MEMORANDUM OF UNDERSTANDING REGARDING COOPERATION AND CONFIDENTIALITY IN MISSION VALLEY SITE NEGOTIATIONS

This Memorandum of Understanding Regarding Cooperation and Confidentiality in Mission Valley Site Negotiations ("MOU") is entered into as of March 21, 2019 ("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, which is the State of California acting in its higher education capacity on behalf of San Diego State University ("SDSU").

RECITALS

The City and SDSU (each, a "Party," and collectively, the "Parties") enter into this MOU with reference to the following circumstances:

A. The City's voters approved Measure G – the citizens' initiative entitled "SDSU West Campus Research Center, Stadium and River Park Initiative" – on November 6, 2018. Measure G is codified in San Diego Municipal Code section 22.0908, which authorizes the Parties to negotiate the terms of a purchase and sale agreement, and potentially other agreements, related to the City's sale to SDSU of approximately 132 acres of City-owned property ("Site"), including the Mission Valley stadium. The Parties commenced those negotiations on or about November 7, 2018, after learning the outcome of Measure G. It is anticipated that the San Diego City Council ("City Council"), acting as the City's governing body, and the Board of Trustees of the California State University ("Board of Trustees"), acting as SDSU's governing body, will consider approval of one or more agreements negotiated by the Parties related to the City's sale of the Site to SDSU (collectively, "Proposed Agreements").

B. To facilitate their negotiations from and after November 7, 2018, the Parties have participated in, and will continue to participate in, meetings and telephone calls, and the Parties have exchanged, and will continue to exchange, information and documents (including drafts) regarding the condition of the Site, SDSU's due diligence investigations regarding the Site, the City's potential sale of the Site to SDSU, the content of the Proposed Agreements, SDSU's proposed plans and concepts for future development activities on the Site, the Parties' proposed plans, concepts, studies, investigations, and technical reports related to the river park improvements adjacent to the Site, SDSU's land use planning efforts for the Site, the environmental review of SDSU's proposed development project of the Site in compliance with the California Environmental Quality Act ("CEQA"), and related topics (collectively, "Site Negotiations").

C. For purposes of this MOU, (i) the term "Affiliated Entities" shall refer collectively to the affiliates, employees, officers, representatives, experts, auxiliaries, consultants (including, but not limited to, architects and engineers), and attorneys of the applicable Party, to the extent they are participating in or supporting the Site Negotiations; (ii) the term "Negotiation Documents" shall refer collectively to all documents, written records, meeting agendas, notes, summaries, drafts, consultant reports, appraisals, emails, and text messages, that have been, or will be, prepared or created by either Party or its Affiliated Entities and shared with the other Party in relation to the Site Negotiations; and (iii) the term "Public Records Act" shall mean the California Public Records Act, California Government Code sections 6250 through 6276.48.

D. The Parties agree it is in their mutual best interests to reasonably cooperate with each other regarding the Site Negotiations and to preserve the confidentiality of the Negotiation Documents to the extent legally permissible until after the Parties have completed the Site Negotiations and the City Council and the Board of Trustees (collectively, "Governing Bodies"), acting in their respective sole discretion, have considered for approval the Proposed Agreements. The Parties agree that the integrity and success of the Site Negotiations will depend on the Parties' ability to engage in a candid exchange of ideas, opinions, and information, free from the chilling effect and undue burden that would be imposed by prompt and continuous public disclosure of the Negotiation Documents. *See, e.g., Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1328-29 (1991). The Parties mutually presume that certain Negotiation Documents of a particularly sensitive nature will be exempt from disclosure under the Public Records Act, based on the deliberative process privilege and the balancing test exemption in California Government Code section 6255, until the Site Negotiations have concluded. The Parties agree that certain other Negotiation Documents might continue to be exempt from disclosure under the Public Records Act after the Site Negotiations have concluded, depending on the applicable circumstances.

TERMS AND CONDITIONS

In consideration of the foregoing Recitals, the Parties agree as follows:

1. Intent. This MOU expresses the Parties' intent to deliberate and pursue Site Negotiations and the Proposed Agreements, consistent with Measure G.

