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8 HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE'S PARK COUNCIL (PPC)

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA — GENERAL JURISDICTION

11 MAKE UC A GOOD
12 NEIGHBOR (MUCGN),
13 PEOPLE'S PARK HISTORIC
14 DISTRICT ADVOCACY
15 GROUP (PPHDAG), PEOPLE'S
16 PARKCOUNCIL (PPC),
17 Petitioners and Plaintiffs,
18 vs.
19 REGENTS OF THE UNIVERSITY
20 OF CALIFORNIA,
21 Respondent and Defendant.

Case No. RG21105966

FIFTH AMENDED COMPLAINT FOR
BREACH OF CONTRACT AND
PETITION FOR DECLARATORY
RELIEF, AND RELATED MATTERS

CCP §§ 1084, et seq.,
Civil Code §§ 3300, et seq.

22 TO THE COURT, THE RESPONDENT, AND ITS ATTORNEY OF RECORD:

23 **FIFTH AMENDED COMPLAINT**

24 COME NOW THE PETITIONERS AND PLAINTIFFS, MAKE UC A
25 GOOD NEIGHBOR (MUCGN), PEOPLE'S PARK HISTORIC DISTRICT
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1 ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC), and
2 hereby respectfully submit to the Court their verified Fifth Amended Complaint for
3 Breach of Contract, and Petition for Declaratory Relief, and related matters, as follows:

4 **INTRODUCTORY STATEMENTS**

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6 1. The Petitioners and Plaintiffs, MAKE UC A GOOD NEIGHBOR (MUCGN),
7 PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S
8 PARK COUNCIL (PPC) herein seek legal and equitable relief from a series of
9 violations of public law, breaches of promise, and breaches of contract. The Defendant
10 and Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA, a public entity in and for
11 the State of California, operating college campuses including, and doing business as, the
12 UNIVERSITY OF CALIFORNIA AT BERKELEY, is herein named as a Defendant and
13 Respondent in this action, pursuant to Code of Civil Procedure §389 and the orders the
14 above-entitled Court dated January 6, 2022, and March 24, 2022, by Hon. FRANK
15 ROESCH, Judge presiding, and as Defendant in causes of action for Breach of Contract as
16 to Plaintiff PEOPLE’S PARK COUNCIL and other related parties.

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18 2. The Defendant and Respondent REGENTS OF THE UNIVERSITY OF
19 CALIFORNIA, by, through, and doing business as UNIVERSITY OF CALIFORNIA AT
20 BERKELEY, breached its agreements with Plaintiff and Petitioner PEOPLE’S PARK
21 COUNCIL, acting on its own behalf and that of the PEOPLE'S PARK PROJECT/ NATIVE
22 PLANT FORUM (Plaintiffs’ and Petitioners’ Exhibits H, I and J), by damaging and
23 destroying plants and property in People’s Park, Berkeley, California, without prior
24 notice or communication with or consent by said parties, by formulating and approving a
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1 Long-Range Development Plan (LRDP) without prior notice or communication with or
2 consent by said parties, and by collaborating with and inducing the former Respondents
3 and Defendants, BERKELEY CITY COUNCIL, MAYOR JESSE ARREGUIN, and THE CITY OF
4 BERKELEY (hereinafter referred to collectively as the “City Respondents”), and each of
5 them, to violate the Ralph M. Brown Act, California Government Code §§ 54950, et
6 seq., by deciding to approve a settlement agreement in closed session, a decision that
7 could only be lawfully adopted in open session, without prior notice or communication.
8 However, the relief sought in this pleading does not implicate the substantive rights of
9 THE CITY OF BERKELEY or of said settlement agreement.
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11 3. Defendant and Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA,
12 acting by and through the Campus Administration of the UNIVERSITY OF CALIFORNIA AT
13 BERKELEY, especially recently, have knowingly and willfully violated the essential and
14 material terms and provisions of binding written and oral agreements negotiated and
15 concluded with the Plaintiff and Petitioner PEOPLE’S PARK COUNCIL, acting on its own
16 behalf and that of the PEOPLE’S PARK PROJECT/ NATIVE PLANT FORUM, and profoundly
17 prejudicing the rights and responsibilities of other responsible student and community
18 organizations, including but not limited to the other named Plaintiffs and Petitioners,
19 MAKE UC A GOOD NEIGHBOR (MUCGN), and PEOPLE’S PARK HISTORIC DISTRICT
20 ADVOCACY GROUP (PPHDAG).
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23 I. JURISDICTION AND VENUE.

24 4. The Petitioners, MAKE UC A GOOD NEIGHBOR (MUCGN), PEOPLE’S PARK
25 HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC)
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1 are non-profit organizations, constituted in accordance with Internal Revenue Code, 26
2 U.S. Code §501(c) (3), and related provisions of the Federal Internal Revenue Code of
3 1986, based and active in Berkeley, Alameda County, California.

4 5. The Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA D.B.A.
5 UNIVERSITY OF CALIFORNIA AT BERKELEY (herein referred to as “UC”) is a tax-supported
6 public institution of higher learning, established in accordance with the Constitution of
7 the State of California, controlled and administered by the Board of Regents of the
8 University of California and by responsible system-wide and campus administrators,
9 including the campus administration of the UC Berkeley campus, in Berkeley, California.

10 6. The former Respondents BERKELEY CITY COUNCIL and MAYOR JESSE
11 ARREGUIN are the current responsible elected officials of the City of Berkeley, California,
12 presiding and doing business in Berkeley, Alameda County, California. The former
13 Respondent CITY OF BERKELEY is an incorporated charter city and is located in Alameda
14 County, California.

15 7. All pertinent facts, circumstances, events, and issues described in this
16 Petition are directly related to or designed to address matters arising in Berkeley,
17 Alameda County, California, and involving the acts and omissions of the City
18 Respondents, as well as those of Respondent and Defendant UC.

19 8. Accordingly, the above-entitled Court has jurisdiction over this matter, and
20 venue is proper, because all parties reside and are headquartered principally within
21 Alameda County, and the causes, events, facts and circumstances herein alleged have
22 arisen entirely within said County.

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II. REQUEST FOR JUDICIAL NOTICE.

9. The Petitioners, MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC), now hereby respectfully request that Judicial Notice be taken of the “Order Granting Petitions for Writ of Mandate,” signed and filed on July 9, 2021, by Hon. BRAD SELIGMAN, Judge of Alameda Superior Court, in Save Berkeley’s Neighborhoods v. Regents of the University of California, and City of Berkeley v. Regents of the University of California, Alameda Superior Court Case No. RG1902887 and RG19023058, respectively, and the related record and rulings in said consolidated or coordinated proceedings.

III. REQUEST FOR EXPEDITED HEARING

10. Because the Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA, by, through and doing business as THE UNIVERSITY OF CALIFORNIA AT BERKELEY, has now executed, ratified, and commenced to implement an unlawfully considered and approved plan in direct violation of solemn written and verbal agreements, resulting in a *fait accomplis* to the legal and practical detriment of the Petitioners, as well as to UC students, faculty, and the people of Berkeley, resulting in foreseeably profound, irreparable and irremediable harm to the community, environment, and neighborhoods of Berkeley, California, the Petitioners, MAKE UC A GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK COUNCIL (PPC) now respectfully request that hearing of this Petition be set as soon as possible, and that Respondent UC be stayed and restrained from taking further action in furtherance of their plans, including UC’s so-called “Long-Range Development Plan (LRDP)” to further harm

1 the trees, grounds, environment, vegetation, wildlife, and human users of People’s Park, in
2 Berkeley, California, pending said hearing. All parties will ultimately benefit from
3 resolution or adjudication of this Complaint and Petition upon its merits and on a
4 reasonably expedited basis, before further permanent harm can occur.

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6 **IV. BACKGROUND INFORMATION AND ALLEGATIONS**

7 **A. TRANSACTIONS BETWEEN DEFENDANT UC AND THE CITY OF BERKELEY.**

8 11. The Plaintiffs and Petitioners, MAKE UC A GOOD NEIGHBOR (MUCGN),
9 PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK
10 COUNCIL (PPC), are non-profit community and neighborhood organizations in Berkeley,
11 California, presently involved in formulating and promoting favorable consideration of
12 public policies generally designed to benefit and further environmental interests, social and
13 human values, open space, historical preservation, and quality of life in the Berkeley,
14 California area. Plaintiffs and Petitioners are especially concerned and involved in dealing
15 with and opposing many aspects of the Long-Range Development Plan (LRDP) espoused
16 by the University of California (UC Berkeley Campus) and formerly opposed by, in part or
17 in whole, by voters and leaders of the City of Berkeley. Said Long-Range Development
18 Plan (LRDP) also directly violates, both procedurally and substantively, the solemn written
19 agreements that are the subject of this action. As active and vocal participants in public
20 advocacy and debate on the very issues addressed in this Complaint and Petition, the
21 Plaintiffs and Petitioners have standing to bring this action.

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24 12. On or about the morning of July 12, 2021, said Petitioners, through their
25 attorney of record in the above-entitled action, caused a demand letter dated July 9, 2021,
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1 to be conveyed both by email and U.S. Mail to the City Clerk, Mayor and City Council of
2 the City of Berkeley, California. Said letter is attached hereto and incorporated herein as
3 Petitioners' Exhibit A. Citing Government Code §54956.9, Trancas Property Owners
4 Association v. City of Malibu (2006), 138 Cal.App.4th 172, and other relevant legal
5 authorities, the demand letter warned of taking certain actions in closed session, and
6 emphasized the need to take certain actions in a noticed and open session in accordance
7 with the terms and provisions of the Ralph M. Brown Act, California Government Code §§
8 54950, et seq. See Petitioner' Exhibit A. To date, the Petitioners have received no letter or
9 other communication in response to the demand letter attached as Exhibit A, from the
10 Respondents or anyone else on behalf of the City of Berkeley.
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12 13. The former Respondents, BERKELEY CITY COUNCIL, MAYOR JESSE
13 ARREGUIN, and THE CITY OF BERKELEY, and each of them, noticed a closed session of the
14 Berkeley City Council, set to be conducted on Tuesday, July 13, 2021, at 4:00 p.m. The
15 "Revised Proclamation Calling for a Special Meeting of the Berkeley City Council,"
16 including agenda for July 13, 2021, at 4:00 p.m., is attached hereto and incorporated herein
17 as Petitioners' Exhibit B.
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19 14. Said former Respondents, and each of them, issued another "Annotated
20 Agenda Berkeley City Council Special Meeting" for Tuesday, July 13, 2021, at 4:00 p.m.,
21 presumably following conclusion of the meeting(s). The "Annotated Agenda" for July 13,
22 2021, at 4:00 p.m., is attached hereto and incorporated herein as Petitioners' Exhibit C.
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24 15. The Berkeley City Council meeting agendas for July 13, 2021, at 4:00
25 p.m., as set forth in both Petitioners' Exhibits B and C, indicate that the "Closed Session"
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1 would address three (3) cases: 1. “(a) City of Berkeley v. Regents of the University of
2 California, Alameda Superior Court Case No. RG19023058”; 1. “(b) Save Berkeley’s
3 Neighborhoods v. Regents of the University of California, Alameda Superior Court Case
4 No. RG19006256” [sic]; and 2) “The City Council will consider whether to initiate a
5 lawsuit against the Regents of the University of California related to the Long Range
6 Development Plan for the Berkeley Campus and related actions. See Petitioners’ Exhibit
7 B, at page 2, and Exhibit C, at page 2. Note: The case number for Save Berkeley’s
8 Neighborhoods v. Regents of the University of California appears to be Alameda Superior
9 Court Case No. RG19022887 [not No. RG19006256, as reflected in the Berkeley City
10 Council agendas attached as Petitioners’ Exhibits B and C].
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13 16. For both the “Closed Session” and the “Open Session,” the Respondents’
14 “Annotated Agenda Berkeley City Council Special Meeting” for Tuesday, July 13, 2021,
15 at 4:00 p.m., indicated “**Action: No action taken**” in three (3) separate locations.
16 Petitioners’ Exhibit C, at page 2 [bold emphasis in the original].
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18 17. Despite the repeated disclaimers of “No action taken” noted above
19 (Exhibit C, page 2), Respondents MAYOR JESSE ARREGUIN and THE CITY OF BERKELEY
20 issued a Press Release, dated July 14, 2021, entitled “CITY COUNCIL APPROVES HISTORIC
21 AGREEMENT WITH UNIVERSITY OF CALIFORNIA, BERKELEY.” The Press Release of July 14,
22 2021, is attached hereto and incorporated herein as Petitioners’ Exhibit D.
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24 18. The first sentence of the Press Release states as follows: “BERKELEY –
25 Last night, the Berkeley City Council voted to authorize a historic agreement governing
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1 future growth, city services and more with the University of California at Berkeley.”
2 Petitioners’ Exhibit D, at page 1.

3 19. The voters of the City of Berkeley passed Measure L in the election of
4 November 3, 1986, a ballot proposition confirmed by the Berkeley City Council and
5 codified as Ordinance No. 5785-N.S., that took effect on December 19, 1986. The full text
6 of Measure L (Ordinance No. 5785-N.S.) is attached hereto and incorporated herein as
7 Petitioners’ Exhibit E. Among the provisions of Berkeley Measure L, is the mandate,
8 “That wherever public parks and open space currently exist in Berkeley, such use shall
9 continue and be funded at least to allow the maintenance of the present condition and
10 services.” Petitioners’ Exhibit E, page 2. People’s Park now exists in Berkeley, California.

11 20. The secret Agreement announced in the Press Release (Petitioners’
12 Exhibit D), lawfully approved in closed session, facially changes, reverses, or violates
13 existing City policy and enactments, including Measure L (Petitioners’ Exhibit E). The
14 Agreement described in the Press Release (Petitioners’ Exhibit D) also runs afoul of the
15 intent and aspirational policies set forth in Berkeley Measure N, approved by the voters of
16 the City of Berkeley on November 8, 1988. See Measure N, attached hereto and
17 incorporated herein as Petitioners’ Exhibit F.

18 21. The actual text of the secret “settlement” Agreement was reportedly
19 released by or through the office of Defendant MAYOR JESSE ARREGUIN within a few days
20 of having been electronically executed (or “DocuSigned”) by officers and attorneys for all
21 parties, with signatures all dated July 27, 2021. Said Agreement was reportedly released to
22 the public after having been approved by the Respondent during the month of July, either at
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1 or soon after the Regents' meeting of July 20-21, 2021. As belatedly released to the public,
2 and presently posted on the website of the City of Berkeley [www.cityofberkeley.info], full
3 text of the "settlement" Agreement, entitled "UC Berkeley – City of Berkeley Settlement
4 Agreement," is attached hereto and incorporated herein as Petitioners' Exhibit G.

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6 22. The Defendant and Respondent REGENTS OF THE UNIVERSITY OF
7 CALIFORNIA breached its prior agreements both with PEOPLE'S PARK PROJECT/ NATIVE
8 PLANT FORUM, and with Plaintiff and Petitioner PEOPLE'S PARK COUNCIL, acting on its own
9 behalf and that of the PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM, substantively and
10 procedurally, by concluding the secret Agreement (Exhibit G) with the CITY OF BERKELEY
11 former Respondents without prior notice to or communication with PEOPLE'S PARK
12 PROJECT/ NATIVE PLANT FORUM or with Plaintiff and Petitioner PEOPLE'S PARK COUNCIL.
13 Trancas Property Owners Association v. City of Malibu (2006), 138 Cal.App.4th 172.

14
15 23. The Defendant and Respondent REGENTS OF THE UNIVERSITY OF
16 CALIFORNIA has also breached its prior written agreements, both with PEOPLE'S PARK
17 PROJECT/ NATIVE PLANT FORUM, and with Plaintiff and Petitioner PEOPLE'S PARK
18 COUNCIL, acting on its own behalf and that of the PEOPLE'S PARK PROJECT/ NATIVE PLANT
19 FORUM, by formulating, advocating, adopting and approving, without any notice or
20 communication, its aforementioned Long-Range Development Plan (LRDP), which
21 directly violates, both procedurally and substantively, the solemn written and oral
22 agreements that are the subject of this action.

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24 24. Although the former Respondents had failed and refused to release or
25 disclose their secret Agreement (Exhibit G) prior to July 27, 2021, the Press Release
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1 (Exhibit D) openly admitted, even boasted of, abrogating established and pre-existing laws
2 and policies of the City of Berkeley. For example, Measure L (Exhibit E) requires
3 continued use and even funding of “open space” currently existing within the City, such as
4 People’s Park in Berkeley. The Berkeley City Council had also resolved on multiple
5 occasions to support tenant rights, and specifically the interests of tenants at 1921 Oxford
6 Street, Berkeley, who will be subject to eviction under UC’s “Anchor House” project. The
7 former Respondents’ Press Release (Exhibit D) presents “an agreement to not challenge the
8 upcoming 2021 LRDP and UC’s Anchor House and People’s Park housing projects.”
9 Petitioners’ Exhibit D, page 2. The former Respondents’ complicity in the destruction of
10 People’s Park violates both the letter and spirit of Measure L. See Petitioners’ Exhibit E.
11 Respondents’ collusion in the destruction of low-income housing at 1921 Walnut Street,
12 Berkeley, California, in pursuit of UC’s Anchor House Project, breaches City policies as to
13 tenants’ rights and preservation of low-income housing. Such changes to or violations of
14 City law and policy can be undertaken, if at all, only in open public session. See Trancas
15 Property Owners Association v. City of Malibu (2006), 138 Cal.App.4th 172, 186-187.

