



Item 4D.
BCWMC 3-16-23

License No. UA-

UNIVERSITY OF MINNESOTA FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (“Agreement”) is entered into effective as of 03/29/2023, by and between Regents of the University of Minnesota (“**University**”), a Minnesota constitutional corporation, and Bassett Creek Watershed Management Commission (“**Licensee**”), a local unit of government. This Agreement is entered into by University through its Robert J. Jones Urban Research Outreach and Engagement Center (UROC).

1. Grant of License. University grants to Licensee a license to use Exhibit A (the “**Facility**”) solely for the following purpose(s):

Exhibit A (the “**Event**”).

The estimated number of people expected to attend the Event is 40. Licensee acknowledges and agrees that University, its agents, employees, invitees, licensees and students may use any portion of the Facility for any purpose whatsoever and at any time during the term of the Agreement, provided that such use shall not unreasonably disturb Licensee’s use of the Facility as provided in this Agreement.

Licensee shall use the Facility in accordance with the terms and conditions of this Agreement, all University policies and rules, including the Safety of Minors policy, if applicable, and all federal, state and local laws, ordinances, rules and regulations. In addition, Licensee agrees to use the Facility in accordance with all guidance published by the Centers for Disease Control and Prevention (**CDC**), the Minnesota Department of Health (**MDH**), and University related to the safe use of the Facility for the Event. The foregoing specifically includes, but is not limited to, all CDC, MDH and University guidance related to COVID-19.

2. Term. Licensee’s use of the Facility pursuant to this Agreement will not exceed 50 separate calendar days. Licensee is permitted to use the Facility only during the following dates and times:

See Exhibit A

3. Fee. In addition to any other payment Licensee is required to make pursuant to this Agreement, Licensee shall pay University a fee, plus any applicable sales tax, as described on the attached Exhibit A (the “**Fee**”). The Fee is non-refundable, unless otherwise provided in this Agreement.

4. Utilities and Services. University shall provide maintenance and services to the Facility in accordance with its routine schedule and standards for the Facility. Licensee shall reimburse University, plus any applicable sales tax, for all additional maintenance and services provided at Licensee’s request.

5. Concessions/Novelties; Food; Beverage.

5.1 Licensee shall not sell any concessions or novelties on or in the Facility or on any University property without an executed Sales Permit issued by University, which Permit University may grant or withhold in its sole discretion.

5.2 Food may be served on or in the Facility only with the permission of University, and, if required by University, a permit from University's Department of Environmental Health and Safety.

5.3 Licensee shall not sell, distribute, dispense, advertise or promote any non-alcoholic beverage (or permit any other to do the same) without University's written consent, which consent University may condition, grant or withhold in its sole discretion.

5.4 Licensee and/or its caterer may not serve or sell alcoholic beverages at the Facility, unless Licensee receives authorization from the University, containing such terms and conditions as University, in its sole discretion, deems advisable. Such authorization may be granted or withheld at University's sole discretion.

6. Alterations; Signs; Liens. Licensee shall not redecorate, change or alter the Facility, nor shall Licensee display any signs or advertising in or about the Facility, without the prior written consent of University, which consent University may grant or withhold in its sole discretion. Licensee shall not permit to accrue, and shall indemnify University against and hold University harmless from, any liens for labor or materials provided to Licensee, or claimed to have been so provided.

7. Personal Property. Licensee, not University, is responsible for loss of or damage to any personal property of Licensee, its guests, agents, employees or invitees, located within the Facility or on University property, before, during or after the term of the Agreement.

8. Indemnification. Licensee agrees to defend (with counsel reasonably acceptable to University), indemnify, and hold harmless University from and against all claims, actions, damages, judgments, fines, liabilities, and expenses (including attorney's and other professional fees) arising from or in connection with (i) Licensee's use of the Facility and other University property, except to the extent caused by the gross negligence or intentional misconduct of University; (ii) the negligent or wrongful acts of Licensee's employees, agents, vendors, contractors, or invitees; or (iii) Licensee's failure to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Agreement.

