

## **FACILITY USE AGREEMENT**

### **THE REGENTS AS LICENSEE**

THIS AGREEMENT dated \_\_\_\_\_, 2018, ("effective Date") is by and between PARKING AUTHORITY OF THE CITY OF MERCED, a parking authority created pursuant to Street and Highways Code Section 32500 et seq ("Authority") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of its Merced campus ("University").

**WHEREAS**, University constructed a 67,000 square-foot office also known as the Downtown Campus Center and intends to employ up to 400 in its Downtown facility;

**WHEREAS**, Said University Downtown Campus Center is located on the project site once known as the Merced Center Hotel and Conference Center site;

**WHEREAS**, the Merced Center Garage was constructed for the purpose of providing leased parking to the Merced Center Hotel and Conference Center project which is now the Downtown Campus Center;

**WHEREAS**, Authority is the owner of certain real property described as follows:

Merced Center Parking Garage located in Merced, CA, bordered by M Street, 18<sup>th</sup> Street, and 19<sup>th</sup> Street, as shown on the map attached hereto as Exhibit A("Premises"); and

**WHEREAS**, University seeks to enter and use a portion of the Premises as follows: 100 dedicated covered parking spaces on the Second Level and 25 non-covered parking spaces on the Third Level as indicated on the maps attached hereto as Exhibits A, B, and C .

**NOW, THEREFORE**, Authority and University hereby agree as follows:

#### **ARTICLE 1 – GRANT OF LICENSE**

1.1 Authority hereby grants the University and to its agents, employees, guest and invitees an exclusive, revocable license to enter and use the Premises for the purpose, and at the times, set forth in Article 3, below.

#### **ARTICLE 2 – TERM**

2.1 The term of this Agreement shall be for the period from August 1, 2018 to December 31, 2023 ("Term").

#### **ARTICLE 3 – USE OF PREMISES**

3.1 University Use. The University shall use the Premises as parking for University employees.

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3.2 Time of Use. The University's use of the Premises shall be limited to Monday through Friday, from 6:00am to 7:00pm., with exceptions for those employees working past 7:00 pm. Weekend parking will be allowed, depending on availability.

3.3 Park Only. The leased parking spaces granted by Authority to University under this Agreement are a non-exclusive license to park only, and shall be used solely by University for the parking of motor vehicles by its employees in the parking facilities identified in the this Agreement, under the terms, conditions, and obligations herein and in accordance with the rules and regulations posted at the parking facilities.

3.4 Identification. Authority shall provide signage or markings for parking spaces leased by University. University shall provide parking hangers for its employees, and University employees shall display the parking hanger on their vehicle rear view mirror to designate that the vehicle is authorized to park within the respective parking facilities.

3.5 No Parking in Ralph Shannon Arcade. University shall prohibit its employees to park at the Ralph Shannon Arcade located at 626 18<sup>th</sup> Street, and shall take reasonable steps to advise its employees not to park at the Ralph Shannon Arcade.

#### **ARTICLE 4 – CONSIDERATION**

4.1 Pay Period. Under this Agreement, the Pay Period shall be from August 1, 2018 to December 31, 2023 ("Pay Period"). University shall pay Authority in advance the amounts specified below prior to the first day of each quarter (January, April, July, and October): Fifty Dollars (\$50) per month for each covered parking space and Thirty-Five Dollars (\$35) per month for each non-covered parking space.

#### **ARTICLE 5 – NOTICES**

5.1 All notices to be addressed by University to Authority in connection with this Agreement shall be given writing to Authority at:

Frank Quintero  
Director of Economic Development  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

With a copy to:  
City Attorney  
City of Merced  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

All notices to be addressed by Authority to University in connection with this Agreement shall be given in writing to:

Karin Groth  
UC Merced – Transportation and Parking Services  
5200 North Lake Road  
Merced, CA 95343

with a copy to:  
Elizabeth Capehart  
Contracts and Real Estate Manager  
UC Merced  
5200 North Lake Road  
Merced, CA 95343

## **ARTICLE 6 – TERMINATION**

6.1 Either Party to this Agreement may terminate this Agreement by proving at least ninety (90) days, written notice to the other Party, unless otherwise agreed to in writing by the Parties.

6.2 In the event that the Premises are damaged from any cause rendering the parking facilities totally or partially inaccessible or unusable during the Term of this Agreement as reasonably determined by Authority, Authority may terminate this Agreement by giving University seven (7) days written notice thereof.

6.3 In the event that University fails to perform any terms, conditions, or obligations under this Agreement, in addition to all other remedies provided by law, Authority may terminate this Agreement immediately upon written notice to University.