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18 25. Notwithstanding the factual information as alleged above, the relief sought
19 in this pleading does not implicate the substantive rights of THE CITY OF BERKELEY or of
20 said Agreement (Exhibit G) between said CITY OF BERKELEY and the Defendant and
21 Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA.
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23 **B. UC COLLUDED IN AN UNLAWFUL UNDERTAKING.**

24 26. As discussed above, the Defendant and Respondent REGENTS OF THE
25 UNIVERSITY OF CALIFORNIA, etc. (“UC”) collaborated with City of Berkeley entities to
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1 form a putative secret Agreement between the City and UC that breaches UC's contractual
2 agreements with Petitioner People's Park Council, (see Plaintiffs' and Petitioners' Exhibits
3 H, I and J), while also violating the Ralph M. Brown Act, California Government Code §§
4 54950, et seq. (hereinafter referred to as the "Brown Act"), and Berkeley Measure "L," as
5 well as other applicable laws and public policies.
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7 27. As discussed above, the so-called "settlement" Agreement approved by
8 Respondent UC, together with UC's Long-Range Development Plan (LRDP), changed
9 many policies, including those approved by both City Council and the City's voters at
10 large, and abrogated City right and powers for years to come. Such significant policy
11 changes and concessions, if lawful at all, would require discussion and approval in an open
12 meeting, under applicable provisions of the Brown Act. Indeed, the secret "settlement"
13 Agreement could not lawfully have been concluded in closed session in the first instance,
14 pursuant to the gravamen of the decision in Trancas Property Owners Association v. City
15 of Malibu (2006), 138 Cal.App.4th 172.
16

17 28. The impact of the secret Agreement on many of the aforementioned City
18 policies is made abundantly clear from the description of the Agreement set forth in the
19 Respondents' Press Release. See Petitioners' Exhibit D. Acquiescence in the Respondent
20 UC's Long Range Development Plan (LRDP), as promised in the Respondents' Press
21 Release (Exhibit D), would involve City policy changes and concessions directly contrary
22 to Measures L and N. See Petitioners' Exhibits E and F. In developing its LRDP, as well
23 as by collaborating in a conflicting agreement with the third-party CITY OF BERKELEY,
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1 Respondent UC directly violated assurances made in the relevant agreements with
2 Petitioner PEOPLE’S PARK COUNCIL. See Petitioners’ Exhibits H, I and J.
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4 29. Apart from the fact that Respondent UC’s secret Agreement with the City of
5 Berkeley clearly breaches UC’s solemn contractual undertakings with Plaintiff and Petitioner
6 PEOPLE’S PARK COUNCIL (see Plaintiffs’ and Petitioners’ Exhibits H, I and J), said
7 Agreement also unlawfully infringes upon City zoning authority, and limits City tax-
8 collection powers, as upheld in City and County of San Francisco v. Regents of University of
9 California, 7 Cal. 5th 536. For example, under §4.8 and §4.9 of the Agreement,
10 impermissible conditions and delays are placed on City taxing authority with respect to the
11 University, in effect making the collection of such taxes at least somewhat negotiable. The
12 Federal Ninth Circuit Court of Appeals held that a court “could not approve a settlement
13 agreement that authorized the City to disregard its own zoning ordinances.” League of
14 Residential Neighborhood Advocates v. City of Los Angeles (2007), Case No. 06-56211,
15 filed 8/21/07, page 10181, 10194.
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18 C. UC EXCEEDED ITS POWERS AND ABROGATED THOSE OF CITIZENS.

19 30. The Agreement between the CITY OF BERKELEY (hereinafter referred to as
20 the “CITY”) and the Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA (“UC”)
21 impermissibly abrogated, waived, and bargained away the constitutional powers of the City,
22 including with respect to policy, taxation, zoning, and police powers.
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24 31. In this way, the Agreement improperly binds and hamstring the City,
25 through its voters and elected representatives, with regard to the exercise of its Constitutional
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1 and Charter-based powers and responsibilities for years to come. The term of the Agreement
2 is sixteen (16) full years, from July 1, 2021, through June 30, 2037. Agreement, §7.1.
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4 32. Reviewing courts have generally recognized the “distinction between
5 governmental and proprietary activity...” Board of Trustees v. City of Los Angeles (1975)
6 49 Cal.App.3d 45, 49, citing Pianka v. State of California, 46 Cal. 2d 208, [293 P.2d 458];
7 Schwerdtfeger v. State of California, 148 Cal. App. 2d 335, [306 P.2d 960]; and People v.
8 Superior Court, 29 Cal. 2d 754 [178 P.2d 1, 40 A.L.R.2d 919].
9

10 33. The Board of Trustees Court found that the State’s claim to “sovereign
11 immunity” is limited “to the situation where the state is operating in a governmental
12 capacity.” Board of Trustees v. City of Los Angeles (1975) 49 Cal.App.3d 45, 49.

13 34. Similarly, in a cases specifically relevant to the CITY and UC relationship,
14 the Appellate Court, First District, upheld the CITY’s right to collect taxes from the Oakland
15 Raiders based upon gross receipts for football games played in UC’s Stadium, in the dual
16 cases of Oakland Raiders v. City of Berkeley (1976) 65 Cal. App. 3d 623 (Raiders I),
17 Oakland Raiders v. City of Berkeley (1983) 143 Cal. App. 3d 638 (Raiders II).
18

19 35. The CITY may terminate the Agreement under §7.4, “if the University
20 decides to increase campus undergraduate enrollment by an amount that exceeds on percent
21 annual enrollment growth, compounded annually . . .” Agreement, §7.4.

22 36. The penalty against the City for terminating the Agreement, under both §7.3
23 and §7.4, is that UC shall no longer have any obligation to pay Annual Payments as provided
24 in the Agreement, whereas the City would remain obligated “to not challenge project
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1 approvals under Sections 6.1, 6.2 and 6.3” which “expressly survive such termination.”
2 Petitioners’ Exhibit G, Agreement, §7.3

3 37. Said projects under §§ 6.1, 6.2 and 6.3 specifically include approval of “the
4 Upper Hearst Project [regarding which project the City had largely prevailed in City of
5 Berkeley v. Regents of the University of California, Alameda Superior Court Case No.
6 RG19023058], the Anchor Student Housing Project and the People’s Park Housing Project”
7 which “expressly survives such termination.” Petitioners’ Exhibit G, Agreement, §7.4.

8 38. Therefore, termination of the Agreement would, by its own plain terms,
9 discharge UC from contractual obligation to pay any consideration to the City, while leaving
10 in place much of the consideration, concessions and restrictions on rights and powers of the
11 City for which UC had bargained. The Agreement is thus unfair if not illusory, inasmuch as
12 it is one-sided, non-reciprocal, and leaves much to the discretion and “good faith” of UC.
13 See Petitioners’ Exhibit G, Agreement, §§ 4.8, 4.9, and 4.10, *inter alia*.

14 39. Adherence to the terms of the Agreement would require the City to
15 unlawfully, or even fraudulently, “arrive at a predetermined result” in considering and
16 deliberating on many discretionary issues, including but not limited to those involving, land-
17 use planning, zoning, health and safety environmental policy, taxation, and police powers.
18 Maxwell v. City of Santa Rosa (1959), 53 Cal. 2d , 276, 281.

19 40. Adoption of the Agreement thus violates the rights of the Plaintiffs and
20 Petitioners, and of their members, as citizens and residents of the City of Berkeley, as well as
21 breaching written and oral agreements with the Defendant and Respondent REGENTS OF THE
22 UNIVERSITY OF CALIFORNIA concluded by PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM, a
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1 nonprofit student, neighborhood and community gardening group, and later extended to
2 Plaintiff and Petitioner PEOPLE’S PARK COUNCIL, including but not limited to those particular
3 written agreements hereto as Plaintiffs’ and Petitioners’ Exhibit H, dated May 8, 1978, and
4 Exhibit I, dated January 5, 1979, respectively.

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6 41. A public entity, such as the City, “may not contract away the right to
7 exercise discretion within its police power in the future,” County of Ventura v. City of
8 Moorpark (2018), Civil Case No.B282866, 2nd Appellate District, 6/10/18, at page 13, and
9 UC should not induce such a public entity to do so.

10 “A government entity may not surrender, for a potentially indefinite
11 period of time, its authority to exercise discretion on matters within its
12 police power. (COMPAC, supra, 62 Cal.App.4th at pp. 739-741.) The
13 terms are void.” County of Ventura v. City of Moorpark (2018), Civil
14 Case No.B282866, 2nd Appellate District, 6/10/18, at pages 14-15.

15
16 D. THE AGREEMENT VIOLATES MEASURE L AND OTHER LAWS.

17 42. As a California State entity, UC is largely “exempt from local building
18 codes and zoning regulations,” but “solely for educational purposes.” *Regents of UC v. City*
19 *of Santa Monica* (1978), 77 Cal.App.3d 130, 136.

20
21 43. In this respect, UC’s plan, condoned by the CITY, to destroy People’s Park,
22 in Berkeley, California, including its California native plant garden and experimental urban
23 ecosystems, originally established by UC students, hardly serves anything approaching
24 “solely educational purposes” (*Id.*), but rather, the contrary. Said native California garden,
25 including many specimen trees, arranged to reflect some of California’s essential ecological
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1 habitats, is located and maintained on user-developed and community-controlled open space
2 that is recognized as a local, State and National historical landmark Such wanton disregard
3 for education, botanical and historical values raises triable issues as to whether UC's
4 destructive intentions are truly exempt from local regulation.
5

6 44. Insofar as UC may not be universally exempt from such regulation, the
7 former Respondent CITY OF BERKELEY may not abrogate its regulatory powers nor obviate or
8 violate laws designed to carry out such powers. One such substantive law, among others, is
9 the ballot measure approved by the voters of Berkeley in 1986 as Measure L. See Measure
10 L, attached to the original and amended Writ Petitions as Petitioners' "Exhibit E."
11

12 45. Measure L applies not only to parks and open space "owned or controlled or
13 leased by the City," as stated in Measure L, Section 1, but also expressly applies to "public
14 school playgrounds, and vacant public land, whether dedicated formally in park use or being
15 used de facto as open space with recreational use or potential use on or after January 1,
16 1985." Measure L, Section 3 (b).
17

18 46. Sections 2 and 3 of Measure L, Section 1, explicitly requires the City
19 government to protect public parks and open space, wherever they exist in Berkeley and
20 regardless of the present ownership thereof. These sections state as follows:

21 "Section 2 (a): That wherever public parks and open space
22 currently exist in Berkeley, such use shall continue and be funded at least to
23 allow for the maintenance of the present condition and services." Measure
24 L, Section 2 (a).
25

1 “Section 3 (b) **Public open space** shall be defined as all City of
2 Berkeley parks, public school playgrounds, and vacant public land, whether
3 dedicated formally in park use or being used de facto as open space with
4 recreational use or potential use on or after January 1, 1985.” Measure L,
5 Section 3 (b) [bold type in the original].
6

7 47. People’s Park, on Dwight Way in Berkeley, California, is thus clearly
8 encompassed within the definition of “public parks and open space [that] currently exist in
9 Berkeley . . .” Measure L, Section 2 (a). Respondent UC is bound to respect City laws and
10 policies, especially in pursuit of objectives that are not clearly in support of (or, as in this
11 case, actually contrary to) an “educational” purpose.
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13 48. Moreover, the language in “vacant public land, whether dedicated formally
14 in park use or being used de facto as open space with recreational use or potential use . . .”
15 perhaps uniquely describes the status of People’s Park, as of January 1, 1985, and to date.
16 By the plain language of its definitions, “Public open space” includes all Berkeley City
17 parks, all Berkeley Unified School District playgrounds, and all other vacant public land,
18 including formal or de facto parks, such as People’s Park. Measure L, Section 3 (b).
19

20 49. It is instructive in this regard that the Berkeley City Attorney Analysis of
21 Measure L, expressly refers to “school parks owned by the Berkeley Unified School District”
22 and to Ohlone Park, then owned at least in part by the Bay Area Rapid Transit (BART)
23 District, a park that had originally and initially been user-developed and popularly known as
24 “People’s Park Annex.” See Berkeley City Attorney Analysis of Measure L, attached to the
25 Writ Petition as Petitioners’ “Exhibit E.”
26

1 50. Measure L (“Exhibit E”) is just one example of a substantive law that would
2 prohibit an Agreement, whether in closed session or otherwise, not to oppose or interfere
3 with UC’s plan to demolish and destroy People’s Park, in favor of a high-rise construction
4 project. Departure from the requirements of Measure L would require at least, and no less
5 than an open public hearing, in compliance with the Brown Act, pursuant to the holding in
6 *Trancas Property Owners Assn. v. City of Malibu* (2006), 138 Cal. App. 4th 172, 186.
7

8 51. As stated above, the Agreement (Plaintiffs’ and Petitioners’ “Exhibit G”) in
9 §7.3, unlawfully limits and penalizes the City’s right to challenge any future UC ‘Campus
10 Capital Project or Off-Campus Housing Project,’ whether on grounds of planning, zoning,
11 revenue, overcrowding, public health and safety, environmental concerns, or for any other
12 reason. See “Exhibit G,” Agreement, §7.3.
13

14 52. Thus, upon its face, the Agreement (Plaintiffs’ and Petitioners’ Exhibit G)
15 directly violates Measure L. Respondent would thus need at least a public hearing in order to
16 change the policy established by Measure L, pursuant to the *Trancas* holding, if not also an
17 additional ballot measure in order to persuade the voters of Berkeley to repeal Measure L.
18 *Trancas Property Owners Assn. v. City of Malibu* (2006), 138 Cal. App. 4th 172, 186.
19

20 53. The Agreement, at §6.3 (Petitioners’ “Exhibit G”), violates the pertinent
21 written understandings with Plaintiff and Petitioner PEOPLE’S PARK COUNCIL (Petitioners’
22 Exhibits H, I and J), and harshly restricts the City’s legal prerogatives in the potential
23 enforcement of Measure L, stating, in pertinent part, as follows:

24 **6.3 2021 LRDP, People’s Park Housing Project, and Anchor**
25 **House Student Housing Projects.** The City agrees not to file any
26

1 lawsuits, pursue any legal challenges, or directly or indirectly support any
2 litigation (including without limitation through funding or by encouraging
3 any litigation by an organization) that opposes: (1) the 2021 LRDP and
4 2021 LRDP EIR (2) the Anchor House Student Housing Project, (3) the
5 People’s Park Housing Project, including without limitation the permanent
6 supportive housing component . . .” Petitioners’ “Exhibit G,” Agreement,
7 at §6.3.
8

9
10 54. “The University and City” also agree to additional housing construction on
11 People’s Park, in the Agreement (Petitioners’ “Exhibit G”) at §4.14, in patent breach of
12 Petitioners’ agreements with Respondent UC (see Petitioners’ Exhibits H, I and J), and in
13 contravention of Measure L (Petitioners’ “Exhibit E”),. Provisions of the Agreement at
14 §4.16 and §4.18 also tend to tie the City’s hands, curb its Constitutional powers, block its
15 legal options, and force it to defend UC’s interests. See Petitioners’ “Exhibit G,” the
16 Agreement, §§ 4.14, 4.16, 4.18, and 6.3, *inter alia*.
17

18 55. Similarly, the Agreement (Petitioners’ “Exhibit G”) further permits delay of
19 UC’s tax-payment obligation, for six (6) months or longer, by requiring the City to
20 acknowledge ‘that the administrative processes between the City and the University related
21 to collection of the tax must be established and that such establishment could preclude
22 collection of the tax on behalf of the City prior to January 1, 2022.’ Petitioners’ “Exhibit G,”
23 Agreement, §4.8. As noted above, the net effect of the conditions and loopholes described
24 above is to render UC’s collection and payment of lawful taxes at least somewhat negotiable,
25

1 if not voluntary. These provisions thus directly violate substantive local law, to wit, Measure
2 N, attached as Petitioner's "Exhibit F."
3

4 E. RESPONDENT HAS PREMEDITATED ITS BREACHES OF CONTRACT.

5 56. By and through its secret negotiation of an agreement to, among other
6 things, destroy People's Park as a student and community park and open space, Defendant
7 and Respondent UC has breached its mutual commitments, promises, and written contracts
8 with responsible People's Park organizations, including the Plaintiff and Petitioner, PEOPLE'S
9 PARK COUNCIL, as well as PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF).
10

11 57. By and through its conduct of and participation the secret negotiation of said
12 agreement in closed session, the Respondent UC has solicited City entities to aid and assist in
13 UC's breach of promise and contract. See Petitioners' Exhibits H, I and J.

14 58. The ongoing agreements between responsible People's Park organizations
15 and the Defendant and Respondent UC, by and through its Berkeley campus administration,
16 include without limitation the following: a) "Exhibit H" -- the "Letter of Agreement"
17 executed on May 8 and 9, 1978, between the UC Berkeley Chancellor's Office and the
18 People's Park Project/ Native Plant Forum (PPP/NPF); b) "Exhibit I" -- the "Letter of
19 Understanding" dated January 5, 1979, between the same parties; and c) "Exhibit J" -- the
20 Letter dated August 31, 1979, "Re Coordinations for Use of the University Property
21 Commonly Called 'People's Park,'" recognizing the role of Plaintiff and Petitioner PEOPLE'S
22 PARK COUNCIL in planning, management and coordination of the People's Stage and
23 People's Park activities generally.
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59. The “Letter of Agreement” of May 8, 1978, under Section C, “Appropriate Use,” states as follows: “People’s Park is primarily reserved for educational, research and recreational purposes.” “Exhibit H,” page 1. The Letter of Agreement also calls for communication before major changes, a provision now grievously breached by Respondent UC, with the collusion of the City Respondents. See “Exhibit H,” page 1.

60. The “Letter of Understanding” of January 5, 1979, also recognized the right of the PEOPLE’S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF) to “maintain a horticultural project” and to pursue “the cultivation of native plants arranged in plant-community habitats” in People’s Park. “Exhibit I,” page 1. This Letter also calls for communication, dispute resolution, and notice between the parties. See “Exhibit I,” page 2.

61. The Letter of August 31, 1979, confirmed the “continuing agreement” between the PEOPLE’S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF) and the Respondent UC’s Berkeley Campus Chancellor’s Office. “Exhibit J,” page 1. In addition, this Letter acknowledged and established in writing the role of the Petitioner, PEOPLE’S PARK COUNCIL, in developing “a set of guidelines” for use of the People’s Stage in the Park, coordinating the use of the Stage, and of the Park in general. See “Exhibit J,” at pages 1 and 2.

62. Respondent UC has recently planned and acted to breach many of the essential elements of the undertakings reflected in “Exhibits H, I and J.” Petitioner PEOPLE’S PARK COUNCIL (PPC) has endeavored to assert its legitimate rights and interests, pursuant to the agreement and otherwise, by sending three (3) demand letters to the parties, copies of which are provided in “Exhibits A, K and L,” respectively.

1 63. Petitioner PPC’s letter to Chancellor CAROL T. CHRIST, dated February 1,
2 2021, is attached as Petitioner’s “Exhibit K.” Petitioner PPC’s letter to DAVID M. ROBINSON,
3 Chief Campus Counsel, dated February 22, 2021, is attached as Petitioner’s “Exhibit L.”
4 Petitioner PPC’s letter to the Respondent MAYOR and CITY COUNCIL Members of the
5 Respondent CITY OF BERKELEY, dated July 9, 2021, is attached as Petitioner’s “Exhibit A.”

