

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: May 22, 2020

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Sale of SDCCU Stadium Site to San Diego State University: Legal Issues Relating to the Protection of the City of San Diego's Existing and Planned Future Water and Sewer Facilities and Groundwater Management Rights

INTRODUCTION

On November 6, 2018, City of San Diego (City) voters approved a citizens' initiative measure, commonly known as Measure G, establishing parameters for the City's potential sale to San Diego State University (SDSU) of approximately 135.12 acres of certain real property in Mission Valley (Acquisition Site). A significant portion of Measure G is codified in San Diego Municipal Code (Municipal Code or SDMC) section 22.0908. One of the requirements in Measure G is that the sale provide for the development of a River Park on approximately 34 acres of real property contiguous to the southern border of the Acquisition Site (River Park Property). SDMC § 22.0908(i). The River Park Property will remain in the City's ownership and is an asset of the City's Water Utility Fund.

The City, through its Public Utilities Department (PUD), currently operates and maintains public facilities, including groundwater monitoring wells, water mains, and sewer pipelines, located on both the Acquisition Site and the River Park Property (collectively, the Properties). This critical City infrastructure requires recorded easements to adequately protect the interests of the City and its utility ratepayers (Ratepayers).¹ Also, PUD has long-standing plans to construct future public facilities on the River Park Property to fulfill the City's groundwater management needs and support the City's Pure Water program.

¹ Ratepayers consist of the City's water and sewer customers, including residents and businesses who pay regular utility bills to the City in exchange for the City's continued provision of local water and sewer service. The City deposits the revenue generated from customers' payment of utility bills in enterprise funds, such as the Water Utility Fund and the Sewer Revenue Fund, which are administered separate and apart from the City's General Fund. Ratepayer funds can only be used for the benefit of the utility for which those funds were collected (e.g., construction, operation, and maintenance of the utility system).

Below, we provide a summary of our legal concerns and recommendations for the City Council as it considers this transaction with respect to water, sewer, and groundwater management issues.

EXECUTIVE SUMMARY

In January 2019, the City and SDSU (collectively, the Parties) commenced negotiations related to the City's sale of the Acquisition Site and SDSU's development of the Properties in accordance with Measure G. The City identified issues related to the existing and planned future utility facilities in the early stage of negotiations. Since at least mid-2019, PUD has repeatedly informed SDSU that the planned future facilities are critical to the success of the Pure Water program and the City's groundwater management activities. However, SDSU has failed to properly address the City's utility needs in the negotiations. For example, SDSU has designed the development of the Properties in a manner that significantly impedes PUD's present and future utility needs related to the Properties. Also, SDSU seeks to include components on the City-owned River Park Property, such as two wetland mitigation areas (Wetland Mitigation Areas) and three storm water best management practices structures (Storm Water BMPs), that mainly benefit SDSU's development project. This could prevent the City from being able to move forward with planned Pure Water Program facilities in the future, or could significantly increase the costs of such projects to Ratepayers.

SDSU's preferred approach is reflected in its most recent draft of the Purchase and Sale Agreement (PSA), dated May 5, 2020 (SDSU Draft PSA), which SDSU officials have declared to be final and non-negotiable. The SDSU Draft PSA requires that the City forego application of the City's standard requirements with respect to the City's public utilities, and does not adequately address the City's present and future utility needs. During the course of negotiations, the City's representatives have continuously objected to many aspects of SDSU's preferred approach now contained in SDSU's Draft PSA, including through the email transmittal of a nine-page spreadsheet to SDSU's representatives on April 23, 2020 (PUD Response to SDSU Proposal). *See* Attachment A. In a further effort to protect the City's public facilities, my Office transmitted to SDSU an initial proposal dated March 11, 2020, and an updated proposal dated April 27, 2020 (responding to SDSU's April 22 feedback), regarding various permitting, mapping, and easement topics for the transaction (City's Permitting Proposal). *See* Attachment B. The SDSU Draft PSA does not incorporate several important elements of the City's Permitting Proposal, to the substantial detriment of the City and its Ratepayers.

As discussed below, if the City adopts SDSU's preferred approach, the City could face dire consequences in the future, including: (i) a violation of Measure G related to the necessary protection of the City's public utilities and groundwater management rights; (ii) a violation of the City's covenants related to bonded indebtedness for the operation of the City's water and wastewater systems; (iii) the loss of a future opportunity to achieve successful completion of Phase II of the Pure Water Program, substantially reducing the City's water production capacity and potentially forcing the City to retrofit a regional wastewater treatment plant in Point Loma at an estimated cost of billions of dollars; (iv) a potential downgrade in the credit rating related to

the City's public water and sewer utilities, increasing the City's borrowing costs in future bond transactions; and (v) exposure to costly litigation.

BACKGROUND

A. Water and Sewer Bond Covenants

The City has owned the Properties for many decades. A substantial portion of the Properties is owned by the City as a Water Utility Fund asset because the Mission Valley Aquifer (Aquifer) – a large, naturally occurring groundwater reservoir – is located beneath the Properties and can be developed as a source of water or used for water storage. This Water Utility Fund real property asset and related water utility lines are part of the City's "Water System," as that term is defined in Section 1.01 of the Amended and Restated Master Installment Purchase Agreement dated January 1, 2009, related to the City's outstanding water bond obligations (Water MIPA). The City's sewer utility lines on this real property asset also are part of the City's "Wastewater System," as defined in Section 1.01 of the Master Installment Purchase Agreement dated September 1, 1993, related to the City's outstanding sewer bond obligations (Sewer MIPA).

The Water MIPA and the Sewer MIPA (collectively, the MIPAs) are very similar contracts that impose binding covenants on the City, for the benefit of bondholders, with respect to the City's ownership of real property assets and operation of public facilities in connection with the City's bond obligations for the Water System and the Wastewater System, respectively (Bond Covenants).² Section 6.04 of each MIPA prohibits the City from entering into any agreement that impairs the operation of the Water System or the Wastewater System, or any part of those systems, or reduces net system revenues. In addition, the Water MIPA generally states that the City may only dispose of Water System property if the property has been determined to be immaterial or unnecessary to the needs of the Water System, or if the City is receiving fair market value for the property. If the property has not been determined to be immaterial or unnecessary, the City must, in addition to receiving fair market value, also comply with more onerous requirements before disposing of the property.³ Water MIPA § 6.04(b).

² Each of the MIPAs has been amended and supplemented multiple times since its inception. However, none of the amendments or supplements has any bearing on the topics addressed in this memorandum.

³ Under the proposed sale transaction, SDSU will not pay any monetary compensation to the City's Water Utility Fund for SDSU's development and use of the River Park Property for non-water utility related uses. Normally, the City would require the developer of any project on real property owned by the Water Utility Fund to pay appropriate compensation to the Water Utility Fund.

B. City's Existing Water and Sewer Facilities

PUD operates and maintains critical water and sewer infrastructure located on the Properties. SDSU's development will require relocation of some of those facilities. Subject to one key exception related to groundwater monitoring wells (as described below), the Parties appear to have reached an agreement regarding the process for the relocation of PUD's facilities, as follows: (a) the City will obtain an easement for the existing facilities upon the close of escrow for the sale transaction; (b) SDSU will submit an application, in compliance with the City's normal procedure, for future utility relocations; and (c) once each relocated facility has been constructed by SDSU and accepted by the City, and SDSU has granted to the City a new easement for the relocated facility, the City will process a vacation of the easement for the existing facility in accordance with its normal procedures.

PUD operates two groundwater monitoring wells, known as Wells MW-2 and MW-3 (Monitoring Wells), that are important assets of the Water Utility Fund. Located in the northeast quadrant of the Acquisition Site, the Monitoring Wells allow the City to obtain independent data to monitor and evaluate the groundwater quality of the Aquifer. SDSU has indicated that the Monitoring Wells need to be removed because, shortly after acquiring the Acquisition Site, SDSU intends to undertake mass grading of the Acquisition Site and pursue a development plan that does not accommodate the continued presence of the Monitoring Wells. PUD has reviewed preliminary information provided by SDSU in support of its desire to remove the Monitoring Wells. PUD's position is that relocation may be feasible, but that SDSU needs to follow PUD's standard utility relocation process, including the submittal of relocation plans, specifications, and drawings, to ensure that the applicable well requirements are met. *See* PUD Response to SDSU Proposal, pp. 1-3.

The Parties have negotiated the content of the PSA in an effort to memorialize their mutual understandings with respect to the proposed sale transaction. The SDSU Draft PSA reflects SDSU's position that PUD should preapprove the removal of the Monitoring Wells. However, PUD cannot grant preapproval because SDSU has not yet provided any information to substantiate that the proposed new well locations will meet applicable well requirements (e.g., access, easement dimensions, utility offsets, etc.). At the close of escrow, the City will require a 100-foot by 100-foot easement over each of the existing Monitoring Wells. The easements are necessary to comply with California Department of Water Resources regulations and to ensure adequate space is available for operation and use of the Monitoring Wells. Once the Parties have agreed on a relocation plan and SDSU has prepared appropriate plans and obtained all necessary permits, SDSU could destroy the Monitoring Wells and the City could process the approval of an easement vacation in accordance with the Municipal Code. *See* PUD Response to SDSU Proposal, pp. 1-3.

PUD is also concerned that the SDSU Draft PSA does not adequately preserve the integrity of PUD's water and sewer utility lines and could lead to costly damage to those lines or disruptions in utility services to customers. To prevent this, PUD would need to retain the ability to review and approve SDSU's proposed development activities within PUD's utility easement areas, consistent with PUD's normal process. *See City's Permitting Proposal*, pp. 2-3. Under the SDSU Draft PSA, however, SDSU has only offered to consider PUD's written comments on SDSU's proposed development plans for the Acquisition Site, with no preapproval rights given to PUD. That approach will not adequately protect the interests of the City and its Ratepayers, and is not consistent with standard utility easement requirements.

C. Planned Future Facilities for Pure Water and Groundwater Management

PUD has long-standing plans to construct and operate future facilities, including groundwater monitoring wells, production wells, and infrastructure, such as utility pipelines, supporting Phase II of the Pure Water Program (collectively, Pure Water Infrastructure), that will be located on the River Park Property, and potentially on the southern portion of the Acquisition Site. In its entirety, the Pure Water Program is anticipated to produce 83 million gallons per day of purified water for local use by the end of 2035. The City's completion of the Pure Water Program will reduce the City's need to purchase imported water and enable the City to offload the Point Loma Metropolitan Wastewater Treatment Plant (Pt. Loma Treatment Plant). Phase II of the Pure Water Program is not ready to proceed yet, but will be pursued in the future. While PUD has completed planning and feasibility studies related to Phase II, the City will not initiate costly advanced design and engineering until the City undertakes detailed environmental review of Phase II construction activities. As a result, PUD is presently unable to determine the exact footprint where the Pure Water Infrastructure will need to be installed on the Properties. *See PUD Response to SDSU Proposal*, pp. 3-8.

