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January 22, 2020<sup>1</sup>

REPORT TO HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

DRAFT PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS FOR THE  
CITY'S SALE OF THE SDCCU STADIUM SITE IN MISSION VALLEY TO SAN DIEGO  
STATE UNIVERSITY

**INTRODUCTION**

On October 28, 2019, San Diego State University (SDSU) submitted to the City of San Diego (City) a revised offer (Revised Offer) to purchase the City's real property located at 9449 Friars Road in Mission Valley, commonly referred to as the SDCCU stadium site (Property). *See* Attachment 1. Mayor Faulconer expressed support of the "main principles" in the Revised Offer in his response dated October 28, 2019. *See* Attachment 2.

On November 18, 2019, after reviewing detailed reports from the Office of the City Attorney and the Independent Budget Analyst (IBA), the San Diego City Council (Council) considered the Revised Offer and approved a motion: (1) requesting that the City Attorney draft the Purchase and Sale Agreement (PSA) for the proposed transaction, addressing all legal concerns, addressing the concerns raised in the written reports from the City Attorney and the IBA, and seeking the best indemnification and protection of the City; (2) requesting that the City Attorney submit the draft PSA to City staff for an objective analysis of policy, including concerns raised in the IBA's report, and operational and financial impacts; (3) requesting that an update be brought forward to the Council in mid-December 2019; (4) requesting that City staff docket the draft PSA for the Council's consideration at the first possible meeting in January 2020; and (5) advising that the draft PSA should include an outside closing date of no later than December 31, 2020, consistent with the IBA's recommendation.

In accordance with the Council's motion and input received from City management/staff, this Office prepared a comprehensive draft of two transaction documents (collectively, Transaction Documents) between the City and SDSU<sup>2</sup>: (1) the draft PSA, which includes numerous related agreements and technical exhibits as attachments; and (2) a separate Memorandum of Understanding regarding the design, environmental review, permitting, and

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<sup>1</sup> The year in the date on this Report has been corrected to read "2020"; it originally was listed as "2019."

<sup>2</sup> Technically, 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), rather than SDSU, is the contracting party, consistent with CSU's contracting protocol. To remain consistent with prior staff and legal reports to the Council regarding this transaction, however, the main body of this Report refers to SDSU, rather than CSU.

potential construction of Fenton Parkway Bridge (Bridge MOU).<sup>3</sup> We drafted the Transaction Documents to be consistent with Measure G,<sup>4</sup> the Revised Offer, and the Council's approved motion on November 18, 2019. The draft Transaction Documents reflect the key operational and policy input provided by City management/staff during their initial review.<sup>5</sup> The draft PSA also incorporates information received from SDSU following its transmittal of the Revised Offer, including SDSU's plan for the production and phasing of affordable housing on the Property. *See* Attachment 3. The draft Transaction Documents are now ready for the Council's consideration at the public meeting on January 27, 2020, during which the Council may provide further policy direction to assist the City's negotiating team in completing negotiations with SDSU and presenting a final version of the Transaction Documents to the Council for approval that the Council will find fair, equitable, and in the public interest as required by Measure G.

## DISCUSSION

Given the complexity and large volume of the Transaction Documents, this Office has prepared three attachments to this Report to assist the Council in its review: (i) Attachment 4, which identifies specific policy issues for the Council's consideration, as necessary to allow the parties to complete negotiation of the Transaction Documents; (ii) Attachment 5, which provides an overview of the main purpose of each draft Transaction Document; and (iii) Attachment 6, which provides a summary of the material provisions of the draft Transaction Documents and evaluates the consistency of those documents with Measure G and related campaign promises, the Revised Offer, and the Council's November 18 motion. Those attachments are not meant to be a substitute for the Council's review of the entire content of the draft Transaction Documents. The sale of the Property will be the City's largest and most complex land use transaction in recent history, and it is imperative that the Council read the draft Transaction Documents in their entirety.

Important unresolved policy issues, such as the affordable housing requirements for SDSU's project and potential development thresholds to be applied to SDSU's project to incentivize compliance with Measure G, are identified in Attachment 4 to this Report. We will be

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<sup>3</sup> The Bridge MOU is a separate document because the potential future construction of the Fenton Parkway Bridge differs from the various development components envisioned by the draft PSA. Whereas SDSU has prepared an environmental document in accordance with the California Environmental Quality Act (CEQA) with respect to its proposed project on the Property, environmental review of the potential construction of the Fenton Parkway Bridge has not occurred to date. The parties cannot make any absolute financial commitments toward construction of the Fenton Parkway Bridge unless and until environmental review of the bridge construction has been completed in accordance with CEQA. The Bridge MOU sets forth the respective roles of the parties relating to CEQA review, design, permitting, and potential construction of the proposed Fenton Parkway Bridge.

<sup>4</sup> Local voters approved Measure G, also known as the SDSU West citizens' initiative, in November 2018. Measure G contemplates that the City and SDSU will negotiate the City's potential sale of the Property to SDSU based on certain parameters set forth in Measure G. The main substance of Measure G is now codified in San Diego Municipal Code section 22.0908.

<sup>5</sup> This Office incorporated input from the Office of the Mayor and the following City departments, among others: Real Estate Assets, Planning, Parks and Recreation, Public Utilities, Public Works, Transportation and Storm Water, Development Services, Environmental Services, Police, Risk Management, City Treasurer, and Communications. This Office also recently met with representatives of the City and the San Diego Housing Commission to discuss issues relating to the Declaration of Affordable Housing Restrictions (Attachment 22 to the draft PSA). This Office incorporated the IBA's earlier written recommendations into the draft PSA and has included the IBA in the email transmittal of all intervening draft versions of the Transaction Documents to City staff.

asking the Council to resolve those issues at the public meeting on January 27, so that we may finalize a PSA that the Council will deem fair, equitable, and in the public interest.

In addition, although the draft PSA is substantially complete, the draft PSA contains some placeholders and gaps that will need to be filled in at the earliest opportunity. The placeholders and gaps exist for several reasons. First, as noted in a placeholder in Section 2.1 of the Declaration of Property Development Restrictions (Attachment 21 to the draft PSA), the City may need to add or modify provisions in the draft PSA once the City is afforded the opportunity to review in detail the entire Final Environmental Impact Report (Final EIR) for SDSU's proposed project on the Property. The draft PSA is designed to hold SDSU accountable to satisfy both the requirements of Measure G and related campaign promises made to local voters and the requirements of the Final EIR, including the successful implementation of all environmental mitigation measures. Second, as noted in various placeholders throughout the draft PSA, the Council's input on specific policy issues, as identified in Attachment 4 to this Report, may necessitate further revisions or additions to the draft PSA. Third, the parties will need to continue discussing numerous complex easement and mapping issues related to the current title condition and future development of the Property before certain provisions of the draft PSA and associated technical exhibits can be finalized in a way that adequately protects the interests of both parties. Fourth, certain technical or factual content of the draft PSA will require additional input from City staff for SDSU, such as SDSU's submittal of a detailed financing plan for its acquisition of the Property and development of the project (Attachment 14 to the draft PSA).

CSU's Board of Trustees (Board) is scheduled to consider action items during a public hearing on January 28, 2020, to certify the Final EIR, approve initial funding for acquisition and development of the Property, and delegate authority for SDSU's representatives to finalize the content of the PSA for the future administrative approval of CSU's Chancellor. Publicly-available materials docketed for the Board's meeting of January 28 omit important details regarding the status of this transaction. For instance, SDSU staff seeks Board authorization for approval of a negotiated PSA that falls within the parameters of the Revised Offer, without disclosing that the Council's November 18 motion resulted in substantial changes that may conflict with SDSU's preferred approach. If SDSU staff obtains Board approval on January 28 as currently proposed, without providing additional information or explanation, the Board's authorization may be too limited or narrow to allow CSU's Chancellor to grant future administrative approval of the PSA, potentially resulting in delay, as CSU staff may be required to return to the Board for additional authorization to sign the PSA.

## **CONCLUSION**

In order to move this transaction forward on January 27, this Office will need direction from the Council on the items highlighted in Attachment 4 to this Report and guidance on any other changes to the terms and conditions of the proposed sale. Once direction is received through a motion approved by a majority of the Council, we will make the changes and transmit a revised draft of the Transaction Documents to SDSU for its review and response.

This Office anticipates that SDSU will request changes to the Transaction Documents that the parties will need to negotiate before City staff returns to the Council with a final version

of the Transaction Documents for the Council's approval. The terms and conditions contained in the Transaction Documents may be modified through that process; however, if there are specific terms and conditions that the Council considers critical to ensuring that the sale is fair, equitable, and in the public interest, the Council will need to identify its concerns on January 27 to assist the parties in future negotiations.

If the Council needs additional time to consider the draft Transaction Documents given their complexity and volume, or to consider an appropriate response to the policy issues identified in Attachment 4 to this Report, we recommend that the Council President schedule another Council meeting at the earliest opportunity after January 27.

Finally, while we recognize the desire of both parties to complete this transaction at the earliest practical opportunity, we cannot make any commitment as to exactly when the final Transaction Documents will be completed and ready for the Council's consideration. The timing will depend on unknown variables, including the scope of SDSU's requested changes to the Transaction Documents and the level of negotiation and document drafting that will be required in response to any requested changes.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Kevin J. Reisch  
Kevin Reisch  
Senior Chief Deputy City Attorney

By /s/ Melissa D. Ables  
Melissa D. Ables  
Deputy City Attorney

KJR:MDA:nja:sc:cm

RC-2020-1

Doc. No. 2293348\_5

Attachments

cc: Kris Michell, Chief Operating Officer  
Cybele Thompson, Director, Real Estate Assets Department  
Mike Hansen, Director, Planning Department  
Andrea Tevlin, Independent Budget Analyst

ATTACHMENT 1 TO  
CITY ATTORNEY REPORT



San Diego State University  
5500 Campanile Drive  
San Diego, CA 92182-8000  
Tel: 619 594 • 5201  
Fax: 619 594 • 8894

THE PRESIDENT

October 28, 2019

Mayor Kevin Faulconer  
City of San Diego  
202 C Street  
11<sup>th</sup> Floor  
San Diego, CA 92101

\* circled numbers correspond to numbered  
deal points in CSU's Revised Offer

**Subject: Proposed Sale of the Mission Valley Stadium Property**

*(Please note an earlier version of this letter had a clerical error, which has been fixed in this updated version.)*

Dear Mayor Faulconer,

San Diego State University ("SDSU") wants to thank you and your staff for a tremendous amount of work since the passage of Measure G. SDSU has listened to the comments of the City Council and greatly values the input of our City leaders. SDSU believes a great opportunity awaits the citizens of San Diego with the transformation of the Mission Valley stadium site into a vibrant campus community. SDSU's proposed Mission Valley Campus Master Plan project ("Project") has the opportunity to provide our region with increased educational access, advance our innovation economy and realize a vision that will serve San Diego for generations to come.

It is with these thoughts in mind, that SDSU offers the following revisions to the terms of the "Offer to Purchase Mission Valley Stadium Site" delivered to the City on October 14, 2019.

- ① • **Parties:** The City of San Diego, as seller, and San Diego State University/California State University ("CSU"),<sup>1</sup> as buyer.
- ② • **Property:** Contains 135.12 acres, as generally depicted on the map attached to the Measure G Initiative and in the appraisal from David Davis dated October 11, 2019 ("Property").
- ③ • **Purchase Price:** \$86,200,000, plus a time value adjustment on the Public Utilities Department 37% portion of the Property, using a 2.149% annual index factor from 9/30/17 through the actual close of escrow ("Closing Date") (estimated adjustment of \$1,500,000).
- ④ • **Murphy Canyon Creek:** The Murphy Canyon Creek parcel will be included in the sale "as is", and SDSU will not be required to make any improvements to Murphy Canyon Creek.

<sup>1</sup> 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.

- ⑤. Stadium Demolition and Maintenance: Upon the Closing Date, SDSU will assume responsibility for ongoing maintenance, up-keep and demolition of the existing stadium.
- ⑥. Fenton Parkway Bridge: The Draft Environmental Impact Report ("DEIR") does not include the Fenton Parkway Bridge ("Bridge") as a Project component. Nevertheless, SDSU understands the City desires the Bridge as a separate facility, that is part of its long-term traffic circulation plan for the Mission Valley Community Plan area, and the City therefore believes that the Bridge has independent utility without regard to the Project. SDSU does not have detailed information from the City regarding the Bridge. With the cooperation, collaboration and support of SDSU, the City will pursue the Fenton Parkway Bridge as a separate City facility in the future and the Bridge must be and remain a separate City project for CEQA and all other purposes. Subject to the necessary CEQA compliance having been completed by or through the City and all other necessary parties, SDSU will construct a 2-lane, all weather, at grade with the trolley crossing (with turn lane) Bridge and fund its environmental review, design, permitting and construction. SDSU believes the Project's share of future traffic under the DEIR's "with bridge" scenario is approximately 25%, and on that basis, SDSU's allocated contribution for Bridge costs would be approximately 25% of the total costs. SDSU will receive development impact fee credits. SDSU will also be entitled to use the City's existing capital improvement project funds allocated to the Bridge (approximately \$1.3 million) for Bridge costs. The City will grant SDSU an easement, license and/or other rights necessary for SDSU to construct the Bridge. SDSU agrees it will construct the Bridge before occupancy of more than 65% of planned equivalent dwelling units for the Project. SDSU requests that the City allocate a maximum \$8.5 million of the purchase price proceeds towards construction of the Bridge. This represents the maximum City contribution for the bridge apart from applicable DIF credits.
- ⑦. Additional Project Improvements: SDSU requests that the City allocate \$1.5 million of the purchase price proceeds in a separate account jointly controlled by the City and SDSU to be held for other related Project improvements.
- ⑧. Transportation Improvements: In addition to the transportation mitigation responsibilities under the Final Environmental Impact Report ("FEIR"), SDSU will provide \$5,000,000 for additional traffic improvements in coordination with the City.
- ⑨. River Park: SDSU will design, construct and maintain in perpetuity, the 34-acre River Park, and pay 100% of those costs. The River Park improvements will be completed no later than seven (7) years after the Purchase and Sale Agreement's ("PSA") effective date and prior to occupancy of any building on the Property, other than the new stadium.
- ⑩. Additional 22 Acres of Parks: SDSU will design, construct and maintain at least 22 acres of population-based park facilities, owned by SDSU and available for general community use and enjoyment.
- ⑪. Future City Recreation Center Site: SDSU will reserve an approximately one-acre site upon which the City may construct and operate a recreation center in the future, as called for in the Mission Valley Community Plan.

- ⑫ • Development Impact Fees: SDSU's non-state private development partners constructing non-SDSU facilities will pay development impact fees ("DIF"), but SDSU and other publicly developed and occupied facilities will be exempt. Because of the timing of construction of the River Park and the additional park improvements, it is anticipated the Project will contain completed parks in excess of the City's requirements and therefore it is anticipated no party constructing any improvements in the Project will be required to pay park DIF fees. SDSU shall be entitled to cash reimbursement or DIF credits for the reimbursable costs expended by SDSU and approved by the City in accordance with the PSA and the Mission Valley Impact Fee Study.
- ⑬ • Affordable Housing: SDSU will provide onsite, 10% of the total number of housing units developed to be set aside as affordable housing units, which may include student housing units. Affordable housing units will be reasonably phased in to coincide with market-rate units.
- ⑭ • Groundwater Management: SDSU will grant appropriate easements to the City, without expense to the City, to install groundwater wells and related facilities within the agreed upon easement location on the Property, and to allow retention of two existing monitoring wells. SDSU will also acknowledge the City's continued retention of its Pueblo water rights.
- ⑮ • Removal of Kinder Morgan Wells: The City will use reasonable efforts to cause Kinder Morgan to timely remove and close all monitoring and extraction wells and related facilities on the Property.
- ⑯ • Environmental Contamination: SDSU will purchase the Property "as is", with all faults. SDSU will defend and indemnify the City against all claims regarding Property's condition and waive all environmental claims against the City. Without incurring any expense or liability, the City will tender written claims to Kinder Morgan for reimbursement of any Property remediation costs arising from Kinder Morgan's environmental contamination.
- ⑰ • Compliance with CEQA: The execution and closing of the PSA is conditioned upon compliance with CEQA, which will include the Board of Trustees of the California State University's certification of the Mission Valley Campus Master Plan FEIR and the City's making of responsible agency findings under the FEIR, among other things. SDSU, by delivering this offer, and the City, by accepting this offer, are not bound or committed to a definite course of action with respect to the PSA or the Project. Consistent with CEQA Guidelines 15004(b)(4), nothing in this offer shall commit or be interpreted to commit SDSU or the City formally or as a practical matter to a definite course of action, to preclude the consideration of feasible mitigation measures and alternatives, or to restrict denial of the PSA or the Project, prior to the certification or approval of said FEIR. The terms proposed in this offer are subject to CEQA compliance through the DEIR and FEIR, and do not constrain meaningful consideration during the CEQA review process of all feasible mitigation measures or alternatives, including the "No Project" alternative required by CEQA.
- ⑱ • Possessory Interest and Other Taxes: SDSU's non-state private development partners constructing improvements in the Project solely for private use and not for the benefit of or in support of SDSU's governmental mission will be required to pay sales tax, possessory interest tax, and/or transit occupancy tax, as required by applicable law. SDSU and other publicly developed property will be exempt from paying property or possessory interest taxes.

