

**FIRST AMENDMENT
TO THE AGREEMENT BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND BANK OF THE WEST**

THIS FIRST AMENDMENT (“First Amendment”) is made, entered into, and effective as of April 1, 2016 (“Effective Date”) by and between **The Regents of the University of California, a California corporation** (“University”) and **Bank of the West, a California banking corporation** (“Bank of the West”).

WHEREAS, University and Bank of the West entered into an agreement (“Agreement”), effective July 1, 2015, to set forth an exclusive sponsorship relationship between the parties.

WHEREAS, University and Bank of the West wish to amend the Agreement to include University athletics post-season bonus payments, as well as the use of University images.

NOW THEREFORE, in consideration of the premises and promises herein contained, the parties hereby agree to amend the Agreement as follows:

1. The following shall be added after paragraph 43 of the Agreement:

44. USE OF UNIVERSITY IMAGES.

A. General. Subject to Section 44B.b. and d., Bank of the West shall hire a subcontractor (the “Photographer”) to photograph the University’s Sather Gate and Sather Tower (The Campanile) (collectively, the “New Images”) and use the New Images along with existing University-owned images (the “Existing Images”) on the Bank of the West website found at www.BankoftheWest.com/UCBerkeley (the “BOTW Microsite”) and in other marketing/advertising collateral geared to the campus population in order to promote the sponsorship in accordance with the terms of the Agreement. New Images and Existing Images are herein collectively referred to as “University Images” attached to this Agreement as Exhibit M.

B. Grant of Rights.

a. Campus Access. Subject to the limitations set forth in this Agreement, prior approval from University concerning the logistics of Bank of the West and Photographer’s campus visit to photograph the New Images, and Bank of the West securing all necessary and required permits and permissions from local authorities, University grants Bank of the West and its Photographer access to the University’s UC Berkeley Campus to photograph the University’s Sather Gate and Sather Tower (The Campanile). Bank of the West, its officers, employees, agents, contractors, subcontractors, and invitees shall comply with all applicable operating procedures, safety rules, and instructions while on University property. Upon completion of its activities, Bank of the West shall leave University property in the same condition as found. University does not warrant the

condition of its property, equipment, and/or facilities for any purpose and Bank of the West accepts the use of same at its own risk. University is not responsible for the safety of Bank of the West's equipment and assumes no other duty not specifically included in this Agreement. Bank of the West is responsible for any direct costs (i.e. staffing or facility usage) incurred in connection with its campus photography activities. Bank of the West will be solely responsible for obtaining any permission and/or release required from any person(s) or third party facility(s) to be photographed and agrees to indemnify University and its representatives, employees and associates from any liability arising from any act or omission by Bank of the West its officers, employees, agents, contractors, subcontractors, and invitees that arises out of the foregoing.

- b. Copyright Ownership. As consideration for waiving location fees typically associated with campus access to take photography used for commercial purposes, Photographer and Bank of the West will grant to University all right and title to the New Images taken by Photographer for the Bank of the West advertising while on University property. For the avoidance of doubt, University owns all University Images, including all New Images and Existing Images. Nothing in this Agreement, including the Copyright License as defined below, will in any way affect the continued and separate copyright ownership interests of University in and to all University Images. Bank of the West hereby agrees, and guarantees that its agreement with Photographer will acknowledge that the New Images shall, to the maximum extent permitted under applicable law (including but not limited to 17 United States Code Section 101), be "works made for hire." The New Images shall be deemed to be works that have been specially ordered or commissioned by University for use as, if applicable, a contribution to a collective work, as part of an audiovisual work, as a translation, as a supplementary work, as a compilation and/or as an instructional text. To the extent that any New Images are not "work made for hire" under applicable law, then all of Bank of the West's and Photographer's rights, title and interests in and to such New Images, together with all intellectual property rights embodied therein, shall be assigned to University subject to Section 44.B.(c) and 44.B.(d), below.
- c. Bank of the West Assignment of New Images. All New Images shall be promptly communicated to University. As consideration for the rights afforded to Bank of the West under this Agreement and to the extent that such New Images are not a "work made for hire" falling under Section 44(b) above, Bank of the West hereby irrevocably assigns to University all of Bank of the West's rights, title and interest in and to all New Images. Bank of the West also hereby assigns to University any and all intellectual property rights in or relating to such New Images that are created or otherwise arise in connection with Bank of the West's promotion of the sponsorship under this Agreement, including but not limited to all copyrights which relate to such New Images, effective immediately upon their conception, origination, creation, preparation, or discovery thereof and regardless of the medium of expression thereof. Bank of the West shall communicate to University or its representatives all facts known to it respecting such New Images. Whenever

