



Office of the City Manager

CONSENT CALENDAR

April 12, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Deputy City Manager, City Manager

Subject: Collection of Parking Space Rental Tax for City Owned Parking Lots; and
Amending BMC Section 6.24.050

RECOMMENDATION

Adopt a resolution authorizing the collection of Parking Space Rental Tax for City of Berkeley owned off street parking lots pursuant to BMC 7.48.070 starting June 1, 2022, and adopt a first reading an Ordinance amending BMC 6.24.050 to allow Parking Space Rental Tax to be placed in the general fund instead of a special fund.

FISCAL IMPACTS OF RECOMMENDATION

Parking Space Rental Tax is calculated at a rate of ten percent based on the rent collected for every occupancy of an off-street parking space. Each occupant will pay the tax at the time the rent is paid to the City's parking lot operator. The tax will be included in the published parking fees. The lot operator remits the tax within the next month following the month it was collected.

This tax would be imposed on the occupant of the parking spaces, but included in the published and posted parking fees. The goBerkeley program sets parking fees in response to parking demand. Based on current demand there would be no change in the total parking fees. Per BMC 7.48.190, "The tax collector shall transmit all moneys collected pursuant to this chapter to the treasurer for deposit to the credit of the general fund." Thus, payment of the tax from the off-street parking fund to the general fund would decrease net parking fund revenue, but not impact total City revenues. Since the Parking Space Rental Tax is a general fund tax, any future tax payment would be an increase in general fund revenue. Parking revenue has declined dramatically as a result of Covid-19 related travel reductions. The City's FY 2022 off street parking revenue is budgeted at \$2.2M. Moving forward 10% of revenue would be parking tax and instead of supporting the parking tax fund, would revert to the general fund. This will create a parking tax deficit that will need to be addressed through the budget process.

Imposing this tax on city owned off street parking lots will allow for the University of California, Berkeley to impose a tax on lots owned by UC. This will generate revenue which will revert to the City of Berkeley, though it is currently unclear how much.

CURRENT SITUATION AND ITS EFFECTS

The City is not currently collecting this parking lot tax on City owned parking lots. In the UC Berkeley and City of Berkeley settlement agreement signed on July 27, 2021, both parties agreed to begin to collect the Parking Space Rental Tax. There are two conditions for the University to comply, first, the City needs to start collecting the tax on its lots; second, the City needs to send a demand letter to BART to collect the Parking Space Rental Tax for BART parking facilities in Berkeley. The City plans to accomplish both of these before June 1, 2022.

BACKGROUND

The City passed the Parking Space Rental Tax ordinance in 1978 and it was imposed on privately operated parking effective August 1, 1979.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The UC Berkeley and City of Berkeley 2021 settlement agreement section 4.8 states, *“The University will cooperate in good faith with City efforts to collect and remit the City Parking Space Rental Tax from University-owned lots. The University will make best efforts to collect the tax from users by the date that the City begins collecting the tax from City-owned lots and demands collection by BART. The City acknowledges that the administrative processes between the City and the University related to collection of the tax must be established and that such establishment could preclude collection of the tax on behalf of the City prior to January 1, 2022.”*

This council item, if approved, would satisfy one of two settlement agreement conditions and support the city receiving parking tax revenue from the University of California that it does not currently receive.

CONTACT PERSON

Paul Buddenhagen, Deputy City Manager, City Manager, 981-7014

Attachments:

1. Resolution
2. Ordinance amending BMC 6.24.050
3. UC Berkeley and City of Berkeley Settlement Agreement July 2021

RESOLUTION NO. ##,###-N.S.

COLLECTION OF PARKING SPACE RENTAL TAX FOR CITY OWNED PARKING
LOTS

WHEREAS, the City of Berkeley passed the Parking Space Rental Tax ordinance in 1978 and it was imposed on privately operated parking effective August 1, 1979; and

WHEREAS, the City of Berkeley is not currently collecting this parking lot tax on City owned parking lots; and

WHEREAS, in the UC Berkeley and City of Berkeley settlement agreement signed on July 27, 2021, both parties agreed to begin to collect the Parking Space Rental Tax; and

WHEREAS, the University will make best efforts to collect the tax from users by the date that the City begins collecting the tax from City-owned lots and demands collection by BART; and

WHEREAS, the City of Berkeley wishes to begin collecting tax on lots it owns and from the University of California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it authorizes the collection of Parking Space Rental Tax for City of Berkeley owned off street parking lots pursuant to BMC 7.48.070 starting June 1, 2022.

