

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: May 1, 2020

TO: Honorable Members of the City Council

FROM: City Attorney Mara W. Elliott

SUBJECT: Status Update Regarding Negotiations Related to the Purchase of the SDCCU Stadium Site in Mission Valley by San Diego State University

On November 18, 2019, the City Council directed my Office to prepare an agreement for the sale of the SDCCU Stadium Site in Mission Valley to San Diego State University (SDSU) that complies with Measure G and voter expectations while protecting our City's taxpayers and utility ratepayers from risks and liabilities. We did just that when we delivered a near-final purchase and sale agreement (PSA) to SDSU on January 28, 2020.¹ The City's team has since spent months at the negotiating table attempting to resolve critical business and policy issues with the goal of closing escrow as expeditiously as possible. This memorandum provides a brief update regarding the status of ongoing negotiations.

BACKGROUND

After the November 18 Council meeting, my Office prepared a full draft of the PSA and its attachments (collectively, the Transaction Documents), reflecting substantial input from City staff. The City's team shared the draft with SDSU's negotiating team prior to the January 27, 2020 Council meeting.

On January 27, the City's team presented the Transaction Documents to the Council and received essential policy direction, which we immediately integrated into the Transaction Documents. At that same meeting, SDSU officials pledged to provide proposed revisions to the City within two weeks from the date the City transmitted the revised Transaction Documents to SDSU. My Office transmitted the revised Transaction Documents to SDSU on January 28. On February 11, SDSU provided the City with a heavily-redlined PSA, but did not provide revisions to any of the 30-plus PSA attachments as promised.² This has significantly slowed progress.

STATUS UPDATE

The parties have continued to meet multiple times each week since the January Council meeting, and have made significant progress on important business and policy issues. Nevertheless, key

¹ Under San Diego Municipal Code section 22.0908(a), the proposed sale must be "at such price and upon such terms as the Council shall deem to be fair and equitable and in the public interest."

² The PSA, which is the master document, is about 50 pages in length. The attachments to the PSA are about 450 pages in length and contain contractual provisions integral to the successful completion of the transaction.

issues remain unresolved, which will be explained in the staff report and related materials for the May 19 Council meeting.

During a phone call on April 27 with SDSU President Adela de la Torre and Jack McGrory, President de la Torre advised me that SDSU would transmit the red-lined Transaction Documents, which she characterized as “final,” to the City no later than April 28. She said that CSU Chancellor Tim White had already signed off on the red-lined documents, and that any substantive changes made by the City would be rejected. She also stated that she expected the deal to be finalized by May 1 even as I pointed out that the City’s negotiating and legal teams had not seen a substantial portion of SDSU’s proposed revisions.

On the evening of April 28, the City’s negotiating and legal teams received eight separate emails from SDSU Vice President Gina Jacobs with red-lined Transaction Documents attached. To provide appropriate context for the Council, we are attaching to this memorandum SDSU’s proposed final version of the PSA master document, transmitted on April 28, in “red-lined” format, showing the thousands of new revisions SDSU has proposed making to the City’s January 28 draft. Our initial review reveals that many of SDSU’s proposed revisions do not reflect the agreed-upon outcome of negotiations, and therefore do not adequately protect the City’s interests.

Additionally, SDSU’s April 28 transmittal included several attachments to the PSA revealing SDSU’s revisions for the first time, despite SDSU’s earlier promise to provide its revisions to the documents two weeks after the January 27 Council meeting. These attachments are extremely important to the City, as they pertain to the location, operation, and maintenance of current and future planned public facilities serving the Site and its adjacent areas, including planned Pure Water Program facilities and the City-owned River Park Property. The attachments also address affordable housing requirements and the respective roles of the parties in issuing permits and reviewing and approving grading and construction plans for SDSU’s project. The agreement between the parties must address all of these issues to avoid disputes and liability in the future, and to enable the City to remain in compliance with applicable water and sewer bond covenants.

The City’s negotiating and legal teams, including outside counsel Kane, Ballmer & Berkman, are reviewing SDSU’s recent submission of red-lined documents and assembling a list of key remaining issues for the Council’s consideration on May 19.³ To the extent permissible under compressed time constraints (as May 5 is the docket deadline for the May 19 meeting), the City’s legal team is preparing an updated version of the PSA that includes proposed revisions acceptable to the City. A deal of this magnitude requires perfect synchronicity between the agreement and its attachments, which is a painstaking and time-consuming process for the City staff and attorneys involved. It is unfortunate that SDSU orchestrated a “document dump” of hundreds of pages of complex contractual provisions upon the City at the very last minute, especially given that the City’s negotiating team repeatedly asked SDSU over the course of several weeks to submit proposed revisions to individual PSA documents as soon as available.

³ This list will not be exhaustive in nature, in part due to the limited available time to complete the list before the May 5 docket deadline. The list will focus on the most critical remaining policy issues, not every remaining issue or pending disagreement regarding the precise wording of contractual provisions.

Honorable Members of the City Council

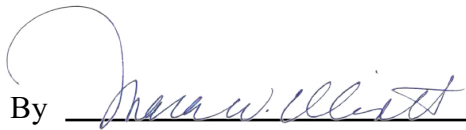
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This strategy does not serve the City or SDSU well, and only prolongs a negotiation we'd all like to conclude.

As with any complex transaction, the devil is in the details. My Office will continue to follow the Council's direction by presenting Transaction Documents that protect City taxpayers and utility ratepayers against hidden costs and financial risks that could come back to haunt the City.

MARA W. ELLIOTT, CITY ATTORNEY

By  _____

MWE:KJR:sne:ccm

MS-2020-11

Doc. No.: 2377646

Attachment

cc: Honorable Mayor Kevin Faulconer

Kris Michell, Chief Operating Officer

Andrea Tevlin, Independent Budget Analyst

~~1-28-20 DRAFT AGREEMENT**~~**

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

by and between

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

as Seller,

and

**the Board of Trustees of the California State University,
the State of California acting in its higher education capacity,**

on behalf of San Diego State University,

as Buyer

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List of Attachments to this Purchase and Sale Agreement

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- 2-A Legal Description of the Real Property
- 2-B Depiction of the Real Property-
- 3-A Legal Description of the Murphy Canyon Creek Parcel
- 3-B Depiction of the Murphy Canyon Creek Parcel-
- 4-A Legal Description of the River Park Property
- 4-B Depiction of the River Park Property
- ~~5-A Legal Description of the Future Recreation Center Site~~
- ~~5-B~~
- 5 Depiction of the Future Recreation Center Site
- 6 Project Site Plan
- 7 Preliminary Title Report for the Real Property-
- 8 Closing Documents List
- 9 Recordable Closing Documents List-
- 10 Depiction of Well Removal and Abandonment Work-
- 11 Depiction of Existing Easements for Proposed Vacation
- 12 Depiction of Existing Rights-of-Way for Proposed Vacation
- 13 Depiction of Proposed Public Easement and Right-of-Way Dedications-
- 14 CSU Financing Plan-
- 15 CSU New Lease Summary-
- 16-A Schedule of Leases
- 16-B Rent Roll
- 17 Schedule of Service Contracts-
- 18 Schedule of Licenses and Permits
- 19 Grant Deed
- 20 Bill of Sale and Assignment and Assumption Agreement
- 21 Declaration of Property Development Restrictions and Permitting
- 22 Declaration of Affordable Housing Restrictions
- ~~23 Permitting and Development Fee Agreement~~
- 23 Additional Public Benefits
- 24 Future Recreation Center Site Agreement
- ~~25 Second Amendment to CSU Existing Occupancy Agreement~~
- 25 Depiction of Monitoring Wells

26	River Park and Storm Water BMP Development Agreement-
27	River Park and Storm Water BMP Maintenance Agreement-
28	Easement Agreement for River Park Construction and Maintenance-
29	Additional Park Maintenance Agreement-
<u>29</u>	<u>Measure G</u>
30	Easement Agreement for City's Public Facilities During Stage 1
31	Easement Agreement for CSU's Utilities within River Park Property
32	Easement Agreement for City's Public Facilities During Stage 2
<u>33</u>	<u>Depiction of Wetlands Mitigation Project Site</u>
<u>34</u>	<u>Depiction of Proposed CSU Easements within River Park Property</u>

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

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

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

RECITALS

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

~~A. A.~~ The City’s voters approved a citizens’ initiative measure, commonly known as Measure G, on November 6, 2018. ~~Measure G is codified in San Diego Municipal Code section 22.0908 and sets forth certain terms that must be included in a purchase and sale agreement, or associated agreements, related to 2018, governing~~ the City’s sale to CSU of certain real property referred to therein as the “Existing Stadium Site” (defined as the “CSU Property” in Section 1). The CSU Property consists of that certain City-owned real property, which includes both the real property commonly known as the San Diego County Credit Union stadium site in Mission Valley and the contiguous real property commonly known as the Murphy Canyon Creek Channel, as well as related improvements and appurtenances ~~(collectively defined as the “Property” in Section 1).~~ ~~If CSU acquires the Property, CSU is required under Measure G and related campaign promises to undertake certain activities and construct, operate, and maintain various improvements of local and regional public benefit on or about the Property.~~

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

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

D. California Education Code section 66606 vests CSU with “full power and responsibility in the construction and development of any state university campus, and any

buildings or other facilities or improvements connected with the California State University.” Section 22.0908(x)(12) states “Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University.” CSU is the State of California acting in its higher education capacity, and is generally exempt from local and regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations, when its development, construction, facilities, and uses are in furtherance of its governmental purpose, unless applicable Law specifically says otherwise. The CSU is only required to comply with such provision of Law as may be applicable to the CSU with respect to the subject matter of this Agreement. Without waiver of CSU’s standing and legal authority as a state agency, and to enable the City to ensure that the sale complies with the Section 22.0908 Conditions, and fulfills the intent and purposes outlined in Measure G, CSU agrees to be bound by the terms and conditions set forth in this Agreement and the Attachments.

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

F. In light of the circumstances stated in Recitals A through E above, the Parties have negotiated, and desire to enter into and be bound by, this Agreement and the Attachments pursuant to which CSU agrees, strictly as a matter of contract, to develop and operate the CSU Property subject to terms and conditions in this Agreement and the Attachments, and in a manner satisfying the City’s concern that the sale must comply with the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. By agreeing to and entering into this Agreement and the Attachments, CSU is not waiving its standing and legal authority as a state agency, though it agrees, due to the unique circumstances at hand, to be contractually bound by the terms of such agreements and documents. The Parties negotiated the terms of this Agreement and the Attachments in response to the local voters’ approval of Measure G and intend all such agreements and documents to be consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G. A true and correct copy of Measure G is attached as Attachment 29 hereto.

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

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

~~B-I~~ This Agreement memorializes the terms and conditions on which: (i) the City agrees to sell to CSU, and CSU agrees to purchase from the City, the CSU Property; and (ii) CSU agrees to ~~fulfill its various commitments to the City's voters in accordance with Measure G and related campaign promises, use and develop the CSU Property in accordance with the terms of this Agreement, the Campus Master Plan, the Final EIR, applicable Law, the Section 22.0908 Conditions, and the Additional Public Benefits.~~ Section 5 of this Agreement summarizes how this Agreement meets the various requirements of ~~Measure G and related campaign promises.~~ the Section 22.0908 Conditions and satisfies the Additional Public Benefits.

TERMS AND CONDITIONS

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

1. **DEFINED TERMS AND SECTION REFERENCES.**

All defined terms in this Agreement are denoted by initial capital letters. Each defined term shall have the meaning identified in this Section 1 for purposes of this Agreement ~~and each attachment to this Agreement (unless the applicable attachment otherwise defines the term).~~ All ~~section~~Section references in this Agreement are to particular sections of this Agreement, unless otherwise expressly stated.

1.1 ~~Additional Earnest Money Deposit. CSU's additional deposit in the amount of \$450,000 (Four Hundred Fifty Thousand Dollars) into the Escrow in accordance with Section 2.6, and once deposited, shall include interest (if any) accrued on such amount.~~ADA Settlement Agreement. The Settlement Agreement and Mutual Release dated February 12, 2001, as amended by the First Amendment thereto dated September 2, 2005, in the matter of Beverly Walker, et al. v. City of San Diego, et al., U.S. District Court Case No. 97-cv-1547 BTM (LSP), relating to alleged violations of the Americans with Disabilities Act with respect to the operation and maintenance of the Existing Stadium.

1.2 ~~Additional Park Maintenance Agreement. The Agreement Regarding Maintenance and Management of Additional Park Areas and Active Recreation Space, to be recorded in the Official Records in Senior Lien Priority against the Real Property upon the Closing, in substantially the form of Attachment 29 to this Agreement.~~Additional Public Benefits. The public benefits and Project elements identified in Attachment 23 to this Agreement, which CSU will provide pursuant to this Agreement (including the Attachments) as part of CSU's development and operation of the Project in response to concerns raised by environmental interest groups and the local community, above and beyond those benefits and components specifically described in Measure G, including the Section 22.0908 Conditions.

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

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

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

1.6 Attachments. Attachments 1 through 34 attached to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.7 ~~1.6~~ Base Purchase Price. The amount of \$86,200,000 (Eighty-Six Million Two Hundred Thousand Dollars).

1.8 ~~1.7~~ Bill of Sale and Assignment and Assumption Agreement. The Bill of Sale and Assignment and Assumption Agreement, in substantially the form of Attachment 20 to this Agreement, by which, upon the Closing, the City will sell and assign to CSU, and CSU will purchase and assume, the Tangible Personal Property, the Intangible Personal Property, the Leases, and the Licenses and Permits; and at CSU's election in accordance with Section ~~4.2, 4.2,~~ the Service Contracts.

1.9 ~~1.8~~ BMP Areas. The storm water Best Management Practices areas, to be constructed and maintained on a portion of the River Park Property comprising a cumulative total of approximately 2.5 acres, in accordance with the River Park and Storm Water BMP Development Agreement, ~~and to be maintained in accordance with the River Park and Storm Water BMP Maintenance Agreement.~~

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

1.11 ~~1.9~~ Business Day. A day other than Saturday, Sunday, or any day on which (i) federally-insured banks are closed, ~~or~~ (ii) the County Recorder is closed, or (iii) the administrative offices of either the City or CSU are closed.

1.12 ~~1.10~~ Campus Master Plan-Update. The San Diego State University Mission Valley Campus Master Plan, approved by the CSU Board of Trustees ~~as an update to the San Diego State University Campus Master Plan on _____, on January 29, 2020.~~

1.13 ~~1.11~~ CEQA. Collectively, the California Environmental Quality Act, set forth at California Public Resources Code section 21000 *et seq.*, and the related CEQA Guidelines, set forth at California Code of Regulations, title 14, section 15000 *et seq.*

1.14 ~~1.12~~ City. Defined in the preamble of this Agreement.

1.15 ~~1.13~~ City Approval Actions. Collectively, the following actions of the City Council: (i) adoption of any ordinances or resolutions, or both, approving this Agreement and any related authorizations ~~and implementing actions with respect to approval of this Agreement~~; and (ii) adoption of a resolution making findings with respect to the Final EIR as a responsible agency in accordance with CEQA.

1.16 ~~1.14 City Council. The City Council of the City of San Diego.~~ City Council. The City Council of the City of San Diego.

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

1.18 ~~1.15~~ City Indemnified Parties. Collectively, the City and its ~~elected~~ officials, employees, agents, officers, attorneys, and representatives.

1.19 ~~1.16~~ City Public Improvement Plans. The plans that will be prepared to depict ~~public street improvements and public~~ City utility improvements to be permitted by the City ~~and~~, then constructed by CSU or any Developer ~~Entities~~ Entity on the CSU Property in connection with the Project, and then owned and operated by the City following the completion of construction, as described in Section ~~6.11~~ 6.10.

1.20 ~~1.17~~ Claim. Any claim, loss, cost, damage, expense, liability, lien, legal proceeding, enforcement action, administrative action or proceeding, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, notice of violation, fine, or penalty of any kind (including ~~consultant and~~ reasonable expert fees and expenses and ~~investigation costs of whatever kind or nature and~~, if the Party ~~providing is in Default regarding its obligations to provide~~ indemnification by improperly ~~fails~~ failing to provide a defense for any indemnified Person after expiration of the notice and cure periods described in Section 12.1(b), then Legal Costs of each such indemnified Person), and all financial or performance obligations arising from any judgment, decree, order, or other written decision issued by any governmental representative or entity.

1.21 ~~1.18~~ Cleanup and Abatement Order. Collectively, Cleanup and Abatement Order No. 92-01, dated January 3, 1992 (revised by errata sheet dated April 6, 1992), issued by the California Regional Water Quality Control Board, San Diego Region, with respect to the

Mission Valley Terminal, and all related addenda issued before or after the Effective Date of this Agreement, including Addendum No. 1 dated May 9, 1994, Addendum No. 2 dated August 27, 1999, Addendum No. 3 dated February 19, 2002, Addendum No. 4 dated March 20, 2002, Addendum No. 5 dated April 13, 2005, Addendum No. 6 dated January 19, 2010, Addendum No. 7 dated December 20, 2011, and Addendum No. 8 dated July 15, 2016.

1.22 ~~1.19~~ Closing. The recording of the Grant Deed, together with other applicable Recordable Closing Documents, in the Official Records.

1.23 ~~1.20~~ Closing Date. The date on which the Closing occurs, ~~which shall be no later than the Outside Closing Date~~.

1.24 ~~1.21~~ Closing Document Deliverables. The documents identified in the Closing Documents List.

1.25 ~~1.22~~ Closing Documents List. The ~~List~~list of Closing Documents included as Attachment 8 to this Agreement, including all documents to be signed by the applicable Party, and acknowledged by a notary public (where applicable with respect to documents to be recorded in the Official Records), in connection with the Closing.

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

1.27 ~~1.23~~ County Recorder. The Office of the San Diego County Recorder.

1.28 ~~1.24~~ CSU. Defined in the preamble of this Agreement.

1.29 ~~1.25~~ CSU Approval Actions. Collectively, the following actions of the CSU Board of Trustees: (i) ~~approval of this Agreement; (ii) approval of the Campus Master Plan Update; and (iii) certification of the Final EIR in accordance with CEQA; (ii) approval of the Campus Master Plan; and (iii) approval of this Agreement and authorization to enter into this Agreement (including Attachments).~~

1.30 ~~1.26~~ CSU Board of Trustees. The Board of Trustees of the California State University.

1.31 ~~1.27~~ CSU Debt Instruments. ~~Any instruments to be recorded in the Official Records against the Real Property to memorialize, or secure the repayment of, any loans, bond financing, or other indebtedness incurred by CSU.~~ CSU Property Development Plans. Plans prepared by or on behalf of CSU depicting planned grading and initial site improvements within a City owned sewer or water line easement that affects the CSU Property or the River Park Property.

1.32 ~~1.28~~ CSU Entry Permit. The Short-Term Right-of-Entry ~~Permit~~Permits between the Parties, dated as of January 24, ~~2019~~2019 and as of March __, 2020, by which the City

provided to CSU the right of access to the CSU Property and the River Park Property for purposes of performing studies, tests, and inspections of the CSU Property and the River Park Property.

1.33 ~~1.29~~ CSU Existing Occupancy Agreement. The Agreement for Use and Occupancy of Qualcomm Stadium between the Parties, dated August 5, 2009, as amended August 6, 2018, by which the City previously granted to CSU the right to use and occupy the Existing Stadium on specified terms and conditions through December 31, ~~2020~~, 2020, together with any and all amendments, modifications, supplements, and/or extensions thereof.

