

**Office of the President**

**TO THE MEMBERS OF THE COMMITTEES ON GROUNDS AND BUILDINGS AND FINANCE:**

**ACTION ITEM**

*For Meeting of November 19, 2015*

**APPROVAL OF BUDGET AND COMMERCIAL TERMS OF THE 2020 PROJECT AGREEMENT AND RELATED ACTIONS, MERCED CAMPUS**

**EXECUTIVE SUMMARY**

UC Merced represents a decades-long commitment of the State and the University of California to increase access to the University of California system for eligible state students and support a rapidly growing, underserved region.

In order for this commitment to be fully realized, and without the availability of the traditional State funding model that enabled other UC campuses to grow, the Merced campus has proposed an alternative framework that has been successfully employed by other large public institutions. This model will enable the campus to cost-effectively build, operate, and maintain 918,900 assignable square feet of critically needed facilities by 2020 (“2020 Project”). It will provide the campus with the physical capacity to accommodate enrollment growth to 10,000 students, as called for in the campus’ Long Range Development Plan adopted by the Regents in 2009. Among the 2020 Project’s delivery method’s key advantages is the ability to deliver facilities efficiently and therefore expand access nearly twice as quickly as traditional delivery of capital projects.

The proposed delivery strategy incorporates international best practices that are rapidly being incorporated into procurement processes in the United States. The strategy represents an expansion of the concept of a master-planned development. It combines the proven method of design-build delivery of facilities with long-term operations and maintenance obligations that create the incentive to deliver high-quality facilities designed with lifecycle operating and maintenance costs in mind. The Design-Build-Finance-Operate-Maintain (DBFOM) delivery model is noteworthy for its ability to deliver facilities faster, provide budgetary certainty over multiple decades, and minimize the financial burden typically created by deferred maintenance.

As previously discussed with the Regents at the March 2013, May 2013, March 2015, July 2015, and September 2015 meetings, the 2020 Project would expand the existing Merced campus through the comprehensive development of academic, administrative, research, recreational, student residence, and student services buildings, as well as infrastructure, outdoor recreation

facilities and open space, landscaping, roadways, and parking. The 2020 Project would allow the campus to increase enrollment from the current 6,685 students to 10,000.

The facilities would be delivered by a single private development consortium. The consortium would be organized as a special purpose entity managed by one or more lead equity investors. This “Developer” would be responsible for managing the design-build contractor, design professionals, and operations and maintenance contractor. The University would enter into one contract to design, construct, finance, operate, and maintain the 2020 Project in multiple sequences, with the first set of facilities available in the 2018-19 academic year and substantial completion of the Project in 2020. Construction is expected to be completed within four years.

Pursuant to the authority identified in Public Contract Code Section 10503(e), the campus seeks a determination that procurement of the 2020 Project is in the best interest of the University.

The Regents are also being asked to approve the budget for the 2020 Project and the commercial terms of the Project Agreement, and authorize the release of the final Request for Proposals (RFP) to three prequalified short-listed teams. The commercial terms of the Project Agreement specify the minimum programmatic scope and maximum price or “upset limit,” and the Project’s funding/financing structure. The RFP package released to the teams will include the final Instructions to Proposers and Project Agreement and will require bidders to submit a master plan for the 2020 Project, preliminary designs for the building types specified in the program, and plans for sustainability, facilities maintenance, and other related items.

The Regents’ action to approve the commercial terms of the Project Agreement would also authorize the President to approve and execute the Project Agreement. The President’s authority would be cabined by the terms of the Regents’ approval, including the minimum programmatic scope and maximum price contained in the Project Agreement.

If the Regents authorize release of the RFP, the campus would solicit proposals from the short-listed teams for receipt in spring 2016. Following consideration of the bidders’ proposals, the UC Merced Chancellor and the Executive Vice President – Chief Financial Officer would select a preferred bidder after a thorough evaluation of the proposals.

In May 2016, it is anticipated that the Regents would be requested to approve the external financing necessary to fund the project subject to State approval of the Budget for State Capital Improvements.<sup>1</sup> The Project Agreement could be approved and executed by the President following these approvals. In summer 2016, the Regents would be asked to approve the Project design.