9. Insurance. At least 30 days prior to the Event, Licensee shall provide University with a certificate of insurance or other acceptable evidence of insurance coverage as indicated below. If this Agreement is signed by Licensee fewer than 30 days prior to the Event, Licensee shall submit such evidence of insurance upon the signing of this Agreement.

9.1. Check either (A) (B) or (C) below as applicable:

- (A) Licensee's policy of Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence; or qualified self-insurance subject to approval by University.
- (B) Proof that Licensee has purchased event liability insurance with a minimum limit of \$1,000,000 per occurrence. Licensee may purchase such insurance from the insurer of its choice, or at the following website address: <https://tulip.ajgrms.com>.
- (C) State and other governmental agencies that are self-insured shall provide a letter stating that fact and the coverage limits for such insurance on departmental letterhead.

9.2 Workers' Compensation/Employers Liability, if applicable, to the extent required by law.

9.3 All insurance provided under paragraph 9.1(A) and 9.1(B) shall be written by insurance companies with an A.M. Best rating of A-VII or better and licensed and authorized to do business in the State of Minnesota and shall name Regents of the University of Minnesota as an additional insured. The policies shall provide that the insurance coverage shall not be canceled, modified or non-renewed before the end of the term of this Agreement without written notice to University. Licensee shall maintain the insurance(s) described in this paragraph for the entire term of this Agreement.

10. Assignment. Licensee shall not assign its rights under this Agreement without University's prior written consent, which consent University may grant or withhold in its sole discretion.

11. Obligations at End of Agreement. Licensee shall, upon the expiration or earlier termination of this Agreement, cease use of the Facility and leave it in the same good condition as on the initial date of possession by Licensee, normal wear and tear excepted. Property not removed by Licensee will be considered abandoned, and University may dispose of it as it deems expedient without liability to Licensee or others. Licensee shall reimburse University for any and all costs University incurs to repair any damage to the Facility or other University property or equipment arising out of or connected with the Event, unless such damage is caused solely by University, its officers, employees, agents or representatives.

12. Notices. All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to University: University of Minnesota
c/o Real Estate Office
Attn.: Leasing Specialist
451 Donhowe Building
319-15th Avenue SE
Minneapolis, MN 55455-0199
Facsimile No.: (612) 624-6345
E-mail: reo@umn.edu

With a copy of
default notices to: University of Minnesota
Office of the General Counsel
Attn.: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
Facsimile No.: (612) 626-9624
E-mail: contracts@mail.ogc.umn.edu

If to Licensee: Bassett Creek Watershed Management Commission
Attn: Laura Jester
16145 Hillcrest Lane,
Eden Prairie MN 55346
Facsimile No.: 952-270-1990
E-mail: laura.jester@keystonewaters.com

13. License Only; Remedies. Licensee acknowledges that this Agreement represents a grant of a revocable license only, and not an easement or lease. Licensee shall pay to University all of University's damages, costs and fees, including attorneys' fees, caused by Licensee's failure to comply with the terms and conditions of this Agreement. In addition, if Licensee fails to comply with the terms and conditions of this Agreement, University shall be entitled to exercise all other legal and equitable remedies available to University.

14. Limitation of University Liability. IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. UNIVERSITY'S TOTAL LIABILITY FOR BREACH OF THIS AGREEMENT IS THE FEE PAYABLE BY LICENSEE AS SET FORTH IN PARAGRAPH 3 OR IN AN EXHIBIT TO THIS AGREEMENT.

15. Cancellation Due to Uncontrollable Event. The Event may be canceled by either party if an Uncontrollable Event makes it impracticable or inadvisable to conduct the Event. An "Uncontrollable Event" means an event or circumstance that is beyond the reasonable control and without the fault of the party impacted. An Uncontrollable Event may include, but is not limited to, an act of God; civil disorder; terrorist acts or threats; acts of governing authorities; fires, floods, and other natural disasters; strikes or other labor difficulties; public health issues or disease; facility closings or operation disruptions due to severe weather, a failure or disruption of utilities or critical equipment, an active shooter, or other emergencies; or other events, whether similar or

dissimilar to the foregoing. For clarity, an Uncontrollable Event will include the COVID-19 pandemic and related circumstances, whether or not foreseeable (including, without limitation, ongoing or new quarantine orders; employee travel or other restrictions; University campus closure or policy changes; or federal, state, or local governmental orders or advisories). If the Event is cancelled due to an Uncontrollable Event, neither party shall have any liability to the other, provided that any deposits or amounts paid by one party to the other shall be promptly refunded and Licensee shall reimburse University for all reasonable expenses incurred to the time of cancellation (including any expenses for which University then is and will remain unavoidably committed).

