

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: May 22, 2020

TO: Honorable Members of the City Council

FROM: City Attorney Mara W. Elliott

SUBJECT: Draft Agreement for the City's Sale of the SDCCU Stadium Site in Mission Valley to San Diego State University

Attached to this memorandum is the Purchase and Sale Agreement (PSA) that the City Council instructed my Office to prepare on November 18, 2019 and January 27, 2020. Consistent with the Council's direction, the PSA:

- Protects the City, its taxpayers, and its utility ratepayers,
- Adheres to the terms of voter-approved Measure G, and
- Incorporates City-protective recommendations made by the Independent Budget Analyst and my Office.

The attached PSA reflects substantial input from impacted City departments, including Real Estate Assets, Planning, Public Utilities, Transportation and Storm Water, Development Services, Parks and Recreation, and Risk Management. It also incorporates revisions proposed by SDSU that would not undermine the City's own interests, or come back to haunt the City now or in the decades ahead. The attached PSA would provide a legitimate basis for the Council to make the required finding under Measure G that the negotiated transaction is fair, equitable, and in the public interest.

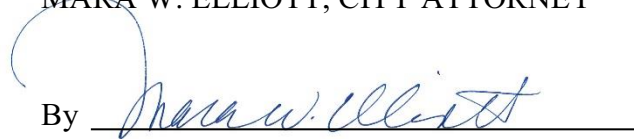
It is our understanding that, on May 29, the Council will consider the PSA prepared by California State University lawyers for SDSU dated May 5, with some subsequent edits made by the City and/or SDSU, and that the full draft we were directed to prepare will not be considered.

Honorable Members of the City Council
May 22, 2020
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We are providing a copy of the City-protective PSA to you because we have completed the work you requested that we perform, and because the Council may wish to compare it to the PSA docketed for the Council's consideration on May 29.

MARA W. ELLIOTT, CITY ATTORNEY

By

A handwritten signature in blue ink, appearing to read "Mara W. Elliott", is written over a horizontal line. A large, light blue circular scribble is present to the left of the signature.

MWE:sne
MS-2020-15
Doc. No.: 2390529
Attachment

cc: Honorable Mayor Kevin Faulconer
Kris Michell, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

by and between

**the City of San Diego,
a California municipal corporation,**

as Seller,

and

**the Board of Trustees of the California State University,
the State of California acting in its higher education capacity,
on behalf of San Diego State University,**

as Buyer

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List of Attachments to this Purchase and Sale Agreement

- 1 Escrow Agent's Consent
- 2-A Legal Description of the Real Property
- 2-B Depiction of the Real Property
- 3-A Legal Description of the Murphy Canyon Creek Parcel
- 3-B Depiction of the Murphy Canyon Creek Parcel
- 4-A Legal Description of the River Park Property
- 4-B Depiction of the River Park Property
- 5 Depiction of the Future Recreation Center Site
- 6 Project Site Plan
- 7 Preliminary Title Report for the Real Property
- 8 Closing Documents List
- 9 Recordable Closing Documents List
- 10 Depiction of Well Removal and Abandonment Work
- 11 Depiction of Existing Easements for Proposed Vacation
- 12 Depiction of Existing Rights-of-Way for Proposed Vacation
- 13 Depiction of Proposed Public Easement and Right-of-Way Dedications
- 14 CSU Financing Plan
- 15 CSU New Lease Summary
- 16-A Schedule of Leases
- 16-B Rent Roll
- 17 Schedule of Service Contracts
- 18 Schedule of Licenses and Permits
- 19 Grant Deed
- 20 Bill of Sale and Assignment and Assumption Agreement
- 21 Declaration of Property Development Restrictions and Permitting
- 22 Declaration of Affordable Housing Restrictions
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- 24 Option Agreement Regarding Future Recreation Center Site
- 25 Measure G
- 26 River Park and Storm Water BMP Development Agreement
- 27 River Park and Storm Water BMP Maintenance Agreement
- 28 Easement Agreement for River Park Construction and Maintenance
- 29 Additional Public Benefits
- 30 Easement Agreement for City's Public Facilities During Stage 1
- 31 Easement Agreement for CSU's Utilities within River Park Property
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- 33 Depiction of Wetlands Mitigation Project Site
34. Depiction of Proposed CSU Easements within River Park Property

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

[SDCCU Stadium Site and Contiguous Property at 9449 Friars Road]

This Real Property Purchase and Sale Agreement and Joint Escrow Instructions (“**Agreement**”) is dated as of _____, 2020 (“**Effective Date**”), by and between the CITY OF SAN DIEGO, a California municipal corporation (“**City**”), and the BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, the State of California acting in its higher education capacity, on behalf of San Diego State University (“**CSU**”).

RECITALS

The City and CSU enter into this Agreement with reference to the facts and circumstances described below (collectively, “**Recitals**”). Terms with initial capital letters that are not defined in the Recitals shall have the meaning given in Section 1:

A. The City’s voters approved a citizens’ initiative measure, commonly known as Measure G, on November 6, 2018, governing the City’s sale to CSU of certain real property referred to therein as the “Existing Stadium Site” (defined as the “**CSU Property**” in Section 1). The CSU Property consists of that certain City-owned real property, which includes both the real property commonly known as the San Diego County Credit Union stadium site in Mission Valley and the contiguous real property commonly known as the Murphy Canyon Creek Channel, as well as related improvements and appurtenances.

B. Measure G is comprised of two main components: (i) Sections 1, 2, 4, 5, 6, 7, and 8 of the citizens’ initiative, which describe, among other things, the purpose, intent, and findings supporting the citizen’s initiative (“**Intent Provisions**”); and (ii) Section 3 of the citizens’ initiative, which adds new section 22.0908 to the San Diego Municipal Code (“**Section 22.0908 Conditions**”). Measure G states that the CSU Property is needed by CSU/SDSU for “Bona Fide Public Purposes,” as that term is defined in the Section 22.0908 Conditions, and for that reason the City shall sell the CSU Property to CSU in accordance with the City Charter, but only if such sale is in compliance with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G.

C. Measure G does not obligate CSU to purchase the CSU Property or take any other actions related to the CSU Property, if CSU chooses not to purchase the CSU Property. However, Measure G requires the City to ensure that the City’s negotiated sale of the CSU Property complies with Measure G.

D. California Education Code section 66606 vests CSU with “full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University.” Section 22.0908(x)(12) states “Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University.” CSU is the State of California acting in its higher education capacity, and is generally exempt from local and

regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations, when its development, construction, facilities, and uses are in furtherance of its governmental purpose, unless applicable Law specifically says otherwise. Without waiver of CSU's standing and legal authority as a state agency, and to enable the City to ensure that the sale complies with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in the terms of Measure G, CSU agrees to be bound by the terms and conditions set forth in this Agreement and the Attachments.

E. The Constitution of the State of California, the City of San Diego Charter, the San Diego Municipal Code, and all relevant ordinances, resolutions and regulations of the City and all other applicable Law vest the City Council of the City with full power and responsibility to perform its obligations and to exercise and enforce its rights under this Agreement and the Attachments. The City is only required to comply with such provisions of Law as may be applicable to the City with respect to the subject matter of this Agreement. The City agrees to sell the CSU Property in compliance with the Section 22.0908 Conditions, and fulfill the intent and purposes outlined in Measure G.

F. In light of the circumstances stated in Recitals A through E above, the Parties have negotiated, and desire to enter into and be bound by, this Agreement and the Attachments pursuant to which CSU agrees, strictly as a matter of contract, to develop and operate the CSU Property subject to terms and conditions in this Agreement and the Attachments, and in a manner satisfying the City's concern that the sale must comply with the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. By agreeing to and entering into this Agreement and the Attachments, CSU is not waiving its standing and legal authority as a state agency, though it agrees, due to the unique circumstances at hand, to be contractually bound by the terms of such agreements and documents. The Parties negotiated the terms of this Agreement and the Attachments in response to the local voters' approval of Measure G and intend all such agreements and documents to be consistent with the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. A true and correct copy of Measure G is attached to this Agreement as Attachment No. 25.

G. Upon CSU's acquisition of the CSU Property in accordance with this Agreement, and in satisfaction of the Additional Public Benefits (defined in Section 1) and the Section 22.0908 Conditions, CSU is required to undertake certain activities and construct, operate, and maintain various improvements of local and regional public benefit on or about the CSU Property, as further described in this Agreement.

H. CSU desires to purchase the CSU Property from the City, and the City desires to sell the CSU Property to CSU, for CSU's use and development of the CSU Property in accordance with terms of this Agreement, the Campus Master Plan, the Final EIR, applicable Law, the Section 22.0908 Conditions, and the Additional Public Benefits.

I. This Agreement memorializes the terms and conditions on which: (i) the City agrees to sell to CSU, and CSU agrees to purchase from the City, the CSU Property; and (ii) CSU agrees to use and develop the CSU Property in accordance with the terms of this Agreement, the Campus Master Plan, the Final EIR, applicable Law, the Section 22.0908 Conditions, and the Additional Public Benefits. Section 5 of this Agreement summarizes how

this Agreement meets the various requirements of the Section 22.0908 Conditions and satisfies the Additional Public Benefits.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual promises, covenants, conditions, and agreements contained in this Agreement, the City and CSU agree as follows:

1. DEFINED TERMS AND SECTION REFERENCES.

All defined terms in this Agreement are denoted by initial capital letters. Each defined term shall have the meaning identified in this Section 1 for purposes of this Agreement. All Section references in this Agreement are to particular sections of this Agreement, unless otherwise expressly stated.

1.1 ADA Settlement Agreement. The Settlement Agreement and Mutual Release dated February 12, 2001, as amended by the First Amendment thereto dated September 2, 2005, in the matter of *Beverly Walker, et al. v. City of San Diego, et al.*, U.S. District Court Case No. 97-cv-1547 BTM (LSP), relating to alleged violations of the Americans with Disabilities Act with respect to the operation and maintenance of the Existing Stadium.

1.2 Additional Public Benefits. The public benefits and Project elements identified in Attachment 29 to this Agreement, which CSU shall provide pursuant to this Agreement (including the Attachments) as part of CSU's development and operation of the Project in response to concerns raised by environmental interest groups and the local community, above and beyond those benefits and components specifically described in Measure G, including the Section 22.0908 Conditions.

1.3 Additional Park Improvements. A minimum of 22 acres of the CSU Property to be developed and maintained by CSU as publicly-accessible additional population-based park facilities and active recreation space, as further described in Section 5.9.

1.4 Agreement. This Real Property Purchase and Sale Agreement and Joint Escrow Instructions between the Parties, including the Attachments, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.5 Approval. Any license, permit, approval, consent, certificate, ruling, variance, or authorization, or any amendment to any of the foregoing, as shall be necessary or appropriate under any applicable Law to: (i) commence, perform, or complete the construction, operation, and maintenance of the Project on the CSU Property; or (ii) complete or operate any activity or business on the CSU Property.

1.6 Appurtenances. All Improvements, development rights, air rights, other rights, easements, and appurtenances on or pertaining to the Real Property, but expressly excluding all water rights, easements, and the like, to the extent reserved in the City's favor under the Grant Deed or any of the Easement Agreements.

1.7 Attachments. Attachments 1 through 33 attached to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.8 Base Purchase Price. The amount of \$86,200,000 (Eighty-Six Million Two Hundred Thousand Dollars).

1.9 Bill of Sale and Assignment and Assumption Agreement. The Bill of Sale and Assignment and Assumption Agreement, in substantially the form of Attachment 20 to this Agreement, by which, upon the Closing, the City will sell and assign to CSU, and CSU will purchase and assume, the Tangible Personal Property, the Intangible Personal Property, the Leases, and the Licenses and Permits, and at CSU's election in accordance with Section 4.2, the Service Contracts, together with any and all amendments, modifications, supplements, and/or extensions to the Bill of Sale and Assignment and Assumption Agreement.

1.10 BMP Areas. The storm water Best Management Practices areas, to be constructed and maintained on a portion of the River Park Property comprising a cumulative total of approximately 2.5 acres, in accordance with the River Park and Storm Water BMP Development Agreement and the Easement Agreement for CSU's Utilities within the River Park, and to be maintained in accordance with the River Park and Storm Water BMP Maintenance Agreement.

1.11 Bona Fide Public Purposes. Defined by Measure G at Municipal Code section 22.0908(x)(1) as "a good faith or genuine use or uses for public or government purposes such as public university uses or facilities; institutional uses or facilities; offices; buildings; stadium, park, open space, trail, and recreation uses and facilities; academic uses and facilities; public parking; faculty, staff, student and residential market-rate and affordable housing; hotel uses and facilities to support university goals and objectives; and public-private partnership support uses and facilities, including but not limited to commercial, neighborhood-serving retail, research, technology, development, uses, individually and cumulatively, promote or facilitate SDSU's higher education mission, goals, and objectives."

1.12 Business Day. A day other than Saturday, Sunday, or any day on which (i) federally-insured banks are closed, (ii) the County Recorder is closed, or (iii) the administrative offices of either the City or CSU are closed.

1.13 Campus Master Plan. The San Diego State University Mission Valley Campus Master Plan, approved by the CSU Board of Trustees.

1.14 CEQA. Collectively, the California Environmental Quality Act, set forth at California Public Resources Code section 21000 *et seq.*, and the related CEQA Guidelines, set forth at California Code of Regulations, title 14, section 15000 *et seq.*

1.15 City. Defined in the preamble of this Agreement.

1.16 City Approval Actions Collectively, the following actions of the City Council: (i) adoption of any ordinances or resolutions, or both, approving this Agreement and any related authorizations with respect to approval of this Agreement; and (ii) adoption of a resolution making findings with respect to the Final EIR as a responsible agency in accordance with CEQA.

1.17 City Council. The City Council of the City of San Diego.

1.18 City Formal Corrective Action. A formal action by the City Council to re-approve any of the City Approval Actions or to take any other formal action to remedy any violation or defect alleged in the court action in which the Injunction Preventing Closing was issued and, if necessary, sign a new Real Property Purchase and Sale Agreement and Joint Escrow Instructions in the substantial form of this Agreement with substantially the same content as in this Agreement or sign an amendment to this Agreement that does not substantially modify the City's rights or obligations under this Agreement. Consideration of any City Formal Corrective Action shall not in any way limit the discretion of the City Council.

1.19 City Indemnified Parties. Collectively, the City and its officials, employees, agents, officers, attorneys, and representatives.

1.20 City Public Improvement Plans. The plans that will be prepared to depict public utility improvements to be permitted by the City (including the City's issuance of a public improvement permit in accordance with applicable City regulations, including Chapter 12, Article 9, Division 7 of the San Diego Municipal Code), then constructed by CSU or any Developer Entity on the CSU Property in connection with the Project, and then owned and operated by the City following the completion of construction, as described in Section 6.11.

1.21 Claim. Any claim, loss, cost, damage, expense, liability, lien, legal proceeding, enforcement action, administrative action or proceeding, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise), charge, award, assessment, notice of violation, fine, or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature), and all financial or performance obligations arising from any judgment, decree, order, or other written decision issued by any Person, entity or governmental representative, or arising from any settlement.

1.22 Cleanup and Abatement Order. Collectively, Cleanup and Abatement Order No. 92-01, dated January 3, 1992 (revised by errata sheet dated April 6, 1992), issued by the California Regional Water Quality Control Board, San Diego Region, with respect to the Mission Valley Terminal, and all related addenda issued before or after the Effective Date of this Agreement, including Addendum No. 1 dated May 9, 1994, Addendum No. 2 dated August 27, 1999, Addendum No. 3 dated February 19, 2002, Addendum No. 4 dated March 20, 2002, Addendum No. 5 dated April 13, 2005, Addendum No. 6 dated January 19, 2010, Addendum No. 7 dated December 20, 2011, and Addendum No. 8 dated July 15, 2016.

1.23 Closing. The recording of the Grant Deed, together with other applicable Recordable Closing Documents, in the Official Records.

1.24 Closing Date. The date on which the Closing occurs, which shall be no later than the Outside Closing Date.

1.25 Closing Document Deliverables. The documents identified in the Closing Documents List.

1.26 Closing Documents List. The list of Closing Documents included as Attachment 8 to this Agreement, including all documents to be signed by the applicable Party, and acknowledged by a notary public (where applicable with respect to documents to be recorded in the Official Records), in connection with the Closing.

1.27 Cooperate or Cooperation. CSU's and the City's good faith efforts to reasonably communicate with each other and use reasonable efforts to take such steps as may be reasonably necessary to effectuate and implement the terms and conditions of this Agreement. For clarification, "Cooperate" or "Cooperation" shall not include any obligation to incur liability or out-of-pocket expenses or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel).

1.28 County Recorder. The Office of the San Diego County Recorder.

1.29 CSU. Defined in the preamble of this Agreement.

1.30 CSU Approval Actions. Collectively, the following actions of the CSU Board of Trustees: (i) certification of the Final EIR in accordance with CEQA; (ii) approval of the Campus Master Plan; and (iii) approval of this Agreement and authorization to enter into this Agreement (including Attachments).

1.31 CSU Board of Trustees. The Board of Trustees of the California State University.

1.32 CSU Debt Instruments. Any instruments to be recorded in the Official Records against the Real Property to memorialize or secure the repayment of, any loans, bond financing, or other indebtedness incurred by CSU or a Developer Entity.

1.33 CSU Entry Permit. The Short-Term Right-of-Entry Permit between the Parties, dated as of January 24, 2019, by which the City provided to CSU the right of access to the CSU Property and the River Park Property for purposes of performing studies, tests, and inspections of the CSU Property and the River Park Property.

1.34 CSU Existing Occupancy Agreement. The Agreement for Use and Occupancy of Qualcomm Stadium between the Parties, dated August 5, 2009, as amended August 6, 2018, by which the City previously granted to CSU the right to use and occupy the Existing Stadium on specified terms and conditions through December 31, 2020, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.35 CSU Financing Plan. The narrative description in Attachment 14 to this Agreement, identifying the reasonably estimated cost of CSU's financial obligations under this Agreement and the pertinent agreements and other documents attached to this Agreement, as well as CSU's anticipated source of funds to fulfill all of those financial obligations.

1.36 CSU Formal Corrective Action. A formal action to re-approve any of the CSU Approval Actions or to take any other formal action to remedy any violation or defect alleged in the court action in which the Injunction Preventing Closing was issued and, if necessary, sign a new Real Property Purchase and Sale Agreement and Joint Escrow Instructions in the substantial form of this Agreement with substantially the same content as in this Agreement or sign an

amendment to this Agreement that does not substantially modify CSU's rights or obligations under this Agreement. Consideration of any CSU Formal Corrective Action shall not in any way limit the discretion of the CSU Board of Trustees.

1.37 CSU New Lease. The new lease with respect to the CSU Property and the River Park Property to be completed and signed by the Parties as provided in and subject to the provisions of Section 3.3, with the content of such new lease to be based upon the CSU New Lease Summary, as further described in Section 3.3, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.38 CSU New Lease Summary. The summary of material terms for the CSU New Lease included as Attachment 15 to this Agreement.

1.39 CSU Property. Collectively, the Real Property, the Appurtenances, the Intangible Personal Property, and the Tangible Personal Property.

1.40 Declaration of Affordable Housing Restrictions. The Declaration of Covenants, Conditions, and Restrictions Regarding Affordable Housing Development on SDSU Mission Valley Property, to be recorded in the Official Records in Senior Priority against the Real Property upon the Closing, in substantially the form of Attachment 22 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.41 Declaration of Property Development Restrictions and Permitting. The Declaration of Covenants, Conditions, and Restrictions Regarding Development, Permitting, Operation, and Maintenance of SDSU Mission Valley Property, to be recorded in the Official Records in Senior Priority against the Real Property upon the Closing, in substantially the form of Attachment 21 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.42 Default. Defined in Section 12.1 of this Agreement.

1.43 Delivery Date. The date that is seven (7) consecutive years from the Effective Date (as may be extended pursuant to the express provisions of this Agreement) by which construction of the improvements on the River Park Property and the New Stadium shall be completed and such improvements shall be open to the public for use and enjoyment, and with respect to the improvements on the River Park Property prior to the occupancy of any building on the CSU Property with the exception of the New Stadium.

1.44 Developer Entity or Developer Entities. Any developer, licensee, contractor, subcontractor, or other Person, whether operating on a for-profit or nonprofit basis, including any auxiliary organizations or affiliates of CSU, who enters into a Development Contract with CSU or its designee/affiliate.

1.45 Development Contract. A contract, deed, subcontract, lease, license, easement, or any similar arrangement entered into between CSU (or its designee/affiliate) and a Developer Entity, under which the Developer Entity agrees to develop, construct, or install any specified component(s) of the Project on the CSU Property, consistent with this Agreement and Measure

G, together with any and all amendments, modifications, supplements, and/or extensions to such Development Contract.

1.46 DSD. The City's Development Services Department, or any successor City department carrying out similar functions on the City's behalf.

1.47 Earnest Money Deposit. CSU's earnest money deposit in the amount of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) required to be deposited by CSU into Escrow in accordance with Section 2.5, and once deposited, shall include interest (if any) accrued on such amount.