At this time the Regents are being asked to: (1) amend the 2015-16 Budget for Capital Improvements and the Capital Improvement Program and approve the budget for the 2020

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<sup>1</sup> Refer to a separate action, being presented to the Committees on Finance and Grounds and Buildings at this meeting, to approve the 2016-17 Budget for State Capital Improvements.

Project; (2) approve the minimum scope of the 2020 Project; (3) approve the commercial terms of the Project Agreement; (4) delegate approval and execution of the Project Agreement to the President; (5) find that procurement of the 2020 Project as a DBFOM project is in the best interest of the University; and (6) authorize the release of the RFP to the three short-listed teams. In addition, in a separate item, the Regents are being asked to approve the 2016-17 Budget for State Capital Improvements.

### RECOMMENDATION

The President of the University recommends that the Committees on Grounds and Buildings and Finance recommend to the Regents that:

1. The 2015-16 Budget for Capital Improvements and the Capital Improvement Program be amended to include the following project:  
  
Merced:        Merced 2020 Project (2020 Project) – \$1,142,850,000 to be funded from external financing (\$600 million), Developer funding (\$385.76 million), and campus funds (\$157.09 million)
2. The minimum scope of the 2020 Project shall include the construction of approximately 918,900 assignable square feet of academic, administrative, research, recreational, student residence, and student services buildings, as well as infrastructure, outdoor recreation facilities and open space, landscaping, roadways, and parking.
3. The commercial terms of the 2020 Project Agreement be approved, contingent on minimum programmatic scope and a maximum annual payment not to exceed \$51 million in the first full year of operations, and escalated over the remaining term of the Project Agreement by provisions contained therein.
4. The President, in consultation with the General Counsel, be authorized to approve and execute the Project Agreement materially consistent with the commercial terms approved by the Regents, and execute all documents necessary to implement the Project Agreement and the 2020 Project.
5. The proposed procurement method be determined to be in the best interest of the University pursuant to Section 10503(e) of the California Public Contract Code.
6. The 2020 Project Request for Proposals be released to the three teams that have been qualified for inclusion on the short list.

## BACKGROUND

Twenty years ago, the Regents established UC Merced as the University of California's tenth campus with the goal of expanding access to UC-eligible students, and providing research and economic growth to the historically underserved San Joaquin Valley.

The Merced campus currently enrolls 6,685 students. The undergraduate student body is a reflection of California's geographic and ethnic diversity: 99 percent are from within California, 48 percent are Latino, 23 percent are Asian-American, and five percent are African-American; 60 percent receive Pell Grants, and 65 percent are first-generation college students.

Increasing the campus's enrollment is critical to the University's ability to continue to provide access to eligible students. However, despite its past development success, the campus is experiencing critical space shortages that limit its ability to expand access. The Merced campus is operating at more than capacity and further enrollment growth beyond fall 2016 is severely constrained by lack of space.

### *2013 Long Range Development Plan Amendment and 2015 Physical Design Framework Acceptance*

In May 2013, the Regents amended the 2009 Long Range Development Plan (LRDP) to create a framework that would provide greater land-use flexibility to design and deliver a master-planned development to accommodate growth to 10,000 students. With the goal of minimizing infrastructure costs, this amendment reduced the amount of land originally intended for campus expansion by 33 percent.

The proposed expansion would occur on a 219-acre parcel of land in Merced County that is owned by the Regents and includes the existing developed campus. The undeveloped portion would be the primary focus for the addition of new facilities and infrastructure. Attachment 1 provides an aerial map of the 219-acre site.

A separate item is being presented to the Committee on Grounds and Building to accept the 2015 Physical Design Framework, thereby aligning that document with the land-use change created by the 2013 LRDP amendment.

## PROJECT DRIVERS

The Merced campus is faced with a growing gap between strong student demand and the campus' limited capacity to provide the facilities necessary to support that demand. Despite its past development success, the campus is experiencing critical space shortages.

### *Space Deficiencies*

Currently, classroom space is at capacity, housing is oversubscribed, and infrastructure systems operate above their design. To prioritize space for students, the campus has moved administrative functions, faculty offices, and research laboratories off campus to four dispersed locations in the greater Merced area.

Specialized classroom and laboratory capacity on campus remains constrained. Campus teaching laboratories and large academic classrooms are over-utilized and lack availability for high-demand and prerequisite courses. This has affected course availability and, consequently, some students' ability to schedule curriculum in order to graduate within four years.

