

Donor Development

Definition—Also known as Gift-in-Kind projects a Donor Developments can include a new facility, rehabilitation/renovation of an existing facility or tenant improvements (“Project”) to serve a defined University need developed by a donor, or donor group. In this approach, the donor-developer takes sole responsibility for both fund raising and Project design, construction financing and construction (i.e., they are responsible for 100% of the fundraising and assume 100% of the risk of the cost of constructing the Project). Since the Project is often built on Regents’ land (i.e., either the main campus or a satellite location), the University must be responsible for: (i) defining the scope and design parameters of the Project, (ii) retaining approval over the design, (iii) overseeing plan check and inspection (as the responsible building official for a programmatic project on Regents’ land), (iv) confirming completion in accordance with plans and specifications and accepting ownership of the Project, and (v) placing the Project in operation. In particular, design review is comparable to a University-developed project, including all applicable policies on sustainable development, life-cycle costs, and campus design standards. The Project is conveyed to UC upon completion as a “gift in kind”. Authorization to proceed with the Project requires Regents’ approval of both gift acceptance and design unless the parameters of the Project are within delegated limits. There is more latitude for a donor developer on private land though the University obviously has a keen interest in how such project will fit the program for which the Project is intended. (See the attached Flow Chart)

Key Terms-- The master agreement includes a reasonably detailed definition of the Project (program, site, design requirements), the parameters for any fund raising program, the design review and approval process, and the conditions applicable to the construction process and transfer of the Project upon completion. In particular, it is important to assure that: (i) any donor(s) fundraising efforts are compatible with University campaigns and policies and (ii) the stages at which the University will review and approve the plans and specifications are detailed. The University’s obligations with respect to CEQA approval and the condition of the site should also be specified. *(Observation: The University’s contributions to the Project should be limited to use of its land and/or rechargeable time for entitlement, CEQA approval and design review conducted by the University. This method is not available if the University plans to contribute to the cost of construction.)*

Because the donor-developer is assuming 100% of the funding/fundraising responsibility and the University is relying on the Project being constructed without its financial support and completed without material delay, confirmation of pledges and funds on hand sufficient to complete the Project is necessary before allowing construction to commence. For Projects on Regents’ land, because the donor-developer is solely at risk for construction, payment and performance bonds are required to assure Project completion. Conditions for lien-free transfer of the Project upon completion should be specified. Finally, conditions for assignment of rights under all contracts awarded by the donor-developer for design or construction of the Project should be specified.

Regents’ or delegated approval is obtained for transfer of the “gift in kind” Project as a condition of the agreement. Attachments to the master agreement would typically include: detailed site and Project descriptions; outline specifications or

performance standards; a license permitting access to the site during construction; form of payment and performance bonds; transfer document(s); and such other transaction-specific documents as may be needed. (The UCLA documents for the Stein III and NCI projects are a good starting point for these transactions.)

Applications-- These Projects involve donors who feel strongly about an area of research or other University program and who wish to more actively manage the development of the Project built with funds they contribute and raise. Such Projects may be the result of a relationship between a donor and a faculty member or school. Accordingly, donor development should be thought of as a response to a donor's strong preference to manage the development process rather than as an alternative development technique. Donor developed Projects at the University through 2011 include the three phases of the Stein Eye Center at UCLA and the International Center and its expansion at UCSD. A number of other smaller projects have also been developed with this technique.

Opportunities-- Donor Developed Projects may make sense where:

- the donor(s) will not contribute and raise the necessary funds for the Project unless they are granted direct control over design and construction;
- the donor has special expertise which is sufficient for the design and/or construction of the Project; and
- the Project is developed on an appropriate site on campus with sufficient control retained by the campus.

Constraints-- Donor Developed Projects probably do not make sense where:

- the Project is highly specialized and/or integrated with other campus buildings where the only practical solution is University development;
- the donor(s) do not have the demonstrable expertise and/or the long-term commitment necessary to carry out the Project;
- due to limited donor financial capacity or overly optimistic cost estimates, it is not certain that the donor(s) has the resources to complete the Project; or
- campus oversight of the Project, particularly for Projects on campus with a range of design concerns, could reasonably be expected to lead to significant friction with the donor.

Note that there may also be instances where a donor will offer to construct a Project for the University on their land and donate the land and Project to The Regents upon completion. Such Projects require the same programmatic, policy and design reviews, and Regents gift approval in advance of construction, but the University is not the building official, Regents' design approval is not required, and there is no access license required. The University will, however, at a minimum want to: (i) determine suitability of the proposed site for the intended use; (ii) review title and obtain title insurance to assure that the site is free of liens and encumbrances; and (iii) review the site's environmental condition for hazardous materials.