

CITY OF SAN DIEGO INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING

[Commencement of Annual Rent Payment to the Water Utility Fund
Related to the SDSU Mission Valley West Project]

This City of San Diego Interdepartmental Memorandum of Understanding ("MOU") is made by and between two City of San Diego ("City") departments, including the Real Estate Assets Department ("READ") and the Public Utilities Department ("PUD"), effective as of May __, 2021 ("Effective Date"). This MOU follows up on an earlier Interdepartmental Memorandum of Understanding dated June 25, 2020 ("June 25 MOU"). See Exhibit A for a copy of the June 25 MOU. All capitalized terms in this MOU have the same meaning ascribed to them in the June 25 MOU, unless otherwise specified.

RECITALS

- A. On August 13, 2020, the City completed the sale to CSU of the 135.12-acre Acquisition Site, of which approximately 52.26 acres are a Water Utility Fund asset, in accordance with the PSA between the City and CSU.
- B. Under the PSA, CSU is obligated to construct and maintain the River Park Improvements on the 34.6-acre River Park Property, which is retained in the City's ownership as a Water Utility Fund asset. The PSA provides the City with certain easement and access rights on the River Park Property for PUD's existing and planned future utility purposes.
- C. In Ordinance No. O-21204 approving the PSA and related matters ("PSA Ordinance"), the City Council approved the Compensation Arrangement described in Section 2 of the June 25 MOU. Under the Compensation Arrangement, as further described in Section 20 of the PSA Ordinance, the City's General Fund will pay annual rent to the Water Utility Fund in the amount of \$77,850 ("Annual Rent"), subject to a future escalator of 10 percent every five years, to account for the shared use of the River Park Property for both park and recreation purposes and existing and planned future utility purposes. See Exhibit B for a copy of the PSA Ordinance.

TERMS AND CONDITIONS

1. READ and PUD have agreed that the Annual Rent payment in accordance with Section 20 of the PSA Ordinance will commence on January 1, 2021, and will continue so long as the River Park Property is used for the construction, operation, or maintenance of the River Park Improvements and any other improvements for non-utility purposes.
2. READ and PUD have agreed on the commencement date for the Annual Rent payment to align with CSU's commencement of grading activities on the River Park Property on January 1, 2021.
3. The Annual Rent payment will increase by 10 percent as of January 1, 2026, and will further increase by an additional 10 percent every five years thereafter, subject to PUD's ability to request a new appraisal of the annual fair market rental value no more than once every 20 years from January 1, 2021, all as further described in Section 20 of the PSA Ordinance.

IN WITNESS WHEREOF, this MOU is signed by each City department's duly authorized representative, to be effective as of the Effective Date.

Date: 5/17/2021

Public Utilities Department

By: Shorance

Shauna Lorange, Director

Date: 5/19/2021

Real Estate Assets Department

By: Penny Mass

Penny Mass, Director

EXHIBIT A

June 25 MOU

[provided starting on next page]

CITY OF SAN DIEGO
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING

[Sale of Substantial Portion of SDCCU Stadium Site in Mission Valley]

This City of San Diego Interdepartmental Memorandum of Understanding ("MOU") is made by and between two City of San Diego ("City") departments, including the Real Estate Assets Department ("READ") and the Public Utilities Department ("PUD"), effective as of June 25, 2020 ("Effective Date").

RECITALS

- A. The City owns approximately 215 acres of real property improved with a stadium (known currently as San Diego County Credit Union Stadium), a large surface parking lot, and other uses located at 9449 Friars Road in San Diego ("**Entire Stadium Site**"). A portion of the Entire Stadium Site, consisting of approximately 131.51 acres, is an asset of the City's Water Utility Fund. The balance of the Entire Stadium Site, consisting of approximately 84.12 acres, is an asset of the City's General Fund.
- B. In November 2018, local voters approved Measure G, the SDSU West citizens' initiative, the main substance of which is now codified in San Diego Municipal Code section 22.0908. As contemplated by Measure G, the 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**"), have negotiated a proposed Real Property Purchase and Sale Agreement and Joint Escrow Instructions that includes numerous attachments (collectively, "**PSA**"). Unless otherwise specified, all capitalized terms in this MOU have the same meaning ascribed to them in the PSA.
- C. As of the Effective Date of this MOU, the City's negotiating team has recommended that the San Diego City Council ("**Council**") approve the PSA and various related actions through a package of three resolutions and two ordinances. One of the two proposed ordinances, labelled with an internal reference number of O-2020-124, specifically involves the Council's approval of the PSA and related actions directly pertinent to this MOU ("**PSA Ordinance**").
- D. Upon the closing of the sale transaction under the PSA ("**Closing**"), the City will convey to CSU fee title ownership of an approximately 135.12-acre portion of the Entire Stadium Site ("**Acquisition Site**"), which is defined as the CSU Property in the PSA. The PSA explains that, within the Acquisition Site, approximately 52.26 acres (38.7 percent of the total acreage ownership) are a Water Utility Fund asset ("**Water Utility Fund Portion of Acquisition Site**"), and approximately 82.86 acres (61.3 percent of the total acreage ownership) are a General Fund asset ("**General Fund Portion of Acquisition Site**").
- E. Consistent with the PSA, CSU will construct certain River Park Improvements (i.e., the River Park) and Storm Water Best Management Practice Structures ("**Storm Water BMPs**") on a portion of the Entire Stadium Site, contiguous to and immediately south of the Acquisition Site, consisting of approximately 34.6 acres ("**River Park Property**"). The

River Park Property is an asset of the Water Utility Fund that will remain in the City's ownership after the Closing. With respect to the River Park Property, the City and CSU have negotiated four agreements that are attached to the PSA and will become effective upon the Closing: (i) the Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures, which is Attachment 26 to the PSA; (ii) the Agreement Regarding Maintenance and Management of River Park and Storm Water Best Management Practice Structures, which is Attachment 27 to the PSA; (iii) the Agreement Regarding Easement for Construction, Maintenance, and Operation of River Park for Recreational Uses, which is Attachment 28 to the PSA; and (iv) the Easement Agreement for Installation of Utilities Within River Park Property, which is Attachment 31 to the PSA (collectively, "**River Park Agreements**").

