

MEETING DATE: 7/12/2010

AGENDA ITEM: **Approval of Amendment No. 1 to the Settlement Agreement Between the City of Culver City and the Los Angeles Community College District regarding the 2010 Supplemental Environmental Impact Report for the 2009 West Los Angeles College Facilities Master Plan.**

ATTACHMENT

Pages

- | | | |
|----|--|------|
| 1. | Amendment No. 1 to Settlement Agreement. | 1-10 |
|----|--|------|

AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT

between

LOS ANGELES COMMUNITY COLLEGE DISTRICT

and

CITY OF CULVER CITY

[Draft Amendment No. 1 to Settlement Agreement – 07/08/10]

AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT

This Amendment No. 1 to Settlement Agreement ("Amendment") is dated as of June ___, 2010, and entered into by and between the Los Angeles Community College District, a California community college district (the "District") comprised of nine community colleges, including the West Los Angeles Community College (the "College"), and the City of Culver City (the "City") (the District and the City are collectively the "Parties").

RECITALS

WHEREAS, the District and the City have previously entered into a Settlement Agreement dated August 8, 2005 ("Settlement Agreement"); and,

WHEREAS, the West Los Angeles College 2009 Facilities Master Plan has been prepared which proposes the continued physical development and improvement of the campus including, inter alia, construction of new facilities, renovation of and additions to existing facilities, demolition of several existing facilities, parking structure, landscaping and open space (collectively the "Project"); and,

WHEREAS, in compliance with the California Environmental Quality Act ("CEQA"), the District as lead agency on the Project caused, on or about March 2010, the circulation of a Draft Supplemental Environment Impact Report ("DSEIR") to evaluate the potential environmental impacts resulting from the Project, and identify feasible measures to mitigate any significant environmental impacts resulting from the Project: and,

WHEREAS, during the public review and comment period following the publication of the DSEIR, the City submitted formal written comments on April 21, 2010 concerning the DSEIR with respect to the Project, the adequacy of the DSEIR, and the proposed mitigation measures included in as part of the DSEIR; and,

WHEREAS, in the spirit of cooperation, the Parties representatives have met to resolve these concerns.

WHEREAS, the Parties desire to amend the Settlement Agreement to clarify the agreements reached as to certain key issues between the Parties.

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained herein, the District and the City agree as follows:

1. Construction Hours. It was previously agreed between the Parties in the 2005 FEIR mitigation measures that Culver City Municipal Code Section § 9.07.035 (A) would control for the start time of construction activities on the College's 2005 Master Plan.

Therefore, under this Amendment, construction activity on the West Los Angeles College 2009 Facilities Master Plan shall be limited to the hours of 8:00 a.m. to 6:00 p.m. weekdays and 9:00 am to 4:00 pm Saturdays with construction prohibited Sundays and national holidays. Except, limited construction activity shall be permitted between 7:00 a.m. and 8:00 a.m. only if all such construction noise generating activity occurs within the interiors of fully completed building shells (i.e., all exterior walls must already have been completed and roof, windows and doors already have been installed), and provided further that the noise audible outside of the building within which such internal construction is being performed does not exceed Culver City noise standards, and the noise levels do not exceed 55 dBA in multi-family residential areas and 53 dBA in single-family residential areas. On weekdays between 7:00 a.m. and 8:00 a.m., should noise monitors show an increase in noise levels above that described in this Section, and the increase is due to construction activities caused by the College, then construction activities shall be changed to reduce the noise to a level consistent with the requirements of this Section or construction shall be postponed until 8 a.m.

2. Emergency and Limited Construction Activity Hours. The College may engage in (1) construction activity at all other times to the extent the construction activity is necessary to address unexpected emergencies that threaten life or property, or (2) limited construction activity (anticipated to be confined to concrete pours, oversized delivery / removal and associated work) between 6:00 a.m. and 8:00 a.m., provided that a variance is obtained from the LA County Health Officer for any work between 7:00 p.m. and 7:00 a.m., and further provided that at least two weeks advance notice of such limited construction activity is given by the College Project Manager to the City. The College will also post notice of such limited activity on the College web site. The City will distribute this notice, or provide a link to the information on the College website, to the College web group to be established by the City. Noise impacts from such activity shall be mitigated to the extent feasible through the use of sound blankets, and either disabling back-up beepers to the extent permitted by law and if considered not to decrease safety to the workers and public, or minimizing the use of back-up beepers.

3. Haul Road and Secondary Access Road. The District has already discontinued use of the temporary haul road that was previously used to connect the north side of the College campus to Jefferson Boulevard and the Secondary Access Road ("College Boulevard") is now complete. Hereafter, all construction vehicles shall enter the College campus via College Boulevard, and all large trucks with more than two axles shall enter College Boulevard by traveling west on Jefferson Boulevard and making a left turn into the College campus.

