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May 23, 2017

REPORT TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

PROPOSED INITIATIVE FOR SAN DIEGO RIVER PARK AND SOCCER CITY

### INTRODUCTION

At the request of the Mayor and several City Councilmembers, the Office of the City Attorney conducted a review of a citizen's initiative titled the "San Diego River Park and Soccer City Initiative" (Initiative).<sup>1</sup> The Initiative proposes the development and use of approximately 233 acres of City-owned real property at and near Qualcomm Stadium (Existing Stadium Site), and 20 acres of City-owned real property and improvements on Murphy Canyon Road, which was previously the San Diego Chargers' practice facility<sup>2</sup> (Murphy Canyon Leased Property). The Existing Stadium Site and the Murphy Canyon Leased Property are collectively referred to as the Property.<sup>3</sup>

On March 2, 2017, the Initiative proponent<sup>4</sup> submitted a notice of its intent to circulate the petition to the Office of the City Clerk for the City of San Diego.<sup>5</sup> The Initiative proponent states that the Initiative's purpose is to promote and enhance San Diego's unique character by adopting a development plan designed to create a San Diego River park consistent with past planning efforts to unify the City's urban setting with the natural environment, as well as to

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<sup>1</sup> The Initiative and its exhibits, including the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan (Specific Plan), are collectively referred to as the "Initiative." The Initiative is on file in the Office of the City Clerk. The proposed development has not been reviewed pursuant to the California Environmental Quality Act (CEQA). Ordinances enacted by initiative, whether directly or by election, are not subject to CEQA review. *Tuolumne Jobs & Small Bus. Alliance v. Superior Court*, 59 Cal. 4th 1029, 1040-42 (2014). Whether future approvals would be subject to CEQA review (e.g., subdivision maps) will require additional legal analysis at that time.

<sup>2</sup> The City will continue to control the remaining approximately 30 acres of the property on Murphy Canyon Road.

<sup>3</sup> The terms "Existing Stadium Site," "Murphy Canyon Leased Property," and "Property" are defined in the Initiative. Initiative, § 7, 61.2802, p. 11. The Specific Plan uses the terms "River Park and Mixed Use Site," "Murphy Canyon Site," and "Plan Area." Initiative, Exhibit F, § 1.1, p. F-13.

<sup>4</sup> The media has widely reported FS Investors to be the Initiative proponent. However, in accordance with San Diego Municipal Code (Municipal Code or SDMC) sections 27.1008 and 27.1010, the proponent of the Initiative is Catherine April Boling because she signed the Statement of Reasons that was included in the Initiative petition. There is also a website, GoalSD.com, that contains information related to the Initiative. The website says that it is paid for by GOAL: San Diegans for the River Park, School Funding, Soccer and a Tax-Free Stadium - A Committee to redevelop the Qualcomm Stadium site, sponsored by MLS SD Pursuit, LLC, with financial support from Michael Stone and Peter Seidler, 7185 Navajo Rd., SD. This Report will refer to the "Initiative proponent."

<sup>5</sup> An initiative petition may not be circulated for signatures until the proponent has published a notice of intention to do so in at least one daily newspaper of general circulation. SDMC § 27.1002.

provide economic opportunities, including creating construction and permanent jobs, generating new business for local hotels and restaurants, and encouraging the creation of new businesses in the City.<sup>6</sup>

On April 24, 2017, the Initiative proponent submitted the Initiative petition to the City Clerk. On May 22, 2017, the City Clerk found that the petition contained the requisite number of valid signatures. Therefore, the petition will be presented to the San Diego City Council (Council). SDMC § 27.1034. Under the City's elections ordinance,<sup>7</sup> the Council must adopt or reject the Initiative as presented. SDMC § 27.1034. The Council may not amend the Initiative. *Id.* If the Council rejects the Initiative or fails to act, then the Council must submit the Initiative to City voters. SDMC § 27.1035. The Charter states that a citizen's initiative that qualifies for the ballot is to be submitted to City voters at the next citywide general election (in this case, November 2018) or earlier if the Council desires. San Diego Charter § 23. Depending on the Council's action, the Initiative potentially could be placed on the ballot for a special election (which may be called for November 7, 2017 or on another date before November 2018), the June 2018 primary election, or the November 2018 general election. At an election, the Initiative would require a majority vote to pass. SDMC § 27.1043.

This Report explains the Initiative and responds to questions received from the Mayor and Councilmembers to date. This Report only contains an overview of the main terms of the lengthy and complex Initiative.<sup>8</sup> Therefore, this Office recommends that the Initiative be read in its entirety. Nothing contained in this Report should be interpreted to indicate support for or opposition to the Initiative.

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<sup>6</sup> According to the Initiative, the People of the City of San Diego further find and declare that our purpose and intent in enacting this Initiative is to:

1. (a) Adopt the San Diego River Park, Soccer City, and Qualcomm Stadium Redevelopment Specific Plan and San Diego River Park and Soccer City Development Agreement; (b) establish an objective set of legislative standards and a specified process for the lease and sale option of the Property to implement and enforce the Specific Plan; (c) make conforming amendments to the General Plan, San Diego Municipal Code, Mission Valley Planned District Ordinance, and to the Mission Valley and Kearny Mesa Community Plans; and (d) authorize the City, pursuant to an established set of guiding legislative policies and minimum requirements, to take any and all actions to permit and implement the development, construction, operation, maintenance, management, and private financing of the proposed stadium and mixed-use development project.
2. Take all actions described in subsection (1) regardless of whether any provision of the Initiative is found to be invalid.

Statement of Reasons, (Feb. 22, 2017); and also Initiative, § 2(B).

<sup>7</sup> The San Diego Charter (Charter) requires the Council to adopt an election code ordinance providing procedures to govern municipal elections, including initiatives. San Diego Charter §§ 8, 23. The City's procedures regarding initiatives are set forth in Municipal Code sections 27.1001 through 27.1051.

<sup>8</sup> The Initiative includes novel and untested issues, as well as seemingly contradictory provisions. If the Initiative is adopted, there will be many details to clarify and resolve during the implementation, and the parties or a court will need to interpret some of the terms.

## BACKGROUND

The Initiative would generally allow, but does not necessarily require, the following development to occur on the Existing Stadium Site:

- a 34-acre River Park
- 12 acres of active use fields
- 9 acres of neighborhood parks
- a Stadium with up to 32,000 seats<sup>9</sup>
- 2.4 million square feet of office space
- 740,000 square feet of retail space
- 4,800 multi-family residential units (800 units of student focused housing)
- 450 hotel rooms
- an option for a 16-acre stand-alone football stadium for a professional football franchise

Initiative, § 2(A)(5), p. 1; Exhibit F, §§ 1.1-1.3, pp. F-13 to F-16 and § 3.1.2, p. F-32.<sup>10</sup>

Additionally, the Initiative would generally allow, but does not necessarily require, uses to support the Existing Stadium Site on the Murphy Canyon Leased Property that could include:

- practice facilities
- full-sized soccer fields
- team operations
- media
- lodging for visiting teams

Initiative, § 2(A)(8), p. 2; Exhibit F, § 3.1.2, p. F-32.

Under the Initiative, the Mayor “shall execute” a 99-year lease for the Property (Lease) with a Qualified Lessee,<sup>11</sup> if the Mayor determines that the Lease meets the requirements of the Municipal Code provisions that would be added by the Initiative and is otherwise consistent with

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<sup>9</sup> The Initiative defines a Joint Use Stadium as “a highest level or premier men’s or women’s outdoor professional soccer league stadium or other outdoor professional sports stadium, which may under certain circumstances be a joint use facility with collegiate football, as described in the *Specific Plan*.” Initiative, § 7, 61.2802, p. 12. The Specific Plan refers to a “Sports Stadium (if used for professional soccer)” or a joint use stadium “for professional and/or collegiate sports, which are anticipated to include a professional soccer team and San Diego State University (“SDSU”) or other collegiate football.” Initiative, Exhibit F, § 1.3, p. F-15. This Report refers to a Stadium, which may contain between 18,000 and 32,000 seats. A 32,000-seat Stadium potentially could be expanded to 40,000 seats, with additional permitting and CEQA review. Initiative, Exhibit F, § 1.3, p. F-15 and § 3.1.1, p. F-32. At this time, this Office understands that there has been no agreement reached regarding SDSU’s use of the Property.