6.4 The Director of Economic Development is empowered to terminate this Agreement on behalf of Authority.

6.5 No right or remedy herein conferred upon or reserved to City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

6.6 Upon expiration or earlier termination of this Agreement, University shall surrender all rights to use the parking facilities granted by this Agreement.

## **ARTICLE 7 - PARKING RULES AND REGULATIONS**

7.1 In its use of the parking facilities, University shall at all times comply, and shall cause its employees to comply, with any rules and regulations established by Authority ("Rules"). Authority may unilaterally modify or amend such Rules from time to time.

## **ARTICLE 8 - INDEMNITY AND HOLD HARMLESS**

8.1 **Authority** shall indemnify, defend and hold harmless University, its officers, agents, and employees from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this License including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of Authority, its officers, partners, agents, or employees.

8.2 **University** shall indemnify, defend and hold harmless Authority, its officers, partners, agents, and employees from and against any Claims arising out of or in any way connected with this License including, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of University, its officers, agents, or employees.

## **ARTICLE 9 – INSURANCE**

9.1 University, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

- a. General Liability Self-Insurance Program (contractual liability included) with minimum limits as follows:

1. Each Occurrence	\$ 1,000,000
2. Products/Completed Operations Aggregate	\$ 2,000,000
3. Personal and Advertising Injury	\$ 1,000,000
4. General Aggregate	\$ 2,000,000
- b. Business Automobile Liability Self-Insurance Program for owned, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.
- c. Property, Fire and Extended Coverage Self-Insurance Program in an amount sufficient to reimburse Authority for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises including leasehold improvements hereinafter constructed or installed.
- d. Workers' Compensation as required by California law.

The coverages referred to under a. and b. of this Section 9.1 shall include Authority as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of University, its officers, agents, employees, volunteers or invitees. University, upon the execution of this License, shall furnish Authority with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30)

days advance written notice to the Authority of any material modification, change or cancellation of any of the above insurance coverages.

The coverages required herein shall not limit the liability of University.

#### **ARTICLE 10 - WAIVER OF SUBROGATION**

10.1 Authority and University and all parties claiming under or through them hereby mutually release and discharge each other and the officers, employees, agents, representatives, customers, and business visitors of Authority or University from all claims, losses, and liabilities arising from or caused by any hazard covered by insurance on or in connection with the Premises, even if caused by the fault or negligence of a released party. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

#### **ARTICLE 11 - EXTERIOR SIGNS**

11.1 Any and all signs or advertisements of any nature extending into, on, or located over the Premises, shall conform to all City of Merced zoning and building codes and shall be approved by Authority in writing prior to construction, use, or erection thereof. Approval by Authority shall not be unreasonably withheld, conditioned or delayed, as to location, graphics, type, content, and architectural or engineering standards.

#### **ARTICLE 12 - COVENANTS AGAINST DISCRIMINATION**

12.1 Both Authority and University agree for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, as follows:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color creed, national origin, religion, sex, disability, marital status, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein granted, nor shall University, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein granted.”

#### **ARTICLE 13 - WAIVER**

13.1 Authority's failure to enforce any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such terms, covenants or conditions, or any subsequent breach of same, or any other term, covenant or condition contained herein.

#### **ARTICLE 14 - ASSIGNMENT OR TRANSFER**

14.1 This Agreement or the right to use any parking facility may not be assigned or transferred by University by voluntary act or otherwise without the Authority's prior written consent. Any attempted assignment or other transfer of this Agreement in violation of this Section shall be void.

## **ARTICLE 15 - GOVERNING LAW**

15.1 The law governing this Agreement shall be that of the State of California.

## **ARTICLE 16 – VENUE**

16.1 The Parties hereto agree that any and all lawsuits or legal proceedings relating to this Agreement, its interpretation or the Parties 'performance of this Agreement, shall take place in Merced County Superior Court.

## **ARTICLE 17 – ATTORNEY'S FEES**

17.1 If either Party to this Agreement brings an action to enforce the terms of this Agreement or to declare rights hereunder, the substantially prevailing party in any such action, on trial or appeal, shall be awarded its reasonable attorney's fees to be paid by the substantially losing party as fixed by the Court.

## **ARTICLE 18 – ENTIRE AGREEMENT**

18.1 This Agreement contains the entire agreement and understanding between the parties and supersedes all prior written or oral agreements with respect to the subject matter herein. No representation, warranty, condition, or agreement of any kind or nature whatsoever shall be binding upon the parties hereto unless incorporated in this Agreement. This Agreement may be modified only by a written Amendment signed by both Licensee and University.

