

RESOLUTION AUTHORIZING UPSET BID PROCESS TO LEASE PARKING SPACES IN NORTH GARAGE TO AMERICAN CAMPUS, LLC

WHEREAS, the City has received an offer (the “Initial Bid”) from AMERICAN CAMPUS, LLC (the “Initial Offeror”) to lease up to 1015 parking spaces in the North Garage, at 305 Pettigrew Street, for up to 10 years, with options to renew for 6 additional 5-year terms for a total potential term of 40 years. The Initial Offeror has paid the required 5% deposit of its offer for the entire potential term of 40 years.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DURHAM RESOLVES THAT:

1. The City Council authorizes the lease of the above-stated number of parking spaces through the upset bid procedure of N. C. G. S. § 160A-269. The City Council determines that the property proposed to be leased will not be needed by the City for the term of the proposed lease.

2. The City Clerk shall maintain a copy of the proposed lease for public inspection. The lease as proposed by the Initial Offeror includes a provision that the tenant will pay rent at the rate set for similar parking spaces from time to time, but may not exceed the Maximum Parking Rate for each calendar year during the term as provided in Exhibit A, attached hereto.

3. a. The lease shall be as proposed by the Initial Offeror except as otherwise allowed by this resolution.

b. In conjunction with its offer, at least seventy percent (70%) of the licenses (or parking permits or subleases), must be used by the tenant, tenant’s employees, residents, or tenants or tenant employees of Property Owned by Tenant. “Property Owned by Tenant” means property then owned or conveyed to third party by tenant, a parent or subsidiary entity of tenant or any subsidiary of tenant’s parent or a tenant subsidiary.

c. The property specified by the tenant must be owned by the tenant or the tenant must be the lessee in that land with a lease term of at least ten years from today’s date. Options to renew exercisable by the lessee are to be counted in that lease term.

4. The Transportation Department shall cause a notice of the Initial Bid to be published.

5. Persons wishing to upset the Initial Bid shall submit a sealed bid with their offer, with the information required by paragraph 3 above, to the Transportation Department, within 10 days after the notice of the Initial Bid is published. At the end of the 10-day period, bids received will be opened, and the highest bid will become the new offer. If there is more than one bid in the same highest amount, the first such bid received will become the new offer. If more than one bid in the amount of the highest offer is received at the same time, lots shall be drawn to determine the new offer.

6. If a qualifying higher bid is received, the Transportation Department shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed during which the Transportation Department does not receive a

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qualifying upset bid. At that time, the amount of the final high bid shall be reported to the City Council.

7. A qualifying higher bid is one that raises the existing offer by at least 10% of the first \$1,000 of that offer and 5% of the remainder of that offer. The lease will provide that the rent per space is subject to change by the City in its discretion from time to time, but for purposes of the upset bid procedure, offers shall be in the form of the maximum amount that could be charged by the City according to Exhibit A. Thus, the minimum offer that can upset that offer would be “\$100 plus 105% of the rent charged by the City for other users of similar parking spaces in the North Garage subject to a maximum parking rate (per space) pursuant to Exhibit A for the full term of the lease.” For the purposes of calculating the Initial Offer, and any upset bid offer, the maximum parking rate shall be used for the entire 40 year term.

8. The initial rent is \$55.00 per space, subject to a maximum annual rate in accordance with Exhibit A so the offer that has been received from the Initial Offeror is calculated by multiplying the maximum annual rent (as shown in Exhibit A) times 1,015 spaces, times 12 months for each year of the 40 year term of the lease and adding each maximum total annual rent for each year of the 40 year term. (For example, for the year of 2012, the maximum annual monthly rental is \$55.49 per space. The maximum annual rent for 2012 is \$55.49 times 1,015 spaces, times 12 (months), or \$675,868.20. This calculation is repeated for each year of the 40-year term using the associated maximum annual monthly rental rate and adding each year total for every year of the 40-year term, the grand total equals \$50,438,841.60, which is multiplied by 0.05 (5%) to determine the Initial Bid of \$2,521,942.08.

9. A qualifying higher bid must be accompanied by a deposit in the amount of 5% of the bid. The deposit shall be made by bank check, cashier’s check, or certified check. The check must be on a bank or trust company insured by the FDIC. The City will return the deposits, including the deposit made with the Initial Bid: (i) at closing; (ii) if the City withdraws the property from the proposed lease before the final high bid is accepted; or (iii) if the City rejects all bids. The deposit by the successful bidder is subject to forfeiture if the successful bidder fails to comply with paragraph 11.

10. The City Council must approve the final high offer before the lease is executed. The Initial Bid is hereby approved.

11. The lease must be executed by the successful bidder and returned, with the first month’s rent, to the Transportation Department within 30 days after the final upset bid period has passed. The Director of the Transportation Department may extend the 30-day period by a total of 90 days for good cause.

12. The City reserves the right to withdraw the property from the proposed lease at any time before the final high bid is accepted. The City reserves the right to reject all bids at any time.

13. If no qualifying upset bid is received after the initial public notice, the Initial Bid is hereby accepted. The City Manager is hereby authorized to execute the proposed lease with the Initial Offeror.

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EXHIBIT A – MAXIMUM PARKING RATE

| <u>Calendar Year</u> | <u>Maximum Parking Rate (per space)</u> |
|----------------------|---|
| 2011 | \$55.00 |
| 2012 | \$55.49 |
| 2013 | \$56.37 |
| 2014 | \$57.29 |
| 2015 | \$61.90 |
| 2016 | \$63.76 |
| 2017 | \$65.67 |
| 2018 | \$67.64 |
| 2019 | \$69.67 |
| 2020 | \$71.76 |
| 2021 | \$73.92 |
| 2022 | \$76.13 |
| 2023 | \$78.42 |
| 2024 | \$80.77 |
| 2025 | \$83.19 |
| 2026 | \$85.69 |
| 2027 | \$88.26 |
| 2028 | \$90.91 |
| 2029 | \$93.63 |
| 2030 | \$96.44 |
| 2031 | \$99.34 |
| 2032 | \$102.32 |
| 2033 | \$105.39 |
| 2034 | \$108.55 |
| 2035 | \$111.80 |
| 2036 | \$115.16 |
| 2037 | \$118.61 |
| 2038 | \$122.17 |
| 2039 | \$125.84 |
| 2040 | \$129.61 |
| 2041 | \$133.50 |
| 2042 | \$137.50 |
| 2043 | \$141.63 |
| 2044 | \$145.88 |
| 2045 | \$150.25 |
| 2046 | \$154.76 |
| 2047 | \$159.41 |
| 2048 | \$164.19 |
| 2049 | \$169.11 |
| 2050 | \$174.19 |
| 2051 | \$179.41 |