The Pt. Loma Treatment Plant currently operates under a permit waiver granted by the United States Environmental Protection Agency and the California Regional Water Quality Control Board, allowing the City to comply with modified (i.e., more lenient) wastewater treatment standards. The most recent permit waiver includes extensive discussion of the Pure Water Program because the City's completion of that program would substantially reduce sewage discharge through the Pt. Loma Treatment Plant. The City's continued progress in carrying out the Pure Water Program will increase the likelihood that the City can continue to receive a regulatory permit waiver into the future. If the City were unable to obtain another permit waiver, then it is anticipated that the City may be required to retrofit the Pt. Loma Treatment Plant to bring it into conformity with current standards, at an estimated cost of several billion dollars. Accordingly, the City's implementation of Phase II of the Pure Water Program is critical to the City's effort to obtain water independence, promote sound environmental policies, and successfully operate the Water and Wastewater Systems.

During the early stage of PSA negotiations, the City recognized that a tension would likely exist between (a) SDSU's planned development activities on the southern portion of the Acquisition Site and planned construction of the River Park and other improvements on the River Park Property, and (b) the City's need to construct and operate the Pure Water Infrastructure on the River Park, and potentially on the southern portion of the Acquisition Site. Therefore, by mid-2019, PUD identified to SDSU specific areas where the City would need to reserve easement rights to construct and operate the Pure Water Infrastructure. In the City's initial draft of the PSA transmitted to SDSU on January 28, 2020, the City included those necessary easements and reserved preapproval rights over any improvements planned to be constructed by SDSU in the easement areas. By doing so, the City sought to avoid a situation in which SDSU constructed River Park improvements or other improvements that would be costly or impossible to remove in the future when the City is ready to proceed with Phase II of the Pure Water Program, including installation of the Pure Water Infrastructure.

Nonetheless, SDSU designed the River Park and other improvements, including the Wetland Mitigation Areas and the Storm Water BMPs, on top of the City's intended easement areas. The SDSU Draft PSA would prohibit the City from installing any future public facilities in the Wetland Mitigation Areas and the Storm Water BMPs, or damaging those areas in any manner. SDSU's current design for the River Park and other improvements on the River Park Property, in combination with the SDSU Draft PSA, could either prevent the City from completing and implementing Phase II of the Pure Water Program or significantly increase the City's overall Phase II project costs.⁴ See PUD Response to SDSU Proposal, pp. 8-9. If the City is unable to fully implement the Pure Water Program, the City cannot reasonably expect continued regulatory leniency with respect to the Pt. Loma Treatment Plant and, as a result, may need to complete the retrofit project at an estimated cost to Ratepayers of several billion dollars.

DISCUSSION

Both the San Diego Charter (Charter), which is the City's local constitution, and the Water MIPA control the use and disposition of property acquired and facilities installed for water utility purposes. Charter section 53 limits the use of water funds to purposes related to the construction, operation, and maintenance of the Water System, and the Water Utility Fund may not be used to pay for services or projects that are unrelated to water utility services. 2010 City Att'y Report 489 (2010-6; Feb. 24, 2010); 2013 City Att'y MOL 8 (2013-01; Jan. 14, 2013). The Water Utility Fund is held in trust to guarantee sufficient revenue to provide water service

⁴ SDSU has stated in recent correspondence that, in the SDSU Draft PSA, SDSU has agreed to reduce the size of the Wetland Mitigation Areas sufficiently to not interfere with PUD's future needs. However, the SDSU Draft PSA does not confirm any reduction in the size of the Wetland Mitigation Areas. Rather, it simply states that SDSU is authorized to create the Wetland Mitigation Areas in accordance with SDSU's prior approvals for the development project and that the City cannot object to SDSU's development project in accordance with SDSU's prior approvals or interfere with the Wetland Mitigation Areas or the Storm Water BMPs.

through a self-sustaining, financially independent utility. 2006 City Att’y MOL 54 (2006-6; Mar. 16, 2006). To help ensure the Water Utility Fund has sufficient revenue to accomplish its mission, the Water Utility Fund must receive fair market value for the use or sale of its property. 2005 City Att’y MOL 87 (2005-10; May 13, 2005). In addition, as discussed above, Section 6.04 of each MIPA prohibits the City from entering into any agreement that impairs the operation of the Water or Wastewater Systems, or any part of those systems, or reduces net system revenues.

I. SDSU’S REQUEST THAT THE CITY PREAPPROVE THE DESTRUCTION OF THE EXISTING MONITORING WELLS VIOLATES THE WATER MIPA BOND COVENANTS AND IS INCONSISTENT WITH MEASURE G.

The City’s two existing Monitoring Wells, located toward the northern boundary of the Acquisition Site, are essential to the success of the City’s groundwater management program, which in turn is essential to the future success of Phase II of the Pure Water Program. The Monitoring Wells allow the City to continuously monitor the contamination levels in groundwater at the Acquisition Site, which is particularly important given the history of environmental contamination migrating onto the Acquisition Site (including the Aquifer) from the adjacent, “uphill” Mission Valley Terminal petroleum tank farm operated by Kinder Morgan.

The Monitoring Wells are a part of the Water System and are thus subject to the Bond Covenants contained in the Water MIPA. Under those Bond Covenants, the City is prohibited from disposing of property (including real property, personal property, and other facilities) that is a part of the Water System, unless either: (1) the property is obsolete, inadequate, immaterial, or no longer necessary for the operation of the Water System; or (2) the City is receiving fair market value for the property and the City has obtained both written certification from an independent engineer attesting to certain facts and written confirmation from credit rating agencies that the rating then in effect on outstanding bond obligations will not be withdrawn or reduced as a result of the disposition.⁵ Water MIPA § 6.04(b). The City is permitted to remove parts of the Water System from service, either temporarily or permanently, if the City fulfills several extensive requirements. MIPA § 6.04(c).

The Monitoring Wells are not obsolete, inadequate, or immaterial to the operation of the Water System, within the meaning of the Bond Covenants. In fact, PUD has identified the Monitoring

⁵ Assuming the City were to accept the SDSU Draft PSA, it is uncertain that the City could obtain either the independent engineer’s certification or the credit rating agencies’ confirmation that would be needed if the City is disposing of Water System property interests in the transaction that are deemed necessary and material to the City’s operation of the Water System. At a minimum, obtaining the certification and the confirmation would be a time-consuming process, causing substantial delay in the closing of the transaction with SDSU. Instead of completing that time-consuming process with an uncertain outcome, the City has focused on trying to persuade SDSU (unsuccessfully, so far) to accommodate PUD’s needs in the transaction.

Wells, and the data that they provide, as essential to the City's groundwater management activities and the preservation of the Aquifer for water use and storage. *See* PUD Response to SDSU Proposal, p. 1. In the sale transaction, SDSU is not paying any monetary consideration to the City in exchange for SDSU's proposed destruction of the Monitoring Wells. Therefore, the requirement under the Bond Covenants that the City obtain fair market value for the disposition of the property is also not met.

Although SDSU has offered to replace the Monitoring Wells at SDSU's sole expense, SDSU has yet to submit relocation plans, specifications, and drawings demonstrating that replacement wells can be installed in a suitable alternative location in compliance with applicable City, County, and State requirements, including a sufficient easement area to allow proper operation and maintenance of the replacement wells. *Id.* Until PUD has approved the installation of replacement wells that PUD determines will be an adequate substitute for the existing Monitoring Wells and will provide sufficient groundwater monitoring data, SDSU's destruction of the Monitoring Wells would cause the City to be in default of the Bond Covenants.⁶

SDSU's proposed destruction of the Monitoring Wells without PUD's advance approval is also inconsistent with Measure G's acknowledgment that the sale transaction needs to protect the City's groundwater management rights and that the City maintains "full regulatory authority" for City easements, including City utility easements. SDMC § 22.0908(u), (v). To avoid the need to vacate City easements in the future, SDSU proposes to limit the City's rights for physical access to the Monitoring Wells at the time of closing to a right of entry permit, rather than granting a recorded easement in accordance with City standards. SDSU's approach is inconsistent with the City's standard practice for utility infrastructure, applied to all local developers of projects. The City's standard practice, which is intended to protect utility ratepayer assets, requires that the City both obtain easements for utility infrastructure and not allow burdens to be imposed on the City's easement rights. PUD Response to SDSU Proposal, pp. 1-3. A right of entry permit is not a property right, conveys a very limited license to use the property, and could be terminated at SDSU's option at any time.

PUD requires an easement at the close of escrow to ensure its ability to access, maintain, repair, and operate the wells, so that the City can continue to collect and utilize the valuable data related to groundwater management that the Monitoring Wells provide. Assuming PUD approves SDSU's installation of replacement wells, the City can process the approval of a vacation of the City's easements for the existing Monitoring Wells.

⁶ As described in a revised PSA submitted by the City to SDSU on May 15, 2020, if SDSU provides adequate information regarding the proposed replacement wells demonstrating compliance with applicable requirements, PUD can approve the destruction of the existing Monitoring Wells and the installation of the replacement wells in the future. If SDSU applies for formal approval of the relocation, including relocation plans, specifications, and drawings, PUD can evaluate the information submitted and determine if relocating the Monitoring Wells is feasible. PUD can then determine what steps need to be taken to comply with the Bond Covenants under the Water MIPA before PUD authorizes the destruction or abandonment of the Monitoring Wells. This process, which is the same process used by PUD for all utility relocations, ensures that the Ratepayers are not short-changed by having facilities destroyed before PUD is able to determine whether relocating the facilities is feasible.

II. SDSU'S PROPOSAL, WHICH SEVERELY LIMITS THE CITY'S ABILITY TO CONSTRUCT THE PURE WATER INFRASTRUCTURE ON THE RIVER PARK PROPERTY, VIOLATES THE WATER MIPA BOND COVENANTS.

As described above, the River Park Property is an asset of the Water Utility Fund, and PUD has current subsurface uses and planned future facilities on the River Park Property. Measure G requires the River Park to be set aside or designated for park purposes pursuant to Charter section 55. SDMC § 22.0908(i). This Office has previously advised that Water Utility Fund property can be designated for park purposes if it is not presently needed for water utility purposes, provided that it remains "freely accessible to the Water Utility as an asset to be either used directly for Water Utility purposes or to be sold for full fair market value to provide funds for the needs of the Water Utility." 1994 City Att'y MOL 448 (1994-50, June 7, 1994).

