

2020 LRDP LITIGATION SETTLEMENT AGREEMENT

THIS 2020 LRDP LITIGATION SETTLEMENT AGREEMENT ("Agreement"), dated May 25th 2005, is made by and among THE UNIVERSITY OF CALIFORNIA, BERKELEY and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation (collectively, the "University") and the CITY OF BERKELEY, an entity corporate and politic (the "City").

RECITALS

- A. WHEREAS, the University has approved the 2020 Long Range Development Plan for the University of California, Berkeley (the "2020 LRDP") and in conjunction therewith, has also prepared and certified an Environmental Impact Report (the "2020 LRDP EIR").
- B. WHEREAS, the City has filed a petition and complaint challenging the validity of the 2020 LRDP EIR (Alameda County Superior Court Case No. 05199505).
- C. WHEREAS, the University and the City desire to settle the dispute between them with respect to the 2020 LRDP and 2020 LRDP EIR on the terms set forth herein and based upon the Statement of Principles below.

I. STATEMENT OF PRINCIPLES.

- A. WHEREAS, the City of Berkeley and UC Berkeley have successfully completed two previous joint planning documents, the 2001

Transportation Demand Management Study and the 2003 Draft Southside Plan, with broad citizen participation and community engagement; and

- B. WHEREAS, the City of Berkeley seeks to establish the downtown as a compact, economically vital historic city center with a defined core area and transition zones for buffering residential neighborhoods; and
- C. WHEREAS, UC Berkeley is an urban campus located partly within the geographical boundaries of the City of Berkeley; and
- D. WHEREAS, the City Environs are as much a part of the Berkeley experience as the campus itself, and the quality of city life is a large part of what makes UC Berkeley a unique and desirable place to learn, work, and live; and
- E. WHEREAS, the City of Berkeley and UC Berkeley seek to respect the unique social and cultural character of the Downtown, create an appealing, safe and pedestrian-oriented Downtown environment and revitalize the Downtown economy; and,
- F. WHEREAS, downtown Berkeley's superior transit access and its established mixed-use character make it a desirable location for those future University investments in new research, cultural, and service functions which require locations near, but not on, the Campus Park; and

- G. WHEREAS, the City of Berkeley in its General Plan seeks to prioritize transit-oriented development to promote increased public transit usage and bicycle and pedestrian access as one of the most effective tools to reduce traffic congestion and improve community health and the environment; and
- H. WHEREAS, the City of Berkeley strongly supports alternative transit that serves UC Berkeley staff, faculty and students; and
- I. WHEREAS, the parties acknowledge the importance to the City of maintaining properties on the City's tax rolls, and UC Berkeley in its 2020 Long Range Development Plan proposes that University-owned land will always be the first option explored by the University for both new program space and parking; and
- J. WHEREAS, the University wishes to plan future investments not merely to meet the program needs of the University, but also to enhance the image, experiential quality, and economic and cultural vitality of downtown Berkeley, by joining with the City of Berkeley in preparing a Berkeley Downtown Area Plan; and
- K. WHEREAS, the City of Berkeley and UC Berkeley share a vision for a cooperatively planned Downtown Berkeley that includes the following elements:

Sustainability: promoting a sustainable downtown that serves as a model of urban stewardship and the wise use of resources, and relieves development pressures on residential neighborhoods;

Livability: enhancing the image and experience of the downtown, preserving its unique cultural and social character and its comfortable pedestrian orientation; and

Vitality: strengthening the downtown as a vital city center offering employment, housing, cultural and recreational opportunities for Berkeley residents.

L. WHEREAS, the City and University agree this vision and plan shall be comprehensive, and shall encompass the entire scope of future downtown development, including all private and public sector landowners and developers; and

M. WHEREAS, the City and the University agree that, while maintaining its autonomy as a state institution, the University will use the new Downtown Area Plan as its guide for the location and design of new projects within the downtown.

