

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

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** February 18, 2020

**TO:** Honorable Members of the City Council

**FROM:** City Attorney Mara W. Elliott

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

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At the Council meeting on January 27, 2020, our Office agreed to provide a brief written update to the Council in mid-February regarding the status of ongoing negotiations.

**BACKGROUND**

On November 18, 2019, the Council approved a motion requesting that our Office prepare the draft transaction documents for the City's proposed sale of the SDCCU Stadium Site (Property) to reflect SDSU's revised purchase offer of October 28, 2019, the City-protective measures earlier identified in writing by our Office and the Independent Budget Analyst, and an outside closing date of December 31, 2020. My Office thereafter prepared the draft transaction documents, including the Purchase and Sale Agreement (PSA), various attachments to the PSA, and a Memorandum of Understanding relating to the Fenton Parkway Bridge (Transaction Documents).

At its meeting on January 27, 2020, the Council approved a series of motions that provided essential policy direction. My Office thereafter revised the Transaction Documents to include this direction and transmitted the revised documents to SDSU on January 28, 2020. SDSU agreed to provide its requested changes to the Transaction Documents to the City's negotiating team within two weeks of receipt.

**STATUS UPDATE**

On February 11, the City received SDSU's significantly revised draft of the main body of the draft PSA. *See* Attachment A. On February 17, the City received some high-level comments from SDSU regarding several PSA attachments, but not a revised draft of those documents. The City has still not yet received SDSU's requested revisions or detailed comments on the Fenton Parkway Bridge MOU.

On February 13, 2020, representatives of SDSU and the City met to address SDSU's overarching concerns regarding the draft PSA and issues identified by the City during its preliminary review of SDSU's proposed revisions to it. The parties agreed to meet and negotiate at least twice per week. The parties will seek policy direction from the Council if certain issues ultimately cannot be resolved in the negotiation sessions.

We note that SDSU is requesting significant revisions to the Draft PSA, some of which are contrary to SDSU's revised offer of October 28, 2019, or will increase the City's risk. In addition, SDSU's representatives informed us during the February 13 negotiation session of their intent to remove key enforcement and performance mechanisms in the draft PSA attachments. Those mechanisms were included to ensure SDSU fulfills the provisions of Measure G and related campaign promises.

In addition to the above-described negotiation sessions, the subject matter experts for both parties continue to hold frequent meetings in an effort to resolve complex logistical issues pertaining to the location, operation, and maintenance responsibilities for current and future planned public facilities serving the Property and adjacent areas, including planned Pure Water Program facilities, the parcel map that will be required to create legal parcels constituting the Property to be acquired by SDSU, the City-owned River Park Property, and certain adjacent City-owned land; and the respective roles of the parties in issuing permits and reviewing and approving grading and construction plans for SDSU's project, including development of the River Park on City-owned land.

In accordance with the Council's authorization on January 27, the City retained the law firm of Kane, Ballmer & Berkman (KBB). Attorneys from KBB have conducted an initial review of the draft PSA and SDSU's proposed revisions, have met with City staff and attended negotiation sessions with SDSU, and will make recommendations to add or modify provisions in the Transaction Documents to further protect the City's interests. It will likely be necessary to increase the authorized expenditure for KBB's legal services above the Mayor-approved threshold of \$250,000.

In addition, we are reviewing the voluminous Final Environmental Impact Report (Final EIR) for the project released by SDSU for public review on January 17. As part of that review, we are determining whether any specific content of the Final EIR will need to be incorporated into the Transaction Documents.

MARA W. ELLIOTT, CITY ATTORNEY



By: \_\_\_\_\_

Mara W. Elliott  
City Attorney

MWE:KJR:cw:ccm  
MS-2020-4  
Doc. No.: 2330127  
Attachment

cc: Honorable Mayor Kevin Faulconer  
Kris Michell, Chief Operating Officer  
Cybele Thompson, Director, Real Estate Assets Department  
Mike Hansen, Director, Planning Department  
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**

## Table of Contents

1.	<b>DEFINED TERMS AND SECTION REFERENCES.....</b>	<b><u>13</u></b>
2.	<b>PURCHASE AND SALE OF PROPERTY.....</b>	<b><u>1415</u></b>
2.1	Escrow.....	<u>1415</u>
2.2	Purchase and Sale.....	<u>1415</u>
2.3	Final Adjusted Purchase Price.....	<u>1415</u>
2.4	Independent Consideration.....	<u>1415</u>
2.5	<del>Initial</del> Earnest Money Deposit.....	15
<del>2.6</del>	<del>Additional Earnest Money Deposit.....</del>	<del>15</del>
<del>2.7</del> <u>2.6</u>	Investment and Disposition of Earnest Money Deposit.....	<del>16</del> <u>15</u>
<del>2.8</del> <u>2.7</u>	Effective Date .....	16
<u>2.8</u>	<u>No Assumption of Liabilities.....</u>	<u>16</u>
3.	<b>LEASE TRANSACTIONS RELATED TO THE REAL PROPERTY.....</b>	<b>16</b>
3.1	<del>Second Amendment to</del> CSU Existing Occupancy Agreement.....	16
3.2	CSU New Lease.....	16
4.	<b>APPROVAL OF DUE DILIGENCE AND FEASIBILITY MATTERS.....</b>	<b>17</b>
4.1	CSU's Approval of Title Condition.....	17
4.2	CSU's Approval of Property Condition.....	17
4.3	<del>City's Approval of</del> CSU Financing Plan.....	18
5.	<b>COMPLIANCE WITH SPECIFIED PROVISIONS OF <del>MEASURE</del></b>	
	<b><u>GSECTION 22.0908</u>.....</b>	<b>18</b>
5.1	Overview.....	18
5.2	Prior Satisfaction of Certain Requirements .....	18
5.3	Completion of Development Features on the Property.....	18
5.4	Mitigation of Significant Environmental Impacts .....	19
5.5	Development and Maintenance of the River Park Property.....	19
5.6	Demolition of Existing Stadium and Construction of New Stadium.....	19
5.7	Public Transit Improvements.....	19
5.8	Development Fee Requirements <del>20</del> <u>and Affordable Housing Requirements</u> .....	<u>19</u>
5.9	Parkland Requirements .....	20
5.10	Reduction of Greenhouse Gas Emissions.....	20
5.11	Stadium Costs.....	20
5.12	Reimbursement of City's Costs for Public Safety and Traffic Management.....	20
5.13	Public-Private Partnerships for Development of the Project.....	20
5.14	Environmental Remediation.....	20
5.15	No Imposition or Increase of Taxes.....	21
5.16	No Prohibition Against Leases, Sales, or Exchanges.....	21
5.17	Applicable Taxes for Development on the Property.....	21
5.18	Lease Obligations.....	21
5.19	Reservation of Rights in City's Favor.....	21
5.20	Cooperation Regarding Easements and Mapping.....	21

5.21	Prevailing Wages and Worker Protections.....	22
6.	<b>SITE PREPARATION AND REMEDIATION ACTIVITIES.</b> .....	22
6.1	Completion of Well Removal and Abandonment Work.....	22
6.2	Circuit 362.....	<del>23</del> <u>22</u>
6.3	Potential Future Remediation of Environmental Contamination.....	23
6.4	Temporary Wetland Impact.....	24
6.5	Sewer Lines.....	<del>24</del> <u>25</u>
6.6	Water Facilities.....	<del>24</del> <u>25</u>
6.7	Parcel Map.....	25
6.8	Recording of Easement Agreements.....	<del>25</del> <u>26</u>
6.9	Existing Easements Vacation Approval.....	<del>26</del> <u>27</u>
6.10	Existing Rights-of-Way Vacation Approval.....	<del>26</del> <u>27</u>
6.11	City Public Improvement Plans.....	<del>27</del> <u>28</u>
6.12	Flood Map Revision.....	<del>27</del> <u>28</u>
6.13	Cooperative Efforts.....	<del>28</del> <u>29</u>
6.14	Municipal Services.....	<del>27</del> <u>29</u>
6.15	Survival.....	<del>28</del> <u>29</u>
7.	<b>RIGHTS AND OBLIGATIONS REGARDING ANY NEW LAWSUIT.</b> .....	<del>28</del> <u>30</u>
7.1	<del>CSU's Assumption of Risk</del> <u>Intentionally Deleted</u> .....	<del>28</del> <u>30</u>
7.2	CSU's Right to Terminate Agreement.....	<del>28</del> <u>30</u>
7.3	CSU's Defense and Indemnification of City.....	<del>29</del> <u>30</u>
7.4	Reasonable Cooperation.....	<del>29</del> <u>30</u>
8.	<b>CONDITIONS PRECEDENT TO THE CLOSING.</b> .....	<del>29</del> <u>30</u>
8.1	CSU's Conditions.....	<del>29</del> <u>30</u>
8.2	City's Conditions.....	<del>30</del> <u>31</u>
8.3	Failure of Closing Conditions.....	<del>30</del> <u>31</u>
9.	<b>JOINT ESCROW INSTRUCTIONS.</b> .....	<del>30</del> <u>32</u>
9.1	Opening of Escrow.....	<del>30</del> <u>32</u>
9.2	Escrow Instructions.....	<del>30</del> <u>32</u>
9.3	Escrow Agent's Authority.....	<del>31</del> <u>32</u>
9.4	CSU's Escrow Deposits.....	<del>31</del> <u>32</u>
9.5	City's Escrow Deposits.....	<del>31</del> <u>32</u>
9.6	Closing Procedure.....	<del>32</del> <u>33</u>
9.7	Timing of Closing.....	<del>32</del> <u>33</u>
9.8	Closing Statements and Escrow Costs.....	<del>33</del> <u>34</u>
9.9	Prorated Items.....	<del>33</del> <u>34</u>
9.10	Escrow Cancellation Charges.....	<del>33</del> <u>35</u>
9.11	Escrow Cancellation.....	<del>34</del> <u>35</u>
9.12	Report to IRS .....	<del>34</del> <u>36</u>
10.	<b>COVENANTS, REPRESENTATIONS, WARRANTIES, AND WAIVERS.</b> .....	<del>34</del> <u>36</u>
10.1	City's Covenants.....	<del>34</del> <u>36</u>
10.2	City's Representations and Warranties .....	<del>35</del> <u>36</u>