<sup>10</sup> Numerous provisions of the Initiative are included in multiple places. Citations to the Initiative will not include every place where a term is mentioned.

<sup>11</sup> A Qualified Lessee is generally defined as an entity that submitted an application and is under consideration for or has been awarded a professional soccer league franchise to be located in San Diego, as of the effective date of the Initiative. Initiative, § 7, 61.2802, p. 12. Currently, to this Office’s knowledge, there is only one pending application to bring a Major League Soccer expansion franchise to San Diego.

the Mayor's authority, duties, and obligations under the City Charter. Initiative, § 7, 61.2803(b), p. 13, § 61.2805(b), p. 30. The Initiative also includes adoption of the San Diego River Park and Soccer City Development Agreement (Development Agreement). Initiative, § 9, p. 31. To allow the proposed development to occur, the Initiative would rezone the Property,<sup>12</sup> amend the Municipal Code, the General Plan, the Mission Valley and Kearny Mesa Community Plans, and the Mission Valley Planned District Ordinance, and adopt the Specific Plan. Initiative, §§ 3-6 and 8, pp. 3-9, 31. Development of the Property would proceed in accordance with the Specific Plan.<sup>13</sup> The Specific Plan includes an appendix titled "Environmental Mitigation Measures," which specifies features that would be required for development constructed on the Property. Initiative, Exhibit F, Appendix C, pp. F-152 to F-177.

The Specific Plan does not require that development on the Property occur in any particular order.<sup>14</sup> Initiative, Exhibit F, § 8.3.1, p. F-129. Most permitted uses can be built anywhere on the Existing Stadium Site, subject to the maximum development intensity set forth in the Specific Plan. Initiative, Exhibit F, § 8.2, p. F-128. The maximum development intensity is based on a projected amount of daily traffic trips, which may be increased under specified circumstances.<sup>15</sup> Initiative, Exhibit F, § 8.1, p. F-127. A summary of the Lease requirements and Specific Plan are included as Attachments 1 and 2, respectively. The Environmental Mitigation Measures are included in Attachment 2.

## DISCUSSION

### I. WILL ADOPTION OF THE INITIATIVE BRING MAJOR LEAGUE SOCCER TO SAN DIEGO?

No. In January 2017, an application was made to bring a Major League Soccer expansion franchise to San Diego. The application relies on a proposed privately-funded stadium on the Existing Stadium Site. This Office understands that a decision on the award of the Major League Soccer expansion franchise for the 2020 season is expected to take place in late 2017. Whether San Diego will be awarded a Major League Soccer expansion franchise is a separate issue beyond the scope of the Initiative. The Initiative would allow the construction of a Stadium, but cannot compel a private party such as Major League Soccer to award an expansion franchise to a specific entity.

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<sup>12</sup> The Existing Stadium Site and Existing-Adjacent Property are proposed to be rezoned from Mission Valley Planned District Ordinance-Mission Valley-Commercial Visitor (MVPD-MV-CV) to Mission Valley Planned District-Mission Valley-Multi-Use/Specific Plan (MVPD-MV-M/SP). The approximately 50-acre Murphy Canyon Site is proposed to be rezoned from Light Industrial (IL) to Community Commercial (CC). Initiative, § 3(E), p. 4.

<sup>13</sup> The Municipal Code will only apply to the Property to the extent the provisions are consistent with the Specific Plan. Initiative, Exhibit F, § 3.3.2, p. F-40. Consequently, many Municipal Code provisions will not apply to the development, and no other Municipal Code provisions will apply to the Lease. Initiative, § 7, 61.2805(e), p. 30.

<sup>14</sup> The Development Agreement also provides that "the Developer shall have the right (without the obligation) to develop the Property in such order and at such rate and at such time as the Developer deems appropriate within the exercise of its subjective business judgment . . ." Development Agreement, ¶ 15, p. G-9. This language appears to conflict with statements in the Specific Plan that the River Park and active fields shall commence construction not later than the date of the completion of the Stadium. Initiative, Exhibit F, § 8.3.1, p. F-129.

<sup>15</sup> Analysis of the projected traffic trips, traffic impacts, and traffic improvements would require expert analysis, and is beyond the scope of this Report. This Office understands that the traffic impacts and improvements contained in the Initiative were based on a traffic study. The traffic study is not part of the Initiative.

## **II. HOW WOULD THE TERMS FOR A LEASE OF THE PROPERTY BE DETERMINED?**

Normally, lease terms for City property are negotiated between City staff and a potential lessee. At the City, either the Mayor or the Council must approve City leases, depending on the length of the term of the lease. SDMC § 22.0901. Generally, leases over 3 years must be approved by the Council. *Id.* If adopted, the Initiative would change the standard procedure by amending the Municipal Code to add Chapter 6, Article 1, Division 28, titled “Existing Stadium Site and Auxiliary Property Ground Lease.” This new Division would include defined terms, detailed requirements of the contents of a Lease for the Property, and the approval process for such a Lease. Initiative, § 7, 61.2801-61.2805, pp. 9-30. Many of the Lease requirements are summarized in Attachment 1.

The new Municipal Code Division would provide for the Mayor to grant a 99-year lease for the Property (approximately 250 acres) to a Qualified Lessee. Initiative, § 7, 61.2803(b), p. 13. The Qualified Lessee also has the option to purchase up to 79.9 acres of the Existing Stadium Site. Initiative, § 7, 61.2803(g)(1), p. 22. The Lease for the Property and sale of portions of the Property would not be subject to any other Municipal Code provisions or Council Policies.<sup>16</sup> Initiative, § 7, 61.2805(e), p. 30. The Mayor would have the authority to approve the Lease, without approval by the Council. *Id.* The City may begin drafting the Lease based on the standards set forth in the Initiative, subject to campaign laws. *See* City Att’y MS 2017-6 (Mar. 21, 2017).

## **III. HOW MUCH WOULD A QUALIFIED LESSEE PAY TO THE CITY FOR THE PROPERTY?**

The Initiative does not establish the actual amount of rent the City would be paid for a 99-year Lease of the Property.<sup>17</sup> If the Initiative is adopted, the Mayor would be required to determine a “fair market value” for the leasehold interest, which includes the future options to purchase 79.9 acres of the Existing Stadium Site.<sup>18</sup> Initiative, § 7, 61.2803(f)(2), p. 21. The Property’s value for the leasehold interest must be determined as of March 2, 2017, the date the Notice of Intent to Circulate the Petition was filed. The “fair market value” of the leased Property is not intended to include any increases in the Property’s value caused by the passage of the Initiative or the passage of time. Initiative, § 7, 61.2803(f)(2), p. 21.

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<sup>16</sup> In many respects, the Initiative does not follow the Council Policies regarding leases. For example, Council Policy 700-10 addresses the City’s policies regarding the leasing of City-owned property (including price, terms, competitive bidding, appraisal assumptions, City entitlement to ownership of improvements at lease termination, and potential City entitlement to 50 percent of sublease revenue). In addition, Council Policy 700-41 addresses the use of the Request for Proposal process for lease of City-owned land. Also, the Initiative’s indemnification language does not protect the City from potential liability to the same extent as the indemnification language the City normally requires in leases for City property.

<sup>17</sup> Generally, City lessees either pay a flat amount of rent or the higher of a minimum rent versus a percentage rent based on the gross income of specific categories of allowed activities on the property, subject to periodic adjustments. Under the Initiative, the City would be paid one lump sum payment for the 99-year term of the Lease, within 30 days after the Lease was executed. Initiative, § 7, 61.2803(f)(5), p. 22. There would be no periodic adjustments, and the City would not receive any percentage rent based on the Property’s income.

<sup>18</sup> City staff has informed this Office that an appraisal is underway.

