to North San Diego County, and from Southeast San Diego County to Downtown San Diego (relieving SR-94), and to points north (relieving I-8).

...

² Specific Plans should provide their own circulation guidelines.

Figure 20, Consolidated Parking Areas at page 97 is amended to remove the Existing Stadium Site as a potential consolidated parking area, as depicted on page C-14 of **Exhibit C**.

Plan Elements Section, Open Space Development Guidelines at page 121 is amended as follows:

~~required. In the event there is a surplus of publicly-owned land after all of the needed community facilities have been provided, the findings and recommendations of this study should be considered, provided they comply with the goals of this Plan and the development intensity and land uses proposed for this area.~~

Plan Elements Section, Community Facilities Development Guidelines at page 155 is amended as follows:

- Before publicly-owned land is used for ~~non-public activity~~, it should be reviewed and determined to be not necessary for public use, or such non-public activity otherwise determined to be in furtherance of the City's goals and policies.

Plan Elements Section, Conservation Noise at page 159 is amended as follows:

The freeways crossing and extending the length of the Valley contribute significantly to the noise levels there. Events held in San Diego Jack Murphy Stadium also contribute to noise levels in the eastern section of the community. Currently, only stadium concerts and firework displays have noise related regulations unless otherwise authorized pursuant to a Specific Plan or permit. Each of these events may not exceed a 95 decibel average (measured at the - press level) and must end at a prescribed time unless otherwise authorized by a Specific Plan or permit. Average noise levels (hourly) for sporting events (football games and motorcycle racing) have been measured at between 93 and 95 decibels. The noise generated by I-15 between Friars Road and I-8 is 76 decibels at 50 feet from the center of the outside lane, based on a daily traffic count of 57,800. Future modification to the stadium should take into consideration additional noise abatement measures. The recent seating expansion project which partially enclosed the southeastern portion should provide some noise attenuation of stadium events.

Plan Elements Section, Urban Design Landmarks at page 185 is amended as follows:

C. LANDMARKS

Community landmarks such as the Presidio (Serra Museum), Mission San Diego de Alcalá, ~~San Diego Jack Murphy Stadium~~ and the Jack Schrade Bridge (I-805) establish areas that require special design considerations. These landmarks provide a community identity and, as such, they should remain highly visible.

Plan Elements Section, Urban Design, Design Guidelines for Landmarks at page 186 is amended as follows:

- Development near the Jack Schrade Bridge should use the bridge to frame the project, perhaps even incorporating some of its form into the design of new buildings.
- ~~Development surrounding the San Diego stadium should maintain view corridors and landscaped areas to enhance the views into this major civic and architectural landmark.~~
- The gateways, or entrances into the community are another type of landmark. Being crisscrossed by regional freeways, Mission Valley has many of them. Each should provide a clear view into, as well as through the community. New development located at these entrances will also become community landmarks, and should be designed with that thought in mind.

Implementation, Transportation Improvements Phasing at page 207 is amended as follows:

Equivalent Dwelling Units (EDU) have been selected to translate different type of development into a common denominator. The EDU factor for each type of land use in Mission Valley is listed in Appendix A. In order to monitor the EDU's in Mission Valley, the Valley was divided into twelve sectors, basically along the San Diego River and the north-south freeways (see Figure A-1, Appendix Section). These sectors were grouped together according to which street or ramp improvements will be required

SECTION 6. Amendment to the Mission Valley Planned District Ordinance.

The Zoning Map of the Mission Valley Planned District Ordinance, a copy of which is attached for informational purposes only at page E-2 of **Exhibit E** hereto, is amended to change the zoning of the Existing Stadium Site and the Existing-Adjacent Property, as set forth on page E-3 of **Exhibit E** hereto. By adopting the MVCP-MV-M/SP zoning for the Existing Stadium Site and the Existing-Adjacent Property, the voters intend to rescind, and do hereby rescind, the existing zoning for the Existing Stadium Site and the Existing-Adjacent Property, and to replace that zoning with the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan for MVCP-MV-M/SP zoning.

The Mission Valley Planned District Ordinance is hereby amended as follows (new language to be inserted into the Mission Valley Planned District Ordinance is shown as underlined text, language to be deleted is shown in ~~strike through text~~, text in regular or bold type reflects the existing Ordinance text and is provided for informational/reference purposes):

Article 14, Division 1, section 1514.0103(b) is amended as follows:

- (b) Exemptions
- (1) Projects submitted pursuant to Council adopted specific plans are exempt from the Mission Valley Planned District Ordinance when the submittal is found to be in substantial conformance with the approved specific plan (see Section 1514.0202).
 - (2) Notwithstanding any other provision to the contrary, the City Manager may waive the permit requirements for an activity regulated under the Mission Valley Planned District Ordinance when it is determined that the proposed activity is necessary to avoid or abate a hazardous or other unsafe condition.
 - (3) Public projects that have approved permits to conduct maintenance work in the Special Flood Hazard Areas are exempt from the requirements of the River Park Subdistrict.
 - (4) The San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan Area shall be exempt from the Mission Valley Planned District Ordinance.