requested, Bank of the West promptly shall execute a confirmatory assignment for the benefit of University with respect to all of such New Images, together with any and all intellectual property rights therein or relating thereto, in such form as may be reasonably satisfactory to University, shall testify in all legal proceedings, sign all lawful papers, and perform all acts necessary or appropriate to enable University and its successors and assigns to obtain and enforce all available legal protections for all such New Images in all countries. All New Images shall become the sole and exclusive property of University, and Bank of the West shall be deemed to have assigned and relinquished all rights, title, and interest in and to such New Images to University by virtue of the provisions of this Section 44.B.(c).

- d. **Photographer's Assignment to University.** In the event that Bank of the West subcontracts a third party Photographer to make, develop, take, or create the New Images, Bank of the West guarantees that the Photographer irrevocably assigns all right, title and interest in and to the New Images to University. Bank of the West shall further incorporate provisions consistent with this Agreement into any agreement with any Photographers that Bank of the West may employ to develop or create the New Images, including, (i.) an acknowledgement that the New Images are works made for hire, (ii.) an irrevocable assignment from Photographer to the University of any intellectual property rights in the New Images, and (iii.)_ ensure that any approved Photographer is contractually obligated to comply with all applicable provisions of this Agreement provided, however, Bank of the West shall remain fully and primarily liable to University under this Agreement for the performance and the acts, omissions, or negligence of any such Photographer relative to the New Images. In no event shall any such Photographer agreement include the right to grant any further subcontract or sublicense.
- e. **Copyright License.** Subject to the limitations set forth in this Agreement and prior University approval for each proposed use of the University Images pursuant to Section 44.B.(f). herein, University grants Bank of the West a non-exclusive, royalty-bearing, paid-up, non-transferable, revocable license to use and display the University Images on the BOTW Microsite, solely in connection with promoting the Scope, as set forth in Exhibit A (the "Copyright License"). Bank of the West will not make any reproduction (nor allow any third parties to make a reproduction) of or from the University Images in whole or in part, except for use in and as part of promoting the Scope. If University in its sole discretion should determine that the University Images have been used or distributed for any purpose other than what is authorized herein, or that Bank of the West's use is derogatory or defamatory to University, its campus, employees, or students in any way, University may immediately terminate this Copyright License.
- f. **APPROVAL OF SPECIFIC USE OF UNIVERSITY IMAGES REQUIRED.** Bank of the West shall submit to the University's Office of Business Contracts & Brand Protection ("BCBP"), for review and written approval in advance of any use, samples of Bank of the West's proposed uses of the University Images,

including uses in advertising marketing materials. Bank of the West's use of the University Images shall be consistent with this Section 44, the Trademark Use Guidelines attached hereto as Exhibit F and made a part of this Agreement and any Visual Design Guidelines issued by University's Office of Communications & Public Affairs and provided to Bank of the West. BCBP will make every reasonable effort to review samples submitted by Bank of the West and to approve or suggest necessary modifications to such samples within thirty (30) business days after receipt of the submission. Upon the University's written request, Bank of the West shall certify annually that its use of the University Images conforms to the pre-approved samples. Bank of the West shall modify, at its sole cost and expense, any changes it made to the University Images or samples or its use of the University Images or samples which were not pre-approved. To denote the University's ownership of the University Images, Bank of the West shall include as required and provided by University, appropriate trademark and/or copyright notices in marketing/communication materials, and in media, such as websites.

- g. No Modifications or Derivatives. This Copyright License does not grant any rights to modify, adapt or create derivatives of the University Images in any manner, or to include the University Images in any product or publication. Bank of the West will not: (i) make any unauthorized changes or modifications to the University Images; (ii) adapt the University Images in any manner except as specified in this Agreement; (iii) include the University Images in any other publications; or (iv) make any other use of the University Images not expressly authorized in or outside the scope of this Agreement.

