

## AGREEMENT

This AGREEMENT (“Agreement”) is made and entered into as of September 22 2020 (the “Effective Date”) by and between the City of Hayward, a California municipal corporation (“CITY”) and the State of California acting through the Board of Trustees of the California State University on behalf of California State University East Bay (“CSUEB”), a California public post-secondary institution for higher education.

### RECITALS

This Agreement is entered into with reference to the following facts:

A. In 2009, CSUEB prepared and adopted the Hayward Campus Master Plan (“Master Plan”), which sets forth the University’s long term strategic vision for the physical development of the campus through the year 2040. In connection with the adoption of the Master Plan, CSUEB prepared and certified a Final Environmental Impact Report (“FEIR”) as required by the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* (“CEQA”).

B. The CITY and two neighborhood groups filed suit challenging the adequacy of the FEIR. The Court of Appeal, First Appellate District, upheld the FEIR with the exception of the FEIR’s analysis of impacts on parklands. The Court of Appeal also directed CSUEB to reconsider its findings on the feasibility of funding CSUEB’s fair share of off-site traffic mitigation. The Court of Appeal’s opinion is published at *City of Hayward v. The Trustees of the California State University*, 242 Cal.App.4<sup>th</sup> 833 (2015).

C. On remand from the Court of Appeal, on October 17, 2016, the Alameda County Superior Court issued a Peremptory Writ of Mandamus (“Writ”), in Court Case Nos. RG09481095 and RG09480852. The Writ directed CSUEB to set aside the FEIR and approval of the Master Plan, and, prior to reconsideration of the same, to revise the FEIR’s parkland analysis and make new findings regarding mitigation funding consistent with the opinion of the Court of Appeal.

D. In accordance with the Writ, CSUEB prepared and circulated a Partial Recirculated Final Environmental Impact Report (“PRFEIR”), which further analyzed the Master Plan’s potential impacts on parklands. On January 31, 2018, CSUEB certified the PRFEIR, re-adopted the Master Plan, and made new findings regarding the funding of CSUEB’s fair share of off-site traffic mitigation.

E. The CITY filed a Petition of Mandamus and Complaint for Injunctive and Declaratory Relief challenging the adequacy of the PRFEIR and CSUEB’s findings with regard to traffic mitigation, in Alameda County Superior Court Case No. RG18895213.

F. After briefing and oral argument, the Alameda County Superior Court denied CITY's Petition and dismissed CITY's Complaint.

G. In its Order Denying Petition for Writ of Mandate, attached hereto as Exhibit A, the Superior Court acknowledged and accepted CSUEB's representations during the litigation by which CSUEB acknowledged its obligation and commitment to pay its fair share of off-site traffic mitigation costs. Those representations were repeated in the Court's Order at pages 6 to 7, lines 14 (at page 6) through 10 (at page 7), at page 11, lines 4 through 21, and page 24, lines 16 through 21 (collectively, the "Fair Share Statements").

H. On November 20, 2019, CITY filed an appeal from the Superior Court's decision, initiating First Appellate District Case No. A158981 (the "Appeal"), which is currently pending.

I. On December 9, 2019, CSUEB filed a cross-appeal from the Superior Court's decision (the "Cross Appeal"), which is currently pending in the same appellate case.

J. The CITY and CSUEB now wish to settle their disputes regarding the Master Plan, FEIR and PRFEIR on the terms and conditions set forth below.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants contained in this Agreement, it is agreed that:

1. CSUEB Reaffirms and Commits to the Fair Share Statements. CSUEB hereby reaffirms its commitment and obligation to act consistent with the Fair Share Statements made during the pendency of Alameda Superior Court Case No. RG18895213. To be clear, CSUEB agrees it shall pay its fair share of the cost of off-site traffic mitigation measures identified in the Mitigation Monitoring and Reporting Program on a project-by-project basis as and to the extent that individual Master Plan projects and their corresponding traffic mitigation measures are undertaken. CSUEB and CITY agree they shall consult and work in good faith with each other on such fair costs. CSUEB, as the lead agency for the project, shall determine the amount of its fair share costs as supported by then-current technical analyses and construction costs, and taking into consideration the fair share discussions with the CITY. Any dispute arising under this Agreement or any subject matter covered herein, including but not limited to, the mitigation measures, the cost of mitigation measures, or CSUEB's fair share of costs shall be resolved by the process identified in Section 7, below. The original estimate of \$2.3 million in off-site traffic mitigation costs was not intended to, and does not, serve as a floor or cap on CSUEB's obligation to make its fair share contribution for such off-site mitigation measures.