- ①9 • Legal Challenges: SDSU will defend and indemnify the City for all legal challenges with respect to approval of the FEIR, PSA, and Campus Master Plan.
- ②0 • Sovereignty: Consistent with SDMC section 22.0908 and CSU's status as a sovereign state public agency, nothing in the PSA will abrogate the authority of the California State University Board of Trustees. CSU alone will issue all development related permits and collect all DIFs (for disbursement to the City if required by SDMC section 22.0908) for all aspects of the Project.
- ②1 • Measure G Compliance: The PSA will incorporate all other conditions and requirements as required by SDMC section 22.0908 and related Measure G campaign promises.

Other proposed PSA details will include:

- ②2 • CSU Approval: The California State University Board of Trustees must accept and approve if at all, the FEIR, Campus Master Plan and PSA. The target date for such California State University Board of Trustees action is January 28, 2020.
- ②3 • Council Approval: The City Council must accept and approve if at all, the Final EIR findings and related mitigation measures, and PSA. The target month for such City Council action is February 2020. Such action will require the introduction and adoption of a Charter section 221 ordinance.
- ②4 • Closing Date: The closing will occur shortly after the parties enter into the PSA with a target Closing Date of no later than March 27, 2020.
- ②5 • Potential Delay in Closing: If the Closing Date does not occur by June 30, 2020, through no fault (including unreasonable delays) of either party, (a) the City will lease the Property to SDSU for \$1.00 per month; (b) SDSU will assume all ongoing costs of maintaining and operating the Property, including the stadium; and (c) unless the delay is the City's fault, the purchase price will increase on prorated basis, applying an index factor of 2.149% from July 1, 2020 until the Closing Date.

SDSU is truly excited about the opportunity to purchase the Property and develop this transformational Project. We are hopeful the changes we are proposing to our offer will be acceptable. We stand ready to move forward and again, we appreciate all the hard work you, the Council and the City staff have provided to get us to this point.

Sincerely,



Adela de la Torre, Ph.D.  
President  
San Diego State University



cc:

Honorable Council President Georgette Gómez  
Council President Pro-Tem Barbara Bry  
Councilmember Jennifer Campbell  
Councilmember Chris Ward  
Councilmember Monica Montgomery  
Councilmember Mark Kersey  
Councilmember Chris Cate  
Councilmember Scott Sherman  
Councilmember Vivian Moreno  
Mara Elliott, City Attorney  
Almee Faucett, Chief of Staff  
Kris Michell, Chief Operating Officer  
Mike Hansen, Director, Planning Department  
Cybele Thompson, Director, Real Estate Assets  
Kevin Reisch, Senior Chief Deputy City Attorney  
Melissa Ables, Deputy City Attorney

**ATTACHMENT 2 TO  
CITY ATTORNEY REPORT**



**KEVIN L. FAULCONER**

**MAYOR**

October 28, 2019

President Adela de la Torre  
San Diego State University  
5500 Campanile Drive  
San Diego, CA 92182-8000

Dear President de la Torre:

I would like to thank you and your team for working with the City to realize the full potential of the Mission Valley stadium property. Transforming this site into a world-class educational hub and recreational destination would not be possible without your vision and our collective work together.

The main principles outlined in the updated offer you sent this afternoon are ones I support. I am pleased to forward this proposal to City Council President Gómez, who has scheduled a City Council hearing as soon as possible to consider this new offer and direct the City Attorney and City staff to begin negotiating a Purchase and Sale Agreement with San Diego State University.

This proposal represents a significant step forward in allowing the parties to reach consensus on Purchase and Sale Agreement terms, setting the stage for the City to transfer this property to SDSU so the campus can continue to grow around a new stadium and world-class river park. Adopting a fair and equitable proposal is a key requirement of Measure G that voters approved in 2018, and will ensure the public can be confident that both the City and SDSU are wisely using public property and funds.

Thank you for your partnership. I look forward to continuing to work with you in the weeks and months ahead to finalize this important agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin L. Faulconer", is written over a horizontal line.

Kevin L. Faulconer  
Mayor

cc:

Honorable Council President Gómez  
Honorable City Councilmembers  
Honorable City Attorney Mara Elliott  
Almee Faucett, Chief of Staff  
Kris Michell, Chief Operating Officer  
Mike Hansen, Director, Planning Dept.

Andrea Tevlin, Independent Budget Analyst  
Cybele Thompson, Director, Real Estate Assets Dept.  
Kevin Relsch, Chief Deputy City Attorney  
Melissa Ables, Deputy City Attorney  
Tom McCarron, Sr. Vice President, SDSU Mission Valley  
Gina Jacobs, Associate Vice President, SDSU Mission Valley

## ATTACHMENT 3 TO CITY ATTORNEY REPORT

### CSU's Affordable Housing Proposal

#### Affordable Housing:

At least ten percent (10%) of residential units, which may include student housing units, constructed as part of the Project will be set aside as affordable housing and built on site (no in-lieu fee option) as follows:

(A) Rental Units: for a period of 55-years, rental units shall be occupied by tenants having an average household income that is 65% of the area median income for San Diego County as determined by the U.S. Department of Housing and Urban Development ("AMI"). To achieve this average, rental units may be occupied by tenants earning a range from less than 30% AMI to 150% AMI so long as on average, affordable rental units are occupied by tenants earning 65% AMI.

(B) For-Sale Units: the initial sale of each unit designated as an affordable housing unit shall be to a buyer having a household income that does not exceed one hundred percent (100%) of AMI, or an initial buyer whose household income does not exceed 150% of AMI for units containing two or more bedrooms.

(C) Student Housing Units: units restricted for occupancy by students eligible for Cal Grant A or Cal Grant B awards, students who were previously in the foster care program, or students enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other Federal, State or local laws, or other metric as the parties may agree.

Rental rates and the purchase price for non-student affordable housing units, as applicable, will be determined in accordance with Health & Safety Code §§ 50052.5(b) and 50053(b) and Cal. Code Regs., tit. 14, §6910 *et seq.* In establishing affordable rental rates and affordable sales prices for non-student housing, Purchaser may rely on guidance provided by the San Diego Housing Commission pursuant to the Inclusionary Affordable Housing Implementation & Monitoring Procedures (2011) and the Affordable For-Sale Housing Program Guidelines (2019), as the same may be updated. Purchaser shall determine how many affordable housing units within the Project will be for-rental, for-sale or student housing units, provided that at full buildout, at least ten percent (10%) of residential units within the Project must be designated as affordable housing meeting the criteria above. Purchaser shall phase in affordable housing units as follows: [see phasing plan below]. Subject to such phasing requirements, Purchaser shall elect how affordable units are distributed within the Project (e.g., all affordable units may be provided in one rental building, may be equally distributed throughout the Property or some combination thereof). Purchaser shall oversee and administer affordable housing for the Project consistent with the terms of this Agreement and shall not be required to comply with the regulatory or procedural requirements of Seller or the San Diego Housing Commission. Upon request, but no more than once annually, Purchaser agrees to provide evidence to Seller of compliance with the affordable housing requirements set forth in this Section.

### Phasing Plan:

SDSU's project proposes 4,600 housing units total. Ten percent, or 460 units will be set aside as affordable housing units.

- Phase 1 (100:1,000): SDSU will require building permits for 100 on-site affordable housing units prior to issuance of the 1,000<sup>th</sup> occupancy permit for a market rate housing unit. Certificates of occupancy for the affordable units must issue within 3 years thereafter.
- Phase 2 (200:2,000): SDSU will require building permits for the next 100 on-site affordable housing units prior to issuance of the 2,000<sup>th</sup> occupancy permit for a market rate housing unit. Certificates of occupancy for the affordable units must issue within 3 years thereafter.
- Phase 3 (300:3,000): SDSU will require building permits for next 100 on-site affordable housing units prior to issuance of the 3,000<sup>th</sup> occupancy permit for a market rate housing unit. Certificates of occupancy for the affordable units must issue within 3 years thereafter.
- Phase 4 (460:4,600): SDSU will require building permits for the final 160 on-site affordable housing units prior to issuance of the 4,600<sup>th</sup> occupancy permit for a market rate housing unit. Certificates of occupancy for the affordable units must issue within 3 years thereafter.
- Affordable housing units will be exempt from development impact fees, consistent with the City's newly adopted affordable housing regulations.

\* Building permits and certificates of occupancy will be issued by CSU.

\* If fewer than 4,600 market rate housing units are constructed, the number of affordable housing units required for the project will be adjusted accordingly so that 10% of all housing units are affordable housing units.

\* CSU gets credit against later affordable housing obligations if it over-produces in an early phase. E.g., if Phase 1 includes a 300-unit affordable housing building, then no additional affordable housing is required until Phase 4.

## ATTACHMENT 4 TO CITY ATTORNEY REPORT

### Specific Policy Issues for the Council's Consideration

*This Attachment 4 identifies specific policy issues for which the Council's input will be required so that the Parties may finalize the Purchase and Sale Agreement ("PSA") and related documents for the City's proposed sale of the Property to CSU in accordance with Measure G. One core requirement of Measure G is that the Council must determine the provisions of the final PSA are fair and equitable and in the public interest. All capitalized terms in this attachment have the same meaning ascribed to them in the draft PSA, unless otherwise specified.*

Topic/Reference	Policy Issue	Explanation/Comments
<b>1. Affordable Housing: Inclusionary Requirement</b> Decl. of Affordable Housing Restrictions, §§ 1.56, 2.1  *see item 24 in Att. 6 to City Atty. Rept.	Should the City require CSU to meet a minimum Inclusionary Requirement in the Project that exceeds 10 percent? If so, what should be the increased minimum Inclusionary Requirement (e.g., 15 or 20 percent)?	Measure G requires CSU to comply with the City's affordable housing requirements. SDMC § 22.0908(l). Affordable housing units constructed within the City must comply with the City's inclusionary affordable housing regulations, which are mainly set forth in the Inclusionary Affordable Housing Regulations Ordinance ("Inclusionary Ordinance"), at Chapter 14, Article 2, Division 13 of the Municipal Code. The Inclusionary Ordinance sets forth an Inclusionary Requirement of 10 percent if a developer opts to produce affordable units on-site instead of paying the affordable housing in-lieu fee. As applied to the Project, this means that at least 10 percent of the total Dwelling Units must consist of Affordable Housing Units. During previous public meetings, individual Councilmembers have expressed a preference for CSU to exceed the normal Inclusionary Requirement of 10 percent in the Project. That approach is neither required nor prohibited by Measure G. The Council is asked to consider whether CSU should be obligated to exceed the Inclusionary Requirement of 10 percent and, if so, to identify the minimum Inclusionary Requirement for the Project (e.g., 15 or 20 percent).
<b>2. Affordable Housing: Minimum Total Number of Units</b> Decl. of Affordable Housing Restrictions, §§ 1.56, 2.1  *item 24 in Att. 6	Should the City establish a "floor" on CSU's production of a specified number of Affordable Housing Units in the Project? If so, what should the floor be (e.g., 400 Affordable Housing Units)?	Measure G envisions the construction of both Market Rate Units and Affordable Housing Units within the residential component of the Project, but does not specify the number of total Dwelling Units. CSU has proposed that the Project will include approximately 4,600 Dwelling Units, including approximately 460 Affordable Housing Units. The Council is asked to consider whether CSU should be obligated to produce a minimum number of Affordable Housing Units (e.g., 400) in the Project even if, for whatever reason, CSU decides to reduce the anticipated number of total Dwelling Units.

Topic/Reference	Policy Issue	Explanation/Comments
<p><b>3. Affordable Housing: Student Eligibility</b> Decl. of Affordable Housing Restrictions, § 1.75</p> <p>*item 23 in Att. 6</p>	<p>Should the City accept CSU's proposal to count the housing of certain low-income students generally toward the on-site affordable housing Inclusionary Requirement in the Project? If so, should the City establish a "cap" on the number or percentage of affordable units (e.g., 25 percent) that may be made available for occupancy by current students?</p>	<p>The Inclusionary Ordinance, which reflects the standard practice for operation of affordable housing projects, does not allow a student to become eligible for occupancy in an Affordable Housing Unit unless the student is an independent household (i.e., is not identified as a dependent on anyone's tax return) and otherwise meets the income eligibility requirements. Under CSU's proposal, student housing units will count as Affordable Housing Units if they are restricted for occupancy by students eligible for Cal Grant A or B awards, students who were previously in the foster care program, or students enrolled in certain job training programs. Allowing CSU to count the housing of certain low-income students generally toward its Inclusionary Requirement is derived from State density bonus law and could be deemed consistent with CSU's development of a "campus village" on the Property, but is inconsistent with the City's affordable housing requirements/practices. To maintain consistency with Measure G, the Office of the City Attorney recommends that the City reject CSU's broad interpretation allowing students to be eligible for affordable housing occupancy. Using the City's normal approach, if a particular student is an independent household and meets the income eligibility requirements, then the student will be eligible to occupy an Affordable Housing Unit. The Council is asked to consider whether to accept CSU's proposal for the broad eligibility of students occupying Affordable Housing Units. If the Council chooses to accept CSU's proposal, then the Council is further asked to consider whether to limit the number or percentage of Affordable Housing Units made available for occupancy to students. For instance, the PSA could include a provision permitting no more than 25 percent of the Affordable Housing Units to be occupied by students, subject to the eligibility requirements in CSU's proposal.</p>
<p><b>4. Affordable Housing: Unit Mix</b> Decl. of Affordable Housing Restrictions, § 1.76</p> <p>*see item 23 in Att. 6</p>	<p>Should the City accept CSU's proposal to allow CSU to provide a mix of rental units and for-sale units within the Affordable Housing Units produced on the Property, as opposed to providing all rental units? If so, should the City establish a "cap" on the</p>	<p>The Inclusionary Ordinance does not require a developer to choose between the production of rental vs. for-sale units when the developer opts to produce on-site affordable housing. The ordinance instead leaves open the possibility of a mix of rental and for-sale units. The City and the Housing Commission generally prefer the on-site production of rental units rather than for-sale units. CSU's proposal could result in the production of solely for-sale affordable units on the Property. The Council is asked to consider whether the City should require CSU to cause the production of Affordable Housing Units that consist of only rental units. Alternatively, the Council may wish to consider limiting the number or percentage</p>