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 6.24.050 USE OF MONEY
DEPOSITED IN PARKING METERS AND PAY-AND-DISPLAY STATIONS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 6.24.050 is amended to read as follows:

Except as permitted under subsection H of this section, all moneys collected from parking meters and pay-and-display stations used on municipal off-street parking lots, other than the Parking Space Rental Tax (BMC Chapter 7.48), shall be placed in a special fund, which fund shall be devoted exclusively to the following purposes:

- A. For the purchasing, leasing, installing, repairing, maintaining, operating, removing, regulating and policing of parking meters in the City, and for the payment of any and all expenses relating or incidental thereto;
- B. For the purchasing, leasing, acquiring, improving, operating and maintaining of off-street parking facilities in the City;
- C. For the installation and maintenance of traffic control devices and signals;
- D. For the painting and marking of streets and curbs required for the direction of traffic and the parking of motor vehicles;
- E. For the proper regulation, control and inspection of parking and traffic upon the public streets;
- F. To be pledged as security for the payment of principal of and interest on off-street parking revenue bonds issued by the City;
- G. Additional Revenue deemed to be generated by the goBerkeley Pilot Program will be used to fund goBerkeley efforts, pursuant to Section 1012(b) of Intermodal Surface Transportation Efficiency Act of 1991, as amended, as agreed in the 2012 Cooperative Agreement between the City of Berkeley, the California Department of Transportation and the Federal Highway Administration.
- H. Surplus money not utilized under subsections A through F of this section may be transferred to the General Fund. The City Manager or their designee may make an annual determination as to what is surplus based on the needs and obligations of the special fund and transfer such surplus to the General Fund.

Section 2. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

UC BERKELEY – CITY OF BERKELEY SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into and effective as of the date last signed below (“Effective Date”), by and between the City of Berkeley (“City”), a charter city, and the Regents of the University of California (“Regents”) and the University of California, Berkeley campus (the “University”) (each a “party” and collectively the “parties”).

RECITALS

WHEREAS, the City is a municipal corporation established pursuant to Article XI of the California Constitution; and

WHEREAS, the University is a constitutionally created entity pursuant to Article IX, Section 9 of the California Constitution, with property located within the City’s boundaries; and

WHEREAS, the University and the City entered into the 2020 LRDP Litigation Settlement Agreement in 2005 (the “2005 Settlement Agreement”), in order to settle litigation with respect to the University’s 2020 Long Range Development Plan (“2020 LRDP”) and the related Environmental Impact Report (“2020 LRDP EIR”); and

WHEREAS, the 2005 Settlement Agreement terminates at the conclusion of the 2020-2021 academic year (on or about August 13, 2021); and

WHEREAS, the Regents have adopted the 2021 Long Range Development Plan (“2021 LRDP”) and certified the 2021 LRDP EIR on July 22, 2021; and

WHEREAS, in addition to evaluating the environmental effects of the 2021 LRDP, the 2021 LRDP EIR includes project-level review of two proposed student housing projects, the “Anchor House Student Housing Project” and the “People Park’s Housing Project;” and

WHEREAS, in June 2019, the City filed a lawsuit challenging the adoption of the Supplemental Environmental Impact Report for the Upper Hearst Development for the Goldman School of Public Policy; and

WHEREAS, on December 29, 2020, the City moved to be made a party to case, *Save Berkeley’s Neighborhoods v. UC Regents, Case No. RG19006256*. The action relates to the University’s proposed intercollegiate beach volleyball facility at its Clark Kerr Campus and reformation of the Declaration of Covenants and Restrictions relating to land use restrictions at the Clark Kerr Campus entered into by the University in 1982. The Alameda County Superior Court granted the City’s motion on January 28, 2021; and

WHEREAS, the parties wish to continue and enhance the cooperative relationship they have enjoyed during the term of the 2005 Settlement Agreement as well as to settle ongoing disputes over certain University projects and avoid litigation over certain pending and future University projects, including the 2021 LRDP and the aforementioned housing projects; and

WHEREAS, the parties have negotiated in good faith and agreed to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the City and the University agree as follows:

1. **STATEMENT OF SHARED GOALS AND PRINCIPLES**

1.1 The City recognizes the significant contributions that the University makes to the surrounding community and supports its efforts to plan for its future needs.

1.2 The University recognizes that the City environs are as much a part of the University experience as the campus itself, and the quality of City life is a large part of what makes the University a unique and desirable place to learn, work, and live.

