MEMORANDUM
OFFICE OF THE
County Executive
COUNTY OF PLACER

TO: Honorable Board of Supervisors

FROM: David Boesch, County Executive Officer

DATE: December 11, 2012

SUBJECT: Proposed Regional University Specific Plan Fee and Reimbursement Agreement

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ACTION REQUESTED:
Consider a proposal from the developer of the Regional University Specific Plan for a Specific Plan Fee and Reimbursement Agreement between Placer County and the developer.

BACKGROUND:
The proponents of the Regional University project incurred substantial costs for the preparation of the Specific Plan and its appendices, technical studies, the Specific Plan Environmental Impact Report (EIR), and County and County consultant costs for review of such documents. It is anticipated that this work will benefit subsequent landowners developing property in the Specific Plan area.

Government Code Section 65456 provides for adoption of a Specific Plan Fee as a mechanism for specific plan proponents to recover a share of the entitlement costs advanced by developers. The developer has proposed such an agreement to impose a fee and recoup costs incurred by the developers.

A number of outstanding issues are being considered and discussions are continuing as to financial implications and terms and conditions of such an agreement.

Attachment

Proposed Regional University Specific Plan Fee and Reimbursement Agreement

DRAFT

SPECIFIC PLAN FEE AND REIMBURSEMENT AGREEMENT FOR THE REGIONAL UNIVERSITY SPECIFIC PLAN

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 2012, by and between the COUNTY OF PLACER, a political subdivision of the State of California ("County"), and the TSAKOPOULOS FAMILY PARTNERSHIP, a California general partnership, ("Landowner").

RECITALS

A. County and Landowner, together with other landowner entities managed by Landowner, have previously entered into certain funding agreements (the "Funding Agreements"), which Funding Agreements provided for funding by Landowner of all County and County consultant costs, as well as the costs of certain technical studies, plus the costs of preparation of a specific plan (the "Specific Plan") and environmental impact report (the "EIR") for the Regional University Specific Plan area (the "Plan Area"), including pre-application staff costs and other items, all as more specifically referenced in the Funding Agreements. Except as specifically set forth in Section 2 below, Landowner has paid, on behalf of itself and any other landowners, in full all amounts due to the County under the Funding Agreements.

B. The County Board of Supervisors adopted the Specific Plan for the Plan Area, including related land use entitlements and certification of the EIR, on December 9, 2008.

C. Pursuant to California Government Code Section 65456 and the County's police power, the County may impose a specific plan fee upon persons seeking government approvals required to be consistent with a specific plan for the purpose of recovering the costs of preparation of a specific plan.

D. The County and Landowner desire to enter into this Agreement to provide for the County's implementation of a specific plan fee and for reimbursement to Landowner of costs advanced and paid by Landowner under the Funding Agreements as provided hereinbelow.

AGREEMENT

1. Within eighteen (18) months of the date of this Agreement, County shall complete proceedings pursuant to the authority of California Government Code Section 65456 to recover the costs of the preparation of the Specific Plan, including costs incurred pursuant to Division 13 of the California Public Resources Code, by adoption of a Specific Plan Fee by the County Board of Supervisors. Subject to compliance with Government Code section 65456, proceedings initiated pursuant to this Section 1 of this Agreement shall establish a specific plan fee (the "Specific Plan Fee") to be imposed either on a per acre basis or on an equivalent

dwelling unit basis, as determined by the County in its reasonable discretion, on the real property located within the Plan Area described on Exhibit A, attached hereto and made a part hereof, exclusive of open space land as described further hereinbelow (the "Affected Plan Area"). The Specific Plan Fee shall be imposed upon any persons filing an application with County after the date of County's adoption of the Specific Plan Fee for approval of any land use entitlement, including, without limitation, any rezoning, or any small lot tentative subdivision map, use permit, or grading permit associated with non-agricultural development (individually, a "Land Use Entitlement" and, collectively, the "Land Use Entitlements"). Notwithstanding the foregoing, no large lot tentative subdivision or parcel map and no land use entitlement for agriculturally-related purposes shall be deemed to be a "Land Use Entitlement," as defined above. For purposes of this Agreement, the Affected Plan Area shall not include any land designated for open space as depicted on Exhibit A or as later designated for open space in any modification to the Specific Plan. It is the intent of the parties that all the real property within the Affected Plan Area shall be subject to the Specific Plan Fee. The Specific Plan Fee shall not apply to County-initiated actions, including, but not limited to, rezoning, general plan amendments and specific plan amendments. The intent of the preceding sentence is to ensure that the County will not become subject to paying the Specific Plan Fee for County-initiated actions; however, a non-County party will not be allowed to pursue development in the Affected Plan Area without first paying the Specific Plan Fee as provided in this Agreement.