Topic/Reference	Policy Issue	Explanation/Comments
	number or percentage of for-sale affordable units (e.g., 25 percent) relative to rental affordable units?	of for-sale affordable units relative to rental affordable units. For instance, the PSA could include a provision limiting the number of for-sale units to 25 percent or less of the Affordable Housing Units.
<b>5. Development Threshold Related to Completion of New Stadium</b> Decl. of Property Devmt. Restrictions, § 2.14(b)  *item 25(c) in Att. 6	Should the City establish a development threshold that CSU cannot exceed until after the New Stadium is constructed and open for public use? If so, what should the development threshold be (e.g., 50 percent of Total Planned EDUs in the Project)?	Measure G states that CSU must complete the construction of the New Stadium within seven years after the PSA is signed. SDMC § 22.0908(j), (x)(9). Measure G is silent as to the creation of any development thresholds for the Project. One of the City's main goals in the transaction is to ensure that CSU develops the Project in accordance with Measure G. The City could create a strong incentive for CSU to timely complete the New Stadium in compliance with Measure G if CSU's failure to do so would prevent CSU from proceeding beyond a certain development milestone in the Project. The Council is asked to consider whether to create a development threshold that CSU cannot exceed in the Project unless and until CSU has completed construction of the New Stadium. For instance, the PSA could include a provision stating that, until the New Stadium is constructed and open for public use, no more than 50 percent of Total Planned EDUs (i.e., CSU's total planned equivalent dwelling units in the Project) may be constructed on the Property. CSU may not object to this concept because CSU plans to construct the New Stadium in the initial phase of the Project and appears to be heavily motivated to complete the New Stadium promptly.
<b>6. Development Threshold Related to Completion of Educational Uses</b> Decl. of Property Devmt. Restrictions, § 2.14(c)  *item 25(d) in Att. 6	Should the City establish a development threshold that CSU cannot exceed until after a certain minimum quantity of educational uses is constructed and operational on the Property? If so, what should be defined as educational uses, and what should the development threshold be (e.g., at least 200,000 square feet of educational uses before the	Measure G requires that the sale of the Property provide for the development of facilities for educational, research, entrepreneurial, and technology programs within a vibrant mixed-use campus village and research park. CSU made a related campaign promise that the Project would entail a world-class university research and innovation campus. During recent public meetings, several Councilmembers have expressed a desire to ensure that the Project includes core academic and research elements supporting CSU's mission and is not predominantly a private development project. Imposing an overall development threshold on the Project that cannot be exceeded until CSU causes a certain minimum threshold of educational uses to be constructed and operational on the Property would be consistent with the requirements of Measure G and CSU's related campaign promise. The Council is asked to consider whether such a development threshold is appropriate and, if so, to specify the parameters of the development threshold. For instance, the PSA could

Topic/Reference	Policy Issue	Explanation/Comments
	Project exceeds 50 percent of the Total Planned EDUs)?	include a provision stating that, until CSU has constructed and opened at least 200,000 square feet of educational uses on the Property, no more than 50 percent of Total Planned EDUs may be constructed on the Property.
<b>7. Payment of Tax In-Lieu Amounts</b> Permitting and Development Fee Agmt., § 4.8  *item 34 in Att. 6	Should the City negotiate CSU's payment of in-lieu amounts to fully or partially compensate the City for its anticipated loss of future local tax revenue due to certain public uses in the Project being deemed exempt from payment of taxes? If so, should the City seek to recoup a certain percentage (e.g., 50 percent) of lost tax revenue?	Measure G lists various required elements of the Project and confirms that certain elements, "as applicable," must contribute sales tax, possessory interest tax, or transient occupancy tax for the City's benefit. SDMC § 22.0908(c)(5). Also, Measure G states that the Parties must negotiate applicable taxes for development on the Property. <i>Id.</i> § 22.0908(s). CSU's Revised Offer states that CSU and other publicly developed property will be exempt from paying property or possessory interest taxes and that Private Uses within the Project will be required to pay sales tax, possessory interest tax, and/or transient occupancy tax. The draft PSA generally reflects the Revised Offer on the topic of taxes. However, Measure G states that local taxes will be paid, "as applicable," requires the Parties to negotiate the payment of applicable taxes, and does not expressly mention any tax exemptions. The Council is asked to consider whether the City should negotiate CSU's payment of in-lieu amounts to fully or partially compensate the City for its anticipated loss of future local tax revenue due to certain public uses in the Project being deemed exempt from payment of taxes. For instance, the PSA could include a provision stating that CSU must pay in-lieu amounts to the City equal to 50 percent of the City's actual or projected share of lost tax revenue.
<b>8. Storm Water Best Management Practices (BMPs) on City-Owned River Park Property</b> River Park and Storm Water BMP Development Agmt.  *item 21 in Att. 6	Should CSU be permitted to construct the Storm Water BMPs, consisting of a cumulative total of approximately 2.5 acres, on the City-owned River Park Property?	Measure G and the Revised Offer are silent regarding CSU's construction of the Storm Water BMPs on the River Park Property. CSU recently requested the City's permission to construct the Storm Water BMPs depicted in Project renderings on the River Park Property, which is and will remain a City-owned property. Based on City management's input, the draft PSA reflects CSU's preferred approach, subject to a defense and indemnity clause and other language that protects the City's interests. Nonetheless, CSU's proposal to construct the Storm Water BMPs on City-owned property is problematic because the proposal: (a) involves the treatment of storm water runoff within the 100-year floodplain (and in some instances as low as the 25-year floodplain), which is inconsistent with the City's normal development requirements; (b) is inconsistent with the City's normal requirement that a landowner treat storm water runoff on the landowner's own property, not on City-owned property – a requirement aimed at minimizing the City's risk; and (c)



Topic/Reference	Policy Issue	Explanation/Comments
		<p>uses the City's property rather than its own property to mitigate drainage impacts and because CSU will be counting the 2.5-acre Storm Water BMPs toward its obligation under Measure G to construct 34 acres of River Park. CSU could comply with the City's normal requirement to construct the Storm Water BMPs on the Property to be owned by CSU, but that approach would presumably require CSU to redesign at least a portion of the Project and would reduce the developable acreage of the Property. In light of these circumstances, the Council is asked to consider whether CSU should be permitted to construct the Storm Water BMPs on the River Park Property.</p>
<p><b>9. Application of Time-Value Factor to Base Purchase Price Upon Delay in Closing</b>  PSA, §§ 1.57, 1.112    *item 3 in Att. 6</p>	<p>If the Closing does not occur by the target date of June 30, 2020, should the Final Adjusted Purchase Price reflect the Time-Value Factor of 2.149 percent being applied to the entirety of the Property retroactively to October 1, 2017 (as opposed to being applied to the 38.7 percent Water Utility Fund Ownership retroactively and applied to the entirety of the Property only on a going-forward basis)?</p>	<p>In the draft PSA, the Final Adjusted Purchase Price equals the Base Purchase Price of \$86.2 million, plus the Time-Value Adjustment Amount. To calculate the Time-Value Adjustment Amount, the Time-Value Factor of 2.149 percent is applied as follows: (a) if the Closing Date occurs on or before June 30, 2020, the Time-Value Factor is applied, on a retroactive basis to October 1, 2017, only to the Water Utility Fund Ownership (i.e., 38.7 percent of the Property, equating to \$33,359,400 of the Base Purchase Price); and (b) if the Closing Date occurs after June 30, 2020, the Time-Value Factor is applied, on a retroactive basis to October 1, 2017, to both the Water Utility Fund Ownership and the General Fund Ownership (i.e., collectively, 100 percent of the Property, equating to the entirety of the Base Purchase Price). The Time-Value Adjustment Amount is included in the Final Adjusted Purchase Price so that the consideration paid by CSU for the Property reflects the value of the Property as of the actual Closing Date, not the valuation date of September 30, 2017, contained in the appraisal report for the Property. The Final Adjusted Purchase Price in the draft PSA differs from the Revised Offer in that, if the Closing does not occur by June 30, 2020, the Time-Value Factor will be applied to the entirety of the Property retroactively to October 1, 2017 (as opposed to being applied to the Water Utility Fund Ownership retroactively and applied to the entirety of the Property only on a going-forward basis). As compared to the Revised Offer, the City's recommended approach will result in an increase of over \$3 million in the Final Adjusted Purchase Price if the Closing does not occur by June 30, 2020. This approach will incentivize a prompt Closing, which is what the Council articulated as a key goal during the November 18 Council meeting and what CSU has also articulated as its goal. The Council is asked to consider whether to apply the</p>

Topic/Reference	Policy Issue	Explanation/Comments
		Time-Value Factor retroactively to the entirety of the Property if the Closing does not occur by June 30, 2020.
<b>10. Fenton Parkway Bridge</b> Bridge MOU, §§ 2.1, 2.2  *item 16 in Att. 6	Should the City require that CSU be responsible for the design, environmental review, and permitting of the Potential Bridge Project to extend Fenton Parkway south over the San Diego River, in addition to CSU constructing the Potential Future Bridge Project, if approved, after environmental impacts identified during CEQA Review are considered?	Measure G is silent as to the construction of the Fenton Parkway Bridge. As an additional community benefit to the surrounding communities, the Parties desire to cooperate in the design, CEQA Review, permitting, and construction of the Potential Bridge Project. The draft Bridge MOU, which requires CSU to take the lead on all aspects of the Potential Bridge Project, differs from the Revised Offer, which required the City to design, complete CEQA Review, and permit the Potential Bridge Project and CSU would construct the bridge. However, dividing the Parties' responsibility for the design and permitting function vs. the construction activity would pose difficult logistical constraints and unacceptably increase the City's liability exposure relating to the completed Fenton Parkway Bridge (e.g., creating "proof problems" as to whether a future bridge defect arose from faulty design vs. faulty construction). Therefore, the Council is asked whether the City should require CSU to take the lead on all aspects of the Potential Bridge Project.
<b>11. Miscellaneous</b>	Does the Council wish to provide input on any other specific policy issues with respect to the PSA?	While the policy issues identified above represent some critical elements of the Sale Transaction, the list is not exhaustive. The Council is asked to provide any additional policy input as the Council deems appropriate to ensure that the provisions of the proposed final PSA, in the Council's estimation, are fair and equitable and in the public interest.

## ATTACHMENT 5 TO CITY ATTORNEY REPORT

### Overview of Main Purpose of Purchase and Sale Agreement and Related Documents

Attachment Number	Short Title of Document	Comments
n/a	Memorandum of Understanding on Fenton Parkway Bridge	Addresses the respective obligations of the Parties relating to CEQA review, design, permitting, and potential construction of the proposed Fenton Parkway Bridge.
n/a	Main body of Purchase and Sale Agreement	Identifies the main terms of the sale transaction, such as the purchase price, the closing date, and the closing mechanics, and includes various attachments.
1	Escrow Agent's Consent	Confirms that Chicago Title Company agrees to act as independent escrow agent for the transaction.
2A	Legal Description of the Real Property	Technical exhibit.
2B	Depiction of the Real Property	Technical exhibit.
3A	Legal Description of the Murphy Canyon Creek Parcel	Technical exhibit.
3B	Depiction of the Murphy Canyon Creek Parcel	Technical exhibit.
4A	Legal Description of the River Park Property	Technical exhibit.
4B	Depiction of the River Park Property	Technical exhibit.
5A	Legal Description of the Future Recreation Center Site	Technical exhibit.
5B	Depiction of the Future Recreation Center Site	Technical exhibit.
6	Project Site Plan	Depicts the main development components of CSU's Project.

<b>Attachment Number</b>	<b>Short Title of Document</b>	<b>Comments</b>
7	Preliminary Title Report for the Real Property	Shows title exceptions relating to the Property.
8	Closing Documents List	Identifies all documents that will be signed and delivered into the Escrow in advance of the Closing.
9	Recordable Closing Documents List	Identifies all Closing documents that will be recorded in the County's local property records upon the Closing.
10	Depiction of Well Removal and Abandonment Work	Technical exhibit.
11	Depiction of Existing Easements for Proposed Vacation	Technical exhibit.
12	Depiction of Existing Rights-of-Way for Proposed Vacation	Technical exhibit.
13	Depiction of Proposed Easement and Right-of-Way Dedications	Technical exhibit.
14	CSU Financing Plan	Identifies details of CSU's plan for financing the acquisition of the Property and the development of the Project.
15	CSU New Lease Summary	Summarizes the material terms of the new lease that will be finalized between the Parties and will be in effect from July 1 through December 31, 2020, if the Closing does not occur by June 30, 2020.
16A	Schedule of Leases	Identifies operative leases affecting the Property.
16B	Rent Roll	Identifies rent payment and security deposit information under operative leases affecting the Property.
17	Schedule of Service Contracts	Identifies operative service contracts affecting the Property.

<b>Attachment Number</b>	<b>Short Title of Document</b>	<b>Comments</b>
18	Schedule of Licenses and Permits	Identifies operative licenses and permits affecting the Property.
19	Grant Deed	Conveys fee title ownership of the Property from the City to CSU upon the Closing, with a reservation of certain easements in the City's favor.
20	Bill of Sale and Assignment and Assumption Agreement	Conveys and assigns ownership of ancillary items, such as leases, service contracts, and tangible personal property, from the City to CSU upon the Closing.
21	Declaration of Property Development Restrictions	Memorializes CSU's obligation to develop key Project elements on the Property after the Closing in accordance with the Campus Master Plan Update, the Final EIR, and Measure G.
22	Declaration of Affordable Housing Restrictions	Memorializes CSU's obligation to cause at least 10 percent of the residential dwelling units constructed on the Property after the Closing to be sold or rented to eligible households for affordable housing, in accordance with Measure G.
23	Permitting and Development Fee Agreement	Memorializes CSU's role as the main permit-issuing authority for the Project, addresses its obligation to pay certain development impact fees or provide completed public facilities in lieu of paying fees, and ensures that the development will accrue certain tax benefits for the City, all in accordance with Measure G.
24	Future Recreation Center Site Agreement	Sets aside a one-acre portion of the Property, during a 20-year option period, for the City's potential future development of a recreation center as envisioned by the Mission Valley Community Plan.
25	Second Amendment to CSU Existing Occupancy Agreement	Changes the termination date on CSU's existing stadium lease to June 30, 2020 (as opposed to Dec. 31) in light of the new lease taking effect if the Closing does not occur by June 30.
26	River Park and Storm Water BMP Development Agreement	Memorializes CSU's obligation to construct the River Park improvements in accordance with Measure G, as well as three storm water best management practice areas, on the City-owned River Park Property.
27	River Park and Storm Water BMP Maintenance Agreement	Memorializes CSU's long-term obligation to maintain the River Park improvements and the Storm Water BMP Areas after they are constructed.

Attachment Number	Short Title of Document	Comments
28	Easement Agreement for River Park Construction and Maintenance	Provides CSU with physical access on the City-owned River Park Property as may be necessary to construct and maintain the River Park.
29	Additional Park Maintenance Agreement	Memorializes CSU's long-term obligation to maintain the additional 22+ acres of Additional Parks and Active Recreation Space after they are constructed as required by Measure G.
30	Easement Agreement for City's Public Facilities During Stage 1	Provides the City with easement rights to operate and maintain existing public facilities through the Property, at least until the Parcel Map depicting necessary easements is approved and recorded in the County's local property records.
31	Easement Agreement for CSU's Utilities within River Park Property	Provides CSU with easement rights to install and operate certain public facilities within the River Park Property that benefit CSU's Project on the Property.
32	Easement Agreement for City's Public Facilities During Stage 2	Provides the City with easement rights to operate and maintain public facilities through the Property after CSU has completed certain post-Closing improvements on the Property.