16. Use of University Name or Logo. Licensee agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University or the name of any representative of the University without the written permission of the University in each instance except for the limited purpose of identifying the location of the Event in advertising or other notices for the Event.

16.1 Licensee shall not use or alter University Marks in connection with the Event. Licensee agrees that the following disclaimer shall be prominently placed in all material related to promotion, publicity or advertising of the Event, whether print media, photo, video or web-based, in a font not smaller than the main text of the specific piece:

“The University of Minnesota is not endorsing or sponsoring the activities conducted by Bassett Creek Watershed Management Commission on the University of Minnesota campus. The relationship between the University of Minnesota and Bassett Creek Watershed Management Commission is solely that of licensor and licensee.”

16.2 Licensee’s failure to comply with this section shall give University the right to immediately terminate this Agreement and Licensee’s access to the Facilities.

17. Copyright Representation and Release. Licensee represents that copies of presentation materials Licensee provides to University, or directs University to copy and distribute to Attendees, and materials that Licensee will present by multimedia at the Event, will only be made from legal copies and that Licensee has the right to make this use of the presentation materials either because Licensee a) owns the copyright; b) has written permission of the copyright owner(s) for this use; c) reasonably believes each use to be fair use pursuant to 17 United State Code § 107, *Limitations on exclusive rights: Fair use*; or d) reasonably believes the material to be in the public domain. Licensee further represents that copyright notices have not been altered and that required attributions are shown. Licensee releases and will hold harmless University, its Regents, officers, employees and agents for copyright infringement arising from Licensee’s presentation materials.

18. Amendments. This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

19. Non-Waiver; Survival. No waiver by any party of a default or non-performance by the other party shall be deemed a waiver of any subsequent default or non-performance. Licensee’s

obligations under Sections 6, 8, 11, 15, and 17 and University's limitation of liability under Section 14 shall survive the expiration or earlier termination of this Agreement.

20. Governing Law; Forum. The laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be brought in the state courts of Minnesota.

21. Entire Agreement. This Agreement (including all exhibits, if any) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.

22. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts and/or by electronic signature, each counterpart of which will be deemed an original, and all of which together will constitute one agreement. The executed counterparts of this Agreement may be delivered by electronic means, such as email and/or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.

23. Exhibits. The terms and conditions of any and all exhibits and addenda attached to this Agreement are made a part of this Agreement as if fully set forth in this Agreement. To the extent that any of the terms and conditions of paragraphs 1 – 23 of this Agreement conflict with any of the terms and conditions of the attached exhibits and addenda, the terms and conditions of the exhibits and addenda shall control. All capitalized terms in any exhibits and addenda that are not specifically defined in such exhibits and addenda shall have the meanings given them in this Agreement.

IN WITNESS WHEREOF, University and Licensee have executed this Agreement as of the date set forth above.

Regents of the University of Minnesota

**Bassett Creek Watershed Management
Commission**

By:

Name: James De Sota
Title: Assistant Executive Director
Date: _____

By:

Name: Catherine Cesnik
Title: Chair
Date: _____

EXHIBIT A

University and Licensee further agree as follows:

**EXHIBIT A
TO
FACILITY USE AGREEMENT**

**Robert J. Jones Urban Research and Outreach-Engagement Center (UROC)
Confirmation of Reservation**

This Confirmation includes an estimate of the Fee based on the information provided by Licensee. In the event Licensee requests a change in the details of the Event following the signing of this Agreement, University shall make a reasonable effort to grant such request and Licensee agrees to pay any additional Fee resulting from the change.