1.48 Easement Agreement for River Park Construction and Maintenance. The Agreement Regarding Easement for Construction, Maintenance, and Operation of River Park for Recreational Uses, to be recorded in the Official Records against the Real Property (in Senior Priority) and the River Park Property upon the Closing, in substantially the form of Attachment 28 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.49 Easement Agreement for CSU's Utilities within River Park Property. The Easement Agreement for Installation of Utilities within River Park Property, to be recorded in the Official Records against the River Park Property after the Closing (unless otherwise specified in this Agreement), as provided for in this Agreement, in substantially the form of Attachment 31 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof, for the proposed utility easements that are tentatively planned by CSU to be located as depicted in Attachment 34 to this Agreement (provided that the current content of Attachment 34 represents CSU's preliminary draft based on CSU's proposed locations, does not reflect all input already received by CSU from City staff prior to the Effective Date, and remains subject to the review and approval of affected City departments, including DSD and PUD).

1.50 Easement Agreement for City's Public Facilities During Stage 1. The Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 1 (Construction Period), to be recorded in the Official Records against the Real Property (in Senior Priority) and the River Park Property upon the Closing, in substantially the form of Attachment 30 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.51 Easement Agreement for City's Public Facilities During Stage 2. The Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 2 (Completed Development), to be recorded in the Official Records against the Real Property (in Senior Priority) and the River Park Property after the Closing (unless otherwise specified in this Agreement), in substantially the form of Attachment 32 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.52 Easement Agreements. Collectively, the Easement Agreements for Stage 1 Recordation and the Easement Agreements for Stage 2 Recordation.

1.53 Easement Agreements for Stage 1 Recordation. Collectively, the documents identified in the category of "Easement Agreements for Stage 1 Recordation" in the Recordable

Closing Documents List, signifying those Easement Agreements to be recorded in the Official Records upon the Closing if the Closing occurs before the Parcel Map is approved and ready to be recorded, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.54 Easement Agreements for Stage 2 Recordation. Collectively, the documents identified in the category of “Easement Agreements for Stage 2 Recordation” in the Recordable Closing Documents List, signifying those Easement Agreements to be recorded in the Official Records after the Closing and in conjunction with the future recording of the approved Parcel Map, if the Closing occurs before the Parcel Map is approved and ready to be recorded, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.55 Effective Date. Defined in the preamble of this Agreement and referring to the date on which the last Party signed this Agreement, as further described in Section 2.7.

1.56 Environmental Claim. Any Claim relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge, as well as all damages or costs of any kind or of any nature whatsoever to the extent relating directly or indirectly to such a Claim.

1.57 Environmental Law. Every applicable law, statute, code, ordinance, requirement, order, proclamation, directive, rule, or regulation of any local, state, or federal governmental agency in effect on or enacted after the Effective Date of this Agreement, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under, or about the CSU Property or the River Park Property or relating to the Project, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 U.S.C. section 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 U.S.C. section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 U.S.C. section 1251 *et seq.*]; the Toxic Substances Control Act (“TSCA”) [15 U.S.C. section 2601 *et seq.*]; the Hazardous Materials Transportation Act (“HMTA”) [49 U.S.C. section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C. section 6901 *et seq.*]; the Clean Air Act [42 U.S.C. section 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. section 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. section 11001 *et seq.*]; the Occupational Safety and Health Act [29 U.S.C. sections 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code section 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code section 13000 *et seq.*]; together with any regulations promulgated under the above-referenced statutes and laws.

1.58 Escrow. The escrow established with Escrow Agent pursuant to the terms of this Agreement.

1.59 Escrow Agent. Chicago Title Company, whose representative and contact information are shown in Section 15.2.

1.60 Escrow Agent's Consent. The consent form to be signed by Escrow Agent, in substantially the form attached to this Agreement as Attachment 1, pursuant to Section 9.1.

1.61 Escrow Opening Date. The date on which Escrow Agent signs Escrow Agent's Consent, pursuant to Section 9.1.

1.62 Existing Easements for Proposed Vacation. Certain existing easements affecting the CSU Property and shown in the Preliminary Report (title exceptions nos. 02 (public road); 12 and 52 (water main); 13 (sewer); 14 (sewer); 15 (sewer); 24, 67 and 96 (electric); 51 and 86 (water main); 56 and 90 (sewer); 61 (water main); 63 (underground structures); 64 (pipe); 65 (electric); and 71 (water pipeline - partial vacation)), as more particularly identified and depicted in Attachment 11 to this Agreement, that will be the subject of the Existing Easements Vacation Approval, together with any and all amendments, modifications, supplements, and/or extensions thereof (provided that the current content of Attachment 11 represents CSU's preliminary draft, which does not reflect all input already received by CSU from City staff prior to the Effective Date). [Note: The Parties will need to discuss both the precise title exceptions to be included above and CSU's proposed version of Attachment 11.]

1.63 Existing Easements Vacation Approval. The proposed future discretionary approval by the City Council of the vacation of the Existing Easements for Proposed Vacation, as described in Section 6.9, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.64 Existing Rights-of-Way for Proposed Vacation. Certain existing public rights-of-way affecting the CSU Property, as more particularly identified and depicted in Attachment 12 to this Agreement, that will be the subject of the Existing Rights-of-Way Vacation Approval (provided that the current content of Attachment 12 represents CSU's preliminary draft, which does not reflect all input already received by CSU from City staff prior to the Effective Date). [Note: The Parties will need to discuss CSU's proposed version of Attachment 12.]

1.65 Existing Rights-of-Way Vacation Approval. The proposed future discretionary approval by the City Council of the vacation of the Existing Rights-of-Way for Proposed Vacation, as described in Section 6.9.

1.66 Existing Stadium. The San Diego County Credit Union Stadium, formerly known as Qualcomm Stadium or Jack Murphy Stadium, located on a portion of the Real Property.

1.67 FEMA. The Federal Emergency Management Agency.

1.68 Final Adjusted Purchase Price. The Base Purchase Price, plus the Time-Value Adjustment Amount.

1.69 Final EIR. The San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees with respect to the Project in compliance with CEQA on January 29, 2020.

1.70 First Extended Closing Date. The date that is six (6) consecutive months immediately after the Primary Target Closing Date.

1.71 Flood Map Revision. One or more of a conditional letter of map revision (CLOMR), a CLOMR-F (fill), or a letter of map revision (LOMR), or any or all of them, to be prepared by CSU and submitted to FEMA for its proposed approval in connection with the Project following the City's execution of a "community acknowledgement form."

1.72 Fourth Extended Closing Date. The earlier of (i) the date that the ruling, order or other determination of the appellate court concerning an Injunction Preventing Closing becomes final on the appeal or (ii) six (6) consecutive months immediately after the Third Extended Closing Date.

1.73 Future Recreation Center Site. That certain real property comprising an approximately one-acre portion of the Real Property, as depicted in Attachment 5 to this Agreement, which real property will be the subject of the Option Agreement Regarding Future Recreation Center Site upon the Closing.

1.74 General Fund Ownership. The 82.86-acre portion of the Real Property, which is an asset of the City's General Fund, equal to 61.3 percent of the Real Property, as determined by the City.

1.75 Grant Deed. The Grant Deed conveying fee ownership of the Real Property and the Appurtenances from the City to CSU, in substantially the form of Attachment 19 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.76 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or by similar terms under any Environmental Law; (ii) is subject to any applicable Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health and safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any applicable Law requiring special handling in its use, transportation, generation, collection, storage, treatment, or disposal.

1.77 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the CSU Property or the River Park Property or during transportation of any Hazardous Substance to or from the CSU Property or the River Park Property, or that arises at any time from any construction, installation,

use, operation, or other activities conducted at, on, under, or from the CSU Property or the River Park Property, whether or not caused by a Party.

1.78 Immediately Available Funds. A bank wire transfer or a certified bank check.

1.79 Improvements. All structures, fixtures, and other improvements located on the Real Property as of the Effective Date of this Agreement.

1.80 Injunction Preventing Completion. For purposes of construction of the improvements on the River Park Property and the New Stadium, any injunction, stay, restraining order, or other order, ruling, judgment, or similar determination of a court that prohibits the performance of CSU's obligation to construct the improvements on the River Park Property or the New Stadium, as applicable.

1.81 Injunction Preventing Closing. For purposes of the Closing, any injunction, stay, restraining order, or other order, ruling, judgment, or similar determination of a court that prohibits the Closing from occurring by the applicable Closing Date stated in this Agreement, prohibits the performance of a Party's material obligation required by this Agreement in order to close the Sale Transaction (e.g. the signature and delivery of the Grant Deed and other Closing Documents and the payment of the Final Adjusted Purchase Price) by the applicable Closing Date stated in this Agreement, or prohibits the performance of any other action by a Party that is required to consummate the Sale Transaction by the applicable Closing Date stated in this Agreement.

1.82 Intangible Personal Property. With respect to the Improvements existing on the Real Property, all of the City's right, title, and interest in and to all (i) plans and specifications, as-built drawings, and other architectural and engineering drawings in the possession of the City, to the extent documents and materials are legally assignable to CSU, and (ii) surveys, engineering reports, and other technical information in the possession of the City, to the extent such documents and materials are legally assignable to CSU; provided however, this provision does not apply to and does not include, and expressly excludes, (a) any Improvements that consist of City-owned or controlled facilities located on the Real Property that will remain owned or controlled by the City after the Closing and (b) any and all funds of, or controlled by, the City.

1.83 Kinder Morgan. Kinder Morgan Energy Partners, L.P., a Delaware limited partnership.

1.84 Kinder Morgan Expedited Well Removal Agreement. The Expedited Well Removal Agreement, dated April 1, 2020, between CSU and SFPP, L.P., a Delaware limited partnership, a direct subsidiary of Kinder Morgan, Inc., a Delaware corporation, providing for the expedited performance of the Well Removal and Abandonment Work.

1.85 Kinder Morgan Right of Entry Permit. The Right of Entry Permit, dated June 27, 2019, between the City and Kinder Morgan, by which the City authorized Kinder Morgan to remove certain existing wells, vaults, and facilities from the Real Property or otherwise abandon in place certain existing facilities on the Real Property, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.86 Kinder Morgan Settlement Agreement. The Settlement Agreement and General Release, dated June 2016, between the City and Kinder Morgan (and its affiliates), which resolved two federal lawsuits filed by the City against Kinder Morgan related to environmental contamination on and under the Real Property and the River Park Property arising from the historical accidental release of Hazardous Substances from the adjacent Mission Valley Terminal site owned and operated by Kinder Morgan.

1.87 Law. Every law, statute, code, ordinance, requirement, order, proclamation, directive, rule, or regulation of any local, state, or federal governmental agency applicable in any way to the Parties, the CSU Property, the River Park Property, or the Project, including relating to any development, construction, use, maintenance, taxation, operation, occupancy, or environmental conditions affecting the CSU Property, the River Park Property, or the Project, or otherwise relating to this Agreement or either Party's rights, obligations or remedies under this Agreement, or constituting any Environmental Law, whether in force on the Effective Date of this Agreement or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.88 Leases. The leases, subleases, franchises, licenses, occupancy agreements, or other agreements providing for the use or occupancy of any portion of the Real Property as of the Effective Date of this Agreement, as identified in the Schedule of Leases included as Attachment 16-A to this Agreement, excluding the CSU Existing Occupancy Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.89 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to reimbursement as the prevailing party or otherwise, including reasonable attorneys' fees, court costs, and consultant and expert witness expenses. For clarification, Legal Costs do not include damages awarded to such Party or imposed by settlement.

1.90 Licenses and Permits. The operative licenses and permits (if any) issued to, or for the benefit of, the City by any governmental or regulatory entity and allowing or requiring the City to operate and maintain the CSU Property or take certain actions on or about the CSU Property as of the Effective Date of this Agreement, to the extent such licenses or permits are legally assignable to CSU, as identified in the Schedule of Licenses and Permits included as Attachment 18 to this Agreement.

1.91 Mayor. The City's Mayor or the City representative duly authorized by the City's Mayor to sign documents, grant approvals, or take other actions on the City's behalf in fulfillment of the City's obligations under this Agreement.

1.92 Measure G. The ballot measure resulting from the citizens' initiative entitled "SDSU West Campus Research Center, Stadium and River Park Initiative," approved by the City's voters on November 6, 2018, and partially codified in Municipal Code section 22.0908. Measure G is attached as Attachment 25 to this Agreement.

1.93 Municipal Code. The San Diego Municipal Code.

1.94 Murphy Canyon Creek Parcel. The real property generally located at the eastern boundary of the CSU Property and consisting of approximately 2.6 acres, as legally described in Attachment 3-A to this Agreement and depicted in Attachment 3-B to this Agreement. The Murphy Canyon Creek Parcel is distinguished from Southern Murphy Canyon Creek, which is located on the River Park Property.

1.95 New Lawsuit. Any complaint, cause of action, or petition for writ of mandate filed by any Third Person in a court proceeding before, on, or after the Effective Date of this Agreement, by which the Third Person seeks to rescind, modify, invalidate, or delay the implementation of, the Sale Transaction, the CSU Approval Actions, or the City Approval Actions, or any constituent aspect of those matters, or seeks to compel either CSU or the City to take any future actions that differ from the CSU Approval Actions or the City Approval Actions.

1.96 New Lawsuit Adverse to the City. A New Lawsuit in which the City or any of its officials, employees, agents, officers, attorneys, or representatives is named as a defendant, a respondent, or a real party in interest.

1.97 New Stadium. The joint use stadium to be constructed on the Real Property as part of the Project, as more specifically defined and described in the Declaration of Property Development Restrictions and Permitting.

1.98 Official Records. The official records of the County Recorder.

1.99 Option Agreement Regarding Future Recreation Center Site. The Option Agreement Regarding Future Recreation Center Site, to be recorded in the Official Records in Senior Priority against the Real Property, including the Future Recreation Center Site, upon the Closing, granting the City an option to acquire a long-term lease of the Future Recreation Center Site, in substantially the form of Attachment 24 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.100 Outside Closing Date. December 31, 2020, or such later date as the Closing may be extended expressly pursuant to the provisions of Section 9.7, which is the latest date on which the Parties may complete the Closing, as described in Section (e).

1.101 Parcel Map. A proposed parcel map, as described in Section 6.7.

1.102 Parties. Collectively, the City and CSU.

1.103 Party. Individually, the City or CSU, as applicable.

1.104 Permitted Title Exceptions. Collectively, the following items: (i) the exceptions to title insurance coverage shown in the Preliminary Report excluding those exceptions that the Title Company has confirmed prior to Closing will not be shown in the Title Policy without action required by the City other than delivering to the Title Company such customary information as the Title Company may reasonably request; (ii) taxes and assessments, if any, on the CSU Property that are a lien not yet due and payable; (iii) all applicable restrictions or regulations of any governmental authority having jurisdiction over the CSU Property; and (iv) any declarations, conditions,

covenants, restrictions, or other matters affecting title to the CSU Property and required or permitted under this Agreement, including the Recordable Closing Documents.

1.105 Person. Any individual, association, corporation, governmental entity or agency, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.106 Preliminary Report. The First Amended Preliminary Report for the Real Property, dated November 25, 2019, issued by Title Company in contemplation of the issuance of the Title Policy, and included as Attachment 7 to this Agreement.

1.107 Primary Target Closing Date. Ten (10) Business Days immediately after the Effective Date, or such earlier date as the Parties may agree.

1.108 Project. **Error! Bookmark not defined.** The project to be developed, constructed, and operated by, or on behalf of, CSU on the Real Property and the River Park Property in accordance with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G, the Campus Master Plan, the Final EIR, and the Additional Public Benefits. A site plan depicting the main components of the Project is included as Attachment 6 to this Agreement.

1.109 Proposed Public Easement and Right-of-Way Dedications. Certain new public easements and public rights-of-way that are proposed to be dedicated to the City on the Parcel Map, as more particularly identified and depicted in Attachment 13 to this Agreement (provided that the current content of Attachment 13 represents CSU's preliminary draft and does not reflect all input already received by CSU from City staff prior to the Effective Date). [Note: The Parties will need to discuss CSU's proposed version of Attachment 13.]

1.110 Proximate Storm Drain Facilities. Certain existing storm drain outlets/outfalls that cross through the City's sewer interceptor, discharge into the San Diego River, and are located within easements that are exclusion areas of the Wetland Mitigation Project Site.

1.111 PUD. The City's Public Utilities Department, or any successor City department carrying out similar functions on the City's behalf.

1.112 Real Property. That certain real property consisting of 135.12 acres, which includes both the real property commonly known as the San Diego County Credit Union stadium site in Mission Valley and the contiguous real property defined in this Agreement as the Murphy Canyon Creek Parcel, which aggregate real property is generally located at 9449 Friars Road in the City of San Diego, County of San Diego, State of California, as legally described in Attachment 2-A to this Agreement and depicted in Attachment 2-B to this Agreement, together with all structures, fixtures, and other improvements owned by the City and located on such aggregate real property as of the Effective Date of this Agreement.

1.113 Recordable Closing Documents. The documents identified in the Recordable Closing Documents List, to be recorded in the Official Records upon the Closing.

1.114 Recordable Closing Documents List. The List of Recordable Closing Documents included as Attachment 9 to this Agreement.

1.115 Rent Roll. The Rent Roll included as Attachment 16-B to this Agreement.

1.116 Rider to Contract. The Rider, in substantially the form of Attachment 23 to this Agreement, to be entered into by, and attached to and incorporated into all agreements made by, CSU and selected Developer Entities, consultants, and contractors, as applicable, in CSU's implementation and performance of its duties and obligations under this Agreement for the design, construction, operation, and maintenance of the River Park Property and other property in which the City has a property interest under this Agreement, with changes to such form as first agreed to by the Mayor in his/her sole discretion and approved by the City Attorney in his/her sole discretion.

1.117 River Park and Storm Water BMP Development Agreement. The Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures, to be recorded in the Official Records against the Real Property and the River Park Property upon the Closing, in substantially the form of Attachment 26 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.118 River Park and Storm Water BMP Maintenance Agreement. The Agreement Regarding Maintenance and Operation of the River Park and Storm Water Best Management Practice Structures, to be recorded in the Official Records against the Real Property and the River Park Property upon the Closing, in substantially the form of Attachment 27 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.119 River Park Improvements. The active and passive park uses, 8- to 10- foot wide linear walking and biking trails, children's play areas, interpretive signage, a river buffer of native vegetation, measures to mitigate drainage impacts and ensure compliance with water quality standards, and other features to be installed within or constructed upon the River Park Property by CSU pursuant to the River Park and Storm Water BMP Development Agreement and the Easement Agreement for River Park Construction and Maintenance, and to be maintained in perpetuity by CSU pursuant to the River Park and Storm Water BMP Maintenance Agreement.

1.120 River Park Property. That certain real property situated contiguous to, and generally south of, the Real Property and consisting of approximately 34.6 acres, as legally described in Attachment 4-A to this Agreement and depicted in Attachment 4-B to this Agreement.

1.121 SAA. The Final Streambed Alteration Agreement Notification No. 1600-2019-0225-R5, dated March 30, 2020, issued by California Department of Fish and Wildlife with respect to certain manhole connection work to be performed by CSU in connection with the Project, as further described in Section 6.4.

1.122 Sale Transaction. The transaction by which the City will sell to CSU, and CSU will purchase from the City, the CSU Property upon the Closing, in accordance with the terms and conditions of this Agreement.

1.123 SDG&E. San Diego Gas and Electric Company.

1.124 Second Extended Closing Date. Six (6) consecutive months immediately after the First Extended Closing Date.

1.125 Section 22.0908. Municipal Code section 22.0908, which partially codifies Measure G.

1.126 Senior Priority. A circumstance in which a specified document, to be recorded in the Official Records against all or a specified portion of the Real Property upon the Closing, is in a position on title that has senior priority relative to all CSU Debt Instruments and all Development Contracts (or related memoranda or abstracts), and any regulatory agreement or covenant, to be recorded in the Official Records upon or after the Closing.

1.127 Service Contracts. The maintenance, service, and supply contracts, and all other agreements for goods and services, including equipment leases, used in connection with the CSU Property as of the Effective Date of this Agreement, as identified in the Schedule of Service Contracts included as Attachment 17 to this Agreement.

1.128 Site Development Funds. A portion of the City General Fund's share of the Final Adjusted Purchase Price proceeds in the amount of \$1,500,000 to be held in a City-approved joint escrow account after the Closing for certain site development activities as described in Section 11.1 of this Agreement.

1.129 Southern Murphy Canyon Creek. The portion of Murphy Canyon Creek within the River Park Property south of Rancho Mission Road, which drains into the San Diego River.

1.130 Tangible Personal Property. All equipment, machinery, furniture, furnishings, supplies, and other tangible personal property and fixtures, if any, owned by the City and located on the Real Property or used by the City, principally in connection with the operation, ownership, maintenance, use, leasing, service, or management of the Real Property as of the Effective Date of this Agreement, except as expressly set forth in the Bill of Sale and Assignment and Assumption Agreement and excluding all computers and copiers, together with all related accessories, connections, fixtures and equipment. The Tangible Personal Property will not include personal property leased by the City or vehicle fleets or equipment stored on the Real Property.

1.131 Third Extended Closing Date. The date that is six (6) consecutive months immediately after the Second Extended Closing Date.

1.132 Third Person. Any Person that is not a Party, an affiliate of a Party, or an official, officer, employee, or agent of a Party.