SECTION 7. Amendment to the San Diego Municipal Code.

The San Diego Municipal Code is hereby amended to add Division 28 to Article 1, Chapter 6 as follows (new language to be inserted into the San Diego Municipal Code is shown as underlined text, language to be deleted is shown in ~~strike through text~~, text in regular or bold type reflects the existing Municipal Code text and is provided for informational/reference purposes):

Article 1: Public Improvement and Assessment Proceedings

Division 28: Existing Stadium Site and Auxiliary Property Ground Lease

§ 61.2801 Purposes

The following are the purposes of this Division.

Furthermore, this Division is intended to provide detailed legislative provisions for the objective requirements that must be contained in any Lease agreement to protect the City from any expenditures or risks associated with the leasing of the Existing Stadium Site and the Murphy Canyon Leased Property, and ensure that all of the environmental mitigation measures and planning requirements of the Specific Plan are met by any potential lessee or purchaser. This Division provides fixed standards and objective measurements that shall be applied to the proposed approval or rejection of an application for any Lease within the Specific Plan area, so that the City's decision-making in considering such application shall be free of personal subjective judgment and allow for a ministerial decision to be made based on objective standards.

The legislative standards set forth in this Division are intended to ensure that any Lease approved by the Mayor will contain provisions that protect the City's interest and ability to obtain the expected Lease benefits, and ensure that the lessee, sublessees, and potential purchasers of property under any Lease Option are each required to comply with the standards for development contained in the Specific Plan. Such legislative standards include the remedies for default that must be contained in any Lease. These legislative standards are also intended to ensure that any Lease provides for commercially reasonable requirements for additional commercial and residential development in compliance with the Specific Plan, which facilitates the lessee's ability to generate sufficient funds to pay for its performance of any Lease obligations to the City.

A key policy for the development of the Property is to assure that no public subsidy or expenditure is required for development. These requirements for potential Leases of the Property have been established by this Division so that the City will not provide subsidies, or be required to make new expenditures, under the standards of any Lease which the City may subsequently approve under this Division.

§ 61.2802 Definitions

Each word that is defined in this Division appears in the text of this Division in italicized letters. Terms defined in the remainder of the Initiative but not defined in this Division have the meaning given to them in the other portions of the Initiative. For the purpose of this Division, the following definitions shall apply:

Development means the development allowed and contemplated in the Specific Plan.

Execution Date shall refer to the date that any Lease approved under this Division has been executed, both by all required officers of the City and by the Qualified Lessee.

Existing-Adjacent Property means the three (3)-acre parcel located immediately north of Friars Road from the Existing Stadium Site, as described more particularly and depicted in the Specific Plan.

Existing Stadium shall refer to the stadium building located on the Existing Stadium Site as of the Initiative Effective Date.

Existing Stadium Site means the property located at or near 9449 Friars Road, San Diego, California 92108, as described more particularly and depicted in the Specific Plan, including the Existing-Adjacent Property.

Football Property means a sixteen (16) acre portion of the Existing Stadium Site, the location of which shall be selected by the Qualified Lessee.

Football Qualified Entity means a professional football team to be located in San Diego.

Initiative means the "San Diego River Park and Soccer City Initiative" adopted on the Initiative Effective Date.

Initiative Effective Date means the date that the Initiative has become effective.

Specific Plan means the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan.

Stadium Land means the portion of the Existing Stadium Site on which the Joint Use Stadium will be constructed.

Term means the period between any Lease's commencement on the Execution Date and its expiration, on the ninety-ninth anniversary of the Execution Date, unless any Lease is terminated prior to that date.

§ 61.2803 Required standards for ground Leases for stadium and ancillary development approved under this Division

Legislative standards for any Lease of the Property that may be reviewed and approved by the Mayor based on any application submitted to the Mayor under this Division have been set forth in this Division to provide a public, organized, and reliable process for applicants to submit Lease applications under these standards. This Division also provides legislative standards so that the public may determine whether such applications meet these Lease standard requirements prior to the execution of any Lease.

The legislative standards and requirements listed in this Division for review, approval and execution of Lease applications and Leases shall be applicable only to applications made to the City pursuant to this Division for the Property. Any Lease of the Property approved by the Mayor under the procedure set forth in this Division shall meet all of the provisions of this Division.

(a) Qualified Lessee.

- (1) Any Lease shall provide that the lessee must be a Qualified Lessee to assure that the Property is developed in a manner that will increase the opportunity for a new professional sports team to locate in San Diego using the resources, unique location, and characteristics of the Property.