## ATTACHMENT 6 TO CITY ATTORNEY REPORT

### Summary and Analysis of Draft Purchase and Sale Agreement and Related Documents for City's Proposed Sale of Mission Valley Stadium Site to CSU

*This Attachment 6 summarizes the main terms of the draft Purchase and Sale Agreement (“PSA”) and related documents for the City’s proposed sale of the Property to CSU in accordance with Measure G. This attachment also evaluates how the main PSA terms achieve consistency with both Measure G – codified in San Diego Municipal Code (“SDMC”) section 22.0908 – and the Council’s motion on November 18, 2019 (“Council Motion”). In the Council Motion, the Council asked the Office of the City Attorney (“OCA”) to prepare the draft PSA based on CSU’s revised offer dated October 28, 2019 (“Revised Offer”), and certain recommendations from the OCA and the Independent Budget Analyst (“IBA”). In addition, this attachment highlights certain policy issues that will require the Council’s input; those issues are shown below in underlined text and are discussed further in Attachment 4 to the City Attorney Report.*

*This attachment is intended to help streamline review of the draft PSA by the Council and members of the public, but is not intended as a fully comprehensive summary or a substitute for a complete review of all provisions in the draft PSA and related documents. All capitalized terms in this attachment have the same meaning ascribed to them in the PSA, unless otherwise specified.*

Topic/Reference	Description of Material Term	Analysis/Comments
<b>1. Parties</b> PSA, Preamble, & § 1.87  *refer to deal point 1 in Revised Offer (Att. 1 to City Attorney Report)	The Parties include 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”).	The identification of the City and CSU as the contracting Parties is consistent with the Measure G and the Revised Offer. If the Council desires to approve the eventual PSA transaction, San Diego Charter section 221 requires that the Council adopt an ordinance approving the negotiated PSA and making a finding that the PSA transaction will achieve “bona fide governmental purposes.”
<b>2. Property</b> PSA, §§ 1.95  *deal point 2 in Revised Offer	The Property contains approximately 135.12 acres of real property, encompassing both a 132.63-acre portion of the Mission Valley SDCCU stadium site and the contiguous 2.49-acre Murphy Canyon Creek Channel parcel, and includes all improvements, with the exception of certain public utility improvements, on the real property (such as the Existing Stadium) and	Measure G states that the Property (defined as the “Existing Stadium Site”) consists of approximately 132 acres at 9449 Friars Road, between Interstates 15 and 8, as depicted in a site map in Section 8 of Measure G. SDMC § 22.0908(x)(3). The Revised Offer refers to the Property consisting of 135.12 acres, identical to the real property valued in the appraisal report dated October 11, 2019, prepared by David Davis, MAI, the independent appraiser mutually selected by the Parties. The identification of the Property

Topic/Reference	Description of Material Term	Analysis/Comments
	certain tangible personal property (such as stadium equipment).	in the PSA is consistent with the narrative text in Measure G, the site map of the Property in Measure G, and the Revised Offer.
<p><b>3. Purchase Price</b> PSA, §§ 1.57, 2.3</p> <p>*deal point 3 in Revised Offer</p>	<p>The Final Adjusted Purchase Price equals the Base Purchase Price of \$86.2 million, plus the Time-Value Adjustment Amount. To calculate the Time-Value Adjustment Amount, the Time-Value Factor of 2.149 percent is applied as follows: (a) if the Closing Date occurs on or before June 30, 2020, the Time-Value Factor is applied only to the Water Utility Fund Ownership (i.e., 38.7 percent of the Property, equating to \$33,359,400 of the Base Purchase Price); and (b) if the Closing Date occurs after June 30, 2020, the Time-Value Factor is applied to both the Water Utility Fund Ownership and the General Fund Ownership (i.e., collectively, 100 percent of the Property, equating to the entirety of the Base Purchase Price).</p> <p>Based on updated information, the Parties have recently confirmed a Property acreage allocation of 61.3 percent to the General Fund (82.86 acres) and 38.7 percent to the Water Utility Fund (52.26 acres), which differs slightly from the 63-to-37 percent allocation reflected in the Revised Offer.</p>	<p>The Final Adjusted Purchase Price is consistent with Measure G and, with one exception designed to incentivize a prompt Closing, is consistent with the Revised Offer.</p> <p>Measure G does not require, but allows, the City to sell the Property to CSU if the Council approves the City's sale of the Property "at such price and upon such terms as the Council shall deem to be fair and equitable and in the public interest." SDMC § 22.0908(a). Measure G states that the City's potential sale of the Property to SDSU "shall be based on the Fair Market Value of the [Property], and the City may fairly consider various factors, adjustments, deductions, and equities" in arriving at the fair and equitable purchase price. <i>Id.</i> § 22.0908(d). Within the context of Measure G, "Fair Market Value" means the price at which a willing seller would sell the Property to a willing buyer in a hypothetical, open market transaction between two private parties, disregarding any effect on property value arising from adoption of Measure G. <i>Id.</i> § 22.0908(x)(5). The Final Adjusted Purchase Price is consistent with Measure G because it is based on the appraised value of the Property in the October 2019 appraisal report, without allowing a discount in the price attributable to two items for which the City's General Fund bears no responsibility, namely the costs to demolish the Existing Stadium and design and construct the River Park.</p> <p>The Time-Value Adjustment Amount is included in the Final Adjusted Purchase Price so that the consideration paid by CSU for the Property reflects the value of the Property as of the actual Closing Date, not the valuation date of September 30, 2017, contained in the appraisal report. <u>The Final Adjusted Purchase Price differs from the Revised Offer in that, if the Closing does not occur by June 30, 2020, the Time-Value Factor will be applied to the entirety of the Property retroactively to October 1, 2017 (as</u></p>



Topic/Reference	Description of Material Term	Analysis/Comments
		<p><u>opposed to being applied to the Water Utility Fund Ownership retroactively and applied to the entirety of the Property only on a going-forward basis).</u> The Council's input will be requested on <u>whether to apply the Time-Value Factor retroactively to the entirety of the Property if the Closing does not timely occur.</u> As compared to the Revised Offer, the City's recommended approach will result in an increase of over \$3 million in the Final Adjusted Purchase Price if the Closing does not occur by June 30, 2020. This approach will incentivize a prompt Closing, which is what the Council articulated as a key goal during the November 18 Council meeting and what CSU has also articulated as its goal.</p>
<p><b>4. Earnest Money Deposit</b> PSA, §§ 1.36, 2.5-2.7, 12.3(b)</p>	<p>The Earnest Money Deposit equals the Initial Earnest Money Deposit of \$900,000 to be made by CSU shortly after Escrow opens for the transaction, plus (if applicable) the Additional Earnest Money Deposit of \$450,000 to be made by CSU if the Closing does not occur by June 30, 2020. The Initial Earnest Money Deposit will be remitted to the City and will become nonrefundable if CSU has not earlier opted to terminate the PSA and the Closing does not occur by June 30, 2020. The Additional Earnest Money Deposit will be remitted to the City and will become nonrefundable to CSU if the Closing does not occur by December 31, 2020. In addition, the Earnest Money Deposit will be remitted to the City and treated as liquidated damages if the Closing does not occur due to CSU's default under the PSA.</p>	<p>Measure G and the Revised Offer are silent as to an Earnest Money Deposit. However, CSU's initial draft of the PSA in April 2019 included a substantial good faith deposit totaling \$1,250,000, and it is standard industry practice for real property transactions to include a substantial good faith deposit. The Earnest Money Deposit is approximately 1.5 percent of the anticipated Final Adjusted Purchase Price, which is within industry standards and at the lower end. Requiring the Earnest Money Deposit will incentivize CSU to accomplish a prompt Closing and, if the Closing does not timely occur or does not occur at all, will compensate the City for its significant commitment of time and resources toward the proposed transaction (subject to CSU's early termination right). Requiring the Earnest Money Deposit also will incentivize CSU not to commit a default under the PSA that would prevent or delay the Closing. The referenced PSA provisions are consistent with the Council Motion, which asked the OCA to prepare the draft PSA in a manner that protects the City's interests.</p>
<p><b>5. Closing Date</b> PSA, §§ 1.85, 1.93, 1.107, 9.7</p>	<p>The Primary Target Closing Date is March 27, 2020. The Secondary Target Closing Date is June 30, 2020. The Outside Closing Date is December 31, 2020. The Parties must reasonably endeavor</p>	<p>Measure G and the Revised Offer are silent as to the timing of the Closing, including the Outside Closing Date. However, the Council Motion specified the Outside Closing Date of December 31, 2020, consistent with the IBA's recommendation. The Outside Closing</p>

Topic/Reference	Description of Material Term	Analysis/Comments
*deal points 24-25 in Revised Offer	to complete the Closing at the earliest practical opportunity.	<p>Date achieves the mutual objective of the Parties to complete the Sale Transaction without a prolonged delay, enabling CSU to commence construction of the Project at the earliest opportunity and enabling the City to receive prompt payment of the Final Adjusted Purchase Price and to dispose of ownership of an asset that presently entails significant cost and risk to the City without a corresponding significant public benefit.</p> <p>The Revised Offer included the Primary Target Closing Date of March 27, 2020, which is reflected in the draft PSA but is likely not a feasible date. Even assuming the Parties can quickly finalize the content of the PSA, the signature of the PSA will require approval by both the CSU Board of Trustees and the Council. The Council's approval of the PSA will require the introduction and adoption of an ordinance under Charter section 221 at two separate Council meetings, and the Parties will need to wait at least 30 days from the ordinance adoption date for the ordinance to take effect.</p>
6. <b>Force Majeure</b> PSA, §§ 1.116, 14.1; Decl. of Property Development Restrictions, §§ 1.82, 26.1	The PSA and various PSA attachments include a force majeure provision, under which a default will not occur if a Party is prevented from taking an action due to Unavoidable Delay. The term Unavoidable Delay includes any cause beyond the Party's reasonable control, but excludes the Party's financial condition or the existence of any lawsuit unless a court issues an injunction or similar order preventing a Party from performing any material obligation. Unavoidable Delay is not permitted as an excuse for CSU's delay in completing construction of the New Stadium or the River Park improvements within seven years after the Effective Date of the PSA as required by Measure G.	Measure G and the Revised Offer are silent as to the inclusion of any force majeure provision to excuse a Party's timely performance of any contractual obligation, including the effort to accomplish a prompt Closing and CSU's obligation to timely construct the New Stadium and the River Park improvements. A force majeure provision is common in real property sales contracts and development contracts, but the precise scope of the provision is not necessarily standard. In the referenced PSA provisions, Unavoidable Delay is defined to exclude the mere existence of a lawsuit because, unless a court issues an injunction, the Parties will be able to accomplish the Closing and CSU will be able to construct improvements in accordance with Measure G and the Campus Master Plan Update. If a lawsuit challenging the Sale Transaction is filed and CSU does not wish to proceed with the Sale Transaction in light of the lawsuit, CSU has the right to terminate the PSA before June 30, 2020, without any financial consequence. The definition of Unavoidable Delay strikes a

Topic/Reference	Description of Material Term	Analysis/Comments
		<p>reasonable balance between the mutual goal of the Parties to accomplish a prompt Closing and the need to account for any delays attributable to causes beyond a Party's reasonable control. Further, by only excusing delays in performance for which Measure G does not set a specific deadline, specifically all development other than the New Stadium and River Park improvements, the PSA force majeure provisions comply with Measure G and reasonably apply the industry standard for this type of transaction. The referenced PSA provisions are consistent with the Council Motion, which asked the OCA to prepare the draft PSA in a manner that protects the City's interests.</p>
<p><b>7. CSU's Approval of Title and Property Condition</b> PSA, §§ 4.1, 4.2</p>	<p>By signing the PSA, CSU will: (a) confirm its approval of the current title condition of the Property; (b) agree to acquire ownership subject to the title exceptions shown in the preliminary title report for the Property; (c) confirm its approval of the current physical condition of the Property; and (d) acknowledge that it has been afforded ample opportunity to review both the title and physical condition of the Property.</p>	<p>Measure G and the Revised Offer are silent as to the existence of any due diligence period after the PSA is approved and signed. In this instance, CSU has been afforded a very lengthy due diligence period. CSU first obtained a preliminary title report for the Property no later than January 2019. Additionally, since January 2019, the City has both granted CSU the right to access the Property for inspections and testing under the CSU Entry Permit (i.e., an agreement by which the City has given Property access rights to CSU), and made City representatives available to meet with CSU on numerous occasions. The City also provided various documents and information regarding the Property to CSU. A typical due diligence period is 30 to 120 days, whereas CSU has had ample opportunity to perform due diligence for at least 12 months. Given this circumstance, there is no reasonable basis for including a due diligence period in the PSA. The referenced PSA provision is consistent with the Council Motion, which asked the OCA to prepare the draft PSA in a manner that protects the City's interests.</p>
<p><b>8. City's Approval of CSU's Financing Plan</b> PSA, §§ 1.29, 4.3, Att. No. 14</p>	<p>The CSU Financing Plan will identify the reasonably estimated cost of CSU's financial obligations under the PSA and the pertinent agreements and other documents attached to the PSA, as well as CSU's source of funds to fulfill</p>	<p>Measure G and the Revised Offer are silent as to CSU's submittal, and the City's approval, of the CSU Financing Plan. However, the referenced PSA provision is consistent with the Council Motion, including the Council's reliance on a specific recommendation made by the OCA. The CSU Financing Plan is intended to</p>

Topic/Reference	Description of Material Term	Analysis/Comments
	<p>all of those financial obligations. (Note that, during its preparation of the draft PSA, the OCA requested from SDSU's attorneys, but did not receive, sufficient details to prepare the CSU Financing Plan.) By signing the PSA, the City will confirm it is satisfied with the content of the CSU Financing Plan as a basis for establishing the financial viability of CSU's acquisition of the Property and CSU's development, operation, and maintenance of the Project in accordance with Measure G and related campaign promises.</p>	<p>demonstrate that CSU has secured, or reasonably can secure, sufficient financial resources to acquire the Property and complete the Project in a timely manner and to cover all long-term maintenance costs for the Project, including the River Park. If the Council is not convinced, based on a review of the CSU Financing Plan, that CSU has demonstrated its financial ability to fulfill its PSA obligations, the Council may wish to consider whether it is prudent, and in the public interest, to dispose of the Property – a valuable public asset – to CSU.</p>
<p><b>9. New Property Lease</b> PSA, §§ 3.2, Att. No. 15</p> <p>*deal point 25 in Revised Offer</p>	<p>If the Closing does not occur by June 30, 2020, the Parties will enter into the CSU New Lease, by which the City will lease the Property and contiguous parking lot areas to CSU from July 1, 2020, through December 31, 2020, on terms much more favorable to the City than the CSU Existing Occupancy Agreement for the Existing Stadium. The CSU New Lease, if needed, will be prepared by the City based on the CSU New Lease Summary and finalized and signed by June 30. If for any reason the Parties do not sign the CSU New Lease by July 31, 2020, either Party may terminate the PSA. The CSU New Lease will feature the following key terms: (a) CSU's payment of \$1 per month in rent; (b) CSU's responsibility for all maintenance, capital repairs and improvements, operation, and insurance, as well as all related costs; (c) CSU's compliance with the City's main obligations under the ADA Settlement Agreement; and (d) CSU's compliance with applicable laws and duty to</p>	<p>Measure G is silent as to the Parties entering into a new lease to replace the CSU Existing Occupancy Agreement before the Closing. However, the Revised Offer envisions the Parties entering into the CSU New Lease as of July 1, 2020, if the Closing has not yet occurred, and the referenced PSA provisions regarding the CSU New Lease are consistent with the Revised Offer. The CSU New Lease Summary contains provisions that will protect the City's interests in the event of a delayed Closing and is consistent with the Council Motion, including the Council's reliance on specific recommendations made by the OCA and the IBA. Under the CSU New Lease, CSU will be responsible for operating and maintaining the Property, and CSU will defend and indemnify the City broadly against any losses or damages incurred with respect to the Property during the term of the CSU New Lease. If and when the Parties enter into the CSU New Lease, the City will not need to incur any additional operational expenses for the Property, which in Fiscal Year 2020 were budgeted in the amount of \$10,335,860, approximately \$4,870,568 more than the expected revenue. As a result of the costs savings to the City, even though the rent received will be far less than the rent currently paid by CSU for the football season, the CSU New Lease will result in a net fiscal savings to the City.</p>

Topic/Reference	Description of Material Term	Analysis/Comments
	defend and indemnify the City with respect to any losses or damages.	
<b>10. Existing Stadium Occupancy Agreement</b> PSA, §§ 3.1, Att. No. 25  *deal point 25 in Revised Offer	Shortly after the Escrow opens, the Parties will sign and deliver to each other the Second Amendment to CSU Existing Occupancy Agreement, which will modify the termination date of the CSU Existing Occupancy Agreement to become June 30, 2020, rather than December 31, 2020.	Measure G and the Revised Offer are silent as to establishing an earlier termination date for the CSU Existing Occupancy Agreement. However, the earlier termination date of June 30, 2020, is consistent with the intent of the Revised Offer and is appropriate because the CSU New Lease will take effect beginning July 1, 2020, if the Closing has not yet occurred. Confirming the earlier termination date of the CSU Existing Occupancy Agreement also will provide a strong incentive for both Parties to finalize the CSU New Lease promptly. The referenced PSA provision is consistent with the Council Motion, which asked the OCA to prepare the draft PSA in a manner that protects the City's interests.
<b>11. Measure G Compliance</b> PSA, § 5; Decl. of Property Development Restrictions, § 2  *deal point 21 in Revised Offer	CSU must complete certain development activities and features on the Property in fulfillment of Measure G and related campaign promises. The development activities and features include, for example, various public and private improvements, the New Stadium, the River Park improvements, features to comply with the City's goals to reduce greenhouse gas emissions, and appropriate CEQA mitigation measures and fair-share payments. The related campaign promises include, for example, the construction of "a world-class university research and innovation campus" on the Property and the inclusion of various environmentally-friendly design features in the Project. Section 5 of the PSA provides a broad overview of how the Sale Transaction will cause CSU to develop and operate the Project in compliance with Measure G and related campaign promises. Section 5 of the PSA also includes a cross-reference to specific sections of	Measure G identifies various development activities and features to be completed by CSU on the Property as part of the Project. SDMC § 22.0908(c). In addition, CSU made various campaign promises relating to the Project, upon which local voters relied in deciding whether to approve Measure G. The Revised Offer sets forth certain development activities and features to be completed by CSU in accordance with Measure G and states that the PSA also will incorporate all other conditions and requirements of Measure G and related campaign promises. The referenced PSA provisions are consistent with Measure G and related campaign promises, as well as the Revised Offer. Section 5 of the PSA is intended as a helpful "road map" showing the Parties' compliance with all of their respective obligations under Measure G.

