

Form of Predevelopment Agreement

PREDEVELOPMENT AGREEMENT

Between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

And

This PREDEVELOPMENT AGREEMENT (the “**Agreement**”), dated _____, 20___, is between **The Regents of the University of California**, a California public corporation, on behalf of the _____ campus (“**University**”) and _____, a _____ ([“**Developer**”]).

RECITALS

WHEREAS, University desires to have constructed a student housing project consisting of approximately _____ to _____ student housing beds and other facilities (the “**Project**”) within a site comprised of approximately _____ acres of land (the “**Site**”), which Site is generally depicted on Exhibit A, attached hereto.

WHEREAS, University has conducted a Stage 1 Request for Proposal (“RFP1”) and a Stage 2 Request for Proposal (“RFP2”) process, and University has selected [DEVELOPER] as the developer of the Project.

WHEREAS, University has concluded that the development of the Project will require at least two stages: (1) a predevelopment planning and design stage (the “**Predevelopment Stage**”) and (2) a construction stage (the “**Development Stage**”).

WHEREAS, University has requested that [DEVELOPER] furnish or procure certain services with respect to the Predevelopment Stage of the Project upon the terms and conditions set forth herein.

WHEREAS, the parties anticipate that the pre-development costs [DEVELOPER] incurs in the performance of services related to the Project will be considered part of the costs of the Project; however, as more particularly described in this Agreement, the parties desire to articulate when and which particular Predevelopment Stage Costs for the Project will be

reimbursed by the University to [DEVELOPER], if the Project, or [DEVELOPER]'s involvement in the Project, is terminated prior to the Development Stage, subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for valuable consideration, the receipt and adequacy of which are hereby acknowledged, University and [DEVELOPER] agree as follows.

1. [DEVELOPER] SERVICES AND RESPONSIBILITIES

1.1. [DEVELOPER] shall furnish or procure the following services and deliverables necessary for the Project within the budget and schedule set forth on the attached Exhibit B (collectively, the “**Services**”):

- 1.1.1 Engage and coordinate professionals to perform planning, engineering, feasibility studies, design work, coordination and services to the University in conformance with the Technical Requirements contained in the RFP2 dated _____, as such Technical Requirements may be amended by University from time to time, and assign personnel as appropriate to such activities, as further described in Exhibit B.
- 1.1.2. Furnish drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs and other materials, as required, in connection with the Services.
- 1.1.3 Submit design plans and specifications to University for its review and approval in accordance with the Preliminary Design Schedule (as defined below).

1.2 [DEVELOPER] shall have the following responsibilities:

- 1.2.1 [DEVELOPER] will exercise professional skill and judgment in the performance of the Services.
- 1.2.2 [DEVELOPER] will make its representatives reasonably available to University on a regular basis for meetings on campus or conference calls to discuss the progress and problems in order that the Services can proceed in an efficient and expeditious manner.
- 1.2.3 Subject to the terms of this Agreement, [DEVELOPER] will engage and manage consultants with respect to the Services, as authorized by University.
- 1.2.4 In the event that [DEVELOPER] is required to assign the Work Product (as defined below) to University pursuant to Section 4.5 or Article 5 below, [DEVELOPER] shall secure assignment of all development documents to University from its Consultants (as defined below).

1.3 [DEVELOPER] has provided to University, and University has approved, (i) preliminary drawings and conceptual designs for the Project (“**Conceptual Drawings**”), (ii) a Preliminary Design Budget (herein so called) and (iii) a Preliminary Design Schedule (herein so called) for the Services, ((i), (ii), and (iii) being collectively referred to herein as the “**Preliminary Package**” and attached hereto as Exhibit B. The Preliminary Package is approved by the University.

2. UNIVERSITY’S RESPONSIBILITIES

2.1 University shall have the following responsibilities:

2.1.1 In the event that University desires for [DEVELOPER] to cease providing Services, University shall notify [DEVELOPER] thereof in writing. Promptly upon [DEVELOPER]’s receipt of such notice, [DEVELOPER] shall (and shall cause all of its consultants to) cease performing Services until University determines that such Services should be resumed.