- F. Aside from the Acquisition Site and the River Park Property, the remaining acreage within the Entire Stadium Site constitutes a Water Utility Fund asset that will remain in City ownership after the Closing and is generally designated as the Stadium Wetland Mitigation Project Site under the PSA. That remaining acreage is not included or referenced in Measure G, and the City's use of that remaining acreage is not governed by Measure G or the agreements entered into between the City and CSU in furtherance of Measure G. However, the PSA and the River Park Agreements include provisions ensuring that the City has ongoing access to that remaining acreage and that any development and construction activities carried out on the Acquisition Site or the River Park Property do not negatively impact the City's Wetland Mitigation Project as defined in the PSA.
- G. Under the proposed PSA Ordinance, the Council will be asked to approve the PSA for the City's sale of the Acquisition Site to CSU and to direct the City's Chief Financial Officer to allocate the City's net sale proceeds to the appropriate City accounts. The PSA confirms that the total purchase price for the Acquisition Site ("**Final Adjusted Purchase Price**") equals the sum of: (i) a base purchase price of \$86,200,000 ("**Base Purchase Price**"); and (ii) an additional amount calculated by applying an annual index factor of 2.149 percent, compounded monthly, to the Base Purchase Price as specified in the PSA ("**Time-Value Adjustment Amount**"). The Final Adjusted Purchase Price is based upon a fair market value appraisal report and a restricted appraisal report pertaining to the Acquisition Site, each dated October 11, 2019, prepared by David Davis, MAI, the independent appraiser mutually selected by the City and CSU. More specifically, as required by Measure G, the fair market value appraisal report discloses the appraiser's opinion of the Acquisition Site's value as of September 30, 2017, and the Base Purchase Price is consistent with the fair market value appraisal report. Also, the restricted appraisal report discloses the appraiser's opinion that 2.149 percent is a reasonable annual index factor to apply to the Base Purchase Price from October 1, 2017, through the Closing Date, and the calculation of the Time-Value Adjustment Amount under the PSA is consistent with the restricted appraisal report with respect to the Water Utility Fund Portion of Acquisition Site.
- H. PUD has determined that: (i) the City's continued ownership of the Water Utility Fund Portion of Acquisition Site is not required to maintain adequate net revenues of the City's water system ("**Water System**") and is not necessary, material, or useful for the operation or maintenance of the Water System, except for the rights and benefits to be reserved in the

City's favor under the Grant Deed and the easements to be granted to the City for water and wastewater utility purposes upon the Closing in accordance with Attachment 30 to the PSA; (ii) the City's disposition of the Water Utility Fund Portion of Acquisition Site to CSU, subject to the terms and conditions of the PSA, will not impair the operation of the City's wastewater system ("Wastewater System") and will not impair the City's ability to maintain adequate net revenues of the Wastewater System; and (iii) the portion of the Final Adjusted Purchase Price allocable to the Water Utility Fund Portion of Acquisition Site under the PSA will represent a reasonable estimate of the current fair market value of such real property as of the Closing.

- I. The purpose of this MOU is to set forth the affected City departments' understanding and agreement regarding the allocation of the net sale proceeds, the compensation arrangement for the use of the River Park Property as a River Park and other non-utility purposes, and the ongoing uses of portions of the Acquisition Site and the River Park Property for water and wastewater utility purposes.

TERMS AND CONDITIONS

1. Allocation of Net Sale Proceeds. The City's net sale proceeds of the Acquisition Site upon the Closing will be allocated based on the percentage of acres to be sold that is a General Fund asset (i.e., the General Fund Portion of Acquisition Site) or a Water Utility Fund asset (i.e., the Water Utility Fund Portion of Acquisition Site). As confirmed in the PSA Ordinance, the Water Utility Fund's portion of the City's net sale proceeds will be deposited in the Water Utility's Capital Outlay Fund upon the Closing in accordance with San Diego Charter section 77.
 - a. The Parties have stated a preference in the PSA to complete the Closing by the Primary Target Closing Date, which is within ten (10) Business Days after the Effective Date of the PSA. Upon the Closing, the General Fund will receive: (i) 61.3 percent of the Base Purchase Price; and (ii) if the Closing occurs after the Primary Target Closing Date through no fault of the City, the portion of the Time-Value Adjustment Amount derived by applying an annual index factor of 2.149 percent, compounded monthly, to the General Fund Portion of Acquisition Site from the Primary Target Closing Date through the Closing. Upon the Closing, the General Fund shall be responsible for paying 61.3 percent of the various Closing costs of the sale, excluding any title insurance costs that are incurred solely for the benefit of the Water Utility Fund or the Sewer Revenue Fund as discussed in Section 1(b) below.
 - b. Upon the Closing, the Water Utility Fund will receive: (i) 38.7 percent of the Base Purchase Price; and (ii) the portion of the Time-Value Adjustment Amount derived by applying an annual index factor of 2.149 percent, compounded monthly, to the Water Utility Fund Portion of Acquisition Site from October 1, 2017, through the Closing. Upon the Closing, the Water Utility Fund shall be responsible for paying 38.7 percent of the various Closing costs of the sale, except that all costs incurred to obtain title insurance for the easements on the Acquisition Site reserved for the benefit of the Water System and the Wastewater System shall be allocated as follows:

(a) 40 percent to the Water Utility Fund, attributable to the two utility easements to be reserved in favor of the Water System; and (b) 60 percent to the Sewer Revenue Fund, attributable to the three utility easements to be reserved in favor of the Wastewater System.