10.3	CSU's Representations and Warranties .....	<del>35</del> <u>37</u>
10.4	CSU's Acknowledgments and Waivers.....	<del>36</del> <u>38</u>
11.	<b>ENCUMBRANCE OF FUNDS FOR POST-CLOSING ACTIVITIES.</b> .....	<del>38</del> <u>40</u>
11.1	City's Encumbrance of Funds.....	<del>38</del> <u>40</u>
<del>11.2</del>	<del>CSU's Encumbrance of Funds.....</del>	<del>38</del>
<del>11.3</del>	<del>Survival.....</del>	<del>38</del>
12.	<b>DEFAULT AND REMEDIES.</b> .....	<del>38</del> <u>40</u>
12.1	Occurrence of Default.....	<del>38</del> <u>40</u>
12.2	City's Default.....	<del>39</del> <u>41</u>
12.3	CSU's Default.....	<del>39</del> <u>41</u>
12.4	Post-Closing Remedies.....	<del>40</del> <u>42</u>
12.5	General Indemnification.....	<del>40</del> <u>42</u>
12.6	Survival.....	<del>41</del> <u>43</u>
13.	<b>CASUALTY OR CONDEMNATION OF THE PROPERTY.</b> .....	<del>41</del> <u>43</u>
13.1	Notice.....	<del>41</del> <u>43</u>
13.2	CSU's Rights.....	<del>41</del> <u>43</u>
14.	<b>UNAVOIDABLE DELAY.</b> .....	<del>41</del> <u>43</u>
14.1	Notice.....	<del>41</del> <u>43</u>
14.2	Assumption of Economic Risks.....	<del>42</del> <u>44</u>
15.	<b>NOTICES.</b> .....	<del>42</del> <u>44</u>
15.1	Delivery .....	<del>42</del> <u>44</u>
15.2	Addresses.....	<del>43</del> <u>45</u>
15.3	Changes.....	<del>44</del> <u>46</u>
16.	<b>GENERAL PROVISIONS.</b> .....	<del>44</del> <u>46</u>
16.1	Incorporation.....	<del>44</del> <u>46</u>
16.2	Assignment.....	<del>44</del> <u>46</u>
16.3	No Brokerage Commissions.....	<del>45</del> <u>47</u>
16.4	Governing Law .....	<del>45</del> <u>47</u>
16.5	Entire Agreement.....	<del>45</del> <u>47</u>
16.6	Amendments and Waivers.....	<del>45</del> <u>47</u>
16.7	Further Assurances.....	<del>45</del> <u>47</u>
16.8	Time of the Essence.....	<del>45</del> <u>48</u>
16.9	No Personal Liability of Officials and Employees.....	<del>46</del> <u>48</u>
16.10	Recovery of Legal Costs.....	<del>46</del> <u>48</u>
16.11	Relationship of Parties.....	<del>46</del> <u>48</u>
16.12	Mutual Negotiation.....	<del>46</del> <u>48</u>
16.13	Calculation of Time Periods .....	<del>46</del> <u>48</u>
16.14	Principles of Construction.....	<del>46</del> <u>48</u>
16.15	Tax Consequences .....	<del>47</del> <u>49</u>
16.16	No Third-Party Beneficiaries.....	<del>47</del> <u>49</u>
16.17	Severability.....	<del>47</del> <u>49</u>

16.18 Effect~~---~~.....4749

16.19 Counterparts.....4749

16.20 Approvals.....4749

**List of Attachments to this Purchase and Sale Agreement**

- 1 Escrow Agent's Consent
- 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 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
- 22 Declaration of Affordable Housing Restrictions
- ~~23 Permitting and Development Fee Agreement~~[Intentionally Deleted](#)
- ~~24 Future Recreation Center Site Agreement~~[Intentionally Deleted](#)
- ~~25 Second Amendment to CSU Existing Occupancy Agreement~~[Intentionally Deleted](#)
- 26 River Park and Storm Water BMP ~~Development~~ Agreement
- ~~27 River Park and Storm Water BMP Maintenance Agreement~~[Intentionally Deleted](#)
- ~~28 Easement Agreement for River Park Construction and Maintenance~~[Intentionally Deleted](#)
- ~~29 Additional Park Maintenance Agreement~~[Intentionally Deleted](#)
- 30 ~~Easement~~[License](#) 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
- 33 Depiction of Wetlands Mitigation Project Site



## 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. 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~~Section 22.0908 and sets forth certain terms that must be included in a purchase and sale agreement, or associated agreements, related to the City’s sale to CSU of 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~~1).

~~A.~~B. If CSU acquires the Property, ~~CSU is required under Measure G and related campaign promises to~~Section 22.0908 provides that CSU will undertake certain activities and construct, operate, and maintain ~~various~~certain improvements of local and ~~regional~~statewide public benefit on or about the Property, as further described herein.

C. CSU desires to purchase the Property for use and development in accordance with terms of this Agreement, the Campus Master Plan and Final EIR, and Section 22.0908.

D. CSU is the State of California acting in its educational capacity. As a sovereign state agency, it is generally exempt and immune from local and regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations. Section 22.0908(x)(12) states “Nothing in [Measure G] abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University.” Given the unique circumstances at hand, however, and without waiver of its sovereignty, CSU will purchase the Property from the City for development consistent with Section 22.0908, and as set forth herein and in the relevant attachments.

~~B.~~E. 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 Property; and (ii) CSU agrees to ~~fulfill its various commitments to the City’s voters in accordance with Measure G and~~

+

~~related campaign promises~~ develop the Property as contemplated by Section 22.0908. Section 5 of this Agreement summarizes how this Agreement meets the various requirements of ~~Measure G and related campaign promises~~ Section 22.0908.

## 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. All Section references in this Agreement are to particular sections of this Agreement, unless otherwise expressly stated.

~~1.4 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.~~

~~1.5 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.~~

1.1 ~~1.6~~ Agreement. This Real Property Purchase and Sale Agreement and Joint Escrow Instructions between the Parties, including all attachments.

1.2 ~~1.7~~ 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 Property; or (ii) complete or operate any activity or business on the Property.

1.3 ~~1.8~~ 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 or License Agreements.

1.4 ~~1.9~~ Base Purchase Price. The amount of \$86,200,000 (Eighty-Six Million Two Hundred Thousand Dollars).

1.5 ~~1.10~~ 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, the Service Contracts.

1.6 ~~1.11~~ 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.~~

1.7 ~~1.12~~ 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.

1.8 ~~1.13~~ 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 January 29, 2020.

1.9 ~~1.14~~ CEQA. Collectively, the California Environmental Quality Act, set forth at California Public Resources Code ~~section~~ Section 21000 *et seq.*, and the related CEQA Guidelines, set forth at California Code of Regulations, title 14, ~~section~~ Section 15000 *et seq.*

1.10 ~~1.15~~ City. Defined in the preamble of this Agreement.

1.11 ~~1.16~~ 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; and (ii) adoption of a resolution making findings with respect to the Final EIR as a responsible agency in accordance with CEQA.

1.12 ~~1.17~~ City Council. The City Council of the City of San Diego.

1.13 ~~1.18~~ City Indemnified Parties. Collectively, the City and its elected officials, employees, agents, officers, attorneys, and representatives.

1.14 ~~1.19~~ City Public Improvement Plans. The plans that will be prepared to depict public ~~street improvements and public~~ utility improvements to be permitted by the City and then constructed by CSU ~~or any Developer Entities~~ on the Property in connection with the Project, as described in Section 6.11.

1.15 ~~1.20~~ 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. No Claim shall include an Excluded Claim.

1.16 ~~1.21~~ 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.

1.17 ~~1.22~~ Closing. The recording of the Grant Deed in the Official Records.

1.18 ~~1.23~~ Closing Date. The date on which the Closing occurs, which shall be no later than the Outside Closing Date.