6
7 64. Petitioners have received no satisfactory substantive responses to any of the
8 aforementioned letters. Respondent UC’s failure to engage constitutes a further and ongoing
9 breach of the commitments and undertakings reflected in Petitioners’ “Exhibits H, I and J.”

10 65. WHEREFORE, the Petitioners and Plaintiffs, MAKE UC A GOOD NEIGHBOR,
11 PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK
12 COUNCIL (PPC) now respectfully allege the following several causes of action:

13
14 **CAUSES OF ACTION:**

15 **FOR DECLARATORY RELIEF AND BREACHES OF CONTRACTS**

16 66. As to the Respondent and Defendant REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA D.B.A. UNIVERSITY OF CALIFORNIA AT BERKELEY, based upon the foregoing, the
18 Petitioners and Plaintiffs now allege the following three (3) causes of action:

19 **I. FIRST CAUSE OF ACTION: DECLARATORY RELIEF AND JUDGMENT**

20 67. Commencing during or about 1978, PEOPLE'S PARK PROJECT/ NATIVE
21 PLANT FORUM, a student, neighborhood and community group dedicated to and engaged in
22 organic gardening, cultivation of California native plants, and landscaping in People’s
23 Park, Berkeley, California, negotiated, approved and concluded both written and oral
24 agreements with the Defendant and Respondent REGENTS OF THE UNIVERSITY OF
25

1 CALIFORNIA (hereinafter occasionally referred to simply as "UC"), two (2) of which written
2 agreements are attached hereto as Plaintiffs' and Petitioners' Exhibit H, dated May 8, 1978,
3 and Exhibit I, dated January 5, 1979, respectively.

4 68. Commencing during or about 1979, PEOPLE'S PARK PROJECT/ NATIVE
5 PLANT FORUM and Defendant and Respondent REGENTS OF THE UNIVERSITY OF
6 CALIFORNIA mutually agreed to extend the rights and responsibilities set forth in their
7 agreements, including the written agreements attached as Plaintiffs' and Petitioners'
8 Exhibits H and I, to include and also apply to Plaintiff and Petitioner PEOPLE'S PARK
9 COUNCIL, acting on its own behalf and that of the PEOPLE'S PARK PROJECT/ NATIVE PLANT
10 FORUM, as is reflected in the letter dated August 31, 1979, attached hereto as Plaintiffs' and
11 Petitioners' Exhibit J.
12

13 69. The Plaintiffs and Petitioners, and each of them, now respectfully request
14 and petition the Court for a declaratory order and judgment recognizing that the solemn
15 agreement concluded between PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM and
16 Defendant and Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA, specifically
17 including without limitation those agreements attached as Plaintiffs' and Petitioners'
18 Exhibits H and I presently remain in full force and effect, including but not limited to those
19 provisions regarding notice, communications, planning, and activities in People's Park.
20

21 70. The Plaintiffs and Petitioners, and each of them, further respectfully
22 request and petition the Court for declaratory relief in the form of a declaratory order and
23 judgment recognizing that the terms and provisions of those agreements attached as
24 Plaintiffs' and Petitioners' Exhibits H and I, including but not limited to those provisions
25

1 regarding notice, communications, planning, and activities in People’s Park, have been
2 extended to and now apply to Plaintiff and Petitioner PEOPLE’S PARK COUNCIL, as well as
3 to PEOPLE'S PARK PROJECT/ NATIVE PLANT, as expressed or implied by and through the
4 letter dated August 31, 1979, attached hereto as Plaintiffs’ and Petitioners’ Exhibit J.
5

6 71. Wherefore, the Plaintiffs and Petitioners, MAKE UC A GOOD NEIGHBOR,
7 PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG), and PEOPLE’S PARK
8 COUNCIL (PPC) now respectfully urge the Court to uphold and enforce the agreements
9 between Respondent and Petitioner as attached in Plaintiffs’ and Petitioners’ Exhibits H and
10 I, as extended to PEOPLE’S PARK COUNCIL (PPC) in accordance with the intentions expressed
11 in the letter attached as Plaintiffs’ and Petitioners’ Exhibit J.
12

13 SECOND CAUSE OF ACTION:

14 BREACH OF CONTRACT BY UC – LETTER OF AGREEMENT

15 72. All foregoing paragraphs of this pleading are incorporated herein as though
16 set forth in full.
17

18 73. People’s Park Project/ Native Plant Forum (PPP/NPF) is a non-profit
19 association of volunteer gardeners, horticulturalists, artists, botanists, naturalists and park
20 landscapers, composed largely of students, neighbors and other community members,
21 dedicated to the establishment, maintenance and preservation of California native plants and
22 organic community gardens in People’s Park a 2.8 acre parcel of public open space in
23 Berkeley, California, bounded by Dwight Way, Bowditch Street and Haste Street, in the
24 South Campus area just east of Telegraph Avenue.
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74. In 1974, students at the University of California in Berkeley, together with other students and community volunteers, founded People’s Park Project/ Native Plant Forum (hereinafter referred to as “PPP/NPF”) and commenced to plant California native specimen plants in People’s Park, organized according to the ecological plant-community habitats in which they occur in nature. The PPP/NPF group, later affiliated with the Associated Students of the University of California (ASUC), also composted, amended the soil, created raised bed and organic community gardens, and over time, established most of the trees, shrubs, flower beds, and other landscape features that have existed in People’s Park, from that time in 1974 and continuously to the present.

75. In the spring of 1978, pursuant to discussions and negotiations directly between representatives of PPP/NPF and the Defendant University of California d.b.a. University of California at Berkeley (hereinafter referred to as “UC”), culminating in a written agreement entitled the “Letter of Agreement” of May 8, 1978. See “Exhibit H,” at page 037 of Plaintiffs’ Appendix of Exhibits.

76. On or about May 8, 1978, the “Letter of Agreement” was approved by both parties and executed by T. H. (Ted) Chenoweth (Associate Vice Chancellor for Business Affairs, UCB), on behalf of Defendant UC, and by Mayo Torres (PPP/NPF Campus Coordinator), David L. Axelrod (PPP/NPF Field Coordinator), and Howard M. Cooper, on behalf of People’s Park Project/ Native Plant Forum (PPP/NPF), respectively.

77. In a mutual exchange of valuable consideration, the “Letter of Agreement” accorded to PPP/NPF certain rights, responsibilities, and assurances, as enumerated under

1 sections B, C and D of said “Letter of Agreement.” See “Exhibit H,” sections B, C and D, at
2 page 037 of Plaintiffs’ Appendix of Exhibits.
3

4 78. Subsequent to formation and approval of the “Letter of Agreement” of May
5 8, 1978, as a solemn and binding undertaking, PPP/NPF acted, along with other community
6 groups and individuals, to organize the PEOPLE’S PARK COUNCIL, a Petitioner and Plaintiff
7 herein, as a student community and neighborhood association to coordinate events and
8 planning around People’s Park, including building and managing the People’s Stage there.
9

10 79. As a constituent and founding entity of and within the Plaintiff and
11 Petitioner PEOPLE’S PARK COUNCIL, PPP/NPF agreed to share and/or transfer its rights,
12 responsibilities, and powers to represent People’s Park in all matters transcending gardening
13 and landscape issues to PEOPLE’S PARK COUNCIL, as a larger, more inclusive and broad-based
14 democratic community organization, transferring communication and coordination functions,
15 expressly including but not limited to those matters set forth under sections B, C and D of the
16 “Letter of Agreement” of May 8, 1978. See “Exhibit H,” sections B, C and D, at page 037 of
17 Plaintiffs’ Appendix of Exhibits.
18

19 80. During a regular gathering of its membership, PEOPLE’S PARK COUNCIL
20 unanimously accepted the transfer of PPP/NPF’s rights and responsibilities pursuant to
21 agreements with UC, and has repeatedly reaffirmed the acceptance and assumption of said
22 rights and responsibilities on behalf of People’s Park, as successor to PPP/NPF as to its role
23 and function under the “Letter of Agreement” (“Exhibit H”), sections B, C and D, as well as
24 under the Letter of Understanding of January 5, 1979 (“Exhibit I”), and other agreements.
25
26

1 81. Pursuant to the “Letter of Agreement” of May 8, 1978, at the third
2 paragraph of section B, both parties agreed that the role of PPP/NPF under the “Letter of
3 Agreement” could be transferred to a “broad-based People’s Park student community
4 neighborhood association” such as PEOPLE’S PARK COUNCIL, a Plaintiff and Petitioner herein.
5 Exhibit H, section B, at page 037 of Plaintiffs’ Appendix of Exhibits, which transfer UC
6 Administration representatives subsequently have continuously recognized and approved.
7

8 82. In his letter to Vice Chancellor R. F. Kerley dated August 31, 1979, T. H.
9 (Ted) Chenoweth, Associate Vice Chancellor for Business Affairs at UC Berkeley,
10 memorialize his recognition of Respondent PEOPLE’S PARK COUNCIL and its role in
11 exercising the rights and responsibilities of PPP/NPF and in coordinating planning and uses
12 of People’s Park, specifically including events at the Stage in People’s Park. See Exhibit J,
13 Appendix of Exhibits, pages 041 to 043.
14

15 83. Defendant UC agreed to “discuss with PPP/NPF [now Plaintiff and
16 Petitioner PEOPLE’S PARK COUNCIL] all matters relating to the use, maintenance and
17 development of the People’s Park site and any tentative proposals for construction, public
18 works, or other significant changes affecting the Park before the Chancellor’s Office makes a
19 decision on these matters.” “Letter of Agreement” of May 8, 1978, section B, Exhibit H, at
20 page 037 of Plaintiffs’ Appendix of Exhibits. Defendant UC has breached this agreement.
21

22 84. The “Letter of Agreement” of May 8, 1978, at section B, also states, the
23 “Chancellor’s Office agrees that the PPP/NPF [now Plaintiff People’s Park Council] will
24 serve as a clearinghouse for discussion and resolution of issues on matters relating to
25 People’s Park” and that those discussing such issues will be referred to PPP/NPF [People’s
26

1 Park Council]. “Letter of Agreement” of May 8, 1978, section B, Exhibit H, at page 037 of
2 Plaintiffs’ Appendix of Exhibits. Defendant UC has breached this agreement.

3 85. In the “Letter of Agreement” of May 8, 1978, at section C, the parties also
4 agreed as follows: “People’s Park is primarily reserved for educational, research and
5 recreational purposes. Disputes regarding use will be settled as defined under Section B,
6 Communications.” See Exhibit H, section C, at page 037 of Plaintiffs’ Appendix of
7 Exhibits. Defendant UC has breached this agreement.

8 86. In the “Letter of Agreement” of May 8, 1978, at section D, the parties also
9 agreed as follows: “Written notice of one year is required of the Chancellor’s Office of the
10 PPP/NPF for cancellation of this Letter of Agreement. See “Letter of Agreement” section D,
11 Exhibit H, at page 037 of Plaintiffs’ Appendix of Exhibits. Neither PPP/NPF nor PEOPLE’S
12 PARK COUNCIL has ever received any notice of cancellation, written or otherwise.
13

14 87. PEOPLE’S PARK COUNCIL, a Plaintiff and Petitioner herein, constitutes the
15 successor and representative of PPP/NPF as to the provisions violated by Defendant and
16 Respondent UC, as set forth above in Paragraph Noa. 127 to 129.
17

18 88. Defendant UC breached the “Letter of Agreement” of May 8, 1978,
19 including but not limited to the provisions of sections B and C thereof as described above in
20 Paragraph Noa. 127 to 129, by recently proposing, considering, approving and adopting a
21 “Long Range Development Plan” (also referred to as “LRDP”) that would completely
22 destroy People’s Park and utilize the razed property as a site for high-rise construction.
23

24 89. Defendant UC breached the “Letter of Agreement” of May 8, 1978,
25 including but not limited to the provisions of sections B and C thereof as described above in
26

1 Paragraph Noa. 127 to 129, by recently proposing, negotiating, approving and ultimately
2 ratifying, on July 27, 2021, the secretly enacted “Settlement Agreement” between the City of
3 Berkeley and the Regents of UC, both Respondents and Defendants herein. See Exhibit G,
4 pages 023 through 036 of Plaintiffs’ Appendix of Exhibits.
5

6 90. The so-called “Settlement Agreement” attached as “Exhibit G” Plaintiffs’
7 Appendix of Exhibits, would solidify and contractualize Defendant UC’s plan to completely
8 destroy People’s Park, by requiring the Defendant City of Berkeley (hereinafter referred to as
9 the “City”) to collude with Defendant UC in implementing its “Long Range Development
10 Plan” (“LRDP”), by abrogating or severely limiting the City’s exercise of its constitutional
11 rights and powers with regard to planning and zoning, by restricting the rights of the City to
12 oppose detrimental development plan on behalf of its citizens, and by requiring the City, in
13 effect, to violate Measure L, which protects all parks and open space within Berkeley city
14 limits, including People’s Park See Measure L, attached as “Exhibit E” to Plaintiffs’
15 Appendix of Exhibits.
16

17 91. Defendant UC has also breached the “Letter of Agreement” of May 8, 1978,
18 including but not limited to the provisions of sections B and C thereof as described above in
19 Paragraph Noa. 127 to 129, during the past three (3) years, by sawing down, clearing and
20 otherwise damaging native California specimen trees, as well as other trees, shrubs,
21 flowering plants, and landscape features of People’s Park, and by drilling and fencing
22 operations conducted in People’s Park, during or about January 2021, operations and
23 activities that, without due notice, damaged plants, polluted the grounds, and restricted access
24 to and use of the Park. See Demand Letter, Exhibit K, pages 044 through 050, specifically
25
26

1 including the last two paragraphs of page 3 and the top two paragraphs of page 4 of the
2 Demand Letter, at pages 046 to 047 of the Appendix of Exhibits.

3 92. On February 1, 2021, on behalf of Plaintiff and Petitioner PEOPLE’S PARK
4 COUNCIL, this attorney sent a demand letter addressed to Carol Christ, Chancellor of the UC
5 Berkeley campus, reviewing the standing agreements and calling for compliance therewith
6 and cessation of destructive violations of such agreements. See Demand Letter, attached as
7 “Exhibit K” to the Appendix of Exhibits, at pages 044 through 050,
8

9 93. Plaintiff and Petitioner PEOPLE’S PARK COUNCIL never received any
10 substantive response to the Demand Letter attached as “Exhibit K” from Chancellor Christ or
11 any other UC administrator, but solely a brief email letter of inquiry from David M.
12 Robinson, Chief Campus Counsel, dated February 10, 2021. True copies of the Demand
13 Letter were also mailed to Gov. Gavin Newsom and UC President Michael V. Drake, M.D.
14

15 94. On February 22, 2021, on behalf of Plaintiff People’s Park Council, this
16 attorney sent a responsive letter addressed to David M. Robinson, Chief Campus Counsel,
17 answering specific questions as requested, and again demanding communications in
18 compliance with all agreements, and an end to destructive actions in violation of said
19 agreements. See Responsive Letter, attached as “Exhibit L” to the Appendix of Exhibits, at
20 pages 051 through 052. True copies of the Responsive Letter were again mailed to Gov.
21 Gavin Newsom and UC President Michael V. Drake, M.D.
22

23 95. No substantive response was ever received either to the Demand Letter,
24 Exhibit K, nor was any correction, mitigation, or remediation noted as to the relevant conduct
25 of Defendant and Respondent UC.
26

1 96. The Letter of Agreement states as follows: “Items of disagreement
2 remaining after this process may be appealed to the Chancellor.” Letter of Agreement,
3 Exhibit H, at page 037 of Plaintiffs’ Appendix of Exhibits.

4 97. Defendant UC’s failure or refusal to substantively address or respond to the
5 Demand Letter (Exhibit K) or the Responsive Letter (Exhibit L) constitutes a further material
6 breach of all the relevant provisions of the Letter of Agreement, specifically including the
7 term providing for an appeal “to the Chancellor.” Letter of Agreement, Exhibit H, at page
8 037 of Plaintiffs’ Appendix of Exhibits.

9
10 THIRD CAUSE OF ACTION:

11 BREACH OF CONTRACT BY UC – LETTER OF UNDERSTANDING

12 98. All foregoing paragraphs of this pleading are incorporated herein as though
13 set forth in full.

14
15 99. On or about February 9, 1979, the “Letter of Understanding” (nominally
16 dated “January 5, 1979”) was approved by both parties and executed by T. H. (Ted)
17 Chenoweth (Associate Vice Chancellor for Business Affairs), on behalf of Defendant UC,
18 and by Howard M. Cooper, David L. Axelrod, and Peter Wood, on behalf of People’s Park
19 Project/ Native Plant Forum (PPP/NPF), respectively.

20
21 100. The terms and provisions of the “Letter of Understanding” are generally
22 similar to, but more extensive than, the terms and provisions of the earlier “Letter of
23 Agreement” between UC and People’s Park Project/ Native Plant Forum (hereinafter referred
24 toas “PPP/NPF”), generally providing more notice, communications, dispute resolution, and
25 preservation of People’s Park for “education, research and recreational purposes.” See

1 section entitled “Appropriate Use” at page 2 of the “Letter of Understanding,” attached as
2 Exhibit I to Plaintiff’s Appendix of Exhibits, page 039.

3 101. The rights and responsibilities of PPP/NPF arising from the Letter of
4 Understanding (Exhibit I), with respect to representing, managing, and representing People’s
5 Park, were properly and generally transferred to and accepted by Plaintiff and Respondent
6 PEOPLE’S PARK COUNCIL, which transfer was recognized by Defendant and Respondent UC,
7 as alleged above in connection with the Letter of Agreement (Exhibit H).
8

9 102. In a mutual exchange of valuable consideration, the Letter of Understanding
10 (Exhibit I) accorded to PPP/NPF certain rights, responsibilities, and assurances, as
11 enumerated under sections labeled “Appropriate Use,” “Routine Maintenance,”
12 “Communications,” and “Resolution of Disagreements,” which provisions are qualitatively
13 similar, to sections B, C and D of the “Letter of Agreement” (Exhibit H). See Exhibit I, at
14 page 039 of Plaintiffs’ Appendix of Exhibits.
15

16 103. Defendant UC breached the “Letter of Understanding” of February 9, 1979
17 (Exhibit I), including but not limited to the provisions of sections labeled “Appropriate Use,”
18 “Communications,” and “Resolution of Disagreements” thereof, by recently proposing,
19 considering, approving and adopting a “Long Range Development Plan” (also referred to as
20 “LRDP”) that would completely destroy People’s Park and utilize the razed property as a site
21 for high-rise construction.
22

23 104. Defendant UC breached the “Letter of Understanding” of February 9, 1979
24 (Exhibit I), by recently proposing, negotiating, approving and ultimately ratifying, on July
25 27, 2021, the secretly enacted “Settlement Agreement” between the City of Berkeley and the
26

1 Regents of UC, both Respondents and Defendants herein. See Exhibit G, pages 023 through
2 036 of Plaintiffs' Appendix of Exhibits.

