

## **INFORMATIONAL ABSTRACT OF THE:**

### **Joint Use and Management Agreement**

#### **Between the City of San Diego and Padres L.P.**

DISCLAIMER: The following document has been drafted as an Informational Abstract, meant merely to communicate to City Staff and other readers hereof, in summary form, the contents of the Joint Use and Management Agreement Between the City of San Diego and Padres L.P. (JUMA), which is on file with the City Clerk as Document Number RR-292706, filed on February 1, 2000. The purpose of this Informational Abstract is to highlight aspects of the JUMA in order to inform the readers of the general contents of the JUMA, so that thereafter the readers can decide whether they want to read the actual JUMA or parts thereof. The readers of this Informational Abstract should not rely on the information provided herein as an alternative to the actual terms and conditions set forth in the JUMA, nor should the readers rely on any representations set forth herein as being any form of legal advice or legal interpretation of the JUMA by the City of San Diego. If any readers of this Informational Abstract have any specific questions about any aspect of the JUMA, they should consult their attorney or other professional legal services provider. The information provided in this Informational Abstract is current as of the following date: August 22, 2023.

## **ARTICLE 1 DEFINITIONS AND USAGE**

### **1.1 Definitions**

All initial capitalized words used throughout this document are defined words within the Joint Use and Management Agreement (JUMA).

### **1.2 Usage**

Words used throughout this document adhere to the usage described in the JUMA.

## **ARTICLE 2 USE AND OCCUPANCY**

### **2.1 Use and Occupancy by Padres**

Padres have the right to use and occupy all of the City Property. The City shall not grant or cause any Liens against the City Property.

### **2.2 Use and Occupancy by City**

Padres shall deliver to the City a standard form ALTA policy of title insurance insuring the City's interest. Any agreement between the Padres and a lender or vendor receiving a Lien shall include appropriate recognition and attornment covenants providing that the City may assume all rights and obligations of the Padres under such agreement.

### **2.3 City Suite**

The City owns one (1) Private Suite. JUMA guarantees that it will seat no fewer than twenty-two (22) persons. Suite is not assignable.

### **2.4 City Parking**

City has the right to fifteen (15) VIP parking passes for each Event.

### **2.5 Padres Parking**

Padres have the right to fifteen (15) VIP parking passes for each Event.

### [2.6 Site Lease, Ballpark Facility Lease, Indenture and MOU](#)

JUMA is subject and subordinate to all of the terms, covenants, and provisions of the Site Lease, the Ballpark Facility Lease and the Indenture, which are incorporated by reference as Exhibits.

### [2.7 Ballpark Land and Outfield Park Actual Parcels](#)

Map attached as [Exhibit K](#) – Supplemented May 25, 2004.

## [ARTICLE 3 PADRES PROPERTY](#)

### [3.1 Padres Property](#)

Padres bear all real property taxes and possessory interest taxes on Ballpark Land.

### [3.2 Private Suites](#)

Padres set aside two (2) Private Suites for their use. Padres set the Private Suite ticket prices for all Events except City Events.

### [3.3 Premium Seats](#)

Padres set Premium Seat ticket prices for Baseball Events and City sets Premium Seat ticket prices for City Events. 70/30 Event premium seat ticket prices determined by both parties (3.3.4(a)).

## [ARTICLE 4 TERM AND RENT](#)

### [4.1 Effective Date to Initial Expiration Date](#)

The Effective Date is February 1, 2000. The Commencement Date is December 15, 2003, per the [Commencement Date Letter](#). Initial Expiration Date is December 14, 2033.

### [4.2 Options to Extend](#)

The Padres may exercise the options to extend only by delivering to the City written notice of intent to renew no later than three hundred sixty five (365) days prior to the last day of the then current Term. The First Extension Term ends on December 14, 2038, and the Second Extension Term ends on December 14, 2043.

### [4.3 Resulting Term](#)

The period between the Effective Date and the Initial Expiration Date, together with the First Extension Term, if applicable, and the Second Extension Term, if applicable, constitutes the Term.

### [4.4 Rent](#)

For use of the Ballpark the Padres will pay fixed rent of \$500,000 per year in two (2) equal installments by June 30th and December 31st. Fixed rent is subject to a CPI increase on the fifth (5th) anniversary of the Commencement Date, and every five (5) years thereafter. In December 2019, the fixed rent increased to \$703,555 per year through 2024. The next increase will occur during the five-year period of 2024-2029.

## ARTICLE 5 USE OF THE BALLPARK PROPERTY

### 5.1 Padres' Use

Padres are entitled to use the Ballpark for year-round operation, Maintenance and Repair of the Ballpark, and any and all other activities which are associated with the conduct of the business of a Major League Baseball team.

### 5.2 Limitations on Padres' Use

The Padres shall not hold or sponsor any Non-Padres Baseball Event, the conduct of which would present a clear and present danger of material damage to the Ballpark Property.

### 5.3 City's Use

This section describes City's use as it relates to City Events and City Exclusive Use Areas, neither of which have been exercised by the City as of the date of this document.

### 5.4 Limitations on City's Use

City shall not hold or sponsor any amateur or professional baseball, softball, or football games.

### 5.5 Use of Clubhouses

When one (1) or two (2) Clubhouses are required in connection to an Event, the Auxiliary Clubhouse is to be used. When three (3) Clubhouses are required in connection to an Event, the Auxiliary Clubhouse and Visitors Clubhouse are used.

### 5.6 Other Uses

The Parties may agree upon permitted uses of the Ballpark in addition to those set forth in this Article 5.

## ARTICLE 6 SCHEDULING AND ACCOUNTING

### 6.1 Cooperation in Scheduling

Scheduling Events at the Ballpark is a cooperative endeavor.

