

Office of the President

TO THE MEMBERS OF THE COMMITTEE ON FINANCE:

ACTION ITEM

For Meeting of September 22, 2005

AUTHORITY TO AGREE TO DEFEND AND INDEMNIFY THE CITY OF BERKELEY AGAINST ANY LITIGATION ARISING FROM APPROVAL OF AN ENCROACHMENT PERMIT FOR THE FOOTHILL PEDESTRIAN SAFETY BRIDGE, BERKELEY CAMPUS

EXECUTIVE SUMMARY

Campus:	Berkeley
Project:	Indemnification of the City of Berkeley against litigation arising from City approval of encroachment permit for Foothill Pedestrian Safety Bridge
Action:	Authorization to execute an indemnity agreement
Previous Actions:	1988: Certification of EIR and approval of Foothill Housing Complex.
Project Summary:	The proposed pedestrian safety bridge would create an ADA-compliant, all-weather connection between the north and south components of the Foothill housing project. The Bridge requires an encroachment permit from the City of Berkeley for crossing the airspace above Hearst Ave. The City Council granted the permit, contingent upon the requested indemnification, and minor design changes.
Issues:	Various commissions and members of the public in the City of Berkeley had several issues regarding the bridge which have been resolved through redesign to minimize the visual impact and the risk from thrown objects.

RECOMMENDATION

The President recommends that the Committee on Finance recommend to The Regents that the President or his designee be authorized to execute an agreement with the City of Berkeley pursuant to which the University would defend and indemnify the City of Berkeley against any future litigation and court costs arising from the issuance and approval by the City of Berkeley of a major encroachment permit above Hearst Avenue that permits the University to construct a pedestrian crossing for the Foothill Student Housing.

BACKGROUND

The Foothill Housing Complex, 2700 Hearst Avenue, Berkeley campus, includes housing for 345 students in 38 units north of Hearst Avenue, and 429 students in 43 units south of Hearst Avenue. Dining commons, a study lounge, and mail facilities are located south of Hearst Avenue. The Foothill Pedestrian Safety Bridge, part of the Foothill Housing Complex as originally designed and approved by The Regents in 1988, would connect these two sections of the complex, providing all-weather, ADA-compliant access between living units and to amenities across Hearst Avenue.

The Berkeley campus first filed an encroachment permit application with the City of Berkeley in 1988. At that time, the city manager wrote to the campus indicating that the bridge concept was acceptable to the City. Construction documents were completed, but the City requested that the campus retract the application because of community controversy over the design. The campus filed a second application in October 1992 and withdrew it in May 1993. The campus engaged in further design work and obtained additional community input in 1998 and 1999.

The campus redesigned the bridge to address community concerns regarding seismic safety, bulk, opacity, and risks due to thrown objects, and filed a third encroachment permit application in February 2003. In 2003 and 2004, the re-designed bridge and encroachment permit were supported by the City of Berkeley Commission on Disability and the Planning Commission. The Landmarks Commission, Public Works Commission, and Design Review committee (a sub-committee of the Zoning Adjustments Board) were opposed to them.

The Berkeley City Council scheduled the encroachment permit for a hearing in July 2004 after commission review and community meetings on the project. In April 2005, the City Council met at the Foothill Complex for a site tour and a public hearing. The council approved the encroachment permit by a 6 to 3 vote on April 26, 2005, conditioned upon design modifications to be approved by the Public Works Director in consultation with the Design Review Committee and on an agreement by the University to defend and indemnify the City from and against litigation arising from the City's approval of the permit.

The City has since received communication regarding the permit approval from an attorney representing New Education Development Systems Inc., owner of 2717 Hearst Avenue. The

communication seeks repeal of the City's approval because of a prejudicial abuse of discretion in making the decision. If litigation ensues, the University will bear the cost of defending the City's action.

Project cost is estimated at \$2 million, to be paid from student housing reserves. The current design does not deviate sufficiently from the previous design to change the environmental conclusions made in the Addendum to the Foothill Student Housing EIR.