1.133 Time-Value Adjustment Amount. [Note: The Parties will need to mutually update the calculations shown below, based on an anticipated Closing Date.] The dollar amount derived by applying the Time-Value Factor to either a specified portion or the entirety of the Base Purchase Price for a specified time period, as follows: (a) if the Closing Date occurs on or before the Primary Target Closing Date, the Time-Value Factor shall be applied only to the Water Utility Fund Ownership (i.e., 38.7 percent of the CSU Property, equating to \$33,359,400 of the Base Purchase Price) from October 1, 2017, through and including the Closing Date; and (b) if

the Closing Date occurs after the Primary Target Closing Date (not counting any tolling period related to the COVID-19 pandemic, as described in Section 9.7(g)), then in addition to the calculation to be performed under clause (a) above, the Time-Value Factor also shall be applied to the General Fund Ownership (i.e., 61.3 percent of the CSU Property, equating to \$52,840,600 of the Base Purchase Price) from the Primary Target Closing Date through and including the Closing Date. The following two calculation examples are provided for illustrative purposes only. In the first example, if the Primary Target Closing Date is August 31, 2020, and the Closing Date occurs on August 31, 2020, the Time-Value Adjustment Amount will equal \$ [REDACTED], which is the Base Purchase Price of \$86,200,000, multiplied by 0.387 (i.e., 38.7 percent), and applying the Time-Value Factor of 2.149 percent from October 1, 2017, through August 31, 2020. In the second example, if the Primary Closing Date is August 31, 2020, and the Closing Date does not occur until September 30, 2020, the Time-Value Adjustment Amount will equal \$ [REDACTED], which is the sum of: (i) the Time-Value Adjustment Amount component of \$ [REDACTED] for the Water Utility Fund Ownership, which is the Base Purchase Price of \$86,200,000, multiplied by 0.387 (i.e., 38.7 percent), and applying the Time-Value Factor of 2.149 percent from October 1, 2017, through September 30, 2020; and (ii) the Time-Value Adjustment Amount component of \$ [REDACTED] for the General Fund Ownership, which is the Base Purchase Price of \$86,200,000, multiplied by 0.613 (i.e., 61.3 percent), and applying the Time-Value Factor of 2.149 percent from September 1, 2020, through September 30, 2020.

1.134 Time-Value Factor. The annual index adjustment factor of 2.149 percent, compounded monthly.

1.135 Title Company. Chicago Title Insurance Company, whose representative and contact information are shown in Section 15.2.

1.136 Title Policy. An American Land Title Association (2006) extended coverage owner's policy of title insurance issued by Title Company as of the Closing Date and with liability in the amount of the Final Adjusted Purchase Price, insuring fee simple ownership of the Real Property in CSU as owner of the Real Property, subject only to the Permitted Title Exceptions.

1.137 TSW. The City's Transportation and Stormwater Department, or any successor City department carrying out similar functions on the City's behalf.

1.138 Unavoidable Delay. A delay in either Party performing any material obligation under this Agreement arising from or on account of any cause beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, regional natural disasters, or inability to obtain required materials. Unavoidable Delay shall not, under any circumstances, include delay caused by or relating to: (i) the financial condition, insolvency, or inability to obtain financing on the part of the Party asserting that Unavoidable Delay exists; or (ii) the filing of any New LawsUIT, unless a court of competent jurisdiction issues an Injunction or similar order preventing either Party from performing any material obligation under this Agreement.

1.139 Water Supply Assessment. The Water Use Estimation for SDSU Mission Valley Campus Master Plan Project prepared by Dexter Wilson Engineering, dated July 23, 2019, and attached as Appendix 4.17-5 of the DEIR, and Chapter 4.17 of the FEIR and any supporting

materials (such as a new water study or an update to an existing water study) to be submitted by CSU to the City after the Effective Date of this Agreement as may be required by the City to demonstrate on a project-specific basis that sufficient water supply is available to meet the specific projected water demands of the Project, including water for potable use and irrigation.

1.140 Water Utility Fund Ownership. The 52.26-acre portion of the Real Property, which is an asset of the City's Water Utility Fund, equal to 38.7 percent of the Real Property, as determined by the City.

1.141 Well Removal and Abandonment Work. Kinder Morgan's removal and closure of certain monitoring and extraction wells, vaults, piping, and related facilities presently located on the Real Property, and Kinder Morgan's abandonment in place of certain existing facilities on the Real Property, in accordance with the Kinder Morgan Right of Entry Permit and the Cleanup and Abatement Order and consistent with the depiction in Attachment 10 to this Agreement.

1.142 Wetland Mitigation Project. The wetland mitigation project, commonly known as the Stadium Wetland Mitigation Project, that has been created by the City, and is now and will continue to be monitored, maintained, and owned by the City (including regular activities such as perimeter control, ranger patrols, trash removal, transient removal, and invasive plant removal), in compliance with the Wetland Mitigation Project Agreements on the Wetland Mitigation Project Site.

1.143 Wetland Mitigation Project Agreements. The regulatory agreements and permits governing the Wetland Mitigation Project, together with any and all amendments, modifications, supplements, and/or extensions thereof, including: (i) the Section 404 Permit dated December 21, 2015, File No. SPL-2014-00416-DB, issued by the U.S. Army Corps of Engineers to the City pursuant to Section 404 of the Clean Water Act; (ii) the Streambed Alteration Agreement, Notification No. 1600-2014-0192-R5, signed by the City's Public Utilities Department on August 5, 2015, and by the California Department of Fish and Wildlife on September 2, 2015; (iii) the Section 401 Water Quality Certification dated November 14, 2014, Certification No. R9-2013-0124, issued by the California Regional Water Quality Control Board, San Diego Region, to the City pursuant to Section 401 of the Clean Water Act; (iv) any site development permits or other permits issued or to be issued by the City relating to the use of wetland mitigation credits from the Wetland Mitigation Project Site; and (v) the Stadium Wetland Mitigation Project (San Diego River) Mitigation Plan Final dated March 13, 2015 and prepared for the City of San Diego, Public Utilities Department.

1.144 Wetland Mitigation Project Site. The City-owned real property consisting of approximately 57 acres (including approximately 40.4 acres of waters of the United States), located generally south of the Real Property and the River Park Property and within the San Diego River and its floodplain, on which the Wetland Mitigation Project is situated and is being carried out by the City in accordance with the Wetland Mitigation Project Agreements, as depicted in Attachment 33 to this Agreement.

2. PURCHASE AND SALE OF PROPERTY.

2.1 Escrow. For the purpose of exchanging funds and documents to complete the purchase and sale transaction contemplated by this Agreement, the Parties agree to open the Escrow with Escrow Agent.

2.2 Purchase and Sale. City shall sell the CSU Property to CSU, and CSU shall purchase the CSU Property from City, for Bona Fide Public Purposes, subject to the Permitted Title Exceptions and the terms and conditions of this Agreement.

2.3 Final Adjusted Purchase Price. CSU shall pay the Final Adjusted Purchase Price to the City in exchange for the City's conveyance of the CSU Property to CSU. The Parties agree that the Final Adjusted Purchase Price is fair and equitable, and represents the fair market value of the CSU Property based on an independent appraisal and certain factors mutually agreed upon by the Parties, as contemplated by Measure G. The Parties further acknowledge that this Agreement is the product of the Parties' good faith negotiation to incorporate all of their mutual agreements and understandings regarding the CSU Property and the Project, as contemplated by Measure G.

2.4 Independent Consideration. Within three (3) Business Days after the Escrow Opening Date, CSU shall deliver to the City, outside of the Escrow, the amount of \$100 (One Hundred Dollars) in Immediately Available Funds. The Parties have bargained for and agreed to this amount as adequate independent consideration for the City's agreement to enter into this Agreement. This amount is in addition to and independent of all other consideration provided in this Agreement (including the Earnest Money Deposit), is nonrefundable to CSU in all circumstances, and shall not be credited toward the Final Adjusted Purchase Price.

2.5 Earnest Money Deposit. Within five (5) Business Days after the Escrow Opening Date, CSU shall deliver to Escrow Agent, for deposit into the Escrow, the Earnest Money Deposit in Immediately Available Funds. If CSU does not timely deliver to Escrow Agent the Earnest Money Deposit in Immediately Available Funds, then the City shall have the unilateral right to terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent within ten (10) Business Days after the Escrow Opening Date. If the Closing does not occur on or before the Outside Closing Date for any reason other than due to the City's uncured Default, then Escrow Agent shall transmit the Earnest Money Deposit to the City no later than three (3) Business Days after the Outside Closing Date. Upon such transmittal, the Earnest Money Deposit shall be nonrefundable to CSU as earned compensation to the City in exchange for the City providing CSU with the opportunity to purchase the CSU Property under the terms and conditions of this Agreement. If the Closing does not occur on or before the Outside Closing Date for any reason other than due to the City's uncured Default, then the City shall have the unilateral right to terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent within ten (10) Business Days after the Outside Closing Date, and the Parties and Escrow Agent shall proceed in accordance with Sections 9.11 and 12.3, and the City shall not incur any resulting liability to CSU or any other Person. The provisions of this Section 2.5 shall survive the termination of this Agreement.

2.6 Investment and Disposition of Earnest Money Deposit. Escrow Agent shall invest the Earnest Money Deposit in government insured interest-bearing accounts satisfactory to CSU

and shall not commingle the Earnest Money Deposit with any funds of Escrow Agent or others. All interest earned on the Earnest Money Deposit shall become a part of the Earnest Money Deposit. Except as otherwise provided in Sections 2.5, 9.11(b) and 12.3(a) for distribution of the Earnest Money Deposit, the Earnest Money Deposit shall remain in the Escrow until the Closing and shall be credited towards the Final Adjusted Purchase Price for CSU's benefit upon the Closing. CSU shall pay all fees and costs charged by Escrow Agent for investment of the Earnest Money Deposit pursuant to this Section 2.6. The City shall not incur any resulting liability to CSU or any other Person for any reason that no or little interest is earned on the Earnest Money Deposit or if there is a dispute as to the amount of interest earned on the Earnest Money Deposit.

2.7 Effective Date. The Effective Date of this Agreement shall correspond to the date on which the Mayor signs this Agreement, provided that CSU's duly authorized representative has first signed this Agreement. Subject to applicable veto rights of the Mayor as set forth in the City of San Diego Charter, the Mayor shall sign, and initial where indicated, this Agreement promptly after receiving confirmation that each of the following events has occurred: (i) CSU's duly authorized representative has signed, and initialed where indicated, three (3) originals of this Agreement and has delivered those three (3) originals to the City; and (ii) the City Council has approved the City Approval Actions and the ordinance approving this Agreement has become effective in accordance with its terms. Upon signing this Agreement, the Mayor shall insert the Effective Date where indicated in the Preamble on Page 1 of this Agreement. Promptly after the Mayor and the Office of the San Diego City Attorney have signed this Agreement, the Mayor shall arrange for the Office of the San Diego City Clerk to file-stamp the cover page of the original and all duplicate originals of this Agreement in accordance with the City's customary practices, and the Mayor shall cause one fully-executed, file-stamped duplicate original of this Agreement to be delivered to CSU and Escrow Agent by messenger for immediate personal delivery or by nationally recognized overnight delivery service in accordance with Section 15.1.

3. **LEASE TRANSACTIONS RELATED TO THE REAL PROPERTY.**

3.1 CSU Existing Occupancy Agreement. The Parties acknowledge and agree that the CSU Existing Occupancy Agreement shall terminate on the date that is the first to occur of (i) the Closing, by operation of merger, (ii) the commencement of the CSU New Lease, or (iii) December 31, 2020. The Parties agree that no separate documentation, such as a stand-alone amendment or termination agreement to the CSU Existing Occupancy Agreement, is needed in order to effectuate the new termination date of the CSU Existing Occupancy Agreement as provided for in this Section 3.1.

3.2 Responsibility of CSU for Operating, Repair, and Maintenance Costs of the Existing Stadium on and after July 1, 2020. Notwithstanding (i) any provision of this Agreement, (ii) whether the Effective Date of this Agreement occurs prior to, on or after July 1, 2020, (iii) any provision of the CSU Existing Occupancy Agreement, (iv) whether or not the Closing has occurred by the Primary Target Closing Date, and (v) whether or not the Parties have entered into the CSU New Lease, the Parties acknowledge and agree that all costs and expenses for the operation, repair, and maintenance of the Existing Stadium incurred or arising on or after July 1, 2020 shall be the responsibility of and shall be paid for by CSU, and that the City shall have no responsibility in any event to pay for any costs and expenses for the operation, repair, and

maintenance of the Existing Stadium incurred or arising on or after July 1, 2020. If CSU fails to pay to the City any written demand for payment of funds under this Section 3.2 within ten (10) Business Days after receipt by CSU of any such written demand, then the City, prior to the Closing, shall have the right to terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent at any time after any such failure of CSU to pay.

3.3 CSU New Lease. If the Closing has not occurred by the Primary Target Closing Date, the City shall prepare and deliver to CSU within fifteen (15) Business Days after the Primary Target Closing Date a draft of the CSU New Lease based on and consistent with the terms of the CSU New Lease Summary. The Parties shall then diligently and expeditiously Cooperate with each other to complete a mutually agreeable form of the CSU New Lease reflecting the CSU New Lease Summary at the earliest practical opportunity. If the content of the CSU New Lease resulting from this cooperative effort is consistent with the CSU New Lease Summary in the reasonable estimation of the Mayor and the Office of the City Attorney, then the Mayor shall exercise his or her authority (consistent with the City Approval Actions) to consider approving, and if approved, to sign the CSU New Lease. If the content of the CSU New Lease resulting from this cooperative effort is inconsistent with the CSU New Lease Summary in any material respect in the reasonable estimation of the Mayor or the Office of the City Attorney, then the City Council will be required to consider adopting a resolution, in its sole and absolute discretion, to approve the CSU New Lease and authorize the Mayor to sign the CSU New Lease. Likewise, if the content of the CSU New Lease is consistent with the CSU New Lease Summary in the reasonable estimation of the campus president delegated with authority to execute the CSU New Lease on behalf of CSU, then the campus president will exercise his or her authority (consistent with the CSU Approval Actions) to consider approving, and if approved, to authorize execution of the CSU New Lease, upon which CSU shall execute the CSU New Lease. If the content of the CSU New Lease resulting from this cooperative effort is inconsistent with the CSU New Lease Summary in any material respect in the reasonable estimation of the campus president delegated with authority to execute the CSU New Lease on behalf of CSU, then the campus president will be required to consider whether to approve the CSU New Lease and authorize its execution, and if approved, CSU shall execute the CSU New Lease. If the Closing has not occurred on or before the Primary Target Closing Date, the Parties shall sign and deliver to each other, outside of the Escrow, the CSU New Lease on or before fifteen (15) Business Days after the receipt by CSU of the draft of the CSU New Lease from the City, assuming that the CSU New Lease has been completed and has received the City's and CSU's necessary approval. However, if both Parties have not signed and delivered to each other the CSU New Lease on or before fifteen (15) Business Days after the receipt by CSU of the draft of the CSU New Lease from the City, then each Party shall have the right to terminate this Agreement by delivering written notice of termination to the other Party and Escrow Agent within five (5) Business Days after the expiration of the such date. If either Party terminates this Agreement in accordance with this Section 3.3, the Parties and Escrow Agent shall proceed in accordance with Section 9.11, and the terminating Party shall not incur any resulting liability to the other Party or any other Person.

4. **APPROVAL OF DUE DILIGENCE AND FEASIBILITY MATTERS.**

4.1 CSU's Approval of Title Condition. By signing and delivering this Agreement to the City, and subject to the terms of this Agreement (including with respect to the post-Closing

vacation of certain rights of way and easements in accordance with the process set forth in this Agreement), CSU confirms its unconditional approval of the condition of title to the CSU Property, including the Permitted Title Exceptions. CSU acknowledges that it has been afforded a full and fair opportunity, before the Effective Date of this Agreement, to review the condition of title to the CSU Property and a natural hazard disclosure statement with respect to the Real Property provided by Escrow Agent.

4.2 CSU's Approval of Property Condition. By signing and delivering this Agreement to the City, CSU confirms for the benefit of the City, CSU's unconditional approval of the condition of the CSU Property, including, but not limited to: (i) all matters pertaining to the physical condition of the CSU Property and the environmental status of the CSU Property, including the presence of any Hazardous Materials on, under, or affecting the CSU Property; (ii) any applicable Law or other factors affecting the future development or use of the CSU Property; (iii) all contracts, studies, surveys, and all other information pertinent to the operation and ownership of the CSU Property, including all items shown in the Schedule of Leases, the Rent Roll, the Schedule of Service Contracts, and the Schedule of Licenses and Permits; and (iv) all inspections, studies, and reviews that CSU has chosen to conduct in accordance with the CSU Entry Permit. CSU acknowledges that it has been afforded a full and fair opportunity to review the condition of the CSU Property, in accordance with the CSU Entry Permit, before the Effective Date of this Agreement. No later than the Effective Date of this Agreement, CSU shall deliver written notice to the City identifying the Service Contracts that CSU will assume upon the Closing. The City shall terminate, as of the Closing and at the City's expense, any Service Contracts that will not be assumed by CSU upon the Closing. Upon CSU's delivery of written notice to the City before the Effective Date of this Agreement, the City shall use commercially reasonable efforts to obtain a signed estoppel certificate, in the City's standard form, from the tenant under any Lease identified by CSU in its written notice. If the City succeeds in obtaining the signature of any requested estoppel certificate, the City shall promptly deliver to CSU a copy of the signed estoppel certificate. The City's ability to obtain any signed estoppel certificate shall not be a condition precedent to the Closing and shall not excuse CSU's performance of any obligations under this Agreement. Nothing in this Section 4.2 is intended to affect, limit, or modify any of CSU's acknowledgements or waivers in Section 10.4.

4.3 City's Approval of CSU Financing Plan. By signing and delivering this Agreement to CSU, the City confirms it has reviewed the CSU Financing Plan and is reasonably satisfied with the content of the CSU Financing Plan as a basis for establishing the financial viability of CSU's acquisition of the CSU Property, including payment to the City of the Final Adjusted Purchase Price, and CSU's development, operation, and maintenance of the Project and the Additional Public Benefits. CSU acknowledges that the City is relying upon the CSU Financing Plan in agreeing to sell the CSU Property to CSU on the terms and conditions of this Agreement. In the event any component of the CSU Financing Plan is proposed to be changed or amended by CSU or becomes infeasible or in the event the implementation of any component of the CSU Financing Plan is not approved and authorized by the CSU Board of Trustees, then CSU agrees to promptly provide the City with a copy of any such proposed updates of the CSU Financing Plan.

4.4 ADA Settlement Agreement. CSU acknowledges that it is aware of and has received a copy of the ADA Settlement Agreement. From and after the Closing, CSU shall

assume and perform all of the City's obligations under the ADA Settlement Agreement. CSU acknowledges and agrees that from and after the Closing, CSU shall act as the successor and assignee of the City under and pursuant to the terms of the ADA Settlement Agreement. The City shall deliver to CSU copies of any notice, written demand, written request or other correspondence received from Plaintiff's Representative concerning the ADA Settlement Agreement within five (5) Business Days of the City's receipt of the same. The terms of this Section shall survive the Closing.

5. COMPLIANCE WITH SPECIFIED PROVISIONS OF MEASURE G.

5.1 Overview. The Parties acknowledge that the Sale Transaction and all related transactions contemplated by this Agreement are of vital importance to local citizens, the City's voters who approved Measure G, and CSU's students and employees, and will help promote CSU's higher education mission and improve and expand the local and regional economy. Accordingly, the Parties desire to be fully transparent as to how this Agreement ensures that CSU, on its own or through its Development Contracts with Developer Entities, will develop the Project consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G, and the Additional Public Benefits. This Section 5 sets forth, or summarizes by reference to an Attachment to this Agreement, the contractual provisions that achieve these objectives. Various Attachments to this Agreement will be signed by one or both of the Parties and recorded in the Official Records against the CSU Property or the River Park Property (as applicable in each instance) upon the Closing as specified in Section 9.6, and will inure to the City's benefit and be enforceable by the City, to ensure CSU's long-term compliance with its contractual obligations under this Agreement and the Attachments. If there is any direct conflict between this Section 5 and the provisions of any Attachment to this Agreement, then the provisions of the particular Attachment to this Agreement shall be controlling.

5.2 Prior Satisfaction of Certain Requirements. The Parties agree that, prior to the Effective Date of this Agreement, certain requirements under the Section 22.0908 Conditions were satisfied in a mutually satisfactory manner. Those requirements include: (i) the negotiation of the Final Adjusted Purchase Price and payment terms in accordance with the appraised fair market value of the CSU Property and other relevant factors, as contemplated by Measure G, including Section 22.0908(a), (b), (d), and (e); and (ii) CSU's comprehensive planning of the future development of the Real Property and the River Park Property through the Campus Master Plan in accordance with CEQA, including ample opportunities for public participation related to the Campus Master Plan and the Final EIR, as required by Section 22.0908(f), (g), and (h)(ii).

5.3 Completion of Development Features on the Property. Section 22.0908(c) identifies various development features required to be completed by CSU on the CSU Property. In addition, CSU agrees to complete the Additional Public Benefits. In this regard, CSU shall complete the development features and the Additional Public Benefits as memorialized in Sections 2.2 and 2.6 of the Declaration of Property Development Restrictions and Permitting, and Sections 2.1 and 2.2 of the Declaration of Affordable Housing Restrictions, and carry out the obligations and covenants of CSU as required by the Declaration of Property Development Restrictions and Permitting and the Declaration of Affordable Housing Restrictions.

5.4 Mitigation of Significant Environmental Impacts. Section 22.0908(h) provides that CSU shall carry out an environmental commitment to take steps to reach agreements with the City and other public agencies regarding the payment of fair-share mitigation costs for any identified off-site significant impacts related to campus growth and development associated with the Project. In addition, Section 22.0908(s) states that the Sale Transaction shall reflect the Parties' negotiation of CSU's fair-share contributions toward feasible mitigation measures to minimize the significant environmental impacts of the Project. In this regard, CSU shall complete certain mitigation measures and pay fair-share contributions toward other mitigation measures related to significant environmental impacts of the Project as memorialized in Sections 2.1 and 2.9 of the Declaration of Property Development Restrictions and Permitting.

