

**Memorandum of Understanding by and between the City of Merced and the Regents  
of the University of California Regarding Annexation of and the Provision of Public  
Services to the UC Merced Campus**

This Memorandum of Understanding (“MOU”) 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, Merced Campus is approximately 1,026 acres and located approximately two miles northeast of the City’s jurisdictional boundaries; and

WHEREAS, Merced Campus’s growth is governed by a long range development plan (“LRDP”) adopted by UC after compliance with the California Environmental Quality Act, Public Resources Code Section 21000 et seq. (“CEQA”); and

WHEREAS, in 2009, UC adopted an LRDP, which contemplated overall development of Merced Campus to support an eventual enrollment of 25,000 students, and specifically contemplated development of the UC Merced 2020 Project to accommodate up to 10,000 students in conjunction with the already developed Merced Campus Phase One; and

WHEREAS, in 2016, UC approved revisions to the 2020 Project with development sufficient to accommodate approximately 9,793 students (“Revised 2020 Project”); and

WHEREAS, the City provides water and sewer service to 219 acres of Merced Campus, Phase One and the Revised 2020 Project, through out-of-boundaries services agreement executed on April 29, 2016 and amended on October 17, 2016 and July 31, 2019 (collectively, “2016 Services Agreement”); and

WHEREAS, as required by the Cortese-Knox-Hertzberg Local Government Reorganization Act, Government Code Section 56000 et seq., the 2016 Agreement was approved by the Merced County Local Agency Formation Commission (“LAFCO”); and

WHEREAS, as required by the 2016 Services Agreement, UC executed an agreement to annex, waiving protest rights in the event the City applied to annex the 216 acres covered by the 2016 Services Agreement (“Annexation Agreement”); and

WHEREAS, in 2020, UC adopted an updated LRDP, which covers development of the entire 1,026-acre Merced Campus; and

WHEREAS, in 2020, A.B. 3312 was adopted allowing the City to submit an application to LAFCO to annex the entire 1,026-acre Merced Campus and certain adjacent parcels without annexing the intervening property; and

WHEREAS, the City and UC agree the City’s annexation of Merced Campus (“Campus Annexation”) would be mutually beneficial; and

WHEREAS, the Parties desire to memorialize their understanding of the roles and responsibilities during the annexation process and the City's provision of water and sewer services to Merced Campus post-annexation.

NOW THEREFORE, THE CITY AND UC AGREE as follows:

**1. Annexation.**

- a. The City shall coordinate with UC in the development of its annexation application materials, including but not limited to providing UC with a reasonable opportunity to review draft materials prior to consideration by the Planning Commission and City Council. UC shall provide technical input and assistance as required. The Parties agree to avoid unnecessary delay and provide requested documentation and feedback in a timely manner.
- b. As part of the City's annexation application, the City shall request notice and hearing.
- c. UC shall provide public support for the Campus Annexation before the Merced LAFCO.
- d. The Parties agree to terminate annexation proceedings in the event either Party determines, in good faith, that any conditions, terms or other requirements proposed by Merced LAFCO:
  - i. Could be contrary to law,
  - ii. Could impose significant and unreasonable costs or other financial burdens on either Party, or
  - iii. Could materially infringe upon either party's lawful powers of governance or organization.
- e. The City agrees to terminate annexation proceedings in the event UC determines, in good faith, that any conditions, terms or other requirements proposed by Merced LAFCO are inconsistent with the following provisions:
  - i. The entirety of the UC Merced campus as identified in the 2020 Long Range Development Plan (LRDP), a total area of 1,026 acres, will be annexed into the City of Merced.
  - ii. The City will provide water and sewer services to the entire 1,026-acre campus. The City's service obligation will be tied to the campus population and development as described in the UC Merced LRDP, as amended or updated by the Regents over time (i.e., upon annexation, the City's service obligation shall increase to 15,000 students, the enrollment projection in the

2020 LRDP, and shall further increase if and when this enrollment projection is updated).

- iii. There shall be no cap or limitation on campus enrollment, or the amount and type of campus development and uses (i.e., total building space, student housing, parking, retail/restaurant space, and incubator space).
- iv. The University retains its full powers of organization and government set forth in Article IX, Section 9, of the California Constitution.