(b) Lease Term

- (1) The Term of any Lease shall be 99 years to provide a Qualified Lessee with sufficient time to develop and finance the allowed improvements on the Property, and to allow the City to enjoy the continued benefits of the completed development under the Specific Plan. No Lease shall contain any renewal options.

(c) Applicable Requirements for Lease and Redevelopment of Existing Property

- (1) The Mayor shall ensure that any Lease includes both the Existing Stadium Site and the Murphy Canyon Leased Property on a combined basis to assure a unified approach in addressing all of the issues and constraints for the overall Property. The location and size of the Murphy Canyon Leased Property shall be specified by the applicant for a Lease in any Lease application, but in no event shall the Murphy Canyon Leased Property exceed twenty (20) acres.
- (2) Any Lease must provide for a comprehensive multi-use development that provides for: (a) the redevelopment of the Property; and (b) the construction, operation, and support of a Joint Use Stadium and other uses allowed under the Specific Plan, all to support the goals of the Specific Plan for the comprehensive re-use of the Property. No Lease may be approved which fails to provide for each of these requirements.
- (3) Any Lease shall require the Qualified Lessee to construct the Joint Use Stadium to meet the City's goal of attracting and retaining professional sports teams without a public subsidy.
- (4) Any Lease shall provide the Qualified Lessee the right to the exclusive use of the Property, except for the continued temporary use of the Existing

- (F) If the City elects to construct the *River Park*, the City shall enter into an appropriate agreement with the *Qualified Lessee* to provide for appropriate access and indemnity to allow for the City's construction without disturbing other development on the *Existing Stadium Site*.
- (8) To ensure that the additional parks specified in the *Specific Plan* are constructed without expenditure or subsidy by the City, any *Lease* shall also require the construction of approximately twelve (12) acres of active use fields and neighborhood parks that will be maintained and operated through a joint agreement with the City and the *Qualified Lessee*, or a *Qualified Lessee's* assignee or designee.
- (9) To ensure that no City funds are required to be expended for maintenance of the *Property*, any *Lease* shall require the *Qualified Lessee* to maintain, or cause others to maintain, the *Property*, with the exception of the *Existing Stadium* during the City's temporary usage period, any infrastructure or equipment installed by the City or third parties pursuant to the existing third party settlement agreements that the City may have for cleanup of contamination on the *Property*, and any City-owned or operated utilities. To also accomplish the legislative policy of ensuring that the City shall not be obligated to expend funds for maintenance, any *Lease* shall also require the *Qualified Lessee* to maintain all streets and utilities on the *Property*, unless the City in its sole discretion has accepted them for dedication or ownership.
- (10) Any *Lease* shall require the *Qualified Lessee* to pay prevailing wages for construction of the *Joint Use Stadium* to further the City's policy goal of having major sports facilities built with the payment of prevailing wage.
- (11) To implement the City's policy goal of providing affordable housing, any *Lease* shall require the *Qualified Lessee* to construct and provide for: (i) the greater of ten (10) percent of dwelling units on the *Existing Stadium Site* or eighty (80) dwelling units as affordable to and occupied by "targeted rental households" (as used in San Diego Municipal Code Chapter 14, Article 2, Division 13); or (ii) equivalent for-sale affordable residential units. To further this goal of providing affordable housing, the *Qualified Lessee* under any *Lease* shall take all other steps necessary to satisfy San Diego Municipal Code Chapter 14, Article 2, Division 13, including consenting to the recordation of any required Declaration of Covenants, Conditions, and Restrictions. This requirement shall apply from and after the tenth anniversary of the effective date of any *Lease*.
- (12) Any *Lease* shall require the payment of development and building permit fees in compliance with the *Specific Plan*.
- (13) Any *Lease* shall require the *Qualified Lessee* to provide a pedestrian connection to the existing light rail transit center at the southern portion of the *Existing Stadium Site*, as described in the *Specific Plan*.
- (14) Any *Lease* shall require the *Qualified Lessee* to provide accommodation for a potential future alignment of the proposed "Purple Line" trolley in the eastern portion of the *Existing Stadium Site*, as described in the *Specific Plan*.
- (15) Any *Lease* shall provide that the City shall at all times retain ownership of the land underneath designated access routes and private streets located within the *Property* as they are established under the *Specific Plan*. The costs of constructing any street and utilities on the *Property* to serve the *Property* shall be paid solely by the *Qualified Lessee*, and all improvements shall be inspected by the City to ensure that they meet City standards. *Qualified Lessee* shall pay for its share of off-site improvements as provided in the *Specific Plan*. The *Qualified Lessee*