A. Booking.

Group/Program: Bassett Creek Valley Stakeholder

Date	Time	Room	Collaboration	Price/hr	Amount
03/29/2023	8:30am-11:00am	107	No	\$70/2.5	\$175

Type: Meeting

Total Fee: \$175

Rooms Subject to change based on Availability

B. Room Set-up. The Facility will be set-up for the Event according to the arrangement depicted on Attachment 1 to this Exhibit. If Licensee moves any furniture in the Facility during the Event, Licensee must return that furniture to the arrangement shown on Attachment 1 at the conclusion of the Event.

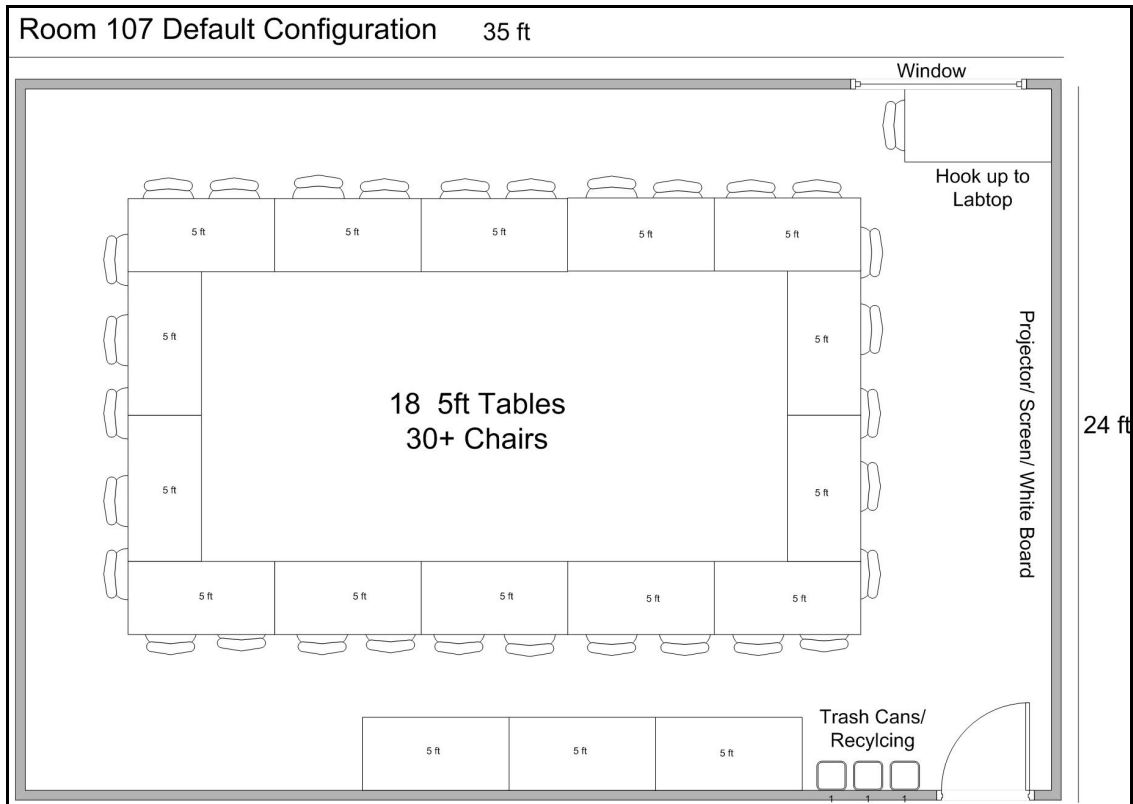
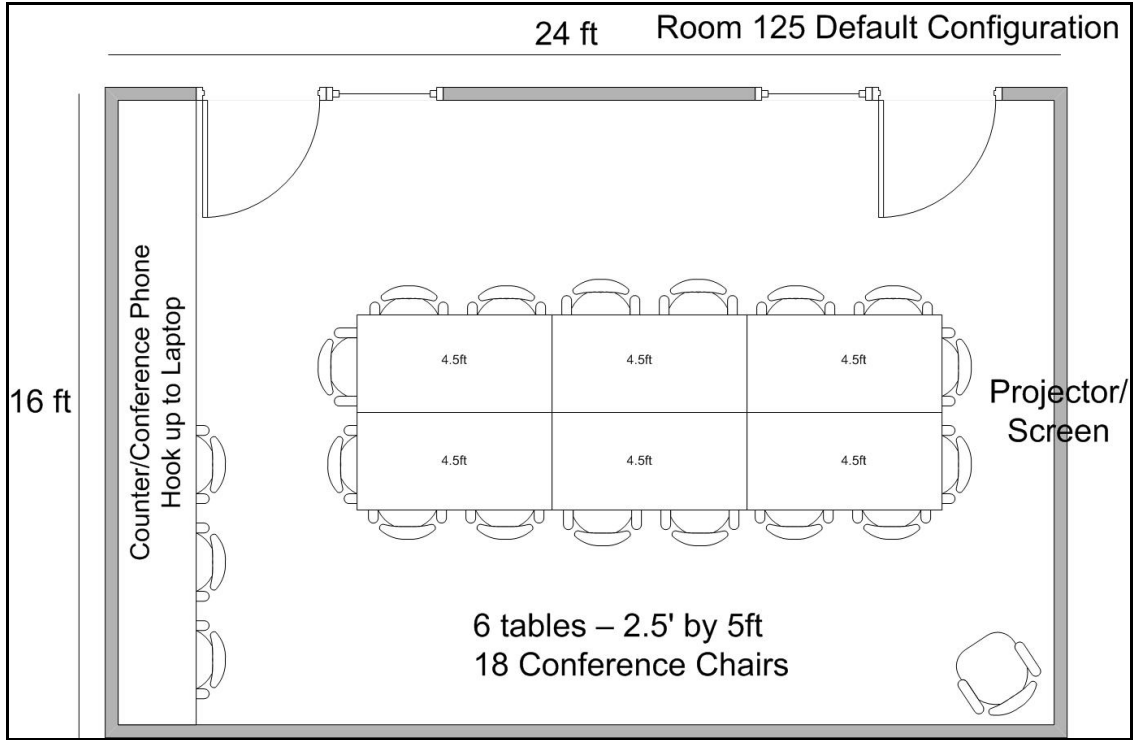
C. Special Cleaning. Licensee shall reimburse University for any and all costs University incurs for additional custodial services above and beyond normal cleaning.