~~1.34~~ ~~1.30~~ ~~CSU Financing Plan. The narrative description in Attachment 14 to this Agreement, identifying the reasonably estimated cost of CSU's financial obligations under this Agreement and the pertinent agreements and other documents attached to this Agreement, as well as CSU's source of funds to fulfill all of those financial obligations.~~ CSU Financing Plan. The narrative description in Attachment 14 to this Agreement.

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

1.36 ~~1.31~~ CSU New Lease. The new lease with respect to the CSU Property and the River Park Property to be completed and signed by the Parties if the Closing does not occur on or before ~~Secondary~~ the Primary Target Closing Date because of an Injunction Preventing Closing, with the content of such new lease to be based upon the CSU New Lease Summary, as further described in Section 3.2, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.37 ~~1.32~~ CSU New Lease Summary. The Summary of Material Terms for CSU New Lease included as Attachment 15 to this Agreement.

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

1.39 ~~1.33~~ Declaration of Affordable Housing Restrictions. The Declaration of Covenants, Conditions, and Restrictions Regarding Affordable Housing Development on ~~the~~ SDSU Mission Valley Property, to be recorded in the Official Records ~~in Senior Lien Priority~~ against the Real Property upon the Closing, in substantially the form of Attachment 22 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.40 ~~1.34~~ Declaration of Property Development Restrictions and Permitting. The Declaration of Covenants, Conditions, and Restrictions Regarding Development, ~~Operation,~~ and ~~Maintenance~~ Permitting of SDSU Mission Valley Property, to be recorded in the Official

Records ~~in Senior Lien Priority~~ against the Real Property upon the Closing, in substantially the form of Attachment 21 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.41 Default. Defined in Section 12.1 of this Agreement.

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

1.43 ~~1.35~~ Developer Entity or Developer Entities. Any developer, licensee, contractor, subcontractor, or other Person, whether operating on a for-profit or nonprofit basis, ~~including any auxiliary organizations or affiliates of CSU,~~ who enters into a Development Contract with CSU or its designee ~~/~~ auxiliary or affiliate.

1.44 ~~1.36~~ Development Contract. A contract, deed, subcontract, lease, license, easement, or any similar arrangement entered into between CSU (or its designee ~~/~~ auxiliary or affiliate) and a Developer Entity, under which the Developer Entity agrees to develop, construct, or install any specified component(s) of the Project on the CSU Property.

1.45 DSD. The City's Development Services Department.

1.46 ~~1.37~~ Earnest Money Deposit. ~~Collectively, the Initial Earnest Money Deposit and, if required to be deposited under this Agreement, the Additional Earnest Money Deposit.~~ CSU's earnest money deposit in the amount of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) to be deposited into Escrow in accordance with Section 2.5, and once deposited, shall include interest (if any) accrued on such amount.

1.47 ~~1.38~~ Easement Agreement for River Park Construction and Maintenance. The Agreement Regarding Easement for Construction, Maintenance, and Operation of River Park for Recreational Uses, to be recorded in the Official Records against the Real Property ~~(in Senior Lien Priority)~~ and the River Park Property upon the Closing, in substantially the form of Attachment 28 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.48 ~~1.39~~ Easement Agreement for CSU's Utilities within River Park Property. The Easement Agreement for Installation of Utilities within River Park Property, to be recorded in the Official Records against ~~the Real Property (in Senior Lien Priority) and~~ the River Park Property ~~upon the Closing or~~ after the Closing (unless otherwise specified in this Agreement), as provided for in this Agreement, in substantially the form of Attachment 31 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof, for the proposed utility easements that are tentatively planned to be located as depicted in Attachment 34 to this Agreement.

1.49 ~~1.40~~ Easement Agreement for City's Public Facilities During Stage ~~1~~-1. The Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 1 (Construction Period), to be recorded in the Official Records against a portion of the Real ~~Property (in Senior Lien Priority) and the River Park~~ Property upon the Closing, in substantially the form of Attachment 30 to this Agreement together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.50 ~~1.41~~ Easement Agreement for City's Public Facilities During Stage ~~2~~-2. The Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 2 (Completed Development), to be recorded in the Official Records against a portion of the Real ~~Property (in Senior Lien Priority) and the River Park~~ Property after the Closing (unless otherwise specified in this Agreement), in substantially the form of Attachment 32 to this Agreement together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.51 ~~1.42~~ Easement Agreements. Collectively, the Easement Agreements for Stage 1 Recordation and the Easement Agreements for Stage 2 Recordation.

1.52 ~~1.43~~ Easement Agreements for Stage 1 Recordation. Collectively, the documents identified in the category of “Easement Agreements for Stage 1 Recordation” in the Recordable Closing Documents List, signifying those Easement Agreements to be recorded in the Official Records upon the Closing if the Closing occurs before the Parcel Map is approved and ready to be recorded together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.53 ~~1.44~~ Easement Agreements for Stage 2 Recordation. Collectively, the documents identified in the category of “Easement Agreements for Stage 2 Recordation” in the Recordable Closing Documents List, signifying those Easement Agreements to be recorded in the Official Records after the Closing and in conjunction with the future recording of the approved Parcel Map, if the Closing occurs before the Parcel Map is approved and ready to be recorded together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.54 ~~1.45~~ Effective Date. Defined in the preamble of this Agreement and referring to the date on which the last Party signed this Agreement, as further described in Section ~~2.8~~-2.7.

1.55 ~~1.46~~ Environmental Claim. Any Claim relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge, as well as all ~~foreseeable and unforeseeable~~ damages or costs of any kind or of any nature whatsoever to the extent relating directly or indirectly to such a Claim.

1.56 ~~1.47~~ Environmental Law. Every applicable law, statute, code, ordinance, requirement, order, proclamation, directive, rule, or regulation of any local, state, or federal governmental agency in effect on or enacted after the Effective Date of this Agreement, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under, or about the CSU Property or the

River Park Property or relating to the Project, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 U.S.C. section 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 U.S.C. section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 U.S.C. section 1251 *et seq.*]; the Toxic Substances Control Act (“TSCA”) [15 U.S.C. section 2601 *et seq.*]; the Hazardous Materials Transportation Act (“HMTA”) [49 U.S.C. section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C. section 6901 *et seq.*]; the Clean Air Act [42 U.S.C. section 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. section 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. section 11001 *et seq.*]; the Occupational Safety and Health Act [29 U.S.C. sections 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code section 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code section 13000 *et seq.*]; together with any regulations promulgated under the above-referenced statutes and laws.

1.57 ~~1.48~~ Escrow. The escrow established with Escrow Agent pursuant to the terms of this Agreement.

1.58 ~~1.49~~ Escrow Agent. Chicago Title Company, whose representative and contact information are shown in Section 15.2.

1.59 ~~1.50~~ Escrow Agent’s Consent. The consent form to be signed by Escrow Agent, in substantially the form attached to this Agreement as Attachment 1, pursuant to Section 9.1.

1.60 ~~1.51~~ Escrow Opening Date. The date on which Escrow Agent signs Escrow Agent’s Consent, pursuant to Section 9.1.

1.61 ~~1.52~~ Existing Easements for Proposed Vacation. Certain existing easements affecting the CSU Property and shown in the Preliminary Report (title exceptions ~~___, ___, and ___~~ nos. 02 (public road); 12 and 52 (water main); 13 (sewer); 14 (sewer); 15 (sewer); 24, 67 and 96 (electric); 51 and 86 (water main); 56 and 90 (sewer); 61 (water main); 63 (underground structures); 64 (pipe); 65 (electric); and 71 (water pipeline - partial vacation)), as more particularly identified and depicted in Attachment 11 to this Agreement, that will be the subject of the Existing Easements Vacation Approval. ~~[Note: The Parties will need to discuss both the precise title exceptions to be included above and CSU’s proposed version of Attachment 11.]~~ together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.62 ~~1.53~~ Existing Easements Vacation Approval. The proposed future discretionary approval by the City Council of the vacation of the Existing Easements for Proposed Vacation, as described in Section ~~6.9~~ 6.8, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.63 ~~1.54~~ Existing Rights-of-Way for Proposed Vacation. Certain existing public rights-of-way affecting the CSU Property ~~and shown in the Preliminary Report (title exceptions —, —, and —)~~, as more particularly identified and depicted in Attachment 12 to this Agreement, that will be the subject of the Existing Rights-of-Way Vacation Approval. ~~[Note: The Parties will need to discuss both the precise title exceptions to be included above and CSU's proposed version of Attachment 12.]~~

1.64 ~~1.55~~ Existing Rights-of-Way Vacation Approval. The proposed future discretionary approval by the City Council of the vacation of the Existing Rights-of-Way for Proposed Vacation, as described in Section ~~6.10~~6.9.

1.65 ~~1.56~~ Existing Stadium. The San Diego County Credit Union Stadium, formerly known as Qualcomm Stadium or Jack Murphy Stadium, located on a portion of the Real Property.

1.66 ~~1.57~~ FEMA. The Federal Emergency Management Agency.

1.67 ~~1.58~~ Final Adjusted Purchase Price. The Base Purchase Price, plus the Time-Value Adjustment Amount.

1.68 ~~1.59~~ Final EIR. The San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees with respect to the Project in compliance with CEQA on ~~—~~, January 29, 2020.

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

1.70 ~~1.60~~ Flood Map Revision. A One or more conditional letter of map revision (CLOMR), a CLOMR-F (fill), or a letter of map revision (LOMR), or any or all of them, to be prepared by CSU and submitted by CSU to FEMA for its proposed approval in connection with the Project following the City's execution of a "community acknowledgement form".

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

1.72 ~~1.61~~ Future Recreation Center Site. That certain real property comprising an approximately one-acre portion of the Real Property, as ~~legally described in Attachment 5-A to this Agreement and~~ depicted in Attachment 5-B to this Agreement.

1.73 ~~1.62~~ Future Recreation Center Site Agreement. The Agreement Regarding Reservation of Future Recreation Center Site, to be recorded in the Official Records ~~in Senior Lien Priority~~ against the Real Property, including upon the Closing, granting the City an option to enter into a long term lease for the Future Recreation Center Site, upon the Closing, and setting forth the material terms to be included in such long term lease, in substantially the form of Attachment 24 to this Agreement ~~, together with any and all amendments, modifications, supplements, and/or extensions thereof.~~

1.74 ~~1.63~~ General Fund Ownership. The 82.86-acre portion of the Real Property ~~owned by, which is an asset of~~ the City's General Fund, equal to 61.3 percent of the Real Property ~~as determined by the City.~~

1.75 ~~1.64~~ Grant Deed. The Grant Deed conveying fee ownership of the Real Property and the Appurtenances from the City to CSU, in substantially the form of Attachment 19 to this Agreement.

1.76 ~~1.65~~ Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy from whatever source, that: (i) is or becomes regulated, defined, or classified as "hazardous," "toxic," "harmful," or by similar terms under any Environmental Law; (ii) is subject to any applicable Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health and safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any applicable Law requiring special handling in its use, transportation, generation, collection, storage, treatment, or disposal.

1.77 ~~1.66~~ Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the ~~Property or the River Park~~ CSU Property or during transportation of any Hazardous Substance to or from the ~~Property or the River Park~~ CSU Property, or that arises at any time from any construction, installation, use, operation, or other activities conducted at, on, under, or from the ~~Property or the River Park~~ CSU Property, whether or not caused by a Party.

1.78 ~~1.67~~ Immediately Available Funds. A bank wire transfer or a certified bank check.

1.79 ~~1.68~~ Improvements. All structures, fixtures, and other improvements located on the Real Property as of the Effective Date of this Agreement.

~~1.69 Initial Earnest Money Deposit. CSU's initial deposit in the amount of \$900,000 (Nine Hundred Thousand Dollars) into the Escrow in accordance with Section 2.5, and once deposited, shall include interest (if any) accrued on such amount.~~

1.80 Injunction. Any injunction, stay, restraining order, or other order, ruling, judgment, or other order, ruling, judgment, or similar determination of a court that prohibits the performance of a Party's material obligation required by this Agreement or is an Injunction Preventing Closing.

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

Documents and the payment of the Final Adjusted Purchase Price) by the applicable Closing Date stated in this Agreement, or prohibits the performance of any other action by a Party that is required to consummate the Sale Transaction by the applicable Closing Date stated in this Agreement.

1.82 Intangible Personal Property. With respect to the Improvements existing on the Real Property, all of the City's right, title, and interest related to the Real Property and the Tangible Personal Property, to the extent assignable, including: (i) the plans and specifications, as-built drawings, and all other architectural and engineering drawings for the Improvements, if any; (ii) warranties, guaranties, indemnities and claims related to any agreements with any architects, contractors, suppliers and others; (iii) surveys, engineering reports and other technical information relating to the Real Property or Tangible Personal Property; (iv) contract rights related to the construction, operation, ownership, maintenance, use, leasing, service, or management of the Real Property, if any, but specifically excluding any Service Contracts that are not assumed by CSU; (v) governmental permits, approvals, licenses, or similar documents, if any; and (vi) property owned or held by the City relating to the design, construction, ownership, use, leasing, maintenance, service, or operation of the Real Property and the Tangible Personal Property; provided however, this provision does not apply to and does not include, and expressly excludes any capital reserve account funds of the City.

1.83 ~~1.70~~ Kinder Morgan. Kinder Morgan Energy Partners, L.P., a Delaware limited partnership.

1.84 ~~1.71~~ Kinder Morgan Right of Entry Permit. The Right of Entry Permit, dated June 27, 2019, between the City and Kinder Morgan, by which the City authorized Kinder Morgan to remove certain existing wells, vaults, and facilities from the Real Property or otherwise abandon in place certain existing facilities on the Real Property, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.85 ~~1.72~~ Kinder Morgan Settlement Agreement. The Settlement Agreement and General Release, dated June 2016, between the City and Kinder Morgan (and its affiliates), which resolved two federal lawsuits filed by the City against Kinder Morgan related to environmental contamination on and under the Real Property and the River Park Property arising from the historical accidental release of ~~petroleum~~ Hazardous Substances from the adjacent Mission Valley Terminal site owned and operated by Kinder Morgan.

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

1.87 ~~1.73~~ Law. Every law, statute, code, ordinance, requirement, order, proclamation, directive, rule, or regulation of any local, state, or federal governmental agency applicable in any way to the Parties, the CSU Property, the River Park Property, or the Project, including relating to any development, construction, use, maintenance, taxation, operation, occupancy, or environmental conditions affecting the CSU Property, the River Park Property, or the Project, or otherwise relating to this Agreement or either Party's rights, obligations or remedies under this

Agreement, or constituting any Environmental Law, whether in force on the Effective Date of this Agreement or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.88 ~~1.74~~ Leases. The leases, subleases, franchises, licenses, occupancy agreements, or other agreements providing for the use or occupancy of any portion of the Real Property as of the Effective Date of this Agreement, as identified in the Schedule of Leases included as Attachment 16-A to this Agreement, excluding the CSU Existing Occupancy Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.89 ~~1.75~~ Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding or other matter for which such Person is entitled to reimbursement, including reasonable attorneys' fees, and court costs, ~~consultant expenses, investigative costs, and expert witness expenses~~.

~~1.76~~ Legal Costs Cap. ~~The amount of Five Hundred Thousand Dollars (\$500,000), which is the maximum cumulative amount recoverable by either Party with respect to any actions or proceedings, collectively, seeking to interpret, enforce, reform, or rescind this Agreement, any Recordable Closing Documents signed in connection with the Closing, or any provision of this Agreement or any such Recordable Closing Documents. The Legal Costs Cap shall not apply to a Party's recovery of Legal Costs with respect to any indemnified Claim under this Agreement or any Recordable Closing Documents signed in connection with the Closing.~~

1.90 ~~1.77~~ Licenses and Permits. The operative licenses and permits (if any) issued to, or for the benefit of, the City by any governmental or regulatory entity and allowing or requiring the City to operate and maintain the CSU Property or take certain actions on or about the CSU Property as of the Effective Date of this Agreement, to the extent such licenses or permits are assignable to CSU, as identified in the Schedule of Licenses and Permits included as Attachment 18 to this Agreement.

1.91 ~~1.78~~ Mayor. The City's Mayor or the City representative duly authorized by the City's Mayor to sign documents, grant approvals, or take other actions on the City's behalf in fulfillment of the City's obligations under this Agreement.

1.92 ~~1.79~~ Measure G. The ballot measure resulting from the citizens' initiative entitled "SDSU West Campus Research Center, Stadium and River Park Initiative," approved by the City's voters on November 6, 2018, and partially codified in Municipal Code section 22.0908. Measure G is attached as Attachment 29 to this Agreement.

1.93 ~~1.80~~ Municipal Code. The San Diego Municipal Code.

1.94 ~~1.81~~ Murphy Canyon Creek Parcel. The real property generally located at the eastern boundary of the CSU Property and consisting of approximately 2.5 acres, as legally described in Attachment 3-A to this Agreement and depicted in Attachment 3-B to this Agreement. The Murphy Canyon Creek Parcel is distinguished from Southern Murphy Canyon Creek, which is located on the River Park Property.

1.95 ~~1.82~~ New Lawsuit. Any complaint, cause of action, or petition for writ of mandate filed by any Third Person in a court proceeding before on, or after the Effective Date of this Agreement, by which the Third Person seeks to rescind, modify, invalidate, or delay the implementation of, the Sale Transaction, the CSU Approval Actions, or the City Approval Actions, or any constituent aspect of those matters, or seeks to compel either CSU or the City to take any future actions that differ from the CSU Approval Actions or the City Approval Actions.

1.96 ~~1.83~~ New Lawsuit Adverse to the City. A New Lawsuit in which the City or any of its ~~elected~~ officials, employees, agents, officers, attorneys, or representatives is named as a defendant, a respondent, or a real party in interest.

1.97 ~~1.84~~ New Stadium. The joint use stadium to be constructed on the Real Property as part of the Project, as more specifically defined and described in the Declaration of Property Development Restrictions and Permitting.

1.98 ~~1.85~~ Official Records. The official records of the County Recorder.

1.99 On-Site Grading Plans ~~1.86~~ ~~Outside Closing Date. December 31, 2020, which is the latest date on which the Parties may complete the Closing, as described in Section 9.7.~~ Collectively, the grading plan depicting CSU's proposed development within any floodplain on the CSU Property and the River Park Property, the SWOMP for the CSU Property and the River Park Property and the SWPPP for the CSU Property and the River Park Property.

1.100 ~~1.87~~ Parcel Map. A proposed parcel map ~~for which CSU has submitted to the City a pending application to accomplish certain lot line adjustments affecting the Property and the River Park Property,~~ as described in Section ~~6.7~~ 6.6.

1.101 ~~1.88~~ Parties. Collectively, the City and CSU.

1.102 ~~1.89~~ Party. Individually, the City or CSU, as applicable.

1.103 ~~1.90~~ Permitted Title Exceptions. Collectively, the following items: (i) the exceptions to title insurance coverage shown in the Preliminary Report excluding those exceptions that the Title Company has confirmed prior to Closing will not be shown in the Title Policy without action required by the City other than delivering to the Title Company such customary affidavits or information as the Title Company may reasonably request; (ii) taxes and assessments if any, on the CSU Property that are a lien not yet due and payable; ~~(iii) all applicable building, zoning, and use restrictions or regulations of any governmental authority having jurisdiction over the Property; and (iv) any~~ and (iii) any recorded or to-be recorded declarations, conditions, covenants, restrictions, or other matters affecting title to the CSU Property and required or permitted under this Agreement, including the Recordable Closing Documents.