2. Compensation Arrangement for River Park Property. As confirmed in the PSA Ordinance, READ and PUD have agreed upon a compensation arrangement by which the City's General Fund will pay annual rent to the Water Utility Fund in the amount of \$77,850, subject to a future escalator of ten percent every five years and as described further below ("**Compensation Arrangement**"), to account for the shared use of the River Park Property, a real property asset of the Water Utility Fund, for both park and recreation purposes and existing and planned future utility purposes.
 - a. The Compensation Arrangement is based on three main factors: (a) the annual fair market rent of a ground leasehold interest for virtually exclusive rights in the River Park Property has been independently appraised at a value of \$155,700, as shown in the restricted appraisal report dated October 11, 2019; (b) the PSA and the River Park Agreements will not allow exclusive use of the River Park Property for park and recreation purposes, and instead will allow a continuing shared use of the River Park Property for both utility and non-utility purposes and will confirm the City's reservation of easement and access rights over significant portions of the River Park Property for utility purposes; and (c) the Water Utility Fund will not be responsible for paying any increased costs incurred to repair or replace the River Park Improvements or any other improvements that serve non-utility purposes, unless otherwise agreed to by PUD.
 - b. The Compensation Arrangement includes the following elements: (a) on the date that CSU commences grading or construction activities on the River Park Property after the Closing in accordance with the PSA, the General Fund will be deemed to have leased the River Park Property from the Water Utility Fund, for certain non-utility purposes, while reserving certain Water Utility rights in the River Park Property to carry out utility purposes; (b) as of the lease commencement date, the General Fund will owe annual rent to the Water Utility Fund in the amount of \$77,850; (c) the General Fund's annual rent obligation will continue for so long as the River Park Property is used for the construction, operation, or maintenance of the River Park Improvements and any other improvements for non-utility purposes; (d) the annual rent will be prorated for any partial year of non-utility use and will be payable before the end of each applicable fiscal year; (e) the annual rent will increase by ten percent once every five years after the lease commencement date; and (f) no more than once every twenty years, PUD may, in its sole discretion, request a new appraisal of the fair market annual rental value for exclusive use of the River Park Property, with the appraisal cost to be shared equally by the General Fund and the Water Utility Fund, and in such event, the annual rent amount will be modified so that it equals fifty percent of the fair market annual rental value shown in the new appraisal.
 - c. As confirmed in the PSA Ordinance, all rental payments received under the

Compensation Arrangement will be deposited in the Water Utility's Operating Fund.

3. Water and Wastewater Utilities and Infrastructure on Acquisition Site. Pursuant to Attachment 30 to the PSA, upon the Closing, CSU will grant easements to the City for all existing utility infrastructure that is currently in use by PUD on the Acquisition Site, with one exception as follows: Pursuant to Section 6.13 of the PSA, with regard to the City's two existing groundwater monitoring wells located in the northeasterly quadrant of the Acquisition Site, CSU will grant an irrevocable right of entry permit that will also be recorded against the Acquisition Site at Closing. With regard to the City's existing utility facilities, the City and CSU have further agreed under the PSA as follows:
 - a. As part of its development project on the Acquisition Site, CSU intends to relocate some of the utilities currently existing on the Acquisition Site. Pursuant to Section 6.5 of the PSA and Section 3.4 of Attachment 21 to the PSA, CSU will follow the City's standard process for relocating public utilities and will pay for the costs of any relocation, unless otherwise provided for in the PSA. Any City funds used to relocate the existing utility infrastructure as a result of CSU's development project will be paid by the City's General Fund and will not be at the expense of the ratepayers or paid from fees or monies collected from ratepayers for water or wastewater services.
 - b. Pursuant to Section 6.5(c) of the PSA and Section 3.3(c) of Attachment 21 to the PSA, PUD will have the right to review and approve any proposed development within the easement areas granted to the City for water and wastewater infrastructure, in order to ensure that CSU's development project does not adversely affect the water and wastewater infrastructure located within those easements.
 - c. Any City water and wastewater utility infrastructure that is not currently in use on the Acquisition Site, and for which no current or future need exists ("Excess Infrastructure"), will be transferred by the City to CSU upon the Closing pursuant to the Grant Deed, which is Attachment 19 to the PSA. CSU will be responsible for abandoning in place or removing any Excess Infrastructure as CSU proceeds with its development project. The PSA does not require the sale, lease, or disposition of any real property or other property that is essential to the proper operation of the Water System or the Wastewater System.
4. Water Utility's Existing and Future Uses of the River Park Property. Section 6 of Attachment 28 to the PSA reserves easements in favor of the City for existing water and wastewater utility improvements, identifies specific areas where water and wastewater utility infrastructure is likely to be constructed or installed in the future, and reserves specific rights relative to the City's ability to access, enter upon, and use the River Park Property for utility purposes.
 - a. Under the River Park Agreements, CSU's development, construction, maintenance, and operation of the River Park Improvements and the Storm Water BMPs must be conducted in such a manner that those activities do not negatively impact the City's ability to: (i) access, operate, maintain, repair, and replace the City's existing water

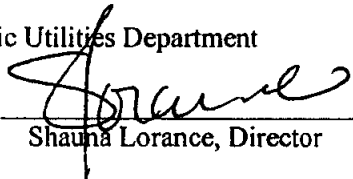
and wastewater improvements; and (ii) develop, construct, install, operate, maintain, and replace future water and wastewater utility infrastructure within the identified areas. *See* Section 1.6 of Attachment 26, Section 7 of Attachment 28, and Section 3.5 of Attachment 31.