2.1.2 University shall make its representatives reasonably available to [DEVELOPER] on a regular basis for meetings on campus or conference calls to discuss the progress and problems in order that the Services can proceed in an efficient and expeditious manner.

2.1.3 If reasonably required for the performance of the Services, University will furnish, without representation or warranty, information, surveys, reports, geotechnical reports, hydrology information, and other relevant materials in University’s possession as of the date of this Agreement at University’s expense.

2.1.4 University will reasonably cooperate with and assist [DEVELOPER] and its selected consultants as necessary for [DEVELOPER] to perform the Services; provided that University shall have no obligation to incur third party costs in connection therewith.

2.1.5 University will review and approve, conditionally approve, or disapprove in a timely manner design plans and specifications submitted by [DEVELOPER] in accordance with Section 1.1.3.

2.2 University hereby grants to [DEVELOPER] a license, during the term of this Agreement, for [DEVELOPER] and its employees, architects, engineers, consultants, sub-consultants, contractors and sub-contractors (collectively, the “**Consultants**”) to enter upon the Site for purposes of performing the foregoing Services. Such license shall automatically terminate upon any termination of this Agreement. [DEVELOPER] accepts such license subject to all restrictions of record, and waives all claims resulting from such condition or restrictions. [DEVELOPER] shall not unreasonably interfere with the activities or otherwise impede the quiet use and enjoyment of the Site by the University, or in any way damage the Site in its exercise of this license. To the extent that [DEVELOPER] or its Consultants cause any damage to the Site or any adjoining property, [DEVELOPER]

shall promptly restore and repair the same, to the condition existing before such damage, at its sole cost and expense. [DEVELOPER]'s obligation to restore and repair the Site shall survive the termination of this Agreement.

3. TERM

- 3.1 Term of Agreement. Subject to the other terms of this Agreement, the Agreement shall expire upon the mutual written agreement of both parties, upon termination for convenience or cause by either party as expressly provided below, or upon the execution of a binding agreement under which Developer will provide for the development and construction of the Project during its Development Stage (the "**Project Agreement**"), whichever shall occur first (the "**Expiration Date**"). Either [DEVELOPER] or University may terminate this Agreement for convenience by giving the other party at least three (3) business days' written notice of such termination. Upon execution of the Project Agreement (if any), all Services performed and all expenses incurred under and in accordance with this Agreement up to and including the date of such execution shall become part of the development costs of the Project and shall not be subject to reimbursement or compensation under this Agreement.
- 3.2 University-Initiated Termination for Cause. If [DEVELOPER] breaches this Agreement and fails to cure such breach within the time periods specified below, University may terminate this Agreement for cause. This termination shall become effective if, within 30 days (or more, if authorized in writing by University) after receipt of a notice of intention to terminate from University specifying such breach, [DEVELOPER] does not make diligent and good faith efforts to cure such breach as soon as reasonably practicable.
- 3.3 [DEVELOPER]-Initiated Termination for Cause. [DEVELOPER] may terminate this Agreement for cause if University breaches this Agreement and fails to cure such breach within the time periods specified below. This termination shall become effective if, within 30 days (or more, if authorized in writing by [DEVELOPER]) after receipt of a notice of intention to terminate from [DEVELOPER] specifying such breach, University does not make diligent and good faith efforts to cure such breach as soon as reasonably practicable.
- 3.4 It will not be a breach of this Agreement if [DEVELOPER] is unable to provide the Services or if the Preliminary Design Budget or if the Preliminary Design Schedule is not met, if such failure is caused by acts or omissions of University, its Regents, officers, employees or agents that result in unreasonable delay, additional expenses or the requirement for additional services; or is caused by a Force Majeure Event. A "**Force Majeure Event**" is an Act of God (e.g., fire, flood, inclement weather, epidemic, earthquake); war or act of terrorism; governmental acts, orders, or restrictions; or any other reason where failure to perform is beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of [DEVELOPER]. If a Force Majeure Event occurs and is continuing for 30 days or more, either party may terminate this Agreement upon written notice to the other, provided such Force Majeure Event has not been resolved prior to the effective date of such termination.