County covenants and agrees that, following the establishment of the Specific Plan Fee, the County shall prepare and timely provide all required notices of the Specific Plan Fee, including, but not limited to, those required pursuant to California Government Code Section 66020(d)(1).

2. Except for the sum of $_____, representing the cost of County staff costs incurred in preparation and processing of the Specific Plan (the "County Costs"), Landowner has funded the cost of preparation of the Specific Plan for the Plan Area, including, but not limited to, all remaining County staff costs and County consultant costs (including, but not limited to, fee consultants) incurred in the County's review and consideration of the Specific Plan, the EIR, master infrastructure plans, environmental studies, financing plans for infrastructure and urban services, and other technical studies, agreements and plans prepared by consultants of Landowners in support of the Specific Plan (the "Specific Plan Costs"). Landowner, as of the date of this Agreement, has incurred Specific Plan Costs in the amount of $9,380,832.47. Landowner shall, within thirty (30) days following the date of this Agreement, submit to the County reasonable back-up documentation substantiating such costs. The County shall, within sixty (60) days following submittal of the back-up documentation by Landowner, reasonably approve or disapprove the Specific Plan Costs that have already been incurred by Landowner, as referenced above, based upon the sufficiency of such back-up documentation and consistency with Government Code Section 65456. The Specific Plan Costs approved by the County shall be used in establishing the initial Specific Plan Fee pursuant to Section 1 of this Agreement and Government Code Section 65456. Landowner shall submit any additional costs incurred by Landowner from and after the date of this Agreement that may be eligible for

reimbursement hereunder to the County (the "Additional Specific Plan Costs") for the County's review and approval. If Landowner submits any Additional Specific Plan Costs to the County and the County approves them as being eligible for reimbursement hereunder, the Specific Plan Fee shall be adjusted to account for such Additional Specific Plan Costs. For purposes of this Agreement, the term "Specific Plan Costs" shall be deemed to include any Additional Specific Plan Costs that have been approved and deemed eligible for reimbursement by the County as provided above.

3. The Reimbursement Amount (as defined below) and the Specific Plan Fee shall be increased as provided below.

a. The Reimbursement Amount, as of the date of this Agreement, shall include interest commencing on April 18, 2003, which is the date Landowner first incurred costs for preparation of the Specific Plan, and for all costs incurred thereafter at the lesser of: (i) the Prime Rate (as define below) in effect in the year costs were incurred, plus two percent (2%), or (ii) six percent (6%) to compensate Landowner for the cost of funds advanced to defray the Specific Plan Costs. For purposes of this Agreement, the term "Prime Rate" shall mean the prime rate as published in the financial section of the Wall Street Journal (or comparable publication if the Wall Street Journal is no longer in publication during the term of this Agreement).

b. From and after the date of this Agreement, on July 1 of each year any outstanding balance of the Reimbursement Amount that is unpaid shall be increased to include interest from the date of this Agreement (or, with respect to any Additional Specific Plan Costs that are included within the Reimbursement Amount, from the date any such Additional Specific Plan Costs are incurred) at the lesser of: (i) the Prime Rate in effect in the year of such adjustment plus two percent (2%), or (ii) six percent (6%) to compensation Landowner for the cost of funds advanced to defray the Specific Plan Costs.

c. On July 1 of each year, the Specific Plan Fee shall be recalculated to take into account then outstanding Reimbursement Agreement which may be readjusted pursuant to Section 3(b) above.