Topic/Reference	Description of Material Term	Analysis/Comments
	PSA attachments, such as Section 2 of the Declaration of Property Development Restrictions, that describe more specifics regarding compliance with Measure G and related campaign promises.	
<p><b>12. Murphy Canyon Creek</b> Decl. of Property Development Restrictions, §§ 2.9, 3.7 River Park and Storm Water BMP Maintenance Agreement, §§ 1, 3.6, and Exh. G</p> <p>*deal point 4 in Revised Offer</p>	<p>CSU must maintain and operate, at its sole expense, the Murphy Canyon Creek Parcel as well as the portion of Murphy Canyon Creek located within the River Park Property retained in the City's ownership, in accordance with applicable laws and the Wetland Mitigation Project Agreements. CSU must mitigate and avoid flooding impacts associated with Murphy Canyon Creek and must promptly repair and restore Murphy Canyon Creek and any affected areas in the event of any damage. While the PSA does not obligate CSU to make any specific improvements to Murphy Canyon Creek, CSU must complete any restoration, improvements, alterations, or modifications of Murphy Canyon Creek as required by any other governmental agencies. CSU is generally prohibited from undertaking certain construction-related activities on the Murphy Canyon Creek Parcel or within any portion of the 100-year flood zone.</p>	<p>As noted in item 2 above, Measure G includes a depiction of the Property that includes the 2.5-acre Murphy Canyon Creek Parcel, and the PSA is consistent with Measure G in that the Property to be acquired by CSU includes the Murphy Canyon Creek Parcel. A portion of Murphy Canyon Creek is located within the River Park Property to be retained in the City's ownership. Under the PSA, CSU will maintain not only the Murphy Canyon Creek Parcel but also the southerly portion of Murphy Canyon Creek within the River Park Property. This approach is consistent with the Revised Offer, which states that CSU will maintain the River Park. The PSA includes strong language to protect the City's interests with respect to Murphy Canyon Creek, consistent with the Council Motion, including the Council's reliance on specific recommendations made by the OCA and the IBA.</p>
<p><b>13. Existing Stadium Demolition and Maintenance</b> Decl. of Property Development Restrictions, §§ 2.6, 3.2</p>	<p>CSU must demolish the Existing Stadium, at its sole expense, within two years after the New Stadium is constructed and opened for public use. In the interim, CSU must operate and maintain the Existing Stadium in a commercially reasonable manner and in a good condition, and must promptly complete any work, repair, rehabilitation, capital improvements or</p>	<p>Measure G requires the PSA to provide for the demolition and removal of the Existing Stadium. SDMC § 22.0908(j). Measure G also states that the sale of the Property will "ensure that the City does not pay for any stadium rehabilitation costs, stadium demolition or removal costs, [or] stadium cost overruns." <i>Id.</i> § 22.0908(n). The referenced PSA provisions regarding demolition and maintenance of the Existing Stadium are consistent with Measure G and the Revised Offer. In addition, the PSA provides a</p>

Topic/Reference	Description of Material Term	Analysis/Comments
<p>*deal point 5 in Revised Offer</p>	<p>replacements as reasonably necessary to maintain the Existing Stadium in a safe and operable condition, all at CSU's sole expense. Additionally, following the Closing, while CSU is operating the Existing Stadium, CSU must comply with the City's obligations under the ADA Settlement Agreement relating to the Existing Stadium.</p>	<p>deadline for CSU to complete demolition of the Existing Stadium, which is two years after the New Stadium is constructed and opened for public use. While Measure G and the Revised Offer do not specify a deadline for the completed demolition, a reasonable deadline is appropriate to ensure that the Existing Stadium is not retained indefinitely on the Property, causing potential public safety risks and prolonged underutilization of the Property.</p>
<p><b>14. New Stadium Construction</b> Decl. of Property Development Restrictions, §§ 2.3, 2.4</p> <p>*deal point 21 in Revised Offer</p>	<p>CSU must complete the design and construction of the New Stadium within seven years after the Effective Date of the PSA and must bear all related costs, including cost overruns. The seven-year deadline is not subject to Unavoidable Delay (i.e., force majeure). The New Stadium must meet or exceed the LEED-certified standard of Version 4 Silver. CSU must explore the feasibility of a phased build-out of the New Stadium that allows future modifications and the inclusion of Potential Sports Partners, including professional leagues such as the National Football League. CSU also must cooperate reasonably with any earnest proposal relating to the future inclusion of any Potential Sports Partners.</p>	<p>Measure G states that CSU must complete the construction of the New Stadium within seven years after the PSA is signed and identifies certain required components of the New Stadium, including its seating capacity and its future adaption to include Potential Sports Partners. SDMC § 22.0908(j), (x)(9). CSU also made a campaign promise that the New Stadium would meet or exceed the LEED-certified standard of Version 4 Silver. The Revised Offer does not expressly mention the New Stadium, but generally states that the PSA will incorporate all Measure G requirements and related campaign promises. The referenced PSA provisions regarding CSU's construction of the New Stadium are consistent with Measure G and CSU's related campaign promise.</p>
<p><b>15. Reimbursement of City's Costs for Public Safety and Traffic Services</b> Decl. of Property Development Restrictions, § 3.4</p>	<p>The City will provide Stadium Event Services, including public safety and traffic management, for Stadium Events subject to: (a) CSU's provision of reasonable advance notice and a special event permit application; (b) the City's availability of adequate City staff and resources; and (c) the lack of interference with the City's general public safety efforts. CSU must promptly reimburse the City for providing the Stadium Event Services.</p>	<p>Measure G states that the sale of the Property will ensure the City is reimbursed for its reasonable costs incurred in providing public safety and traffic management for games and other events at the Property. SDMC § 22.0908(n). The Revised Offer does not expressly mention this topic, but generally states that the PSA will incorporate all Measure G requirements. The referenced PSA provisions regarding reimbursement of the City's costs in providing public safety and traffic management are consistent with Measure G and the Revised Offer.</p>

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<p>*deal point 21 in Revised Offer</p>		
<p><b>16. Fenton Parkway Bridge</b> Fenton Parkway Bridge MOU, §§ 1, 2</p> <p>*deal point 6 in Revised Offer</p>	<p>CSU will be responsible for completing the design, CEQA review, permitting, and construction of the Fenton Parkway Bridge, which will consist of a two-lane, all weather bridge extending Fenton Parkway over the San Diego River to Camino Del Rio North at grade with the trolley crossing, providing vehicular, pedestrian, and bicycle access that benefits users and occupants of the Project and adjacent developments. Subject to the earlier completion of CEQA review, the City will grant an easement, license, or other rights necessary for CSU to construct the Fenton Parkway Bridge. CSU will be required to comply with the City's competitive bidding requirements and pay prevailing wages for the bridge, because City funds are being used to pay for a portion of the bridge costs.</p> <p>Also, subject to the earlier completion of CEQA review, the City will contribute funds to reimburse CSU for funds actually expended toward construction of the Fenton Parkway Bridge, including: (a) up to \$8.5 million in funds other than development impact fee ("DIF") funds, which may include any interest earned on the principal amount of development impact fees paid to the City; (b) \$1,235,646 from the City's existing capital improvement project ("CIP") for the Fenton Parkway Bridge, which is the principal amount previously paid to satisfy a development permit condition; and (c) future DIF actually collected by the City for construction of</p>	<p>Measure G is silent as to the construction of the Fenton Parkway Bridge. However, the Fenton Parkway Bridge is contemplated by the Mission Valley Community Plan and the City's other planning documents for Mission Valley. The Revised Offer states that, while the Fenton Parkway Bridge is not part of the Project evaluated in the Final EIR, the Parties will collaborate in pursuing the future completion of the Fenton Parkway Bridge, with the City taking the lead on CEQA review, permitting, and design, and with CSU taking the lead on construction. The Revised Offer also states that the City will contribute the following amounts toward the Fenton Parkway Bridge: (a) \$8.5 million of the City's purchase price proceeds; (b) \$1.3 million in the City's existing CIP funds; and (c) any available DIF. The Revised Offer states that CSU's contribution for the Fenton Parkway Bridge will be approximately 25 percent of the total costs.</p> <p>The referenced MOU provisions incorporate some elements of the Revised Offer, but differ from the Revised Offer in several respects. First, after further analysis and as relayed to CSU in a recent meeting, City staff and the OCA have determined that dividing the Parties' responsibility for the design and permitting function vs. the construction activity would pose difficult logistical constraints and would unacceptably increase the City's liability exposure relating to the completed Fenton Parkway Bridge (e.g., creating "proof problems" as to whether a future bridge defect arose from faulty design vs. faulty construction). Therefore, the MOU envisions that CSU will take the lead on all aspects of the Fenton Parkway Bridge. Second, the MOU states that the City's contribution of non-development impact fee funds will be up to \$8.5 million, and specifically allows the City to use any interest earned on the principal amount of monies paid to the City for development impact fees or to satisfy a development permit</p>



Topic/Reference	Description of Material Term	Analysis/Comments
	<p>the Fenton Parkway Bridge, in accordance with the San Diego Municipal Code and the Public Facilities Financing Plan. The City's financial contribution will be capped at a total of the three amounts described in the preceding sentence, and CSU will not use any portion of the City's contribution to offset CSU's project-specific share as determined in the Public Facilities Financing Plan. CSU will pay all other costs necessary to complete the CEQA review, permitting, design, and construction of the Fenton Parkway Bridge.</p>	<p>condition towards the \$8.5 million. Third, in compliance with CEQA, the MOU does not encumber the City's contribution of up to \$8.5 million from the purchase price proceeds. <i>See</i> Cal. Code Regs., title 14, § 15004(b). Fourth, the MOU does not cap CSU's contribution at 25 percent of the total costs for the Fenton Parkway Bridge, but instead states that assuming the earlier completion of CEQA review, CSU is responsible for a minimum of 25 percent of the total Fenton Parkway Bridge costs, and is responsible for any gap in funding, and all cost overruns.</p>
<p><b>17. Additional Project Improvements</b> PSA, § 11.1</p> <p>*deal point 7 in Revised Offer</p>	<p>The City must encumber, and set aside in a designated account, \$1,500,000 from the City General Fund's share of the Final Adjusted Purchase Price proceeds. The City must use the designated account funds to reimburse CSU for its actual, documented costs incurred in relocating utilities and other public facilities and completing other site development activities in the Project (excluding New Stadium costs, River Park costs, and Existing Stadium demolition costs) that serve a valid public purpose and provide public benefits.</p>	<p>Measure G is silent as to the City's contribution of funds toward CSU's site preparation or development activities. In the Revised Offer, CSU requested that the City allocate \$1.5 million to an account jointly controlled by the Parties for Project-related improvements. The referenced PSA provision is consistent with the Revised Offer, except that to avoid potential legal challenges such as Charter violations relating to improper control of City funds or an impermissible gift of public funds, the City's contribution will be encumbered in a City-controlled account, not placed in a jointly controlled account. In addition, the City's funds will be used only for CSU's development activities that achieve a valid public purpose and benefit the City's interests. Those clarifications are consistent with the Council Motion, including the Council's reliance on a specific recommendation made by the OCA.</p>
<p><b>18. Traffic Improvements</b> PSA, § 5.4; Decl. of Property Development Restrictions, §§ 2.1, 2.9</p>	<p>CSU must develop the Project consistent with the Final EIR, including its mitigation monitoring and reporting program. CSU will contribute \$5,000,000 for traffic improvements to mitigate impacts of the Project, including two components: (a) specified traffic improvements to be completed by CSU at its cost, at a presumed</p>	<p>Measure G imposes an "environmental commitment" on SDSU to "take steps to reach agreements with the City of San Diego 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 [Property]." SDMC § 22.0908(h). The Revised Offer states that, in addition to CSU's transportation mitigation responsibilities under</p>

Topic/Reference	Description of Material Term	Analysis/Comments
<p>*deal point 8 in Revised Offer</p>	<p>value of up to \$2,566,000; and (b) CSU's payment of at least \$2,434,000 to the City for deposit into the City's capital improvement fund for traffic improvement projects in the Mission Valley, Serra Mesa, and Navajo communities. Consistent with the Final EIR, CSU must contribute \$390,000 to the City to allow the City's completion of certain traffic mitigation measures associated with the Project and intended to optimize the timing of traffic signals in the vicinity of the Project.</p>	<p>the Final EIR, CSU will provide \$5 million for traffic improvements in coordination with the City. The referenced PSA provisions are consistent with Measure G and the Revised Offer and reflect certain traffic mitigation commitments of CSU set forth in the Final EIR. The PSA provisions clarify that CSU's fulfillment of the \$5 million contribution toward additional traffic improvements will consist of a combination of actual completed improvements and contributed funds toward other improvements. CSU's additional contribution of \$390,000 is based on City staff's quantification of the estimated cost for CSU to optimize the timing of certain traffic signals in the vicinity of the Project, as required by the Final EIR.</p>
<p><b>19. Public Transit Improvements</b> PSA, § 5.7; Decl. of Property Development Restrictions, § 2.1, 2.10</p> <p>*deal points 8, 21 in Revised Offer</p>	<p>Before CSU allows the permanent occupancy of any completed building or other structure within the Project, CSU must construct a trolley plaza in the vicinity of the existing light rail transit center on the Property, activated with commercial uses and providing adequate space for at least four bus bays. CSU must design, construct, and operate the Project in a manner that facilitates the daily and efficient use of the Green Line light rail transit station on the Property operated by MTS. CSU also must cooperate in good faith with the City, MTS, and SANDAG to accommodate the inclusion of a planned Purple Line light rail transit station on or about the Property and must participate in any related meetings and planning efforts with the affected agencies. Until the meetings and planning efforts are completed, CSU must reserve adequate right-of-way within the Property for the potential future construction, operation, and maintenance of a new Purple Line light rail transit station on the Property in a</p>	<p>Measure G states that the Project must include "[t]rolley and other public transportation uses and improvements to minimize vehicular traffic impacts . . . ." SDMC § 22.0908(c)(5)(I). Moreover, Measure G requires that the Sale Transaction facilitate the daily and efficient use of MTS's existing Green Line transit station on the Property, accommodate a planned Purple Line transit station on or about the Property, and enhance a pedestrian connection to the existing light rail transit center on the Property. <i>Id.</i> § 22.0908(k). The Revised Offer is silent as to public transit improvements, other than acknowledging that CSU will satisfy its transportation mitigation responsibilities under the Final EIR and generally acknowledging that the PSA will incorporate all Measure G requirements. The referenced PSA provisions are consistent with Measure G and the Revised Offer and reflect certain public transit commitments of CSU set forth in the Final EIR, subject to City staff's clarification as to the timing of CSU's completion of the trolley plaza. The inclusion of a planned Purple Line light rail transit station on or about the Property will require extensive future coordination and planning among CSU, the City, MTS, and SANDAG.</p>