Designating the River Park as a public park and allowing SDSU to use the surface to construct the River Park is not, in and of itself, prohibited by the Charter or the MIPAs. In order to comply with these governing documents, however, PUD must retain broad access rights and the ability to construct and maintain non-park related facilities within the River Park Property, as PUD may determine is necessary. The City Council should be aware that, if PUD determines in the future that the River Park Property is no longer needed for water utility purposes, and thus wishes to sell the property, the General Fund may be responsible for any devaluation of the property attributed to the easements granted to SDSU for its use of the River Park Property that do not serve water utility purposes.⁷ Additionally, the City's retention of a fee ownership interest in the River Park Property does not shield the City from a claim that it has otherwise disposed of Water System property in violation of Section 6.04(b) of the Water MIPA.

SDSU's current design for improvements on the River Park Property includes Storm Water BMPs and Wetland Mitigation Areas that conflict with the City's planned improvements for Phase II of the Pure Water Program and the City's groundwater management activities. *See* PUD Response to SDSU Proposal, pp. 8-9. The SDSU Draft PSA, which SDSU asserts will resolve this issue, is unacceptable for many reasons, which include: (a) limiting PUD's review and approval rights regarding SDSU's River Park improvements to City easement areas for water and sewer lines and relocation of City water and sewer lines (i.e., precluding PUD's review and approval rights with respect to all other areas of the River Park Property); (b) prohibiting the City from taking any action that would damage or negatively impact the Storm Water BMPs or the Wetland Mitigation Areas, even though SDSU designed those areas (particularly one portion of the Wetland Mitigation Areas toward the western boundary of the River Park Property) in a manner incompatible with PUD's planned future activities; and (c) requiring the City to acknowledge that the River Park as designed does not interfere with PUD's current and future planned uses.

⁷ Based on PUD's long-standing future plans, it is unlikely that PUD will determine that the River Park Property is unnecessary for the Water Utility's use. However, it is important that the Council is aware of potential General Fund liabilities created by SDSU's approach.

If the City accepts SDSU's proposal, SDSU will be allowed to interfere with and potentially prohibit PUD's planned future uses of the River Park Property, including construction and operation of the Pure Water Infrastructure. That scenario is highly problematic for three reasons. First, the City will be denied the free use of Water Utility Fund property for water utility purposes, in direct violation of the Bond Covenants under the Water MIPA. Second, SDSU is not offering to pay any monetary compensation to the Water Utility Fund in exchange for diverting Water Utility Fund property for non-water related services. As a result, the City's General Fund will need to pay appropriate monetary compensation to the Water Utility Fund.⁸ Third, if the City is unable to construct the Pure Water Infrastructure on the River Park Property due to SDSU's preferred approach, then the City may be unable to complete Phase II of the Pure Water Program, in which case the City may be forced to retrofit the Pt. Loma Treatment Plant at an inordinately high cost, estimated in the billions of dollars, or the City may incur significant additional costs to complete Phase II, assuming the City is somehow able to secure a feasible alternative location to construct the Pure Water Infrastructure.

As SDSU is aware, SDSU can pursue feasible alternatives to creating the Wetland Mitigation Areas on the City-owned River Park Property to offset the impacts of SDSU's project. SDSU's own Final Environmental Impact Report for the project evaluates at least three feasible off-site alternatives, including establishing a wetland mitigation area on SDSU's Adobe Falls property, purchasing wetland mitigation credits from the City (at the existing wetland mitigation site adjacent to the River Park Property), or purchasing credits from another landowner's wetland mitigation bank. *See San Diego State University: Mission Valley Campus Master Plan, Mitigation and Monitoring Reporting Program, MM-BIO-13.* SDSU's effort to create the Wetland Mitigation Areas on the River Park Property is a cost-savings measure for SDSU that seriously jeopardizes the future success of Phase II of the Pure Water Program, and may result in the City violating the Bond Covenants.

In connection with the City's future construction of the Pure Water Infrastructure, PUD is willing to attempt to minimize the impact to River Park improvements and to work with SDSU to address concerns as they arise. However, PUD must retain broad rights to allow the City's continued, effective access to the River Park Property for water service purposes. If PUD does not retain such rights, the City will be in violation of the Charter and the Water MIPA.

⁸ Our Office has asked City management to determine a proposed amount of monetary compensation payable by the General Fund to the Water Utility Fund so that we may conduct an analysis of the legal defensibility of the proposed payment arrangement under the Bond Covenants in the Water MIPA. David Davis, the appraiser selected jointly by the Parties to prepare an appraisal report disclosing his opinion as to the estimated fair market value of the Acquisition Site, also prepared a supplemental appraisal report disclosing his opinion as to the estimated fair market rental value of the River Park Property. City management will be able to rely upon that supplemental appraisal report, as well as other pertinent factors, to formulate the proposed amount of compensation in this instance.

III. SDSU'S PROPOSAL TO MERELY CONSIDER THE CITY'S COMMENTS REGARDING SDSU'S DEVELOPMENT WITHIN CITY UTILITY EASEMENTS ON THE ACQUISITION SITE VIOLATES THE BOND COVENANTS.

Section 6.04 of each MIPA prohibits the City from entering into any agreement that impairs the operation of the Water or Wastewater Systems, or any part of those systems, or reduces net system revenues. If the City accepts the SDSU Draft PSA, the City will be in default of the Bond Covenants because SDSU's proposal does not adequately preserve the integrity of PUD's water and sewer utility lines on the Acquisition Site. Consistent with its standard process (universally applied to all developers), PUD needs the right to review and approve all of SDSU's proposed development activities within PUD's utility easement areas.

However, SDSU has offered only to consider PUD's written comments on SDSU's proposed development plans for the Acquisition Site, with no preapproval rights given to PUD. SDSU's approach could lead to costly damage to the City's utility lines or disruptions in utility services to customers if, for example, SDSU constructs improvements on or adjacent to the City's utility easement areas that cause physical damage to the City's utility lines or prevent the City from adequately maintaining or repairing its utility lines.

In sum, SDSU's approach could seriously undermine the interests of the City, its Ratepayers, and holders of water and sewer revenue bonds issued by the City (Bondholders), the latter of which could sue the City for violating the Bond Covenants.

IV. IF THE CITY APPROVES A PURCHASE AGREEMENT THAT DOES NOT ADEQUATELY PROTECT THE CITY'S RIGHTS WITH RESPECT TO EXISTING AND PLANNED FUTURE UTILITY INFRASTRUCTURE, THE CITY COULD FACE DIRE FINANCIAL CONSEQUENCES.

The above discussion illustrates several ways in which the City's acceptance of the SDSU Draft PSA will or could cause a violation of the Bond Covenants under one or both of the MIPAs. If the City is determined to be in default of the Bond Covenants (as the result of a Bondholder lawsuit or otherwise), the City and its Ratepayers could face dire financial consequences. For example, if the City is unable to implement Phase II of the Pure Water Program, the City could be forced to retrofit the Pt. Loma Treatment Plant at extraordinary cost, or if the City's utilities are substantially damaged as a result of SDSU's improvements on the Acquisition Site, the City could be forced to pay significant repair costs (assuming the City is unable to recover those costs from SDSU). In those scenarios, the City could be compelled to raise significantly the utility rates paid by local water and sewer customers (i.e., Ratepayers) to increase net revenues and cover the City's additional utility costs. Consequently, the City could face a legal challenge from Ratepayers, who could contend that the City's failure to adequately protect the Water or Wastewater Systems in the PSA transaction triggered the need for the increase in utility rates.

In addition, if the City is determined to be in default of the Bond Covenants, the City's access to financial markets for additional bond offerings involving the Water or Wastewater Systems could be jeopardized. Also, the credit rating agencies could possibly downgrade the credit rating related to the Water or Wastewater Systems. As a result, the City could incur higher borrowing costs in future bond transactions, placing a direct financial burden on Ratepayers.

Moreover, the City's inability to implement Phase II of the Pure Water Program could expose the City to the risk of future litigation filed by Ratepayers or the parties to one or both of two existing City contracts, including: (i) the Regional Wastewater Disposal Agreement dated June 24, 1998, between the City and various local participating agencies; and (ii) the Cooperative Agreement in Support of Pure Water San Diego dated December 9, 2014, between the City and several environmental organizations. The Regional Wastewater Disposal Agreement requires the City to provide wastewater conveyance, treatment, and disposal services to the participating agencies through the Metropolitan Sewerage System, and requires the participating agencies to contribute their pro rata share toward the cost of those services. The Cooperative Agreement requires the City to complete the Pure Water Project (including both Phases I and II) in accordance with specified construction milestones, ultimately enabling the City to produce a cumulative total of 83 million gallons per day of purified water by December 31, 2035.

If the City's sale transaction with SDSU causes the City to lose the opportunity to construct the Pure Water Infrastructure necessary to complete Phase II of the Pure Water Program, and to be forced to retrofit the Pt. Loma Treatment Plant, the City could face a costly breach of contract claim under the Regional Wastewater Disposal Agreement. In addition, any environmental organization could withdraw from the Cooperative Agreement and file a lawsuit seeking to compel the City to retrofit the Pt. Loma Treatment Plant or take other remedial actions.

CONCLUSION

SDSU has requested that the City forego application of the City's standard requirements with respect to the City's public utilities. SDSU's preferred approach, which is reflected in the SDSU Draft PSA, could prove very detrimental to the City's Water Utility Fund and local Ratepayers.

For the reasons described herein, we strongly recommend that the City Council ensure the City's present and future utility needs are adequately addressed in the sale transaction, which would involve the City's further negotiation of deal points relative to the content of the SDSU Draft PSA. First, Measure G acknowledges the need to protect the City's public utilities and groundwater management rights, and the final PSA should do just that. Second, the City must maintain ongoing compliance with the Bond Covenants, which prevent the City from agreeing to any contract rights that will disrupt operation of the City's Water and Wastewater Systems or reduce related revenues. Third, the City's loss of a future opportunity to achieve successful completion of Phase II of the Pure Water Program could substantially reduce the City's water production capacity and force the City to retrofit the Pt. Loma Treatment Plant at an estimated

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cost of several billion dollars, all to the substantial financial detriment of Ratepayers. Fourth, failure to properly address the City's present and future utility needs in the sale transaction could jeopardize the credit rating related to the City's Water or Wastewater Systems and could expose the City to costly, protracted litigation on several fronts.