4. The Specific Plan Fee shall be applied on either a per acre basis or an equivalent dwelling unit basis, as determined by the County, against the Affected Plan Area, as described on Exhibit A hereto. It is the intent of the parties that all real property within the Affected Plan Area shall be subject to the Specific Plan Fee. All applicants after the date of County's adoption of the Specific Plan Fee for any Land Use Entitlement in the Affected Plan Area shall be obligated to pay the Specific Plan Fee in a lump sum (i.e., single payment) to County for the parcels for which Land Use Entitlements are sought prior to the scheduled Board of Supervisor's initial hearing for the approval of the first of any applicable Land Use Entitlement (or in the event no Board of Supervisors' hearing is required prior to the Planning Commission's hearing for approval of the applicable Land Use Entitlement). Notwithstanding the foregoing, the Specific Plan Fee shall not apply to County-initiated actions, as provided in Section 1 above.

5. All rights to receive payments of the Reimbursement Amount are personal to Landowner and do not run to successors and assigns unless Landowner so indicates in writing to County. The amount of reimbursement to be paid to Landowner hereunder (the "Reimbursement Amount") equals the Specific Plan Costs incurred and paid by Landowner and reasonably approved by County pursuant to Section 2 of this Agreement and as increased pursuant to the terms of Section 3 hereof.

Landowner shall be entitled to assign its right to receive payment of the Reimbursement Amount (or any portion thereof) hereunder to any person or entity (without any requirement that such person or entity ultimately files an application for any Land Use Entitlement on any property in the Affected Plan Area) (each, a "Landowner Assignee"). Any assignment of the right to receive payment of the Reimbursement Amount (or any portion thereof) by Landowner shall be effective upon delivery of a Certificate of Assignment and Transfer of Specific Plan Reimbursement Right substantially in the same format as set forth on Exhibit B attached hereto ("Certificate of Assignment") to County at the address specified in Section 9 hereof. County shall be entitled to conclusively rely on the accuracy of the Certificate of Assignment in determining the amount of the Reimbursement Amount and the identity of the parties entitled to the payment of the Reimbursement Amount.

Notwithstanding any other provision in this Agreement, the payment of the Reimbursement Amount to Landowner (or any Landowner Assignees) shall be limited to funding available from Specific Plan Fees collected by County pursuant to this Agreement. No County funds other than Specific Plan Fees shall be allocated to reimbursements to Landowner (or Landowner Assignees) under this Agreement.

6. Subject to the limitations set forth in Section 1 hereof, Specific Plan Fee revenues collected shall be distributed to Landowner (or Landowner Assignees) by County within thirty (30) days of receipt.

7. In order to reimburse County for the County Costs owed it for unreimbursed staff costs as described above, County shall have the right to retain for its account the first $_____ in Specific Plan Fees collected by County. Thereafter, the County shall establish an account for the Landowner for the rights to receive reimbursement of the Reimbursement Amount, pursuant to this Agreement. Additionally, upon any assignment by any Landowner of rights to receive all or any portion of the Reimbursement Amount to any Landowner Assignee and, upon the Landowner's providing written notice of such assignment to the County, the County shall establish a new account for such Landowner Assignee for the administration of payment of applicable portion of the Reimbursement Amount assigned to such party. The County shall, on no less than a quarterly basis, update all accounts described above to provide the then current amounts of any reimbursement applied for, or paid to, Landowner (or Landowner Assignees). Furthermore, the County shall provide Landowner (and any Landowner Assignees) by October 1st of each year with an annual accounting of Specific Plan Fee revenues collected and disbursed by County through June 30 of the immediately preceding fiscal year. The Specific Plan Fee itself shall include an administrative fee component which will

fund the ongoing administration of the Specific Plan Fee. The County will be reimbursed for its costs incurred in the ongoing administration of the Specific Plan Fee prior to any reimbursement being made under this Agreement.

8. This Agreement shall in all cases expire thirty (30) years after the date of execution; provided, however, that following such thirty (30)-year period the Agreement shall be automatically extended for additional periods of ten (10) years each unless County or Landowner provides written notice of nonrenewal at least ninety (90) days prior to the commencement of any such additional ten (10)-year period. After expiration of the Agreement, all of the rights and entitlements of the Landowner under this Agreement shall be null and void and Landowner shall have no further right to reimbursement for any reimbursable cost or interest thereon.