### 6.2 Master Calendar and Other Records

Padres to keep and provide to City a master calendar of all Events scheduled at Ballpark, at least monthly.

### 6.3 Four Essential Categories of Events

The four (4) essential categories are: Major League Baseball Games, Co-Owner's Everyday Events, Small Events, and Significant Events.

### 6.4 Major League Baseball Scheduling

Major League Baseball Games have an absolute priority over any other Event.

### 6.5 Additional Scheduling Priorities

During the Off-Season, the City shall have scheduling priority for City Events.

#### 6.6 Civic Impact Events and Other Conflicts

Parties may seek to accommodate the scheduling of Civic Impact Events, but the decision to reschedule Major League Baseball games lies with Major League Baseball.

#### 6.7 Co-Owner's Everyday Events

Co-Owner's Everyday Events Must involve the use of the Ballpark with activities engaged in by a party's own personnel and invited guests, must involve no Incremental Ballpark Revenues and no Incremental Ballpark Expenses, and must not interfere with the conduct of any other Event.

#### 6.8 Small Event Scheduling

Small Event require the use and occupancy of only a small portion of the Ballpark, i.e. receptions and meetings.

#### 6.9 Significant Event Scheduling

Padres shall provide to the City a written good-faith estimate of the Incremental Ballpark Expenses and Incremental Ballpark Revenues which the Padres anticipate may be incurred for each proposed Significant Event.

#### 6.10 Allocation by Formula

The Padres manage and operate Small and Significant Events held at the Ballpark. On May 21, 2012, the City approved the first amendment to the JUMA, which revised the amount due to the City to 30% for all Events held at the Ballpark with an annual minimum revenue of \$300,000. Net Incremental Loss for Small Events is allocated 100% to the Padres.

#### 6.11 Accounting and Payments for Events

Per Non-Baseball Events Letter dated May 10, 2005, Padres calculate Event Net Incremental Revenue or Loss and report to City monthly, and pay City on April 30 and November 30.

The Padres shall be entitled to offset the amount of its Event Capital Expenditure Credit against the amount of Net Incremental Revenue otherwise payable to the City. This offset does not relieve the Padres of its obligation to make the Minimum Annual Payment.

#### 6.12 Padres Assistance and Event Accounting and Payments with City Events

Incremental Ballpark Revenues include admission ticket proceeds, concession commissions (except Padre related merchandise), and Net Parking Revenue.

Monthly Event Reports shall include the following unless otherwise agreed by the parties: admission ticket proceeds, concession commissions, Padre related concession commissions, and Net Parking Revenue, any other revenue, fees or operating expenses paid by Padres to parking operators, Incremental Ballpark expenses, any other financial information requested by the City.

#### 6.13 Reconciliation

Either party may submit a revised statement to, or request a revised statement from, the other party for reconciliation purposes. All reports and other information submitted by the Padres to the City described in this Article 6 shall be subject to the City's audit rights as set forth in Section 28.5.

## ARTICLE 7 MANAGEMENT, MAINTENANCE, REPAIRS AND IMPROVEMENTS

### 7.1 Ballpark Management

If City determines that on two occasions within a calendar year Padres fails to timely perform Ballpark Management obligations, City shall deliver written notice to the Padres. City's determination will be contested via arbitration, unless contention is waived. Padres have the right to cure (or must start cure process) within thirty (30) days. If arbitration finds City correct, City can terminate Padres' Ballpark Management responsibilities and appoint a nationally recognized management company.

### 7.2 Ballpark Management Contracts

Padres can contract Ballpark Management services out, including to one of its Affiliates, if the terms of that agreement are no less favorable than could be obtained from an independent management company.

### 7.3 Playing Field Maintenance and Repair

General maintenance and repair is a Padres Expense. Damage caused by an Event is an Incremental Ballpark Expense.

### 7.4 Cleaning and Trash Removal

Cleaning and trash removal is a Padres responsibility.

### 7.5 Utilities

It is the Padres' responsibility to contract all utilities. City will assist with reconnections of services, if required. Padres shall provide, Maintain, Repair and regularly test the emergency back-up systems for the Ballpark Property.

### 7.6 Game and Event Operations

This section 7.6 and section 7.7 were clarified in the [Police and Traffic Control Services at Padre Home Games Letter dated September 27, 2007](#).

- Padres are responsible for paying the cost of Police services inside the Ballpark;
- Padres are responsible for providing & supervising personnel inside the Ballpark, including crowd control, first-aid, and emergency medical assistance;
- City is responsible for paying the cost of Police services outside the Ballpark;
- City is responsible for paying 155.6 hours of Special Event Traffic Control Services (SETC); and
- Padres are responsible for paying the cost of SETC in excess of 155.6 hours.

### 7.7 Security

Security is a Padres responsibility. Ballpark has twenty-four (24) hour per day and year-round security.

### 7.8 Capital Expenditure Budget

This section 7.8 was clarified in the [Date for Submission of Proposed Capital Expenditure Budget Letter dated September 23, 2005](#).

- 1) No later than October 31 of each year, the Padres shall submit to the City a proposed Capital Expenditure Budget;
- 2) The City, pursuant to [Section 7.8.4](#) of the JUMA, will have thirty (30) days after the receipt of the proposed Capital Expenditure Budget from the Padres to respond;

- 3) If no valid objections to the proposed Capital Expenditure Budget are raised by the City, the City shall use that Capital Expenditure Budget in the City's budget process for the City's succeeding fiscal year;
- 4) The Padres shall provide the City any updated information on the approved Capital Expenditure Budget no later than March 31 of each year; and
- 5) Following the close of the Padres' fiscal year, the Padres shall provide the City with a final reconciliation of the Capital Expenditure Budget for that fiscal year.