- (22) To prevent any potential for subsidy of operation of the *Joint Use Stadium*, any *Lease* approved under this Division shall require that the City be reimbursed for reasonable costs incurred by the City in providing game/event-day public safety and traffic management related to *Joint Use Stadium* events. At the City's option, the reimbursement may be provided by means of the advancement of a reasonable payment to cover the City's anticipated costs prior to the City's obligation to pay such costs.
- (23) To protect the City from liability and from claims from third parties based on a *Lease* of the *Property*, any *Lease* shall provide that the agreement between the *Qualified Lessee* and the City does not create a joint venture or partnership, and that there are no third party beneficiaries to the *Lease*.
- (24) Subject to the City's discretion under state law to modify or vacate easements, any *Lease* shall provide that the *Qualified Lessee* and the City may cooperate to modify or vacate easements on the *Property* (other than easements of the City of San Diego or any utility department of the City of San Diego for which the City retains its full regulatory discretion), so that development may proceed on the *Property*.
- (25) To assist in financing of the *Joint Use Stadium* and further the legislative purpose of attracting a new professional sports team to San Diego, any *Lease* shall require that the City execute such additional documents and provide such additional interests in the *Existing Stadium Site* as may be requested by the *Qualified Lessee* to facilitate the sale of personal seat licenses to attendees of professional or collegiate sporting events or other events by the *Qualified Lessee*, so long as the Mayor determines that such actions by the City do not require the expenditure of City funds and do not subject the City to any additional liability.
- (26) If requested by the *Qualified Lessee*, the Mayor may, but is not obligated to, depart from any legislative standard and requirements for potential *Leases* set forth in this Division in order to satisfy the requirements of an applicable professional sports league or otherwise facilitate the development of the *Property* in accordance with the *Specific Plan*, provided that the Mayor determines that such modifications shall not prevent the City from receiving fair market value for any *Lease* pursuant to this Division or require any expenditure by the City. No such modification shall delete, modify, or add to the environmental mitigation measures, standards, and requirements contained in the *Specific Plan*.
- (d) Option for Professional Football and SDSU Football Uses
- (1) Any *Lease* shall require the *Qualified Lessee* to reserve the sixteen (16) acre *Football Property*, the location of which shall be selected by the *Qualified Lessee*. This reservation shall support the City's goal of attracting a new professional football team to San Diego. This reservation must be accompanied by specific terms and conditions which protect the interests of the City, the prospective *Football Qualified Entity* and the *Qualified Lessee*. Therefore, any *Lease* shall contain the following requirements to balance these interests.
- (A) The *Qualified Lessee* shall (i) offer to sublease the *Football Property* to a *Football Qualified Entity* on terms acceptable to the *Qualified Lessee* or (ii) if the *Qualified Lessee* and the *Football Qualified Entity* fail to agree on such terms, subject to the *Qualified Lessee's* receipt of the value of the termination of any *Lease* with respect to the *Football Property*, the *Qualified Lessee* shall offer to terminate any *Lease* with respect to the *Football Property* concurrently with the sale or lease of the *Football Property* by the City to such *Football Qualified Entity*.

three appraisers, paid for by the *Football Qualified Entity*, taking into account the value of the *Property's* finished condition, any improvements constructed on the *Football Property*, pro rata obligations for the construction of streets and rights of way, and the development potential for alternative uses of the site set forth in the *Specific Plan*; provided, however, in no event shall such fair market rental or termination value be less than the aggregate amount expended by the *Qualified Lessee* to improve the *Football Property*.

(B) The *Qualified Lessee* and the *Football Qualified Entity* shall each appoint one appraiser, and such appraisers shall appoint a neutral third appraiser. Upon the consummation of any such sublease or termination of any *Lease* with respect to the *Football Property* as part of a purchase by the *Football Qualified Entity*, an amount equal to such fair market rental or termination value, together with all costs and expenses of the *Qualified Lessee* in connection with any such transaction, shall be paid by the *Football Qualified Entity* to the *Qualified Lessee*.

(e) Continued Operation and Orderly Demolition and Removal of the *Existing Stadium*

(1) The City faces a large unfunded cost for the continued maintenance and operation of the *Existing Stadium*. The City also faces a large unfunded cost for demolition of the *Existing Stadium*. The location of the *Existing Stadium* in the center of the *Existing Stadium Site* makes any future rehabilitation, grading, and flood control improvements of the *Existing Stadium Site* extremely difficult and costly. An additional consideration is that the City has existing leases and agreements for use of the *Existing Stadium* that continue until approximately 2018. The City intends to address these costs and considerations through a comprehensive plan of redevelopment set forth in the *Specific Plan*, and orderly demolition and removal of the *Existing Stadium* to allow such redevelopment to occur. At the same time, the City desires to accomplish these goals without subsidy or expenditure by the City. Correspondingly, the City intends to assure that all of these requirements are set forth in an objective manner through legislation, along with requirements that prevent any obligations placed on any *Qualified Lessee* from rendering development of the *Property* economically infeasible, burdensome or unattractive to potential lessees.