There are several factors included in the Initiative that the Mayor may choose to consider in making the “fair market value” determination of the leasehold interest. These include “financial and cost factors” such as the current physical condition of the Property and a potential “benefit and burden adjustment.” Initiative, § 7, 61.2803(f)(2), pp. 21-22. The Initiative states the physical condition of the Property shall be considered, and may include existing contamination of the Property, if any, and the value and obligations of any agreement for remediation of potential contamination to a prospective lessee; the Property’s potential for flooding; biological habitat and any agreements regarding the preservation of habitat; and the presence of Qualcomm Stadium.<sup>19</sup> Initiative, § 7, 61.2803(f)(2)(B), p. 21. The benefit and burden adjustment may consider the costs of demolition and removal of Qualcomm Stadium; the economic impact on a prospective lessee of providing the reverter right;<sup>20</sup> options for third parties on the Property; the Qualified Lessee’s purchase options; and other extraordinary costs or benefits. Initiative, § 7, 61.2803(f)(2)(C), pp. 21-22.

If the “fair market value” is determined to be a negative number, the Initiative requires that the Qualified Lessee pay rent in the amount of \$10,000 for the 99-year term of the Lease. Initiative, § 7, 61.2803(f)(3), p. 22. The City would also be entitled to a fee each time the Qualified Lessee exercises an option to purchase under the Lease. This “exercise fee” will be an amount equal to \$1,000 plus additional consideration, if any, based on specified factors. Initiative, § 7, 61.2803(g)(4), p. 23.

#### **IV. DOES THE INITIATIVE REQUIRE A DEVELOPER TO BUILD A STADIUM?**

The Initiative requires that the Lease contain a provision that a Stadium be constructed if a Qualified Lessee can obtain all regulatory approvals needed for construction.<sup>21</sup> Initiative, § 7, 61.2803(c)(2), (3) and (18), pp. 13, 16. If a lease is not executed, the “Specific Plan and Initiative create no obligations or requirements on the part of developers within the Plan Area to build or construct parks and/or facilities that require regional, State, or Federal permits.” Initiative, Exhibit F, § 4.4, p. F-77. It is unknown at this time whether such permits would be required.

The Specific Plan guides the development of the Property, but does not require that any development be built. Initiative, Exhibit F, § 1.1, p. F-13. The Specific Plan includes several conceptual plans showing how the Property may be developed, including Figure 3.6 titled “Conceptual Stadium Area Rendering.” Initiative, Exhibit F, § 3.1, Figure 3.6, p. F-38. These site plans are not regulatory, “and in no way direct how such areas shall be organized or developed.” Initiative, Exhibit F, § 3.2, p. F-32.

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<sup>19</sup> The Initiative provides that contamination “addressed in third party agreements shall continue to be the responsibility of such third parties or the City as set forth in those agreements” and also provides that other contamination shall “continue to be the responsibility of the City.” Initiative, § 7, 61.2803(j)(3)(B) and (D), p. 26.

<sup>20</sup> Under the Initiative, reverter right means the right of the City to terminate any Lease and take further actions to regain occupancy or ownership of the Property under certain circumstances if the Qualified Lessee fails to construct the Stadium within 7 years, as more particularly described in Section V. Initiative, § 7, 61.2802, p.12.

<sup>21</sup> The Initiative does not say that denial of an application for a Major League Soccer expansion franchise to be located in San Diego would in itself excuse the Qualified Lessee from the requirement to build a Stadium.

## V. WHAT HAPPENS IF A STADIUM IS NOT BUILT?

The City cannot compel the Qualified Lessee to build a Stadium. If a Stadium is not constructed within 7 years,<sup>22</sup> the City may terminate the Lease with the Qualified Lessee and the Property may revert to the City. Initiative, § 7, 61.2803(h), p. 24. However, the Property will not automatically revert to the City; the City must choose to exercise the reverter right. The City's right to terminate the Lease could expire before a Stadium is built, and the City's rights to use any Property that reverts to the City would be limited by any subleases on the Property, which would likely remain in effect. Initiative, § 7, 61.2803(h)(1)(A), p. 24.

## VI. DOES THE INITIATIVE REQUIRE THE DEVELOPER TO BUILD THE RIVER PARK?

Not necessarily. One of the Specific Plan's objectives is to create a San Diego River Park. Initiative, Exhibit F, § 2.0, p. F-29. Under the Initiative, the Lease of the Property must require that the Qualified Lessee set aside approximately 34 acres of open space at the southern portion of the Existing Stadium Site for the River Park. Initiative, § 7, 61.2803(c)(6), p. 14. However, the "Specific Plan and Initiative create no obligations or requirements on the part of developers within the Plan Area to build or construct parks and/or facilities that require regional, State, or Federal permits." Initiative, Exhibit F, § 4.4, p. F-77. Given the proximity of the San Diego River, it is likely that at least one regional, state, or federal permit would be required.<sup>23</sup>

Under the Initiative, the Lease must also require that both the Qualified Lessee and the City diligently pursue any state and federal permits necessary to construct the River Park. Initiative, § 7, 61.2803(c)(7), p. 14. The Qualified Lessee must submit applications for any required permits within 120 days after execution of the Lease. *Id.* If all required state or federal permits are obtained within 18 months of the execution of the Lease, then the Qualified Lessee would be required to construct the River Park. *Id.* However, if any required permits are not obtained within 18 months, the Qualified Lessee is not specifically required to construct the River Park, but may be required to deposit an amount no greater than \$40,000,000 with the City for the future construction of the Park. *Id.* Also, if the Lease is not executed by December 31, 2017, the amount to be deposited decreases to \$20,000,000. Initiative, § 7, 61.2804(i), p. 29. The Initiative does not provide a specific timeframe within which the River Park must be built. *See* note 14. If the Lease is not executed by December 31, 2017, the City may not require time limits, mandatory start dates, or mandatory completion dates for construction of the River Park (or any other parks), except for any time limitations or dates that may be required by state law. Initiative, § 7, 61.2804(i), p. 29.

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<sup>22</sup> This time period could be tolled (put on hold) and extended for numerous reasons. Initiative, § 7, 1.2803(h)(1)(B), p. 24.

<sup>23</sup> The park(s) could still be built if a permit is required. The Qualified Lessee could either obtain any required permit(s) or redesign the park(s) so no permits were required. However, the Initiative creates no obligation for the Qualified Lessee to pursue either option.

**VII. DOES THE INITIATIVE REQUIRE THE DEVELOPER TO BUILD THE OTHER PARKS?**

Not necessarily. The Specific Plan allows for 9 acres of parkland and 12 acres of active use fields. Initiative, Exhibit F, § 4.1, p. F-72. Under the Initiative, the Lease of the Property would require the construction of approximately 12 acres of active use fields and neighborhood parks. Initiative, § 7, 61.2803(c)(8), p. 15. The Initiative does not provide a specific timeframe within which the active use fields and neighborhood parks must be built. *See* note 14. The “Specific Plan and Initiative create no obligations or requirements on the part of developers within the Plan Area to build or construct parks and/or facilities that require regional, State, or Federal permits.” Initiative, Exhibit F, § 4.4, p. F-77. It is unclear what would happen if any required permits could not be obtained, or if the fields and parks were not constructed. If the Lease is not executed by December 31, 2017, the City may not impose any time limits, mandatory start dates, or mandatory completion dates for construction of the parks and fields, except as may be required by state law. Initiative, § 7, 61.2804(i), p. 29.

**VIII. WILL THE DEVELOPMENT COMPLY WITH THE SAN DIEGO RIVER SUBDISTRICT REGULATIONS IN THE MUNICIPAL CODE?**

Yes. The Municipal Code states that the purpose of the San Diego River Park Subdistrict regulations in the Mission Valley Planned District Ordinance is “to ensure that development along the San Diego River implements the San Diego River Park Master Plan and the Mission Valley Community Plan.” SDMC § 1514.0302(a). The River Park Subdistrict includes the River Corridor Area and the River Influence Area. SDMC § 1514.0302(b). The Initiative states that the regulations of the River Park Subdistrict will continue to apply to the areas of the River Park and Mixed Use Site within the River Influence Area. Initiative, Exhibit F, § 3.4.4.2, p. F-53. However, construction is exempt from the discretionary Site Development Permit process in the Environmentally Sensitive Lands regulations (Municipal Code sections 143.0101-143.0160); only ministerial construction permits are required. *Id.* It is unclear whether the River Park Subdistrict regulations would apply to any development in the River Corridor Area.

**IX. DOES THE DEVELOPMENT INCLUDE AFFORDABLE HOUSING?**

Yes. The affordable housing requirements will comply with the current Municipal Code, and include making the greater of 80 units or 10 percent of the on-site dwelling units affordable. This requirement “shall apply from and after the tenth anniversary” of the effective date of the Lease. Initiative, § 7, 61.2803 (c)(11), p. 15.

