

MEMORANDUM
OFFICE OF THE
County Executive
COUNTY OF PLACER

TO: Honorable Board of Supervisors
FROM: David Boesch, County Executive Officer
DATE: December 18, 2012
SUBJECT: Proposed Regional University Specific Plan Fee and Reimbursement Agreement

ACTION:

Consider approval of a Regional University Specific Plan Fee and Reimbursement Agreement between Placer County and the funding parties and/or provide direction to County staff as may be required.

BACKGROUND:

The County Board of Supervisors adopted the Specific Plan for the Regional University, including related land use entitlements and certification of the Environmental Impact Report, on December 9, 2008. The Specific Plan is designed as a mixed-use community including a University campus site with adjoining residential, commercial and office uses. The proponents of the Regional University project have incurred substantial costs for the preparation of the Specific Plan and its appendices, technical studies, the Specific Plan Environmental Impact Report (EIR), County, and consultant costs for review and processing of such documents.

Ultimately, 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 the entitlement costs advanced by the initial developers. The developer has proposed such an agreement to impose a fee and recoup various costs incurred. Representatives of Angelo Tsakopoulos have submitted a total cost estimate of \$9,480,446 for that work. Approval of the attached agreement would require submittal of back-up documentation to County staff within 30 days and the County to initiate proceedings to consider recovery of the costs of the preparation of the Specific Plan with adoption of a specific plan fee ordinance within 90 days. A preliminary estimate of the fee in current dollars and based on costs identified indicates that the fee amount, if approved, would be approximately \$2,300 per dwelling unit.

ISSUE:

Placer County and surrounding jurisdictions commonly enter into reimbursement agreements for shared infrastructure and directly related costs. Costs for securing entitlements are not typically included in reimbursement agreements. The costs for entitlements are more commonly reflected in the value of the entitled property at the time of sale. While reimbursing the project developer for costs associated with entitlement is not current County practice, the Regional University Project is not typical given the public benefits that would be derived from a potential University within the Plan area. The Specific Plan and the associated development agreement limit the use of the site for a period of 50 years to the operation of a 4-year accredited undergraduate and graduate institution. Given the unique characteristics of this particular Specific Plan, such a request may merit consideration.

PROPOSED AGREEMENT:

At its meeting of December 11, the Board of Supervisors considered a proposed agreement submitted on behalf of Angelo Tsakopoulos. While the Board was receptive to further considering the request, a number of issues were raised. Several provisions that were of concern included the ability to preserve capital given the proposed interest earning rate on Specific Plan costs and the total time frame during which interest would be accrued; the uncertainty associated with new Specific Plan costs that could be added to the agreement following adoption of the fee, which would require reimbursement over time; and, the extent to which action on the proposal from the developer would lock-in staff and/or the Board of Supervisors to specific provisions in adoption of a fee ordinance. As such, the Board directed that further discussions occur and the issue be placed on the agenda for the December 18, 2012 meeting at 9:00 a.m.

Given the issues raised, staff has proposed revisions to the draft agreement that include:

1. The ability to use an alternative approach in the proposed fee ordinance, such as an inflation adjustment, that would address the time value of the upfront investment;
2. Providing certainty on applicable Specific Plan costs by including only those expenses incurred as of the date the agreement is executed (the attached agreement does not provide for reimbursement of future costs or additional Specific Plan expenditures); and
3. Removing problematic language that obligates the County in adopting the fee.

In addition to items previously discussed by the Board, it should also be noted that the 60 day turnaround time provided for in the original proposal has been changed to 90 days. Also, the proposed agreement reflects 30 days for the developer to submit backup documentation on costs and provides the County 60 days for review of those materials. Given this and the complexities involved, a minimum of 90 days would be appropriate. Finally, the outstanding balance of approximately \$182,000 in County staff costs incurred as the project was being processed through Placer County has been removed as an item to be reimbursed through this agreement.

ENVIRONMENTAL DETERMINATION:

The proposed action exempt from environmental review pursuant to Sections 15061(b)(3) and 15378 of the CEQA Guidelines. No further CEQA review is required at this time.

CONCLUSION:

While the attached proposal addresses a number of the concerns raised, some outstanding issues are being considered and discussions are continuing as to the financial implications of the terms and conditions of such a fee program.

Available for Review at Clerk of the Board: Proposed Regional University Specific Plan Fee and Reimbursement Agreement

**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 Parties listed on the signature page of this Agreement (the "Funding Parties").