1.19 ~~1.24~~ Closing Document Deliverables. The documents identified in the Closing Documents List.

1.20 ~~1.25~~ Closing Documents List. The 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.

1.21 ~~1.26~~ County Recorder. The Office of the San Diego County Recorder.

1.22 ~~1.27~~ CSU. Defined in the preamble of this Agreement.

1.23 ~~1.28~~ CSU Approval Actions. Collectively, the following actions of the CSU Board of Trustees: (i) ~~approval of this Agreement~~ certification of the Final EIR in accordance with CEQA; (ii) approval of the Campus Master Plan ~~Update~~; and (iii) ~~certification of the Final EIR in accordance with CEQA~~ approval of this Agreement.

1.24 ~~1.29~~ CSU Board of Trustees. The Board of Trustees of the California State University.

~~1.30 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.~~

1.25 ~~1.31~~ CSU Entry Permit. The Short-Term Right-of-Entry Permit between the Parties, dated as of January 24, 2019, by which the City provided to CSU the right of access to the Property and the River Park Property for purposes of performing studies, tests, and inspections of the Property and the River Park Property.

1.26 ~~1.32~~ 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.

1.27 ~~1.33~~ 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.~~

1.28 ~~1.34~~ CSU New Lease. The new lease with respect to the Property to be completed and signed by the Parties if the Closing does not occur on or before Secondary Target Closing Date, with the content of such new lease to be based upon the CSU New Lease Summary, as further described in Section 3.2.

1.29 ~~1.35~~ CSU New Lease Summary. The Summary of Material Terms for CSU New Lease included as Attachment 15 to this Agreement.

1.30 ~~1.36~~ 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.

1.31 ~~1.37~~ Declaration of Property Development Restrictions. The Declaration of Covenants, Conditions, and Restrictions Regarding Development, Operation, and Maintenance of 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 21 to this Agreement. ~~[Attachments No. 21, 23 and 24 should be consolidated into a single Declaration of Property Development Restrictions.]~~

1.32 Default. Default has the meaning given in Section 12.1 of this Agreement.

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

~~1.38 Developer Entity.~~ 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/affiliate.

~~1.39 Development Contract.~~ A ~~contract, subcontract, lease, license, easement, or any similar arrangement entered into between CSU (or its designee/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 Property.~~

~~1.40 Earnest Money Deposit.~~ Collectively, the Initial Earnest Money Deposit and, if required to be deposited under this Agreement, the Additional Earnest Money Deposit.

~~1.41 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.~~

1.34 ~~1.42~~ 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, as provided for in this Agreement, in substantially the form of Attachment 31 to this Agreement.

~~1.43 Easement Agreement for City's Public Facilities During Stage 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 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.~~

1.35 ~~1.44~~ Easement Agreement for City's Public Facilities During Stage 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 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.

~~1.45 Easement Agreements. Collectively, the Easement Agreements for Stage 1 Recordation and the Easement Agreements for Stage 2 Recordation.~~

~~1.46 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.~~

1.36 ~~1.47~~ 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.

1.37 Easement and License Agreements. Collectively, the License Agreements for Stage 1 Recordation and the Easement Agreements for Stage 2 Recordation.

1.38 ~~1.48~~ 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 ~~2.82.7~~.

1.39 ~~1.49~~ Environmental Claim. Any Claim relating to or arising from any actual or alleged violation of any applicable Environmental Law ~~or any Hazardous Substance Discharge~~, as well as ~~all foreseeable and unforeseeable actual~~ damages or costs ~~of any kind or of any nature whatsoever to the extent~~ relating directly ~~or indirectly~~ to such a Claim.



1.40 ~~1.50~~ Environmental Law. Every 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 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~~Section 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 U.S.C. ~~section~~Section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 U.S.C. ~~section~~Section 1251 *et seq.*]; the Toxic Substances Control Act (“TSCA”) [15 U.S.C. ~~section~~Section 2601 *et seq.*]; the Hazardous Materials Transportation Act (“HMTA”) [49 U.S.C. ~~section~~Section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C. ~~section~~Section 6901 *et seq.*]; the Clean Air Act [42 U.S.C. ~~section~~Section 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. ~~section~~Section 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. ~~section~~Section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. ~~section~~Section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. ~~section~~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~~Section 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code ~~section~~Section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code ~~section~~Section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code ~~section~~Section 13000 *et seq.*]; together with any regulations promulgated under the above-referenced statutes and laws.

1.41 ~~1.51~~ Escrow. The escrow established with Escrow Agent pursuant to the terms of this Agreement.

1.42 ~~1.52~~ Escrow Agent. Chicago Title Company, whose representative and contact information are shown in Section 15.2.

1.43 ~~1.53~~ 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.

1.44 ~~1.54~~ Escrow Opening Date. The date on which Escrow Agent signs Escrow Agent’s Consent, pursuant to Section 9.1.

1.45 Excluded Claims. Excluded Claims has the meaning given in the last sentence of Section 12.5 of this Agreement.

1.46 ~~1.55~~ Existing Easements for Proposed Vacation. Certain existing easements affecting the Property and shown in the Preliminary Report (title exceptions     ,     , and     ), 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. This will not be needed if the Parties agree easements have terminated by merger.]~~

1.47 ~~1.56~~ 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. ~~[Note: This will not be needed if the Parties determine the Closing can occur with licenses, rather than easements.]~~

1.48 ~~1.57~~ Existing Rights-of-Way for Proposed Vacation. Certain existing public rights-of-way affecting the 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 in Attachment 12.]~~

1.49 ~~1.58~~ 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.

1.50 ~~1.59~~ 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.

1.51 ~~1.60~~ FEMA. The Federal Emergency Management Agency.

1.52 ~~1.61~~ Final Adjusted Purchase Price. The Base Purchase Price, plus the Time-Value Adjustment Amount.

1.53 ~~1.62~~ 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.

1.54 ~~1.63~~ Flood Map Revision. A 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 ~~submitted~~ prepared by CSU and submitted to FEMA for its proposed approval in connection with the Project following the City's execution of a "community acknowledgement form".

1.55 ~~1.64~~ 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~~ located generally in the area depicted in Attachment 5-B to this Agreement.

~~1.65 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 the Future Recreation Center Site, upon the Closing, in substantially the form of Attachment 24 to this Agreement.~~



1.56 ~~1.66~~ General Fund Ownership. The 82.86-acre portion of the Real Property ~~owned by, the beneficial owner of which is~~ the City's General Fund, equal to 61.3 percent of the Real Property, ~~as determined by the City.~~

1.57 ~~1.67~~ Grant Deed. The Grant Deed conveying fee ownership of the Property from the City to CSU, in substantially the form of Attachment 19 to this Agreement.

1.58 ~~1.68~~ 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.

~~1.69 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 Property or during transportation of any Hazardous Substance to or from the Property or the River Park 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 Property, whether or not caused by a Party.~~

1.59 ~~1.70~~ Immediately Available Funds. A bank wire transfer or a certified bank check.

1.60 ~~1.71~~ Improvements. All structures, fixtures, and other improvements located on the Real Property as of the Effective Date of this Agreement.

~~1.72 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.~~

1.61 Injunction. Any injunction, stay, restraining order or other order, ruling, judgment or similar determination of a court prohibiting the Closing from occurring or prohibiting the performance of a Party's obligations reasonably necessary for the Closing to occur or otherwise having the practical effect of precluding the Closing.

1.62 Intangible Personal Property. All of the City's right, title and interest in and to all intangible personal property related to the Real Property and the Tangible Personal Property, 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 (as defined below) that are not assumed by CSU; (v) governmental permits, approvals, licenses, or similar documents, if any; (vi) capital reserve accounts established to fund repairs, renovations and improvements to the Property and the Improvements; and (xi) 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.

1.63 ~~1.73~~ Kinder Morgan. Kinder Morgan Energy Partners, L.P., a Delaware limited partnership.

1.64 ~~1.74~~ 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 as required by the Cleanup and Abatement Order.

1.65 ~~1.75~~ 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~~ certain Hazardous Substances from the adjacent Mission Valley Terminal site owned and operated by Kinder Morgan.

1.66 ~~1.76~~ 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 Property, the River Park Property, or the Project, including relating to any development, construction, use, maintenance, taxation, operation, occupancy, or environmental conditions affecting the 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. Nothing in this definition shall make any Party subject to any law, statute, code, ordinance, requirement, order, proclamation, directive, rule, or regulation of any local, state, or federal governmental agency to which it was not subject as of the Effective Date.

1.67 ~~1.77~~ 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.

1.68 ~~1.78~~ 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, court costs, ~~consultant expenses~~  
~~investigative costs~~, and expert witness expenses.

~~1.79 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.~~

1.69 License Agreement for City's Public Facilities During Stage 1. The License 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 the Real Property and the RiverPark Property upon the Closing, in substantially the form of Attachment 30 to this Agreement. *[Parties are still discussing whether Closing can occur with licenses, rather than easements in place.]*

1.70 License Agreements for Stage 1 Recordation. Collectively, the documents identified in the category of "License Agreements for Stage 1 Recordation" in the Recordable Closing Documents List, signifying those License 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.

