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Thomas McCarron
Vice President and CFO

July 24, 2017

By E-mail

Honorable Mayor Kevin L. Faulconer
City Councilmembers
City of San Diego
City Administration Building
202 C Street, 10th Floor
San Diego, California 92101

Re: *Information regarding City Attorney Memoranda, July 21, 2017*
(Qualcomm/Resolution)

Dear Mayor Faulconer and Councilmembers:

On behalf of San Diego State University (SDSU), I submit this letter to provide information to the Honorable Mayor and Councilmembers related to two City Attorney's Office memos dated July 21, 2017. I respectfully offer this information in the spirit of cooperation, and after having conducted significant legal due diligence on the important topics evaluated by the City Attorney's Office.

The first memorandum identifies options for Council at the July 25 meeting, including (1) referring the matter to a committee, (2) requesting a report from the Mayor regarding the current and potential future use of the Property, or (3) taking no action.

We would like to add to the list of Council's options, by suggesting the option grounded in San Diego Municipal Code, art. 2, div. 9, section 22.0907 (Sales of Real Property to Public Agencies) which appears to provide a grant of authority to the Council to authorize the sale of any of the Property to a public agency. The Council can make findings that some or all of the land is required for public purposes such as higher education. (It is our understanding the reference to Pueblo Lands in this provision is a subset of the overall council authority in this section of the Code.)

The City Attorney's Office's second memorandum responds to three questions posed by Councilmembers Bry, Gomez, and Kersey. We comment on each below.

Question from Councilmember Bry

Councilmember Bry raised the first question of whether the Council has the authority to sell or lease City-owned real property, including through a Request for Proposal (RFP) process, without Mayoral input or action. The City Attorney's Office answered the Council could not issue the RFP without Mayoral involvement because Council Policy 700-10 gives shared responsibility over the sale of surplus land to both the Council and the Mayor. We offer an important additional observation for consideration.

As stated by the City Attorney, the Surplus Land Act does not specify who has the authority within a local public agency to determine whether the property is surplus land. (See City Attorney First Memo. p. 3.)

In addition, under current Council Policy 700-10, the Mayor makes the initial "surplus land" determination, and as stated by the City Attorney, the Mayor's determination is made "without . . . making any type of formal declaration that a particular parcel of real property is surplus land." (See City Attorney's Office First Memo. p. 3.) In addition, once that initial determination is made, it is the Council that must authorize the sale of the property.

A resolution could be written as a back-up plan to take effect only if the Initiative is not passed or is invalidated by the courts. There should be no opposition to establishing a back-up plan in place for the Property. We note the City has been working on a long-term solution for the Property dating back to at least 2004.

Further, we do not see Council Policy 700-10 as an obstacle. Instead, it is a policy that can be partially or wholly waived by the Council; and in any case, it is broader in scope than the Surplus Land Act because it extends to "all governmental agencies," inclusive of SDSU as a public university.

Question from Councilmember Gomez

Councilmember Gomez asked the second question of whether the City could issue a RFP for the Property before the Initiative is voted upon.

We agree with the City Attorney that City officials' "hands are not tied" and they "must be able to govern." The Council's governance certainly "could include the creation of parallel processes." (See City Attorney's Second Memo. p. 5.)

Thus, we believe the City can issue a RFP for the Property before the vote on the Initiative without risk of infringing on the voters' reserved initiative power. If the Initiative is adopted, it will govern the use of the Property. If the Initiative fails or is invalidated by the courts, the City can move forward with an established alternative plan for the disposal and productive use of the Property.

Question from Councilmember Kersey

Councilmember Kersey asked the third and final question of whether the City could implement part of the Initiative, such as building a stadium on site, consistent with the terms of the Initiative, before the Initiative is voted upon. The City Attorney's Office answered that the

City arguably could take action consistent with the Initiative prior to a vote without infringing on the voter's reserved initiative power, but that such action likely would be subject to Mayoral veto.

We observe that the Council could authorize the sale of all or some of the Property to SDSU without impinging on the voter's reserved initiative power – even if such a sale is not solely a back-up plan. We respectfully observe the Initiative has only qualified for the ballot; it is not enacted, it is not the law, and even if passed, it could be invalidated.

We continue to encourage an open and transparent process that many will benefit from. Accordingly, the Council could exercise its considerable discretion to arrive at a long-term solution for the disposition and productive use of the Property, through a variety of means. Importantly, we agree that the existing Initiative does not tie the hands of Council as it relates to acting on this matter.

To that end, we enclose a statement that puts forth a vision SDSU has for the site.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Tom McCarron', written in a cursive style.