#### 7.9 Emergency Maintenance, Repairs and Improvements

Emergency Maintenance, Repairs and Improvements are the Padres' responsibility. In the event that the Padres fail to timely effect the Maintenance, Repairs or Improvements, City may effect such and be reimbursed for its share of Joint Ballpark Operating Expense, or from the Capital Expenditure Reserve Fund, if Maintenance, Repair, or Improvement was a Capital Expenditure not identified by the Capital Expenditure Budget.

#### 7.10 Notice to City of Material Defects, Damage or Destruction

The Padres shall notify the City, by written notice promptly, of any material defects, damage or destruction.

#### 7.11 Obligations Regarding Damaged Property

If a component of the Ballpark becomes damaged property due to negligence or misconduct on behalf of one party, that party will bear all the repair costs and such costs will not be Joint Ballpark Operating Expenses.

#### 7.12 Ownership of Improvements

The party that pays for an Improvement owns that Improvement.

#### 7.13 Improvements to Offices

Padres may improve their offices and those costs will be deemed Joint Ballpark Operating Expenses or Capital Expenditures.

#### 7.14 No Material Adverse Effect from Improvements

If the City reasonably believes that the Padres' making an Improvements would have a Material Adverse Effect on the City, the parties shall meet, confer and reasonably restructure the transaction in such a manner that (i) the Improvements may be made without such a Material Adverse Effect on the City, and (ii) the restructuring does not result in the imposition of additional costs on either party.

#### 7.15 Unapproved Improvements

If Padres make an improvement which requires approval, without approval, the City will determine whether the improvement is to be removed. If Padres make an improvement which does not require approval and which results in above standard Maintenance or Repair costs, Padres alone will bear the costs.

#### 7.16 Condition of Improvements at End of Term

If at the end of Term there are any deferred Maintenance items, City can require Padres to complete such obligations.

#### 7.17 Performance of Maintenance, Repairs and Improvements

It is the Padres' responsibility to perform Maintenance, Repairs and Improvements in a timely manner, to comply with City's Equal Opportunity Contracting Program (EOCP), and to allow EOCP staff to monitor and review such compliance.

#### 7.18 Limitation of Responsibility

City's payment of Joint Ballpark Operating Expenses (JBOE) shall not be considered approval of actual performance and City shall hold no liability for performance of Maintenance, Repairs and Improvements work.

#### 7.19 Payment of Claims and Removal of Liens

Payment of claims and removal of Liens are the Padres' responsibility. If Padres fail to timely address, City may pay (or contest) such claims or Liens, and the Padres will reimburse the City. Padres' expenses shall be JBOEs or Capital Expenditures.

#### 7.20 Inspection by the City

City may inspect Ballpark quarterly, with five (5) days written notice to Padres.

#### 7.21 Operations and Maintenance Manuals

City should have a copy of the Padres' Operations Manuals and the Padres' Maintenance Manual.

#### 7.22 Capital Event Expenditures

Every Fiscal Year, 30% of all costs predominantly in connection with 70/30 Events (Event Capital Expenditures) will be credited to the Padres as Event Capital Expenditures Credit. Event Capital Expenditures Credit offsets the amount of Net Incremental Revenue payable to City. Event Capital Expenditures Credit carries forward each Fiscal Year. Before receiving Event Capital Expenditures Credit, the Padres present the City a statement of Event Capital Expenditures, and City has ten (10) days to agree or disagree.

### ARTICLE 8 OWNERSHIP AND OPERATING EXPENSES

#### 8.1 Joint Ballpark Ownership Expenses

The parties share the JBOE.

#### 8.2 City Share of Joint Ballpark Ownership Expenses

December 15 (or before) Padres deliver to City a good-faith written estimate of (i) JBOE for the upcoming Fiscal Year and (ii) the City Share of JBOE for the upcoming Fiscal Year. Each Fiscal Year the City must pay the Padres an amount equal to the lesser of:

1. 70% of the actual JBOE for that Fiscal Year; or
2. the City's joint expense cap for that Fiscal Year.

The City's joint expense cap was set at \$3,500,000 at the Commencement Date and is adjusted upward annually by CPI for the period including January 1 in a Fiscal Year over the CPI for the period including January 1 of the previous Fiscal Year. City determines the amount it owes and makes two equal installments, on February 1 and August 1 of such Fiscal Year.

### 8.3 Payment of City Share of Joint Ballpark Expenses

December 30 (or before) Padres deliver to City a final reconciliation of (i) all Joint Ballpark Ownership Expenses actually incurred in the preceding calendar year, and (ii) the amount of the City Share of Joint Ballpark Expenses for such calendar year (including back-up computations), together with a certificate of the CFO certifying that such reconciliation is true and accurate

Within twenty (20) business days of the delivery of the final reconciliation, one party pays the other party the amount of reconciliation it owes.

8.3.1 For the Fiscal Year that includes the Commencement Date, based on the Padres' Joint Expense Estimate for such Fiscal Year, the City shall pay to the Padres an amount equal to the estimate of the City Share of Joint Ballpark Expenses in two (2) equal installments, on July 1 of such Fiscal Year and November 1 of such Fiscal Year.

### 8.4 Incremental Ballpark Expenses

Padres are responsible for Padres Games and Events and City is responsible for City Events. For all Events "usual and customary" clarified in [Police and Traffic Control Services at Padre Home Games Letter dated September 27, 2007](#):

- Padres are responsible for paying the cost of Police services inside the Ballpark;
- Padres are responsible for providing & supervising personnel inside the Ballpark, including crowd control, first-aid, and emergency medical assistance;
- City is responsible for paying the cost of Police services outside the Ballpark;
- City is responsible for paying 155.6 hours of Special Event Traffic Control Services (SETC); and
- Padres are responsible for paying the cost of SETC in excess of 155.6 hours.