1.71 ~~1.80~~ 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 Property or take certain actions on or about the 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.

1.72 ~~1.81~~ 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.

1.73 ~~1.82~~ 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 codified in Municipal Code ~~section~~ Section 22.0908.

1.74 ~~1.83~~ Municipal Code. The San Diego Municipal Code.

1.75 ~~1.84~~ Murphy Canyon Creek Parcel. The real property generally located at the eastern boundary of the 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.

1.76 ~~1.85~~ New Lawsuit. Any complaint, cause of action, or petition for writ of mandate filed by any Third Person in a court proceeding before 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.

1.77 ~~1.86~~ 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.

1.78 ~~1.87~~ 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.

1.79 ~~1.88~~ Official Records. The official records of the County Recorder.

1.80 ~~1.89~~ Outside Closing Date. ~~December 31, 2020~~ Six (6) months after the commencement date of the CSU New Lease, which is the latest date on which the Parties may complete the Closing (unless Closing is precluded by an Injunction), as described in Section 9.7.

1.81 ~~1.90~~ 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.

1.82 ~~1.91~~ Parties. Collectively, the City and CSU.

1.83 ~~1.92~~ Party. Individually, the City or CSU, as applicable.

1.84 ~~1.93~~ Permitted Title Exceptions. Collectively, the following items: (i) the exceptions to title insurance coverage shown in the Preliminary Report; (ii) taxes and assessments on the Property that are a lien not yet due and payable; and (iii) ~~all applicable building, zoning, and use restrictions or regulations of any governmental authority having jurisdiction over the Property; and~~ (iv) any declarations, conditions, covenants, restrictions, or other matters affecting title to the Property and required or permitted under this Agreement, including the Recordable Closing Documents.

~~1.94 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.~~

1.85 ~~1.95~~ 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.

1.86 ~~1.96~~ Preliminary Report The [First] Amended Preliminary Report for the Real Property, dated [November 25, 2019], issued by Title Company in contemplation of the issuance of the Title Policy, and included as Attachment 7 to this Agreement.

1.87 ~~1.97~~ Primary Target Closing Date. ~~[March 27], 2020~~ Forty (40) days after the Effective Date, which is the earliest date on which the Parties will reasonably endeavor to accomplish the Closing, as described in Section 9.7.

1.88 ~~1.98~~ Project. The project to be developed, ~~constructed, and operated~~ by CSU ~~and the Developer Entities~~ on the Real Property and the River Park Property in accordance with the Campus Master Plan ~~Update~~ and the Final EIR. A site plan depicting the main components of the Project is included as Attachment 6 to this Agreement.

1.89 ~~1.99~~ Property. Collectively, the Real Property, the Appurtenances, the Intangible Property and the Tangible Personal Property.

1.90 ~~1.100~~ 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, or by separate instrument. [Note: The Parties will need to discuss CSU's the proposed version of Attachment 13.]

1.91 ~~1.101~~ 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.

1.92 ~~1.102~~ Recordable Closing Documents List. The List of Recordable Closing Documents included as Attachment 9 to this Agreement.

1.93 ~~1.103~~ Recordable Closing Documents. The documents identified in the Recordable Closing Documents List, to be recorded in the Official Records upon the Closing.

1.94 ~~1.104~~ Rent Roll. The Rent Roll included as Attachment 16-B to this Agreement, ~~showing all rents payable by tenants under the Leases~~.

1.95 ~~1.105~~ River Park and Storm Water BMP ~~Development~~ Agreement. The Agreement Regarding Development and Maintenance of River Park Improvements ~~and~~, Storm Water Best Management Practice Structures and Additional Park Improvements, 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. [Attachment Nos. 26 through 29 should be consolidated into a single document.]

~~1.106 River Park Maintenance and Storm Water BMP 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.~~

1.96 ~~1.107~~ 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.

1.97 ~~1.108~~ Sale Transaction. The transaction by which the City will sell to CSU, and CSU will purchase from the City, the Property upon the Closing in accordance with this Agreement.

1.98 ~~1.109~~ SDG&E. San Diego Gas and Electric Company.

~~1.110 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.~~

1.99 ~~1.111~~ Secondary Target Closing Date. ~~June 30, 2020~~ Five (5) months after the Effective Date, 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.

~~1.112 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 that has senior priority relative to all CSU Debt Instruments and all Development Contracts (or related memoranda or abstracts) to be recorded in the Official Records upon or after the Closing.~~

1.100 Section 22.0908. San Diego Municipal Code Section 22.0908, which codifies Measure G.

1.101 ~~1.113~~ 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 Property as of the Effective Date of this Agreement, as identified in the Schedule of Service Contracts included as Attachment 17 to this Agreement.

1.102 ~~1.114~~ 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.

1.103 ~~1.115~~ 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.

1.104 ~~1.116~~ 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 Target Closing Date, the Time-Value Factor shall be applied only to the Water Utility Fund



Ownership (i.e., 38.7 percent of the Property, equating to \$33,359,400 of the Base Purchase Price) from October 1, 2017, through and including the Closing Date; and (b) if the Closing Date occurs after the ~~Secondary Target Closing Date~~CSU New Lease commencement date, 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 Property, equating to \$52,840,600 of the Base Purchase Price) from ~~July 1, 2020~~the Secondary Target Closing Date, through and including the Closing Date. 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 Closing Date occurs on ~~July 31, 2020~~, the Time-Value Adjustment Amount will equal \$, which is the sum of: (i) the Time-Value Adjustment Amount component of \$ 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 \$ 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~~.

1.105 ~~1.117~~ Time-Value Factor. The annual index adjustment factor of 2.149 percent, compounded monthly.

[1.106](#) ~~1.118~~ Title Company. Chicago Title Insurance Company, whose representative and contact information are shown in Section 15.2.

1.107 ~~1.119~~ 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.

1.108 ~~1.120~~ 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, casualty, war, acts of terrorism, riots, regional natural disasters, ~~or~~ inability to obtain required labor or materials, or governmental delays. 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.

1.109 ~~1.121~~ Water Supply Assessment. The ~~water supply assessment~~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.~~

[1.110](#) ~~1.122~~ [Water Utility Fund Ownership](#). The 52.26-acre portion of the Real Property ~~owned by, the beneficial owner of which is~~ the City's Water Utility Fund, equal to 38.7 percent of the Real Property, [as determined by the City](#).

[1.111](#) ~~1.123~~ [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.

[1.112](#) ~~1.124~~ [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, and invasive plant removal), in compliance with the Wetland Mitigation Project Agreements on the Wetland Mitigation Project Site.

[1.113](#) ~~1.125~~ [Wetland Mitigation Project Agreements](#). The regulatory agreements and permits governing the Wetland Mitigation Project, 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.

[1.114](#) ~~1.126~~ [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, [as shown on Attachment 33](#), on which the Wetland Mitigation Project is situated and is being carried out by the City in accordance with the Wetland Mitigation Project Agreements.



## 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 Property to CSU, and CSU shall purchase the Property from City, 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 Property to CSU. The Parties agree that the Final Adjusted Purchase Price is fair and equitable, and represents the fair market value of the 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~~ described in Section 22.0908 to negotiate the Sale Transaction and all related agreements and understandings contemplated by ~~Measure G~~ Section 22.0908.

2.4 Independent Consideration. Within three (3) 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 consideration for CSU's right to purchase the Property under the terms and conditions of 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~~ five (~~3~~ 5) 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, and such failure continues beyond the notice and cure period provided in Section 12.112.1(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 ~~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.

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 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. If CSU does not timely deliver to Escrow Agent the Additional 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 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 Agreement.

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 by 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 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 on 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.

2.8 No Assumption of Liabilities. Notwithstanding any provision contained in this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an agreement for the sale of the Property described herein and none of the provisions hereof shall be deemed to create any obligation or liability of any Party to any person or entity that is not a Party to this Agreement, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise. Except as specifically provided otherwise in this Agreement, CSU shall not assume and shall not discharge or be liable for any debts, liabilities or obligations of the City including, but not limited to, any (a) liabilities or obligations of the City to its creditors, (b) liabilities or obligations of the City with respect to any acts, events or transactions occurring prior to, on or after the Closing, or (c) any contingent liabilities or obligations of the City, whether known or unknown by the City or CSU. Except as otherwise provided in this Agreement, CSU shall have no duty whatsoever to take any action or receive or make any payment or credit arising from or related to any services provided or costs incurred in connection with the management and operation of the Property or any business conducted on the Property prior to the Closing, including, but not limited to, any matters relating to cost reports, collections, audits, hearings, or legal action arising therefrom.

### 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 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 the Primary Target Closing Date, a draft of the CSU New Lease based on the CSU New Lease Summary. The Parties shall then 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 exercise his or her authority (consistent with the City Approval Actions) to approve and sign the CSU New Lease. 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 reasonable 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.~~ approvals.

