

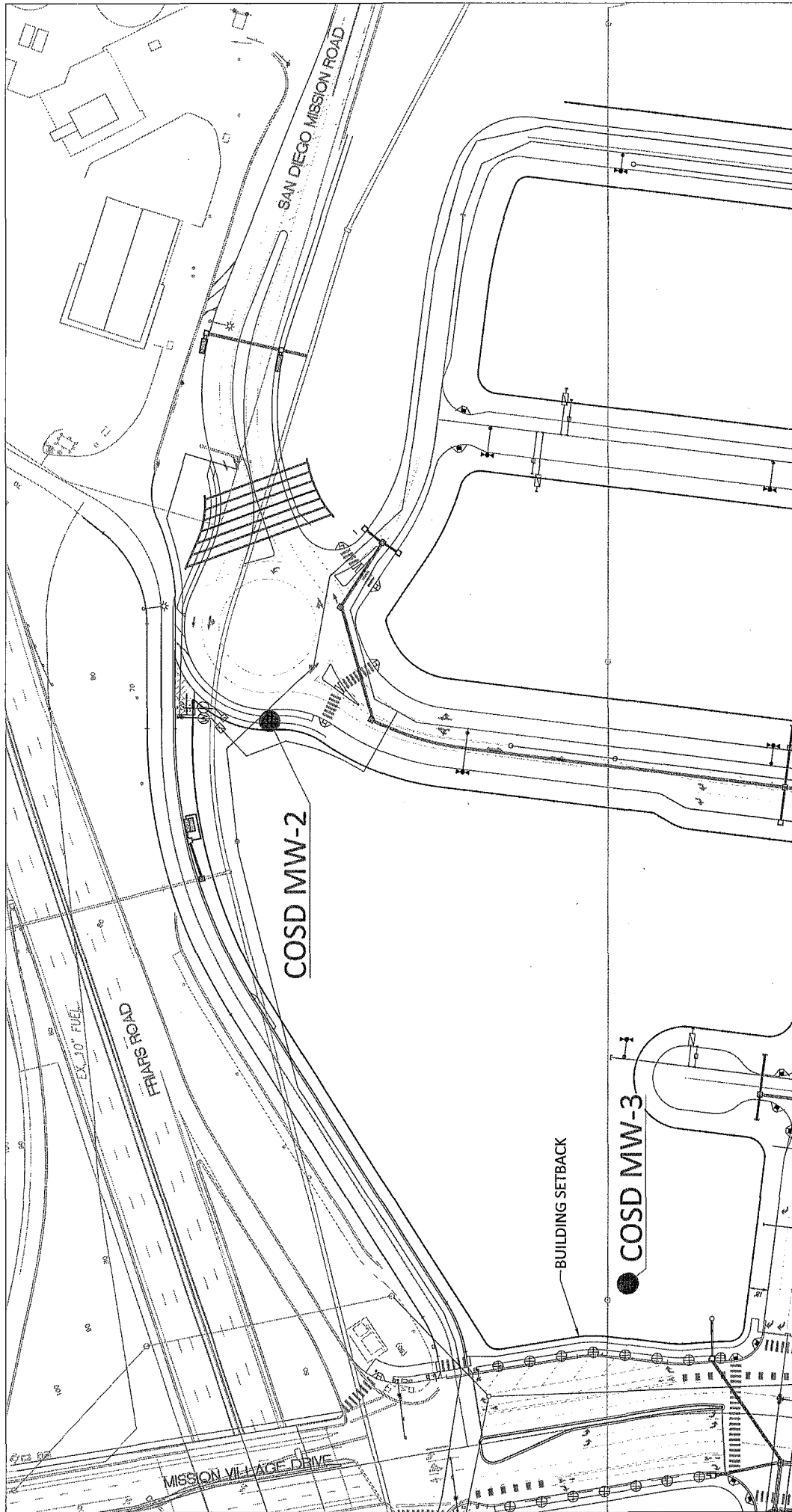
**Part 5 of Attachment A to City Staff Report  
for City Council Meeting on June 17, 2020**

\*includes PSA attachments 25 through 27

ATTACHMENT 25-A TO PURCHASE AND SALE AGREEMENT

**Depiction of Existing Monitoring Wells**

[provided starting on next page]



# EXISTING MONITORING WELL LOCATIONS



DATE: 6/11/2020



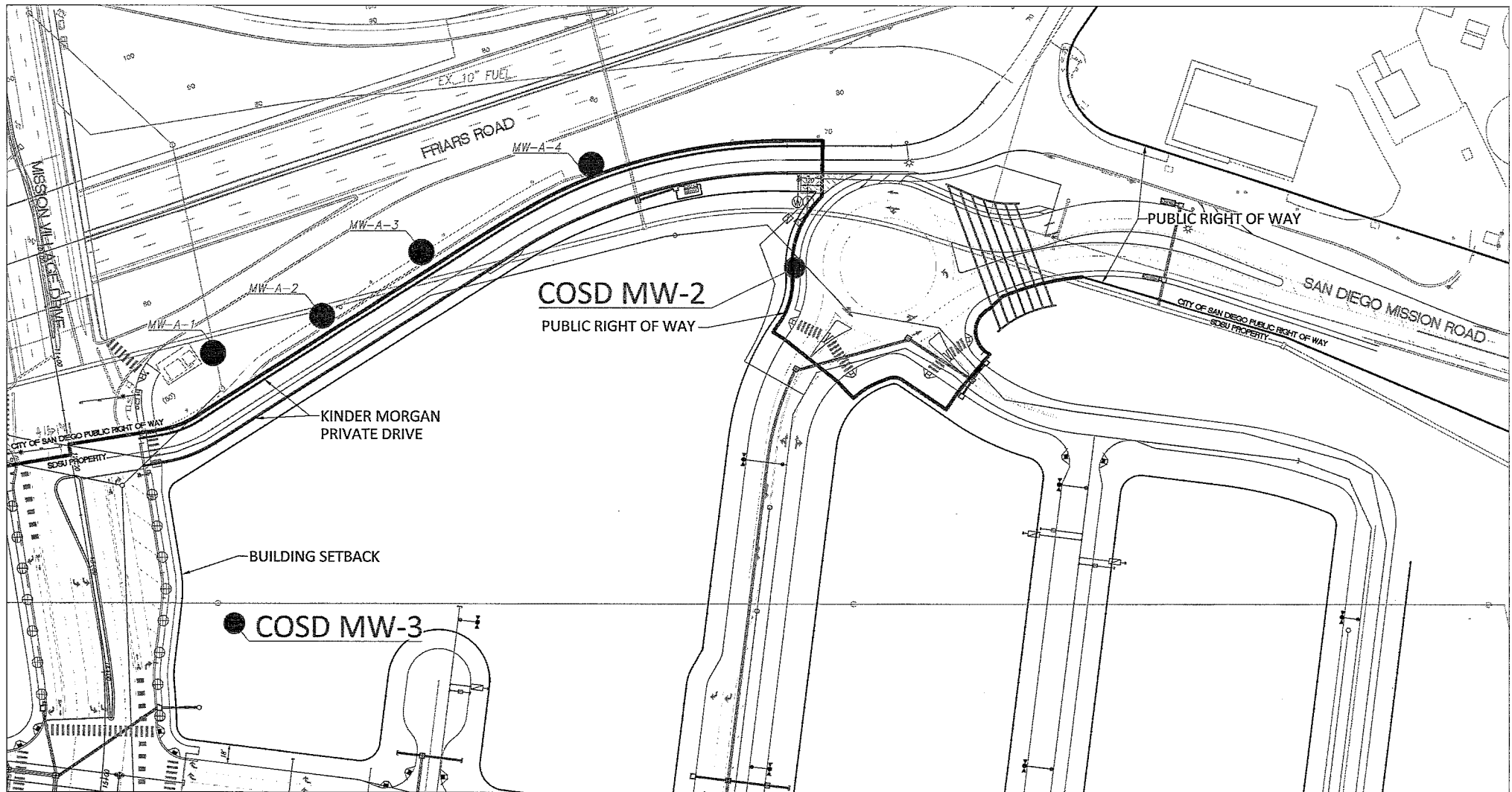
**PROJECT DESIGN CONSULTANTS**  
Planning | Landscape Architecture | Environmental | Engineering | Survey

701 B Street, Suite 600  
San Diego, CA 92101  
619.233.6714  
619.233.6288 Fax

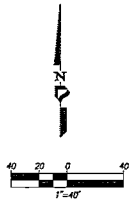
ATTACHMENT 25-B TO PURCHASE AND SALE AGREEMENT

**Depiction of Potential Locations for New Monitoring Wells**

[provided starting on next page]



## MONITORING WELL ALTERNATE LOCATIONS



DATE: 5/28/2020



**PROJECT DESIGN CONSULTANTS**  
 Planning | Landscape Architecture | Environmental | Engineering | Survey

701 B Street, Suite 600  
 San Diego, CA 92101  
 619.235.6771 Tel  
 619.234.0249 Fax

ATTACHMENT 26 TO PURCHASE AND SALE AGREEMENT

River Park and Storm Water BMP Development Agreement

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of San Diego  
1200 Third Avenue, Suite 1700  
San Diego, CA 92101  
Attn: Cybele Thompson,  
Director, Real Estate Assets Dept.

Space above line for Recorder's use only

Exempt from Recording Fees per Cal. Govt. Code § 27383  
Exempt from Documentary Transfer Tax per Cal. Govt. Code § 11922

**AGREEMENT REGARDING DEVELOPMENT OF RIVER PARK  
IMPROVEMENTS AND STORM WATER BEST MANAGEMENT  
PRACTICE STRUCTURES**

This Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures ("**Agreement**") is entered into by and between the City of San Diego, a 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**"). City and CSU are referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**." This Agreement is entered into with reference to the recitals set forth below. Unless otherwise defined herein, terms with initial capital letters have the meaning given in Section 22.

RECITALS

A. City's voters approved a citizens' initiative measure, commonly known as Measure G, on November 6, 2018, governing City's sale to CSU of certain real property referred to therein as the "Existing Stadium Site" and consisting of 135.12 acres, comprised of both the real property commonly known as the San Diego County Credit Union stadium site and the Murphy Canyon Creek Parcel, generally located at 9449 Friars Road in the City of San Diego, County of San Diego, State of California, as legally described in **Exhibit A** to this Agreement (the "**CSU Property**").

B. Measure G is comprised of two main components: (i) Sections 1, 2, 4, 5, 6, 7, and 8 of the citizens' initiative, which describe, among other things, the purpose, intent, and findings supporting the citizen's initiative; and (ii) Section 3 of the citizens' initiative, which adds new section 22.0908 to the San Diego Municipal Code ("**Section 22.0908 Conditions**"). Measure G states that the CSU Property is needed by CSU/San Diego State University for "Bona Fide Public Purposes," as that term is defined in the Section 22.0908 Conditions, and for that reason City shall sell the CSU Property to CSU in accordance with the City Charter, but only if such sale is in

compliance with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G.

C. Measure G does not obligate CSU to purchase the CSU Property or take any other actions related to the CSU Property, if CSU chooses not to purchase the CSU Property. However, Measure G requires City to ensure that City's negotiated sale of the CSU Property complies with Measure G.

D. California Education Code section 66606 vests CSU with "full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University." Section 22.0908(x)(12) states "Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University." CSU is the State of California acting in its higher education capacity, and is generally exempt from local and regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations, when its development, construction, facilities, and uses are in furtherance of its governmental purpose, unless applicable Law specifically says otherwise. Without waiver of CSU's standing and legal authority as a state agency, and to enable City to ensure that the sale of the CSU Property complies with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G, CSU agrees to be bound by the terms and conditions set forth in this Agreement, and the Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 2020 between the Parties ("**Purchase Agreement**"), and its attachments.

E. In light of the circumstances stated in Recitals A through D above, the Parties negotiated and entered into the Purchase Agreement and related agreements pursuant to which CSU agreed, strictly as a matter of contract, to develop and operate the CSU Property subject to terms and conditions in the Purchase Agreement and related agreements, and in a manner satisfying City's concern that the sale must comply the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. By entering into these agreements, CSU is not waiving its standing and legal authority as a state agency, though it agrees, due to the unique circumstances at hand, to be contractually bound by the terms of such agreements. The Parties negotiated the terms of the Purchase Agreement and related agreements in response to the local voters' approval of Measure G and intend all such agreements to be consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G.

F. As of the Effective Date of this Agreement, the closing of the transaction has occurred under the Purchase Agreement, by which CSU has acquired the CSU Property.

G. As provided in Section 22.0908, CSU intends to design and construct a public park which will consist of active and passive park uses, 8- to 10- foot wide linear walking and biking trails, children's play areas, interpretive signage, a river buffer of native vegetation, and measures to mitigate drainage impacts and ensure compliance with water quality standards and other features (collectively "**River Park Project**" or "**River Park**") on that certain real property owned by City situated contiguous to the CSU Property and consisting of approximately 34.6 acres ("**River Park Property**"). **Exhibit B** to this Agreement contains a depiction of the River Park Property, and **Exhibit C** contains the legal description of the River Park Property.

H. CSU has developed a conceptual design for the River Park Project, as depicted on **Exhibit D** to this Agreement ("**River Park Conceptual Design**") and in connection therewith engaged extensively with the community including by forming a River Park Advisory Group comprised of representatives from City, the Mission Valley Community Planning Group, the Navajo/Allied Gardens Community Planning Group, various environmental groups, students, faculty and other members of the community ("**River Park Advisory Group**") and held several public workshops and other community meetings, including with the San Diego Parks and Recreation Board.

I. The Parties are concurrently entering into that certain Declaration of Covenants, Conditions, and Restrictions Regarding Development and Permitting of SDSU Mission Valley Property with an effective date of \_\_\_\_\_, 2020 ("**Declaration of Property Development Restrictions and Permitting**"), that among other things, memorializes CSU's agreement to cause the construction of certain public improvements, including the River Park, of a predetermined total value in lieu of requiring payment of certain development impacts fees, which is a required condition of Section 22.0908, including the park component of those fees, to City.

J. City and CSU are also concurrently entering into that certain Agreement Regarding Easement for Construction, Maintenance, and Operation of River Park for Recreational Uses dated \_\_\_\_\_, 2020 ("**Easement Agreement for River Park Construction and Maintenance**"), in which City grants to CSU an easement to design, construct, operate, maintain, and repair the River Park appurtenant to and for the benefit of the CSU Stadium and Park Sites.

K. In accordance with Section 22.0908, the Purchase Agreement, the Declaration of Property Development Restrictions and Permitting, the Easement Agreement for River Park Construction and Maintenance and various other agreements entered into by the Parties, CSU has agreed to construct, operate and maintain the River Park.

L. In compliance with Section 22.0908(i), on \_\_\_\_\_, 2020, City set aside and designated the River Park Property for park purposes in accordance with San Diego Charter section 55, as more fully set forth in San Diego Resolution R-\_\_\_\_\_ (\_\_\_\_\_, 2020).

M. Additionally, CSU proposes to install three (3) best management practice structures within the River Park Property to filter and treat storm water runoff from the CSU Property ("**Storm Water BMPs**") and the infrastructure associated therewith for the benefit of the CSU Property and the River Park Property. The Storm Water BMPs will be located on approximately 2.5 acres of the River Park Property in the areas generally shown on **Exhibit B** with the label SDSU BMP. Subject to the terms and conditions of the River Park Agreements, the Storm Water BMPs will be maintained, owned and operated by CSU, at no expense to City.

N. The Storm Water BMPs will serve as passive park space within the River Park.

O. City and CSU have agreed on the form of an Easement Agreement for Installation of Utilities in the River Park attached to the Purchase Agreement as Attachment 31 ("**Easement Agreement for CSU's Utilities in River Park**"), in which, in addition to other easements, City will grant CSU an easement appurtenant to the CSU Property to design, construct, operate,



maintain, and repair the Storm Water BMPs for the benefit of the CSU Property, subject to the Parties finalizing the physical dimensions and the precise locations of the various easements. The Easement Agreement for CSU's Utilities in River Park will be executed in recordable form by City and CSU and recorded after recordation of the Parcel Map or by separate instrument if either Party elects not to proceed with a Parcel Map.

P. The Parties anticipate that CSU will design, construct and permit the River Park and the Storm Water BMPs as one project consistent with the River Park Conceptual Design. This Agreement refers to the River Park and the Storm Water BMPs collectively as the **"River Park / BMP Project."**

Q. The River Park Property is located adjacent to 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 CSU Property and the River Park Property and within the San Diego River and its floodplain (**"Wetland Mitigation Project Site"**) on which is located a wetland mitigation project (**"Wetland Mitigation Project"**), commonly known as the Stadium Wetland Mitigation Project, that has been created by City, and is now and will continue to be monitored and maintained by City (including regular activities such as perimeter control, ranger patrols, trash removal, transient management, and invasive plant removal), in compliance with the regulatory agreements and permits governing the Wetland Mitigation Project, together with any and all amendments, modifications, supplements, and/or extensions thereof, 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 City pursuant to Section 404 of the Clean Water Act; (ii) the Streambed Alteration Agreement, Notification No. 1600-2014-0192-R5, signed by 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 City pursuant to Section 401 of the Clean Water Act; (iv) any site development permits or other permits issued or to be issued by City relating to the use of wetland mitigation credits from the Wetland Mitigation Project Site; and (v) the Stadium Wetland Mitigation Project (San Diego River) Mitigation Plan Final dated March 13, 2015 and prepared for the City of San Diego, Public Utilities Department (collectively, **"Wetland Mitigation Project Agreements"**).

R. The River Park Property is adjacent to a portion of City's Multi-Habitat Planning Area and all construction activities in the River Park / BMP Project that occur directly adjacent to City's Multi-Habitat Planning Area (i.e., the San Diego River) will be performed in compliance with the Land Use Adjacency Guidelines requiring project features that minimize indirect effects to City's Multi-Habitat Planning Area.

S. Additionally, CSU acknowledges that City has existing utility infrastructure which will remain in the River Park Property, and that City may in the future install additional infrastructure as provided for in the various agreements entered into between the Parties related to the sale of the CSU Property. CSU acknowledges and agrees that its rights under this Agreement are subject to City's rights for public utilities expressly reserved or provided for in the Declaration of Property Development Restrictions and Permitting, the Easement Agreement for River Park Construction and Maintenance, the River Park and Storm Water BMP Maintenance Agreement,

the Easement Agreement for CSU's Utilities in River Park, and various other agreements entered into by the Parties pursuant to the Purchase Agreement and applicable to the River Park Property.

T. City and CSU enter into this Agreement to memorialize the terms and conditions under which CSU will design and construct the River Park / BMP Project. The terms and conditions under which CSU will maintain and operate the River Park / BMP Project are addressed in the Agreement Regarding Maintenance and Management of the River Park and Storm Water Best Management Practice Structures ("**River Park and Storm Water BMP Maintenance Agreement**"), entered into separately by the Parties.

## AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, the Parties agree as follows:

### **1. SUBJECT OF THIS AGREEMENT.**

1.1 CSU's Provision of Park Land and Project Improvements. Section 22.0908 requires the development of the River Park Project as a condition of the sale of the CSU Property. However, City's local regulations requiring population-based park acreage and development of park infrastructure do not apply to projects on state-owned land. Notwithstanding, CSU agrees to fulfill the obligations within this Agreement in furtherance of Section 22.0908. City agrees to accept performance of CSU's obligations under this Agreement and to record the Easement Agreement for River Park Construction and Maintenance granting CSU the use and access rights necessary to allow CSU to design, install and construct the River Park, including the design and construction of park facilities. However, the requirement to maintain the River Park is not satisfied by this Agreement and is intended to be addressed in the River Park and Storm Water BMP Maintenance Agreement.

1.2 City's Project Manager. Chris Larson is currently designated by City as City's representative for the development of the River Park / BMP Project ("**City Project Manager**"). In the event City elects to assign a new City Project Manager from time to time, City will (i) notify CSU in writing of the new City Project Manager within five (5) calendar days after the new designation and (ii) make the new City Project Manager available to perform all duties of the previous City Project Manager at the time the previous City Project Manager is reassigned.

1.3 Design and Construction of River Park / BMP Project. CSU agrees to design and construct the River Park / BMP Project to completion, with the River Park / BMP Project operational and suited to the purpose for which it was designed and in accordance with this Agreement, the Easement Agreement for River Park Construction and Maintenance, and plans and specifications substantially conforming to the River Park Conceptual Design ("**Plans and Specifications**"). CSU will not create any wetlands on the River Park Property. As required by the Declaration of Property Development Restrictions and Permitting, CSU will cause the River Park to be constructed and all River Park Improvements to be completed before occupancy of any building on the CSU Property, with the exception of the New Stadium, by the Delivery Date (as defined in Section 3.1, below), subject to Section 3.3 below.

1.4 No Compensation or Reimbursement to CSU. Without limiting City's responsibility for Environmental Claims affecting the River Park Property and except as provided in Section 3.3, CSU will perform all of its obligations under this Agreement, including design and construction of the River Park and the Storm Water BMPs at no cost to City, and the Parties agree that City will not be required to reimburse or compensate CSU from any City funds, without regard to the source of any particular City funds or how those funds may be held. All costs incurred for performance of CSU's obligations under this Agreement will be at no cost to City.

1.5 Conditions Relating to Wetland Mitigation Project and MSCP Plan. CSU acknowledges that it has received and reviewed a copy of the Wetland Mitigation Project Agreements and the Final Multiple Species Conservation Program Plan for the San Diego Region dated August 1998 ("**MSCP Plan**"). The San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees in compliance with CEQA on January 29, 2020 ("**Final EIR**") analysis concludes that the River Park / BMP Project (i) will not be inconsistent with the MSCP Plan, and (ii) will not have significant, unmitigated impacts on wetlands, including the Wetland Mitigation Project Site. CSU will cause the River Park / BMP Project to be constructed, operated and maintained at all times, and will undertake the performance of all obligations under this Agreement at all times, in a manner that: (a) is consistent with the Final EIR Mitigation Monitoring and Reporting Program ("**MMRP**"); (b) does not cause any damages, losses, or adverse impacts to the Wetland Mitigation Project or the Wetland Mitigation Project Site; and (c) does not prevent or interfere with City's ability to complete the Wetland Mitigation Project, including City's monitoring and maintenance of sensitive habitat, in accordance with Law, the Wetland Mitigation Project Agreements, and the MSCP Plan.

1.6 Conditions Relating to Existing and Future City Utilities. CSU will design, construct, operate and maintain the River Park / BMP Project in a manner that is consistent with the rights granted to CSU and reserved by the City in the Easement Agreement for River Park Construction and Maintenance, and that does not interfere with, limit, or prohibit City's ability to (a) access, operate, maintain, repair and replace its existing infrastructure; and (b) install future facilities, including facilities related to groundwater management, the City's Pure Water Program or other water or sewer projects, and the exercise of City's Pueblo water rights in accordance with this Agreement, the Easement Agreement for River Park Construction and Maintenance and the River Park and Storm Water BMP Maintenance Agreement (collectively, "**River Park Agreements**") and other agreements between the Parties pursuant to the Purchase Agreement.

1.7 No Inconsistent Uses. Except as set forth in Section 1.6 and the Easement Agreement for River Park Construction and Maintenance, City will not undertake, permit or facilitate any use of the River Park Property that is inconsistent with or would frustrate CSU's performance of this Agreement.

1.8 Representations and Warranties Regarding River Park. City hereby represents and warrants as set forth below with respect to the River Park Property. As used herein, the phrase "**City's Knowledge**" means the actual knowledge of Cybele Thompson, in her capacity as City's Director of the Real Estate Assets Department, and Shauna Lorance, in her capacity as the City's Director of the Public Utilities Department, each without duty of investigation or inquiry. City

represents and warrants that Cybele Thompson and Shauna Lorange are the most knowledgeable City representatives regarding the River Park Property and the matters described below.

(a) There is no suit, action, arbitration, legal, administrative or other proceeding or governmental investigation, formal or informal (collectively, “**Action**”), relating to or affecting the River Park Property and, to City’s Knowledge, no such Action is pending or threatened.