~~1.91~~ ~~Permitting and Development Fee Agreement. The Agreement Regarding Permitting Functions, Development Fees, and Tax Payments, to be recorded in the Official Records in Senior Lien Priority against the Real Property upon the Closing, in substantially the form of Attachment 23 to this Agreement.~~

1.104 ~~1.92~~ Person. Any individual, association, corporation, governmental entity or agency, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.105 ~~1.93~~ Preliminary Report. The ~~[First]~~ Amended Preliminary Report for the Real Property, dated ~~[November 25, 2019]~~ 2019, issued by Title Company in contemplation of the issuance of the Title Policy, and included as Attachment 7 to this Agreement.

1.106 ~~1.94~~ Primary Target Closing Date. ~~[March 27], 2020, which is the earliest date on which the Parties will reasonably endeavor to accomplish the Closing, as described in Section 9.7.~~ Ten (10) Business Days immediately after the Effective Date or such earlier date as the Parties may agree.

1.107 ~~1.95~~ Project. The project to be developed, constructed, and operated by or on behalf of CSU ~~and the Developer Entities~~ on the Real Property and the River Park Property in accordance with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G, the Campus Master Plan Update and the Final EIR, and the Additional Public Benefits. A site plan depicting the main components of the Project is included as Attachment 6 to this Agreement.

1.108 Proximate Storm Drain Facilities ~~1.96~~ Property. ~~Collectively, the Real Property, the Appurtenances, and the Tangible Personal Property.~~ Certain existing storm drain outlets located within easements that are exclusion areas of the Wetland Mitigation Project Site.

1.109 PUD. The City's Public Utilities Department.

1.110 ~~1.97~~ Proposed Public Easement and Right-of-Way Dedications. Certain new public easements and public rights-of-way that are proposed to be dedicated to the City on the Parcel Map, as more particularly identified and depicted in Attachment 13 to this Agreement. ~~[Note: The Parties will need to discuss CSU's proposed version of Attachment 13.]~~

1.111 ~~1.98~~ Real Property. That certain real property consisting of 135.12 acres, which includes both the real property commonly known as the San Diego County Credit Union stadium site in Mission Valley and the contiguous real property defined in this Agreement as the Murphy Canyon Creek Parcel, which aggregate real property is generally located at 9449 Friars Road in the City of San Diego, County of San Diego, State of California, as legally described in Attachment 2-A to this Agreement and depicted in Attachment 2-B to this Agreement, together with all structures, fixtures, and other improvements owned by the City and located on such aggregate real property as of the Effective Date of this Agreement.

1.112 ~~1.99~~ Recordable Closing Documents List. ~~The List of Recordable Closing Documents included as Attachment 9 to this Agreement.~~ 1.100 Recordable Closing Documents. The documents identified in the Recordable Closing Documents List, to be recorded in the Official Records upon the Closing.

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

1.114 ~~1.101~~ Rent Roll. The Rent Roll included as Attachment 16-B to this Agreement, ~~showing all rents payable by tenants under the Leases.~~

1.115 ~~1.102~~ River Park and Storm Water BMP Development Agreement. The Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures, to be recorded in the Official Records against the Real Property and the River Park Property upon the Closing, in substantially the form of Attachment 26 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.116 ~~1.103~~ River Park ~~Maintenance~~ and Storm Water BMP ~~Maintenance~~ Agreement. The Agreement Regarding Maintenance and Management of the River Park and Storm Water Best Management Practice Structures, to be recorded in the Official Records against the Real Property and the River Park Property upon the Closing, in substantially the form of Attachment 27 to this Agreement, together with any and all amendments, modifications, supplements, and/or extensions thereof.

1.117 ~~1.104~~ River Park Property. That certain real property situated contiguous to, and generally south of, the Real Property and consisting of approximately 34.6 acres, as legally described in Attachment 4-A to this Agreement and depicted in Attachment 4-B to this Agreement.

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

1.119 ~~1.105~~ Sale Transaction. The transaction by which the City will sell to CSU, and CSU will purchase from the City, the CSU Property upon the Closing, in accordance with the terms and conditions of this Agreement.

1.120 ~~1.106~~ SDG&E. San Diego Gas ~~and~~ Electric Company.

1.121 ~~1.107~~ Second Amendment to CSU Existing Occupancy Agreement. ~~The Second Amendment to Agreement for Use and Occupancy of Qualcomm Stadium, in substantially the form of Attachment 25 to this Agreement, to be signed by the Parties within three (3) Business Days after the Escrow Opening Date, in accordance with Section 3.1.~~ Second Extended Closing Date

~~1.108~~ Secondary Target Closing Date. ~~June 30, 2020, which is the date on which the Parties will reasonably endeavor to accomplish the Closing, as described in Section 9.7, if the Closing has not occurred on or before the Primary Target Closing Date.~~ The date that is six (6) consecutive months immediately after the First Extended Closing Date.

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

1.123 ~~1.109~~ Senior ~~Lien~~ Priority. A circumstance in which a specified document, to be recorded in the Official Records against all or a specified portion of the Real Property upon the

Closing, is in a ~~lien~~ position on title that has senior priority relative to all ~~CSU Debt Instruments and all~~ Development Contracts (or related memoranda or abstracts), and any regulatory agreement or covenant, to be recorded in the Official Records upon or after the Closing.

1.124 ~~1.110~~ Service Contracts. The maintenance, service, and supply contracts, and all other agreements for goods and services, including equipment leases, used in connection with the ~~Real~~ CSU Property as of the Effective Date of this Agreement, as identified in the Schedule of Service Contracts included as Attachment 17 to this Agreement.

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

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

1.127 ~~1.111~~ Tangible Personal Property. All equipment, machinery, furniture, furnishings, supplies, and other tangible personal property and fixtures, if any, owned by the City and located on the Real Property or used by the City, ~~solely~~ principally in connection with the operation, ownership, maintenance, use, leasing, service, or management of the Real Property as of the Effective Date of this Agreement, ~~except as expressly set forth in the Bill of Sale and Assignment and Assumption Agreement.~~ The Tangible Personal Property will not include personal property leased by the City or vehicle fleets or equipment stored on the Real Property that are not principally utilized to operate and maintain the CSU Property, provided such excluded Tangible Personal Property will be removed from the Real Property prior to the Closing.

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

1.129 ~~1.112~~ Third Person. Any Person that is not a Party, an affiliate of a Party, or an ~~elected~~ official, officer, employee, or agent of a Party.

1.130 ~~1.113~~ Time-Value Adjustment Amount. The dollar amount derived by applying the Time-Value Factor to either a specified portion or the entirety of the Base Purchase Price for a specified time period, as follows: (a) if the Closing Date occurs on or before the ~~Secondary~~ Primary Target Closing Date, the Time-Value Factor shall be applied only to the Water Utility Fund Ownership (i.e., 38.7 percent of the CSU Property, equating to \$33,359,400 of the Base Purchase Price) from October 1, 2017, through and including the Closing Date; and (b) if the Closing Date ~~occurs after the Secondary Target Closing Date~~ is delayed due to an Injunction Preventing Closing, then in addition to the calculation to be performed under clause (a) above, the Time-Value Factor also shall be applied to the General Fund Ownership (i.e., 61.3 percent of the CSU Property, equating to \$52,840,600 of the Base Purchase Price) from ~~July 1, 2020~~ the day after the Primary Target Closing Date was scheduled to occur until the Parties enter into the CSU New Lease (or through and including the Closing Date ~~if the Parties do not enter into the CSU New Lease).~~ The following two calculation examples are provided for illustrative

purposes only. In the first example, if the Closing Date occurs on June 30, 2020, the Time-Value Adjustment Amount will equal \$2,029,005, which is the Base Purchase Price of \$86,200,000, multiplied by 0.387 (i.e., 38.7 percent), and applying the Time-Value Factor of 2.149 percent from October 1, 2017, through June 30, 2020. In the second example, if the Primary Target Closing Date was scheduled to occur on June 30, 2020, the Parties do not enter into the CSU New Lease and the Closing Date occurs on July 31, 2020, the Time-Value Adjustment Amount will equal \$ ~~_____~~ 2,187,009, which is the sum of: (i) the Time-Value Adjustment Amount component of \$ ~~_____~~ 2,092,380 for the Water Utility Fund Ownership, which is the Base Purchase Price of \$86,200,000, multiplied by 0.387 (i.e., 38.7 percent), and applying the Time-Value Factor of 2.149 percent from October 1, 2017, through July 31, 2020; and (ii) the Time-Value Adjustment Amount component of \$ ~~_____~~ 94,629 for the General Fund Ownership, which is the Base Purchase Price of \$86,200,000, multiplied by 0.613 (i.e., 61.3 percent), and applying the Time-Value Factor of 2.149 percent from July 1, 2020, through July 31, 2020.

1.131 ~~1.114~~ Time-Value Factor. The annual index adjustment factor of 2.149 percent, compounded monthly.

1.132 ~~1.115~~ Title Company. Chicago Title Insurance Company, whose representative and contact information are shown in Section 15.2.

1.133 ~~1.116~~ Title Policy. An American Land Title Association (2006) extended coverage owner's policy of title insurance issued by Title Company as of the Closing Date and with liability in the amount of the Final Adjusted Purchase Price, insuring fee simple ownership of the Real Property in CSU as owner of the Real Property, subject only to the Permitted Title Exceptions.

1.134 TSW. The City's Transportation Storm Water Department.

1.135 ~~1.117~~ Unavoidable Delay. A delay in either Party performing any material obligation under this Agreement arising from or on account of any cause beyond the Party's reasonable control, including ~~strikes, labor troubles or other union activities~~ acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, ~~or pandemic, current or future COVID-19 orders and/or mandates from federal, state or local governments,~~ inability to obtain required materials, or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by the Party asserting an Unavoidable Delay). Unavoidable Delay shall not, under any circumstances, include delay caused by or relating to: (i) the financial condition, insolvency, or inability to obtain financing on the part of the Party asserting that Unavoidable Delay exists; or (ii) the filing of any New LawsUIT, unless ~~a court of competent jurisdiction issues an injunction or similar order preventing either Party from performing any material obligation under this Agreement~~ an Injunction Preventing Closing is granted in connection therewith.

1.136 ~~1.118~~ Water Supply Assessment. ~~The water supply assessment~~ The Water Use Estimation for SDSU Mission Valley Campus Master Plan Project prepared by Dexter Wilson

Engineering, dated July 23, 2019, and attached as Appendix 4.17-5 of the DEIR, and Chapter 4.17 of the FEIR and any supporting materials (such as a new water study or an update to an existing water study) ~~assessing whether~~demonstrating that sufficient water supply is, ~~or will be,~~ available to meet the projected water demands of the Project, ~~which have been prepared by CSU's qualified consultant in accordance with Law, including all applicable urban water management plans, and approved by the City Council in accordance with California Water Code section 10910 at substantially the same time as the City Council's approval of this Agreement.~~

1.137 ~~1.119~~ Water Utility Fund Ownership. The 52.26-acre portion of the Real Property ~~owned by, which is an asset of~~ the City's Water Utility Fund, equal to 38.7 percent of the Real Property, as determined by the City.

1.138 ~~1.120~~ Well Removal and Abandonment Work. Kinder Morgan's removal and closure of certain monitoring and extraction wells, vaults, piping, and related facilities presently located on the Real Property, and Kinder Morgan's abandonment in place of certain existing facilities on the Real Property, in accordance with the Kinder Morgan Right of Entry Permit and the Cleanup and Abatement Order and consistent with the depiction in Attachment 10 to this Agreement.

1.139 ~~1.121~~ Wetland Mitigation Project. The wetland mitigation project, commonly known as the Stadium Wetland Mitigation Project, that has been created by the City, and is ~~currently being~~now and will continue to be monitored and maintained by the City (including regular activities such as perimeter control, ranger patrols, trash removal, transient ~~removal~~management, and invasive plant removal), in compliance with the Wetland Mitigation Project Agreements on the Wetland Mitigation Project Site.

1.140 ~~1.122~~ Wetland Mitigation Project Agreements. The regulatory agreements and permits governing the Wetland Mitigation Project, together with any and all amendments, modifications, supplements, and/or extensions thereof, including: (i) the Section 404 Permit dated December 21, 2015, File No. SPL-2014-00416-DB, issued by the U.S. Army Corps of Engineers to the City pursuant to Section 404 of the Clean Water Act; (ii) the Streambed Alteration Agreement, Notification No. 1600-2014-0192-R5, signed by the City's Public Utilities Department on August 5, 2015, and by the California Department of Fish and Wildlife on September 2, 2015; (iii) the Section 401 Water Quality Certification dated November 14, 2014, Certification No. R9-2013-0124, issued by the California Regional Water Quality Control Board, San Diego Region, to the City pursuant to Section 401 of the Clean Water Act; ~~and~~ (iv) any site development permits or other permits issued or to be issued by the City relating to the use of wetland mitigation credits from the Wetland Mitigation Project Site; and (v) the Stadium Wetland Mitigation Project (San Diego River) Mitigation Plan Final dated March 13, 2015 and prepared for the City of San Diego, Public Utilities Department.

1.141 ~~1.123~~ Wetland Mitigation Project Site. The City-owned real property consisting of approximately 57 acres (including approximately 40.4 acres of waters of the United States), located generally south of the Real Property and the River Park Property and within the San Diego River and its floodplain, on which the Wetland Mitigation Project is situated and is being carried out by the City in accordance with the Wetland Mitigation Project Agreements, as depicted in Attachment 33 to this Agreement.

2. PURCHASE AND SALE OF PROPERTY.

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

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

2.3 Final Adjusted Purchase Price. CSU shall pay the Final Adjusted Purchase Price to the City in exchange for the City's conveyance of the CSU Property to CSU. The Parties agree that the Final Adjusted Purchase Price is fair and equitable, and represents the fair market value of the CSU Property based on an independent appraisal and certain factors mutually agreed upon by the Parties, ~~all in accordance with Measure G. The Parties further agree that they have mutually negotiated this Agreement in good faith and that their mutual signature of this Agreement fully satisfies their mutual obligation under Measure G to negotiate the Sale Transaction and all related agreements and understandings contemplated by Measure G.~~

2.4 Independent Consideration. Within ~~three~~five (35) Business Days after the Escrow Opening Date, CSU shall deliver to the City, outside of the Escrow, the amount of \$100 (One Hundred Dollars) in Immediately Available Funds. The Parties have bargained for and agreed to this amount as adequate independent consideration for ~~CSU's right to purchase the Property under the terms and conditions of the City's agreement to enter into~~ this Agreement. This amount is in addition to and independent of all other consideration provided in this Agreement (including the Earnest Money Deposit), is nonrefundable to CSU in all circumstances, and shall not be credited toward the Final Adjusted Purchase Price.

2.5 ~~Initial Earnest Money Deposit. Within three (3) Business Days after the Escrow Opening Date, CSU shall deliver to Escrow Agent, for deposit into the Escrow, the Initial Earnest Money Deposit in Immediately Available Funds. If CSU does not timely deliver to Escrow Agent the Initial Earnest Money Deposit in Immediately Available Funds, then the City shall have the unilateral right to terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent at any time before CSU delivers the Initial Earnest Money Deposit to Escrow Agent. If CSU makes the Initial Earnest Money Deposit before any termination of this Agreement, and if the Closing does not occur on or before the Secondary Target Closing Date, for any reason other than CSU's default or breach of this Agreement, CSU shall have the unilateral right to terminate this Agreement by delivering written notice of termination to the City and Escrow Agent no later than 5:30 p.m. Pacific Time on July 2, 2020. If CSU does not timely deliver a written notice of termination, and if the inability to complete the Closing is not due to the City's uncured default, then Escrow Agent shall transmit the Initial Earnest Money Deposit to the City on or before July 6, 2020. Upon such transmittal, the Initial Earnest Money Deposit shall be nonrefundable to CSU as earned compensation to the City in exchange for the City providing CSU with the opportunity to purchase the Property and the right to terminate this Agreement due to a delay in the Closing beyond the Secondary Target Closing Date, as well as to complete its due diligence investigation of the Property in accordance with the CSU Entry Permit; provided, however, that CSU shall be entitled to a full refund of the~~

~~Initial Earnest Money Deposit if the Closing ultimately does not occur on or before the Outside Closing Date due to the City's uncured default of this Agreement. If either Party terminates this Agreement in accordance with this Section 2.5, the Parties and Escrow Agent shall proceed in accordance with Section 9.11, and the terminating Party shall not incur any resulting liability to the other Party or any other Person. The provisions of this Section 2.5 shall survive the termination of this Agreement.~~Earnest Money Deposit~~2.6 Additional Earnest Money Deposit. If the Closing does not occur on or before the Secondary Target Closing Date, and CSU has not timely delivered its written notice of termination to the City and Escrow Agent in accordance with Section 2.5, then the Escrow shall remain open and, Within five (5) Business Days after the Escrow Opening Date, CSU shall deliver to Escrow Agent, for deposit in the Escrow, the Additional Earnest Money Deposit in Immediately Available Funds on or before July 6, 2020, into the Escrow, the Earnest Money Deposit in Immediately Available Funds. If CSU does not timely deliver to Escrow Agent the Additional Earnest Money Deposit in Immediately Available Funds~~Earnest Money Deposit in Immediately Available Funds, and such failure continues beyond the notice and cure period provided in Section 12.1(a) of this Agreement, then the City shall have the unilateral right to terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent at any time before CSU delivers the Additional Earnest Money Deposit to Escrow Agent. If the Closing does not occur on or before the Outside Closing Date, due to any reason other than the City's uncured default, Escrow Agent shall transmit the Additional Earnest Money Deposit to the City on or before January 5, 2021. Upon such transmittal, the Additional Earnest Money Deposit shall be nonrefundable to CSU as earned compensation to the City in exchange for the City providing CSU with the opportunity to purchase the Property under the terms and conditions of this Agreement for an additional six (6) months beyond the Secondary Target Closing Date. If the City terminates this Agreement in accordance with this Section 2.6, the Parties and Escrow Agent shall proceed in accordance with Section 9.11, and the City shall not incur any resulting liability to CSU or any other Person. The provisions of this Section 2.6 shall survive the termination of this AgreementEarnest Money Deposit to Escrow Agent.