1.3 The City wishes to work cooperatively with the University in planning for future capital projects on the Clark Kerr Campus and City Environs and advance projects that will improve the neighborhoods adjacent to the main campus and the Clark Kerr Campus.

1.4 The City and University have successfully completed various planning documents including the 2001 Transportation Demand Management Study, the 2003 Draft Southside Plan and the 2012 Downtown Area Plan, with broad citizen participation and community engagement.

1.5 The 2005 Settlement Agreement resulted in a historic partnership between the parties, including a joint planning process for the Downtown area, annual payments to support city services and the initiation of the Chancellor's Community Partnership Fund.

1.6 The City and the University wish to build on the positive relationship established through the 2005 Settlement Agreement.

1.7 The City and the University support efforts to increase the production and supply of housing for University students, to reduce housing instability and pressures on the city housing market.

1.8 The City seeks to increase the availability and production of housing at all income levels, and is evaluating zoning adjustments (e.g. by allowing construction of housing facilities up to twelve stories) to encourage the construction of more student housing in the City's Southside Area, located directly south of the University's main campus.

1.9 The City and the University have a shared interest in collaboration to improve their surrounding community, in particular neighborhoods that are adjacent to the main campus.

1.10 To wit, the University makes annual contributions to the City's Proposition 218 Stormwater and Street Light Fund, the Downtown Berkeley Association, and the Telegraph Improvement District.

1.11 The parties acknowledge the importance to the City of maintaining properties on the City's tax rolls, and the University commits that University-owned land will always be the first option explored by the University for both new program space and parking.

1.12 The University has set a goal in its 2021 Long Range Development Plan to limit undergraduate enrollment over the term of the planning horizon to an average of one percent per year, compounded annually.

2. **DEFINITIONS & ABBREVIATIONS**

2.1 The Upper Hearst Development for the Goldman School of Public Policy shall be referred to herein as “Upper Hearst Project,” and the Supplemental Environmental Impact Report prepared for the Upper Hearst Project shall be referred to herein as “SEIR”.

2.2 The “main campus” of the University is defined as all property owned by the University within the area bounded by Hearst Avenue to the north, Gayley Road/Piedmont Avenue to the east, Bancroft Way to the south, and Oxford Street/Fulton Street to the west.

2.3 The “Clark Kerr Campus” of the University is defined as all property owned by the University within the area bounded by Dwight Way to the north, East Bay Regional Park District to the east, Derby Street to the south, Warring Street to the west.

2.4 “Section” refers to each numbered paragraph of the Agreement.

2.5 Unless this Agreement specifically states otherwise, all terms are binding on the parties only during the term of the Agreement.

3. **FINANCIAL CONSIDERATION: ANNUAL PAYMENT**

3.1 The University agrees to make an annual payment to the City of \$4,100,000, which amount shall be increased annually by three percent compounding as described in Section 3.4 below (the “Annual Payment”) each year from 2021 through 2036 inclusive. The University shall make each Annual Payment each year by July 1 or, in 2021, by the Effective Date.

3.2 The Annual Payment is intended to be comprehensive and is inclusive of any costs to mitigate financial impacts to the City resulting from the approval, adoption or certification of the following projects: (1) the Upper Hearst Project and the SEIR, (2) any projects implementing the 2021 LRDP, including projects located on the main campus, the Clark Kerr Campus, and any other projects located off of the University’s main campus that consist of at least 80 percent assignable square footage of housing, (3) the Anchor House Student Housing Project, and (4) the People’s Park Housing Project. The City reserves all of its rights with regards to off-main campus capital projects that are not identified in this paragraph.

3.3 The Annual Payment shall not eliminate or otherwise supersede ongoing fees for services paid to the City by the University as of June 1, 2021, which fees may be increased pursuant to Section 5.1 of this Agreement. The Annual Payment supersedes and replaces the contributions specified in the 2005 Settlement Agreement annual allocation.

3.4 Except as provided in Sections 3.5 and 3.6, the City shall allocate the Annual Payment funds as follows, unless otherwise agreed to by the parties during the term of the Agreement. Each allocation is individually subject to the annual three percent increase and

shall be transferred to the City in a single payment no later than July 31st of each year during the term of the Agreement. The City is not required to spend the entire Annual Payment every year, and may accumulate funds from year to year. This agreement provides a funding mechanism only and does not constitute approval of any of the improvements listed herein.

