

**First Amendment to
Amended and Restated Contract for Water, Sewer and Other Services
Between
The City of Merced and The Regents of the University of California**

THIS FIRST AMENDMENT to Amended and Restated Contract for Water, Sewer and Other Services ("First Amendment to Contract") between the City of Merced, a California Charter Municipal Corporation ("City") and The Regents of the University of California, on behalf of the Merced campus ("UCM").

WHEREAS, UCM is expanding its university campus ("Project") and requires additional sewer and water services from the City; and

WHEREAS, City and UCM have previously entered into an Amended and Restated Contract for Water, Sewer and Other Services for said Project dated April 29, 2016 ("Contract"); and

WHEREAS, City and UCM desire to amend said Contract to modify the terms of payment for said Project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, agree as follows:

1. Section 8 of the Contract, "Price," is hereby amended to read as follows:

"Section 8. Price. UCM shall pay for water and sewer services provided as follows:

a. Sewer Monthly Service Charges and Water Monthly Service Charges. UCM shall pay sewer monthly service charges and water service charges as specified for its appropriate user category in the Merced Municipal Code, Chapter 15, as may be amended from time to time; provided however, UCM 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 California Government Code section 54999.3 and following.

b. Sewer Facilities Charges and Water Facilities Charges. Both Water Facilities Charges and Sewer Facilities Charges provided for in sections 1,2, and 3 below are based upon the Merced Municipal Code, Chapter 15 as of March 17, 2003 for Phase One, UCM Campus and as of 2016 for the Revised 2020 Project, and have been negotiated and agreed upon by the parties as provided in California Government Code Section 54999.3 and following. The parties agree that for the purpose of determining these Facilities charges, including the costs of service North of Bear Creek, but outside of the North Merced Sewer Assessment District for Phase One, UCM Campus and the Revised 2020 Project, there are certain measurements of campus land area, building line connection sizes, and final engineering design impacts which are difficult and impractical to determine precisely. Therefore, the parties agree that the following determinations are made with respect to Sewer Facilities Charges and Water Facilities Charges:

1. North of Bear Creek, but outside North Merced Sewer Assessment District. Phase One, UCM Campus is approximately 102 acres, of which 24 acres was open space not subject to the charge applicable to property North of Bear Creek but outside of the North Merced Sewer District under Phase One. UCM Campus. The cost for the balance of Phase One which is North of Bear Creek, but outside of the North Merced Sewer Assessment District was based upon 78 acres of area, at \$3,222.71 per acre as of the original date of the Original Contract, totaling a one-time charge of \$251,371.38, which amount is included in the Project Costs.

Revised 2020 Project and Phase One, UCM Campus are approximately 219 acres, including approximately 117 acres not previously included in Phase One, UCM Campus. The cost for the Revised 2020 property which is also North of Bear Creek, but outside the North Merced Sewer Assessment District is estimated upon an additional 137 acres of area, at \$4,251.61 per acre as of August 31, 2015 totaling a one-time charge of \$582,470.08. The final calculation of the annexation charge shall be based on the developable acreage of the Revised 2020

Project and any part of the 24 acres of open space in Phase One, UCM Campus that is proposed for development, adjustments for changes based upon accumulated interest between August 31, 2015 and the date the fee is paid in accordance with Merced Municipal Code Section 15.16.070, and shall not include any open space not subject to development.

a. Fee Obligation. UCM acknowledge and unconditionally agree that it owes the City the total sum of Five Hundred Eighty-Two Thousand Four Hundred Seventy Dollars and Eight Cents (\$582,470.08) for sewer fees.

b. Down Payment and Repayment Schedule. The UCM agree to pay twenty-five percent (25%) of the sewer fees upon execution of this First Amendment to Contract with the remaining seventy-five percent (75%) to be paid in equal annual installments over the next four (4) years (or less at UCM's option).

c. Repayment Terms and Conditions.

1. Payment Frequency. UCM shall make annual payments of the remaining deferred sewer fee obligation, the amount paid annually being at least one-quarter of the total deferred sewer fee obligation, plus interest as described below. Payments shall be made on or before the anniversary date on an annual basis of the execution of this First Amendment to Contract and shall be made to the City of Merced, Finance Department , Fee Deferral for UC Merced, and made at 678 West 18th Street, Merced, California 95340. City shall endeavor to send UCM an invoice for payment at least thirty (30) days before the payment is due. However, UCM unconditionally agrees to make said payment by the payment due date even if no invoice is received thereby. A late

fee of five percent (5%) of the total fee payment shall be imposed for all late payments made.

2. Interest. The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus one percent (1%) [100 basis points] adjusted every July.

3. Due on Transfer. The unpaid deferred sewer fee balance, together with accrued interest, and late fees shall be due and payable in full upon sale or any other transfer of the property.

4. Recording and Processing Fees. All such fees shall be paid by UCM.

2. Sewer Facilities Charges. A twenty-four-inch sewer connection is provided, with a single point of connection. The Sewer Facilities Charge due as part of the capital costs of the Project is a one-time charge of \$104,780 and UCM has paid that amount.

Future Sewer Facilities Charges shall be paid by UCM to compensate for increased enrollment, as provided in the Schedule of Sewer Facilities Charges in Attachment 3, as updated, and incorporated herein by reference. These charges shall be paid not later than September 30th of each year.

3. Water Facilities Charges. A sixteen-inch water connection is provided, with a single meter in lieu of City metering of individual buildings on the UCM Campus. The Water Facilities Charge, which has been paid by UCM, was a one-time charge per special determination based upon the MMC, for a sixteen-inch connection is \$557,404.

c. Capital Facilities Fees. Capital Facilities Fees were based upon Project Costs, including Sewer and Water Facilities Charges, amortized over the payment period for the Project Financing, and sufficient to fully retire the Project Financing.

UCM will continue to make the payments required pursuant to the Permanent Financing Capital Facilities Fee Agreement dated October 17, 2003 between the City of Merced and the Regents of the University of California."

2. Except as herein amended, the Contract dated April 29, 2016 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Contract to be duly executed on the date first above written.

CITY OF MERCED

MAYOR

DATE

ATTEST:

City Clerk

APPROVED AS TO FORM

By:  9-7-2016
City Attorney Date

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By:  08-27-16
DATE