5.5 Development and Maintenance of the River Park Property. Consistent with Section 22.0908(i), CSU has agreed to develop the River Park Improvements, on the River Park Property to be retained in the City's ownership, in accordance with the terms and conditions of this Agreement and its Attachments. The River Park Improvements shall be completed and made available for the use and enjoyment of the public not later than the Delivery Date, and at no cost to the City's General Fund. In addition, CSU agrees to maintain the improved River Park Property in perpetuity, at its own cost. In this regard, CSU shall permit and develop the improvements on the River Park Property and operate and maintain the improved River Park Property, in perpetuity and at its own cost, as memorialized in and in accordance with the terms of the River Park and Storm Water BMP Development Agreement, the River Park and Storm Water BMP Maintenance Agreement, and the Easement Agreement for River Park Construction and Maintenance, all of which will be recorded in the Official Records against the Real Property and the River Park Property, for the City's benefit, upon the Closing. In addition, the Rider to Contract shall be entered into by, and attached to and incorporated into all agreements made by CSU and selected Developer Entities, consultants, and contractors, as applicable, in CSU's implementation and performance of its duties and obligations under this Agreement for construction, operation, and maintenance of the River Park Property and other property in which the City has a property interest.

5.6 Demolition of Existing Stadium and Construction of New Stadium. Consistent with Section 22.0908(j), CSU has agreed to perform the demolition, dismantling, and removal of the Existing Stadium and the construction of the New Stadium on the CSU Property in accordance with the terms and conditions of this Agreement and its Attachments, to be completed and made available for the use and enjoyment of the public not later than the Delivery Date. In this regard, CSU shall complete the demolition and construction activities as memorialized in Sections 2.3 through 2.5 of the Declaration of Property Development Restrictions and Permitting.

5.7 Public Transit Improvements. Section 22.0908(k) requires that the Sale Transaction shall facilitate the daily and efficient use of the existing Metropolitan Transit System's Green Line transit station on the Real Property, shall accommodate a planned Purple Line transit station on or about the Real Property, and shall enhance a pedestrian connection to the existing light rail transit center on the Real Property. Section 22.0908(c)(5)(I) also requires that the Sale Transaction shall provide for the development of trolley and other public transportation uses and improvements to minimize vehicular traffic impacts in the vicinity of the

Project. In this regard, CSU shall fulfill the requirements as memorialized in Section 2.10 of the Declaration of Property Development Restrictions and Permitting.

5.8 Development Fee Requirements. Section 22.0908(l) states that the Sale Transaction shall require development on the Real Property to comply with the City's development impact fee requirements and housing impact fees/affordable housing requirements. In this regard, CSU shall comply with the requirements as memorialized in Sections 4.1 through 4.6 of the Declaration of Property Development Restrictions and Permitting and the requirements of the Declaration of Affordable Housing Restrictions (Attachment 22).

5.9 Parkland Requirements; Development of Additional Park Improvements. Section 22.0908(l) further states that the Sale Transaction shall require development on the Real Property to comply with the City's parkland requirements. Also, Section 22.0908(i) states that the City shall designate or set aside the improved River Park Property for park purposes pursuant to San Diego Charter section 55. In this regard, the Parties shall comply with the requirements and their respective obligations as memorialized in Recital E and Article I of the River Park and Storm Water BMP Development Agreement. Also, Section 22.0908(i) provides that the Sale Transaction will require CSU to develop a minimum of 22 acres of the CSU Property for use as publicly-accessible active recreation space. In this regard, CSU shall develop and maintain the Additional Park Improvements on the CSU Property as memorialized in Section 2.2(b) of Declaration of Property Development Restrictions and Permitting. In addition, CSU agrees to, and shall, make the Future Recreation Center Site available for long-term lease to the City as memorialized in the Option Agreement Regarding Future Recreation Center Site.

5.10 Reduction of Greenhouse Gas Emissions. Section 22.0908(m) states that the Sale Transaction shall require CSU to develop the Project in compliance with the City's greenhouse gas emission reduction goals, which are largely encompassed within the City's Climate Action Plan existing as of the date the Final EIR was certified (adopted by the City Council by Resolution R-2016-309 effective December 15, 2015, as amended by the City Council by Resolution R-2016-762 effective July 12, 2016). CSU's commitment to comply with this requirement is memorialized in Section 2.11 of the Declaration of Property Development Restrictions and Permitting.

5.11 Stadium Costs. Section 22.0908(n) requires the Sale Transaction to ensure the City does not pay for (i) any rehabilitation costs or demolition, dismantling, or removal costs associated with the Existing Stadium or (ii) any operating costs, maintenance costs, or capital improvement expenses associated with the New Stadium. This requirement is memorialized in Sections 2.3 and 2.4 of the Declaration of Property Development Restrictions and Permitting.

5.12 Reimbursement of City's Costs for Public Safety and Traffic Management. Section 22.0908(n) requires the Sale Transaction to provide for reimbursement of the City's reasonable costs and expenses incurred in providing public safety and traffic management-related activities for games or other events at the CSU Property. This requirement is memorialized in Section 5.2 and 5.3 of the Declaration of Property Development Restrictions and Permitting.

5.13 Public-Private Partnerships for Development of the Project. Consistent with Section 22.0908(o), the Parties agree that nothing in this Agreement or the Closing of the Sale Transaction will impair or preclude CSU from engaging in public-private partnerships with CSU's affiliates or other Persons, including any Developer Entities, to finance, construct, or operate the Project.

5.14 Environmental Remediation. Section 22.0908(p) states that the Sale Transaction shall not impair the City's ability to continue its plan of environmental remediation of the Real Property and the River Park Property based on the City's existing agreements with responsible parties. The Parties agree that this Municipal Code provision has no practical significance in the Sale Transaction, as the City is not, and has not recently been, undertaking any environmental remediation efforts with respect to the Real Property or the River Park Property, and that, upon the Closing, the City has no liability or responsibility for same with respect to the CSU Property or the River Park Property (except the City shall be liable or responsible solely for environmental remediation on the River Park Property required as a direct result of environmental conditions determined to have existed on the River Park Property prior to the Closing Date, subject to the City's ability to seek recovery of all resulting remediation costs from Kinder Morgan under the Kinder Morgan Settlement Agreement). As of the Effective Date of this Agreement, the City and Kinder Morgan have entered into the Kinder Morgan Right of Entry Permit authorizing Kinder Morgan to perform the Well Removal and Abandonment Work as required by the Cleanup and Abatement Order. CSU entered into the Kinder Morgan Expedited Well Removal Agreement with a Kinder Morgan affiliate to facilitate acceleration of the Well Removal and Abandonment Work. Upon entering into the Kinder Morgan Expedited Well Removal Agreement with CSU, Kinder Morgan commenced and is continuing to perform the Well Removal and Abandonment Work. The Kinder Morgan Expedited Well Removal Agreement does not modify the terms of the Kinder Morgan Right of Entry Agreement or the Cleanup and Abatement Order or relieve Kinder Morgan of any of its obligations thereunder or under any other applicable Law, including Environmental Law, or governmental orders or directives.

5.15 No Imposition or Increase of Taxes. Consistent with Section 22.0908(q), the Parties agree that nothing in this Agreement or the Closing of the Sale Transaction will cause any existing taxes paid by City residents to be increased, or any new or additional taxes to be imposed on the City's residents.

5.16 No Prohibition Against Leases, Sales, or Exchanges. Consistent with Section 22.0908(r), the Parties agree that nothing in this Agreement or the Closing of the Sale Transaction will prohibit CSU from leasing, selling, or exchanging any portion of the CSU Property to CSU's current or future affiliate or current or future auxiliary organization, or to any other Person, including any Developer Entity, as part of any public-private partnership or arrangement, in furtherance of the Bona Fide Public Purposes; provided, however, that CSU shall include in all contractual or other arrangements with its affiliate or auxiliary organization, or other affected Person (including any Developer Entity) a requirement for such Persons to comply with the provisions of all applicable documents recorded in the Official Records against the Real Property (and the River Park Property, if applicable) upon the Closing; and provided, further, that to ensure compliance with San Diego Charter section 221, CSU agrees not to assign, to its affiliate or auxiliary organization or any other Person, CSU's right under this Agreement to purchase the CSU Property.

5.17 Applicable Taxes for Development on the Property. Section 22.0908(s) requires that the Sale Transaction shall provide for the payment of applicable taxes related to development and operation of the Project. In addition, Section 22.0908(c)(5) requires that the Sale Transaction shall provide for the payment of specified types of applicable taxes, such as sales taxes, possessory interest taxes, and transient occupancy taxes, as applicable, with respect to specified development components of the Project. Those requirements are memorialized in Section 4 of the Declaration of Property Development Restrictions and Permitting.

5.18 Lease Obligations. Consistent with Section 22.0908(t), the Parties agree that nothing in this Agreement or the Closing of the Sale Transaction will change or alter any obligations under any existing lease regarding the use of the Existing Stadium, including the CSU Existing Occupancy Agreement; provided, however, that consistent with the Parties' mutual desire to consummate the Closing on an expedited basis, the Parties have agreed to clarify the termination or expiration provisions of the CSU Existing Occupancy Agreement under this Agreement in accordance with Section 3.1, have agreed to the assumption by CSU of operating, repair, and maintenance costs of the Existing Stadium on and after July 1, 2020 in accordance with Section 3.2, and, if the Closing has not occurred on or before the Primary Target Closing Date, have provided for the negotiation and entry into the CSU New Lease in accordance with Section 3.3.

5.19 Reservation of Rights in City's Favor. Section 22.0908(u) states that the Parties shall acknowledge in the Sale Transaction that: (i) certain portions of the Real Property are owned by the City's Public Utilities Department, through the City's Water Utility Fund; (ii) the City's Water Utility Fund will receive compensation for its portion of the CSU Property; and (iii) the City has reserved rights to extract subsurface water, minerals, and other substances on the Real Property. Consistent with clauses (i) and (ii) of this Section 5.19, the Parties acknowledge that the City's Water Utility Fund will receive 38.7 percent of the net proceeds of the Base Purchase Price, plus its allocable share of the Time-Value Adjustment Amount, which will depend on the timing of the actual Closing Date. The requirements described in clauses (i) and (ii) are memorialized in reservation language in the City's favor in the Easement Agreement for City's Public Facilities During Stage 1 and in the Easement Agreement for City's Public Facilities During Stage 2. The requirement described in clause (iii) of this Section 5.19 is memorialized in reservation language in the City's favor in the Grant Deed.

5.20 Cooperation Regarding Easements and Mapping. Section 22.0908(v) requires that the Sale Transaction provide for the Parties to Cooperate to modify or vacate easements or secure lot line adjustments on the Real Property (other than easements of the City or its applicable department for which the City retains its full regulatory discretion) so that development of the Project is facilitated. The Parties' compliance with this requirement is described in Sections 6.7 through 6.15 of this Agreement.

5.21 Prevailing Wages and Worker Protections. Section 22.0908(w) sets forth three requirements to be memorialized in the Sale Transaction. First, CSU shall be required to pay prevailing wages for construction of the New Stadium and other public improvements, provided that the construction of such New Stadium and other public improvements occurs on state-owned property or involves the use of state funding. Second, CSU will be required, to the extent possible under applicable State Law and subject to applicable CSU collective bargaining agreements, to ensure that all building and construction work within the Project will be

performed by contractors and subcontractors licensed by the State of California, who will make good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County. Third, with respect to the New Stadium, CSU shall be required to use good faith efforts to retain qualified employees who currently work at the Existing Stadium. Those requirements are memorialized in Sections 2.12 and 5.4 of the Declaration of Property Development Restrictions and Permitting. In addition, to ensure compliance with applicable prevailing wage laws, including payment, reporting, and enforcement obligations, as set forth in California Labor Code section 1720 et seq., CSU acknowledges that CSU shall either be the awarding body, or designate which entity will be the awarding body, for construction of each component of the Project and any other improvements required or contemplated under this Agreement and all Attachments to this Agreement. In no event shall the City be the awarding body for any contract to design, maintain, operate, and/or construct the Project or any part of the Project.

6. SITE PREPARATION AND REMEDIATION ACTIVITIES.

6.1 Completion of Well Removal and Abandonment Work. From the Effective Date of this Agreement through and including the Closing Date, the City will use commercially reasonable efforts to allow Kinder Morgan to complete the Well Removal and Abandonment Work in accordance with applicable Law, including the Cleanup and Abatement Order. CSU acknowledges that the City will not be responsible or liable for completing the Well Removal and Abandonment Work and that the City has limited ability to either cause Kinder Morgan's completion of the Well Removal and Abandonment Work or ensure Kinder Morgan's compliance with applicable Law, including the Cleanup and Abatement Order. CSU further acknowledges the necessity of the Parties to Cooperate with Kinder Morgan to allow Kinder Morgan to fulfill its obligations under the Cleanup and Abatement Order before and after the Closing Date, including Kinder Morgan's continued monitoring of specified sentinel wells, designated as wells T-11, R-10, R-43AS-AD, R-79AS-AM-AD, and R-87AS. The Well Removal and Abandonment Work is underway as of the Effective Date pursuant to the Kinder Morgan Expedited Well Removal Agreement and the Kinder Morgan Right of Entry Permit, but may or may not be completed prior to the Closing. Nothing in this Agreement shall impose any obligation or liability on the City to incur any out-of-pocket expenses or liability whatsoever, or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel), with respect to the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order, to initiate a lawsuit, arbitration, or other proceeding for the purpose of causing Kinder Morgan's completion of the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order, or to take any actions with respect to the Well Removal and Abandonment Work or the Cleanup and Abatement Order before or after the Closing Date. Further, the Parties agree that Kinder Morgan's completion of the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order is not a condition precedent to the Closing and shall not be a basis for either Party to prevent or delay the Closing. If the Well Removal and Abandonment Work is not completed before the Closing, CSU shall provide, upon the City's reasonable request from time to time after the Closing, access to monitoring and extraction wells, vaults, piping, and related facilities on and under the Real Property for monitoring and information purposes, as well as written updates and any related written reports regarding the status of the Well Removal and Abandonment Work, for the purpose of allowing the City to monitor the status of Kinder Morgan's compliance with the Cleanup and Abatement Order and to assess how such compliance or non-compliance may affect

groundwater conditions. Upon the Closing, CSU grants to the City a limited license to access the CSU Property and the monitoring and extraction wells currently owned and operated by Kinder Morgan on the CSU Property, together with any vaults, piping, and related facilities for such purposes.

6.2 Circuit 362. The Parties acknowledge that Circuit 362 constitutes SDG&E's backup electric source for the Existing Stadium and provides an electric system redundancy in the event of the failure of Circuit 149, which constitutes SDG&E's main electric source for the Existing Stadium. From the Effective Date of this Agreement through and including the Closing Date, the City intends to retain Circuit 362 on the CSU Property to provide a reliable backup electric source for any events to be held at the Existing Stadium. CSU intends to cause SDG&E's removal of Circuit 362 at the earliest opportunity after the Closing to facilitate the construction of the Project. Accordingly, before the Closing Date and upon CSU's request, the City shall submit to SDG&E any necessary application or request for the removal of Circuit 362, to occur promptly after the Closing in accordance with applicable Law. Further, the City will Cooperate with CSU's pre-Closing planning and design activities relating to the post-Closing removal of Circuit 362. Nothing in this Agreement or otherwise shall impose any obligation or liability on the City to incur any out-of-pocket expenses or liability whatsoever, or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel), with respect to the removal of Circuit 362 or any related application or to take any actions with respect to the removal of Circuit 362 other than as expressly set forth in this Section 6.2.

6.3 Intentionally Omitted.

6.4 Temporary Wetland Impact. CSU anticipates that its construction of a new manhole connection to an existing 96-inch trunk sewer serving the CSU Property will result in a temporary wetland impact to City-owned property within or adjacent to the River Park Property. CSU has entered into the SAA with the California Department of Fish and Game relating to the manhole connection work and shall conduct the manhole connection work in compliance with the SAA and any other applicable Law, including any applicable requirement to obtain additional Approvals. CSU shall bear all costs and expenses relating to the manhole connection work, including the costs of complying with requirements of the SAA and restoring the condition of the affected portion of the CSU Property and City-owned property including the River Park Property to substantially the same condition that existed prior to the initiation of the manhole connection work and all associated remedial or restorative activities and all application fees and requirements imposed by any regulatory agencies in connection with obtaining the required Approvals.

6.5 Storm Drain Outlets. In connection with the Project, CSU shall maintain the Proximate Storm Drain Facilities. The City has advised that the Proximate Storm Drain Facilities are permitted under the Wetland Mitigation Project Agreements and are located in exclusion areas, and are therefore outside the boundaries of the Wetland Mitigation Project Site. CSU shall comply with any applicable terms of the Wetland Mitigation Project Agreements in connection with maintenance of the Proximate Storm Drain Facilities, but the City will remain primarily responsible for compliance with the terms and requirements of the Wetland Mitigation Project Agreements, including ensuring the successful completion of the Wetland Mitigation Project and the timely achievement of all monitoring, maintenance, and compliance standards

described in the Wetland Mitigation Project Agreements. The City agrees to promptly deliver to CSU copies of any correspondence or notices delivered to or received from the regulatory agencies issuing, enforcing or monitoring compliance with the Wetland Mitigation Project Agreements. The easement for the Proximate Storm Drain Facilities shall be in a form substantially consistent with Attachment 31.

6.6 City Utilities.

(a) Relocation of Sewer Lines. The City shall Cooperate with CSU's efforts after the Closing to relocate certain existing City sewer lines on the CSU Property and the River Park Property in order to minimize impacts to CSU's planned development footprint and traffic circulation for the Project. Sewer lines to be relocated include, but are not necessarily limited to, an 8" and 18" sewer line serving the Existing Stadium and the existing Serra Mesa Community and Fire Station location north of Friars Road and a portion of an existing 36" sewer line located in the easterly portion of the River Park Property to facilitate the construction of an extension of Rancho Mission Road. CSU shall comply with all applicable Laws, including applicable City standards and regulations, and shall obtain all applicable Approvals required in connection with the relocation of City sewer lines. CSU shall obtain permits from the City prior to: (i) relocating the existing City sewer lines on the CSU Property or the River Park Property; (ii) constructing or installing any new City sewer lines on the CSU Property or the River Park Property; (iii) undertaking any construction or grading within the City's sewer line easement areas; and (iv) establishing a connection to any City sewer pipelines. The permits for relocation of existing City sewer lines will be issued pursuant to a ministerial process if the City determines that the City Public Improvement Plans prepared by CSU for the relocation of City sewer lines satisfy applicable City, state and federal laws and regulations. After the Closing, CSU shall bear all costs and expenses associated with: (i) any sewer line relocation and construction on the CSU Property, the River Park Property, and any adjacent property impacted by the Project; and (ii) the provision and usage of sewer capacity, connections, and service benefitting the CSU Property and the River Park Property or resulting from the Project, including any upgrades or system improvements needed as a result of the projected sewer-related demands of the Project. The fees charged for future sewer connections or increased capacity will be calculated taking into account the existing sewer capacity at the CSU Property as of the Effective Date. The 84/96-inch interceptor sewer on the River Park Property will remain in its current alignment and will not be relocated as part of the Project.

(b) Relocation of Water Lines. The City shall Cooperate with CSU's efforts after the Closing to relocate any existing City water lines or facilities on the CSU Property or the River Park Property to a new location that minimizes impacts to CSU's planned development footprint and traffic circulation for the Project. Water lines to be relocated include, but are not necessarily limited to, an existing 48-inch Alvarado water transmission main and the existing 16-inch water transmission main. In addition, the City shall Cooperate with CSU's efforts after the Closing to obtain new water meters and irrigation meters to serve the Project, in the capacity and quantity commensurate with the water demand to be created by the Project as identified in the Water Supply Assessment, which shall include an updated, project-specific water study to be prepared by CSU and reviewed and approved by the City in connection with CSU's proposed relocation of any water lines. CSU shall comply with all applicable Laws, including applicable City standards and regulations, and shall obtain all applicable Approvals required in connection

with the relocation of City water lines. CSU shall obtain permits from the City prior to: (i) relocating the existing City water lines on the CSU Property or the River Park Property; (ii) constructing or installing any new City water lines on the CSU Property or the River Park Property; (iii) undertaking any construction or grading within the City's water line easement areas; and (iv) establishing a connection to any City water pipelines. The permits for relocation of existing City water lines will be issued pursuant to a ministerial process if the City determines that the City Public Improvement Plans prepared by CSU for the relocation of City sewer lines satisfy applicable City, state and federal laws and regulations. After the Closing, CSU will bear all costs and expenses associated with: (i) any water line or facility relocation and construction on the CSU Property, the River Park Property, and any adjacent property impacted by the Project; (ii) the installation of any new water meters and irrigation meters on the CSU Property, the River Park Property, and any adjacent property impacted by the Project; and (iii) the provision and usage of water capacity, connections, and service benefitting the CSU Property and the River Park Property or resulting from the Project, including any upgrades or system improvements needed as a result of the projected water-related demands of the Project. The fees charged for future water connections or increased capacity will be calculated taking into account the existing water capacity at the CSU Property as of the Effective Date. CSU shall ensure that the Project is designed to include adequate water service for the River Park Property and the Wetland Mitigation Project Site, both during Project construction and after Project completion. Pending the City's review and approval of an updated water study and proposed Public Improvement Plans to be prepared and submitted by CSU, it is presently anticipated by CSU that all onsite water mains will be owned and maintained by CSU, except that the existing 48-inch Alvarado water transmission main, the existing 16-inch water transmission main and the existing pressure-reducing station will continue to be owned and maintained by the City.