Therefore, the University and City of Berkeley agree as follows:

II. JOINT PLANNING FOR THE DOWNTOWN AREA (DEVELOPMENT OF A DOWNTOWN AREA PLAN (DAP)).

UC Berkeley will participate in a joint City of Berkeley/UC Berkeley planning process for the Downtown Area of Berkeley, defined as the area bounded by Hearst, Oxford, Dwight and Martin Luther King, Jr. Way.

A. Conditions.

1. Staffing for preparation of the DAP and EIR shall include at least one FTE dedicated City planner and one FTE dedicated UC Berkeley planner; see part II.B below for other process management conditions. The DAP will establish development envelopes and design guidelines by area or subarea, not site-by-site, and not just for UC Berkeley development sites. UC owned sites will be considered using the same set of criteria as non-UC sites.
2. Design guidelines should be developed by area or subarea, not by site. The University will develop project specific design guidelines that are, to the full extent feasible, consistent with the DAP design guidelines for each major UC Berkeley project, in accordance with the project approval process as specified in the 2020 LRDP.
3. UC Berkeley and the City will work together to identify opportunities for mixed-use projects and public/private

partnerships on land not currently under UC control, within the Downtown Area or elsewhere in the City.

4. UC Berkeley will explore with the City development of public-private research facilities within the City. However, the City acknowledges that the proximity of academic programs on and adjacent to the Campus Park is a fundamental objective of the UC Berkeley academic strategy and 2020 LRDP.
5. Following certification of the EIR and adoption of the DAP, UC Berkeley would use it as a guide for the location of projects implemented under the 2020 LRDP in the area of the DAP, and would use the design guidelines and standards prescribed in the DAP as a guide to the design of such projects, as stated in part II.A.2 above. UC Berkeley will continue to use the 2020 LRDP and 2020 LRDP EIR. The DAP EIR will not supersede the 2020 LRDP EIR, but rather augment it.
6. Because both parties recognize that UC Berkeley may need to move forward with some 2020 LRDP projects during preparation of the DAP and DAP EIR, within 90 days from the date of this Agreement, UC Berkeley shall provide to the City a list of University- and State-owned properties within the DAP area that it considers to have potential for future University development or

redevelopment during this period, and the most likely use or mix of uses those future projects might accommodate. The City acknowledges, however, that this list will not be exclusive or limit UC Berkeley's ability to go forward with other projects under the 2020 LRDP, because as a dynamic research university, its current needs may change and new unanticipated needs may emerge.

B. DAP/EIR Process.

1. The City will act as the Lead Agency under CEQA for preparation of the Downtown Area Plan (the "DAP") and DAP EIR. The Regents will reserve their autonomy from local land use regulation.
2. The City will certify the EIR and adopt the DAP within 48 months of executing the Settlement Agreement; however the City Manager and Chancellor may agree to extensions of this deadline without further approval by The Regents or the City Council.
3. There shall be a staff level DAP joint preparation committee that includes UC Berkeley planners. The City and UC Berkeley staff will meet and establish "milestones" for the planning process to ensure orderly and timely completion of the Plan and EIR within this 48 month period. The parties may agree on incentives and/or

disincentives beyond those specified herein to ensure that the process is completed in a timely and effective manner.

- (a) If the goal of completion within 48 months is not met as a result of City action or inaction not caused by UC Berkeley's failure to perform under this Agreement, then UC Berkeley's annual payment to the City will be reduced by \$180,000 each year, or \$15,000 per month of delay, until certification of the EIR and adoption of the Plan. This reduction in annual payment, if it occurs, may not be drawn from the TDM or Neighborhood funds (see part III.B, below).
- (b) UC Berkeley retains the right to tier from the 2020 LRDP EIR as provided in part II.A.5 and II.A.6 above.

- 4. Dispute Resolution: The City's planning director and the campus' planning director will be fully authorized to make process decisions jointly. If the City planning director and campus planning director cannot resolve a dispute, it will be referred to the City Manager and UC Vice Chancellor for Facilities Services for resolution. If they cannot resolve the dispute, it will be referred to the Mayor and the Chancellor. If they cannot resolve the dispute, the parties would equally share the costs of the outside mediation.

