Background

The Ohlone Community College District (“District”) desires to enter into a sale or lease of a certain portion of its real property that is located adjacent to its Ohlone College campus site (the “Campus”). The Campus is located in Fremont, Alameda County, California, on the east side of Mission Boulevard south of Interstate 680, on a site that contains approximately 534 acres of real property.

The District now wishes to enter into a sale or a ground lease of a separate portion of its real property near the Campus, containing approximately seventeen (17) acres (the “Site”). The Site is located adjacent to the Campus in the area known as the Upper Campus next to Mission Boulevard, and is more particularly located along the southeast side of the Campus and shown as the area identified as Parcel C on Exhibit 1, attached hereto and incorporated herein by reference.

Pursuant to the provisions of California Education Code § 81370(b), the District hereby requests a waiver, with regard to a sale or long-term ground lease of the Site, of the requirement described in § 81370, which mandates that the District accept the highest bid received. This waiver is requested for the reasons set forth below, and it is believed that such a waiver would serve the best interests of the District. The District has not previously sought a waiver of California Education Code § 81370.

While the Site was originally intended to be used for later expansion and further development of the Campus under the original Master Plan, the Site has only been used for open space and parking. Recently, the District completed an update of its Master Plan that calls for a new orientation of the Campus. As part of that process, certain areas along Mission Boulevard and the southern boundary of the Campus were identified as not being needed for school classroom buildings. As such, the current and projected land needs at the Campus based on the update of the Master Plan do not warrant, and are not expected to warrant, use of the Site. The District declared the Site surplus on January 26, 2005. The District has also complied with the provisions of California Government Code § 54222, and related sections, and California Education Code § 81363.5 with regard to the Site. No agency or entity described in said Code sections expressed an interest in the Site within the statutory time period set forth in said sections.

The District desires to enter into an agreement or agreements with a purchaser or tenant that will provide a reasonable economic return to the District while assuring that the potential development will provide the aesthetic and other amenities that will guarantee that the development will be a suitable neighbor to the existing Campus as well as compatible with other development in the area. Although such potential development
will require that the City of Fremont’s General Plan be amended to change the designation of the Site from Public Facilities District to Community Commercial or other designation, to permit such development, the District is confident that such an amendment shall be adopted, subject to review under CEQA and the certification of an EIR and a mitigation monitoring plan. Similarly, the District believes that the required zoning for such development of the Site will be established through the Planned District provisions of the City of Fremont’s zoning code.

The above objectives can best be accomplished by having the District solicit one or more sale or lease proposals for the Site that allows the developer the flexibility to propose material terms that are over and above the minimum requirements being solicited by the District. With respect to a lease of the Site, these material terms include (1) the term of the lease; (2) the base rent; (3) escalation clauses; and (4) a general description of improvements on the Site. With respect to a sale of the Site, these material terms include (1) the terms of payment of the purchase price; (2) the rights granted or reserved to the District; and (3) a general description of improvements on the Site.

Because of the complexity of any long-term ground lease transaction (in this case projected to be a minimum of 40 years) and the diversity of commercial uses for which the Site may be developed, because the mixture of uses may vary from one proposed developer to another, and because of the nature of a ground lease and its many provisions and varieties of possible economic structures, it would be extremely difficult, if not impractical, to assess each lease proposal’s exact monetary value, particularly in comparison with a sale. This is especially true as the District believes that it must consider other important factors in the proposals it expects to receive in addition to economic factors, such as the reputation and long-term financial stability of each proposed purchaser or tenant as well as each proposed purchaser’s or tenant’s willingness to cooperate with respect to the educational and environmental impact of each respective proposal that is received, such as traffic mitigation and aesthetic qualities. Because these items are not conducive to a “highest bid” analysis, it may not be possible to ascertain which proposed tenant has tendered the “highest bid,” nor to comply with the provision of California Education Code § 81370 for which waiver is requested.

Further, California Education Code § 81374 provides that final acceptance of the bid must be made within ten (10) days from the date of the opening of the bid. Due to the complexity of a sale or long-term ground lease and the numerous factors that must be taken into consideration (as set forth above), the District may need to make full use of this ten (10) day period in order to perform a thorough financial as well as non-economic analysis of each proposal. Thus, request for a waiver at that time would be impractical and would greatly limit the District’s ability to properly analyze each proposal.

The District believes that it would be in the best interest of the District to select a purchaser or tenant and a development that would comply with the needs of the District and the community free from the “highest bid” constraint of California Education Code § 81370.
The District believes that for the reasons set forth above, it is in the best interest of the District that the Board of Governors grant to the District a waiver of the provision of California Education Code § 81370 as set forth above.

A list of some of the factors or criteria that would be considered in evaluating bids from developers is attached hereto as Exhibit 2.

The Request for Waiver is sent to you on behalf of the governing board of the Ohlone Community College District. We would appreciate your prompt response to this request.

Very truly yours

OHLINE COMMUNITY COLLEGE
DISTRICT BOARD OF TRUSTEES

By: ________________________________

Title: ________________________________