**X. WHAT RIGHTS DOES THE INITIATIVE GIVE TO SAN DIEGO STATE UNIVERSITY?**

None. San Diego State University (SDSU) may reach an agreement with the Qualified Lessee to acquire land for university-related purposes. Initiative, Exhibit F, § 8.4, p. F-131. The land must be developed in accordance with the Specific Plan. *Id.* SDSU may improve Optional Park areas into parkland, which would require separate environmental review and appropriate permits. *Id.* It is possible that SDSU football games could be accommodated in a joint use



Stadium or football stadium; however, accommodation of collegiate football by the entity operating either stadium is not mandatory. If SDSU wanted to expand a Stadium beyond 32,000 seats, separate permitting and environmental review would be required. Initiative, Exhibit F, § 3.1.1, p. F-32. The Initiative does not address who would pay the costs for any Stadium expansion. The Mayor, SDSU, and the Initiative proponent may discuss SDSU's potential use of the Property, subject to campaign laws. *See* City Att'y MS 2017-6 (Mar. 21, 2017). At this time, this Office understands that there has been no agreement reached regarding SDSU's use of the Property.<sup>24</sup>

## **XI. WOULD A NEW FOOTBALL STADIUM BE BUILT?**

The Initiative does not require that a football stadium be built. The Lease would require the Qualified Lessee to identify and reserve a 16-acre portion of the Existing Stadium Site for a period of 5 years after the effective date of the Initiative for a possible Football Stadium. Under the Initiative, a Football Stadium could be built only if certain requirements were met. *See* Initiative, § 7, 61.2803(d), pp. 17-19. The City must create economic standards and requirements to be included in the Lease, to use in negotiations with any professional football team<sup>25</sup> that submitted an application for use of the 16-acre site. Initiative, § 7, 61.2803(d)(5), p.18.

The Qualified Lessee would sublease the Property to the team if the parties could agree on lease terms, which would have to meet the economic standards and requirements set forth in the Lease.<sup>26</sup> If the Qualified Lessee and the football team could not agree on lease terms, the City could directly negotiate with the football team for a lease or sale of the 16-acre portion of the Property. If the City and the football team were able to negotiate a lease or sale, the Qualified Lessee would offer to terminate the Lease for the 16-acre portion, provided that the Qualified Lessee receives the termination value as defined in the Initiative. Initiative, § 7, 1.2803(d)(1)(A), p. 17. If the City wanted to sell the 16 acres to a football team, a public vote would be required.<sup>27</sup> Initiative, § 7, 61.2803(d)(2), p. 18. Any sale or lease to a football team must restrict the use of the 16-acre site to the construction and operation of a Football Stadium and ancillary uses such as parking. If the Football Stadium were used for any other purpose, the Qualified Lessee would have the right to require that the property revert to the Qualified Lessee, and that the Lease be reinstated as to that 16-acre portion. Initiative, § 7, 61.2803(d)(4), p. 18.

A Football Stadium would require separate discretionary approval and CEQA review. Initiative, Exhibit F, § 8.1, p. F-128. The traffic generated by the use of the Football Stadium is not included in the estimated average daily traffic trips contained in the Specific Plan. Initiative, Exhibit F, § 8.5, p. F-131. Therefore, an amendment to the Specific Plan would be required if additional improvements were necessary based on the increased daily traffic trips. *Id.* Any amendment to the Specific Plan would require a public vote, if an amendment was needed prior to January 1, 2033. *Id.*, Initiative, § 14(A), p. 33.

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<sup>24</sup> The parties have the option to continue negotiations.

<sup>25</sup> An NFL team is not required. *See* the definition of Football Qualified Entity. Initiative, § 7, 61.2802, p. 11.

<sup>26</sup> It is not clear how potential franchise issues would be addressed.

<sup>27</sup> A majority vote of the electorate would be required to approve the sale of 16 acres. If any additional terms were included on the ballot, this Office would need to evaluate whether a two-thirds vote would be required.

## **XII. WILL THE DEVELOPMENT COMPLY WITH THE APPLICABLE AIRPORT LAND USE COMPATIBILITY PLANS?**

Yes. According to the Initiative, portions of the development are located in the Airport Influence Area for the Montgomery-Gibbs Executive Airport and the Marine Corps Air Station Miramar. Initiative, Exhibit F, § 3.4.4.1, p. F-52. The Specific Plan requires the development to comply with the most recently adopted applicable airport land use plans. *Id.*

## **XIII. CAN THE COUNCIL CHANGE THE INITIATIVE OR REQUIRE THE DEVELOPMENT TO GO THROUGH THE PUBLIC HEARING PROCESS?**

No. The language of the Initiative included in the Notice of Intent to Circulate Petition published in the newspaper on February 22, 2017, defines the Initiative's terms. *See* SDMC §§ 27.1001-27.1051. To make changes, a new Notice of Intent would need to be published and signatures gathered again. Under the City's elections ordinance, the Council must adopt or reject the Initiative as presented, but may not amend it. SDMC § 27.1034. If the Initiative is adopted either by the Council or the voters, no provisions can be changed before 2033, without a majority vote of the people. Initiative, § 14(A), p. 33.<sup>28</sup> The Mayor may negotiate agreements clarifying or resolving the many details necessary to implement the Initiative, in compliance with the Initiative's terms<sup>29</sup> and the law. Any such agreements may not amend the terms of the Initiative.<sup>30</sup>

Adoption of the Initiative grants numerous rights, including the right to build according to the Specific Plan. Applications for development consistent with the Specific Plan would be issued solely by the Development Services Department staff through a ministerial process.<sup>31</sup> Initiative, Exhibit F, § 8.9, p. F-134. City staff could not impose changes to the development. No public hearings regarding permits would be conducted. Initiative, Exhibit F, § 8.8.4, p. F-134.

## **XIV. WOULD THE INITIATIVE REQUIRE TAXPAYER FUNDS?**

That is unclear.<sup>32</sup> The Initiative states in numerous places that the payment of taxpayer funds would not be required, and provides a funding mechanism for many costs. For example, the Initiative states that no City funds would be used for construction and operation of the Stadium, including cost overruns, operating costs, maintenance, or capital improvement

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<sup>28</sup> The Initiative further limits changes to those that do not impair the Qualified Lessee's contractual or vested rights conferred by a lease, option agreement, or development agreement. Initiative, § 14(B), p. 33.

<sup>29</sup> For example, the Initiative permits changes to the Lease terms, in certain circumstances. *See*, e.g., Initiative, § 7, 61.2803(c)(26), p. 17 and 61.2805(c), p. 30.

<sup>30</sup> This Office understands that FS Investors sent a letter to the Mayor dated May 18, 2017, summarizing the terms they have negotiated to date. Those terms are not analyzed in this Report. The obligation of a third party to honor the terms made in any separate agreement the Initiative proponent reaches with the City is unclear.

<sup>31</sup> Decisions whether to grant approvals other than development permits (e.g., subdivision approvals) may be subject to additional discretionary and CEQA review.

<sup>32</sup> If the measure is referred to the ballot, the Independent Budget Analyst, the Mayor or his designee, and the City Auditor will jointly prepare the official fiscal impact statement for the ballot in accordance with the Municipal Code. SDMC § 27.0506. In addition, the City may wish to commission a study of the financial implications of having a Major League Soccer expansion franchise in San Diego. Those issues are beyond the scope of this Report.

expenses. Initiative, § 7, 61.2803(c)(20), p. 16; *see also* Initiative, Exhibit F, § 8.17, p. F-136. One of the Lease requirements would be that the Qualified Lessee pay for the demolition of the existing Qualcomm Stadium. Initiative, § 7, 61.2803(e)(7), p. 20. Until Qualcomm Stadium is demolished, the City is responsible for ongoing operation and maintenance costs, in the approximate annual amount of \$12,000,000 (which would decrease once the existing stadium agreements expire in 2018).<sup>33</sup> Initiative, § 7, 61.2803(e)(3), p. 19. Regardless of whether the stadium is demolished, the City is responsible for paying off the outstanding stadium bonds. Initiative, § 7, 61.2803(e)(3)(B), p. 20. According to City staff, the outstanding amount of principal on the bonds is \$36,965,000 as of June 30, 2017, and the final maturity date is in 2027. Although these are existing financial obligations, such costs normally would be addressed during lease negotiations. However, the Initiative provides that such costs shall not be shifted from the City to the Qualified Lessee under the Lease. *Id.*

In addition, the Initiative provides that certain City costs would be advanced; however, it does not include advancing costs for City staff time. *See, e.g.*, Initiative, § 7, 61.2803(c)(7)(B), p. 14. Like any project, the development anticipated in the Initiative will require extensive City staff review (e.g., permitting, inspections, and general project management).<sup>34</sup> Normally, a private developer would pay the City for staff time spent processing its development, in accordance with Municipal Code sections 112.0201 and 112.0202. Under the Initiative, it is unclear whether any City staff time will be reimbursed.