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Deputy City Attorney

KJR:jdf

MS-2020-14

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Attachments

cc: Kris Michell, Chief Operating Officer
Rolando Charvel, Chief Financial Officer
Shauna Lorange, Director, Public Utilities Department
Cybele Thompson, Director, Real Estate Assets Department
Mike Hansen, Director, Planning Department
Andrea Tevlin, Independent Budget Analyst

ATTACHMENT A

City Response to SDSU's Proposal Entitled "SDSU MISSION VALLEY CAMPUS PROPOSED GROUNDWATER WELLS AND PURE WATER INFRASTRUCTURE TERMS *DRAFT FOR DISCUSSION*"

This document identifies the City's written response to the SDSU proposal addressing select issues specific to the Public Utilities Department. 4-23-2020

1. City's Existing Groundwater Monitoring Wells.	
SDSU Proposal	City PUD Response
<p>The City currently has two wells installed in the northern portion of the stadium site near San Diego Mission Road and between Mission Center Road and the current entrance to the Stadium off San Diego Mission Road. These are sampling wells used by the City to independently monitor any leaks or contamination to the groundwater that is coming on to the site from Kinder Morgan's Mission Valley Terminal (MVT). The attached "MW-2 and MW-3 Alternate Locations" exhibit from Group Delta shows the locations of the existing monitoring wells in green/black as MW-2 and MW-3. Due to the poor soils conditions, undocumented existing fill and past contamination of the soil, SDSU must conduct mass grading of virtually the entire SDSU MV site to excavate down to within 5 feet of the groundwater table, then refill and re-compact. Unfortunately, no existing wells can remain on site during this mass grading. PUD is concerned that they do not want to have a gap in monitoring data collection that would occur if the existing wells were removed prior to grading and reinstalled after grading is complete. In addition, PUD prefers that the wells be located in the same location so that data is "equivalent" to their current data over time. We have had discussions about what would constitute data "equivalency" from different well locations, and it is our understanding that the purpose of the City monitoring wells is to determine if and when any future contamination of the water and soil is coming from the north, specifically the MVT. In our understanding, this objective does not require "data equivalency" or simultaneous well reporting from old and new wells in precise same location.</p> <p>The attached "MW-2 and MW-3 Alternate Locations" exhibit shows the existing well locations, the original plume of contamination from MVT and several alternative locations for the relocation of the City's MW-2 and MW-3 wells. As discussed on our phone conference on March 24, 2020, SDSU is proposing that the PUD can select any two locations shown as alternates, with the understanding that the alternate well locations shown in red can be drilled at any time prior to grading so that there is no loss of data and data can be compared between the existing and replacement wells, or the City can use the alternate locations shown in blue that can only be drilled after grading is complete. The red replacement well locations are all on City owned land or public right of way. If the PUD selects the blue replacement well locations, then SDSU would grant easements to the City for those locations with the understanding that the easements cannot restrict SDSU's plans or activities except in a very small area of the wellhead. The easements would provide for temporary use by the City of a larger area than the wellhead for PUD major maintenance activities as needed. SDSU would pay for and install any required replacement monitoring wells of the same type that exist today, with no upgrades or changes. SDSU currently has a cost estimate of approximately \$102,000 for the drilling of two monitoring wells comparable to the existing wells. After agreement on the location and timing of the replacement wells, SDSU will work with PUD in a fashion similar to the relocation of other City utilities on the property with D sheet submittals. The City would commit to expeditious review of the submitted drawings and</p>	<p>It is the City's preference to preserve in place the two (2) existing groundwater monitoring wells located in the northeast portion of the site. However, SDSU has expressed the need to relocate the wells to allow for mass grading operations. It should be noted that SDSU was aware of the existing utilities and chose to design/plan the campus based on SDSU's own assumption the City would agree to relocation or abandonment of the wells. The City's existing groundwater sampling wells are an important asset to the Public Utilities Department. Wells MW-2 and MW-3 allow the City to obtain independent data to characterize the groundwater quality of the Mission Valley Aquifer (MVA) and to measure hydraulic heads in the various multilevel ports of the monitoring wells.</p> <p>SDSU submitted a memo (dated April 2, 2020) identifying proposed locations for relocated wells. The City has evaluated the submitted materials and alternate locations and believes that relocation may be feasible and should continue to be investigated. The City could not grant any preapproval at this time because there is insufficient information that the exact locations proposed could meet the City's requirements (access, easement requirements, utility offsets, etc.). New groundwater wells must meet all City, County of San Diego (County) and State of California (State) requirements, including the requirement that areas larger than the wellhead be protected in an easement. SDSU's request for future well easements to be limited to only the area of the wellhead is unacceptable to the City.</p> <p>Formal well relocation approval would require SDSU's submittal to the City with relocation plans, drawings, specifications. The City acknowledges that some of the alternate well locations would result in a data gap of 14-16 months. PUD agrees to work cooperatively with SDSU on the relocation of the existing groundwater monitoring wells, subject to City, County, State and other regulatory agency requirements.</p> <p>At the time of property sale, the City requires two (2) 100-foot by 100-foot easements over the existing wells. The easements are necessary to comply with Department of Water Resources (DWR) regulations and to ensure adequate space is available for operation and use of the wells. Once SDSU and the City agree on a relocation plan, and SDSU has prepared appropriate plans and obtained all necessary permits, SDSU could destroy the existing wells and the City could process the approval of an easement vacation in accordance with the Municipal Code.</p> <p>Requirements for the new wells are listed below:</p>

documents and PUD would not demand unreasonable information requests or anything that would increase the cost of installing the wells beyond the \$102,000 cost estimate.

WELL DESTRUCTION

SDSU shall be responsible at no cost to the City for the destruction for MW-2 and MW-3, and shall complete the following:

- SDSU shall submit a well destruction work plan for MW-2 and MW-3 to the City for review and approval. SDSU shall obtain the well abandonment permit from the San Diego County Department of Environmental Health. The work plan shall include: specifications and material data sheets for material to be used to cap the casings, and schematics of how SDSU will destroy the casing.
- SDSU shall be responsible for processing and securing CEQA clearance, SWPPPs, traffic control plans, and any other permits and approvals from appropriate organizations.
- Following well destruction activities, SDSU shall submit documentation describing in detail how the wells were destroyed, including pictures of the well destruction, and documentation of the materials used to seal casings.
- SDSU shall allow the City to observe all phases of well destruction.
- SDSU shall be liable for damages to the monitoring wells MW-2 and MW-3 due to improper handling, including any impacts to groundwater quality resulting from incorrect destruction of the monitoring wells.
- SDSU shall be responsible for all costs associated with well destruction.
- SDSU will employ a California C-57-licensed well driller to carry out any well destruction, modification, or installation work.
- SDSU shall be responsible for all well destruction activities and the City shall not be liable for damages, injuries, or hazards resulting from SDSU or SDSU's contractor activities.

WELL INSTALLATION

SDSU shall be responsible for all costs associated with relocation of existing monitoring wells MW-2 and MW-3, including an initial round of water quality sampling. In addition, the following shall be submitted to the City by SDSU:

- SDSU shall submit a well installation work plan, gantt-style schedule, specifications and drawings for review and approval by the City.
- SDSU shall designate a single point of contact through which all communication can be distributed. The designee shall respond to the City's questions as needed.
- SDSU shall prepare D sheet drawings and submit to the City Development Services Department for review and approval. Plans shall demonstrate compliance with City standards (i.e, latest City adopted edition of the Greenbook, Whitebook, Water Design Guide, Sewer Design Guide, etc.).
- SDSU must obtain County approval and permits for the installation of the new wells.
- SDSU shall be responsible for obtaining any and all applicable approvals and permits, including CEQA, SWPPPs, traffic control plans.

- If applicable, SDSU shall secure necessary permission from land owners for wells installed outside SDSU property.
- SDSU must conduct all phases of well installation, including permitting, utility locating, lithologic and geophysical logging, grain size analysis, well installation, well development, and well surveying.
- SDSU shall allow the City to observe all phases of well drilling, testing, development and construction.
- Wells are to be constructed consistent with monitoring well requirements in State of California DWR Bulletins 74-81 and 74-90.
- SDSU shall submit to the City a well installation report, which shall include all well logs (DWR and County), well installation progress pictures, survey results (land surveying, geophysics, geology), initial water quality results and pictures of subsurface geology/stratigraphy at 5 foot intervals. Report to match the report for the installation of MW-2 and MW-3.
- SDSU will employ a California-registered Geologist to prepare the well design based on lithology, grain size analysis, and geophysical logging.
- SDSU will employ a California C-57-licensed well driller to carry out any well destruction, modification, or installation work.
- The monitoring wells will be installed consistent with the construction of MW-2 and MW-3, by utilizing CMT to install sampling ports within the three distinct water-bearing zones, if encountered (surficial gravel, middle sand, and basal gravel). Additional sampling ports will be installed in encountered silt zones. The wells must be constructed using the continuous multichannel tubing (CMT) method with approximately six groundwater sampling ports per well.
- SDSU shall provide sufficient access to the monitoring wells. In general, the well sites must be accessible via roads or cleared pathways. There are a number of activities requiring access to the well, each of which has a different frequency. The activities may require a variety of vehicles and equipment accessing the site, ranging from a single person carrying equipment onto the site to do monitoring, to a full drilling operation requiring the siting of multiple heavy-duty trucks. Some of the activities include: monitoring, water quality sampling, rehabilitation, and abandonment. A typical range of vehicles requiring access to the well include: water tank trucks, drilling rigs, work trucks, and semi-trucks.
- SDSU shall ensure well installations in Rights-of-Way can withstand vehicular traffic loads.
- SDSU shall provide the City with sufficient easements in recordable form. A 100-foot by 100-foot easement is based on standard regulation by the State of California in order to (1) provide sufficient clearance from actual or potential sources of contamination, and (2) provide City and contracted staff sufficient space to perform their work. The wells must be sited to be in spatial clearance requirements as dictated by both Bulletin 74-90, and the earlier Bulletin 74-81 of a same name. The two versions of the standards must be used in tandem. Deviations from the standard easement dimensions may be considered on a case by case basis with sufficient information that easements

provide for adequate access, adequate space for construction, maintenance and operation of the wells and that the easement meets all required State and County requirements. Where necessary, SDSU shall seek permission to deviate from established practice from the State and/or County as applicable. 100'x100' easement is a City requirement.

- SDSU shall demonstrate wells meet standards and have been installed in accordance with the plans prior to City final acceptance. Wells must function in accordance with the well specifications and provide sufficient data before City acceptance of the relocated well.