(b) The River Park Property is currently owned and operated by City in compliance with all applicable Law and in compliance with the Wetland Mitigation Approvals and all permits, licenses and approvals applicable to Murphy Canyon Creek.

(c) Neither the execution and delivery of this Agreement, the other River Park Agreements, the Declaration of Property Development Restrictions and Permitting, the Easement Agreement for CSU’s Utilities in River Park or any other agreements entered into between CSU and City regarding the River Park pursuant to the Purchase Agreement, nor the performance or consummation of the actions contemplated by this Agreement or the other River Park Agreements, will (i) constitute a violation, default or breach of any contract, agreement, understanding, instrument, commitment or representation binding upon City or the River Park Property; (ii) constitute a violation or breach of any judgment, order, writ, injunction or decree issued against or imposed upon City or the River Park Property; or (iii) challenge, impair or interfere with City’s ability to perform its obligations under this Agreement or the other River Park Agreements in accordance with its terms. City will not make or enter into any contract, agreement, understanding, instrument, commitment or representation during the term of this Agreement or any other River Park Agreement that would result in the representations in subsections (i), (ii) or (iii) directly above becoming untrue.

(d) Hazardous Substances. To City’s Knowledge, City has never (i) used, generated, processed, stored, disposed of, released or discharged any Hazardous Substances on, under, or about the River Park Property in violation of Environmental Law, (ii) transported Hazardous Substances to or from the River Park Property in violation of Environmental Law, or (iii) caused any Hazardous Substances to migrate on, under or about the River Park Property in violation of Environmental Law. To City’s Knowledge, no Hazardous Substances currently exist on, under or about the River Park Property in violation of Environmental Law.

(e) Reservation of Rights. Nothing in this Agreement impairs or limits (i) City’s rights of access to the River Park Property; (ii) City’s rights under the Kinder Morgan Settlement Agreement and City’s rights of access to the River Park Property to exercise those rights; and (iii) the access rights of City set forth in the Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 1 (Construction Period), attached as Attachment 30 to the Purchase Agreement, and the Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 2 (Completed Development), attached as Attachment 32 to the Purchase Agreement. CSU agrees to Cooperate with City, at no out of pocket cost and with no liability to CSU, by not unreasonably impeding access by City or a designated third party as necessary to perform testing or remediation, if City desires to pursue future recovery against Kinder Morgan under the Kinder Morgan Settlement Agreement with respect to the River Park Property.

**2. DURATION OF THIS AGREEMENT.** Following the adoption of City Council Resolution authorizing this Agreement and the latest date on which both Parties have signed this Agreement in accordance with their respective procedural requirements, this Agreement shall be effective ("**Effective Date**"). Unless otherwise terminated pursuant to the terms hereof, this Agreement shall be effective until Final Completion (as defined in Section 9.2) of the River Park / BMP Project. This Agreement shall automatically terminate and be of no further force or effect upon Final Completion. Though not required to effect termination of this Agreement, upon request by either Party following Final Completion, the Parties shall record a termination of this Agreement in the Official Records of San Diego County.

**3. PROJECT SCHEDULE AND MEETINGS.**

3.1 River Park Project Completion. This Agreement provides for CSU's construction of the River Park as contemplated by Section 22.0908, the Purchase Agreement, and the Declaration of Property Development Restrictions and Permitting. Subject to the terms and conditions of this Agreement, the River Park will be constructed and all River Park Improvements will be completed prior to the occupancy of any building on the CSU Property, with the exception of the New Stadium within seven (7) consecutive years from the effective date of the Purchase Agreement ("**Delivery Date**"). To the extent that the Storm Water BMPs will be constructed in order to allow the completion of the River Park, or to prevent a material adverse impact to the public's intended use of the River Park as a park, the Storm Water BMPs must also be completed by the Delivery Date. Subject to written notice duly provided by CSU to City pursuant to Section 3.2 below, the Delivery Date will be extended for up to a maximum of twenty-four (24) aggregate months (or thirty-six (36) aggregate months if due to an Injunction) due solely to an Unavoidable Delay or an Injunction preventing CSU's completion of the River Park or other performance obligation required herein (provided that CSU has diligently and in good faith taken all reasonable steps to cause the dissolution or vacation of such Injunction). Except as set forth in Section 3.3 below, in no event will an extension of the Delivery Date with respect to the River Park Improvements impair, modify, or waive CSU's obligation to complete construction of the River Park Improvements and open the River Park Property to the public for use and enjoyment prior to the occupancy of any building on the CSU Property with the exception of the New Stadium. As used in this Agreement, the term "**Unavoidable Delay**" means a delay in either Party performing any material obligation under this Agreement arising from or on account of any cause beyond the Party's commercially reasonable control, including acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, current or future COVID-19 orders and/or mandates from federal, state or local governments, inability to obtain required materials or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by the Party asserting an Unavoidable Delay). Unavoidable Delay shall not, under any circumstances, include delay caused by or relating to the financial condition, insolvency, or inability to obtain financing on the part of the Party asserting that Unavoidable Delay exists.

3.2 Notification of Delay. Within ten (10) Business Days after first learning of any cause described in Section 3.1 above that will cause a delay of the construction of the River Park Improvements on the River Park Property to completion by the Delivery Date, CSU will deliver written notice to City and City Project Manager describing in reasonable detail the nature of the delay, an explanation of the cause of the delay, the date of occurrence of the delay, a reasonable

estimate of the length of delay, and all reasonably available supporting data. During the applicable period of extension described in Section 3.1 above, CSU shall not be in Default for failing to meet the Delivery Date.

3.3 Delay Due to Environmental Remediation of the River Park Property. City, not CSU, will have all obligations, liabilities, and responsibilities relating to the investigation or remediation of Hazardous Substances on, under, or affecting the River Park Property and further remains liable for all obligations, liabilities, and responsibilities with respect to any Environmental Claims affecting the River Park Property, except to the extent environmental conditions giving rise to an Environmental Claim affecting the River Park Property are determined to have been directly caused by CSU or any contractor retained by CSU to construct the River Park Improvements. Prior to CSU's commencement of construction of the River Park Improvements, CSU will deliver to City its schedule for construction of the River Park Improvements. Such construction is estimated to be completed within approximately two (2) years after commencement of construction of the River Park Improvements. If construction of the River Park Improvements is delayed due to environmental studies and remediation relating to the River Park Property, then notwithstanding the failure to complete the River Park Improvements by the Delivery Date, CSU will be entitled to complete and occupy buildings in addition to the New Stadium at such time as the construction of the River Park Improvements would have been completed but for the delay associated with the environmental studies and remediation conducted by or on behalf of City or a designated third party.

#### 3.4 Default and Remedies.

3.4.1 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, and this circumstance continues for five (5) Business Days after the Party in breach of its contractual obligation receives written notice from the other Party identifying the nature of the breach.

(b) Non-Monetary Default. Subject to any time extensions that may apply due to Unavoidable Delay, a Party fails to comply with any covenant or perform any obligation required hereunder and such failure is not cured within thirty (30) days after the delivery of written notice describing such failure by the other Party, provided that if such Default cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, the defaulting Party will be afforded an additional sixty (60) days to cure a Default.

3.4.2 Remedies. Subject to the express notice and opportunity to cure provisions of this Agreement regarding a specific Default, upon the occurrence of any Default by a Party under this Agreement, the non-defaulting Party may seek a court order that provides declaratory or injunctive relief to address the Default or pursue any other available legal or equitable remedy, unless City has pursued the Expert Cost Estimator Remedy. If City pursues the Expert Cost Estimator Remedy, that will be City's sole and exclusive remedy for a Default with respect to

completion of the River Park Improvements. Notwithstanding anything to the contrary set forth herein, neither Party will be entitled under any circumstances to recover any speculative, consequential or punitive damages from the other Party.

3.4.3 Expert Cost Estimator Remedy. If CSU fails to require the contractor(s) performing work on the River Park Property to maintain bonds as required by Section 10.1 below, and the River Park Improvements have not been completed and made available for regular public use and enjoyment by the Delivery Date (as the same may be extended pursuant to the terms and conditions of this Agreement), then the Parties agree that City may elect, in its sole and absolute discretion, to pursue the following remedy: (i) City and CSU will jointly retain an Expert Cost Estimator to provide an opinion as to the River Park Future Total Estimated Costs, and City may (at its sole option) undertake a competitive bidding process for the River Park Improvements to provide the Expert Cost Estimator with relevant market data; (ii) City will deliver written notice to CSU identifying the exact amount of the River Park Future Total Estimated Costs and the Expert Cost Estimator's related expenses; and (iii) within thirty (30) days after CSU's receipt of City's written notice, CSU will fully pay to City, via a bank wire transfer or a certified bank check, the River Park Future Total Estimated Costs and the Expert Cost Estimator's related expenses. If City receives CSU's payment of the River Park Future Total Estimated Costs, City will use such paid funds for construction and long-term maintenance of the River Park Improvements and CSU will be deemed to have completed the River Park ("**Expert Cost Estimator Remedy**"). If City pursues the Expert Cost Estimator Remedy, that will be the sole and exclusive remedy available to City in the event of a Default with respect to CSU's failure to complete the River Park Improvements by the Delivery Date (as the same may be extended).

3.5 Assignment of River Park Contracts. If City terminates this Agreement due to CSU's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by CSU or CSU's agents for the construction of the River Park, to the extent such rights and contracts can be assigned to and assumed by City. Any such assignment and assumption of rights shall be as-is and without representation or warranty.

3.6 Rider to Contract. CSU will ensure that the Rider to Contract, in substantially the form of **Exhibit K, Rider to Contract**, attached to this Agreement, will be entered into by, and attached to and incorporated into all agreements made by, CSU and all consultants and contractors, and subcontractors, as applicable, and entered into on or after the Effective Date of this Agreement, in CSU's implementation and performance of its duties and obligations under this Agreement for construction, operation, and maintenance of the River Park. CSU will also use commercially reasonable efforts to cause the Rider to Contract to be entered into with respect to such contracts executed prior to the Effective Date. Future changes to the Rider to Contract shall not be made without the mutual written agreement of the Parties.

#### 4. **PREVAILING WAGE.**

4.1 Prevailing Wages Apply. CSU will cause compliance with California Labor Code sections 1720 through 1781, as amended or supplemented from time to time, and all regulations promulgated or enforced by the California Department of Industrial Relations or any other State agency with respect to prevailing wages, and any Federal Law regarding prevailing wages (collectively, "**Prevailing Wage Law**") with respect to the construction of the River Park

Improvements, provided that the construction of such public improvements occurs on state-owned property or involves the use of state funding, as set forth in Section 22.0908. To the extent allowed under State Law, (a) all building and construction work in the River Park / BMP Project will be performed by contractors and subcontractors licensed by the State; and (b) CSU will cause all contractors and subcontractors performing building and construction work in the River Park / BMP Project to use good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County, as set forth in Section 22.0908.

4.2 Awarding Body. CSU acknowledges that City is not the awarding body for construction of any component of the River Park / BMP Project required or contemplated under this Agreement. City acknowledges that CSU is not the awarding body for any non-River Park / BMP Project improvements that may be undertaken by City on the CSU Property or the River Park Property, including for Pure Water San Diego, utility, or other improvements constructed by, on behalf of or at the direction of City.

## 5. DESIGN AND CONSTRUCTION STANDARDS.

5.1 Standard of Care. CSU agrees that the professional services provided by its contractors under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional design, architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

5.2 Compliance with all Laws, Design Standards, and Construction Standards. In all aspects of the design and construction of the River Park / BMP Project, CSU will comply with all applicable Laws. The Parties acknowledge that CSU is not subject to local regulations, including the Green Book or City's Standard Drawings and Design and Construction Standards. Nevertheless, CSU has designed and will use commercially reasonable efforts to construct the River Park Improvements in substantial conformance with the Green Book and City's Standard Drawings and Design and Construction Standards attached as **Exhibit E, Design and Construction Standards**. It is also CSU's responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations with respect to the construction of the River Park / BMP Project. CSU will require its contractors and subcontractors performing work on the River Park Property to comply with such Act and Title 24 regulations and to execute CSU's standard form of certification relating to same.

5.3 Review of River Park Conceptual Design. City acknowledges that the River Park Conceptual Design was achieved through a process that is substantially similar to City Council Policy 600-33 dated January 28, 2016 regarding Public Notification And Input For City-Wide Park Development Project. In particular, City acknowledges that substantial public and City input is reflected in the River Park Conceptual Design through multiple meetings of the River Park Advisory Group, presentations to the Mission Valley Planning Group (which does not have a Recreation Council) and the City Parks and Recreation Board, and through close coordination with City staff concerning amenities, features and similar design considerations for the River Park, as summarized in **Exhibit F, River Park Design Outreach**. CSU will construct the River Park on



the River Park Property in substantial conformance with the River Park Conceptual Design. As CSU finalizes design details and proceeds and prepares construction documents for the River Park, CSU will continue to coordinate closely with City by submitting design and construction documents ("**Construction Documents**") for City review and comment for consistency with the River Park Conceptual Design and **Exhibit G, Review of Construction Documents and Park Name**. Unless specifically provided otherwise, whenever this Agreement requires review by City, that review will be performed by City Project Manager.

5.4 Limited City Review and Permitting Rights. CSU is a "state agency created by the Legislature in the field of public higher education which is charged with the management, administration, and control of the State College System of California." (Cal. Const., art xx, §23; *see also* Ed. Code, §§66600 *et seq.*, 89000 *et seq.*). California Education Code section 66606 provides that "the Trustees of the California State University shall have full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University." (Ed. Code, §66606 (emphasis added).) The River Park / Storm Water BMPs is a facility or improvement connected with the CSU Project and accordingly, CSU will have primary permitting authority for the River Park Improvements and generally will not be subject to the ordinances, regulations, policies or rules of City. Due to unique circumstances regarding the nature of the River Park Property, including that it is currently within a floodplain for which City is the floodplain administrator, and that it contains City-owned water and sewer regional facilities, the Parties have agreed that City will have limited review and permitting authority with respect to the River Park Improvements as set forth below.

5.4.1 Onsite Grading Plans. CSU has provided City with grading plans depicting River Park and Storm Water BMP improvements, a proposed storm water quality management plan ("**SWQMP**") for the River Park, and a proposed Stormwater Pollution Prevention Plan ("**SWPPP**") for portions of the River Park currently located within any floodplain (collectively, "**Onsite Grading Plans**") and City has provided review comments on the Onsite Grading Plans. Before CSU issues a grading permit or commences any construction activity within the River Park Property, CSU will submit to City's Department of Development Services ("**DSD**") and City's Department of Transportation Storm Water ("**TSW**") for review, revised Onsite Grading Plans and CSU will respond to DSD and TSW comments and consult with DSD and TSW. This review and consultation is intended to confirm CSU's plans do not materially conflict with: (i) MS4 storm water requirements, understanding that CSU will issue its own grading permit complying with storm water requirements; and (ii) applicable City requirements, which include the Land Development Code (including Chapter 14, Article 2, Divisions 1 and 2, and Chapter 14, Article 3, Divisions 1 and 3) and the Land Development Manual (including Appendixes B – Drainage Design Manual, H – Standard Drawings, O – Storm Water Standards Manual, and S – FEMA Definitions). CSU will make a good faith effort to incorporate all comments received from DSD and TSW into the final Onsite Grading Plans. CSU will provide a written explanation to DSD and TSW if any of their comments are not incorporated, but further consultation will not be required before CSU may proceed with issuance of its grading permit or construction activities. CSU will 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. Without limiting the City's responsibility for Environmental Claims affecting the River Park Property except as provided in Section 3.3 above, CSU will bear all costs

and expenses associated with the performance of any grading activities within the River Park Property and all costs associated with obtaining the necessary Approvals for such grading activities.

5.4.2 Flood Map Revisions. City, in its capacity as the floodplain administrator, will 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 River Park, provided that City will not be required to incur any associated material out-of-pocket expenses or liability whatsoever. City's reasonable cooperation will include City's signature of one or more "Community Acknowledgment Forms" in reliance on grading plans and related materials prepared by CSU or its consultants, in form and content reasonably acceptable to City, and City's reasonable coordination with CSU to submit all applications and materials to FEMA relating to the Flood Map Revision. CSU will prepare the proposed Community Acknowledgment Form and any other applications and materials associated with the Flood Map Revision in a manner that achieves full compliance with applicable Law and is in substantial conformance with City's applicable regulations and requirements pertaining to grading activities in a floodplain. CSU will 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 will 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.

5.4.3 Relocation of Sewer Lines. City will Cooperate with CSU's efforts to relocate certain existing City sewer lines on the River Park Property in order to minimize impacts to CSU's planned development footprint and traffic circulation for the Project. Sewer lines to be relocated include, but are not necessarily limited to, an 8" and 18" sewer line serving the stadium existing as of the Effective Date on the CSU Property and the existing Serra Mesa Community and Fire Station located north of Friars Road and a portion of an existing 36" sewer line located in the easterly portion of the River Park Property to facilitate the construction of an extension of Rancho Mission Road. CSU will obtain all applicable Approvals required in connection with the relocation of City sewer lines. Without affecting any provisions relating to City's review and approval rights over construction or grading within City's sewer line easement areas as set forth in Section 5.4.5, CSU will obtain either public improvement permits or right-of-way permits, as applicable, from City in City's reasonable discretion prior to: (i) relocating the existing City sewer lines on the River Park Property; (ii) constructing or installing any new City sewer lines on the River Park Property; and (iii) establishing a connection to any City sewer pipelines. CSU will bear all costs and expenses associated with: (a) any sewer line relocation and construction on the River Park Property, and any adjacent property impacted by the River Park Project; and (b) the provision and usage of sewer capacity, connections, and service resulting from the Project in excess of the sewer-related demands of the Project evaluated in the Final EIR, including any upgrades or system improvements needed as a result of an increase in such sewer-related demands. The fees charged for future sewer connections or increased capacity will be calculated taking into account the existing sewer capacity at the River Park Property as of the Effective Date. The 84/96-inch interceptor sewer on the River Park Property will remain in its current alignment and will not be relocated as part of the Project.

5.4.4 Relocation of Water Lines. City will Cooperate with CSU's efforts to relocate any existing City water lines or facilities on the River Park Property to a new location that

minimizes impacts to CSU's planned development footprint and traffic circulation for the Project. Water lines to be relocated include, but are not necessarily limited to, an existing 48-inch Alvarado water transmission main and the existing 16-inch water transmission main. In addition, City will Cooperate with CSU's efforts 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 evaluated in the Final EIR in connection with CSU's proposed relocation of any water lines. CSU will obtain all applicable Approvals required in connection with the relocation of City water lines. Without affecting any provisions relating to City's review and approval rights over construction or grading within City's water line easement areas as set forth in Section 5.4.5, CSU will obtain either public improvement permits or right-of-way permits, as applicable, from City in City's reasonable discretion prior to: (i) relocating the existing City water lines on the River Park Property; (ii) constructing or installing any new City water lines on the River Park Property; and (iii) establishing a connection to any City water pipelines. CSU will bear all costs and expenses associated with: (a) any water line or facility relocation and construction on the River Park Property, and any adjacent property impacted by the River Park Project; (b) the installation of any new water meters and irrigation meters on the River Park Property, and any adjacent property impacted by the River Park Project; and (c) the provision and usage of water capacity, connections, and service benefitting the River Park Property or resulting from the Project in excess of the water-related demands of the Project evaluated in the Final EIR, including any upgrades or system improvements needed as a result of an increase in such projected water-related demands. The fees charged for future water connections or increased capacity will be calculated taking into account the existing water capacity at the River Park Property as of the Effective Date. CSU will also ensure that the Project is designed to include adequate water service for the Wetland Mitigation Project Site, until such time as City has received regulatory sign-off confirming the successful completion of conditions set forth in the Wetland Mitigation Project Agreements, which is currently anticipated to occur in March, 2023. Pending City's review and approval of proposed public improvement plans submitted by CSU, it is presently anticipated by CSU that all onsite water mains will be owned and maintained by CSU, except that the existing 16-inch water transmission main and the existing pressure-reducing station will continue to be owned and maintained by City.

5.4.5 Construction Within City Sewer and Water Line Easements on River Park Property. CSU agrees that improvements constructed within City sewer and water line easements on the River Park Property will be limited to landscaping, hardscaping, streetscaping, recreational fields, bike paths, trails and similar improvements. Prior to constructing or installing improvements (or permitting the construction or installation of improvements) within any City sewer or water line easement on the River Park Property, CSU will provide to City's Public Utilities Department ("PUD") and DSD, for review and approval plans prepared by or on behalf of CSU depicting planned grading and initial site improvements within a City owned sewer or water line easement that affects the River Park Property ("**CSU Property Development Plans Within City Easements**"). Before CSU issues a grading permit, construction permit, or any other permit allowing such grading or construction activities, or commences any such grading or construction activities on the River Park Property within such a City easement, PUD will have first reviewed and approved the proposed CSU Property Development Plans Within City Easements, with PUD's approval being confirmed via a signed letter from PUD's Director, and DSD will have issued all applicable permits and approvals, as set forth in Sections 5.4.3 and 5.4.4, and CSU will have obtained an encroachment maintenance and removal agreement from City in a form mutually

agreeable to the Parties. PUD's review and approval of the CSU Property Development Plans Within City Easements and any modifications to those plans will be limited to PUD confirming: (i) the CSU Property Development Plans Within City Easements is consistent with PUD-related City regulations in the Land Development Code and the Land Development Manual, specifically Appendix N – Water Design Guide and Sewer Design Guide; and (ii) CSU's grading activities will not impair, damage, or interfere with PUD's groundwater management program or existing public utilities. CSU will not modify the approved CSU Property Development Plans Within City Easements, or undertake any grading or construction activities in conflict with such approved plans after PUD confirms its approval of such plans in writing. City will have the right to reasonably inspect CSU's grading or construction activities occurring within City's easements for water and sewer lines to ensure conformance with the approved CSU Property Development Plans Within City Easements.

5.5 Expedited Review. DSD will designate a project manager to help expedite City's review and approval of all applicable plans and documents submitted by CSU, including by PUD, TSW and other City departments. If CSU pays City's normal fees applicable for expedited processing, then once CSU's submittal is deemed complete, City will expedite its review of CSU submittals and endeavor to finalize its review within fifteen (15) Business Days after the date of each complete initial submittal and (if applicable) each complete subsequent submittal. If an application submitted to City is deemed incomplete, City will advise CSU of such incompleteness within fifteen (15) Business Days of City's receipt of such application. However, City will be unable to offer expedited review to the extent that CSU is proposing any material deviations from City's standards and regulations.

5.6 City Approval Not a Waiver of Obligations. Approval by City, the Mayor, City Project Manager or other representatives of City pursuant to the terms of this Agreement does not relieve CSU of responsibility for complying with all applicable Laws.

5.7 Early Termination. If this Agreement terminates due to CSU's Default prior to Final Completion, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by CSU or CSU's agents for the construction of the River Park, to the extent such rights and contracts can be assigned to and assumed by City. Any such assignment and assumption of rights shall be as-is and without representation or warranty. Additionally, with respect to any contracts entered into pertaining to design and construction of the River Park from and after the Effective Date, CSU shall include, and require its contractors and subcontractors to include, provisions in all River Park contracts and subcontracts, that City is a third-party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

## 6. CONSTRUCTION AND DRUG-FREE WORKPLACE.

6.1 Compliance with Project Schedule and Construction Requirements. CSU will commence construction of the River Park / BMP Project in a manner that ensures the River Park is completed as required by Article 3, above, and that complies with the procedures set forth in attached **Exhibit H, Construction Obligations**. CSU will diligently pursue such construction to completion. Except as set forth otherwise in this Agreement, failure to complete the River Park

by the Delivery Date (as the same may be extended) constitutes a Default subject to Section 3.1 above.

6.2 Drug-Free Workplace. CSU is not required to cause its contractors and subcontractors to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 because CSU has its own Drug-Free Workplace policy as required by and based on applicable Law that contractors and subcontractors will be required to comply with in connection with the River Park / BMP Project.

## 7. PUBLIC RELATIONS.

7.1 Presentations. Upon request, CSU and CSU's agents will reasonably consider participating in presentations to the City Council, Council Committees, any other related committees to provide them with information about the River Park.