#### 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), 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 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, 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, its unconditional approval of the condition of the Property, including, but not limited to: (i) all matters pertaining to the physical condition of the Property and the environmental status of the Property, including the presence of any Hazardous Materials on, under, or affecting the Property; (ii) any applicable Law or other factors affecting the future development or use of the Property; (iii) all contracts, studies, surveys, and all other information pertinent to the operation and ownership of the 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 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 deliver written notice to the City identifying the Service Contracts that CSU will assume upon the Closing. The City shall terminate, as of the Closing and at the City's expense, any Service Contracts that will not be assumed by CSU upon the Closing. Upon CSU's delivery of written notice to the City at least fifteen (15) Business Days before the Closing Date, the City shall 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 promptly ~~delivery~~deliver to CSU a copy of the signed estoppel certificate. The City's ability to obtain any signed estoppel certificate shall not be a condition precedent to the Closing and shall not excuse CSU's performance of any obligations under this Agreement, provided, however, that in such event the City shall be required to deliver a landlord estoppel certificate to CSU ten (10) Business Days prior to the Closing with respect to the material terms of any Lease for which a tenant estoppel certificate is not obtained, the form and content of which shall be subject to the reasonable approval of CSU. 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 satisfied with the content of~~ has received the CSU Financing Plan ~~as a basis for establishing the financial viability of CSU's acquisition of the Property and CSU's development, operation, and maintenance of the Project in accordance with Measure G and related campaign promises~~ and CSU acknowledges that the City ~~has relied on~~ is relying upon the CSU Financing Plan in agreeing to sell the Property to CSU on the terms and conditions of this Agreement.

## 5. COMPLIANCE WITH SPECIFIED PROVISIONS OF ~~MEASURE G~~SECTION 22.0908.

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, the Parties~~ will satisfy the requirements of ~~Measure G, as codified in the Municipal Code, and fulfill campaign promises made with respect to Measure G~~ Section 22.0908. This Section 5 sets forth, or summarizes by reference to an attachment to this Agreement, the contractual provisions that achieve this objective. Various attachments to this Agreement will be signed by one or both of the Parties and recorded in the Official Records against the 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~~. If there is any direct conflict between this Section 5 and the provisions of any attachment to this Agreement, then the provisions of the 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~~ Section 22.0908 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 Property and other relevant factors, as contemplated by ~~Municipal Code section~~ 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 to be completed by CSU on the Property. In addition, CSU ~~committed during and after the election process for Measure G~~ agrees to complete certain additional development features and environmentally-friendly features on the Property. CSU's commitment to complete ~~all of~~ those development features is memorialized in Sections 2.2 and 2.6 of the Declaration of Property Development Restrictions, and Sections 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~~ provides that CSU will to take steps to reach agreements with the City and other applicable 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, as identified in CSU's Final EIR. In addition, ~~Municipal Code section~~ Section 22.0908(s) states that the Sale Transaction will reflect the Parties' negotiation of CSU's fair-share contributions toward feasible mitigation measures to minimize the significant environmental impacts of the Project. CSU's commitments to complete certain mitigation measures and pay fair-share contributions toward other mitigation measures related to significant environmental impacts of the Project are memorialized in Sections 2.1 and 2.9 of the Declaration of Property Development Restrictions.

5.5 Development and Maintenance of the River Park Property. ~~Municipal Code section~~ Section 22.0908(i) ~~requires~~ provides that CSU ~~to will~~ develop certain improvements on the River Park Property, to be retained in the City's ownership, at no cost to the City's General Fund. In addition, CSU ~~made campaign promises to the effect that CSU would~~ has agreed to maintain the improved River Park Property in perpetuity, at its own cost. CSU shall have the right to license naming rights for the River Park and to maintain any revenue associated with such naming rights. CSU's commitment to 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 and CSU's right to license naming rights for the River Park, are~~ is and CSU's right to license naming rights for the River Park, are memorialized in 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~~provides that the Sale Transaction will result in the demolition, dismantling, and removal of the Existing Stadium and the construction of the New Stadium on the Property. CSU's commitment to complete those demolition and construction activities is memorialized in Sections 2.3 through 2.5 of the Declaration of Property Development Restrictions.

5.7 Public Transit Improvements. ~~Municipal Code section~~ Section 22.0908(k) ~~requires~~provides that the Sale Transaction will facilitate the daily and efficient use of the existing Metropolitan Transit System's Green Line transit station on the Real Property, accommodate a planned Purple Line transit station on or about the Real Property, and 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~~states that the Sale Transaction will provide for the development of trolley and other public transportation uses and improvements to minimize vehicular traffic impacts in the vicinity of the Project. CSU's commitment to fulfill ~~all of~~ those requirements is memorialized in Section 2.10 of the Declaration of Property Development Restrictions.

5.8 Development Fee Requirements. ~~Municipal Code section and Affordable Housing Requirements.~~ Section 22.0908(l) states that the Sale Transaction will require development on the Real Property to comply with the City's development impact fee requirements and housing impact fees/affordable housing requirements. Development of university facilities free from local agency regulation is a fundamental authority of CSU. Therefore, once the Real Property is purchased by CSU, any development of the New Stadium, student and faculty housing, and academic, administrative, research, athletic, commercial services, and other campus or public related facilities constructed pursuant to and in support of CSU's governmental mission shall not be required to comply with any local agency building and land use requirements, while they will be required to comply with all State of California and California State University building and land use requirements ("University Facilities and Improvements"). The development of University Facilities and Improvements, therefore, shall not be required to comply with the City's development impact fee and housing impact fee requirements. Due to the unique circumstances applicable to this transaction, CSU agrees that developers constructing improvements on the Real Property that are not for the benefit of or in support of Purchaser's governmental mission ("Non-University Facilities and Improvements") will be required to comply with the City's development impact fee and housing impact fee requirements. CSU's commitment to comply with those development impact fee requirements is memorialized in Sections 3.1 through 3.6 of the Permitting and Development Fee Agreement. through of the Declaration of Property Development Restrictions and CSU's commitment to comply with affordable housing requirements is memorialized in the Declaration of Affordable Housing Restrictions.

5.9 Parkland Requirements. ~~Municipal Code section~~ Section 22.0908(l) further states that the Sale Transaction will require development on the Real Property to ~~comply~~ be generally consistent with the City's parkland requirements. Also, ~~Municipal Code section~~ Section 22.0908(i) states that CSU will develop a minimum of 22 acres of the Property for use as publicly-accessible active recreation space and that the City shall designate or set aside the improved River Park Property for park purposes pursuant to San Diego Charter ~~section~~ Section 55. The Parties' compliance with those requirements is memorialized in Recital E and Article I and Section of the River Park and Storm Water BMP Development Agreement. Though not required by Section 22.0908, CSU has also agreed to make the Future Recreation Site available for long term lease to the City, as set forth in the Declaration of Property Development Restrictions.

5.10 Reduction of Greenhouse Gas Emissions ~~Municipal Code section~~ Section 22.0908(m) states that the Sale Transaction will 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~~ climate action plan. CSU's commitment to comply with this requirement is memorialized in Section 2.11 of the Declaration of Property Development Restrictions.

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 and 3.3 of the Declaration of Property Development Restrictions.

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 expenses in providing public safety and traffic management-related activities for games or other events at the Property. This requirement is memorialized in Section 3.4 of the Declaration of Property Development Restrictions.

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 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 the~~ City is not, and has not recently been, undertaking any environmental remediation efforts with respect to the Real Property or the River Park Property, but pursuant to the terms of the Kinder Morgan Settlement Agreement and the Kinder Morgan Right of Entry Permit, the City has the ability to require Kinder Morgan to remediate certain Hazardous Substances encountered in connection with development of the



Real Property or the River Park Property, including following any conveyance of the Real Property and the River Park Property by the City.

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 Property to CSU's ~~affiliate or current or future affiliates or current or future~~ auxiliary ~~organization~~organizations, or to any other Person, including ~~any Developer Entities~~, as part of any public-private partnership or arrangement; ~~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 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 Property.~~

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

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 if the Closing has not occurred on or before the Secondary Target Closing Date, the ~~CSU New Lease~~ in accordance with Section 3.2.

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 may receive compensation for its portion of the 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 (as determined by the City), 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 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 through 6.13 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 be required to pay prevailing wages for construction of the New Stadium and other public improvements, provided that the construction of such public improvements occurs on state-owned property or involves the use of state funding (it being acknowledged that the construction of Non-University Facilities and Improvements may not be required to be constructed pursuant to prevailing wage Laws) if not on state-owned property or involving 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 2.12 and 3.6 of the Declaration of Property Development Restrictions. ~~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 awarding body for construction of each component of the Project and any other improvements required or contemplated under this Agreement and all attachments to this Agreement.~~

## 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 use commercially reasonable efforts to cause Kinder Morgan to complete the Well Removal and Abandonment Work in accordance with Law, including the Cleanup and Abatement Order. CSU acknowledges that the City will not be responsible 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 Law, including the Cleanup and Abatement Order. CSU further acknowledges the necessity of the Parties' cooperative efforts with Kinder Morgan to ensure Kinder Morgan fulfills 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 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. ~~Nothing~~ Except as provided in Section 6.3, nothing in this Agreement shall impose any obligation on the City to incur any material out-of-pocket expenses or liability whatsoever with respect to the Well Removal and Abandonment Work or compliance with the Cleanup and Abatement Order, to initiate a lawsuit or other proceeding to cause 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 after the Closing Date. ~~Further, the Parties agree that Kinder Morgan's completion of the Well Removal and Abandonment Work 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.~~ environmental conditions. [Parties need to discuss the sentinelwells and timing for removal.]

