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11 CITY OF BERKELEY

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 UNITED STATES POSTAL SERVICE,

15 Plaintiff,

16 vs.

17 CITY OF BERKELEY

18 Defendant.

Civ. No. 16-cv-04815WHA

CITY OF BERKELEY’S ANSWER TO
PLAINTIFF’S COMPLAINT

19 Respondent CITY OF BERKELEY (“City”) hereby answers the Complaint for
20 Declaratory and Injunctive Relief (“Complaint”) filed by the UNITED STATES POSTAL
21 SERVICE (“USPS”) as follows:

22 1. Answering Paragraph 1, the City admits that this action seeks a declaration that
23 Berkeley Municipal Code Chapter 23E.98 is invalid and an injunction against its enforcement or
24 implementation. Except as specifically admitted, the City denies the allegations of Paragraph 1.
25 In addition, Paragraph 1 contains legal conclusions and/or citations to legal authorities to which
no response is required.

26 2. Answering Paragraph 2, the City admits that this action seeks a declaration that
27 Berkeley Municipal Code Chapter 23E.98 is invalid and an injunction against its enforcement or
28 implementation.

1 3. The City admits the allegations of Paragraph 3.

2 4. The City admits the allegations of Paragraph 4.

3 5. The City admits the allegations of Paragraph 5.

4 6. The City admits the allegations of Paragraph 6.

5 7. The City admits the allegations of Paragraph 7.

6 8. Answering Paragraph 8, this paragraph contains legal conclusions and/or citations
7 to legal authorities to which no response is required.

8 9. Answering Paragraph 9, this paragraph contains legal conclusions and/or citations
9 to legal authorities to which no response is required.

10 10. Answering Paragraph 10, this paragraph contains legal conclusions and/or
11 citations to legal authorities to which no response is required.

12 11. Answering Paragraph 11, this paragraph contains legal conclusions and/or
13 citations to legal authorities to which no response is required.

14 12. The City lacks sufficient information or belief in order to answer the allegations
15 of Paragraph 12, and on that basis denies those allegations.

16 13. The City admits the allegations of Paragraph 13.

17 14. Answering Paragraph 14, the City admits that in 2012 and/or 2013, the USPS
18 made decisions to relocate postal operations from 2000 Allston Way (the “Property”) and to sell
19 the Property. Except as specifically admitted, the City denies the allegations of Paragraph 14.

20 15. Answering Paragraph 15, the City admits that the USPS took certain actions
21 required by law and regulation to solicit public comment on its decisions to relocate and to sell
22 the Property. Except as specifically admitted, the City denies the allegations of Paragraph 15.

23 16. Answering Paragraph 16, the City admits that the USPS began marketing 2000
24 Allston Way through its broker, that the marketing materials discussed restrictions related to
25 preservation of historic features, and that they indicated that the USPS was interested in leasing
26 part of the building back for its retail operations. Except as specifically admitted, the City denies
27 the allegations of Paragraph 16.

28 17. The City admits the allegations of Paragraph 17.

1 18. Answering Paragraph 18, the City admits that on April 30, 2013 it sent a letter to
2 the USPS appealing the decisions to relocate the post office from the Property and to sell the
3 Property, and that the letter speaks for itself. The City further admits that on July 18, 2013, the
4 USPS issued a Final Determination as alleged in Paragraph 18. Except as specifically admitted,
5 the City denies the allegations of Paragraph 18.

6 19. The City admits the allegations of Paragraph 19.

7 20. The City admits the allegations of Paragraph 20, except that it further alleges that
8 the dismissal was without prejudice.

9 21. The City admits the allegations of Paragraph 21.

10 22. Answering Paragraph 22, the City admits that on September 3, 2013, the USPS
11 submitted a draft preservation covenant for the Property to various consulting parties, and that
12 the covenant included various terms prescribing preservation obligations. Except as specifically
13 admitted, the City denies the allegations of Paragraph 22.

14 23. Answering Paragraph 23, the City admits that the USPS proposed that it be the
15 covenant holder, and that the City took the position that it should be compensated annually for
16 the life of the covenant for its cost of fulfilling that function but offered to settle for a single
17 lump sum payment of \$75,000. Except as specifically admitted, the City denies the allegations of
18 Paragraph 23.

19 24. The City lacks sufficient information or belief in order to answer the allegations
20 of Paragraph 24, and on that basis denies those allegations.

21 25. Answering Paragraph 25, the City admits that the USPS proposed a five-year
22 leaseback provision with three 5-year options to extend the lease, and that the City viewed the
23 total 20-year period as too short. Except as specifically admitted, the City denies the allegations
24 of Paragraph 25.

25 26. Answering Paragraph 26, the City admits that the USPS terminated the Section
26 106 consultation process. Except as specifically admitted, the City denies the allegations of
27 Paragraph 26.

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1 27. Answering Paragraph 27, the City admits that in 2013 the City Council began its
2 consideration of the ordinance that ultimately became the Civic Center Historic Overlay District,
3 which was codified as Berkeley Municipal Code (BMC) Chapter 23E.98. Except as specifically
4 admitted, the City denies the allegations of Paragraph 27.

5 28. The City admits the allegations of Paragraph 28.

6 29. Answering Paragraph 29, the City admits that the statement allegedly made by
7 Planning Commissioner Pollack is contained in the minutes of the November 6, 2013, Planning
8 Commission meeting, but denies that it has the meaning attributed to it by the USPS in
9 Paragraph 29. Except as specifically admitted, the City denies the allegations of Paragraph 29.

10 30. Answering Paragraph 30, the City admits that the statements allegedly made by
11 the Council members Wengraf and Anderson are contained in the captioner's transcript of the
12 January 28, 2014, City Council meeting, but denies that they have the meaning attributed to them
13 by the USPS in Paragraph 30. Except as specifically admitted, the City denies the allegations of
14 Paragraph 30.

15 31. The City lacks sufficient information or belief in order to answer the allegations
16 of Paragraph 31, and on that basis denies those allegations.

17 32. Answering Paragraph 32, the City admits that on September 9, 2014, it adopted
18 the first reading of the Civic Center Historic Overlay District (BMC Chapter 23E.98). The City
19 alleges that the Civic Center Historic Overlay District, as well as the underlying zoning district,
20 speak for themselves as to what uses are permitted or permissible, and with what level of
21 discretionary review. Except as specifically admitted, the City denies the allegations of
22 Paragraph 32.

23 33. The City denies the allegations of Paragraph 33, and further alleges that the
24 boundaries of the Civic Center Historic Overlay District conform to the boundaries of the
25 National Register Civic Center Historic District designated *in 1998*.

26 34. The City denies the allegations of Paragraph 34.

27 35. The City lacks sufficient information or belief in order to answer the allegations
28 of Paragraph 35, and on that basis denies those allegations.

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PRAYER

WHEREFORE, the City prays as follows:

1. That USPS take nothing by way of its Complaint;
2. That the Court enter judgment in favor of the City;
3. That the City be awarded costs; and
4. For any other relief that the Court deems just and proper.

Dated: January 24, 2017

Respectfully submitted:

By: /s/ Zach Cowan
ZACH COWAN, City Attorney
Attorney for Defendant City of Berkeley