7.2 CSU as Primary Contact. CSU is the primary contact with the media regarding the River Park; however, CSU will forward all media inquiries regarding the River Park status to City Project Manager Department's ("**Responsible Department**") Senior Public Information Officer so that City is aware of any media inquiries regarding the River Park and CSU's intended response, and to allow City to provide a response on behalf of City if it desires to do so. CSU is not authorized to speak to the media on behalf of City. If City receives media inquiries regarding the River Park, City will forward such inquiry to CSU so CSU is aware of media inquiries regarding the River Park and City's intended response, and allow CSU to provide a response on behalf of CSU if it desires to do so. City is not authorized to speak to the media on behalf of CSU.

7.3 Advertising. The Parties acknowledge that advertising referring to the Parties by name as a user of a product, material, or service by the other Party or the Party's agents, material suppliers, vendors or manufacturers is expressly prohibited without the Parties' prior written approval.

7.4 Recognition. CSU will place a sign, placard, or other similar monument on the River Park site during construction, which will acknowledge CSU's and City's joint involvement with the River Park.

7.5 Dedication Ceremony. CSU will have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the River Park Property at any reasonable time, provided CSU coordinates with City Project Manager for the ceremony and provides an opportunity for appearances by the Mayor, Council Members and other appropriate City officials. CSU will contact the Responsible Department's Senior Public Information Officer to arrange a mutually acceptable date and time for any ceremony.

7.6 Cleanup. CSU will be responsible for the cleanup of debris on the River Park Project site and the restoration and repair of any damage to the River Park Project site attributable to any CSU sponsored ceremony.

8. **PROJECT COMPLETION**. When CSU determines that the River Park / BMP Project is complete, CSU will notify City in writing of the River Park / BMP Project status within seven (7) calendar days of CSU's determination. The notice will certify to City that the River Park / BMP

Project has been substantially completed in accordance with the Construction Documents, all applicable building codes and regulations and all permits, licenses and certificates of inspection, use and occupancy relating to the River Park / BMP Project (“**Project Completion Notice**”).

## 9. PROJECT APPROVAL AND FINAL COMPLETION.

9.1 Approval. Within ten (10) Business Days after CSU’s delivery of a Project Completion Notice to City, City Project Manager and a designated CSU representative will schedule and conduct a joint inspection of the River Park / BMP Project to determine if the River Park / BMP Project is constructed in substantial conformance with the Construction Drawings. Within five (5) Business Days following such inspection, City Project Manager will provide written notice stating that the River Park / BMP Project is satisfactory (“**Approval**”) or identifying specific deficiencies that must be addressed to obtain Approval. City Project Manager will act reasonably in determining whether to provide Approval, which will not be unreasonably withheld, conditioned or delayed if the River Park / BMP Project is constructed in substantial conformance with the Construction Drawings. CSU will deliver another Project Completion Notice upon curing any deficiencies identified by City in writing and the process above will repeat until Approval is provided. If City fails to timely respond to a Project Completion Notice or to timely deliver notice of Approval or an explanation of deficiencies to be addressed to obtain Approval, then City will be deemed to have granted Approval of the River Park / BMP Project. After Approval, the following will occur:

(a) Notice of Completion. CSU shall execute and record a Notice of Completion in the Official Records of San Diego County and shall provide City Project Manager with a certified copy of such recorded Notice of Completion pursuant to Section 9.2.

(b) Lien and Material Releases. CSU shall ensure that all contractors and subcontractors provide lien and material releases for the River Park / BMP Project and provide copies of such lien and material releases to City Project Manager. Alternatively, bonds may be provided in favor of CSU in lieu of lien and material releases for all such work.

9.2 Final Completion. “**Final Completion**” of the River Park / BMP Project shall be deemed to occur on the last date of the following events: (a) recordation of the Notice of Completion with a certified copy provided to City as stated above; and (b) submission of all documents required to be supplied by CSU to City pursuant to this Agreement, as outlined in the attached **Exhibit I, Project Deliverables**.

(a) As-Built Drawings. CSU will submit As-Built Drawings to City within ninety (90) Business Days of Final Completion. City, including City Project Manager, will evaluate the submitted As-Built Drawings for accuracy and completeness and may return them to CSU with comments. CSU will meet with City and work together in good faith until all issues are resolved. Upon issue resolution, CSU will submit a mylar set and three (3) sets of As-Built Drawings stamped by the architect/engineer of record as required by applicable Law within thirty (30) calendar days.

(b) When Open for Public Use. Notwithstanding anything to the contrary herein, once CSU submits the As-Built Drawings to City as required by Section 9.2(a), above, or

determines the River Park is substantially complete as evidenced by issuance of a certificate of occupancy or equivalent thereto, whichever occurs first, the River Park may be opened for use by the general public.

## **10. BONDS AND OTHER ACCEPTABLE SECURITIES.**

10.1 Assurance by Bond. Consistent with the Public Contract Code and the General Contract Provisions, CSU will cause the contractor(s) performing work on the River Park Property to obtain payment and performance bonds prior to commencement of construction of the River Park Improvements, securing payment and performance of CSU's obligations to timely complete the River Park Improvements, and such payment and performance bonds will be maintained until the River Park Improvements are completed and made available for public use and enjoyment. The payment and performance bonds obtained by the contractor(s) performing work on the River Park Property in satisfaction of this Section 10.1 will: (1) be in form and substance required by the General Contract Conditions and the Public Contracts Code; (2) be in sufficient amounts based on the final construction drawings or the designated engineer's construction estimate for the River Park Improvements, which amount will be updated based on periodic updates provided for such cost estimates to the extent CSU may require updates under the General Contract Conditions and the Public Contract Code; and (3) be renewed at least thirty (30) calendar days prior to their expiration. CSU will provide City with periodic updates of CSU's compliance with the provisions of this Section 10.1, and City will have the right to seek reasonable information from CSU on CSU's compliance with the provisions of this Section 10.1, during construction of the River Park Improvements.

10.2 CSU Contract General Conditions. Notwithstanding anything to the contrary herein, CSU will require compliance with the surety and bonding requirements set forth in the CSU General Contract Conditions prepared by the Office of the Chancellor, Capital Planning, Design and Construction, June 2019, as the same may be amended, modified or supplemented in the future ("**General Contract Conditions**"). Other than third party rights given to City pursuant to the Purchase Agreement and its attachments, including this Agreement, any conflicts between the terms of this Agreement and the General Contract Conditions shall be resolved in favor of the General Contract Conditions.

## **11. INDEMNIFICATION**

11.1 Indemnification and Hold Harmless Agreement by CSU. Except for claims covered and indemnified under the consultant or contractor indemnification described in **Exhibit L, Consultant Provisions**, attached to this Agreement, in the performance of professional services or design professional services, CSU shall defend, indemnify, and hold harmless City and its officials, employees, agents, officers, attorneys, and representatives (collectively, "**City Parties**") from and against any and all Claims related to this Agreement, the River Park Property, or the River Park / BMP Project arising from or relating to any of the following circumstances: (a) willful misconduct, sole negligence or active negligence of CSU, the CSU Board of Trustees, and CSU's employees, agents, attorneys and representatives (collectively, "**CSU Parties**") or CSU or its auxiliary organizations (collectively, "**CSU Entities**") on the River Park Property or in connection with the River Park / BMP Project; (b) any Claim arising from Default by CSU under this Agreement; (c) any agreements or other arrangements that CSU (or anyone claiming by or through

CSU) makes with a third person regarding the River Park Property and/or the River Park / BMP Project; (d) any noncompliance by the CSU Parties or CSU Entities with applicable Law, including the Final EIR MMRP; (e) any Claim relating to workers' compensation or to any employee of the CSU Entities or any of its contractors performing work on the River Park Property or in connection with the River Park / BMP Project; (f) any failure to comply with any applicable Law related to prevailing wage requirements by any CSU Party, CSU Entity, or any CSU-retained contractor performing work on the River Park Property or in connection with the River Park / BMP Project; (g) any Claim resulting from the design of the River Park Project or the construction of the River Park Improvements; (h) any Environmental Claim directly resulting from any negligence or Default under this Agreement by any CSU Parties or CSU Entities; (i) any Claim arising directly from any CSU Party's or CSU Entity's maintenance, or failure to adequately maintain, the Onsite Portions of Murphy Canyon Creek, excluding, however any Claims arising from or relating to (1) an established breach of City's representations, warranties, or covenants or (2) deficiencies or other conditions occurring or existing before or after the Effective Date on the Offsite Portions of Murphy Canyon Creek; or (j) any Claim arising from any adverse impacts on the Wetland Mitigation Project or the Wetland Mitigation Project Site directly resulting from any negligence or Default under this Agreement by any CSU Parties or CSU Entities. Notwithstanding the foregoing, CSU's indemnification obligations will not apply to any Claims to the extent arising out of City's established sole negligence or willful misconduct, or any Claims directly arising out of environmental conditions determined to have existed on the River Park Property, except for conditions directly caused by CSU or any of its contractors performing work on the River Park Property. CSU's obligation to indemnify, defend and hold harmless the City Parties as set forth in this Section 11.1 supplements and in no way limits, and is in no way limited by, the scope of indemnifications set out elsewhere in this Agreement or City's rights to, or contractor or consultant obligations for, indemnification to the City described in **Exhibit L, Consultant Provisions**. City shall notify CSU in writing within five (5) Business Days of the receipt of any notice of any indemnified Claim; provided that the failure to notify CSU in writing within such five (5) Business Day period shall not release CSU from the indemnification obligation set forth in this Section. Upon receipt of the City's notification, CSU shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to City and CSU. CSU shall notify City of CSU's desired legal counsel, in writing within five (5) Business Days after CSU's receipt of City's written notice of a Claim. City shall thereafter have five (5) Business Days within which to approve or disapprove CSU's choice of counsel, and if City fails to respond in writing within such time period, it shall be deemed to have approved CSU's choice of counsel. City's approval of CSU's choice of counsel shall not be unreasonably withheld, conditioned or delayed. CSU's obligation to indemnify and defend the City Parties pursuant to this Agreement shall survive the expiration or termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations. The terms of this Section shall be binding solely upon the fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

11.2 Indemnification and Hold Harmless Agreement by City. City shall defend, indemnify, and hold harmless the CSU Parties from and against any and all Claims related to this Agreement, the River Park Property, or the River Park / BMP Project arising from or relating to any of the following circumstances: (a) any willful misconduct, sole negligence or active



negligence of any City Parties on the River Park Property or in connection with the River Park / BMP Project; (b) any Claim arising from Default by City under this Agreement; (c) any noncompliance with applicable Law by any City Parties, including in connection with the River Park / BMP Project, directly resulting from any negligence or Default under this Agreement by any City Parties; (d) any Claim attributable to or relating to any City Parties' use, maintenance, construction or operation of any City-owned public sewer and water utilities or groundwater facilities now or in the future located within the River Park Property; or (e) any Claims for personal injury or property damage arising from events occurring on the River Park Property prior to the Effective Date. Notwithstanding the foregoing, City's indemnification obligations will not apply to any Claims to the extent arising out of the CSU's established sole negligence or willful misconduct. CSU shall notify City in writing within five (5) Business Days of the receipt of any notice of any indemnified Claim; provided that the failure to notify City in writing within such five (5) Business Day period shall not release City from the indemnification obligation set forth in this Section. Upon receipt of such notification, City shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to City and CSU. CSU shall have five (5) Business Days within which to approve or disapprove City's choice of counsel and if CSU fails to respond in writing within such time period it shall be deemed to have approved City's choice of counsel. CSU's approval of City's choice of counsel shall not be unreasonably withheld, conditioned or delayed. City's obligation to indemnify and defend the CSU Parties pursuant to this Agreement shall survive the expiration or termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations.

11.3 Insurance. The provisions of this Section 11 are not limited by the requirements of Section 12, below, related to insurance.

## 12. INSURANCE.

12.1 General. CSU shall not permit any contractor to begin work on the River Park / BMP Project pursuant to this Agreement until it has obtained the insurance coverages required by Section 4.06 of the General Contract Conditions and caused both CSU and City to be named as additional insureds on such policies. Upon request, CSU shall require its contractor performing work on the River Park Property to provide insurance certificates reflecting evidence of such insurance. The current requirements of Section 4.06 of the General Contract Conditions are set forth in Attached **Exhibit J, Standard Insurance Provisions ("Required Insurance")**.

12.2 Additional Insurance. CSU and its contractors may obtain additional insurance not required by this Agreement.

12.3 Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit CSU's obligations under this Agreement, including indemnity.

12.4 CSU Insurance. CSU shall cause City to be named as an additional insured on a liability policy of insurance it maintains for the River Park / BMP Project.

12.5 City Insurance. For all work performed on behalf of City within the River Park Property, City will require that CSU be named as an additional insured on any liability policy of

insurance maintained in connection with such work or that the contractor is required to maintain. Each policy of insurance shall state that such policy is primary and noncontributing with any insurance or self-insurance maintained by or available to the River Park / BMP Project carried by CSU.

12.6 Self-Insurance. It is understood and agreed that City and CSU maintain various programs of self-insurance, insurance, and reinsurance providing the insurance coverages required in this Agreement and it is agreed that such programs may be acceptable means of providing the required coverage provided the coverage is at least as broad as the Required Insurance. Each party shall provide documents in evidence of such coverage as required in this Agreement.

**13. WARRANTY.** CSU shall require the contractors constructing the River Park / BMP Project work to warrant and guarantee that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction, or otherwise, which warranty and guarantee will be on commercially reasonable terms.

**14. DEFECTIVE WORK.**

14.1 Correction, Removal, or Replacement. All work, material, or equipment that is materially unsatisfactory, faulty, incomplete, or does not substantially conform to the Construction Documents is defective ("**Defective Work**"). If the River Park / BMP Project is conclusively determined to contain Defective Work, CSU will promptly and in accordance with City's reasonable written instructions and within the reasonable time limits stated therein, either correct the Defective Work or remove it from the site and replace it with non-defective and conforming work.

14.2 No Limitation on other Remedies. Exercise of the remedies for Defective Work pursuant to this Section 14 shall not limit the remedies City may pursue under this Agreement, at law, or in equity.

14.3 Prior to Final Completion. Where Defective Work has been identified prior to the Final Completion of the River Park / BMP Project, CSU will promptly, either correct the Defective Work or remove it from the site and replace it with non-defective and conforming work.

**15. MAINTENANCE OF PROJECT PRIOR TO FINAL COMPLETION**

15.1 Maintenance Prior to Final Completion. CSU will maintain and be responsible for the River Park / BMP Project in accordance with the terms of this Agreement, including without limitation erosion control measures, until Final Completion.

15.2 Maintenance Period. CSU will provide a maintenance period to begin on the first day after all landscape and irrigation work on the River Park / BMP Project is complete, checked, and City has concurred in writing that landscape and irrigation work on the River Park / BMP Project is complete, which concurrence will not be unreasonably conditioned, withheld or delayed. If City fails to provide such written concurrence or describe the reasons for withholding concurrence within ten (10) Business Days after CSU's delivery of a notice stating that all landscape and irrigation work on the River Park / BMP Project is complete, City will be deemed to have concurred that such work is complete. Upon City's concurrence or deemed concurrence

that all landscape and irrigation work on the River Park / BMP Project is complete, the maintenance period shall begin and will conclude ninety (90) days thereafter. The maintenance period will be one hundred twenty (120) calendar days if turf is seeded.

15.3 Maintenance Area. CSU will maintain all areas of the River Park / BMP Project, including areas impacted or disturbed by the River Park / BMP Project until Final Completion.

15.4 Maintenance Required. CSU will conduct regular planting maintenance operations immediately after each plant is planted. Plants will be kept in a healthy growing condition by watering, pruning, mowing, rolling, trimming, edging, fertilizing, re-staking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas will be kept free of weeds, noxious grass, and all other undesired vegetative growth and debris. CSU will replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance will also include the following: (i) filling and replanting of any low areas that may cause standing water, (ii) adjusting of sprinkler head height and watering pattern, (iii) filling and re-compaction of eroded areas, (iv) weekly removal of trash, litter, clippings and foreign debris, (v) inspecting plants at least twice per week, and (vi) protecting all planting areas against traffic or other potential causes of damage. CSU will not be in Default of this Agreement if it reduces or eliminates irrigation of the River Park in the event water conservation measures are implemented pursuant to the request or direction of City, CSU or other applicable authorities.

15.5 Landscape and Irrigation Inspection. At the conclusion of the maintenance period, City will inspect the landscaping and irrigation to determine if the work, including maintenance, is deficient in any manner, which determination shall not be unreasonably conditioned, withheld or delayed. This inspection will be scheduled with fourteen (14) calendar days' notice, a minimum of ninety (90) calendar days after the plant maintenance period commencement, or when CSU notifies City it is ready for the final landscape and irrigation inspection, whichever comes last. City will notify CSU of all deficiencies revealed by the inspection within fourteen (14) calendar days after the inspection. City will be deemed to have concluded no deficiencies exist if it fails to provide a timely notice as required by this Section.

15.6 Extension of Maintenance Period. CSU will extend completion of the maintenance period when in City's reasonable opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. CSU will accept responsibility for additional maintenance of the work until all of the work is completed and free from defects.

15.7 Replacement. Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, will be replaced within fourteen (14) calendar days of notification by City. CSU will include, at its expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report will indicate the reason for lack of vigor, potential remedies, if any, and an estimate of the time required to regain vigor and specified size. Plants used for replacement will be of the same kind and size as specified and will be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. CSU will bear the cost of all repair work to existing improvements damaged during replacements.

**16. MAINTENANCE OF PROJECT AFTER FINAL COMPLETION.** Upon Final Completion, CSU will be responsible for the maintenance of the River Park / BMP Project as more fully set forth in the River Park and Storm Water BMP Maintenance Agreement, maintenance of plant material, weed abatement, pest control, graffiti and trash removal, hardscape irrigation systems and the repair and/or replacement of any component of the River Park / BMP Project that is in an unsafe or in an un-useable condition.

**17. RECORDS AND AUDITS.**

17.1 Retention of Records. CSU will retain records related to the construction, operation and maintenance of the River Park for a minimum of three (3) years from the date the related document was created, unless the CSU retention schedule governing CSU's retention of records ("**CSU Retention Schedule**") or applicable Law requires a longer period of retention.

17.2 Audit of Records. Upon ten (10) Business Days prior written notice, CSU will make available, and will request that its contractors or subcontractors make available to City for examination at reasonable locations within the County of San Diego, data and records with respect to all matters covered by Section 17.1. Said audit will be during normal business hours at the offices of CSU or CSU's agent. Any audit will be limited to non-privileged invoices and other data and media reasonably needed to verify compliance with all terms specified in Section 17.1. Notwithstanding anything to the contrary herein, CSU will not be required to provide personnel records or other protected information to City.

**18. NOTICES.** 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 affected 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. The notice addresses for the Parties, as of the Effective Date, are as follows:

If to CSU:

The California State University

401 Golden Shore, 5th Floor  
Long Beach, CA 90802-4210  
Attn: Steve Relyea, Executive Vice Chancellor and Chief Financial Officer  
Email: [srelyea@calstate.edu](mailto:srelyea@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](mailto:presoffi@sdsu.edu)

and a copy 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: [gajones@calstate.edu](mailto:gajones@calstate.edu)

and also a copy 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](mailto:ddrago@sheppardmullin.com)

If to City:

City of San Diego  
Parks and Recreation Department  
202 C Street, MS-39  
San Diego, CA 92101  
Attn: Andrew Field, Director  
Email: [afield@sandiego.gov](mailto:afield@sandiego.gov)

With a copy to:

City of San Diego  
1200 Third Avenue, Suite 1700a  
San Diego, CA 92101

Attn: Cybele Thompson, Director, Real Estate Assets Dept.  
email: thompsonc@sandiego.gov

and also a copy to:

City of San Diego  
9192 Topaz Way, MS 901  
San Diego, CA 92123  
Attn: Shauna Lorance, Director, Public Utilities Department  
email: SLorance@sandiego.gov

## 19. MEDIATION.

19.1 Mandatory Mediation. If a dispute arises out of, or relates to, the River Park / BMP Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") or any other neutral organization agreed upon before having recourse in a court of law.

19.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

19.3 Selection of Mediator. A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator shall be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon mediator. To initiate mediation, the initiating Party shall serve a request for mediation on the opposing Party. If the mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

(a) If AAA is selected to coordinate the mediation ("**Administrator**"), within fourteen (14) calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred mediators listed in preference order after striking any mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of the initiating Party's preferred mediators, the opposing Party shall submit a list of three preferred mediators listed in preference order to the initiating Party and Administrator. Initiating Party shall file a list of preferred mediators listed in preference order, after striking any mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a mediator.

(b) The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred mediator from the individual Parties' lists who is available to serve within the designated time frame.

(c) If the Parties agree not to use AAA, a mediator, date and place for the mediation shall be mutually agreed upon.

19.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

(a) Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

(b) Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

**20. ESTOPPEL CERTIFICATES.** Each Party shall from time to time, within fifteen (15) Business Days after receipt of written request from the other Party, execute, acknowledge and deliver a statement in customary form (i) certifying that this Agreement is unmodified (whether by formal waiver, amendment, or otherwise) and in full force and effect or, if modified, stating the nature of such modification and certifying that this Agreement as so modified is in full force and effect (or, if this Agreement is claimed not to be in force and effect, specifying the grounds therefor), (ii) acknowledging that there are not, to the knowledge of the other Party, any uncured Defaults on the part of such other Party hereunder (or specifying such Defaults if any are claimed), and (iii) certifying such other matters as the requesting Party or its respective current or prospective development partners, mortgagees, insurance carriers, auditors, and/or potential purchasers or lessees may reasonably request. The failure to timely deliver a statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured Defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

**21. INTENTIONALLY DELETED.**

**22. CERTAIN DEFINITIONS.** In addition to any terms defined elsewhere in this Agreement, the following terms shall be defined as set forth below:

22.1 **"Approval"** means any license, permit, approval, consent, certificate, ruling, variance, or authorization, or any amendment to any of the foregoing, as shall be required under any applicable Law to commence, perform, or complete the construction of the River Park Project or the Storm Water BMP Project on the River Park Property.

22.2 **"Business Day"** means a day other than Saturday, Sunday, or any day on which (i) federally-insured banks are closed, (ii) the County Recorder is closed or (iii) the administrative offices of either City or CSU are closed.

22.3 **"Claim"** means 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 reasonable expert fees and expenses and, if the Party is in Default regarding its obligations to provide indemnification by improperly failing to provide a defense for any indemnified Person after expiration of the notice and cure periods described in this Agreement, 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 Government representative or entity.

22.4 **"Cooperate"** means CSU's and City's good faith efforts to reasonably communicate with each other and use reasonable efforts to take such steps as may be reasonably necessary to effectuate and implement the terms and conditions of this Agreement. For clarification, "Cooperate" shall not include any obligation to incur liability or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel).

22.5 **"CSU Project"** means the project to be developed, constructed, and operated by CSU on the CSU Property, further described as the "Project" in the Declaration of Property Development Restrictions and Permitting.

22.6 **"Environmental Claim"** means any Claim relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge, as well as all damages or costs of any kind or of any nature whatsoever to the extent relating directly or indirectly to such a Claim.

22.7 **"Environmental Law"** means every applicable 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 CSU Property or the River Park Property or relating to the River Park, 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 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 U.S.C. section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 U.S.C. section 1251 *et seq.*]; the Toxic Substances Control Act ("TSCA") [15 U.S.C. section 2601 *et seq.*]; the Hazardous Materials Transportation Act ("HMTA") [49 U.S.C. section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C. section 6901 *et seq.*]; the Clean Air Act [42 U.S.C. section 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. section 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. 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 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health &



Safety Code section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code section 13000 *et seq.*]; together with any regulations promulgated under the above-referenced statutes and laws.

22.8 “**Expert Cost Estimator**” means a general contractor or other qualified consultant who has at least five (5) years of experience in estimating construction costs for projects comparable to the River Park / BMP Project in the San Diego region.

22.9 “**Government**” means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City, or otherwise), whether now or later in existence.

22.10 “**Hazardous Substance**” means 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.