3.4.1. \$2.8 million (increased by three percent per year) for fire and other City services;

3.4.2. \$1.3 million (increased by three percent per year) for capital projects and other services benefiting residents living within one-half mile of the University's main campus boundaries and the Clark Kerr Campus, including but not limited to a joint BPD-UCPD Telegraph Area Beat (a community-based policing program). Priorities for these projects shall be determined by City and University leaders pursuant to Section 3.7.

3.5 Notwithstanding the above, with regard only to the Annual Payment made in 2021 ("2021 Annual Payment"):

3.5.1. \$920,000 shall be allocated by the City to the City's Housing Trust Fund, in recognition of the demolition of eight rent-controlled units at 1921 Walnut Street for the Anchor House Student Housing Project;¹

3.5.2. \$130,000 shall be allocated by the City for a permanent restroom in the Telegraph area;

3.5.3. An amount determined through joint planning between the City and the University will be allocated to fund a day-time drop-in/service center in the Telegraph area for the unhoused population;

3.5.4. The City shall allocate the remainder of the 2021 Annual Payment as it determines to be appropriate.

3.6 Notwithstanding the above, with regard only to the Annual Payment made in 2022 ("2022 Annual Payment"):

3.6.1. \$250,000 shall be allocated by the City for Piedmont/Channing traffic circle pedestrian and street lighting improvements;

3.6.2. Amount to be determined for wildfire risk management and fuel reduction on UC owned property;

3.6.3. The City shall allocate the remainder of the 2022 Annual Payment in compliance with Section 3.4.

3.7 The City will spend not less than 30 percent of the Annual Payment on services and infrastructure (inclusive of any services or infrastructure funded pursuant to

¹ This amount does not replace or in any way impact any relocation benefits provided by the University to tenants at 1921 Walnut Street.

Sections 3.4.2, 3.5.2, 3.5.3, or 3.6.1) that benefit City residents living within one-half mile of the University's main campus boundaries and the Clark Kerr Campus. If the City fails to adhere to this commitment, then the University has the right to terminate this Agreement after providing the City written notice of the City's breach and a reasonable opportunity to cure the breach pursuant to Section 8.5. The Chancellor, Mayor, City Manager and Vice Chancellor for Administration shall meet annually to review the City's proposed list of projects and/or services satisfying the requirements of this Section. The parties shall use best efforts to reach mutual agreement on the list of expenditures, but the City shall make the allocations of its own expenditures, consistent with the terms of this Agreement. The City will not allocate any portion of the Annual Payment to the development of a new fire station, should the City decide to develop a new fire station during the term of this Agreement.

3.8 Beginning on July 1, 2023, the City shall make reasonable efforts to provide the University with an annual summary statement setting forth its use of the funds described in Section 3.4 since the prior Annual Payment. If the City fails to adhere to the commitments regarding its expenditures described in Section 3.4 above, then the University may (but is not obligated to) terminate this Agreement, after providing the City written notice of the City's breach and a reasonable opportunity to cure the breach pursuant to Section 8.5.

3.9 The University intends, but is not obligated, to continue to fund the Chancellor's Community Partnership Fund during the term of this Agreement in the amount of approximately \$300,000/year, increased by three (3) percent annually. The University shall provide a summary of these expenditures to the City annually.

4. COOPERATIVE RELATIONSHIP AND PLANNING REGARDING MATTERS OF MUTUAL CONCERN

4.1 The Chancellor, the Vice Chancellor for Administration, the Mayor, and the City Manager, and the City Attorney (as appropriate) will meet quarterly to review implementation of this Agreement and discuss areas of mutual interest or concern. The University will provide the City with timely written updates concerning its implementation of the 2021 LRDP, changes in enrollment, and campus housing production. The City and the University may mutually agree to reduce the frequency of these meetings to not less than annual if there is no longer a perceived need to meet as frequently as quarterly.

4.2 The University and the City will negotiate in good faith to establish within two years of the Effective Date a collaborative planning process for the City to review and comment upon campus capital projects located in the City environs and implementation of sustainable development standards prior to campus approval of such projects.

4.3 The University will continue its practice of typically voluntarily honoring the City's existing zoning standards in the design of projects off the main campus. The University will consult with City staff, the City Council and relevant commissions as well as community members about new projects off of the main campus and respond to any reasonably identified concerns presented during the public process. This consultation shall include, but not be limited to, the following actions:

4.3.1. LRDP Projects. While implementing the 2021 LRDP, the University will continue to review and consider the City's adopted planning and zoning documents, including without limitation the Downtown Area Plan (DAP) and the Southside Area Plan (SAP) when making decisions about the location of University facilities off of the main campus, and will use the design guidelines and standards prescribed in the DAP or SAP, as applicable, when designing projects in the respective plan areas to the extent they are consistent with the program for the building.