### *Enrollment Growth*

The University remains committed to admitting and enrolling all UC-eligible applicants who wish to attend. Growth at the Merced campus is a critical element in the University's long-term ability to continue to respond to enrollment demand from California residents, along with expanded enrollment at all undergraduate campuses. In addition, growth at UC Merced supports access for first-generation college students, low-income students, and those from underserved communities – all of whom are well represented at this campus. UC Merced has established a goal of developing its physical capacity to accommodate a comprehensive 10,000-student campus by 2020.

### *Preferred Solution – 2020 Project Objectives*

The Merced campus has developed an alternative framework to cost-effectively build, operate, and maintain approximately 918,900 assignable square feet of critically needed facilities. Among the 2020 Project's key advantages is the ability to deliver facilities, and therefore expand access, in nearly half the time as compared to a more traditional delivery method. To address existing deficiencies and provide the capacity for increased enrollment, the campus proposes a solution to:

- Use an aggressive construction schedule that results in substantial completion by 2020 of 918,900 assignable square feet of new academic space for teaching and research, housing, dining, student life, athletics, campus operations, and associated infrastructure necessary to accommodate 10,000 students; by requiring delivery of assignable square feet, rather than gross square feet, the campus hopes to further incentivize efficiencies and space economies within the built program;
- Provide mixed-use facilities that allow for interdisciplinary scholarly activities and result in a unique, dynamic, and inspiring environment for students, faculty, and staff;
- Create built-in flexibility and adaptability to accommodate future needs;
- Implement a project plan that expands space capacity appropriately across all building/facility categories necessary for enrollment growth;

- Result in a cost-effective development that takes advantage of existing investments in campus infrastructure and provides best overall value for the lifecycle of the facilities;
- Support UC Merced’s goal of achieving “Triple Net Zero” status (zero net energy, zero landfill waste, and zero net greenhouse gas emissions);
- Incorporate private-sector innovation and expertise in design, construction and management, and access to portions of the financing to facilitate the transfer of risk;
- Shift certain risks related to design, construction, operations, and maintenance to a private-sector partner; and
- Facilitate greater capacity to focus on core teaching, research, and public service missions.

### **PROJECT PROGRAM**

UC Merced’s instructional model is that of a small, intimate research university. To outline the specific facilities envisioned for the 2020 Project, UC Merced engaged a broad set of academic, administrative, and student stakeholders to inform space-planning needs and program character for the site. These intensive focus groups developed information and specific criteria for various space types, schools, campus programs, student services, and campus-wide initiatives.

The 2020 Project program is a reflection of this process and is focused on creating mixed-use academic and student-focused space on campus. The campus has sought ways to continue patterns of efficiency and seek out models for flexible, adaptable spaces. The goal of the program is to extend the current campus to support new approaches to multi-disciplinary learning and research, consistent with UC Merced’s Strategic Academic Focusing Initiative, which provides the intellectual foundation for the next decade of UC Merced’s growth.

The 2020 Project program proposed for approval (Attachment 2) is 918,900 assignable square feet in size and comprised of two broad categories: (1) space to address critical existing needs and (2) space needed to accommodate growth to 10,000 students. Within the program, the two largest types of space are Academic Space and Student Housing, followed by Student Life/Athletics and Campus Operations.

Attachment 3 provides additional detail for the 2020 Project program.

### **PROJECT STRUCTURE**

In order to cost-effectively build and maintain the proposed facilities, the delivery strategy is to develop the project using the familiar Design-Build methodology and supplement it with developer financing for a portion of the project and a long-term maintenance agreement.

This approach achieves the campus objective of implementing a lifecycle financial model and risk profile for its facilities that preserves the value of University ownership. To realize this benefit, the procurement strategy will create a private-sector competition for a contract that links

the cost of long-term maintenance and operation of the facilities to their initial design and construction.

Under this procurement methodology, the University will make two types of payments: (1) milestone payments and (2) availability payments.

Milestone payments are predetermined payments made by the University when the Developer meets certain conditions or delivery targets during design and construction.

