MEMORANDUM

UTAH SYSTEM OF HIGHER EDUCATION

March 15, 2023

Potential Revisions to Board Policies on Capital Facilities

This memo seeks to respond to recent Board of Higher Education committee and Council of Presidents discussions on Board Policies related to capital facilities, acquisition of property, and use of capital project funds, among other capital-centric topics. Specifically, this memo will summarize existing policies in areas of question and offer potential revisions for Board consideration.

Architectural Programming, Feasibility Study and Design

Policy and Statutory Definitions

Under Board Policy R701-3.1, Architectural Programming is defined as "a formal decision-making process used to identify and define the goals and uses of a capital project and to define the scope of work and cost prior to design or construction."

Under Board Policy R741.3.4, Capital Program is defined as "the services to define the scope and purpose of a proposed capital project as defined in Utah Code section 63A-5b-502."

Utah Code section 63A-5b-502 defines "Programming" as "services to define the scope and purpose of an anticipated project, and may include developing standards such as area allowances, space allocation, travel distances, furniture and equipment requirements, lighting levels, acoustical requirements and particular space requirements such as special HVAC, plumbing, or security needs, among other considerations."

Utah Code section 63A-5b-502 and Utah Administrative Rule R23-3-10 outline the elements of a "Feasibility Study" including the need, appropriateness, funding sources, and economic and community impacts to a capital development project, as well as the extent of site evaluation and utility and infrastructure concerns that may relate to a project of the particular type, location, size, and magnitude, among other considerations.

Board Policy R701-8 requires approval from an institution's Board of Trustees, the Board of Higher Education, and DFCM prior to entering into a contract for architectural programming services for a future state-funded capital project that has not been approved by the Legislature. Institutions do not need this

Board's approval to architecturally program a facility that has been affirmatively authorized and funded by the Legislature. Moreover, Board Policy R702-7 does not require this Board to approve architectural programming for non-state funded projects.

Board Policy R741-4 requires institutions to submit a detailed capital program and a capital budget estimate reviewed by DFCM prior to the prioritization of a project, along with the total cost of ownership, cost of capital improvement, and other analyses. R741-4 further requires institutions to demonstrate how a proposed facility will meet institutional master plans and five-year plans. Board Policy R745-4 requires an institution to create a capital program and to collaborate with DFCM to create a realistic construction budget estimate ("CBE") for a project prior to seeking Board approval of an institution's use of dedicated capital project funds. Utah Code section 63A-5b-403 further requires non-dedicated projects to be prioritized by DFCM in accordance with Utah Administrative Rule R23-3-10.

Considerations for Policy Revision

The Board balances multiple objectives when approving institution requests for architectural programming. A feasibility analysis may need to be commissioned to research and assess the viability of a given project proposal early in the process, while final project programming is a condition for Board approval of dedicated and non-dedicated projects. The Board's interest, then, is to align approvals with the phase and timing of projects to not prohibit an exploratory feasibility analysis while also not approving full-scope programming for projects unlikely to be initiated within a five-year capital plan.

To address these concerns, the Board could more precisely define terms such as Feasibility Study, Architectural Programming, and Final Programming and Design to clarify which specific activities are being considered for Board approval. The Board could also require institution requests for final project programming to align with the institution's top priority dedicated and non-dedicated projects as reflected in an institution's five-year plan.

Acquisition of Real Property

Definitions and Policies

Under Utah Code section 63A-5b-401 Capital Development Project includes the purchase of real property if an appropriation is requested and made for the purchase. Utah Code section 53B-1-402 requires the Board to prioritize all appropriations requests.

Board Policy R703-3 requires the Board to review and consider for approval all institutional requests for real property acquisition that commit institutional funds that exceed $1,500,000. Additionally, that Policy requires the Board to review and consider for approval all property purchased that will include

instructional space outside of the institution's designated service area. *See* R703-3.1. Board Policy R703-6 delegates authority to acquire real property to an institution's Board of Trustees under certain conditions.

<u>Considerations for Policy Revision</u>

The Board put forward multiple institution land banking requests during the 2023 General Legislative Session and secured funding with great success. However, Board policy could be more robust in developing specific criteria that should be weighed when considering Board prioritization and approval of institution land bank requests and, more generally, acquisition of real property by institutions. Board Policy R706 requires institutions to complete and maintain a comprehensive facilities master plan as well as a five-year capital plan. Board Policy R741 requires the purchase of real property if an appropriation is requested and made for the purchase to be aligned with the institution's master plan and 5-year plan. The Board could consider strengthening the requirements of both or either of these plans to more explicitly contemplate both short and long-run land banking needs, including the identification of specific parcels of land, and then prioritize requests for appropriations or approval of property acquisition consistent with those plans.

Dedicated and Non-Dedicated Capital Project Prioritization Process

<u>Definitions and Board Policies</u>

Board Policy R741-3 defines a Dedicated Project as "a degree-granting institution's capital development project funded by the institution's allocation under Utah Code section 53B-22-201 or from the Board's prioritization of dedicated funds for a technical college." Board Policy R741-3 defines a Nondedicated Project as "a capital development project for which state funds from a source other than the institution's allocation are requested or used."

Board Policies R742 and R744 require the Board to annually review and prioritize nondedicated projects submitted by technical colleges and degree-granting institutions. Pursuant to these policies, by May of each year, the Board shall adopt priority guidelines pertaining to the most pressing and critical capital needs for the system not funded as dedicated projects. Moreover, OHCE and the Board will score projects according to criteria outlined in Board Policies R742-5, R744-5, and R741-5. For Technical Colleges, Board Policy R744-8 allows the Board to forward capital project requests for dedicated capital project funding based on prioritization at the Board's discretion.

<u>Considerations for Policy Revision</u>

As opposed to eliciting non-dedicated capital project requests and prioritizing them each year, the Board could move to a multi-year cycle where non-dedicated projects are evaluated and prioritized once every three years. This would allow for more organized planning and sequencing of system-priority projects

across institutions. A multi-year prioritization cycle would also help to integrate decision-making around architectural programming and land banking with specific capital development projects and in the context of a more durable short-term planning horizon.

Commissioner's Recommendation

This is an information item only; no action is required.