22.11 “**Hazardous Substance Discharge**” means any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the River Park Property or during transportation of any Hazardous Substance to or from 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 River Park Property, whether or not caused by a Party.

22.12 “**Injunction**” means any injunction, stay, restraining order, or other order, ruling, judgment, or other order, ruling, judgment, or similar determination of a court that prohibits the performance of a Party’s material obligation required by this Agreement.

22.13 “**Kinder Morgan**” means Kinder Morgan Energy Partners, L.P., a Delaware limited partnership.

22.14 “**Kinder Morgan Settlement Agreement**” means 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 CSU Property and the River Park Property arising from the historical accidental release of Hazardous Substances from the adjacent Mission Valley Terminal site owned and operated by Kinder Morgan.

22.15 “**Law**” means 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 River Park Property, or the River Park, including relating

to any development, construction, use, maintenance, taxation, operation, occupancy, or environmental conditions affecting the River Park Property, or the River Park, 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.

22.16 **"Legal Costs"** means, 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, and court costs.

22.17 **"Murphy Canyon Creek"** means the creek that flows generally in a north-to-south alignment through the Murphy Canyon Creek Parcel, onto the River Park Property and toward the San Diego River.

22.18 **"Murphy Canyon Creek Parcel"** means the real property generally located at the eastern boundary of the CSU Property and consisting of approximately 2.5 acres, as described more completely in the Declaration of Property Development Restrictions and Permitting.

22.19 **"New Stadium"** means the new stadium that CSU will construct on the CSU Property, as further defined in the Declaration of Property Development Restrictions and Permitting.

22.20 **"Non-Government Use"** has the meaning given in the Declaration of Property Development Restrictions and Permitting.

22.21 **"Parcel Map"** means a proposed parcel map with respect to the CSU Property, the River Property and other property owned by the City, as described more completely in the Purchase Agreement.

22.22 **"Person"** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

22.23 **"Project"** refers collectively to the CSU Project and the River Park Project.

22.24 **"River Park Future Total Estimated Costs"** means a future estimate of the total cost to design, permit, and construct the River Park Improvements (or to complete the construction of the River Park Improvements, if construction has been partially completed as of the time of the future estimate, but excluding any costs for remediating environmental conditions affecting the River Park Property unless directly caused by CSU or its contractors), and to facilitate long-term management and maintenance of the completed River Park Improvements, including a reasonable contingency amount for all cost components, as determined by the Expert Cost Estimator in accordance with the terms of this Agreement.

22.25 **"River Park Improvements"** means active and passive park uses, 8- to 10- foot wide linear walking and biking trails, children's play areas, interpretive signage, a river buffer of native vegetation, wetlands created as mitigation for public right of way improvements that

improve access to the Park, measures to mitigate drainage impacts and ensure compliance with water quality standards, and other features installed within or constructed upon the River Park Property by CSU pursuant to this Agreement.

22.26 **“SDSU Mission Valley Campus”** means those improvements that CSU intends to construct on the CSU Property for bona fide public purposes, including, among other things, active and passive park uses, a stadium, up to 4,600 residential units, along with additional retail, commercial and university uses as set forth in the Mission Valley Campus Master Plan approved by CSU’s Board of Trustees on January 29, 2020.

22.27 **“Southern Murphy Canyon Creek”** means the segment of Murphy Canyon Creek within the River Park Property south of Rancho Mission Road, which drains into the San Diego River.

### **23. GENERAL PROVISIONS.**

23.1 Term of Agreement. The Effective Date and term of the Agreement is set forth in Section 2, above.

23.2 Construction Documents. Construction documents include, but are not limited to: construction contract, contract addenda, bid/proposal (along with invitation to bid/request for proposal) if any, the bonds, the general conditions, permits from other agencies, permits from City, the special provisions, the plans, standard plans, storm water pollution prevention plan, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract.

23.3 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

23.4 Gender & Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders, and (ii) the singular number includes the plural number.

23.5 Reference to Paragraphs. Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.

23.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of City or CSU shall be deemed to be both covenants and conditions.

23.7 Integration. This Agreement and all exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement.

23.8 Amendments. This Agreement may be amended only upon the approval and signature of both Parties. Any amendment to this Agreement that is signed by one Party, but not the other Party, shall be null and void and of no force or effect whatsoever. If the CSU Property is subdivided in the future, upon request by either Party, the Parties shall record an amendment to

this Agreement partially releasing certain subdivided portions of the CSU Property consistent with the intent of this Agreement. Without limiting the foregoing rights to amend this Agreement, the Parties hereby acknowledge and agree that (i) in furtherance of the development of the CSU Property, CSU currently intends to record a subdivision map for the CSU Property which will subdivide the CSU Property into various separate legal parcels, (ii) nothing in this Agreement shall be construed as granting City any right to approve any such subdivision map and/or the legal parcels created thereby, (iii) CSU's obligations under this Agreement are intended to only apply to CSU and any successor fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses, and thus, after a subdivision map is recorded, this Agreement will not be applicable to the entire CSU Property, and (iv) at such time, without need for City consent or approval, in addition to such subdivision map and all matters contained therein, CSU shall be allowed, in its sole discretion, to record against title to the CSU Property one or more instruments which specifically identify which legal parcels created by the subdivision map contain specific components of the project to be developed on the CSU Property and/or specific areas of the CSU Property.

23.9 Potential Conflicts Between Documents. The Parties acknowledge that this Agreement will be recorded in the Official Records at substantially the same time as other documents between the Parties in connection with the Purchase Agreement closing. If any direct conflict exists between this Agreement and any other document signed by the Parties and recorded in the Official Records in connection with the Purchase Agreement closing, then this Agreement shall be controlling to the extent that this Agreement describes development of the River Park and the Storm Water BMPs. However, varying degrees of stringency shall not be deemed direct conflicts, and the most stringent requirement shall control.

23.10 Severability. If any term or provision of this Agreement or application of any term or provision of this Agreement to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms and provisions of this Agreement shall be valid and shall be enforced to the fullest extent allowed by Law.

23.11 Drafting Ambiguities. The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

23.12 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable Law and this Agreement, the applicable Law shall control. Varying degrees of stringency among the main body of this Agreement, other agreements entered into between the Parties related to the River Park Property or CSU Property, the exhibits, and applicable Laws are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

23.13 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.

23.14 Good Faith Performance. The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

23.15 Further Assurances. City and CSU each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

23.16 Exhibits. Each of the following exhibits referenced and attached to this Agreement is fully incorporated herein by reference.

Exhibit A	Legal Description of CSU Stadium and Park Sites
Exhibit B	Depiction of River Park Property
Exhibit C	Legal Description of the River Park Property
Exhibit D	River Park Conceptual Design
Exhibit E	Design and Construction Standards
Exhibit F	River Park Design Outreach
Exhibit G	Review of Construction Documents and Park Name
Exhibit H	Construction Obligations
Exhibit I	Project Deliverables
Exhibit J	Standard Insurance Provisions
Exhibit K	Rider to Contract
Exhibit L	Consultant Provisions

23.17 Compliance with Controlling Law. CSU will include a term in its contracts with its consultants, contractors, subcontractors, agents, and employees stating that compliance with all applicable Laws shall be required.

23.18 Jurisdiction, Venue, and Choice of Law. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

23.19 Governmental Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a charter city of the State of California. Nothing contained

in this Agreement shall be construed as a limitation upon the powers of CSU as the State of California acting in its higher education capacity.

23.20 Third-Party Relationships. Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City is an intended third-party beneficiary of all CSU's contracts, purchase orders and other contracts entered into on or after the Effective Date of this Agreement between CSU and third-party services for the design, supply, and construction of the River Park Project. Pursuant to and in accordance with Section 3.6, above, CSU will incorporate this provision into its contracts, supply agreements and purchase orders by attaching and incorporating in same the Rider to Contract in form attached as **Exhibit K, Rider to Contract**. CSU will also use commercially reasonable efforts to cause the Rider to Contract to be entered into with respect to such contracts executed prior to the Effective Date.

23.21 Non-Assignment. CSU shall not assign any rights, obligations, or duties under this Agreement to a third party without the prior written consent of City which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, this Section shall not prevent CSU from delegating its rights and/or obligations under this Agreement to any Person that CSU has contracted with to perform any of CSU's duties or obligations under this Agreement. Notwithstanding any approved assignment or permitted delegation, CSU shall remain primarily liable under this Agreement.

23.22 Binding; Successors in Interest. The rights and obligations contained in this Agreement shall inure to the benefit of and be binding upon the successors-in-interest, agents, employees, assigns, and transferees of the Parties, provided that with respect to the CSU Property, this Agreement shall be binding solely upon the fee owner of the portion of the CSU Property (as it may later be subdivided) upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

23.23 Independent Contractors. Each of the Parties is an independent contracting entity. Nothing in this Agreement shall create any partnership, joint venture, or similar business arrangement, relationship, or association between the Parties.

23.24 Approval. Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld, delayed or conditioned.

23.25 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants, conditions, restrictions, or agreements contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction, or agreement. Any waiver or relinquishment of any rights or powers under this Agreement at any one time or more times shall not be deemed a waiver or relinquishment of such right or power at any other time or times.

23.26 Signing Authority. Each Party represents to the other that the individual(s) executing this Agreement on behalf of such Party has/have duly obtained all authority to sign on behalf of such Party.

23.27 Computation of Time. All periods of time referred to in this Agreement shall include all Saturdays, Sundays, and state or national holidays, unless the period of time specifies Business Days. If the date to perform any act or give any notice with respect to this Agreement falls on such a day, the act or notice may be timely performed or given on the next succeeding Business Day.

23.28 Counterpart Originals; Integration. This Agreement may be signed in multiple counterpart originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement, the exhibits attached to this Agreement, and the documents referenced in this Agreement represent the entire understanding of the Parties and supersede all previous negotiations, letters of intent, memoranda of understanding, or agreements between the Parties with respect to all or any part of the subject matter of this Agreement.

23.29 Unavoidable Delay; Extension of Time for Performance. This Section shall not apply to completion of the River Park Improvements, which shall be governed by Sections 3.1, 3.2 and 3.3 above. Subject to the foregoing and except as otherwise expressly set forth in this Agreement, performance by either Party under this Agreement shall not be deemed or considered to be in Default or breach, where such Default or breach is due to an Unavoidable Delay. Any Party claiming Unavoidable Delay shall provide written notice to the other Party: (a) within thirty (30) days after such Party knows of such Unavoidable Delay; and (b) within thirty (30) days after such Unavoidable Delay ceases to exist. To be effective, any written notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of occurrence of the Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party seeking to be excused from performance shall exercise reasonable, diligent efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

23.30 Use Regulations/Policies. Prior to Final Completion, CSU will develop rules and regulations for use and operation of the River Park ("**Park Regulations**"). The Park Regulations will be consistent with the maintenance and operation standards set forth in the Easement Agreement for River Park Construction and Maintenance, provide for the imposition of penalties for violations of established rules and regulations, and may contain other terms and conditions as CSU deems appropriate. The Park Regulations established by CSU will become effective upon adoption by the City Council by ordinance.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution No. \_\_\_\_\_ authorizing such execution, and by CSU.

**CITY:**

Date: \_\_\_\_\_

City of San Diego,  
a California municipal corporation

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: \_\_\_\_\_

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &  
HAMPTON, LLP

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

Domenic C. 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



## NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA           )  
  )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ (date), before me, \_\_\_\_\_  
(name and title of notary public), personally appeared \_\_\_\_\_  
(name of signer), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Legal Description of CSU's Property**

[to be attached]

**EXHIBIT B**

**Depiction of River Park Property**

[to be attached]

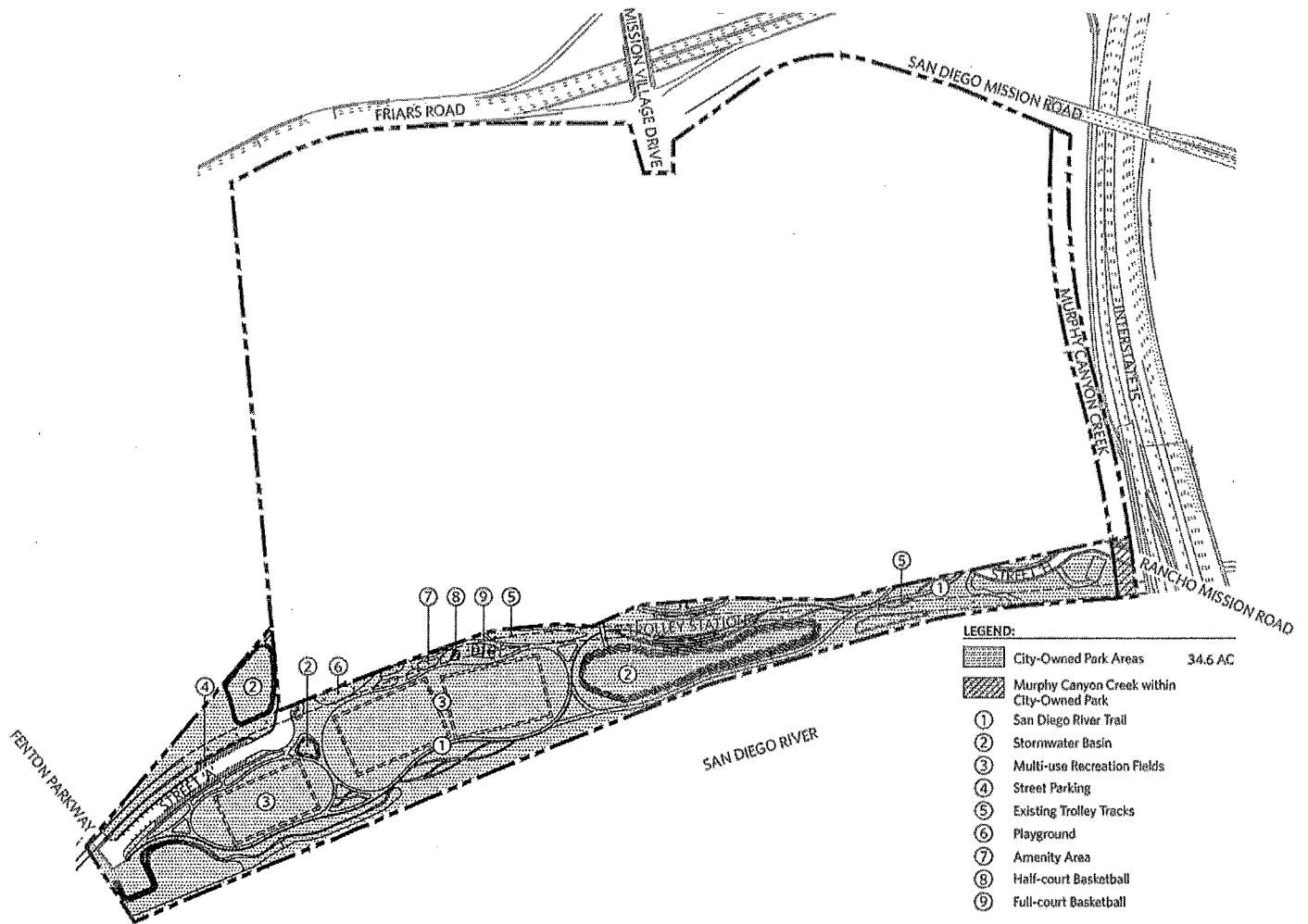
**EXHIBIT C**

**Legal Description of the River Park Property**

[to be attached]

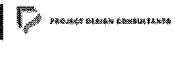
# EXHIBIT D

## River Park Conceptual Design



SDSU MISSION VALLEY RIVER PARK CONCEPTUAL DESIGN

DATE: 27 MAY 2020



## EXHIBIT E

### Design and Construction Standards

In the event of a conflict between the terms contained in the body of the Agreement and the terms of this Exhibit, the terms contained in the body of the Agreement shall control.

1. **Laws.** CSU will substantially comply with the design and construction standards in all applicable local City regulations to the extent required by Section 5.4 of the Agreement and applicable County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
  - A. *Permits.* Any applicable permits, including a grading permit, required for construction of the River Park / BMP Project. CSU will issue all construction permits, including grading permits, for the River Park / BMP Project, except that City will issue permits for utility facilities to be owned and maintained by City (if any). CSU and City will cooperate to secure permits from such state and federal agencies that govern the establishment of wetlands and regulation of wetland resources that may be required onsite for improvements within the River Park that improve public access.
  - B. *Building Codes.* State Building Codes
  - C. *The Americans with Disabilities Act (ADA) and Title 24 of the California Building Code (Title 24).* It is CSU's sole responsibility to comply with all ADA and Title 24 regulations.
  - D. *Environmental.* CSU will complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.
  - E. *Air, Water, and Discharge.* CSU will comply with the Clean Air Act of 1970; the Clean Water Act; and the Mitigation, Monitoring and Reporting Program approved with the San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees on January 29, 2020.
  - F. *ESBSSA.* CSU will comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
2. **Standard Specifications.** CSU will work cooperatively with City and use commercially reasonable efforts to design and construct the River Park / BMP Project in a manner substantially consistent with the most current editions of the following reference specifications when designing and constructing the River Park / BMP Project, including:

- A. *Green Book*. Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments, and the City of San Diego Standard Specifications (Whitebook) as may be applicable.
  - B. *DOT*. California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
- 3. **Standards**. CSU will cause its consultants to provide professional services in accordance with standards customarily adhered to by experienced and competent professional design, architectural, engineering, landscape architecture and construction firms (as applicable) using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of serve in the State of California.
  - 4. **Materials Standards**. CSU acknowledges that this facility is for public use and will use industrial grade, not residential grade, equipment and accessories for all facets of design and construction.
  - 5. **Child Safety Standards**. CSU will provide a certification from a third party independent National Playground Safety Institute (NPSI) certified playground inspector that the installed equipment is compliant with all applicable codes. Surfacing will be tested on-site to determine that the Head Impact Criteria (HIC) rating meets minimum safety specifications per the latest version of the American Society of Testing Material (ASTM) F1951.

## **EXHIBIT F**

### **River Park Design Outreach**

In designing the River Park, CSU formed a River Park Advisory Group to solicit community input for the River Park. Committee members included representation from the following:

- Sierra Club
- League of Women Voters
- Navajo/Allied Gardens Planning Group
- San Diego River Conservancy
- Kumeyaay Diegueno Land Conservancy
- City of San Diego Parks and Recreation
- Mission Valley Community Planning Group
- SDSU Faculty: Department of History, Geological Sciences, Environmental Engineering, Environmental Sciences
- San Diego River Park Foundation
- San Diego Parks Foundation
- San Diego County Water Authority
- San Diego Audubon Society
- H.G. Fenton
- San Diego Coastkeeper
- SDSU Associated Students
- Design industry professional
- Community Members

CSU held meetings with the community and City regarding the River Park as summarized below:

- Public Workshop #1, July 27, 2019
- Public Workshop #2, December 14, 2019
- Preferred design meeting with City staff, January 7, 2020
- City Council Environment Committee Presentation, March 14, 2019
- River Park Advisory Group, May 21, 2019
- River Park Advisory Group, June 25, 2019
- River Park Advisory Group, September 27, 2019
- River Park Advisory Group, December 3, 2019
- City Parks and Recreation Board Review, February 20, 2020



## EXHIBIT G

### Review of Construction Documents and Park Name

In the event of a conflict between the terms contained in the body of the Agreement and the terms of this Exhibit, the terms contained in the body of the Agreement shall control.

CSU WILL SUBMIT PLANS AND SPECIFICATIONS AND SELECT THE PARK NAME IN COORDINATION WITH CITY IN THE MANNER IDENTIFIED BELOW:

1. **Preparation of the design documents.** The River Park / BMP Project will be consistent with all applicable state and federal disabled access laws and requirements. City acknowledges that the River Park Conceptual Design is substantially consistent with City's Park and Recreation Department's current version of the Consultant's Guide to Park Design and Development.
2. **Final Review of the Design and Park Name.** The River Park / BMP Project will be constructed in substantial conformance with the River Park Conceptual Design. City and CSU will work cooperatively to select a name for the park, which is subject to approval by the Park and Recreation Board and the CSU Board of Trustees, if required by CSU Policy. Approval of the park name will be in conformance with Council Policy No. 900-20 and Park and Recreation Board Policy No. 1001, unless waived by either City Council or the Park and Recreation Board as allowed; and CSU Policy (No. ICSUAM 15501.00) Naming of California State University Facilities and Properties, unless waived by the CSU Board of Trustees.
3. **Review of Plans and Specifications and Construction Cost Estimate.** CSU will submit Plans and Specifications to City Project Manager for review and comment prior to the start of construction. CSU may submit preliminary Plans and Specifications for individual phases of the River Park / BMP Project prior to the start of construction. City Project Manager will notify CSU in writing within fifteen (15) calendar days following receipt of the preliminary Plans and Specifications of any City request for modifications to ensure substantial conformance with the Conceptual Design as shown in **Exhibit D**. If modifications are requested, CSU will reasonably consider such modifications and resubmit the preliminary Plans and Specifications for further City Project Manager's review and comment. Plans and Specifications will be substantially consistent with the City's standard drawings and specifications as described in this **Exhibit G**.
4. **City Information.** CSU will provide copies of design documents for City's information purposes at Final Design, so that City may review the final design to confirm it is substantially in accordance with the River Park Conceptual Design.

## EXHIBIT H

### Construction Obligations

1. **Site Safety, Security, and Compliance.** CSU will be responsible for site safety, security, and compliance with all related laws and regulations.
  - A. *Persons.* CSU will be responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by CSU to access the River Park Property.
  - B. *Other.* CSU is responsible for the River Park / BMP Project, site, materials, equipment, and all other incidentals pursuant to the Agreement.
  - C. *Environment.* CSU will be responsible for the environmental consequences of the River Park / BMP Project construction and will comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Mitigation, Monitoring and Reporting Program approved with the San Diego State University Mission Valley Campus Master Plan Environmental Impact Report, certified by the CSU Board of Trustees on January 29, 2020. Furthermore, CSU will prepare a SWPPP to be implemented by CSU during the River Park / BMP Project construction. Where applicable, the SWPPP will comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements.
2. **Access to River Park Property.**
  - A. *Site Access.* City officers, agents and employees with River Park / BMP Project-related business will have the right to enter the River Park Property with reasonable notice to CSU of not less than forty-eight (48) hours, except where necessitated by a bona-fide emergency, or if the nature of their work requires unannounced access, in which case, they will be accompanied by an employee of CSU while at the River Park Property. City Project Manager will have the right to access the River Park / BMP Project site at any time for River Park / BMP Project-related business purposes provided City Project Manager complies with all safety standards adopted by CSU. Additionally, the City's officers, agents, employees and contractors will be permitted access to the River Park Property to gain access to the Wetland Mitigation Project Site to carry out duties associated with the Wetland Mitigation Project, or to access the San Diego River. The Parties will Cooperate to identify mutually agreed upon access points, which may change from time to time, in order to provide for safe vehicular and pedestrian access to the Wetland Mitigation Project Site and the San Diego River for the City and its contractors that does not unreasonably interfere with ongoing construction of the River Park / BMP Project.

3. **Surveying and Testing.** CSU will coordinate, perform, and complete all surveying, materials testing, and special testing for the River Park / BMP Project at the River Park Property, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:
  - A. *Existing Conditions.* CSU will obtain all necessary soils investigation and conduct agronomic soil testing required by design of the River Park / BMP Project. The soils consultant will prepare a statement that will be included in the relevant Construction Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
  - B. *Utilities.* CSU will provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this River Park / BMP Project. Section 5.4 of the body of the Agreement will govern with respect to the relocation of City utilities. CSU will file all of the required documents for the approval of authorities having jurisdiction over the River Park / BMP Project and in obtaining the services of all utilities required by the River Park / BMP Project.
  - C. *Geotechnical Information.* CSU will obtain all necessary geotechnical information required for the design and construction of the River Park / BMP Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) will prepare a statement that will be included in the Construction Documents, to address existing geotechnical conditions of the site that might affect construction.
4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the public right-of-way will be coordinated with City.
  - A. *Materials Testing.* CSU will pay for and coordinate with City to have all material tests within the public right-of-way and any asphalt paving completed by City's Material Testing Laboratory.
  - B. *Surveying.* CSU will pay for and coordinate with City's Survey Section all surveying required within the public right-of-way.
  - C. *Follow all Laws, Rules, and Regulations.* CSU agrees to follow all City standards and regulations while working in the public right-of-way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
5. **Traffic Control.** CSU will address all traffic control requirements for the River Park / BMP Project including, if necessary, separate traffic control plans, and/or notes. All proposed work within City roadways will require a traffic control permit issued by DSD.
6. **Inspections.** CSU will coordinate with all applicable inspectors required for compliance with all State Building Codes and regulations as specified in the Construction Documents.