4.3.2. Off-Campus Projects. The University will submit all capital projects off of the main campus with an anticipated value in excess of \$5 million to the City's Planning Director and will either incorporate the City Planning Director's comments into the project or explain in writing its decision not to do so. Additionally, the University will submit all capital projects off of the main campus with a value in excess of \$5 million to the City's 4x6 City/Student/UC committee so that the committee and/or its members may provide comments to the University regarding such projects. When the University determines that it will not implement such projects consistent with the City's adopted planning and zoning documents, the University will, upon the request of the City's Planning Director, provide a written explanation of the reasons for such decision.

4.4 If campus undergraduate enrollment growth exceeds one percent per year on average over three consecutive years, then the Mayor, City Manager, the Chancellor and the Vice Chancellor for Administration shall meet to discuss the potential physical impacts of enrollment increases on the City and whether any amendments should be made to the terms of this Agreement to address the increase. The City shall present specific data and evidence to illustrate the physical impacts of campus enrollment increases on the City.

4.5 During the term of this Agreement, so long as there is demonstrated need on and in areas adjacent to University, the University will continue to fund a position of a campus social worker to work with the unhoused population who visit People's Park and in the broader Telegraph area, inclusive of Willard Park.

4.6 The City and University are parties to a Memorandum of Understanding (City of Berkeley Resolution No. 51,172-N.S.) regarding the development of the Clark Kerr Campus dated April 23, 1982 (the "MOU"). The terms of the MOU are not altered by this Agreement, though they are generally described for reference in this Section and its subsections. During the remaining term of the MOU, the University and the City will comply with the MOU by working cooperatively in planning and development of projects on the Clark Kerr Campus that would be constructed prior to the expiration of the time term of the MOU in 2032. The City and the University will also consult and work cooperatively regarding potential expanded public access to recreational facilities on the Clark Kerr Campus.

The MOU addresses the potential re-development of the property according to the Dwight-Derby Site Plan ("Site Plan") prior to 2032 (the time term of the MOU is fifty years). The MOU generally provides that the Clark Kerr Campus may not be developed, built upon, improved, operated, occupied, used or leased except as provided for and in accordance with the terms of the MOU. The MOU also generally provides that the University will maintain recreational facilities consistent with joint use agreements between the City and University. The

MOU also generally provides that the University will notify the City of Berkeley Landmarks Preservation Commission and provide 60 days to review and comment on any proposal to construct new buildings, demolish or significantly modify existing structures of architectural or historical significance, or remove existing landscaping or other significant site improvement. The MOU also generally provides that the University may depart from the plans, provisions, goals, and objectives of the Site Plan if such departure is authorized by resolution adopted by the City Council. The University reaffirms its commitment to work in partnership with the City as prescribed in the MOU.

With regard to any development planned to be undertaken by the University after the expiration of the MOU in 2032, but during the time term of this Agreement, the City will take a lead role in soliciting community input along with the University for capital renovation and capital projects (demolition, remodeling, retrofit and new construction) at the Clark Kerr Campus. The City and University will work cooperatively to develop any operational mitigations, if necessary, regarding capital renovation and capital Projects at the Clark Kerr Campus, and will consult and work cooperatively with the City regarding public access to recreational facilities on the Clark Kerr Campus.

4.7 The University's leadership will work with the City's elected officials and staff to study the impacts and plan for the potential closure of Alta Bates Hospital and its emergency room in Berkeley, and identify alternatives to continue emergency and acute care for the University and city population.

4.8 The University will cooperate in good faith with City efforts to collect and remit the City Parking Space Rental Tax from University-owned lots. The University will make best efforts to collect the tax from users by the date that the City begins collecting the tax from City-owned lots and demands collection by BART. The City acknowledges that the administrative processes between the City and the University related to collection of the tax must be established and that such establishment could preclude collection of the tax on behalf of the City prior to January 1, 2022.

4.9 The University shall require its commercial tenants in buildings leased to non-University parties by the University (when such buildings are not on the main campus or the Clark Kerr Campus) for the sole purpose of generating revenue (as opposed to carrying out the program of the University) to obtain City permits and pay City impact fees. The University shall determine in good faith whether a space is leased to carry out its programs or exclusively to generate income. Nothing in this Section prevents the City from disagreeing with the University's determination that a commercial tenancy is in furtherance of the University's program.

