

CITY CLERK - CONTRACTS SCAN SHEET

CONTRACT #: 11273

CONTRACTING PARTY: THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA ON BEHALF OF THE UNIVERSITY
OF CALIFORNIA, IRVINE

CONTRACT DATE: 03/03/2021

EXPIRATION DATE:

DESCRIPTION: SETTLEMENT AGREEMENT; ORANGE COUNTY
SUPERIOR COURT, CASE NO. 30-2021-
01183322-CU-WM-CXC; CHALLENGING THE
CERTIFICATION OF THE 2021 LRDP
AMENDMENT SEIR AND THE APPROVAL OF
THE 2021 LRDP AMENDMENT

AMOUNT: \$2,500,000.00

DEPARTMENT: CITY MANAGER

ITEM #:

MEETING DATE:

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “**Agreement**”) is entered into as of March 3, 2021 (the “**Effective Date**”), by and between the (i) CITY OF IRVINE (“**City**”) and (ii) The REGENTS OF THE UNIVERSITY OF CALIFORNIA (“**Regents**”), on behalf of the University of California, Irvine (“**UCI**”) (Regents and UCI are collectively referred to as “**University**”). This Agreement is intended to and shall settle, fully and finally, the dispute between the City and the University as discussed herein. The Parties to this Agreement are referred to herein collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. In November 2007, University approved a Long Range Development Plan for the future growth of the University of California, Irvine campus (“**2007 LRDP**”), which campus is located within the municipal boundaries of the City of Irvine. As required by the California Environmental Quality Act, Public Resources Code section 21000 *et. seq.* (“**CEQA**”), University prepared, circulated, and approved an Environmental Impact Report (“**2007 LRDP EIR**”) prior to approval of the 2007 LRDP.

B. University amended the 2007 LRDP in January of 2021 (“**2021 LRDP Amendment**”) to include a project that consists of a new medical development to be developed on property at the corner of Jamboree Road and Campus Drive in the City of Irvine, consisting of a six (6) story, three hundred fifty thousand (350,000) gross square foot (“**gsf**”) acute care hospital, a six-story, two hundred twenty five thousand (225,000) gsf Ambulatory Care Center, a three-story central utility plant, and a six-story parking structure with approximately one thousand four hundred (1,400) parking spaces (“**Project**”). As required by CEQA, University prepared, circulated, and approved the “Subsequent Environmental Impact Report for the Irvine Campus Medical Complex” (State Clearinghouse Number 2020029099) (“**2021 LRDP Amendment SEIR**”) prior to approval of 2021 LRDP Amendment.

C. On February 8, 2021, Irvine filed a Petition for Writ of Mandate and Complaint for Declaratory Relief in the Orange County Superior Court against University, bearing Case No. 30-2021-01183322-CU-WM-CXC (the “**Action**”) challenging the certification of the 2021 LRDP Amendment SEIR, and the approval of the 2021 LRDP Amendment for the Project.

D. The Parties enter into this Agreement to (i) recognize their mutual interests and goals, and to formalize an agreement to strengthen their relationship, and support mutually beneficial cooperation in the future, and (ii) settle and fully resolve the Action, thereby avoiding the distraction, burden, expense, and uncertainty of litigation.

AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals, and the terms, conditions, and covenants herein, the Parties hereto agree as follows:

1. **Confirmation of Recitals.** The Parties hereby represent and warrant that the factual statements made in the above Recitals are true and accurate.

2. **Community Investment.**

a. As a strong community partner, University will make a one-time, lump sum payment of two million five hundred thousand dollars (\$2,500,000) to Irvine (“**Community Investment**”), to be used toward circulation improvements, including reducing roadway congestion, in the vicinity of the UCI campus and in support of the UCI campus community; provided, however, that the Parties agree that reducing roadway congestion in the vicinity of the campus is “in support of the UCI campus community.”

b. University shall pay the Community Investment to Irvine on the Effective Date of this Agreement.

c. The Parties agree and acknowledge that the Community Investment is separate and apart from the CEQA process.

d. Irvine will use the Community Investment towards implementation of the improvements identified in the 2007 LRDP EIR for which University had a fair share contribution obligation (“**2007 Improvements**”); provided, however, that Irvine may reasonably determine to build one or more alternatives to the 2007 Improvements to address congestion in the same area if Irvine determines in good faith that the alternative(s) alleviate(s) a portion of the roadway congestion caused by the 2007 LRDP as augmented by the 2021 LRDP Amendment.

e. University’s payment of the Community Investment shall fully satisfy University’s actual and perceived obligations with regard to traffic impacts and related LOS and fair share obligations caused by the 2007 LRDP as augmented by the 2021 LRDP Amendment; provided, however, that nothing in this agreement shall excuse University from its obligations pursuant to CEQA as specified in the 2007 LRDP EIR as augmented by the 2021 LRDP Amendment SEIR.

3. **Waiver, Forfeiture, and Release of Existing Fee Credits.** University hereby waives, forfeits, and releases all of its outstanding transportation credits with Irvine, with a total value of approximately two million six hundred thousand dollars (\$2,600,000), which includes the elimination of the credit University obtained from Irvine in connection with the widening of approximately 1.2 miles of Culver Drive between Campus Drive and Shady Canyon Drive.