- A. *Reports.* CSU will provide City all special inspection reports within seven (7) calendar days of inspection. CSU will report all failures of special inspections to City.
  - B. *Concealing Work.* Prior to concealing work, CSU will obtain approval of the CSU Inspector of Record.
- 7. **Property Rights.** CSU will provide all documents required under the River Park Agreements, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements,
  - 8. **Maintenance.** CSU will maintain and be responsible for the River Park / BMP Project site until Final Completion, including ongoing erosion prevention measures.

## EXHIBIT I

### Project Deliverables

- A. *Design Documents.* The River Park Conceptual Design is acceptable to City.
- B. *Construction Documents.* CSU will provide, based on the River Park Conceptual Design, Plans and Specifications setting forth in detail the requirements for construction of the River Park / BMP Project. To the extent reasonably practicable, the Plans and Specifications will be substantially in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans and be in an electronic format acceptable to City.
- C. *Surveys.* CSU will provide all surveying services required for the design of this River Park / BMP Project in accordance with all applicable legal regulations.
- D. *Utility Location Requests.* Along with initial submission of Plans and Specifications, CSU will furnish copies of the Service and Meter Location Request and all utility companies' verifications.
- E. *H, G & SW Reports.* CSU has prepared hydrologic, geotechnical, storm water and other related documents or reports relating to the River Park Property, which are available as appendices to the Final EIR for the SDSU Mission Valley Campus. As reasonably requested and to the extent available, CSU will provide additional or updated reports to City.
- F. *As-Builts.* CSU will provide As-Builts.
  - i. As-Builts will show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, valves, and other similar items as determined by City, both concealed and visible. CSU will clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. CSU will clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. CSU will thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
  - ii. CSU will include all of the following on the As-Builts:
    - a. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
    - b. Locations of utilities and appurtenances, with references to visible and accessible features of the River Park / BMP Project.
    - c. Field changes of dimensions and details.

- d. Changes authorized by approved proposal requests, construction change orders, and discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
  - e. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
  - f. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the River Park / BMP Project record set verifying layout information.
  - g. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
  - h. The title "AS-BUILTS" in 3/8" letters.
- iii. CSU will maintain a set of "red line" As-Builts at the River Park / BMP Project site for reference. CSU will ensure that changes to the As-Builts are made within twenty-four (24) hours after obtaining information. Changes will be made with erasable colored pencil (not ink or indelible pencil), will clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, will indicate the date of entry, will circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.
- G. *As-Graded Reports.* CSU will submit the City approved As-Graded Report summarizing the results of the observations and testing of grading operations.
- H. *Signed Grading and/or Public Right-of-Way Permit.* CSU will submit the signed grading and/or public right-of-way permit.

## EXHIBIT J

### CSU's Standard Insurance Provisions

#### 4.06 Insurance Requirements

- a. The contractor retained by CSU for the River Park ("Contractor") shall not commence work on the River Park Property until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees of the California State University ("Trustees").

##### (1) Policies and Coverage

- (a) The Contractor shall obtain and maintain for the term of the Contract the following policies and coverage:
- (i) Comprehensive or Commercial Form General Liability Insurance on an occurrence basis, covering work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage and contractual liability. The aggregate limit shall apply separately to the work.
  - (ii) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
  - (iii) Workers' Compensation including Employer's Liability Insurance as required by law.
- (b) The Contractor also may be required to obtain and maintain the following policies and coverage:
- (i) Environmental Impairment Liability Insurance should the work involve hazardous materials, such as asbestos, lead, fuel storage tanks and PCBs.
  - (ii) Other Insurance by agreement between the Trustees and the Contractor.

##### (2) Verification of Coverage.

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. Contractor shall timely file renewal certifications and endorsements for all coverage until the work is accepted as completed pursuant to

Article 8.01 of the General Terms and Conditions, Acceptance. The Trustees reserve the right to require the Contractor to furnish the Trustees complete, certified copies of all required insurance policies.

(3) Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.07 of the General Terms and Conditions. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (a) For the General and Automobile Liability Policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers and agents are to be covered as additional insureds.
- (b) For any claims related to the work, the Contractor's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, their officers, employees, representatives, volunteers and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
- (c) The Contractor shall immediately upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required under this Article 4.06, provide written notice of any such insurance cancellation or non-renewal by certified mail to the Trustees.
- (d) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

(4) Amount of Insurance.

- (a) For All Projects.

The insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following ('M' indicates millions):



- (i) Comprehensive or Commercial Form General Liability Insurance – Limits of Liability:

Contract Amount	Up to \$2M	\$2M+\$0.01 to \$5M	\$5M+\$0.01 to \$10M	\$10M+\$0.01 and Over
General Aggregate	\$2M	\$5M	\$10M	\$10M
Each Occurrence – combined single limit for bodily injury and property damage	\$1M	\$5M	\$10M	\$10M

- (ii) Business Automobile Liability Insurance – Limits of Liability (Each Accident–combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.)

Vehicle Type	Autos or Pickup Trucks (up to one-ton)	Dump Trucks or Semi-trucks (hauling materials or equipment)
Each Accident	\$2M	\$5M

- (iii) Workers' Compensation limits as required by law with Employer's Liability limits of \$1,000,000. These requirements and limits are the same for all size contracts.

- (b) For Projects Involving Hazardous Materials.

The Contractor shall provide additional coverage in amounts not less than the following:

- (i) Environmental Impairment (pollution) Liability Insurance – Limits of Liability

Contract Amount	Up to \$5M	\$5M+\$0.01 and over
General Aggregate	\$10M	\$10M
Each Occurrence – combined single limit for bodily injury and property damage, including clean-up costs.	\$5M	\$10M

- (ii) In addition to the coverage described in 4.06-a (4)(a)(ii), Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:

(A) MCS-90 endorsement.

(B) Sudden & Accidental Pollution endorsement – Limits of Liability\*

\$2M Each Occurrence

\$2M General Aggregate

\* These requirements and limits are the same for all size contracts. A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With the Trustees' approval, the Contractor may delegate the responsibility to provide this additional coverage, as described in this Article 4.06-a (4) (b) above, to its hazardous materials subcontractor. When the Contractor returns its signed Project construction phase agreement to the Trustees, the Contractor shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all of the requirements in Article 4.06-a: (2) Verification of Coverage and (3) Insurance Provisions. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees as soon as the Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 days of the Notice to Proceed, whichever is less.

(5) Acceptability of Insurers.

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A:VII, or shall be a carrier otherwise acceptable to Trustees.

(6) Subcontractor's Insurance.

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's work. Contractor shall not allow any subcontractor to commence work on its subcontract until the insurance has been obtained.

(7) Miscellaneous.

- (a) Any deductible under any policy of insurance required in this Article shall be the Contractor's liability.
- (b) Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the Contract.
- (c) In the event the Contractor does not comply with these insurance requirements, the Trustees may opt to provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due to the Contractor.

- (d) If the Trustees are damaged by the failure of the Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.
- (e) The Contractor's obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.

## EXHIBIT K

### Rider to Contract

#### *Explanatory Note*

The City of San Diego (“**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 entered into that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 2020 (“**Purchase Agreement**”). Pursuant to the Purchase Agreement, the City and CSU have entered into or will be entering into as required by the Purchase Agreement (i) that certain Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures dated \_\_\_\_\_, 2020 and (ii) that certain Agreement Regarding Maintenance and Management of the River Park and Storm Water Best Management Practice Structures dated \_\_\_\_\_, 2020, (collectively, “**Purchase Agreement Documents**”).

As part of CSU’s implementation and performance of its duties and obligations under the Purchase Agreement Documents, CSU and each and every selected developer, consultant, and contractor for construction, operation, or maintenance of the River Park Property under the Purchase Agreement Documents shall attach and incorporate this Rider to Contract into each respective developer, consultant, and contractor agreement and shall execute this Rider to Contract (to be updated only to reflect the applicable parties). It shall also be the obligation of each and every selected developer, consultant, and contractor for construction, operation, or maintenance of the River Park Property under the Purchase Agreement Documents to require each of its contractors and consultants, to attach and incorporate this Rider to Contract into each respective consultant and contractor agreement and to execute this Rider to Contract (to be updated only to reflect the applicable parties).

*[Rider to Contract form provided below]*

### **RIDER TO CONTRACT**

#### **(CITY OF SAN DIEGO IS EXPRESS BENEFICIARY OF AGREEMENT)**

This Rider to Contract (“**Rider**”) is attached to and incorporated in that certain \_\_\_\_\_ [insert full name of agreement] (“**Agreement**”) dated \_\_\_\_\_, \_\_\_\_\_, by and between [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**”)] [Developer] [Contractor] [Consultant] and [Developer] [Contractor] [Consultant], a \_\_\_\_\_ (“**Contractor**”). This Rider shall form an integral part of the Agreement. Wherever possible, the provisions of this Rider and the Agreement shall be construed consistently so that each is given application to the fullest extent possible consistent with its intent.

1. Contractor and [CSU] [Developer] [Contractor] [Consultant] each agree that the City of San Diego (“**City**”) is an express third party beneficiary of the Agreement, and shall be entitled to all rights and remedies provided to [CSU] [Developer] [Contractor] [Consultant] pursuant to the

terms of the Agreement. Loss, waiver or other limitation on [CSU] [Developer] [Contractor] [Consultant]'s rights shall not affect or impact the City's rights under those provisions, nor shall any such loss, waiver or other limitation on the City's rights affect or impact the rights of [CSU] [Developer] [Contractor] [Consultant]. [CSU] [Developer] [Contractor] [Consultant] and the City shall have the right to separately and independently exercise such rights as to their respective interests.

2. Without limiting Paragraph 1 of this Rider, Contractor specifically acknowledges that the City shall be an express third party beneficiary of all provisions in the Agreement requiring Contractor to indemnify, defend, protect and hold harmless [CSU] [Developer] [Contractor] [Consultant] (collectively "**Indemnity Obligations**"). Contractor further acknowledges and agrees that the Contractor's Indemnity Obligations are not limited by the insurance policies and coverages that Contractor is required to maintain and if, for any reason such insurance policies and coverages are insufficient to cover all Indemnity Obligations, Contractor shall nevertheless remain responsible to perform all such Indemnity Obligations in full. Contractor further acknowledges and agrees that the Contractor's Indemnity Obligations under those provisions shall survive termination or expiration of the Agreement with respect to all Indemnity Obligations whether or not accrued as of the date of such termination.

3. The City shall also be named as an additional insured in an endorsement to the insurance policies required by the Agreement. Contractor shall furnish [CSU] [Developer] [Contractor] [Consultant] with evidence that such insurance has been obtained upon execution of the Agreement, and [CSU] [Developer] [Contractor] [Consultant] shall provide copies of such evidence to CSU which shall provide such copies of evidence to the City.

4. Contractor acknowledges that it is acting as an independent contractor in performing its obligations under the Agreement and that Contractor shall in no event be considered an agent or employee of the City or CSU. Neither Contractor nor any of its employees shall have any right to participate in any pension plan, insurance, bonus, workers' compensation or similar benefits the City or CSU provides for its employees. Contractor shall hold the City and CSU harmless from any and all payroll and other taxes and interest thereon and penalties therefor which may become due as a result of any obligations, services or other matters performed by Contractor or its agents or employees pursuant to the Agreement.

5. The City, as a third-party beneficiary, neither undertakes nor assumes any obligations under the Agreement. Nothing in this Rider requires the City to be responsible for or establishes a duty to review, inspect, supervise, pass judgment upon, or inform Contractor or any third party of any matter in connection with the operations, maintenance, development, oversight, and coordination of the subject Property and improvements thereon. Nothing in this Rider requires the City to review or determine the quality, adequacy or suitability of any plans or improvements, labor, service, equipment or material furnished, any person furnishing the same, or other like matters. Contractor and all employees and agents of Contractor shall rely upon their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information provided by the City in connection with such matters is for the public purposes of the City, and neither Contractor nor any third party is entitled to rely thereon.

6. Any notices to the City pursuant to the Agreement shall be delivered to the City in the manner provided in the Agreement at the addresses set forth below:

To City: City of San Diego  
Attn: Director, Real Estate Assets Dept.  
1200 Third Avenue, Suite 700  
San Diego, CA 92101

City of San Diego  
Attn: Director, Parks and Recreation Department  
202 C Street, MS-39  
San Diego, CA 92101

and a copy to:

City of San Diego  
9192 Topaz Way, MS 901  
San Diego, CA 92123  
Attn: Shauna Lorange, Director, Public Utilities Department

7. Contractor acknowledges and agrees that Contractor shall have no rights or remedies against the City for any payments due by [CSU] [Developer] [Contractor] [Consultant] to Contractor under the Agreement or for the performance of any obligations of [CSU] [Developer] [Contractor] [Consultant] under the Agreement.

8. There shall be no modification, waiver or other alteration or change to the provisions of this Rider without the prior written consent of the City and CSU.

9. This Rider may be signed in one or more counterparts, all of which, taken together, shall constitute a single instrument.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

## EXHIBIT L

### Consultant Provisions

These provisions shall be included in the contract between CSU and the consultant:

1. **Third Party Beneficiary.** The City of San Diego is an intended third-party beneficiary of this contract. The City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third-party beneficiaries of this contract.

2. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 3 and 4 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert witnesses incurred in connection therewith) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this contract by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this contract.

3. **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

4. **Design Professional Services Defense.** The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees. Notwithstanding the foregoing, in no event shall the cost to defend charged to a design professional exceed that design professional's proportionate percentage of fault.

5. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this contract.



ATTACHMENT 27 TO PURCHASE AND SALE AGREEMENT

River Park and Storm Water BMP Maintenance Agreement

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of San Diego  
1200 Third Avenue, Suite 1700  
San Diego, CA 92101  
Attn: Cybele Thompson,  
Director, Real Estate Assets Dept.

Space above line for Recorder's use only

Exempt from Recording Fees per Cal. Govt. Code § 27383  
Exempt from Documentary Transfer Tax per Cal. Govt. Code § 11922

**AGREEMENT REGARDING MAINTENANCE AND  
MANAGEMENT OF THE RIVER PARK AND STORM WATER  
BEST MANAGEMENT PRACTICE STRUCTURES**

This Agreement Regarding Maintenance and Management of the River Park and Storm Water Best Management Practice Structures ("**Agreement**") is entered into 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**"). City and CSU (collectively, the "**Parties**," and individually, a "**Party**") enter into this Agreement with reference to the Recitals described below. Unless otherwise defined herein, terms with initial capital letters have the meaning given in Section 26.

RECITALS

A. City's voters approved a citizens' initiative measure, commonly known as Measure G, on November 6, 2018, governing City's sale to CSU of certain real property referred to therein as the "Existing Stadium Site" and consisting of 135.12 acres, comprised of both the real property commonly known as the San Diego County Credit Union stadium site and the Murphy Canyon Creek Parcel, generally located at 9449 Friars Road in the City of San Diego, County of San Diego, State of California, as legally described in **Exhibit A-1** to this Agreement (the "**CSU Property**").

B. Measure G is comprised of two main components: (i) Sections 1, 2, 4, 5, 6, 7, and 8 of the citizens' initiative, which describe, among other things, the purpose, intent, and findings supporting the citizen's initiative; and (ii) Section 3 of the citizens' initiative, which adds new section 22.0908 to the San Diego Municipal Code ("**Section 22.0908 Conditions**"). Measure G states that the CSU Property is needed by CSU/San Diego State University for "Bona Fide Public Purposes," as that term is defined in the Section 22.0908 Conditions, and for that reason City will sell the CSU Property to CSU in accordance with the City Charter, but only if such sale is in

compliance with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G.

C. Measure G does not obligate CSU to purchase the CSU Property or take any other actions related to the CSU Property, if CSU chooses not to purchase the CSU Property. However, Measure G requires City to ensure that City's negotiated sale of the CSU Property complies with Measure G.

D. California Education Code section 66606 vests CSU with "full power and responsibility in the construction and development of any state university campus, and any buildings or other facilities or improvements connected with the California State University." Section 22.0908(x)(12) states "Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University." CSU is the State of California acting in its higher education capacity, and is generally exempt from local and regional ordinances, regulations, policies and rules, including, without limitation, zoning and land use regulations, when its development, construction, facilities, and uses are in furtherance of its governmental purpose, unless applicable Law specifically says otherwise. Without waiver of CSU's standing and legal authority as a state agency, and to enable City to ensure that the sale of the CSU Property complies with the Section 22.0908 Conditions and fulfills the intent and purposes outlined in Measure G, CSU agrees to be bound by the terms and conditions set forth in this Agreement, and the Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 2020 between the Parties ("**Purchase Agreement**"), and its attachments.

E. In light of the circumstances stated in Recitals A through D above, the Parties negotiated and entered into the Purchase Agreement and related agreements pursuant to which CSU agreed, strictly as a matter of contract, to develop and operate the CSU Property subject to terms and conditions in the Purchase Agreement and related agreements, and in a manner satisfying City's concern that the sale must comply the Section 22.0908 Conditions and fulfill the intent and purposes outlined in Measure G. By entering into these agreements, CSU is not waiving its standing and legal authority as a state agency, though it agrees, due to the unique circumstances at hand, to be contractually bound by the terms of such agreements. The Parties negotiated the terms of the Purchase Agreement and related agreements in response to the local voters' approval of Measure G and intend all such agreements to be consistent with the Section 22.0908 Conditions and the intent and purposes outlined in Measure G.

F. As of the Effective Date of this Agreement, the closing of the transaction has occurred under the Purchase Agreement, by which CSU has acquired the CSU Property.

G. In furtherance of Section 22.0908, the Parties have entered into an Agreement Regarding Easement for Construction, Maintenance, and Operation of River Park for Recreational Uses ("**Easement Agreement for River Park Construction and Maintenance**"), with an effective date of \_\_\_\_\_, 2020, by which City has conveyed to CSU a recreation easement for design, construction and operation on a portion of an approximately 34.6-acre site as a park ("**River Park Property**") available for use by the general public for park and recreation purposes. **Exhibit A-2** to this Agreement contains a legal description of the River Park Property. **Exhibit B** to this Agreement is a copy of the Easement Agreement for River Park Construction and Maintenance.

H. CSU's improvements on the River Park Property will consist of active and passive park uses, 8- to 10- foot wide linear walking and biking trails, children's play areas, interpretive signage, a river buffer of native vegetation, wetlands created as mitigation for public right of way improvements that improve access to the Park, measures to mitigate drainage impacts and ensure compliance with water quality standards, and other features installed within or constructed upon the River Park Property by CSU pursuant to the River Park and Storm Water BMP Development Agreement (collectively, "**River Park Improvements**"). The Storm Water BMPs (defined in Recital K) will provide passive park space within the River Park, but will not be part of the River Park Improvements that CSU constructs on the River Park Property. The River Park Improvements, together with the portion of the River Park Property on which they are located, are referred to as the "**River Park**" in this Agreement. Upon completion, the River Park will be fully open to the public, as more fully set forth in the Easement Agreement for River Park Construction and Maintenance.

I. The River Park Property includes the segment of Murphy Canyon Creek within the River Park Property south of Rancho Mission Road, which drains into the San Diego River ("**Southern Murphy Canyon Creek**"), and this segment will be part of the River Park.

J. As part of this Agreement, CSU will be responsible, in perpetuity, for maintaining Southern Murphy Canyon Creek as part of the River Park. This obligation is in addition to CSU's responsibilities for the segment of Murphy Canyon Creek within the CSU Property acquired by CSU from City pursuant to the Purchase Agreement ("**Northern Murphy Canyon Creek**"). CSU shall be solely responsible, in perpetuity, for maintaining Northern Murphy Canyon Creek.

K. CSU will install three (3) best management practice structures within the River Park Property to filter and treat storm water runoff from the CSU Property ("**Storm Water BMPs**") and the infrastructure associated therewith for the benefit of the CSU Property and the River Park Property. The Storm Water BMPs will be located on approximately 2.5 acres of the River Park Property and will be maintained, owned, and operated by CSU, at no expense to City.

L. The Storm Water BMPs will serve as passive park areas within the River Park.

M. The River Park Property is located adjacent to 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 CSU Property and the River Park Property and within the San Diego River and its floodplain ("**Wetland Mitigation Project Site**") on which is located a wetland mitigation project ("**Wetland Mitigation Project**"), commonly known as the Stadium Wetland Mitigation Project, that has been created by City, and is now and will continue to be monitored and maintained by City (including regular activities such as perimeter control, ranger patrols, trash removal, transient management, and invasive plant removal), in compliance with the regulatory agreements and permits governing the Wetland Mitigation Project, together with any and all amendments, modifications, supplements, and/or extensions thereof, 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 City pursuant to Section 404 of the Clean Water Act; (ii) the Streambed Alteration Agreement, Notification No. 1600-2014-0192-R5, signed by 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 City pursuant to Section 401 of the Clean Water Act; (iv) any site development permits or other permits issued or to be issued by City relating to the use of wetland mitigation credits from the Wetland Mitigation Project Site; and (v) the Stadium Wetland Mitigation Project (San Diego River) Mitigation Plan Final dated March 13, 2015 and prepared for the City of San Diego, Public Utilities Department (collectively, **"Wetland Mitigation Project Agreements"**).

N. The River Park Property is also adjacent to a portion of City's Multi-Habitat Planning Area established in furtherance with City's Final Multiple Species Conservation Plan (**"MSCP Plan"**) for the San Diego Region dated August 1998, as may be amended, supplemented, or superseded in the future, and all related implementing agreements, plans, and documents.

O. The River Park Improvements will be constructed by CSU pursuant to that certain Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures dated \_\_\_\_\_, 2020 between City and CSU (**"River Park and Storm Water BMP Development Agreement"**).

P. As further set forth in this Agreement, CSU will assume responsibility for maintenance and operation of the River Park, in accordance with and subject to the terms and conditions of this Agreement, commencing on the Effective Date of this Agreement.

Q. To encourage regular public use of the River Park and enable the River Park to become a well-recognized and highly utilized public resource in the Mission Valley community, City desires to grant CSU the right to actively program the River Park with park, recreational, cultural, educational, and promotional events to facilitate community use while still allowing for passive recreational public use of the River Park.

R. The costs of maintaining and operating the River Park will not be funded from City's general fund or existing City revenue sources and will be the responsibility of CSU, except as expressly set forth otherwise in the River Park Agreements.

S. Section 22.0908(i) also states that the sale and development of the CSU Property shall require improvement of an approximately 34-acre River Park. Though not required by Section 22.0908, CSU has agreed to maintain the River Park in accordance with and subject to the terms and conditions of this Agreement.

T. Pursuant to the Purchase Agreement, the Parties intend to enter into that certain Easement Agreement for Installation of Utilities Within River Park Property (**"Easement Agreement for CSU's Utilities in River Park"**), in which, in addition to other easements, the City will grant CSU an easement to design, construct, operate, maintain, and repair the Storm Water BMPs appurtenant to and for the benefit of the CSU Property, subject to the Parties finalizing the physical dimensions and the precise locations of the various easements.

