

December 2, 2015

Via Email

Dr. Sam Hawgood  
Chancellor  
University of California San Francisco  
550 16th Street  
San Francisco, CA 94158  
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Re: Memorandum of Understanding between Golden State Warriors and University of California, San Francisco

Dear Chancellor Hawgood,

I write on behalf of the Mission Bay Alliance (the “Alliance”) regarding the memorandum of understanding (“MOU”) entered into between the Golden State Warriors and the University of California San Francisco (“UCSF”) on October 7, 2015 regarding the proposed Warriors Arena and Event Center. For the reasons explained in this letter, the MOU is invalid because it was entered into without authority, it constitutes a gift of public funds, and the University of California cannot delegate its sovereign authority to abate nuisances affecting land owned by the citizens of California. Therefore, we request that UCSF respond to this letter within five business days to explain the steps that the Chancellor will take to repudiate this agreement for the sake of the faculty, staff, and other stakeholders in the future of UCSF. Your failure to do so will result in legal action.

The MOU is a one-sided deal that purports to waive UCSF’s legal rights to protect its campus, the hospital, and the patients who rely on it for life-saving care in exchange for empty promises from the Warriors. But these rights belong to the entire UCSF community and the people of California, and the Chancellor has no authority to trade them away.

Closer scrutiny of the deal reveals how it endangers UCSF’s future. As an initial matter, the MOU only seeks to address traffic caused by narrowly-defined “MOU dual events,” which would only be a fraction of the events to be held at the proposed arena.<sup>1</sup> The Warriors have not agreed to limit the number of dual events at all. Instead, they agree to convene a meeting when an MOU dual event first causes an “unacceptable traffic condition,” another narrowly defined term. It is only after *three out of four* events or *four out of six* events cause such a condition that the Warriors would agree to limit dual events to 12 for the next calendar year. But even

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<sup>1</sup> Furthermore, the agreement has an unreasonably narrow definition of “dual events.” It only counts as dual events those that overlap with a “*regular season*” San Francisco Giants game at AT&T Park,” thereby excluding playoff baseball games, concerts and private events, which are the events most likely to create the worst traffic conditions.

then, since the Warriors do not agree to move a single event they have already scheduled, any relief from the crippling traffic will be delayed by months or years.

And what does the MOU purport to require of UCSF? That it waive “***any and all rights in law or equity to challenge the Project.***” The scope of the agreement is breathtaking. Make no mistake, the Warriors’ lawyers will make sure that neither you nor any future Chancellor can enforce any rights UCSF has to limit the catastrophic effects of the arena on Mission Bay, the university campus, and the UCSF Children’s Hospital. To add insult to injury, you have signed up UCSF to “actively and publicly support” the construction of the arena. With respect, UCSF has never had a basketball team and the Golden State Warriors already have cheerleaders. It is inappropriate for the head of one of the world’s preeminent research universities to commit to supporting a private project to build a basketball arena next door.

And what little UCSF will receive in return could disappear if the Warriors experience a period with fewer so-called “MOU dual events.” If there are two calendar years with no dual event traffic conditions, the agreement’s termination clause ends “***all obligations*** of UC, UCSF and the Warriors set forth herein (***except as set forth in Section 2***);” Section 2 is the clause that contains the nuisance easement. Therefore, while the Warriors could exploit a downturn in event scheduling (or event attendance) to eliminate what few obligations they have under the MOU, UCSF and future Chancellors will be unable to challenge the arena for generations.

In addition to the MOU being a bad deal, it is invalid and illegal for the following reasons.

First, UCSF is not a legal entity that may enter into contracts concerning property owned by the UC Regents. The MOU acknowledges that the University of California Regents (“UC Regents”) are the owners of a view easement over a portion of the arena site but it tries to hide the highly valuable property right that UCSF purports to grant the Warriors. UCSF’s extraordinary obligations contained in Section 2 effectively grant an easement to the Warriors to operate a nuisance next door to a hospital. Such a right is not UCSF’s to give.

Second, the UC Regents did not delegate authority to you to enter into the MOU on their behalf, so you had no authority to negotiate or sign it. Because the agreement purports to waive all rights in law and equity for UCSF to challenge the Warriors’ arena, it grants an easement to the Warriors to operate a nuisance next to UCSF and the Children’s Hospital. This exceeds the strict limits of the UC Regents’ delegation of authority to chancellors to grant limited easements or licenses. It will also cost the University millions of dollars and dramatically devalue its land and entitlements in Mission Bay. No other delegation of authority authorizes the MOU.

Third, no entity—not the UC Regents nor the UCSF Chancellor—can delegate away the sovereign authority of the State of California to abate nuisances that affect its property, as the arena certainly will.

Fourth, the MOU constitutes a gift of a public asset. For the reasons explained above, the MOU attempts to grant an extremely valuable property right without adequate consideration.

Even aside from its *ultra vires* character, the agreement is illegal, wasteful, and constitutes a gift of public funds under the common law and California Code of Civil Procedure § 526a.

The eyes of the hard-working staff, faculty, and students of UCSF are on you. I am sure you are aware that many of UCSF's esteemed faculty members, its financial supporters, and the California Nurses Association have spoken out against the location of the proposed Warriors arena. You are also responsible for the thousands of patients seeking treatment at the UCSF Children's Hospital and their families, many of whom have added their voices to a growing chorus of concerned citizens that want to protect the future of Mission Bay. The Alliance has the support of the community and a mandate to protect the legacy of UCSF, through litigation if necessary. We urge you to reconsider the ill-advised MOU before it is too late. We look forward to your prompt response.

Regards,

  
Joshua T. Schiller

Cc: Janet Napolitano, President of the University of California  
Charles F. Robinson, General Counsel and Vice President for UC Regents  
Greta W. Schnetzler, Chief Campus Counsel, University of California San Francisco