6.2 Circuit 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 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 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 on the City to incur any material out-of-pocket expenses or liability whatsoever 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. Pursuant to the Kinder Morgan Settlement Agreement, even following the City's conveyance of the Property to a third party, Kinder Morgan is obligated to indemnify the City for the additional incremental costs that are incurred in connection with redevelopment of the Real Property and the River Property that would not have been incurred but for historical releases of Hazardous Substances by Kinder Morgan. Accordingly, it is agreed that the City shall indemnify CSU and its trustees, employees, agents, officers, attorneys and representatives, harmless from and against any and all Claims relating to or arising from Hazardous Substances remediation or Risk Mitigation Measures (as that term is defined in the Kinder Morgan Settlement Agreement) but only to the extent such matters are within the scope of the Kinder Morgan Settlement Agreement. 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 performance of remediation or 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, which the City agrees to reasonably consider and implement; provided, however, that the City shall ~~have sole and absolute~~ determine, in its reasonable discretion ~~as to~~, the final content of the written claim. If Kinder Morgan approves the written claim and provides reimbursement of any remediation costs or agrees to perform remediation, the City shall cooperate reasonably with CSU to ensure that CSU receives the ~~financial~~ complete benefit of Kinder Morgan's reimbursement for any of CSU's actual out-of-pocket expenses or performance of any remediation by Kinder Morgan. 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~~ The City shall use commercially reasonable efforts to enforce the Kinder Morgan Settlement Agreement, including by complying with the procedural requirements described in the Kinder Morgan Settlement Agreement and pursuing litigation, if appropriate, to enforce the Kinder Morgan Settlement Agreement. CSU shall bear all reasonable costs and expenses associated with the City's tender of a claim under the Kinder Morgan Settlement Agreement and all reasonable costs and expenses incurred by the City to enforce the Kinder Morgan Settlement Agreement. Provided the City uses commercially reasonable efforts to enforce the Kinder Morgan Settlement Agreement, at CSU's reasonable cost and expense, 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. The City shall not terminate, modify, amend or waive its rights under the Kinder Morgan Settlement Agreement. Nothing in this Agreement shall be deemed to constitute a release by CSU of any claims it may have now or in the future against Kinder Morgan and Kinder Morgan is not a third-party beneficiary under this Agreement. The provisions of this Section 6.3 shall survive the Closing.

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 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 applicable Approvals required with respect to the manhole connection work. The City agrees to reasonably cooperate with CSU's efforts to obtain any applicable Approvals required for the manhole connection work; provided that the City shall not be required to incur any material out-of-pocket expense in connection with same. CSU shall conduct the manhole connection work in compliance with applicable 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, to the extent required, approvals from ~~all~~the regulatory agencies that initially approved or issued the Wetland Mitigation Project Agreements. CSU shall not install any pipelines, facilities, or structures within the Wetland Mitigation Project Site without obtaining the City's consent, which shall not be unreasonably withheld, conditioned or delayed, 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 the successful completion of the Wetland Mitigation Project, including 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.

As part of the Project, CSU proposes to install and maintain storm drain or other pipelines or facilities within or proximate to the Wetland Mitigation Project Site ("Proximate Storm Drain Facilities"), but the City has advised that such facilities are permitted under Wetland Mitigation Project Agreements or are located 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 installation and maintenance of the Proximate Storm Drain Facilities, but the City shall remain primarily responsible for compliance with the terms and requirements of the Wetland Mitigation Project Agreements, including ensuring the successful completion of the Wetland Mitigation Project and the timely achievement of all monitoring, maintenance, and compliance standards described in the Wetland Mitigation Project Agreements. The City agrees to promptly, but in any event within ten (10) Business Days, 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.

6.5 Sewer Lines. The City shall cooperate with CSU's efforts after the Closing to relocate the existing public sewer line on the Real Property to a new location within the Real Property that minimizes 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~~and the City will cooperate with one another with respect to the design and installation of the relocated public sewer line and CSU shall use commercially reasonable efforts to cause the relocated public sewer line to be substantially functionally equivalent to 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 bear all costs associated with: (i) any sewer line relocation and construction on the Real Property and the River Park Property; and (ii) the provision and usage of sewer capacity, connections, and service benefitting the Real Property and the River Park Property, including any upgrades or system

improvements needed as a result of the projected sewer-related demands of the Project. The 36-inch Murphy Canyon trunk sewer on the Real Property and the 84/96-inch interceptor sewer on the River Park Property will remain in their current alignment and will not be relocated as part of the Project.

6.6 Water Facilities. The City shall cooperate with CSU's efforts after the Closing to relocate any existing public water lines or facilities on the Real Property to a new location within the Real Property that minimizes impacts to CSU's planned development footprint and traffic circulation for the Project. In addition, the City shall 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~~ and the City will cooperate with one another with respect to the design and installation of the relocated public water line, water meters and irrigation meters and CSU shall use commercially reasonable efforts to cause the relocated public water line and the new water meters and irrigation meters on the Real Property and the River Park Property to be substantially functionally equivalent to the existing public water line and meters (subject to increase in size to serve a demand consistent with the Water Supply Assessment). After the Closing, CSU shall bear all costs associated with: (i) any water line/facility relocation and construction on the Real Property and the River Park Property; (ii) the installation of any new water meters and irrigation meters on the Real Property and the River Park Property; and (iii) the provision and usage of water capacity, connections, and service benefitting the Real Property and the River Park Property, including any upgrades or system improvements needed as a result of the projected water-related demands of the Project. CSU shall be entitled to a credit for any and all existing water meters currently servicing the Real Property as an offset to any costs CSU may be charged by the City for water meters installed in the future in connection with the Project. CSU shall 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~~ maintained by CSU, except that the existing 48-inch Alvarado water transmission main and the existing 16-inch water transmission main will continue to be publicly maintained by the City.

6.7 Parcel Map. ~~As of the Effective Date of this Agreement, CSU has submitted, CSU will process and approve a Parcel Map and the City is processing, the will also process said Parcel Map application, which for approval pursuant to a ministerial decision process. The Parcel Map is intended to accomplish lot line adjustments establishing the Real Property, the River Park Property, and the balance of the City's land ownership in the immediate vicinity of the Real Property as three separate legal parcels and to 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 incorporate the.~~ The Parcel Map is also intended to show the permanent location of the (i) Proposed Public Easement and Right-of-Way Dedications. If the Parcel Map application both fulfills the provisions and intent of this Agreement and complies 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~~ in favor of the City, which are tentatively planned to be located as depicted on Attachment 13, and (ii) proposed utility easements located within the River Park for the benefit of CSU, which are tentatively planned to be located as depicted in the Easement Agreement for Installation of Utilities within River Park Property which is Attachment 31 hereto. The City shall grant ministerial approval of the Parcel Map ~~application. Once the Parcel Map has been approved by the City and signed by all Persons having any record title interest in the real properties being adjusted, the City,~~ provided that any City approval rights for the Parcel Map shall exclude any approvals related to the Real Property other than for confirmation of the proper location of the Proposed Public Easement and Right-of-Way Dedications. Following approval of the Parcel Map by CSU and the City, CSU shall cause the approved Parcel Map to be recorded in the Official Records by the County Recorder. 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.~~ CSU may proceed with development of the Project without pursuing the Parcel Map if it elects, in its sole discretion, to do so, in which case necessary easement and right of way dedications will be accomplished pursuant to separate instruments.

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 and License 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 development of the Project advance. Therefore, the final content of certain Easement and License 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 with each other in good faith to finalize the content of the Easement and License 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~~ License Agreements for Stage 1 Recordation will be recorded ~~in Senior Lien Priority~~ against the Real Property in the Official Records upon the Closing, subject to any mutually agreeable revisions to the Grant Deed and such ~~Easement~~ License Agreements. In such event, the Parties shall continue to cooperate in good faith after the Closing to accomplish the recording of the Easement and License Agreements for Stage 2 Recordation in conjunction with the recording of the approved Parcel Map. CSU agrees that the Easement Agreements for Stage 2 Recordation that benefit the City shall 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.~~

(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 and License Agreements will be recorded ~~in Senior Lien Priority~~ against the

Real Property in the Official Records upon the Closing, subject to any mutually agreeable revisions to the Grant Deed and such ~~Easement~~License Agreements or any mutual understanding that certain ~~Easement~~License Agreements are no longer needed based on the then-prevailing circumstances.

