

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: January 9, 2020

TO: Honorable Members of the City Council

FROM: City Attorney Mara W. Elliott

SUBJECT: City of San Diego's Response to San Diego State University's Offer to Purchase the SDCCU Stadium Site in Mission Valley

On October 28, 2019, San Diego State University (SDSU) submitted a revised offer to purchase the City of San Diego's (City) real property located at 9449 Friars Road in Mission Valley, commonly referred to as the SDCCU stadium site (Property). To assist in understanding the pertinent issues associated with the Property's sale, my Office prepared a detailed report and two worksheets for use at the November 18, 2019, City Council meeting. Worksheet A summarized recommendations by my Office and the Independent Budget Analyst regarding deal points that must be addressed in the purchase and sale agreement and related agreements and documents (PSA) to ensure consistency with Measure G and protect the City's interests. Worksheet B contained questions related to specific deal points that required the City Council's direction and input so that we could draft the PSA in a manner that the City Council would deem fair, equitable, and in the public interest, a standard required by Measure G.

We received limited direction at the November 18 City Council meeting. Specifically, the City Council asked our Office to prepare a PSA that:

- includes the deal points set forth in SDSU's offer;
- addresses input received from our Office and the IBA;
- includes provisions that protect the City's interests;
- reflects an outside closing date of December 31, 2020; and
- includes additional policy or factual input provided by City management.

Three of our most experienced real estate attorneys, with the assistance of other attorneys with specialized skill sets, have been working late nights, weekends, and throughout the holiday recess to complete an initial draft of the PSA. Their work has included numerous lengthy meetings and phone calls with City and SDSU staff regarding various PSA-related topics.

As promised during the November 18 City Council meeting, my team provided City staff with a substantially complete draft of the PSA by Friday, December 20, 2019. The attached chart describes the PSA documents my Office has prepared and transmitted to City staff. City staff have since been diligently reviewing the draft PSA and providing key operational and policy input and information for inclusion in the draft. I am pleased to report that we've made significant progress and are on track to present a substantially final draft of the PSA to the City Council at its regularly scheduled meeting on January 27, 2020. Our goal is to provide SDSU's negotiating team with a comprehensive draft PSA by January 21, 2020.

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Important policy and operational issues were left unresolved at prior City Council meetings including, for instance, questions concerning the proposed Fenton Parkway Bridge and affordable housing requirements. The PSA you will review later this month represents the terms and conditions my Office and City staff believe reflect the direction received thus far from the City Council, honors the terms of Measure G, and protects the City's interests. As this is the City's largest, most complex land use transaction in decades, it is imperative that you read the PSA in its entirety, ask the questions you need resolved, and provide additional input and direction as you see fit. Ultimately, the City Council must determine whether the proposed sale, as memorialized in the negotiated PSA, complies with Measure G's requirements and is "at such price and upon such terms as the Council shall deem to be fair and equitable and in the public interest." San Diego Municipal Code § 22.0908(a).

We will be asking the City Council at its meeting on January 27 to approve a motion that: (i) directs our Office to amend the draft PSA based on policy input provided by the City Council; (ii) authorizes City staff to present the draft PSA, including any changes made by our Office at the City Council's direction, to SDSU for its review and response; and (iii) authorizes the City's negotiating team to negotiate with SDSU regarding any SDSU-requested changes to the PSA before the Mayor submits a final PSA to the City Council for final approval.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Mara W. Elliott

Mara W. Elliott
City Attorney

MWE:cw

MS-2020-1

Doc. No.: 2283134

Attachment

cc: Honorable Mayor Kevin Faulconer

Chief Operating Officer Kris Michell

Independent Budget Analyst Andrea Tevlin

Transmittal of Draft PSA Documents to City Staff

Attachment Number	Short Title of PSA Document	Initial Draft Transmittal	Comments
n/a	Fenton Parkway Bridge MOU	12/17/19	Addresses the respective obligations of the Parties relating to CEQA review, design, permitting, and construction of the proposed Fenton Parkway extension.
n/a	Main body of PSA	12/20/19	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	Included in PSA.	Confirms that Chicago Title agrees to act as independent escrow agent for the transaction.
2A	Legal Description of the Real Property	Consultant's draft is prepared.	Technical exhibit.
2B	Depiction of the Real Property	Consultant's draft is prepared.	Technical exhibit.
3A	Legal Description of the Murphy Canyon Creek Parcel	Consultant's draft is prepared.	Technical exhibit.
3B	Depiction of the Murphy Canyon Creek Parcel	Consultant's draft is prepared.	Technical exhibit.
4A	Legal Description of the River Park Property	Consultant's draft is prepared.	Technical exhibit.
4B	Depiction of the River Park Property	Consultant's draft is prepared.	Technical exhibit.
5A	Legal Description of the Future Recreation Center Site	Consultant's draft is pending.	Technical exhibit.
5B	Depiction of the Future Recreation Center Site	Consultant's draft is prepared.	Technical exhibit.
6	Project Site Plan	Consultant's draft is prepared.	Depicts the main development components of CSU's Project.

7	Preliminary Title Report for the Real Property	Chicago Title has prepared report.	Shows title exceptions relating to the Property.
8	Closing Documents List	12/24/19	Identifies all documents that will be signed and delivered into the Escrow in advance of the Closing.
9	Recordable Closing Documents List	12/24/19	Identifies all Closing documents that will be recorded in the local property records upon the Closing.
10	Depiction of Well Removal and Abandonment Work	Parties will need to discuss.	Technical exhibit.
11	Depiction of Existing Easements for Proposed Vacation	CSU's consultant PDC has prepared proposed exhibit.	Technical exhibit.
12	Depiction of Existing Rights-of-Way for Proposed Vacation	CSU's consultant PDC has prepared proposed exhibit.	Technical exhibit.
13	Depiction of Proposed Easement and Right-of-Way Dedications	CSU's consultant PDC has prepared proposed exhibit.	Technical exhibit.
14	CSU Financing Plan	CSU has provided limited info and will supplement later.	Identifies details of CSU's plan for financing the acquisition of the Property and the development of the Project.
15	CSU New Lease Summary	12/27/19	Summarizes the material terms of the new lease that 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	12/27/19	Identifies operative leases affecting the Property.
16B	Rent Roll	12/30/19	Identifies rent payment and security deposit info under operative leases affecting the Property.
17	Schedule of Service Contracts	12/27/19	Identifies operative service contracts affecting the Property.

18	Schedule of Licenses and Permits	Awaiting City staff's input re any relevant info	Identifies operative licenses and permits affecting the Property.
19	Grant Deed	12/31/19	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	12/24/19	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	12/20/19	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	12/23/19	Memorializes CSU's obligation to cause at least 10% 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	12/20/19	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	12/20/19	Sets aside a one-acre portion of the Property 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	12/17/19	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	12/20/19	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.

27	River Park and Storm Water BMP Maintenance Agreement	12/20/19	Memorializes CSU's long-term obligation to maintain the River Park improvements and the Storm Water BMP areas after they are constructed.
28	Easement Agreement for River Park Construction and Maintenance	12/20/19	Provides CSU with physical access on the City-owned River Park Property necessary to construct the River Park.
29	Additional Park Maintenance Agreement	1/2/20	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	12/31/19	Provides the City with easement rights to operate existing public facilities through the Property, at least until the Parcel Map depicting necessary easements is approved and recorded.
31	Easement Agreement for CSU's Utilities within River Park Property	12/31/19	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	12/31/19	Provides the City with easement rights to operate public facilities through the Property after CSU has completed certain post-Closing improvements on the Property.