4. No Cut-Through Vehicular Travel Via College Campus Streets. The Parties agree that College Boulevard shall be closed from 11:00 p.m. to 6:00 a.m. The District shall attempt to maintain College Boulevard in such a manner that (except in the case of an emergency) it is impracticable at all times to use College Boulevard as a cut-through from Jefferson Boulevard to Overland Avenue. If the District and the City determine College

Boulevard is being used as a cut-through from Jefferson Boulevard to Overland Avenue, then the Parties will work with Los Angeles County to install appropriate traffic control mechanisms to further discourage cut-through traffic.

5. Student Population Traffic Impact Studies and Impacts Exceeding Threshold. The Parties agree to the following contingency regarding student population traffic impact report requirements, even though current projections do not anticipate that the total student enrollment will reach 18,000 by 2022. (Total students enrollment is defined as follows: a count of actual students *including on-campus, on-line and other off-campus students*, but not full time equivalent students). The District shall initiate new traffic impact studies once total student enrollment exceeds 18,000 students. Studies shall be planned and undertaken to ensure that impacts are identified and mitigated well in advance of the actual *on-campus* student population reaching 18,000. The District will study and mitigate any residual traffic impacts that exceed the projected impacts and associated mitigation identified in the 2005 FEIR (based on the *on-campus* student population of 18,904 students utilized in the 2004 traffic impact report for the 2005 FEIR).

6. On-Campus Student Parking Threshold. Total on-campus student population at the College shall not exceed 10,998 students (based on a count of actual on-campus students, not “full-time equivalent” students) unless and until it is demonstrated that adequate parking spaces are supplied to meet student parking demand. (Using the most recent parking use ratio of one space per seven students, 2,143 spaces should be sufficient to meet the demand from 15,000 on-campus students. It is anticipated there will be 2,650 spaces on-site not including on-street spaces. Current projections indicate that no more than 10,998 on-campus students are anticipated through 2022).

7. Mitigation Hotline. The District shall provide a Mitigation Hotline (telephone and e-mail) during the period of construction of the projects to ensure that the mitigation measures adopted by the District are implemented and to facilitate, to the extent feasible, the prompt resolution of any issues that may arise relating to such matters. The Mitigation Hotline replaces the construction ombudsman position. The District shall respond to identified concerns as soon as feasible and a response reporting actions taken shall be provided to callers in a timely manner, usually within 24-hours or on the first business day following a weekend or holiday. In accordance with better practices, after six months of operation, the Parties shall assess the effectiveness of the Mitigation Hotline and shall make adjustments as required. The District is committed to enforcing mitigation commitments on the College campus.

8. Community and Special Events Liaisons. The District shall identify an employee or authorized agent to serve as the College’s Community Liaison, who shall be available to respond to questions or concerns from the surrounding community concerning campus operations (campus activities and other matters relating to the College campus and the roads surrounding the campus) and facilitate, to the extent feasible, the prompt resolution of any issues that may arise relating to such matters. The Community and Special Event Liaisons replace the special event ombudsman position. The Community Liaison shall be available during business hours (8:00 a.m. to 5:00 p.m. Monday through Friday excluding official holidays) to respond to community concerns in a timely manner. The Community Liaison shall

have authority to initiate a response on behalf of the College and the District in foreseeable matters and, without limiting the generality of the foregoing, shall have the authority to terminate an event in accordance with District rules and regulations.

The District shall identify an employee or authorized agent to serve as the College's Special Events Liaison, who shall be available onsite to respond to community concerns in a timely manner during special events. Any questions or concerns from the surrounding community concerning the College campus special event activity during the time such activity is taking place shall be addressed by calling the College campus Sheriff's Office. Sheriff's Office staff will assess the question or concern and, as appropriate, cause the Special Events Liaison to take necessary actions.

9. Meetings. The City and the College will jointly facilitate two meetings per year with any interested members of the Culver City community. The meetings will occur on or about August and January of each year, or at other such times as agreed between the City and the College, to review the effectiveness of the 2010 Final SEIR Mitigation Measures and this Amendment.

10. Bus Routes. Effective June 9, 2010, the City municipal buses shall no longer enter onto the College campus. Instead, the municipal buses shall stop at designated municipal bus stops on the public streets outside the College campus. This will reduce wear and tear on the College campus streets, will reduce bus noise otherwise experienced by adjacent residences, and eliminate any safety hazards that are the result of the buses driving through the College campus parking lots. The City shall allow the existing College shuttle to share use of the designated municipal bus stops outside the College campus for the purpose of transporting any disabled student or faculty bus riders who need assistance travelling to and from the center of campus.