4.10 The University and the City will collaborate in good faith to reach an agreement regarding the University's master leasing of off-campus residential buildings, and will meet and confer in an effort to reach such an agreement within one year of the Effective Date. The University and City contemplate that such an agreement will set a date by which the University would reduce or eliminate its use of master leasing of residential facilities, excepting only temporary leasing necessary to create surge space during the renovation or construction of

campus housing facilities. This Section does not require either party to enter into such an agreement, but the parties shall use their good faith best efforts to do so.

4.11 The University and the City will work cooperatively in an effort to develop and implement plans to address the impacts of special events planned by either party or by third parties that impact the other party, including but not limited to graduations, game days, move-ins, move-outs, City parades, City street fairs, and temporary traffic changes. The parties will similarly consult about events planned by neither the City nor University but impacting both, such as free speech activities. The plans will address at least the following issues: street closures, temporary and permanent parking changes, illegal dumping, unlawful camping, and responses to persons experiencing homelessness.

4.12 The University commits in concept to assisting the City in its development of a new fire station by contributing land off of the main campus owned by the University as of the Effective Date and suitable for the development of a City fire station intended to serve the City and campus communities. The City and the University will engage in cooperative joint planning for a potential fire station in a location identified through such planning. This provision does not constitute a commitment by either party to entitle or fund a future fire station nor does this provision evidence that the City or the University have determined such a fire station to be necessary at this time.

4.13 The University will make a presentation to the City's Planning Director (who will share the information presented with the City's Design Review Committee for comment) regarding the Upper Hearst Project's proposed final design and exterior color scheme. The University will consider any comments and concerns raised regarding the design and color scheme by the City's Planning Director and address those concerns, in writing, prior to finalizing the construction drawings.

4.14 The University shall consider ground leasing to Resources for Community Development (or a similar private nonprofit housing developer) land at People's Park for the construction of a housing project to provide affordable and permanent supportive housing for the homeless. The University and City agree that the campus will entitle the project in order to enable the non-profit developer to fund and construct the project, and will work with the City and non-profit developer to support state and outside funding to complete the project. The obligations of the University regarding the supportive housing project are contingent upon compliance with the California Environmental Quality Act and the approval of the design of the project by the Board of Regents, which is presently scheduled to consider the project in September of 2021.

4.15 Explore relocation and the cost of relocating the eight-unit building at 1921 Walnut Street, if it is technically feasible, to a site to be determined, prior to the commencement of construction of the Anchor House Student Housing Project, so long as moving the building does not result in increased time to the Anchor House Student Housing Project and/or the University, or delay the construction of the Anchor House Student Housing Project.

4.16 Nothing in this Agreement shall be construed to limit, in any way, the land use or entitlement authority of the parties within their respective jurisdictions, nor to place any limits on either party's authority to undertake land use approvals, including but not limited to capital and other development projects, land use and development plans, or amendments thereto.

4.17 The University and the City will meet in good faith to discuss an extension or replacement of this Agreement beginning no later than two years prior to the Expiration Date, upon the request by either party for such a meeting.

4.18 If a third party challenges this Agreement in court, the parties will work cooperatively to defend the Agreement. If a court determines that there are legal deficiencies in the Agreement or the process used to adopt the Agreement, the parties will work in good faith to correct any legal deficiencies and readopt comparable terms.

5. **CITY SERVICES, FEES AND ASSESSMENTS**

5.1 During the term of the Agreement, the City will not increase any municipal or service fees currently charged to the University by more than the percentage increase applicable to the public generally for such fees or impose or apply any municipal fees (including without limitation sewer fees and any developer impact fees) to the University that are not already being paid by the University. For the purpose of determining the baseline fee to which such increases would apply, the fees charged as of June 1, 2021 shall be the fees that the University is obligated to pay, as those fees may be increased consistent with the fee increase limitation of this Section.

5.2 The City will not make any proposals to include property owned by the University in any new assessments without the prior consent of the University.

6. **CURRENT AND FUTURE LITIGATION**

6.1 **Upper Hearst.** The City agrees to promptly dismiss the Upper Hearst Project lawsuit with prejudice and will represent to any court in the remaining Save Berkeley's Neighborhoods lawsuit challenging the Upper Hearst Project and SEIR (Alameda County Superior Court Case No. RG19022887) that the City does not oppose the Upper Hearst Project or the SEIR. The parties will be responsible for payment of their own attorneys' fees and costs, regardless of any decision issued by the trial court. If the City terminates this Agreement pursuant to either Section 7.3 or 7.4 below, this Section 6.1 shall expressly survive such termination.