6.9 Existing Easements Vacation Approval. ~~[This Section will be deleted if the Parties determine that they can close on licenses rather than easements.]~~ 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 continue to 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~~Section 125.1001 *et seq.*), City staff shall 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. If the Project is 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.

6.10 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 continue to 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~~Section 125.0901 *et seq.*), City staff shall 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. If the Project is 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 consolidate the pending applications for the Existing Easements Vacation Approval and the Existing Rights-of-Way Vacation Approval for concurrent processing.

6.11 City Public Improvement Plans. CSU shall prepare the proposed City Public Improvement Plans to depict public ~~street and~~ utility improvements to be constructed on the Real Property and the River Park Property by CSU in connection with the Project that will be owned, operated and maintained by the City following such construction. CSU shall submit the proposed City Public Improvement Plans to the City's Development Services Department for review ~~and approval~~ for consistency with applicable City standards and the issuance of any necessary ~~permits. To the extent feasible, the City shall 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~~ construction permits, all of which are expected to be ministerial in nature. CSU shall allow the City's employees or authorized representatives to access the Real Property from time to time (upon no less than three (3) Business Days prior written notice) 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 be solely responsible for the cost of construction and installation of all public ~~street and~~ utility improvements on the Real Property and the River Park Property.

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 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 not be required to incur any associated material out-of-pocket expenses or liability whatsoever. The City's reasonable cooperation shall include the City's signature of a "Community Acknowledgment ~~Letter~~ Form" 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 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~~ and in substantial conformance with the City's regulations and requirements pertaining to grading activities in a floodplain. CSU shall 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 reasonably and promptly 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~~ CSU approved grading permit plan for any grading activities proposed to be carried out within any floodplain on the Real Property or the River Park Property as part of the Project. Although such CSU grading plan shall not be subject to City approval, CSU agrees to make a good faith effort to work cooperatively with the City to develop a mutually acceptable grading plan that substantially conforms with City ordinances and regulations applicable to grading within a floodplain for any grading activities it carries out within the floodplain ("Grading Plan"). 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~~ applicable state and federal Law, the Grading Plan and any required Approvals. CSU ~~shall 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 bear all costs associated with the performance of any grading activities within any floodplain on the Real Property and the River Park Property and all costs associated with obtaining the necessary Approvals for such grading activities.

6.13 Cooperative Efforts. The Parties acknowledge that close cooperation and coordination will be required to develop the Project after the Closing because, among other reasons, many public 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~~ Section 22.0908 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, subject to Unavoidable Delays. Accordingly, the City agrees to cooperate reasonably with CSU's implementation of the Project and to process timely and expeditiously all applications for necessary 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 and~~ the City's applicable rules and regulations. The City also agrees 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 applicable Law and do not materially and 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.~~

6.14 Municipal Services. The City shall cooperate in providing water, sewer, ~~fire,~~ and other municipal services (excluding police services) with respect to the Real 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~~ 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 Property. Prior to the Closing Date, and outside of the Escrow, the Parties shall use commercially reasonable efforts to cause 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 between the law enforcement agencies for providing police services and responding to incidents on the Real Property and on areas contiguous to the Real Property, including the River Park Property.

6.15 Survival. The provisions of this Section 0 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.~~

### 7.1 Intentionally Deleted

7.2 CSU's Right to Terminate Agreement. If any Third Person initiates a New Lawsuit 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 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 any Excluded Claims or any Claims arising from any New Lawsuit primarily alleging that the City failed to comply with procedural requirements relating to the City Approval Actions, such as a failure to comply with public noticing statutes. The City shall notify CSU in writing within five (5) Business Days of the receipt of any notice of any Claims related to or comprising a New Lawsuit. Upon receipt of such notification, CSU shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to the City and CSU. The provisions of this Section 7.3 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 with CSU's defense of such New Lawsuit; provided, however, that the City shall not be required to incur any related material out-of-pocket expenses. 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 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 this Agreement 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 Litigation. There shall be no litigation, arbitration or proceeding pending or threatened before any court or administrative agency that materially relates to or affects the Real Property or the River Property, or that causes or could cause a lien, encumbrance or other cloud on title to the Real Property at or after the Close of Escrow (other than a Permitted Exception) or that seeks or threatens to seek an Injunction.

(g) No Material Change. There shall not have occurred any material change with respect to the Real Property or the River Property.

(h) ~~(f)~~ 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 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 this Agreement 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 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 2.82.7, 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 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. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, 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.

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 Closing Documents 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, the Title Policy issued by Title Company.

9.7 Timing of Closing. 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, unless the Parties are willing and able to Close Escrow, but the Closing cannot occur due to the issuance of an Injunction. If for any reason, other than due to an Injunction, the Closing has not occurred on or before the Outside Closing Date, then any Party not then in ~~default~~ 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 Closing Date and no Injunction has issued and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 9.7 before the first date on which Escrow Agent delivers 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. If the Closing cannot occur prior to the Outside Closing Date due to an Injunction, then the Outside Closing Date shall be automatically extended until the date that is thirty (30) days after the lifting or final resolution of such Injunction in a manner that authorizes the Closing to occur.

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 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: (i) all ad valorem taxes and special taxes or assessments levied or assessed against the Property; ~~and~~ (ii) all collected rent and other collected income pursuant to Leases, licenses, naming rights agreements and other similar agreements in effect on the Closing Date; and (iii) all utility costs and other expenses of operating the Real Property, if any. 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 rents and other income shall be prorated for the month of the Closing as of 11:59 p.m. on the day immediately preceding the Closing Date. The City shall be charged with any rent and other income collected by the City prior to Closing but applicable to any period of time after Closing. Uncollected rent and other income shall not be prorated. Following Closing, the City shall have no further right to receive or collect any rent or other income from the Property (whether or not pertaining to the City's period of ownership of the Property), as such right shall have been conveyed to CSU at Closing. To the extent rents or other income from the Property are received by the City after Closing, the City shall immediately remit such payment to CSU. 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. CSU shall receive a credit in an amount equal to any security deposits held by City pursuant to the Leases, which credit shall be reflected on the closing statements. Promptly after the Closing, the City shall provide written notice, in a form approved

by CSU, 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.

9.10 Escrow Cancellation Charges. If the Closing does not occur due to the City's ~~default~~Default under this Agreement, 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, 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~~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 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~~Section 6045(e), Escrow Agent shall report the gross proceeds of the purchase and sale of the 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~~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.~~ approval may be withheld in CSU's sole and absolute discretion if the proposed amendment or modification would extend or grant any Person a possessory interest in the Real Property beyond the Closing Date, and which approval may be withheld in CSU's reasonable discretion as to other matters.

(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 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.

(d) Cooperation with Project. The City shall, at no material out-of-pocket expense to the City, reasonably cooperate with CSU's pre-construction development activities for the Project, including as set forth in Article 6 above.

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 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 (except with respect to Paragraphs (a) and (b) below which shall not be subject to any limitation on the survival period) The City represents and warrants to CSU that:

(a) Due Authorization. The signature and delivery of this Agreement by the City has 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.

(c) Litigation. Except as set forth in Schedule 10.2(c), there is no litigation, action or proceeding, legal, equitable, administrative or otherwise pending, and to the City's knowledge there is no litigation, action or proceeding, legal, equitable, administrative or otherwise threatened, with respect to Real Property or the River Park Property.

(d) Leases and Service Contracts. The City has delivered to CSU true, correct and complete copies of all Leases and Service Contracts.

(e) Compliance with Law; Condemnation. Neither the Real Property nor the River Park Property is subject to any violation of any applicable Law and the City has not received from any governmental authority written notice of any pending or threatened violation of applicable Law to the Real Property or the River Park Property, or any part thereof, or that eminent domain proceedings for the condemnation of the Real Property or the River Park Property or any portion thereof are pending or threatened.

(f) Binding Commitments. Except as disclosed in the Preliminary Report, the City has not made any commitment or representation to any government authority, or any adjoining or surrounding property owner, or any other Third Person which would in any way be binding upon CSU or the Property, and the City will not make any such commitment or representation which would affect the Property any portion thereof prior to the Close of Escrow.

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 and shall be deemed to be repeated at and as of the Closing and shall survive the Closing. CSU represents and warrants to the City that:

(a) Due Authorization. The signature and delivery of this Agreement by CSU has 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.

~~(c) CSU's Sophistication. CSU is a sophisticated purchaser and is familiar with acquiring, owning, developing, and operating real property similar to the 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 Property pursuant to this Agreement.~~

(c) ~~(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 Property and the value of the Property. Such investigation and analysis included: the present and future economic value of the Property and the feasibility of developing or marketing the Property for CSU's intended purposes; an environmental analysis ~~as required by Law~~; the soils condition of the Property; the presence of Hazardous Substances on or affecting the 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 Property; present ~~or future~~ Law, limitations, restrictions, conditions, or requirements affecting the Property; the existence and effect of covenants, conditions, restrictions, and requirements set forth in recorded documents affecting the Property; and possible costs associated with CSU's development, grading, and construction of improvements on the Property. CSU acknowledges that its approval of the condition of the 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 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) 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 Property; and (iii) CSU is acquiring the Property as a result of CSU's own knowledge, inspection, and investigation of the 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 Property, unless such statement or representation is expressly set forth in this Agreement.