(c) Construction Within City Sewer and Water Line Easements. CSU agrees that improvements constructed within City sewer and water line easements on the CSU Property and the River Park Property will be limited to landscaping, hardscaping, streetscaping, recreational fields, bike paths, trails and similar improvements. Prior to constructing or installing improvements (or permitting the construction or installation of improvements) within any City sewer or water line easement on the CSU Property or the River Park Property, CSU shall provide to PUD and DSD, for review and approval, the CSU Property Development Plans depicting proposed grading and site development construction activities within the affected City easements. 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 or the River Park Property within such a City easement, PUD shall have first reviewed and approved the proposed CSU Property Development Plans, with PUD's approval being confirmed via a signed letter from PUD's Director, and DSD shall have issued all applicable permits and approvals, including an encroachment maintenance and removal agreement in the City's standard form. PUD's review and approval of the CSU Property Development Plans and any modifications to those plans will be limited to ensuring: (i) the CSU Property Development Plans comply with PUD-related City regulations in 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 (including planned future facilities) or existing public utilities. CSU shall not modify the approved CSU Property Development Plans, or undertake any grading or

construction activities in conflict with such approved plans after PUD confirms its approval of such plans in writing.

6.7 Parcel Map. As of the Effective Date of this Agreement, CSU has submitted, and the City is processing, the Parcel Map application, which Parcel Map is intended to (i) accomplish lot line adjustments establishing the CSU Property, the River Park Property, and the balance of the City's land ownership in the immediate vicinity of the CSU Property as three separate legal parcels and (ii) depict certain public easements and public rights-of-way needed in connection with the future operation of the Project. To the extent consistent with the mutual requirements and objectives of the Parties in connection with the Project, the Parcel Map shall incorporate and identify the permanent locations of (a) the Proposed Public Easement and Right-of-Way Dedications for the benefit and in favor of the City, which are tentatively planned by CSU to be located as depicted on Attachment 13 to this Agreement, and (b) proposed utility easements located within the River Park for the benefit of CSU, which are tentatively planned by CSU to be located as depicted in Attachment 34 to this Agreement. The Parties acknowledge that City staff provided input to CSU regarding the proposed content of Attachment 13 and Attachment 34 prior to the Effective Date, including input on the standard physical dimensions of easements required by the City for all public utility easements, and that those two Attachments are preliminary in nature and do not reflect City staff's input. The City reserves the right to require modifications to CSU's proposed Parcel Map to reflect City staff's prior input, including the need for compliance with all applicable City regulations and standards, and to further reflect any additional input from City staff in response to CSU's future provision of detailed technical drawings to the City in support of the Parcel Map application. Each Party must consider approval of the Parcel Map in accordance with its own regulations, requirements, and processes. The City will require the Parcel Map to comply with the California Government Code and the City's applicable regulations and requirements for the approval of Parcel Maps. If CSU's proposed Parcel Map is not requesting any deviations from the City's applicable regulations and requirements, the City anticipates that the City's approval process will be ministerial in nature. If the Parcel Map has been approved by the Parties and signed by all Persons having any record title interest in the real properties being adjusted, CSU shall cause the approved Parcel Map to be recorded in the Official Records. The Parties acknowledge that the recording of the Parcel Map may occur either in connection with the Closing or after the Closing, and is not a condition precedent to the Closing.

6.8 Recording of Easement Agreements. The Parties agree as follows with respect to the recording of the Grant Deed and the Easement Agreements:

(a) Potential Revisions. All of the Easement Agreements may need to be modified as the details for specific development of the Project advance. Therefore, the final content of certain Easement Agreements may need to be modified in certain respects before the Closing, but after the Effective Date of this Agreement. Before the Closing, the Parties shall Cooperate with each other in good faith to finalize the content of the Easement Agreements, including any modifications as may be reasonably necessary to satisfy the mutual requirements and objectives of the Parties in connection with both the Project and their respective property interests to be held after the Closing.

(b) Pre-Map Closing. If the Closing occurs before the Parcel Map is recorded in the Official Records, then the Parties mutually intend that the Easement Agreements for Stage 1 Recordation will be recorded in Senior Priority against the CSU Property in the Official Records upon the Closing, subject to any mutually agreeable revisions to the Easement Agreements. In such event, the Parties shall continue to Cooperate in good faith after the Closing to accomplish the recording of the Easement Agreements for Stage 2 Recordation in conjunction with the recording of the approved Parcel Map. CSU agrees that the Easement Agreements for Stage 2 Recordation that benefit the City shall be recorded in Senior Priority against the CSU Property. The City agrees that the Easement Agreements for Stage 2 Recordation that benefit CSU will be recorded in Senior Priority against the River Park Property or the Wetland Mitigation Project Site, as applicable, provided that nothing in this provision shall be interpreted in a manner that would cause a violation of any of the Wetland Mitigation Project Agreements or would prevent the City from consummating the sale of any wetland mitigation credits attributable to the Wetland Mitigation Project.

(c) Map-Based Closing. If the Closing occurs in conjunction with the recording of the approved Parcel Map, then the Parties mutually intend that the Easement Agreements will be recorded in Senior Priority against the CSU Property in the Official Records upon the Closing, subject to any mutually agreeable revisions to such Easement Agreements or any mutual understanding that certain Easement Agreements are no longer needed based on the then-prevailing circumstances.

6.9 Existing Easements Vacation Approval. As of the Effective Date of this Agreement, CSU has submitted, and the City is processing, an application for the Existing Easements Vacation Approval, which is intended to cause the City to vacate the Existing Easements for Proposed Vacation to the extent those easements are no longer required for the City's benefit. The Parties shall continue to Cooperate with each other relating to the application for the Existing Easements Vacation Approval. The Parties acknowledge that Attachment 11 to this Agreement is only a preliminary depiction of the Existing Easements for Proposed Vacation and does not reflect input already provided by City staff to CSU prior to the Effective Date. The City reserves the right to process CSU's application for the Existing Easements Vacation Approval in accordance with input provided by City staff with respect to Attachment 11 prior to the Effective Date. If such application both fulfills the provisions and intent of this Agreement and complies with the City's applicable regulations and requirements relating to the City's Process Five decision-making level for the vacation of public easements (including Municipal Code section 125.1001 *et seq.*), City staff shall present the Existing Easements Vacation Approval for the San Diego Planning Commission's recommendation and the City Council's consideration at the earliest practicable opportunity. CSU acknowledges that the San Diego Planning Commission retains discretion whether to recommend in favor of the Existing Easements Vacation Approval and that the City Council retains discretion whether to grant the Existing Easements Vacation Approval application. Nothing in this Agreement requires the San Diego Planning Commission or the City Council to recommend, approve, or take any particular action with respect to such application.

6.10 Existing Rights-of-Way Vacation Approval. As of the Effective Date of this Agreement, CSU has submitted, and the City is processing, an application for the Existing Rights-of-Way Vacation Approval, which is intended to cause the City to vacate the Existing

Rights-of-Way for Proposed Vacation to the extent those rights-of-way are no longer required for the City's benefit. The Parties shall continue to Cooperate with each other relating to the application for the Existing Rights-of-Way Vacation Approval. The Parties acknowledge that Attachment 12 to this Agreement is only a preliminary depiction of the Existing Rights-of-Way for Proposed Vacation and does not reflect input already provided by City staff to CSU prior to the Effective Date. The City reserves the right to process CSU's application for the Existing Rights-of-Way Vacation Approval in accordance with input provided by City staff with respect to Attachment 12 prior to the Effective Date. If such application both fulfills the provisions and intent of this Agreement and complies with the City's applicable regulations and requirements relating to the City's Process Five decision-making level for the vacation of public rights-of-way (including Municipal Code section 125.0901 *et seq.*), City staff shall present the Existing Rights-of-Way Vacation Approval for the San Diego Planning Commission's recommendation and the City Council's consideration at the earliest practicable opportunity. CSU acknowledges that the San Diego Planning Commission retains discretion whether to recommend in favor of the Existing Rights-of-Way Vacation Approval and that the City Council retains discretion whether to grant the Existing Rights-of-Way Vacation Approval application. Nothing in this Agreement requires the San Diego Planning Commission or the City Council to recommend, approve, or take any particular action with respect to such application. To the extent feasible, the City will consolidate the pending applications for the Existing Easements Vacation Approval and the Existing Rights-of-Way Vacation Approval for concurrent processing.

6.11 City Public Improvement Plans. CSU shall prepare the proposed City Public Improvement Plans to depict public utility improvements to be constructed on the CSU Property and the River Park Property in connection with the Project that will be owned, operated, and maintained by the City following such construction. CSU shall submit the proposed City Public Improvement Plans to PUD for review and approval and the issuance of any necessary permits, which will be issued pursuant to a ministerial process if the City determines that the City Public Improvement Plans satisfy applicable Laws and regulations. To the extent feasible, the City shall consolidate the City Public Improvement Plans for processing concurrently with the Existing Easements Vacation Approval application and the Existing Rights-of-Way Vacation Approval application. CSU shall allow the City's employees or authorized representatives to access the CSU Property after the Closing to inspect any work completed by or at the direction of CSU in accordance with the approved City Public Improvement Plans and any related permits. CSU shall be solely responsible for the cost of construction and installation of all public utility improvements on the CSU Property and the River Park Property.

6.12 Flood Map Revision. The Parties acknowledge that CSU intends to cause portions of the Project to be graded and removed from the 100-year floodplain during construction of the Project, subject to FEMA review and approval of the Flood Map Revision. The City, in its capacity as the floodplain administrator, will Cooperate with the effort to obtain FEMA's approval of the Flood Map Revision as may be needed to facilitate CSU's development of the Project, provided that the City shall not be required to incur any associated out-of-pocket expenses or liability whatsoever. The City's reasonable cooperation shall include the City's signature of one or more "Community Acknowledgment Forms" in reliance on grading plans and related materials prepared by CSU or its consultants, in form and content reasonably acceptable to the City, and the City's reasonable coordination with CSU to submit all applications and materials to FEMA relating to the Flood Map Revision. CSU shall prepare the proposed

Community Acknowledgment Form and any other applications and materials associated with the Flood Map Revision in a manner that achieves full compliance with applicable Law, including the City's applicable regulations and requirements pertaining to grading activities in a floodplain. CSU shall pay all fees and expenses associated with CSU's preparation, and FEMA's processing, of all applications and materials relating to the Flood Map Revision. The Parties shall reasonably and promptly Cooperate with each other to finalize the content of any submittals made to FEMA and any follow-up responses to FEMA as may be required.

6.13 Grading Plans. CSU has provided the City with On-Site Grading Plans depicting CSU's proposed development within any floodplain on the CSU Property and the River Park Property. The City has provided review comments on the On-Site Grading Plans. Before CSU issues a grading permit or commences any construction activity within any floodplain on the CSU Property or the River Park Property, CSU will submit to DSD and TSW for review, revised On-Site Grading Plans and CSU will respond to DSD and TSW comments and consult with DSD and TSW. This review and consultation is intended to ensure CSU's plans do not materially conflict with: (i) MS4 storm water requirements, understanding that CSU will issue its own grading permit complying with storm water requirements; and (ii) applicable City requirements, 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). CSU shall make a good faith effort to incorporate all comments received from DSD and TSW into the final On-Site Grading Plans. CSU shall provide a written explanation to DSD and TSW if any of their comments are not incorporated, but further consultation will not be required before CSU may proceed with issuance of its grading permit or construction activities. CSU shall ensure that all grading associated with the establishment and implementation of water quality best management practices achieves a hydraulic disconnection between the basin areas and the adjacent San Diego River 100-year floodplain. CSU shall bear all costs and expenses associated with the performance of any grading activities within any floodplain on the CSU Property and the River Park Property and all costs associated with obtaining the necessary Approvals for such grading activities.

6.14 City's Groundwater Monitoring Wells.

(a) Existing Monitoring Wells. Attachment 25 to this Agreement depicts, among other things, two groundwater monitoring wells currently located on the CSU Property (identified on Attachment 25 as "MW-2" and "MW-3", and referred to herein as the "**Monitoring Wells**"). At the Closing, and as a condition to the Closing, CSU shall grant the City an easement on the applicable portion of the CSU Property, in accordance with all of PUD's standards and regulations (including PUD's standard form of easement), to monitor, maintain, operate and repair the Monitoring Wells. The City acknowledges that CSU intends to destroy the Monitoring Wells at CSU's sole cost and expense after the Closing in connection with its grading and construction activities. CSU shall not commence destruction of the Monitoring Wells until after PUD has first approved in writing CSU's application for relocation of the Monitoring Wells in accordance with PUD's standard application process and PUD's normal regulations.

(b) New Monitoring Wells. Prior to recordation of the Parcel Map, the Parties shall negotiate in good faith to determine mutually acceptable locations (and easement dimensions, if applicable) for the installation of two new groundwater monitoring wells (the “**New Monitoring Wells**”), which locations may or may not be on the CSU Property. The New Monitoring Wells will be substantially similar in quality and type to the Monitoring Wells as they exist as of the Effective Date. CSU shall install the New Monitoring Wells in such mutually acceptable locations at its sole cost and expense, after PUD has first approved in writing CSU’s application for installation of the New Monitoring Wells in accordance with PUD’s standard application process and PUD’s normal regulations and after CSU has first obtained all other required Approvals. The City shall promptly cause the easement for the existing Monitoring Wells to be extinguished after CSU has completed the installation of the New Monitoring Wells and has made the New Monitoring Wells operational for regular use, with appropriate access rights in the City’s favor.

(c) Potential New Monitoring Wells on CSU Property. If either or both of the New Monitoring Wells are to be located on the CSU Property, the location(s) may not adversely affect the development of the Project, and they may not be installed until after CSU has completed grading the CSU Property for the Project. CSU shall grant the City one or more easements, in accordance with all of PUD’s standards and regulations (including PUD’s standard form of easement), to monitor, maintain, operate and repair the New Monitoring Wells to the extent that they are located on the CSU Property.

(d) Potential New Monitoring Wells in Right of Way. If either or both of the New Monitoring Wells are to be located on property not owned by CSU but are located within the public right of way, then the City shall issue a right of entry permit to CSU, in accordance with and subject to all City regulations, allowing CSU to install the New Monitoring Wells on such property.

6.15 Cooperative Efforts.

(a) Coordination. The Parties acknowledge that close cooperation and coordination will be required to develop the Project after the Closing because, among other reasons, many public facilities and utilities owned and operated by the City will need to be relocated, realigned, constructed, reconstructed, or otherwise impacted at CSU’s sole expense during construction of the Project and because CSU is required under the Section 22.0908 Conditions and the Additional Public Benefits to complete construction of the New Stadium and improvements on the River Park Property no later than the Delivery Date. Accordingly, the City agrees to Cooperate reasonably with CSU’s implementation of the Project and to timely process for consideration all applications for necessary Approvals, including encroachment permits for construction within public rights-of-way, City Public Improvement Plan approvals, and the granting of utility, drainage, or other easements, upon CSU’s payment of applicable City processing fees and subject to CSU’s compliance with applicable Law, including the City’s applicable rules and regulations. The City also agrees reasonably and timely to support and help facilitate CSU’s applications with other governmental entities with respect to any development activities on the Project, as long as such applications comply with applicable Laws and do not adversely affect the City’s interests. If CSU pays the City’s normal fees applicable for expedited processing, then once CSU’s submittal is deemed complete, the City will expedite its review of

CSU submittals and diligently endeavor to finalize its review within fifteen (15) Business Days after the date of each complete initial submittal and (if applicable) each complete subsequent submittal. Nothing in this Agreement shall impose any obligation on the City to incur any out-of-pocket costs or expenses or liability whatsoever with respect to the City's reasonable cooperation with CSU's implementation of the Project and the related processing of any applications for Approvals.

(b) Extension of Delivery Date. Subject to written notice duly provided by CSU to the City pursuant to paragraph (c) below, the Delivery Date shall be extended when and as permitted by this paragraph for up to a total aggregate maximum of twenty-four (24) months (or for up to a total aggregate maximum of thirty-six (36) months if the Delivery Date is delayed due to an Injunction Preventing Completion) due solely to a cause beyond CSU's commercially reasonable control that arises prior to the Delivery Date and includes, and is limited to, one or more of the following: casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, inability to obtain required materials, governmental delays (excluding delays directly caused by CSU), or an Injunction Preventing Completion (provided that CSU has diligently and in good faith taken all reasonable steps to cause the dissolution or vacation of the Injunction Preventing Completion). Notwithstanding the foregoing, there shall be no extension of the Delivery Date under any circumstances due to the financial condition, insolvency, or inability to obtain financing on the part of CSU. In no event shall an extension of the Delivery Date with respect to the improvements on the River Park Property impair, modify, or waive CSU's obligation to complete construction of the improvements on the River Park Property and open the River Park Property to the public for use and enjoyment prior to the occupancy of any building on the CSU Property with the exception of the New Stadium.

(c) Notice of Delay. Within ten (10) Business Days after first learning of any cause described in paragraph (b) above that will cause a delay of the construction of the improvements on the River Park Property and/or the New Stadium to completion by the Delivery Date, CSU shall deliver written notice to the City describing in reasonable detail the nature of the delay, an explanation of the cause of the delay, the date of occurrence of the delay, a reasonable estimate of the length of delay, and all reasonably available supporting data. During the applicable period of extension described in paragraph (b) above, CSU will not be in Default for failing to meet the Delivery Date.

6.16 Municipal Services. The City shall Cooperate in providing water, sewer, and other municipal services (excluding police services) with respect to the CSU Property on the same terms and conditions, and based on the same cost structure, available to the general public. Pursuant to California Education Code section 67381, San Diego State University Police Department, acting as the campus law enforcement agency, through its authority under Penal Code section 830.2(c), shall have primary authority for providing police or security services, including the investigation of criminal activity, on the CSU Property. Prior to the Closing Date, and outside of the Escrow, the Parties shall Cooperate with the goal of causing their respective law enforcement agencies (i.e., San Diego Police Department and San Diego State University Police Department) to enter into a written memorandum of understanding that identifies and allocates responsibilities and, if applicable, costs, between the law enforcement agencies for providing police services and responding to incidents on the CSU Property and on areas contiguous to the CSU Property, including the River Park Property.

6.17 Notice of Transfer Under 401 Certification. The portion of the CSU Property comprising Murphy Canyon Creek and certain property owned by the City comprising the Wetland Mitigation Project Site (collectively, “**401 Project Area**”) are subject to that certain Clean Water Act Section 401 Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials issued by the California Regional Water Quality Control Board, San Diego Region (“**Water Board**”), as Certification No. R9-2013-0124 dated November 14, 2014 (“**401 Certification**”). The work resulting in impacts to the portion of the CSU Property covered by the 401 Certification have been carried out, but the City has continuing obligations with respect to the Wetland Mitigation Project Site. Section VI.E.1 of the 401 Certification provides that if any portion of the 401 Project Area is transferred to a new owner, notification must be given to the Water Board within ten (10) days of transfer of ownership. Accordingly, upon the Closing, the Parties agree to jointly notify the Water Board that: (i) a portion of the 401 Project Area has been transferred to CSU; (ii) all impacts to the CSU owned portion of the 401 Project Area have been carried out; (iii) City will retain ownership of the Wetland Mitigation Project Site and responsibility for obligations relating thereto, including for maintenance and monitoring of habitat until the success criteria have been met and long-term management thereafter; and (iv) accordingly, the Parties do not intend to transfer the 401 Certification to CSU. In addition, to the extent CSU is required or desires to obtain permits from state or federal agencies for future maintenance or repair of the portion of Murphy Canyon Creek existing on the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek, the City agrees to Cooperate by providing CSU with copies of historical permits, applications, correspondence and related materials as CSU may reasonably request.

6.18 Survival. The provisions of this Section 6.18 shall survive the Closing to the extent that any pertinent obligations have not been fully satisfied as of the Closing.

7. **RIGHTS AND OBLIGATIONS REGARDING ANY NEW LAWSUIT.**

7.1 CSU’s Assumption of Risk. Notwithstanding anything to the contrary in this Agreement, CSU assumes all risk of delays or damages that may result from any Third Person’s initiation of any New Lawsuit, including the payment of Legal Costs.

7.2 CSU’s Right to Terminate Agreement. If any Third Person initiates a New Lawsuit, in which CSU is named as a defendant or a respondent or a real party in interest, prior to the Closing, then at any time prior to the Closing, CSU shall have the right to cancel the Escrow and terminate this Agreement by delivering written notice of termination to the City and Escrow Agent, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 9.11.

7.3 CSU’s Defense and Indemnification of City. If any Third Person initiates a New Lawsuit Adverse to the City, then CSU agrees to defend, indemnify, and hold harmless the City Indemnified Parties from and against all Claims related to or comprising the New Lawsuit. The foregoing indemnity shall not apply to the extent of any cause of action in a New Lawsuit Adverse to the City alleging that, as part of the City Approval Actions, the City failed to properly notice a matter as required by the Ralph M. Brown Act. If CSU Defaults on its obligation to provide a defense or indemnification owed to the City Indemnified Parties prior to the Closing pursuant to this Agreement, then at any time prior to the Closing, the City shall have the right to

cancel the Escrow and terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent, in which event the Parties and the Escrow Agent shall proceed in accordance with Section 9.11. The City's cancellation of the Escrow and termination of this Agreement shall not limit the City's right to recover the Legal Costs of the City Indemnified Parties related to the New Lawsuit and to pursue all other available remedies at law or in equity for CSU's Default. If CSU Defaults on its obligation to provide a defense or indemnification obligation owed to the City Indemnified Parties after the Closing, the City shall be entitled to pursue all available remedies at law or in equity, including but not limited to specific performance. The provisions of this Section 7.3 shall survive the Closing or the termination of this Agreement, as applicable. Nothing in this Section 7.3 releases the City from its representations and warranties under this Agreement or in any other agreement entered into between the Parties at the Closing.