5. All public meetings regarding the DAP and EIR, excluding any public hearing process before City commissions and the City Council, must be jointly planned and sponsored by the City and UC Berkeley. All DAP and EIR meetings before all City commissions and the City Council will be coordinated with UC Berkeley.
6. Joint review of DAP and EIR: because the DAP is a Joint Plan, there shall be no release of draft or final DAP or EIR without concurrence by both parties. Concurrence may be withheld in the case of a good faith disagreement regarding land use planning or CEQA issues. Any mitigation measures included in the EIR must be acceptable to UC Berkeley and applicable to all projects in the Downtown Area, regardless of ownership or sponsorship. Each party reserves the right to determine the feasibility of mitigation measures proposed in the DAP EIR and to discuss such feasibility in the DAP EIR, other environmental documents or findings.
7. UC Berkeley reserves the right to determine if the DAP or EIR meets the Regents' needs. The basis for making such a determination would be that the DAP or EIR does not accommodate UC Berkeley development in a manner satisfactory to the Regents.

8. If the DAP EIR is challenged in court, the University may tier solely from its 2020 LRDP EIR unless and until the DAP EIR is upheld.
The University will not be required to defend the DAP EIR in court.

C. Costs.

1. UC Berkeley will pay 50% of the City's cost of preparing the DAP EIR, up to a maximum amount of \$250,000.00.
2. The City will employ a minimum of one FTE land use planner for four (4) years. The City may choose to fund such planning salary(ies) out of the campus' annual payment to the City, however the funds allocated for TDM and the Neighborhood programs as described in part III.B may not be reduced.
3. In addition, up to \$250,000 of the City's share of the cost of the DAP EIR may be funded out of UC's annual contribution to the City, provided that the funds allocated for TDM and the Neighborhood programs as described in part III.B may not be reduced.
4. UC Berkeley supports the concept of developing a financing plan for infrastructure improvements, transit and neighborhood development in the Downtown Area, provided such a plan applies to all private and public property owners and all developers in the Downtown Area and that any financial contributions by UC

Berkeley to such a plan do not increase UC Berkeley's \$1.2 million annual contribution to the City, as described in part III.B, below.

III. FISCAL CONSIDERATIONS.

A. Beginning July 31, 2006, UC Berkeley agrees to make an annual allocation of \$1.2 million to the City for the term of the 2020 LRDP, to be disbursed and used as indicated in part III.B below. This annual contribution will be increased annually by 3%.

1. This annual contribution to the City is intended to be all encompassing. The campus will not agree to any extra allocations other than the campus' commitment to pay 50% of the cost of preparing the DAP EIR, up to a maximum of \$250,000.00.
2. Allocations under this part III.A are not intended to eliminate on-going fees for services paid to the City by UC Berkeley as of the date of this Agreement, but not addressed by this Agreement. In addition, the allocation does not include the costs of mitigation measures that are required in any certified EIR and that The Regents determine are feasible to implement.

B. The sums in categories 1 and 2 below would be transferred to the City no later than July 31st of each year. The sum in category 3 below would be deposited on an annual basis into a separate account administered jointly

by the Vice Chancellor, Facilities Services and the City Manager. The sum in category 4 below would be deposited on an annual basis into a separate UC Berkeley account and an annual balance will be provided to the City. Funds in all accounts may accumulate from year to year to underwrite a pre-identified major capital purchase or project.

1. \$200,000 annually
Sewer and storm drain infrastructure projects, including replacement and rehabilitation of existing sewer and storm drain lines.
2. \$600,000 annually
Fire and emergency equipment, capital improvements, and training, including maintenance and repair of equipment and capital improvements.
3. \$200,000 annually
Joint UC/COB Transportation Demand Management and pedestrian improvement programs, studies, and projects, including, but not limited to, new or improved signage, which allocation does not require the City to provide matching funds.
4. \$200,000 annually
Fund projects that benefit City neighborhoods. Project proposals would be solicited from community and neighborhood groups and reviewed by a Chancellor's advisory committee comprised of selected UC Berkeley staff, community members, and City representatives. Funding will be disbursed at the Chancellor's discretion and may be used to leverage additional funding from private and public resources. Projects funded through this account would not be located on the Campus Park.