2. Payment of CITY's Attorneys Fees from 2009 Litigation. Within sixty (60) days of the Effective Date, CSUEB shall pay to the CITY in the method and manner that the CITY directs, an amount of Two Hundred Four Thousand Five Hundred Sixty Two Dollars

(\$204,562.00). This amount will constitute CSUEB's full and complete payment of (1) the amount awarded by the Court for CITY's attorneys' fees in the trial court phase of Case No. RG09480852, pursuant to the Court's Order dated April 28, 2011, in the amount of One Hundred Ten Thousand Two Hundred Seventy Three Dollars (\$110,273.00); and (2) the amount requested by CITY for its attorney's fees in the appellate phase of Case No. RG09480852, pursuant to its Motion for Attorneys' Fees filed May 17, 2016, in the amount of Ninety Four Thousand Two Hundred Eighty Nine Dollars (\$94,289.00).

3. CITY to Withdraw Motion for Attorney's Fees. Immediately upon receipt of CSUEB's payment pursuant to section 2 of this Agreement, CITY shall file with the Alameda County Superior Court all documents necessary to withdraw and/or dismiss CITY's Motion for Attorneys' Fees filed May 17, 2016. CITY shall not thereafter make any attempt to revoke the withdrawal and/or dismissal of its Motion for Attorneys' Fees, to resurrect such Motion, or to file any other Motion for Attorneys' Fees or costs with regard to Alameda Superior Court Cases No. RG09480852 or RG18895213 or the appellate proceedings linked to those cases.

4. CITY to Abandon Appeal. Immediately upon the Effective Date of this Agreement, CITY shall file a notice of abandonment of the Appeal, in its entirety, with prejudice ("Notice of Abandonment of Appeal"), and send confirmation of the filing of the Notice of Abandonment of Appeal to CSUEB and its counsel. CITY shall not thereafter make any attempt to revoke the Abandonment of the Appeal, to resurrect the Appeal, or to file any other appeal from the Judgement entered in Alameda Superior Court Case No. RG18895213 or any portion thereof.

5. CSU to Abandon Cross-Appeal. Immediately upon its receipt of the Notice of Abandonment of Appeal per section 4 above and the withdrawal of CITY's Motion for Attorneys' Fees per section 3 above, CSUEB shall file a notice of abandonment of the Cross Appeal, in its entirety, with prejudice ("Notice of Abandonment of Cross Appeal"), and send confirmation of the filing of the Notice of Abandonment of Cross Appeal to CITY and its counsel. CSUEB shall not thereafter make any attempt to revoke the abandonment of the Cross Appeal, to resurrect the Cross Appeal, or to file any other appeal from the Judgement entered in Alameda Superior Court Case No. RG18895213 or any portion thereof.

6. Release of Claims. If the Appeal and Cross Appeal are dismissed with prejudice pursuant to sections 4 and 5, above, then the CITY, on the one hand, and CSUEB on the other hand, shall waive and release all claims and causes of action each has or may have against the other arising from the preparation and adoption of the Master Plan, FEIR, and PRFEIR, including unknown claims. The parties release each other from claims unknown at the time of the release, and waive their respective rights under Civil Code §1542, which provides that 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.

7. Dispute Resolution. If a dispute should arise pertaining to this Agreement or the terms hereof, the parties agree to attempt to informally resolve the dispute through good faith discussions. If after 14 days, the dispute cannot be resolved through informal discussions, the parties agree to participate in good faith in mediation to resolve the dispute. The parties agree to share the cost of mediation equally.

If mediation is unsuccessful, the parties shall engage in binding Arbitration, as described herein. The arbitration process shall be one mutually selected by the parties; provided, however, that the arbitration and subsequent enforcement of any arbitration award shall be governed by the California Arbitration Act ("CAA"). In the event the parties are unable or unwilling to select a suitable arbitrator or arbitration entity, then any party may apply, *ex parte*, to the supervising judge of the Alameda County Superior Court, Hayward branch, for an order compelling arbitration, including the appointment of a neutral and qualified arbitrator or arbitration entity. The arbitrator shall not have the power to commit errors of law or to reach factual conclusions unsupported by substantial evidence, and the award may be vacated for any such legal error or factual error. Subject to the immediately preceding sentence, the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement, except that the foregoing clause shall not prohibit either CITY or CSUEB from joining any indispensable or necessary party to the arbitration.

