

January 20, 2022

City of San Diego  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101  
Attn: Kevin Reisch, Senior Chief Deputy City Attorney

Email: kreisch@sandiego.gov

Re: Right of Way Vacation Application – Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated as of August 6, 2020 (“PSA”), by and between the City of San Diego (“City”) and the Board of Trustees of the California State University (“CSU”)

Dear Mr. Reisch:

As you may be aware, in August 2021, CSU’s completed application for the Existing Rights-of-Way Vacation Approval was approved by City Staff, including an agreed upon Purchase and Sale Agreement (attached) for the Existing Rights-of-Way. A staff report was prepared in August 2021 (attached) and the item was placed on the September 2021 Land Use and Housing Committee agenda, as provided for in section 6.9 of the PSA (a copy of section 6.9 is attached for your reference). Shortly before the meeting, it was requested that the item be pulled from the agenda and the completed application has been awaiting docketing since that time.

We have repeatedly requested to have the item re-docketed without success and now six months later, we need to have this item approved in order to stay on schedule with the development of SDSU Mission Valley, including 4,600 units of housing which are planned for the site.

CSU is hereby requesting that the application be placed on the agenda for the Land Use & Housing Committee’s February 10, 2022, meeting; and then on the agenda for the next City Council meeting thereafter.

Any further delay by the City risks resulting in a breach by the City of its clear obligations under Section 6.9 of the PSA and threatens to delay the continued progress on the site.

**City’s Requirements Under the PSA**

Section 6.9 requires the City to cooperate with CSU relating to the application and requires that the City staff “...present and support 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.” The PSA defines “Cooperation” as a party’s use of “...reasonable efforts to take such steps as may be reasonably necessary to effectuate and implement the terms and conditions of this Agreement.” Please note that the City later informed CSU that the application is not required to be presented to the Planning Commission.

CSU requires the City’s prompt compliance with these unequivocal provisions of the PSA.

### **Benefits of the Proposed Vacation**

The Existing Rights-of-Way Vacation Approval would benefit the City and the public in several material ways. The proposed vacation would adjust the rights-of-way at Friars Road, Mission Village Drive, and San Diego Mission Road to match the City-approved parkway configuration for SDSU Mission Valley, and would reduce the City’s overall street maintenance responsibilities. Moreover, the Existing Rights-of-Way Vacation Approval is consistent with the provisions of San Diego Municipal Code Section 22.0908(v), which provides that the sale of the SDCCU Stadium Site to SDSU shall require “the City and SDSU to cooperate to modify or vacate easements or secure lot line adjustments on the Existing Stadium Site so that development of the Existing Stadium Site is facilitated.” If the vacation is not implemented as planned, the City would also be foregoing receipt of \$240,000 in cash, which represents the City-appraised value that CSU has agreed to pay for the portion of the right-of-way property to be deeded to CSU.

The vacation will not detrimentally affect any of the public facilities for which the existing rights-of-way were originally acquired. Alternative public access through SDSU Mission Valley will replace the vacated portion of San Diego Mission Road and provide the same connections and access. The vacated portion of San Diego Mission Road will provide a private driveway to the Kinder Morgan Mission Valley Energy Terminal. Finally, the Existing Rights-of-Way Vacation Approval would have no impact whatsoever on the future proposed San Diego Trolley Purple Line. None of the three potential alignments identified in the Final EIR, as approved by the CSU Board of Trustees in January 2020, and by the City Council as part of the PSA approval in June 2020, are impacted by the right-of-way vacation.

### **Consequences of Not Approving the Proposed Vacation**

By contrast, any further delay by the City on this matter may result in material adverse consequences to the ongoing development of the Mission Valley site, which would be detrimental to the community and the City.

Failure to complete the Existing Rights-of-Way Vacation Approval would not be consistent with the provisions of SDMC Section 22.0908(v), and would result in the City retaining additional long-term maintenance obligations for property that is no longer being used as right-of-way. Consistent with PSA Section 6.9, the application for the Existing Rights-of-Way Vacation Approval also includes the application for the Existing Easements Vacation Approval. The Existing Easements Vacation Approval would vacate numerous existing easements that encumber the SDSU Mission

# SheppardMullin

Kevin Reisch, Senior Chief Deputy City Attorney  
January 20, 2022  
Page 3

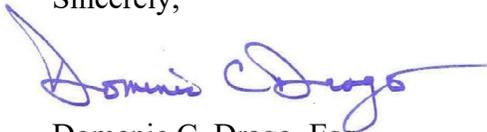
Valley's residential sites, hotel site, stadium and Innovation District. Failing to complete the Existing Easements Vacation Approval would render the majority of SDSU Mission Valley site undevelopable.

The City has also required that new easements be dedicated for proposed public sewer and public water lines that are under construction. SDSU and City staff agreed that these new easements would be granted on the parcel map, which is prepared and awaiting recordation. However, the parcel map cannot be recorded until the Existing Rights-of-Way Vacation Approval and Existing Easements Vacation Approval are completed. Thus, not completing these vacations will prevent CSU from granting to the City these critical City water and sewer easements.

SDSU Mission Valley has strong and growing community support. The vacation applications are an essential next step in order to allow SDSU to deliver the many community benefits that SDSU Mission Valley will provide, including the River Park and Snapdragon Stadium.

We anticipate and would appreciate your prompt attention to this matter.

Sincerely,



Domenic C. Drago, Esq.  
Sheppard Mullin Richter & Hampton LLP

CC:

Penny Maus, Director of Real Estate Assets, City of San Diego  
Steve Relyea, Executive Vice Chancellor and Chief Financial Officer, CSU  
Adela de la Torre, President, SDSU  
G. Andrew Jones, Executive Vice Chancellor and General Counsel, CSU  
Dawn Theodora, Assistant Vice Chancellor and Chief Counsel – Business & Finance, Office of General Counsel, CSU  
Danny Mandel, University Counsel, Real Estate & Land Use, CSU  
Kelly Bendell, University Counsel, CSU

*Attachment:  
Purchase and Sale Agreement  
Main Body, Section 6.9*

## **6.9 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 will continue to Cooperate with each other relating to the application for the Existing Rights-of-Way Vacation Approval. The Parties conceptually agree upon the location of Existing Rights-of-Way for Proposed Vacation as depicted in Attachment 12. The Parties will Cooperate to finalize the application for Existing Rights-of-Way Vacation Approval for submittal to City Council for the City Council's consideration. If CSU's application for the Existing Rights-of-Way Vacation Approval both fulfills the provisions and intent of this Agreement and complies with the City's applicable regulations and requirements relating to the City's Process Five decision-making level for the vacation of public rights-of-way (including Municipal Code section 125.0901 et seq.), City staff will present and support 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. 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 will consolidate the pending applications for the Existing Easements Vacation Approval and the Existing Rights-of-Way Vacation Approval for concurrent processing.