4. GENERAL PROVISIONS

- 4.1 Independent Contractor. [DEVELOPER] shall perform the Services as an independent contractor and not as an agent or employee of University.
- 4.2 [DEVELOPER] Hiring. [DEVELOPER] shall not hire any officer or employee of University to perform any Service. If the Service is to be performed in connection with a federal contract or grant, [DEVELOPER] shall not hire any employee of the United States government to perform any Service.
- 4.3 Other Consultants/Sub-Consultants. [DEVELOPER] shall meet, confer and coordinate as reasonably requested with consultants employed by University in the production of work related to the Services. In addition, University will have the right to review and approve any agreement related to the Services between [DEVELOPER] and a Consultant. Nothing in the foregoing procedure shall create any contractual relationship between University and the professionals employed by [DEVELOPER] under the terms and conditions of this Agreement. [DEVELOPER] is solely responsible for payment of any Consultants that [DEVELOPER] retains. [DEVELOPER] will not create or permit any liens against University property resulting from any work under this Agreement. If a lien of a Consultant is filed against University property as a result of such work, [DEVELOPER] shall cause such lien to be released or bonded over.
- 4.4 Legal and Regulatory Compliance. [DEVELOPER] shall perform all Services and prepare documents in compliance with the applicable requirements of laws, codes, rules, regulations, and ordinances.
- 4.5 Ownership and Use of Documents. Drawings, documents, reports, surveys, renderings, exhibits, models, prints, and photographs, and other materials furnished by [DEVELOPER] hereunder (collectively, the “**Work Product**”) shall be and shall remain the property of [DEVELOPER] until such Work Product is assigned by [DEVELOPER] to University pursuant to this Section 4.5. Upon receipt by [DEVELOPER] of all payments owed by University to [DEVELOPER] pursuant to Article 5 hereof, [DEVELOPER] shall assign to University all right, title and interest of [DEVELOPER] in and to the Work Product.
- 4.6 [DEVELOPER]’s Accounting Records. All books and records relating to this Agreement shall be maintained in accordance with generally accepted accounting principles. University or University’s authorized representative, at University’s expense, shall as reasonably required by University, have access to and the right to audit and the right to copy all of [DEVELOPER]’s books and records directly related to the Services. [DEVELOPER] records related to the Services shall include but not be limited to accounting records (hard copy); contracts; payroll records; Consultant agreements; vendor agreements; purchase orders; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this Agreement. All such books and records shall

be preserved for a period of at least three (3) years from the date of final payment under this Agreement.

4.7 Conflict of Interest. [DEVELOPER] affirms that to the best of its knowledge, there exists no actual or potential conflict between [DEVELOPER]'s business or financial interests and the provisions of the Services.

4.8 Successors and Assigns. This Agreement shall be binding upon University and [DEVELOPER] and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, may be assigned by either party without the prior written consent and approval of the other.

5. COMPENSATION

5.1 University will pay [DEVELOPER] for the reimbursable costs for Services provided in accordance with this Agreement, as follows:

5.1.1 The maximum payment by University to [DEVELOPER] for the Services is specified in the Preliminary Design Budget. University will have no obligation to pay [DEVELOPER] for amounts in excess of that specified in the Preliminary Design Budget unless such excess has been approved in writing by University. No element of the Preliminary Design Budget or the Preliminary Design Schedule shall be changed except with the prior written approval of University, which approval shall not be unreasonably withheld, conditioned or delayed. If an event described in Section 3.4 of this Agreement occurs that results in the need to amend the schedule or budget, the parties will in good faith negotiate an amendment to the schedule or budget as appropriate to respond to such occurrence.