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	precise location mutually desirable to CSU, the City, MTS, and SANDAG.	
<p><b>20. River Park</b> PSA, § 5.5; River Park and Storm Water BMP Development Agmt., §§ 1.4, 1.5, 3.1, 5.2, 5.4, 10.1, 10.2, 11, 12; River Park and Storm Water BMP Maintenance Agmt., §§ 1, 2.13, 14, 15</p> <p>*deal point 9 in Revised Offer</p>	<p>CSU must design, construct, and maintain in perpetuity the 34-acre River Park, and pay 100 percent of those costs. The City will have limited authority and review with respect to the permitting, design, and construction of the River Park improvements, including the issuance of a grading permit. CSU must complete the River Park improvements within seven years after the Effective Date of the PSA. The seven-year deadline is not subject to Unavoidable Delay (i.e., force majeure). CSU must obtain payment and performance bonds to secure the completion of its River Park construction obligation. Additionally, CSU must establish a River Park Endowment Fund to ensure that funds are available in perpetuity for the operation, maintenance, and repair of the River Park. CSU must defend and indemnify the City against any losses or damages attributable to the River Park Improvements. In conjunction with the Council's approval of the PSA, the Council will be asked to formally designate the River Park as a public park in accordance with Charter section 55.</p>	<p>Measure G requires SDSU to construct the 34-acre River Park, containing certain specified elements, such as active and passive park uses, walking and biking trails, a river buffer of native vegetation, and measures to mitigate drainage impacts and ensure compliance with water quality standards. SDMC § 22.0908(i). Measure G further requires SDSU to complete construction of the River Park within seven years after the signature date of the PSA and requires the City to designate or set aside the River Park as a public park in accordance with Charter section 55. <i>Id.</i> The Revised Offer echoes the Measure G requirements for the River Park. The referenced PSA provisions are consistent with Measure G and the Revised Offer, subject to the inclusion of language clarifying the City's limited role in permitting the River Park improvements on City-owned property and reviewing the design and completed construction of those improvements and further clarifying that CSU will not be entitled to reimbursement from DIF for CSU's costs incurred in designing, permitting, constructing, and maintaining the River Park.</p>
<p><b>21. Storm Water BMPs</b> River Park and Storm Water BMP Development Agreement, §§ 1.4, 11, 12; River Park and Storm Water BMP Maintenance</p>	<p>CSU has proposed to install Storm Water BMPs, consisting of three best management practice structures (or basins), within an approximately 2.5-acre portion of the River Park Property, to filter and treat storm water runoff from the Property, as well as potential flooding from both Murphy Canyon Creek and the San Diego River. CSU must design, construct, and maintain in</p>	<p>Measure G and the Revised Offer are silent regarding CSU's construction of the Storm Water BMPs on the River Park Property. <u>CSU has requested in recent discussions to obtain the City's permission to construct the Storm Water BMPs depicted in Project renderings on the River Park Property, which is and will remain a City-owned property. The OCA recommends against this approach due to the increased exposure to the City and the potential</u></p>

Topic/Reference	Description of Material Term	Analysis/Comments
<p>Agreement, §§ 1, 3, 14, 15</p>	<p>perpetuity the Storm Water BMPs, and pay 100 percent of those costs. CSU will own the completed Storm Water BMPs. CSU must defend and indemnify the City against any losses or damages attributable to the Storm Water BMPs.</p>	<p><u>inconsistency with Measure G, although CSU's request is a policy decision for the Council.</u></p> <p>Accordingly, based on City management's input, the referenced PSA provisions include language accommodating CSU's request, subject to a defense and indemnity clause and other language that protects the City's interests. Nonetheless, CSU's proposal to construct the Storm Water BMPs on City-owned property is problematic because: (a) the proposal involves the treatment of storm water runoff within the 100-year floodplain (and in some instances as low as the 25-year floodplain), which is inconsistent with the City's normal development requirements; (b) it is inconsistent with the City's normal requirement that a landowner treat storm water runoff on the landowner's own property, not on City-owned property – a requirement aimed at minimizing the City's risk; and (c) it is arguably inconsistent with Measure G, both because CSU is using the City's property rather than its own property to mitigate drainage impacts and because CSU will be counting the 2.5-acre Storm Water BMPs toward its obligation under Measure G to construct 34 acres of River Park. CSU could comply with the City's normal requirement to construct the Storm Water BMPs on the Property to be owned by CSU, but that approach would presumably require CSU to redesign at least a portion of the Project and would reduce the developable acreage of the Property. The OCA seeks direction on this issue from the Council.</p>
<p><b>22. Additional 22 Acres of Parks</b> PSA, § 5.5; Decl. of Property Development Restrictions, § 2.2(b); Additional Park</p>	<p>CSU is required to develop the Additional Park Areas and Active Recreation Space on the Property, consisting of a minimum of 22 acres to be used for population-based park facilities and publicly-accessible active recreation space, which may include practice, intramural, intermural, and recreation fields, all as depicted on the Project Site Plan. CSU is also responsible for the long-term</p>	<p>Measure G states that, in addition to the River Park, SDSU must reserve and improve at least 22 acres of publicly-accessible active recreation space on the Property. SDMC § 22.0908(i). The Revised Offer includes a minimum of 22 additional acres of population-based park facilities on the Property for general community use and enjoyment. The referenced PSA provisions are consistent with Measure G and the Revised Offer. The PSA includes City-acceptable park maintenance language, consistent with the Council</p>

Topic/Reference	Description of Material Term	Analysis/Comments
<p>Maintenance Agmt., § 1.1</p> <p>*deal point 10 in Revised Offer</p>	<p>maintenance of the Additional Park Areas and Active Recreation Space in accordance with City-acceptable park standards.</p>	<p>Motion, including the Council's reliance on a specific recommendation made by the OCA.</p>
<p><b>23. Affordable Housing Eligibility and Unit Mix</b></p> <p>PSA, § 5.3; Decl. of Affordable Housing Restrictions, §§ 1.4-1.6, 1.42, 1.54, 1.56, 1.75-1.77, 3.1-3.2, 4</p> <p>*deal point 13 in Revised Offer; Att. 3 to City Attorney Report</p>	<p>CSU must cause the Project to meet the City's current Inclusionary Requirement, under which at least 10 percent of the total Dwelling Units are developed and operated as Affordable Housing Units. CSU can produce the Affordable Housing Units through its own desired combination of Affordable Housing Rental Units and Affordable Housing For-Sale Units. The Affordable Housing Rental Units will be restricted for occupancy to tenants having a household income at or below 65 percent of AMI. The Affordable Housing For-Sale Units will be restricted for sale to buyers having a household income at or below 100 percent of AMI. A student will be eligible for occupancy in an Affordable Housing Unit only if the student qualifies as an independent household (i.e., is not identified as a dependent on any individual's tax return) and otherwise meets the income eligibility requirements.</p> <p>Before the issuance of any Building Permit for Affordable Housing Units, each Affordable Housing Developer must provide Performance Security to ensure that the applicable Affordable Housing Units are timely constructed. All Affordable Housing Units will be subject to recorded affordability covenants for at least 55 years. The Housing Commission will monitor and enforce ongoing compliance of all Affordable</p>	<p>Measure G states that the Project must include both market rate and affordable homes, among other development components. SDMC § 22.0908(c)(5)(H). Measure G further states: "Such sale and ultimate development shall require development within the [Property] to comply with the City's . . . housing impact fees/affordable housing requirements." <i>Id.</i> § 22.0908(l). Affordable housing units constructed within the City must comply with the City's inclusionary housing regulations, which are mainly set forth in the Inclusionary Affordable Housing Regulations Ordinance ("Inclusionary Ordinance"), at Chapter 14, Article 2, Division 13 of the Municipal Code.</p> <p>The Revised Offer states that CSU will cause the onsite production of Affordable Housing Units (including student housing units) equal to 10 percent of the total number of Dwelling Units in the Project. CSU followed up on the Revised Offer by providing a more detailed affordable housing proposal (Housing Proposal), which is Attachment 3 to the City Attorney Report. The key elements of the Housing Proposal are: (a) CSU can meet the Inclusionary Requirement through a mix of rental units offered at an average of 65 percent of AMI, within a range of 30 percent to 150 percent of AMI, or for-sale units offered at 100 percent of AMI, or at 150 percent of AMI for units containing two or more bedrooms; (b) student housing units will count as Affordable Housing Units if they are restricted for occupancy by students eligible for Cal Grant A or B awards, students who were previously in the foster care program, or students enrolled in certain job training programs; (c) the Affordable Housing Units will be delivered in phases per the Affordable Housing Phasing Program</p>

Topic/Reference	Description of Material Term	Analysis/Comments
	<p>Housing Units with the applicable affordability requirements. Each Affordable Housing Developer must pay the Housing Commission's standard initial set-up fee and occupancy monitoring fee.</p> <p>CSU must provide a quarterly Housing Status Report and other pertinent documents to the City and the Housing Commission to allow effective monitoring of CSU's compliance with the affordable housing production requirements.</p>	<p>(see item 24 below); and (d) CSU, not the City or the Housing Commission, will oversee and administer affordable housing for the Project.</p> <p>Many elements of the Revised Offer and the Housing Proposal are arguably inconsistent with Measure G, which requires CSU's compliance with the City's affordable housing requirements (i.e., the Inclusionary Ordinance). The Declaration of Affordable Housing Restrictions ("Housing Restrictions") memorializes affordable housing terms that are consistent with the Revised Offer and the Housing Proposal where feasible, and consistent with the Inclusionary Ordinance. The Housing Restrictions contain bracketed notes that explain where the Housing Restrictions differ from the Revised Offer and the Housing Proposal in order to achieve consistency with the Inclusionary Ordinance. There is also a potential argument that, notwithstanding the requirement to comply with the City's affordable housing requirements, CSU's proposal to allow certain student housing to be counted toward the required Affordable Housing Units is consistent with Measure G, because Measure G envisions a "campus village" setting. While the OCA recommends requiring compliance with the City's affordable housing requirements based on a plain reading of Measure G, this is a policy issue for the Council's consideration as described in Attachment 4 to the City Attorney Report.</p> <p>The Housing Restrictions allow CSU to meet the Inclusionary Requirement through a mix of rental and for-sale units, but to avoid inconsistency with the Inclusionary Ordinance and related regulations, the Housing Restrictions disallow both the automatic eligibility of certain students for occupancy in Affordable Housing Units and the purchase of Affordable Housing For-Sale Units by households above 100 percent of AMI. <u>The Council is being asked to consider whether to allow CSU to provide a mix of rental and for-sale units to count toward CSU's production of Affordable Housing Units and, if so, whether a "cap" should be established on</u></p>

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		<p><u>the number or percentage of for-sale affordable units relative to rental affordable units. The Council also is being asked to consider whether to accommodate CSU's request to count the housing of certain low-income students generally toward the Inclusionary Requirement despite the likely inconsistency with Measure G and, if so, whether to limit the number of Affordable Housing Units (e.g., 25 percent of them) made available for occupancy to students.</u> To avoid inconsistency with the Inclusionary Ordinance, the Housing Restrictions require the recording of 55-year affordability covenants against the Property and envision the Housing Commission's oversight of CSU's compliance with affordable housing requirements.</p>
<p><b>24. Affordable Housing Phasing Plan</b> Decl. of Affordable Housing Restrictions, §§ 1.3, 1.10-1.21, 1.56, 2.1, 2.2</p> <p>*deal point 13 in Revised Offer; Att. 3 to City Attorney Report</p>	<p>CSU plans to cause the construction of a total of 4,600 Dwelling Units on the Property, including an estimate of 4,140 Market Rate Units and 460 Affordable Housing Units. CSU will follow the Affordable Housing Phasing Plan to meet the onsite 10 percent Inclusionary Requirement. Under this plan, CSU must deliver a minimum number of Affordable Housing Units in relation to total Dwelling Units as follows: (a) at least 100 Affordable Housing Units in Building Phase 1, which includes a first phase of 1,000 Dwelling Units; (b) at least 100 Affordable Housing Units in Building Phase 2, which includes a second phase of 1,000 additional Dwelling Units; (c) at least 100 Affordable Housing Units in Building Phase 3, which includes a third phase of 1,000 additional Dwelling Units; and (d) at least 160 Affordable Housing Units in Building Phase 4, which includes a fourth phase of 1,600 additional Dwelling Units. CSU must cause each Building Phase to be completed by a specified Building</p>	<p>CSU's Housing Proposal contemplates the onsite production of Affordable Housing Units in phases that match the 10 percent Inclusionary Requirement at different construction milestones. The Housing Proposal differs from the industry standard and City requirements, in that: (i) it uses the issuance of a certificate of occupancy for Market Rate Units, rather than the issuance of a building permit, as the trigger for production of Affordable Housing Units, allowing CSU additional time to complete Affordable Housing Units in relation to Market Rate Units; and (ii) it does not achieve the 10 percent Inclusionary Requirement in each Building Phase because it states, for instance, that 100 Affordable Housing Units would be produced in connection with the first 1,000 Market Rate Units (which would result in only 9.1 percent, not 10 percent, of the total Dwelling Units being Affordable Housing Units).</p> <p>The Housing Restrictions include a version of the Affordable Housing Phasing Plan that is generally consistent with CSU's Housing Proposal, except that each Building Phase will achieve the 10 percent Inclusionary Requirement, not 9.1 percent. <u>Also, in response to Councilmember comments during prior public</u></p>

Topic/Reference	Description of Material Term	Analysis/Comments
	<p>Threshold Date. During each Building Phase, CSU must issue a Building Permit for the required minimum number of Affordable Housing Units in such Building Phase, and those Affordable Housing Units must be timely constructed so that a Certificate of Occupancy is issued for them within three years after issuance of the Building Permit. If less than 4,600 total Dwelling Units are constructed, the number of Affordable Housing Units will be reduced to match the 10 percent Inclusionary Requirement.</p>	<p><u>meetings, the Council is being asked to consider whether to (i) require a “floor” on the overall production of a specified number of Affordable Housing Units (such as 400 units) in the Project; and (ii) increase the Inclusionary Requirement to higher than 10 percent (e.g., 15 or 20 percent).</u></p>
<p><b>25. Development Thresholds</b> Decl. of Property Development Restrictions, §§ 2.13, 2.14</p> <p>*deal point 6 in Revised Offer</p>	<p>The Declaration of Property Development Restrictions includes three development thresholds that would apply to the Project and includes a placeholder for a potential fourth development threshold, as follows:</p> <p>(a) CSU must ensure that no construction of vertical improvements (excluding the New Stadium and ancillary facilities) is completed on the Property, or made available for use and occupancy, until after CSU has caused at least 42 acres of active park space and open space adjacent to, and north of, the San Diego River (including the River Park Improvements) to be completed and available for regular public use per the Campus Master Plan Update.</p> <p>(b) CSU agrees that the Occupancy Level of the Project (excluding the New Stadium) shall not exceed 65 percent of the Total Planned EDUs (i.e., the total planned equivalent dwelling units within the Project), unless and until the Fenton</p>	<p>Measure G requires that the sale of the Property provide for the development of certain facilities, but is silent as to development thresholds in the Project. However, the development thresholds in the Declaration of Property Development Restrictions are consistent with Measure G campaign promises, the Revised Offer, or the Council Motion, as follows:</p> <p>(a) The first development threshold, which cannot be exceeded unless CSU completes 42 acres of active park space and open space (including the River Park improvements), is consistent with CSU’s campaign promise related to Measure G.</p> <p>(b) The second development threshold, which cannot be exceeded unless the Fenton Parkway Bridge is constructed and opened for regular use (contingent upon the future completion of CEQA review), is consistent with the Revised Offer.</p> <p>(c) <u>The third development threshold, which cannot be exceeded unless the New Stadium is constructed and open for regular use, is intended to provide a security mechanism and a strong incentive for CSU to satisfy its obligation under Measure G to complete construction of the New Stadium within seven years after the Effective Date of the PSA. The Council is being asked to provide</u></p>



Topic/Reference	Description of Material Term	Analysis/Comments
	<p>Parkway Bridge has been constructed and is open for daily public use.</p> <p>(c) CSU agrees that the Occupancy Level of the Project (excluding the New Stadium) shall not exceed 50 percent of the Total Planned EDUs within the Project, unless and until the New Stadium has been constructed and is open for the holding of Stadium Events on a regular basis.</p> <p>(d) Based on prior input from several Councilmembers, the Council is being asked to consider adding a provision that requires a certain minimum threshold of educational uses to be constructed and operational on the Property, before CSU is permitted to exceed a specified Occupancy Level of the Project (excluding the New Stadium).</p>	<p><u>input whether such a development threshold is appropriate and, if so, whether the threshold level (i.e., a cap at 50 percent of the Total Planned EDUs until CSU first constructs and opens the New Stadium) is appropriate.</u> A development threshold of this nature would be consistent with the Council Motion, which sought to include PSA provisions protective of the City's interests and to ensure CSU's accountability in satisfying Measure G requirements.</p> <p>(d) The fourth development threshold is an open-ended placeholder and requires further definition. During recent public meetings, several Councilmembers have expressed a desire to ensure that the Project includes core academic and research elements supporting CSU's mission and is not predominantly a private development project. Measure G requires that the Project include facilities for educational, research, entrepreneurial, and technology programs within a vibrant mixed-use campus village and research park. CSU made a related campaign promise that the Project would entail a world-class university research and innovation campus. <u>Imposing an overall development threshold on the Project that cannot be exceeded until CSU causes a certain minimum threshold of educational uses to be constructed and operational on the Property would be consistent with the spirit of Measure G and CSU's related campaign promise.</u> The Council is being asked to provide input <u>whether such a development threshold is appropriate and, if so, to specify the parameters of the development threshold.</u> A development threshold of this nature would be consistent with the Council Motion, which sought to include PSA provisions protective of the City's interests and to ensure CSU's accountability in satisfying Measure G requirements.</p>
<p><b>26. Financial Encumbrances</b> PSA, § 11.2</p>	<p>CSU must encumber, and set aside in a designated account, or otherwise establish to the City's reasonable satisfaction that CSU has secured adequate financing, to pay all amounts required</p>	<p>Measure G and the Revised Offer are silent as to CSU encumbering necessary funds to complete the Sale Transaction and the development of the Project. The referenced PSA provision is consistent with the Council Motion, including the Council's</p>