## **2. UC Sovereignty and Self-Governance.**

- a. The Parties understand and agree that UC retains full powers of sovereignty and self-governance.
- b. UC's approval and adoption of LRDPs shall govern future Merced Campus development. The adoption and amendment of a LRDP is subject to CEQA review.
- c. The City understands and agrees that an approved LRDP is the sole cap or limitation on the amount and type of development and uses.

## **3. Water and Sewer Services.**

- a. City shall provide water and sewer service to development within the entire 1,026-acre Merced Campus as defined by the Merced Campus LRDP as approved and amended by the University from time to time.

## **4. Water and Sewer Fees.**

- a. Monthly water and sewer service use charges shall accurately reflect the City's cost to provide service to Merced Campus, through rates based on the applicable user category as defined in the City of Merced Municipal Code (MMC), consistent with rates paid by other users of the same category.
- b. UC does not waive its rights, if any, to contest at any time in the future that new or increased charges include capital charges which have not been agreed to under Government Code section 54999.3.

## **5. Sewer Facilities Charges.**

- a. A 24-inch sewer connection is provided. Upon payment of the 'per student' sewer facilities charge under the 2016 Services Agreement up to 10,000-student enrollment, UC will have paid all water and sewer capacity/connection fees for Merced Campus Phase One and the Revised 2020 Project.
- b. The City and UC agree that a 'per student' charge adequately compensates the City for sewer capacity necessary to serve Merced Campus. To address future enrollment increases, UC shall pay a 'per student' charge as outlined in Exhibit A,

attached hereto and incorporated herein by reference. These 'per-student' charges are intended to be in lieu of any other future sewer facilities or capacity charges for any new Campus development.

**6. Water Capacity Charges.**

- a. A 16-inch water connection is provided, with a single meter for Merced Campus and water facilities charges have been paid. Any future water capacity/connection charges for additional Campus development beyond the 16-inch water connection shall be negotiated pursuant to Government Code Section 54999.3.

**7. 2016 Services Agreement.**

Upon the execution of the Merced LAFCO Certificate of Completion, the 2016 Services Agreement shall be terminated.

**8. Other Agreements.**

The Parties agree to expeditiously take all necessary steps to: (a) amend the 2003 Permanent Financing Capital Facilities Fee Agreement and Municipal Code to extend the credit period to 2043; and (b) amend the 2016 Transportation Improvement Funding Agreement to allocate Bellevue Road improvement costs based on a proportionate share study.

**9. Other Provisions**

- a. Authority. The individuals executing this MOU hereby represent and warrant that each of them has the authority to enter into this MOU and to perform all acts required by this MOU, and that the consent, approval or execution of or by any third party is not required to legally bind either party to the terms and conditions of this MOU.
- b. Governing Law. This MOU shall be governed by and interpreted in accordance with the laws of the State of California with venue proper only in the County of Merced, State of California.
- c. Attorney's Fees. If any action, at law or in equity, including any action for declaratory relief, and including any arbitration or mediation, is brought to enforce or interpret the provisions of this MOU, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs of suit, which shall be determined by the court, the arbitrator or the mediator in the same or separate action brought for that purpose,
- d. Interpretation. The provisions and language of this MOU shall be interpreted in accordance with the plain meaning thereof and shall not be construed for or against any of the parties hereto.

- e. **Good Faith.** The parties agree to exercise their best efforts and utmost good faith to effectuate all the terms and conditions of this MOU and to execute such further instruments and documents as are necessary or appropriate to effectuate all of the terms and conditions of this MOU.
- f. **Headings.** the headings used in this MOU are for convenience and reference only and shall not be utilized in the construction of the terms or provisions of this MOU.
- g. **Severability.** If any term, provision, covenant or condition of this MOU shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this MOU shall remain in full force and effect and shall not be affected, impaired, or invalidated. The term, provisions, covenant or condition that is so invalidated, voided or held to be unenforceable, shall be modified or changed by the parties to the extent possible to carry out the intentions and directives set forth in this MOU.
- h. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other party hereto are in the physical possession of the party seeking enforcement thereof.
- i. **Assignment.** Except as expressly provided herein, no party shall have the right to assign its rights or delegate any of its obligations or duties hereunder without the express written consent of the other party which consent shall not be unreasonably withheld.
- j. **Waiver.** The waiver of any breach of any provision hereunder by any party to this MOU shall not be deemed to be a waiver of any preceding or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- k. **Notices.** All notices, approvals, acceptances, demands, and other communications required or permitted hereunder to be effective, shall be in writing and shall be delivered either in person or by mailing the same by U.S. mail (return receipt requested) or by FedEx or other similar overnight delivery service to the party to whom the notice is directed at the address of each such party as follows:

City Contacts	UC Contacts
City Manager	UC Merced Office of the Chancellor
678 W. 18 <sup>th</sup> St.	5200 Lake Road
Merced, CA 95340	Merced, CA 95343

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the party written notice of its new address as herein provided.

- l. Amendment. Amendments to this MOU and its terms and conditions shall only be made by written mutual agreement of the parties and signed by a duly authorized official representing each party, provided, however, as to the City any amendment must first be approved by the City Council at a duly noticed public meeting.
- m. Entire Agreement. This MOU constitutes the entire agreement between the parties and supersedes any prior negotiations, agreements, and understandings of the parties, relating to the subject matter of this MOU.

IN WITNESS WHEREOF, the Parties have executed this MOU 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

## EXHIBIT A

### Sewer Facilities Charges

1. The Sewer Facilities Charge fee discussed in this Exhibit A shall be calculated based on the average fall and spring student FTE enrollment compared to the average fall and spring student FTE enrollment for the prior fiscal year (July 1 through June 30). The enrollment increase shall be calculated initially based on the number of actual FTE students enrolled in the fall quarter minus the average of fall and spring actual FTE student enrollment for the prior academic year. FTE student enrollment is calculated by dividing student credit hours ("SCH") by a full time study load to determine how many full time students would generate the same instructional workload. Student credit hours (SCH) are the sum of the units earned by all students enrolled in classes. For this purpose, a full time equivalent study load is defined as:

45 SCH per year (15 units per quarter for three quarters) for undergraduates (e.g., 450 undergraduate SCH are equivalent to 10 full time equivalent student enrollment).

36 (SCH) per year (12 units per quarter for three quarters) for a graduate student.

2. UC shall pay the Sewer Facility Charge based on the fall actual FTE student enrollment for that academic year no later than September 30th of each year. The formula for calculating this payment is as follows:

Charge per Student	X	Fall Quarter FTE Student Enrollment	-	Average Fall/Spring Enrollment for Prior Academic Year	=	Sewer Facility Charge (Fall Payment)
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Not later than May 30th of each year, UC shall determine the spring quarter FTE student enrollment and shall calculate the average FTE fall/spring student enrollment for that academic year. In the event, that average fall/spring FTE student enrollment is less than the fall enrollment, UC shall receive a credit against the Sewer Facilities Charge fee payable for the next academic year determined by multiplying the charge per student paid for academic year in which the fee was paid by the difference in the average fall/spring FTE student enrollment and the fall FTE student enrollment. In the event, that average fall/spring FTE student enrollment is greater than the fall enrollment, UC shall pay the City an amount determined by multiplying the charge per student paid for that academic year by the difference in the average fall/spring FTE student enrollment and the fall FTE student enrollment

for that year. The amount of credit/charge shall be based on the charge per student used to calculate the original amount of the Sewer Facility Charge (Fall Payment).

The formula for calculating the credit/charge is as follows:

Charge per Student for Sam Academic Year	X	Fall Quarter FTE Student Enrollment Same Academic Year	-	Fall/Spring Student Enrollment Same Academic Year*	=	Sewer Facility Credit/Charge
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\*If the Fall/Spring FTE is greater than Fall FTE, then the amount from this column is the difference Fall/Spring FTE and the Fall FTE for that same academic year.

3. The charge per student is \$711.74 at the date of this MOU. However, it is subject to change computed by a price index according to Chapter 15.16 of the Merced Municipal Code, so rates are subject to increase.