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February 2, 2000

City Council  
City of Pasadena  
100 North Garfield Avenue, Room 247  
Pasadena, California 91109

Re: Proposed Kidspace Museum in the Arroyo Seco

Dear Honorable Mayor Bogaard and Members of the City Council:

We previously sent to you a letter dated August 30, 1999, which set forth on behalf of our clients, the Arroyo Seco Foundation and other concerned citizens of the City of Pasadena ("City"), our comments and objections to the proposed Kidspace Museum project (the "Project") and the related April 1, 1998 lease (the "Lease"). Since that time, the City Attorney has attempted to partially respond to the comments and objections in support of the Project and the City's past action in entering into the Lease.

Based upon the City Charter and established California law, it is clear that:

- The Lease is in violation of the City Charter because City Charter section 1601 required that the Lease be approved by a majority of the voters at an election prior to the Lease being entered into by the City.
- The intent and scope of the limitations of City Charter section 1601 cannot be disputed, given it was, among other things, proposed and adopted in response to a "Hall of Science" museum being proposed to be constructed on land to be leased from the City in the Arroyo Seco.
- The Lease is void because any action taken by any City Council in violation of its applicable City Charter is void under California law.

- Although the Lease is void and the City Council signed it in error, the City cannot incur any contract-based liability to Kidspace for the City Council's recognition that the Lease is void.

The balance of this letter specifically addresses the violations of the City Charter and sets forth the specific legal authority and analysis as to the void nature of the Lease. The City Charter is dispositive of all Project issues, because the Lease is clearly void, so there is no need to respond to the balance of the City Attorney's memorandum. We have done so, however, in the Attachment to this letter to highlight that the Project is fraught with planning and legal problems, including without limitation, inconsistencies with and violations of the City's General Plan, the Arroyo Seco Ordinance, Open Space Zoning, the Municipal Code and the California Environmental Quality Act.

#### VIOLATIONS OF THE CITY CHARTER.

A. The Project is Contrary to the City Charter's Intent and Purpose to Protect and Preserve the City's Parklands.

Article XVI of the City Charter governing the preservation of parkland and the uses thereof was enacted in 1981 to ". . . preserve and protect the City's parklands and insure that the citizens are informed of changes proposed in the dedicated parks of the City of Pasadena." See Charter Proposal Amendment Summary, for which there was no opposition summary. The construction of the Kidspace museum in the Arroyo Seco area is contrary to the express intent and purpose of Article XVI. Not only is this evident by the present concerns and objections the citizens of Pasadena have regarding this Project but also by looking at the past treatment of similar proposed projects in the same area that led to the enactment of Article XVI.

For example, in December 1978, there was a proposal to construct a "Hall of Science" museum in the Arroyo Seco, near the current location for the Project herein. Similar to the opposition received in response to this Project, this proposed museum received harsh criticism from many citizen groups in Pasadena. One common theme among the opponents was that this type of development was inconsistent with the intent of the City's fathers. In fact, in one newspaper article, the City Directors, at that time, were quoted as saying that the "city fathers pledged to keep the Arroyo for recreational purposes and to restore it to its original naturalness." Given that the construction of a museum in the middle of Brookside Park would not be

consistent with such a pledge, the proposed museum project was vetoed. Shortly thereafter, Article XVI of the City Charter, enacted for the sole purpose to preserve and protect the parklands and insure citizen participation in situations where the parklands are at risk, was enacted.

Now, almost twenty years later, another museum project has been proposed in the Arroyo Seco area. However, this time, not only is the Project contrary to the "pledge of the City fathers", but, it is also in direct violation of the express intent, purpose and restrictions of the City Charter.

B. The Lease Violates Section 1601 of the City Charter.

As noted above, not only is the Lease contrary to the intent and purpose of Article XVI, but as previously stated in our August 30, 1999 correspondence, the Lease expressly violates several provisions of the City Charter, including section 1601. Section 1601 provides in relevant part: "All dedicated park land owned by the City shall be used only for park and recreational purposes, and shall not be sold, transferred or used for other purposes, except upon the approval of a majority of the voters of an election held for such purposes." City Charter section 1601. (emphasis added). Pasadena Municipal Code ("PMC") section 4.02.010 defines "sale" as including "... a lease of an interest in city-owned land for a term in excess of 15 years." PMC section 4.02.010(B). Here, the Lease is for dedicated park land for a term of at least 50 years. Thus, under the definition set forth in PMC section 4.02.010(B), the Lease is a sale and therefore, pursuant to the City Charter, section 1601, the approval of a majority of the voters at an election held for such purposes was required.

Notwithstanding the relevant code provisions and without citing to any relevant legal authority to support the proposition, the City Attorney argues that the 50 year lease term is not a sale for purposes of the City Charter because the definition set forth in the PMC is limited to Chapter 4.02 of the PMC. To adopt the City Attorney's interpretation that the City Charter stands alone without incorporating the other codes of the City would also be contrary to standard legal interpretation. "Generally, the same principles of construction applicable to statutes apply to the interpretation of municipal charters. [citation omitted.] The courts must always look first to the express language of the statute to ascertain its meaning." United Association of Journeymen v. City and County of San Francisco (1995) 32 Cal.App.4th 751, 760.