The College shall provide transportation to the extent needed and shall make arrangements with such disabled students and faculty to meet their needs. Appropriate notice of this change in bus routes has been provided by the City. The Parties shall review the bus route changes after six months of operation to ensure that the needs of the College and the City are being satisfactorily addressed.

11. Residential Use of College Campus Outdoor Recreational Facilities. Commencing within 30 days of the execution of this Amendment, Culver City adult residents (18 years of age or older), as well as minors under 18 years of age and accompanied by an adult parent or guardian who is a resident of Culver City, shall be permitted to utilize (for personal, noncommercial purposes) any outdoor recreational facilities located on the College campus, including, but not limited to, the track, ball fields, and basketball courts (the "Outdoor Facilities"). Use of the Outdoor Facilities by Culver City residents is subject to the Identification Card system described in subsection (a) below.

a. Identification Card. The District may require a one-time registration process through the College campus Sheriff's Office for the issuance of a College identification card. The District shall not charge any fee for issuance of a College identification card to Culver City residents. Alternatively, and in lieu of a College identification card, the District shall honor a valid

Culver City Resident Recreation Card issued in substantially the form shown on Exhibit "A," attached hereto and incorporated herein by reference. Except as otherwise provided, all Culver City residents must possess a valid College identification card or Culver City Resident Recreation Card in order to use the Outdoor Facilities. An identification card shall not be required for children five years of age or younger, provided they are accompanied by a parent or guardian bearing a College identification card or Culver City Resident Recreation Card. A College identification card or Culver City Resident Recreation Card shall be required for minors above the age of five. All minors must be accompanied by a parent or guardian bearing a College identification card or Culver City Resident Recreation Card.

b. Hours of Use and Temporary Closures. The Outdoor Facilities shall be open and available for public use whenever the College campus is open, so long as such use does not directly interfere with a specific College event, class or activity occurring in the Outdoor Facilities. As described in the District's 2004 Facilities Master Plan and the draft 2009 Facilities Master Plan, the District is in the process of redeveloping and improving portions of the College campus. Prior to the District's commencement of construction of each new physical improvement on the College campus, the District shall meet with the City to discuss the construction schedule for that improvement and agree upon any anticipated temporary closures of the Outdoor Facilities necessitated by such construction.

12. 10100 Jefferson Boulevard Property. The future disposition and/or development of the property has been addressed in the 2010 Final SEIR. In addition, the College will meet and confer at least once with the City prior to making a decision regarding the disposition and/or development of the 10100 Jefferson Boulevard property.

13. 2009 Master Plan. The execution of this Amendment shall be a condition of approval of the 2009 Master Plan by the District Board of Trustees.

14. Waiver of Right to Sue. The City understands and agrees the District will not be obligated to proceed with implementing any of the provisions of this Amendment unless and until all challenges to the project's compliance with CEQA have been exhausted. With these understandings, the City waives any rights it may have to challenge the District's compliance with CEQA in connection with the approval and certification of the 2010 FSEIR and approval of the Project.

15. Institution of Legal Actions: Judicial Reference. Except for an action for injunctive relief commenced by a party hereto in order to protect against irreparable injury, all action under this Amendment or relating to its interpretation will be heard by the Los Angeles County Superior Court referee pursuant to California Code of Civil Procedure (CCP) sections 638, et seq., which referee will be a retired or former Superior Court judge. The Parties shall have all of the discovery rights they would have in an action filed in a California Superior Court of unlimited jurisdiction and all rights of appeal provided by CCP section 645. With respect to all judicial reference proceedings hereunder, the Parties will select a single referee to try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy. If the Parties do not select a referee within ten days after service of a written demand to do so by a party, either party

may seek to have one retired or former Superior Court judge appointed pursuant to CCP section 640. Any referee selected pursuant to this Provision shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

THE PARTIES VOLUNTARILY AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE JUDICIAL REFERENCE PROVISION ABOVE DECIDED BY A NEUTRAL REFEREE AS PROVIDED BY CALIFORNIA LAW AND ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. THEY ARE FURTHER GIVING UP ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY REFERENCED HEREIN OR IN ANY OF THE STATUTES SPECIFICALLY REFERENCED HEREIN. IF A PARTY REFUSES TO SUBMIT TO JUDICIAL REFERENCE, IT MAY BE COMPELLED TO SUBMIT PER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

- a. **Applicable Law.** The terms of this Amendment shall be interpreted according to the laws of the State of California. If litigation arises out of this Amendment, then venue shall be in the Superior Court of Los Angeles County. The parties hereto shall be bound by all federal, state and local laws, ordinances, regulations and directives pertaining to the services to be performed hereunder.
- b. **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated herein, the rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party. Except as otherwise expressly stated herein, neither party is waiving any rights or remedies it may have under applicable law, and no such waiver will be implied or inferred in the absence of express language of any such waiver.
- c. **Attorney Fees.** Each Party shall bear its own attorneys fees and other costs in any legal action or other proceeding, including arbitration or an action for declaratory relief, brought between the Parties to enforce this Amendment or because of a dispute, breach, default, or misrepresentation in connection with this Amendment.