2. Cooperation. The Parties, through their respective Affiliated Entities, will attend regular negotiation meetings with each other, cooperate reasonably with each other regarding the Site Negotiations, and share information with each other as reasonably needed to facilitate the Site Negotiations. Neither Party shall be required to share with the other information that it reasonably believes is confidential, privileged, or proprietary, including information regarding financial projections, unless such information is reasonably necessary to facilitate the Site Negotiations, including the completion of any independent appraisal of the Site. Each Party will endeavor to respond within a reasonable time frame to the other Party's requests, from time to time, for information and documents intended to facilitate the Site Negotiations. If one Party communicates its belief to the other Party that such Party's request for information and documents is overly broad or irrelevant or will be unduly burdensome, the Parties will promptly confer in good faith in an attempt to clarify or reasonably narrow the scope of the request.

3. Confidentiality of Negotiation Documents. Except as otherwise specified in this MOU or as otherwise required by law or future court order, each Party agrees that it will maintain, and will instruct its Affiliated Entities to maintain, the strict confidentiality of all Negotiation Documents shared between the Parties (including through their respective Affiliated Entities), to the extent permissible by law, until after one of the following events has occurred: (a) the Proposed Agreements have been made public as part of the process by which the Governing Bodies are considering the Proposed Agreements for approval; or (b) the Parties have mutually agreed that the Site Negotiations will permanently cease. Following the occurrence of one of the events in the preceding sentence, the Parties acknowledge that certain Negotiation Documents may continue to be confidential and exempt from disclosure under the Public Records Act. No sharing of any

Negotiation Documents between the Parties or their respective Affiliated Entities will waive or diminish in any way the confidentiality of those Negotiation Documents or their continued protection under any applicable legal privilege or doctrine. Consistent with California Government Code section 6254.5(e), and except as otherwise specified in this MOU, the Parties intend all Negotiation Documents shared between the Parties or their respective Affiliated Entities to be treated as confidential, to the extent permissible by law. Specifically, each Proposed Agreement shall be considered a confidential draft until it is submitted for approval by either of the Governing Bodies. The information to be kept confidential under this MOU does not include information which: (i) becomes generally available to the public other than as a result of a disclosure by a Party in violation of this MOU, or (ii) was or becomes available to a Party on a non-confidential basis, provided that, to such disclosing Party's knowledge, such source was not itself bound by an obligation of confidentiality owed to the other Party.

4. Disclosure of Negotiation Documents. Except as otherwise specified in this MOU, or as otherwise required by law or future court order, (a) each Party agrees it will not disclose to any person or entity, except its Affiliated Entities, any Negotiation Documents received from the other Party; and (b) each Party will specifically advise its Affiliated Entities that the Negotiation Documents are privileged and confidential and are subject to the terms of this MOU. Each Party will use commercially reasonable efforts to prevent any disclosure, by itself or its Affiliated Entities, of any Negotiation Documents contrary to the terms of this MOU. To minimize the risk of inadvertent public disclosure of any Negotiation Documents, each Party is encouraged to use a "Confidential" stamp or prominent "Confidential" text on the face of any Negotiation Documents shared with the other Party or its Affiliated Entities. However, a Party's failure to identify any Negotiation Documents as confidential in this manner will not be treated as a waiver of that Party's right to assert the confidentiality of those Negotiation Documents consistent with this MOU. All Negotiation Documents shared between the Parties or their respective Affiliated Entities before the Effective Date of this MOU regarding or comprising the Site Negotiations before the Effective Date of this MOU, are now subject to the terms of this MOU.

5. No Waiver. The privileges and protections for the Negotiation Documents under this MOU may not be waived by either Party without the prior written consent of the Party that prepared or provided the Negotiation Documents. Either Party's inadvertent or purposeful disclosure of any Negotiation Documents or information contrary to the terms of this MOU shall not constitute a waiver of any privilege or protection. If one Party becomes aware that a third party has delivered a subpoena or initiated a lawsuit seeking a court order to produce or reveal any Negotiation Documents, that Party will promptly provide written notice of this circumstance to the other Party so that the other Party may, at its own cost, have the opportunity to timely object to the production of any Negotiation Documents. Unless both Parties otherwise agree in a given situation, both Parties shall object to, and take reasonable efforts to prevent, public disclosure of any Negotiation Documents. Although the Parties believe withholding certain Negotiation Documents from public disclosure is justified on the basis of the deliberative process privilege and the balancing test exemption in California Government Code section 6255, nothing in this MOU is intended to waive the right of either Party to assert any other pertinent statutory exemptions or grounds for withholding the Negotiation Documents from public disclosure.