Each party agrees to execute any and all documents as may be necessary to carry out the purposes of this Section 7. The cost of any arbitration hereunder shall be initially paid equally by the parties to this Agreement, but the prevailing party shall recover costs of arbitration proceedings from the non-prevailing party. Attorney fees, witnesses fees, and other fees and expenses, shall be governed by Section 13 of this Agreement. The agreement of the parties to arbitrate claims and disputes shall be specifically enforceable under California arbitration law. Pending final decision of the arbitrator, the parties shall proceed diligently with the performance of all obligations as provided in this Agreement.

8. No Admissions. This Agreement is a compromise of disputed claims, and is not intended to be nor shall be deemed to be admissions by any party of the merit or lack thereof of any party's claims or positions.

9. Notices. All communications and notices required by or given pursuant to this Agreement shall be provided to the following:

To the CITY:

City Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541-5007

With a copy to:

Best Best & Krieger LLP  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Attn: Harriet Steiner or Kara Ueda  
*Email:* [harriet.steiner@bbklaw.com](mailto:harriet.steiner@bbklaw.com); [kara.ueda@bbklaw.com](mailto:kara.ueda@bbklaw.com)

To CSUEB:

Vice President for Administration and Finance  
25800 Carlos Bee Boulevard  
Hayward, CA 94542-3004

With a copy to:

California State University Office of the General Counsel  
401 Golden Shore  
Long Beach, CA 90802-4210  
Attn: Dawn Theodora or Shawna McKeever  
E-mail: [dtheodora@calstate.edu](mailto:dtheodora@calstate.edu) or [smckeever@calstate.edu](mailto:smckeever@calstate.edu)

With a copy to:

SSL Law Firm LLP  
505 Montgomery Street, Suite 620  
San Francisco, CA 94111  
Attn: Diane Hanna or Ivo Keller  
*Email:* [diane@sslfirm.com](mailto:diane@sslfirm.com); [ivo@sslfirm.com](mailto:ivo@sslfirm.com)

10. Legal Representation. This Agreement was negotiated by parties represented by able legal counsel, so shall not be subject to the rule that ambiguities are to be construed against the drafting party.

11. Further Assurances. Each party agrees to execute such further documents and do such further acts as may reasonably be required to carry out the provisions of this Agreement.

12. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

13. Attorneys' Fees. In the event that either party brings any action or proceeding against the other arising out of or in connection with the enforcement, interpretation, or breach (or alleged breach) of any provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its reasonable attorneys' fees, costs of suit and necessary disbursements (including, without limitation, expert witness fees and

attorneys' fees and costs incurred in any appellate proceedings), in addition to whatever damages or other relief said prevailing party is entitled to in connection with such dispute.

14. Entire Agreement; Amendments; Time. This Agreement constitutes the entire agreement between the parties. All prior discussions, negotiations and agreements have been included in and are superseded by this Agreement. This Agreement may not be altered, amended, or otherwise changed in any respect except by a writing duly executed by all of the parties. The parties agree that time is of the essence in respect to this Agreement.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, and the counterparts so executed shall constitute one and the same instrument, which shall be binding on all parties. A photocopy of this Agreement shall be deemed as valid as the original. The parties agree that this Agreement may be delivered either by a party or its counsel electronically by email transmission to the other party or its counsel, and that signatures so transmitted shall be deemed to be binding on the party whose signature is so transmitted.

16. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, or as evidence of the intention of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with effect from the Effective Date.

**CITY:**

**CSUEB:**

City of Hayward

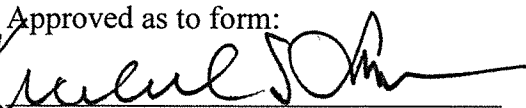
California State University East Bay



By: Kelly McAdoo, City Manager

DocuSigned by:  

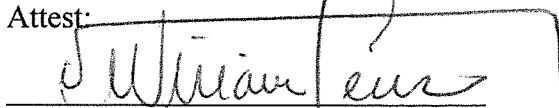

By: Leroy M. Morishita, President

Approved as to form:  


By: Michael S. Lawson, City Attorney

Approved as to form:  
DocuSigned by:  


By: Shawn McKeever, University Counsel

Attest:  


By: Miriam Lens, City Clerk