Availability payments are performance-based payments made over the lifecycle of the facilities. Following the delivery of the facilities and over the term of a long-term contract (equivalent in length to a bond financing), the University will make availability payments, subject to the availability and performance of the facilities as specified in the Project Agreement. This Availability Payment DBFOM approach is structured to pay for the amortization of the private financing portion of the design and construction costs, interest on financing, and the cost of maintenance, operation, and renewal of the facilities.

The maximum size of the availability payments will be determined through a competitive procurement process. The process establishes a financial cap, called the “upset limit.” The upset limit is based upon, and lower than, an estimate of what the annual cash flow requirement for a single-phase Design-Build project would be within a long-range, lifecycle financial model. The “2020 Project Budget Approval” section below includes a detailed discussion of components of the upset limit that will be released to the proposers in the Request for Proposal (RFP).

The upset limit ensures that savings, relative to a Design-Build approach, are passed on to the University and guaranteed through a Project Agreement. As a result of the competitive nature of the process, bids may be lower than the upset limit established in the RFP. However, if a proposer submits a financial proposal with a bid maximum availability payment that exceeds the upset limit, the proposal will be deemed non-responsive.

Under an Availability Payment DBFOM contract, the Developer must not only design and build efficient facilities on the agreed-upon time schedule, it must also properly maintain the major building systems in order to earn the agreed-upon availability payments. If any facilities are not available in accordance with the contract’s standards, the University is entitled to deduct an established amount from the availability payment. These availability payment reductions function to share the financial and performance risk of maintaining and operating facilities over time. In addition, the transaction is structured to require the Developer to establish monetary reserves for capital renewal/compliance work and for work related to handback requirements at the end of the agreement term. These reserves ensure a funding source to return the buildings in a state of good repair, per the standards specified in the Project Agreement.

The proposed scope and strategy for the Project, its operational and financial considerations, and a proposed delivery timeline have been extensively modeled and evaluated both internally and

by external experts. The analysis indicates that the proposed DBFOM delivery method could provide:

- An advantage in time to delivery of up to four years
- Efficient and cost-effective pricing of lifecycle design, construction, and facilities management
- Increased long-term budgetary certainty for facilities maintenance and operations
- Transfer of significant construction-related risks from the campus to the Developer

The 2020 Project is being procured under a competitive bidding procedure applicable to the Regents set forth in Section 10503 of the Public Contract Code (PCC). Section 10503 identifies authorized modes of contracting and other procedural requirements. PCC Section 10503 authorizes the Regents to use four specific construction delivery methods: (1) lump sum (Section 10503(a)), (2) design build (10503(b)), construction manager at risk (10503(c)), and (4) cost plus (10503(d)). In addition to these four contracting modes, the statute authorizes a discretionary contracting mode if that mode is determined to be in the best interest of the University. Specifically, PCC Section 10503(e) states that the Regents may prepare: “Documents for the solicitation of bids under such other contracting mode as the regents determine to be in the best interest of the university, provided that such proposals be compared on a uniform basis and that award be made as determined by the published selection standards.” Pursuant to this authority identified in PCC, the campus seeks a determination by the Regents that the procurement of the 2020 Project is in the best interest of the University.

The campus has prepared an analysis of advantages of the DBFOM delivery model and alternative traditional delivery methods, including Design-Bid-Build and Design-Build. This analysis supports the requested determination that the proposed procurement method pursuant to Section 10503(e) is in the best interest of the University. (See Attachment 4.) The 2020 Project RFP contains published standards for the procurement and ensures that proposals will be compared on a uniform basis and awarded based on published selection standards as required under Section 10503(e) of Public Contract Code.

### **REQUEST FOR PROPOSAL STRUCTURE**

The 2020 Project RFP consists of two basic documents: the Instruction to Proposers (ITP) and the Project Agreement.

The ITP sets forth in detail the terms and procedures to be followed in the procurement process and delineates the University’s requirements and rights with respect to the procurement.

