

Amendment #1 to the Transportation Improvement Funding Agreement

This Amendment #1 ("Amendment #1") is entered into this ____ day of _____, 2023, by and between the City of Merced ("City"), a California charter municipal corporation, and the Regents of the University of California, on behalf of the Merced Campus ("UC") (collectively, "Parties").

WHEREAS, on April 24, 2016, the Parties entered into the Transportation Improvement Funding Agreement ("Agreement") to provide clarity regarding the Parties' obligations with respect to transportation improvements necessary for the UC's Revised 2020 Project and the full build out of the Merced Campus ("Campus"), along with reimbursement provisions; and

WHEREAS, in 2020, A.B. 3312 was adopted allowing the City to submit an application to annex the Campus and certain adjacent parcels without annexing the intervening property; and

WHEREAS, because A.B. 3312 restructured the anticipated development pattern, the Parties acknowledge the original assumptions underlying the Agreement and UC's proportionate share have changed; and

WHEREAS, the Parties wish to amend the Agreement to address the changed development pattern.

NOW THEREFORE, THE CITY AND UC AGREE as follows:

1. UC has completed construction of the Revised 2020 Project and the Parties agree Section 1, Truck Routes and Roadway Construction Impacts, of the Agreement is no longer operative.
2. On November 20, 2020, the County of Merced ("County") and UC entered into a separate transportation improvement funding agreement and the Parties agree UC's contribution to funding the construction of Campus Parkway is governed by the agreement with the County. The Parties further agree Section 2, Campus Parkway Phase I, and Section 3, Campus Parkway North of Yosemite and Phase II, of the Agreement are no longer operative.
3. Section 4, Bellevue Road Improvements, of the Agreement is replaced in its entirety to read as follows:

Section 4. Bellevue Road Improvements: The Parties agree that any properties or other future development benefiting from the widening of Bellevue Road from two lanes to four lanes between G Street and Lake Road ("Bellevue Widening Project") shall contribute their proportionate share of the Project's costs.

- a. Proportionate share determination. At any time after the execution of this Amendment #1, UC may prepare, at its expense, a study to determine the UC's

proportionate share of Bellevue Road traffic that is being or is anticipated to be generated by the Campus at buildout (“Campus Share”). Prior to commencement of the study, the City and UC shall meet and consult on the appropriate assumptions and methodology that will be used in the study. The study shall include all existing and planned development that would benefit from the Bellevue Widening Project and the necessary facts to support amending the City’s Public Facilities Fee Program (PFFP). Upon completion of the study, the City shall amend the PFFP and impose the PFFP in accordance with Municipal Code Section 17.58.090 for each of the properties – other than UC – benefitting from the Bellevue Widening Project for their proportionate share of Bellevue Road traffic.

- b. Bellevue improvement fees. Based upon UC’s proportionate share study and consistent with all of the requirements of state and federal law and related case authority, the City agrees to impose one or more fees, by an amendment to the adopted PFFP, on all properties benefitting from the Bellevue Widening Project for their proportionate share of Bellevue Road traffic. The City shall, upon adoption of the amended PFFP, impose the PFFP in accordance with Merced Municipal Code Section 17.58.090 for each of the properties- other than UC - benefitting from the Bellevue Widening Project for their proportionate share of Bellevue Road traffic. Some or all of such fees may also be imposed as a mitigation measure on any environmental documents prepared in association with the development of all or part of each property. The Parties agree time is of the essence to amend the PFFP upon completion of the study.
- c. If the City undertakes the Bellevue Widening Project, UC shall contribute as follows:
 1. City notice. The City shall provide UC written notice when (i) the Average Daily Traffic (“ADT”) for Bellevue Road has reached, or exceeded 11,600 ADT, per the City of Merced’s adopted 2030 General Plan for Transportation and Circulation, and (ii) the City intends to construct the Bellevue Widening Project. The ADT count will be for weekdays only during the time that UC Merced is in session, excluding summer session, winter break, testing periods, and other off-peak periods in UC Merced’s academic calendar.
 2. Proportionate share determination update. Within 180 days of receipt of the City’s notice, UC may prepare, at its expense, an updated study to determine the UC’s proportionate share of Bellevue Road traffic that is being or is anticipated to be generated by the Campus at buildout. In the event UC conducts an updated study, UC’s updated proportionate share will be considered the “Campus Share”. Prior to commencement of the study, the City and UC shall meet and consult on the appropriate assumptions and

methodology that will be used in the study. The study shall include all existing and planned development that would benefit from the Bellevue Widening Project and the necessary facts to support amending the City's PFFP.

3. Design Phase. UC will pay the City for the Campus Share of the cost of engineering and environmental analysis (collectively, "Design Phase") for the Bellevue Widening Project within sixty days of commencement of the Design Phase. The design of the Bellevue Road improvements shall meet all City engineering and design standards as those standards exist at commencement of the Design Phase and any applicable state and federal law requirements that may apply at the time of approval of final engineering plans and specifications. Additionally, the design of the Bellevue Widening Project will consider the least total cost option in relation to potential right-of-way acquisition and mitigation costs.
4. Right of Way/Mitigation/Construction Phase. UC will pay the City for the Campus Share of the cost of the right of way acquisition, environmental mitigation and construction costs including construction management engineering (collectively, "Right of Way/Mitigation/Construction Phase") for the Bellevue Widening Project when the City has (1) approved a final design and (2) is commencing the process of right of way acquisition. The parties agree that UC's payments herein for right of way acquisition, environmental and construction costs shall be payable as separate payments with: (1) the right of way acquisition costs payable within 60 days of commencement of right of way acquisition (the right of way cost shall include attorneys' fees and all necessary eminent domain costs, if any); (2) the environmental mitigation costs payable within 60 days of commencement of environmental mitigation; and (3) construction costs including construction management engineering payment due within 60 days of City's issuance of a Notice to Proceed with construction.
 - d. If a private party or parties constructs the Bellevue Widening Project, UC will not make any payments to the City described herein. Instead, UC will reimburse the private party for the Campus Share of construction costs as defined by Merced Municipal Code Section 17.58.090 within 180 days of City's acceptance of the Bellevue Widening Project.
4. The Parties acknowledge under this Amendment #1, the Campus Share represents UC's proportionate share of the Bellevue Widening Project and is not in excess of UC's fair share. Therefore the Parties agree Section 6, Reimbursement Agreement for University Community Properties, shall be amended at such time as the study is

completed and the City's PFFP is amended to reflect any changes in proportional share.

5. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment #1 as of the date written above.

CITY OF MERCED

REGENTS OF THE UNIVERSITY OF
CALIFORNIA

BY: _____

Stephanie R. Dietz
City Manager

BY: _____

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

APPROVED AS TO LEGAL FORM

BY: _____

Assistant/Deputy City Clerk

BY: _____

APPROVED AS TO LEGAL FORM

BY:  _____

City Attorney

ACCOUNTY DATA:

BY: _____

Verified by Finance Officer