2. Wellfield Easement

SDSU Proposal	City PUD Response
<p>There is a fundamental disagreement between the PUD/City and SDSU as to previous agreements on the location of the PUD well field and supporting infrastructure needed for two production groundwater wells and supporting infrastructure associated with a future Groundwater program, which still requires CEQA and other associated approvals. In order to try and resolve this impasse and address the needs of both parties, SDSU is willing to grant the City an easement, as part of the PSA document, over the SDSU owned triangular portion of the River Park that is bound by Street A, the trolley tracks and the future Campus parking garage (the "South of Campus Triangle"). PUD has told SDSU that they may need two production groundwater wells somewhere on the SDSU MV property. SDSU requests that the City provide a definition of what a "production well" is and what volume of water it should produce as well as how it would serve to inject water if the City chooses to do that on the property. The conditions currently proposed by SDSU for the City's Easement over the South of Campus Triangle include:</p> <p>2.1. The City must first try to develop up to two groundwater production wells within the City River Park or west of Fenton Parkway parcels. To do this, the City must initially drill up to four exploratory wells within the likely high yield areas of the River Park parcel and up to four exploratory wells within the area west of Fenton Parkway. The City would be allowed to drill exploratory and production wells in any area of the City owned River Park as long as the wells do not permanently damage or destroy the function of the athletic fields, bio-filtration basins or wetlands areas and the City mitigates any damage by returning it to the substantially same or better condition within a reasonable period of time. If any City work will impact wetlands, City must obtain required Resource Agency permits and approvals prior to undertaking such work and comply, at its cost and expense, with all mitigation and monitoring requirements associated with wetland impacts.</p> <p>SDSU believes that the "high yield areas" of the River Park are located in the same areas as the City owned portion of the Proposed Wellfield and the Proposed Support Infrastructure boxes on the City's exhibit of March 20, 2020 (attached as "PUD Groundwater and Pure Water Easements PDF). If these exploratory wells lead to the City drilling two groundwater production wells in these areas, then SDSU has no further obligations to the City and the City's requirements for groundwater from the site have</p>	<p>Statements that the City had previously agreed to limit future groundwater or support infrastructure projects to areas outside the project footprint are not accurate or consistent with documented correspondence, including site diagrams, exchanged during negotiations over the past 16 + months.</p> <p>The Public Utilities Department currently owns a large portion of the property to be sold to SDSU and has known and intended uses for the property for groundwater extraction, as acknowledged in Measure G at Municipal Code section 22.0908(u). The City's geologic data and groundwater studies indicate the good locations for groundwater extraction are located in a centralized area of the stadium property. SDSU expressed concerns during early discussions that the City retaining broad rights for future groundwater extraction would too severely restrict their ability to develop the property. The City agreed to modify the area identified for future groundwater production to minimize constraints on SDSU's development and future property.</p> <p>The City has identified a rectangular shaped wellfield easement/access area (Wellfield Easement) for future groundwater production, primarily located within the northern portion of the future River Park and also located within the southern portion of the SDSU property. The City plans to utilize the groundwater resources present in the Mission Valley aquifer and believes there may be up to 759 acre-feet a year (0.677 MGD) of water resources available to supplement and diversify the City's water supply.</p> <p>SDSU has designed campus and River Park improvements that severely restrict the City's ability to install groundwater production wells and support infrastructure in the Wellfield Easement. These developments (storm water BMP's, recreation center site, etc.) prevent the City from being able to use the Wellfield Easement as intended. The City has offered to reduce the east-west dimensions and increase the north-south dimensions of the broad Wellfield Easement (thereby allowing SDSU proposed uses in the eastern half to proceed unimpeded) in the River Park area in exchange for an area on the SDSU campus.</p>

been met, so long as the impacts are mitigated by repairing any park property impacted by its work. In the event that the City is not able to find suitable locations for up to two production groundwater wells, then:

2.1.1. The City would have a temporary right of entry for the City to drill up to two exploratory wells in the South of Campus Triangle area. These exploratory wells cannot disrupt SDSU's required Emergency Vehicle Access routes and surfaces or any existing buildings or tot lots within the South of Campus Triangle area, or present a safety hazard.

2.1.2. If the South Campus Triangle Area exploratory wells indicate up to two good sites for production groundwater wells within the area, then SDSU would grant permanent easements for installation, maintenance and operation of up to two groundwater production wells within the South of Campus triangle under the following conditions:

2.1.2.1. Exploratory and permanent wells cannot be drilled until after SDSU has completed all grading required to complete the Campus parking garage and structures and complete the River Park in the South of Campus triangle for its permanent condition.

2.1.2.2. Well easements will specify the well head location and the location of all pipelines and electrical and other appurtenances in a small permanent easement thought to be approximately 15 feet by 15 feet.

2.1.2.3. Temporary well installation and maintenance easements would be granted solely for installation and maintenance of the wells and would be larger, approximately 50 by 50 feet, depending on terrain.

2.1.2.4. City PUD would be responsible for any and all damage to the South of Campus Triangle, River Park or other improvements and would have to repair such damage to the condition and materials that existed prior to the City PUD entering the site. The PUD would also be required to install facilities that blend with the aesthetics of the South of Campus Triangle or River Park so that the City well facilities do not present any hazards or impede the intended use of the affected areas.

2.1.2.5. PUD must submit all plans and specifications, a log of all the exploratory wells drilled onsite, an explanation of why the production well sites identified by the City are preferable to other potential sites, a detailed schedule of construction, operation and maintenance through-out the life of the wells and other reasonable information requested by SDSU for SDSU to review prior to approval of the smaller permanent easements.

2.1.2.6. The City shall defend and indemnify SDSU against any and all actions and damages that result from the City's activities, facilities and groundwater extraction and injection in the South of Campus Triangle and the Easement Document would contain other typical provisions such as insurance, etc.

2.1. /2.1.1. The City would like to use the area of SDSU owned property called "south of Campus Triangle" where future SDSU development is compatible with groundwater well development (primarily a landscaped area). The City has reviewed geology and geotechnical data and believes this area may be suitable for groundwater well development. The City shall primarily retain the Wellfield Easement in the River Park that affords broad rights to the City for future wellfield development and would use the SDSU property only if needed. The City does not agree to avoid all impacts to athletic fields or any other improvement in the River Park. As identified in other areas of this response, SDSU wetland mitigation may not be located on the City-owned River Park Property, and incompatible uses may not be developed within the Wellfield Easement. SDSU's certified Final EIR identifies alternative, off-site locations that could be used by SDSU for wetland mitigation to offset the impacts of SDSU's own development project.

The City proposes that the Purchase and Sale Agreement will include a recordable closing document that describes the parties' agreement regarding the Wellfield Easement, including the City's future development of groundwater production wells. The Wellfield Easement will afford the City a right of entry to explore the potential location of those wells and will require the recording of a future easement or access agreement to cover the City's selected location of those wells and associated pipelines, with easement dimensions meeting the City's standard requirements (as discussed below). The Wellfield Easement would have conditions on the City's use that prevent damage to the SDSU campus. The Wellfield Easement would require the City to first pursue groundwater extraction feasibility on the City owned lands before pursuing groundwater extraction on the SDSU property. It is the City's preference to develop production wells in City owned land versus SDSU property. If after drilling a minimum of 4 exploratory wells in the City property to the south of the SDSU campus without identifying desirable locations for 2 production wells, the City may proceed with investigating the wellfield area on the SDSU property. The City acknowledges that wellfield development in the SDSU South of Campus Triangle area will be required to maintain emergency vehicle access routes and preserve buildings/tot lots. The City requires the ability to drill exploratory wells for the installation of up to 2 production wells in the triangle area. The City understands that well development in the triangle area would be required to occur after SDSU has completed grading for the parking garage and finished River Park improvements.

2.1.2.2 /2.1.2.3 The City requires 100-foot by 100-foot easements for each well and associated pipeline easements for conduit and for conveying water offsite. The City cannot accept a 15-foot by 15-foot permanent easement or 50 by 50 temporary easement. Unlike traditional utility easements, the City is willing to craft easement language that allows for greater flexibility by avoiding traditional requirements like an EMRA, reducing the impact of a 100-foot easement to the SDSU campus or the River Park, as applicable.

2.1.2.4 The City acknowledges areas temporarily impacted by wellfield development on SDSU property shall be restored and any new facilities shall be designed to blend in with the aesthetics of the campus to the extent feasible. The City does not agree that River Park improvements would be replaced in kind, as described in other areas of this response.

2.1.2.5 The City acknowledges that for work within SDSU property, plans and specifications along with other supporting information shall be submitted to SDSU and the City shall coordinate with SDSU. For City projects within the River Park, project plans can be provided to SDSU as a courtesy; however, SDSU has no authority over City projects on City-owned property.

2.1.2.6 Indemnification language will be included in the appropriate PSA documents.

The City agrees to plan and design the future groundwater project to minimize impacts to the park and to work around the athletic fields to the extent possible. The City cannot commit to avoid all impacts to the River Park improvements within the Wellfield Easement. Temporary and permanent alterations to River Park improvements may result from implementation of the future wellfield project. The City must retain broad rights in the designated Wellfield Easement area within the River Park and shall not be required to obtain approval from SDSU on projects within City easements or on City property. The City agrees to work cooperatively with SDSU to minimize impacts to the River Park improvements.

3. Support Infrastructure Easement

SDSU Proposal

PUD has requested access and the ability to construct and maintain non-park related facilities over roughly all of the River Park areas from the imaginary north-south extension of Street A to the San Diego River, west to the future extension of Fenton Parkway/Bridge as labeled on the attached exhibit as the "Proposed Support Infrastructure" area. As part of the River Park that is required by Measure G, this area is currently planned for an athletic field, the approximately 1.5 acre wetland mitigation site, trails and passive areas. This same area is also the most promising for future groundwater extraction. The PUD does not know what it ultimately needs and therefore wants to keep maximum flexibility for the primarily underground facilities that PUD thinks they might need in this area. Currently, PUD wants to put a number of pipelines and the terminus of a tunnel to accommodate an approximately 60 inch sewer line that would run from a future Pure Water treatment facility on the south side of the San Diego River to the existing City-owned Mission Valley Sewer Interceptor that runs along the north bank of the San Diego River. In discussions with PUD, they have said it would be much less expensive for PUD to put the non-sewer pipelines in the future Fenton Parkway Bridge and possibly the sewer line as well. SDSU is open to the City using any part of the area they have requested for the installation of the various pipeline facilities under the following conditions:

3.1. PUD facilities cannot damage or impact the wetland mitigation area or result in any permanent damage to the athletic field or related improvements.

3.2. SDSU would allow for the temporary closing of the athletic field, if necessary, to accommodate construction of the sewer tunnel or other PUD infrastructure needs for a reasonable period of time.

3.3. City PUD would be responsible for all and any damage to the River Park or other improvements and would have to repair such damage to the condition and materials that existed prior to the City PUD working on the site within a reasonable period of time. City PUD would also be required to install

City PUD Response

The Public Utilities Department owns the property that will become the future river park and has intended and necessary uses for the property to support water supply projects that are essential.