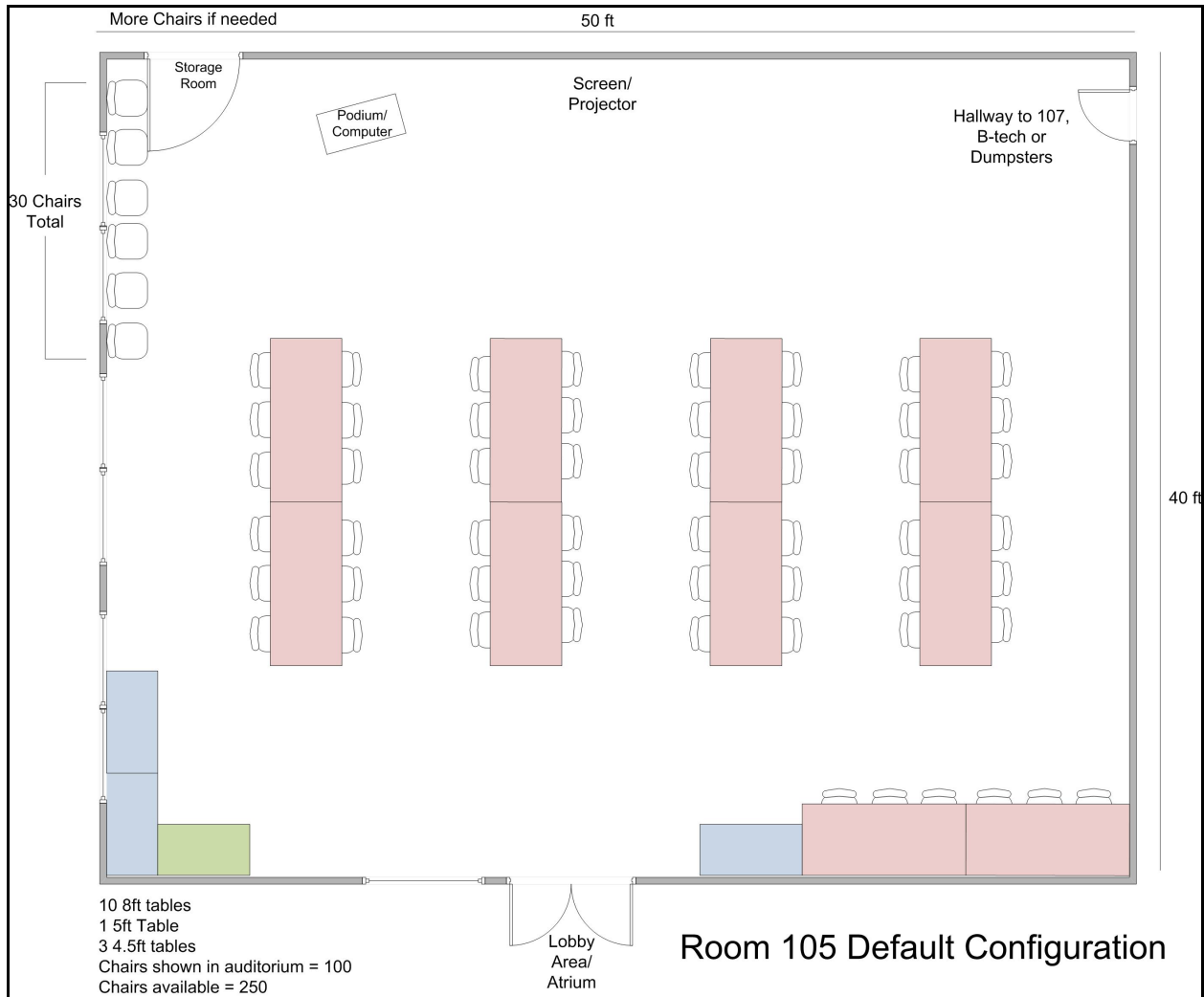
D. Audio/Visual. Requests for audio and visual technicians and equipment must be received by University at least five (5) business days prior to the event.

