



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: July 24, 2024

TO: Honorable Mayor Todd Gloria, City of San Diego

FROM: Sean Elo-Rivera, Council President, City of San Diego, Ninth District
Henry L. Foster III, Councilmember, City of San Diego, Fourth District

SUBJECT: Specific Points for Kettner and Vine Lease

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In light of the recent developments regarding the proposed Kettner and Vine Lease (Lease), it has become evident that the current draft of the Lease does not adequately safeguard the legal, operational, and financial interests of the City of San Diego (City).

Therefore, it is crucial to:

- (1) allocate the necessary time, documents, and resources to the San Diego City Attorney Office (CAO) to ensure a thorough analysis and advisory for the City and the San Diego City Council (Council);
- (2) incorporate the Project Labor Agreement (PLA) terms into the Lease;
- (3) coordinate procurement procedures for tenant improvements;
- (4) receive a Rough Order of Magnitude Estimate for tenant improvement costs;
- (5) provide all key documents, including building assessments conducted to date, to the Independent Budget Analyst (IBA), CAO, and Council;
- (6) incorporate Item S400 Council action from July 22, 202, Council meeting;
- (7) address all key lease and Tenant Work Agreement issues; and
- (8) revise and clarify the liability clause for Hazardous Materials.

Time, Documents, and Resources:

The San Diego City Charter Section 40 authorizes the City Attorney to advise the San Diego City government. The CAO needs more time to summarize key Lease terms and deliver a more comprehensive analysis of the Lease for Council's review. Thus, we request that the City and Doug Hamm provide the CAO with the essential documents and adequate time to conduct a comprehensive review of the proposed Lease. This will ensure an informed decision-making process. We request that the City and Doug Hamm allow more time for the CAO to provide a full report of its findings concerning the Lease and the overall transaction. This request includes having access to all pertinent documents and sufficient time to provide comprehensive legal advice. By allowing sufficient access and time, the City, City Council, its officials, and its departments can obtain a detailed report and comprehensive legal advice, ensuring an informed decision-

making process. This memorandum incorporates by reference the Preliminary Analysis of Proposed Lease for Kettner and Vine Site report authored by the CAO.

Inclusion of the Terms of the City's Project Labor Agreement:

Including the terms of the PLA into the terms of the proposed lease of Kettner and Vine is essential for ensuring its success and sustainability. The PLA provides a framework that guarantees fair wages, safe working conditions, and local job opportunities, which are crucial for fostering a robust and inclusive economy. As Mayor Gloria emphasized, "Our Project Labor Agreement ensures that our city projects are built by skilled workers who earn fair wages and benefits, while also creating opportunities for local residents." By integrating the PLA, the project will not only support skilled labor and high-quality craftsmanship but also stimulate the local economy through the creation of well-paying jobs for San Diego residents. This alignment with the PLA underscores a commitment to ethical labor practices and community development.

Coordinate Procurement Procedures for Tenant Improvements: Integrating Funding Source Requirements and Compliance in Lease and Tenant Work Agreement:

The San Diego City Purchasing and Contracting Department is responsible for overseeing the procurement of goods and services, ensuring compliance with regulations, and managing contracts for the City. Thus, the City must coordinate with Purchasing & Contracting Department and CAO to determine appropriate procurement procedures based on funding sources for tenant improvements. This includes but is not limited to any pre-qualification requirements, subcontracting requirements, small business and/or disadvantaged business requirements, prevailing wage requirements, and/or Davis-Bacon requirements, and incorporate such in the Lease and/or Tenant Work Agreement to ensure funding reimbursement.

Layout design and construction estimate:

Homelessness Strategies and Solutions Department (HSSD) has committed to being guided by the working group for key decisions about the shelter (e.g., number of people served, populations served, and design of the shelter). Key participants in the proposed working group have stated that the shelter should not serve the 1,000 people initially proposed and HSSD Director Sarah Jarman said it may not reach the 1,000 bed capacity. However, current construction estimates are based on a preliminary design sketch to accommodate 1,000 occupants. We request a Rough Order of Magnitude Estimate based on the design recommendations of the working group regarding tenant improvement costs. We also request an estimate of the annual per person cost of the shelter based on the working group's recommended occupancy level and corresponding support and security staffing.

Provision of Key Documents to the Independent Budget Analyst:

Provide the Independent Budget Analyst with (a) the material Domusstudio used for the City's conditional assessment of the premises in the Lease, (b) the full and complete copy of the Tenant Work Agreement to the Lease, and (c) a funding plan for operations under the Lease.

Incorporate Item S400 Council Action from July 22, 202 Council Meeting:

Incorporate all Council actions from the July 22, 2024, City Council Meeting regarding Item S400 in the Lease. This includes the four points voted upon for Item S400 during the July 22, 2024, Council meeting.

- a. **Address key lease issues:** Address the Lack of Financial Security from the Landlord, Limitation on Landlord's Liability, Vague Standards to Maintain the Property's Appearance, Vague Wording of the City's Right of First Refusal, Unenforceable Provision Purporting to Bind a Third Party, Lack of Flexible Options in Future Use of Property, and Potential Payment of Landlord's Preliminary Expenses in the Lease. These issues are also specified in the Preliminary Analysis of Proposed Lease for Kettner and Vine Site report authored by the CAO.
- b. **Revise and Clarify the Liability Clause for Hazardous Materials:** We request that the Lease incorporates a clause that creates liability against the Landlord for all claims resulting from any Hazardous Materials that exist upon the Premises and are not caused by Tenant and Hazardous Materials that migrate onto the Premises from adjoining real property.

Conclusion:

By allowing the above items to be provided to the requisite departments, offices, and officials; a summary of the key Lease terms and their material consequences can be provided to help the Council and the public understand the deal terms before a decision is made. Therefore, helping to achieve a more favorable outcome for the City.

HLFIII: dh

cc: **Kevin Reisch**, Chief Deputy City Attorney
Lydia Van Note, Chief of Staff, Office of Council President Sean Elo Rivera
Maya Rosas, Deputy Chief of Staff and Director of Strategic Initiatives, Office of Council President Sean Elo Rivera
Daniel Horton, Chief of Staff, Office of Councilmember Henry L. Foster III
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