- b. Under the River Park Agreements, the City has also reserved the right to enter upon the River Park Property for the purposes of exercising the City's Pueblo water rights, groundwater management, and/or use and management of the Mission Valley Aquifer, including installing pump stations, wells, and any other infrastructure or piping necessary to carry out those purposes, or to meet the water and sewer needs of the City, within specific identified areas of the River Park Property. *See* Section 6 of Attachment 28.
- c. To ensure adequate protection of both the existing and future water and sewer utility uses on the River Park Property, the PSA provides for PUD to review and approve CSU's plans for development of the River Park Property to ensure that CSU's development of the River Park Property does not adversely impact the City's existing and planned future utility infrastructure and uses. *See* Section 6.5(c) of the PSA, Section 3.3(c) of Attachment 21, and Section 5.4.5 of Attachment 26.
- d. If the City's costs to develop, construct, maintain, or repair water or wastewater infrastructure are materially increased as a result of the River Park Improvements, the Storm Water BMPs, or the operation of the River Park Property for recreational purposes, any such increased costs will be paid by the General Fund and will not be paid by the Water Utility Fund, the Sewer Revenue Fund, or any other funds collected from the ratepayers for water and wastewater service. Examples of potential increased costs include costs incurred to remove or restore any portion of the River Park Improvements and increased construction costs incurred solely for the purpose of avoiding impacts to the Storm Water BMPs.

IN WITNESS WHEREOF, this MOU is signed by each City department's duly authorized representative, to be effective as of the Effective Date.

Date: 6/25/2020

Public Utilities Department

By: 
Shauna Lorange, Director

Date: 6/29/20

Real Estate Assets Department

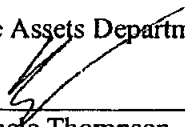
By: 
Cybelle Thompson, Director

EXHIBIT B

PSA Ordinance

[provided starting on next page]

6/30/2020
(O-2020-124) #52A

ORDINANCE NUMBER O- **21204** (NEW SERIES)

DATE OF FINAL PASSAGE **JUL 06 2020**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE SALE OF AN
APPROXIMATELY 135.12-ACRE PORTION OF THE REAL
PROPERTY LOCATED AT 9449 FRIARS ROAD IN MISSION
VALLEY, COMMONLY KNOWN AS THE SAN DIEGO
COUNTY CREDIT UNION STADIUM SITE, AND APPROVING
VARIOUS RELATED ACTIONS.

WHEREAS, on November 6, 2018, the voters of the City of San Diego (City) approved Measure G, a citizen's initiative measure partially codified in San Diego Municipal Code section 22.0908, which governs the City's sale of a portion of the real property located at 9449 Friars Road, San Diego, California, commonly known as the San Diego Credit County Credit Union stadium site (Stadium Site); and

WHEREAS, in compliance with Measure G, the 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), have negotiated that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (Purchase Agreement), a copy of which is included as Attachment A to the staff report accompanying this Ordinance (Staff Report); and

WHEREAS, unless otherwise specified, all capitalized terms in this Ordinance have the same meaning ascribed to them either in the Purchase Agreement or certain attachments to the Purchase Agreement, depending on the context; and

WHEREAS, the Purchase Agreement contemplates the City's sale to CSU of real property and related improvements comprising approximately 135.12 acres of the Stadium Site, and a legal description of such real property is included in Attachment 2-A to the Purchase Agreement (collectively, Acquisition Site); and

WHEREAS, consistent with Measure G, the Purchase Agreement requires CSU to demolish the Existing Stadium on the Acquisition Site and develop and construct certain improvements and uses on the Acquisition Site, such as the New Stadium with a capacity for 35,000 persons, a minimum of 22 acres of passive and active recreation space, facilities for educational, research, entrepreneurial, and technology programs, commercial and retail uses, hotel rooms to support visitors to campus and stadium-related events, affordable and market-rate residential units, and trolley and other public transit improvements; and

WHEREAS, also consistent with Measure G, the Purchase Agreement requires CSU to develop, construct, and maintain in perpetuity, all at CSU's sole expense, the River Park Improvements on the approximately 34.6-acre River Park Property, which is City-owned land contiguous to the southern boundary of the Acquisition Site; and

WHEREAS, CSU's development and construction obligations with respect to the Acquisition Site and the River Park Property are set forth in Attachment 21 to the Purchase Agreement, entitled Declaration of Covenants, Conditions, and Restrictions Regarding Development, Operation, and Maintenance of SDSU Mission Valley Property, which will be recorded in the local land records upon the Closing – i.e., when the City conveys to CSU fee title ownership of the Acquisition Site by Grant Deed; and

WHEREAS, CSU is a state agency responsible for developing and constructing campuses and improvements to support CSU's students and employees in a manner that furthers the field of public higher education; and