4. **Campus Circulation Improvements.**

a. University reaffirms its commitment to provide four million dollars (\$4,000,000) in roadway improvements along Jamboree Road (“**Campus Circulation Improvements**”) as a part of the separate UCI Center for Advanced Care project that will begin construction in 2021.

b. The Campus Circulation Improvements are shown on Figure 1-3 of the 2021 Irvine Campus Medical Complex SEIR Transportation Study and are identified on Table 16 of the Irvine Campus Medical Complex Supplemental LOS analysis. These improvements include intersection improvements at Jamboree Road/Birch Street intersection and a new access driveway on Jamboree Road south of Jamboree/Birch intersection. The Campus Circulation Improvements also include pedestrian and bikeway improvements that include a sidewalk or street-adjacent Class

I off-street bike path and a Class II on-street bike lane on the east side of Jamboree Road from Campus Drive to Fairchild Road.

c. The Campus Circulation Improvements will move forward in 2021. Irvine and UCI agree they will work together to obtain any necessary Coastal Development Permits for these Improvements.

5. **Future Collaboration.** Irvine (including, but not limited to, two members of the City Council) and UCI executives (including, but not limited to, the Vice Chancellor, Division of Finance and Administration) will participate in a planning and collaboration process that will include:

a. Working groups to regularly meet and discuss mutual opportunities and how best to leverage and partner; challenges and areas of concern (and solutions); and discussions to seek approval for the commitment of any resources of the Parties for projects to address mutual challenges.

i) The working group to meet no less than four times per year. The first meeting shall be held on or before March 31, 2021.

ii) Topics to be discussed by the working group will include identifying and assigning cost responsibilities for the maintenance of roadway segments and street lights adjacent to and in the vicinity of the University, and UCI's provision of on-campus housing.

b. Development of a Strategic Partnership Plan that will at a minimum (i) set forth a mechanism for ongoing meetings and collaboration between the parties to enhance their joint interests, (ii) identify areas where collaboration currently occurs and should be recognized and bolstered, and (iii) identify future areas for future partnership.

6. **Dismissal of Action With Prejudice:** Within two (2) business days of the full execution of this Agreement and receipt of the Community Investment, City shall dismiss the Action with prejudice.

7. **Release:**

a. Other than as set forth below in Section 7(b), Irvine voluntarily and knowingly waives, releases, and discharges forever University and each of its regents, officers, directors, employees, agents, attorneys, and representatives (collectively, "**Released Parties**") from any and all claims, charges, complaints, damages, liabilities, actions, causes of action in law or equity, suits, attorneys' fees, costs, losses, penalties, liens, debts, interest or expenses (collectively, "**Claims**") of any nature whatsoever, whether known or unknown, whether suspected or unsuspected, against Released Parties, which arise out of the Action or the Project. Each and all of the aforesaid Claims are hereby fully and finally settled, compromised, and released.

b. Nothing herein shall constitute a waiver by the Irvine of any claims or rights that may arise from University's failure to perform obligations pursuant to CEQA as specified in the 2007 LRDP EIR as augmented by the 2021 LRDP Amendment SEIR or the terms of this Agreement.

c. Irvine represents and warrants to University, that Irvine (i) has all necessary power and authority to make such release, including any necessary consent or approval from any person; and (ii) has not heretofore transferred or attempted to transfer all or any part of any such thing released in any manner whatsoever, including by way of subrogation or operation of law. Irvine further represents and warrants to University that the release and waiver by Irvine under this Agreement is executed voluntarily and without duress or undue influence on the part of any other person or entity whatsoever.

d. The foregoing releases are intended to extend to all such existing claims arising from the Action or the Project that are, known or unknown, suspected or unsuspected, and each Party expressly waives and relinquishes any rights and benefits that they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

e. The Parties acknowledge that they have specifically reviewed with their attorneys the meaning and effect of the release and waiver set forth in subparagraph (a), and the language from Civil Code Section 1542 quoted in subparagraph (d), and their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

8. **Parties to Bear Their Own Costs, Fees and Expenses.** Each Party shall bear its own attorneys' fees, costs and expenses in relation to the Action, and no Party shall pay nor be liable for any payment to another Party in relation to the Action except as expressly set forth in this Agreement.

9. **Successors and Assigns.** This Agreement, and all of the terms and provisions hereof, shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, legal representatives, successors, and assigns.

10. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that, prior to signing this Agreement, they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that, prior to signing this Agreement, they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions,

either oral or in writing, express or implied, between the Parties. The Parties each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement, or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each Party hereto in order to become effective.

12. **Public Records Act.** Upon its execution, this Agreement shall be subject to disclosure pursuant to the California Public Records Act.

13. **Specific Performance.** 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.

14. **Enforcement Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that Party may be entitled.

15. **Severability.** Should any portion, word, clause, phrase, sentence, or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

16. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed under the laws of said State without giving effect to conflicts of laws principles.

17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth below.

[Signatures to Follow]

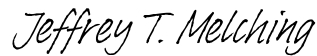
Dated: March 3, 2021

CITY OF IRVINE



Farrah N. Khan, Mayor

Approved as to form:



Jeffrey T. Melching, City Attorney

Dated: March 3, 2021

REGENTS OF UNIVERSITY OF
CALIFORNIA

Howard Gillman
Chancellor
University of California, Irvine

Approved as to form:

Andrea Gunn Eaton
UCI Chief Campus Counsel

Dated: March __, 2021

CITY OF IRVINE

Farrah N. Khan, Mayor

Approved as to form:

Jeffrey T. Melching, City Attorney

Dated: ~~March __~~^{3/3/2021}, 2021

REGENTS OF UNIVERSITY OF
CALIFORNIA

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Howard Gillman

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Howard Gillman

Chancellor

University of California, Irvine

Approved as to form:

DocuSigned by:

Andrea Gunn Eaton

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Andrea Gunn Eaton

UCI Chief Campus Counsel