6.2 **Clark Kerr.** The City agrees to promptly dismiss the City as a party with prejudice in the Clark Kerr Covenants Lawsuit (Alameda County Superior Court Case No. RG19006256) and will represent to any court in the remaining Save Berkeley's Neighborhoods lawsuit challenging the Clark Kerr Covenants that the City has dismissed or intends to dismiss all causes of action in the lawsuit with prejudice. The parties will be responsible for payment of their own attorneys' fees and costs. If the City terminates this Agreement pursuant to either Section 7.3 or 7.4 below, this Section 6.2 shall expressly survive such termination.

6.3 2021 LRDP, People’s Park Housing Project, and Anchor House Student Housing Projects. The City agrees not to file any lawsuits, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) that opposes: (1) the 2021 LRDP and 2021 LRDP EIR (2) the Anchor House Student Housing Project, (3) the People’s Park Housing Project, including without limitation the permanent supportive housing component; provided, however, the City retains all rights to challenge the Anchor House Student Housing Project and the People’s Park Housing Project if the University materially changes the scope of such projects in such a way that would cause new significant impacts or substantially increase the severity of impacts previously found to be significant. For avoidance of doubt, the City’s agreement in this Section with regard to the 2021 LRDP and 2021 LRDP EIR does not apply to amendments to the 2021 LRDP adopted during the term of this Agreement that are not adopted in furtherance of the projects described in Section 6.4 about which the City agrees that it will not file any lawsuit, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) under the California Environmental Quality Act (“CEQA”) or any other theory. For the purposes of this Section, the scope of the Anchor House Student Housing Project and the scope of the People’s Park Housing Project are the respective project descriptions set forth in the 2021 LRDP EIR presented to the Regents for certification at its regular meeting in July 2021. If the City terminates this Agreement pursuant to either Section 7.3 or 7.4 below, this Section 6.3 shall expressly survive such termination.

6.4 Future Campus Capital Projects, Off-Campus Housing Projects & Enrollment Decisions. Unless the City terminates this Agreement pursuant to the termination rights described in Section 7.3 or 7.4 below, while the Agreement is in effect, the City will not file any lawsuit, pursue any legal challenges, or directly or indirectly support any litigation (including without limitation through funding or by encouraging any litigation by an organization) under CEQA or any other theory to challenge the University’s decision to approve: (1) a campus capital project on the University main campus or the Clark Kerr Campus (“Campus Capital Project”); (2) any other campus capital project off of the University main campus that consists of more than 80 percent assignable square footage of housing (“Off-Campus Housing Project”); or (3) any enrollment decision made by the State of California or the University (“Enrollment Decision”). Unless the City terminates this Agreement pursuant to the termination rights described in Section 7.4 described below, the City will also not file any CEQA action challenging an enrollment increase.

6.5 If Sections 6.3 or 6.4 are violated, this Agreement shall immediately terminate and be of no further force or effect, and the University need not comply with the notice and opportunity to cure provisions set forth in Section 8.5. If the City contends that the University has wrongfully invoked this Section and that the Agreement remains in effect in spite of the University’s contention that this Section applies, the City may commence a lawsuit alleging that this Agreement remains in effect and may seek injunctive relief to compel the University to comply with the Agreement’s terms.

6.6 For avoidance of doubt, the phrase “pursue any legal challenges, or directly or indirectly support any litigation” as used in Sections 6.1, 6.2, 6.3 and 6.4 means a formal action by the City to commence litigation or to provide City funds or City resources to

support litigation instigated by others, and does not mean the enactment of non-binding resolutions of the City Council or City boards and commissions, the statements of individual persons whether acting in their personal or official City capacities, or submission of comments to the University or other public agencies.

7. TERMINATION

7.1 This Agreement shall become effective upon execution of the undersigned, and shall supersede, replace, and terminate the 2005 Settlement Agreement in its entirety. Any monetary payments, if any, by the University to the City that would have been due on July 1, 2021 under the 2005 Settlement Agreement are replaced in full by the payment called for on July 1, 2021, in Section 3.1 of this Agreement. This Agreement shall terminate on June 30, 2037 (“Expiration Date”), or at such earlier date as set forth in this Agreement.

