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8/15/13

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT AND ENCROACHMENT PERMIT

This Agreement ("Agreement") is entered into as of Sept. 11, 2013, between the City of Fresno, a municipal corporation ("City"), and the Board of Trustees of the California State University, which is the State of California acting in its higher education capacity ("University"), pursuant to the following facts, among others:

RECITALS

A. University desires to install two cameras to be used for monitoring by its University Police Department on two street light poles (one camera on each pole) located in the public street right-of-way. One pole is a City-owned pole at the northwest corner of Sixth Street and Bulldog Lane ("Permitted Site") as shown on Exhibit A, attached hereto and incorporated by reference herein. The other pole is a PG&E-owned pole located at the southeast corner of Fourth Street and San Ramon Avenue ("Ramon Site") as shown on Exhibit A.

B. City is willing to permit such installation on the Permitted Site only on the conditions herein specified and if University enters into this Agreement to protect such public rights-of-way and to protect City from any liability that may arise from such installation or the granting of this permit.

C. University is willing to allow access to the camera video feed from both Sites by City's Police Department as needed for law enforcement monitoring and to capture stored images. Stored images will be retained for the time period specified by University Police Department practices.

D. University is willing to purchase and install the two cameras, if City is willing to provide matching funds of \$8,000 for University's purchase of one of the two cameras. City has funded \$8,000 for said purchase.

E. The public benefits that will follow from installation of cameras include contribution to public safety through affording law enforcement with modern technological investigative tools in this metropolitan and adjacent University area. This will improve the ability of law enforcement to prevent and detect public safety emergencies, deter criminal conduct, and identify crime participants.

AGREEMENT

Therefore, in consideration of City's granting of a permit to use and occupy the Permitted Site as defined above, University hereby promises and agrees with the City, for the benefit of the City, its public property and the general public to the following conditions as follows:

1. Grant of Encroachment Permit. City grants to University a non-exclusive, revocable permit to the extent it has the authority to do so, to enter into, and to install, operate and maintain a camera on the Permitted Site, solely for the use by law enforcement as an investigative tool.

This Agreement shall constitute an encroachment permit pursuant to Fresno Municipal Code Section 13-219 for the Permitted Site. This Agreement does not relieve University from the

obligation of obtaining a street work permit pursuant to Fresno Municipal Code Section 13-202 for any work to be done in the public right-of-way contiguous to, or within, the Permitted Site or the Ramon Site.

It shall be the responsibility of University to obtain permission from PG&E for installation by University of a camera at the Ramon Site and to comply with all applicable rules and regulations of PG&E for installation, operation and maintenance of the camera. University shall not interfere with City's use of the Ramon Site for street lighting.

2. Approval of Plans, Drawings and Specifications. Before beginning to install the camera on the Permitted Site, University shall obtain written approval of all plans, drawings, and specifications for such installation from the City's Public Works Director ("Director"). Upon such approval, University shall install the camera as promptly as practicable in strict accordance with the approved plans, drawings, and specifications. During installation of the camera at the Permitted Site, University shall take all steps necessary to avoid or minimize disruption of vehicular and pedestrian traffic in the vicinity of the respective Permitted Site. No change shall be made in the approved plans, drawings, or specifications without the prior written approval of the Director.

3. Responsibility for Installation, Operation and Maintenance. University shall be solely responsible for the installation, operation and maintenance of the cameras at the Permitted Site and the Ramon Site (hereinafter collectively referred to as "the Sites"), University shall at all times operate and maintain the cameras at and the Sites so that there is no interference with vehicular or pedestrian traffic. University shall maintain no nuisances on the Permitted Site in fact or at law, and shall at all times conduct its activities or cause its activities to be conducted in full compliance with all applicable federal, state and municipal laws.

4. Utilities. University shall be solely responsible for obtaining, and paying all costs associated with, electricity needed for operation of the cameras. The University shall install a meter at each of the Sites for utility consumption such that the University shall be required to pay for the costs of such utility consumption directly to the providing utility.