16. General Provisions.

- a. **Notices, Demands and Communications between the Parties.** All notices given or required to be given pursuant to this Amendment shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To City: Carol Schwab
City Attorney

City of Culver City
9770 Culver Boulevard
Culver City, California 92614

With a copy to:

Murray O. Kane
Kane, Ballmer & Berkman
515 South Figueroa Street, Suite 1850
Los Angeles, California 90071

To District: Camille Goulet
General Counsel
Los Angeles Community College District
770 Wilshire Boulevard, 9th Floor
Los Angeles, California 90017

With a copy to:

Gavin Hachiya Wasserman
Wasserman & Wasserman LLP
1370 Crenshaw Boulevard, Suite #103
Torrance, California 90501

- b. Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one single instrument. Signatures may be transmitted by facsimile, which are binding on the Parties, and the Parties shall later transmit original signatures.
- c. Amendments in Writing.** This Amendment, and the provisions contained herein, shall not be altered, changed, modified or amended, except by mutual consent and written agreement of the Parties.
- d. Further Acts.** Each Party hereto shall execute such further documents and do such further acts as may be reasonably required to effectuate the Parties' intent and carry out the terms herein.
- e. Severability.** If any clause, provision or section of this Amendment shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions.
- f. Authority.** Contingent upon approval of the respective governing boards, each person executing this Amendment on behalf of a party hereby represents and warrants that (i) the signatory hereto has authority to sign on behalf of the stated party, (ii) such authority has been duly and validly conferred by that party's

governing body, and (iii) said entity has full right and authority to enter into this Amendment.

- g. Headings.** The headings used in this Amendment are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

17. Except as expressly set forth in this Amendment, all terms and conditions of the Settlement Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the day and year first written above.

LOS ANGELES COMMUNITY COLLEGE DISTRICT

By: Larry Eisenberg
Executive Director, Facilities Planning and
Development

Approved as to Form:

Thomas F. Quilling, District Counsel

CITY OF CULVER CITY

By: P. Lamont Ewell,
Interim City Manager

Approved as to Form:

Carol Schwab, City Attorney

Exhibit "A"

The Culver City Resident Recreation Card

Goal: To create a resident identification card for the purpose of allowing residents of the City of Culver City to access City recreational facilities and other comparable facilities available through joint use agreements.

The Resident Card shall enable Culver City residents' access to recreation facilities, recreation programs and classes offered by the City of Culver City, subject to availability and any facility user fees or enrollment charges. The Resident Card shall also provide Culver City residents' access to the West Los Angeles College Campus Recreation Facilities as defined within the Joint Use Agreement between the City of Culver City and West Los Angeles College. The Resident Card will be offered at no cost at present, but may be subject to a fee in the future, based on expanded access to future amenities as and when constructed, and/or increased costs of providing recreation facilities and services.

The Resident Card is available to any person principally residing within the City of Culver City, city limits (see proof of residency below), subject to revocation for inappropriate or unlawful conduct.

Residents must apply in person. Resident Cards may be obtained at the following locations during normal business hours:

-Culver City Recreation Parks Registration Office, 4117 Overland Blvd
Monday-Friday 11:30am-6:30pm

-Culver City Municipal Pool, 4175 Overland Blvd
Monday-Friday 8:00am-2:00pm
Monday-Thursday 7:00pm-8:00pm

-City Hall Service Counters

-West Los Angeles College Sheriff's Office

Culver City Parks, Recreation & Community Services Department	
RESIDENT CARD	
4175 Overland Avenue, Culver City, CA 91505-6650	
Name of Resident	_____
Address	_____
Emergency Contact	_____
Phone Number	_____
Pass No. 0001	

PROOF OF RESIDENCY

To obtain a Resident Card, a current, valid California driver's license or current, valid California identification card (photo ID) or current, valid Passport and one of the following bearing a Culver City address is required:

Most recent utility bill

Voter registration card

Most recent Culver City tax notice

Rental contract or property ownership documentation

Children ages five and younger are not required to obtain a card and may obtain access if they are accompanied by a parent or guardian with a valid Resident Card. A minor above the age of five wishing to obtain a Resident Card must be accompanied by a parent or guardian, and the adult must meet the above-stated requirements.