5.1.2 [DEVELOPER] shall be reimbursed for actual expenditures incurred by [DEVELOPER] and [DEVELOPER]'s employees, consultants, architects, engineers and sub-consultants, for the following expenses, subject to the limitations set forth in the "Reimbursables" line item in the Preliminary Design Budget:

5.1.2.1 Transportation, lodging and living expenses of [DEVELOPER] and its employees, consultants, architects, engineers and sub-consultants while traveling outside [DEVELOPER]'s office areas of [_____, California] or the office areas of [DEVELOPER]'s consultants, architects, engineers and sub-consultants offices, as applicable.

5.1.2.2 Expenses for design fees, architect fees, engineering fees and/or consultant fees, printing, reproductions, and postage for documents, reports, surveys, drawings, renderings and other

materials reasonably necessary for [DEVELOPER] to provide the Services.

- 5.1.3 In order to establish [DEVELOPER]'s entitlement to payment as a result of the expiration or termination of this Agreement, [DEVELOPER] shall promptly after such expiration or termination deliver to University a written accounting (the "**Written Accounting**") of the Services performed and expenses incurred in sufficient detail to enable University to determine the appropriateness of [DEVELOPER]'s claim for payment.
- 5.1.4 In the event that: (a) University terminates this Agreement for convenience pursuant to Section 3.1 prior to a determination that the Project is not feasible pursuant to Section 5.1.7 below; or (b) [DEVELOPER] terminates this Agreement for cause pursuant to Section 3.3; or (c) execution of the ground lease for the Project does not occur on or before _____, 20__, as such date may be extended by written agreement of [DEVELOPER] and University; or (d) [DEVELOPER] terminates for cause at any time (i) after the University and [DEVELOPER] approve a financial pro forma for the Project in writing and (ii) subsequent to such approval the University requires changes, charges or additions to the Project not included in such pro forma, the effect of which is to make the Project not feasible (with any such event being referred to herein as a "**Termination Event**"), then University, within 30 days after delivery to University of the Written Accounting, will pay [DEVELOPER] for all Services performed and all expenses incurred under and in accordance with this Agreement (subject to limitations set forth in Sections 5.1.1 and 5.1.2), up to and including the effective date of such termination. In ascertaining the Services actually rendered up to the date of termination, consideration shall be given to both completed Services and Services in progress, whether delivered to University or in the possession of [DEVELOPER], and to authorized reimbursable expenses. Except as otherwise provided in this Section 5.1, no compensation shall be payable for anticipated profit on unperformed Services, and the sums paid by University to [DEVELOPER] pursuant to this Section 5.1.4 shall be [DEVELOPER]'s sole and exclusive remedy for such Termination Event. Notwithstanding anything set forth herein to the contrary, if a Termination Event occurs, [DEVELOPER] shall be obligated to assign all Work Product to University pursuant to Section 4.5 hereof once University has paid to [DEVELOPER] the sums required to be paid by University to [DEVELOPER] as set forth above in this Section 5.1.4.
- 5.1.5 In the event that (a) [DEVELOPER] terminates this Agreement for convenience pursuant to Section 3.1 prior to a determination that the Project is not feasible pursuant to Section 5.1.7, or (b) University

terminates this Agreement for cause pursuant to Section 3.2, then University shall not be obligated to pay for any Services, and [DEVELOPER] shall reimburse University for certain costs and expenses paid by University up to the date of such termination (“**University Costs**”) in accordance with Exhibit C attached hereto, as University’s sole and exclusive remedy for such termination, which amounts shall be due and payable within thirty (30) days after [DEVELOPER]’s receipt of an itemized invoice therefor with sufficient backup materials (a “**University Invoice**”). Exhibit C may be modified to include additional University Costs only with [DEVELOPER]’s prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