3 105. The so-called "Settlement Agreement" attached as "Exhibit G" Plaintiffs'
4 Appendix of Exhibits, would solidify and contractualize Defendant UC's plan to completely
5 destroy People's Park, by requiring the Defendant City of Berkeley (hereinafter referred to as
6 the "City") to collude with Defendant UC in implementing its "Long Range Development
7 Plan" ("LRDP"), by abrogating or severely limiting the City's exercise of its constitutional
8 rights and powers with regard to planning and zoning, by restricting the rights of the City to
9 oppose detrimental development plan on behalf of its citizens, and by requiring the City, in
10 effect, to violate Measure L, which protects all parks and open space within Berkeley city
11 limits, including People's Park See Measure L, attached as "Exhibit E" to Plaintiffs'
12 Appendix of Exhibits.
13

14 106. Defendant UC has also breached the "Letter of Understanding" of February
15 9, 1979, during the past three (3) years, by sawing down, clearing and otherwise damaging
16 native California specimen trees, as well as other trees, shrubs, flowering plants, and
17 landscape features of People's Park, and by drilling and fencing operations conducted in
18 People's Park, during or about January 2021, operations that damaged plants, polluted the
19 grounds, and restricted access to and use of the Park. See Demand Letter, Exhibit K, pages
20 044 through 050, specifically including the last two paragraphs of page 3 and the top two
21 paragraphs of page 4 of the Demand Letter, at pages 046 to 047 of the Appendix of Exhibits.
22

23 107. Defendant UC's failure or refusal to substantively address or respond to the
24 Plaintiff People's Park Council's Demand Letter (Exhibit K) or to its Responsive Letter
25
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1 (Exhibit L) constitutes a further material breach of all the relevant provisions of the Letter of
2 Agreement, specifically including the last sentence under “Resolution of Disagreements”
3 providing for an appeal “to the Chancellor.” Letter of Understanding, Exhibit I, at page 039
4 of Plaintiffs’ Appendix of Exhibits.

5
6 108. Defendant and Respondent UC breached the Letter of Understanding
7 (Exhibit I) as well as the agreements described in the Chenoweth Letter of August 31, 1979,
8 (Exhibit J), by recently proposing, considering, approving and adopting a “Long Range
9 Development Plan” (“LRDP”) that would completely destroy People’s Park and utilize the
10 razed property as a site for high-rise construction, and by damaging and destroying trees,
11 shrubs, flowers, groundcover plants, and the wheelchair ramp to the People’s Stage in
12 People’s Park, Berkeley, California, without any prior notice, communication, or consent, as
13 required by the terms of said agreements.

14
15 109. Defendant and Respondent UC also breached the Letter of Understanding
16 (Exhibit I), as well as the other agreements described above, during the past two (2) years, by
17 sawing down, clearing and otherwise damaging native California specimen trees, and other
18 valuable trees, including full-grown redwoods in the Fred Cody Grove and elsewhere, as well
19 as shrubs, flowering plants, garden beds and landscape features of People’s Park, during or
20 about August 2022, and by drilling and fencing operations conducted in People’s Park,
21 during or about January 2021, and afterwards, operations that damaged plants, polluted the
22 grounds, and restricted access to and use of the Park. See Demand Letter, Exhibit K, pages
23 044 through 050, specifically including the last two paragraphs of page 3 and the top two
24 paragraphs of page 4 of the Demand Letter, at pages 046 to 047 of the Appendix of Exhibits.

1
2 110. Respondent and Defendant UC's failure or refusal to substantively address
3 or respond to the Plaintiff People's Park Council's Demand Letter (Exhibit K) or to its
4 Responsive Letter (Exhibit L) constitutes a further material breach of the Letter of
5 Understanding (Exhibit I), as well as other operative oral and written agreements.

6 124. Following the inception of this lawsuit, during the summer of the following
7 year, 2022, and particularly during early August of 2022, in bald and brazen contravention of
8 the word and spirit of its numerous agreements and commitments, as set forth or implied
9 within Plaintiffs' and Petitioners' Exhibits H, I, and J, Respondent and Defendant UC acted
10 wantonly to saw down full-grown native California oaks, pines, redwoods, and other
11 specimen California and exotic trees, shredded shrubs, destroyed flowering plants, and
12 damaged the People's Stage and other significant landscape features, installed or cultivated
13 by and belonging to the Plaintiffs and Petitioners, by whom they had been developed and
14 dedicated for open public use and the enjoyment of the community .
15

16 PRAYER

17 WHEREFORE, THE PETITIONERS AND PLAINTIFFS, MAKE UC A
18 GOOD NEIGHBOR, PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP
19 (PPHDAG), and PEOPLE'S PARK COUNCIL (PPC) respectfully pray the Court to:
20

21 1. Grant declaratory relief, consisting of a declaratory order and judgment
22 acknowledging, recognizing and upholding the contractual rights of Plaintiff and Petitioner
23 PEOPLE'S PARK COUNCIL and PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM, against the
24 Defendant and Respondent REGENTS OF THE UNIVERSITY OF CALIFORNIA;
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2. Impose a stay of further or continued operations, administrative proceedings, acts and omissions and on the part of the Defendant and Respondent, REGENTS OF THE UNIVERSITY OF CALIFORNIA, in breach of the agreements cited above, and enjoining said Respondent from further damage and destruction of plants and property within People's Park, Berkeley, California;

3. Provide appropriate equitable relief, including issuance of a temporary restraining order enjoining the Defendant and Respondent, REGENTS OF THE UNIVERSITY OF CALIFORNIA, from engaging in any further or continued actions, proceedings, or conduct in violation of the law, of contractual agreements (Plaintiffs' and Petitioners' Exhibits H, I and J), and of the Plaintiffs' Petitioners' rights thereunder;

4. Compensatory damages for the loss of the use, community control and user development of that parcel of open space and real property commonly known as People's Park, together with the improvements, trees, gardens, birds and wildlife thereon, in an amount of at least \$28 million, or such other amount, according to proof;

5. Award reasonable attorney fees and costs of court pursuant to applicable statutory, contractual, and equitable authority; and

6. Grant such further relief as the Court may find just, reasonable and proper.

DATED: September 12, 2023



DAVID L. AXELROD,
Attorney for the Petitioners,
MAKE UC A GOOD NEIGHBOR, (MUGGN) PEOPLE'S
PARK HISTORIC DISTRICT ADVOCACY GROUP (PPHDAG),
and PEOPLE'S PARK COUNCIL (PPC)

1 **APPENDIX OF EXHIBITS “A” TO “L”**

2

3 **EXHIBIT A: Letter dated July 9, 2021, to the City Clerk, Mayor and City Council.**

4

5 **EXHIBIT B: “Revised Proclamation Calling for a Special Meeting of the Berkeley**
6 **City Council,” including agenda for July 13, 2021, at 4:00 p.m.**

7 **EXHIBIT C: “Annotated Agenda Berkeley City Council Special Meeting” for**
8 **Tuesday, July 13, 2021, at 4:00 p.m.**

9 **EXHIBIT D: Petitioners’ Press Release of July 14, 2021.**

10

11 **EXHIBIT E: City of Berkeley Measure L (Passed and effective as of 1986).**

12

13 **EXHIBIT F: City of Berkeley Measure N (Passed and effective as of 1988).**

14

15 **EXHIBIT G: UC Berkeley – City of Berkeley Settlement Agreement**
16 **(Signatures Dated 7/27/2021).**

17 **EXHIBIT H: “Letter of Agreement” of May 8, 1978.**

18

19 **EXHIBIT I: “Letter of Understanding” of January 5, 1979.**

20

21 **EXHIBIT J: Letter of August 31, 1979, to Vice Chancellor R. F. KERLEY.**

22 **EXHIBIT K: Letter of February 1, 2021, to Chancellor CAROL T. CHRIST.**

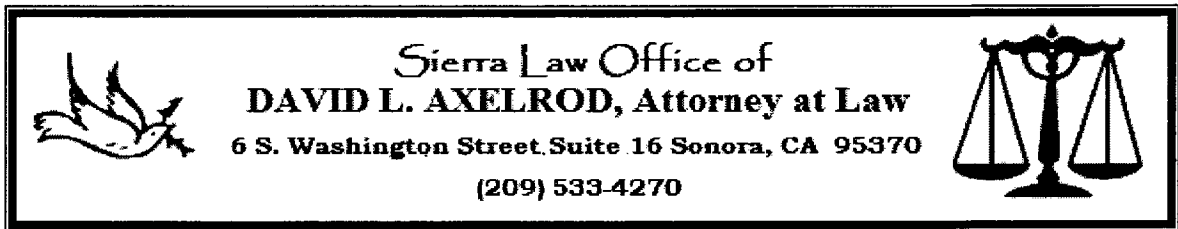
23

24 **EXHIBIT L: Letter of February 22, 2021, to Counsel DAVID M. ROBINSON.**

APPENDIX OF EXHIBITS “A” TO “L”

Page

1		
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3	EXHIBIT A:	Letter dated July 9, 2021, to the City Clerk, Mayor and City Council -- 003
4		
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21	EXHIBIT J:	Letter of August 31, 1979 -- 041
22		
23	EXHIBIT K:	Letter of February 1, 2021, to Chancellor CAROL T. CHRIST. -- 044
24		
25	EXHIBIT L:	Letter of February 22, 2021, to Counsel DAVID M. ROBINSON. -- 051
26		
27		
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July 9, 2021

**To: Mayor and Members of City Council,
c/o The City Clerk, City of Berkeley,
2180 Milvia Street,
Berkeley, CA 94704**

COPY

By: U.S. Mail and Email to council@cityofberkeley.info and clerk@cityofberkeley.info

Re: CITY OF BERKELEY v. UNIVERSITY OF CALIFORNIA – Proposed Settlement Agreement – REQUEST FOR TRANSPARENCY in Conduct of Public Business for the City.

Dear Mayor ARREGUIN and Members of the Berkeley City Council:

This letter will serve to inform you, and the City of Berkeley, that I have been engaged to request transparency and compliance with open meeting laws, on behalf of People's Park Council (PPC), Make U.C. a Good Neighbor, People's Park Historic District Advocacy Group (PPHDAG) and Save Berkeley's Neighborhoods (SBN), in the discussion and potential resolution of public policy issues in connection with pending litigation. Cf. Alameda Superior Court Cases RG 19006256 and RG 19023068.

I have recently reviewed some relevant case law construing the Ralph M. Brown Act, California Government Code §§ 54950, et seq. (hereinafter referred to as the Brown Act), in connection with City of Berkeley's contemplated discussion and approval of a potential settlement agreement in closed session.

As you know, the Brown Act does properly permit discussion of pending litigation with counsel in closed or executive session. Government Code §54956.9 (a) and (d). It is not nearly as clear, however, that a potential settlement agreement can be lawfully approved in closed session. Even if a settlement agreement may be approved in closed session, the fact and content of the agreement must be disclosed thereafter in open session, pursuant to the terms of the Brown Act, Government Code §54957.1. The substance of the agreement would then be required to be disclosed "upon inquiry by any person . . ." Brown Act, Government Code §54957.1 (a) (1) (B).

EXHIBIT A

Although the Brown Act does not expressly so indicate, a decision to advocate or adopt such a negotiated settlement agreement may also be concluded in closed session, but not if such approval involves a decision that would otherwise require an open meeting or public hearing. This is the holding in Trancas Property Owners Association v. City of Malibu (2006), 138 Cal.App.4th 172, which states, in pertinent part, as follows:

“And as ‘emphasized’ in the Attorney General’s manual on the Brown Act, ‘the purpose of [section 54956.9] is to permit the body to receive legal advice and make litigation decisions only; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions.’ (Cal. Dept. of Justice, Off. of Atty. Gen., The Brown Act (2003), p. 40.)

“Section 54956.9’s implied allowance for adoption of settlements in closed session thus may be subject to limits. And whatever else it may permit, the exemption cannot be construed to empower a city council to take or agree to take, as part of a non-publicly-ratified litigation settlement, action that by substantive law may not be taken without a public hearing and an opportunity for the public to be heard.” Trancas Property Owners Association v. City of Malibu (2006), 138 Cal.App.4th 172, 186-187.

Examples of decisions requiring an open meeting include changes of public policies previously adopted, including but not limited to land-use policies, changes of zoning standards or planning guidelines, zoning variances, climate change policies, tenant’s rights, and historical landmarking. Although no party has yet publicly disclosed the content, if any, of the putative settlement agreement between the City of Berkeley and the University of California, such an agreement would presumably involve issues of land use, zoning and planning, preservation of recognized landmarks, and impacts on the city’s adopted climate change policies, as well as University enrollment limitation, and financial compensation for use of City services.

Any settlement agreement would necessarily imply changes of decisions and positions previously adopted by the City of Berkeley in these areas. Moreover, the spirit and intent, if not also the explicit content, of Measures L and N, passed by the voters and adopted by the City in the late 1980s, would be undermined and abrogated by any agreement to condone or collude in harming neighborhood quality of life, and in the destruction of the historic public open space and native community gardens in People’s Park, Berkeley, or of historic tenants’ rights in the Anchor House, 1921 Walnut Street, Berkeley.

Given the probable scope of any settlement agreement, it thus seems abundantly clear that any decision on approval or disapproval of a specific settlement agreement intending to resolve or dispose of the City's currently-pending litigation with the University of California would need to be undertaken in an open public session of the Berkeley City Council. See Trancas Property Owners Association v. City of Malibu (2006), 138 Cal.App.4th 172. See also Shapiro v. San Diego City Council (2002), 96 Cal.App.4th 904.

The Brown Act would also require that, in order to consider any settlement agreement in open session, the veil of confidentiality or secrecy would need to be lifted and the item in question would need to be disclosed to the public and placed upon the Council's agenda in sufficient time for meaningful public participation in the open meeting or hearing. Brown Act, Government Code §54954.2 (a).

In so doing, the public would then be accorded a meaningful opportunity to address issues raised in the proposed settlement agreement. Brown Act, Government Code §54954.3, and Shapiro v. San Diego City Council (2002), 96 Cal.App.4th 916-17.

Furthermore, any such settlement agreement approved in a closed session, or even if otherwise, would be void and unlawful, in whole or in part, if it purported to “. . . contract away the right to exercise its police power in the future.” County of Ventura v. City of Moorpark (2018), Civil Case No.B282866, 2nd Appellate District, 6/10/18, at page 13. See also Center for Community Action and Environmental Justice v. City of Moreno Valley, 4th Appellate District.

“A government entity may not surrender, for a potentially indefinite period of time, its authority to exercise discretion within its police powers.” County of Ventura v. City of Moorpark (2018), Civil Case No.B282866, 2nd Appellate District, 6/10/18, at page 14-15.

The Federal Ninth Circuit Court of Appeals held that a court “could not approve a settlement agreement that authorized the City to disregard its own zoning ordinances.” League of Residential Neighborhood Advocates v. City of Los Angeles (2007), Case No. 06-56211, filed 8/21/07, page 10181, 10194.

I believe the putative settlement agreement between University of California and the City of Berkeley will require full public disclosure of the proposed agreement in advance of consideration. Any decision to approve or reject such a settlement agreement should take place, if at all, at an open and noticed public meeting.

Even if the content of such a settlement agreement arguably be deemed temporarily confidential pursuant to the “lawyer-client privilege,” as narrowly expressed pursuant to the

Brown Act, Government Code §54956.9 (b), the City certainly retains the sound discretion to waive that privilege and confidentiality in order to disclose the terms of any prospective agreement to the public, as the City is under no compelling legal obligation to maintain attorney-client privilege in this case. It would be entirely consistent with the spirit and purpose of the Brown Act to so waive the privilege, in order to allow the transparency necessary to encourage full community and neighborhood participation in public policy matters of profound importance and public interest.

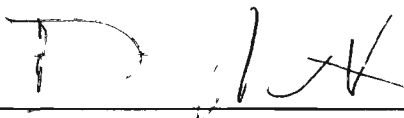
Accordingly, on behalf of the people who have asked me to write this letter, including several community and neighborhood groups, tenants, historians, environmentalists, and defenders of People's Park as a user-developed and community-controlled open space, I now respectfully request and demand that the Berkeley City Council do as follows:

- 1) Disclose and circulate the proposed settlement agreement, if any there be, in sufficient time to permit full public comment and participation; and
- 2) Consider potential approval or rejection of any proposed agreement, if at all, during a lawfully noticed and properly agendized public City Council meeting or hearing.

Thank you in advance for your kind and thoughtful consideration of these serious matters. Should you have any questions or comments, please do not hesitate to contact this office at your earliest convenience.

I appreciate your anticipated courtesy and cooperation in working to address and resolve this request and demand swiftly, in good faith, and without undue delay, in order to uphold the statutory and human rights of my clients and of the larger community of which they are a part.

Very truly yours,



**DAVID L. AXELROD, Attorney for
People's Park Council (PPC), and on behalf of
People's Park Historic District Advocacy Group
(PPHDAG), Make UC a Good Neighbor, and Save
Berkeley's Neighborhoods**

cc: People's Park Council; People's Park Project/ Native Plant Forum; Thomas N. Lippe, Esq., Law Offices, APC; Michael Lozeau, Esq., Lozeau Drury LLP; David Shiver; Phil Bokovoy; Joe Liesner; Lesley Emmington; Harvey Smith; Zach Stewart; Michael Delacour; Carol Denney; Hali Hammer; Lisa Teague; and Maxina Ventura.



**REVISED PROCLAMATION
CALLING A SPECIAL MEETING
OF THE BERKELEY CITY COUNCIL
(REVISED TO ADD NEW AGENDA ITEM)**

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, JULY 13, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this closed session meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/86076393598>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)**; enter Meeting ID: **860 7639 3598**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

EXHIBIT B

Preliminary Matters

Roll Call

Public Comment - Limited to items on this agenda only

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) AND 54956.9(d)(1):

- a. City of Berkeley v. Regents of the University of California, Alameda Superior Court Case No. RG19023058
- b. Save Berkeley's Neighborhoods, et al. v. The Regents of the University of California, et al., Alameda Superior Court, Case No. RG19006256

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(c) and 54956 (d)(4):

Initiation of litigation – one case

The City Council will consider whether to initiate a lawsuit against the Regents of the University of California related to the Long Range Development Plan for the Berkeley Campus and related actions.