E. Signs; Decorations. Licensee may post signs or place decorations on or within the Facility in accordance with UROC's decorating policy and with the prior approval of University.

F. Notices to UROC. All notices given by Licensee pursuant to Section 12 of the Agreement shall also be sent to UROC at: 2001 Plymouth Avenue North, Minneapolis, MN 55411, urocinfo@umn.edu.

**ATTACHMENT 1
TO
EXHIBIT A**





**ATTACHMENT 2
TO EXHIBIT A**

UROC DECORATING POLICY

1. All decorations must comply with local, state, and national fire regulations and may be subject to approval by local fire authorities.
2. Emergency exits and service doors must not be blocked with any decorations, equipment, or chairs.
3. All organizations are responsible for setting up their own decorations, as well as removing them at the end of the event.
4. All decorations and signs must be contained within the space reserved.
5. Users are responsible for the actions of their guests, staff, and contractors (caterers and decorators).
6. The use of glitter, confetti, rice, flower petals, and other hard to clean materials are prohibited.
7. The use of paint or aerosol spray products is prohibited.
8. The use of candles is prohibited.
9. Open flames will not be permitted. Only materials, which are treated with flame retardant, may be used for decorations.
10. Painters' tape (blue) or self-stick Flip Charts are the only acceptable fastening material to be used on walls. Nails, tacks, other types of tape, screws, or staples must not be used to fasten decorations to the walls, doors, blinds, glass or any other part of the facility.
11. Large containers of water or fountains are prohibited without prior notification and approval.
12. Fog and smoke machines are prohibited.
13. UROC Staff reserves the right to remove postings in violation of the Decorating Policy.