

Board of Trustees Agenda Item

Board Meeting Date: January 5, 2010

Title of Item: MOU between the Regents of the University of California and the Foothill-De Anza Community College District

Background and Analysis:

Financial Background:

Consistent with prior Board authorization, FHDA has made capital contributions to the University Associates – Silicon Valley LLC (UA-SV) through June 30, 2009 as part of our fair share contribution toward the development of the NASA project. These capital contributions have utilized both Measure C and other Fund 76 resources. FHDA's capital contribution for the period July 1, 2009 through June 30, 2010 was estimated to be \$480,896, as communicated to the Board in July 2009. That figure was based on a 20% share of the estimated UA-SV operating budget for 2009-10 of \$2.4 million. Once the prior year was closed out however, a cash balance of approximately \$350 thousand remained that rolled forward and reduced our obligation for the 09-10 year to \$414 thousand.

Since that time, and because of a 20% budget reduction in the UA-SV operating budget, driven both by UCSC and FHDA, our capital contribution for the period July 1, 2009 through June 30, 2010 has been reduced to \$331,312.

More recently, contributions from the selected developer have mitigated previous concerns over the cash flow necessary for the rent payment due to NASA. Cash flow projections now indicate the UA-SV will be in a positive cash situation through June 30, 2010.

Memorandum of Understanding:

Our previous capital contribution of \$220k, for the period ending June 30, 2009, reflected approximately 64% direct project development expense and was paid for with Measure C proceeds, and approximately 36% administrative support of the UA-SV and was paid for with one-time source of Fund 76 resources.

In an effort to minimize impact to any non-Measure C fund source, FHDA has been working closely with the UA-SV team to develop a Memorandum of Understanding (MOU) that will allow FHDA to recast its funding obligations to the NASA development entirely as direct project cost. This will mean that our entire capital contribution can be met utilizing only Measure C proceeds. Those negotiations are complete and the MOU is attached.

With the approval of this MOU our current capital contribution of \$331,312, and future obligations, will be made entirely with Measure C proceeds.

Recommendation:

The Vice Chancellor of Business Services recommends the Board authorize the Chancellor or designee to sign the attached Memorandum of Understanding

Submitted by:	Andy Dunn, Vice Chancellor, ext. 6201
Additional contact names:	Charles Allen, Executive Director, ext. 6150
Is backup provided?	Yes

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this ____ day of November, 2009, by and between FOOTHILL DE ANZA COMMUNITY COLLEGE DISTRICT ("FHDA"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, on behalf of the University of California, Santa Cruz ("UCSC"), with reference to the following facts:

RECITALS

Whereas, UCSC and FHDA have each executed the University Associates – Silicon Valley LLC Amended and Restated Limited Liability Company Agreement (the "Agreement") which creates obligations to make capital contributions to University Associates – Silicon Valley LLC ("UA") at various times in various amounts; and

Whereas, the capital contributions required by the Agreement are calculated based upon the respective percentages of ownership of UCSC and FHDA and will be applied against two general categories of ongoing UA expenses: property development expenses, and administrative overhead expenses; and

Whereas, FHDA has a source of available funds (to wit, bond funds) which are eligible to satisfy that portion of its capital contribution obligation which is to be allocated to UA property development expenses, including but not limited to property use and development planning and negotiation of development agreements, but does not have general revenue funds needed to satisfy that portion of its capital contribution obligation which would be allocated to UA administrative overhead expenses, while UCSC has no similar limitation; and

Whereas, UCSC and FHDA now express their agreement to resolve FHDA's funding limitation by re-allocating one hundred percent of FHDA's capital contribution obligation to UA's property development expenses, and re-allocating funds contributed by UCSC as capital contributions disproportionately to cover UA's administrative overhead expenses, with the net result that each party meets its contractual capital contribution requirement,

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND, THE PARTIES EXPRESS THEIR AGREEMENT TO THIS UNDERSTANDING BY EXECUTING THE FOLLOWING MEMORANDUM OF UNDERSTANDING:

Section One. The parties will each cause UA to allocate one hundred percent of FHDA's capital contribution obligations which, under the Operating Agreement, come due on or after December 31, 2009, as payments to offset the property development costs of UA; and none shall be allocated to administrative overhead costs or expenses of UA.

Section Two. To the extent necessary to balance, pro rata, the capital contributions of all parties between UA administrative overhead and property development expenses, the parties will each cause UA to create, accounting entries in the books of UA which shall reflect that (a) UCSC's capital contributions to and against UA administrative overhead expenses shall include that portion of FHDA's capital contribution which but-for this MOU would be allocated to UA overhead expenses, and (b) FHDA's capital contribution, which by virtue of this MOU has been

one hundred percent allocated to UA property development costs, shall include and cover a corresponding portion of UCSC's capital contribution which but-for this MOU would be allocated to UA's property development expense.

This Memorandum is executed by FHDA and UCSC as of the date first written above.

"UCSC"

The Regents of the University of California

By: George Blumenthal
Authorized Officer

"FHDA"

Foothill DeAnza Community College District

By: _____
Authorized Officer