7.4 Reasonable Cooperation. If any Third Person files a New Lawsuit in which CSU is named as a defendant, a respondent, or a real party in interest, then the City shall Cooperate with CSU's defense of such New Lawsuit; provided, however, that the City shall not incur any liability whatsoever nor shall the City be required to incur any related out-of-pocket expenses or costs. The provisions of this Section 7.4 shall survive the Closing or the termination of this Agreement, as applicable.

8. **CONDITIONS PRECEDENT TO THE CLOSING.**

8.1 CSU's Conditions. Provided that the failure of any condition to be satisfied is not due to CSU's Default under this Agreement, CSU's obligation to purchase the CSU Property from the City on the Closing Date shall be conditioned upon the satisfaction, or CSU's signed written waiver, of each of the following conditions precedent on or before the Closing Date:

(a) Title Policy. Title Company shall be irrevocably committed to issue the Title Policy at the Closing upon payment of Title Company's premium.

(b) City's Deliveries. The City shall have delivered to Escrow Agent, at or before the Closing, all items to be delivered by the City as described in Section 9.5.(c)

(c) City's Representations and Warranties. Each of the City's representations and warranties set forth in Section 10.2 shall be true and correct in all material respects as of the Closing Date.

(d) City's Performance. The City shall have performed all of its material obligations required by this Agreement to be performed before the Closing, including the City's covenants under Section 10.1.

(e) City Approval Actions. The City Council shall have approved the City Approval Actions.

(f) CSU's Closing Statement. CSU shall have reasonably approved CSU's escrow closing statement as described in Section 9.8.

(g) No Injunction Preventing Closing. There shall be no Injunction Preventing Closing.

8.2 City's Conditions. Provided that the failure of any condition to be satisfied is not due to the City's Default under this Agreement, the City's obligation to sell the CSU Property to CSU on the Closing Date shall be conditioned upon the satisfaction, or the City's signed written waiver, of each of the following conditions precedent on or before the Closing Date:

(a) CSU's Deliveries. CSU shall have delivered to Escrow Agent, at or before the Closing, all items to be delivered by CSU as described in Section 9.4.

(b) CSU's Representations and Warranties. Each of CSU's representations and warranties set forth in Section 10.3 shall be true and correct in all material respects as of the Closing Date.

(c) CSU's Performance. CSU shall have performed all of its material obligations required by this Agreement to be performed before the Closing.

(d) CSU Approval Actions. The CSU Board of Trustees shall have approved the CSU Approval Actions.

(e) City's Closing Statement. The City shall have reasonably approved the City's escrow closing statement as described in Section 9.8.

(f) No Injunction Preventing Closing. There shall be no Injunction Preventing Closing.

8.3 Failure of Closing Conditions. Provided that the failure of any condition precedent under this Section 8 to be satisfied is not due to either Party's Default under this Agreement, the Party benefitted by the condition precedent shall be entitled to (i) waive the unfulfilled condition in writing and proceed with the Closing (if the Closing is feasible under such circumstances), without modification to, or abatement of, the Final Adjusted Purchase Price, or (ii) cancel the Escrow and terminate this Agreement by delivering written notice to the other Party and Escrow Agent within ten (10) Business Days after the scheduled Closing Date. Upon delivery of the written notice of termination, the Parties and Escrow Agent shall proceed in accordance with Section 9.11. If either Party terminates this Agreement in accordance with this Section 8.3, such Party shall not incur any resulting liability to the other Party or any other Person.

9. **JOINT ESCROW INSTRUCTIONS.**

9.1 Opening of Escrow. The purchase and sale of the CSU Property shall take place through the Escrow to be administered by Escrow Agent. Within one (1) Business Day after receiving the City's delivery of the duplicate original of this Agreement in accordance with Section 2.7, Escrow Agent shall sign and deliver to each Party a copy of Escrow Agent's Consent, which shall confirm the Escrow Opening Date.

9.2 Escrow Instructions. This Section 9, together with Section 2, constitute the joint escrow instructions of the Parties to Escrow Agent for the conduct of the Escrow for the

purchase and sale of the CSU Property, as contemplated by this Agreement. The Parties shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. Either Party may prepare supplemental escrow instructions consistent with the provisions of this Agreement, subject to the other Party's reasonable approval. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent or prepared by either Party, the provisions of this Agreement shall control unless the Parties have expressly stated their mutual intent in the further escrow instructions to supersede any provisions of this Agreement.

9.3 Escrow Agent's Authority. The Parties authorize Escrow Agent to: (i) pay and charge the Parties for their respective shares of the applicable fees, taxes, charges, and costs payable by either Party regarding the Escrow; (ii) release each Party's escrow closing statement to the other Party; (iii) file all Recordable Closing Documents with the County Recorder for recording in the Official Records, pursuant to the joint instructions of the Parties; and (iv) utilize documents signed by each Party in counterparts, including attaching separate signature pages to one original of the same document.

9.4 CSU's Escrow Deposits. CSU shall deposit all of the following items into the Escrow at least one (1) Business Day before the Closing Date:

(a) Closing Statement. CSU's escrow closing statement, signed by CSU's authorized representative(s);

(b) Closing Document Deliverables. All Closing Document Deliverables, signed by CSU's authorized representative(s), and acknowledged by a notary public (where applicable with respect to documents to be recorded in the Official Records);

(c) Closing Funds. All monetary amounts, in Immediately Available Funds, required to be deposited into the Escrow by CSU under the terms of this Agreement to close the Escrow, as shown in CSU's signed escrow closing statement; and

(d) Other Reasonable Items. Any other money or documents required to be delivered by CSU under the terms of this Agreement or as reasonably requested by Escrow Agent or Title Company to close the Escrow or comply with Law.

9.5 City's Escrow Deposits. The City shall deposit all of the following items into the Escrow at least one (1) Business Day before the Closing Date:

(a) Closing Statement. The City's escrow closing statement, signed by the City's authorized representative(s);

(b) Closing Document Deliverables. All Closing Document Deliverables, signed by the City's authorized representative(s), and acknowledged by a notary public (where applicable with respect to documents to be recorded in the Official Records); and

(c) Other Reasonable Items. Any documents required to be delivered by the City under the terms of this Agreement or as reasonably requested by Escrow Agent or Title Company to close the Escrow or comply with Law, including any information or statement that

the Title Company may reasonably require to issue the Title Policy without taking exception for any “gap” due to the inability to effectively search title records as a result of COVID-19 related delays in updating title records.

9.6 Closing Procedure. Upon Escrow Agent’s receipt of written confirmation from the Parties that their respective conditions precedent to the Closing are satisfied or waived, Escrow Agent shall facilitate the Closing by taking all of the following actions:

(a) Recording and Distribution of Documents. Escrow Agent shall cause the Recordable Closing Documents to be filed with the County Recorder for recording in the Official Records regarding the Real Property and the River Park Property upon the Closing in the order of priority shown in the Recordable Closing Documents List. Upon the Closing, Escrow Agent shall deliver, to the Parties and any other Person designated in the written joint escrow instructions of the Parties, conformed copies of all Recordable Closing Documents that have been filed with the County Recorder for recording in the Official Records and a fully-executed original of all other Closing Documents deposited into the Escrow before the Closing. Each conformed copy of a Recordable Closing Document shall show all recording information.

(b) Funds. Escrow Agent shall distribute all funds held in the Escrow pursuant to the approved escrow closing statements.

(c) FIRPTA Affidavit. Escrow Agent shall file the completed FIRPTA Affidavit, as identified in the Closing Documents List, with the United States Internal Revenue Service.

(d) Form 593-C. Escrow Agent shall file the completed Form 593-C, as identified in the Closing Documents List, with the California Franchise Tax Board.

(e) Title Policy. Escrow Agent shall obtain from Title Company, and deliver to CSU, with a copy to the City, the Title Policy issued by Title Company.

9.7 Timing of Closing.

(a) Primary Target Closing Date. The Parties shall reasonably endeavor to accomplish the Closing on or before the Primary Target Closing Date and, if the Closing does not occur by then due to an Injunction Preventing Closing as expressly provided in Section 9.7(b) below, then the Closing shall occur not later than the Outside Closing Date.

(b) First Extended Closing Date. If the Closing does not occur by the Primary Target Closing Date solely by reason of a pending Injunction Preventing Closing, then, provided that CSU has diligently and in good faith taken reasonable steps to cause the dissolution or vacation of the Injunction Preventing Closing, the Closing is automatically extended to not later than the First Extended Closing Date. Prior to the First Extended Closing Date, CSU shall work diligently and expeditiously, using reasonable efforts, to cause the Injunction Preventing Closing to be dissolved or vacated, including by causing the CSU Board of Trustees to consider approval of a CSU Formal Corrective Action. The City agrees to Cooperate with CSU during this time, including by causing the City Council to consider approval of a City Formal Corrective Action if necessary to assist with CSU’s effort to remove the Injunction Preventing Closing. The City shall

also Cooperate diligently and expeditiously with CSU's efforts to defend any New LawsUIT and any claim for an Injunction Preventing Closing and to cause prompt dissolution or vacation of any Injunction Preventing Closing.

(c) Second Extended Closing Date. If the Closing does not occur by the First Extended Closing Date solely by reason of the pending Injunction Preventing Closing described in paragraph (b) above, then, provided that CSU has diligently and in good faith taken reasonable steps to cause the dissolution or vacation of the Injunction Preventing Closing, the Closing is automatically extended to not later than the Second Extended Closing Date. Prior to the Second Extended Closing Date, CSU shall work diligently and expeditiously, using reasonable efforts, to cause the Injunction Preventing Closing to be dissolved or vacated, including by causing the CSU Board of Trustees to consider approval of a CSU Formal Corrective Action. The City agrees to Cooperate diligently and expeditiously with CSU during this time, including by causing the City Council to consider approval of a City Formal Corrective Action if necessary to assist with CSU's effort to remove the Injunction Preventing Closing. The City shall also Cooperate with CSU's efforts to defend any New LawsUIT and any claim for an Injunction Preventing Closing and to cause prompt dissolution or vacation of any Injunction Preventing Closing.

(d) Third Extended Closing Date. If the Closing does not occur by the Second Extended Closing Date solely by reason of (i) the pending Injunction Preventing Closing described in paragraph (b) above, (ii) an appeal involving the Injunction Preventing Closing described in paragraph (b) above has been filed with the appellate court, which appeal is pending, and (iii) an Injunction Preventing Closing has been issued by a court and remains in effect, then, provided that CSU has diligently and expeditiously and in good faith taken all reasonable steps to cause the dissolution or vacation of the Injunction Preventing Closing, the Closing is automatically extended to not later than the Third Extended Closing Date. Prior to the Third Extended Closing Date, CSU shall work diligently, using reasonable efforts, to cause the Injunction Preventing Closing to be dissolved or vacated, including by causing the CSU Board of Trustees to consider approval of a CSU Formal Corrective Action. The City agrees to Cooperate with CSU during this time, including by causing the City Council to consider approval of a City Formal Corrective Action if necessary to assist with CSU's effort to remove the Injunction Preventing Closing. The City shall also Cooperate diligently and expeditiously with CSU's efforts to defend any New LawsUIT and any claim for an Injunction Preventing Closing and to cause prompt dissolution or vacation of any Injunction Preventing Closing.

(e) Fourth Extended Closing Date. If the Closing does not occur by the Third Extended Closing Date solely by reason of (i) the pending appeal involving the Injunction Preventing Closing described in paragraph (d) above and (ii) a hearing on such pending appeal has occurred prior to the Third Extended Closing Date but the appellate court's determination has not yet been issued or a hearing on such appeal is scheduled by the appellate court prior to the Third Extended Closing Date, then the Closing is automatically extended to not later than the Fourth Extended Closing Date. Prior to the Fourth Extended Closing Date, CSU shall work diligently and expeditiously, using reasonable efforts, to cause the appeal involving the Injunction Preventing Closing to be quickly dissolved and/or vacated, including by causing the CSU Board of Trustees to consider approval of a CSU Formal Corrective Action. The City agrees to Cooperate with CSU during this time, including by causing the City Council to

consider approval of a City Formal Corrective Action if necessary to assist with CSU's effort to remove the Injunction Preventing Closing. The City shall also Cooperate diligently and expeditiously with CSU's efforts to defend any New LawsUIT and any claim for an Injunction Preventing Closing and to cause prompt dissolution or vacation of any Injunction Preventing Closing.

(f) The Parties agree that in no event will the Closing be extended past the Fourth Extended Closing Date as described in paragraph (e) above no matter the existence of any Injunction Preventing Closing, court issued stay or enjoinder of the Closing, or appeal thereof. If, for any reason other than an Injunction Preventing Closing, the Closing has not occurred on or before the Primary Target Closing Date, or on or before the First Extended Closing Date, the Second Extended Closing Date, the Third Extended Closing Date, or the Fourth Extended Closing Date, based on any extension of the Closing expressly provided pursuant to paragraphs (b), (c), (d), and (e) above, respectively, then either Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering written notice of termination to both the other Party and Escrow Agent. Following any such written notice of termination, the Parties and Escrow Agent shall proceed pursuant to Section 9.11. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement pursuant to this Section (e), if the Closing does not occur on or before the Primary Target Closing Date, if no Injunction Preventing Closing has been issued, and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section (e), then the Closing shall occur as soon as reasonably possible following the first date on which Escrow Agent delivers a written "readiness" notice to both Parties that the Closing is ready to occur in accordance with the terms and conditions of this Agreement.

(g) COVID-19 Delays. Notwithstanding anything to the contrary in this Agreement, if there is a court closure due to the COVID-19 pandemic while an Injunction Preventing Closing is pending or in effect, then, so long as the Closing occurs within two (2) years of the Primary Target Closing Date, the Primary Target Closing Date shall be tolled until the date that is five (5) Business Days after the court resumes operations in a manner that allows proceedings on the Injunction Preventing Closing to continue. In addition, if the Official Records of San Diego County, the Escrow Agent used by the Parties and required for the Closing of the Sale Transaction or the bank used by a Party or the Escrow Agent and needed for the transfer of funds in connection with the Sale Transaction, is not open for business due to the COVID-19 pandemic and affects the ability to proceed with the Closing, then, so long as the Closing occurs within two (2) years of the Primary Target Closing Date, then the Primary Target Closing Date shall be extended to the date that is two (2) business days after such offices or bank reopen for business or otherwise are able to effectuate the Closing.

9.8 Closing Statements and Escrow Costs. The Parties shall jointly notify Escrow Agent when they reasonably believe the Closing is ready to occur at an estimated future date. Escrow Agent shall calculate the Final Adjusted Purchase Price, based on the estimated Closing Date provided by the Parties and utilizing the calculation method and illustrative examples contained in the definition of the Final Adjusted Purchase Price in this Agreement. Escrow Agent shall deliver an escrow closing statement to each Party at least four (4) Business Days before the Closing Date, identifying Escrow Agent's calculation of the Final Adjusted Purchase

Price and specifying the costs to be borne by each Party upon the Closing. The City shall pay all recording fees, all documentary transfer taxes, one-half of Escrow Agent's charges for conducting the Escrow, and the premium charged by Title Company for the Title Policy, excluding the cost of any endorsements in the Title Policy that may be requested by CSU and the cost associated with any extended coverage in the Title Policy above and beyond the standard coverage in a California Land Title Association owner's title policy. CSU shall pay one-half of Escrow Agent's charges for conducting the Escrow, the cost of any endorsements in the Title Policy that may be requested by CSU, and the cost associated with any extended coverage above and beyond the standard coverage in a California Land Title Association owner's title policy (including the incremental increase in cost for an American Land Title Association owner policy). All other charges, fees and taxes levied by each and every governmental authority relative to the conveyance of the CSU Property through the Escrow shall be paid by the applicable Party, as customary in San Diego County. Each Party shall not unreasonably disapprove, or unreasonably delay its approval of, such Party's escrow closing statement.

9.9 Prorated Items. When preparing the escrow closing statement for each Party, Escrow Agent shall prorate the following items between the Parties as of the date and time described below: (i) all ad valorem taxes and special taxes or assessments levied or assessed against the CSU Property; (ii) all utility costs and other expenses of operating the Real Property, if any; and (iii) all collected and uncollected rent and other income pursuant to the Leases in effect on the Closing Date. The taxes and assessments, if any, shall be prorated for the year of the Closing as of 11:59 p.m. on the day immediately preceding the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall be based upon the tax rate and the assessed valuation for the preceding tax year. The utility costs and other expenses of operating the Real Property shall be prorated for the month of the Closing as of 11:59 p.m. on the day immediately preceding the Closing Date, utilizing the most recently available meter reading or other reliable information that the Parties reasonably agree upon for purposes of apportioning such costs and expenses. The Parties agree to reasonably apportion applicable taxes and costs between them upon the Closing, consistent with the provisions of this Section 9.9. The Closing shall constitute the final reconciliation of all taxes and costs to be apportioned between the Parties with respect to the Real Property. The collected and uncollected rent and other income from Leases shall be prorated for the month of the Closing as of 11:59 p.m. on the day immediately preceding the Closing Date. CSU shall receive a credit in an amount equal to any security deposits held by the City pursuant to the Leases, which credit will be reflected on the closing statements. To the extent rents and other income from the CSU Property are received by the City or by CSU after the Closing but are for any period of time before the Closing Date, such rents and other income belong to the City and shall immediately be remitted to the City and CSU shall have no right to such income. To the extent rents and other income from the CSU Property are received by the City or by CSU after the Closing but are for any period of time on or after the Closing Date, such rents and other income belong to CSU and shall immediately be remitted to CSU and the City shall have no right to such income. Promptly after the Closing, the City shall provide written notice to each tenant under each Lease that the Lease has been assigned to CSU and that all future rental payments under the Lease for the period from and after the Closing Date are owed to CSU. Except as expressly provided in this Section 9.9 with respect to income from the Leases, the Parties shall not undertake or be liable for any post-Closing adjustment or reconciliation of any prorated items. The City shall not be responsible for any increase in taxes or assessments

resulting from improvements to the Real Property made on or after the Closing Date, or made by or on behalf of CSU during the period on or after the Effective Date of this Agreement and before the Closing Date.

9.10 Escrow Cancellation Charges. If, due to the City's Default under this Agreement, the Closing does not occur, the City shall pay any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent and Title Company. If, due to CSU's Default under this Agreement, the Closing does not occur, CSU shall pay any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent and Title Company. If the Closing fails to occur for any reason other than either Party's Default, each Party shall pay one-half of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent and Title Company.

9.11 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to either Party in this Agreement to terminate this Agreement (other than due to the other Party's Default), the Parties shall do all of the following:

(a) Cancellation Instructions. The Parties shall, within five (5) Business Days after Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent.

(b) Return of Funds and Documents. Within ten (10) Business Days after a Party has delivered a written notice of termination to the other Party and Escrow Agent in accordance with this Agreement: (i) CSU or Escrow Agent shall return to the City all documents previously delivered by the City to CSU or Escrow Agent, respectively, regarding the Escrow; (ii) the City or Escrow Agent shall return to CSU all documents previously delivered by CSU to the City or Escrow Agent, respectively, regarding the Escrow; (iii) Escrow Agent shall, unless otherwise provided in this Agreement, return to CSU all funds deposited into the Escrow by CSU, less CSU's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 9.10, and less the Earnest Money Deposit that has already been transmitted, or that is due to be transmitted, by Escrow Agent to the City as nonrefundable consideration pursuant to terms of this Agreement; and (iv) Escrow Agent shall, unless otherwise provided in this Agreement, return to the City all funds deposited in the Escrow by the City, less the City's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 9.10.

9.12 Report to IRS. For the purpose of complying with Internal Revenue Code section 6045(e), Escrow Agent is designated as the "person responsible for closing the transaction" and also as the "reporting person" who must file any informational report with the Internal Revenue Service concerning the transaction contemplated by this Agreement, as required by applicable Law. After the Closing and before the last date on which any report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Internal Revenue Code section 6045(e), Escrow Agent shall report the gross proceeds of the purchase and sale of the CSU Property to the Internal Revenue Service on Form 1099-B, W-9, or such other form as may be specified by the Internal Revenue Service pursuant to Internal Revenue Code section 6045(e). Concurrently with the filing of such report with the Internal Revenue Service, Escrow Agent shall deliver a copy of the filed report to the Parties.

10. COVENANTS, REPRESENTATIONS, WARRANTIES, AND WAIVERS.

10.1 City's Covenants. The City covenants and agrees with CSU as follows with respect to the time period between the Effective Date and the Closing Date:

(a) No Changes to Agreements. The City shall not modify or amend any Leases, Service Contracts, or other agreement respecting the Real Property, or enter into any new lease or contract respecting the Real Property, without obtaining CSU's prior written approval, which shall not be unreasonably withheld or delayed.