The Project Agreement sets forth the rights and obligations of both the Developer and the University. Campus, institutional, and advisory experts, and stakeholders have spent almost two years developing the document. The Project Agreement includes commercial and risk-allocation provisions that reflect:

- Developer’s obligation to design, build, operate, and maintain major building systems



- Allocation of financing responsibility between the University (in the form of milestone payments) and the Developer (private financing)
- Phased delivery of approximately 918,900 assignable square feet by fall 2020 that will enable the campus to accommodate 10,000 students
- Penalties for late delivery or poor performance
- Good-faith thresholds to employ local businesses from the San Joaquin Valley
- Maintenance and renewal requirements of the facilities for 35 years
- Prevailing-wage and other labor-related provisions, and worker safety standards
- Governmental, regulatory, sustainability, and building official approval requirements
- Limitations on the ability of the Developer to assign or transfer its obligations
- Procedures for force majeure events (e.g., earthquakes, natural disasters)
- A form of direct agreement with the Lenders
- University's oversight and approval rights, including step-in rights in the event of default
- Duration and allocation of responsibility for various elements of Project operations

Under the Project Agreement, the Developer is responsible for developing the conceptual design included in its bid to final design, in accordance with the design requirements, technical specifications and performance standards contained in the Project Agreement. The Developer is required to provide design submittals for the campus' review and approval during the contract administration phase.

After delivery of the Project, the Developer is required to commence operations and maintenance services on major building systems in accordance with defined performance standards. Failure to meet the performance standards entitles the University to various rights and remedies, including payment deductions, and termination for Developer default. The Developer is also responsible for performing renewal work in accordance with a renewal work schedule.

At the end of the contract, the Developer will hand back the facilities to the University in a condition meeting the contract's requirements. Attachment 5 provides a summary of the commercial terms proposed for Regents' approval.

### **2020 PROJECT BUDGET APPROVAL**

The 2020 Project represents a major financial commitment to fulfill the mission established for UC Merced. The transaction structure is designed to help manage the campus' lifecycle performance and financial risk at the lowest possible cost. The finance plan for the Project has been modeled as a hybrid version of an Availability Payment DBFOM contract. This hybrid approach preserves the transfer of design, construction, operations and maintenance risks, and the lifecycle cost benefits of the availability payment procurement while bringing the overall cost of capital closer to the cost that would have been available if the University had financed the Project.

The total project budget is estimated to be \$1,059,450,000 in 2014 dollars, representing the year in which the project budget was estimated. In escalated costs<sup>2</sup>, the budget is estimated to be \$1,142,850,000. Attachment 2 displays a detailed breakdown of the space categories and associated estimated costs within the aggregate Project budget. This program and budget is used to determine the upset limit financial threshold discussed in concept above, and in specific detail below.

Of the escalated costs: (i) \$600 million is anticipated to be from University external financing, with \$400 million of that financing supported by State General Funds under the AB 94 funding mechanism; (ii) \$385.76 million is anticipated from Developer funding; and (iii) \$157.09 million anticipated from campus funds. (Refer to Attachment 6 for a breakdown of the Project budget funding.) Costs to be funded from campus funds include campus (owner) costs and associated contingency, and interest during construction (for previously-issued Century Bonds allocated to the Merced campus).

### ***State-Eligible Portion***

The State-supportable – i.e., research, academic, and academic support space – portion of the project consists of approximately 415,800 assignable square feet for academic facilities and campus operations, as well as the infrastructure that is proportionate to the State-eligible space. State-supportable space accounts for approximately 49 percent of the Project's total gross square feet. The State-supportable portion is estimated to cost \$527.3 million (escalated year of expenditure dollars). As stated previously, \$400 million is expected to be contributed by University external financing and \$127.3 million of State-eligible costs would be contributed through the Developer's funding.

In a separate action being considered by the Committee on Finance and Committee on Grounds and Buildings at this meeting, the Regents are being asked to approve the *2016-17 Budget for State Capital Improvements*. The Merced 2020 Project is the only project within that *2016-17 Budget*. Approval of the State funding would allow the campus to utilize State General Funds to repay General Revenue Bonds issued to fund milestone payments (\$400 million) and make availability payments (\$127.3 million) under the contract, subject to the provisions of Section 92493, et seq. of the Education Code.

### ***Non-State-Supportable Portion***

The non-State-supportable portion of the project consists of approximately 503,100 assignable square feet for student housing, student athletic facilities, parking, owner costs (such as tenant improvements and the campus's project oversight costs associated with the non-State-supportable project elements), and owner contingency. These costs would be funded from University external financing (\$200 million), Developer funding (\$258.46 million) and campus equity (\$157.09 million).

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<sup>2</sup>Represents a total inflation increase of approximately eight percent.

