


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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: November 19, 2019

TO: Kris Michell, Chief Operating Officer

FROM: Mara W. Elliott, City Attorney 

SUBJECT: San Diego State University's Offer of October 28, 2019, to purchase the SDCCU Stadium Site in Mission Valley

Consistent with direction received from the City Council (Council) at yesterday's hearing, my Office has begun to draft the Purchase and Sale Agreement (PSA) for purposes of selling the SDCCU stadium site in Mission Valley (Property) to San Diego State University (SDSU). The Council accepted all the recommendations made by my Office and the Independent Budget Analyst in Worksheet A to City Att'y Report 2019-8 (Nov. 15, 2019), and provided some input on the deal points described in Worksheet B to that same report.

We must have policy direction and factual input from City management and staff on various open issues and undefined deal points identified in Worksheets A and B to expeditiously draft the PSA. As to Worksheet A, we assume the Council's approved motion signifies the Council's intent to adopt the approach that best protects the City's interests. However, we will need City staff to provide factual input on various items in Worksheet A, including items 8, 9(a), 10(a), 10(c), 13, 14(b), and Attachment 2, City Att'y Report 2019-7 (Nov. 13, 2019) (RC-2019-7), items (e), (j), (k), (l), and (m). For any easements to be retained by the City on or under the Property, we will need City staff to provide a narrative description stating the easement's purpose, a graphic depiction of the easement area, and a metes-and-bounds legal description of the easement area. If the City wishes to accommodate SDSU's request to privatize the sewer system within the Property, the parties will need to discuss more specifics, and my Office will need to evaluate and try to help minimize associated risks to the City. As we noted in Attachment 2 to RC-2019-7, accommodating SDSU's request to privatize the sewer system would be unprecedented and could significantly delay completion of the PSA.

As to Worksheet B, we will need City management or staff to provide a definitive response to each question so that we have adequate policy direction on how to proceed with drafting many of the provisions in the PSA. We cannot draft those provisions in a vacuum.

Kris Michell, Chief Operating Officer

November 19, 2019

Page 2

Providing the policy direction and factual input requested above is consistent with the Mayor's executive authority, as set forth in sections 260 and 265 of the San Diego Charter, to negotiate contracts on behalf of the City, including leases, sales of land, and development agreements. It is also consistent with Measure G, which states that nothing within San Diego Municipal Code section 22.0908 is intended to abrogate the Mayor's administrative and executive authority, particularly with regard to engaging in good faith contract negotiations, including purchase and sale agreements for the City. *See* SDMC § 22.0908(z).

My Office cannot prepare a useful draft of the PSA without appropriate input from City management and staff. If this input is not timely provided, the timeline for completion of the PSA will be severely impacted, to the detriment of both parties. Given the parties' interest in bringing a PSA to the Council for review in January 2020, we will need written policy direction and factual input from responsible mayoral departments as to the above-specified items in Worksheet A and each deal point in Worksheet B no later than **Monday, November 25**. If certain requested information cannot feasibly be provided by November 25, we recommend providing the information on a rolling basis at the earliest practical opportunity after November 25, although that approach will impact the timeline for completion of the PSA.

We recognize that your staff will be routing the OnBase item to docket the December 16, 2019, update to Council by Tuesday, December 3, 2019. Our Office does not expect to have documents ready to supplement the item before the Council meets on December 16, 2019. We will notify you if that changes. We look forward to your timely cooperation.

MWE:cm

MS-2019-25

Doc. #2229900

cc: Honorable Members of the City Council
Andrea Tevlin, Independent Budget Analyst