WHEREAS, the improvements and uses required to be developed by CSU on the Acquisition Site will further CSU's governmental mission by providing increased educational facilities and capacity for additional students, new housing that will assist in recruitment and

retention of both staff and students, a stadium for the San Diego State University (SDSU) football team and potential sports partners, park and recreation space integral to campus life and student health, and public transportation improvements that will connect SDSU's existing campus to its new Mission Valley campus; and

WHEREAS, CSU's anticipated improvements and uses on the Acquisition Site will serve bona fide governmental purposes as required by San Diego Charter section 221, and bona fide public purposes as defined by San Diego Municipal Code section 22.0908(x)(1), as further described in Attachment B to the Staff Report; and

WHEREAS, the City and CSU (collectively, Parties) negotiated \$86,200,000 as the Base Purchase Price for the Acquisition Site, based on an independent appraisal of the Acquisition Site that provides an opinion of the fair market value of the Acquisition Site in effect on September 30, 2017, as required by Measure G and as further discussed in Attachment C to the Staff Report; and

WHEREAS, the ownership percentages of the City's General Fund and the City's Water Utility Fund in the Acquisition Site are 61.3 percent and 38.7 percent, respectively; and

WHEREAS, the Purchase Agreement confirms that the Base Purchase Price for the Acquisition Site will be increased to arrive at the Final Adjusted Purchase Price payable by CSU to the City upon the Closing, as follows: (a) if the Closing occurs on or before the Primary Target Closing Date (which is within ten Business Days after the Effective Date of the Purchase Agreement), then the Base Purchase Price will be increased by applying an annual index adjustment factor of 2.149 percent (Time-Value Adjustment Factor), compounded monthly from October 1, 2017 through the Closing Date, to 38.7 percent of the Base Purchase Price (attributable to the Water Utility Fund's ownership interest); and (b) if the Closing occurs after

the Primary Target Closing Date through no fault of the City, then in addition to the increase described in clause (a) above, the Base Purchase Price will be increased by applying the Time-Value Adjustment Factor to the remaining 61.3 percent of the Base Purchase Price (attributable to the General Fund's ownership interest) from the Primary Target Closing Date through the Closing Date; and

WHEREAS, the Purchase Agreement states that, upon the Closing, CSU will grant to the City certain easements, as more fully set forth in Attachments 30 and 32 to the Purchase Agreement, allowing for the City's ongoing use, operation, maintenance, repair, and replacement of existing water, sewer, and storm water infrastructure; and

WHEREAS, the Purchase Agreement requires the Parties to cooperate to approve a Parcel Map in accordance with each Party's own approval process that will complete lot line adjustments for the Acquisition Site, the River Park Property, and additional City-owned property to the south of the River Park Property, and will also authorize the dedication of certain public easements and rights-of-way in favor of the City and grant utility easements in favor of CSU on the River Park Property, all as conceptually depicted on the Preliminary Parcel Map, which is Attachment 34 to the Purchase Agreement; and

WHEREAS, the Purchase Agreement provides that either Party may elect to abandon the Parcel Map process if certain conditions are met to ensure the necessary dedication of public easements and rights-of-way and other easements as conceptually depicted on the Preliminary Parcel Map; and

WHEREAS, Section 11.1 of the Purchase Agreement requires the City to set aside upon the Closing, in a separate escrow account, \$1,500,000 of the General Fund's portion of the net sale proceeds to reimburse CSU for its actual costs incurred in the future for site development

activities on the Acquisition Site that the Mayor reasonably determines will serve a valid public purpose and benefit the City, such as relocating City utilities or development of other public facilities, provided that these funds may not be used to pay for the demolition of the Existing Stadium or the design, construction, or maintenance of the New Stadium or the River Park Improvements; and

WHEREAS, Section 11.2 of the Purchase Agreement requires the City contribute certain funds to be used for the cost of the Feasibility Exploration, including preliminary design and environmental review in compliance with the California Environmental Quality Act (CEQA) and (if applicable) the National Environmental Policy Act (NEPA), regarding the potential future construction of Fenton Parkway Bridge, which is a bridge to extend Fenton Parkway south across the San Diego River to Camino Del Rio North; and

WHEREAS, more specifically, the City's funding contribution toward the Feasibility Exploration for the proposed Fenton Parkway Bridge will include: (a) the City's allocation of existing funds within Mission City Parkway Bridge / San Diego River Fund No. 400247 (Fund No. 400247), which includes a balance of \$2,324,559.32 comprising developer contributions and accrued interest thereon; and (b) the City's deposit of \$2,000,000 of the General Fund's portion of the net sale proceeds into Fund No. 400247 or another designated fund upon the Closing; and

WHEREAS, Section 3.2 of the Purchase Agreement states that, if the Closing is delayed beyond the Primary Target Closing Date for any reason other than the City's default, the Parties will immediately sign the CSU Interim Lease, which is an interim lease in the form of Attachment 36 to the Purchase Agreement, at which time CSU will assume all responsibilities and obligations relating to the Stadium Site, including the Existing Stadium; and

WHEREAS, the CSU Interim Lease, if signed due to a delay in the Closing, will supersede the CSU Existing Occupancy Agreement between the Parties related to CSU's current use of Existing Stadium (an agreement that mainly allocates the maintenance and repair obligations for the Existing Stadium to the City), and the CSU Existing Occupancy Agreement will terminate as of the effective date of the CSU Interim Lease; and