The Initiative also appears to anticipate that either the City or a third party (Kinder Morgan) would be responsible for any remediation required to address environmental contamination discovered on the Existing Stadium Site during development in accordance with the Specific Plan.<sup>35</sup> Initiative, § 7, 61.2803(j), pp. 25-26. Although the Regional Water Quality Control Board has issued “no further action” letters with respect to groundwater and soil contamination on the Existing Stadium Site, it is possible that additional contamination remains. The Initiative provides that contamination “addressed in third party agreements shall continue to be the responsibility of such third parties or the City as set forth in those agreements” and also provides that other contamination shall “continue to be the responsibility of the City.” Initiative, § 7, 1.2803(j)(3)(B) and (D), p. 26. If contamination is discovered during development of the Existing Stadium Site, it is not certain that the City could require Kinder Morgan to perform or fund any required remediation under the Kinder Morgan Agreement. This uncertainty could lead to litigation between the Qualified Lessee and the City, as well as between the City and Kinder Morgan. Even if the City ultimately prevailed, the litigation costs could be significant. If the City

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<sup>33</sup> Similarly, once the Lease is executed and the existing agreements on the Property expire, the City would not receive any further ongoing revenue from activities that take place on the Property.

<sup>34</sup> The 179-page Specific Plan instead of the Municipal Code exclusively controls the development requirements for the Property, except as otherwise specified. Initiative, §§ 8, 10, p. 31. City staff must administer the Specific Plan to ensure compliance with the regulations and procedures, which will require the expenditure of significant staff time. Initiative, Exhibit F, § 8.8.1, p. F-133.

<sup>35</sup> The Initiative’s references to existing agreements between the City and third parties to clean up, rehabilitate, redevelop, and remediate the contamination that exists on the Existing Stadium Site appear to be to a Settlement Agreement and General Release that the City entered into with Kinder Morgan in June 2016 related to soil and groundwater contamination on the Existing Stadium Site from Kinder Morgan’s Mission Valley Terminal, an aboveground tank farm facility located adjacent to the Existing Stadium Site. Settlement Agreement and General Release (June 30, 2016) (Kinder Morgan Agreement).

did not prevail, it could be faced with the costs of remediating any environmental contamination discovered on the Existing Stadium Site, along with the payment of attorney's fees.

The Initiative's indemnification language does not protect the City from potential liability to the same extent as the indemnification language the City normally requires in its leases for City property or permits granted for private development projects. Therefore, the City would have more legal risk and potential expenses (e.g., legal defense costs if the Initiative, or any actions taken by the City in furtherance of the Initiative such as executing the Lease, are challenged in court), which could be substantial.

**XV. WHAT WOULD HAPPEN IF A COURT HELD THAT PART OF THE INITIATIVE WAS ILLEGAL?**

The Initiative provides that if any portion of it is determined by a court to be invalid, the remaining portions remain valid. Initiative, § 13, p. 32. Similarly, if any portion of the Initiative is declared invalid, the Council is instructed to cure the deficiencies and reenact those provisions, consistent with the intent of the Initiative. *Id.* However, because of the length and complexity of the Initiative, if any portion is deemed invalid, a court could ultimately determine the appropriate scope of any legal remedy.

**XVI. CAN THE QUALIFIED LESSEE TRANSFER ITS INTERESTS IN THE PROPERTY?**

Yes. If the Initiative is adopted, the Lease must allow for the assignment (including the assignment of the options to purchase), sublease, sub-sublease, licensing, or other occupancy agreement by the Qualified Lessee to another party or parties. Initiative, § 7, 61.2803(i)(2), p. 25, 61.2803(g)(9), p. 23. The Qualified Lessee would also have the right to purchase up to 79.9 acres of the Existing Stadium Site, which then could be sold.

**CONCLUSION**

This Report provides an overview of the 3,028-page San Diego River Park and Soccer City Initiative, and responds to questions this Office has received from the Mayor and Councilmembers to date. Adoption of the Initiative would control the development of the approximately 250-acre Property for at least 99 years. If the Initiative is not adopted, the City will have the opportunity to pursue other development proposals for the Property. Because of the complexity and significant provisions included, this Office recommends that the Initiative be read in its entirety.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Leslie A. FitzGerald  
Leslie A. FitzGerald  
Senior Chief Deputy City Attorney

Honorable Mayor and City  
Councilmembers

-13-

May 23, 2017

LAF:nja

RC-2017-1

Doc. No. 1479266

Attachments

cc: Andrea Tevlin, Independent Budget Analyst

# **Attachment 1**

Summary of San Diego Municipal Code Amendments in Article 1, Chapter 6, Division 28:  
Existing Stadium Site and Auxiliary Property Ground Lease

(Initiative, § 7, pp. 9 to 30)

The Initiative provides detailed objective requirements that must be included in any lease agreement (Lease Requirements) for the *Existing Stadium Site* and the *Murphy Canyon Leased Property* (collectively the *Property*). § 61.2801,<sup>1</sup> p. 11. Numerous terms are defined within the Initiative, and are used throughout the Lease Requirements. Initiative, § 61.2802, p. 11. Defined terms are capitalized and italicized in the Initiative, and appear the same in this summary.

All Lease Requirements are set forth within proposed San Diego Municipal Code section 61.2803, pp. 13-30 of the Initiative. The following is a summary of many, but not all, of the Lease Requirements.

1. Potential Lessee

The City is required to lease the property to a *Qualified Lessee*. §61.2803(a)(1), p. 13. To be a *Qualified Lessee* an entity must be one of the following:<sup>2</sup> (1) an interested prospective ownership group for the San Diego market who has submitted an application, and is under active consideration for a franchise to be located in San Diego from a *Professional Soccer League* as part of any such league's expansion process as of the *Initiative Effective Date*; (2) an entity who has been awarded a *Professional Soccer League* franchise to be located in the San Diego market; or (3) an entity that owns or controls an entity that meets the criteria in (1) or (2) above. § 61.2802, p. 12.

2. Term

The *Term* of the *Lease* shall be for a period of 99 years. The *Lease* may not include any renewal options. § 61.2803(b)(1), p. 13.

3. Premises

The premises leased must include the *Existing Stadium Site* and the *Murphy Canyon Leased Property*. § 61.2803(c)(1), p. 13. The *Existing Stadium Site* consists of the property commonly known as 9449 Friars Road, San Diego, CA, as well as a three-acre parcel located immediately north of Friars Road identified as the *Existing-Adjacent Property*. § 61.2802, p. 11. The *Murphy Canyon Leased Property* consists of up to twenty acres of the *Murphy Canyon Training Facility Site* located at 4020 Murphy Canyon Road, San Diego, CA 92123. It is up to the *Qualified Lessee* to determine the

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<sup>1</sup> All citations are to the Initiative, section 7.

<sup>2</sup> In addition to this criteria, § 61.2804(e), p. 28, provides for expansion of the *Qualified Lessee* definition, in the event that no entity meeting the requirements to be a *Qualified Lessee* submits a proposed *Lease* meeting the requirements of section 61.2804 within one year of the *Initiative Effective Date*.

location and the size of the portion of the *Murphy Canyon Training Facility Site* which will ultimately become the *Murphy Canyon Leased Property*. § 61.2802, p. 12.