The foregoing notwithstanding, the University will transfer the sum of \$150,000 to the City no later than June 30, 2005, so that the City can employ the FTE land use planner described in Section II.C.2 above. This amount will be deducted from the amount to be transferred by the University to the City on July 31, 2009, pursuant to Sections III.B.1 or 2.

- C. No later than the first business day following July 1st of each year the City shall provide UC a full accounting of its use of category 1 and 2 funds. If UC determines that any amount of these funds has been spent in a manner inconsistent with this part it may withhold that amount from the sums deposited the following July 31st, provided that it concurrently provides a written explanation for its determination. The parties shall then seek to resolve their disagreement.
- D. The parties acknowledge that if changes in state law modify the monetary legal obligations of UC the parties shall renegotiate this Agreement with the purpose of maintaining the same total amount of allocations, inclusive of any new obligation.

IV. PARKING.

- A. UC Berkeley agrees to construct no more than 2,060 total new parking spaces by 2015, consisting of 1,270 net new parking spaces and 790 un-built spaces previously approved for development (including 690 at

Underhill) without preparing a project specific EIR (even as to any such excess parking spaces located in the DAP area), provided that the City approves a route for Rapid Bus on Telegraph Avenue by 2010 and considers a route for a dedicated lane BRT on Telegraph Avenue.

- B. As part of the DAP and DAP EIR, UC Berkeley and the City will explore and consider alternative transit opportunities in addition to the AC Transit Rapid Bus and Bus Rapid Transit.
- C. When building new parking in the Downtown Area, UC Berkeley will attempt to prioritize locations that maximize shared public and campus use and will consider public/private partnerships to develop new parking structures. As part of the DAP, the City and University will seek to maximize the integration of any UC parking into the overall supply of parking in the downtown area and encourage its use by the public at off-peak times when not required for University needs with appropriate pricing and signage.

V. ADDITIONAL JOINT INITIATIVES.

- A. Prior to any announcement by the parties concerning this Agreement, the City and UC Berkeley will mutually agree upon and prepare a joint press release and hold a joint press conference announcing settlement of the litigation.

- B. The City of Berkeley currently receives the entirety of the local use tax paid by UC Berkeley, a benefit of \$324,000 over the past four fiscal quarters (as of March 31, 2005). UC Berkeley supports in concept a Use Tax "pilot program" to enable a greater share of use taxes to be accrued to the City of Berkeley. The City would assist UC Berkeley to set up an administrative process to implement the program. If determined feasible by the University, in conjunction with the Board of Equalization, such program would be implemented as soon as possible, but in no event later than July 1, 2006. The University will make diligent, reasonable and good faith efforts to determine the feasibility of such a program.

The campus agrees to participate in the following Additional Joint Initiatives to the extent permissible under existing law and UC practices.

- C. Work with the City on a First Source hiring program to the extent feasible for all new construction and non-construction jobs modeled on the City's existing First Source Hiring Program, such as enabling the City to provide information to University contractors.
- D. Develop and implement within a reasonable time a local-purchasing program for prioritizing the purchase of goods and services in Berkeley, to the extent feasible.

- E. Work together to publicize and support , and implement, the Berkeley Champions for Kids Workplace (voluntary) Giving Payroll Deduction Program for UC Berkeley Faculty and employees.
- F. Explore establishing a UC Berkeley Employee Volunteer Release Time program similar to the City's to have volunteers work with at risk young people in the City.
- G. Explore with the City opportunities to encourage private spin-off businesses that might result from UC-related research to locate in Berkeley.