### 8.5 Capital Expenditures

Approved Capital Expenditures shall be paid with funds from the Capital Expenditures Reserve Fund. Padres are responsible for Capital Expenditures that cannot be paid from the balance of the Capital Expenditures Reserve Fund and all improvements to the Padres Offices. Any Capital Expenditures paid for by Padres is considered an interest free loan to the Capital Expenditures Reserve Fund. The loan is to be repaid as soon as possible from future deposits into the Capital Expenditures Reserve Fund, provided that the Capital Expenditures Reserve Fund does not drop below \$500,000.

### 8.6 Capital Expenditure Reserve Fund

City shall establish a system to track withdrawals and deposits to and from the Capital Expenditures Reserve Fund. Interest income and investment earnings generated by the Capital Expenditures Reserve Fund become part of the fund. Padres shall allow no liens on its interest in the Capital Expenditures Reserve Fund. All funds in the Capital Expenditures Reserve Fund belong to the City.

### 8.7 Deposits into the Capital Expenditure Reserve Fund; Padres Capital Expenditures

Instead of depositing \$250,000 per year in the Capital Expenditures Reserve Fund, Padres shall make yearly Capital Expenditures of not less than \$1,000,000. City has no obligation to make any deposits into the Capital Expenditures Reserve Fund.

### 8.8 Investment of Funds in the Capital Expenditure Reserve Fund

City can invest funds from Capital Expenditures Reserve Fund only in investments in which the City is permitted to invest its own funds.

### 8.9 Disbursements from the Capital Expenditure Reserve Fund

Capital Expenditures Reserve Fund may be drawn upon with written approval from both parties. Request for Payment by the Padres from the CE Reserve Fund have to be approved or declined by City within twenty (20) Business Days. City can withdraw funds from the Capital



Expenditures Reserve Fund to reimburse City for Reimbursable Costs, but only after ten (10) Business Day written notice to the Padres.

## ARTICLE 9 AFFORDABLE FAMILY BASEBALL PROGRAMS

Padres will provide attractive and meaningful programs designed to keep Major League Baseball affordable for families, including senior, military, and children discount programs.

## ARTICLE 10 CONCESSIONS

### 10.1 Padres' Rights

Padres have the right to select concessionaire and enter into concession agreements, for all Events.

### 10.2 Concessionaire Agreements

Padres may enter into one (1) or more concession agreements. All concession agreements must offer comparable terms for all Events.

### 10.3 City Events

City can sell its novelties at any City event, after consulting with Padres about pricing. Padres have right to approve all other products for sale at City events.

### 10.4 Concession Fees and Commissions

All fees paid by concessionaire are retained by Padres (for all Events, except City Events). All concession commissions payable in connection to City events shall be remitted to City.

### 10.5 Additional Improvements

If concessionaire requires improvements to Ballpark property, those improvements, its Maintenance, and Repair, shall be paid by the concessionaire and the Padres.

### 10.6 Environmental Responsibilities

Padres shall require its concessionaires to adhere to the Settlement Agreement among the City, the Redevelopment Agency of the City of San Diego, Centre City Development Corporation, the Padres, and the Environmental Health Coalition dated as of October 19, 1999.

## ARTICLE 11 ADVERTISING AND SIGNS

### 11.1 Advertising and Signs

Padres have exclusive right to sell advertising within Ballpark. All interior facing signs are exempt from City's sign ordinance. All advertisement shall be displayed at all Events and may not be covered without the Padre's consent.

### 11.2 Sponsors and Prohibited Competitors

No City Event shall have a Prohibited Competitor as a title sponsor, a Prohibited Sponsor is a competitor in an established category of any exclusive Ballpark advertiser or sponsor. City may request a list at any time. City shall give Padres opportunity to review temporary advertisements for City Events ten (10) business days before the event. If approved City may sell and retain the revenue from these temporary advertisements.

### 11.3 Other Advertising

Padres may conduct all forms of advertising at the Ballpark.

## ARTICLE 12 BROADCAST FEES

### 12.1 Definition of Broadcast Fees

All rights, other fees, arrangements, and income relating to the production and distribution of Events for media; inside and outside the local market.

### 12.2 Ownership of Broadcast Fees

Padres retain Broadcast Fees for Padres Games and Events, City retains Broadcast Fees for City Events.

## ARTICLE 13 EXCLUSIVE VENUE, NON-RELOCATION OF TEAM AND SALE OF FRANCHISE

### 13.1 Exclusive Venue

Padres shall not play any Home Games any other place than the Ballpark unless the City, in its sole and absolute discretion, authorizes it in writing. Exceptions which Padres may take:

1. Three (3) Home Games outside the continental U.S. per Season;
2. One (1) home series (not to exceed 5 Home Games) in Asia once a three (3) year period starting with 2004-2006. Current period is 2022-2024. City has to authorize if consecutive Seasons include this Asia home series; and
3. On the basis of health or safety risk at the ballpark.

### 13.2 No Relocation of Team

Padres shall not relocate for duration of Term to any location other than the City of San Diego.

### 13.3 Sale of Franchise

Padres can sell franchise without City's consent but new franchise owner must agree in writing to acquire all rights and obligations under the Franchise and the JUMA.

## ARTICLE 14 RIGHT OF FIRST REFUSAL AND EXCLUSIVE NEGOTIATION

### 14.1 Right of First Refusal

Padres have right of first refusal if the City makes or receives an offer to sell the City Property (or its interest in the Site Lease).

### 14.2 Exclusive Negotiation

Padres may deliver a written notice to the City that they wish to purchase the City Property (or the City's interest in the Site Lease) once every six (6) months or the City may deliver notice to the Padres if it contemplates selling the City Property (or the City's interest in the Site Lease). If either of these occur, the City will negotiate exclusively and in good faith with the Padres exclusively for sixty (60) days.