U. Additionally, CSU acknowledges that the City has existing utility infrastructure which will remain in the River Park Property, and that the City may in the future install additional infrastructure as provided for in the various agreements entered into between the Parties related to the sale of the CSU Property. CSU acknowledges and agrees that its rights under this Agreement are subject to the City's rights for public utilities expressly reserved or provided for in the

Declaration of Property Development Restrictions and Permitting, the Easement Agreement for River Park Construction and Maintenance, the River Park and Storm Water BMP Development Agreement, this Agreement, the Easement Agreement for CSU's Utilities in River Park, and various other agreements entered into by the Parties pursuant to the Purchase Agreement and applicable to the River Park Property.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and for other valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

#### 1. MAINTENANCE AND OPERATION OBLIGATIONS.

1.1 River Park Improvements and Storm Water BMPs. As more fully and specifically set forth in this Agreement and subject to City's obligations under this Agreement and the other River Park Agreements, CSU shall, at no cost or expense to City, operate, maintain and repair, the River Park Property, including all River Park Improvements, Southern Murphy Canyon Creek and the Storm Water BMPs, in a manner that ensures the following in perpetuity: (a) the River Park is open and available for the public's use; (b) the River Park is maintained at a minimum standard of care customary for other City of San Diego regional parks as of the Effective Date; (c) activities, including maintenance and repairs, that occur directly adjacent to the City's Multi-Habitat Planning Area (i.e., the San Diego River) must be performed in compliance with the Mitigation Monitoring and Reporting Program ("MMRP") included in the San Diego State University Mission Valley Campus Master Plan Environmental Impact Report certified by the CSU Board of Trustees on January 29, 2020 ("Final EIR") which includes mitigation measures intended to minimize indirect effects to City's Multi-Habitat Planning Area; (d) in compliance with all applicable Laws; and (e) there are no adverse consequences to the water quality, San Diego River, or the Wetland Mitigation Project as a result of CSU's actions or Default (defined in Section 10.1) under this Agreement, provided that CSU shall have no liability or responsibility with respect to (i) matters arising from or relating to deficiencies or other conditions (A) occurring or existing outside the River Park Property or the CSU Property, (B) caused by City or other City Parties, or (ii) those liabilities, responsibilities, and/or obligations which are retained and/or assumed by City pursuant to the terms and conditions of this Agreement or any of the other River Park Agreements.

1.2 Southern Murphy Canyon Creek. In accordance with and subject to the terms and conditions of this Agreement and subject to the City's representations expressly included in Section 5.2 below, CSU will maintain, at no expense to City, Southern Murphy Canyon Creek in compliance with all applicable Laws. Notwithstanding the foregoing, CSU shall have no liability or responsibility with respect to Southern Murphy Canyon Creek for matters arising from or relating to (i) deficiencies or other conditions occurring or existing outside the River Park Property or the CSU Property, or caused by City or other City Parties, or (ii) those liabilities, responsibilities, and/or obligations which are retained and/or assumed by City pursuant to the terms and conditions of this Agreement or any of the other River Park Agreements. Provided the representations and warranties of the City set forth in Section 5.2 below are true and correct, the City will not be responsible for any repairs, restoration or physical improvements that may be required for Southern Murphy Canyon Creek after the Effective Date.

1.3 Environmental Claims. Notwithstanding anything to the contrary set forth herein, the City, not CSU, will have all obligations, liabilities, and responsibilities relating to the investigation or remediation of Hazardous Substances on, under, or affecting the River Park Property, including Southern Murphy Canyon Creek, and further remains liable for all obligations, liabilities, and responsibilities with respect to any Environmental Claims affecting the River Park Property, including Southern Murphy Canyon Creek, except to the extent environmental conditions giving rise to an Environmental Claim affecting the River Park Property, including Southern Murphy Canyon Creek, are determined to have been caused directly by CSU or any contractor retained by CSU to operate or maintain the River Park Improvements. CSU agrees to Cooperate with the City, at no out of pocket cost and with no liability to CSU, by not unreasonably impeding access by the City or a designated third party as necessary to perform testing or remediation, if the City desires to pursue future recovery against Kinder Morgan under the Kinder Morgan Settlement Agreement with respect to the River Park

## 2. CSU MAINTENANCE AND OPERATION OBLIGATIONS FOR THE RIVER PARK.

2.1 Maintenance. CSU, at no expense to City except as set forth otherwise in this Agreement or any other River Park Agreement, shall perform all maintenance work related to the River Park, as more fully set forth in the River Park Maintenance Scope of Work, a copy of which is attached as **Exhibit C** to this Agreement ("**Maintenance**"). CSU shall not have any Maintenance responsibility for improvements or facilities that were not constructed or installed by or on behalf of CSU.

### 2.2 Maintenance Specific Requirements.

(a) CSU will conduct periodic on-site inspections of all Maintenance performed under this Agreement in the River Park. Within thirty (30) days following receipt of written request from City, which request will be made no more than once per year, CSU will submit an annual report to City confirming that such periodic on-site inspections have been completed and providing a copy of each inspection report.

(b) CSU will correct any deficiency identified during on-site inspections or reported by City staff to CSU within thirty (30) calendar days or such additional period of time as may be reasonably required. If a deficiency could endanger the public's health and safety, in CSU's reasonable discretion, CSU will use commercially reasonable efforts to correct the deficiency within twenty-four (24) hours or take other appropriate action to protect public health and safety until the deficiency can be permanently corrected.

(c) If CSU receives any complaint regarding Maintenance of the River Park, CSU will investigate such complaint and promptly take appropriate corrective action.

(d) CSU will retain records related to the Maintenance of the River Park for a minimum of three (3) years from the date the related document was created, unless the CSU retention schedule governing CSU's retention of records ("**CSU Retention Schedule**") or applicable Law requires a longer period of retention.

2.3 Allowed Uses on the River Park. CSU will be entitled to use or allow the River Park to be used for the following purposes:

- (a) Passive public park recreational uses;
- (b) Programmed active recreational uses on the athletic fields;
- (c) Temporary pre-scheduled park, recreational, cultural, educational, and promotional events facilitated or permitted by CSU that take place over the course of no more than five (5) consecutive calendar days, including set-up and dismantling time ("**Limited Duration Events**"), as set forth in this Agreement including the following categories of activities:
  - (i) Arts and entertainment programs and events;
  - (ii) Promotional programs and events;
  - (iii) Concert and performance programs and events;
  - (iv) Educational programs and events;
  - (v) Fairs, festivals, and market programs and events;
  - (vi) Awareness and fundraising programs and events;
  - (vii) Athletic, recreation, and health programs and events;
  - (viii) Holiday special programs and events; and
  - (ix) Exhibits and shows.
- (d) All other typical, normal and customary park uses.

2.4 River Park Programming and Permitting. With respect to Limited Duration Events, CSU will: (1) plan, schedule and coordinate Limited Duration Events held on the River Park Property by CSU; and (2) issue permits for Limited Duration Events for the use of the River Park Property by third parties, as CSU deems appropriate in its reasonable discretion ("**River Park Event Permits**"). CSU and all third parties holding a Limited Duration Event on the River Park shall secure all applicable authorizations, approvals, and permits from all applicable authorities prior to commencing a Limited Duration Event. Until CSU Park Rules (defined herein) are adopted as provided herein, CSU's operation of the River Park will be consistent with the park use provisions in the San Diego Municipal Code that govern City parks. As of the Effective Date, CSU has indicated to the City that CSU intends to develop rules and regulations applicable to CSU's operation of the River Park, including, without limitation, penalties for violations of such rules and regulations ("**CSU Park Rules**"). Therefore, if CSU develops CSU Park Rules, and such CSU Park Rules are adopted by the City Council by ordinance, then the CSU Park Rules will apply to CSU's operation of the River Park, in place of the City's Municipal Code. For avoidance of doubt, the CSU Park Rules, to be valid and effective as applied to the River Park, must first be adopted by the City Council by ordinance, including any amendments or modifications to such rules and regulations.

(a) Additional Provisions Applicable to Limited Duration Events, River Park Event Permits, and Fees.

(i) All permits shall be subject to the California Environmental Quality Act, Public Resources Code sections 21000 et seq.

(ii) CSU will issue River Park Event Permits on a first-come first-serve basis no more than 365 days in advance of the date of the Limited Duration Event. All Limited Duration Events, whether held on the River Park by CSU or a third party, will be calendared, reserved, or permitted no more than 365 days in advance of the date of the Limited Duration Event.

(iii) CSU will have the right to charge and collect reasonable fees for the use of the River Park which are designed to cover the permitting, maintenance and management costs of the River Park for Limited Duration Events ("**River Park Event Fees**"). In establishing fees for use, CSU will consider setting fees in an amount that maximizes and encourages the public's use of the River Park. CSU may charge the permittee of a Limited Duration Event for all costs incurred by CSU for personnel, equipment, maintenance, insurance, or other expenses resulting from each permittee's Limited Duration Event. No fees may be imposed for the passive use of the River Park by the public.

(iv) The River Park will be utilized and operated in a drug-free environment. CSU will include this requirement in use agreements with third parties for Limited Duration Event permittees.

(b) Coordination and Scheduling of Limited Duration Events. All inquiries for Limited Duration Events received by City will be directed to CSU.

(c) Provision of Monthly Calendar of All Activities. Upon request, CSU will provide City's Director of the Parks and Recreation Department or its designee ("**City Representative**") with a written calendar of all activities held, authorized, or permitted by CSU to utilize any portion of the River Park, including all Limited Duration Events. CSU will include the full name of any such activity and sponsoring entity as well as the date and time of the particular activity.

(d) Security. Security needs in connection with any Limited Duration Event will be the responsibility of CSU or third-party permittee, and will be subject to all applicable Laws.

(e) Insurance and Indemnity to City from Third Parties Obtaining CSU's Authorization to Use the River Park. CSU will require each and every third-party Limited Duration Event permittee to indemnify City and name City as an additional insured in any insurance policies and endorsements related to any permit issued by CSU or any other agreement or authorization for the use of any portion of the River Park. CSU will cause any permit or any other such agreement or authorization for the use of any portion of the River Park to contain the following language:



"Indemnity. \_\_\_\_\_ (*insert name of third-party permittee*) shall protect, defend, indemnify, and hold harmless the City of San Diego (City), its officials, officers, departments, representatives, agents, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to \_\_\_\_\_'s (*insert name of third party permittee*) officers, employees, agents, contractors, invitees, and guests, which arise out of or are in any manner directly or indirectly connected with this permit, or the occupancy, use, development, or maintenance of that portion of the Premises occupied or otherwise used by \_\_\_\_\_ (*insert name of third party permittee*), including, but not limited to, attorney's fees and costs; provided, however, that the duty of \_\_\_\_\_ (*insert name of third party permittee*) to indemnify and hold harmless shall not include any claims or liability arising from the established gross negligence or willful misconduct of City, its elected officials, officers, departments, representatives, agents, and employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, \_\_\_\_\_ (*insert name of third party permittee*) shall be liable for paying all reasonable costs related thereto, including without limitation, attorney's fees and costs.

Insurance. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form] \_\_\_\_\_ (*insert name of third party permittee*) shall name "City of San Diego, its elected officials, officers, departments, representatives, agents, and employees" as additional insured in all policies issued to \_\_\_\_\_ (*insert name of third party permittee*) relating to the permit between CSU and \_\_\_\_\_ (*insert name of third party permittee*) including, but not limited to coverage under endorsement CG2010 (11/85) or its equivalent. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the entire duration of the term of the permit between CSU and \_\_\_\_\_ (*insert name of third party permittee*).

Future changes to the foregoing indemnity and insurance provisions will not be made without the mutual written agreement of the Parties; provided, however, CSU may modify the foregoing indemnity to provide that CSU will have equal rights as the City as an indemnitee without City's prior written agreement. CSU shall make a copy of any and all insurance certificates and endorsements set forth in this subsection (e) available to the City within seven (7) calendar days of the City's request.

(f) Music. CSU shall only perform or authorize to be performed on the River Park music for which City, CSU or the permittee for a Limited Duration Event has the applicable license from ASCAP, Broadcast Music, Inc. (BMI), SESAC, or any other musical industry licensing entity ("**Licensing Entity**"). It shall be CSU's sole responsibility to ensure it only performs or authorizes to be performed music for which it, City or the Limited Duration Event permittee has obtained a valid performance license from the appropriate Licensing Entity before CSU performs or authorizes to be performed the desired music. CSU acknowledges and agrees

that: (1) City does not provide any equipment in the use of the music played or authorized to be played on the River Park; and (2) City does not authorize the music played or authorized to be played on the River Park.

(g) Accessibility Requirements. CSU shall comply with Title 24 of the California Code of Regulations ("**California Building Code**"); the Americans with Disabilities Act of 1990 ("**ADA**"); and all other applicable state and federal laws and regulations existing or hereafter enacted that protect the rights of people with disabilities.

2.5 Collection and Use of Revenues from Limited Duration Events. The revenue collected by CSU from a Limited Duration Event in excess of CSU's costs incurred in connection with that Limited Duration Event shall be used for the maintenance, operation, and improvement of the River Park, and not be used to fund other activities of CSU not relating to the River Park.

2.6 Non-Exclusive Use of River Park. After completion of the River Park Improvements, the general public will not be wholly or permanently excluded from the River Park, except as it relates to a Limited Duration Event; provided the foregoing shall not be construed as preventing CSU from closing all or certain portions of the River Park when required under applicable Law (including local, State, and Federal orders), for the protection of public health and safety, and in order to perform any required Maintenance and/or improvements. CSU, in consultation with City, may develop reasonable rules and restrictions for the use of the River Park, including but not limited to reasonable restrictions on access, hours of operation, and noise generation, provided that the rules and restrictions are consistent with the rights of the general public to not be wholly or permanently excluded from the River Park (except as stated in this Agreement), are designed to enable CSU to use the River Park for the purposes herein granted, and comply with all Laws.

2.7 River Park Hours of Operation. Subject to reasonable restrictions on hours of operation for Limited Duration Events, as set forth above, the River Park shall be operated by CSU as a public park, open during hours CSU may reasonably establish in consultation with City Representative. CSU may close the River Park during late night/early morning hours if it reasonably determines doing so is in the interest of public health and safety.

2.8 Non-Interference with Wetland Mitigation Project and MSCP Plan. The Final EIR analysis concludes that the River Park will not have significant, unmitigated impacts on the MSCP Plan or wetlands, including the Wetland Mitigation Project Site. CSU will conduct all inspections, perform all maintenance, operate the River Park, and ensure that all programming and permitting is done in a manner that: (i) does not authorize or permit use or entry upon the Wetland Mitigation Project Site; and (ii) does not prevent City from complying with the MSCP Plan or completing the Wetland Mitigation Project, including City's monitoring and maintenance of sensitive habitat, in accordance with all applicable laws and the Wetland Mitigation Project Agreements. CSU will include appropriate language in any contracts or agreements for maintenance, repairs, services, programming, or any other contracts related to the River Park to notify any contractor performing work on any aspect of the River Park about the requirement to avoid impacts to the Wetland Mitigation Project Site and interference with City's rights and obligations with respect to the Wetland Mitigation Project and the MSCP.

2.9 No Interference; Park Closure for Maintenance. CSU will provide the Maintenance in a manner which minimizes interference with the public's use of the River Park. Closures of the River Park will be permitted for repairs and/or Maintenance as reasonably required, and on prior written notice to City. Except in the case of a closure required for Maintenance or repair activities needed to respond to an emergency, as reasonably determined by CSU, in which case CSU will give such notice as is reasonably possible under the circumstances, CSU will endeavor to notify City in writing at least seven (7) days in advance of any Maintenance activities that would cause some or all of the River Park to be closed from public use.

2.10 Liens and Encumbrances. This Agreement does not authorize CSU to create any monetary lien or encumbrance against the River Park Property in connection with its performance or use pursuant to this Agreement. If any monetary encumbrance or lien is imposed on any portion of the River Park Property, CSU shall promptly cause such monetary encumbrance or lien to be removed at its sole expense.

2.11 Alterations. Without limiting CSU's obligations under any encroachment maintenance and removal agreement or any easement agreement between the Parties that may be entered into with respect to the River Park Property, City retains the right, at its sole cost and expense, to alter the River Park Property from time to time, provided such alterations are consistent with the City's reserved rights in the Easement Agreement for River Park Construction and Maintenance and in compliance with all applicable Laws.

2.12 Incident Reports. CSU will maintain reports, which may be on the form attached as **Exhibit D, City Incident Report Form** to this Agreement or other similar form, of all serious accidents, substantial vandalism, and other serious incidents relating to public health and safety occurring on the River Park. Upon request, CSU agrees to provide copies of such reports to City.

### 3. STORM WATER POLLUTION PREVENTION PROGRAM.

3.1 Compliance with Local Regulations. CSU will operate and maintain the River Park in a manner that substantially complies with City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in City's Jurisdictional Runoff Management Plan.

3.2 Compliance with Jurisdictional Urban Runoff Management Plan. CSU will operate and maintain the River Park in a manner that substantially complies with City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

3.3 Compliance with Storm Water Pollution Prevention Plan. CSU will substantially comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed to minimize any negative impact to the storm water collection system and environment.

3.4 Responsibility for Storm Water BMPs and other Storm Water improvements on the River Park Property. CSU will be solely responsible for the design, construction, operation,

maintenance, improvement, and restoration, as required of the Storm Water BMPs as described and more fully set forth in **Exhibit F, Requirements for Storm Water BMPs**, in addition to maintaining, operating, repairing, and replacing if necessary any other storm water improvements, including pipes, drains and outfalls located on the River Park Property, and owned by CSU pursuant to the Purchase Agreement and documents entered into in connection therewith conveying the CSU Property to CSU.

3.5 Non-Interference with Wetland Mitigation Project and MSCP Plan. CSU will conduct all inspections of, perform all maintenance on, and operate the Storm Water BMPs in a manner that: (i) is consistent with the mitigation measures described in the MMRP; (ii) does not cause any damages, losses, or adverse impacts to the Wetland Mitigation Project or the Wetland Mitigation Project Site or City's Multi-Habitat Planning Area; and (iii) does not prevent City from complying with the MSCP Plan or completing the Wetland Mitigation Project, including City's monitoring and maintenance of sensitive habitat, in accordance with all Laws and the Wetland Mitigation Project Agreements. CSU will endeavor to include appropriate language in any contracts or agreements for maintenance, repairs, services, programming, or any other contracts related to the River Park to notify any contractor performing work on any aspect of the Storm Water BMPs about the requirement to avoid impacts to the Wetland Mitigation Project Site and interference with City's rights and obligations with respect to the Wetland Mitigation Project and the MSCP.

3.6 CSU's Obligations for Southern Murphy Canyon Creek.

(a) Subject to the City's representations expressly included in this Agreement and without limiting the City's responsibility for Environmental Claims affecting the River Park Property, CSU will maintain, as required in accordance with this Section, at no cost or expense to the City, Southern Murphy Canyon Creek in compliance with all applicable Laws and as described and more fully set forth in **Exhibit G, Southern Murphy Canyon Creek Storm Water Requirements**, attached to this Agreement.

(b) As the City is the fee title owner of the Southern Murphy Canyon Creek, certain assistance or actions by the City may be required in order for CSU to adequately perform its obligations required by this Agreement with respect to Southern Murphy Canyon Creek. In this regard, for the sole purpose of CSU adequately performing its obligations required by this Agreement, and to the extent City assistance is required for CSU to perform its obligations under this Agreement, City will reasonably Cooperate with CSU as required to assist CSU in CSU's performance of its obligations under this Agreement with respect to Southern Murphy Canyon Creek.

4. NO INTERFERENCE BY CITY. Subject to Section 2.11 of this Agreement and the City's reserved rights in the Easement Agreement for River Park Construction and Maintenance, the City shall not authorize or permit the River Park Property to be used for anything other than the River Park or in any manner inconsistent with the terms of this Agreement or any other River Park Agreement or that would impair, interfere with or increase the cost, burden or liability of CSU in maintaining and operating the River Park or Southern Murphy Canyon Creek as required by this Agreement or any other River Park Agreement. City shall not grant any third parties any license or other possessory interest in the River Park Property, and shall not encumber the River Park

Property in any way without first obtaining CSU's consent and approval, which consent shall not be unreasonably withheld, conditioned or delayed provided that CSU's rights with respect to the River Park will not be modified or subordinated with respect to any such encumbrance. Except in accordance with the City's reserved rights as set forth in the Easement Agreement for River Park Construction and Maintenance, the City shall not alter, modify or remove any River Park Improvements without obtaining CSU's prior written consent, or install, place or construct any improvements or objects within the River Park Property (other than utilities after appropriate coordination with CSU) without obtaining CSU's prior written consent, and in all events, subject to and in accordance with the terms and conditions of the Easement Agreement for River Park Construction and Maintenance.

## 5. REPRESENTATIONS AND WARRANTIES.

### 5.1 REPRESENTATIONS AND WARRANTIES REGARDING RIVER PARK.

City hereby represents and warrants as set forth below with respect to the River Park Property. As used herein, the phrase "City's Knowledge" means the actual knowledge of Cybele Thompson, in her capacity as City's Director of the Real Estate Assets Department, and Shauna Lorange, in her capacity as the City's Director of the Public Utilities Department, each without duty of investigation or inquiry. City represents and warrants that Cybele Thompson and Shauna Lorange are the most knowledgeable City representatives regarding the River Park Property and the matters described below.

(a) There is no suit, action, arbitration, legal, administrative or other proceeding or governmental investigation, formal or informal (collectively, "**Action**"), relating to or affecting the River Park Property and, to City's Knowledge, no such Action is pending or threatened.

(b) The River Park Property is currently owned and operated by City in compliance with all applicable Law and in compliance with the Wetland Mitigation Approvals and all permits, licenses and approvals applicable to Murphy Canyon Creek.

(c) Neither the execution and delivery of this Agreement, the other River Park Agreements, the Declaration of Property Development Restrictions and Permitting, the Easement Agreement for CSU's Utilities in River Park or any other agreements entered into between CSU and City regarding the River Park pursuant to the Purchase Agreement, nor the performance or consummation of the actions contemplated by this Agreement or the River Park Agreements, will (i) constitute a violation, default or breach of any contract, agreement, understanding, instrument, commitment or representation binding upon City or the River Park Property; (ii) constitute a violation or breach of any judgment, order, writ, injunction or decree issued against or imposed upon City or the River Park Property; or (iii) challenge, impair or interfere with City's ability to perform its obligations under this Agreement or the other River Park Agreements in accordance with their terms. City shall not make or enter into any contract, agreement, understanding, instrument, commitment or representation during the term of this Agreement or any other River Park Agreement that would result in the representations in subsections (i), (ii) or (iii) directly above becoming untrue.

(d) To City's Knowledge, the City has never (i) used, generated, processed, stored, disposed of, released or discharged any Hazardous Substances on, under, or about the River

Park Property in violation of Environmental Law, (ii) transported Hazardous Substances to or from the River Park Property in violation of Environmental Law, or (iii) caused any Hazardous Substances to migrate on, under or about the River Park Property in violation of Environmental Law. To City's Knowledge, no Hazardous Substances currently exist on, under or about the River Park Property in violation of Environmental Law.

**5.2 REPRESENTATIONS AND WARRANTIES REGARDING SOUTHERN MURPHY CANYON CREEK.** The City represents and warrants as set forth below with respect to Southern Murphy Canyon Creek. As used herein, the phrase "City's Knowledge" means the actual knowledge of Andrew Kleis, in his capacity of the Deputy Director of the City's Department of Transportation and Storm Water Department, and Cybele Thompson, in her capacity as the City's Director of the Real Estate Assets Department, each without duty of investigation or inquiry. The City represents and warrants that Andrew Kleis and Cybele Thompson are the most knowledgeable City representatives regarding Southern Murphy Canyon Creek and the matters described below.

(a) To the City's Knowledge, the City is not in violation of any permits, applicable Laws, regulations, directives, notices, or orders issued by a court or a governmental or regulatory agency having authority over Southern Murphy Canyon Creek.

(b) The City has not received written notice of any directives, notices, or orders issued by a court of competent jurisdiction or a governmental or regulatory agency having authority over Southern Murphy Canyon Creek that requires the City to take any action, including to make physical improvements to Southern Murphy Canyon Creek or require the City to restore or repair any portion of Southern Murphy Canyon Creek pursuant to which such required improvements or restoration or repair work have not been completed by the Effective Date in accordance with such directive, notice, or order.