(b) CSU's Acceptance of Property. Subject to the City's covenants, representations and warranties provided herein or the documents attached hereto, including with respect to the Kinder Morgan Settlement Agreement described in Section 6.3 of this Agreement, CSU acknowledges that the Closing shall evidence CSU's unconditional and irrevocable acceptance of the Property in the 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 Property, including: (i) the structural, geotechnical, or physical condition of the Property; (ii) the existence or absence of any Hazardous Substances on, under, or affecting the 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 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 Property; (v) the availability of building permits or other permits or approvals for the Property by any state or local governmental bodies with jurisdiction over the Property ~~and by any adjacent landowners~~; (vi) the current compliance of the Property with Law; (vii) the availability or capacity of sewer, water, or other utility connections to the Property; and (viii) the suitability of the Property for CSU's intended uses.

(c) 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.~~ AGREES THAT, EXCEPT AS SET FORTH IN SECTION 6.3 OF THIS AGREEMENT AND 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. SUBJECT TO THE CITY'S OBLIGATIONS SET FORTH IN SECTION 6.3 OF THIS AGREEMENT, UPON THE CLOSING, CITY SHALL HAVE NO LIABILITIES OR RESPONSIBILITIES RELATING TO THE INVESTIGATION OR REMEDIATION OF HAZARDOUS SUBSTANCES ON, UNDER, OR AFFECTING THE PROPERTY, AND SUBJECT TO THE CITY'S OBLIGATIONS SET FORTH IN SECTION 6.3 OF THIS AGREEMENT, CSU ASSUMES ALL OBLIGATIONS, LIABILITIES, AND RESPONSIBILITIES WITH RESPECT TO HAZARDOUS SUBSTANCES AFFECTING THE PROPERTY OR THE PROJECT.

(d) CSU's Assumption of Risk and Waiver of Claims. UPON THE CLOSING, BUT SUBJECT TO SECTION 6.3 OF THIS AGREEMENT, THE CITY'S REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 10.2 OF THIS AGREEMENT AND THE COVENANTS SET FORTH IN THIS AGREEMENT AND ANY DOCUMENTS TO BE ENTERED INTO AT CLOSING, CSU ASSUMES THE RISK THAT ADVERSE PROPERTY CONDITIONS, INCLUDING CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ~~ENVIRONMENTAL~~ HAZARDOUS SUBSTANCES CONDITIONS, MAY NOT HAVE BEEN REVEALED BY CSU'S INVESTIGATIONS OF THE PROPERTY. UPON THE CLOSING, BUT SUBJECT TO SECTION 6.3 OF THIS AGREEMENT, THE CITY'S REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 10.2 OF THIS AGREEMENT AND THE COVENANTS SET FORTH IN THIS AGREEMENT AND ANY DOCUMENTS ENTERED INTO AT 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, OR VIOLATIONS OF LAW, ~~AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS~~ REGARDING THE PROPERTY.

(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~~ EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, AS AMENDED OR MODIFIED, WHICH CURRENTLY ~~PROVIDES~~ PROVIDES:

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS 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 IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(f) **CSU's Acknowledgment.** CSU

~~ACKNOWLEDGES~~ ACKNOWLEDGES AND AGREES ~~THAT THAT~~ CSU HAS CAREFULLY REVIEWED THIS SECTION 10.4, DISCUSSED ITS IMPORT WITH LEGAL COUNSEL, AND IS FULLY AWARE OF ITS CONSEQUENCES, AND ~~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~~ 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~~ RELEASE, WAIVER, OR DISCHARGE SHALL NOT APPLY AND SHALL BE OF NO FORCE OR EFFECT FOR ANY CLAIMS ARISING OUT OF THE (I) CITY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR fraud, (II) THE CITY'S BREACH OF ANY COVENANT, REPRESENTATION, OR COVENANT, REPRESENTATION, OR WARRANTY SET FORTH IN THIS AGREEMENT, (III) ANY CLAIMS ARISING OUT OF OR RELATED TO PERSONAL INJURY OR DEATH OCCURRING PRIOR TO THE CLOSING (EXCLUDING DURING THE TERM OF THE CSU NEW LEASE). IN ADDITION, CSU IS NOT RELEASING ANY CLAIMS IT MAY HAVE AGAINST ANY THIRD PARTIES, INCLUDING KINDER MORGAN, ANY CONSULTANT, CONTRACTOR OR SUBCONTRACTOR.

\*\*\* CSU's Initials: \_\_\_\_\_ \*\*\*

## 11. ENCUMBRANCE OF 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~~ (“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).

~~11.2.~~ The Parties shall enter into joint escrow instructions describing the terms upon which the Site Development Funds will be released to CSU at Closing, 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. [City: We also need to resolve how the \$8,500,000 of purchase price proceeds is going to be allocated as described in SDSU’s offer letter.] ~~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.~~

~~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~~ten (§10) 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 material 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 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~~thirty (2030) 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 2030-Business Day extension period.

(c) ~~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).~~Intentionally Deleted.

(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 Default. If the City is in ~~default~~Default of its obligation to Close Escrow under this Agreement, CSU's sole remedy 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; (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, punitive, or indirect damages, any due diligence expenses, any consultant or expert costs, any planning or design expenses, or any lost profits, or punitive damages~~ incurred or claimed to have been incurred as a result of the City's ~~default~~Default under this Agreement.

### 12.3 CSU's 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** 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 AND SIGNATURE 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. 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 equity, except as otherwise provided in this Agreement, and except that ~~(i)~~ neither Party shall be entitled to recover from the other Party any speculative, consequential, ~~collateral, special, punitive, or indirect damages, any due diligence expenses, any consultant or expert costs, any~~



~~planning or design expenses, or any lost profits; 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 Property, or punitive damages.~~

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 arising out of or directly or indirectly related to: (i) any Environmental Claim and any condition, circumstance, dangerous instrumentalities, and soils conditions, including soils subsidence or the presence of Hazardous Substances, now or hereafter existing on, under, or affecting the Property, excluding any matter as to which Kinder Morgan is liable under the Kinder Morgan Settlement Agreement and subject to the City's performance of its obligations concerning the Kinder Morgan Settlement Agreement pursuant to Section 6.3 of this Agreement; (ii) the noncompliance of CSU's use of the Property in compliance with applicable Law; (iii) the death of any person or any accident, injury, loss, or damage whatsoever caused to any Person on the Property or to the Property itself occurring after the Closing, except to the extent such death, accident, injury, loss, or damage is directly or indirectly caused by the established ~~sole~~gross 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) contracts or agreements entered into by CSU in connection with this Agreement or CSU's use of the Property; ~~(vi)~~ the costs associated with CSU's development, improvement, use, and operation of the Property or construction of the Project; and ~~(vii)~~ 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 applicable Law, including any required Approvals. The City shall ~~be entitled to select, in its sole and absolute discretion, the legal counsel that will defend 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.~~ notify CSU in writing within five (5) Business Days of the receipt of any notice of any Claims being initiated and upon receipt of such notification, CSU shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to the City and CSU. The foregoing indemnity shall not apply to (a) Claims arising out of any act or omission of the City or any City Indemnified Parties, (b) any Claims arising out of or related to the gross negligence, willful misconduct or fraud of the City or the City Indemnified Parties; and (c) any breach or Default by the City of the City's representations, warranties, covenants or obligations set forth in this Agreement or in any document executed by the City at Closing (collectively, "Excluded Claims").

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~~five percent (~~10~~5%) 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 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 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

With a copy to:

San Diego City Attorney's Office  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101

Attn: KevinReisch, Esq., SeniorChiefDeputyCity Attorney  
Email: kreisch@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, Executive Vice Chancellor and Chief Financial Officer  
Email: sreylea@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: [REDACTED]~~  
[Email: gajones@calstate.edu](mailto: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 Property are of material importance to the City; and (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, prior to the Closing, 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 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~~ contract, subcontract, lease, license, easement or similar agreement 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 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 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 Closing Date, or the Outside 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 reasonably incurred 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~~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: \_\_\_\_\_

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: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &  
HAMPTON

By: \_\_\_\_\_

Domenic 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 Vice  
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: \_\_\_\_\_

~~CHICAGO TITLE COMPANY~~

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~By~~ \_\_\_\_\_

~~Name:~~ \_\_\_\_\_

~~Title:~~ \_\_\_\_\_



<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.7.0.7 Document comparison done on</b> <b>2/11/2020 10:01:44 PM</b>	
<b>Style name:</b> SMRH Standard	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> nd://4813-4712-4915/1/City - SDSU - PSA main body.doc	
<b>Modified DMS:</b> nd://4813-4712-4915/6/City - SDSU - PSA main body.doc	
<b>Changes:</b>	
<u>Add</u>	805
<del>Delete</del>	703
<del>Move From</del>	35
<u>Move To</u>	35
<u>Table Insert</u>	4
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	1582