WHEREAS, Section 3.3 of the Purchase Agreement states that, if the Closing is delayed beyond the Primary Target Closing Date for any reason other than the City's default, the Parties will also be required to negotiate in good faith a more complete CSU New Lease based on the material terms set forth in Attachment 15 to the Purchase Agreement; and

WHEREAS, Attachment 21 to the Purchase Agreement requires CSU to provide the Community Benefit Additional Contribution, in the amount of \$5,000,000, by constructing specific traffic-related improvements that will benefit the community as a whole (Community Benefit Traffic Improvements) and making a cash payment to the City equal to \$5,000,000 less CSU's total costs (currently estimated to be \$2,434,000) of constructing the Community Benefit Traffic Improvements; and

WHEREAS, Attachment 21 to the Purchase Agreement further requires CSU to pay to the City the Traffic Mitigation Measure Contribution of \$390,000, which is the City's good-faith estimate of the City's costs to complete improvements that will optimize the traffic signal timing at certain street intersections to mitigate off-site traffic impacts associated with the full build-out of CSU's development project, as contemplated in the Final EIR; and

WHEREAS, CSU's obligation to develop, construct, and maintain in perpetuity, the River Park Improvements on the City-owned River Park Property is described in Attachments 26, 27, 28, and 31 to the Purchase Agreement (collectively, River Park Agreements), which

include the grant of an easement for park and recreation purposes, a River Park development agreement, a River Park maintenance and operation agreement, and an easement agreement for utilities located in the River Park that will benefit the Acquisition Site; and

WHEREAS, the River Park Agreements reserve certain rights in favor of the City's Public Utilities Department, and specifically the City's water and sewer utilities, to use the River Park Property (a real property asset of the Water Utility Fund) for existing and future utility uses to ensure that the City is able to meet the needs of the City's utility ratepayers for these services and to comply with the City's water and sewer bond covenants; and

WHEREAS, the River Park Agreements allow CSU to construct and maintain three storm water best management practice structures (collectively, Storm Water BMPs) on the River Park Property to treat the runoff from the Acquisition Site, as well as some runoff from the River Park Property, while also providing passive park space and educational opportunities; and

WHEREAS, the City's Public Utilities Department and the City's Real Estate Assets Department have agreed upon a compensation arrangement by which the City's General Fund will pay annual rent to the Water Utility Fund in the amount of \$77,850, subject to a future escalator of ten percent every five years (Compensation Arrangement), to account for the shared use of the River Park Property, a real property asset of the Water Utility Fund, for both park and recreation purposes and existing and planned future utility purposes; and

WHEREAS, the Compensation Arrangement is based on three main factors, which include: (a) the annual fair market rent of a ground leasehold interest for virtually exclusive rights in the River Park Property has been independently appraised at a value of \$155,700, as shown in the restricted appraisal report included as Attachment D to the Staff Report; (b) the PSA and the River Park Agreements will not allow exclusive use of the River Park Property for

park and recreation purposes, and instead will allow a continuing shared use of the River Park Property for both utility and non-utility purposes and will confirm the City's reservation of easement and access rights over significant portions of the River Park Property for utility purposes; and (c) the Water Utility Fund will not be responsible for paying any increased costs incurred to repair or replace the River Park Improvements or any other improvements that serve non-utility purposes, unless otherwise agreed to by the City's Public Utilities Department; and

WHEREAS, the Compensation Arrangement is further described in one of the Council's action items below in this Ordinance; and

WHEREAS, the Council has not taken, and is not required to take, any formal action under the California Surplus Land Act declaring that the Acquisition Site is not needed for the City's use, because the City is selling the Acquisition Site in compliance with Measure G; and

WHEREAS, nonetheless, if the City did take such formal action under the California Surplus Land Act, the City's sale of the Acquisition Site would constitute the sale of "exempt surplus property" pursuant to California Government Code section 54221(f)(1)(D), because the Acquisition Site is real property that the City is transferring to a state agency (i.e., CSU) for that agency's use; and

WHEREAS, the City's Public Utilities Department has determined that the Water Utility Fund's portion of the Acquisition Site is not necessary for the proper operation of the City's water system and may be sold to CSU, and that the Sale Transaction contemplated by the Purchase Agreement, which provides for CSU's grant of certain easements to the City and the City's reservation of certain rights, including the City's Pueblo water rights and groundwater management rights, will not negatively impact the net revenues of the City's water or sewer systems; and

WHEREAS, San Diego Charter section 77 requires all proceeds from the sale of City-owned real property that is an asset of the General Fund to be used for one or more of three purposes: (a) for the acquisition and construction of permanent public improvements; (b) to reimburse the General Fund for prior capital expenditures and financing costs associated with the acquisition and construction of permanent public improvements; or (c) for the replacement of permanent public improvements; and

WHEREAS, San Diego Charter section 53 requires that all of the City's Water Utility revenues be deposited into the Water Utility Fund; and

WHEREAS, San Diego Charter section 99 requires that this Ordinance be adopted by a two-thirds majority vote of the Council, because the Purchase Agreement includes obligations to expend certain City funds (such as the City's funding commitments under Sections 11.1 and 11.2 of the Purchase Agreement), which obligations could extend beyond five years; and

WHEREAS, the Council has held a public hearing, and has reviewed and considered the written and verbal testimony and evidence presented at or before the public hearing, regarding the subject matter of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. For the reasons described in Part 2 of Attachment E to the Staff Report, and in compliance with San Diego Charter section 221, the Council finds that the City's sale of the Acquisition Site to CSU, a governmental agency, is for bona fide governmental purposes.