- h. Copyright License Representations and Warranties. Bank of the West represents and warrants that:
 - 1) Bank of the West's use of the University Images will comply with the terms and conditions in this Agreement.
 - 2) Neither Bank of the West, its agents, its independent contractors and subcontractors, including the Photographer, nor any entity involved in the promoting the Scope, or in the display or exhibition of the University Images will assert any rights inconsistent with University's copyrights or other rights. Bank of the West will include in every contract it enters into with subcontractors, independent contractors, or others, including the Photographer, provisions consistent with its warranties and agreements hereunder and;
 - 3) Bank of the West will not permit the University Images to be available in any medium in a manner that enables third parties to download, extract or access the University Images as a stand-alone file. Bank of the West will not directly or indirectly reproduce the University Images in any secondary reproductions such as screen shots, in-context promotions or on file-sharing or social networking websites such as YouTube, Facebook, Twitter, etc., unless authorized in advance by University in writing.

- i. Infringement. Bank of the West acknowledges and agrees that any unauthorized or unlicensed use of any University Images by Bank of the West constitutes infringement of copyright and other applicable laws and will entitle University to exercise all rights and remedies available at law or in equity, including monetary damages, against all users and beneficiaries of the use of such University Images. If, for any reason, the University Images come into the possession of any unauthorized third person, firm or corporation while it is in Bank of the West's control and regardless of the reason(s), Bank of the West agrees to undertake reasonable efforts to recover the University Images and to cooperate fully with University in recovering any damages sustained by University by reason of the unauthorized use.
- j. Cessation of Use of University Images. Upon the termination of the Copyright License or the expiration of the Term or other termination of this Agreement, Bank of the West shall return to University a copy of all New Images in digital format, and cease use of the University Images within ten (10) business days following such expiration or termination and, during such period, shall remove said University Images from display, including without limitation all internet web pages, and destroy promptly all materials held by Bank of the West containing the University Images, and cease any and all use of said University Images.
- k. Permission Language. For any webpage containing a University Image, Bank of the West will include the following text near the University Image:

Displayed by permission of The Regents of the University of California, University of California, Berkeley. All rights reserved.

2. **EXHIBIT D of the Agreement**. The following list of University Marks will be added to the end of the list of Secondary Marks in Exhibit D:

Depictions of University Marks' Sather Gate and Sather Tower (The Campanile), subject to prior approval by University of each proposed use of such images.

3. **EXHIBIT E of the Agreement**. The following Section III. shall be added to Exhibit E of the Agreement, after Section II.:

III. Athletics Post-Season Bonus Payment:

Subject to the express conditions set forth herein, should the Cal football team and/or Cal men's basketball team participate in any post-season competition during the 2015-16 and/or 2016-17 fiscal years, then Bank of the West shall make the following bonus payments to University (each a "Bonus Payment"), for the right to use the applicable sport-specific Cal

Athletics radio assets listed in Exhibit B Section 1.i. Radio (the "Cal Athletics Radio Assets") in association with University's participation in the aforementioned post-season competition:

Fiscal Year	Sport	Amount
2015-16	Football	\$9,345
	Men's Basketball	\$2,430
2016-17	Football	\$9,812
	Men's Basketball	\$2,552

Bank of the West shall pay the Bonus Payments to University within thirty (30) days of being notified by University that it has qualified for the aforementioned post-season competitions.

The parties further agree that should the Cal football team and/or Cal men's basketball team participate in any post-season competition during any of the 2017-18 through 2024-25 Years, then Bank of the West shall make additional bonus payments to University for each post-season qualification, the amounts of which shall reflect future applicable market rates for such bonus payments, and be mutually agreed upon by the parties in writing (the "Future Bonus Payments"). In consideration for any Future Bonus Payments paid to University, Bank of the West shall be granted the right to use the applicable sport-specific Cal Athletics Radio Assets in association with University's participation in the aforementioned post-season competitions. The maximum allowable increase for each such Future Bonus Payment shall not exceed 5.00% from year to year.

4. Except as modified or amended hereby, the terms and conditions of the Agreement shall remain in full force and effect and the obligations, liabilities, and rights of the parties herein and thereunder shall remain unchanged. Capitalized terms used in this First Amendment shall have the same meanings as set forth in the Agreement.

IN WITNESS WHEREOF, this Amendment has been executed by the duly authorized representatives of the parties effective on the Effective Date.

BANK OF THE WEST,
a California banking corporation

**THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,** a California corporation

By: Jason P. Anderson

By: Jimmy Nguyen

Name: JASON P. ANDERSON

Name: Jimmy A. Nguyen

Title: V.P.

Title: Senior Business Contracts Officer

Date: 08/23/2016

Date: 08/24/16

Exhibit M
University Images

Existing Images: NONE

New Images: To be added in future amendments.