## ARTICLE 15 BONDS

### 15.1 Bond Constraints

Any payments made to or to be made by the Padres to the City shall not be used to pay principal of, or interest on, the Bonds for purposes of the private security or payment of

Section 141(b)(2) of the Internal Revenue Code. This includes payments for services provided by the City or any related party of the City.

#### 15.2 Tax-Exempt Status of Bonds

Parties will commit to avoid adversely affecting the tax-exempt status of the Bonds under federal law.

### ARTICLE 16 ADDITIONAL CONDITIONS AND OBLIGATIONS

#### 16.1 Third-Party Agreements

Padres may enter into agreements with third parties for Ballpark operations. If Padres defaults on JUMA, City can unilaterally cancel these agreements or take Padres' rights and responsibilities. If a Bond Counsel Opinion concludes that a contract will cause the Bonds not to qualify for tax-exempt status, the Padres shall not enter into such contract.

#### 16.2 Compliance With Laws

Padres shall comply with all laws, including obtaining licenses and permits.

#### 16.3 Maintenance of Good Standing in League

The Padres will maintain the Team in good standing with the National League and the Office of the Commissioner of Baseball.

#### 16.4 Outfield Park CCRs

Padres granted exclusive rights of Ballpark Owner, including:

- a) easement rights;
- b) holding Events in Baseball Event Area of the Outfield Park;
- c) naming rights to the Ballpark, Outfield Park and Improvements thereon and retain the proceeds from such rights;
- d) designating the members of the Architectural Committee;
- e) adopting signage criteria;
- f) voting rights; and
- g) plenary rights to perform all other acts permitted or required.

Padres shall keep the City generally informed on the administration and implementation of the Outfield CCRs. City is permitted to participate in meetings and discussions pertaining to the Outfield Park CCRs, to the extent reasonably requested by the City.

Padres assume all obligations of Ballpark Owner, provided that payments made by the Padres will be considered JBOE, Incremental Ballpark Expenses, or Capital Expenditures, and that there will be cross-indemnification rights between the parties.

An Affiliate of the Padres may own portions of the Outfield Park Retail Parcels with the same rights as the Padres.

### ARTICLE 17 INSURANCE AND SUBROGATION

#### 17.1 Term of Insurance

Padres shall obtain Insurance and the cost for such is a JBOE.

### 17.2 Types of Insurance

Insurance must be sufficient to satisfy the requirements of the Bond Documents, and meet the following requirements:

- 17.2.1 Commercial general liability – combined single limit \$1,000,000 per occurrence.
- 17.2.2 Excess liability – \$50,000,000 per occurrence with \$50,000,000 annual aggregate.
- 17.2.3 Auto – combined single limit \$1,000,000 per occurrence.
- 17.2.4 Property insurance upon City property in the name of the City, PFFA, and the Trustee, and upon the Padres property in the name of the Padres with the City, PFFA, and the Trustee named as loss payees. Amount will be the greater of the full replacement cost of the Ballpark Property without deduction for depreciation or the then-current principal amount of outstanding Bonds. Deductibles will be the lesser of the maximum amount of the deductibles permitted but the Bond Documents or \$250,000, adjusted upward by CPI every fifth Fiscal Year.
- 17.2.5 Workers compensation – \$1,000,000 employer’s liability coverage
- 17.2.6 Use and occupancy insurance, in an amount sufficient to pay the Base Rental Payments (Ballpark Facility Lease Term – Exhibit C of [Exhibit C](#)) for a 24 month period.

### 17.3 Additional Insurance Specifications

Insurance carrier shall have at least an “A-VII” rating by AM BEST and be licensed in California.

All policies (except workers’ compensation) shall name the City, the Agency, CCDC, PPFA, the Trustee, and their respective officers, directors, employees, attorneys, agents and representatives as additional insureds.

Endorsements shall be submitted to the City to the effect that:

- a) policies are primary and non-contributory;
- b) policies cannot be canceled, non-renewed, or changed except after thirty (30) calendar day prior written notice from the insurer to the City; and
- c) all deductibles are the responsibility of the Padres.

City agrees that, if requested by the Padres, it will cooperate in arranging for the insurance coverages to be procured through the City pooled insurance arrangements.

### 17.4 Underlying Insurance

Either Party may require that appropriate insurance coverages be obtained from contractors who will be performing work on a particular Capital Expenditure or Improvement. Padres are responsible for requiring insurance and indemnifications as they deem appropriate for any third parties performing services related to the use, operation, or management of the Ballpark Property.

### 17.5 Evidence of Insurance

A certified copy of all insurance policies shall be delivered to City.

#### 17.6 Annual Review

The parties shall conduct an annual review in order to determine the adequacy of the coverage amounts, not less than thirty (30) days prior to insurance termination date.

#### 17.7 Waiver of Subrogation

Insurance must include Waiver of Subrogation of all rights against the Padres, the City, the Agency, CCDC, PFFA, the Trustee, and their respective officers, directors, employees, attorneys, agents and representatives.

#### 17.8 City's Governmental Immunity

Parties recognize that City has, and has not waived, governmental immunity.

#### 17.9 Acknowledgements of Bond Covenants and Application of Insurance Proceeds

So long as bonds remain outstanding (See Section 23.3.1):

- the proceeds of any claims that are paid under a policy required by the Bond Documents shall be administered by the Trustee in accordance with the terms of the Bond Documents;
- proceeds from any other insurance policy shall be deposited into an account, jointly in the names of the City and the Padres, established for the payment of costs to repair the damage or destruction in accordance with the Lease and the Indenture (the “Restoration Account”);
- Net Proceeds of any insurance claim (other than claims under any business interruption insurance policy) payable to the City or the PFFA shall be applied pursuant to the Lease and the Indenture;
- the Padres shall rebuild all damaged or destroyed portions of the Ballpark Property, to the extent such insurance proceeds are made to the Padres sufficient to effectuate such rebuilding;
- to the extent such insurance proceeds made available to the Padres are insufficient to cover the costs of any repair, restoration or replacement of any Damaged Property, then such costs shall be allocated as may be mutually agreed by the parties at that time; and
- in the event that the Bond Documents require the City to use the proceeds of insurance to rebuild or repair the City Property, the Padres shall use their proceeds to rebuild or repair Padres Property.