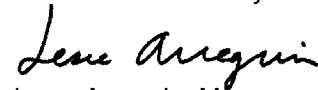
OPEN SESSION:

Public Reports of actions taken pursuant to Government Code section 54957.1.

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 9th day of July, 2021.


Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Mark Numainville, City Clerk

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable emergency Executive Orders issued by the Governor. Any member of the public may participate in the public comment portion of this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Agendas and agenda reports may be accessed via the Internet at
<http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6346(V) or 981-7075 (TDD) at least three business days before the meeting date.



ANNOTATED AGENDA BERKELEY CITY COUNCIL SPECIAL MEETING

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, JULY 13, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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END C

Preliminary Matters

Roll Call: 4:03 p.m.

Present: Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Bartlett

Councilmember Bartlett present at 4:21 p.m.

Public Comment - Limited to items on this agenda only – 20 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) AND 54956.9(d)(1):

- a. City of Berkeley v. Regents of the University of California, Alameda Superior Court Case No. RG19023058
- b. Save Berkeley's Neighborhoods, et al. v. The Regents of the University of California, et al., Alameda Superior Court, Case No. RG19006256

Action: No reportable action taken

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(c) and 54956 (d)(4):

Initiation of litigation – one case

The City Council will consider whether to initiate a lawsuit against the Regents of the University of California related to the Long Range Development Plan for the Berkeley Campus and related actions.

Action: No reportable action taken.

OPEN SESSION:

No reportable action.

Adjournment

Action: M/S/C (Harrison/Robinson) to adjourn the meeting.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste.

Councilmember Droste absent 7:22 p.m. – 7:24 p.m.

Adjourned at 7:24 p.m.

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #2: Conference with Legal Counsel – Anticipated Litigation Pursuant to Government Code Sections: 54956.9 (C) and 54956 (d) (4)

1. Leila Moncharsh
2. John Selawsky
3. 1921 Walnut Street Association
4. Kim and Theo Romerso
5. Phil Allen
6. Save 1921 Walnut
7. UC Berkeley Capital Strategies
8. Margots999@ (2)
9. Natalie Logusch
10. Tom Luce
11. Hali Hammer
12. Ann May
13. Carol Corradi
14. Leo Kremer
15. Rob Wenig
16. Carol Denney
17. Mark Schneiderman
18. David Shiver, on behalf of the Southside Neighborhood Consortium
19. Jean Mudge
20. Marissa Moss
21. Donna Evans
22. Shelli Oreck
23. Barbara Malina
24. Leslie Firestone
25. Gabriela Kipnis
26. Marla Wilson
27. Tony Corman
28. Dean Hunsaker
29. Andrew Guenthner
30. Pam Frantz
31. Anne Boersma (2)
32. Robert Dunn
33. Gail Tennant
34. Kathleen Giustino
35. Diana Bohn (3)
36. Fred Krieger
37. Coplan Family
38. Dona Bretherick

39. Madeleine Shearer
40. Sabina McMurty
41. Dorothy Berndt
42. Joshua Rose
43. Cris Benson
44. Debbie DeVoe
45. Carol Hirth
46. Wallace Gorell
47. Robert Godes
48. Leah Redwood
49. Karen Sharpe
50. Ann Carlson
51. Dione Cota
52. Sue Chan
53. Karyn Mandan
54. Eileen Joyce
55. Lynne Clenfield
56. Charlotte von der Hude
57. Claudia Deering
58. Donna Mickleson
59. Esther Lerman
60. Jeffery Kaplan
61. Mark Gorney
62. Councilmember Harrison (2)
63. Terri Wilde
64. Zach Stewart
65. Doug Jackson
66. Lynne Scalapino
67. David Axelrod
68. Stefen
69. Michael Weber
70. Lisa Bruce
71. Greysonne Coomes
72. Summer Brenner
73. Katherine Ramage

Supplemental Communications and Reports 3

Item #2: Conference with Legal Counsel – Anticipated Litigation Pursuant to Government Code Sections: 54956.9 (C) and 54956 (d) (4)

74. Laura Schmidt
75. Kerna Trottier
76. Paola Laverde
77. Jeannie Battagin
78. Dawn Thomas
79. Todd and Linda Darling
80. Anne-Lise Francois
81. Jerry Kapsner
82. Russbumper
83. Sally Nelson

84. Kathy Dittmer
85. Mary Louise Zernicke
86. Elana Auerbach
87. Ellen Thomsen
88. Barbara Fisher
89. Nancy Carleton
90. Margaretta Mitchell
91. Susan DeMersseman
92. Laura Klein
93. Christa Burgoyne
94. Sharon Singer
95. Anna Mantell
96. John Harris
97. Leonard Pitt
98. Bernard Marszalek
99. Marda Stothers
100. S. Entwistle
101. Tom Shoff
102. jwarzyn@
103. Judy Beblaar
104. Carolyn McNiven
105. Barbara Rydlander
106. Harvey Smith
107. Theresa Gensler
108. Mary Lee Noonan
109. Elizabeth Lamoureux
110. Sandra Blair
111. Toni Garrett
112. Maxina Ventura
113. Zach Stewart
114. Terri Saul
115. Doreen Neptune
116. Gerard Jamin
117. Berkeley Citizens for a Better Plan
118. Carole Peftofsky
119. Carole Cool
120. Sheila Goldmacher
121. Katie Latimer
122. Spencer Veale
123. Kevin Moore
124. Jaz Colibri
125. Tom Luce
126. Tiffany Bennett
127. Phillip Bokovoy
128. Josef Chytry
129. Emma Gobler
130. Patricia Adler
131. Maya Karpinski
132. Carla Woodworth
133. John Selawsky

- 134. Richard Bermack
- 135. Jean Butterfield
- 136. Charles Pappas
- 137. Megan Moran

016

FOR IMMEDIATE RELEASE

July 14, 2021

*Mayor Arreguin has media availability from 2pm-2:45pm
Chancellor Christ has media availability from 12:45-1:15pm.*

Please contact their respective representatives for details:

Contact:

Stefan Elgstrand
Legislative Aide
Office of Mayor Jesse Arreguin
Berkeley
(510) 981-7103
selgstrand@cityofberkeley.info

Dan Mogulof
Assistant Vice Chancellor
University of California,

(510) 919-6954
dmogulof@berkeley.edu

CITY COUNCIL APPROVES HISTORIC AGREEMENT WITH UNIVERSITY OF CALIFORNIA, BERKELEY

[<image003.jpg>](#)

Click on image for full video

BERKELEY – Last night, the Berkeley City Council voted to authorize a historic agreement governing future growth, city services and more with the University of California at Berkeley. The agreement represents one of the largest financial settlements a UC campus has provided to a host city and paves the way for expanded educational opportunities while balancing community concerns and prospective impacts on City services. More importantly, the agreement assures a voice for the City and Berkeley community in the University’s future development.

“At its core this agreement is about enabling a world-class education in a world-class city. It will enable the City to continue to provide quality city services and maintain the character of its neighborhoods while extending UC’s renowned education to the next generation of students. This agreement is the culmination of years of negotiation and community input, and it’s a reflection of the mutual relationship and ongoing cooperation between the City and the University of California.” said Berkeley Mayor Jesse Arreguin.

On the agreement, UC Berkeley Chancellor Carol Christ said, “pending approval by the Regents, this agreement lays the foundation for a new era of city-campus collaboration and cooperation that will greatly benefit the members of our respective communities. We are thrilled to have the city’s support for our efforts to address an urgent student housing crisis, just as we welcome the prospect of working with our municipal partners to address shared challenges and opportunities. I am grateful for Mayor Arreguin’s efforts that have allowed us to arrive at a true win-win agreement, an outcome that is indescribably better than the prospect of costly, lengthy litigation”.

The tentative agreement approved by the City Council calls for the University to provide annual payments to the city for a total amount of \$82.64 million over the next 16 years. The funding will support fire and city services, and projects supporting

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residents within a half mile of the UC main campus and Clark Kerr Campus. In addition to the annual payment, the agreement calls for a stronger cooperative relationship including: voluntarily honoring the City's zoning standards in the design of off-campus projects, creating a collaborative planning process for projects in the City Environs, meeting and conferring around suspending master leasing of private housing, a commitment to work with the City around the closure of Alta Bates Hospital, and a willingness to work with the city to require commercial tenants to obtain permits and pay city impact fees.

The tentative agreement also provides that the city will drop its litigation over the Upper Hearst Housing Project, discontinue litigation over an intercollegiate volleyball facility at UC's Clark Kerr Campus and an agreement to not challenge the upcoming 2021 LRDP and UC's Anchor House and People's Park housing projects. This agreement enables the City to retain its rights to challenge certain off-campus projects.

Next week, the University of California Board of Regents will discuss and potentially vote on final approval of this tentative agreement. The final language of the agreement will be available after final adoption and execution by the parties.

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EXHIBIT D

Berkeley Public Parks and Open Space Preservation Ordinance "Measure L"

This Ordinance was approved by the electors of the City of Berkeley at the Municipal Election held in the City of Berkeley on November 3, 1986.

In effect: December 19, 1986

ORDINANCE NO. 5785-N.S.

THE BERKELEY PUBLIC PARKS AND OPEN SPACE PRESERVATION ORDINANCE: PROPOSAL FOR AN ORDINANCE TO REQUIRE THE BERKELEY CITY COUNCIL TO PRESERVE AND MAINTAIN THE PUBLIC PARKS AND OPEN SPACE WHICH EXIST IN BERKELEY, AS WELL AS TO ACQUIRE AND MAINTAIN PUBLIC PARKS AND OPEN SPACE IN THE CENSUS TRACTS AND NEIGHBORHOODS OF BERKELEY HAVING LESS THAN THE MINIMUM AMOUNT OF OPEN SPACE RELATIVE TO POPULATION (2 ACRES PER 1,000) IDENTIFIED IN THE BERKELEY MASTER PLAN OF 1977; AND TO REQUIRE THE CITY TO SUBMIT TO A POPULAR VOTE ALL PROPOSALS TO WITHDRAW FROM RECREATIONAL USE PUBLIC PARKS OR PUBLIC OPEN SPACE. BE IT ORDAINED by the People of the City of Berkeley as follows:

FINDINGS:

WHEREAS, the Berkeley Master Plan of 1977 (hereinafter Master Plan) provides for a minimum standard of two acres of public open space per 1,000 persons and identifies specific Berkeley census tracts as having high population density and high open space demands, and attainment of the minimum standard is jeopardized by continued loss of public open spaces.

WHEREAS, the City of Berkeley is the second most densely populated City in California, undeveloped land is at a high premium in Berkeley, there are significant pressures to convert City owned or controlled open space to permanent or long-term non-park, non-open space uses and there exists a clear and present emergency in that the threatened loss of open space, parks and recreational opportunities in the neighborhoods in Berkeley will cause irreparable damage to the health and welfare of Berkeley residents.

WHEREAS, the Berkeley City Council has failed to provide and fund the Master Plan minimum standard of public parks and open space in every Berkeley neighborhood, and in particular in those census tracts having high park and open space requirements

WHEREAS, specific procedures and directives to the Berkeley City Council are necessary to insure that the Master Plan's minimum park and open space goals are not rendered impossible through the continued loss of public open spaces;

Section 1. VOTER AUTHORIZATION PROCEDURE.

That no public parks (hereinafter defined) or public open space (hereinafter defined) owned or controlled or leased by the City of Berkeley or agency thereof, shall be used for any other purpose than public parks and open space, without The Berkeley City Council first having submitted such use to the citizens for approval by a majority of registered Berkeley voters voting at the next general election.

EXHIBIT E

Section 2. FUNDING LEVELS TO ALLOW FULL USE

2(a): That wherever public parks and open space currently exist in Berkeley, such use shall continue and be funded at least to allow the maintenance of the present condition and services. (b) That all undedicated or unimproved open space owned or controlled by the City of Berkeley (including land held by the City in trust) shall be retained and funded by the Berkeley City Council to enable public recreational use of those lands. (c) That those census tracts containing less than the Master Plan provision of two acres of parks and open space per 1,000 population shall be singled out as having a high priority for funding the acquisition, development and maintenance of parks and recreational facilities.

Section 3. DEFINITIONS

3(a): Public parks shall be defined as City of Berkeley parks, public school playgrounds or lands held in trust by a public entity, which have been formally dedicated to permanent recreational use by the City of Berkeley, and funded for recreational use by City of Berkeley public funds. 3(b): Public open space shall be defined as all City of Berkeley parks, public school playgrounds, and vacant public land, whether dedicated formally to park use or being used de facto as open space with recreational use or potential use on or after January 1, 1985.

Section 4. ADOPTION OF THIS ORDINANCE

4(a): If the petition accompanying this proposed ordinance is signed by the number of voters required by the Berkeley City Charter, Article XIII, Section (3) or (4) or (5), the Berkeley City Council is hereby directed to submit this ordinance forthwith to the vote of the people pursuant to the appropriate Charter Section that applies to the highest number of voter signatures certified by the City Clerk, unless the Council passes this ordinance pursuant to the Charter, Article XIII, Section (3)(a).

Section 5. RETROACTIVITY

5(a): Upon passage of this initiative, all actions taken on or after January 1, 1985, by the Berkeley City Council, Housing Authority, or any agency of the City of Berkeley occurring after the date this initiative is certified for placement on the next occurring general election ballot, which actions are not in full conformity with this Ordinance, shall be declared null and void.

Section 6. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are severable.

RESOLUTION NO. 54,583-N.S.

THE PUBLIC AGENCY ACCOUNTABILITY MEASURE

WHEREAS, to protect and enhance the quality of life in our City, Berkeley citizens have adopted planning, zoning, and other laws, and have approved taxes and fees to fund important services. Public agencies, including the University of California at Berkeley, Lawrence Berkeley Laboratory, the State of California, Alameda County and other governmental agencies, play an important role in Berkeley's community life. Berkeley citizens seek good relations with these agencies and value their contributions to our community including the provision of student and other housing, and employment opportunities for Berkeley residents; and

WHEREAS, currently, public agencies do not pay city fees or taxes and are not required to follow our city's zoning and land use policies. Development and expansion by public agencies has a profound cumulative impact on traffic, parking, density, air quality, and the character and livability of our city. Such development creates increased demands for municipal services including sewers, streets, police, and fire protection, without accompanying increases in revenue. Public agencies should be as accountable to their civic responsibilities as other private citizens and businesses; and

WHEREAS, development by public agencies which disregards city policies shows a lack of respect for the future of city residents and businesses, disrupts cooperative relations with the city, and undermines the spirit of neighborliness and civic responsibility upon which public life depends.

NOW THEREFORE, BE IT RESOLVED by the People of the City of Berkeley that in order to minimize or eliminate problems resulting from public agency expansion and development, we the citizens of Berkeley support the following policies:

EXHIBIT F

1. It shall be the policy of the City of Berkeley that all land use plans, development and expansion by public agencies follow city laws, the City's General Plan and Zoning Ordinance, and the California Environmental Quality Act.
2. The City Manager and the elected representatives of the City of Berkeley shall use all available lawful means to ensure that public agencies abide by the rules and laws of the city and that these agencies pay taxes and fees, comparable to those paid by private citizens and businesses, to support their fair share of city services.

This Resolution was approved by the electors as Measure N at the City of Berkeley General Municipal Election held in the City of Berkeley on November 8, 1988.

Copies sent 12/12/88

To: City Manager

Passed by the electorate on November 8, 1988,
and confirmed by Council on November 29, 1988.

RESOLUTION

No. 54,583 N.S.

Dated November 29, 1988

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: _____

Noes: _____

Abstaining: _____

Absent: _____

Loni Hancock
Mayor and President of the Council

Attest Marie Heckman
City Clerk and Clerk of the Council

EXHIBIT F

UC BERKELEY – CITY OF BERKELEY SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into and effective as of the date last signed below (“Effective Date”), by and between the City of Berkeley (“City”), a charter city, and the Regents of the University of California (“Regents”) and the University of California, Berkeley campus (the “University”) (each a “party” and collectively the “parties”).

RECITALS

WHEREAS, the City is a municipal corporation established pursuant to Article XI of the California Constitution; and

WHEREAS, the University is a constitutionally created entity pursuant to Article IX, Section 9 of the California Constitution, with property located within the City’s boundaries; and

WHEREAS, the University and the City entered into the 2020 LRDP Litigation Settlement Agreement in 2005 (the “2005 Settlement Agreement”), in order to settle litigation with respect to the University’s 2020 Long Range Development Plan (“2020 LRDP”) and the related Environmental Impact Report (“2020 LRDP EIR”); and

WHEREAS, the 2005 Settlement Agreement terminates at the conclusion of the 2020-2021 academic year (on or about August 13, 2021); and

WHEREAS, the Regents have adopted the 2021 Long Range Development Plan (“2021 LRDP”) and certified the 2021 LRDP EIR on July 22, 2021; and

WHEREAS, in addition to evaluating the environmental effects of the 2021 LRDP, the 2021 LRDP EIR includes project-level review of two proposed student housing projects, the “Anchor House Student Housing Project” and the “People Park’s Housing Project;” and

WHEREAS, in June 2019, the City filed a lawsuit challenging the adoption of the Supplemental Environmental Impact Report for the Upper Hearst Development for the Goldman School of Public Policy; and

WHEREAS, on December 29, 2020, the City moved to be made a party to case, *Save Berkeley’s Neighborhoods v. UC Regents, Case No. RG19006256*. The action relates to the University’s proposed intercollegiate beach volleyball facility at its Clark Kerr Campus and reformation of the Declaration of Covenants and Restrictions relating to land use restrictions at the Clark Kerr Campus entered into by the University in 1982. The Alameda County Superior Court granted the City’s motion on January 28, 2021; and

WHEREAS, the parties wish to continue and enhance the cooperative relationship they have enjoyed during the term of the 2005 Settlement Agreement as well as to settle ongoing disputes over certain University projects and avoid litigation over certain pending and future University projects, including the 2021 LRDP and the aforementioned housing projects; and

WHEREAS, the parties have negotiated in good faith and agreed to the terms of this Agreement.