**IN WITNESS WHEREOF**, the parties have executed this Facility Use Agreement as of the date first written above.

**AUTHORITY:**  
**PARKING AUTHORITY OF THE**  
**CITY OF MERCED**

**UNIVERSITY:**  
**THE REGENTS OF THE**  
**UNIVERSITY OF CALIFORNIA**

**APPROVED AS TO FORM:**

By: Kelly Finney  
Authority General Counsel

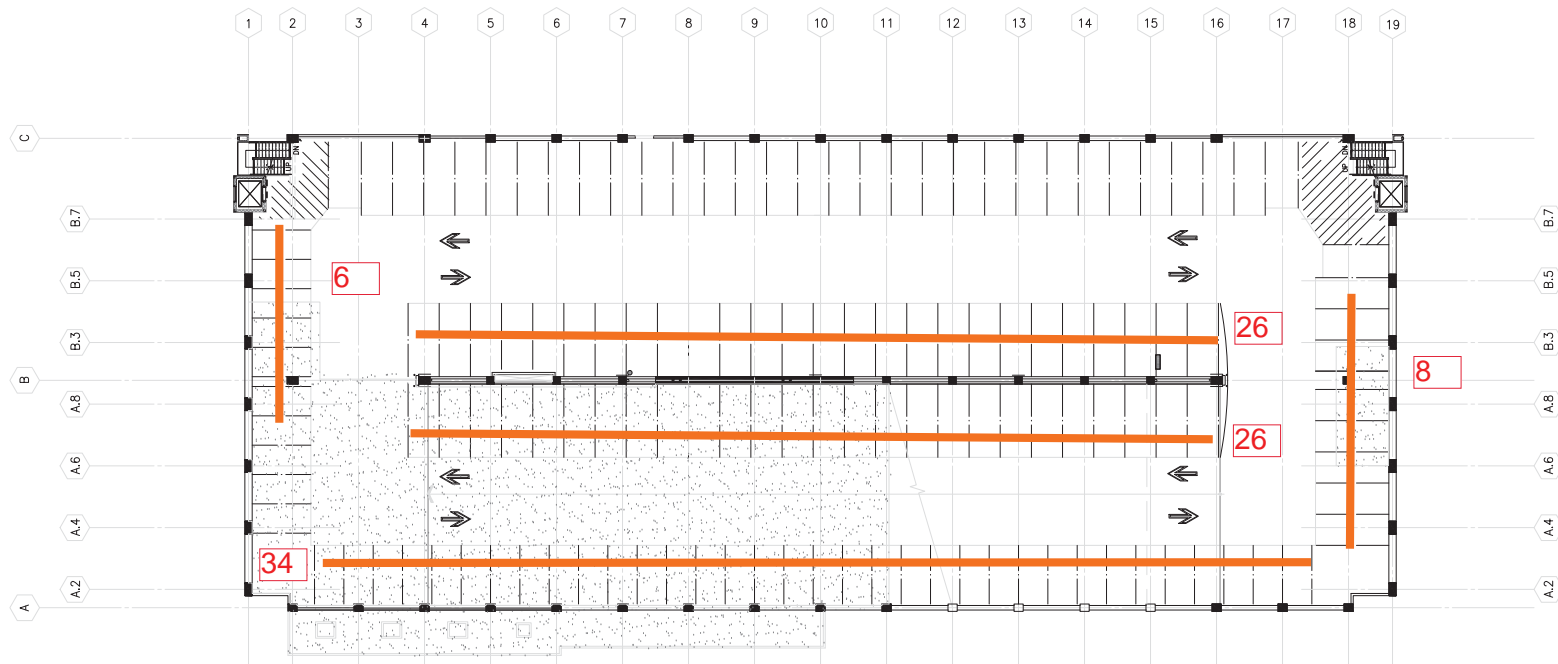






**EXHIBIT A**  
**UCM DCC Parking Agreement**  
**Subject Garage**





## SECOND LEVEL PLAN

SCALE: 1/16" = 1'-0"



### EXHIBIT B UCM DCC Parking Agreement Covered Parking

NO.	DATE	BY	REVISION MADE

**Underground Service Alert**

**TWO DAYS BEFORE YOU DIG**

Call 1 TOLL FREE 1 (800) 942-2444

NOTE: ALL REFERENCES AND WRITTEN DIMENSIONS SHALL TAKE PREFERENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE SITE. ANY DISCREPANCY SHALL BE BROUGHT TO NOTICE OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF ANY WORK.