#### 4. Rent

The Initiative requires that the Mayor determine the fair market value for a 99-year leasehold interest in the *Property*, including the conditional options for future purchase, as of March 2, 2017. § 61.2803(f)(1), p. 21. There are financial and cost factors identified as items the Mayor may consider in determining the fair market value. However, the “Mayor may use such financial and cost factors as the Mayor deems appropriate in the Mayor’s discretion to make the determination of the fair market value of a leasehold interest that meets the requirements of this Division.” § 61.2803(f)(2), p. 21. A *Qualified Lessee* shall be required to pay fair market value rent pursuant to the terms of the *Lease*. § 61.2803(f)(1), p. 21.

If the Mayor determines that the fair market value of a 99-year leasehold interest for the *Property* is a negative number, the rent for the entire *Term* shall be \$10,000. § 61.2803(f)(3), p. 22. The Initiative provides for payment of rent for the *Term* in a single lump-sum payment within thirty days of the *Lease* being fully executed. § 61.2803(f)(5), p. 22.

#### 5. Allowed Uses

The *Lease* must allow for comprehensive multi-use development, which shall include the following: (1) the redevelopment of the *Property*; (2) the construction, operation, and support of a *Joint Use Stadium*; and (3) other uses allowed under the *Specific Plan*. § 61.2803(c)(2), p. 13.

#### 6. Construction of Joint Use Stadium

Construction of the *Joint Use Stadium* must be accomplished without public subsidy. § 61.2803(c)(3), p. 13. The *Joint Use Stadium* shall be privately-owned, and the *Lease* shall not require the City to use public funds to pay for construction costs, cost overruns, or operating costs, maintenance or capital improvement expenses of the *Joint Use Stadium*. § 61.2803(20), p. 16. The *Qualified Lessee* shall be required to pay prevailing wages for construction of the *Joint Use Stadium*. § 61.2803(c)(10), p. 15.

#### 7. Construction of River Park

Any *Lease* entered into by the City shall require the *Qualified Lessee* to set aside 34 acres of open space land at the southern portion of the *Existing Stadium Site*. § 61.2803(c)(6), p. 14. Additionally, the *Qualified Lessee* and the City shall be required to diligently pursue any state or federal permits that are necessary to construct the *River Park*. If permits are obtained within 18 months of the *Execution Date*, then the *Qualified Lessee* shall be required to construct the *River Park*; however, the City cannot require the



*Qualified Lessee* to expend more than \$40,000,000 for the permitting, grading and construction of the *River Park*. § 61.2803(c)(7)(C), p. 14.

If permits required for the construction of the *River Park* are not obtained within 18 months, the *Qualified Lessee* is not required to construct the *River Park*, but may be required to deposit \$40,000,000 (which can be reduced to \$20,000,000 in certain circumstances) with the City; the deposited funds can be used by the City to construct the *River Park* if the City chooses to do so. § 61.2803(c)(7)(D) and (E), p. 14.

If the *River Park* is constructed, the *Lease* shall require that it be open for public recreational uses during daylight hours or scheduled events. § 61.2803(c)(6), p. 14. The *River Park* shall be managed by the *Qualified Lessee* or an association of private property owners, lessees or sublessees established by the *Qualified Lessee*. The *Qualified Lessee*, or the established association, would be responsible to pay for the ongoing maintenance of the *River Park*. § 61.2803(c)(6), p. 14.

#### 8. Construction of Active Use Fields and Neighborhood Parks

The Initiative states that the *Lease* shall require construction of approximately 12 acres of active use fields and neighborhood parks. These fields and parks must be constructed without subsidy or expenditure by the City, and shall be maintained and operated through a joint agreement between the City and the *Qualified Lessee*, or the *Qualified Lessee's* assignee or designee. § 61.2803(c)(8), p. 15.

#### 9. Construction of Affordable Housing

Beginning in the eleventh *Lease* year, the *Qualified Lessee* shall be required to provide the greater of 80 units or 10% of dwelling units on the *Existing Stadium Site* as affordable to and occupied by "targeted rental households," as that term is used in Chapter 14, Article 2, Division 13 of the San Diego Municipal Code. The *Qualified Lessee* may also provide equivalent for sale affordable residential units instead of rental units. § 61.2803(c)(11), p. 15.

#### 10. Option for Professional Football Uses and SDSU Football Uses

The *Qualified Lessee* shall designate 16 acres of the *Existing Stadium Site* to be reserved for a period of five years from the *Initiative Effective Date*. § 61.2803(d)(1), p. 17. This 16 acres, referred to as the *Football Property*, can be utilized by a professional football team for the sole purpose of construction and operation of a football stadium and ancillary uses such as parking. § 61.2803(d)(4), p. 18. Additional conditions of using the *Football Property* include obtaining all necessary permits and approvals for construction, and making appropriate efforts to accommodate SDSU collegiate football if it has not been accommodated in the *Joint Use Stadium*. § 61.2803(d)(3), p. 18. If the *Football Property* is sold to an entity to allow for the construction and operation of a football stadium, the sale would be submitted to a public vote. § 61.2803(d)(1)-(2), pp. 17-18. If a professional football team does not obtain the rights to utilize the *Football Property* prior

to expiration of the five (5) year period, the *Qualified Lessee* shall have no further obligation to reserve the property for such use. § 61.2803(d)(1)(C), p. 18.

#### 11. Continued Use and Demolition of Existing Stadium

Operation, maintenance, and any ongoing costs or liability associated with the continued operation of the *Existing Stadium*, including overseeing any current leases or agreements for events to be held there, shall be the responsibility of the City, until the *Qualified Lessee* is required to demolish the *Existing Stadium*. § 61.2803(e)(3), p. 19. The City would be prohibited from extending current agreements, or entering into new lease agreements that extend beyond the later of December 31, 2020, or 30 days following the substantial completion of the *Joint Use Stadium*. § 61.2803(e)(3)(A)(1), p. 20. Additionally, the City could not take any other actions that would adversely affect the *Qualified Lessee's* rights, materially interfere with the *Qualified Lessee's* use of the *Property*, or create new liens or encumbrances on the *Property* or *Existing Stadium*. § 61.2803(e)(3)(A), pp. 19-20.

The *Qualified Lessee* shall conduct and pay for the demolition of the *Existing Stadium*, including obtaining all required permits and approvals. § 61.2803(e)(7), p. 20. Demolition shall not occur until the expiration (or earlier termination) of the leases or agreements that existed prior to the execution of the *Lease*. § 61.2803(e)(7), p. 20.

#### 12. Option to Purchase

The *Qualified Lessee* shall be given the option to purchase up to 79.9 acres of real property on the *Existing Stadium Site*. § 61.2803(g)(1), p. 22. The option can be exercised multiple times and can be assigned by the *Qualified Lessee*, however, the total amount of real property purchased may not exceed 79.9 acres. § 61.2803(g)(1) and (9), pp. 22-23. The *Qualified Lessee* shall not be entitled to exercise any option to purchase real property until the reverter rights have expired. § 61.2803(g)(2), p. 22.

The City shall charge an exercise fee in the amount of \$1,000 plus additional consideration in the amount equal to the fair market value of the real property purchased in fee title, less the fair market value of a leasehold interest for the remainder of the lease term. The fair market value shall be determined as of the date the option is being exercised. § 61.2803(g)(4), p. 23.

#### 13. Termination/Reverter Right

The City shall have the right to terminate the *Lease* if the *Qualified Lessee* fails to complete the construction of the *Joint Use Stadium* on the *Existing Stadium Site* within seven years of the execution of the *Lease* (the *Reverter Date*). § 61.2803(h)(1)(A), p. 24; § 61.2802, p. 12. The *Reverter Date* is tolled and extended day-for-day by a number of circumstances, including (1) force majeure; (2) delay by City in the performance of any of its obligations; (3) litigation regarding the validity of the *Lease*, options to purchase, or the *Specific Plan*; (4) unknown conditions of the *Property* that delay construction; (5)

changes in law that delay construction; or (6) failure of the City or other governmental agencies to issue permits for the construction of the *Joint Use Stadium* within a reasonable time. § 61.2803(h)(1)(B), p. 24.

