

DRAFT- May 4, 2020

Letter of Intent

for a new parking deck in Chapel Hill

May ____, 2020

The Board of Governors of The University of North Carolina (“UNC”) and the Town of Chapel Hill, North Carolina (the “Town”), state their intent to cooperate in the development of a new parking deck in downtown Chapel Hill, as provided in this Letter of Intent (this “LOI”).

1. The Project

The Town is undertaking a project (the “Project”) to plan, design, build and otherwise place in service a new parking deck (the “New Deck”) having approximately 1,100 standard parking spaces with an entrance on Rosemary Street in Chapel Hill between Columbia and Henderson Streets. The Town intends to begin construction of the New Deck by the end of September 2020, and expects to place the New Deck in service by November 1, 2021. The Town estimates a total cost for the New Deck of approximately \$27,300,000.

The parties believe that the New Deck will benefit UNC by making additional parking available in downtown Chapel Hill as UNC expands its presence of employees and activities in Chapel Hill’s core downtown.

To encourage the Town to undertake the Project, UNC plans to contribute to the initial cost and the on-going maintenance of the New Deck. The Town is undertaking the Project in partial consideration of UNC’s expressed intent.

2. UNC's initial contribution

Amount. Subject to Section 5, UNC will pay to the Town a share of the cost of the New Deck, calculated as follows:

* The total cost of the New Deck, as certified by the general contractor at the time the New Deck is granted its certificate of occupancy and is available for service;

* Divided by the final number of standard parking spaces at the time of occupancy;

* Multiplied by 100.

Based on the current estimates of approximately \$27,300,000 for New Deck construction and 1,100 parking spaces, the parties estimate the UNC initial contribution will be approximately \$2,481,818. UNC expects that funds will be available for this payment from _____ [funding source].

The New Deck total cost will include all soft costs, including design, permitting, engineering and costs of real estate entitlements. It will include all costs of real estate acquired for the Project. It will include all construction costs and the Town's financing costs. It will not include any amounts representing interest payable by the Town.

Timing. The Town will present an invoice to UNC for its initial contribution promptly upon the New Deck's being placed in service, but not before October 1, 2021. The Town will include information as to its calculation of the initial contribution. By the 30th day following the date the Town delivers the invoice, UNC will pay any amount not in dispute and will state the amount of any dispute (and UNC's reasons for dispute) to the Town. The parties will then work together to resolve the dispute.

By way of illustration: if the Town builds a deck of 1,100 spaces and states a total certified cost of \$27,300,000, it will present an invoice for \$2,481,818. Assume the Town delivers the invoice on November 1, 2021, and assume UNC disputes \$1,000,000 of the certified costs. Then by December 1, 2021, UNC must pay the Town \$2,390,909 and state the reasons for its dispute of the remaining \$1,000,000 of costs.

3. UNC's maintenance payments

Subject to Section 5, UNC will pay to the Town an annual maintenance fee, calculated as follows:

- * \$400 per space
- * Multiplied by 100 spaces
- * Multiplied by an inflation adjustment, as described below.

The Town will submit an invoice to UNC annually by each July 1, beginning with the first July 1 after the New Deck is placed in service. UNC will pay each invoice by the succeeding August 1. This process will continue so long as the New Deck remains in service. UNC expects that funds will be available for this payment from _____ [funding source].

The inflation adjustment for each year will be the cumulative change in the United States producer price index, as published by the United States Bureau of Labor Statistics (or any successor index), from the January 1 preceding the first invoice through the relevant invoice date. The Town will not apply an inflation adjustment to the first invoice and the adjustment will never be less than zero. The parties will work together to establish a corresponding index if the baseline of the stated index is restated.

UNC is required to make these annual payments so long as parking has been available in the New Deck as provided in Section 4 for at least 330 of the

365 calendar days preceding the invoice date. If the parking has been available for less than 330 days, the Town will adjust the invoice amount by multiplying the amount otherwise due, by a fraction, the numerator of which is the total number of days parking was available and the denominator of which is 365. The first invoice will not, however, be pro-rated to adjust for a partial year.

The Town must keep the New Deck in good operating condition, but the Town is not required to account to UNC for the use of the annual maintenance payments.

4. UNC's parking rights

Subject to Section 5, the Town will provide [parking; has it been discussed beyond that?]

5. Nature of this commitment

This LOI states the current intent of the parties. The parties agree that upon the signing and delivery of this LOI, they will begin to negotiate a definitive agreement to confirm their mutual obligations.

Neither party, however, has a duty beyond negotiation with due diligence and good faith. Any party can cease negotiations at any time if it has acted in good faith and with due diligence to that point. Without a definitive agreement, however, UNC has no obligations under Sections 2 and 3, and the Town has no obligations under Section 4. The Town has no obligation, in any case, to undertake or continue the Project.

[The rest of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the Town and UNC have caused this Letter of Intent to be executed and delivered as of the day and year first above written by duly authorized officers.

(SEAL)

ATTEST:

**TOWN OF CHAPEL HILL,
NORTH CAROLINA**

Sabrina Oliver
Town Clerk

By: _____
Maurice Jones
Town Manager

(SEAL)

ATTEST:

**THE BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH
CAROLINA**

[Printed name]
Secretary/Assistant Secretary

By: _____
[Name/Title]

[Letter of Intent
For a new parking deck in Chapel Hill,
Dated as of May _____, 2020]