5.1.6 In the event that (i) either [DEVELOPER] or University terminates this Agreement for convenience pursuant to Section 3.1 following a determination that the Project is not feasible pursuant to Section 5.1.7, or (ii) either [DEVELOPER] or University terminates this Agreement pursuant to Section 3.4 because of a Force Majeure Event, then (a) University, within 30 days after delivery to University of the Written Accounting, will pay [DEVELOPER] an amount equal to fifty percent (50%) of the total amount of all Services performed and fifty percent (50%) of all expenses incurred under and in accordance with this Agreement (subject to limitations set forth in Sections 5.1.1 and 5.1.2), up to and including the effective date of such termination, and (b) [DEVELOPER], within 30 days after delivery to [DEVELOPER] of the University Invoice, will pay University an amount equal to fifty percent (50%) of the total University Costs incurred under and in accordance with this Agreement, up to and including the effective date of such termination. Except as otherwise provided in this Section 5.1, no compensation shall be payable for anticipated profit on unperformed Services, and the sums paid by either party to the other pursuant to this Section 5.1.6 shall be their respective sole and exclusive remedy in the event of a termination described in this Section 5.1.6. Notwithstanding anything set forth herein to the contrary, upon University’s payment of the sums required to be paid by University to [DEVELOPER] in this Section 5.1.6, [DEVELOPER] shall be obligated to assign all Work Product to University pursuant to Section 4.5 hereof.

5.1.7 For purposes of determining whether the Project is not feasible pursuant to Sections 5.1.4, 5.1.5 or 5.1.6 hereinabove, the Project shall be determined to be not feasible if (A) [DEVELOPER] has been unable to obtain a suitable commitment from a lender by _____, 201__ for financing of the construction and development of the Project with a structure and upon terms consistent with the terms set forth on Exhibit D and (B) [DEVELOPER]’s and University’s efforts to perform Value Engineering (hereinafter defined) of the Project have not resulted in sufficient

decreases in the cost of the Project to achieve such commitment. As used herein, the term “**Value Engineering**” means the strategic analysis of the alteration or redesign of the Project (which may include the analysis of estimated, bid, or proposed costs and/or the design and specifications of project components) in order to reduce the costs of the Project. University hereby agrees to consider in good faith any Value Engineering reasonably recommended by [DEVELOPER], provided, however, such recommendations shall not include any deletions which in University’s reasonable determination render the Project incomplete or inadequate for its intended use.

5.1.8 University’s and [DEVELOPER]’s payment obligations pursuant to this Section 5.1 shall survive any termination of this Agreement.

6. **INDEMNIFICATION**

6.1 [DEVELOPER] shall indemnify, defend, protect and hold harmless University and its Regents, officers, employees, agents, and representatives (collectively, “**University Indemnitee**”), against all direct liabilities, demands, claims, costs, damages, injury (including death), settlements, and expenses (including without limitation, interest and penalties, but not including any consequential damages) incurred by University Indemnitee (“**Losses**”), but only in proportion to and to the extent such Losses were caused negligently or intentionally by [DEVELOPER] or its officers, employees or agents or arising out of the performance of the Services or [DEVELOPER]’s breach of this Agreement. [DEVELOPER] will require in all sub-contracts for services under this Agreement an indemnification clause requiring the sub-contractor to indemnify University Indemnitee as indicated in this Section 6.1.

6.2 University shall indemnify, defend, protect and hold harmless [DEVELOPER] and its directors, officers, employees, agents, and representatives (collectively, “[**DEVELOPER**] **Indemnitee**”), against all direct liabilities, demands, claims, costs, damages, injury (including death), settlements, and expenses (including without limitation, interest and penalties, but not including any consequential damages) incurred by [DEVELOPER] Indemnitee (also, “**Losses**”), but only in proportion to and to the extent such Losses were caused negligently or intentionally by University or its officers, employees, or agents or arising out of University’s breach of this Agreement.

6.3 Nothing in this Agreement, including the provisions of this Article 6, shall constitute a waiver or limitation of any rights which either party may have under applicable law.