(2) In addition to the other reasons set forth in this Division, the City must remain an owner of all or a portion of the *Property* or a beneficiary of the covenant(s) imposed upon any sale, in order to maintain control of the *Property* for the duration of any *Lease* to assure that the City plans for continued operation and orderly demolition and removal of the *Existing Stadium* are effectuated. The limited *Option* provided in this Division also contains provisions which assure the implementation of the *Specific Plan*. Premature sale or disposition of the *Property* would threaten these goals and requirements. As a result, these standards and requirements must be met by any *Lease* entered into by the City pursuant to this Division.

(3) Any *Lease* shall require that the City shall retain all responsibility for the operation and maintenance of the *Existing Stadium* until the *Qualified Lessee* is required to demolish the *Existing Stadium* under any *Lease*, subject to reasonable standards and conditions. Such responsibility shall be provided for in any *Lease* pursuant to this Division in compliance with the following standards:

(A) During the City's continued operation and maintenance of the *Existing Stadium* until the demolition of the *Existing Stadium*, the City shall not:

(f) Price

(1) Any Qualified Lessee shall be required under any Lease to pay what the Mayor determines to be the fair market value for a leasehold interest of the Property (including specified conditional options for future purchase), as of the Initiative Notice Date, as described in this subsection (f).

(2) The Mayor shall determine the fair market value of a leasehold interest created by a 99-year lease of the Property, including specified conditional options for future purchase of 79.9 acres of the Property (with option exercise and other lease terms similar to those provided in this Division for any Lease), with a date of value that is the date of Initiative Notice Date. This determination of fair market value is intended to be based on a value of the Property that does not consider any later effect on value caused by the adoption of the new zoning and other development standards included in the Specific Plan, which only apply to the Property after the adoption of the Initiative. The Mayor may use such financial and cost factors as the Mayor deems appropriate in the Mayor's discretion to make the determination of the fair market value of a leasehold interest that meets the requirements of this Division. In determining the appropriate factors to use, the Mayor may consider the following factors:

(A) An independent appraisal or appraisals of the fair market value of the Property which considers the physical condition of the Property as of the Initiative Notice Date together with the zoning for the Property and other permits and approvals for development, as of the Initiative Notice Date with respect to the Property. Any appraisal submitted by an applicant for a Lease shall be made available to the public upon submittal to the City.

(B) Any appraisal shall consider the physical condition of the Property as of the Initiative Notice Date which may include:

(1) The existing contamination of the Property, as well as the value and obligations of any agreement made by the City for remediation of such contamination to a prospective lessee;

(2) The potential for flooding of the Property and its classification on Federal Emergency Management Agency flooding maps;

(3) Biological habitat and any agreements made by the City regarding the preservation of habitat on the Property; and/or

(4) The presence of the Existing Stadium and the future value or costs related to its potential to generate leases under current leases or other continued use, and potential costs of preservation, rehabilitation or demolition of such stadium related to any consideration of potential future development.

(C) A Lease benefit and burden adjustment, if any, based upon the present discounted value of future benefits and additional obligations placed upon the lessee for any Lease by the Initiative that may affect the fair market value of the leasehold interest, but only to the extent that such costs were not already considered in the determination of fair market value of the Property as of the Initiative Notice Date as described above, to adjust for:

(1) The costs of demolition and removal of the Existing Stadium;

- (4) Any Lease shall provide that the exercise fee for each exercise of the Option shall be an amount equal to \$1,000, plus additional consideration in an amount equal to: (i) the difference in fair market value between the land purchased in fee title as of the option exercise date; and (ii) the fair market value of the leasehold interest in the land under the remaining years of the 99 year lease at the time of any option exercise. The exercise fee and reasonable transaction costs of the City shall be paid at the time that title to such portion of the Property is transferred pursuant to the Option.
- (5) Any Lease shall provide that once the sale is consummated, any Lease shall cease to apply to the Option Land (other than with respect to environmental obligations that expressly survive the termination of any Lease) and the Qualified Lessee shall be relieved of all obligations with respect to the Option Land, with the exception of the recorded covenant described in this Division, and provided that any outstanding Lease obligations related to the construction of improvements on the Option Land shall continue to be the responsibility of the Qualified Lessee after such purchase.
- (6) Prior to the sale of any Option Land, the City shall be entitled to record a covenant, running with the land, in favor of the City, obligating the purchaser and subsequent owners for the remaining duration of any Lease, to comply with all of the environmental mitigation measures of the Specific Plan (as such Specific Plan provides by its terms as of the Initiative Effective Date), that are specifically applicable to the Option Land being sold. Such covenant shall ensure that the City retains the ability to implement those provisions of the Specific Plan for the duration of any Lease, to further the City's goal of conducting and supervising a comprehensive plan of redevelopment for the Property throughout the term of any Lease. Upon request at the time of any Option exercise, the Mayor may modify such covenant to refer to the Specific Plan as it may be amended as of the date of any Option exercise.
- (7) Proceeds from any purchase and sale of the Property or a portion thereof shall be allocated by the Mayor between all applicable City funds, including, without limitation, the City's General Fund and the City's Water Utilities Fund or funds for public improvements, in compliance with all City Charter provisions, ordinances, resolutions, and policies.
- (8) Any Lease shall provide that no Option may be exercised unless the acquisition of the Option Land complies with the Subdivision Map Act, or any exception to the Subdivision Map Act that may be applicable to such sale of property.
- (9) Any Lease shall provide that an Option may be assigned, in whole or in part, to any sublessee of any portion of the Property; provided that if the Qualified Lessee terminates the sublease with such sublessee, the assigned Option shall revert to the Qualified Lessee without the need for any further action by the parties.
- (10) Nothing in any Lease shall preclude the City from performing a land swap of lands purchased with funds from the City's General Fund with any portion of the Property that now may be owned by the Water Utilities Department, provided that the Qualified Lessee's rights under any Lease shall not be adversely affected thereby.
- (11) Any Lease shall provide that the deed conveying any portion of the Property conveyed pursuant to an Option shall grant easements for ingress, egress, and utilities over all roads, driveways, accessways, paths, and utility corridors, whether existing at the time of the Execution Date of the Lease or thereafter created, which provide access or utilities to and from such portion of the Property.