Moreover, to further support her position, the City Attorney mistakenly relies on Santa Barbara v. Maher (1938) 25 Cal.App.2d 325, as a case that interprets a

charter provision similar to the City's Charter section 1601 in its holding that charter requirements for sale of public land do not apply to long term leases. Mahe, however, is clearly distinguishable from the present case in that nowhere in the City of Santa Barbara municipal code or its city charter was there a provision defining the term "sale" for purposes of disposing of public land. Here, on the other hand, the PMC contains a specific section that sets forth the definition of sale for purposes of disposition of surplus property to include "... a lease of an interest in city-owned land for a term in excess of 15 years." PMC section 4.02.010(B).<sup>1/</sup>

In addition, in section 1005 of the City Charter, it is expressly stated that "[t]he City Council shall provide, by ordinance, for uniform methods for the sale and exchange of real and personal property not needed by the City." City Charter section 1005. The PMC, Chapter 4.02, governs the sale of real property and contains the definition of what constitutes a sale. Thus, when looking at the express language of the City Charter and the PMC and attempting to ascertain the intent of lawmakers so as to effectuate the true purpose of the laws, it is clear that the City Charter and the PMC section 4.02.010(B) must be read as a whole and the definition of sale contained in section 4.02.010(B) is applicable to section 1601 of the City Charter.

Finally, even if one found that the Lease was not a "sale" for purposes of both the PMC and the City Charter, which one should not, the Lease would still be in violation of Section 1601 because at a minimum, the Lease is a transfer of city-owned property given the long lease term. To hold otherwise would circumvent the right of the citizens of Pasadena to approve such transactions and the right of the people to vote could always be defeated by long-term leases (*e.g.*, the City Council could lease the whole Arroyo Seco for the next millennium without a vote of the people because fee title would theoretically remain with the City). As discussed above, this was not the intention of the citizens of Pasadena when enacting this City Charter provision.

C. The Lease is Void for Non-compliance With The City Charter.

As stated above, pursuant to City Charter section 1601, the Lease for the Project is considered a sale of dedicated parkland requiring the approval of a majority of the voters. Given that the Lease is a sale and no approval of a majority of the voters at an election regarding this Project has occurred, the Lease is in violation of the

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<sup>1/</sup> In addition to the PMC, California law now clearly recognizes that a leasehold is an estate in real property. Parker v. Superior Court (1970) 9 Cal.App.3d 397, 401; Civil Code § 761.

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City Charter. Since "[a]ny act that is violative of or not in compliance with the [city's] charter is void", the present Lease between the City and Kidspace is null and void. Domar Electric, Inc. v. City of Los Angeles (1994) 9 Cal.4th 161, 172. Furthermore, declaring the Lease void does not leave the City vulnerable to contractual liability, since a city cannot incur any contract based liability from a lease that is not formed in compliance with that city's charter. First Street Plaza Partners v. City of Los Angeles (1998) 65 Cal.App.4th 650, 656.

### CONCLUSION

Because the Lease violates the City Charter and is therefore void, our clients respectfully request that the City take no further steps to enforce it. Should the City seek to exercise any provisions of the Lease - by processing a conditional use permit or otherwise - our clients regrettably will have no choice but to seek vindication of the City Charter through appropriate legal action.

Respectfully submitted,

Jonathan C. Curtis

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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Enclosures

cc: Michele Beal Bagneris, Esquire  
Ms. Jane Rodriguez

## ATTACHMENT

The following is in specific response to the other issues set forth in the City Attorney's December 9, 1999 memorandum.

### SUMMARY

1. **The Project violates the City's Arroyo Seco Ordinance.**

The Arroyo Seco Ordinance is a specific statute that limits the permitted uses of parklands to active recreational uses, passive recreational uses and cultural events. Museums are not identified as any of these activities and, thus, are not permitted.

2. **The Project violates the Pasadena Municipal Code.**

Pasadena Municipal Code Chapter 4.02 governs the disposition of "surplus real property". Park land cannot be disposed of in the manner contemplated by the Lease in violation of the City Charter.

3. **The Project is inconsistent with the City's Comprehensive General Plan ("General Plan").**

Property in the "open space" designation must be owned by the City (a lease over 15 years is considered a sale pursuant to Pasadena Municipal Code section 4.02.010) and the Project violates numerous objectives and goals contained therein.