SDSU's proposed wetland mitigation is an incompatible land use within the City's reserved easement/access area for Support Infrastructure and would prevent the City from constructing future Pure Water and groundwater facilities.

PUD requires broad access rights and the ability to construct and maintain non-park related facilities over the River Park areas defined as the Support Infrastructure area. The City is in the preliminary stages of project planning for Pure Water Phase 2 and for groundwater production and shall reserve rights in this area to ensure PUD's ability to provide safe and sustainable water supply for its customers. As part of the Pure Water Phase 2, the City will be constructing large sewer and water pipelines needed to support the future Pure Water facility located south of the San Diego River.

3.1 SDSU may not locate their wetland mitigation inside the Support Infrastructure area or the Wellfield Easement area in the River Park. The City will not commit to avoid all impacts to the River Park improvements within the Support Infrastructure area including impacts to the athletic fields. It is anticipated that temporary and permanent alterations to River Park improvements would result from implementation of the future Pure Water, groundwater or other PUD project.

3.2. The City shall minimize the length of time that River Park is affected by construction of future water/groundwater and/or sewer projects. The City shall not be required to obtain approval from SDSU on essential public projects built within the River Park on City land and within City easements.

<p>facilities that blend with the aesthetics of the River Park so that the City facilities do not present any hazards or impede the intended use of the affected areas.</p> <p>3.4. PUD must submit all plans and specifications, a detailed schedule of construction, operation and maintenance through-out the life of the facilities and other reasonable information requested by SDSU for SDSU to review prior to approval of the facilities SDSU's approval of the PUD plans cannot be unreasonably withheld..</p> <p>3.5. The City must inform the public of its plans, take responsibility for any disruption in the River Park and protect its facilities as necessary.</p> <p>3.6. PUD must pay for any and all marginal hard and soft costs associated with the construction, structural and design costs to incorporate the various pipelines into the bridge and pay an appropriate allocation of overhead, administration, mitigation, planning, entitlement and other costs related to the bridge.</p> <p>3.7. Both the use of the Proposed Support Infrastructure and Groundwater Wellfields within the City Owned Portion of the River Park would be documented in the same agreement as the rights and obligations of SDSU are set forth for the River Park with similar reciprocal indemnities, etc. In the SDSU Mission Valley Final Environmental Impact Report, SDSU has planned for and accommodated on-site wetlands required as mitigation for the Fenton Parkway extension (identified in the Mission Valley Community Plan as "Street I" and in the SDSU site plan/Final EIR as "Street A"), a connection that is separate from the planned Fenton Parkway Bridge. The PUD has stated that the existence of the wetland mitigation area that is required to continue the Fenton Parkway public right of way at grade over the Trolley Tracks is problematic and limits the utility of the area for PUD's maximum flexibility. Therefore, if the City is willing to provide any and all wetland mitigation areas to the satisfaction of the resource agencies that govern such mitigation, then SDSU will not construct the wetland and will instead program park uses in the area in order to be compatible with the Support Infrastructure and groundwater production wells as it is currently understood by SDSU.</p>	<p>3.3. The City can restore temporarily impacted areas with surface improvements like landscaping and paving. City cannot commit to replace park improvements in kind, as SDSU park improvements may not be compatible with future utilities (examples: recreational field may need to be modified in dimensions to accommodate a manway or vault, or trees removed could not be replanted over pipelines).</p> <p>3.4. PUD shall coordinate with SDSU on projects located with the River Park. PUD shall provide a copy of plans, specifications, construction schedules, typical operation and maintenance requirements and/or other reasonable information to SDSU.</p> <p>3.5. The City will comply with CEQA and shall certify appropriate CEQA documents prior to construction of essential public projects within the River Park. Public outreach shall be conducted in accordance with CEQA requirements and City standards. The City will minimize environmental impacts and community disruption as feasible and as required by CEQA.</p> <p>3.6. The future Fenton Parkway Bridge should be designed and built to accommodate future water and sewer pipelines. PUD acknowledges responsibility for an appropriate fair share of costs associated with additional bridge requirements necessary to accommodate future pipelines.</p> <p>3.7 Indemnification language will be included in the appropriate PSA documents.</p> <p>SDSU's onsite wetland mitigation is not an allowable use within the Support Infrastructure or Wellfield Easement areas on the River Park Property. Although the PUD is working to assist SDSU with alternate mitigation options (as such options are envisioned by the certified Final EIR), PUD is not responsible for SDSU's compensatory mitigation obligations. The City agrees to continue to work cooperatively together towards solutions that eliminate conflicts in PUD easements.</p> <p>The City will not commit to avoid all impacts to the River Park improvements within the Support Infrastructure area including impacts to the athletic fields. It is anticipated that temporary and permanent alterations to River Park improvements would result from implementation of the future Pure Water, groundwater or other PUD project. The City must retain broad rights in the designated Support Infrastructure area within the River Park and shall not be required to obtain approval from SDSU on projects within City easements or on City property. The City agrees to work cooperatively with SDSU to minimize impacts to the River Park improvements.</p>
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4. City's Existing Wetland Mitigation Area Boundary in the San Diego River

SDSU Proposal	City PUD Response
<p>The City has an existing Wetland Mitigation Area (WMA) in the San Diego River. The City has provided a CAD drawing of the surveyed northern boundary of the WMA. The boundary of the WMA is shown in blue on the attached "PUD Mitigation Boundary SDSU" exhibit and the current River Park southern property</p>	<p>This item is consistent with our understanding. The River Park boundary should be corrected to remove the encroachment into the mitigation area. Adjusting the southern edge of the park boundary will include additional sewer interceptor easement area and SDSU would need to design, construct and</p>

<p>line (also the Jurisdictional Delineation line) is shown in black. When comparing these two lines, there is overlap with the WMA boundary north of the River Park Parcel boundary in the southeast and northeast sections of the boundary. The WMA boundary is approximately 14 to 19 feet south of the current River Park boundary in the middle and section of the SD River. We recommend that we adjust the River Park boundary so that the River Park boundary:</p> <p>Does not encroach into the WMA at any location</p> <p>The total parcel area of the River Park remains the same at 34.6 acres</p> <p>No other boundaries in the current configuration of the City parcelization are affected so that all other parcel areas and boundaries are the same as now.</p>	<p>maintain park improvements in the easement area consistent with City standards to ensure the sewer pipeline is protected and the City has adequate access for maintenance and operation.</p> <p>The Stadium Wetland Mitigation site irrigation line is located north of the mitigation boundary and along the southern edge of the existing parking lot. SDSU will need to preserve the irrigation connections and ensure adequate water supply to the City's Stadium Wetland Mitigation site until that mitigation site obtains regulatory sign off (anticipated March 2023).</p> <p>The City's Stadium Wetland Mitigation site and protected San Diego River wetlands are required to be protected from intrusion and impacts per the mitigation project permits and City's Biology Guidelines. If the protective fencing is to be removed as part of the SDSU redevelopment, SDSU must install a new fence or alternate fence/barrier to protect the San Diego River wetlands and to comply with Stadium Wetland Mitigation site regulatory and permit conditions.</p>
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5. SDSU Storm Water Easements

SDSU Proposal	City PUD Response
<p>PUD is requiring SDSU to accept the maintenance of the storm water outlets that currently go through the City's Mission Valley Sewer Interceptor line on the northern bank of the San Diego River and into the San Diego River. PUD has said that they have carved out areas within the WMA for easements that would be granted to SDSU for the maintenance, repair and replacement of the storm water outfalls. PUD does not have these areas identified in a legal description and SDSU will need that description in order to determine whether the carved out areas are sufficient easements for SDSU's use. PUD needs to provide the complete boundary of the WMA, including the dimensions of the storm water easement areas and any area that is not included in the WMA in order to facilitate development of the Fenton Parkway Bridge as soon as possible so that these easements can be reviewed for adequacy by SDSU and included in the PSA.</p>	<p>The City Transportation and Storm Water Department is requiring SDSU to accept ownership and maintenance of the existing storm drain outlets found along the southern edge of the Stadium property and that terminate in the River after passing through the sewer interceptor. Any discussion regarding storm water assets must be directed to the appropriate City Department. PUD does not manage storm water assets.</p> <p>PUD owns and maintains the Stadium Wetland Mitigation Site to the south of the future River Park. Utility easements are not included in the mitigation site and are "carved out" of the acreage. Survey data has been shared between the parties that identifies the complete northern boundary of the Stadium Wetland Mitigation Site, including the utility carve outs for the existing utilities (sewer interceptor, storm drains, water) and the future Fenton Parkway bridge. Both parties agree on this item and it should be documented as resolved.</p>

6. SDSU Wetland Mitigation Area

SDSU Proposal	City PUD Response
<p>If the City will not provide wetland mitigation credits in lieu of the required wetland mitigation area discussed in section #3 above related to the Fenton Parkway extension, then the City and PUD agree to sit down and review the best way to create a hydrologically and biologically functioning wetland mitigation site for the impacts of connecting Street A to Fenton Parkway (without a bridge) at the current location proposed by SDSU at the site. SDSU needs to establish a physical connection between the San Diego River and the wetlands area. To do this, SDSU may need an easement over some City owned land between the proposed wetland mitigation site and the San Diego River to link the</p>	<p>The proposed location of the SDSU wetland mitigation in the River Park and inside the Support Infrastructure area is incompatible with the future development of essential water and sewer facilities. SDSU may not locate the development project's wetland mitigation within PUD easements or within the Support Infrastructure area or Wellfield Easement area in the River Park.</p> <p>PUD has offered to work with SDSU to use credits at the adjacent City Stadium Wetland Mitigation site for wetland impacts that are the result of public improvements. This would require compensation to the Water Utility Fund and would be subject to regulatory agency approval. Not all of the mitigation</p>

mitigation area with the San Diego River and the City's WMA. This issue can be addressed after the need for the wetland mitigation area discussed in section #3 is determined.


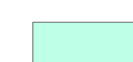




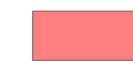





obligations required for SDSU's project could be satisfied at the Stadium Mitigation site. Temporary wetland impacts and portions of the 2/3 of the 3:1 ratio could utilize credits at the Stadium Wetland Mitigation site with regulatory agency approval. The mitigation site is owned by the Water Utility Fund, which would require compensation of \$221,794.84/acre. Regulatory agency applications will need to be prepared with the City as a co-applicant and terms would be determined by the Regional Board, CDFW and the Army Corps.