5. Matching Funds and Fresno Police Department Access. City will provide University \$8,000 for University's purchase of one camera. University will purchase two cameras, one for installation at the Ramon Site and one for installation at the Permitted Site pursuant to this Agreement. University will retain title to and ownership of both cameras and allow access to the camera video feed from both cameras by City's Police Department ("FPD") as needed by FPD for law enforcement monitoring and to capture stored images.

6. City Right of Entry and Priority Use. City's representatives shall have the right to enter upon all or any part of the Permitted Site at any time for any lawful purpose(s). University agrees that City's use of the Sites as street lights shall take priority over University's use and City use and repair thereof may interfere from time-to-time with University's use of cameras. University agrees not to interfere with such City use. In the event the City shall, in its sole discretion, determine that the use of part or all of the Permitted Site is required for any municipal or public utility purpose, it will give University at least 30 days written notice of such requirement and University shall remove the cameras and all appurtenant equipment and shall restore the respective Permitted Site to substantially the same condition it was in prior to installation of the cameras.

University shall be fully responsible for all costs related to such removal and restoration.

7. Independent Contractor. University is and shall be an independent contractor and not an employee, partner, joint venturer or agent of the City. Neither party shall have any right to control, supervise or direct the manner or method or choice by which the other party or its contractors shall perform its or their work or function. However, each party shall retain the right to verify that the other is performing its respective obligations in accordance with the terms hereof.

8. City may revoke this Agreement and the permit for the Permitted Site, for any reason, immediately upon delivery of written notice to University. Within 30 calendar days after such revocation, University shall remove the camera and all appurtenant equipment from the Permitted Site and shall restore the Permitted Site to substantially the same condition it was in prior to installation of the camera. University shall be fully responsible for all costs related to such removal and restoration.

9. No Warranty or Right to Trespass. City makes no warranty that the scope of either City's ownership in, or City's easement in, whichever is applicable to, the Permitted Site is broad enough to encompass the issuance of this permit. University shall inform itself of, and obtain, any other approvals necessary to lawfully enter the Permitted Site and install the cameras. This permit is not permission to trespass on any property, publicly or privately owned.

10. Indemnification. University shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, University or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of or in any way connected with (a) University's performance of this Agreement, (b) the grant of this permit, (c) use of the Permitted Site by University, its employees, officers, agents, contractors or subcontractors, or (d) design, installation, operation, maintenance or removal of the cameras by University. University's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or by the willful misconduct of City or any of its officers, officials, employees, agents or volunteers.

This section shall survive termination or expiration of this Agreement.

11. Insurance. University shall maintain insurance policies or self-insurance programs to fund its liabilities hereunder. Its programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the City and each of its officers, officials, agents, employees and volunteers.

12. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, or

deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

13. Binding. Subject to Section 15 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties and each party's respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.

14. Assignment. This Agreement is personal to University and there shall be no assignment by University of its rights or obligations under this Agreement without the prior written approval of City. Any attempted assignment by University, its successors or assigns, shall be null and void unless approved in writing by City.

15. Compliance with Law. In performing any work pursuant to its permit hereunder, University shall at all times comply with all applicable federal, state and local laws, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the life of this Agreement.

16. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

17. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

18. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

19. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision, or part thereof, shall not affect the validity or invalidity of any other provision.

20. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

21. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party

in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

22. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

23. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and University.

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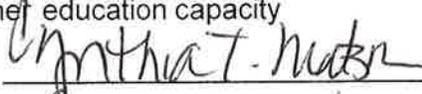
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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

City of Fresno,
A California municipal corporation

By: 
Scott Mozier,
Assistant Director and City Engineer
Department of Public Works

Trustees of the California State University,
which is the State of California acting in a
higher education capacity

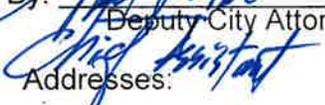
By: 
Name: Cynthia T. Matsou
Title: VP Admin & CFE

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: 
Deputy Date 9/16/13

APPROVED AS TO FORM:

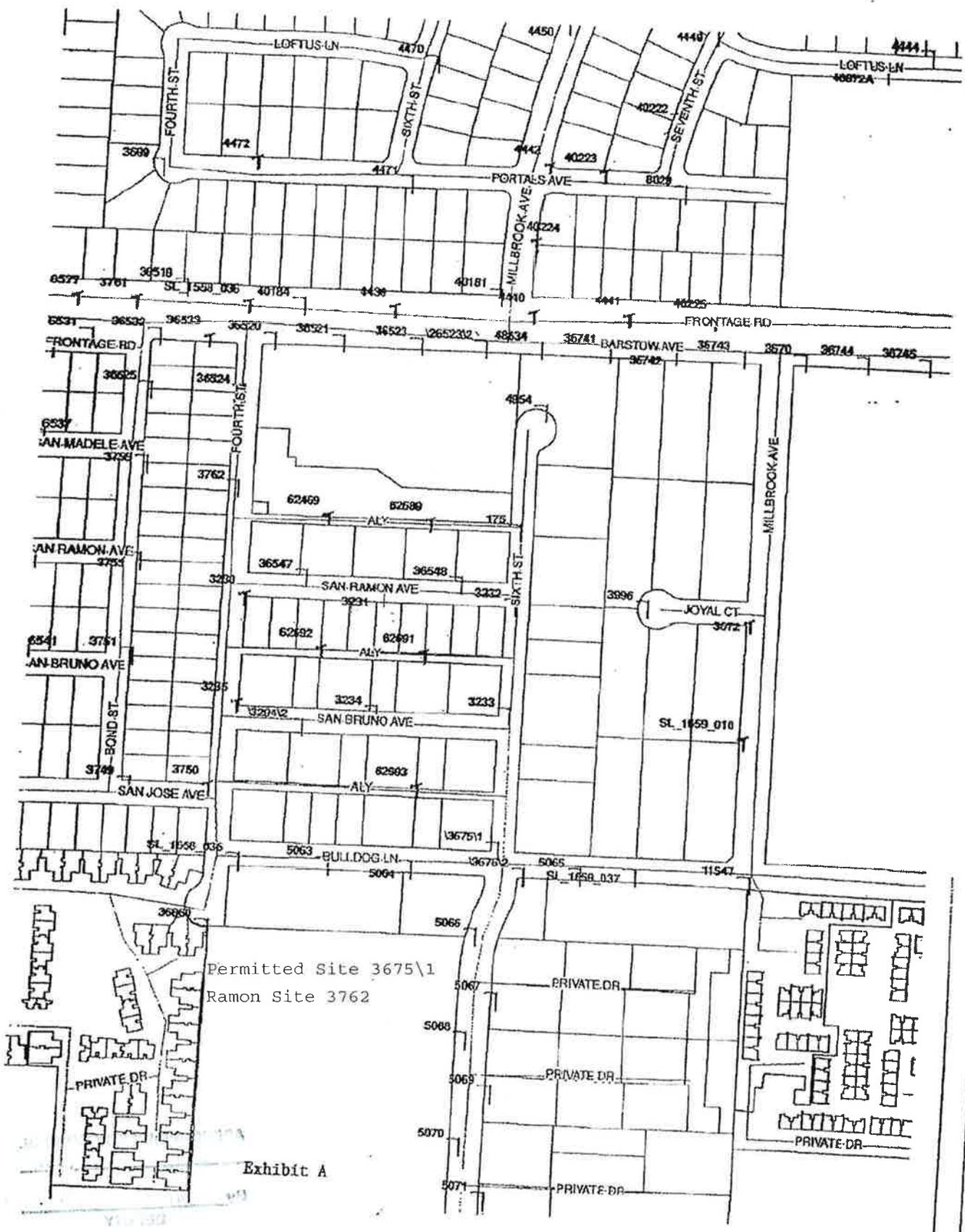
DOUGLAS T. SLOAN
City Attorney

By: 
Deputy City Attorney

Addresses:

City:
Attention: Director of Public Works
2600 Fresno Street, 4th Floor
Fresno, CA 93721-3623

University:
California State University, Fresno
Police Department
2311 E. Barstow Ave. M/S P014
Fresno, CA 93740-8004

Attachment:
Exhibit A - Description of Permitted Site



Permitted Site 3675\1
Ramon Site 3762

Exhibit A

Y11-33