**City of Merced**  
"Gateway to Yosemite"

**DEVELOPMENT SERVICES**  
ENGINEERING PROJECTS AND STANDARDS  
670 W. 16th Street (209) 385-4546

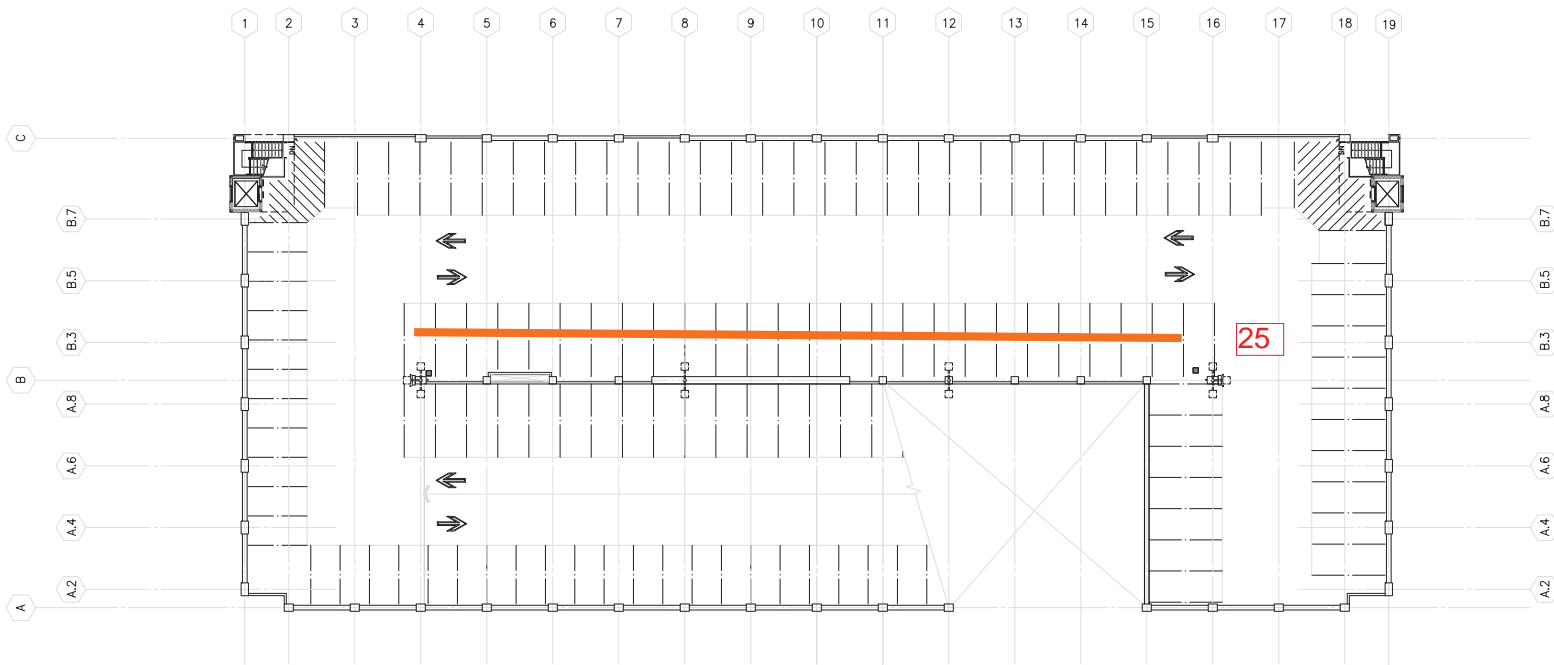
## SECOND LEVEL PLAN

## PROJECT NO. MERCED PARKING GARAGE MUSIC FESTIVAL

DR. BY: SER
DATE: 01/23/2009
CH. BY: JCS
DATE: 01/23/2009
SCALE: 1/16"=1'-0"

File No. ###
Sheet
<b>2</b>
of 3





**THIRD (ROOF) LEVEL PLAN**   
 SCALE: 1/16" = 1'-0"

**EXHIBIT C**  
**UCM DCC Parking Agreement**  
**Non-Covered Parking**

NO.	DATE	BY	REVISION MADE

**Underground Service Alert**  
  
**TWO DAYS BEFORE YOU DIG**  
 Call 1 TOLL FREE 1 (800) 843-3444

NOTE:  
 ALL REFERENCES AND WRITTEN DIMENSIONS SHALL TAKE PREFERENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE SITE. ANY DISCREPANCY SHALL BE BROUGHT TO NOTICE OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF ANY WORK.

 **City of Merced**  
*"Gateway to Your Future"*  
**DEVELOPMENT SERVICES**  
 ENGINEERING PROJECTS AND STANDARDS  
 615 W. 18th Street (209) 399-6666

**THIRD (ROOF) LEVEL PLAN**

**PROJECT NO.**  
**MERCED PARKING GARAGE**  
**MUSIC FESTIVAL**

DR. BY: SER
DATE: 01/23/2009
CH. BY: JCS
DATE: 01/23/2009
SCALE: 1/16"=1'-0"

File No. ###  
 Sheet  
**3**  
 of 3