*Operations and Maintenance*

The delivery strategy for the 2020 Project includes a long-term maintenance agreement for major building systems. As implemented, the Developer will perform lifecycle maintenance and management of major building systems that are incorporated into the cost of the project. The campus has retained responsibility for day-to-day maintenance requirements such as custodial functions and landscaping, the cost of which has been incorporated into the annual cash flow requirement. The annual cash flow requirement to fulfill all of the 2020 Project obligations – including operations and maintenance of major building systems – is estimated to be \$105 million. As discussed conceptually in the “Project Structure” section above, within this annual cash flow requirement of \$105 million is a maximum availability payment threshold – or “upset limit” – calculated to be \$51 million. Any bid that exceeds this maximum availability payment threshold will be deemed non-responsive. This maximum price is comprised of: (i) \$40 million, representing the capital component of the availability payment (which would increase at one percent per year); and, (ii) \$11 million representing the operations and maintenance component of the availability payment (which would escalate at the Consumer Price Index, projected at three percent per year). This \$51 million in costs will constitute the upset limit released to the proposers in the RFP.

The campus has also developed a pro forma lifecycle financial analysis that incorporates assumptions about the financial resources and expenditures of the campus over time, including both operating and capital components.

**FINANCING**

One of the key elements of this Project has been to delineate clearly who bears risk, between the University and the Developer, at various stages during the construction and operations of the Project. The 2020 Project approach is designed to minimize the University’s financial exposure at the most vulnerable points during the construction process, protect the system’s ability to meet its other financial obligations, and incentivize high-quality performance.

*The Base Case Financial Plan*

The base case plan of finance for the Project has been modeled as a hybrid version of an availability-payment DBFOM contract. As envisioned in the base case, the University would borrow \$600 million of the total project construction cost using a combination of its own General Revenue and Limited Project Revenue Bonds. This financing would be used to make milestone payments under the Project Agreement. In addition to the milestone payments, under the current model, the campus would contribute approximately \$157 million from its funds.

In order to fund design and construction of the project, the Developer would be responsible for the remaining \$386 million of design and construction costs as well as coverage that will be needed to bridge receipt of the milestone payments from the University. (Refer to the discussion pertaining to the “Milestone Payments” immediately below.)

Moreover, the Developer would also need to secure financing to cover additional obligations (e.g. interest during construction, taxes, reserves required by its lenders, transaction costs, and financing fees).

Taken together, this represents an estimated \$876 million of private capital that would be at risk during construction. The Developer would finance its obligations through a combination of debt and equity. Of this amount, the Project Agreement requires that the Developer fund its obligations with at least 10 percent equity during the construction period.

The Developer's financing would be repaid over time through availability payments. The University's requirement to make availability payments would be an unsecured contractual obligation of The Regents under the Project Agreement. Attachment 6 provides a breakdown of the Project's funding, including University and Developer funding, financing, and computed annualized costs.

### *Milestone Payments*

The milestone payments totaling \$600 million would be made to the Developer only if specific conditions are satisfied. In the event of delay or any other problem precluding timely completion of the facilities, these milestone payments would not be made until all of the required facilities are completed in full. The General Revenue Bonds and Limited Project Revenue Bonds used to fund the milestone payments would be issued in the same manner and have the same priority as all other Regents' debt issuances.

The milestone payments allow the University to use its own low-cost financing for a portion of the project while retaining the long-term performance guarantees provided under the availability-payment DBFOM structure. In addition to the protections afforded by the conditions precedent to the payment of milestone payments, the University would require the Developer to provide payment and performance bonds in an amount equivalent to the total amount of milestone payments (\$600 million).

## **LABOR APPROACH**

The Project Agreement for the 2020 Project provides significant protections for represented employees during both the construction and operations phases of the Project. During construction of the Project, developers, contractors/subcontractors, manufacturers, and distributors will be required to adhere to the University's prevailing-wage requirements, as well as to contract terms that conform to Labor Code Section 1777.5 targets for the hiring of construction workers who are registered in or graduates of approved apprenticeship programs. The Developer also must make reasonable and good-faith efforts to draw construction workers from the Central Valley Infrastructure Employment Project.

During operations, UC Merced will continue to manage custodial, grounds, and existing dining operations, and will continue to employ represented UC employees covered by current and future

systemwide labor agreements. Under this framework, no work performed by employees represented by University of California Service Unit (SX) would be adversely affected. The University's Fair Wage/Fair Work Plan provisions will be incorporated in the 2020 Project to the extent required by University policy.