EXHIBIT G

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the City and the University agree as follows:

1. **STATEMENT OF SHARED GOALS AND PRINCIPLES**

1.1 The City recognizes the significant contributions that the University makes to the surrounding community and supports its efforts to plan for its future needs.

1.2 The University recognizes that the City environs are as much a part of the University experience as the campus itself, and the quality of City life is a large part of what makes the University a unique and desirable place to learn, work, and live.

1.3 The City wishes to work cooperatively with the University in planning for future capital projects on the Clark Kerr Campus and City Environs and advance projects that will improve the neighborhoods adjacent to the main campus and the Clark Kerr Campus.

1.4 The City and University have successfully completed various planning documents including the 2001 Transportation Demand Management Study, the 2003 Draft Southside Plan and the 2012 Downtown Area Plan, with broad citizen participation and community engagement.

1.5 The 2005 Settlement Agreement resulted in a historic partnership between the parties, including a joint planning process for the Downtown area, annual payments to support city services and the initiation of the Chancellor's Community Partnership Fund.

1.6 The City and the University wish to build on the positive relationship established through the 2005 Settlement Agreement.

1.7 The City and the University support efforts to increase the production and supply of housing for University students, to reduce housing instability and pressures on the city housing market.

1.8 The City seeks to increase the availability and production of housing at all income levels, and is evaluating zoning adjustments (e.g. by allowing construction of housing facilities up to twelve stories) to encourage the construction of more student housing in the City's Southside Area, located directly south of the University's main campus.

1.9 The City and the University have a shared interest in collaboration to improve their surrounding community, in particular neighborhoods that are adjacent to the main campus.

1.10 To wit, the University makes annual contributions to the City's Proposition 218 Stormwater and Street Light Fund, the Downtown Berkeley Association, and the Telegraph Improvement District.

1.11 The parties acknowledge the importance to the City of maintaining properties on the City's tax rolls, and the University commits that University-owned land will always be the first option explored by the University for both new program space and parking.

1.12 The University has set a goal in its 2021 Long Range Development Plan to limit undergraduate enrollment over the term of the planning horizon to an average of one percent per year, compounded annually.

2. DEFINITIONS & ABBREVIATIONS

2.1 The Upper Hearst Development for the Goldman School of Public Policy shall be referred to herein as “Upper Hearst Project,” and the Supplemental Environmental Impact Report prepared for the Upper Hearst Project shall be referred to herein as “SEIR”.

2.2 The “main campus” of the University is defined as all property owned by the University within the area bounded by Hearst Avenue to the north, Gayley Road/Piedmont Avenue to the east, Bancroft Way to the south, and Oxford Street/Fulton Street to the west.

2.3 The “Clark Kerr Campus” of the University is defined as all property owned by the University within the area bounded by Dwight Way to the north, East Bay Regional Park District to the east, Derby Street to the south, Warring Street to the west.

2.4 “Section” refers to each numbered paragraph of the Agreement.

2.5 Unless this Agreement specifically states otherwise, all terms are binding on the parties only during the term of the Agreement.

3. FINANCIAL CONSIDERATION: ANNUAL PAYMENT

3.1 The University agrees to make an annual payment to the City of \$4,100,000, which amount shall be increased annually by three percent compounding as described in Section 3.4 below (the “Annual Payment”) each year from 2021 through 2036 inclusive. The University shall make each Annual Payment each year by July 1 or, in 2021, by the Effective Date.

3.2 The Annual Payment is intended to be comprehensive and is inclusive of any costs to mitigate financial impacts to the City resulting from the approval, adoption or certification of the following projects: (1) the Upper Hearst Project and the SEIR, (2) any projects implementing the 2021 LRDP, including projects located on the main campus, the Clark Kerr Campus, and any other projects located off of the University’s main campus that consist of at least 80 percent assignable square footage of housing, (3) the Anchor House Student Housing Project, and (4) the People’s Park Housing Project. The City reserves all of its rights with regards to off-main campus capital projects that are not identified in this paragraph.

3.3 The Annual Payment shall not eliminate or otherwise supersede ongoing fees for services paid to the City by the University as of June 1, 2021, which fees may be increased pursuant to Section 5.1 of this Agreement. The Annual Payment supersedes and replaces the contributions specified in the 2005 Settlement Agreement annual allocation.

3.4 Except as provided in Sections 3.5 and 3.6, the City shall allocate the Annual Payment funds as follows, unless otherwise agreed to by the parties during the term of the Agreement. Each allocation is individually subject to the annual three percent increase and

shall be transferred to the City in a single payment no later than July 31st of each year during the term of the Agreement. The City is not required to spend the entire Annual Payment every year, and may accumulate funds from year to year. This agreement provides a funding mechanism only and does not constitute approval of any of the improvements listed herein.

3.4.1. \$2.8 million (increased by three percent per year) for fire and other City services;

3.4.2. \$1.3 million (increased by three percent per year) for capital projects and other services benefiting residents living within one-half mile of the University's main campus boundaries and the Clark Kerr Campus, including but not limited to a joint BPD-UCPD Telegraph Area Beat (a community-based policing program). Priorities for these projects shall be determined by City and University leaders pursuant to Section 3.7.

3.5 Notwithstanding the above, with regard only to the Annual Payment made in 2021 ("2021 Annual Payment"):

3.5.1. \$920,000 shall be allocated by the City to the City's Housing Trust Fund, in recognition of the demolition of eight rent-controlled units at 1921 Walnut Street for the Anchor House Student Housing Project;¹

3.5.2. \$130,000 shall be allocated by the City for a permanent restroom in the Telegraph area;

3.5.3. An amount determined through joint planning between the City and the University will be allocated to fund a day-time drop-in/service center in the Telegraph area for the unhoused population;

3.5.4. The City shall allocate the remainder of the 2021 Annual Payment as it determines to be appropriate.

3.6 Notwithstanding the above, with regard only to the Annual Payment made in 2022 ("2022 Annual Payment"):

3.6.1. \$250,000 shall be allocated by the City for Piedmont/Channing traffic circle pedestrian and street lighting improvements;

3.6.2. Amount to be determined for wildfire risk management and fuel reduction on UC owned property;

3.6.3. The City shall allocate the remainder of the 2022 Annual Payment in compliance with Section 3.4.

3.7 The City will spend not less than 30 percent of the Annual Payment on services and infrastructure (inclusive of any services or infrastructure funded pursuant to

¹ This amount does not replace or in any way impact any relocation benefits provided by the University to tenants at 1921 Walnut Street.

Sections 3.4.2, 3.5.2, 3.5.3, or 3.6.1) that benefit City residents living within one-half mile of the University's main campus boundaries and the Clark Kerr Campus. If the City fails to adhere to this commitment, then the University has the right to terminate this Agreement after providing the City written notice of the City's breach and a reasonable opportunity to cure the breach pursuant to Section 8.5. The Chancellor, Mayor, City Manager and Vice Chancellor for Administration shall meet annually to review the City's proposed list of projects and/or services satisfying the requirements of this Section. The parties shall use best efforts to reach mutual agreement on the list of expenditures, but the City shall make the allocations of its own expenditures, consistent with the terms of this Agreement. The City will not allocate any portion of the Annual Payment to the development of a new fire station, should the City decide to develop a new fire station during the term of this Agreement.

3.8 Beginning on July 1, 2023, the City shall make reasonable efforts to provide the University with an annual summary statement setting forth its use of the funds described in Section 3.4 since the prior Annual Payment. If the City fails to adhere to the commitments regarding its expenditures described in Section 3.4 above, then the University may (but is not obligated to) terminate this Agreement, after providing the City written notice of the City's breach and a reasonable opportunity to cure the breach pursuant to Section 8.5.

3.9 The University intends, but is not obligated, to continue to fund the Chancellor's Community Partnership Fund during the term of this Agreement in the amount of approximately \$300,000/year, increased by three (3) percent annually. The University shall provide a summary of these expenditures to the City annually.

4. COOPERATIVE RELATIONSHIP AND PLANNING REGARDING MATTERS OF MUTUAL CONCERN

4.1 The Chancellor, the Vice Chancellor for Administration, the Mayor, and the City Manager, and the City Attorney (as appropriate) will meet quarterly to review implementation of this Agreement and discuss areas of mutual interest or concern. The University will provide the City with timely written updates concerning its implementation of the 2021 LRDP, changes in enrollment, and campus housing production. The City and the University may mutually agree to reduce the frequency of these meetings to not less than annual if there is no longer a perceived need to meet as frequently as quarterly.

4.2 The University and the City will negotiate in good faith to establish within two years of the Effective Date a collaborative planning process for the City to review and comment upon campus capital projects located in the City environs and implementation of sustainable development standards prior to campus approval of such projects.

4.3 The University will continue its practice of typically voluntarily honoring the City's existing zoning standards in the design of projects off the main campus. The University will consult with City staff, the City Council and relevant commissions as well as community members about new projects off of the main campus and respond to any reasonably identified concerns presented during the public process. This consultation shall include, but not be limited to, the following actions:

4.3.1. LRDP Projects. While implementing the 2021 LRDP, the University will continue to review and consider the City's adopted planning and zoning documents, including without limitation the Downtown Area Plan (DAP) and the Southside Area Plan (SAP) when making decisions about the location of University facilities off of the main campus, and will use the design guidelines and standards prescribed in the DAP or SAP, as applicable, when designing projects in the respective plan areas to the extent they are consistent with the program for the building.

4.3.2. Off-Campus Projects. The University will submit all capital projects off of the main campus with an anticipated value in excess of \$5 million to the City's Planning Director and will either incorporate the City Planning Director's comments into the project or explain in writing its decision not to do so. Additionally, the University will submit all capital projects off of the main campus with a value in excess of \$5 million to the City's 4x6 City/Student/UC committee so that the committee and/or its members may provide comments to the University regarding such projects. When the University determines that it will not implement such projects consistent with the City's adopted planning and zoning documents, the University will, upon the request of the City's Planning Director, provide a written explanation of the reasons for such decision.

4.4 If campus undergraduate enrollment growth exceeds one percent per year on average over three consecutive years, then the Mayor, City Manager, the Chancellor and the Vice Chancellor for Administration shall meet to discuss the potential physical impacts of enrollment increases on the City and whether any amendments should be made to the terms of this Agreement to address the increase. The City shall present specific data and evidence to illustrate the physical impacts of campus enrollment increases on the City.

4.5 During the term of this Agreement, so long as there is demonstrated need on and in areas adjacent to University, the University will continue to fund a position of a campus social worker to work with the unhoused population who visit People's Park and in the broader Telegraph area, inclusive of Willard Park.

4.6 The City and University are parties to a Memorandum of Understanding (City of Berkeley Resolution No. 51,172-N.S.) regarding the development of the Clark Kerr Campus dated April 23, 1982 (the "MOU"). The terms of the MOU are not altered by this Agreement, though they are generally described for reference in this Section and its subsections. During the remaining term of the MOU, the University and the City will comply with the MOU by working cooperatively in planning and development of projects on the Clark Kerr Campus that would be constructed prior to the expiration of the time term of the MOU in 2032. The City and the University will also consult and work cooperatively regarding potential expanded public access to recreational facilities on the Clark Kerr Campus.

The MOU addresses the potential re-development of the property according to the Dwight-Derby Site Plan ("Site Plan") prior to 2032 (the time term of the MOU is fifty years). The MOU generally provides that the Clark Kerr Campus may not be developed, built upon, improved, operated, occupied, used or leased except as provided for and in accordance with the terms of the MOU. The MOU also generally provides that the University will maintain recreational facilities consistent with joint use agreements between the City and University. The

MOU also generally provides that the University will notify the City of Berkeley Landmarks Preservation Commission and provide 60 days to review and comment on any proposal to construct new buildings, demolish or significantly modify existing structures of architectural or historical significance, or remove existing landscaping or other significant site improvement. The MOU also generally provides that the University may depart from the plans, provisions, goals, and objectives of the Site Plan if such departure is authorized by resolution adopted by the City Council. The University reaffirms its commitment to work in partnership with the City as prescribed in the MOU.

With regard to any development planned to be undertaken by the University after the expiration of the MOU in 2032, but during the time term of this Agreement, the City will take a lead role in soliciting community input along with the University for capital renovation and capital projects (demolition, remodeling, retrofit and new construction) at the Clark Kerr Campus. The City and University will work cooperatively to develop any operational mitigations, if necessary, regarding capital renovation and capital Projects at the Clark Kerr Campus, and will consult and work cooperatively with the City regarding public access to recreational facilities on the Clark Kerr Campus.

4.7 The University's leadership will work with the City's elected officials and staff to study the impacts and plan for the potential closure of Alta Bates Hospital and its emergency room in Berkeley, and identify alternatives to continue emergency and acute care for the University and city population.

4.8 The University will cooperate in good faith with City efforts to collect and remit the City Parking Space Rental Tax from University-owned lots. The University will make best efforts to collect the tax from users by the date that the City begins collecting the tax from City-owned lots and demands collection by BART. The City acknowledges that the administrative processes between the City and the University related to collection of the tax must be established and that such establishment could preclude collection of the tax on behalf of the City prior to January 1, 2022.

4.9 The University shall require its commercial tenants in buildings leased to non-University parties by the University (when such buildings are not on the main campus or the Clark Kerr Campus) for the sole purpose of generating revenue (as opposed to carrying out the program of the University) to obtain City permits and pay City impact fees. The University shall determine in good faith whether a space is leased to carry out its programs or exclusively to generate income. Nothing in this Section prevents the City from disagreeing with the University's determination that a commercial tenancy is in furtherance of the University's program.

4.10 The University and the City will collaborate in good faith to reach an agreement regarding the University's master leasing of off-campus residential buildings, and will meet and confer in an effort to reach such an agreement within one year of the Effective Date. The University and City contemplate that such an agreement will set a date by which the University would reduce or eliminate its use of master leasing of residential facilities, excepting only temporary leasing necessary to create surge space during the renovation or construction of

campus housing facilities. This Section does not require either party to enter into such an agreement, but the parties shall use their good faith best efforts to do so.

4.11 The University and the City will work cooperatively in an effort to develop and implement plans to address the impacts of special events planned by either party or by third parties that impact the other party, including but not limited to graduations, game days, move-ins, move-outs, City parades, City street fairs, and temporary traffic changes. The parties will similarly consult about events planned by neither the City nor University but impacting both, such as free speech activities. The plans will address at least the following issues: street closures, temporary and permanent parking changes, illegal dumping, unlawful camping, and responses to persons experiencing homelessness.

4.12 The University commits in concept to assisting the City in its development of a new fire station by contributing land off of the main campus owned by the University as of the Effective Date and suitable for the development of a City fire station intended to serve the City and campus communities. The City and the University will engage in cooperative joint planning for a potential fire station in a location identified through such planning. This provision does not constitute a commitment by either party to entitle or fund a future fire station nor does this provision evidence that the City or the University have determined such a fire station to be necessary at this time.

4.13 The University will make a presentation to the City's Planning Director (who will share the information presented with the City's Design Review Committee for comment) regarding the Upper Hearst Project's proposed final design and exterior color scheme. The University will consider any comments and concerns raised regarding the design and color scheme by the City's Planning Director and address those concerns, in writing, prior to finalizing the construction drawings.

4.14 The University shall consider ground leasing to Resources for Community Development (or a similar private nonprofit housing developer) land at People's Park for the construction of a housing project to provide affordable and permanent supportive housing for the homeless. The University and City agree that the campus will entitle the project in order to enable the non-profit developer to fund and construct the project, and will work with the City and non-profit developer to support state and outside funding to complete the project. The obligations of the University regarding the supportive housing project are contingent upon compliance with the California Environmental Quality Act and the approval of the design of the project by the Board of Regents, which is presently scheduled to consider the project in September of 2021.

4.15 Explore relocation and the cost of relocating the eight-unit building at 1921 Walnut Street, if it is technically feasible, to a site to be determined, prior to the commencement of construction of the Anchor House Student Housing Project, so long as moving the building does not result in increased time to the Anchor House Student Housing Project and/or the University, or delay the construction of the Anchor House Student Housing Project.

4.16 Nothing in this Agreement shall be construed to limit, in any way, the land use or entitlement authority of the parties within their respective jurisdictions, nor to place any limits on either party's authority to undertake land use approvals, including but not limited to capital and other development projects, land use and development plans, or amendments thereto.

4.17 The University and the City will meet in good faith to discuss an extension or replacement of this Agreement beginning no later than two years prior to the Expiration Date, upon the request by either party for such a meeting.

4.18 If a third party challenges this Agreement in court, the parties will work cooperatively to defend the Agreement. If a court determines that there are legal deficiencies in the Agreement or the process used to adopt the Agreement, the parties will work in good faith to correct any legal deficiencies and readopt comparable terms.

5. **CITY SERVICES, FEES AND ASSESSMENTS**

5.1 During the term of the Agreement, the City will not increase any municipal or service fees currently charged to the University by more than the percentage increase applicable to the public generally for such fees or impose or apply any municipal fees (including without limitation sewer fees and any developer impact fees) to the University that are not already being paid by the University. For the purpose of determining the baseline fee to which such increases would apply, the fees charged as of June 1, 2021 shall be the fees that the University is obligated to pay, as those fees may be increased consistent with the fee increase limitation of this Section.

5.2 The City will not make any proposals to include property owned by the University in any new assessments without the prior consent of the University.

6. **CURRENT AND FUTURE LITIGATION**

6.1 **Upper Hearst.** The City agrees to promptly dismiss the Upper Hearst Project lawsuit with prejudice and will represent to any court in the remaining Save Berkeley's Neighborhoods lawsuit challenging the Upper Hearst Project and SEIR (Alameda County Superior Court Case No. RG19022887) that the City does not oppose the Upper Hearst Project or the SEIR. The parties will be responsible for payment of their own attorneys' fees and costs, regardless of any decision issued by the trial court. If the City terminates this Agreement pursuant to either Section 7.3 or 7.4 below, this Section 6.1 shall expressly survive such termination.

6.2 **Clark Kerr.** The City agrees to promptly dismiss the City as a party with prejudice in the Clark Kerr Covenants Lawsuit (Alameda County Superior Court Case No. RG19006256) and will represent to any court in the remaining Save Berkeley's Neighborhoods lawsuit challenging the Clark Kerr Covenants that the City has dismissed or intends to dismiss all causes of action in the lawsuit with prejudice. The parties will be responsible for payment of their own attorneys' fees and costs. If the City terminates this Agreement pursuant to either Section 7.3 or 7.4 below, this Section 6.2 shall expressly survive such termination.