If the City exercises its right to terminate the *Lease*, the *Property* would revert to the City subject to any subleases (other than a sublease for the portion of the *Property* on which the *Joint Use Stadium* was going to be constructed) with non-disturbance agreements. § 61.2803(h)(1)(A), p. 24. The City's right to terminate the *Lease* based on the failure to build the *Joint Use Stadium* expires upon (1) completion of construction of the *Joint Use Stadium*; (2) the first anniversary of the *Reverter Date*, provided that the *Qualified Lessee* has given the required written notice; or (3) a determination by the Mayor that the *Qualified Lessee* has provided adequate financial information and assurances that the *Qualified Lessee* will construct the *Joint Use Stadium*. § 61.2803(h)(2), p. 24.

#### 14. Assignment/Subletting

Assignment, subletting, sub-subletting, licensing and other occupancy or use of all or a portion of the *Property* for the purposes of development consistent with the *Specific Plan* must be allowed under the *Lease*. Additionally, the *Lease* shall contain a specific acknowledgement by the City that the portion of the *Property* where the *Joint Use Stadium* is being built may be subleased by the *Qualified Lessee* for the purpose of facilitating the development and construction of the *Joint Use Stadium*. § 61.2803(i)(2), p. 25. At the request of the *Qualified Lessee*, or the sublessee, the City will be required to execute a non-disturbance agreement with the sublessee. § 61.2803(i)(3), p. 25.

#### 15. Indemnification

The *Qualified Lessee* shall agree to indemnify and defend the City and the City's interest in the *Property*, and all parts thereof, from any claims resulting from (1) the conduct, activities, or omissions of the *Qualified Lessee*, its agents, contractors, invitees, or licensees on the *Property*; (2) occurrences on the *Property* during the *Term* of the *Lease*; or (3) the *Qualified Lessee's* breach of any *Lease*. § 61.2803(k)(1), p. 26. *Qualified Lessee* shall pay reasonable attorney's fees, costs, charges, and other expenses incurred by the City in protecting the City from and against such claims. § 61.2803(k)(2), p. 27.

These indemnification obligations do not extend to (1) any claims arising out of or relating to the conduct, activities, or omissions by the City or any of its agents, employees contractors, lessees, invitees, or licensees on or about the *Property*; (2) any obligation required to be performed by the City under any *Lease* or applicable law; or (3) any breach of the City's obligations under any *Lease*. § 61.2803(k)(3), p. 27. Additionally, the *Qualified Lessee's* general obligation to indemnify and defend the City is subject to any other specific provisions, limitations, or obligations contained in the *Lease*. *Id.*

# **Attachment 2**

Summary of San Diego River Park, Soccer City, and Qualcomm Stadium  
Redevelopment Specific Plan

(Initiative, Exhibit F, pp. F-1 to F-177)

Organized in eight chapters, the Specific Plan contains policies and development and use regulations for the River Park and Mixed Use Site and the Murphy Canyon Site, and off-site infrastructure improvements. The San Diego Municipal Code applies to the extent it does not conflict with the Specific Plan. Initiative, Exhibit F, § 1.3, p. F-16. The Appendices include Legal Descriptions, Definitions, Environmental Mitigation Measures, and a Traffic Monitoring Worksheet. The following is a brief summary of the Specific Plan.

1. Chapter 1, Purpose and Planning Context

This Chapter discusses things such as the purpose and legal authority, location, Specific Plan development description, background and planning context, and the relationship of the Specific Plan to the General Plan and Community Plans, climate change policies, and the San Diego River Park.

2. Chapter 2, Specific Plan Objectives

This Chapter discusses the Specific Plan objectives, which “are intended to guide development within the Specific Plan.” Initiative, Exhibit F, § 2.0, p. F-29.

3. Chapter 3, Land Use and Zoning

The Specific Plan calls for the demolition of the existing Qualcomm Stadium, construction of a new stadium seating up to 32,000 (depending on the type of use) and mixed uses around the new stadium consisting of multifamily residential, hotel, retail, and office use, subject to traffic caps. Approximately 4,800 multifamily residential units are proposed, of which 800 will be student focused housing. There are minimum development requirements, including the 800 housing units, and a set aside of 10% commercial office space and 3% commercial retail space. Additionally, 16 acres would be reserved for 5 years for the potential construction of a professional football team stadium. The Murphy Canyon Site will be developed with two regulation size soccer fields and a half size practice field, as well as 24-40 rooms to accommodate visiting teams. The existing facilities and offices at the Murphy Canyon Site would be retained.

The Specific Plan states that issuance of the first grading or building permit shall create vested rights to proceed with all phases of the development in substantial compliance with the policies and regulations in effect at the time of that first permit issuance. The vested rights are not exempt from changes required to comply with state building and fire codes as those are adopted by the City, and associated fees, or from compliance with state or federal laws or regulations. If the grading or building permits have not been utilized within 7 years of issuance, they are void, unless certain specific events have occurred.

The Specific Plan contains a table which sets forth the permissible uses and any permitting requirements for the River Park and Mixed Use Site, similar to those found in

the San Diego Municipal Code use tables. Development in the River Park and Mixed Use Site and Murphy Canyon Site shall comply with regulations related to the airport land use plan, San Diego River Subdistrict, Special Flood Hazard Area, and Multi-Habitat Planning Area, however, no discretionary permits shall be required. Development regulations regarding lot coverage, building height, floor area ratio, signage, etc. are set forth. Some uses such as outdoor entertainment and the sale of alcohol for off-site consumption are separately regulated uses and must obtain discretionary permits.

#### 4. Chapter 4, Parks, Open Space, and Recreation

It is anticipated that the Sports Stadium will develop first, followed by the River Park/Community Park and Active Sports Fields and ancillary development on the periphery of the River Park and Mixed Use Site. The River Park/Community Park and Active Sports Fields are to commence construction not later than the completion of the Sports Stadium. The park plans themselves are only conceptual at this stage, however, anticipated uses are for both active and passive park uses. Along the San Diego River, all grading and construction will occur only in previously disturbed areas. The Specific Plan disavows any requirement to construct parks or facilities that would require regional, state, or federal permits.

#### 5. Chapter 5, Circulation

The Circulation Element of the Specific Plan states that the roadways will be designed to City standards. Modifications to the proposed circulation network is allowed, so long as the changes are in compliance with federal, state, and local requirements for traffic circulation. Potential improvements to Friars Road include an additional lane in each direction, plus bike lanes and a new signalized entrance to the River Park and Mixed Use Site. An overcrossing is proposed at Mission Village Drive, along with improvements to the existing Mission Village Drive off-ramps. Additionally, improvements are proposed to San Diego Mission Road and Rancho Mission Road, along with a new connection from Fenton Parkway to the River Park and Mixed Use Site.

The maximum development allowed at the River Park and Mixed Use Site is limited by the Average Daily Trips (ADTs) and peak hour trips. On a non-game day, development on the River Park and Mixed Use Site shall not generate more than 71,533 driveway ADT and not more than 4,849 total driveway AM peak hour trips, and not more than 7,150 total driveway PM peak hour trips. The ADTs are to be monitored by the Development Services Director, and the worksheets shall be submitted with construction permit applications. Traffic from a professional football stadium does not count towards the ADT or peak driveway hours.

The implementation of the Specific Plan requires either the City or the developer to ensure all relevant River Park and Mixed Use Site on-site improvements are made prior to the corresponding development. The developer may pay a fair share amount at building permit issuance, or if the City obtains the necessary permits, the developer may construct the improvements. Payment of funds shall be sufficiently in advance of the need, so that construction of the improvements occurs on schedule. However,

development may proceed without the improvements if the developer has worked closely with the City to develop a schedule, paid all fees, and the City determines that the absence of the improvements does not create a dangerous or unsafe condition for motorists or pedestrians. The inability to obtain permits for off-site improvements associated with an ADT shall not preclude development, provided the funds have been deposited with the City. In addition, development may proceed beyond the ADT limits if the developer can demonstrate through a traffic analysis that additional peak hour trips will not cause any listed study area intersection which is operating at an acceptable level of service to fall below "D," unless the developer agrees to construct the improvements necessary to avoid the loss of service. The Specific Plan contains a schedule for the construction or payment of fees. Development at the Murphy Canyon Site is governed only by the zoning.

