

AGREEMENT FOR USE OF FACILITY

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the City of Merced, a California Charter Municipal Corporation whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as “City”) and The Regents of the University of California, on behalf of its Merced Campus, whose address of record is 5200 North Lake Road, Merced, California 95344, (hereinafter referred to as “Project Sponsor”).

WHEREAS, Project Sponsor desires to temporarily use a City-owned park located at West Main Street and Canal Street (Bob Hart Square) on Friday, May 6, 2016 for the UC Merced Graduation Reception (the “Project”).

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. INCORPORATION OF RECITALS. The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.

2. SCOPE OF THE PROJECT. Project Sponsor represents that the scope of the Project is limited to the temporary use of a City-owned park located at West Main Street and Canal Street (Bob Hart Square), as shown on the location drawing attached hereto as Exhibit “A” and incorporated herein by reference, on May 6, 2016 for the UC Merced Graduation Reception. Project Sponsor represents and warrants that alcoholic beverages will be served, as permitted by City Council, and security will be provided by the UC Merced Police Department (a minimum of two officers at all times). Project Sponsor represents and warrants that in no event shall the scope of the Project be exceeded beyond the representations made in this Agreement or the limitations imposed by this Agreement. Project Sponsor further understands and agrees that should the scope of the Project be exceeded for any reason whatsoever, the City shall have all rights and remedies available at law or in equity, including injunctive relief, and that the Project Sponsor will not contest or object to the City’s pursuit of any rights or remedies hereunder.

3. PURCHASE OF SPECIAL EVENTS INSURANCE COVERAGE. Before Project Sponsor holds the Project, Project Sponsor shall—at its sole expense—obtain special events insurance through Special Event Liability Group Trust, RPG, administered by HUB International Services, Inc. or through related

entities acceptable to the City in its sole and absolute discretion. Said insurance shall name the City and its respective officers, officials, employees, volunteers and agents as additional insureds and must also be approved by the City's Insurance Coordinator before the Project is held. It is also a specific requirement of this Agreement that said insurance is primary and not contributing with any insurance held by the City, and its respective officers, officials, employees, volunteers and/or agents.

4. **INSURANCE.** During the entire time of the Project, Project Sponsor shall also maintain in full force and effect at its own cost and expense, the following self-insurance coverage:

a. **Workers' Compensation Insurance.** If Project Sponsor has any employees, full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law.

b. **General Liability and Automobile Insurance.** Project Sponsor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least Five Hundred Thousand Dollars (\$500,000) combined limit for bodily injury and property damage; provided that the City, and its respective officials, officers, employees, volunteers, and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Project Sponsor and that no other insurance effected by the City, or other named insureds will be called on to cover a loss covered thereunder.

c. **Certificate of Insurance and Endorsements.** Project Sponsor shall complete and file with the City, prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance and additional insured endorsements evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for non-payment of premium.

5. **USE OF ELECTRICAL SYSTEM.** Sponsor has indicated that it does wish to connect to Bob Hart Square's electrical system. Sponsor shall be responsible for making arrangements with the City's Public Works' staff to turn on and off the power supply in the park before and after the event.

6. PARKING. Attendees shall use the large City parking lots located between Main Street and West 16th Street. No attendees shall park on West Main Street.

7. PORTABLE TOILETS. Project Sponsor shall provide a minimum of two portable toilets for the Project.

8. CLEAN UP SITE AFTER EVENT. After the event occurs, Project Sponsor shall be responsible for restoring the site used for the Project to the condition that existed before the setup for the event occurred. Such restoration shall include, but not be limited to, refuse removal and clean-up of debris.

9. CONFORMANCE TO APPLICABLE LAWS. Project Sponsor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Project Sponsor in the employment of persons to work under this contract because of race, color, national origin, ancestry, sexual orientation, disability, sex or religion of such person.

10. WAIVER. In the event that the City or Project Sponsor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

11. SEVERABILITY. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

12. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

13. ATTORNEY'S FEES. In any litigation, arbitration or any other proceeding where the City or Project Sponsor seeks to enforce any provision of this Agreement, or seeks a declaration of the rights and obligations of the parties, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses incurred to resolve the dispute and to enforce any provision of this Agreement.

14. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

15. SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

16. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

17. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

18. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

19. INTERPRETATION. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the sections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

20. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

21. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third

person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the parties hereto or their officers, officials, employees, volunteers or agents. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED

City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

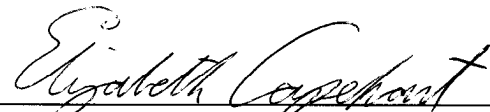
APPROVED AS TO FORM:

Ken Aguel 3/29/14
City Attorney Date

ACCOUNT DATA:

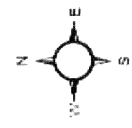
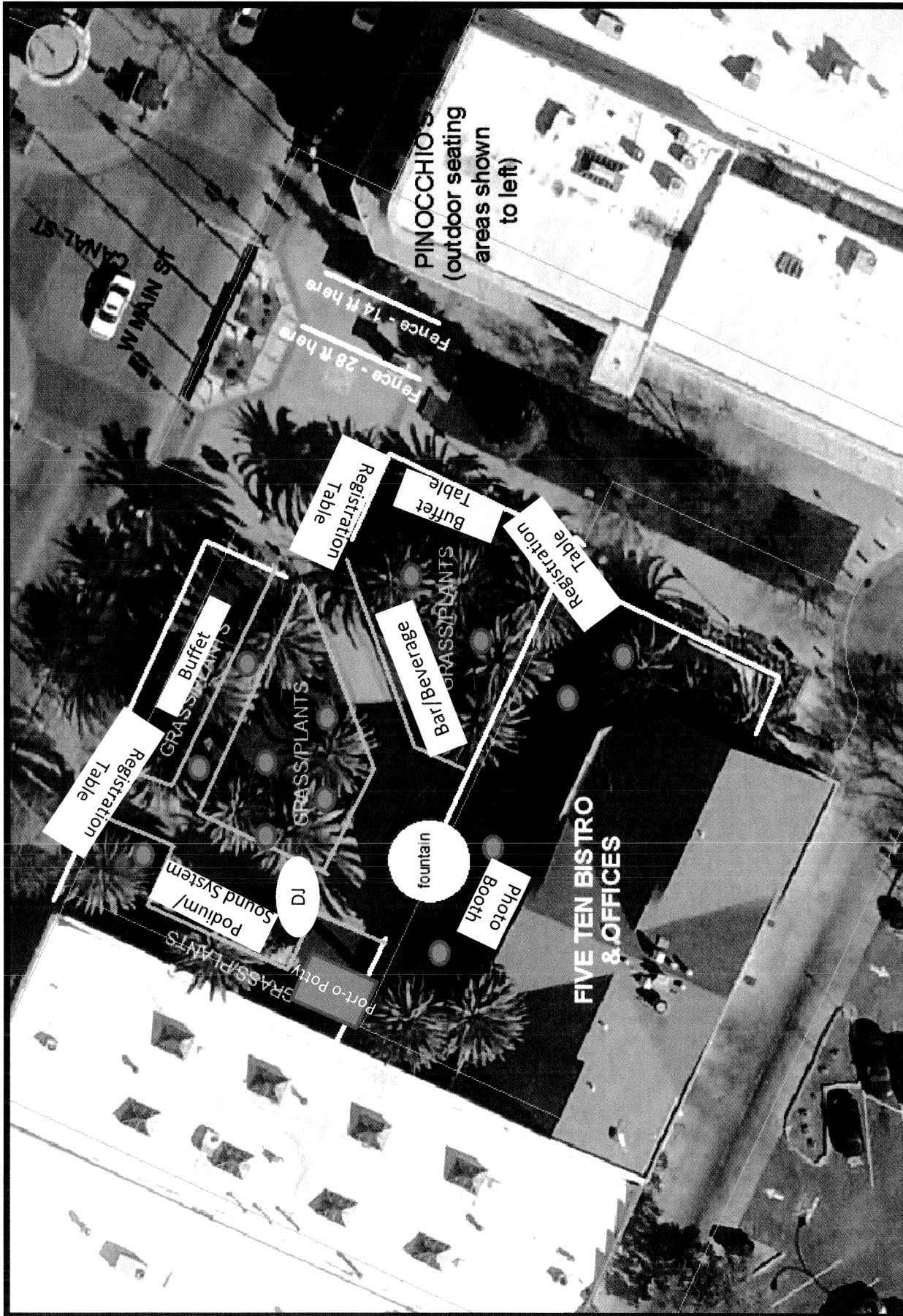
BY: _____
Verified by Finance Officer

PROJECT SPONSOR:
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, on Behalf of its
Merced Campus

BY: 
Elizabeth Capehart
Contracts & Real Estate Manager
University of California, Merced

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Merced, CA 95344

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● = high boy table

SITE MAP: Bob Hart Square

Disclaimer: This document was created for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official records or approved City documents.

EXHIBIT A