RESOLUTION OF THE BOARD OF TRUSTEES OF THE
OHLONE COMMUNITY COLLEGE DISTRICT DECLARING REAL PROPERTY
SURPLUS AND INTENTION TO LEASE SURPLUS REAL PROPERTY AND
AUTHORIZING SUBMISSION OF REQUEST FOR
WAIVER OF CERTAIN PUBLIC BIDDING REQUIREMENTS IN RELATION TO THE
LEASE OF SURPLUS REAL PROPERTY

WHEREAS, the Ohlone Community College District ("District") owns real property comprised of approximately 15.9 acres of vacant real property on the south/southwest side of the Ohlone College Newark Center for Health Sciences and Technology located on Cherry Street between Mowry Avenue and Stevenson Boulevard in the City of Newark, County of Alameda, State of California and is a portion of APN 901-0185-13-9 ("Property") as depicted in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to Education Code section 81360, the Property is not needed by the District for school classroom buildings and the Board of Trustees desires to declare the Property surplus real property and intends to lease the real property to a developer for a commercial multi-family residential project; and

WHEREAS, Education Code section 81365 authorizes the District’s governing board to declare the Property surplus and its intention to lease the Property for a commercial multi-family residential development project by adopting a resolution in an open meeting by two-thirds vote; and

WHEREAS, the District has determined that complying with the procedures set forth in Education Code section 81360 et seq. for the lease of the Property for a commercial multi-family residential project, specifically the public auction requirement, will chill proposals and will not be in the best interest of the District given the size, features and development constraints of the Property; accordingly, the District desires greater flexibility in selecting a suitable developer entity with the ability to negotiate a “best value” lease for the Property; and

WHEREAS, Education Code section 81250 et seq. allows a community college district to waive all or part of any section of Education Code section 81360 et seq.; and

WHEREAS, to obtain a waiver, the District must first conduct a public hearing regarding the District’s intention to request a waiver and provide written notice of the public hearing at least thirty (30) days prior to the hearing, to any city, county, park or recreation, regional park authority, or public housing authority within which the land is situated, pursuant to Education Code Section 81250(b); and

WHEREAS, Education Code section 81363.5 requires the District to also send written notices to certain public agencies (the “Public Agencies”) informing them of the District’s intention to lease the Property and offering to negotiate directly with any of the Public Agencies interested in the Property;

NOW THEREFORE, be it resolved by the Board of Trustees of the Ohlone Community College District as follows:
1. That the above recitals are true and correct.

2. That the Board hereby declares the Property is not and will not be needed by the District for school classroom buildings.

3. That the Board hereby declares the Property surplus, and hereby declares the Board’s intention to lease the Property for a commercial multi-family residential project, subject to the Board adopting an authorizing resolution at a duly noticed meeting in the future soliciting proposals to ground lease the Property for a commercial multi-family residential project.

4. That the Board hereby declares its intention to seek a waiver of Education Code sections 81360 et seq. substantially in the form attached hereto as Exhibit B and incorporated herein by this reference.

5. That at the October 13, 2021 regular meeting, the Board intends to hold a public hearing (“Public Hearing”) at which time the Board will consider comments to the waiver request and give notice of the Public Hearing a pursuant to subdivision (b) of Section 81250 of the Education Code.

6. That the District will, prior to seeking a waiver, comply with the lease offering requirements to applicable public agencies pursuant to Section 81363.5 of the Education Code.

APPROVED, PASSED AND ADOPTED by the Board of Trustees of the Ohlone Community College District on 11th day of August, 2021, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

_____________________________________
Secretary, Board of Trustees
Ohlone Community College District
County of Alameda, State of California

I, ____________________________________________, Clerk of the Board of Trustees of the Ohlone Community College District, do hereby certify that the foregoing Resolution was adopted by the Board of Trustees of said District at a meeting of said Board held on the 11th day of August, 2021

_____________________________________
Clerk of the Board of Trustees for the
Ohlone Community College District
EXHIBIT A

DEPICTION OF PROPERTY
EXHIBIT B

Form of Waiver Request

See Attached
# Request for Waiver of Property Use Requirements:
Sale, Lease, Use, Gift, and Exchange (Ed. Code § 81250 et seq.)

<table>
<thead>
<tr>
<th>Community College District:</th>
<th>Contact’s name and title:</th>
<th>Email:</th>
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<tbody>
<tr>
<td>Ohlone Community College District</td>
<td>Sean B. Absher</td>
<td><a href="mailto:sabsher@stradlinglaw.com">sabsher@stradlinglaw.com</a></td>
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<tr>
<th>Address:</th>
<th>City:</th>
<th>State:</th>
<th>Zip:</th>
<th>Phone:</th>
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<tbody>
<tr>
<td>44 Montgomery Street, #4200</td>
<td>San Francisco</td>
<td>CA</td>
<td>94104</td>
<td>(415) 283-2242</td>
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<tr>
<th>Date of request:</th>
<th>Local board approval date: (Required)</th>
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<tr>
<td>October ____, 2021</td>
<td>August 11, 2021</td>
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**Justification**

Date of public hearing held on this matter: October 13, 2021

What parts of Part 49, Chapter 2 are being requested to be waived? (See Attached Exhibit A) Why? (See Attached Exhibit A).