Tom McCarron

Vice President for Business and Financial Affairs & CFO

cc: Sally Roush, President, San Diego State University
Gina Jacobs, Chief of Staff
Mayor Kevin L. Faulconer
Council President Myrtle Cole
Councilmember Barbara Bry
Councilmember Lorie Zapf
Councilmember Chris Ward
Council President Pro Tem Mark Kersey
Councilmember Chris Cate
Councilmember Scott Sherman
Councilmember David Alvarez
Councilmember Georgette Gomez
City Attorney Mara W. Elliott

SDSU Vision for Mission Valley

Since our founding in 1897, San Diego State University has grown from a small teachers' college into a national research university of 36,000 students enrolled in bachelor's, master's and doctoral programs. SDSU's arts, cultural and athletics events engage the entire San Diego region. On May 26, 2017, in the San Diego Union-Tribune, SDSU Presidents Weber, Hirshman and Roush articulated a vision for the Mission Valley site reimagined as an opportunity for SDSU – landlocked on 238 acres – to build on 120 years of distinguished history and tradition, while ensuring one of the city's most important land assets generates ongoing benefits for the entire San Diego region.

This is a rare opportunity for SDSU and one that will not come again. The Mission Valley site is the only proximate piece of land capable of solving SDSU's long-term expansion needs. Those needs are what led the university to discuss an agreement with the City of San Diego in 2011 and what leads us to continue to express interest in taking a significant role in master planning the site and ensuring its complete development.

This opportunity ensures the academic and athletic success of SDSU, which already contributes an estimated \$2.4 billion annually to the San Diego economy through 36,000 students, 6,000 university employees and nearly 240,000 local alumni. As San Diego continues to grow, the growth of SDSU will support the region's need for an educated workforce and continue to create jobs that secure the university's contributions as a local economic powerhouse. In short, the success of SDSU is intertwined with the success of San Diego.

SDSU envisions a vibrant mixed-use development of medium-density that is transit-oriented to expand our educational, research, entrepreneurial and technology transfer programs; house more upper-division and graduate students; provide faculty and staff housing to assist in the recruitment of nationally recognized talent; and build a new multiuse stadium for our top-25 Aztec football team and other potential sports partners. We also envision a river park, a science-based interpretive/education center and other civic green space. Most importantly, because of trolley and other public transportation resources, this development will minimize traffic impacts in the area. We also remain committed to working with the city to ensure the development is in line with the desired average daily trip count.

We foresee the following uses for the site, built using a phased approach:

- **Stadium:** A 35,000-40,000 seat multiuse stadium for Aztec football, potential sports partners and the community to be used year-round. It would be easily expandable to accommodate the growth of the football program and for a potential NFL partner. The stadium will have adjacent and convenient parking and will include all the amenities expected of a top-tier program – proximity to campus and trolley access, a design that provides an intimate fan experience, premium seating, access to technology, community gathering areas, recreation fields, and local foods and beverages.

- **River Park:** A riverfront park as advocated by the San Diego River Park Foundation reclaims the San Diego River for recreational and potential educational uses with green space and walking paths.
- **Affordable and Market-Rate Housing:** Units will support upper-division and graduate students, faculty and staff, as well as the general public. Over time, additional units may support general housing demand.
- **Commercial/Office Space:** Initial office space, compatible with SDSU's needs, will be developed through a public-private partnership. Space will include modern facilities for our internationally recognized researchers, consolidation of offices for faculty and staff, and homes for our interdisciplinary teams researching climate and sustainability, water scarcity and other critical topics. The expansion of community clinics in health and counseling will also provide more opportunities for community engagement. It will be occupied immediately with private interests to generate additional property tax revenue for the city and, over time, ownership/occupancy will revert to SDSU for educational and workforce training to benefit the region in perpetuity. As revenue from Phase I allows, SDSU will build additional educational, research, entrepreneurial and technology transfer space.
- **Complementary Retail:** SDSU envisions restaurants and other retail spaces that serve neighborhood residents and businesses while also creating an exciting college game-day experience for Aztec football fans and our potential sports partners. Retail uses will contribute sales tax and possessory interest tax back to the City of San Diego.
- **Hotel:** A hotel will support visitors to campus and stadium-related events, as well as provide additional meeting and conference space. The hotel will also serve as a professional incubator for graduate and undergraduate students in our L. Robert Payne School of Hospitality and Tourism Management.

Getting it Done

SDSU can make this vision a reality and is developing a more detailed plan, which we expect to share in the coming months. We stand ready and willing to lead this effort in partnership with the City of San Diego in order to best address both SDSU's needs and the city's objectives.

While the process forward is unclear, we advocate for transparency and open dialogue. We favor a decision-making process that is inclusive of SDSU, as well as solicits the meaningful contributions of the public, including the Mission Valley Planning Group. We are motivated by our desire to achieve shared values furthering San Diego's growth as a vibrant, collaborative knowledge economy, consistent with our public higher education mission. SDSU will remain flexible as the public discussion evolves, while being mindful of the environmental and infrastructure parameters that cannot be ignored.