

Office of the President

TO MEMBERS OF THE COMMITTEE ON FINANCE:

ACTION ITEM – CONSENT

For Meeting of May 11, 2016

AUTHORITY TO INDEMNIFY THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION FOR ENCROACHMENT PERMIT RELATED TO POSTING SIGNAGE FOR UC DAVIS TAHOE CITY FIELD STATION, DAVIS CAMPUS

EXECUTIVE SUMMARY

This action would authorize the delegation of authority to the President to take discretionary action to execute an agreement including a third-party indemnity provision in favor of the State of California, Department of Transportation (State) that would allow the Davis campus to construct and permanently install a sign within the right of way controlled by the State.

The State requires an indemnity provision under its Standard Encroachment Permit (Permit), which requires approval by the Regents under Standing Order 100.4(dd)(9). The Permit authorizes the UC Davis campus to place a sign adjacent to Lake Forest Road at the driveway entrance to the Tahoe City Field Station, Tahoe City, California.

RECOMMENDATION

The President of the University recommends that the Committee on Finance recommend to the Regents that the President be authorized to approve and execute the Standard Encroachment Permit with the State of California, Department of Transportation, which contains an indemnification provision by which the University would assume third-party liability, for posting signage for the UC Davis Tahoe City Field Station.

BACKGROUND

The UC Davis Tahoe City Field Station is located at 2400 Lake Forest Road, Tahoe City, California, 96145. It serves both as a base for field work and additionally as an education center for the general public. In an effort to raise the public profile of the station, UC Davis obtained grant funding to install signage at the edge of the Regents' property. The location of the sign also happens to fall within the right of way of Lake Forest Road as controlled by the State. The State requires completion of its Standard Encroachment Permit in order to allow placement of the sign. The Permit contains indemnification language which does not fit within the authority delegated to the President pursuant to Standing Order 100.4(dd)(9).

The Davis campus has attempted to negotiate with the State so as to modify the indemnification language to bring it in compliance with the Standing Order. The State has refused to make any changes. The University has received the same response from the State on other requests requiring use of its Permit. As a result, the Permit must include original language as proposed by the State which reads as follows:

“The applicant, understands and herein agrees to the general provisions, special provisions and conditions of the encroachment permit, and to indemnify and hold harmless the State, its officers, directors, agents, employees and each of them (Indemnitees) from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys’ fees, judgments, losses and liabilities of every kind and nature whatsoever (Claims) arising out of or in connection with the issuance and/or use of this encroachment permit and the placement and subsequent operation and maintenance of said encroachment for: 1) bodily injury and/or death to persons including but not limited to the Applicant, the State and its officers, directors, agents and employees, the Indemnitees, and the public; and 2) damage to property of anyone. Except as provided by law, the indemnification provisions stated above shall apply regardless of the existence or degree of fault of Indemnitees. The Applicant, however, shall not be obligated to indemnify Indemnitees for Claims arising from the sole negligence and willful misconduct of State, its officers, directors, agents or employees.”

The proposed indemnification could expose the University to some increased liability and defense costs. However, the campus believes the risks of this outcome to be infinitesimally small. The roadway in question has no unusual design aspects or hazards. Commissioning of the sign design was through a certified Civil Engineer in compliance with the Tahoe Regional Planning Agency design standards. Placement of the sign has additionally been reviewed by the campus Civil Engineer, Fehr and Peers, who conclude there is no dangerous condition or defect created with the sign placement. Physical construction of the sign will be completed by UC Davis employees working for the field station. Due to the nature of their work at the field station, construction is a regular and normal part of their responsibilities.

The campus views the chances of the sign causing damage or injury to third parties to be remote, and therefore highly unlikely that the University would be required to indemnify the State. This authority is requested in order to allow placement of this sign and thereby raise the public profile of this interpretive research center.