### ARTICLE 18 INDEMNIFICATION

#### 18.1 Indemnification by the Padres and 18.2 Indemnification by the City

Each party indemnifies the other, together with its Parties, from any Losses related to the failure of the indemnifying party to perform its obligations, its breach of any of the representations or warranties, or its, or its Parties', negligence or willful misconduct.

#### 18.3 Procedures for Indemnification

- The “Indemnified Party” shall give notice to the “Indemnifying Party” to indemnify it each time that it becomes aware of anything that would create an obligation to indemnify.

- If no notice is given within thirty (30) days after becoming aware of any such fact or circumstance, the Indemnified Party shall not be entitled to recover the amount of any Losses which it would not have been incurred if it had provided notice in a timely manner.
- The Indemnifying Party shall have the right and obligation to assume the defense of any such claim in respect of which it is obligated to provide indemnity.
- The Indemnifying Party shall not settle or compromise any such claim without the Indemnified Party's prior written consent.
- The Indemnified Party at all times shall have the right, at its option and expense, to participate fully in the defense or settlement of such claim.
- The parties shall cooperate fully in defending or settling any third-party claim.

#### 18.4 Waivers for Insurance

The parties waive all recovery rights against each other to the extent that the waiving party has valid and collectible insurance covering the Losses sustained.

#### 18.5 Survival

This Article 17 survives the Agreement.

### ARTICLE 19 DEFAULT AND REMEDIES

#### 19.1 Default by the Padres:

The following constitute a default by the Padres:

- 19.1.1 Failure to pay City, if failure continues for twenty (20) days after notice that payment is due.
- 19.1.2 Failure to perform any JUMA responsibility, if not addressed for thirty (30) days after notice is given.
- 19.1.3 Padres admit in writing their inability to pay their debts.
- 19.1.4 A trustee or receiver is appointed for the Padres and is not discharged within ninety (90) days.
- 19.1.5 Bankruptcy (etc.) instituted by or against the Padres and not dismissed within ninety (90) days.

#### 19.2 City's Remedies

Until Padres Default has been cured:

- the City may sue for damages;
- the Padres right to repayment from the Capital Expenditures Reserve Fund is tolled;
- the City may choose to make payments on behalf of Padres and later reimbursed, including interest and costs; and
- City may obtain injunction from violation of Sections [13.1](#), [13.2](#), or [13.3](#).

### 19.3 City's Termination Rights and Limitations

- 19.3.1 City may terminate the Padres' occupation rights and management rights separately.
- 19.3.2 Padres' management rights can only be terminated if arbitration ([Section 28.1](#)) determines that they failed to perform, and cure, their Material Ballpark Management Obligations twice in one calendar year (Re-Entry Default).
- 19.3.3 Padres' Re-Entry Default does not terminate its obligations to use and occupy the Ballpark, to pay a share of all Repairs, Improvements, Maintenance, operations, and replacement manager costs.
- 19.3.4 Upon Re-Entry Default, City can unilaterally cancel Padres' third party agreement or take Padres' rights and responsibilities.
- 19.3.5 Termination does not deprive City of its past rent payments by the Padres.
- 19.3.6 City may exercise any remedy without terminating, no action will be considered termination unless stated by the City that that is its intent.

### 19.4 Default by City

The following constitute a default by the City:

- 19.4.1 Failure to pay Padres, if it continues for twenty (20) days after notice that payment is due.
- 19.4.2 Failure to perform any JUMA responsibility, if not addressed for thirty (30) days after notice is given.
- 19.4.3 A trustee or receiver is appointed for the City and is not discharged within ninety (90) days.
- 19.4.4 Bankruptcy (etc.) instituted by or against the City and not dismissed within ninety (90) days.

### 19.5 Padres' Remedies

If City defaults:

- Padres may sue for damages;
- Padres may choose to make payments on behalf of City and later reimbursed, including interest and costs; and
- Upon a second uncured material City Default within one calendar year, Padres may terminate the JUMA.

### 19.6 Rights of Set-Off; Phase I Hotel Set-Off

Either party can set-off payments owed to them when making their own payments. Exception: Padres cannot set-off City or 70/30 Event revenue. Phase I and ancillary development hotels remit to the City certain annual thresholds of Transient Occupancy Tax (TOT). The City may reduce its share of the annual JBOE by the amount the annual threshold exceeds the TOT remitted by these hotels.

[19.7 Remedies Not Exclusive](#) Remedies are cumulative.

#### [19.8 Default Interest](#)

Default Interest Rate shall be added to late payment between the parties.

### [ARTICLE 20 PROTECTION OF THE PADRES' RIGHTS](#)

City will not interfere with Padres' rights as long as Padres do not default on their obligations.

#### [ARTICLE 21 RIGHT OF ENTRY](#)

City and its agents have right to enter Ballpark Property for any valid purpose.

### [ARTICLE 22 SUBORDINATION AND ATTORNMENT](#)

#### [22.1 Subordination](#)

Parties subordinate JUMA to the Outfield Park CCRs.

#### [22.2 Attornment](#)

If City transfers its interest in the City Property, the Padres will attorn to such transferee, City will continue with obligations from Sections [7.6.2](#), [8.4.2](#), and [28.7](#).