The Specific Plan anticipates and incorporates additional trolley lines and bike paths. There are parking ratios and standards set forth for the various proposed uses. The Specific Plan requires the implementation of a Transportation Demand Management (TDM) by applicants for proposed commercial and hotel development over 50,000, to reduce single-occupant trips. A Transportation Management Plan (TMP) to manage traffic flow shall be developed and provided to the Development Services Director prior to the first game. A Parking Management Plan (PMP) shall also be prepared to address such issues as employee parking.

#### 6. Chapter 6, Public Utilities

The Specific Plan notes that improvements to the storm drain system are necessary. Buildings will comply with the Federal Emergency Management Agency and the City's requirements regarding elevation, and grading near the San Diego River will avoid the floodplains.

#### 7. Chapter 7, Public Services

This Chapter discusses Public Services, such as solid waste disposal, police, fire, and schools.

#### 8. Chapter 8, Implementation and Financing

The Specific Plan does not require that the development occur in any specific order. In addition, phases may develop concurrently, if the necessary infrastructure is present. However, the first phase is anticipated to include the Sports Stadium and grading for the River Park and play fields. The Specific Plan contains an option for San Diego State University to develop part of the active fields, subject to any necessary permitting and environmental review. The Specific Plan also contains an option for a professional football stadium on 16 acres of land. Specific details regarding the football stadium are to be contained in the lease between the City and the lessee. While this would be a permitted use, the stadium would be subject to all other permitting and environmental review otherwise required.

The Specific Plan requires documentation such as photographs, architectural salvage, and interpretive displays of the existing Qualcomm Stadium for historical purposes. Payment of affordable housing and development impact fees are required in accordance with the City's ordinances. Payment of the Regional Transportation Capital Improvement Project fees are also required. Maintenance areas and responsibilities are to be included on building permit applications, however, common areas, landscaping, private recreational amenities, and active use fields are to be maintained by developers, Property Owners Associations, through a Maintenance Assessment District, or through a maintenance agreement with the City.

9. Exhibit C, Mitigation Measures

The Specific Plan includes an appendix titled "Environmental Mitigation Measures," which includes 13 features required of projects constructed in the Plan area.<sup>1</sup> Exhibit F, Appendix C, pp. F-152 to F-178. These include:

- I. Aesthetics. Unauthorized material may not be installed on temporary construction barriers and walkways; landscaped areas are to be maintained in accordance with a landscape plan prepared by a licensed landscape architect; new utilities shall be undergrounded where practical; and lighting and associated glare shall be minimized to the extent feasible and consistent with the Specific Plan uses.
- II. Air Quality. During construction, various measures apply such as covering load materials for off-site hauling, sweeping streets, limiting the construction traffic to 15 miles per hour, and ceasing activities during periods of high winds (more than 25 miles per hour). After construction, air quality measures include the use of energy efficient lighting and a public information campaign to encourage the use of park and ride lots and the trolley.
- III. Biological Resources. During construction, the Multiple Habitat Planning Area (MHPA) and areas with sensitive habitat or species are to be delineated; work is to be monitored by a qualified biologist to ensure no impacts to sensitive habitat or species occurs and work is to be avoided during breeding and nesting season and near active nests; and noise monitoring may be required. Operational requirements include compliance with storm water Best Management Practices; development designed to reduce bird collisions with buildings; and the MHPA protections mentioned previously as well further protections such as designs that prevent drainage and toxins into the MHPA, provision of barriers to direct public access, reduce animal predation, protect wildlife in the preserve, and provide noise reduction, prohibition of invasive species, brush

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<sup>1</sup> If a parcel was sold, the City could record a covenant running with the land that obligated the purchaser and subsequent owners to comply with the Environmental Mitigation Measures, for the duration of the Lease term. § 7, 61.2803(g)(6), p. 23.



management requirements, avoidance of impacts during additional breeding and nesting seasons.

- IV. Geologic and Soils. A final, design-level geotechnical, geologic, and seismic hazard investigation report, including the potential for subsidence, prepared by a qualified geotechnical engineer and certified geologist that complies with all applicable state and local codes, shall be submitted to the City prior to the issuance of building or grading permits. Design of the area shall comply with these design and construction recommendations. A state-certified geologist will review excavations for faulting or seismically-induced ground deformation. In the event an active fault is determined to exist, appropriate setbacks shall be established.
- V. Greenhouse Gas Reduction. Buildings are required to include green or cool roof designs to the extent feasible. Plumbing fixtures, fittings, and appliances must be low-flow and projects must be designed to have reduced energy budgets, as specified in the City's Climate Action Plan. Requirements are imposed for the provision of electric vehicle charging stations, shower facilities, and low-emitting, fuel-efficient, and carpool/vanpool vehicles. Transportation Demand Management measures must be implemented. Development will create an urban tree canopy with coverage of at least 15%, with a goal of 35% coverage.
- VI. Hazardous Material/Human Health/Public Safety. The Sports Stadium owner, lessee, or developer must prepare plans and policies pertaining to emergency response and evacuation procedures, to be distributed to various parties. Prior to any grading, a Contaminated Soils and Groundwater Management Plan for the handling and disposal of contaminated soils and groundwater which meets local, state, and federal regulations must be prepared and distributed to various parties. Handling of any hazardous materials, including any asbestos, lead, or polychlorinated biphenyls, shall be disposed of in accordance with regulations. Prior to the demolition of the existing stadium, a Demolition and Explosion Plan shall be submitted to the City.
- VII. Historical Resources. A requirement for archeological and Native American monitoring shall be indicated on the applicable construction documents. An archeological monitor must be present during all soil-disturbing activities that could result in impacts to Native American resources. Any resources or human remains encountered are to be handled as specified. The existing stadium is to be documented for historical purposes, architectural materials offered for preservation, and interpretive displays created.
- VIII. Hydrology and Water Quality. Prior to the issuance of a grading permit for the Sports Stadium Area, a letter revising the floodplain map must be obtained from the Federal Emergency Management Agency. Prior to development, an erosion control plan must be prepared that includes

detailed flood control plans and demonstrates that storm water runoff would not exceed existing design conditions. Development must demonstrate compliance with the City's storm water permit requirements and incorporate construction and post-construction Best Management Practices.

- IX. Noise. During construction, noise control measures are required on construction equipment and notice of construction activities shall be provided to residents within 800 feet, published in the newspaper, and posted at the site, with the posted sign including a hotline complaint number. Additionally, contractors are required to comply in writing with the City's noise ordinance, endeavor to schedule high noise-producing activities so as to minimize disruption to sensitive receptors, and to turn off heavy duty equipment when not in use for more than 30 minutes. After construction, compliance with the City's noise ordinance is required. Fireworks shows are limited to 30 events a year, and are prohibited after 10:00, with listed excepted occasions. Stationary noise sources are to be placed away from the noise-sensitive receivers to the extent practical.
- X. Paleontological Resources. If paleontological resources are encountered during ground-disturbing activities, further activities in that area shall cease until a qualified paleontologist can assess the resource and recommend preservation, conservation, or relocation, as appropriate.
- XI. Public Services. Fire Department access shall be maintained both before and after construction. Adequate fire hydrants are to be installed, to the satisfaction of the Fire Department. During construction, Police Department access shall be maintained. Various safety measures are required, such as adequate lighting, fencing, and alarms. Upon completion of the Sports Stadium, the Police Department shall be provided with a diagram of the Stadium, as well as any other information that may facilitate a police response. Parks shall be designed to provide access to a variety of open spaces.
- XII. Transportation/Circulation. For construction traffic, a traffic control plan shall be prepared and implemented to avoid delays on surrounding roadways. After construction, bus access shall be maintained and trolley access shall be enhanced. As mentioned earlier, developers must either construct or fund specific improvements when development reaches indicated ADT thresholds and prior to building permit approval. A Transportation Management Plan for Stadium games and events must be approved by the City prior to the first game or event. Annual review and approval of the plan is required, with adjustments as may be necessary.
- XIII. Utilities. Plumbing fixtures shall be low-flow, automatic irrigation systems shall be programmed to reduce water usage, and the City shall be consulted regarding feasible water conservation features. During construction, a Solid Waste Management Coordinator shall be designated

to ensure that all contractors are educated and procedures followed for waste reduction and recycling. Recyclable materials shall be separated and diverted. Waste diversion of 81% of construction and demolition materials shall be achieved. After construction, the use of drought tolerant plants and recycling is encouraged and recycling containers are required to be provided.