2.6 ~~2.7~~ Investment and Disposition of Earnest Money Deposit. Escrow Agent shall invest the Earnest Money Deposit in government insured interest-bearing accounts satisfactory to CSU and shall not commingle the Earnest Money Deposit with any funds of Escrow Agent or others. All interest earned on the Earnest Money Deposit shall become a part of the Earnest Money Deposit. ~~Except as otherwise provided in Sections 2.5 and 2.6, the~~ The Earnest Money Deposit shall remain in the Escrow until the Closing ~~and, The Deposit shall either (a) be credited toward the Final Adjusted Purchase Price for CSU's benefit upon the Closing. CSU shall pay all fees and costs charged by Escrow Agent for investment of the Earnest Money Deposit pursuant to this Section 2.7, (b) constitute liquidated damages to the City pursuant to Section 12.3(b) if the Closing fails to occur by reason of CSU's Default as provided in Section 12.3(a), or (c) be returned to CSU in the event (i) of a failure of a condition precedent in favor of CSU as provided in Section 8.1, (ii) the Closing fails to occur by reason of the City's Default as provided in Section 12.2 or (iii) any other termination of this Agreement upon which the Deposit is to be returned to CSU pursuant to the express terms of this Agreement. Upon any termination of this Agreement, the Parties and Escrow Agent shall proceed in accordance with Section 9.11, and the terminating Party shall not incur any resulting liability to the other Party or any other Person. The provisions of this Section 2.6 shall survive the termination of this Agreement.~~

2.7 ~~2.8~~ Effective Date. The Effective Date of this Agreement shall correspond to the date on which the Mayor signs this Agreement, provided that CSU's duly authorized representative has first signed this Agreement. ~~The Subject to applicable veto rights of the Mayor as set forth in the City of San Diego Charter, the~~ Mayor shall sign, and initial where indicated, this Agreement promptly after receiving confirmation that each of the following events has occurred: (i) CSU's duly authorized representative has signed, and initialed where indicated, three (3) originals of this Agreement and has delivered those three (3) originals to the City; and (ii) the City Council has approved the City Approval Actions and the ordinance approving this Agreement has become effective in accordance with its terms. Upon signing this Agreement, the Mayor shall insert the Effective Date where indicated in the ~~preamble~~ Preamble on ~~page~~ Page 1 of this Agreement. Promptly after the Mayor and the Office of the San Diego City Attorney have signed this Agreement, the Mayor shall arrange for the Office of the San Diego City Clerk to file-stamp the cover page of the original and all duplicate originals of this Agreement in accordance with the City's customary practices, and the Mayor shall cause one fully-executed, file-stamped duplicate original of this Agreement to be delivered to CSU and Escrow Agent by messenger for immediate personal delivery or by nationally recognized overnight delivery service in accordance with Section 15.1.

3. LEASE TRANSACTIONS RELATED TO THE REAL PROPERTY.

3.1 ~~Second Amendment to CSU Existing Occupancy Agreement. Within three (3) Business Days after the Escrow Opening Date, the Parties shall sign and deliver to each other, outside of the Escrow, the Second Amendment to CSU Existing Occupancy Agreement. If either Party has not timely delivered its signed original of the Second Amendment to CSU Existing Occupancy Agreement, then the Party in compliance with this signature and delivery obligation shall have the unilateral right to terminate this Agreement by delivering written notice of termination to the non-compliant Party and Escrow Agent at any time before the non-compliant Party delivers its signed original of the Second Amendment to CSU Existing Occupancy Agreement. If either Party terminates this Agreement in accordance with this Section 3.1, the Parties and Escrow Agent shall proceed in accordance with Section 9.11, and the terminating Party shall not incur any resulting liability to the other Party or any other Person. The Parties acknowledge and agree that the CSU Existing Occupancy Agreement shall terminate by operation of merger upon the Closing, or if applicable, upon commencement of the CSU New Lease.~~

3.2 CSU New Lease. If the Closing has not occurred by the Primary Target Closing Date, ~~the City shall prepare, and deliver to CSU within fifteen (15) Business Days after~~ due to an Injunction Preventing Closing, the Parties will enter into the CSU New Lease. At least twenty (20) Business Days prior to the Primary Target Closing Date, ~~the City will prepare and deliver to CSU~~ a draft of the CSU New Lease based on and consistent with the terms of the CSU New Lease Summary. The Parties ~~shall will~~ then cooperate ~~Cooperate~~ with each other in good faith to complete a mutually agreeable form of the CSU New Lease reflecting the CSU New Lease Summary at the earliest practical opportunity. If the content of the CSU New Lease resulting from this cooperative effort is consistent with the CSU New Lease Summary in the reasonable estimation of the Mayor ~~and the Office of the City Attorney~~, then the Mayor ~~shall will~~ exercise his or her authority (consistent with the City Approval Actions) to ~~approve and consider approving, and if approved, to~~ sign the CSU New Lease ~~in the event the Closing is delayed by~~

an Injunction Preventing Closing. If the content of the CSU New Lease resulting from this cooperative effort is inconsistent with the CSU New Lease Summary in any material respect in the reasonable estimation of the Mayor ~~or the Office of the City Attorney~~, then the City Council will be required to consider adopting a resolution, ~~in its sole and absolute discretion~~, to approve the CSU New Lease and authorize the Mayor to sign the CSU New Lease. ~~If the Closing has not occurred on or before the Secondary Target Closing Date, the Parties shall sign and deliver to each other, outside of the Escrow, the CSU New Lease on or before the Secondary Target Closing Date, or at the earliest practical opportunity after that date, assuming that the CSU New Lease has been completed and has received the City's necessary approval. However, if both Parties have not signed and delivered to each other the CSU New Lease on or before July 31, 2020, then each Party shall have the right to terminate this Agreement by delivering written notice of termination to the other Party and Escrow Agent at any time before the CSU New Lease is fully signed and delivered by both Parties. If either Party terminates this Agreement in accordance with this Section 3.2, the Parties and Escrow Agent shall proceed in accordance with Section 9.11, and the terminating Party shall not incur any resulting liability to the other Party or any other Person.~~ Likewise, if the content of the CSU New Lease is consistent with the CSU New Lease Summary in the reasonable estimation of the campus president delegated with authority to execute the CSU New Lease on behalf of CSU, then the campus president will exercise his or her authority (consistent with the CSU Approval Actions) to consider approving, and if approved, to authorize execution of the CSU New Lease in the event the Closing is delayed by an Injunction Preventing Closing. If the content of the CSU New Lease resulting from this cooperative effort is inconsistent with the CSU New Lease Summary in any material respect in the reasonable estimation of the campus president delegated with authority to execute the CSU New Lease on behalf of CSU, then the campus president will be required to consider whether to approve the CSU New Lease and authorize its execution. The Parties will negotiate in good faith until they reach agreement on the form of CSU New Lease and if such agreement is not achieved by the Primary Target Closing Date, the Time-Value Adjustment Amount will be applied to the General Fund Ownership from the day after the scheduled Primary Target Closing Date until the Parties enter into the CSU New Lease or the Closing Date, whichever occurs first.

4. APPROVAL OF DUE DILIGENCE AND FEASIBILITY MATTERS.

4.1 CSU's Approval of Title Condition. By signing and delivering this Agreement to the City, and subject to the terms of this Agreement (including with respect to the post-Closing vacation of certain rights of way and easements). CSU confirms its ~~unconditional~~ approval of the ~~condition of title to the Property, including the~~ Permitted Title Exceptions, ~~as shown in the Preliminary Report.~~ CSU acknowledges that it has been afforded a full and fair opportunity, before the Effective Date of this Agreement, to review the condition of title to the CSU Property and a natural hazard disclosure statement with respect to the Real Property provided by Escrow Agent.

4.2 CSU's Approval of Property Condition. By signing and delivering this Agreement to the City, ~~CSU confirms its~~ subject to City's representations and warranties set forth in Section 10.1 and the City's performance of its obligations described herein and in any documents entered into at the Closing. CSU confirms for the benefit of the City, CSU's unconditional approval of the condition of the CSU Property, including, but not limited to: (i) all matters pertaining to the physical condition of the CSU Property and the environmental status of

the CSU Property, including the presence of any Hazardous Materials on, under, or affecting the CSU Property; (ii) any applicable Law or other factors affecting the future development or use of the CSU Property; (iii) all contracts, studies, surveys, and all other information pertinent to the operation and ownership of the CSU Property, including all items shown in the Schedule of Leases, the Rent Roll, the Schedule of Service Contracts, and the Schedule of Licenses and Permits; and (iv) all inspections, studies, and reviews that CSU has chosen to conduct in accordance with the CSU Entry Permit. CSU acknowledges that it has been afforded a full and fair opportunity to review the condition of the CSU Property, in accordance with the CSU Entry Permit, before the Effective Date of this Agreement. Within ~~three~~five (35) Business Days after the Escrow Opening Date, ~~and in any event at least thirty (30) days before the anticipated Closing Date, CSU shall~~CSU will deliver written notice to the City identifying the Service Contracts that CSU will assume upon the Closing. The City ~~shall~~will terminate, as of the Closing and at the City's expense, all Service Contracts other than those that CSU has elected to assume in writing upon the Closing. The City will be responsible for all costs and liabilities associated with any Service Contracts that ~~will~~are not ~~be~~terminated or assumed by CSU ~~upon~~as of the Closing. ~~Upon CSU's delivery of written notice to the City at least fifteen (15)~~Within five (5) Business Days ~~before~~after the ~~Closing~~Escrow Opening Date, the City ~~shall~~will use commercially reasonable efforts to obtain a signed estoppel certificate, in the City's standard form, from the tenant under any Lease identified by CSU in its written notice. If the City succeeds in obtaining the signature of any requested estoppel certificate, the City ~~shall~~will promptly ~~delivery~~deliver to CSU a copy of the signed estoppel certificate. The City's ability to obtain any signed estoppel certificate ~~shall~~will not be a condition precedent to the Closing and ~~shall~~will not excuse CSU's performance of any obligations under this Agreement. Nothing in this Section 4.2 is intended to affect, limit, or modify any of CSU's acknowledgements or waivers in Section 10.4.

4.3 City's Approval of CSU Financing Plan. By signing and delivering this Agreement to CSU, the City confirms it ~~is~~has reviewed the CSU Financing Plan and is reasonably satisfied with the content of the CSU Financing Plan as a basis for establishing the financial viability of CSU's acquisition of the CSU Property, including payment to the City of the Final Adjusted Purchase Price, and CSU's development, operation, and maintenance of the Project ~~in accordance with Measure G and related campaign promises and the Additional Public Benefits.~~ CSU acknowledges that the City ~~has relied on~~is relying upon the CSU Financing Plan in agreeing to sell the CSU Property to CSU on the terms and conditions of this Agreement. In the event the CSU Board of Trustees takes an action to amend the CSU Financing Plan, CSU will provide the City with a copy of the publicly noticed action relating thereto.

4.4 ADA Settlement Agreement. CSU acknowledges that it is aware of and has received a copy of the ADA Settlement Agreement. In connection with its operations of the Existing Stadium after the Closing, CSU will comply with all state and federal Law for the sale of wheelchair spaces and the adjacent companion seat and semi-ambulatory and armless aisle transfer seats, and any other specific requirements of the Law. City shall remain as the Defendant's Representative, as defined in the ADA Settlement Agreement, for the purposes of administering the ADA Settlement Agreement. At least two weeks prior to any event at the Existing Stadium after the Closing, CSU shall provide to the City, at no cost to the City, for distribution to the Plaintiff's Representative, as defined in the ADA Settlement Agreement, 25 wheelchair seating pairs, 28 semi-ambulatory seating pairs, and 20 armless transfer seat seating

pairs (for a total of 146 seats) applicable to the upcoming Existing Stadium event. Within five (5) Business Days of the City's receipt of CSU's notice, the City shall provide written notice to CSU designating the location of such seats. The City shall deliver to CSU copies of any notice, written demand, written request or other correspondence received from Plaintiff's Representative or anyone else concerning the ADA Settlement Agreement within five (5) Business Days of the City's receipt of the same. The terms of this Section shall survive the Closing.

5. COMPLIANCE WITH SPECIFIED PROVISIONS OF MEASURE G.

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

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

5.3 Completion of Development Features on the Property. ~~Municipal Code section, Section~~ 22.0908(c) identifies various development features required to be completed by CSU on the CSU Property. In addition, CSU ~~committed during and after the election process for Measure G to complete certain additional development features and environmentally friendly features on the Property. CSU's commitment to~~agrees to complete the Additional Public Benefits. In this regard, CSU will complete ~~all of those~~the development features ~~is~~as

memorialized in ~~Sections~~Section 2.2 and 2.6 of the Declaration of Property Development Restrictions and Permitting, and ~~Sections~~Section 2.1 ~~and 2.2~~ of the Declaration of Affordable Housing Restrictions.

5.4 Mitigation of Significant Environmental Impacts. ~~Municipal Code section~~ Section 22.0908(h) ~~imposes an environmental commitment on CSU to~~ provides that CSU will take steps to reach agreements with the City and other public agencies regarding the payment of fair-share mitigation costs for any identified off-site significant impacts related to campus growth and development associated with the Project. In addition, ~~Municipal Code section~~ Section 22.0908(s) states that the Sale Transaction ~~will~~shall reflect the Parties' negotiation of CSU's fair-share contributions toward feasible mitigation measures to minimize the significant environmental impacts of the Project. In this regard, CSU's commitments to will complete certain mitigation measures and pay fair-share contributions toward other mitigation measures related to significant environmental impacts of the Project ~~areas~~ memorialized in ~~Sections 2.1 and~~ Section 2.9 of the Declaration of Property Development Restrictions ~~and Permitting, which agreement constitutes an agreement between CSU and the City regarding the performance of mitigation measures, including the payment of fair share mitigation, sufficient to mitigate the Project's offsite traffic impacts as required by CEOA and as described in the Final EIR.~~

5.5 Development and Maintenance of the River Park Property. ~~Municipal Code section~~ Section 22.0908(i) requires ~~CSU to develop~~ that the Sale Transaction shall cause certain improvements on the River Park Property (including but not limited to passive park uses, 8- to 10-foot wide linear walking and biking trails, a river buffer of native vegetation, and measures to mitigate drainage impacts and ensure compliance with water quality standards), to be retained in the City's ownership, and at no cost to the City's General Fund. ~~In addition, CSU made campaign promises to the effect that CSU would~~ In furtherance of the Additional Public Benefits, CSU agrees to complete the River Park Improvements no later than seven (7) years from the Effective Date of this Agreement (subject to extension pursuant to Section 6.14(b) below). In addition, CSU agrees to maintain the improved River Park Property in perpetuity, at its own cost. In this regard, CSU's commitment to will permit and develop the improvements on the River Park Property and operate and maintain the improved River Park Property, in perpetuity and at its own cost, ~~is~~as memorialized in and in accordance with the terms of the River Park and Storm Water BMP Development Agreement and the River Park and Storm Water BMP Maintenance Agreement, both of which will be recorded in the Official Records against the Real Property and the River Park Property, for the City's benefit, upon the Closing. ~~Municipal Code section 22.0908(i) also requires CSU to develop a minimum of 22 acres of the Property for use as publicly accessible active recreation space. CSU's commitment to develop and maintain a minimum of 22 acres of additional population-based park facilities and active recreation space on the Property is memorialized in Section 2.2(b) of Declaration of Property Development Restrictions and in the Additional Park Maintenance Agreement.~~

5.6 Demolition of Existing Stadium and Construction of New Stadium. ~~Municipal Code section~~ Section 22.0908(j) requires that the Sale Transaction shall result in the demolition, dismantling, and removal of the Existing Stadium, and shall result in the construction of the New Stadium on the ~~Property. CSU's commitment to complete those~~ CSU Property to be completed not later than seven (7) years from the Effective Date of this Agreement (subject to extension pursuant to Section 6.14(b) below). In this regard, CSU will complete the demolition and

construction activities ~~is~~as memorialized in ~~Sections~~Section 2.3 ~~through~~and 2.5 of the Declaration of Property Development Restrictions and Permitting.

5.7 Public Transit Improvements. ~~Municipal Code section~~ Section 22.0908(k) requires that the Sale Transaction shall facilitate the daily and efficient use of the existing Metropolitan Transit System's Green Line transit station on the Real Property, shall accommodate a planned Purple Line transit station on or about the Real Property, and shall enhance a pedestrian connection to the existing light rail transit center on the Real Property. ~~Municipal Code section~~ Section 22.0908(c)(5)(I) also requires that the Sale Transaction shall provide for the development of trolley and other public transportation uses and improvements to minimize vehicular traffic impacts in the vicinity of the Project. In this regard, CSU's ~~commitment to~~ will fulfill ~~all of these~~the requirements ~~is~~as memorialized in Section 2.10 of the Declaration of Property Development Restrictions and Permitting.

5.8 Development Fee Requirements. ~~Municipal Code section~~ Section 22.0908(l) states that the Sale Transaction ~~will~~shall require development on the Real Property to comply with the City's development impact fee requirements and housing impact fees/affordable housing requirements. ~~CSU's commitment to comply with those requirements is memorialized in Sections 3.1 through 3.6 of the Permitting and Development Fee Agreement. In this regard, (i) CSU will construct the River Park and additional park facilities in lieu of paying the park and recreation component of the Mission Valley development impact fee as memorialized in Section 4.2 and 4.3 of the Declaration of Property Development Restrictions and Permitting, and (ii) Six Million Five Hundred Thousand (\$6,500,000) of the Final Adjusted Purchase Price will be allocated to and constitutes payment of the transportation component of the Mission Valley development impact fee for the Project.~~

5.9 Parkland Requirements. ~~Municipal Code section~~ Section 22.0908(l) further states that the Sale Transaction ~~will~~shall require development on the Real Property to comply with the City's parkland requirements. Also, ~~Municipal Code section~~Section 22.0908(i) states that the City shall designate or set aside the improved River Park Property for park purposes pursuant to San Diego Charter section 55. ~~The~~ In this regard, the Parties' ~~compliance will comply with those~~the requirements ~~is~~and their respective obligations as memorialized in Recital ~~E~~I and Article I of the River Park and Storm Water BMP Development Agreement. Also, Section 22.0908(i) provides that the Sale Transaction will require CSU to develop a minimum of 22 acres of the CSU Property for use as publicly-accessible active recreation space. In this regard, CSU will develop and maintain a minimum of 22 acres of additional population-based park facilities and active recreation space on the CSU Property as memorialized in Section 4.3 of the Declaration of Property Development Restrictions and Permitting. In addition, CSU agrees to, and will, make the Future Recreation Center Site available for long term lease to the City as memorialized in the Future Recreation Center Site Agreement.

5.10 Reduction of Greenhouse Gas Emissions. ~~Municipal Code section~~ Section 22.0908(m) states that the Sale Transaction ~~will~~shall require CSU to develop the Project in compliance with the City's greenhouse gas emission reduction goals, which are largely encompassed within the City's Climate Action Plan. existing as of the date the Final EIR was certified (adopted by the City Council by Resolution R-2016-309 effective December 15, 2015, as amended by the City Council by Resolution R-2016-762 effective July 12, 2016). CSU's

commitment to comply with this requirement is memorialized in Section 2.11 of the Declaration of Property Development Restrictions and Permitting.

5.11 Stadium Costs. ~~Municipal Code section~~ Section 22.0908(n) requires the Sale Transaction to ensure the City does not pay for (i) any rehabilitation costs or demolition, dismantling, or removal costs associated with the Existing Stadium or (ii) any operating costs, maintenance costs, or capital improvement expenses associated with the New Stadium. This requirement is memorialized in ~~Sections 3.2~~ Section 2.3 and ~~3.32.5~~ of the Declaration of Property Development Restrictions and Permitting.

5.12 Reimbursement of City's Costs for Public Safety and Traffic Management. ~~Municipal Code section~~ Section 22.0908(n) ~~further~~ requires the Sale Transaction to provide for reimbursement of the City's reasonable costs and expenses incurred in providing public safety and traffic management-related activities for games or other events at the CSU Property. This requirement is memorialized in Section ~~3.45.2~~ of the Declaration of Property Development Restrictions and Permitting.