legislative purposes, the above purposes shall be implemented by the following requirements for Leases approved pursuant to this Division.

- (2) Any Lease shall provide or allow for assignment, subletting, sub-subletting, licensing, and other occupancy of all or a portion of the Property for the purpose of development consistent with the Specific Plan. Without limiting the foregoing, any Lease shall contain an acknowledgement from the City that the Stadium Land may be subleased by the Qualified Lessee to a sublessee for the purpose of facilitating the development and construction of the Joint Use Stadium.
- (3) Any Lease shall require that if any sublease(s) of all or a portion of the Property are entered into, then, upon the request of Qualified Lessee or the applicable sublessee, the City shall execute a commercially reasonable nondisturbance agreement with the sublessee(s) within ten (10) days following such request, subject to satisfaction of the following requirements:
 - (A) Such agreement must provide that the sublessee will attorn to the City if the City acquires the sublessor's interest under such sublease, and either (i) the rent received by the sublessor under such sublease must be the fair market rental rate of the subleased property paid no less frequently than on an annual basis, or (ii) the sublease is for the Stadium Land; or
 - (B) The City must be otherwise satisfied that the City's continuing interest in the Property is protected.

Notwithstanding this subsection, any sublease for the Stadium Land shall be subject to the Reverter Right.

- (4) Any Lease shall provide that no sublease shall relieve the Qualified Lessee's obligations with respect to the improvements to be constructed on the subleased land under such sublease. No sublessee under any sublease shall be required to perform the obligations of the Qualified Lessee under any Lease, except that the direct sublessee of the Stadium Land shall be required, jointly and severally with the Qualified Lessee, to construct the Joint Use Stadium.

(j) Environmental

- (1) Any Lease shall permit and require that the City take all actions required under any existing agreement between the City and third parties to clean up, rehabilitate, redevelop, and remediate the contamination that exists on the Existing Stadium Site. This provision is required in any Lease so that the City does not affect its existing agreements, and can continue to receive the benefits of those agreements with respect to the Existing Stadium Site.

So that any prospective lessee who may desire to submit a Lease application to the City under this Division may expect that it can rely upon the City's plans for cleanup, remediation, and redevelopment of the potential leased property, any Lease shall provide that the City shall not modify or terminate, and shall continue to perform its obligations under such existing third party agreements.

Any Lease shall provide that the Qualified Lessee shall, if required by such third party agreements, allow representatives of any third party to enter into the Property and implement the remediation and risk mitigation measures that may be designed and constructed as part of the redevelopment of the Property.

Nothing in this Division shall alter any of the provisions or obligations set forth in any such third party agreements.

the development of the Property or from death or injury to person or property; or

(C) The Qualified Lessee's breach of any Lease.

(2) Any Lease shall provide that the Qualified Lessee agrees to pay reasonable attorneys' fees, costs, charges, and other expenses which the City may incur in negotiating, settling, defending, and otherwise protecting the City from and against such claims.

(3) Any Lease shall also provide that, notwithstanding the foregoing, the foregoing indemnity shall be subject to all limitations, provisions, and obligations set forth elsewhere in any Lease and shall not extend to any claims arising out of or relating to:

(A) The conduct, activities, or omissions by the City or any of its agents, employees, contractors, lessees, invitees, or licensees on or about the Property;

(B) Any obligation required to be performed by the City under any Lease or applicable law; or

(C) Any breach of the City's obligations under any Lease.

(4) The provisions of this Section shall survive the expiration or earlier termination of any Lease.