Section 2. For the reasons described in Part 3 of Attachment E to the Staff Report, and in compliance with Measure G's requirement codified at San Diego Municipal Code section 22.0908(a), the Council finds that the terms and conditions of the Purchase Agreement, including the Final Adjusted Purchase Price, are fair, equitable, and in the public interest.

Section 3. For the reasons described in Part 4 of Attachment E to the Staff Report, the Council finds that the use of certain City funds to provide for site development improvements on the Acquisition Site and to explore feasibility of the potential Fenton Parkway Bridge in accordance with Sections 11.1 and 11.2 of the Purchase Agreement, respectively, serves bona fide public purposes.

Section 4. For the reasons described in Part 5 of Attachment E to the Staff Report, the Council finds that allowing CSU to construct the Storm Water BMPs on the City-owned River Park Property serves bona fide public purposes.

Section 5. For the reasons described in Attachment F to the Staff Report, the Council finds that it is valid and appropriate for the City to allow certain permitting authority to be allocated to CSU with respect to CSU's development activities on City-owned property, namely the River Park Property and the City's utility easement areas on the Acquisition Site.

Section 6. The Council finds that the City's acceptance of CSU's payment of the Final Adjusted Purchase Price in exchange for the City's conveyance of the Acquisition Site serves a valid public purpose even if the Final Adjusted Purchase Price is less than the current fair market value of the Acquisition Site, for the following reasons: (a) as required by Measure G, the Parties negotiated the Final Adjusted Purchase Price based on an appraisal providing an expert opinion of the fair market value of the Acquisition Site as of September 30, 2017; and (b) the Sale Transaction furthers the policies set forth in Measure G, provides for CSU's development and maintenance of the River Park, which will be available for public use, and provides for the development of affordable housing and public transportation improvements, among other public benefits required by the Purchase Agreement.

Section 7. The Council approves the Purchase Agreement and authorizes the City's sale of the Acquisition Site to CSU in accordance with the Purchase Agreement, which includes, but is not limited to, the City's sale of certain real property that is a Water Utility Fund asset and the grant of certain easements and the reservation of certain rights benefitting the Water Utility, including the City's Pueblo water rights and groundwater management rights.

Section 8. The Mayor or designee is authorized, on the City's behalf, to sign and deliver the Purchase Agreement, the Grant Deed, and all other agreements, including all attachments to the Purchase Agreement, and documents necessary to complete the sale of the Acquisition Site, to make any changes to the technical exhibits to the Purchase Agreement as may be deemed necessary by any affected City departments and mutually acceptable to the Parties, to reserve or grant easements as required under the Purchase Agreement, and to take all such other actions as necessary or appropriate to consummate and implement all transactions contemplated by the Purchase Agreement and to effectuate the purposes and intent of this Ordinance. A copy of the Purchase Agreement, when signed by both Parties, shall be placed on file in the Office of the City Clerk as Document No. 00-21204.

Section 9. The Mayor or designee is authorized, on the City's behalf, to sign and deliver the CSU Interim Lease in accordance with Section 3.2 of the Purchase Agreement and the CSU New Lease in accordance with Section 3.3 of the Purchase Agreement, and to sign all other necessary documents and take all implementing actions, in the event that the Closing does not occur by the Primary Target Closing Date for any reason other than the City's default; provided that, with respect to the CSU New Lease, the Mayor or designee and the Office of the City Attorney have first determined that the final content of the CSU New Lease is consistent with Attachment 15 to the Purchase Agreement.

Section 10. The Chief Financial Officer is authorized and directed to accept CSU's payment of the Independent Consideration of \$100 in accordance with Section 2.4 of the Purchase Agreement, and deposit this amount into Fund Number 100000, General Fund.

Section 11. The Chief Financial Officer is authorized and directed to accept the City's proceeds of the sale of the Acquisition Site, net of all costs of the Sale Transaction, and deposit those net proceeds as follows: (a) 61.3 percent of the Base Purchase Price and, if applicable, the portion of the Time-Value Adjustment Amount derived by applying an annual index factor of 2.149 percent compounded monthly to the General Fund portion from the Primary Target Closing Date until the actual Closing Date, into Fund Number 400002, Capital Outlay Fund, except as described in the next sentence; and (b) 38.7 percent of the Base Purchase Price and the portion of the Time-Value Adjustment Amount derived by applying an annual index factor of 2.149 percent, compounded monthly, from October 1, 2017, through the actual Closing Date, into Fund Number 400004, Capital Outlay – Water Purpose. The General Fund portion of the City's net sale proceeds deposited into Fund Number 400002, Capital Outlay Fund in accordance with clause (a) in the preceding sentence will exclude the following amounts, which are separately appropriated in accordance with this Ordinance: (i) \$6,500,000 for the City's use in financing future transportation-related capital improvements in the Mission Valley Community, in accordance with Section 5.8 of the Purchase Agreement; (ii) \$1,500,000 for the City's contribution toward certain site development activities, in accordance with Section 11.1 of the Purchase Agreement; and (iii) \$2,000,000 for the City's contribution toward the Feasibility Exploration of the potential Fenton Parkway Bridge, in accordance with Section 11.2 of the Purchase Agreement.