(b) Normal Maintenance. Except as otherwise set forth in the CSU Existing Occupancy Agreement, Section 3.2, or the CSU New Lease, the City shall maintain the CSU Property consistent with its present condition, except for ordinary wear and tear, and in accordance with the same standards that the City has customarily observed in its ownership and management of the Real Property.

(c) No New Title Exceptions. Except as otherwise contemplated in or permitted by this Agreement, the City shall not cause, permit, allow, or suffer any change to the title condition of the Real Property other than the Permitted Title Exceptions.

10.2 City's Representations and Warranties. All of the City's representations and warranties set forth in this Section 10.2 shall be true upon the Effective Date and shall be deemed to be repeated at and as of the Closing and shall survive the Closing for a time period of one (1) year. The City represents and warrants to CSU that:

(a) Due Authorization. The signature and delivery of this Agreement by the City and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized and approved by all necessary action of the City (provided that the City does not make, and expressly disclaims, any representation or warranty with respect to any third party's potential initiation of a New Lawsuit).

(b) No Default. The signature and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach of the terms or conditions of, or constitute a default under, any instrument or obligation by which the City is bound, or violate any order, writ, injunction, or decree of any court in any litigation to which the City is a party. Such representation and warrant shall not apply to any New Lawsuit.

(c) Notices and Documents. Based on the current, actual knowledge of Cybele Thompson (Director, Real Estate Assets Department) as of the Effective Date, and thereafter, if Cybele Thompson is no longer employed by the City and available, then based on the current, actual knowledge of the designated City representative being most familiar with the Existing Stadium operations as determined by the Mayor, without any independent duty of inquiry or investigation in either case, (i) the City has not received written notice of any pending violations of law, any pending or threatened condemnation action, or any litigation that would prohibit the Parties from consummating the Closing as of the scheduled Closing Date and performing their respective obligations under this Agreement; and (ii) the City has delivered to CSU a true and correct copy of the Leases and the Service Contracts.

10.3 CSU's Representations and Warranties. All of CSU's representations and warranties set forth in this Section 10.3 shall be true upon the Effective Date and shall be deemed to be repeated at and as of the Closing and shall survive the Closing for a time period of one (1) year. CSU represents and warrants to the City that:

(a) Due Authorization. The signature and delivery of this Agreement by CSU and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized and approved by all necessary action of CSU (provided that CSU does not make, and expressly disclaims, any representation or warranty with respect to any third party's potential initiation of a New Lawsuit).

(b) No Default. The signature and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach of the terms or conditions of, or constitute a default under, any instrument or obligation by which CSU is bound, or violate any order, writ, injunction, or decree of any court in any litigation to which CSU is a party. Such representation and warrant shall not apply to any New Lawsuit.

(c) CSU's Sophistication. CSU is a sophisticated purchaser and is familiar with acquiring, owning, developing, and operating real property similar to the CSU Property. CSU has relied solely upon its own inspection, investigation, and analysis of all relevant matters in deciding to confirm its approval of the condition of the CSU Property pursuant to this Agreement and to enter into and execute this Agreement.

(d) No Assignment. CSU has not made, whether voluntarily, involuntarily, or by operation of Law, an assignment of, or a commitment to assign, any of CSU's rights or obligations under this Agreement, except to the extent that the City has given prior written consent to the assignment in accordance with Section 16.2.

10.4 CSU's Acknowledgments and Waivers. CSU provides the following acknowledgments and waivers for the City's express benefit, all of which shall survive the Closing:

(a) CSU's Investigation. As authorized by the CSU Entry Permit, CSU made an independent investigation and analysis, to the extent CSU deemed necessary or appropriate, concerning the physical condition, development potential, use, sale, and occupancy of the CSU Property and the value of the CSU Property. Such investigation and analysis included: the present and future economic value of the CSU Property and the feasibility of developing or marketing the CSU Property for CSU's intended purposes; an environmental analysis as required by applicable Law; the soils condition of the CSU Property; the presence of Hazardous Substances on or affecting the CSU Property and the actual or potential need for remediation of such Hazardous Substances; the future availability and adequacy of water, sewer, and other utilities serving the CSU Property; applicable Law, limitations, restrictions, conditions, or requirements affecting the CSU Property; the existence and effect of covenants, conditions, restrictions, and requirements set forth in recorded documents affecting the CSU Property; and possible costs associated with CSU's development, grading, and construction of improvements on the CSU Property. CSU acknowledges that its approval of the condition of the CSU Property pursuant to this Agreement evidences all of the following: (i) to the extent that CSU's own

expertise with respect to any matter regarding the CSU Property is insufficient to enable CSU to reach an informed conclusion regarding such matter, CSU has engaged the services of Persons qualified to advise CSU with respect to such matters; (ii) CSU has received assurances acceptable to CSU, by means independent of the City or the City's representatives, of the truth of all facts material to CSU's acquisition of the CSU Property, provided that nothing in this paragraph (a)(ii) releases the City from its representations, warranties, and obligations to perform covenants under this Agreement or in any other agreement entered into between the Parties at the Closing; and (iii) CSU is acquiring the CSU Property as a result of CSU's own knowledge, inspection, and investigation of the CSU Property and not as a result of any statement or representation made by the City or the City's representatives relating to the condition of the CSU Property, unless such statement or representation is expressly set forth in this Agreement or in any other agreement entered into between the Parties at the Closing.

(b) CSU's Acceptance of Property. CSU acknowledges that the Closing shall evidence CSU's unconditional and irrevocable acceptance of the CSU Property in the CSU Property's "AS IS, WHERE IS" condition, subject to all faults and defects. CSU further acknowledges that the City has not made, and expressly disclaims, any express or implied warranties with respect to the CSU Property, including: (i) the structural, geotechnical, or physical condition of the CSU Property; (ii) the existence or absence of any Hazardous Substances on, under, or affecting the CSU Property; (iii) the content or accuracy of any report, sample, results, study, opinion, or conclusion of any soils, toxic, environmental, or other engineer, consultant, or other Person who has examined the CSU Property; (iv) the content or accuracy of any information disclosed to CSU by any of the City Indemnified Parties, or any engineer, consultant, planner, governmental employee, or other Person in connection with CSU reviewing the feasibility of development of, and otherwise investigating, the CSU Property; (v) the availability of building permits or other permits or approvals for the CSU Property by any state or local governmental bodies with jurisdiction over the CSU Property and by any adjacent landowners; (vi) the current compliance of the CSU Property with Law; (vii) without limiting the City's obligations, if any, to provide any such services, the availability or capacity of sewer, water, or other utility connections to the CSU Property; and (viii) the suitability of the CSU Property for CSU's intended uses. Nothing in this paragraph (b) releases the City from its representations, warranties, and obligations to perform covenants under this Agreement or in any other agreement entered into between the Parties at the Closing.

(c) CSU's Assumption of Obligations Relating to Hazardous Substances. **CSU AGREES THAT, WITHOUT LIMITING ANY OTHER PROVISIONS OF THIS AGREEMENT, THE CITY SHALL HAVE NO OBLIGATION TO REMEDIATE OR REMOVE ANY HAZARDOUS SUBSTANCES DISCOVERED ON, UNDER, OR AFFECTING THE CSU PROPERTY. UPON THE CLOSING, CSU ASSUMES ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITIES RELATING TO THE INVESTIGATION OR REMEDIATION OF HAZARDOUS SUBSTANCES ON, UNDER, OR AFFECTING THE CSU PROPERTY AND FURTHER ASSUMES ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITIES WITH RESPECT TO ANY ENVIRONMENTAL CLAIM AFFECTING THE CSU PROPERTY OR THE PROJECT.**

(d) CSU's Assumption of Risk and Waiver of Claims. **UPON THE CLOSING, CSU ASSUMES THE RISK THAT ADVERSE PROPERTY CONDITIONS,**

INCLUDING CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY CSU'S INVESTIGATIONS OF THE CSU PROPERTY. UPON THE CLOSING, CSU RELEASES THE CITY INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, THAT CSU MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE CITY INDEMNIFIED PARTIES AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF LAW, AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE CSU PROPERTY.

(e) CSU's Waiver of Section 1542. REGARDING ALL RELEASES OF CLAIMS IN THIS AGREEMENT, CSU EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, AS AMENDED OR MODIFIED, WHICH CURRENTLY PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(f) CSU's Acknowledgment. CSU ACKNOWLEDGES AND AGREES THAT CSU HAS CAREFULLY REVIEWED THIS SECTION 10.4, DISCUSSED ITS IMPORT WITH LEGAL COUNSEL, AND IS FULLY AWARE OF ITS CONSEQUENCES, AND FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION 10.4 ARE A MATERIAL PART OF THIS AGREEMENT. IN ANY EVENT, CSU'S RELEASE, WAIVER, OR DISCHARGE SHALL NOT APPLY AND SHALL BE OF NO FORCE OR EFFECT FOR ANY CLAIMS ARISING OUT OF (I) THE CITY'S FRAUD OR TO THE EXTENT ARISING OUT OF THE CITY'S ESTABLISHED SOLE NEGLIGENCE, (II) THE CITY'S WILLFUL MISCONDUCT, OR (III) ANY CLAIMS ARISING OUT OF OR RELATING TO PERSONAL INJURY OR DEATH THAT OCCURRED ON THE CSU PROPERTY PRIOR TO THE CLOSING EXCEPT DURING THE PERIOD OF CSU'S LEASE OF THE CSU PROPERTY. IN ADDITION, BY THIS SECTION 10.4, CSU IS NOT RELEASING ANY CLAIMS THAT IT MAY HAVE AGAINST ANY THIRD PARTIES, INCLUDING KINDER MORGAN. THE CITY AGREES TO COOPERATE WITH CSU, AT NO OUT OF POCKET COST AND WITH NO LIABILITY TO THE CITY, IF CSU DESIRES TO PURSUE ANY ENVIRONMENTAL CLAIM AGAINST KINDER MORGAN IN THE FUTURE, PROVIDED THAT THE CITY'S COOPERATION SHALL BE LIMITED TO SHARING WITH CSU STUDIES, ANALYSES, MEMOS, CORRESPONDENCE, AND OTHER INFORMATION THAT THE CITY POSSESSES WHICH ARE (i) RELATED TO THE SUBJECT MATTER OF SUCH CSU CLAIM, (ii) NON-PRIVILEGED, AND (iii) PUBLIC RECORDS. THIS COVENANT TO COOPERATE SHALL SURVIVE THE CLOSING.

*** CSU's Initials: _____ ***

10.5 CSU Debt Instruments. All CSU Debt Instruments shall be consistent with the CSU Financing Plan, shall be subordinate to any covenant, declaration, and agreement in Senior Priority, and shall not violate any provisions of any covenant, declaration, or agreement in Senior Priority or impair any rights provided to the City therein. This provision shall survive the Closing.

11. ENCUMBRANCE OF FUNDS FOR POST-CLOSING ACTIVITIES.

11.1 City's Encumbrance of Funds. As part of the City Approval Actions, the City shall encumber, and set aside in a designated City account or pursuant to a City-approved joint escrow agreement, the Site Development Funds from a portion of the City General Fund's share of the Final Adjusted Purchase Price proceeds. Upon CSU's provision to the City of reasonably satisfactory evidence substantiating CSU's actual expenditures, the Site Development Funds shall be used to reimburse CSU for its actual costs incurred in relocating City utilities and other public facilities and completing other site work, including excavation and grading and other site development activities, that, in the City's reasonable view, serve a valid public purpose and benefit the City's interests (excluding any costs relating to the design, construction, or maintenance of the New Stadium or the River Park Improvements, or the demolition of the Existing Stadium). Prior to the Closing, the Parties shall meet and confer on preparing mutually agreeable written procedures consistent with this Section 11.1, for processing payment requests for and making disbursements of the Site Development Funds, including the preparation and use of a joint escrow agreement reasonably approved by the Parties prior to the Closing.

11.2 Potential Fenton Parkway Bridge. As an established City priority project, the City desires that Fenton Parkway be extended across the San Diego River ("**Fenton Parkway Bridge**") as described in the City's Mission Valley Community Plan Update. The Fenton Parkway Bridge has been contemplated in the City's long-range planning documents for the Mission Valley community for more than thirty (30) years as an independent local facility that separately serves the needs of the community and benefits the public. The City has collected developer contributions held on deposit in Mission Valley Urban Community Fund No. 400247 (Mission City Parkway Bridge/San Diego River), in which consists a principal balance of \$1,235,646 and accrued interest to fund environmental review, design, permitting and construction of the Fenton Parkway Bridge ("**Fund No. 400247**"). In addition, the Draft Mission Valley Impact Fee Study, Fiscal Year 2020 (November 2019), identifies the Fenton Parkway Bridge as Facility M-20, and the Mission Valley Public Facilities Financing Plan identifies the Fenton Parkway Bridge as the Mission City Parkway Bridge (Project No. T-29). As such, the Fenton Parkway Bridge is eligible to be funded with development impact fees that may be collected by the City for this purpose. The Final EIR concluded that the Fenton Parkway Bridge is not required mitigation to reduce the Project's direct significant traffic impacts. The Fenton Parkway Bridge is not a functional element or component of the Project. Nevertheless, as a benefit to the community and not as a part of the Project or as mitigation for the Project, CSU is willing to support the potential development of the Fenton Parkway Bridge by contributing funds toward the exploration, preliminary feasibility, due diligence, design, environmental review, and permitting for the potential Fenton Parkway Bridge ("**Feasibility Exploration**") and to perform the Feasibility Exploration.

(a) Feasibility Exploration Funding. If, after the Closing, the City deposits a total amount of Two Million Dollars (\$2,000,000) of the Final Adjusted Purchase Price received by the City into Fund No. 400247 or another fund that can be used to pay for the Feasibility Exploration at Closing, CSU will provide an additional Two Million Dollars (\$2,000,000) after the Closing to support the Feasibility Exploration. Each Party will be responsible for fifty percent (50%) of Feasibility Exploration costs, with each Party bearing equal responsibility for expenses as they are incurred; provided, however, that the City shall not be responsible for and shall not incur more than its initial contribution of Two Million Dollars (\$2,000,000) for the Feasibility Exploration. Notwithstanding the above, CSU shall be responsible for any total Feasibility Exploration costs in excess of Four Million Dollars (\$4,000,000). The funds described in this subsection (a) to be provided by the City will be made available to CSU for performance of the Feasibility Exploration upon terms reasonably agreed upon in writing by the Parties. To the extent any funds of the \$2,000,000 allocated by the City toward Feasibility Exploration costs pursuant to this subsection (a) remain after all Feasibility Exploration costs have been paid, the City may use such funds in any manner it chooses in its sole discretion.

(b) Scope of Review. The Feasibility Exploration will consider the feasibility of an all-weather bridge crossing the San Diego River, consisting of a two-lane road extending Fenton Parkway south over the San Diego River to Camino Del Rio North at grade with the trolley crossing, with left turn lanes from southbound Fenton Parkway to Camino del Rio North and Eastbound Camino Del Rio North to Fenton Parkway, and traffic signal modifications at the intersection of Camino Del Rio North and Fenton Parkway (collectively, the “**Potential Bridge Project**”). There is insufficient information about the potential Fenton Parkway Bridge to perform environmental review at this time. For example, details such as the precise location, configuration, design, construction, alternatives, design features, federal and state regulatory compliance requirements, and feasible mitigation for the potential Fenton Parkway Bridge are largely unknown at this time and meaningful environmental review cannot be performed in the absence of such information. The City will provide CSU reasonable rights to access any City-owned real property on which the Potential Bridge Project is intended to be located, to the extent CSU reasonably requires such access to facilitate its Feasibility Exploration for the Fenton Parkway Bridge.

(c) No Commitment. The Parties are agreeing to explore the feasibility of the Potential Bridge Project and provide a framework for the Feasibility Exploration, but neither Party is committing to construct any kind of Fenton Parkway Bridge at this time. Any obligation to construct the Fenton Parkway Bridge is irrevocably conditioned upon the completion of environmental review in compliance with CEQA and, if applicable, the National Environmental Policy Act (“**NEPA**”). Nothing in this Agreement shall: (i) commit or be interpreted to commit either Party to a definite course of action with respect to the Fenton Parkway Bridge or to approve the Potential Bridge Project, (ii) preclude the consideration of feasible mitigation measures and alternatives to the Potential Bridge Project, including the no project alternative, or (iii) restrict denial of the Fenton Parkway Bridge, prior to the certification, approval, or consideration of a CEQA compliance document for the Fenton Parkway Bridge. Compliance with CEQA and, if applicable, NEPA will be part of the Feasibility Exploration. For the avoidance of any doubt, the full and absolute discretion to approve, disapprove, or modify the Potential Bridge Project or any type of Fenton Parkway Bridge, or require mitigation measures or alternatives, is expressly reserved.

(d) Construction. If the Fenton Parkway Bridge is approved in compliance with CEQA and, if applicable, NEPA, then CSU will construct the Fenton Parkway Bridge pursuant to the terms of a separate agreement between the Parties, which would include rights of access, provided the City has placed an additional Six Million Five Hundred Thousand Dollars (\$6,500,000) into Fund No. 400247 or another fund that can be used to pay for the construction costs, and makes such funding available to CSU upon terms reasonably agreed upon in writing by the Parties. Within six (6) months after the certification of an environmental impact report or other CEQA compliance for the Fenton Parkway Bridge, if Approval under CEQA and, if applicable, NEPA is obtained at all, the Parties will engage in good faith negotiations to agree upon the terms for construction of the Fenton Parkway Bridge. Potential terms to be covered in such an agreement include: (a) responsibility for obtaining necessary Approvals from state and federal agencies to construct the Fenton Parkway Bridge; (b) permitting authority; (c) encroachment permits and construction licenses; (d) the implementation of mitigation measures; (e) consistent with the Declaration of Property Development Restrictions and Permitting, a provision confirming that CSU will complete construction of the Fenton Parkway Bridge, which must be open for public use on a daily basis prior to the occupancy of more than sixty-five percent (65%) of the Project; (f) ownership and acceptance of the Fenton Parkway Bridge by the City; and (g) other funding mechanisms available to support the construction, among other things. Pursuant to Section 11.2(c) above, nothing in this Section should be interpreted as a commitment to construct the Fenton Parkway Bridge, and any agreement to construct or negotiate an agreement to construct the Fenton Parkway Bridge is irrevocably conditioned upon and subject to the completion of environmental review under CEQA, NEPA (if applicable), and other applicable Law. The City's funding obligation for any and all costs that may be associated with the feasibility, design, and construction of the Fenton Parkway Bridge is limited to (i) the amounts existing in Fund No. 400247 as of the Effective Date of this Agreement; (ii) not more than Two Million Dollars (\$2,000,000) of the Final Adjusted Purchase Price received by the City and allocated towards Feasibility Exploration pursuant to Section 11.2(a); and (iii) if, and only if, required approvals are obtained in accordance with CEQA and (if applicable) NEPA, not more than Six Million Five Hundred Thousand Dollars (\$6,500,000) to be allocated by the City for construction costs. Any future construction-related agreement between the Parties may also provide for future reimbursement to CSU from development impact fees that the City collects for the Fenton Parkway Bridge. To the extent any of the funds allocated by the City subject to environmental review toward construction costs for the Fenton Parkway Bridge pursuant to this subsection (d) remain after all such construction costs have been paid (in the event any such construction is approved after the required environmental review), the City may use such funds in any manner it chooses in its sole discretion. Notwithstanding anything to the contrary in this Section 11.2, all expenditures made from funds withdrawn from Fund No. 400247 shall be made subject to all requirements of Law applicable to such Fund, including applicable terms and conditions otherwise agreed to or required by the City in connection with its receipt of funds deposited into such Fund.

11.3 Survival. The provisions of this Section 11 shall survive the Closing.

12. **DEFAULT AND REMEDIES.**

12.1 Occurrence of Default. A Party shall be in "default" under this Agreement in any of the following circumstances (each a "**Default**"):

(a) Monetary/Escrow Default. A Party fails to timely pay or deposit any amount of money, bond, surety, or evidence of any insurance coverage required under this Agreement, or a Party fails to timely submit any funds or documents to Escrow Agent as reasonably necessary to close the Escrow in accordance with this Agreement, and this circumstance continues for five (5) Business Days after the Party in breach of its contractual obligation receives written notice from the other Party identifying the nature of the breach. Notwithstanding the cure period set forth in this paragraph (a), the cure period applicable to any indemnifying Party's failure to provide indemnification by improperly failing to provide a defense for any indemnified Party under this Agreement shall be three (3) Business Days for a monetary default after receiving written notice from the indemnified Party specifying the nature of the default.

(b) Non-Monetary Default. A Party fails to perform any of such Party's non-monetary obligations under this Agreement or to comply with any material restriction or prohibition in this Agreement, and this circumstance continues for ten (10) Business Days after the Party in breach of its contractual obligation receives written notice from the other Party identifying the nature of the breach; provided, however, that the Party in breach shall be entitled to a time extension of up to twenty (20) additional Business Days to cure the breach if: (i) the Party in breach delivers written notice to the other Party within the initial 10-Business Day cure period confirming (with supporting evidence) that the Party in breach cannot reasonably cure the breach within the initial cure period and stating that the Party in breach intends to cure the breach as expeditiously as possible; and (ii) the Party in breach diligently prosecutes the cure of the breach to completion within the 20-Business Day extension period. Notwithstanding the cure periods set forth in this paragraph (b), the cure period applicable to any indemnifying Party's failure to provide indemnification by improperly failing to provide a defense for any indemnified Party under this Agreement shall be ten (10) Business Days for a non-monetary default after receiving written notice from the indemnified Party specifying the nature of the default.