### [ARTICLE 23 UNTENANTABILITY](#)

#### [23.1 Alternate Site](#)

Padres are entitled to play Home Games at an alternate site if the Ballpark becomes untenable. If parties cannot agree on alternate site within the City and County of San Diego, site may be outside the City and County of San Diego. Untenantability does not give Padres the right to terminate unless:

- a) Ballpark becomes untenable within the last 5 years of Term;
- b) City determines that there is no financially feasible plan to complete reconstruction within 3 years of untenantability; and
- c) City does not commit to reconstruct within 6 months of untenantability.

#### [23.2 Continuing Obligations](#)

Untenantability does not relieve the Padres of any of its Ballpark Management obligations.

#### [23.3 Rebuilding Obligations](#)

If damage or destruction is covered by any insurance policy required by the Bond Documents the insurance proceeds will be administered by the Trustee. Proceeds from any other policy will be deposited into an account, jointly held by the parties, for the payment of repair to damage or destruction ("Restoration Account"). If insurance proceeds are insufficient to cover repairs, costs will be allocated as mutually agreed by the parties. If Ballpark is not rebuilt, insurance proceeds will be distributed in accordance with Indenture ([Exhibit F](#)) Article VI, which refers to Ballpark Facility Lease ([Exhibit C](#)) Article VII.



## ARTICLE 24 EMINENT DOMAIN

### 24.1 Termination for Condemnation

If a material part of the Ballpark is condemned, the JUMA will terminate. Material part is a loss of seating of a number of seats having a ticket price equal to 10% or more of the aggregate ticket price of all seats in the Ballpark. Padres may elect to treat any loss as not a material part.

### 24.2 Performance of Work

In Condemnation occurs and JUMA is not terminated, Padres shall perform all work necessary to restore Ballpark to suitability. Costs will be allocated as agreed to by the parties.

### 24.3 Use of Condemnation Award or Settlement Proceeds

Proceeds applied per Indenture ([Exhibit F](#)) Article VI, which refers to Ballpark Facility Lease ([Exhibit C](#)) Article VII.

### 24.4 Temporary Taking

In the event of temporary taking, JUMA shall not terminate and rights and obligations continue in full force and effect, except: (i) Padres are entitled to play Home Games at an alternate site if the Ballpark becomes untenable. If parties cannot agree on alternate site within the City and County of San Diego, site may be outside the City and County of San Diego; and (ii) Padres are relieved of Ballpark management costs and responsibilities, if responsibilities are inconsistent with terms of taking.

## ARTICLE 25 SURRENDER AND ABANDONMENT

### 25.1 Surrender

Upon Term Padres will deliver Ballpark in good order and deliver all keys, combinations, etc.

### 25.2 Abandonment

Padres shall not vacate or abandon Ballpark during the Term. If they do, remedies available are per [Section 19, Default and Remedies](#).

## ARTICLE 26 REPRESENTATIONS BY THE PADRES

### 26.1 Valid Existence

Padres are a Delaware Limited partnership.

### 26.2 Power; No Limitation on Ability to Perform

Padres are only limited by some need of approval of the National League and the Office of the Commissioner or Baseball.

### 26.3 Valid Execution

JUMA is validly executed.

### 26.4 Defaults

JUMA does not cause Padres to default on any prior agreement / obligation.

### 26.5 Team Ownership

Padres own the Team.

### 26.6 Compliance With Laws

Padres comply with all Laws.

### 26.7 Maintenance of Good Standing in League

Padres and Franchise are in good standing with the National League and the Office of the Commissioner or Baseball

## ARTICLE 27 REPRESENTATIONS BY THE CITY

### 27.1 Valid Existence

City is a corporate body and political subdivision of California.

### 27.2 Power; No Limitation on Ability to Perform

City has power and no limitation on ability to perform.

### 27.3 Valid Execution

JUMA is validly executed.

### 27.4 Defaults

JUMA does not cause City to default on any prior agreement / obligation.

## ARTICLE 28 MISCELLANEOUS

### 28.1 Arbitration

Arbitration is the binding means for resolving disputes between the parties (“Dispute”). Either party may commence arbitration by written demand to the other party with a copy to the American Arbitration Association (“AAA”). AAA will provide the parties a list of five (5) potential arbiters. The parties shall each take turns striking names from the list until only one (1) name remains, Padres strike first. Arbitration judgement can be entered in any court with jurisdiction.

- a) The arbitration shall occur in San Diego, CA;
- b) The arbitration shall be governed by the laws of California and shall be conducted in accordance with the Commercial Arbitration Rules of AAA;
- c) The arbiter shall not discuss the arbitration with either party *ex parte*;
- d) The prevailing party will be entitled to arbitration costs and attorney’s fees;
- e) Arbitration shall commence within 30 days of selecting the arbiter;
- f) Arbiter shall express its decision in writing to both parties within ten (10) days of the close of the presentation; and
- g) There will be no right to appeal, except on the grounds set forth under California Law.

### 28.2 No Smoking Ballpark

Ballpark will be “No Smoking” in accordance with applicable City ordinances.

### 28.3 Fireworks

Padres are permitted to use Ballpark for fireworks in Baseball events, with the following limitations:

- a) No more than three (3) thirty (30) minute and ten (10) ten (10) minute fireworks displays per season;
- b) May occur only on Opening Day, last day of season, Friday and Saturday evenings, Memorial Day, Independence Day, Labor Day, one Mexican national holiday, playoff games, World Series games and All-Star games;

- c) Theatrical fireworks of no more than thirty (30) seconds will be allowed following Padres victories and home runs at each Baseball event; and
- d) Fireworks must comply with all applicable City ordinances and Laws.

For non-Baseball events, fireworks require the consent of both parties and shall be subject to all applicable City ordinances and Laws.