Section 12. The Chief Financial Officer is authorized to expend an amount up to \$28,316,276 from the General Fund's portion of the net sale proceeds from the Sale Transaction, deposited into Fund Number 400002, Capital Outlay Fund, for the City's repayment of outstanding bonded indebtedness incurred with respect to prior renovations at the Existing Stadium, contingent upon the Appropriation Ordinance for the appropriate Fiscal Year first being adopted, and contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 13. The Mayor or designee is authorized to allow the sum of \$1,500,000, which amount shall be deducted from the General Fund's portion of the net sale proceeds, to remain in an escrow account with Chicago Title Company for the purpose of reimbursing CSU for its actual costs incurred for site development activities on the Acquisition Site in accordance with and subject to Section 11.1 of the Purchase Agreement.

Section 14. The Chief Financial Officer is authorized to establish a new special interest-bearing account, Capital Outlay – Mission Valley Trans (hereinafter, MV Capital Outlay Fund), and to deposit \$6,500,000 from the General Fund's portion of the net sale proceeds from the Sale Transaction into such account upon the Closing of the Sale Transaction, to be designated and used for future transportation-related capital improvements in the Mission Valley Community in accordance with Section 5.8 of the Purchase Agreement.

Section 15. The Chief Financial Officer is authorized to deposit \$2,000,000 from the General Fund's portion of the net sale proceeds of the Sale Transaction into the MV Capital Outlay Fund upon the Closing of the Sale Transaction.

Section 16. The Chief Financial Officer is authorized to add the Fenton Parkway Extension project to the Capital Improvement Program.

Section 17. The Chief Financial Officer is authorized to increase the Capital Improvement Program Budget in the Fenton Parkway Extension CIP project and to appropriate and expend up to \$4,324,559.32, of which \$2,324,559.32 is from Fund No. 400247, Mission City Parkway Bridge / San Diego River, and \$2,000,000 is from the MV Capital Outlay Fund, for the purpose of payment or reimbursement, as applicable, of costs incurred with respect to the Feasibility Exploration for the proposed Fenton Parkway Bridge in accordance with and subject to Section 11.2 of the Purchase Agreement.

Section 18. The Chief Financial Officer is authorized to accept CSU's payment of the amount of \$5,000,000, less CSU's total costs of construction of the Community Benefit Traffic Improvements, in accordance with Attachment 21 to the Purchase Agreement, and deposit that amount into Fund 200636, Developer Contributions – CIP, and is further authorized to appropriate and expend such amount upon receipt for capital improvement projects for improved traffic circulation in the Mission Valley, Serra Mesa, and Navajo communities, with a preference toward projects closest in vicinity to the Acquisition Site, as described in Attachment 21 to the Purchase Agreement.

Section 19. The Chief Financial Officer is authorized to accept CSU's payment of the amount of \$390,000 in accordance with Attachment 21 to the Purchase Agreement, and deposit that amount into Fund 200636, Developer Contributions – CIP, and is further authorized to appropriate and expend such amount upon receipt to allow the City to complete the specific traffic improvements for which CSU paid such amount, as described in Attachment 21 to the Purchase Agreement.

Section 20. The Council approves the following Compensation Arrangement with respect to the River Park Property, a real property asset of the Water Utility Fund: (a) on the date

that CSU commences grading or construction activities on the River Park Property after the Closing in accordance with the PSA, the General Fund will be deemed to have leased the River Park Property from the Water Utility Fund, for certain non-utility purposes, while reserving certain Water Utility rights in the River Park Property to carry out utility purposes; (b) as of the lease commencement date, the General Fund will owe annual rent to the Water Utility Fund in the amount of \$77,850; (c) the General Fund's annual rent obligation will continue for so long as the River Park Property is used for the construction, operation, or maintenance of the River Park Improvements and any other improvements for non-utility purposes; (d) the annual rent will be prorated for any partial year of non-utility use and will be payable before the end of each applicable fiscal year; (e) the annual rent will increase by ten percent once every five years after the lease commencement date; and (f) no more than once every twenty years, the City's Public Utilities Department may, in its sole discretion, request a new appraisal of the fair market annual rental value for exclusive use of the River Park Property, with the appraisal cost to be shared equally by the General Fund and the Water Utility Fund, and in such event, the annual rent amount will be modified so that it equals fifty percent of the fair market annual rental value shown in the new appraisal.

Section 21. The Chief Financial Officer is authorized to transfer the annual rent amount under the above-described Compensation Arrangement, from Fund Number 100000, General Fund, Business Area 1613, Real Estate Assets Department, to Fund Number 700011, Water Utility Operating, during each applicable fiscal year, contingent upon the Appropriation Ordinance for the appropriate Fiscal Year first being adopted, and contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

(O-2020-124)

Section 22. The City Engineer or the City Land Surveyor is authorized to accept any dedications of public easements or public rights-of-way as contemplated on the Preliminary Parcel Map, which is Attachment 36 to the Purchase Agreement, with any adjustments to the physical dimensions and precise locations as deemed necessary or acceptable by the City Engineer or the City Land Surveyor.

Section 23. A full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 24. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Kevin Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

KJR:jdf
6/12/2020
Or.Dept: Real Estate Assets
Doc. No.: 2379559_5
Companion to: R-2020-605
R-2020-606
R-2020-607
O-2020-123

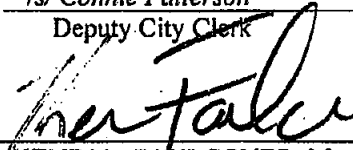
(O-2020-124)

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 06/30/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Connie Patterson
Deputy City Clerk

Approved: 7/2/2020
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 30 2020 by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☐	☒	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage JUL 06 2020

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 17 2020

, and on JUL 06 2020

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21204