4. **The Project is inconsistent with the open space zoning in that impermissible uses are being proposed.**

5. **The City has not complied with the California Environmental Quality Act, the State CEQA Guidelines and the Environmental Guidelines for City of Pasadena.**

I. **THE PROJECT VIOLATES THE ARROYO SECO ORDINANCE.**

The Arroyo Seco Ordinance, Ordinance No. 6403, established "regulations for preservation, enhancement and enjoyment of the Arroyo Seco as a unique environmental, recreational and cultural resource of the City of Pasadena surrounded by residential neighborhoods." Pasadena Municipal Code 3.32.020. Sections 3.32.160 and 3.32.170 of the Code set forth the permitted uses and special regulations that apply to the Brookside Park area. Active recreational uses, passive recreational activities and cultural events are permitted, but neither museums nor commercial uses are permitted. In fact, the ordinance expressly provides that

"[c]ommercial uses other than those existing as of the effective date of this ordinance are prohibited unless ancillary to the basic recreational uses." As admitted in the Initial Study prepared by the City, the Project is, at the very least, a "commercial recreation" use under applicable zoning, and this use certainly did not exist at the time of the adoption of the Arroyo Seco Ordinance. Thus, the Lease and the underlying use are prohibited by this ordinance.

Even though the language of the Arroyo Seco Ordinance is very limited in its definition of what constitutes permitted uses in the Brookside Park area, the City Attorney argues that the proposed museum would fall within the category of such permitted uses. In support of her proposition, the City Attorney cites to two California cases, which, although interesting, are not relevant to this situation in that neither case provides any authority as to the specific ordinance language regarding a commercial recreation use.

## II. THE PROJECT VIOLATES THE PASADENA MUNICIPAL CODE CONCERNING DISPOSITION OF SURPLUS REAL PROPERTY.

PMC Section 4.02.010 defines "surplus real property" as "the real property of the city not needed for the purposes for which it was acquired or for any other public purpose." In addition, as stated above, under this section, "sale" includes "a lease of an interest in city-owned land for a term in excess of 15 years." Section 4.02 sets forth detailed procedures to be followed for disposing of surplus real property. In the instant case, the Lease is void as the City cannot avoid City Charter provisions (as described above), which require a vote of the citizens of the City of Pasadena, by declaring park property as "surplus." Furthermore, on the one hand, the City Attorney argues that the Lease is a "sale", as this term is defined under section 4.02.010, for purposes of surplus real property procedures, yet argues on the other hand, that the Lease is not a sale for purposes of complying with the City Charter. This type of argument is illogical. As stated above, the City Charter and the PMC are interrelated City laws and can not be arbitrarily applied in some circumstances and not in others.

## III. THE PROJECT IS INCONSISTENT WITH THE CITY'S COMPREHENSIVE GENERAL PLAN.

The General Plan designation for the Project site is "open space." Open space is defined at page 34 of the General Plan as follows:

"This category is for a variety of active and passive public recreational facilities and for City-owned open space facilities. This includes natural open spaces and areas which have been designated as environmentally and ecologically significant. This category also applies to land

which is publicly owned, though in some instances public access may be restricted. Most importantly, this designation only applies to lands owned by the City." (Emphasis added).

As stated above, this designation only applies to lands owned by the City. As a result, given that the Lease is a "sale" within the meaning of the PMC and the City Charter, as explained above, the Lease and the Project are inconsistent with and violate General Plan restrictions concerning land designated open space (land in this designation must be owned by the City). At a minimum, a General Plan amendment will be required for the Project prior to any action on any lease.

It should also be noted that the Project is inconsistent with numerous objectives and goals and the City's General Plan<sup>1/</sup>. These objectives and policies include, but are not limited to, those requiring public park land to be protected from non-recreational uses, that development of any new park facility should be undertaken only after thorough study, that citizen participation shall play a major role in all phases of recreational space planning from site selection to program development and that open space land should be preserved.

#### IV. THE PROJECT IS INCONSISTENT WITH THE OPEN SPACE ZONING DESIGNATION.

The Project as currently proposed continues to be inconsistent with the zoning designation of "open space." A zoning designation of open space may permit "commercial recreation" uses pursuant to a conditional use permit, but this Project is a "museum." Furthermore, even if the Project were to be considered a commercial recreation use, as previously stated in our August 30, 1999 letter, concern exists in that some of the uses proposed by Kidspace Museum do not appear to be limited to commercial recreation activities, including a number of special events and private parties.

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<sup>1</sup> See General Plan Elements: (1) Vision Statement - Sections 2, 4 and 7; (2) Land Use - Objective 2 and Policies 2.1, 2.2 and 2.3; Objective 6; Objective 9; Objective 17 and Policies 17.3 and 17.4; Objective 25; Land Use Diagram - Open Space; Design Principles; Historic Preservation; (3) Conservation - Strategy 200 and related policies and programs; and (4) Open Space - Strategies, Goals and Objectives, including strategy 100 and Policies 101-104.



V. NO PROPER ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT HAS BEEN DONE.

We note from the City Attorney's memorandum that no adequate environmental review of the Project has occurred and any future review would depend "on the specifics of the project." Given that the current Lease is void due to the numerous violations identified above, a thorough analysis under the California Environmental Quality Act will still be necessary for any proposed project.

CONCLUSION

As stated in the attached letter, although we acknowledge the City Attorney's attempts to support the past acts of the City Council, given the foregoing, on behalf of all of our clients, we request that the City Council appropriately recognize that the current Lease is inconsistent with and void for failing to comply with, among others, the City Charter of the City of Pasadena , the City's General Plan, the Arroyo Seco Ordinance, zoning and other provisions of the Municipal Code.