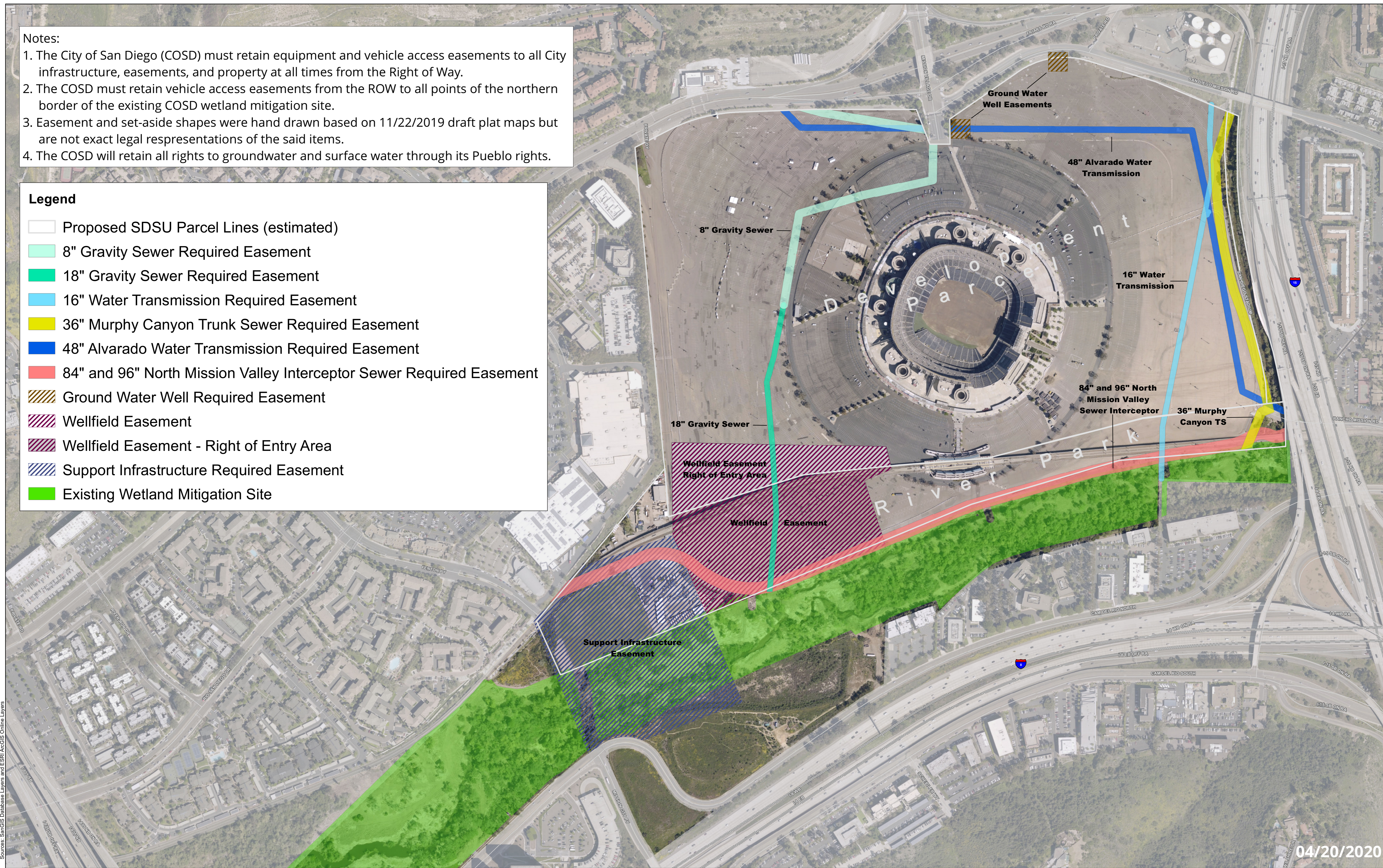
Although PUD is working to assist SDSU with alternate mitigation options, PUD is not responsible for SDSU's compensatory mitigation obligations. The City agrees to continue to work cooperatively with SDSU towards solutions that eliminate conflicts with PUD easements.

Notes:

1. The City of San Diego (COSD) must retain equipment and vehicle access easements to all City infrastructure, easements, and property at all times from the Right of Way.
2. The COSD must retain vehicle access easements from the ROW to all points of the northern border of the existing COSD wetland mitigation site.
3. Easement and set-aside shapes were hand drawn based on 11/22/2019 draft plat maps but are not exact legal representations of the said items.
4. The COSD will retain all rights to groundwater and surface water through its Pueblo rights.

Legend

-  Proposed SDSU Parcel Lines (estimated)
-  8" Gravity Sewer Required Easement
-  18" Gravity Sewer Required Easement
-  16" Water Transmission Required Easement
-  36" Murphy Canyon Trunk Sewer Required Easement
-  48" Alvarado Water Transmission Required Easement
-  84" and 96" North Mission Valley Interceptor Sewer Required Easement
-  Ground Water Well Required Easement
-  Wellfield Easement
-  Wellfield Easement - Right of Entry Area
-  Support Infrastructure Required Easement
-  Existing Wetland Mitigation Site



Sources: SanGIS Database Layers and ESRI ArcGIS Online Layers

04/20/2020

ATTACHMENT B

SDSU Mission Valley Campus Project

City's Updated Proposal for Permitting of Various Project Components and Activities

*Prepared as of April 27, 2020, in response to CSU's
proposed revisions submitted on April 22, 2020*

1. Overview

This document sets forth the City's updated proposal for the allocation of land use related permitting rights and responsibilities between the City and CSU with respect to the following components and activities in SDSU's Mission Valley Campus project ("Project") on and adjacent to the 135.12-acre project site to be purchased and owned by CSU ("CSU Property"), as more fully described in CSU's Master Plan ("Master Plan") and Final Environmental Impact Report ("Final EIR") for the Project: (a) CSU's development and maintenance of its improvements on the CSU Property, generally; (b) the City's development and maintenance of the future recreation center within an approximately one-acre portion of the CSU Property, to be ground leased by CSU to the City for 99 years; (c) CSU's development, operation, and maintenance of the 34-acre River Park on City-owned property immediately south of the CSU Property; and (d) CSU's completion of other off-site improvements, such as traffic improvements required by the Final EIR for the Project. Once the City and CSU have agreed upon all terms of the permitting proposal, the transaction documents will be modified to reflect the agreed-upon terms.

This document also addresses certain permitting aspects associated with CSU's potential future construction of the Fenton Parkway Bridge. Certain key deal points related to the bridge will be included in the Purchase and Sale Agreement ("PSA") for the transaction, as the parties do not currently anticipate signing a separate MOU related to the bridge at the time of PSA approval.

This document focuses on the major highlights regarding the topic of permitting and approvals related to the construction, operation, and maintenance of the Project. It is not intended to address every provision that will need to be incorporated into the transaction documents with respect to permitting, including provisions related to licensing the use of the park and recreation spaces or right of entry permits that are issued by the City or CSU in its proprietary capacity. Also, this document is not intended to address in detail other issues in the City/CSU transaction that may have some overlap with permitting functions, such as the nuances of easements and mapping for the Project Site and adjacent properties, CSU's provision of performance security for certain construction obligations, or CSU's potential future construction of the Fenton Parkway Bridge.

This document reflects input from the following City departments: Development Services ("DSD"); Parks and Recreation; Planning; Public Utilities ("PUD"); Public Works; Real Estate Assets ("READ"); and Transportation and Storm Water ("TSW").

2. Improvements on CSU Property

CSU will generally have permitting authority for all development and building permits and certificates of occupancy for development on the CSU Property. The City will retain limited permitting and approval authority with respect to certain aspects of the Project, as follows:

- (a) Grading Plans (DSD/TSW Review): CSU has submitted to the City a grading plan depicting all proposed development within any floodplain on the CSU Property, a proposed Storm Water Quality Management Plan (“SWQMP”) for the CSU Property, and a proposed Storm Water Pollution Prevention Plan (“SWPPP”) for the CSU Property (collectively, “CSU Property Grading Plans”). The City has provided review comments on the CSU Property Grading Plans, and CSU will submit to the City an updated version of CSU Property Grading Plans. Before CSU issues a grading permit or commences any construction activity within any floodplain on the CSU Property, DSD and TSW must have reviewed the CSU Property Grading Plans (including any updated version) and consulted with CSU regarding the proposed content. This review and consultation is intended to ensure CSU’s compliance with: (i) MS4 storm water requirements (understanding that CSU will issue its own grading permit complying with storm water requirements); and (ii) applicable City regulations, which include the Land Development Code (including Chapter 14, Article 2, Divisions 1 and 2, and Chapter 14, Article 3, Divisions 1 and 3) and the Land Development Manual (including Appendixes B – Drainage Design Manual, H – Standard Drawings, and S – FEMA Definitions). CSU will make a good faith effort to incorporate all comments received from DSD and TSW into the final CSU Property Grading Plans. CSU will provide a written explanation to DSD and TSW if any of their comments cannot be incorporated.

CSU will submit to the City all FEMA application documents, and the City will sign the associated Community Acknowledgment Form upon completion of the review and consultation period if the content of such form is reasonably acceptable to the City. The City will provide initial comments for any application within 15 business days after CSU’s submittal of complete information. City acknowledges that CSU has already submitted, and City has already signed, the Community Acknowledgment Form for CSU’s FEMA CLOMR-F application, but one or more additional applications and Community Acknowledgement Forms will be required by CSU to complete development of the Project.

- (b) Development Plans (PUD Review): CSU must submit to the City a proposed development plan and related supporting documents depicting all proposed grading and construction activities, including installation of structures and landscaping, within any City utility easement on the Project Site and with respect to any proposed grading or construction activities that will occur under, over, or adjacent to the City’s water and sewer utility pipes within the CSU Property (collectively, “CSU Property Development Plans”). Before CSU issues a grading permit, construction permit, or any other permit allowing such grading or construction activities, or commences any such grading or construction activities on the CSU Property, PUD must have reviewed and approved the CSU Property Development Plans, with PUD’s approval being confirmed via a signed letter from PUD’s Director. CSU must not modify the approved CSU Property

Development Plans, or undertake any grading or construction activities in conflict with the approved plans, without first obtaining PUD's additional approval. PUD's review and approval of the CSU Property Development Plans and any modifications to those plans will be limited to ensuring: (i) CSU complies with PUD-related City regulations in the Land Development Code and the Land Development Manual, specifically Appendix N – Water Design Guide and Sewer Design Guide; and (ii) CSU's grading activities will not impair, damage, or interfere with PUD's groundwater management program or existing public utilities.¹ CSU agrees that improvements constructed within City utility easements for water or sewer utility pipes existing on the CSU Property will be limited to landscaping, hardscaping, streetscaping, recreational fields, bike paths, trails and similar improvements.