7. **INSURANCE**

7.1 [DEVELOPER], at its sole cost and expense, shall insure its activities in connection with this Agreement, and/or cause the Consultants to insure such activity, as appropriate. In the event that [DEVELOPER] hires any Consultants to perform any part of this Agreement, [DEVELOPER] is responsible for ensuring that these insurance provisions

shall apply to each contracting entity. [DEVELOPER] and each of its Consultants of any tier shall obtain, keep in force and maintain insurance as follows:

7.1.1 Comprehensive or Commercial Form General Liability Insurance (contractual liability included) as follows:

7.1.1.1 Each Occurrence	\$1,000,000
7.1.1.2 Products/Completed Operations Aggregate	\$1,000,000
7.1.1.3 Personal and Advertising Injury	\$1,000,000
7.1.1.4 General Aggregate	\$2,000,000

However, if any such insurance is written on a claims-made form, coverage shall continue for a period of not less than three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Agreement

7.1.2 Professional (Errors & Omissions) Liability Insurance with minimum limits of \$1,000,000 for each claim and \$1,000,000 in the aggregate. If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of any professional services performed for this Agreement. Such coverage shall be required of each Consultant hired directly or indirectly to perform professional services for this Agreement and shall include University as an indemnified party for vicarious liability caused by professional services performed for this Agreement.

7.1.3 Workers' Compensation and Employer's Liability Insurance as required by California law or as required in the State in which any work will be performed under this Agreement. Employer's Liability limits shall not be less than \$1,000,000 for bodily injury for each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 policy limit for bodily injury by disease.

7.2 Insurance required under 7.1.1, 7.1.2, and 7.1.3 shall be issued by companies licensed to do business with a Best rating of A- or better and a financial classification of VIII or better (or an equivalent rating by Standard & Poor's or Moody's), or as otherwise reasonably acceptable to the University.

7.3 The insurance coverage referred to under 7.1.1 and 7.1.2 shall be endorsed to include The Regents of the University of California, its officers, agents, employees, consultants, representatives and representative's consultants as additional insured by endorsement equivalent to ISO form CG2010(07/04) and CG2037(07/04). A waiver of subrogation by endorsement shall apply to coverages referred under 7.1.1 and 7.1.3. Such a provision, however, shall apply only in proportion to and to the extent of the negligent acts or

omissions of [DEVELOPER], its officers, agents, employees; or any person or persons under [DEVELOPER]'s direct supervision and control.

7.4 All insurance evidenced shall be primary insurance as respects The Regents of the University of California, its officers, agents, and employees, any insurance or self-insurance maintained by The Regents of the University of California shall be excess of and non-contributory with this insurance.

7.5 In the event that [DEVELOPER] receives notice from an insurer of any modification, change or cancellation of any of the above insurance coverage, it will provide a copy of such notice to University within three (3) business days thereof.

If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against [DEVELOPER].

7.6 [DEVELOPER], upon the execution and continuously during the Term of this Agreement, shall furnish University with Certificates of Insurance acceptable in form to the University evidencing compliance with all requirements noted above in this Section 7.1, 7.2, 7.3, 7.4 and 7.5.

7.7 The coverage required herein shall not in any way limit the liability of [DEVELOPER], its officers, agents, partners, or employees.

8. NONDISCRIMINATION

In connection with the performance of its obligations under this Agreement, [DEVELOPER] will not willfully discriminate against any employee or qualified applicant for employment because of race, color, religion, ancestry, national origin, local custom, habit, sex, age, sexual orientation, physical disability, veteran's status, medical condition (as defined in Section 12926 of the California Government Code), marital status, or citizenship (within the limits imposed by law or by The Regents' policy attached hereto as Schedule I). [DEVELOPER] will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, national origin, local custom, habit, sex, age, sexual orientation, physical disability, veteran's status, medical condition (as defined in Section 12926 of the California Government Code), marital status, or citizenship (within the limits imposed by law or by The Regents' policy attached hereto as Schedule I). This equal treatment shall apply, but shall not be limited to, the following: upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

9. NOTICE

All notices and demands required or allowed to be given hereunder shall be given in writing and delivered by U.S. certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be considered given upon the earlier of (a) personal delivery or (b) two

(2) business days after deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given to the address stated in that notice:

If to University: Real Estate Services
 University of California, Davis
 255 Cousteau Place
 Davis California 95618
 Attention: Mary Hayakawa, Executive Director
 Telephone: 530.752.4339
 mghayakawa@ucdavis.edu

with a copy to: Allen Meacham
 Office of the President
 Real Estate Services & Strategies
 University of California
 1111 Franklin Street, 6th Floor
 Oakland, California 94607
 Telephone: 510:987-9060
 Allen.Meacham@ucop.edu

If to [DEVELOPER]: _____

 Attention: _____
 Telephone: _____

with a copy to: _____

 Attention: _____
 Telephone: _____

10. ADDITIONAL TERMS AND CONDITIONS:

10.1 Performance. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND OF EACH PROVISION HEREOF.

- 10.2 Calculation of Time. The time in which any act required or permitted by this Agreement is to be performed shall be determined by excluding the day upon which the event occurs from whence the time commences. If the last day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or holiday. The term “holiday” shall mean all and only those State holidays specified in Section 6700 and 7701 of the California Government Code.
- 10.3 Interest. Any amounts not paid when due under this Agreement will earn interest at a rate equal to the lower of (a) 4% over the 3-month LIBOR as published in *The Wall Street Journal* from the date such amount is due until it is fully paid or (b) the highest rate permitted by law.
- 10.4 Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between University and [DEVELOPER] or between either or both of them and any third party.
- 10.5 Supersedence. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to reimbursement of costs related to the Services, and all prior agreements, understandings, representations or negotiations related to such reimbursement are hereby superseded, terminated and canceled in their entirety, and are of no further force or effect.
- 10.6 Amendments. This Agreement is not subject to modification or amendment except by a writing of the same formality as this Agreement and executed by the signatories hereto, both University and [DEVELOPER].
- 10.7 Applicable Law and Venue. This Agreement shall in all respects be governed by the laws of the State of California applicable to agreements executed and to be wholly performed within this State, and the venue for any disputes shall be sited in Riverside County, California.
- 10.8 Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but the provisions of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such law.
- 10.9 Attorneys’ Fees. Should any party hereto commence any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement or for declaratory relief, the prevailing party shall be entitled to recover from the losing party or parties such amount as the court may

adjudge to be reasonable attorney fees for services rendered to the prevailing party in such action or proceeding.

10.10 Separate Counterparts. This Agreement may be executed in two or more separate counterparts each of which when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

10.11 Captions, Number and Gender. The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the paragraph at the head of which it appears, the paragraph and not the caption shall control and govern the construction of this document. In this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA**, a California public
corporation

_____,
a _____

By: _____

By: _____

Its: _____

Its: _____

Attachments:

- Exhibit A - Site(s) Map
- Exhibit B - Scope of Services and Preliminary Package (Conceptual Drawings, Preliminary Design Budget and Preliminary Design Schedule)
- Exhibit C - University's Costs
- Exhibit D - Financing Terms
- Schedule I - Non-Discrimination Policy

EXHIBIT A
SITE MAP

EXHIBIT B

SCOPE OF SERVICES, PRELIMINARY DESIGN SCHEDULE AND
PRELIMINARY DESIGN BUDGET

EXHIBIT C
UNIVERSITY COSTS

EXHIBIT D
FINANCING TERMS

Bond Par Amount:	Equal to the sum of all hard and soft development and FF+E costs, reserves, capitalized interest, costs of issuance, and all other items customarily included in tax exempt revenue bond issuances.
Bond Interest Rate:	Not to exceed 6.0%.
Term:	30-year term after capitalized interest period.
Capitalized Interest:	Interest capitalized during the construction period + 6-month lease-up and stabilization period.
Costs of Issuance:	2.0% of bond par amount.
Debt Service Coverage:	No less than 1.20X beginning with first year of operation.
Debt Service Reserve:	One Year Maximum Annual Debt Service, funded at bond closing.
Developer Compensation:	[As set forth in Developer's Proposal dated _____.]

SCHEDULE I
NON-DISCRIMINATION POLICY