(c) Prohibited Transfer. Any of the following types of transfers occurs prior to the Closing: (i) CSU assigns or transfers its interest in this Agreement, in whole or in part, without the City's prior written consent; (ii) an assignment or transfer of CSU's interest in this Agreement, in whole or in part, occurs involuntarily or by operation of Law; or (iii) any transfer of the CSU Property or any portion thereof, without the City's prior written consent.

12.2 City's Pre-Closing Default. If the City is in Default of its obligations prior to the Closing, CSU's sole remedy for such City Default shall be to elect one of the following options: (i) waive the effect of the City's Default; (ii) terminate this Agreement by delivering written notice of termination to the City and Escrow Agent, in which case the Parties and Escrow Agent shall proceed in accordance with Section 9.11; or (iii) bring an action for specific performance of the City's obligations under this Agreement within thirty (30) calendar days after the end of the cure period for the City's uncured Default under this Agreement. CSU shall not be entitled under any circumstances to recover from the City any speculative, consequential, or punitive damages, any due diligence expenses, any consultant or expert costs, any planning or design expenses, or any lost profits, incurred or claimed to have been incurred as a result of the City's Default under this Agreement.

12.3 CSU's Pre-Closing Default.

(a) City's Election. If CSU is in Default of its obligations with respect to the Closing of Escrow, the City's sole remedy for such CSU Default prior to the Closing shall be to elect one of the following options: (i) waive the effect of CSU's Default and proceed to consummate the Sale Transaction under this Agreement; or (ii) terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent and the City shall receive and retain the Earnest Money Deposit as liquidated damages as determined in Section 12.3(b) below, as its sole and exclusive remedy for such CSU Default prior to the Closing. With respect to the City's election of remedies for CSU's Default of its obligations with respect to the Closing of Escrow, the City waives and relinquishes all rights to assert a remedy against CSU of specific performance of CSU's obligations to the Closing of Escrow. With respect to any other CSU Default prior to the Closing of Escrow, the City shall have the right to pursue all available remedies at law or in equity including, but not limited to, an action for specific performance.

(b) Determination of Liquidated Damages for CSU Default With Respect to Closing of Escrow. **THE PARTIES ACKNOWLEDGE THAT IT WOULD BE EXTREMELY IMPRACTICAL AND DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES THAT WOULD BE SUFFERED BY THE CITY IF THE CLOSING DOES NOT OCCUR DUE TO CSU'S DEFAULT. THE PARTIES HAVE CONSIDERED CAREFULLY THE LOSS TO THE CITY OCCASIONED BY THE NEGOTIATION OF AND EXECUTION OF THIS AGREEMENT, THE CITY'S EXPENSES INCURRED IN CONNECTION WITH PREPARING THIS AGREEMENT AND COOPERATING WITH CSU'S DUE DILIGENCE INVESTIGATION OF THE CSU PROPERTY, THE EXPENSES OF THE CITY'S PERFORMANCE UNDER THIS AGREEMENT, AND THE OTHER DAMAGES, GENERAL AND SPECIAL, WHICH THE PARTIES REALIZE THE CITY WILL SUSTAIN, BUT WHICH THE CITY CANNOT AT THIS TIME CALCULATE WITH REASONABLE CERTAINTY. BASED ON ALL THOSE CONSIDERATIONS, THE PARTIES AGREE THAT THE DAMAGE TO THE CITY IN THE EVENT OF CSU'S DEFAULT OF ITS OBLIGATIONS WITH RESPECT TO THE CLOSING OF ESCROW WOULD REASONABLY BE EXPECTED TO EQUAL THE AMOUNT OF THE EARNEST MONEY DEPOSIT. ACCORDINGLY, IF THE CLOSING DOES NOT OCCUR DUE TO CSU'S DEFAULT OF ITS OBLIGATIONS WITH RESPECT TO THE CLOSING OF ESCROW, THEN THE CITY'S SOLE AND EXCLUSIVE REMEDY FOR SUCH CSU DEFAULT PRIOR TO CLOSING SHALL BE TO TERMINATE THE AGREEMENT AND RECEIVE AND RETAIN THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES. CSU SEEKS TO LIMIT ITS LIABILITY UNDER THIS AGREEMENT FOR SUCH CSU DEFAULT TO THE AMOUNT OF THE EARNEST MONEY DEPOSIT IN THE EVENT THE CITY TERMINATES THIS AGREEMENT AS A RESULT OF CSU'S DEFAULT OF ITS OBLIGATIONS WITH RESPECT TO THE CLOSING OF ESCROW UNDER THIS AGREEMENT. THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF ANY APPLICABLE LAW, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY AS EXPRESSLY STATED HEREIN, AS PERMITTED UNDER LAW.**

*** City's Initials: _____ ***

*** CSU's Initials: _____ ***

12.4 Post-Closing Remedies of the Parties. After the Closing, the Parties shall, subject to the terms and conditions of this Agreement (including limitations on or releases of liability and limitations on remedies or damages), have such rights and remedies as are available at law or in equity, including but not limited to specific performance, except as otherwise expressly provided in this Agreement, and except that: (i) neither Party shall be entitled to recover from the other Party any speculative, consequential, or punitive damages, any due diligence expenses, any consultant or expert costs, any planning or design expenses, or any lost profits; and (ii) the City's liability, if any, shall be limited to the City's conveyance of fee title to the CSU Property to CSU or damages or other financial amounts, in the aggregate, capped at a maximum of the amount of the Final Adjusted Purchase Price actually paid for the CSU Property.

12.5 General Indemnification. From and after the Closing, CSU agrees to defend, indemnify, and hold harmless the City Indemnified Parties from and against all Claims arising out of or directly or indirectly related to: (i) any Environmental Claim and any condition, circumstance, dangerous instrumentalities, and soils conditions, including soils subsidence or presence of Hazardous Substances, now or hereafter existing on, under, or affecting the CSU Property; (ii) the noncompliance with applicable Law of CSU's use of the CSU Property; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any Person on the CSU Property or to the CSU Property itself occurring on or after the Closing and also occurring before the Closing during the period of CSU's lease of the CSU Property prior to the Closing, except to the extent such death, accident, injury, loss, or damage is directly or indirectly caused by the established sole negligence or willful misconduct of the City; (iv) any assertion that the approval or signature of this Agreement triggered the need to comply with any applicable Law related to the payment of prevailing wages or any related reporting, monitoring, or other obligations; (v) contracts or agreements entered into by CSU with third parties in connection with this Agreement or CSU's use of the CSU Property; (vi) the costs associated with CSU's development, improvement, use, and operation of the CSU Property or construction of the Project; (vii) the performance of any manhole connection work as described in Section 6.4 and any resulting adverse impacts to the Wetland Mitigation Project or the Wetland Mitigation Project Site, as well as any related noncompliance with Law, including any required Approvals; (viii) any Claim for relocation with respect to the development of the CSU Property; (ix) any Claim arising from or relating to development of the Project, the Campus Master Plan, Measure G, and this Agreement, including, but not limited to, any Claim arising from or relating to CSU's and its transferees' obligations and activities under this Agreement, any Development Contract, or other arrangement; and (x) any Claim arising from or relating to the ADA Settlement Agreement. Notwithstanding the foregoing, CSU's indemnification obligations shall not apply to any Claims to the extent arising out of the City's established sole negligence or willful misconduct, or any Claims directly arising out of environmental conditions determined to have existed on the River Park Property prior to the Closing Date.

12.6 Prevailing Wages. CSU agrees to carry out development, construction, maintenance, repair, and operation of the Project, including any and all public works, in conformity with all applicable Federal and State labor Laws, including the payment of State prevailing wages, and bear all risk of any payment or nonpayment of State prevailing wages in connection with the Project, to the extent required by Law. CSU expressly acknowledges and agrees that the City has not affirmatively represented to CSU or its contractor(s) for the Project in writing or otherwise that the work to be covered by the bid or contract is not a "public work,"

as defined in Section 1720 of the Labor Code. CSU shall provide, or cause to be provided, all payment of prevailing wages, disclosures, bonds, representations, statements, rebidding, and/or identifications as may be required by Law.

12.7 No Joint and Several Liability. The Parties agree that they are not jointly and severally liable for any liability imposed on a Party for a negligent or wrongful act or omission as provided for in Government Code section 895.2. Further, the Parties have provided for indemnification and allocation of risks of liability in this Agreement, as allowed by Government Code section 895.4, and the Parties agree, that neither Party shall be entitled to seek a contribution from the other Party for any amount paid in excess of that Party's pro rata share to satisfy a judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement pursuant to Government Codes section 895.6.

12.8 Requirements Relating to CSU Indemnification Obligation. The City shall promptly notify CSU in writing of the City's receipt of any written notice of any Claims subject to CSU's indemnification. With respect to CSU's indemnification obligations under this Agreement, the City, may, at its election, conduct the defense or participate in the defense of any Claim related in any way to the indemnification. If the City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense, of any Claim related to this indemnification, CSU shall pay all of the costs and expenses related to the defense and indemnification, including, but not limited to, Legal Costs.

12.9 No Liens or Encumbrances. CSU shall not allow, create, or permit any liens or encumbrances to be attached to the River Park Property or portions of the CSU Property constituting the Future Recreation Center Site or on which the City will have, or has, easement property rights. Any such liens and encumbrances shall be promptly removed by CSU.

12.10 Survival. The provisions of this Section 12 shall survive the termination of this Agreement or the Closing, as applicable.

13. **CASUALTY OR CONDEMNATION OF THE PROPERTY.**

13.1 Notice. If the City becomes aware before the Closing of any damage or destruction to the Real Property, or if the City receives notice before the Closing of the commencement or threatened commencement of eminent domain proceedings with respect to all or any portion of the Real Property, the City shall promptly deliver to CSU written notice of the relevant circumstances.

13.2 CSU's Rights. If between the Effective Date and the Closing Date, the Real Property is destroyed or damaged to the extent that an independent third party estimator reasonably estimates the cost of restoration or repair to exceed ten percent (10%) of the Base Purchase Price, or any eminent domain proceeding is commenced that will result in the taking of more than ten percent (10%) of the surface area of the Real Property, CSU shall have the right, in its sole and absolute discretion, to either: (i) terminate this Agreement by delivering written notice of termination to the City and Escrow Agent, in which event the Parties and Escrow Agent shall proceed in accordance with Section 9.11; or (ii) proceed with the Closing with no reduction in the Final Adjusted Purchase Price, in which event the City shall assign to CSU all of the City's right, title, and interest to any

insurance proceeds for casualty or any monetary award in any eminent domain proceeding, as may be applicable under the circumstances.

14. UNAVOIDABLE DELAY.

14.1 Notice. Performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any Default is due to the occurrence of an Unavoidable Delay. Within ten (10) Business Days after first learning of an Unavoidable Delay, any Party claiming an Unavoidable Delay shall deliver written notice to the other Party describing in reasonable detail the nature of the Unavoidable Delay and the date of occurrence of the Unavoidable Delay. The extension of time to perform under this Agreement resulting from the occurrence of an Unavoidable Delay shall commence on the date of occurrence of the Unavoidable Delay. After a written notice of Unavoidable Delay has been delivered, the Parties shall exercise commercially reasonable efforts and shall Cooperate with each other as may be required to cure the condition causing the Unavoidable Delay. Within five (5) Business Days after the Unavoidable Delay ceases to exist, the Party initially claiming the Unavoidable Delay shall provide written notice to the other Party regarding this circumstance.

14.2 Assumption of Economic Risks. EACH PARTY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT, SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE OF THIS AGREEMENT.

*** City's Initials: _____ ***

*** CSU's Initials: _____ ***

15. NOTICES.

15.1 Delivery. Any and all notices and communications pursuant to or as required by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United

Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (iv) electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient Party in response to a notice email). To conserve resources and reduce administrative burden, the Parties intend to deliver notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any notice shall be deemed received by the addressee, on the Business Day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any notices or communications delivered via email.

15.2 Addresses. The notice addresses for the Parties, Escrow Agent, and Title Company, as of the Effective Date, are as follows:

To City:

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Cybele Thompson, Director, Real Estate Assets Dept.
Email: thompsonc@sandiego.gov

With a copy to:

San Diego City Attorney's Office
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Attn: Kevin Reisch, Esq., Senior Chief Deputy City Attorney
Email: kreisch@sandiego.gov

To CSU:

The Board of Trustees of the California State University
401 Golden Shore, 5th Floor
Long Beach, CA 90802-4210
Attn: Steve Relyea, Executive Vice Chancellor and Chief Financial Officer
Email: srelyea@calstate.edu

with a copy to:

Office of the President
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-8000
Attn: Adela de la Torre, President
Email: presoffi@sdsu.edu

and to:

G. Andrew Jones, Executive Vice Chancellor and General Counsel
The California State University
Office of General Counsel
401 Golden Shore
Long Beach, CA 90802-4210
Email: gajones@calstate.edu

and to:

Sheppard Mullin Richter & Hampton LLP
12275 El Camino Real, Suite 200
San Diego, CA 92130
Attn: Domenic C. Drago, Esq.
Email: ddrago@sheppardmullin.com

To Escrow Agent:

Chicago Title Company
National Commercial Services
701 B Street, Suite 1120
San Diego, CA 92101
Attn: Renee Marshall
Email: marshallunit@ctt.com

To Title Company:

Chicago Title Insurance Company
2365 Northside Drive, Suite 600
San Diego, California 92108
Attn: Ken Cyr and Mark Franklin
Email: TeamCyrFranklin@ctt.com

15.3 Changes. Each Party shall promptly deliver written notice to the other Party and Escrow Agent regarding any change in such Party's notice address.

16. GENERAL PROVISIONS.

16.1 Incorporation. The Recitals set forth above, as well as all attachments and exhibits to this Agreement, are incorporated into this Agreement in their entirety by this reference.

16.2 Assignment. CSU acknowledges that: (i) the business experience, integrity, and financial ability of the purchaser and ultimate developer of the CSU Property are of material importance to the City; (ii) the City is relying on CSU's business experience, integrity, and financial ability in entering into this Agreement, as well as the information contained in the CSU Financing Plan; and (iii) an assignment of this Agreement without the City's prior written consent could result in a violation of San Diego Charter section 221. Accordingly, CSU shall not assign this Agreement or any of its rights or obligations under this Agreement without the City's prior written consent, which consent may be withheld in the City's sole and absolute discretion. No assignment of CSU's obligations under this Agreement, whether permitted pursuant to this Section 16.2 or not, will relieve the assignor of any of its obligations under this Agreement, unless the City otherwise consents in writing. At least twenty (20) calendar days in advance of any proposed assignment, CSU shall deliver to the City written notice of the proposed assignment, including the name and identity of each Person that will be directly or indirectly involved in the acquisition of the CSU Property and the precise nature of each such Person's interest. CSU also shall promptly provide to the City any additional information or documents regarding the proposed assignment or the proposed assignee as the City may reasonably request in determining whether to consent to the proposed assignment. Notwithstanding the foregoing, CSU's entry into any Development Contract for Bona Fide Public Purposes to facilitate completion of the Project will not require the City's prior written consent. Any assignment made in contravention of this Section 16.2 shall be voidable at the City's election, in the City's sole and absolute discretion. CSU agrees that the restrictions on assignments set forth in this Section 16.2 are reasonable.

16.3 No Brokerage Commissions. The Parties represent and warrant to each other and agree that no real estate commission, finder's fee, or broker's fee has been or will be incurred in connection with the purchase and sale of the CSU Property pursuant to this Agreement. Each Party agrees to defend, indemnify, and hold harmless the other Party with respect to any Third Person's claim that any real estate commission, finder's fee, or broker's fee is owed as a result of any act or failure to act of any of the indemnifying Party's employees, agents, or representatives. The provisions of this Section 16.3 shall survive the termination of this Agreement or the Closing, as applicable.

16.4 Governing Law. The laws of the State of California shall govern interpretation and enforcement of this Agreement, without application of conflict-of-laws principles or statutes. This Agreement is entered into, is to be fully performed in, and relates to real property located in San Diego County, California. The proper venue for all legal actions arising from this Agreement shall be San Diego County, California, and the Parties waive any objection to this mutual choice of venue.

16.5 Entire Agreement. This Agreement integrates all of the terms and conditions with respect to the subject matter of this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Sale Transaction and all other transactions contemplated by this Agreement.

16.6 Amendments and Waivers. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Parties. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one occasion upon strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

16.7 Further Assurances. The Parties agree to take such further actions and sign and deliver such additional documents and instruments as may be reasonably required in order to more effectively carry out the terms of this Agreement and the intentions of the Parties, and to memorialize the Sale Transaction and all other transactions contemplated by this Agreement.

16.8 Time of the Essence. As to the performance of each and every obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence. Each Party acknowledges that a timely Closing on or before the Primary Target Closing Date or the Outside Closing Date, as applicable, is a material term of this Agreement, and neither the Primary Target Closing Date nor the Outside Closing Date may be extended, except through a written amendment to this Agreement signed by both Parties.

16.9 No Personal Liability of Officials and Employees. No official or employee of the City shall be personally liable to CSU, or any successor in interest to CSU, in the event of the City's Default under this Agreement or for any amount that may become due to CSU or to CSU's successor, or on any obligations under the terms of this Agreement, except to the extent resulting from the fraud or willful misconduct of such official or employee. Likewise, no official or employee of CSU shall be personally liable to the City, or any successor in interest to the City, in the event of CSU's Default under this Agreement or for any amount that may become due to the City or to the City's successor, or on any obligations under the terms of this Agreement, except to the extent resulting from the fraud or willful misconduct of such official or employee.

16.10 Recovery of Legal Costs. If either Party commences any action or proceeding seeking to interpret, enforce, reform, or rescind this Agreement or any provision of this Agreement, the prevailing Party (as determined by the court or arbiter in a final decision) shall be entitled to receive payment of its Legal Costs from the other Party. This Section 16.10 shall survive the Closing or the termination of this Agreement, as applicable.

16.11 Relationship of Parties. The Parties are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

16.12 Mutual Negotiation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection.

16.13 Calculation of Time Periods. All periods of time referred to in this Agreement shall include all Business Days and non-Business Days, unless the period of time specifies Business

Days; provided, however, that if the date or last date to perform any act or give any notice or approval shall fall on a non-Business Day, such act or notice may be timely performed or given on the next Business Day.

16.14 Principles of Construction. Unless otherwise specified, all references in this Agreement to sections, subsections, paragraphs, or provisions are to those in this Agreement. Any reference to a section in this Agreement includes all subsections and paragraphs in such section. A word, term, or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words “include” and “including” in this Agreement shall be construed to be followed by the words: “without limitation.” Except where the context clearly requires otherwise, (i) each collective noun in this Agreement shall be interpreted as if followed by the words “(or any part of it)”; and (ii) the word “or” in this Agreement shall include the word “and.” The word “shall” has the same meaning as the word “must” and denotes a mandatory action. The word “may” denotes a permissive action. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. Every reference to Law refers to each legal requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

16.15 Tax Consequences. Except as expressly provided in this Agreement, each Party shall bear all responsibility, liability, and costs relating to any tax consequences experienced by such Party as a result of this Agreement and the transactions contemplated by this Agreement.

16.16 No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Person other than the Parties or give any Person other than the Parties any right of subrogation or action over or against any Party. For the avoidance of doubt, no transferee or assignee of CSU under any Development Contract shall become a third-party beneficiary under this Agreement.

16.17 Severability. If a court of competent jurisdiction declares any portion of this Agreement to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal, or unenforceable portion had never been included in this Agreement.

16.18 Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and assigns.

16.19 Counterparts. This Agreement may be signed in multiple counterpart originals, each of which is deemed to be an original and all of which shall constitute one agreement.

16.20 Approvals. Except as otherwise expressly provided in this Agreement or as otherwise required by the San Diego Charter or the Municipal Code, the Mayor shall grant or deny, in writing, any approvals or consents required to administer the City’s obligations under

this Agreement; provided, however, that the Mayor may, in his or her sole discretion, refer to the City Council any item requiring the City's consent or approval.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, a duly authorized representative of each Party has signed this Agreement, to be effective as of the Effective Date.

CITY:

Date: _____

City of San Diego,
a California municipal corporation

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

[CSU's signature blocks are provided on the following page]

CSU:

The Board of Trustees of the California State University,
the State of California acting in its higher education
capacity, on behalf of San Diego State University

Date: _____

By _____

Name: _____

Title: _____

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &
HAMPTON, LLP

By: _____

Domenic C. Drago, Counsel for The
Board of Trustees of the California
State University, which is the State of
California acting in its higher
education capacity on behalf of San
Diego State University

APPROVED AS TO FORM:

BOARD OF TRUSTEES OF
THE CALIFORNIA STATE UNIVERSITY

By: _____

G. Andrew Jones, Executive Director
Chancellor and General Counsel

ATTACHMENT 1 TO PURCHASE AND SALE AGREEMENT

Escrow Agent's Consent

The undersigned ("Escrow Agent") acknowledges delivery of the fully-executed original of the Real Property Purchase and Sale Agreement and Joint Escrow Instructions ("Purchase Agreement") dated as of _____, 2020, by and between the CITY OF SAN DIEGO, a California municipal corporation, and the BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, the State of California acting in its higher education capacity, on behalf of San Diego State University.

The undersigned agrees to act as Escrow Agent in accordance with the provisions of the Purchase Agreement. The parties are notified that the Escrow Opening Date for purposes of the Purchase Agreement is the date of the undersigned's signature shown below.

Dated this ____ day of _____, 2020.

CHICAGO TITLE COMPANY

By _____
Name: _____
Title: _____