7.2 Intentionally Omitted.

7.3 Upon prior written notice to the University, the City may terminate this Agreement if the City decides to file a lawsuit challenging a Campus Capital Project or Off-Campus Housing Project, as defined in Section 6.4. If the City desires to file such a lawsuit, then the City may terminate this Agreement and permanently forego entitlement to future Annual Payments under this Agreement. In the event of such termination, the City’s obligation to not challenge project approvals under Sections 6.1, 6.2 and 6.3 expressly survive such termination. In the event of such termination, in such litigation or in any litigation filed by the City regarding a specific proposed capital project that is tiered from the 2021 LRDP EIR, the City shall not seek any compensation or damages related to enrollment increases at the University so long as the University does not increase campus undergraduate enrollment by an amount that exceeds one percent annual enrollment growth, compounded annually, compared to the 2020-2021 undergraduate enrollment level, at the time such litigation is filed.

7.4 Upon prior written notice to the University, the City may terminate this Agreement (which shall also permanently terminate the University’s obligation to make Annual Payments pursuant to Section 3.1 of this Agreement) if the University decides to increase campus undergraduate enrollment by an amount that exceeds one percent annual enrollment growth, compounded annually, compared to the 2020-2021 undergraduate enrollment level. In the event of such termination, the University and the City will have no further obligations under this Agreement except that the City’s obligation to not challenge a decision to approve the Upper Hearst Project, the 2021 LRDP, the Anchor House Student Housing Project and the People’s Park Housing Project under Sections 6.1, 6.2 and 6.3 expressly survives such termination.

8. MISCELLANEOUS

8.1 Time shall be of the essence in the performance and/or satisfaction of this Agreement and/or each individual term, promise, provision, obligation, sentence, clause or paragraph thereof.

8.2 The parties intend and agree that this Agreement, and each and every provision thereof, shall be binding and enforceable upon the parties according to the terms and provisions specified herein.

8.3 This written Agreement constitutes the entire Agreement between the parties as to the matters referred to herein. Any other terms, promises, provisions, obligations or agreements by or between the parties shall be enforceable only as set forth in any other applicable written agreement.

8.4 After consultation with the undersigned counsel, each party to this Agreement represents and warrants that it authorized and has the capacity to enter into this Agreement, and that each signatory to this Agreement on its behalf is authorized and has the capacity to sign this Agreement on its behalf.

8.5 Except to the extent other remedies for default under this Agreement are otherwise specified herein, the parties' obligations under this Agreement shall be specifically enforceable, and any non-defaulting party may bring an action for specific performance or any other appropriate relief in the Superior Court, after providing written notice of breach to the breaching party and an opportunity to cure, as provided in Sections 8.5.1 to 8.5.2.

8.5.1. Except with regard to City breaches pursuant to Section 6.3 or Section 6.4, if a party to this Agreement believes another party has violated this Agreement, then the party asserting a violation shall notify the other party in writing. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy.

8.5.1.1 If the University asserts that the City has improperly spent or allocated a portion of an Annual Payment pursuant to Sections 3.4, 3.5, 3.6, or 3.7, the University shall offer as one available corrective action that the City allocate an equivalent amount of City funds for eligible services the following year.

8.5.2. The notifying party and the party receiving notice shall meet within fourteen (14) calendar days after the receiving party receives the notice, unless a different date is agreed to by both parties, to attempt to resolve the issues raised by the notice. If the parties are unable to reach agreement on whether a breach has occurred and/or take corrective action or remedy the breach within forty-five (45) days after this meeting, then the parties may pursue any enforcement process permitted by this Agreement.

8.6 This Agreement is intended only for the benefit of the parties. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

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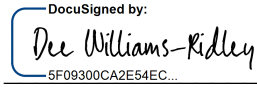
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CITY OF BERKELEY

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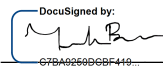
Jesse Arreguin
Mayor

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Dee Williams-Ridley
City Manager

Approved as to form:

CITY ATTORNEY

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Farimah Faiz Brown
City Attorney

7/27/2021
_____, 2021

UNIVERSITY OF CALIFORNIA,
BERKELEY

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Carol T. Christ
Chancellor

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Marc Fisher
Vice Chancellor, Administration

[Signatures continued on next page]

7/27/2021, 2021

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Approved as to form:
GENERAL COUNSEL OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

DocuSigned by:

Alison Krumbein

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Alison Krumbein
Attorney for the University of California and
the Regents of the University of California