RECITALS

A. County and certain landowners have previously entered into certain funding agreements (the "Funding Agreements"), which Funding Agreements provided for funding 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, Funding Parties have paid, on behalf of themselves and any other such 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 Funding Parties desire, due to the unique nature of this project and the benefits to the County from the establishment of a University in the County, to enter into this Agreement to provide for the County's implementation of a specific plan fee and for reimbursement to Funding Parties of costs advanced and paid by Funding Parties under the Funding Agreements as provided herein below.

AGREEMENT

1. Within ninety (90) days of the date of this Agreement, County shall initiate proceedings pursuant to the authority of California Government Code Section 65456 to consider recovery of 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 consider the establishment 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 in the event the Specific Plan Fee is adopted 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 proceed with development in the Affected Plan Area without first paying the Specific Plan Fee as provided in this Agreement.

County covenants and agrees that if the Specific Plan Fee is adopted 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 One Hundred Eighty Two Thousand Eight Hundred Four and 16/100 Dollars (\$182,804.16) representing County staff costs incurred and unreimbursed in preparation and processing of the Specific Plan (the "County Costs"), Funding Parties represent that they have 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 Funding Parties in support of the Specific Plan, (the "Specific Plan Costs"). Funding Parties, as of the date of this Agreement, represent that they have incurred Specific Plan Costs in the amount of Nine Million Four Hundred Eighty Thousand Eight Hundred Four Hundred Forty-Six Dollars (\$9,480,446.00). Funding Parties shall, within thirty (30) days following the date of this Agreement, submit to the County reasonable back-up documentation substantiating such claimed costs. The County shall, within sixty (60) days following submittal of the back-up documentation by Funding Parties, reasonably approve or disapprove the Specific Plan Costs claimed by Funding Parties, 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.

3. The Reimbursement Amount (as defined below) and the Specific Plan Fee may be increased as provided below, or by such other adjustment mechanism as the County may determine.

- a. The Reimbursement Amount, as of the date of this Agreement, may include interest commencing on January 1, 2013, 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 Funding Parties 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 may 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 compensate Funding Parties 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 Amount which may be readjusted for the adjustments pursuant to Section 3(b) above.

4. After the date of County's adoption of the Specific Plan Fee for any Land Use Entitlement in the Affected Plan Area, all applicants subject to the Specific Plan Fee 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.

Funding Parties shall, within ten (10) business days of the effective date of this Agreement, provide advance funding to the County for both the analysis required pursuant to Section 2 and for the initial administration of the Specific Plan Fee in the amount of Thirty Thousand Dollars (\$30,000) (the "Advanced Administrative Costs"). The Specific Plan fee itself shall include an administrative fee component in the initial amount equal to Two and ½ percent (2.5%) of the Specific Plan Fee, which will fund the ongoing administration of the Specific Plan Fee. The Advanced Administrative Costs will be included in the Specific Plan Costs and thereby included in the Specific Plan Fee. The County shall be reimbursed for its costs incurred in the ongoing administration of the Specific Plan Fee prior to any reimbursement being made under this Agreement.

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

Any one or more of the Funding Parties shall be entitled to assign its rights and obligations under this Agreement, including the 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 "Funding Parties' Assignee"). Any assignment of the rights and obligations under this Agreement by Funding Parties 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 Funding Parties hereby agree that they, and each of them, shall indemnify and defend and hold County harmless for any claim, action or proceeding against the County and its agents, officers and employees pursuant to Section 11 of this Agreement for following such instructions..

6. Subject to the limitations set forth in this Agreement, Specific Plan Fee revenues collected shall be distributed to Funding Parties (or Funding Parties Assignees) by County within thirty (30) days of receipt.

7. The County shall establish an account for the Funding Parties for the rights to receive reimbursement of the Reimbursement Amount, pursuant to this Agreement. Additionally, upon any assignment by any Funding Parties of rights to receive all or any portion of the Reimbursement Amount to any Funding Parties' Assignee and, upon the Funding Parties' providing written notice of such assignment to the County, the County shall establish a new account for such Funding Parties' 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, Funding Parties (or Funding Parties Assignees). Furthermore, the County shall provide Funding Parties (and any Funding Parties 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.

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 may be extended for additional periods of ten (10) years each upon mutual written consent. After expiration of the Agreement, all of the rights and entitlements of the Funding Parties under this Agreement shall be null and void and Funding Parties 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 Development Resource Agency Director
County of Placer
3091 County Center Drive
Auburn, CA 95603

With a copy to:

County Executive Officer
County of Placer
175 Fulweiler Avenue
Auburn, CA 95603

Notices required to be given to the Funding Parties shall be addressed as follows:

AKT Investments, Inc.
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 Funding Parties, or their successors and assigns, and the Board of Supervisors of the County.