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	<p>under the PSA, including a reasonable estimate of the costs for: (a) the Final Adjusted Purchase Price; (b) the demolition and removal of the Existing Stadium; (c) the design and construction of the New Stadium; (d) the design and construction of the River Park Property improvements in accordance with the River Park and Storm Water BMP Development Agreement; (e) the long-term maintenance and management costs for the improved River Park Property and the Storm Water BMP Areas in accordance with the River Park and Storm Water BMP Maintenance Agreement; and (f) all funds necessary to construct and implement mitigation measures in the Final EIR, including the Final EIR MMRP, and to make all related fair-share payments to the City.</p>	<p>reliance on specific recommendations made by the OCA. Those recommendations included ensuring adequate security for the performance of CSU's obligations. This PSA provision ensures CSU will timely construct the Project and adequately maintain the completed Project in accordance with Measure G and related campaign promises made to local voters.</p>
<p><b>27. Security for Performance</b> PSA, § 11.2; Decl. of Property Development Restrictions, §§ 2, 3; River Park and Storm Water BMP Development Agreement, § 3.1, 3.3, 10.,1, 10.2</p>	<p>The PSA contains various mechanisms that are intended to secure CSU's timely completion of its obligations under the PSA, consistent with Measure G and related campaign promises. Those mechanisms are discussed elsewhere in this Attachment 6 and include, for example, CSU's up-front financial encumbrances for payment of all monetary amounts and construction and maintenance costs contemplated by the PSA and necessary for the Project, CSU's agreement to various provisions in detailed covenants to be recorded against the Property, CSU's agreement to complete certain public improvements before exceeding certain overall development thresholds in the Project, and CSU's obligation to obtain payment and performance bonds for construction of the River Park improvements.</p>	<p>Measure G and the Revised Offer are silent as to CSU's provision of security for timely completion of its obligations under the PSA. However, in the absence of adequate performance security, the City will be unable to ensure that CSU is held accountable to timely fulfill its obligation to construct and maintain the key Project elements in accordance with Measure G and related campaign promises made to local voters. Therefore, if for any reason CSU indicates during PSA negotiations that it cannot satisfy any performance security or related mechanism described in the PSA, the City will need to evaluate the availability and feasibility of alternative performance security. This approach is consistent with the Council Motion, including the Council's reliance on specific recommendations made by the OCA and the IBA.</p>

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<p><b>28. Future City Recreation Center Site</b>  Future Recreation Center Site Agmt., §§ 2, 5</p> <p>*deal point 11 in Revised Offer</p>	<p>The City has the right, throughout a 20-year option period from the Closing Date, to acquire a one-acre designated portion of the Property for the construction and operation of a recreation center. The purchase price for the future recreation center site will be \$1. If the City acquires the site, (a) the City must construct all facilities on the site in compliance with applicable laws and in a manner that minimizes disruption to CSU's development project on the Property, to the maximum extent possible; and (b) the Parties must cooperate reasonably to ensure the reasonable compatibility of the City's recreation center with CSU's development project and to satisfy the City's logical needs relating to the recreation center, as well as regular public access to and from the completed recreation center. Also, if the City elects to acquire the site, CSU must first remove all improvements from the site and raise the footprint of the site to an elevation that would be outside of the 100-year flood level based on post-construction conditions.</p>	<p>Measure G is silent as to the future recreation center site. The Revised Offer states that CSU will reserve the approximately one-acre site for the City's construction and operation of a recreation center, as contemplated by the Mission Valley Community Plan. The referenced PSA provisions are consistent with the Revised Offer and the Council Motion, including the Council's reliance on a specific recommendation made by the OCA. However, those PSA provisions vary from CSU's recent proposal, received after the submittal of the Revised Offer, for a 10-year option period and a long-term ground lease. Those PSA provisions describe the mechanics of the City's potential acquisition of the site and construction and operation of the recreation center in a manner that protects the City's interests.</p>
<p><b>29. Permitting Authority</b>  Decl. of Property Development Restrictions, § 2</p> <p>*deal point 20 in Revised Offer</p>	<p>The Parties acknowledge that CSU, as a sovereign entity of the State of California, generally will have the permit-issuing authority for the Project and will issue all Development Permits and, after a proper building inspection, all Certificates of Occupancy. The City will retain limited permitting authority with respect to elements of the Project involving use of the City's water or sewer system, construction activity within any real property or easement area owned by the City, and subdivision maps.</p>	<p>Measure G is silent as to permit-issuing authority for the Project. The Revised Offer states that CSU will issue all Development Permits for the Project. The referenced PSA provision is consistent with the Revised Offer, subject to clarifying language that the City will have limited permitting authority to the extent necessary to protect the City's interests and comply with applicable laws and regulations.</p>

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<p><b>30. Development Impact Fees</b> Decl. of Property Development Restrictions, §§ 3.1-3.4</p> <p>*deal point 12 in Revised Offer</p>	<p>Development Impact Fees for the Project will apply only to Private Uses and not Governmental Uses. In lieu of the City requiring payment of Development Impact Fees for Private Uses, CSU will construct capital improvements of public benefit in the Project, including the 34-acre River Park Improvements, the 22-plus-acre Additional Park Improvements, and (if future CEQA review is completed) the Fenton Parkway Bridge. The collective value of such capital improvements, defined as the CSU Total Public Facilities Contribution, will be equal to or greater than the projected cumulative amount of Development Impact Fees otherwise payable with respect to Private Uses to be constructed in the Project. If any capital improvements are not timely constructed, the City reserves the right to pursue all available remedies, including a specific remedy under which CSU will pay the City an amount necessary to enable the City to cause future construction and long-term maintenance of the River Park Improvements and the Additional Park Improvements, based on a qualified expert's future cost estimate, or the amount of \$10 million in lieu of CSU's completion of the Fenton Parkway Bridge.</p>	<p>Measure G states that the Sale Transaction will require development of the Project to comply with the City's development impact fee requirements. SDMC § 22.0908(l). The Revised Offer states that CSU, as part of its permit-issuing authority, will collect all development-related fees and, if required by Measure G, disburse the fees to the City. Although City staff is willing to allow CSU to issue Development Permits for the Project, including Private Uses, this circumstance will complicate the City's effort to ensure its collection of Development Impact Fees for Private Uses. As reflected in the referenced PSA provisions, City staff's proposal is that CSU will construct certain public improvements of the nature for which Development Impact Fees normally would be paid and receive a credit against the obligation to pay Development Impact Fees based on the presumed minimum value of those public improvements. City staff's proposal, including its net fiscal effect on CSU, is generally consistent with the Revised Offer. City staff's proposal to provide a credit to CSU for the cost of the completed River Park Improvements is consistent with Measure G, which states that CSU will complete the River Park Improvements at no cost to the City's General Fund. SDMC § 22.0908(i).</p>
<p><b>31. Inclusionary Affordable Housing Fee</b> Decl. of Property Development Restrictions, § 3.5</p>	<p>CSU has elected to cause the construction and operation of Affordable Housing Units on the Property in a quantity that will equal or exceed 10 percent of the total number of residential dwelling units constructed on the Property, and on that basis, to not pay the City's Inclusionary Affordable Housing Fee for the Project.</p>	<p>Measure G states that the Sale Transaction will require development of the Project to comply with the City's affordable housing requirements. SDMC § 22.0908(l). Under the City's Inclusionary Ordinance (Chapter 14, Article 2, Division 13 of the Municipal Code), a developer generally must either produce at least 10 percent of total residential units as Affordable Housing Units or pay the Inclusionary Affordable Housing Fee (also known as the in-</p>

Topic/Reference	Description of Material Term	Analysis/Comments
<p>*deal point 12 in Revised Offer</p>	<p>However, if CSU fails to comply with its obligation to timely cause the production of Affordable Housing Units on the Property in compliance with the Affordable Housing Phasing Plan, then the City may exercise the remedy of collecting from CSU the then-applicable Inclusionary Affordable Housing Fee attributable to the Affordable Housing Units not timely produced on the Property and depositing CSU's payment into the San Diego Affordable Housing Fund.</p>	<p>lieu fee). The Revised Offer states that CSU will produce at least 10 percent of on-site total residential units as Affordable Housing Units. However, the City will need to protect its interests and ensure compliance with Measure G if CSU fails to timely produce the on-site Affordable Housing Units. To achieve this goal, the OCA recommends allowing the City to pursue the remedy of collecting from CSU the then-applicable Inclusionary Affordable Housing Fee attributable to the Affordable Housing Units not timely produced on the Property. If necessary, alternative approaches may be available to achieve this same goal.</p>
<p><b>32. Additional Development Fees</b> Decl. of Property Development Restrictions, § 3.6</p> <p>*deal point 12 in Revised Offer</p>	<p>Before CSU allows any proposed construction activity to occur on the Property, CSU must obtain written confirmation that the City has received payment of the Additional Development Fees, where applicable, relating to the construction activity. The Additional Development Fees include the Regional Transportation Congestion Improvement Program Fee, the City's Housing Impact Fee, the City's Civic Enhancement Fee, and any other new or increased development-related fee generally imposed by the City.</p>	<p>Measure G states that the Sale Transaction will require development of the Project to comply with the City's development impact fee and housing impact fee requirements. SDMC § 22.0908(l). The Revised Offer states that CSU, as part of its permit-issuing authority, will collect all development-related fees and, if required by Measure G, disburse the fees to the City. The referenced PSA provision does not envision CSU's direct collection of the Additional Development Fees, and instead confirms that CSU is not permitted to allow proposed construction activities to occur on the Property until after the City confirms its receipt of payment of the Additional Development Fees.</p>
<p><b>33. Water and Sewer Capacity Fees</b> Decl. of Property Development Restrictions, § 3.7</p>	<p>Before CSU allows any proposed construction activity to occur on the Property that will result in any new or increased use of or connection to the City's water or sewer system, CSU must obtain written confirmation that the City has received payment of the City's Water and Sewer Capacity Fees (e.g., water and sewer connection fees, capacity charges, and other similar charges) associated with the construction activity.</p>	<p>Measure G and the Revised Offer are silent as to the payment of Water and Sewer Capacity Fees. However, the City customarily charges Water and Sewer Capacity Fees relating to any new or increased use of or connection to the City's water or sewer system. City staff strongly supports applying the City's customary approach to the Project. Without applying the City's customary approach, the City would provide significant water and sewer facilities/services to the Project free of charge, which is impermissible.</p>

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<p><b>34. Local Tax Revenue</b> Decl, of Property Development Restrictions, § 4</p> <p>*deal point 18 in Revised Offer</p>	<p>The CSU Entities (i.e., CSU and its affiliated university entities) will not be subject to real property taxes with respect to their fee title ownership of the Property. The County Tax Collector will determine to what extent possessory interest taxes apply to any Private Uses within the Project, and CSU will not structure any Development Contract with any Developer Entity for the purpose of evading payment of possessory interest taxes. CSU must use commercially reasonable efforts to ensure the payment of applicable sales and use taxes with respect to the Project. The City's transient occupancy tax and the City's tourism marketing district assessment will apply to affected uses in the Project (mainly hotels and other lodging facilities), subject to any applicable exemption.</p>	<p>Measure G lists various required elements of the Project and confirms that certain elements, "as applicable," must contribute sales tax, possessory interest tax, and/or transient occupancy tax for the City's benefit. SDMC § 22.0908(c)(5). Also, Measure G states that the Parties must negotiate applicable taxes for development on the Property. <i>Id.</i> § 22.0908(s). The Revised Offer states that CSU and other publicly developed property will be exempt from paying property or possessory interest taxes and that Private Uses within the Project will be required to pay sales tax, possessory interest tax, and/or transient occupancy tax. The referenced PSA provisions are generally consistent with Measure G and the Revised Offer, subject to clarifying language protective of the City's interests.</p> <p><u>The OCA earlier requested policy input as to whether the City wishes to negotiate CSU's payment of in-lieu amounts to fully or partially compensate the City for its anticipated loss of future local tax revenue due to certain public uses in the Project being deemed exempt from payment of taxes. Measure G could be interpreted to mean that CSU's payment of all local taxes is negotiable because Measure G states that local taxes will be paid, "as applicable," and does not expressly mention any tax exemptions. The Council will be asked to provide input regarding CSU's potential payment of in-lieu amounts.</u></p>
<p><b>35. No New City Taxes</b> PSA, § 5.16</p> <p>*deal point 21 in Revised Offer</p>	<p>Nothing in the PSA 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.</p>	<p>Measure G states: "Such sale shall not raise or impose any new or additional taxes on City residents." SDMC § 22.0908(q). The referenced PSA provision is consistent with Measure G.</p>
<p><b>36. Development and Maintenance Costs</b></p>	<p>CSU must cause the Project, consisting of a world-class university research and innovation campus, to be constructed and completed in a good and workmanlike manner, at CSU's sole</p>	<p>Measure G states that CSU will develop the Project, including specified key elements. SDMC § 22.0908(c). Measure G does not require the City to contribute any funds toward the development and maintenance of the Project. The Revised Offer envisions that</p>

Topic/Reference	Description of Material Term	Analysis/Comments
<p>Decl, of Property Development Restrictions, §§ 2.1, 3.1</p> <p>*deal point 21 in Revised Offer</p>	<p>expense (except as otherwise expressly set forth in the PSA and its attachments). CSU also must operate and maintain (or cause the Developer Entities to operate and maintain) the Property, including the Project, in a commercially reasonable manner and in a good condition, and must promptly complete any repairs and replacements as necessary to maintain the good appearance and character of the Property, all at CSU's sole expense.</p>	<p>the City will make certain financial contributions toward construction of the Project, but does not state that CSU generally will be responsible for all development and maintenance costs. The referenced PSA provision confirms that CSU will be responsible for all development and maintenance costs in the Project, except as otherwise set forth in the PSA and its attachments. This PSA provision is consistent with the Council Motion, including the Council's reliance on a specific recommendation made by the OCA.</p>
<p><b>37. City's Prior Consent to Future Plan Amendments</b> PSA, §§ 6.2, 6.5, 6.6, 6.13</p>	<p>If CSU proposes to amend the Campus Master Plan Update at any future date, CSU must obtain the City's written consent to the amendment, which consent will be subject to the City's reasonable discretion.</p>	<p>Measure G and the Revised Offer are silent as to City's pre-approval of any future amendments to CSU's Campus Master Plan Update. However, if CSU is allowed to make unilateral future amendments to the Campus Master Plan Update, then CSU could end up not fulfilling the basic requirements of Measure G and related campaign promises for development of key Project elements on the Property, contrary to the reasonable expectations of the City and local voters. The referenced PSA provision is one mechanism to ensure CSU's continued accountability and transparency in fulfilling the requirements of Measure G and related campaign promises, and is consistent with the Council Motion, in which the Council asked the OCA to prepare the draft PSA to protect the City's interests.</p>
<p><b>38. Cooperation Regarding Site Preparation and Public Facilities</b> PSA, §§ 6.2, 6.5, 6.6, 6.13</p>	<p>The Parties acknowledge the need for close cooperation and coordination in ensuring CSU's timely development of the Project and the availability of adequate public facilities to serve the Project. The City must cooperate reasonably with CSU's implementation of the Project and processing of necessary approvals, permits, and easements in accordance with applicable laws. The City will cooperate with CSU's efforts to ensure adequate water and sewer services for the</p>	<p>Measure G states that the PSA will require the Parties to cooperate to modify or vacate easements or secure lot line adjustments on the Property so that development of the Project is facilitated. SDMC § 22.0908(v). The Revised Offer is silent on the topic of the City's cooperation in facilitating logistics for construction of the Project, but CSU provided a recent PSA draft that included language on that point. The referenced PSA provision incorporates much of CSU's proposed language, but excludes certain language that would compel the City to make stronger promises than may be reasonable or feasible. In general, the Parties will need to cooperate</p>