**6. OVERSIGHT AND ADMINISTRATION BY CITY.** City staff shall have the right, but not the obligation, in its reasonable discretion, to conduct River Park and Storm Water BMP inspections during the term of this Agreement to evaluate CSU's compliance with this Agreement. If, after City staff conducts an inspection, City reasonably determines that CSU is not in compliance with this Agreement, it may pursue appropriate action in accordance with Section 10.1(a).

**7. NO COMPENSATION OR REIMBURSEMENT TO CSU.** Except as expressly set forth otherwise in this Agreement or any other River Park Agreement, CSU shall perform all of its obligations under this Agreement, including Maintenance, repairs, programming and permitting, and restoring the River Park and the Storm Water BMPs at no cost to City, and the Parties agree that City shall not be required to reimburse or compensate CSU from any City funds, without regard to the source of any particular City funds or how those funds may be held.

**8. EFFECTIVE DATE AND TERM.** This Agreement shall be effective on the Effective Date and shall continue in effect until terminated as set forth in this Agreement. The Effective Date corresponds to the latest date on which both Parties have signed this Agreement in accordance with their respective procedural requirements. Pursuant to Section 4 above, City may not permit the River Party Property to be used for anything other than the River Park. Notwithstanding the

foregoing, and without limiting the effect of Section 4, this Agreement shall automatically terminate and be of no further force or effect if the River Park Property is authorized to be used for any purpose other than the River Park as contemplated in the River Park Agreements, including in accordance with the procedures required under San Diego City Charter Section 55.

## **9. DOCUMENTS, RECORDS, AND REPORTS.**

9.1 Ownership of Documents. All documents then in the actual possession of CSU, including, but not limited to reports and maps prepared in connection with or related to the Maintenance, shall be the property of City (subject to the right of preparers) upon the termination of this Agreement, and in all events excluding any such items which are confidential or subject to privilege. Notwithstanding the foregoing, CSU shall have the right, at its sole cost, to make and retain separate copies of the documents.

### **9.2 Inspection of Records.**

(a) Upon at least ten (10) days prior written notice, CSU will make available to City for examination at reasonable locations within the County of San Diego, data and records with respect to Maintenance, Limited Duration Events, and reports of serious or substantial accidents, vandalism or other incidents relating to public health or safety. CSU and all contractors and subcontractors will permit City to audit all non-privileged invoices, materials, payrolls, records of personnel, and other data and media relating to the foregoing. Notwithstanding anything to the contrary herein, CSU shall not be required to provide personnel records or other legally protected, confidential or privileged information and records to City. Said audit will be during normal business hours at the offices of CSU or CSU's agent.

(b) CSU will retain records related to the Maintenance of the River Park for a minimum of three (3) years from the date the related document was created, unless the CSU Retention Schedule requires a longer period of retention.

9.3 Annual Report. Upon request, on or before January 31<sup>st</sup> of each year, CSU shall provide an annual report for the previous calendar year to City containing the following information:

(a) The annual total expenditures for Maintenance, repair and operations; and

(b) The annual total revenues received from Limited Duration Permits, or other sources of revenue generated by the operation of the River Park.

## **10. REMEDIES AND DEFAULT.**

10.1 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, and this circumstance continues for five (5) Business Days after the Party in breach of

its contractual obligation receives written notice from the other Party identifying the nature of the breach.

(b) Non-Monetary Default. Subject to any time extensions that may apply due to Unavoidable Delay, a Party fails to comply with any covenant or perform any obligation required hereunder and such failure is not cured within thirty (30) days after the delivery of written notice describing such failure by the other Party, provided that if such Default cannot reasonably be cured within such thirty (30) day period and the defaulting Party commences to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, the defaulting Party will be afforded an additional sixty (60) days to cure a Default.

10.2 Remedies. Subject to the express notice and opportunity to cure provisions of this Agreement regarding a specific Default, upon the occurrence of any Default by a Party under this Agreement, the non-defaulting Party may seek a court order that provides declaratory or injunctive relief to address the Default or pursue any other available legal or equitable remedy. Notwithstanding anything to the contrary set forth herein, neither Party will be entitled under any circumstances to recover any speculative, consequential or punitive damages from the other Party.

10.3 No Waiver of Other Remedies. Subject to the limitation described in Section 10.2, the rights and remedies enumerated in this Agreement are cumulative and shall not limit a Party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to one Party against the other.

## 11. **RELATIONSHIP BETWEEN PARTIES.**

11.1 No Agency and Delegation of Duties. CSU and any contractors and subcontractors employed by CSU are not agents of City and vice versa. CSU shall administer the Maintenance, Limited Duration Events, and operations and may engage, in accordance with this Agreement, one or more contractors and subcontractors to provide routine Maintenance services including, but not limited to, trash collection and disposal, graffiti removal, repair, landscaping, and lighting improvements.

11.2 Parties' Representatives. CSU agrees that a designated CSU representative ("**CSU Representative**") shall be the primary contact between CSU and City for the purposes of this Agreement, and City agrees that a designated City representative ("**City Representative**") shall be the primary contact between CSU and City for purposes of this Agreement, which initial representatives are designated on **Exhibit E, Designation of Representatives**, to this Agreement. CSU shall notify City Representative within ten (10) calendar days of replacement of the CSU Representative. City shall notify the CSU Representative within ten (10) calendar days of replacement of City Representative.

### 11.3 Contractors; Rider to Contract.

(a) If the City terminates this Agreement due to CSU's Default, the City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by CSU or CSU's agents for the maintenance and operation of the River Park, to the extent such rights and contracts can be assigned to and assumed by the City. Any such assignment and assumption



of rights shall be as-is and without representation or warranty. Additionally, with respect to any contracts entered into pertaining to maintenance and operation of the River Park from and after the Effective Date, CSU shall include, and require its contractors and subcontractors to include, provisions in all River Park contracts and subcontracts, that the City is a third-party beneficiary of the same and that the City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

(b) CSU shall ensure that the Rider to Contract, in substantially the form of **Exhibit H, Rider to Contract**, attached to this Agreement, shall be entered into by, and attached to and incorporated into all agreements made by, CSU and all consultants and contractors, and subcontractors, as applicable, and entered into on or after the Effective Date of this Agreement, in CSU's implementation and performance of its duties and obligations under this Agreement for maintenance, repair, and operation of the River Park. CSU will also use commercially reasonable efforts to cause the Rider to Contract to be entered into with respect to such contracts executed prior to the Effective Date. Future changes to the Rider to Contract shall not be made without the mutual written agreement of the Parties.

12. **COVENANTS AND CONDITIONS.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or CSU to be performed or observed shall be deemed to be both covenants and conditions.

13. **COMPLIANCE WITH CONTROLLING LAW.** CSU shall comply with all applicable Laws as they pertain to the performance of CSU's obligations under this Agreement.

14. **INFORMAL DISPUTE RESOLUTION.** If CSU and City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions hereof, they shall first attempt to resolve such disputes by informal discussion between their respective representatives. Within five (5) calendar days of determining the existence of any such dispute, the party determining there is such a dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five (5) calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

15. **INDEMNIFICATION.**

15.1 Indemnification by CSU. CSU shall defend, indemnify, and hold harmless City and the City Parties from and against any and all Claims related to this Agreement, the River Park Property, or the River Park arising from or relating to any of the following circumstances: (a) willful misconduct, sole negligence or active negligence of CSU, the CSU Board of Trustees, and CSU's employees, agents, attorneys and representatives (collectively, "**CSU Parties**") or CSU or its auxiliary organizations (collectively, "**CSU Entities**") on the River Park Property or in connection with the River Park; (b) any Claim arising from Default by CSU under this Agreement; (c) any agreements or other arrangements that a CSU Entity (or anyone claiming by or through CSU Entity) makes with a third person regarding the River Park Property and/or the River Park; (d) any noncompliance by the CSU Parties or CSU Entities with applicable Law, including the Final EIR MMRP; (e) any Claim relating to workers' compensation or to any employee of any CSU Entities performing work on the River Park Property or in connection with the River Park;

(f) any failure to comply with any applicable Law related to prevailing wage requirements by any CSU Party, CSU Entity or any CSU-retained contractor performing work on the River Park Property or in connection with the River Park; (g) any Environmental Claim directly resulting from any negligence or Default under this Agreement by any CSU Parties or CSU Entities; (h) any Claim arising directly from CSU Party's or CSU Entity's maintenance, or failure to adequately maintain the Onsite Portions of Murphy Canyon Creek, excluding, however any Claims arising from or relating to (1) an established breach of City's representations, warranties, or covenants or (2) deficiencies or other conditions occurring or existing before or after the Effective Date on the Offsite Portions of Murphy Canyon Creek; or (i) any Claim arising from any adverse impacts on the Wetland Mitigation Project or the Wetland Mitigation Project Site directly resulting from any negligence or Default under this Agreement by any CSU Parties or CSU Entities. Notwithstanding the foregoing, CSU's indemnification obligations will not apply to any Claims to the extent arising out of City's established sole negligence or willful misconduct, or any Claims directly arising out of environmental conditions determined to have existed on the River Park Property, except for conditions directly caused by CSU or any of its contractors performing work on the River Park Property. City shall notify CSU in writing within five (5) Business Days of the receipt of any notice of any indemnified Claim; provided that the failure to notify CSU in writing within such five (5) Business Day period shall not release CSU from the indemnification obligation set forth in this Section. Upon receipt of the City's notification, CSU shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to City and CSU. CSU shall notify City of CSU's desired legal counsel, in writing within five (5) Business Days after CSU's receipt of City's written notice of a Claim. City shall thereafter have five (5) Business Days within which to approve or disapprove CSU's choice of counsel, and if City fails to respond in writing within such time period, it shall be deemed to have approved CSU's choice of counsel. City's approval of CSU's choice of counsel shall not be unreasonably withheld, conditioned or delayed. CSU's obligation to indemnify and defend the City Parties pursuant to this Agreement shall survive the expiration or termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations. The terms of this Section shall be binding solely upon the fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

15.2 Indemnification by City. City shall defend, indemnify, and hold harmless CSU and the CSU Parties from and against any and all Claims related to this Agreement, the River Park Property, or the River Park to the extent any such Claim arises from or relates to any of the following circumstances: (a) any willful misconduct, sole negligence or active negligence of any City Parties on the River Park Property or in connection with the River Park; (b) any Claim arising from Default by City under this Agreement; (c) any noncompliance with applicable Law by any City Parties, including in connection with the River Park, directly resulting from any negligence or Default under this Agreement by any City Parties; or (d) any Claims for personal injury or property damage arising from events occurring on the River Park Property prior to the Effective Date. Notwithstanding the foregoing, the City's indemnification obligations will not apply to any Claims to the extent arising out of CSU's established sole negligence or willful misconduct. CSU shall notify City in writing within five (5) Business Days of the receipt of any notice of any indemnified Claim; provided that the failure to notify City in writing within such five (5) Business Day period shall not release City from the indemnification obligation set forth in this Section.

Upon receipt of such notification, City shall assume the defense of the Claims, including the employment of counsel reasonably satisfactory to City and CSU. CSU shall have five (5) Business Days within which to approve or disapprove City's choice of counsel and if CSU fails to respond in writing within such time period it shall be deemed to have approved City's choice of counsel. CSU's approval of City's choice of counsel shall not be unreasonably withheld, conditioned or delayed. City's obligation to indemnify and defend the CSU Parties pursuant to this Agreement shall survive the expiration or termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to such obligation are fully, finally, and completely barred by applicable statutes of limitations.

## 16. INSURANCE.

16.1 CSU Insurance. CSU shall cause City to be named as an additional insured on a liability policy of insurance it maintains for the River Park Property.

### 16.2 Commercial General Liability Insurance.

(a) At all times during the term of this Agreement, CSU shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of at least \$5,000,000 per occurrence, subject to an annual aggregate of at least \$5,000,000.

(b) The policy shall expressly provide that:

(i) all defense costs shall be outside the limits of the policy; and

(ii) the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to City by certified mail.

(c) The policy shall be endorsed to expressly provide that:

(i) The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and

(ii) The policy is primary and non-contributory to any insurance that may be carried by City.

(iii) The policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(d) There shall be no endorsement or modification of the policy limiting the scope of coverage for insured versus insured claims, or for contractual liability.

### 16.3 Commercial Automobile Liability Insurance.

(a) At all times during the term of this Agreement, CSU shall maintain in full force and effect Commercial Automobile Liability Insurance for all of CSU's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of that form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of at least \$2,000,000 per occurrence.

(b) The policy shall expressly provide that the policy cannot be canceled or materially changed, except after thirty (30) calendar days written notice by the insurer to City by certified mail.

(c) The policy shall be endorsed to expressly provide that City, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

(d) The policy is primary and non-contributory to any insurance that may be carried by City.

(e) The policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall prove cross-liability coverage.

#### 16.4 Workers' Compensation Insurance.

(a) At all times during the term of this Agreement, CSU shall maintain in full force and effect Workers' Compensation Insurance for all of CSU's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.

(b) The policy shall expressly provide that the policy cannot be canceled or materially changed, except after thirty calendar days written notice by the insurer to City by certified mail.

(c) The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against City of San Diego, its elected officials, officers, agents, employees, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.

16.5 Endorsements. All endorsements required under this Section 16 shall be in full force and effect for the entire term of this Agreement.

16.6 City's Right to Request and Review CSU's Insurance Policies. City reserves its right to request, and CSU shall immediately submit to City upon City's request, copies of any policy required in this Section 16, and its right to review, at any time, CSU's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to City. If City determines that such insurance coverage, limits, deductibles, and/or self-insured retentions are unacceptable, City may require the revision of amounts and coverage at any time by giving CSU thirty (30) calendar days prior written notice. CSU shall also obtain any additional insurance

required by City for changed circumstances or City's reasonable re-evaluation of risk levels related to the Maintenance.

16.7 Deductibles. All deductibles on any policy shall be the responsibility of CSU, and shall be disclosed on the insurance certificates and acceptable to City.

16.8 CSU's Liability Not Limited to Insurance Coverage. CSU's liability, including, but not limited to, CSU's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Section 16.

16.9 Modifications Affecting City's Exposure to Loss. CSU shall not modify any policy (or endorsement thereto) that increases City's exposure to loss for the duration of this Agreement.

16.10 Additional Insurance. CSU may obtain additional insurance not required by this Agreement at its sole cost and expense.

16.11 Expiration of Policies. At least thirty (30) calendar days prior to the expiration of each insurance policy required herein, CSU shall provide City an insurance certificate, showing that a new or extended policy has been obtained which meets the requirements of this Agreement.

16.12 Requirement to Maintain Insurance Coverage. CSU maintenance of the insurance coverage required in this Article 16 is a material provision of this Agreement. Any failure by CSU to maintain or renew such coverage, or to provide City evidence of renewal during the term of this Agreement, shall constitute a material breach of contract.

16.13 City Insurance. For all work performed on behalf of the City within the River Park Property, the City will require that CSU be named as an additional insured on any liability policy of insurance maintained in connection with such work or that the contractor is required to maintain. Each policy of insurance shall state that such policy is primary and noncontributing with any insurance or self-insurance maintained by or available to the project carried by CSU.

16.14 Self-Insurance. It is understood and agreed that City and CSU maintain various programs of self-insurance, insurance, and reinsurance providing the insurance coverages required in this Agreement and it is agreed that such programs may be acceptable means of providing the required coverage provided the coverage is at least as broad as the Required Insurance. Each Party shall provide documents in evidence of such coverage as required in this Agreement.

17. **ESTOPPEL CERTIFICATES**. Each Party shall from time to time, within fifteen (15) Business Days after receipt of written request from the other Party, execute, acknowledge and deliver a statement in customary form (i) certifying that this Agreement is unmodified (whether by formal waiver, amendment, or otherwise) and in full force and effect or, if modified, stating the nature of such modification and certifying that this Agreement as so modified is in full force and effect (or, if this Agreement is claimed not to be in force and effect, specifying the grounds therefor), (ii) acknowledging that there are not, to the knowledge of the other Party, any uncured Defaults on the part of such other Party hereunder (or specifying such Defaults if any are claimed), and (iii) certifying such other matters as the requesting Party or its respective current or prospective development partners, mortgagees, insurance carriers, auditors, and/or potential purchasers or lessees may reasonably request. The failure to timely deliver a statement shall constitute a

conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured Defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

18. INTENTIONALLY DELETED.

19. **NOTICE.** 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 affected 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. The notice addresses for the Parties, as of the Effective Date, are as follows:

If to CSU:

The California State University  
401 Golden Shore, 5th Floor  
Long Beach, CA 90802-4210  
Attn: Steve Relyea, Executive Vice Chancellor and Chief Financial Officer  
Email: srelyea@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 a copy 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: [gajones@calstate.edu](mailto:gajones@calstate.edu)

and also a copy 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](mailto:ddrago@sheppardmullin.com)

If to City:

City of San Diego  
Parks and Recreation Department  
202 C Street, MS-39  
San Diego, CA 92101  
Attn: Andrew Field, Director  
Email: [afield@sandiego.gov](mailto:afield@sandiego.gov)

With a copy to:

City of San Diego  
1200 Third Avenue, Suite 1700a  
San Diego, CA 92101  
Attn: Cybele Thompson, Director, Real Estate Assets Dept.  
email: [thompsonc@sandiego.gov](mailto:thompsonc@sandiego.gov)

and also a copy to:

City of San Diego  
1200 Third Avenue, Suite 1700a  
San Diego, CA 92101  
Attn: Cybele Thompson, Director, Real Estate Assets Dept.  
email: [thompsonc@sandiego.gov](mailto:thompsonc@sandiego.gov)

City of San Diego  
9192 Topaz Way, MS 901  
San Diego, CA 92123  
Attn: Shauna Lorange, Director, Public Utilities Department  
email: [SLorange@sandiego.gov](mailto:SLorange@sandiego.gov)

20. **CONTRACTS AWARDED BY CSU.** CSU shall keep the River Park and the Storm Water BMPs free from all encumbrances and liens of any nature which arise out of any work performed by a contractor or materialman hired by CSU (or any subcontractor of such contractor or materialman) or any lien or encumbrance created or expressly permitted by CSU. CSU shall defend, indemnify, protect, and hold harmless the Indemnified Parties from and against any and all such encumbrances and/or liens, and from and against any Claim relating to or charged against the River Park in connection CSU's violation of this Section.

21. **PREVAILING WAGES.**

21.1 Prevailing Wage. CSU will cause compliance with California Labor Code sections 1720 through 1781, as amended or supplemented from time to time, and all regulations promulgated or enforced by the California Department of Industrial Relations or any other State agency with respect to prevailing wages, and any Federal Law regarding prevailing wages (collectively, "**Prevailing Wage Law**") with respect to the Maintenance of the River Park, provided that the maintenance of such public improvements occurs on state-owned property or involves the use of state funding, as set forth in Section 22.0908. To the extent allowed under State Law, (a) all maintenance, construction and improvement work in the River Park will be performed by contractors and subcontractors licensed by the State; and (b) CSU will cause all contractors and subcontractors performing work in the River Park to use good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County, as set forth in Section 22.0908.

21.2 Awarding Body. CSU acknowledges that the City is not the awarding body for construction of any component of the River Park required or contemplated under this Agreement. City acknowledges that CSU is not the awarding body for any non-River Park improvements that may be undertaken by the City on the CSU Property or the River Park Property, including for Pure Water San Diego, utility or other improvements constructed by, on behalf of or at the direction of the City.

22. **DRUG FREE WORKPLACE.** CSU has its own Drug-Free Workplace policy as required by and based on applicable Law that contractors and subcontractors will be required to comply with in connection with the River Park.

23. **AMERICANS WITH DISABILITIES ACT.** It shall be CSU's responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations.

24. **NONDISCRIMINATION.** CSU shall not discriminate on the basis of race, gender, gender identity, gender expression, religion, national origin, ethnicity, sexual orientation, age, or disability in the performance of its obligations under this Agreement or its activities related to the River Park or the Storm Water BMPs, including but not limited to permitting, solicitation, selection, hiring, or treatment of consultants, contractors, subcontractors, vendors, suppliers, permittees, licensees, invitees, or guests.

25. **UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.** Except as otherwise expressly set forth in this Agreement, performance by either Party under this



Agreement shall not be deemed or considered to be in Default or breach, where such Default or breach is due to an Unavoidable Delay. Any Party claiming Unavoidable Delay shall provide written notice to the other Party: (a) within thirty (30) days after such Party knows of such Unavoidable Delay; and (b) within thirty (30) days after such Unavoidable Delay ceases to exist. To be effective, any written notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of occurrence of the Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party seeking to be excused from performance shall exercise reasonable, diligent efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

26. **CERTAIN DEFINED TERMS.** In addition to any terms defined elsewhere in this Agreement, the following terms shall be defined as set forth below:

26.1 **"Business Day"** means a day other than Saturday, Sunday, or any day on which (i) federally-insured banks are closed, (ii) the County Recorder is closed or (iii) the administrative offices of either City or CSU are closed.

26.2 **"City Parties"** means City's officials, employees, agents, officers, attorneys, and representatives.

26.3 **"Claim"** means 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 reasonable expert fees and expenses and, if the Party is in Default regarding its obligations to provide indemnification by improperly failing to provide a defense for any indemnified Person after expiration of the notice and cure periods described in this Agreement, 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 Government representative or entity.

26.4 **"Cooperate"** means CSU's and the City's good faith efforts to reasonably communicate with each other and use reasonable efforts to take such steps as may be reasonably necessary to effectuate and implement the terms and conditions of this Agreement. For clarification, "Cooperate" shall not include any obligation to incur liability or to retain or to utilize any third party consultants (including experts, advisors, or outside counsel).

26.5 **"Declaration of Property Development Restrictions and Permitting"** means a certain Declaration of Covenants, Conditions, and Restrictions Regarding Development and Permitting of SDSU Mission Valley Property entered into by the Parties with respect to the CSU Property in connection with the Purchase Agreement and recorded concurrently with this Agreement.

26.6 **"Environmental Claim"** means any Claim relating to or arising from any actual or alleged violation of any Environmental Law or any Hazardous Substance Discharge, as well as all damages or costs of any kind or of any nature whatsoever to the extent relating directly or indirectly to such a Claim.

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

26.8 **“Government”** means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City, or otherwise), whether now or later in existence.

26.9 **“Hazardous Substance”** means 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.

26.10 **“Hazardous Substance Discharge”** means any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the River Park Property or during transportation of any Hazardous Substance to or from 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 River Park Property, whether or not caused by a Party.

26.11 **"Kinder Morgan"** means Kinder Morgan Energy Partners, L.P., a Delaware limited partnership.

26.12 **"Kinder Morgan Settlement Agreement"** means 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 CSU Property and the River Park Property arising from the historical accidental release of Hazardous Substances from the adjacent Mission Valley Terminal site owned and operated by Kinder Morgan.

26.13 **"Law"** means 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 CSU Property, the River Park Property, or the River Park, including relating to any development, construction, use, maintenance, taxation, operation, occupancy, or environmental conditions affecting the CSU Property, the River Park Property, or the River Park, 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.

26.14 **"Legal Costs"** means, 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, and court costs.

26.15 **"Murphy Canyon Creek"** means the creek that flows generally in a north-to-south alignment through the Murphy Canyon Creek Parcel, onto the River Park Property and toward the San Diego River.

26.16 **"Murphy Canyon Creek Parcel"** means the real property generally located at the eastern boundary of the CSU Property and consisting of approximately 2.5 acres, as described more completely in the Declaration of Property Development Restrictions and Permitting.

26.17 **"New Stadium"** means the new stadium that CSU will construct on the CSU Property, as further defined in the Declaration of Property Development Restrictions and Permitting.

26.18 **"Non-Government Use"** has the meaning given in the Declaration of Property Development Restrictions and Permitting.

26.19 **"Parcel Map"** means a proposed parcel map with respect to the CSU Property, the River Park Property and other property owned by City, as described more completely in the Purchase Agreement.

26.20 **"Person"** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

26.21 **"River Park Agreements"** means collectively, this Agreement, the Easement Agreement for River Park Construction and Maintenance and the River Park and Storm Water BMP Development Agreement.