This is in accord with Section 92493, et seq. of the Education Code which was amended by Senate Bill 81 (SB 81) to expand the eligible uses of State General Funds to include "availability payments, lease payments, installment payments, and other similar or related payments for capital expenditures," thereby permitting the campus to utilize State General Funds to support the capital portion of the availability payments being made to the 2020 Project Developer. SB 81 has a condition that specifies that "for capital expenditures related to the Merced 2020 Project, the University of California may proceed with capital expenditures ... only if all work traditionally performed by persons with University of California Service Unit (SX) job classifications is performed only by employees of the University of California."

The Developer would be responsible for operating and maintaining major building systems in facilities it has designed and built.

#### **PROCUREMENT PROCESS AND SUBSEQUENT REGENTS' APPROVALS**

Subsequent to the Regents' amendment of the 2009 LRDP in May 2013, the campus initiated a Request for Qualifications/Request for Proposals process to identify a short list of development teams to deliver the Project utilizing an availability payment DBFOM approach. In January 2015, the UC Merced Chancellor and Executive Vice President – Chief Financial Officer selected three "short-listed" teams to proceed to the RFP phase of the procurement.

In collaboration with the Office of the President and the Office of General Counsel, the campus has developed the ITP and the Project Agreement, which together constitute the RFP.

If the Regents approve this item, the campus will release the Final RFP and receive proposals in March 2016. This would be followed by a rigorous scoring and selection process informed by expert advisors. After evaluation of the proposals, a preferred proposer would be selected.

The proposals would be evaluated by three topic-specific evaluation committees comprised of campus academic and administrative personnel and UC Office of the President management. The evaluation committees will score the proposals with supporting expert advice from topic-specific expert panels drawn from both internal stakeholders and external consultants.

The Project Selection Committee is comprised of the UC Merced Chancellor and the Executive Vice President – Chief Financial Officer and will make a final selection of the apparent successful proposal.

The University intends to make an award based on a proposer's offering an acceptable proposal that is deemed most advantageous to the University taking into consideration the financial,

technical, and aesthetic criteria, consistent with the procedures set forth in the RFP. However, the University retains the right to award or not award an agreement as provided for under the RFP. In May 2016, the Regents would be requested to approve the external financing necessary to fund milestone payments under the Project Agreement, subject to State approval of the *2016-17 Budget for State Capital Improvements*. The Project Agreement would be approved and executed by the President following these approvals. In summer 2016, the Regents would be requested to approve the 2020 Project design.

Leading up to and following the 2016 Regents' meetings, the campus will consult with and seek advice from campus and University stakeholders as well as Regents' leadership to ensure the Project progresses as envisioned.

### **INTERIM SERVICES AGREEMENT**

To ensure timely delivery of the Project, the Developer may need to engage in preliminary design work after bid award but prior to approval of financing or execution of the Project Agreement. During this time period, the University anticipates entering into an interim agreement with the selected Developer. The scope of the agreement would allow for compensation to the Developer, estimated not to exceed \$25 million, in the event no Project Agreement is executed. Services and deliverables under the agreement include completed master planning documents and associated engineering, design development level documents for first delivery facilities (and schematic design level documents for remaining facilities), and mobilization, administrative, and other related work. The agreement would not exceed \$25 million and would be paid from campus funds. All work produced would become property of the University. The Interim Services Agreement would not commit or constrict the discretion of the Regents at the design approval stage. The President would approve and execute this agreement subject to Standing Order 100.4.

### **KEY TO ACRONYMS**

DBFOM	Design-Build-Finance-Operate-Maintain
ITP	Instruction to Proposers
PCC	California Public Contract Code
RFP	Request for Proposals
SB 81	State Senate Bill 81
SX	University of California Service Unit

**ATTACHMENTS:**

- Attachment 1: [Project Site Map](#)
- Attachment 2: [Merced 2020 Project Budget](#)
- Attachment 3: [2020 Project Program Detail](#)
- Attachment 4: [Briefing Memorandum – UC Merced Project Delivery Options](#)
- Attachment 5: [Commercial Terms Summary](#)
- Attachment 6: [Projected Funding Breakdown](#)