

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: May 5, 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

This follows the memorandum issued on May 1, 2020, regarding the status of negotiations related to the sale of the SDCCU Stadium Site. The City's legal team, including my Office and the outside law firm of Kane, Ballmer & Berkman, prepared the attached "Key Issues" document outlining the 14 most critical policy issues that are not addressed in the City's favor in the Draft Purchase and Sale Agreement (PSA) delivered last week by SDSU. These issues remain to be decided by the City Council at its May 19 meeting. The Attachment is consistent with the City Council's direction on November 18, 2019, to prepare a Purchase and Sale Agreement that protects the City, taxpayers, and utility ratepayers and adheres the terms contained in voter-approved Measure G.

The key policy issues are summarized below, and the numbers correspond to those found in the Attachment.

1. Whether the commencement date for the New Lease should continue to be July 1, 2020 as originally agreed to by the Parties, or, as the California State University (CSU) now proposes, the commencement date should be pushed back to an uncertain future date incurring a cost to the City of approximately \$1 million a month after July 1, 2020, as well as other adverse consequences.
2. Whether the City should adhere to the Council-directed Outside Closing Date of December 31, 2020, with one narrow exception, or, as CSU now proposes, the Outside Closing Date should be left open-ended and subject to vague contingencies, potentially allowing CSU to delay final the execution of the PSA and leave the City in a holding pattern for many years.
3. Whether the PSA should preserve the City's ability to operate existing and future planned water and sewer facilities, including Pure Water facilities, as required by applicable water and sewer bond covenants and by Measure G.

4. Whether the PSA should protect the existing City groundwater monitoring wells on the Property and the City's access to them, and require CSU to go through the City's standard processes if it seeks to relocate the wells.
5. Whether the sale should be conducted "as-is" with standard language in which CSU indemnifies the City against all environmental risk and liability for the Property and River Park Property in accordance with the language in Measure G, or, as CSU now proposes, the sale should be constructed so that the City as seller absorbs significant environmental risks and liability, likely of immense proportion, on CSU's behalf.
6. Whether the PSA should, as CSU proposes, include expanded warranties and representations by the City, including some that directly violate Measure G, and which expose the City to significant unanticipated liability after the Closing when the City no longer owns or controls the Property.
7. Whether language from Measure G on prevailing wage compliance should be accurately reflected in the PSA and its Attachments, making CSU (and not the City) responsible for any prevailing wage awards that could arise from the property's acquisition and development or, as CSU now proposes, all such language should be removed, subjecting the City to potentially enormous liability and costs.
8. Whether CSU should be responsible for the condition of Murphy Canyon Creek and indemnify the City against all deficiencies, as previously agreed to by the Parties, or, as CSU now proposes, the ongoing risk and liability of Murphy Canyon Creek should be shifted to the City, bringing with it potential extraordinary costs.
9. Whether the City should require CSU to collect from the CSU's development partners, and then remit to the City, the Regional Transportation Congestion Improvement Program (RTCIP) Fee paid by all developers, or as CSU now proposes, the City should agree to waive that fee and forgo an estimated \$10,000,000 in funds for major regional transportation and mobility projects.
10. Whether CSU and its development partners should be required to follow the City's standard procedure with respect to paying water and sewer connection fees, or, as CSU now proposes, the City should exempt CSU's development partners from those costs to the detriment of utility ratepayers.
11. Whether standard City park rules and regulations should initially apply to the River Park, protecting the public's right to access, or as CSU now proposes, the River Park should be governed by CSU's "grounds policy" for the SDSU campus, under which preferential treatment is afforded to university-related groups, exposing the City to potential litigation.