#### 28.5 Audit Rights

- 28.5.1 City has the right to review and audit, at Padres Offices, all books, records and data of the Padres, their Affiliates, contractors, and subcontractors (to which the Padres themselves have access) which relate or are pertinent to the JUMA. Books, records and data shall be retained by the Padres for at least three (3) years after the end of the Fiscal Year to which they relate.
- 28.5.2 Audit may be performed by City staff or advisors, or independent certified public accounting firm. The results will be binding to both parties, but Padres can appeal to City Council, whose determination is binding.
- 28.5.3 Audits must preserve proprietary and confidential information.
- 28.5.4 If audit finds that Padres owes City money, Padres will promptly remit to the City (within thirty (30) Business days) the amount owed. See section [28.5.4\(b\)](#) for cases where Padres will also pay Audit Costs.

#### 28.6 Naming Rights

Padres have exclusive rights to enter into naming rights agreement. Naming Rights shall not extend beyond the Term. Padres retain all funds from the sale of Naming Rights.

#### 28.7 Limitation on New Taxes

If City imposes new or increased taxes against the Padres with respect to the Ballpark the Padres receive full credit for the amounts otherwise owed to the City under the JUMA. This limitation does not apply to:

- a) New or increased taxes already established as of August 4, 1998;
- b) Assessments imposed by a vote of taxpayers within an assessment district including the Ballpark; and
- c) New or increased taxes which are generally applicable, which mean:
  - 1) They apply City-wide;
  - 2) They are payable by a substantial number of taxpayers in addition to Padres; and
  - 3) They are not an admission, ticket, entertainment or similar tax, fee or assessment.

#### 28.8 Possessory Interest Taxes

All possessory interest taxes shall be the sole responsibility of the Padres (and are not a JBOE).

#### 28.9 Drafting of Agreement

No ambiguity can be construed against either party. Neither party can alone be considered the JUMA drafter.

#### 28.10 Material Adverse Effect

The Padres will comply in all material respects with the Padres' covenants set forth in the JUMA regarding actions by the Padres which the City reasonably believes would have a Material Adverse Effect upon the City.

#### 28.11 Proprietary or Confidential Information

All books, records and data provided by Padres to City pursuant to the JUMA do not contain proprietary or confidential information, unless specified by Padres. If Padres assert, that specifically data provided contain proprietary or confidential information, the parties shall agree on a procedure by which City may review or audit all such information, but not copy or excerpt, or reach another agreement so that it may be preserved to the maximum extent permitted by Law.

#### 28.12 No Waiver

No waiver by either party of any breach shall be a waiver of any subsequent breach.

#### 28.13 No Joint Venture

Padres are an independent contractor of the City.

#### 28.14 Statement of Performance

Each party shall, within ten (10) days after request by the other party, deliver to the other party a statement certifying that the JUMA is in full force and effect.

#### 28.15 Notices

Any notice to be given shall be in writing, shall be (i) hand delivered to the receiving party, (ii) sent by telecopy, (iii) sent by Federal Express or other nationally-recognized overnight courier service, or (iv) sent by or as an attachment to electronic mail (with acknowledgment of receipt).

#### 28.16 Designated Agents

The City Ballpark Administrator is authorized to deal with the Padres on all matters relating to the JUMA. Padres shall designate an executive officer to be the primary contact for the City with respect to the Ballpark Property and who is authorized to deal with the City on all matters relating to the JUMA.

#### 28.17 Assignment

City shall consent in writing to an assignment of this Agreement to any Person who acquires the entire ownership interest in the Franchise, provided such assignee assumes unconditionally all of the Padres' obligations for the balance of the Term. Upon the effective date of assignment, the Padres shall have no further liability hereunder. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party.

#### 28.18 Successors and Assigns

The JUMA shall be binding upon the parties hereto and their respective successors and assigns.

#### 28.19 Authorized City Representative

Any action to be taken by the City hereunder may be taken by the City Manager or his or her designee, unless the City Manager elects otherwise or applicable law requires otherwise.

#### [28.20 No Third Party Beneficiaries](#)

The JUMA shall not confer any rights or remedies upon any person other than the parties, CCDC, the Agency and PFFA and their respective successors and permitted assigns.

#### [28.21 Costs of Legal Proceedings](#)

If any party institutes legal proceedings, the prevailing party shall be entitled to court costs and reasonable attorneys' fees incurred by the prevailing party.

#### [28.22 Entire Agreement](#)

The JUMA, together with its Exhibits, represents the entire agreement between the parties. If any provision of the JUMA is found to be ambiguous the MOU may be of assistance in the interpretation of that ambiguity. The JUMA shall not be deemed to supersede provisions of the MOU that address subject matter not addressed herein.

#### [28.23 Amendments](#)

No amendments or modifications to the JUMA shall be made unless in writing, executed and delivered.

#### [28.24 Severability](#)

If anything in the JUMA is held to be invalid or unenforceable, the remainder of the JUMA shall not be affected.

#### [28.25 Headings and Captions for Convenience](#)

Headings and captions are for convenience only and shall not be considered in interpreting the provisions.

#### [28.26 Exhibits Incorporated](#)

All exhibits referred to in the JUMA shall be deemed incorporated in the JUMA by reference.

#### [28.27 Submission to Jurisdiction](#)

Any legal action or proceeding with respect to this agreement may be brought in any court of the United States of America for the Southern District of California. Parties unconditionally accept the jurisdiction of such courts.

#### [28.28 Further Assurances](#)

Each party shall execute and deliver to other party documents and instruments and take other actions as other party may reasonably request, in order to more effectively consummate the transactions.

#### [28.29 Governing Law](#)

The JUMA is to be interpreted and enforced according to the laws of the State of California.

#### [28.30 Time is of the Essence](#)

Time is of the essence in every JUMA section.

#### [28.31 Counterparts and Facsimile Delivery](#)

The JUMA may be executed in counterparts.