26.22 **"Unavoidable Delay"** means 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 acts of God, fire, earthquake, flood, casualty, war, acts of terrorism, riots, regional natural disasters, pandemic, current or future COVID-19 orders and/or mandates from federal, state or local governments, inability to obtain required materials or supplies, a labor dispute which results in a strike, work stoppage or other inability to obtain labor, environmental contamination, governmental delays (excluding delays directly caused by the Party asserting an Unavoidable Delay); provided Unavoidable Delay shall not, under any circumstances, include delay caused by or relating to the financial condition, insolvency, or inability to obtain financing on the part of the Party asserting that Unavoidable Delay exists.

## 27. GENERAL PROVISIONS.

27.1 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California or as limiting the rights and obligations of City in its governmental or regulatory capacity. Nothing in this Agreement shall be construed as a limitation on the governmental police power or other legal authority (whether direct or delegated) of the CSU or as limiting the rights and obligations of CSU in its governmental or regulatory capacity.

27.2 California Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof. CSU covenants and agrees to submit to the personal jurisdiction of any state court in the City of San Diego, State of California for any dispute, claim, or matter arising out of or related to this Agreement.

27.3 City's Consent, Discretion. City's consent or approval under this Agreement shall mean the written consent or approval of the City Representative.

27.4 Non-Assignment. CSU shall not assign any rights, obligations, or duties under this Agreement to a third party without the prior written consent of City which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, this Section shall not prevent CSU from delegating its rights and/or obligations under this Agreement to any Person that CSU has contracted with to perform any of CSU's duties or obligations under this Agreement. Notwithstanding any approved assignment or permitted delegation, CSU shall remain primarily liable under this Agreement.

27.5 Jurisdiction and Venue. The venue for any suit concerning solicitations or this Agreement, the interpretation or application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

27.6 Binding; Successors in Interest. The rights and obligations contained in this Agreement shall inure to the benefit of and be binding upon the successors-in-interest, agents, employees, assigns, and transferees of the Parties, provided that with respect to the CSU Property, this Agreement shall be binding solely upon the fee owner of the portion of the CSU Property (as it may later be subdivided) upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses.

27.7 Amendments. This Agreement may be amended only upon the approval and signature of both Parties. Any amendment to this Agreement that is signed by one Party, but not the other Party, shall be null and void and of no force or effect whatsoever. If the CSU Property is subdivided in the future, upon request by either Party, the Parties shall record an amendment to this Agreement partially releasing certain subdivided portions of the CSU Property consistent with the intent of this Agreement. Without limiting the foregoing rights to amend this Agreement, the Parties hereby acknowledge and agree that (i) in furtherance of the development of the CSU Property, CSU currently intends to record a subdivision map for the CSU Property which will subdivide the CSU Property into various separate legal parcels, (ii) nothing in this Agreement shall be construed as granting City any right to approve any such subdivision map and/or the legal parcels created thereby, (iii) CSU's obligations under this Agreement are intended to only apply to CSU and any successor fee owner of the portion of the CSU Property upon which the New Stadium is to be located and shall not be binding upon any successor-in-interest or lessee of any portion of the CSU Property containing residential, retail, commercial or Non-Government Uses, and thus, after a subdivision map is recorded, this Agreement will not be applicable to the entire CSU Property, and (iv) at such time, without need for City consent or approval, in addition to such subdivision map and all matters contained therein, CSU shall be allowed, in its sole discretion, to record against title to the CSU Property one or more instruments which specifically identify which legal parcels created by the subdivision map contain specific components of the project to be developed on the CSU Property and/or specific areas of the CSU Property.

27.8 Drafting Ambiguities. The Parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision of whether to seek advice of legal counsel with respect to this Agreement is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

27.9 Conflicts Between Terms. If this Agreement conflicts with an applicable local, state, or federal law, regulation, or court order, then applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits or attachments, other agreements entered into between the Parties related to the River Park or the Storm Water BMPs, and laws, regulations, or orders, are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

27.10 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all

continuing obligations indicated in this Agreement, shall survive completion and acceptance of performance and termination, expiration or completion of the Agreement.

27.11 CSU as Primary Contact for Media Inquiries. CSU is the primary contact with the media regarding the River Park; however, CSU shall forward all questions regarding the status of the River Park to the Communications Department's Senior Public Information Officer for Parks and Recreation Department so that City is aware of any media inquiries regarding the River Park and CSU's intended response, and to allow City to provide a response on behalf of City if it desires to do so. CSU is not authorized to speak to the media on behalf of City. City shall forward all questions it receives regarding the River Park status to CSU so that CSU is aware of any media inquiries regarding the River Park and City's intended response, and to allow CSU to provide a response on behalf of the CSU if it desires to do so. City is not authorized to speak to the media on behalf of the CSU.

27.12 No Third-Party Beneficiaries. Except as may be specifically set forth in this Agreement, none of the provisions of this Agreement are intended to benefit any third party not specifically referenced in this Agreement. No party other than City and CSU shall have the right to enforce any of the provisions of this Agreement.

27.13 Compliance with Law. CSU shall require its contractors, subcontractors, agents, and employees to comply with all applicable Laws with respect to this Agreement. CSU may satisfy this requirement by including a term in its contracts requiring compliance with applicable law.

27.14 Integrated Agreement. This Agreement, including attachments and/or exhibits, contains all of the agreements of the Parties, and all prior negotiations and agreements are merged herein. Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by a written agreement executed by duly authorized representatives of the Parties. Any alleged oral amendments have no force or effect.

27.15 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

27.16 Waiver. The failure of either Party to insist upon the strict performance of any covenant, term, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall not constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term of this Agreement shall continue in full force and effect without respect to any existing or subsequent breach.

27.17 Headings. All headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

27.18 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though the Parties had executed the same page.

27.19 Exhibits. The following exhibits are attached hereto and incorporated herein:

- A River Park Easement Deed
- B River Park Improvements
- C Scope of Maintenance Services
- D City Incident Report Form
- E Designation of Representatives
- F Requirements for Storm Water BMPs
- G Southern Murphy Canyon Creek Storm Water Requirements
- H Rider to Contract

27.20 Reservation of Rights. Nothing in this Agreement impairs or limits (i) the access rights of the City set forth in the Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 1 (Construction Period), attached as Attachment 30 to the Purchase Agreement and the Easement Agreement Regarding Sewer and Water Facilities, Rights-of-Way, and San Diego River Access – Stage 2 (Completed Development), attached as Attachment 32 to the Purchase Agreement, (ii) the City's rights of access to the River Park Property, or (iii) the City's rights under the Kinder Morgan Settlement Agreement and the City's rights of access to the River Park Property to exercise those rights.

27.21 Third-Party Relationships. Nothing in this Agreement shall create a contractual relationship between the City and any third-party; however, the Parties understand and agree that the City is an intended third-party beneficiary of all CSU's contracts, purchase orders and other contracts entered into on or after the Effective Date of this Agreement between CSU and third-party services for the maintenance and operation of the River Park. Pursuant to and in accordance with Section 11.3(b), above, CSU shall incorporate this provision into its contracts, supply agreements and purchase orders by attaching and incorporating in same the Rider to Contract in form attached as **Exhibit H, Rider to Contract**. CSU will also use commercially reasonable efforts to cause the Rider to Contract to be entered into with respect to such contracts executed prior to the Effective Date.

*[remainder of 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:**

City of San Diego,  
a California municipal corporation

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

By \_\_\_\_\_

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

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

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER &  
HAMPTON, LLP

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

Domenic C. 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



STATE OF CALIFORNIA                     )  
      )   
COUNTY OF \_\_\_\_\_ )

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A-1**

**Legal Description of the CSU Property**

[to be attached]

**EXHIBIT A-2**

**Legal Description of the River Park Property**

[to be attached]

**EXHIBIT B**

**Easement Agreement for River Park Construction and Maintenance**

[to be attached]

## EXHIBIT C

### Scope of Maintenance Services

All maintenance and replacement materials for planting and irrigation items including replacement groundcovers, shrubs, trees, mulches, turf overseeding, pesticides, fertilizers, soil amendments, planting and irrigation equipment and accessories, etc. shall be pursuant to the River Park and Storm Water BMP Development Agreement and these specifications. Notwithstanding the foregoing, the provisions of this Exhibit shall be subject to revision as mutually agreed on by the Parties depending on the final River Park Improvements.

All watering, irrigation, and power washing/spraying under these specifications must comply with City's "Emergency Water Regulations" (San Diego Municipal Code 67.3801 et seq., as may be amended from time to time), including as applicable to all City Parks and Recreation facilities. The City Representative will coordinate with the CSU Representative on any specific restrictions or necessary actions to comply with the special restrictions or provisions applicable to the River Park Improvements. Any issues or fines related to violations of the "Emergency Water Regulations" or applicable laws and regulations by CSU shall be the responsibility of CSU. CSU shall not be in Default of this Agreement if it reduces or eliminates irrigation of the River Park in the event water conservation measures are implemented pursuant to the request or direction of City, CSU or other applicable authorities.

In addition, for all activities under these specifications, CSU shall, at no expense to City, comply with all applicable laws, rules, regulations and direction of competent governmental authority (including the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management, including applicable requirements of the applicable National Pollutant Discharge Elimination System ("NPDES") permit. CSU acknowledges and agrees that such legal requirements may change at any time and from time to time.

At all times CSU and its subcontractors shall exercise care with regard to the use of equipment and machinery in and around the River Park Property to prevent injury and/or damage to patrons, trees, building surfaces, walls, header board, light fixtures, signage, etc.

28. **LANDSCAPING.** CSU shall maintain all landscaping within the River Park in a good and attractive condition, including without limitation the trimming, watering and fertilization of all turf, ground cover, shrubs and trees, removal of dead or waste material and replacement of any dead or diseased grass, ground cover, shrubs or trees; maintenance of planted areas free of weeds; and the trimming of all trees and shrubs so that they do not impede pedestrian traffic and the pruning of trees.

29. **SYNTHETIC TURF.** CSU shall maintain synthetic turf, if any, in good condition pursuant to the manufacturer's recommendations and shall be fixed or replaced as CSU deems necessary in its reasonable discretion.

30. **IRRIGATION.** CSU shall maintain all irrigation systems within the River Park in good conditions. All irrigation systems for the landscaping shall be maintained to provide an appropriate amount of water to the landscape for plant growth without causing soil erosion and runoff.

31. **PATHWAYS.** CSU shall maintain all sidewalks, trails and pathways within the River Park in a smooth and safe condition, and shall be responsible for the removal of weeds and debris.
32. **PLAY EQUIPMENT AND PLAY AREA SURFACING.** CSU shall maintain all play equipment and play area surfacing in a clean and safe condition. CSU shall temporarily secure broken or damaged equipment so it cannot be used and place appropriate signage to notify the public that the equipment is out of service, and repair broken or damaged equipment in a timely manner. Play safety surfacing shall be regularly inspected at intervals recommended by the manufacturer to insure that the surface meets the fall zone specifications as required for safety. Play safety surfacing shall be regularly inspected at intervals recommended by the manufacturer for signs of cracking, granulating or flaking and repaired promptly per manufacturer's instructions.
33. **ART OBJECTS.** CSU shall, at no cost to City, be responsible for the maintenance of any artwork installed in the River Park including, but not limited to, cleaning of artwork, artwork-related plaques and surrounding paving. Graffiti and general bird droppings must be removed in within a reasonable period of time.
34. **LIGHT FIXTURES.** CSU shall be responsible for maintaining all light fixtures in good condition. CSU shall be responsible for ensuring the correct aiming of light fixtures and replacement of defective/burned-out lamps when necessary.
35. **ELECTRICAL POWER.** CSU shall be responsible for electrical power for lights within the Recreation Easement.
36. **DRAINAGE FACILITIES.** CSU shall be responsible for periodic inspection of surface and subsurface drains located within the Recreation Easement and for assuring proper flow and functioning. Debris or vegetation that might accumulate at drain inlets shall be removed or repair as required.
37. **TRASH REMOVAL.** All trash, litter or other debris, and the residue of urination and defecation shall be removed from the River Park Property at least one (1) time per day.
38. **GRAFFITI REMOVAL.** CSU shall, within five (5) days of occurrence, remove all graffiti including but not limited to graffiti on walls, fencing, signs, site furniture, paving, trellis, signage, boulders and fencing structures and play equipment.
39. **Dog waste disposal bag dispensers.** CSU shall replenish dog waste disposal bags as needed.
40. **TRELLIS AND FENCING.** CSU shall maintain fencing, gates and trellis elements in a good, attractive and safe condition, making repairs as needed.
41. **SIGNAGE.** CSU shall maintain park signage in good condition.
42. protection of PaRK facilities and structures.
43. **PUBLIC RESTROOMS.** CSU shall clean and maintain all grounds, structures and fixtures of the restrooms in good condition, in accordance with all applicable health and safety

codes. CSU will clean and disinfect all plumbing fixtures, mirrors, washroom sanitary and waste receptacles, floors, wall bases and dispensers of supplies located in restrooms regularly and adequately maintain and stock all toiletry receptacles and dispensers with supplies. The entrance doors to the Joint-Use Public Restrooms shall be open seven (7) days a week at a minimum from the hours of 6:00 a.m. to 9:00 p.m. (or other hours as CSU may reasonably establish in consultation with the City Representative) and will be inspected from time-to-time throughout the day by personnel of the private security or campus policy, or by other persons engaged by CSU at no expense to City. The restrooms will have appropriate lighting to deter crime.

44. **PARK EASEMENT SECURITY.** The River Park shall be patrolled by a security guard or university police as part of the 24-hour-a-day site observation patrol. The River Park may be monitored by a 24-hour-a-day recordable video security camera system with internet website accessibility set up by CSU. If CSU elects to monitor the River Park via video security cameras, CSU shall partner with the San Diego Police Department's "Operation: Secure San Diego" program, or a substantially similar program, to allow access to live video transmissions. CSU shall provide adequate signage at various areas in the River Park indicating that the River Park is monitored by security camera.

45. **SECURITY FENCE.** Within 180 days following completion of the River Park Improvements and opening the River Park to the public, CSU and City, including City Representative and a representative of the San Diego Police Department, shall meet and confer about whether any of them believes that the number of security-related incidents in or about the River Park and in the immediately surrounding community, as evidenced by park maintenance records related to repairs and associated mis-use, inappropriate use and/or vandalism, private security and police records and reports and security tapes, is at a level that proper control and/or security in the River Park cannot be adequately maintained without installing a security fence around the perimeter of the River Park (a "Security Fence"). The parties would also review the fence design to determine the appropriate height and openings to the surrounding sidewalk that may be needed to adequately secure the River Park. If, after meeting and conferring, any of CSU or City reasonably determines that the Security Fence should be installed due to security concerns, CSU shall as reasonably and promptly thereafter, as commercially possible, cause the Security Fence to be installed, at no expense to City. If the Security Fence is not installed at that time, CSU and City shall continue to meet and confer periodically to determine whether adequate security in the River Park can be maintained with or without installing the Security Fence. Once installed, the Security Fence can only be removed with the approval of both CSU and City.

**EXHIBIT D**

**City Incident Report Form**

[provided starting on next page]



## EXHIBIT E

### Designation of Representatives

City: Area Manager,                      Area (Primary)

District Manager,                      Area (Backup)

CSU: \_\_\_\_\_ (Primary)

\_\_\_\_\_ (Backup)

## EXHIBIT F

### Requirements for Storm Water BMPs

1. CSU shall operate, maintain, repair, and restore as necessary, at no cost to City, the Storm Water BMPs in accordance with applicable regulations and permits, including grading permits related to the construction and operation of the Storm Water BMPs, and the plans and specifications in the Final EIR (Hydrology & Water Quality).
2. CSU shall prepare (if qualified), or cause to be prepared, an Operation and Maintenance Procedure (OMP) for the Storm Water BMPs consistent with the Final EIR. The OMP shall be updated by CSU as necessary, subject to the City's reasonable review and in a manner reasonably satisfactory to the City.
3. CSU shall maintain, repair, and replace the Storm Water BMPs in conformance with the OMP, subject to City's reasonable review, and in a manner reasonably satisfactory to City.
4. CSU shall maintain all operation and maintenance records for the Storm Water BMPs for at least three (3) years or longer if required by the CSU Retention Schedule or applicable Law. These records shall be made available to City for inspection upon request at any time with sufficient notice.
5. CSU shall comply with all applicable Law in connection with its design, construction, operation, and maintenance of the Storm Water BMPs, including, but not limited to, the Federal Water Pollution Control Act [33 U.S.C. section 1251 *et seq.* and the National Pollutant Discharge Elimination System program.
6. CSU shall be responsible for ensuring that there not any adverse water quality impacts as a direct result of the Storm Water BMPs. If a notice of violation, order, directive, enforcement action, or any other type of action or notice is taken or issued by a governmental or regulatory agency, or a court of competent jurisdiction with respect to the Storm Water BMPs (collectively "**NOV**"), CSU shall, at its sole expense, promptly take action including performing repairs, maintenance, and restoration, as necessary, to completely remedy and resolve the NOV to the satisfaction of the entity issuing the NOV.

## EXHIBIT G

### Southern Murphy Canyon Creek Storm Water Requirements

1. Subject to the terms and conditions of this Agreement and the other River Park Agreements, CSU will maintain Southern Murphy Canyon Creek, at no expense to City as part of the River Park and so long as it has responsibility for maintaining the River Park.
2. CSU will keep maintenance records for Southern Murphy Canyon Creek in accordance with the terms contained in the body of this Agreement.
3. CSU will comply with all applicable Laws in connection with its maintenance of Southern Murphy Creek.
4. CSU will be responsible for ensuring that there not any adverse water quality impacts arising directly from CSU's maintenance of Southern Murphy Canyon Creek. If a notice of violation, order, directive, enforcement action, or any other type of action or notice is taken or issued by a governmental or regulatory agency, or a court of competent jurisdiction with respect to maintenance of Southern Murphy Creek (collectively, "**NOV**"), CSU will, at its sole expense, and subject to the limitations described in Section 1.2 and 1.3 of this Agreement, promptly take action including without limitation performing additional maintenance to remedy and resolve the NOV to the satisfaction of the entity issuing the NOV.

## EXHIBIT H

### RIDER TO CONTRACT

#### *Explanatory Note*

The City of San Diego ("**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 entered into that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions dated \_\_\_\_\_, 2020 ("**Purchase Agreement**"). Pursuant to the Purchase Agreement, the City and CSU have entered into or will be entering into as required by the Purchase Agreement (i) that certain Agreement Regarding Development of River Park Improvements and Storm Water Best Management Practice Structures dated \_\_\_\_\_, 2020 and (ii) that certain Agreement Regarding Maintenance and Management of the River Park and Storm Water Best Management Practice Structures dated \_\_\_\_\_, 2020, (collectively, "**Purchase Agreement Documents**").

As part of CSU's implementation and performance of its duties and obligations under the Purchase Agreement Documents, CSU and each and every selected developer, consultant, and contractor for construction, operation, or maintenance of the River Park Property shall attach and incorporate this Rider to Contract into each respective developer, consultant, and contractor agreement and shall execute this Rider to Contract (to be updated only to reflect the applicable parties). It shall also be the obligation of each and every selected developer, consultant, and contractor for construction, operation, or maintenance of the River Park Property to require each of its contractors and consultants, to attach and incorporate this Rider to Contract into each respective consultant and contractor agreement and to execute this Rider to Contract (to be updated only to reflect the applicable parties).

*[Rider to Contract form provided below]*

### RIDER TO CONTRACT

#### (CITY OF SAN DIEGO IS EXPRESS BENEFICIARY OF AGREEMENT)

This Rider to Contract ("**Rider**") is attached to and incorporated in that certain \_\_\_\_\_ [insert full name of agreement] ("**Agreement**") dated \_\_\_\_\_, \_\_\_\_\_, by and between [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**") [Developer] [Contractor] [Consultant] and [Developer] [Contractor] [Consultant], a \_\_\_\_\_ ("**Contractor**"). This Rider shall form an integral part of the Agreement. Wherever possible, the provisions of this Rider and the Agreement shall be construed consistently so that each is given application to the fullest extent possible consistent with its intent.

1. Contractor and [CSU] [Developer] [Contractor] [Consultant] each agree that the City of San Diego ("**City**") is an express third party beneficiary of the Agreement, and shall be entitled to all rights and remedies provided to [CSU] [Developer] [Contractor] [Consultant] pursuant to the terms of the Agreement. Loss, waiver or other limitation on [CSU] [Developer] [Contractor] [Consultant]'s rights shall not affect or impact the City's rights under those provisions, nor shall any such loss, waiver or other limitation on the City's rights affect or impact the rights of [CSU]

[Developer] [Contractor] [Consultant]. [CSU] [Developer] [Contractor] [Consultant] and the City shall have the right to separately and independently exercise such rights as to their respective interests.

2. Without limiting Paragraph 1 of this Rider, Contractor specifically acknowledges that the City shall be an express third party beneficiary of all provisions in the Agreement requiring Contractor to indemnify, defend, protect and hold harmless [CSU] [Developer] [Contractor] [Consultant] (collectively "**Indemnity Obligations**"). Contractor further acknowledges and agrees that the Contractor's Indemnity Obligations are not limited by the insurance policies and coverages that Contractor is required to maintain and if, for any reason such insurance policies and coverages are insufficient to cover all Indemnity Obligations, Contractor shall nevertheless remain responsible to perform all such Indemnity Obligations in full. Contractor further acknowledges and agrees that the Contractor's Indemnity Obligations under those provisions shall survive termination or expiration of the Agreement with respect to all Indemnity Obligations whether or not accrued as of the date of such termination.

3. The City shall also be named as an additional insured in an endorsement to the insurance policies required by the Agreement. Contractor shall furnish [CSU] [Developer] [Contractor] [Consultant] with evidence that such insurance has been obtained upon execution of the Agreement, and [CSU] [Developer] [Contractor] [Consultant] shall provide copies of such evidence to CSU which shall provide such copies of evidence to the City.

4. Contractor acknowledges that it is acting as an independent contractor in performing its obligations under the Agreement and that Contractor shall in no event be considered an agent or employee of the City or CSU. Neither Contractor nor any of its employees shall have any right to participate in any pension plan, insurance, bonus, workers' compensation or similar benefits the City or CSU provides for its employees. Contractor shall hold the City and CSU harmless from any and all payroll and other taxes and interest thereon and penalties therefor which may become due as a result of any obligations, services or other matters performed by Contractor or its agents or employees pursuant to the Agreement.

5. The City, as a third-party beneficiary, neither undertakes nor assumes any obligations under the Agreement. Nothing in this Rider requires the City to be responsible for or establishes a duty to review, inspect, supervise, pass judgment upon, or inform Contractor or any third party of any matter in connection with the operations, maintenance, development, oversight, and coordination of the subject Property and improvements thereon. Nothing in this Rider requires the City to review or determine the quality, adequacy or suitability of any plans or improvements, labor, service, equipment or material furnished, any person furnishing the same, or other like matters. Contractor and all employees and agents of Contractor shall rely upon their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information provided by the City in connection with such matters is for the public purposes of the City, and neither Contractor nor any third party is entitled to rely thereon.

6. Any notices to the City pursuant to the Agreement shall be delivered to the City in the manner provided in the Agreement at the addresses set forth below:

To City:

City of San Diego  
Attn: Director, Real Estate Assets Dept.  
1200 Third Avenue, Suite 700  
San Diego, CA 92101

City of San Diego  
Attn: Director, Parks and Recreation Department  
202 C Street, MS-39  
San Diego, CA 92101

And a copy to:

City of San Diego  
9192 Topaz Way, MS 901  
San Diego, CA 92123  
Attn: Shauna Lorange, Director, Public Utilities Department  
email: SLorange@sandiego.gov

7. Contractor acknowledges and agrees that Contractor shall have no rights or remedies against the City for any payments due by [CSU] [Developer] [Contractor] [Consultant] to Contractor under the Agreement or for the performance of any obligations of [CSU] [Developer] [Contractor] [Consultant] under the Agreement.
8. There shall be no modification, waiver or other alteration or change to the provisions of this Rider without the prior written consent of the City and CSU.
9. This Rider may be signed in one or more counterparts, all of which, taken together, shall constitute a single instrument.

*[SIGNATURES FOLLOW ON NEXT PAGE]*