



## CITY OF ALBANY CITY COUNCIL AGENDA STAFF REPORT

Agenda Date: June 20, 2023

**SUBJECT:** Cooperative Agreement with University of California Berkeley

**REPORT BY:** Nicole Almaguer, City Manager

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### **SUMMARY**

The City and University of California Berkeley have worked in partnership to develop a Cooperative Agreement that provides the opportunity for ongoing collaboration between the two organizations as well as funding to be provided to the City for existing services and programs that serve the residents of UC Village and the city as a whole.

### **STAFF RECOMMENDATION**

That the Council approve the Cooperative Agreement between the City of Albany and the University of California Berkeley.

### **BACKGROUND/DISCUSSION**

The City and the University of California Berkeley have worked in partnership for several years on matters of overlapping interest to serve Albany community members living within the University Village and throughout the city. One of the most critical services provided by the City to the residents within University Village is the emergency response provided by the Albany Fire Department. The Fire Department is the primary first responder for all emergency medical responses, ambulance transport, hazardous material and fire suppression incidents at the University Village.

The proposed cooperative agreement provides a mechanism by which the two organizations will continue to partner on an ongoing basis. In addition, the agreement provides funding to the City of Albany for existing services and programs as well as a contribution to the overall expense of new emergency response equipment including a new ladder truck that provides the fire department the ability to effectively serve taller buildings such as the new student housing currently under construction within University Village.

### **CITY COUNCIL STRATEGIC PLAN INITIATIVES**

The agreement helps achieve the City Council Strategic Plan Goal 5 – Increase Revenue to Sustain City Services, Objective: Seek Funding Partnership with outside agencies.

## **FINANCIAL CONSIDERATIONS**

The agreement includes an annual contribution of \$600,000 to the City of Albany for a period of 10 years. As noted in the agreement, \$200,000 of the annual \$600,000 would be designated as a contribution towards needed emergency response equipment and be held in the City's equipment reserves for such purposes. The remaining balance of \$400,000 annually would be utilized within the City's General Fund to help offset the cost of existing City services and programs.

### **Attachments**

1. Cooperative Agreement

## **COOPERATIVE AGREEMENT**

This Cooperative Agreement (“Agreement”) is entered into and effective as of the date last signed below (“Effective Date”), by and between the City of Albany (“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 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 have a long history of partnership on initiatives and projects that benefit the Albany community and campus affiliates, as exemplified by a number of mutual beneficial collaborations over the years, including:

- Partnering to solicit community input on the University’s planning to redevelop the University Village which now serves as home to 3000 undergraduate and graduate students and their families; and
- Partnering to solicit community input through the Albany 2x2x2 Committee on City, School District, and University programs and projects that impact the Albany community; and
- Partnering to solicit and respond to community input on the City’s planning process to entitle the development of new commercial facilities (that house Sprouts grocery store, Starbucks, Pet Express, The Habit Burger Grill, and other businesses) that provide revenue to the University, benefit residents and provide tax revenue to the City; and
- Partnering to solicit and respond to community input on the City’s planning process to entitle the development of the Belmont Senior Housing facility that serves seniors with memory loss, including up to, and, more recently, the graduate student housing development; and
- Partnering to solicit community input on the planning of the University’s new Graduate Student Housing Facility that will be home to up to 770 students; and
- Working collaboratively with the City of Berkeley to fund and coordinate a project to restore Codornices Creek and improve adjacent land for public enjoyment; and, establishing a working group of City staff (representing Albany and Berkeley) and campus staff who work together to ensure the creek and parkland are protected and maintained; and
- Working together to provide support for programs and special projects that meet the needs of University Village families and the general Albany community; for example, the City sponsored Crossing Guard program, providing access to University Village After School Programs, the Albany Little League and the Soccer League which the City and the University have supported in different ways.

WHEREAS, the parties wish to continue and enhance the cooperative relationship they have enjoyed over the years; and

WHEREAS, the parties have negotiated in good faith and agreed to the terms of this Collaborative 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 and the University have a shared interest in supporting the City’s emergency response infrastructure, including being confident that the City’s Fire Department can adequately respond to fire related emergencies at the new Graduate Housing Facility; which would require the purchasing of new equipment that can service a 5+ story building.