6.3 2021 LRDP, People’s Park Housing Project, and Anchor House Student Housing Projects. The City agrees not to file any lawsuits, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) that opposes: (1) the 2021 LRDP and 2021 LRDP EIR (2) the Anchor House Student Housing Project, (3) the People’s Park Housing Project, including without limitation the permanent supportive housing component; provided, however, the City retains all rights to challenge the Anchor House Student Housing Project and the People’s Park Housing Project if the University materially changes the scope of such projects in such a way that would cause new significant impacts or substantially increase the severity of impacts previously found to be significant. For avoidance of doubt, the City’s agreement in this Section with regard to the 2021 LRDP and 2021 LRDP EIR does not apply to amendments to the 2021 LRDP adopted during the term of this Agreement that are not adopted in furtherance of the projects described in Section 6.4 about which the City agrees that it will not file any lawsuit, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) under the California Environmental Quality Act (“CEQA”) or any other theory. For the purposes of this Section, the scope of the Anchor House Student Housing Project and the scope of the People’s Park Housing Project are the respective project descriptions set forth in the 2021 LRDP EIR presented to the Regents for certification at its regular meeting in July 2021. If the City terminates this Agreement pursuant to either Section 7.3 or 7.4 below, this Section 6.3 shall expressly survive such termination.

6.4 Future Campus Capital Projects, Off-Campus Housing Projects & Enrollment Decisions. Unless the City terminates this Agreement pursuant to the termination rights described in Section 7.3 or 7.4 below, while the Agreement is in effect, the City will not file any lawsuit, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) under CEQA or any other theory to challenge the University’s decision to approve: (1) a campus capital project on the University main campus or the Clark Kerr Campus (“Campus Capital Project”); (2) any other campus capital project off of the University main campus that consists of more than 80 percent assignable square footage of housing (“Off-Campus Housing Project”); or (3) any enrollment decision made by the State of California or the University (“Enrollment Decision”). Unless the City terminates this Agreement pursuant to the termination rights described in Section 7.4 described below, the City will also not file any CEQA action challenging an enrollment increase.

6.5 If Sections 6.3 or 6.4 are violated, this Agreement shall immediately terminate and be of no further force or effect, and the University need not comply with the notice and opportunity to cure provisions set forth in Section 8.5. If the City contends that the University has wrongfully invoked this Section and that the Agreement remains in effect in spite of the University’s contention that this Section applies, the City may commence a lawsuit alleging that this Agreement remains in effect and may seek injunctive relief to compel the University to comply with the Agreement’s terms.

6.6 For avoidance of doubt, the phrase “pursue any legal challenges, or directly or indirectly support any litigation” as used in Sections 6.1, 6.2, 6.3 and 6.4 means a formal action by the City to commence litigation or to provide City funds or City resources to

support litigation instigated by others, and does not mean the enactment of non-binding resolutions of the City Council or City boards and commissions, the statements of individual persons whether acting in their personal or official City capacities, or submission of comments to the University or other public agencies.

7. **TERMINATION**

7.1 This Agreement shall become effective upon execution of the undersigned, and shall supersede, replace, and terminate the 2005 Settlement Agreement in its entirety. Any monetary payments, if any, by the University to the City that would have been due on July 1, 2021 under the 2005 Settlement Agreement are replaced in full by the payment called for on July 1, 2021, in Section 3.1 of this Agreement. This Agreement shall terminate on June 30, 2037 (“Expiration Date”), or at such earlier date as set forth in this Agreement.

7.2 Intentionally Omitted.

7.3 Upon prior written notice to the University, the City may terminate this Agreement if the City decides to file a lawsuit challenging a Campus Capital Project or Off-Campus Housing Project, as defined in Section 6.4. If the City desires to file such a lawsuit, then the City may terminate this Agreement and permanently forego entitlement to future Annual Payments under this Agreement. In the event of such termination, the City’s obligation to not challenge project approvals under Sections 6.1, 6.2 and 6.3 expressly survive such termination. In the event of such termination, in such litigation or in any litigation filed by the City regarding a specific proposed capital project that is tiered from the 2021 LRDP EIR, the City shall not seek any compensation or damages related to enrollment increases at the University so long as the University does not increase campus undergraduate enrollment by an amount that exceeds one percent annual enrollment growth, compounded annually, compared to the 2020-2021 undergraduate enrollment level, at the time such litigation is filed.

7.4 Upon prior written notice to the University, the City may terminate this Agreement (which shall also permanently terminate the University’s obligation to make Annual Payments pursuant to Section 3.1 of this Agreement) if the University decides to increase campus undergraduate enrollment by an amount that exceeds one percent annual enrollment growth, compounded annually, compared to the 2020-2021 undergraduate enrollment level. In the event of such termination, the University and the City will have no further obligations under this Agreement except that the City’s obligation to not challenge a decision to approve the Upper Hearst Project, the 2021 LRDP, the Anchor House Student Housing Project and the People’s Park Housing Project under Sections 6.1, 6.2 and 6.3 expressly survives such termination.

8. **MISCELLANEOUS**

8.1 Time shall be of the essence in the performance and/or satisfaction of this Agreement and/or each individual term, promise, provision, obligation, sentence, clause or paragraph thereof.

8.2 The parties intend and agree that this Agreement, and each and every provision thereof, shall be binding and enforceable upon the parties according to the terms and provisions specified herein.

8.3 This written Agreement constitutes the entire Agreement between the parties as to the matters referred to herein. Any other terms, promises, provisions, obligations or agreements by or between the parties shall be enforceable only as set forth in any other applicable written agreement.

8.4 After consultation with the undersigned counsel, each party to this Agreement represents and warrants that it authorized and has the capacity to enter into this Agreement, and that each signatory to this Agreement on its behalf is authorized and has the capacity to sign this Agreement on its behalf.

8.5 Except to the extent other remedies for default under this Agreement are otherwise specified herein, the parties' obligations under this Agreement shall be specifically enforceable, and any non-defaulting party may bring an action for specific performance or any other appropriate relief in the Superior Court, after providing written notice of breach to the breaching party and an opportunity to cure, as provided in Sections 8.5.1 to 8.5.2.

8.5.1. Except with regard to City breaches pursuant to Section 6.3 or Section 6.4, if a party to this Agreement believes another party has violated this Agreement, then the party asserting a violation shall notify the other party in writing. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy.

8.5.1.1 If the University asserts that the City has improperly spent or allocated a portion of an Annual Payment pursuant to Sections 3.4, 3.5, 3.6, or 3.7, the University shall offer as one available corrective action that the City allocate an equivalent amount of City funds for eligible services the following year.

8.5.2. The notifying party and the party receiving notice shall meet within fourteen (14) calendar days after the receiving party receives the notice, unless a different date is agreed to by both parties, to attempt to resolve the issues raised by the notice. If the parties are unable to reach agreement on whether a breach has occurred and/or take corrective action or remedy the breach within forty-five (45) days after this meeting, then the parties may pursue any enforcement process permitted by this Agreement.

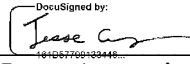
8.6 This Agreement is intended only for the benefit of the parties. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

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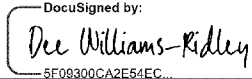
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7/27/2021
_____, 2021

CITY OF BERKELEY

DocuSigned by:


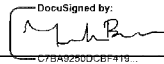
Jesse Arreguin
Mayor

DocuSigned by:


Dee Williams-Ridley
City Manager

Approved as to form:

CITY ATTORNEY

DocuSigned by:


Farimah Faiz Brown
City Attorney

7/27/2021
_____, 2021

UNIVERSITY OF CALIFORNIA,
BERKELEY

DocuSigned by:


Carol T. Christ
Chancellor

DocuSigned by:


Marc Fisher
Vice Chancellor, Administration

[Signatures continued on next page]

036

7/27/2021, 2021

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Approved as to form:
GENERAL COUNSEL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

DocuSigned by:

Alison Krumbein

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Alison Krumbein
Attorney for the University of California and
the Regents of the University of California

EXHIBIT G

LETTER OF AGREEMENT

A. Parties

This Letter of Agreement is between the University of California, Berkeley Campus Chancellor's Office and the People's Park Project/Native Plant Forum (PPP/NPF).

B. Communications

The Chancellor's Office agrees to discuss with the PPP/NPF all matters relating to the use, maintenance and development of the People's Park site and any tentative proposals for construction, public works, or other significant changes affecting the Park before the Chancellor's Office makes a decision on these matters.

The Chancellor's Office agrees that the PPP/NPF will serve as a clearinghouse for discussion and resolution of issues on matters relating to People's Park and that Individuals and Groups discussing People's Park-related issues with the Chancellor's Office will be referred to the PPP/NPF. Items of disagreement remaining after this process may be appealed to the Chancellor.


At such time as a broad-based People's Park student community neighborhood association can organize itself, PPP/NPF may request that the Chancellor's Office transfer the above functions to said association.

C. Appropriate Use


People's Park is primarily reserved for educational, research and recreational purposes. Disputes regarding use will be settled as defined under Section B, Communications.

D. Notice of Cancellation

Written notice of one year is required of the Chancellor's Office or the PPP/NPF for cancellation of this Letter of Agreement.

 Date: May 8, 1978
Campus Coordinator, PPP/NPF

 Date: May 8, 1978
Associate Vice Chancellor for
Business Affairs, UCB

 Date: 9 May '78
Field Coordinator, PPP/NPF

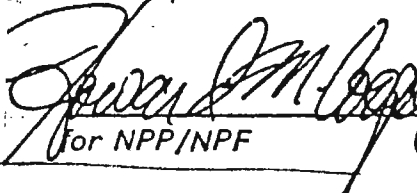
 Date: May 8, 1978.
for NPP/NPF

EXHIBIT H

January 5, 1979

LETTER OF UNDERSTANDING

This Letter of Understanding is between the University of California, Berkeley's administration and the People's Park Project/Native Plant Forum, a non-profit registered student organization.

OBJECTIVES

The purpose of the People's Park Project/Native Plant Forum (PPP/NPF) is to plant and to maintain a horticultural project in the area of the People's Park east of the existing lawn according to the general guidelines of the April 1975 proposal, including the sketch maps submitted with the proposal and amended subsequently. The PPP/NPF also expects to advise the University and to contribute, where possible, to the landscaping of the entire area.

The PPP/NPF shall be responsible for the care and maintenance or replacement of plants in its area.

These activities are open to anyone who is interested.

A major objective of the People's Park Project is public education. Association with the University of California on this project is an invaluable asset. The disciplines of agriculture, forestry and landscape architecture, among others, can contribute advanced, theoretical, and technical achievements to the Park's demonstration gardens.

Concepts of multicultural gardening, composting, botanical diversity and wild lands ecology will be given practical expression. Botanical label markers and explanation signs will assist the assimilation of knowledge by visitors. As PPP/NPF can benefit richly from the expertise and facilities of the campus, so can the Park become an integral element and valuable resource in the University structure. This is a relationship that both parties can hope to enhance in the future.

People's Park Project/Native Plant Forum has emphasized the cultivation of native plants arranged in plant-community habitats displaying hundreds of California species. This emphasis serves the threefold purpose of conserving rare or endangered species and varieties, increasing technical knowledge and awareness of native botanic horticulture, and providing a working model for the reintroduction of our native flora into the urban environment. In this way it may be possible to preserve vestiges of natural values in people's daily life, while reducing the extent to which metropolitan areas act as ecological barriers to the natural interaction and migration of plants and wildlife.

EXHIBIT I

NOTICE OF CANCELLATION

Written notice of one year is required of the Chancellor's Office or the PPP/NPF for cancellation of this Letter of Agreement.

APPROPRIATE USE

People's Park is primarily reserved for education, research and recreational purposes. Disputes regarding use will be settled as defined under "Communications".

ROUTINE MAINTENANCE

PPP/NPF will assume responsibility for maintaining and watering the garden area of People's Park.

The University will provide water, surplus materials, trash pick-up, part-time labor, and other services.

COMMUNICATIONS

The Chancellor's Office agrees to discuss with PPP/NPF all matters relating to the use, maintenance and development of the People's Park site and any tentative proposal for construction, public works, or other significant changes affecting the Park before the Chancellor's Office makes a decision on these matters. The PPP/NPF will notify the Chancellor's Office when the NPF registered organization status is renewed.

RESOLUTION OF DISAGREEMENTS

If there is a disagreement between PPP/NPF and the Office of Associate Vice Chancellor for Business Affairs over whether the foregoing points are being followed, a meeting will be held to resolve the difficulty before any action is taken to terminate the project. Items of disagreement remaining after this process may be appealed to the Chancellor.

OFFICES OF NOTICE

The following offices of notice may be used for communication and information between the Chancellor's Office and the People's Park Project/Native Plant Forum:

*Office of the Associate Vice
Chancellor for Business Affairs
127 California Hall
University of California
Berkeley, CA 94720*

*People's Plant Project/
Native Plant Forum
P.O. Box 463
Berkeley, CA 94701*

Charles M. Bates Date: February 7th
Campus Coordinator, PPP/NPF

J. H. Chandreth Date: 1/23/77
Associate Vice Chancellor for
Business Affairs

Daniel K. L. L. Date: 7 Feb. '77
Field Coordinator, PPP/NPF

Peter M. Ward Date: February 9, 1977
for PPP/NPF

7

August 31, 1979

VICE CHANCELLOR R. F. KERLEY:

RE: Coordinations for Use of the University Property Commonly Called "People's Park"

The People's Park Project/Native Plant Forum (PPP/NPF) has a continuing agreement with the Chancellor's Office to conduct their urban gardening and native plant activities on the east end of People's Park. David Axelrod (phone: 428-0657--home; 525-2233--work) is the principal contact for this group, but the new campus coordinator for the coming academic year is Michele Gray (phone: 948-6206).

The People's Park Coordinating Council is an association of persons interested in planning activities for the Park and in the overall administration and control by the University of the Park area. The Coordinator for the People's Park Council for the coming academic year is David Fogarty (phone: 548-4511) previously associated with the ASUC Municipal Lobby.

In discussions with Chief Beall and me, the People's Park Council has developed a set of guidelines for the use of the platform erected on a few parking spaces immediately west of the grass area. These guidelines seem reasonable to me and have been reviewed by Chief Beall as well. Campus-registered organizations or community groups that would like to use the stage have been directed to get in touch with the People's Park Council (message line phone: 841-6500) or the "Stage Manager" Steve Hayton (phone: 548-6292). (See attached copy of guidelines for reference.) Chief Beall, Roland Maples and I have worked out the following procedures to be used by the University when a campus-registered organization or a community group would like to hold some activity in the People's Park area.

For campus or registered organizations, the usual request for use of University facilities will be filled out at 103 Sproul Hall showing the nature of the event, its date and scheduled time, and other information necessary for Maples' office to make a review of the materials submitted. The request is then sent to my office for approval. If the campus-registered organization has not been in touch with the People's Park Council, then my office informs their coordinator of the request and arrangements are made with the Council (or with the Stage Manager if the event involves the use of the stage) and the Council informs me of the results of their discussions with the organization. If the campus-registered organization approaches the Council first and makes its arrangements, the Council, before filing the request in Maples' office, records that information on the request and sends it to my office.

EXHIBIT J

For community groups that wish to use the Park area, normally their first contact is with the People's Park Council. The Council informs the group of the guidelines and develops the dates, schedule times, and other information necessary for review by my office and informs me of their support or non-support of the group's request for use of the Park area. By arrangement with Roland Maples and the Council, I have requested that the community group also fill out the pertinent sections of the request for University facilities at 103 Sproul Hall and the request, with its supporting material, is forwarded by Maples' office to my office.

If the foregoing procedure is followed with sufficient time for notice to the Police Department and Facilities Management or other involved University departments, then the process goes smoothly. In the past, a few community groups have held events in the Park without notice to either the People's Park Council or the University and both of us have had to scramble to "catch up" with the group's plans to avoid conflicts in use and provide for all the necessary coordinations and notices to City and University departments. When the planning has been early and notifications done in time, I have not yet found it necessary to deny a request for use of the Park area.

My general agreement with the People's Park Council and the PPP/NPF is that if the guidelines will be followed and the general procedure outlined above is also followed, the Chancellor's Office will usually approve any reasonable request for use of the area. Any approval by the Chancellor's Office will always be based upon input and support from the People's Park Council. If the People's Park Council were to not support a use of the Park area (such as their opposition to the CalFAIRE Carnival), I have agreed that the Chancellor's Office would always make its reasons for approval known to the People's Park Council. Similarly, if the Chancellor's Office ever had to deny use of the Park area to an organization or group that applied for use of the Park area, such a denial over the support of the People's Park Council, could also be supported by the reasons for the University's denial. These general agreements and procedures have been worked out between me, Dave Axelrod, Dave Fogarty, Bob Sparks and others who are active in these activities and concerned about both the appropriate and community-oriented use of the Park area.

The issue of police surveillance and control in this portion of University property has been a continual difficulty in the minds of many members of the community. We have had many meetings with community persons and the police and myself to discuss specific incidents as well as general principles. I believe the amount of police enforcement in the Park area is reasonable as exerted by the Telegraph Avenue patrol and, insofar as possible, there is mutual respect between most members of the community and the patrol officers. Incidents, from time to time, make for specific difficulties

but by discussing the incident with both sides we have been able to keep communication channels open even though there may not be final agreement. In general, we have provided the same type of police enforcement in the People's Park area as we do on other University property. Even though the People's Park area is operated as a low-maintenance park for general community use, this issue requires continual attention by the Chancellor's Office.

As recommended elsewhere, I have said that Ed Hendricks should be the management person for the PPP/NPF and the People's Park Council to get in touch with on specific and daily issues, and that Ed should serve as the representative of the Chancellor's Office in areas of communication and coordination. In my absence, the resolution of disputes over principles and the approval for the use of the Park area will now come to your attention and signature.

Since I will now be a "private citizen" who has a long involvement in the last five or six years' developments in the People's Park area, I expect to remain active as a member of the People's Park Council, especially when the interest of the neighbors around the Park are involved. I hope, with your approval, that I will also be able to serve as a "friend of the University" when issues are discussed but without my previous authority as Associate Vice Chancellor.