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

5.14 Environmental Remediation. ~~Municipal Code section~~ Section 22.0908(p) states that the Sale Transaction ~~will~~ shall not impair the City's ability to continue its plan of environmental remediation of the Real Property and the River Park Property based on the City's existing agreements with responsible parties. ~~The Parties agree that this Municipal Code provision has no practical significance in the Sale Transaction, as~~ As of the date hereof, the City ~~is not, and has not recently been, undertaking any~~ and Kinder Morgan have entered into the Kinder Morgan Right of Entry Permit authorizing Kinder Morgan to perform the Well Removal and Abandonment Work as required by the Cleanup and Abatement Order, as part of a plan of environmental remediation efforts with respect to the ~~Real Property or~~ CSU Property and the River Park Property. CSU voluntarily entered into the Kinder Morgan Expedited Well Removal Agreement with a Kinder Morgan affiliate to facilitate acceleration of the Well Removal and Abandonment Work. Upon entering into the Kinder Morgan Expedited Well Removal Agreement with CSU, Kinder Morgan commenced and is continuing to perform the Well Removal and Abandonment Work. The Kinder Morgan Expedited Well Removal Agreement does not modify the terms of the Kinder Morgan Right of Entry Agreement or the Cleanup and Abatement Order or relieve Kinder Morgan of any of its obligations thereunder or under any other applicable Law, including Environmental Law, or governmental orders or directives.

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

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

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

5.18 Lease Obligations. Consistent with ~~Municipal Code section~~Section 22.0908(t), the Parties agree that nothing in this Agreement or the Closing of the Sale Transaction will change or alter any obligations under any existing lease regarding the use of the Existing Stadium, including the CSU Existing Occupancy Agreement; provided, however, that consistent with the Parties' mutual desire to consummate the Closing on an expedited basis, the Parties have agreed to enter into the ~~Second Amendment to CSU Existing Occupancy Agreement in accordance with Section 3.1 and~~CSU New Lease in accordance with Section 3.2 if the Closing has not occurred on or before the ~~Secondary~~Primary Target Closing Date, ~~the CSU New Lease in accordance with Section 3.2.~~ because of an Injunction Preventing Closing.

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

5.20 Cooperation Regarding Easements and Mapping. ~~Municipal Code section~~Section 22.0908(v) requires that the Sale Transaction provide for the Parties to ~~cooperate~~Cooperate to modify or vacate easements or secure lot line adjustments on the Real Property (other than

easements of the City or its applicable department for which the City retains its full regulatory discretion) so that development of the Project is facilitated. The Parties' compliance with this requirement is described in Sections ~~6.7~~6.6 through ~~6.13~~6.12 of this Agreement.

5.21 Prevailing Wages and Worker Protections. ~~Municipal Code section~~ Section 22.0908(w) sets forth three requirements to be memorialized in the Sale Transaction. First, CSU ~~will~~shall be required to pay prevailing wages for construction of the New Stadium and other public improvements, provided that the construction of such New Stadium or other public improvements occurs on state-owned property or involves the use of state funding. Second, CSU will be required to the extent possible under applicable State Law and subject to applicable CSU collective bargaining agreements, to ensure that all building and construction work within the Project will be performed by contractors and subcontractors licensed by the State of California, who will make good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County. Third, with respect to the New Stadium, CSU will be required to use good faith efforts to retain qualified employees who currently work at the Existing Stadium. Those requirements are memorialized in ~~Sections~~Section 2.12 and 3.6 of the Declaration of Property Development Restrictions ~~and Permitting~~. In addition, to ensure compliance with applicable prevailing wage laws, including payment, reporting, and enforcement obligations, as set forth in California Labor Code section 1720 *et seq.*, CSU acknowledges that ~~CSU will be~~the City is not the awarding body for construction of ~~each~~any component of the Project ~~and any other improvements~~ required or contemplated under this Agreement ~~and all attachments to this Agreement, or the Attachments.~~ City acknowledges that CSU is not the awarding body for any non-Project improvements that may be undertaken by the City on the CSU Property or the River Park Property, including for pure water, utility or other improvements constructed by, on behalf of or at the direction of the City.

6. SITE PREPARATION AND REMEDIATION ACTIVITIES.

6.1 Completion of Well Removal and Abandonment Work. From the Effective Date of this Agreement through and including the Closing Date, the City ~~shall~~will use commercially reasonable efforts to ~~cause~~allow Kinder Morgan to complete the Well Removal and Abandonment Work in accordance with applicable Law, including the Cleanup and Abatement Order. CSU acknowledges that the City will not be responsible or liable for completing the Well Removal and Abandonment Work and that the City has limited ability to either cause Kinder Morgan's completion of the Well Removal and Abandonment Work or ensure Kinder Morgan's compliance with applicable Law, including the Cleanup and Abatement Order. CSU further acknowledges the necessity of the Parties' ~~cooperative efforts~~ to Cooperate with Kinder Morgan to ~~ensure~~allow Kinder Morgan ~~fulfills~~to fulfill its obligations under the Cleanup and Abatement Order before and after the Closing Date, including Kinder Morgan's continued monitoring of specified sentinel wells, designated as wells T-11, R-10, R-43AS-AD, R-79AS-AM-AD, and R-87AS. ~~CSU further acknowledges that, as of the Effective Date of this Agreement, Kinder Morgan has postponed the~~ The Well Removal and Abandonment Work pending its receipt of a requested written determination from the California Department of Industrial Relations regarding whether Kinder Morgan is required to pay prevailing wages for the Well Removal and Abandonment Work, is underway as of the Effective Date pursuant to the Kinder Morgan Expedited Well Removal Agreement and the Kinder Morgan Right of Entry Permit, but may or may not be completed prior to the Closing. Nothing in this Agreement shall impose any

obligation or liability on the City to incur any material out-of-pocket expenses or liability whatsoever, or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel), with respect to the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order, to initiate a lawsuit, arbitration, or other proceeding ~~to cause for the purpose of causing~~ Kinder Morgan's completion of the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order, or to take any actions with respect to the Well Removal and Abandonment Work or the Cleanup and Abatement Order before or after the Closing Date. Further, the Parties agree that Kinder Morgan's completion of the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order is not a condition precedent to the Closing and shall not be a basis for either Party to prevent or delay the Closing. ~~If the Well Removal and Abandonment Work is not completed before the Closing, CSU shall provide, upon the City's request from time to time after the Closing, access to monitoring and extraction wells, vaults, piping, and related facilities on and under the Real Property for monitoring and information purposes, as well as written updates and any related written reports regarding the status of the Well Removal and Abandonment Work, to enable the City to monitor the status of Kinder Morgan's compliance with the Cleanup and Abatement Order and assess how such compliance may affect groundwater conditions.~~

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

6.3 Potential Future Remediation of Environmental Contamination. ~~Upon CSU's written request, the City shall 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 on, under, or about the Real Property and the River Park Property. CSU shall provide the City with sufficient background information to enable the City to prepare and tender the written claim. The City shall submit to CSU a draft of the written claim so that CSU may provide input to the City regarding the content of the written claim; provided, however, that the City shall have sole and absolute discretion as to the final content of the written claim. If Kinder Morgan approves the written claim and provides reimbursement of any remediation costs, the~~

~~City shall 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 requests any additional background information in order to evaluate the written claim, the Parties shall reasonably cooperate with each other so that the City may submit any additional background information to Kinder Morgan in a timely manner. If Kinder Morgan rejects the written claim, the City shall 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 with respect to any of the following matters: (i) the potential rejection of the claim; (ii) any environmental remediation costs associated with, or incurred as a result of, the Project; or (iii) any environmental contamination on, under, or about the Real Property or the River Park Property.~~

6.3 ~~6.4~~ Temporary Wetland Impact. CSU anticipates that its construction of a new manhole connection to an existing 96-inch trunk sewer serving the Real Property will result in a temporary wetland impact to ~~a portion of the Wetland Mitigation Project Site.~~ ~~CSU shall obtain, and maintain in full force and effect at all relevant times, all Approvals required~~ City owned property adjacent to the River Park Property. CSU has obtained the SAA with respect to the manhole connection work. ~~CSU shall and will~~ conduct the manhole connection work in compliance with Law, including the required Approvals, and in a manner that causes the least and shortest possible intrusion into the Wetland Mitigation Project Site and the least and shortest possible interference with the Wetland Mitigation Project. ~~CSU shall not conduct any manhole connection work or otherwise conduct or permit any activity that may cause any adverse impact to the Wetland Mitigation Project or any portion of the Wetland Mitigation Project Site unless and until CSU has obtained all required Approvals for the manhole connection work, including approvals from all regulatory agencies that initially approved or issued~~ such SAA and any other applicable Law. CSU will bear all costs and expenses relating to the manhole connection work, including the costs of complying with requirements of the SAA.

6.4 Storm Drain Outlets. In connection with the Project, CSU is willing to maintain the Proximate Storm Drain Facilities. The City has advised that Proximate Storm Drain Facilities are permitted under the Wetland Mitigation Project Agreements and are located in exclusion areas, and are therefore outside the boundaries of the Wetland Mitigation Project Site. To the extent applicable, CSU will comply with any applicable terms of the Wetland Mitigation Project Agreements in connection with maintenance of the Proximate Storm Drain Facilities, but the City will remain primarily responsible for compliance with the terms and requirements of the Wetland Mitigation Project Agreements. ~~CSU shall not install any pipelines, facilities, or structures within the Wetland Mitigation Project Site and shall limit the manhole connection work to the activities expressly authorized in the required Approvals. If CSU performs the manhole connection work, CSU shall promptly and fully complete any remedial or restorative activities as may be necessary or appropriate to restore the affected portion of the Wetland Mitigation Project Site to the same or better condition as existed immediately before CSU commenced the manhole connection work and to ensure~~ including ensuring the successful completion of the Wetland Mitigation Project, ~~including and~~ the timely achievement of all monitoring, maintenance, and compliance standards described in the Wetland Mitigation Project Agreements ~~and any required Approvals for the manhole connection work. CSU shall bear all costs relating to the manhole connection work, including all associated remedial or restorative activities and all application fees and requirements imposed by any regulatory agencies in~~

~~connection with obtaining the required Approvals.~~ The City agrees to promptly, but in any event within ten (10) Business Days of City's receipt, deliver to CSU copies of any correspondence or notices delivered to or received from the regulatory agencies issuing, enforcing or monitoring compliance with the Wetland Mitigation Project Agreements. The City will maintain the real property covered by the Proximate Storm Drain Easements free of any sensitive biological habitat, including wetlands. If sensitive biological habitat, including wetlands, are found to exist within the Proximate Storm Drain Facilities easement area in the future, the City will be responsible, at no cost to CSU, for obtaining Approvals needed to impact such habitat in order to perform maintenance of the Proximate Storm Drain Facilities, including providing any necessary mitigation. The City, rather than CSU, will be required to maintain the Proximate Storm Drain Facilities until such Approvals are obtained and necessary mitigation (if any) is provided. The easement for the Proximate Storm Drain Facilities will be in a form substantially consistent with Attachment 31.

6.5 City Utilities.

(a) ~~6.5-Relocation of Sewer Lines.~~ The City ~~shall cooperate~~ will Cooperate with CSU's efforts after the Closing to relocate ~~the certain~~ existing ~~public~~ City sewer ~~line~~ lines on the ~~Real Property to a new location within the Real Property that minimizes~~ CSU Property and ~~the River Park in order to minimize~~ impacts to CSU's planned development footprint and traffic circulation for the Project. ~~CSU shall comply with all applicable Laws, including City standards and regulations, and shall obtain all Approvals required in connection with the relocation of the existing public sewer line on the Real Property and the construction of any new public sewer lines or facilities on the Real Property and the River Park Property. After the Closing, CSU shall~~ Sewer lines to be relocated include, but are not necessarily limited to an 8" and 18" sewer line serving the existing Serra Mesa Community and Fire Station location north of Friars Road and a portion of an existing 36" sewer line located in the easterly portion of the River Park Property to facilitate the construction of an extension of Rancho Mission Road. CSU will obtain a public improvement permit from the City prior to relocating the existing City sewer lines on the CSU Property or the River Park Property or constructing or installing any new City sewer lines on the CSU Property or the River Park Property, which will be issued pursuant to a ministerial process if the City determines, in its reasonable discretion, that the City Public Improvement Plans prepared by CSU for the relocation of City sewer lines substantially satisfy applicable City, state and federal laws and regulations. After the Closing, CSU will bear all costs and expenses associated with: (i) any sewer line relocation and construction on the ~~Real~~ CSU Property and the River Park Property; and (ii) the provision and usage of sewer capacity, connections, and service benefitting the ~~Real~~ CSU Property and the River Park Property, including any upgrades or system improvements needed as a direct result of the projected sewer-related demands of the Project. ~~The 36-inch Murphy Canyon trunk sewer on the Real Property and The fees charged for future sewer connections or increased capacity will be calculated taking into account the existing sewer capacity at the CSU Property as of the Effective Date. The 84/96-inch interceptor sewer on the River Park Property will remain in their~~ its current alignment and will not be relocated as part of the Project.

(b) ~~6.6-Relocation of Water Facilities~~ Lines. The City ~~shall cooperate~~ will Cooperate with CSU's efforts after the Closing to relocate any existing ~~public~~ City water lines or facilities on the ~~Real~~ CSU Property or the River Park Property to a new location ~~within the Real~~

~~Property~~ that minimizes impacts to CSU's planned development footprint and traffic circulation for the Project. Water lines to be relocated include, but are not necessarily limited an existing 48-inch Alvarado water transmission main and the existing 16-inch water transmission main. In addition, the City ~~shall cooperate~~will Cooperate with CSU's efforts after the Closing to obtain new water meters and irrigation meters to serve the Project, in the capacity and quantity commensurate with the water demand to be created by the Project as demonstrated in the Water Supply Assessment. ~~CSU shall comply with all applicable Laws, including City standards and regulations, and obtain all Approvals required in connection with the relocation of any existing public water lines or facilities on the Real Property, the construction of any new public water lines or facilities on the Real Property and the River Park Property, and the installation of any new water meters and irrigation meters on the Real Property and the River Park Property.~~ CSU will obtain a public improvement permit from the City prior to relocating any existing City water lines or facilities on the CSU Property or the River Park Property or constructing or installing any new City water lines or facilities on the CSU Property or the River Park Property, which will be issued pursuant to a ministerial process if the City determines, in its reasonable discretion, that the City Public Improvement Plans for the relocation of City water lines and facilities substantially satisfy applicable City, state and federal laws and regulations. After the Closing, CSU ~~shall~~will bear all costs and expenses associated with: (i) any water line~~/~~or facility relocation and construction on the ~~Real~~CSU Property and the River Park Property; (ii) the installation of any new water meters and irrigation meters on the ~~Real~~CSU Property and the River Park Property; and (iii) the provision and usage of water capacity, connections, and service benefitting the ~~Real~~CSU Property and the River Park Property, including any upgrades or system improvements needed as a direct result of the projected water-related demands of the Project. ~~CSU shall~~ The fees charged for future water connections or increased capacity will be calculated taking into account the existing water capacity at the CSU Property as of the Effective Date. CSU will ensure that the Project is designed to include adequate water service for the River Park Property~~and the Wetland Mitigation Project Site~~, both during Project construction and after Project completion. All onsite water mains will be ~~privately owned and~~ maintained by CSU, except that the existing 48-inch Alvarado water transmission main~~and~~, the existing 16-inch water transmission main and the existing pressure reducing station will continue to be ~~publicly owned and~~ maintained by the City.

(c) Construction Within City Sewer and Water Line Easements on CSU Property. CSU agrees that surface improvements constructed within City sewer and water line easements existing on the CSU Property will be limited to landscaping, hardscaping, streetscaping, recreational fields, bike paths, trails and similar improvements. Prior to constructing or installing improvements within an easement on the CSU Property for a City sewer or water line, CSU will provide to PUD for review and comment, the CSU Property Development Plans depicting proposed grading and initial site development construction activities within said City easements. Before CSU issues a grading permit, construction permit, or any other permit allowing such grading or construction activities, or commences any such grading or construction activities on the CSU Property within such a City easement, CSU will consult with and consider the design input of PUD on the proposed CSU Property Development Plans. PUD's review of the CSU Property Development Plans and any modifications to those plans is intended to ensure that CSU's proposed improvements do not materially conflict with: (i) Land Development Manual, Appendix N – Water Design Guide and Sewer Design Guide; and (ii) CSU's grading activities will not impair or damage PUD's existing public utilities. CSU

will not modify the CSU Property Development Plans, or undertake any grading or construction activities in conflict with such plans after submitting the same for review by the City, without first obtaining PUD's additional review. CSU will make a good faith effort to incorporate all comments received from PUD into the final CSU Property Development Plans. CSU will provide a written explanation to PUD if any of its comments are not incorporated, but further consultation will not be required before CSU may proceed with issuance of a grading permit, construction permit or any other permit allowing grading or construction activities on the CSU Property. The review and consultation process for CSU Property Development Plans will only be required in connection with the initial grading and installation of improvements within City easements for sewer and water lines existing on the CSU Property.

(d) Construction Within City Sewer and Water Line Easements on River Park Property. CSU agrees that surface improvements constructed within City sewer and water line easements existing on the River Park Property will be limited to landscaping, hardscaping, streetscaping, recreational fields, bike paths, trails and similar improvements. Prior to constructing or installing improvements within an easement on the River Park Property for a City sewer or water line, CSU will provide to PUD for review and comment CSU Property Development Plans depicting proposed grading and initial site development construction activities within said City easements. Before CSU issues a grading permit, construction permit, or any other permit allowing such grading or construction activities, or commences any such grading or construction activities on the River Park Property, PUD will have reviewed and approved the CSU Property Development Plans, with PUD's approval being confirmed via a signed memorandum from PUD's Director. CSU will not modify the approved CSU Property Development Plans for improvements within a City sewer or water line easement located on the River Park Property, or undertake any grading or construction activities in conflict with the approved CSU Property Development Plans, without first obtaining PUD's additional approval. PUD's review and approval of the CSU Property Development Plans for the River Park Property and any modifications to those plans will be limited to ensuring: (i) consistency with PUD-related City regulations in the Land Development Code and the Land Development Manual, specifically Appendix N – Water Design Guide and Sewer Design Guide; and (ii) CSU's grading activities will not impair or damage PUD's existing public utilities.

6.6 6.7 Parcel Map. As of the Effective Date of this Agreement, CSU has submitted, and the City is processing, the Parcel Map application, which Parcel Map is intended to (i) accomplish lot line adjustments establishing the RealCSU Property, the River Park Property, and the balance of the City's land ownership in the immediate vicinity of the RealCSU Property as three separate legal parcels and (ii) depict certain public easements and public rights-of-way needed in connection with the future operation of the Project. To the extent consistent with the mutual requirements and objectives of the Parties in connection with the Project, the Parcel Map shall will incorporate and identify the permanent locations of (a) the Proposed Public Easement and Right-of-Way Dedications. ~~If the Parcel Map application both fulfills the provisions and intent of this Agreement and complies~~ for the benefit and in favor of the City, which are tentatively planned to be located as depicted on Attachment 13 to this Agreement, and (b) proposed utility easements located within the River Park for the benefit of CSU, which are tentatively planned to be located as depicted in Attachment 34 to this Agreement. Each Party must consider approval of the Parcel Map in accordance with its own regulations, requirements, and processes with respect to its real property interest shown on the Parcel Map. To the extent

concerning City real property interests, the City will require the Parcel Map to comply with the California Government Code and the City's applicable regulations and requirements ~~relating to the City's Process One decision-making level for parcel maps, the City shall grant ministerial approval of the Parcel Map application. Once for the approval of Parcel Maps.~~ The City anticipates that the City's approval process will be ministerial in nature. CSU may elect not to proceed with the Parcel Map if the City requires a discretionary approval process, in which event the easements contemplated to be established on the Parcel Map would be established by separate instrument instead. If the Parcel Map has been approved by the ~~City Parties~~ and signed by all Persons having any record title interest in the real properties being adjusted, ~~the City shall~~ CSU will cause the approved Parcel Map to be recorded in the Official Records. The Parties acknowledge that the recording of the Parcel Map may occur either in connection with the Closing or after the Closing, and is not a condition precedent to the Closing.