Topic/Reference	Description of Material Term	Analysis/Comments
	Project and to request SDG&E's removal of a backup electrical source for the Existing Stadium, as long as CSU pays all applicable fees and costs and complies with applicable laws.	extensively with each other to ensure CSU's success in developing the Project and protect their mutual interests with respect to public utilities.
<b>39. Municipal Services</b> PSA, § 6.14	The City will provide water, sewer, fire, and other municipal services with respect to the Property based on the same terms and cost structure available to the general public. CSU's campus police will have primary authority for providing police or security services on the Property. The Parties' respective law enforcement agencies will enter into a to-be-finalized written memorandum of understanding that allocates responsibilities for providing police services on the Property and on areas contiguous to the Property, including the River Park Property.	Measure G and the Revised Offer are silent on the topic of providing water, sewer, fire, police, and other municipal services with respect to the Property, although the provision of such services obviously will be an essential element of the Project. CSU submitted a recent PSA draft that included language regarding municipal services, and the referenced PSA provision incorporates much of CSU's proposed language while clarifying that the City will provide municipal services based on the same terms and cost structure available to the general public. A written MOU already exists between the Parties' law enforcement agencies with respect to the provision of police services on the main SDSU campus and contiguous areas. That MOU can be expanded to encompass the Property and contiguous areas.
<b>40. Parcel Map</b> PSA, §§ 6.7, 6.9, 6.10  *deal point 21 in Revised Offer	The City is processing CSU's ministerial application for the Parcel Map, which will accomplish lot line adjustments establishing the Property, the River Park Property, and the balance of the City's land ownership in the immediate vicinity of the Property as three separate legal parcels and will depict certain public easements and rights-of-way needed in connection with the future operation of the Project. The Parcel Map is expected to incorporate certain public easement and public right-of-way dedications. The Parcel Map may also reflect certain public easement and public right-of-way vacations, if the Council grants future discretionary approval of the vacations. If the Parcel Map application is consistent with the	Measure G states that the PSA will require the Parties to cooperate to modify or vacate easements or secure lot line adjustments on the Property so that development of the Project is facilitated. SDMC § 22.0908(v). The Revised Offer is silent on the topic of the Parcel Map and the related dedication or vacation of public easements and public rights-of-way, but CSU submitted a recent PSA draft that included language on those points. The referenced PSA provisions incorporate much of CSU's proposed language, subject to certain clarifications protective of the City's interests. The Parties have held several meetings regarding the Parcel Map and related logistics, and they will need to continue their coordination on complex mapping and easement issues. Those logistics are much more complicated than in the typical transaction, both because the Sale Transaction involves a large piece of land that will be developed with numerous types of uses and because the Closing may occur before the Parcel Map is approved.



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	intent of the PSA and applicable laws, the City will grant ministerial approval of the Parcel Map application. The recording of the Parcel Map may occur either in connection with the Closing or after the Closing.	
<b>41. Easements</b> PSA, § 6.8; Easement Agreements  *deal point 21 in Revised Offer	The PSA envisions that the Parties will enter into certain Easement Agreements upon the Closing and that the Grant Deed will reserve certain easement rights in the City's favor. The various easement provisions in the PSA have been prepared on an expedited basis in an effort to allow prompt approval of the PSA. The final content of certain easement provisions in the PSA may need to be modified in certain respects before the Closing. The Parties must cooperate with each other in good faith to finalize the content of those easement provisions in accordance with their mutual objectives. The easement provisions in the City's favor are intended to ensure the City's successful operation and maintenance of any public facilities at the Property that will continue in effect after the Closing Date, as well as to ensure ongoing public access through any private streets within the Property so that the public enjoys the benefits of important public assets, such as trolley improvements and River Park improvements.	Measure G states that the PSA will require the Parties to cooperate to modify or vacate easements or secure lot line adjustments on the Property so that development of the Project is facilitated. SDMC § 22.0908(v). The Revised Offer is silent on the topic of easements, but CSU submitted a recent PSA draft and related diagrams that addressed the topic of easements. The referenced PSA provisions incorporate much of CSU's proposed input, subject to certain clarifications protective of the City's interests. As noted above, the Parties will need to continue their coordination to resolve complex easement issues.
<b>42. Groundwater Management</b> Grant Deed; Easement Agmt. for City's Public Facilities During	Upon the Closing, CSU will confirm the City's Pueblo water rights and will grant easements to the City, at no City expense, allowing the City's installation and maintenance of groundwater well and related facilities and the retention of existing monitoring wells. CSU must construct and	Measure G acknowledges the existence of the City's Pueblo water rights. SDMC § 22.0908(u). The Revised Offer states that CSU will acknowledge the City's continued retention of the Pueblo water rights and will grant appropriate easements to the City, at no City expense, allowing the City to install groundwater wells and related facilities and retain two existing monitoring wells. The referenced

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<p>Stage 1, § 2.4; Decl. of Property Development Restrictions, § 2.16</p> <p>*deal point 14 in Revised Offer</p>	<p>maintain the Project in a manner that recognizes and preserves the City's Pueblo water rights, including the City's completion of activities on or under the Property such as: (i) groundwater management; (ii) the use, diversion, and storage of surface water; and (iii) the use and management of the aquifer located beneath the Property. The City retains the right to enter upon and make use of the Property for the purpose of exercising the City's Pueblo water rights and any related activities.</p>	<p>PSA provisions are consistent with Measure G and the Revised Offer, and include clarifying language regarding the City's permitted activities in exercising its Pueblo water rights.</p>
<p><b>43. Wetland Mitigation Plan</b> Decl. of Property Development Restrictions, § 4</p>	<p>CSU must cause the Project to be constructed and maintained in a manner that: (i) satisfies all agreements and regulations concerning the City's Wetland Mitigation Project located adjacent to the San Diego River and immediately south of the Property; (ii) does not cause any damages, losses, or adverse impacts to the Wetland Mitigation Project; and (iii) does not prevent or interfere with the City's ability to complete the Wetland Mitigation Project, including the monitoring and maintenance of sensitive habitat.</p>	<p>Measure G and the Revised Offer are silent regarding the Wetland Mitigation Project. The City has existing obligations with respect to the Wetland Mitigation Project, which the City has installed, and now monitors and maintains, in accordance with a mitigation plan and regulatory authorizations granted by resource agencies, such as the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the California Department of Fish and Wildlife. The referenced PSA provision is intended to ensure that CSU's development of the Project does not adversely impact the Wetland Mitigation Project or place the City in violation of its obligations with respect to the Wetland Mitigation Project. The provision is consistent with the Council Motion, including the Council's reliance on a specific recommendation made by the OCA.</p>
<p><b>44. Removal of Kinder Morgan Wells</b> PSA, § 6.1</p> <p>*deal point 15 in Revised Offer</p>	<p>Until the Closing, the City must use commercially reasonable efforts to cause Kinder Morgan to complete the removal of certain monitoring and extraction wells, vaults, piping, and related facilities from the Property, and Kinder Morgan's abandonment in place of certain existing facilities on the Property, in accordance with the existing right of entry permit between the City and Kinder Morgan. CSU acknowledges</p>	<p>Measure G is silent regarding Kinder Morgan's removal or abandonment of its wells and related facilities, although Kinder Morgan's work will be reasonably required to accommodate CSU's development of the Project. The Revised Offer contemplates the City using reasonable efforts to cause Kinder Morgan's timely removal and closure of its facilities. The referenced PSA provision is consistent with the Revised Offer, subject to City-protective clarifications that Kinder Morgan's work could involve either removal or abandonment in place of its facilities and that the City</p>

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	that the City will not be responsible for completing this work, that the City has limited ability to cause Kinder Morgan's completion of the work, and that Kinder Morgan has postponed the work pending its receipt of the State's determination on the applicability of prevailing wage requirements.	cannot ensure Kinder Morgan's timely completion of the work, particularly because Kinder Morgan has postponed the work pending receipt of the State's prevailing wage determination.
<b>45. Environmental Contamination</b> PSA, § 6.3  *deal point 16 in Revised Offer	The City must tender a written claim to Kinder Morgan under the Kinder Morgan Settlement Agreement, by which the City seeks reimbursement of any remediation costs in connection with the Project arising from Kinder Morgan's historical environmental contamination affecting the Property and the River Park Property. CSU must provide the City with sufficient background information to enable the City to prepare and tender the written claim. If Kinder Morgan approves the written claim and provides reimbursement of any remediation costs, the City must cooperate reasonably with CSU to ensure that CSU receives the financial benefit of Kinder Morgan's reimbursement for any of CSU's actual out-of-pocket expenses. If Kinder Morgan rejects the written claim, the City will have no obligation to further pursue the written claim or to initiate a lawsuit or other proceeding with respect to the written claim. By tendering the written claim, the City shall not incur any expense or liability whatsoever.	Measure G is silent regarding any effort to obtain reimbursement of environmental remediation costs under the Kinder Morgan Settlement Agreement. The Revised Offer states that the City will tender written claims to Kinder Morgan seeking such reimbursement. CSU submitted a recent PSA draft that contained much more extensive provisions regarding this topic, far in excess of the deal point set forth in the Revised Offer and imposing significant exposure on the City for environmental contamination. The referenced PSA provision is generally consistent with the Revised Offer, subject to certain City-protective clarifications, and is consistent with the "as-is" nature of the Sale Transaction.
<b>46. "As-Is" Transaction</b> PSA, §§ 10.3, 10.4	CSU confirms that it has had ample opportunity to complete its due diligence investigation of the Property and is relying upon its own investigation in deciding to purchase the Property. CSU further	Measure G is silent regarding the "as-is" nature of the Sale Transaction. The Revised Offer confirms that CSU will purchase the Property in its as-is condition, with all faults. The referenced PSA provisions are consistent with the Revised Offer and the

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*deal point 16 in Revised Offer	confirms that, upon the Closing, CSU will accept the Property in its “as-is” condition, subject to all faults, waive and release all claims against the City regarding the condition of the Property, and assume all risks regarding the Property. CSU also represents and warrants that it is a sophisticated purchaser and is familiar with acquiring, owning, developing, and operating real property similar to the Property.	Council Motion, including the Council’s reliance on a specific recommendation made by the OCA. Those PSA provisions also are consistent with both the general industry standard for real property transactions and the language typically used in agreements where the City is the seller of real property.
<b>47. Representations and Warranties</b> PSA, §§ 10.2, 10.3	The Parties will give limited factual representations and warranties to each other, confirming that their respective signatures on the PSA are duly authorized and that the signature of the PSA will not cause a default under any other operative agreements and will not violate any court order. Also, as noted above, CSU will represent and warrant that it is a sophisticated purchaser and is familiar with acquiring, owning, developing, and operating real property similar to the Property.	Measure G and the Revised Offer are silent as to either Party’s representations and warranties in the Sale Transaction. CSU submitted a recent PSA draft that contained broad representations and warranties by the City in favor of CSU. Those broad representations and warranties could expose the City to significant risk relating to any post-Closing damages, defects, or losses. By contrast, the PSA contains very limited representations and warranties. The approach in the PSA is fair and reasonable because CSU has undertaken a lengthy due diligence process and, as the primary user of the Existing Stadium, is familiar with the Property’s condition. CSU should be able to reasonably rely upon its own due diligence investigation and familiarity with the Property, and should not need to rely upon the City’s representations and warranties. The OCA strongly recommends that the City not provide any representations or warranties beyond those contained in the draft PSA.
<b>48. Indemnification</b> PSA, § 12.5; Decl. of Property Development Restrictions, § 12  *deal point 16 in Revised Offer	CSU must defend and indemnify the City against all Claims relating to CSU’s acquisition of the Property, including the Property’s condition and any environmental contamination. CSU also must defend and indemnify the City against all Claims relating to CSU’s development and operation of the Project, including construction and	Measure G is silent on the topic of defense and indemnification against Claims that may arise from CSU’s acquisition of the Property and development of the Project. The Revised Offer states that CSU will defend and indemnify the City against all Claims regarding the Property’s condition. The referenced PSA provisions are representative examples of strongly-worded provisions under which CSU is required to defend and indemnify the City against all Claims relating to CSU’s acquisition of the Property and

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	maintenance activities on the Property and the River Park Property.	development of the Project. The referenced PSA provisions are consistent with the Revised Offer and the Council Motion as to defense and indemnification relating to CSU's acquisition of the Property. The provisions also are consistent with the Council Motion as to defense and indemnification relating to CSU's future development of the Project, based on an earlier recommendation made to the Council by the OCA and the IBA. Moreover, the provisions are consistent with both the general industry standard for real property/development transactions and the language typically used in the City's agreements.
<b>49. Prevailing Wages and Worker Protections</b> Decl. of Property Development Restrictions, §§ 2.13, 3.6  *deal point 21 in Revised Offer	CSU must comply with prevailing wage laws with respect to the construction of the New Stadium and all other public improvements in the Project that are located on any real property owned by any governmental entity or that involve the use of any public funds. To the extent allowed under applicable law, (a) CSU must cause all building and construction work in the Project to be performed by contractors and subcontractors licensed by California; and (b) CSU must cause all contractors and subcontractors performing building and construction work in the Project to use good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County. When the New Stadium is constructed and ready to be opened for public use, CSU must use good faith efforts to retain qualified employees then working at the Existing Stadium and enable them to continue working at the New Stadium, to the extent allowed under applicable law.	Measure G sets forth certain requirements related to prevailing wage compliance and worker protections during construction of the Project. SDMC § 22.0908(w). The Revised Offer includes CSU's commitment to comply with all applicable Municipal Code requirements, but does not expressly mention compliance with prevailing wage laws and worker protections. The PSA provisions regarding prevailing wage compliance and worker protections are consistent with Measure G and the Council Motion, including the Council's reliance on a specific recommendation made by the OCA.
<b>50. Potential Legal Challenge</b>	CSU assumes all risk of delays or damages that may result from a third party's initiation of any	Measure G is silent as to defense and indemnification against any legal challenges to the PSA or any related environmental planning

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<p>PSA, §§ 1.81, 1.82, 7</p> <p>*deal point 19 in Revised Offer</p>	<p>New Lawsuit (defined broadly to include any legal challenges to the approval of the Final EIR, the Campus Master Plan Update, the PSA, and any related actions). If a New Lawsuit is initiated before the Closing, then at any time before the Closing, CSU may cancel the Escrow and terminate the PSA. If a New Lawsuit adverse to the City is initiated, then CSU must defend and indemnify the City and related entities from and against all Claims related to or comprising the New Lawsuit. If a New Lawsuit is initiated in which CSU is named as the defendant, then the City must reasonably cooperate with CSU's defense of such New Lawsuit; provided, however, that the City will not be required to incur any related out-of-pocket expenses.</p>	<p>approvals. The Revised Offer states that CSU will defend and indemnify the City against all legal challenges with respect to approval of the Final EIR, the Campus Master Plan Update, and the PSA. The referenced PSA provisions regarding a New Lawsuit are consistent with the Revised Offer.</p>
<p><b>51. Recovery of Attorneys' Fees and Court Costs</b></p> <p>PSA, §§ 1.75, 16.10</p>	<p>If either Party commences any action or proceeding seeking to interpret, enforce, reform, or rescind the PSA, the prevailing Party (as determined by the court or arbiter in a final decision) will be entitled to receive payment of its Legal Costs from the other Party, subject to a cumulative Legal Costs Cap of \$500,000 (except with respect to the recovery of Legal Costs for any indemnified Claim).</p>	<p>Measure G and the Revised Offer are silent as to the potential recovery of attorneys' fees and court costs by a prevailing party in the event of a dispute. Nonetheless, the inclusion of a reciprocal attorneys' fees provision is fairly common in real property and development transactions. A reciprocal attorneys' fees provision is included in the PSA, but the maximum cumulative recovery of Legal Costs by any Party in any future lawsuits is subject to the Legal Costs Cap of \$500,000. The Legal Costs Cap may be the subject of future negotiations between the Parties. A reciprocal attorneys' fees provision is helpful in creating a disincentive to the filing of meritless lawsuits and encouraging the amicable resolution of any disputes. However, an attorneys' fees provision with no monetary cap would tend to favor CSU because CSU is committing significant resources toward the completion of the Project, including hiring various attorneys and consultants, whereas the City generally has handled the Sale Transaction "in-house" through the OCA and City staff up to this point, with much less involvement</p>

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		from outside consultants and attorneys. The inclusion of the Legal Costs Cap neutralizes this imbalance and prevents the recovery of a massive or unreasonable award of attorneys' fees in future lawsuits.