On August 11, 2021 by Resolution No. _______, the Ohlone Community College District (District) Board of Trustees (Board) identified and declared as surplus real property consisting of approximately 15.9 acres of vacant land in Newark, California (Property). The Property is located on the south/southwest side of the District’s Newark Campus Health Sciences & Technology Center on Cherry Street between Mowry Avenue and Stevenson Blvd. The Board desires to enter into a long term ground lease of the Property for a multi-family residential housing project that will benefit the District by providing ongoing cash flow that will help the District meet the educational needs of the community.

Prior to declaring the Property surplus, on October 14, 2020 the Board, after consultation with its real estate development broker, adopted Resolution No. 10/20-21 authorizing the ground lease of the Property for an office, research & development, advanced manufacturing project. Further to Education Code sections 81390 et seq., the proposed project required a joint occupancy component whereby the District would have the use of a portion of the project. The Board did not receive any proposals for the ground lease of the Property. Thereafter, the Board has been informed by its real estate development broker that staff in the City of Newark Community Development Department believes a better and more compatible use of the Property is declaring the Property surplus and developing a multi-family residential project with a set aside for affordable housing units.
The Property is currently zoned Public Facilities District (P-F) and development of a multi-family residential housing project will require a developer to obtain land use entitlements that include a General Plan amendment and zoning change from Public Facilities District to Planned Development-Multi-Family. The Property is also subject to a land use covenant imposed by the California Department of Toxic Substances that requires mitigation of environmental conditions prior to residential development.

After consulting with District's real estate development broker, the Board believes a successful ground lease of the Property for a multi-family residential project will require an aggressive marketing effort leading to extensive negotiations with potential lessees/developers of the Property to create a "best value" proposal that meets the District goals for rental income, affordable housing units, mitigation of environmental conditions and substantial completion. The Board believes that processing the waiver of the parts of Part 49, Chapter 2 as provided in Exhibit A will best allow the District to ground lease all or a portion of the Property and achieve the higher end of the ground lease value of the Property through targeted direct broker marketing and developer negotiations prior to award of the ground lease.

Does waiver request involve the sale or lease of district real property? This waiver involves the lease of District property without option to purchase.

If so, was written notice of at least 30 days prior to the public hearing provided to the appropriate entity outlined in § 81250(b)? Yes, public notice was given on ____________, 2021.

District Certification – I hereby certify that the information provided on this application is correct and complete.

<table>
<thead>
<tr>
<th>Authorized Signature:</th>
<th>Name and Title:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sean B. Absher</td>
<td>____________, 2021</td>
</tr>
<tr>
<td></td>
<td>Attorney for Ohlone CCD</td>
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FOR California Community College Chancellor's Office USE ONLY

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<tr>
<th>Staff Member Name:</th>
<th>Signature:</th>
<th>Date:</th>
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</table>

Please note that additional pages can be attached, if needed.

Send original plus one copy to:

California Community Colleges
Chancellor's Office
1102 Q Street
Sacramento, CA 95811-6549

ATTN: Legal Affairs

Or

Email the completed form and back-up material to: legalaffairs@cccco.edu

/4819-0781-2340v1/024230-0011
Exhibit A

(Education Code Provisions to be Waived and Statement of Purpose)

Education Code Section 81365. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it, and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered. [ADD: The governing body shall specify “best value” criteria to evaluate rental and terms that are in the best interest of the District.]

Waiver of this portion of Section 81365 would allow the District to avoid specifying a minimum bid at a public meeting and would allow the District to set their own terms and conditions and remove references to minimum bids and actions to be taken with “sealed” bids. The District may instead work with a broker to develop a strategic plan for advertising and marketing of the Property in order to solicit proposals from potential developer/ground lessees interested in the Property that meets the District’s goals for rental income, affordable housing units, and environmental mitigation and project scheduling and substantial completion.

Education Code Section 81370.

(a) At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals that have been received shall, in public session, be opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted that conform to all terms and conditions specified in the resolution of intention to sell or to lease and that are made by responsible bidders, the sealed proposal that is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless the board rejects all of those bids [ADD: The governing body may accept the proposal that the governing body determines is in the best interest of the District.]

(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district.

This waiver will allow the District the greatest flexibility in developing “best value” criteria for proposals based on proposed rental income, affordable housing units, environmental mitigation and substantial completion date(s). The District may instead work with a broker to
develop a strategic plan for advertising and marketing of the Property in order to solicit proposals from potential developer/ground lessees interested in the Property that meets the District’s goals for rental income, affordable housing units, and environmental mitigation and project scheduling and substantial completion.

* In addition, the District at some point in the future may decide to take possession of the Property for educational or administrative purposes. The Board will have flexibility to consider proposed ground lessees’ contemplated improvements to the Property and suitability for future District use of such improvements.

**Education Code Section 81374.** The final acceptance by the governing body may be made either at the same session or at any adjourned session of the same meeting held within the 30 days next following.

The Board sets its meeting calendar at the start of each calendar year. This modification would allow the Board to adjourn to the next regularly scheduled meeting rather than a special meeting. Public participation is more likely if the adjourned meeting is held at a regularly scheduled meeting.