6.7 ~~6.8~~ Recording of Easement Agreements. The Parties agree as follows with respect to the recording of the Grant Deed and the Easement Agreements:

(a) Potential Revisions. All of the Easement Agreements ~~and the easement reservation provisions in the Grant Deed have been prepared on an expedited basis in an effort to allow prompt approval of this Agreement.~~ may need to be modified as the details for specific development of the Project advance. Therefore, the final content of certain Easement Agreements ~~and the easement reservation provisions in the Grant Deed~~ may need to be modified in certain respects before the Closing, but after the Effective Date of this Agreement. Before the Closing, the Parties ~~shall cooperate~~ will Cooperate with each other in good faith to finalize the content of the Easement Agreements ~~and the easement reservation provisions in the Grant Deed~~, including any modifications as may be reasonably necessary to satisfy the mutual requirements and objectives of the Parties in connection with both the Project and their respective property ~~ownership~~ interests to be held after the Closing.

(b) Pre-Map Closing. If the Closing occurs before the Parcel Map ~~will be~~ is recorded in the Official Records, then the Parties mutually intend that the ~~Grant Deed and the~~ Easement Agreements for Stage 1 Recordation will be recorded in Senior ~~Lien~~ Priority against the ~~Real~~ CSU Property in the Official Records upon the Closing, subject to any mutually agreeable revisions to the ~~Grant Deed and such~~ Easement Agreements. In such event, the Parties ~~shall~~ will continue to ~~cooperate~~ Cooperate in good faith after the Closing to accomplish the recording of the Easement Agreements for Stage 2 Recordation in conjunction with the recording of the approved Parcel Map ~~or establishment by separate instrument if CSU elects not to proceed with a Parcel Map because the City determines the Parcel Map cannot be approved by ministerial process.~~ CSU agrees that the Easement Agreements for Stage 2 Recordation that benefit the City ~~shall~~ will be recorded in Senior ~~Lien Priority against the Real Property, and CSU shall obtain an appropriate signed, written subordination of all CSU Debt Instruments to ensure that such Easement Agreements for Stage 2 Recordation are in Senior Lien Priority.~~ Priority against the CSU Property. City agrees that the Easement Agreements for Stage 2 Recordation that benefit CSU will be recorded in Senior Priority against the River Park Property or the Wetland Mitigation Project Site, as applicable.

(c) Map-Based Closing. If the Closing occurs in conjunction with the recording of the approved Parcel Map, then the Parties mutually intend that ~~the Grant Deed and~~

~~all of~~ the Easement Agreements will be recorded in Senior ~~Lien~~ Priority against the ~~Real~~ CSU Property in the Official Records upon the Closing, subject to any mutually agreeable revisions to ~~the Grant Deed and~~ such Easement Agreements or any mutual understanding that certain Easement Agreements are no longer needed based on the then-prevailing circumstances.

6.8 ~~6.9~~ Existing Easements Vacation Approval. As of the Effective Date of this Agreement, CSU has submitted, and the City is processing, an application for the Existing Easements Vacation Approval, which is intended to cause the City to vacate the Existing Easements for Proposed Vacation to the extent those easements are no longer required for the City's benefit. The Parties ~~shall~~ will continue to ~~cooperate~~ Cooperate with each other relating to the application for the Existing Easements Vacation Approval. If such application both fulfills the provisions and intent of this Agreement and complies with the City's applicable regulations and requirements relating to the City's Process Five decision-making level for the vacation of public easements (including Municipal Code section 125.1001 *et seq.*), City staff ~~shall~~ will present the Existing Easements Vacation Approval for the San Diego Planning Commission's recommendation and the City Council's consideration at the earliest practicable opportunity. As the Project will be developed in accordance with the Campus Master Plan, it is acknowledged that (a) there will be no present or prospective public use for the Existing Easements for Proposed Vacation, either for the facility or purpose for which they were originally acquired or for any other public use of a like nature that can be anticipated because, among other reasons, necessary facilities will continue to be provided through relocated easements; (b) the public will benefit from the Existing Easements Vacation Approval through improved utilization of the Property made available by such vacations; (c) the Existing Easements Vacation Approval would be consistent with applicable land use plans, including the Mission Valley Community Plan; and (d) the public facilities or purposes for which the Existing Easements for Proposed Vacations were originally acquired will no longer exist following development of the Project, which will provide for relocated public service easements acceptable to the City pursuant to the terms of this Agreement. CSU acknowledges that the San Diego Planning Commission retains discretion whether to recommend in favor of the Existing Easements Vacation Approval and that the City Council retains discretion whether to grant the Existing Easements Vacation Approval application. Nothing in this Agreement requires the San Diego Planning Commission or the City Council to recommend, approve, or take any particular action with respect to such application.

6.9 ~~6.10~~ Existing Rights-of-Way Vacation Approval. As of the Effective Date of this Agreement, CSU has submitted, and the City is processing, an application for the Existing Rights-of-Way Vacation Approval, which is intended to cause the City to vacate the Existing Rights-of-Way for Proposed Vacation to the extent those rights-of-way are no longer required for the City's benefit. The Parties ~~shall~~ will continue to ~~cooperate~~ Cooperate with each other relating to the application for the Existing Rights-of-Way Vacation Approval. If such application both fulfills the provisions and intent of this Agreement and complies with the City's applicable regulations and requirements relating to the City's Process Five decision-making level for the vacation of public rights-of-way (including Municipal Code section 125.0901 *et seq.*), City staff ~~shall~~ will present the Existing Rights-of-Way Vacation Approval for the San Diego Planning Commission's recommendation and the City Council's consideration at the earliest practicable opportunity. As the Project will be developed in accordance with the Campus Master Plan, it is acknowledged that (a) the Existing Rights-of-Way for Proposed Vacation are excess public right-of-way not required for street or highway purposes; (b) the Existing Rights-of-Way

for Proposed Vacation lie within one ownership and does not continue though that ownership or touch the property of another owner; (c) the Existing Rights-of-Way for Proposed Vacation will be superseded by relocation, including in connection with new rights of way to be dedicated as part of the Project; and (d) the Existing Rights-of-Way Vacation Approval will not terminate any public service easements.

CSU acknowledges that the San Diego Planning Commission retains discretion whether to recommend in favor of the Existing Rights-of-Way Vacation Approval and that the City Council retains discretion whether to grant the Existing Rights-of-Way Vacation Approval application. Nothing in this Agreement requires the San Diego Planning Commission or the City Council to recommend, approve, or take any particular action with respect to such application. To the extent feasible, the City ~~shall~~will consolidate the pending applications for the Existing Easements Vacation Approval and the Existing Rights-of-Way Vacation Approval for concurrent processing.

6.10 ~~6.11~~ City Public Improvement Plans. CSU ~~shall~~will prepare the proposed City Public Improvement Plans to depict public ~~street and~~ utility improvements to be constructed on the ~~Real~~CSU Property and the River Park Property in connection with the Project. ~~CSU shall that will be owned, operated, and maintained by the City following such construction.~~ CSU will submit the proposed City Public Improvement Plans to ~~the City's Development Services Department~~PUD for review and approval and the issuance of any necessary permits. ~~which will be issued pursuant to a ministerial process if the City determines, in its reasonable discretion, that the City Public Improvement Plans substantially satisfy applicable Laws and regulations.~~ To the extent feasible, the City ~~shall~~will consolidate the City Public Improvement Plans for processing concurrently with the Existing Easements Vacation Approval application and the Existing Rights-of-Way Vacation Approval application. CSU ~~shall~~will allow the City's employees or authorized representatives to access the ~~Real~~CSU Property from time to time, upon no less than two (2) Business Day prior written notice from the City, after the Closing to inspect any work completed by or at the direction of CSU in accordance with the approved City Public Improvement Plans ~~and any related permits.~~ CSU ~~shall~~will be solely responsible for the cost of construction and installation of all public ~~street and~~ utility improvements on the ~~Real~~CSU Property and the River Park Property.

6.11 ~~6.12~~ Flood Map Revision. The Parties acknowledge that CSU intends to cause portions of the Project to be graded and removed from the 100-year floodplain during construction of the Project, subject to FEMA review and approval of the Flood Map Revision. The City, in its capacity as the floodplain administrator, ~~shall reasonably cooperate~~will Cooperate with the effort to obtain FEMA's approval of the Flood Map Revision as may be needed to facilitate CSU's development of the Project, provided that the City ~~shall~~will not be required to incur any associated material out-of-pocket expenses or liability whatsoever. The City's reasonable cooperation ~~shall~~will include the City's signature of ~~a one or more~~ "Community Acknowledgment ~~Letter~~Forms" in reliance on grading plans and related materials prepared by CSU or its consultants, in form and content reasonably acceptable to the City, and the City's reasonable coordination with CSU to submit all applications and materials to FEMA relating to the Flood Map Revision. CSU ~~shall~~will prepare the proposed Community Acknowledgment ~~Letter~~Form and any other applications and materials associated with the Flood Map Revision in a manner that achieves full compliance with ~~Law, including~~applicable Law and is in substantial conformance with the City's applicable regulations and requirements pertaining to grading activities in a floodplain. CSU ~~shall~~will pay all fees and expenses associated with

CSU's preparation, and FEMA's processing, of all applications and materials relating to the Flood Map Revision. The Parties ~~shall~~will reasonably and promptly ~~cooperate~~Cooperate with each other to finalize the content of any submittals made to FEMA and any follow-up responses to FEMA as may be required. ~~In addition, CSU shall submit to the City an application for a grading permit for any grading activities proposed to be carried out~~

6.12 Grading Plans. CSU has provided the City with On-Site Grading Plans depicting CSU's proposed development within any floodplain on the ~~Real~~CSU Property ~~or the River Park Property as part of the Project. CSU shall cause all grading activities within any floodplain to be performed in compliance with Law, including the City-issued grading permit and any other required Approvals. CSU shall~~ and the River Park Property. The City has provided review comments on the On-Site Grading Plans. Before CSU issues a grading permit or commences any construction activity within any floodplain on the CSU Property or the River Park Property, CSU will submit to DSD and TSW for review, revised On-Site Grading Plans and CSU will respond to DSD and TSW comments. This review and consultation is intended to ensure CSU's plans do not materially conflict with: (i) MS4 storm water requirements, understanding that CSU will issue its own grading permit complying with storm water requirements; and (ii) Land Development Code, Chapter 14, Article 2, Divisions 1 and 2, and Land Development Manual Appendixes B – Drainage Design Manual, H – Standard Drawings, and S – FEMA Definitions. CSU will make a good faith effort to incorporate all comments received from DSD and TSW into the final On-Site Grading Plans. CSU will provide a written explanation to DSD and TSW if any of their comments are not incorporated, but further consultation will not be required before CSU may proceed with issuance of its grading permit or construction activities. CSU will ensure that all grading associated with the establishment and implementation of water quality best management practices achieves a hydraulic disconnection between the basin areas and the adjacent San Diego River 100-year floodplain. CSU ~~shall~~will bear all costs and expenses associated with the performance of any grading activities within any floodplain on the ~~Real~~CSU Property and the River Park Property and all costs associated with obtaining the necessary Approvals for such grading activities.

6.13 City's Groundwater Monitoring Wells.

(a) Existing Monitoring Wells. Attachment 25 to this Agreement depicts, among other things, two groundwater monitoring wells currently located on the CSU Property (identified on Attachment 25 as "MW-2" and "MW-3", and referred to herein as the "**Monitoring Wells**"). At Closing, CSU shall grant the City a right of entry onto the CSU Property to monitor, maintain, operate and repair the Monitoring Wells. The City acknowledges that CSU intends to destroy the Monitoring Wells at CSU's sole cost and expense after the Closing in connection with its grading and construction activities, and the City agrees to reasonably cooperate with CSU in connection therewith. Upon the commencement of such destruction, the City's right of entry shall automatically terminate.

(b) New Monitoring Wells. Prior to recordation of the Parcel Map, the Parties shall negotiate in good faith to determine mutually acceptable locations (and easement dimensions, if applicable) for the installation of two new groundwater monitoring wells (the "**New Monitoring Wells**"). which locations may or may not be on the CSU Property. The New Monitoring Wells will be substantially similar in quality and type to the Monitoring Wells as

they exist as of the Effective Date, with no upgrades. CSU shall install the New Monitoring Wells in such mutually acceptable locations at its sole cost and expense.

(c) Potential New Monitoring Wells on CSU Property. If either or both of the New Monitoring Wells are to be located on the CSU Property, the location(s) may not adversely affect the development of the Project, and they may not be installed until after CSU has completed grading the CSU Property for the Project. CSU shall grant the City mutually acceptable easement(s) to monitor, maintain, operate and repair the New Monitoring Wells to the extent that they are located on the CSU Property.

(d) Potential New Monitoring Wells in Right of Way. If either or both of the New Monitoring Wells are to be located on property not owned by CSU but are located within the public right of way, then the City shall cause a right of entry to be granted to CSU onto such property to allow CSU to install the New Monitoring Wells.

6.14 ~~6.13~~ Cooperative Efforts.

(a) Coordination. The Parties acknowledge that close cooperation and coordination will be required to develop the Project after the Closing because, among other reasons, many public utilities and facilities owned and operated by the City will need to be relocated, realigned, constructed, reconstructed, or otherwise impacted ~~at CSU's sole expense~~ during construction of the Project and because CSU is required under ~~Measure G~~ the Section 22.0908 Conditions and the Additional Public Benefits to complete construction of the New Stadium and improvements on the River Park Property ~~within seven (7) years after the Effective Date of this Agreement~~ no later than the Delivery Date. Accordingly, the City agrees to ~~cooperate~~ Cooperate reasonably with CSU's implementation of the Project and to timely process for consideration all applications for necessary applicable Approvals, including encroachment permits for construction within public rights-of-way, City Public Improvement Plan approvals, and the granting of utility, drainage, or other easements, upon CSU's payment of applicable City processing fees and subject to CSU's compliance with applicable Law, including the City's applicable rules and regulations. The City also agrees reasonably and timely to support and help facilitate CSU's applications with other governmental entities with respect to any development activities on the Project, as long as such applications comply with ~~Law and do not adversely affect the City's interests. Nothing in this Agreement shall impose any obligation on the City to incur any out-of-pocket expenses or liability whatsoever with respect to the City's reasonable cooperation with CSU's implementation of the Project and the related processing of any applications for Approvals.~~ applicable Laws. If CSU pays the City's normal fees applicable for expedited processing, the City will expedite its review of CSU submittals and finalize its review within fifteen (15) Business Days. If the City fails to provide comments on a submittal within such fifteen (15) Business Day period, the City will be deemed to have no comments, concerns or objections on or to the submittal.

(b) Extension of Delivery Date. Subject to written notice duly provided by CSU to the City pursuant to paragraph (c) below, the Delivery Date shall be extended for up to a maximum of twenty-four (24) aggregate months (or thirty-six (36) aggregate months if due to an Injunction) due solely to an Unavoidable Delay that arises before the Delivery Date or an Injunction preventing CSU's completion of the improvements for the River Park, the New

Stadium or other performance obligation required herein (provided that CSU has diligently and in good faith taken all reasonable steps to cause the dissolution or vacation of such Injunction). Notwithstanding the foregoing, there shall be no extension of the Delivery Date under any circumstances due to the financial condition, insolvency, or inability to obtain financing on the part of CSU. In no event shall an extension of the Delivery Date with respect to the improvements on the River Park Property impair, modify, or waive CSU's obligation to complete construction of the improvements on the River Park Property and open the River Park Property to the public for use and enjoyment prior to the occupancy of any building on the CSU Property with the exception of the New Stadium.

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

6.15 ~~6.14~~ Municipal Services. The City ~~shall cooperate~~ will Cooperate in providing water, sewer, ~~fire~~, and other municipal services (excluding police services) with respect to the ~~Real~~ CSU Property on the same terms and conditions, and based on the same cost structure, available to the general public. Pursuant to California Education Code section 67381, San Diego State University Police Department, acting as the campus law enforcement agency, through its authority under Penal Code section 830.2(c), shall have primary authority for providing police or security services, including the investigation of criminal activity, on the ~~Real~~ CSU Property. Prior to the Closing Date, and outside of the Escrow, the Parties ~~shall cause~~ will Cooperate with the goal of causing their respective law enforcement agencies (i.e., San Diego Police Department and San Diego State University Police Department) to enter into a written memorandum of understanding that identifies and allocates responsibilities and, if applicable, costs, between the law enforcement agencies for providing police services and responding to incidents on the ~~Real~~ CSU Property and on areas contiguous to the ~~Real~~ CSU Property, including the River Park Property.

6.16 Notice of Transfer Under 401 Certification. The portion of the CSU Property comprising Murphy Canyon Creek and certain property owned by the City comprising the Wetland Mitigation Project Site (collectively, "401 Project Area") are subject to that certain Clean Water Act Section 401 Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials issued by the California Regional Water Quality Control Board, San Diego Region ("Water Board"), as Certification No. R9-2013-0124 dated November 14, 2014 ("401 Certification"). The work resulting in impacts to the portion of the CSU Property covered by the 401 Certification have been carried out, but the City has continuing obligations with respect to the Wetland Mitigation Project Site. Section VLE.1 of the 401 Certification provides that if any portion of the 401 Project Area is transferred to a new owner, notification must be given to the Water Board within ten (10) days of transfer of ownership. Accordingly, upon the Closing, the Parties agree to jointly notify the Water Board that (i) a portion of the 401 Project Area has been transferred to CSU; (ii) all impacts to the CSU owned portion of the 401

Project Area have been carried out: (iii) City will retain ownership of the Wetland Mitigation Project Site and responsibility for obligations relating thereto, including for maintenance and monitoring of habitat until the success criteria have been met and long-term management thereafter; and (v) accordingly, the Parties do not intend to transfer the 401 Certification to CSU. In addition, to the extent CSU is required or desires to obtain permits from state or federal agencies for future maintenance or repair of the portion of Murphy Canyon Creek existing on the Murphy Canyon Creek Parcel or Southern Murphy Canyon Creek, the City agrees to Cooperate by providing CSU with copies of historical permits, applications, correspondence and related materials as CSU may reasonably request.

6.17 ~~6.15~~ Survival. The provisions of this Section 6 shall survive the Closing to the extent that any pertinent obligations have not been fully satisfied as of the Closing.