6. Withdrawal. Either Party may withdraw from this MOU at any time, on a prospective basis only, by providing ten (10) days written notice of withdrawal to the other Party.

Notwithstanding a Party's withdrawal, this MOU will remain operative as to all Negotiation Documents shared between the Parties or their Affiliated Entities before the date of the written notice of withdrawal.

7. Public Records Act Requests; Press Releases. Each Party will use reasonable efforts to promptly deliver to the other Party copies of any requests such Party receives under the Public Records Act. The Parties agree their respective primary points of contact, as identified in Section 10, will coordinate the content and timing of oral or written public communications or documents, including press releases, fact sheets, and announcements regarding matters provided for in this MOU. The coordination and timing shall be consistent with the confidentiality provisions of this MOU and shall ensure that before issuing any press release regarding the Site Negotiations or the Proposed Agreements, each Party will provide the other Party with a reasonable opportunity to review and comment upon a draft of the press release.

8. Modification. The provisions of this MOU may be modified only by written agreement of both Parties.

9. Scope of Protection. This MOU is intended to afford the broadest and greatest protection possible of Negotiation Documents from disclosure to third parties. However, nothing in this MOU is intended to prevent either Party from: (a) meeting or otherwise communicating with governmental employees or appointed or elected officials, including, without limitation, members of the City Council and/or members of the Board of Trustees, (b) disclosing any Negotiation Documents as plainly required by applicable statute, including, but not limited to, CEQA; (c) holding any community workshops, public hearings, or the like regarding plans or concepts for future development of the Site; (d) holding a meeting, in open session or closed session, with its Governing Body (or any committee that advises the Governing Body) to provide a status update or seek input on the Site Negotiations (each an "Informational Discussion"); or (e) holding a meeting in open session with its Governing Body regarding approval of any Proposed Agreements or any CEQA compliance documents or CEQA determinations. Before any Party schedules an Informational Discussion in open session with its Governing Body (or any committee that advises the Governing Body), that Party will identify to the other Party the types of information anticipated to be divulged and addressed during the upcoming Informational Discussion. Reasonable consideration shall be given to the other Party's concerns about the type or scope of information planned to be divulged or addressed during an Informational Discussion. The Parties agree that, to maintain the productivity and integrity of the Site Negotiations, all Negotiation Documents, including drafts of the Proposed Agreements, must remain confidential pursuant to the terms of this MOU and shall not be publicly disclosed during any Informational Discussion.

10. Primary Points of Contact. The primary point of contact for all press releases related to the Site Negotiations will be Christina Chadwick on the City's behalf and Gina Jacobs on SDSU's behalf. If either Party wishes to change its own primary point of contact at any time, that Party will provide written notice to the other Party identifying the new primary point of contact.

11. Discretionary Actions. Nothing in this MOU commits either Party or the Governing Bodies to approve the Proposed Agreements or any specific development activities on the Site. The Parties' execution of this MOU is merely an agreement to cooperate and exchange confidential

information during a period of negotiations and deliberations between the Parties. Nothing in this MOU restricts the existing discretion of any Party or its respective Governing Body in deciding whether to approve the Proposed Agreements and in determining the appropriate environmental review under CEQA with respect to any discretionary approval.

12. Severability. If any provision of this MOU is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this MOU shall continue in full force and effect and shall in no way be impaired or invalidated.

13. Ambiguity. The Parties and their counsel have each carefully reviewed this MOU, and the Parties have agreed to each term of this MOU. No ambiguity shall be presumed to be construed against either Party.

14. No Unintended Beneficiaries. This MOU is not intended for the benefit of any person or entity other than the Parties, and shall not be enforceable by any person or entity other than the Parties.

15. Disclosure of MOU. Notwithstanding any other provisions of this MOU, upon request pursuant to the Public Records Act, either Party may disclose a copy of this MOU or divulge its contents to the requesting person or entity.

16. Counterparts. This MOU may be signed in multiple counterpart originals, each of which is deemed to be an original and all of which will constitute a single agreement.

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A duly authorized representative of each Party will sign this MOU, to be effective as of the Effective Date – i.e., the date on which the last Party has signed the MOU.

CITY:

City of San Diego,
a California municipal corporation

Date: 3/29/19

By: KR
Name: KRIS MICHELL
Title: COO

APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: Kevin Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

SDSU:

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

Date: _____

By _____
Name: T. McCARRON
Title: VP + CFO, SDSU

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