- (c) Parcel Map: The parcel map will include and may slightly modify the respective boundaries of the CSU Property, the River Park Property, and other adjacent City-owned property created as separate legal parcels. The parcel map also will confirm the location of various easements and rights-of-way related to CSU's development and operation of the Project and the City's maintenance and operation of various public utilities. The parcel map must include final City utility easements, Pure Water easements, public street right-of-way dedications, and private (CSU) utility easement dedications within the River Park Property. Each party (i.e., both CSU and the City) must consider approval of the parcel map in accordance with its own regulations, requirements, and processes. The parcel map must comply with the California Government Code and the City's applicable regulations and requirements for the approval of parcel maps. The City anticipates, based on CSU's representations regarding the contents of the parcel map, that the City's approval process will be ministerial in nature; however, the City cannot make a final determination on that process until CSU submits the complete parcel map application.²
- (d) City Public Improvement Plans: CSU will prepare proposed public improvement plans depicting certain public street improvements and public utility improvements (e.g., utility pipelines) to be constructed on the CSU Property and the River Park Property by CSU, which will ultimately be owned, operated, and maintained by the City after construction is completed ("City-Owned Public Improvements"). For purposes of this Section 2(d), City-Owned Public Improvements do not include the River Park improvements, which are addressed in Section 4 below. The public street improvements to be owned, operated, and maintained by the City are limited to the revised terminus of Rancho Mission Road at project "Street H" and the revised terminus of San Diego Mission Road at project "Street F." The City will have permitting authority for the City-Owned Public Improvements. CSU will submit the Public Improvement plans in two packages to the City through

¹ In response to one of CSU's comments, the City cannot agree to preapprove CSU's installation of any improvements, such as trolley improvements, within City easement areas. The City needs to retain preapproval rights over CSU's proposed installation of any improvements that may compromise the City's pipelines. The City's successful operation of its pipelines is extremely important to the local community. For instance, the 48-inch Alvarado pipeline provides water to 250,000 customers, or approximately 19 percent of the City's water supply.

² In response to one of CSU's comments, the City cannot waive the requirement for a parcel map if the City ends up determining, based on the specific content of CSU's proposal, that the parcel map requires a discretionary approval process. In addition, the City has submitted a separated document to CSU describing the process for vacation of public service easements and dedicated public right-of-way. As noted in the Overview section above, the topic of vacating such easements and right-of-way is outside the intended scope of this document.

DSD, which will concurrently review the two packages of Public Improvement plans and issue the appropriate permits. The permits are expected to be ministerial construction permits, provided that DSD determines, in its sole discretion and in coordination with PUD, that the plans satisfy all of the City requirements and regulations, including complying with all applicable federal and state laws, regulations, and building codes.

- (e) Water and Sewer Connections: The City, through DSD, in coordination with PUD, will be the permitting authority for all permits authorizing proposed water and sewer connections to City-owned pipes and infrastructure. Before CSU is allowed to implement any proposed water and sewer connections, the City must approve the proposed connections, the relocations of all public water and sewer lines crossing through the CSU Property and the River Park Property, the installations of water meters and irrigation meters connecting to City-owned pipes and infrastructure, and any work occurring within a City easement area pursuant to Section 2(b) above. All applicable work and connections must comply with the City's regulations, including the Green and White Book standards. The City's approval of all water and sewer connections will be subject to CSU's payment of the City's standard connection fees prior to issuance of any permit, with an award of credits for existing water meters as appropriate.
- (f) Expedited Review: DSD will designate a project manager to help expedite the City's review and approval of all applicable plans and documents submitted by CSU, including by PUD, TSW, and other applicable City departments. If CSU pays the City's normal fees for expedited processing, then once SDSU's submittal is deemed complete, the City will expedite its review of applicable plans and documents and endeavor to finalize its review within 15 business days after the date of each complete initial submittal and (if applicable) each complete subsequent submittal. However, the City will be unable to offer expedited review to the extent that CSU is proposing any deviations from the City's standards and regulations.

3. Future Recreation Center

The City will have permitting authority for its construction of the Future Recreation Center. The ground lease will require that the Future Recreation Center comply with all applicable law, including the California Building Code, California Health and Safety Code, California Fire Code, Americans with Disabilities Act, and the California Environmental Quality Act, including compliance with any mitigation measures adopted with the Final EIR for the Project; be constructed with an architectural style that is compatible with improvements constructed on or planned for construction on the CSU Property; and be consistent with the Campus Design Guidelines for the Project ("Ground Lease Requirements"). Before the City issues a building permit or a construction permit or commences any construction activity for the Future Recreation Center, the City will submit to CSU, for its review and comment, a copy of design and construction plans for the Future Recreation Center ("Future Recreation Center Plans").³ The City will make a good faith effort to incorporate all comments received from CSU on the Future

³ In response to one of CSU's comments, the City is unable to attach a conceptual design of the Future Recreation Center to the PSA. The City has not begun any design-related planning for the recreation center and will need to identify funding for preliminary design in the future, after approval of the PSA. The City notes that the PSA will provide the City with a 20-year period in which to exercise its option to lease the recreation center site.

Recreation Center Plans. The City will provide a written explanation to CSU if any of its comments are not incorporated, but further consultation will not be required before the City may proceed with issuance of a building or other construction permit, so long as construction is performed in compliance with the Ground Lease Requirements. The City and CSU will cooperate with each other to ensure the reasonable compatibility of the Future Recreation Center with CSU's Project and to satisfy the City's reasonable logistical needs for design, construction, operation, and maintenance of the Future Recreation Center, as well as regular public access to and from all completed facilities.

4. River Park

CSU will have general permitting authority for all park and open space on the CSU Property and the River Park Property. In addition, CSU will be responsible for obtaining all required permits from applicable regulatory agencies, for development, operation, and maintenance of the River Park. The preceding two sentences are subject to the following conditions:

- (a) Governmental Purposes: The City Council, in its sole and absolute discretion, must make a finding that CSU's development of the River Park will effectuate valid governmental purposes, as a basis for the City ceding its permitting authority to CSU on City-owned land. City staff will recommend that the Council make such a finding.
- (b) Council Policy Waiver: The City Council, in its sole and absolute discretion, must waive the application of the City's normal park development rules in Council Policy 600-33. City staff will recommend that the Council approve such a waiver.
- (c) Indemnification: CSU must fully defend and indemnify the City against any claims and losses related to CSU's exercise of permitting authority and the City's relinquishment of its authority.
- (d) No Wetland Impacts: CSU must construct the River Park improvements and the Storm Water BMPs outside of the geographic limits of the Wetland Mitigation Project Site, and must not adversely impact the Wetland Mitigation Project Site.
- (e) Public Facilities: CSU's construction, maintenance, and operation of the River Park improvements must accommodate the City's construction, maintenance, and operation of existing and planned future public facilities, including Pure Water facilities. To the extent CSU proposes to construct any public utilities on the River Park Property, including any relocation of existing utilities, the above-described provisions for the City's approval of the parcel map (see item 2(c) above) and the Public Improvement plans (see item 2(d) above) will apply.⁴
- (f) Conceptual Plans: CSU's conceptual plans for the River Park improvements, in a form approved by the Director of the City's Parks and Recreation Department, will be attached

⁴ In response to one of CSU's comments, the City is not responding in this document as to CSU's proposed inclusion of additional details regarding planned future public facilities, such as Pure Water facilities. That topic is the subject of separate ongoing communications between the parties.

to the PSA. CSU must develop the final plans in a manner consistent with the approved conceptual plans and construct the improvements in accordance with the final plans.

(g) Grading Plans (DSD/TSW Review): CSU has submitted to the City a proposed grading plan depicting River Park and Storm Water BMP improvements, a proposed SWQMP for the River Park, and a proposed SWPPP for the River Park (collectively, “Off-Site Grading Plans”). The City has provided review comments on the Off-Site Grading Plans. Before CSU issues a grading permit or commences any work on River Park and Storm Water BMP improvements, DSD and TSW must have reviewed, and approved in writing, the Off-Site Grading Plans. This review and approval is intended to ensure CSU’s compliance with: (i) MS4 storm water requirements; and (ii) applicable City regulations, which include the Land Development Code (including Chapter 14, Article 2, Divisions 1 and 2, and Chapter 14, Article 3, Divisions 1 and 3) and the Land Development Manual (including Appendixes B – Drainage Design Manual, H – Standard Drawings, O – Storm Water Standards Manual, and S – FEMA Definitions).

(h) Development Plans (PUD Review): CSU must submit to the City a proposed development plan and related supporting documents depicting all proposed grading and construction activities, including installation of structures and landscaping, within the River Park Property (collectively, “River Park Development Plans”). Before CSU issues a grading permit, construction permit, or any other permit allowing such grading or construction activities, or commences any such grading or construction activities on the River Park Property, PUD must have reviewed and approved the River Park Development Plans, with PUD’s approval being confirmed via a signed letter from PUD’s Director. CSU must not modify the approved Off-Site Development Plans, or undertake any grading or construction activities in conflict with the approved plans, without first obtaining PUD’s additional approval. PUD’s review and approval of the River Park Development Plans and any modifications to those plans will be limited to ensuring: (i) CSU complies with PUD-related City regulations in the Land Development Code and the Land Development Manual, specifically Appendix N – Water Design Guide and Sewer Design Guide; and (ii) CSU’s grading activities are consistent with the City’s fee ownership rights and the easement rights granted to CSU and will not impair, damage, or interfere with PUD’s groundwater management program, existing public utilities, and the City’s planned future facilities, including Pure Water facilities.

5. Fenton Parkway Bridge

CSU will have permitting authority for the Fenton Parkway Bridge. CSU will also be responsible for obtaining all permits required for construction of the bridge from other regulatory agencies. CSU must design the bridge in accordance with State of California Department of Transportation (CalTrans) standards and the City’s regulations and standards, including the Street Design Manual and environmentally sensitive lands regulations.

CSU must construct the Fenton Parkway Bridge outside of the geographic limits of the Wetland Mitigation Project Site, and must not adversely impact the Wetland Mitigation Project Site.

CSU must cooperate with the City to include capacity within the bridge design for the installation of future City water and sewer pipelines. The City must approve CSU's final design plans for the bridge, before any construction commences, to ensure that the City's regulations and standards are met and the design properly accommodates future essential City services, including water and sewer pipelines.

6. Miscellaneous Off-Site Improvements

The City will have permitting authority for off-site traffic related improvements occurring within the City's rights-of-way. CSU shall not begin work in the City's rights-of-way until the City has issued any required permits.

CSU will not adversely impact the City's Wetland Mitigation Project Site and will ensure its contractors do not impact the same.