1.2 The City and the University have a shared interest in strengthening projects and programs that are designed to improve the quality of life for Albany residents, including those services and programs that take place on or near to the University’s Albany Village.

2. **ANNUAL PAYMENT**

2.1 Beginning on July 1, 2023, the University agrees to make an annual allocation of \$600,000 in the aggregate, to the City for a term of ten years with the last payment occurring on July 1, 2032 to be disbursed and used as indicated below (the “Annual Payment”).

2.2 The Annual Payment shall be allocated as follows, unless otherwise agreed to by the parties during the term of the Agreement. Funds in all accounts may accumulate from year to year to underwrite a pre-identified major capital purchase or project.

2.2.1 \$200,000 for equipment that supports emergency response infrastructure that could respond at the new Graduate Housing Facility and private housing facilities that the City may entitle in the future.

2.2.2 \$400,000 to augment other City services (e.g., Community Services, Crossing Guards, Homeless Encampment Assistance, Community Programs, etc.), and Fire and Emergency Medical Response Services that benefit the residents of the City living in Albany Village and the broader Albany community. The allocations for these services shall be determined by City with input from University leaders.

2.2.3 Homeless Encampment Assistance shall be defined as the City of Albany consulting with the University to provide expertise regarding people experiencing homelessness that have established an encampment within the property jurisdiction of the University of California within the City of Albany as well as coordinating homeless programming, as feasible under Albany's existing programs that connect people to Alameda County agencies and services. Any use of Albany's services will be at the discretion of the City based on the capacity of City staff and service resources available. Any necessary enforcement shall remain the responsibility of the University in accordance with jurisdictional ownership. Initially, the City Manager's Office and the Office of the Vice Chancellor for Administration will convene City and Campus Managers and staff to develop an engagement protocol to ensure effective collaboration; and convene the joint team periodically to address issues that may arise.

2.3 No later than the first business day following July 1st of each year during the term of the Agreement, beginning on July 1, 2023, the City shall provide the University with a summary statement setting forth its use of the funds described in Section 2.2 since the prior Annual Payment.

**3. COOPERATIVE RELATIONSHIP AND PLANNING REGARDING MATTERS OF MUTUAL CONCERN**

3.1 The Vice Chancellor for Administration, the Vice Chancellor for Student Affairs, the Mayor (or Mayor Designee), the City Manager will meet annually and as needed to review implementation of this Agreement and discuss areas of mutual interest or concern.

3.2 The University will continue its practice of consulting with City staff, the City Council, relevant commissions and the public about new projects at Albany Village and respond to any reasonably identified concerns presented during the public input process.

3.3 The University commits to cooperating with the City in its development of a new shared bike path (along Jackson Street) that will benefit UVA students and families, the broader Albany community, and East Bay residents.

3.4 The University shall continue to require its commercial tenants in buildings leased to non-University parties by the University for the sole purpose of generating revenue (as opposed to carrying out the program of 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.

3.5 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. **FUTURE LITIGATION**

4.1 The City agrees not to file any lawsuits or pursue any legal challenges that would challenge the approval of or otherwise oppose University campus capital projects in the City during the term of this Agreement, provided that the City may terminate this Agreement pursuant to the termination rights described below.

5. **TERMINATION**

5.1 Notwithstanding Section 6.1, the University and the City will meet in good faith to discuss an extension or replacement of this Agreement beginning no later than one year prior to the Expiration Date, upon the request by either party for such a meeting.

5.2 The City may terminate this agreement for the purpose of commencing litigation against the University, effective June 30 of the year that follows the year in which the City provides notice of termination. For example, if the City terminates this agreement on June 1 of 2024, the termination shall become effective on June 30, 2025. If the City terminates this agreement then the University shall not be obligated to make any payments that would otherwise be due under this Agreement, and the University shall have no right seek a refund of any payments that have been made. The City's obligation not to sue the University shall remain in effect between the date that the City provides notice of the termination and the effective date of termination.

6. **MISCELLANEOUS**

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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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July 1, 2023

CITY OF ALBANY

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Aaron Tiedemann  
Mayor

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Nicole Almaguer  
City Manager

July 1, 2023

UNIVERSITY OF CALIFORNIA, BERKELEY

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Carol T. Christ  
Chancellor

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Marc Fisher  
Vice Chancellor, Administration