7. RIGHTS AND OBLIGATIONS REGARDING ANY NEW LAWSUIT.

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

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

7.3 CSU's Defense and Indemnification of City. If any Third Person initiates a New LawsUIT ~~Adverse~~adverse to the City, then CSU agrees to defend, indemnify, and hold harmless the City Indemnified Parties from and against all Claims related to or comprising the New LawsUIT. ~~The City shall be entitled to select, in its sole and absolute discretion, the legal counsel that will defend the City Indemnified Parties in the New LawsUIT, which counsel may include the Office of the City Attorney, outside legal counsel approved by the City Council, or both, and CSU shall be required to pay all related Legal Costs incurred by the City Indemnified Parties. If CSU defaults on its defense or indemnification obligation owed to the City Indemnified Parties prior to the Closing, then at any time prior to the Closing, the City shall have the right to cancel the Escrow and terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent, in which event the Parties and the Escrow Agent shall proceed in accordance with Section 9.11. The City's cancellation of the Escrow and termination of this Agreement shall not limit the City's right to recover the Legal Costs of the City Indemnified Parties related to the New LawsUIT and to pursue all other available remedies for CSU's default. If CSU defaults on its defense or indemnification obligation owed to the City Indemnified Parties after the Closing, the City shall be entitled to pursue all available remedies. foregoing indemnity shall not apply to the extent of any Claims arising solely from a breach of any representations or warranties by the City in Section 10.2 or to any New LawsUIT alleging that as part of the City Approval Actions the City failed to properly notice a matter, including notices as required by the Ralph M. Brown Act.~~ The provisions of this Section 7.3 shall be subject to the procedures described in Section 12.6 and shall survive the Closing or the termination of this Agreement, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **JOINT ESCROW INSTRUCTIONS.**

9.1 Opening of Escrow. The purchase and sale of the CSU Property shall take place through the Escrow to be administered by Escrow Agent. Within one (1) Business Day after receiving the City's delivery of the duplicate original of this Agreement in accordance with Section ~~2.8, 2.7~~, Escrow Agent shall sign and deliver to each Party a copy of Escrow Agent's Consent, which shall confirm the Escrow Opening Date.

9.2 Escrow Instructions. This Section 9, together with Section 2, constitute the joint escrow instructions of the Parties to Escrow Agent for the conduct of the Escrow for the purchase and sale of the CSU Property, as contemplated by this Agreement. The Parties shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. Either Party may prepare supplemental escrow instructions consistent with the provisions of this Agreement, subject to the other Party's reasonable approval. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent or prepared by either Party, the provisions of this Agreement shall control unless the Parties have expressly stated their mutual intent in the further escrow instructions to supersede any provisions of this Agreement.

9.3 Escrow Agent's Authority. The Parties authorize Escrow Agent to: (i) pay and charge the Parties for their respective shares of the applicable fees, taxes, charges, and costs payable by either Party regarding the Escrow; (ii) release each Party's escrow closing statement to the other Party; (iii) file all Recordable Closing Documents with the County Recorder for

recording in the Official Records, pursuant to the joint instructions of the Parties; and (iv) utilize documents signed by each Party in counterparts, including attaching separate signature pages to one original of the same document.

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

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

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

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

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

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

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

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

(c) Other Reasonable Items. Any documents required to be delivered by the City under the terms of this Agreement or as reasonably requested by Escrow Agent or Title Company to close the Escrow or comply with Law, including any affidavit or indemnity that the Title Company may reasonably require to issue the Title Policy without taking exception for any "gap" due to the inability to effectively search title records as a result of COVID-19 related delays in updating title records.

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

(a) Recording and Distribution of Documents. Escrow Agent shall cause the Recordable Closing Documents to be filed with the County Recorder for recording in the Official Records regarding the Real Property ~~(and, if applicable, the River Park Property)~~ upon the Closing in the order of priority shown in the Recordable Closing Documents List. Upon the Closing, Escrow Agent shall deliver, to the Parties and any other Person designated in the

written joint escrow instructions of the Parties, conformed copies of all Recordable Closing Documents that have been filed with the County Recorder for recording in the Official Records and a fully-executed original of all other documents identified on the Closing Documents List deposited into the Escrow before the Closing. Each conformed copy of a Recordable Closing Document shall show all recording information.

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

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

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

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

9.7 Timing of Closing.

(a) Primary Target Closing Date. The Parties shall reasonably endeavor to accomplish the Closing on or before the Primary Target Closing Date ~~or, if applicable, on or before the Secondary Target Closing Date. If the Closing is not accomplished on or before the Secondary Target Closing Date, the Parties shall reasonably endeavor to accomplish the Closing at the earliest practical opportunity after the Secondary Target Closing Date. In any event, the Closing shall occur no later than the Outside Closing Date.~~

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

(c) Second Extended Closing Date. If the Closing does not occur by the First Extended Closing Date solely by reason of the pending Injunction Preventing Closing described in paragraph (b) above, then, provided that CSU has diligently and in good faith taken reasonable steps to cause the dissolution or vacation of the Injunction Preventing Closing, the Closing is automatically extended to not later than the Second Extended Closing Date. Prior to the Second Extended Closing Date, CSU shall work diligently, using reasonable efforts, to cause

the Injunction Preventing Closing to be dissolved or vacated, including by causing the CSU Board of Trustees to consider approval of a CSU Formal Corrective Action. The City agrees to Cooperate with CSU during this time, including by causing the City Council to consider approval of a City Formal Corrective Action if necessary to assist with CSU's effort to remove the Injunction Preventing Closing. City shall also Cooperate diligently and expeditiously with CSU's efforts to defend any New Lawsuit and any claim for an Injunction Preventing Closing and to cause the prompt dissolution or vacation of any Injunction Preventing Closing.

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

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

(f) No Further Extensions. The Parties agree that in no event will the Closing be extended past the Fourth Extended Closing Date as described in paragraph (e) above no matter the existence of any Injunction Preventing Closing, court issued stay or enjoinder of the Closing, or appeal thereof. If, for any reason other than an Injunction Preventing Closing, the Closing has not occurred on or before the ~~Outside Closing Date, then any Party not then in default~~ Primary Target Closing Date, or on or before the First Extended Closing Date, the Second

Extended Closing Date, the Third Extended Closing Date, or the Fourth Extended Closing Date, based on any extension of the Closing expressly provided pursuant to paragraphs (b), (c), (d), and (e) above, respectively, then either Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering written notice of termination to both the other Party and Escrow Agent. Following any such written notice of termination, the Parties and Escrow Agent shall proceed pursuant to Section 9.11. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement pursuant to this Section 9.7, if the Closing does not occur on or before the ~~Outside~~Primary Target Closing Date, if no Injunction Preventing Closing has been issued, and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 9.7 ~~before, then the Closing shall occur as soon as reasonably possible following~~ the first date on which Escrow Agent delivers a written "readiness" notice to both Parties that the Closing is ready to occur in accordance with the terms and conditions of this Agreement, ~~then the Closing shall occur as soon as reasonably possible following the first date on which Escrow Agent delivers the written readiness notice.~~

(g) COVID-19 Delays. Notwithstanding anything to the contrary in this Agreement, if there is a court closure, including due to the COVID-19 pandemic, while an Injunction Preventing Closing is pending or in effect, then the First Extended Closing Date, Second Extended Closing Date, Third Extended Closing Date or Fourth Extended Closing Date, whichever is then applicable, shall be tolled until the date that is five (5) Business Days after the court resumes operations in a manner that allows proceedings on the Injunction Preventing Closing to continue. In addition, if the Official Records of San Diego County, Escrow Agent, City, CSU, or any bank of City, CSU or Escrow Agent used for the transfer of funds in connection with the transaction contemplated under this Agreement are not open for business due to the COVID-19 pandemic or other events beyond the reasonable control of either party and such closure affects the ability to proceed with the Closing, then the Closing Date shall be extended to the date that is two (2) Business Days after such offices or bank reopen for business or such events no longer affect the ability to proceed with the Closing.

9.8 Closing Statements and Escrow Costs. The Parties shall jointly notify Escrow Agent when they reasonably believe the Closing is ready to occur at an estimated future date. Escrow Agent shall calculate the Final Adjusted Purchase Price, based on the estimated Closing Date provided by the Parties and utilizing the calculation method and illustrative examples contained in the definition of the Final Adjusted Purchase Price in this Agreement. Escrow Agent shall deliver an escrow closing statement to each Party at least four (4) Business Days before the Closing Date, identifying Escrow Agent's calculation of the Final Adjusted Purchase Price and specifying the costs to be borne by each Party upon the Closing. The City shall pay all recording fees, all documentary transfer taxes, one-half of Escrow Agent's charges for conducting the Escrow, and the premium charged by Title Company for the Title Policy, excluding the cost of any endorsements in the Title Policy that may be requested by CSU and the cost associated with any extended coverage in the Title Policy above and beyond the standard coverage in ~~a California~~an American Land Title Association owner's title policy. CSU shall pay one-half of Escrow Agent's charges for conducting the Escrow, the cost of any endorsements in the Title Policy that may be requested by CSU, and the cost associated with any extended coverage above and beyond the standard coverage in ~~a California~~an American Land Title

Association owner's title policy. All other charges, fees and taxes levied by each and every governmental authority relative to the conveyance of the CSU Property through the Escrow shall be paid by the applicable Party, as customary in San Diego County. Each Party shall not unreasonably disapprove, or unreasonably delay its approval of, such Party's escrow closing statement.

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

9.10 Escrow Cancellation Charges. If ~~the Closing does not occur~~, due to the City's ~~default~~ Default under this Agreement, the Closing does not occur, the City shall pay any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent and Title

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

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

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

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

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

10. COVENANTS, REPRESENTATIONS, WARRANTIES, AND WAIVERS.

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

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

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

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

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

(a) Due Authorization. The signature and delivery of this Agreement by the City ~~has~~ and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized and approved by all necessary action of the City.

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

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

(d) ADA Settlement Agreement. Based on the current, actual knowledge of Mike McSweeney, in his capacity as the City's manager of the Existing Stadium, and Cybele Thompson, in her capacity as the City's Director of the Real Estate Assets Department, and

thereafter, if Mike McSweeney and Cybele Thompson are no longer employed by the City and available, then based on the current, actual knowledge of the designated City representative being most familiar with Existing Stadium operations as determined by the Mayor, without any independent duty of inquiry or investigation in either case, (i) the City has provided CSU with a true and complete copy of the ADA Settlement Agreement, which has not been amended, modified, or supplemented in any way; (ii) all improvements, including capital improvements, required to be performed pursuant to the ADA Settlement Agreement or any subsequent compliance inspections or other obligations required to have been performed under the ADA Settlement Agreement have been performed; (iii) there are no defaults under the ADA Settlement Agreement, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the ADA Settlement Agreement; (iv) there are no amounts owed to plaintiffs, their counsel or anyone else pursuant to the ADA Settlement Agreement; and (v) the City has provided CSU with true and correct copies of reports or other documentation prepared in connection with any compliance inspections performed under the ADA Settlement Agreement, along with records of any actions taken and acceptance of the same by Plaintiff's Representative within the last three (3) years.

If the City learns of any material inaccuracy in City's representations or warranties after the date hereof and prior to the Closing, the City shall promptly notify CSU of such inaccuracy; for purposes hereof, an inaccuracy shall be deemed material if it has a material and adverse effect on ownership of the CSU Property, development of the Project, or any of CSU's rights or obligations in any of the Attachments in accordance with the terms and conditions of this Agreement. The City shall have the right (but not the obligation) to make commercially reasonable efforts to cure such inaccuracy prior to the Closing. If the City delivers written notice of its election not to cure the material inaccuracy, CSU's sole and exclusive remedy in such event shall be to elect, on or before the earlier of the Closing Date or five (5) Business Days after receiving such written notice from the City, to either (y) waive such material inaccuracy and any Claim against the City relating thereto and proceed to consummate the transaction contemplated by this Agreement without reduction in the Purchase Price or (z) terminate this Agreement and receive a refund of the Deposit. If CSU elects to close Escrow pursuant to clause (y) in the preceding sentence, the City shall have no liability to CSU with respect to such inaccurate representation or warranty.

10.3 CSU's Representations and Warranties. All of CSU's representations and warranties set forth in this Section 10.3 shall be true upon the Effective Date (except with respect to Section 10.2(a) which shall be true upon the Closing only) and shall be deemed to be repeated at and as of the Closing and shall survive the Closing for a time period of one (1) year. CSU represents and warrants to the City that:

(a) Due Authorization. The signature and delivery of this Agreement by CSU ~~has~~ and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized and approved by all necessary action of CSU.

(b) No Default. The signature and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any breach of the terms or conditions of, or constitute a default under, any instrument or obligation by which

CSU is bound, or violate any order, writ, injunction, or decree of any court in any litigation to which CSU is a party. Such representation and warrant shall not apply to any New LawsUIT.

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

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

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

(a) CSU's Investigation. As authorized by the CSU Entry Permit, CSU made an independent investigation and analysis, to the extent CSU ~~deems~~deemed necessary or appropriate, concerning the physical condition, development potential, use, sale, and occupancy of the CSU Property and the value of the CSU Property. Such investigation and analysis included: the present and future economic value of the CSU Property and the feasibility of developing or marketing the CSU Property for CSU's intended purposes; an environmental analysis as required by applicable Law; the soils condition of the CSU Property; the presence of Hazardous Substances on or affecting the CSU Property and the actual or potential need for remediation of such Hazardous Substances; the future availability and adequacy of water, sewer, and other utilities serving the CSU Property; ~~present or future~~applicable Law, limitations, restrictions, conditions, or requirements affecting the CSU Property; the existence and effect of covenants, conditions, restrictions, and requirements set forth in ~~recorded documents affecting the Property~~ the Permitted Title Exceptions; and possible costs associated with CSU's development, grading, and construction of improvements on the CSU Property. CSU acknowledges that its approval of the condition of the CSU Property pursuant to this Agreement evidences all of the following: (i) to the extent that CSU's own expertise with respect to any matter regarding the CSU Property is insufficient to enable CSU to reach an informed conclusion regarding such matter, CSU has engaged the services of Persons qualified to advise CSU with respect to such matters; (ii) except with respect to the express covenants, representations and warranties of the City set forth in this Agreement or in any other agreement entered into between the Parties at the Closing. CSU has received assurances acceptable to CSU, by means independent of the City or the City's representatives, of the truth of all facts material to CSU's acquisition of the CSU Property; and (iii) CSU is acquiring the CSU Property as a result of CSU's own knowledge, inspection, and investigation of the CSU Property and not as a result of any statement or representation made by the City or the City's representatives relating to the condition of the CSU Property, unless such statement or representation is expressly set forth in this Agreement or in any other agreement entered into between the Parties at the Closing.

(b) CSU's Acceptance of Property. CSU acknowledges that subject to the express covenants, representations and warranties made by the City in this Agreement or in any other agreement entered into between the Parties at the Closing, the Closing shall evidence CSU's unconditional and irrevocable acceptance of the CSU Property in the CSU Property's "AS IS, WHERE IS" condition, subject to all faults and defects. CSU further acknowledges that the City has not made, and expressly disclaims, any express or implied warranties with respect to the CSU Property, including: (i) the structural, geotechnical, or physical condition of the CSU Property; (ii) the existence or absence of any Hazardous Substances on, under, or affecting the CSU Property; (iii) the content or accuracy of any report, sample, results, study, opinion, or conclusion of any soils, toxic, environmental, or other engineer, consultant, or other Person who has examined the CSU Property; (iv) the content or accuracy of any information disclosed to CSU by any of the City Indemnified Parties, or any engineer, consultant, planner, governmental employee, or other Person in connection with CSU reviewing the feasibility of development of, and otherwise investigating, the CSU Property; (v) the availability of building permits or other permits or approvals for the CSU Property by any state or local governmental bodies with jurisdiction over the CSU Property and by any adjacent landowners; (vi) subject to the express covenants, representations and warranties made by the City in this Agreement or in any other agreement entered into between the Parties at the Closing, the current compliance of the CSU Property with Law; (vii) without limiting the City's obligations, if any, to provide any such services, the availability or capacity of sewer, water, or other utility connections to the CSU Property; and (viii) the suitability of the CSU Property for CSU's intended uses. ~~(e) CSU's Assumption of Obligations Relating to Hazardous Substances. CSU AGREES THAT, WITHOUT LIMITING ANY OTHER PROVISIONS OF THIS AGREEMENT, THE CITY SHALL HAVE NO OBLIGATION TO REMEDIATE OR REMOVE ANY HAZARDOUS SUBSTANCES DISCOVERED ON, UNDER, OR AFFECTING THE PROPERTY. UPON THE CLOSING, CSU ASSUMES ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITIES RELATING TO THE INVESTIGATION OR REMEDIATION OF HAZARDOUS SUBSTANCES ON, UNDER, OR AFFECTING THE PROPERTY, TO THE EXTENT ANY SUCH INVESTIGATION OR REMEDIATION IS REQUIRED BY LAW, AND FURTHER ASSUMES ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITIES WITH RESPECT TO ANY ENVIRONMENTAL CLAIM AFFECTING THE PROPERTY OR THE PROJECT.~~

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

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

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

(e) ~~(f)~~ CSU's Acknowledgment. CSU ACKNOWLEDGES AND AGREES THAT CSU HAS CAREFULLY REVIEWED THIS SECTION 10.4, DISCUSSED ITS IMPORT WITH LEGAL COUNSEL, AND IS FULLY AWARE OF ITS CONSEQUENCES, AND FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION 10.4 ARE A MATERIAL PART OF THIS AGREEMENT. IN ANY EVENT, CSU'S RELEASE, WAIVER, OR DISCHARGE SHALL NOT APPLY AND SHALL BE OF NO FORCE OR EFFECT FOR ANY CLAIMS ARISING OUT OF ~~THE CITY'S FRAUD OR~~ OR RELATING, DIRECTLY OR INDIRECTLY, FROM (I) THE ACTIVE NEGLIGENCE, SOLE NEGLIGENCE OR SOLE WILLEFUL MISCONDUCT OF ANY OF THE CITY INDEMNIFIED PARTIES, (II) THE CITY'S BREACH OF ANY COVENANT, REPRESENTATION, OR WARRANTY EXPRESSLY SET FORTH IN THIS AGREEMENT, OR IN ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES AT THE CLOSING, OR (III) ANY CLAIMS ARISING OUT OF OR RELATING TO PERSONAL INJURY OR DEATH THAT OCCURRED ON THE PROPERTY PRIOR TO THE CLOSING. IN ADDITION, BY THIS SECTION 10.4, CSU IS NOT RELEASING ANY CLAIMS THAT IT MAY HAVE AGAINST ANY THIRD PARTIES, INCLUDING KINDER MORGAN. THE CITY AGREES TO COOPERATE WITH CSU, AT NO OUT OF POCKET COST AND WITH NO LIABILITY TO THE CITY, IF IT DESIRES TO PURSUE ANY ENVIRONMENTAL CLAIM AGAINST KINDER MORGAN IN THE FUTURE, WHICH COOPERATION SHALL INCLUDE, BUT IS NOT LIMITED TO, SHARING NON-PRIVILEGED REPORTS, STUDIES, ANALYSES, MEMOS, CORRESPONDENCE, LITIGATION FILES AND OTHER INFORMATION THAT THE CITY POSSESSES FROM THE LITIGATION THAT RESULTED IN THE KINDER MORGAN SETTLEMENT AGREEMENT. THIS COVENANT TO COOPERATE SHALL SURVIVE THE CLOSING.