11. The Funding Parties, and each of them, 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 Funding Parties' obligations under this Agreement. This indemnity does not obligate the Funding Parties 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 to Funding Parties, County covenants and agrees to reasonably cooperate with Funding Parties 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 Funding Parties' claim for reimbursement hereunder. County's obligation to reimburse Funding Parties 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. The Indemnification Agreement previously entered into between landowners within the Specific Plan and County regarding the entitlements remains in full force and effect, and no provision of the Indemnification Agreement is modified or affected by any provision of this Agreement. The agreements are to be read and construed together.

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:

FUNDING PARTIES:

COUNTY OF PLACER:

ANGELO K. TSAKOPOULOS

By: _____
Chair, Board of Supervisors

KATINA TSAKOPOULOS

ATTEST:

ELENI TSAKOPOULOS-KOUNALAKIS

By: _____
Clerk of the Board

ATHENA TSAKOPOULOS

KYRIAKOS TSAKOPOULOS

CHRYSANTHY DEMOS

ALEXANDRA TSAKOPOULOS

EXHIBIT A

Description of Affected Plan Area

(see attached)

EXHIBIT "A"

Land Use Plan

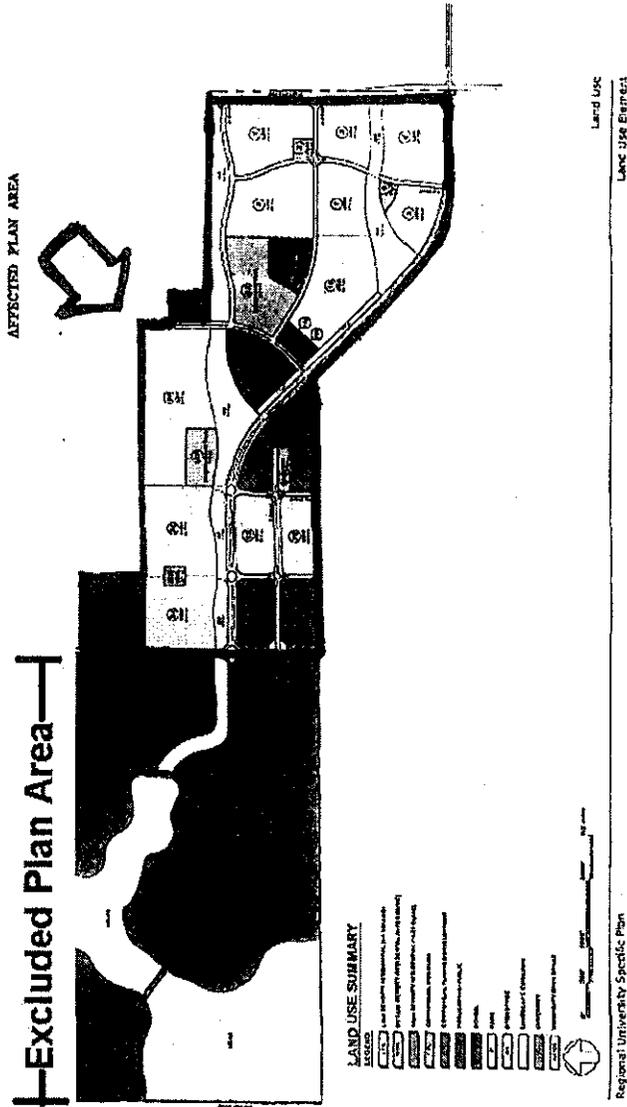


EXHIBIT B

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

The undersigned, as the holder(s) of undivided interests in and to the Specific Plan Fee and Reimbursement Agreement for the Regional University Specific Plan between the COUNTY OF PLACER and ANGELO K. TSAKOPOULOS, KATINA TSAKOPOLOUS, ELENI TSAKOPOULOS-KOUNALAKIS, ATHENA TSAKOPOULOS, KYRIAKOS TSAKOPOULOS, CHRYSANTHY DEMOS, and ALEXANDRA TSAKOPOULOS (the "Funding Parties") dated _____ (the "Agreement"), hereby irrevocably assigns, transfers and conveys an _____ undivided interest of all of the undersigned Funding Parties' rights in and to the Agreement for the Regional University Specific Plan to the undersigned Assignee as indicated below:

Funding Parties' Legal Name: _____

Assignee's Legal Name: _____

ACKNOWLEDGED: Administrator: _____

FUNDING PARTIES:

ASSIGNEE:

a _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Funding Parties Contact:

Assignee Contact:

Name: _____

Name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

E-Mail: _____

E-Mail: _____