9. Notices required pursuant to this Agreement shall be deemed delivered when deposited in the United States Post Office, postage prepaid and addressed as follows:

Notice required to be given to the County shall be addressed as follows:

Community Services Director
County of Placer
_____
_____

With a copy to:

_____
_____
_____
_____
_____

Notices required to be given to the Landowner shall be addressed as follows:

Tsakopoulos Family Partnership
7700 College Town Drive, Suite 101
Sacramento, CA 95826
Attention: Angelo K. Tsakopoulos

With a copy to:

Hefner, Stark & Marois, LLP
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833
Attention: Timothy D. Taron, Esq.

Any of the parties may change the address stated herein by giving notice in writing to the other parties, and thereafter, notices shall be addressed and delivered to the new address.

10. This Agreement may be amended in writing provided such amendment is approved by Landowner, or his successor and assigns, and the Board of Supervisors of the County. Except as so amended, this Agreement constitutes the sole agreement between County and Landowner and supersedes any other oral or written understanding between the parties related to reimbursement of the Specific Plan Costs.

11. The Landowner shall defend, indemnify and hold harmless the County and its agents, officers, and employees from any claims, actions or proceedings against the County or its agents, officers, or employees, including attorneys' fees, as a result in any way of: (a) the County's approval of this Agreement, (b) the County's adoption of the Specific Plan Fee, (c) the County's performance of its obligations under this Agreement, or (d) the Landowner's obligations under this Agreement. This indemnity does not obligate the Landowner to defend, indemnify, and hold harmless the County for claims, actions or proceedings that result from (i) the sole active negligence or willful misconduct of the County or its agents, officers, employees or representatives, or (ii) actions by the County after termination of this Agreement. In the event the County tenders or turns over the defense of any action or claim referenced under this Section 11 (which would also include any defense turned over to Landowner pursuant to Section 1 above) to Landowner, County covenants and agrees to reasonably cooperate with Landowner in connection with the defense of such action or claim. This Section shall survive termination of this Agreement.

12. Nothing in this Agreement shall be deemed to obligate County to use General Fund monies to satisfy any Landowner's claim for reimbursement hereunder. County's obligation to reimburse Landowner under this Agreement shall be limited to Specific Plan Fee revenues actually received by County from landowners within the Affected Plan Area in accordance with the terms of this Agreement.

13. This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.

14. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

15. The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. The parties acknowledge and agree that each party and its counsel have reviewed and revised this Agreement and that no rule of construction to the

effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.

16. This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Placer, State of California.

17. This Agreement may be signed in counterpart and all counterparts together constitute one document.

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

COUNTY:

COUNTY OF PLACER:

By: _____
Chairman, Board of Supervisors

ATTEST:

By: _____
County Clerk

LANDOWNER:

TSAKOPOULOS FAMILY PARTNERSHIP,
a California general partnership

By:_____
Name:_____
Title: _____

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EXHIBIT A

Description of Affected Plan Area

(see attached)

EXHIBIT "A"