(l) Costs/Closing

(1) Any Lease shall provide that the Qualified Lessee pay for its own costs and fees associated with the exercise of its option to purchase all or any portion of the Property, including, but not limited to, appraisal, escrow, and any other processing fees or expenses. City is to incur no closing expenses in connection with such purchase.

(2) To provide a lessee assurances to proceed with development or financing of the Property regarding the ability to obtain title insurance, any Lease shall provide that the City shall provide customary owners affidavits, estoppel certificates, and similar documentation required in connection with the issuance of title insurance, all at the buyer's sole expense. Any Lease shall provide that title to the applicable Property will be delivered to the buyer at the close of escrow.

(3) The Qualified Lessee and any proposed purchaser shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in any transaction contemplated by any Lease including, without limitation, the exercise of the Option, and the precise nature of their interest, in order to comply with any applicable City Charter provisions.

(m) Any Lease shall provide that the City, acting solely in its proprietary capacity as the owner of the Property, and the Qualified Lessee shall, in order to facilitate the development of the Property: (i) use best efforts to effect any lot line adjustment requested by the Qualified Lessee, including without limitation, the adjustment of the existing lot lines to create a separate legal lot for the Joint Use Stadium; (ii) cooperate with the Qualified Lessee to subdivide any existing parcel of the Property; and (iii) execute such further documents and take such further actions, as may be necessary to give effect to the provisions of any Lease. Nothing in any Lease shall limit the City's authority or any applicable discretion which the City may have in its regulatory capacity as a governmental entity to consider such application.

(n) Financing

- (f) The Mayor shall first consider all applications submitted within the first seven (7) calendar days following the *Initiative Effective Date* pursuant to the process under this Division, and may act upon any application immediately, without waiting for other applications, upon determining that the application meets the requirements of this Division and that it is in the City's best economic interest to act immediately. After considering any applications submitted within such seven (7)-calendar day time period, if none of the submitting parties are determined to be a *Qualified Lessee*, the Mayor shall then consider applications submitted later than seven (7) calendar days following the *Initiative Effective Date*.
- (g) If, at any time, the Mayor is considering more than one application of an entity meeting the requirements of a *Qualified Lessee* and meeting all of the requirements of this Division, the Mayor shall select the one entity that the Mayor determines is best qualified to bring a professional sports franchise to San Diego under the standards of this Division and the *Specific Plan* in the shortest possible time and approve a *Lease* with that entity under the procedures set forth in this Division, and reject any other pending applications.
- (h) If a *Qualified Lessee* submits a proposed *Lease* meeting the requirements of this Division, that is signed by the *Qualified Lessee* and includes therewith all materials necessary to confirm that the submitting party is a *Qualified Lessee*, then the Mayor shall review the application and shall proceed with the process set forth in Section 61.2805.
- (i) In recognition of the extraordinary costs of even a short delay and any uncertainty with respect to the necessary approvals and entitlements that will materially affect the viability of any development proposal on the *Property* and the ability of the *Qualified Lessee* to ultimately be awarded a *Professional Soccer League* franchise for San Diego, and to provide for the ability of the *Qualified Lessee* to still proceed with the development contemplated under the *Specific Plan*, any *Lease* under this Division shall provide that, if the *Execution Date* of the final *Lease* provided for in this Division is delayed beyond December 31, 2017 for any reason (except for the limited exception in this subsection): (i) the *Qualified Lessee's* obligations to improve City land for public recreation purposes under any *Lease* and the *Specific Plan* shall be reduced by \$20,000,000; and (ii) the *Qualified Lessee's* obligations to build parks shall not be subject to any time limits, mandatory start dates, or mandatory completion dates, except for any limits or dates required by state law. No such reduction shall occur if (1) the *Initiative Effective Date* occurs on or before August 1, 2017 and (2) the *Qualified Lessee* fails to submit a complete *Lease* application which complies with the standards of the *Initiative* within thirty (30) calendar days of the *Initiative Effective Date*.
- (j) The Mayor shall confirm that any application for a *Lease* submitted pursuant to this Division is complete and identify any deficiencies in the application within ten (10) days of receipt of the application.

§ 61.2805 **Preparation and execution of approved ground *Leases* for development of the *Property***

The following requirements are established for the review and approval of any *Lease* application, and the preparation and execution of any *Lease* of the *Property* subject to the *Specific Plan* and to the requirements of this Division. These requirements are intended to ensure that any lessee's application shall be reviewed and considered, and any *Lease* prepared and executed by the City, according to fixed and objective standards that have been provided to the public and established in advance of any application. These requirements are also established to ensure that there is an expeditious and centralized process for decision making by the City with respect to such *Leases*, such that the City shall not lose the opportunity to attract new professional sports franchises nor fail to provide for a new venue for collegiate football, in an expeditious and streamlined manner, consistent with all applicable legal requirements.