T. H. Chenoweth
Associate Vice Chancellor
for Business Affairs

Attachment

cc: Associate Vice Chancellor N. L. Smith
Chief Administrator E. B. Hendricks
Director R. J. Maples
Chief W. P. Beall
Assistant Vice Chancellor G. P. Russo
Officer L. L. Schmelzer
Officer R. P. Hafner
Mr. D. Axelrod (PPP/NPF)
Ms. M. Gray (PPP/NPF)
Mr. D. Fogarty (People's Park Council)
Mr. B. Sparks (People's Park Council)



February 1, 2021

To: **CAROL T. CHRIST, Office of Chancellor,
University of California Administration,
200 California Hall, #1500
Berkeley, CA 94720-1500**

COPY

Re: **DEMAND of PEOPLE'S PARK COUNCIL Regarding Status and Protection of the Park.**

Dear Ms. CHRIST:

This letter will serve to inform you that I have been engaged to represent your contractual and community counterpart, the Claimant PEOPLE'S PARK COUNCIL, on behalf of People's Park and its constituent community groups and individuals, with regard to the rights and interests of said PEOPLE'S PARK COUNCIL itself and of PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM, in the preservation, protection, and integrity of People's Park, Berkeley, California, as a user-developed and community-controlled open space.

Please be advised that this representation has been duly memorialized in a professional engagement agreement with my client, the PEOPLE'S PARK COUNCIL (hereinafter referred to as the "COUNCIL"). Accordingly, please direct all future communications, correspondence and compensation regarding this particular matter to me, as attorney for the said Claimant, at the office address and telephone number indicated above, and henceforth kindly refrain from contacting or communicating directly with the Claimant in reference to any of the specific legal issues herein addressed.

The COUNCIL is particularly concerned with the preservation of People's Park as such including, but not limited to, its inherent environmental, expressive, cultural, community, social, historical, horticultural and botanical values. This letter shall endeavor to raise and address the following serious issues of mutual concern:

1) Adherence to binding agreements between the University of California Berkeley campus administration (hereinafter referred to as U.C.) and responsible People's Park organizations; 2) Compliance with all statutory requirements of the California Environmental

EXHIBIT K

Quality Act ("CEQA") [California Public Resources Code, Sections 21000 – 21178]; 3) The furtherance of free expression and public education; and 4) The preservation of plants and wildlife, including the botanic and horticultural values and resources of People's Park.

1. **AGREEMENTS:** As I'm sure you are well aware, the U.C. campus administration has perfected a number of solemn, lawful, and binding agreements, concluded in good faith, with the responsible People's Park organizations, notably including the PEOPLE'S PARK COUNCIL and PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF).

The first such binding agreement is the "Letter of Agreement" of May 8, 1978, executed by T. H. ("TED") CHENOWETH, then "Associate Vice Chancellor for Business Affairs, UCB," on behalf of U.C., and by three (3) responsible Coordinators and members of PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (hereinafter referred to as "PPP/NPF"), on behalf of People's Park. Section B of the Letter of Agreement states, in pertinent part, as follows:

"The Chancellor's Office agrees to discuss with the PPP/NPF all matters relating to the use, maintenance and development of the People's Park site and any tentative proposals for construction, public works, or other significant changes affecting the Park before the Chancellor's Office makes a decision on these matters.

"The Chancellor's Office agrees that the PPP/NPF will serve as a clearinghouse for discussion and resolution of issues on matters relating to People's Park . . ." Letter of Agreement, § B. Communications, page 1.

A somewhat more elaborate memorialization of the agreed-upon working relationship between U.C. and PPP/NPF was set forth in the Letter of Understanding dated January 5, 1979, and fully-executed on February 9, 1979, by officers of the same parties as the Letter of Agreement. The Letter of Understanding set forth undertakings similar to the Letter of Agreement, reiterating verbatim, under the heading "Communications," the same sentence that had previously appeared in the previous agreement, to wit:

"The Chancellor's Office agrees to discuss with the PPP/NPF all matters relating to the use, maintenance and development of the People's Park site and any tentative proposals for construction, public works, or other significant changes affecting the Park before the Chancellor's Office makes a decision on these matters." Letter of Understanding, Communications, page 2.

Section B of the Letter of Agreement goes on to declare that may request transfer of "the above functions" to "a broad-based People's Park student community neighborhood association . . ." Letter of Agreement, § B. Communications. This latter reference anticipated the

coordinating role of the PEOPLE'S PARK COUNCIL, which was organized and founded very soon thereafter. PPP/NPF did in fact duly transfer its role as a "clearinghouse" for People's Park land-use planning and coordination to the PEOPLE'S PARK COUNCIL, an ongoing organization that is presently often referred to as the PEOPLE'S PARK COMMITTEE, or simply as "the COMMITTEE." Gardening and landscape-development activities and issues generally remained under the sound purview of and coordination by PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF).

Said functions of these respective People's Park organizations, namely the PEOPLE'S PARK COUNCIL and PPP/NPF, were expressly recognized, acknowledged, and largely respected by the U.C. Campus Administration. Said recognition, and the working relationships thus created, were memorialized in a Letter from T. H. ("TED") CHENOWETH, as Associate Vice Chancellor for Business Affairs, to then Vice Chancellor ROBERT F. ("BOB") KERLEY, dated August 31, 1979.

The PEOPLE'S PARK COUNCIL, in cooperation with the U.C. Campus Administration, with PPP/NPF, and with other student and community groups, built the People's Stage on the West End of People's Park in 1979.

Specifically, Mr. CHENOWETH's Letter of August 31, 1979, opened by expressly recognizing PPP/NPF's "continuing agreement with the Chancellor's Office to conduct their urban gardening and native plant activities" in People's Park. Mr. CHENOWETH's Letter went on to acknowledge and express approval of the stage-use Guidelines developed by the PEOPLE'S PARK COUNCIL for scheduling and use of the People's Stage that it had erected that same year. Mr. CHENOWETH's Letter also expressly recognized the unique role of the PEOPLE'S PARK COUNCIL in scheduling of events and managing use of the Stage, as well as such scheduling, management, upkeep, planning, and improvement of People's Park in general.

This demand letter shall serve as due notice that U.C. has materially breached the solemn agreements, both written and verbal, that it has undertaken with both the PEOPLE'S PARK COUNCIL and PPP/NPF, including but not limited to those discussed above.

2. CEQA LAW: The U.C. campus administration has also recently violated the California Environmental Quality Act ("CEQA"), codified as California Public Resources Code, Sections 21000 – 21178.

The most recent incursions and depredations by or on behalf of U.C. have included fencing and drilling on portions of People's Park without due notice, discussion or environmental impact assessment. In so doing, U.C. has breached the various agreements described above, as well as the clear requirements of CEQA.

Among the severe and deleterious environmental impacts caused by U.C.'s recent activities are, without limitation, significant damage to native California trees and other valuable botanic resources established and growing in People's Park, pollution to the grounds of the Park, damage to the soil of the Park, disruption of land use, and disturbance of long-permitted community access to and reliance upon the site, thus creating secondary impacts throughout Berkeley and beyond, inconveniencing students and employees of the campus, park users, neighbors, and merchants, as well as many other individuals and the community generally. Such disruptions are especially significant and hazardous to public health in light of the ongoing the Covid-19 Pandemic.

Even prior to these most recent unilateral actions and resulting negative impacts, U.C. has conducted a purported planning process that has assiduously avoided any direct notification of, discussion with, or solicitation of input from the PEOPLE'S PARK COUNCIL or PPP/NPF, or for that matter, many other People's Park interest groups and stakeholders, students, neighbors, and community organizations and individuals. In this and other ways, said planning process, as such, has been violative of the requirements of CEQA.

It should be noted that in 1977, People's Park was listed on the State Historic Resources Inventory. The Park was deemed category "3S," appearing "eligible for NR [National Register] as individual property through survey evaluation." In 1984 the City of Berkeley Landmarks Preservation Commission designated People's Park a City of Berkeley Landmark.

Besides the historical and cultural status of People's Park, the values and interests of open space, recreation, botany, horticulture, urban density, Derby Creek restoration, water and air quality, carbon sequestration, land use, and traffic flow, among many other considerations, must all be fully recognized, weighed and assessed, pursuant to the terms of CEQA.

It is perhaps unnecessary to remind you that litigation in the early 1990s, involving a CEQA writ of mandate filed on behalf of the PEOPLE'S PARK COUNCIL led, directly or indirectly, to the modification, curtailment and abandonment of several specific harmful projects that U.C. had planned to impose on People's Park.

3. FREE EXPRESSION: People's Park has served as a Constitutionally-protected forum for free speech, assembly and public education continuously since 1974.

PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF) has conducted concerts, rallies, gardening classes, and public events in the park since April, 1974. It was with this specific

purpose in mind that the PEOPLE'S PARK COUNCIL and PPP/NPF, in close cooperation and consultation with other many groups and individuals, built the People's Stage in 1979.

Commencing in 1979, the PEOPLE'S PARK COUNCIL has managed, coordinated and scheduled all such public events in the Park, including concerts, celebrations, festivals, and rallies involving amplified speech, public assembly, music, poetry, and other expressive content, in cooperation with U.C. Campus administration, police, and the Associated Students (ASUC). Many if not most of these events have been conducted by the PEOPLE'S PARK COUNCIL directly. In addition, the PEOPLE'S PARK COUNCIL has diligently assisted many other groups and individuals to access and utilize the Park, the Stage, and other available facilities.

In 1987, PEOPLE'S PARK COUNCIL and PPP/NPF, together with four (4) individual Plaintiffs, successfully sued U.C. to guarantee unfettered free speech, both amplified and unamplified, on the Stage and in the Park. The Summary Judgment granted by Alameda Superior Court remains in place and must continue to be honored.

PEOPLE'S PARK COUNCIL has typically sponsored and coordinated anniversary celebrations in the spring, as well as several other similar event each year, since 1979. The only diminution in such public gatherings has occurred in just the past year as a result of restrictions associated with the Covid-19 Pandemic.

The free expressive and public educational uses and functions of People's Park have become a valuable community asset and inherent cultural resource.

4. PLANTS AND WILDLIFE: Some forty-four (44) distinct species of trees and shrubs thrive in People's Park, primarily to be found among the California native plant communities established on the East End of the Park and in landscaped areas and organic garden beds established on the West End of the Park. In addition, countless species of wildflowers, groundcovers, herbs, succulents, and fungi fill the interstices between the woody plants.

Since April, 1974, PEOPLE'S PARK PROJECT/ NATIVE PLANT FORUM (PPP/NPF) has created and maintained this verdant oasis, emphasizing California native plants. A few such specimen plantings may represent rare and endangered species or varieties, at least in this climate zone. PPP/NPF has also provided opportunities for individuals and groups to learn about and enjoy the rewards of community gardening and urban landscaping, always free of charge.

PPP/NPF sprang from a student-initiated field study in horticulture and urban ecosystems based in what was previously the Agriculture Department on the U.C. campus in Berkeley. Over the years, PPP/NPF and People's Park have greatly benefitted from the active

participation and contributions of U.C. Cooperative Extension, U.C. Botanical Garden, Regional Parks Botanic Garden, the Associated Students (ASUC), the Work-Study program, and numerous students and faculty members from the U.C. Berkeley campus and other institutions.

In so doing, the energy of many campus and community contributors has combined to create a verdant botanic oasis amidst the pavement and buildings that crowd our urban landscape in Berkeley, California. Attracted to the greenery and organisms present, many birds, in flocks and as individuals, both migratory and local, are attracted to and regularly visit People's Park. Squirrels and other small wildlife are likewise abundant.

These natural values and garden resources, including plants, birds and wildlife, should be treasured and preserved.

The unlawful and ill-considered actions of U.C., especially the recent attempted fencing and drilling activities, have violated the legitimate interests, concerns and values set forth above. People's Park must not be further desecrated, defaced, or damaged. All parties should learn from the recent desecration, defacement, and damage done to our U.S. Capitol in Washington, D.C. Such unlawful and destructive acts can never be condoned, in either location.

Please be advised that the ongoing course and pattern of wrongdoing on the part of U.C. has specifically violated binding agreements undertaken in good faith for mutual consideration (see Section 1 above), as well as CEQA and other pertinent provisions of applicable law (see Section 2 above).

Therefore, on behalf of my client, the PEOPLE'S PARK COUNCIL, I now respectfully insist and demand that U.C. cease and desist from any further violations of law, breach of contract, or other wrongful conduct in contravention of the values and interests described above.

Any and all disagreements or disputes among the parties concerning the nature and future of People's Park can and must solely be resolved lawfully, as agreed, through direct settlement negotiation or, if unsuccessful, through court adjudication.

The Claimant PEOPLE'S PARK COUNCIL has at all times acted in good faith and with due care in meeting its own obligations pursuant to the agreements and transactions in question. Said Claimant simply seeks full and immediate compliance with all agreements, undertakings, and pertinent provisions of State and Municipal law, including but not limited to CEQA.

Kindly respond to this letter at your earliest convenience, but in any event, no more than fifteen (15) days from the date of this letter. In the absence of an affirmative response by that time, any settlement offer herein expressed or implied will be withdrawn and deemed to

have expired by its own terms, without prejudice to further action in accordance with the rights and responsibilities of PEOPLE'S PARK COUNCIL and PPP/NPF.

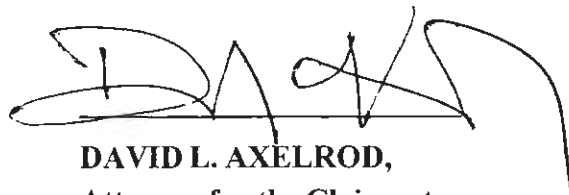
I look forward to working with you to promptly and reasonably address, evaluate, and resolve the lawful demands, interests, and claims herein asserted, in the hope of achieving an early, appropriate, and amicable resolution of this matter in good faith. If necessary, the parties might also consider the potential utilization of mediation, arbitration, or other similar remedies or alternative dispute resolution (ADR).

Please be assured that the COUNCIL is quite resolute, earnest, and determined in its intention to pursue this claim to a fair, adequate, and reasonable conclusion, whether in or out of court. However, my client sincerely desires to reach a fair and prompt settlement of its claim at this time and to uphold its just rights and interests, without the expense, inconvenience and inevitable delay of protracted court litigation or available administrative processes, if possible.

Should you have any questions or comments, please do not hesitate to contact this office directly, at your earliest opportunity.

I appreciate your anticipated courtesy and cooperation in working to address and resolve this claim swiftly, in good faith, and without undue delay.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Axelrod', written over a horizontal line.

**DAVID L. AXELROD,
Attorney for the Claimant,
PEOPLE'S PARK COUNCIL**

**cc: PEOPLE'S PARK COUNCIL, client;
Gov. GAVIN NEWSOM; and
Pres. MICHAEL V. DRAKE, M.D.**



February 22, 2021

**To: DAVID M. ROBINSON, Chief Campus Counsel,
Office of Legal Affairs, U.C. Administration,
200 California Hall, MC #1500
Berkeley, CA 94720-1500**

Re: DEMAND of PEOPLE'S PARK COUNCIL – Reply to DAVID M. ROBINSON, Campus Counsel

By: U.S. MAIL and by EMAIL to dmrobinson@berkeley.edu

Dear Mr. ROBINSON:

Thank you for your letter dated February 10, 2021, in response to my demand letter sent on behalf of the Claimants PEOPLE'S PARK COUNCIL (PPC) and PEOPLE'S PARK PROJECT/NATIVE PLANT FORUM (PPP/NPF), in the interest of ensuring the survival and integrity of People's Park, Berkeley, California, as a user-developed and community-controlled open space.

At your request, I will email this letter, as well as posting it in the U.S. Mail. For your information, I received your response letter last week in the mail, but did not open your email until today. The reason is that I have established a new email address for business purposes, and that is sierralaw0@gmail.com [simply adding an Arabic numeral zero to the old email address].

Yes, I do represent organizations, albeit made up of individuals. The client identification is clear from the opening paragraph, as well as the closing salutation, of the initial demand letter dated February 1, 2021, as well as this letter.

Those interested in the preservation of People's Park are quite numerous, including very many individuals, as well as several organized groups, arising from and consisting of community members, students, neighbors, environmentalists, historians, and other academically-oriented persons. As I explained in my letter of February 1, 2021, the People's Park Council -- also commonly referred to as the "Committee" or "PPC" -- is the democratic clearinghouse and coordinating body for purposes of People's Park planning, liaison with the University of California (U.C.) Berkeley campus administration, management of the People's Stage, user development, and gardening (by and through the PEOPLE'S PARK PROJECT/NATIVE PLANT FORUM.

EXHIBIT L

I will scan and attach those three (3) specific fundamental documents to which I expressly referred in my letter of February 1, 2021, agreements undertaken by the People's Park Council ("PPC") and PEOPLE'S PARK PROJECT/NATIVE PLANT FORUM ("PPP/NPF"), on behalf of People's Park, and by the responsible U.C. Berkeley campus administrators, on behalf of your client. In the ensuing years since 1979, other communications, guidelines, and working relationships have been negotiated and developed between our respective clients, but always consistent with the principles and parameters set forth in these attached founding documents.

The issues raised and referred to in my demand letter of February 1, 2021, include but are not limited to the U.C. campus administration's failure to communicate and consult, in good faith, with the PPC and PPP/NPF. The U.C. campus administration has also breached both the letter and spirit of the attached agreements by recently damaging and disturbing the People's Park soils and plant life, cutting down trees, disturbing People's Park users, and installing temporary fencing in portions of People's Park, thus acting to divide and enclose the Park open space.

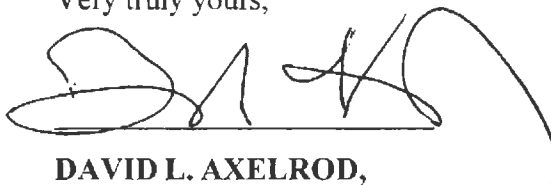
The U.C. campus administration must cease all such unauthorized activities immediately and desist from any future violations, unless and until the responsible parties, including the PPC, explicitly agree otherwise.

I will only add at this point that I must respectfully disagree that the "campus is fully complying with the California Environmental Quality Act" (CEQA).

On behalf of my client, Claimant PPC, I am very gratified to read your pledge that the U.C. campus administration will henceforth honor its legal obligations.

Should you have any further questions or comments, please contact this office without delay. I appreciate your professional courtesy and cooperation in addressing these matters.

Very truly yours,



**DAVID L. AXELROD,
Attorney for the Claimant,
PEOPLE'S PARK COUNCIL**

**cc: PEOPLE'S PARK COUNCIL, client;
Gov. GAVIN NEWSOM; and
Pres. MICHAEL V. DRAKE, M.D.**

ATTACHMENTS (3)