Land Use Plan

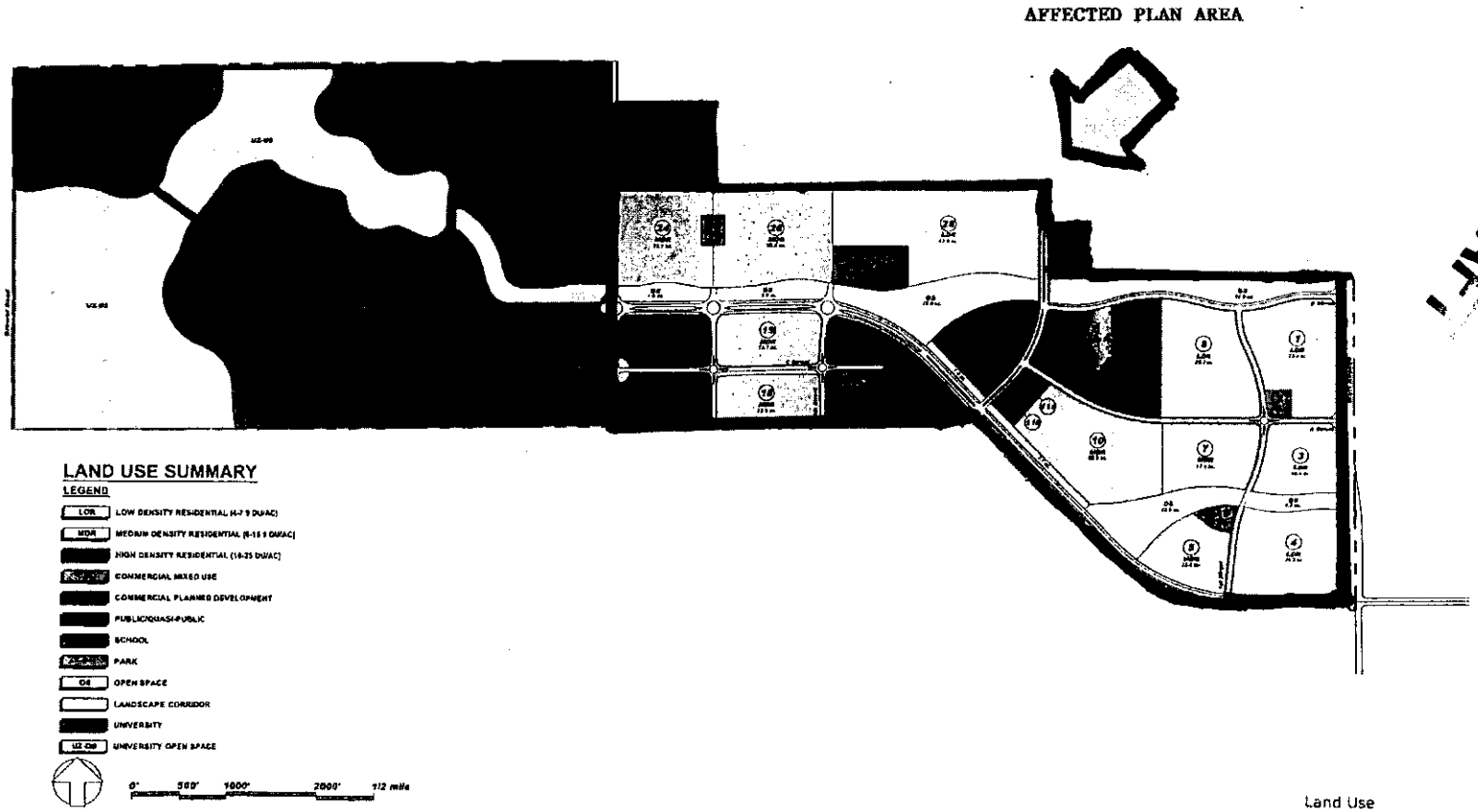

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EXHIBIT B

FORM OF CERTIFICATE OF ASSIGNMENT AND TRANSFER OF REGIONAL UNIVERSITY SPECIFIC PLAN REIMBURSEMENT RIGHTS

The undersigned Landowner, as the holder of certain Regional University Specific Plan Reimbursement Rights related to the Specific Plan Fee and Reimbursement Agreement for the Regional University Specific Plan between the COUNTY OF PLACER and ANGELO K. TSAKOPOULOS dated _____ (the "Agreement"), hereby assigns, transfers and conveys to the undersigned Assignee the Regional University Specific Plan reimbursement rights in the amount indicated below:

Landowner's Legal Name: _____

Assignee's Legal Name: _____

Reimbursement Amount Assigned: $_____

Balance of Reimbursement Amount retained by Landowner under Agreement before Transfer: $_____

Balance of Reimbursement Amount retained by Landowner under Agreement after Transfer: $_____

ACKNOWLEDGED: Administrator: _____

LANDOWNER:

_____

a _____

By:_____
Name:_____
Title:_____
Date:_____

ASSIGNEE:

_____

a _____

By: _____
Name:_____
Title:_____
Date:_____

Landowner Contact:

Name:_____
Address:_____
_____
Telephone:_____
Facsimile:_____
E-Mail:_____

Assignee Contact:

Name:_____
Address:_____
_____
Telephone:_____
Facsimile:_____
E-Mail:_____