SECTION 8. Adoption of the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan.

The San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan, attached as **Exhibit F** to this Initiative, is hereby adopted. The Specific Plan exclusively shall control development requirements, development fees, and land use and utilization of the lands covered by the Specific Plan. Therefore, the Specific Plan is exempt from any conflicting provisions of the San Diego Municipal Code, except as provided in the Specific Plan itself, which contains the exclusive provisions governing and regulating the Specific Plan's development review procedures and process, including the plan-checks, sign-offs, actions, decisions, approvals, and other determinations required by the Specific Plan with respect to the standards, guidelines, infrastructure, open space, trails, and other Specific Plan-identified facilities, services, and amenities.

SECTION 9. Adoption of the San Diego River Park and Soccer City Development Agreement.

The San Diego River Park and Soccer City Development Agreement, attached hereto as **Exhibit G**, is adopted.

SECTION 10. Internal General Plan and Municipal Code Consistency.

A. The amendments to the General Plan, as set forth in Section 3 above, express the intent of the People of the City of San Diego to eliminate any possible internal inconsistency within or between any elements of the General Plan or any provisions contained in the Municipal Code or the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan. It is the intent of the People of the City of San Diego that the General Plan, as amended by this Initiative, constitutes an integrated, internally consistent and compatible statement of planning policies. It is the People's further intent that if and to the extent there is no exact or literal match between the General Plan and the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan, those planning documents and their provisions be read and construed in full harmony with each other as provided for by this Initiative.

B. It is the intent of the People of the City of San Diego that the amendments contained in Sections 3, 4, 5, 6, 7, and 8 of this Initiative be read and construed in full harmony with the General Plan. To the extent that any provisions of the San Diego Municipal Code, including the Mission Valley Planned District Ordinance, or any other ordinances of the City, may be inconsistent with this Initiative, the provisions of this Initiative shall govern.

SECTION 11. Implementation of Initiative.

A. Upon the effective date of this Initiative, the City of San Diego is directed to promptly take all appropriate actions needed to implement this Initiative. This Initiative is considered adopted and effective upon the earliest date legally possible after the City Council adopts this Initiative, or the Elections Official certifies the vote on this Initiative by the voters of the City of San Diego, whichever occurs earlier.

B. Upon the effective date of this Initiative, the provisions of Section 3 of this Initiative are hereby inserted into the General Plan as of the first lawful date to complete such insertion.

C. The General Plan in effect on the date of filing with the City Clerk of the Notice of Intent to Circulate this Initiative ("Filing Date"), and the General Plan as amended by this Initiative, comprise an integrated, internally consistent and compatible statement of policies for the City. To ensure that the City's General Plan remains an integrated, internally consistent and compatible statement of policies for the City, any provision of the General Plan that is adopted between the Filing Date and the effective date of the General Plan amendments adopted by this Initiative shall, to the extent that such an interim-enacted provision is inconsistent with the General Plan amendments adopted by this Initiative, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this Initiative and other elements of the General Plan.

D. Upon the effective date of this Initiative, the provisions of Section 4 are hereby inserted into the Mission Valley Community Plan; the provisions of Section 5 are hereby inserted into the Kearny Mesa Community Plan; the provisions of Section 6 are hereby inserted into the Mission

SECTION 14. Amendment.

- A. Until January 1, 2033, the provisions of this Initiative may only be amended or repealed by a majority of the voters of the City voting in an election held in accordance with applicable law. On or after that date, a vote of the people shall not be required to amend or repeal this Initiative, and any amendment or repeal shall occur as otherwise permitted by law.
- B. Any amendments to this Initiative shall not impair the contractual rights or vested rights conferred by a lease and option agreement or any associated development agreement.
- C. The San Diego River Park and Soccer City Development Agreement may be amended as provided in California Government Code section 65868.
- D. The text of existing provisions of the City of San Diego General Plan, Mission Valley Planned District Ordinance, Mission Valley Community Plan, Kearny Mesa Community Plan, and San Diego Municipal Code that are quoted in this Initiative but not modified herein are not subject to this Section.

SECTION 15. List of Initiative Exhibits.

The Exhibits to this Initiative are:

- Exhibit A – Amendments to General Plan Figures
- Exhibit B – Amendments to the Zoning Map
- Exhibit C – Amendments to the Mission Valley Community Plan
- Exhibit D – Amendments to the Kearny Mesa Community Plan
- Exhibit E – Amendments to the Mission Valley Planned District Ordinance
- Exhibit F – San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan
- Exhibit G – San Diego River Park and Soccer City Development Agreement
- Exhibit H – San Diego Municipal Code Sections (for informational purposes only)
- Exhibit I – City of San Diego Climate Action Plan (for informational purposes only)
- Exhibit J – City of San Diego General Plan, Strategic Framework Element (for informational purposes only)