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

11. ~~ENCUMBRANCE~~TREATMENT OF SELECT FUNDS ~~FOR POST-CLOSING ACTIVITIES.~~

11.1 City's Encumbrance of Funds. As part of the City Approval Actions, the City shall encumber, and set aside in a designated joint escrow account with Escrow Agent, a portion of the City General Fund's share of the Final Adjusted Purchase Price proceeds in the amount of ~~\$1,500,000. Upon CSU's provision to the City of reasonably satisfactory evidence substantiating CSU's actual expenditures, the City shall use the designated account funds to reimburse CSU for its actual costs incurred in relocating~~ 1,500,000 ("Site Development Funds"). With the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, Site Development Funds shall be released to CSU to fund the relocation of City utilities and other public facilities and completing other site work including excavation and grading, and other mutually beneficial site development activities ~~in the Project~~ that, in the City's reasonable view, serve a valid public purpose and benefit the City's interests (excluding any costs relating to the design, construction, or maintenance of the New Stadium or the River Park Property improvements, or the demolition of the Existing Stadium). Prevailing wages shall be paid for any work funded with Site Development Funds. Within fifteen (15) Business Days after the Closing, the Parties shall enter into joint escrow instructions describing the terms upon which the Site Development Funds will be released to CSU, which will provide that CSU shall be entitled to request, from time to time, that the costs to be incurred pursuant to this Section 11.1 be paid using Site Development Funds, which requests the City must approve or deny within ten (10) Business Days after its receipt of a request. If the City approves or fails to timely respond to a request for a disbursement from the Site Development Fund, Escrow Agent shall release such amount to the CSU immediately. If the City refuses the disbursement request, then the parties shall meet and confer and use commercially reasonable efforts to resolve their dispute. This Section shall survive the Closing.

11.2 ~~CSU's Encumbrance of Funds.~~ As part of the CSU Approval Actions, CSU shall 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 monetary amounts required under this Agreement, including a reasonable estimate of the following costs: (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 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. Potential Fenton Parkway Bridge. As an established City priority project, the City desires that Fenton Parkway be extended across the San Diego River ("Fenton Parkway Bridge") as described in the City's Mission Valley Community Plan Update. The Fenton Parkway Bridge has been contemplated in the City's long-range planning documents for the Mission Valley community for more than 30 years as an independent local facility that separately serves the needs of the community and benefits the public. The City has collected development impact fees in Mission Valley Urban Community Fund No. 400247, of which \$1,235,646 remain to fund environmental review.

design, permitting and construction of the Fenton Parkway Bridge (“Fund No. 400247”). The Draft Mission Valley Impact Fee Study, Fiscal Year 2020 (November 2019), identifies the Fenton Parkway Bridge as a facility M-20, and in that manner, the City intends to continue collecting development impact fees for the Fenton Parkway Bridge. The Final EIR contains substantial evidence demonstrating the Fenton Parkway Bridge is not required mitigation to reduce the Project’s direct significant traffic impacts nor is it a functional element or component of the Project. Nevertheless, as a benefit to the community and not as a part of the Project or as mitigation for the Project, CSU is willing to support the potential development of the Fenton Parkway Bridge by helping the City fund the exploration, preliminary feasibility, due diligence, design, environmental review and permitting for the potential Fenton Parkway Bridge (“Feasibility Exploration”).

(a) Feasibility Funding. If the City deposits Two Million Dollars (\$2,000,000) of the Purchase Price into Fund No. 400247 or another fund that can be used to pay for the Feasibility Exploration at Closing, CSU will provide up to an additional Two Million Dollars (\$2,000,000) after the Closing to support the Feasibility Exploration. The amounts currently existing in Fund No. 400247 shall first be exhausted for Feasibility Exploration and thereafter, the City and CSU will each be responsible for fifty percent (50%) of additional Feasibility Exploration costs, with each Party bearing equal responsibility for expenses as they are incurred. Any funds remaining after the completion of the Feasibility Exploration will be utilized to construct the Fenton Parkway Bridge if it is approved, or to fund other transportation improvements in the Mission Valley Community Plan area if the Fenton Parkway Bridge is not approved.

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

(c) No Commitment. The Parties are agreeing to explore the feasibility of the Potential Bridge Project, but neither Party is committing to construct any kind of Fenton Parkway Bridge at this time. Any obligation to construct the Fenton Parkway Bridge is irrevocably conditioned upon the completion of environmental review in compliance with CEQA and the National Environmental Policy Act (“NEPA”), if applicable. Nothing in this Agreement shall commit or be interpreted to commit either Party to a definite course of action with respect to the Fenton Parkway Bridge, preclude the consideration of feasible mitigation measures and alternatives, including the no project alternative, or restrict denial of the Fenton Parkway Bridge, prior to the certification, approval, or consideration of a CEQA compliance document for the

Fenton Parkway Bridge. Compliance with CEOA and NEPA, if applicable, will be part of the Feasibility Exploration.

(d) Construction. If the Fenton Parkway Bridge is approved in compliance with CEOA and NEPA if applicable, then CSU will construct the Fenton Parkway Bridge pursuant to the terms of a separate agreement provided the City has placed an additional Six Million Five Hundred Thousand Dollars (\$6,500,000) into Fund No. 400247 and makes such funding available to CSU. Within six (6) months after the certification of an environmental impact report or other CEOA compliance for the Fenton Parkway Bridge, if CEOA Approval is obtained at all, the Parties will engage in good faith negotiations to agree upon the terms for construction of the Fenton Parkway Bridge. Potential terms to be covered in such an agreement include responsibility for obtaining necessary Approvals from state and federal agencies to construct the Fenton Parkway Bridge, permitting authority, encroachment permits and construction licenses, the implementation of mitigation measures, that CSU will complete construction of the Fenton Parkway Bridge prior to the occupancy of more than 65% of the Project, ownership and acceptance of the Fenton Parkway Bridge by the City and other funding mechanisms available to support the construction, among other things. Pursuant to Section 11.2(c) above, nothing in this Section should be interpreted as a commitment to construct the Fenton Parkway Bridge and any agreement to construct or negotiate an agreement to construct the Fenton Parkway Bridge is irrevocably conditioned upon and subject to the completion of environmental review under CEOA and other applicable Law.

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

12. **DEFAULT AND REMEDIES.**

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

(a) Monetary/Escrow Default. A Party fails to timely pay or deposit any amount of money, bond, surety, or evidence of any insurance coverage required under this Agreement, or a Party fails to timely submit any funds or documents to Escrow Agent as reasonably necessary to close the Escrow in accordance with this Agreement, and this circumstance continues for five (5) Business Days after the Party in breach of its contractual obligation ~~(for purposes of this Section 12, the “Party in breach”)~~ receives written notice from the other Party identifying the nature of the breach.

(b) Non-Monetary Default. A Party fails to perform any of such Party’s non-monetary obligations under this Agreement or to comply with any material restriction or prohibition in this Agreement, and this circumstance continues for ten (10) Business Days after the Party in breach of its contractual obligation receives written notice from the other Party identifying the nature of the breach; provided, however, that the Party in breach shall be entitled to a time extension of up to twenty (20) additional Business Days to cure the breach if: (i) the Party in breach delivers written notice to the other Party within the initial 10-Business Day cure period confirming (with supporting evidence) that the Party in breach cannot reasonably cure the breach within the initial cure period and stating that the Party in breach intends to cure the

breach as expeditiously as possible; and (ii) the Party in breach diligently prosecutes the cure of the breach to completion within the 20-Business Day extension period.

~~(e) Insolvency. CSU admits in writing that CSU is unable to pay CSU's debts as they become due or CSU becomes the subject of any bankruptcy proceeding (except an involuntary bankruptcy proceeding dismissed within 90 calendar days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution, or other judicial seizure is made with respect to, substantially all of CSU's assets or CSU's interest in this Agreement or the Property (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 90 calendar days).~~

(c) ~~(d)~~ Prohibited Transfer. Any of the following types of transfers occurs prior to the Closing: (i) CSU assigns or transfers its interest in this Agreement, in whole or in part, without the City's prior written consent ~~(except that the CSU's entry into any Development Contract to facilitate completion of the Project will not require the City's prior written consent)~~; or (ii) an assignment or transfer of CSU's interest in this Agreement, in whole or in part, occurs involuntarily or by operation of Law.

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

12.3 CSU's Pre-Closing Default.

(a) City's Election. If CSU is in ~~default~~ Default of its obligation to Close Escrow under this Agreement, the City's sole and exclusive remedy shall be to ~~elect one of the following options: (i) waive the effect of CSU's default and proceed to consummate the Sale Transaction under this Agreement; or (ii)~~ terminate this Agreement by delivering written notice of termination to CSU and Escrow Agent, in which case the City shall receive or retain the Earnest Money Deposit as liquidated damages and as consideration for the City accepting this Agreement and affording CSU with all of its rights under this Agreement.

(b) Determination of Liquidated Damages for CSU Default With Respect to Closing of Escrow. **THE PARTIES ACKNOWLEDGE THAT IT WOULD BE EXTREMELY IMPRACTICAL AND DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES THAT WOULD BE SUFFERED BY THE CITY IF THE CLOSING DOES NOT OCCUR DUE TO CSU'S DEFAULT. THE PARTIES HAVE CONSIDERED**

CAREFULLY THE LOSS TO THE CITY OCCASIONED BY THE NEGOTIATION ~~OF~~ AND ~~SIGNATURE~~EXECUTION OF THIS AGREEMENT, THE CITY'S EXPENSES INCURRED IN CONNECTION WITH PREPARING THIS AGREEMENT AND COOPERATING WITH CSU'S DUE DILIGENCE INVESTIGATION OF THE PROPERTY, THE EXPENSES OF THE CITY'S PERFORMANCE UNDER THIS AGREEMENT, AND THE OTHER DAMAGES, GENERAL AND SPECIAL, WHICH THE PARTIES REALIZE THE CITY WILL SUSTAIN, BUT WHICH THE CITY CANNOT AT THIS TIME CALCULATE WITH REASONABLE CERTAINTY. BASED ON ALL THOSE CONSIDERATIONS, THE PARTIES AGREE THAT THE DAMAGE TO THE CITY IN THE EVENT OF CSU'S DEFAULT OF ITS FAILURE TO CLOSE ESCROW WOULD REASONABLY BE EXPECTED TO EQUAL THE AMOUNT OF THE EARNEST MONEY DEPOSIT. ACCORDINGLY, IF THE CLOSING DOES NOT OCCUR DUE TO CSU'S DEFAULT OF ITS OBLIGATION TO CLOSE ESCROW UNDER THIS AGREEMENT, THEN THE CITY'S SOLE AND EXCLUSIVE REMEDY TO THE CITY SHALL BE TO RECEIVE ~~OR RETAIN~~ THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES ~~(TO THE EXTENT THE EARNEST MONEY DEPOSIT HAS NOT ALREADY BEEN TRANSMITTED BY ESCROW AGENT TO THE CITY AS NONREFUNDABLE CONSIDERATION PURSUANT TO ANY SPECIFIC PROVISION OF THIS AGREEMENT).~~ CSU SEEKS TO LIMIT ITS LIABILITY UNDER THIS AGREEMENT TO THE AMOUNT OF THE EARNEST DEPOSIT IN THE EVENT THE CITY TERMINATES THIS AGREEMENT AS A RESULT OF CSU'S DEFAULT OF ITS OBLIGATION TO CLOSE ESCROW UNDER THIS AGREEMENT. THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF ANY APPLICABLE LAW, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY AS PERMITTED UNDER LAW. THE CITY SPECIFICALLY WAIVES AND RELINQUISHES ALL RIGHTS TO ASSERT A REMEDY OF SPECIFIC PERFORMANCE OF CSU'S OBLIGATION TO CLOSE ESCROW IN CONSIDERATION OF THE PROVISIONS HEREIN.

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

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

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

12.5 General Indemnification. From and after the Closing, CSU agrees to defend, indemnify, and hold harmless the City Indemnified Parties from and against all Claims to the extent arising out of or directly or indirectly related to: ~~(i)~~ (i) any Environmental Claim and any

condition, circumstance, dangerous instrumentalities, and soils conditions, including soils subsidence or presence of Hazardous Substances, now or hereafter existing on, under, or affecting the CSU Property; ~~(ii)~~(i) the noncompliance with applicable Law of CSU's use of the CSU Property ~~with Law~~; ~~(iii)~~(iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any Person on the CSU Property or to the CSU Property itself, ~~except to the extent such death, accident, injury, loss, or damage is directly or indirectly caused by the established sole negligence or willful misconduct of the City~~; ~~(iv)~~ any assertion that the approval or signature of this Agreement triggered the need to comply with any Law related to the payment of prevailing wages or any related reporting, monitoring, or other obligations; ~~(v)~~ occurring on or after the Closing; ~~(iv)~~ contracts or agreements entered into by CSU with third parties in connection with this Agreement or CSU's use of the CSU Property; ~~(vi)~~(v) the costs associated with CSU's development, improvement, use, and operation of the CSU Property or construction of the Project; ~~and (vii)~~(vi) the performance of any manhole connection work as described in Section 6.4 and any resulting adverse impacts to the Wetland Mitigation Project or the Wetland Mitigation Project Site, as well as any related noncompliance with Law, including any required Approvals. ~~The City shall be entitled to select, in its sole and absolute discretion, the legal counsel that will defend~~; ~~(vii)~~ any Claim for relocation with respect to the development of the CSU Property; and ~~(viii)~~ any Claim arising from or relating to development of the Project, the Campus Master Plan and this Agreement, including, but not limited to, any Claim arising from or relating to CSU's and its transferees' obligations and activities under this Agreement, any Development Contract, or other arrangement. Notwithstanding the foregoing, CSU's indemnification obligations shall not apply to any Claims to the extent arising out of or directly or indirectly related to a breach of any of the City's express covenants, representations or warranties set forth in this Agreement or in any agreements entered into between the Parties at the Closing, or the active negligence, sole negligence or sole willful misconduct of any of the City Indemnified Parties ~~in any indemnified Claim, which counsel may include the Office of the City Attorney, outside legal counsel approved by the City Council, or both, and CSU shall be required to pay all related Legal Costs incurred by the City Indemnified Parties.~~

12.6 Requirements Relating to CSU Indemnification Obligation. The City shall promptly notify CSU in writing of the City's receipt of any written notice of any Claims subject to CSU's indemnification. Upon receipt of such notification, CSU shall assume the defense of the Claim, including the employment of counsel reasonably satisfactory to the City and CSU. The City shall have ten (10) Business Days within which to approve or disapprove CSU's choice of counsel and if the City fails to respond in writing within such time period it shall be deemed to have approved CSU's choice of counsel. The City's approval of CSU's choice of counsel shall not be unreasonably withheld, conditioned or delayed.

12.7 ~~12.6~~ Survival. The provisions of this Section 12 shall survive the termination of this Agreement or the Closing, as applicable.

13. CASUALTY OR CONDEMNATION OF THE PROPERTY.

13.1 Notice. If the City becomes aware before the Closing of any damage or destruction to the Real Property, or if the City receives notice before the Closing of the commencement or threatened commencement of eminent domain proceedings with respect to all

or any portion of the Real Property, the City shall promptly deliver to CSU written notice of the relevant circumstances.

13.2 CSU's Rights. If between the Effective Date and the Closing Date, the Real Property is destroyed or damaged to the extent that CSU reasonably estimates the cost of restoration or repair to exceed ~~ten~~five percent (~~10~~5%) of the Base Purchase Price, or any eminent domain proceeding is commenced that will result in the taking of more than ten percent (10%) of the surface area of the Real Property, CSU shall have the right, in its sole and absolute discretion, to either: (i) terminate this Agreement by delivering written notice of termination to the City and Escrow Agent, in which event the Parties and Escrow Agent shall proceed in accordance with Section 9.11; or (ii) proceed with the Closing with no reduction in the Final Adjusted Purchase Price, in which event the City shall assign to CSU all of the City's right, title, and interest to any insurance proceeds for casualty and any monetary award in any eminent domain proceeding.

14. **UNAVOIDABLE DELAY.**

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

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

AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE OF THIS AGREEMENT.

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

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

15. NOTICES.

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

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

To City:

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

With a copy to:

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

To CSU:

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

with a copy to:

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

and to:

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

and to:

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

To Escrow Agent:

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

To Title Company:

Chicago Title Insurance Company
2365 Northside Drive, Suite 600
San Diego, California 92108

Attn: Ken Cyr and Mark Franklin
Email: TeamCyrFranklin@ctt.com

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

16. GENERAL PROVISIONS.

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

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

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

16.4 Governing Law. The laws of the State of California shall govern interpretation and enforcement of this Agreement, without application of conflict-of-laws principles or statutes. This Agreement is entered into, is to be fully performed in, and relates to real property located in

San Diego County, California. The proper venue for all legal actions arising from this Agreement shall be San Diego County, California, and the Parties waive any objection to this mutual choice of venue.

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

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

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

16.8 Time of the Essence. As to the performance of ~~any~~each and every obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence. Each Party acknowledges that a timely Closing on or before the ~~Primary Target Closing Date~~, the ~~Secondary~~First Extended Closing Date, ~~or the Outside the Second Extended Closing Date, the Third Extended Closing Date or the Fourth Extended Closing Date~~, as applicable, is a material term of this Agreement, and ~~the Outside Closing Date~~ may not be extended, except through a written amendment to this Agreement signed by both Parties.

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

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

~~Cap.~~ This Section 16.10 shall survive the Closing or the termination of this Agreement, as applicable.

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

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

16.13 Calculation of Time Periods. All periods of time referred to in this Agreement shall include all Business Days and non-Business Days, unless the period of time specifies Business Days; provided, however, that if the date or last date to perform any act or give any notice or approval shall fall on a non-Business Day, such act or notice may be timely performed or given on the next Business Day.

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

16.15 Tax Consequences. ~~CSU~~ Each Party shall bear all responsibility, liability, and costs relating to any tax consequences experienced by ~~CSU~~ such Party as a result of this Agreement and the transactions contemplated by this Agreement.

16.16 No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Person other than the Parties or give any Person other than the Parties any right of subrogation or action over or against any Party.

16.17 Severability. If a court of competent jurisdiction declares any portion of this Agreement to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect,

as fully as though such invalid, illegal, or unenforceable portion had never been included in this Agreement.

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

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

16.20 Approvals. Except as otherwise expressly provided in this Agreement or as otherwise required by the San Diego Charter or the Municipal Code, the Mayor shall grant or deny, in writing, any approvals or consents required to administer the City's obligations under this Agreement; provided, however, that the Mayor may, in his or her sole discretion, refer to the City Council any item requiring the City's consent or approval.

[remainder of this page intentionally left blank]

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

CITY:

Date: _____

City of San Diego,
a California municipal corporation

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

CSU:

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

Date: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER & HAMPTON, LLP

By: _____

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

APPROVED AS TO FORM:

BOARD OF TRUSTEES OF
THE CALIFORNIA STATE UNIVERSITY

By: _____
G. Andrew Jones, Executive Director
Chancellor and General Counsel

ATTACHMENT 1 TO PURCHASE AND SALE AGREEMENT

Escrow Agent's Consent

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

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

Dated this ____ day of _____, 2020.

~~CHICAGO TITLE COMPANY~~

By _____
Name: _____
Title: _____

CHICAGO TITLE COMPANY

By:
Name:
Title:

Document comparison by Workshare Compare on Wednesday, April 29, 2020
3:13:28 PM

Input:	
Document 1 ID	file:///K:/CG/SD/Mission Valley Stadium/City PSA & Attachments/PSA main body v5.doc
Description	PSA main body v5
Document 2 ID	file:///K:/CG/SD/Mission Valley Stadium/SDSU Revised PSA Docs/SDSU Draft Documents 04.28.2020/1-PSA - Main Body.doc
Description	1-PSA - Main Body
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1184
Deletions	827
Moved from	27
Moved to	27
Style change	0
Format changed	0
Total changes	2065