VI. OTHER CONSIDERATIONS.

- A. The City agrees to promptly dismiss its lawsuit challenging the 2020 LRDP EIR with prejudice, not contingent upon an agreement "for the duration of the 2020 LRDP." The parties will be responsible for paying their own attorneys' fees and costs.
- B. The City agrees not to seek to impose parking taxes on the University during the course of the 2020 LRDP as long as the total of fiscal considerations under part III are not reduced.
- C. The City agrees not to pursue new or additional sewer fees or litigation to impose such new or additional fees on the University during the course of

the 2020 LRDP as long as the total of fiscal considerations under part III are not reduced. City will promptly pass a resolution and take any other legal steps necessary to exempt UC Berkeley from the imposition of the sewer fees adopted by the City Council on April 26, 2005.

- D. The City agrees not to pursue any legal challenges to the approval or construction of the Southeast Quadrant Academic Commons, provided it is consistent with the 2020 LRDP and 2020 LRDP EIR, or to fund or encourage by official action other organizations to do so. Nothing in this paragraph shall be construed to apply to Memorial Stadium.
- E. The City agrees not to pursue, any challenges to any LRDP projects on the Campus Park, provided they are consistent with the 2020 LRDP and 2020 LRDP EIR or to fund or encourage by official action other organizations to do so.

If A, B, or C above is violated, this Agreement shall immediately terminate. If D or E above is violated, UC Berkeley legal fees incurred in defending any such lawsuits will be deducted from the annual contributions to the City for sewer and storm drain infrastructure and fire and emergency services.

VII. MISCELLANEOUS.

- A. This Agreement shall become effective upon execution of the undersigned. This Agreement shall terminate at the conclusion of the

2020-2021 academic year or at such earlier date set forth in Section VI above.

- B. Time shall be of the essence in the performance and/or satisfaction of this Agreement and/or each individual term, promise, provision, obligation, sentence, clause or paragraph thereof.
- C. The parties intend and agree that this Agreement, and each and every provision thereof, shall be binding and enforceable upon the parties according to the terms and provisions specified herein.
- D. This written Agreement constitutes the entire Agreement between the parties as to the matters referred to herein. Any other terms, promises, provisions, obligations or agreements by or between the parties shall be enforceable only as set forth in any other applicable written agreement.
- E. After consultation with the undersigned counsel, each party to this Agreement represents and warrants that it authorized and has the capacity to enter into this Agreement, and that each signatory to this Agreement on its behalf is authorized and has the capacity to sign this Agreement on its behalf.
- F. Except to the extent other remedies for default under this Agreement are otherwise specified herein, the parties' obligations under this Agreement shall be specifically enforceable, and any non-defaulting party may bring

an action for specific performance or any other appropriate relief in the Superior Court. This Agreement is not intended, nor shall it, create any right or remedy in any third party.

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Dated: May 25, 2005

CITY OF BERKELEY

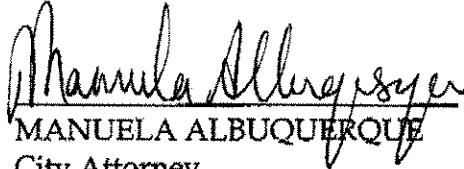


TOM BATES
Mayor



PHIL KAMLARZ
City Manager

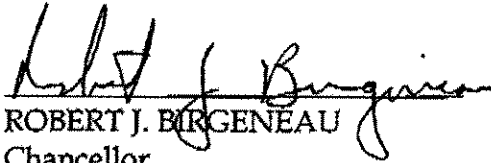
Approved as to form:
CITY ATTORNEY



MANUELA ALBUQUERQUE
City Attorney

Dated: May 25, 2005

UNIVERSITY OF CALIFORNIA,
BERKELEY



ROBERT J. BIRGENEAU
Chancellor

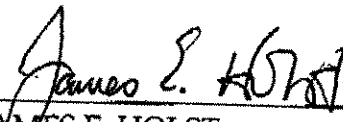


EDWARD J. DENTON
Vice Chancellor-Facilities Services

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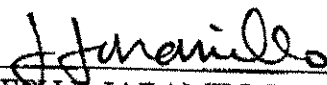
Dated: May 25, 2005

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA



JAMES E. HOLST
General Counsel

Approved as to form:
GENERAL COUNSEL OF THE
REGENTS OF THE UNIVERSITY OF
CALIFORNIA



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