

**MEMORANDUM OF UNDERSTANDING
WITH
FRESNO BUILDING HEALTHY COMMUNITIES AND
STREET LEAGUE SKATE BOARDING FOUNDATION
REGARDING ROMAIN SKATE PARK**

This Memorandum of Understanding (“MOU”) is entered into this ____ day of _____, 20__, by and between the CITY OF FRESNO, a municipal corporation, (“City”), FRESNO BUILDING HEALTHY COMMUNITIES, a California nonprofit unincorporated association (“Fresno BHC”), and STREET LEAGUE SKATEBOARDING FOUNDATION, a California nonprofit, public benefit corporation (“SLSF”) (collectively, “the parties”).

WITNESS

WHEREAS, City owns Frank Romain Playground Park (“Park”), located at 745 N. 1st. St., Fresno, California, 93702;

WHEREAS, Fresno BHC was established to foster and encourage thriving communities where all children and families can live healthy, safe, and productive lives;

WHEREAS, Fresno BHC desires to renovate and improve the Park and has secured private funding to construct a permanent skate park in the same location (“Skate Park”); and has retained the expertise of SLSF to design and construct the Skate Park on their behalf;

WHEREAS, SLSF was established to increase global participation in skateboarding; and to create healthy, sustainable communities by promoting the inherent benefits of skateboarding;

WHEREAS, SLSF assists municipalities, non-profit organizations, and private donors with the design, development, and construction of legal and safe skate plazas, as well as assisting with educational programs that both increase understanding and encourage skateboarding;

WHEREAS, Fresno BHC led a series of public workshops to develop a community-supported conceptual plan for the Skate Park, and during a community workshop held on May 27, 2015, SLSF presented a draft conceptual plan for the Skate Park (“Draft Conceptual Plan”), attached as Exhibit A; and

WHEREAS, the City, Fresno BHC, and SLSF now wish to enter into this MOU to allow SLSF to construct the Skate Park at the Park.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained, and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Manuel A. Mollinedo, Director
Parks, After School, Recreation and Community
Services
1515 E. Divisadero St.
Fresno, CA 93721
Tel: (559) 621-2900

Fresno BHC Representative: Sandra F. Celedon-Castro
Fresno Building Healthy Communities
4949 E. Kings Canyon Road
Fresno, CA 93727

Street League Representative: Paul Vizcaino
Street League Skate Boarding Foundation
777 S. Mission Road
Los Angeles, CA 90023

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

A. The City shall:

- (i) Designate a representative to work with Fresno BHC and SLSF to ensure each stage of the project and the scope of work have been completed.
- (ii) Review each project phase of the design and construction of the Skate Park, however, nothing in this MOU shall bind future City action which may be necessary to fund and approve future development of the Park.
- (iii) Dedicate and name the Skate Park *Fresno Building Healthy Communities Skate Park* for a period of not less than fifteen years, and agrees that, subject to providing a rendering of the proposed signage and gaining prior approval of said signage by City, Fresno BHC shall erect informational plaques or signs on the Park property, detailing proper use of the Skate Park and acknowledging the contributions of Fresno BHC, the grantors under any grant agreements, City, and SLSF. Approved signage shall be installed by SLSF during construction of the Skate Park.
- (iv) Seek prior approval of Fresno BHC regarding the nature, text, and timing of public announcements which directly or indirectly concern the existence of or terms of this MOU. City will seek the approval of Fresno BHC regarding the nature, text and timing of press releases, announcements, and events related to construction or completion of the Skate Park. Moreover, City shall acknowledge the contributions of Fresno BHC, the grantors under any grant agreements, and SLSF during any public or media event publishing the Skate Park. Similarly, any document, written report, or brochure prepared in whole or in part pursuant to installation of

the Skate Park shall acknowledge the contributions of Fresno BHC, the grantors under any grant agreements, and SLSF.

- (v) Respond to requests from Fresno BHC or SLSF for review of any documents regarding this MOU or the Park within three business days so as to accomplish the above-mentioned approval process in a timely manner.

B. Fresno BHC shall:

- (i) Encourage and incorporate community outreach efforts during the planning and construction phase of the Skate Park.
- (ii) Provide City with proposed notices and plans, and obtain written approval by City of such notices and plans, prior to advertising or holding any program, special event, press event, community event, or any other event related to the Skate Park at the Park.
- (iii) Designate a representative to work with City and SLSF to ensure each stage of the project and the scope of work have been completed.
- (iv) Review each project phase of the design and construction of the Skate Park.
- (vi) Seek prior approval of City regarding the nature, text, and timing of public announcements which directly or indirectly concern the existence of or terms of this MOU. Fresno BHC will seek the approval of City regarding the nature, text and timing of press releases, announcements, and events related to construction or completion of the Skate Park. Moreover, Fresno BHC shall acknowledge the contributions of City, all grantors under any grant agreements, and SLSF during any public or media event publishing the Skate Park. Similarly, any document, written report, or brochure prepared in whole or in part pursuant to installation of the Skate Park shall acknowledge the contributions of City, all grantors under any grant agreements, and SLSF.
- (vii) Respond to requests from City or SLSF for review of any documents regarding this MOU or the Park within three business days so as to accomplish the above-mentioned approval process in a timely manner.

C. SLSF shall:

- (i) Assume financial responsibility for all costs associated with the design and construction of the Skate Park. When construction of Skate Park is complete and approved by City, financial responsibility for maintenance of the Skate Park shall transfer to City.

- (ii) Assume responsibility of working with subcontractor California Skateparks as the design/ build firm.
- (iii) Appoint a Project Director to oversee the project and work with Fresno BHC and City.
- (iv) Require any subcontractors to insure and indemnify Fresno BHC and City as described in this MOU.

3. EFFECTIVENESS, DURATION AND TERMINATION

This MOU shall be effective September __, 2015, through the completion of the Skate Park project, or until April 30, 2016, whichever comes sooner. Upon completion and the City's approval and acceptance of the Skate Park project, City will become responsible for the long-term maintenance of the Skate Park. The City shall maintain the Skate Park in good shape and provide timely repairs, as needed, for at least five calendar years after completion.

Any party may at any time terminate this MOU with cause upon written notice to the other parties following another party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days' written notice thereof. Termination shall be effective (the "Effective Date of Termination") as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this MOU shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein. The parties recognize that termination of this MOU prior to project completion may result in incomplete and unusable facilities at the Park resulting in significant liability to City. The parties therefore agree to terminate this MOU only for cause, as outlined above in this section.

4. COMPLIANCE WITH GOVERNING LAW

Each party shall comply with all federal, state, and local laws, rules and regulations in its pursuit hereof. No party in its performance of this MOU shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, gender identification, or status as a disabled veteran or veteran of the Vietnam era.

5. CAPACITY OF CITY, FRESNO BHC, AND STREET LEAGUE

Each party is acting in an independent contractor capacity. Nothing in this MOU and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency, or employment relationship, jointly and severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits, and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of Fresno BHC and/or SLSF. The City

assumes full responsibility for the actions of such personnel while they are performing services pursuant to this MOU, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by Fresno BHC and/or SLSF or its subcontractors will not for any purpose be considered employees or agents of the City. Fresno BHC and/or SLSF (or any subcontractor) assumes full responsibility for the actions of such personnel while they are performing services pursuant to this MOU, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and Fresno BHC agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. Fresno BHC agrees and acknowledges that its employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment, or disability benefits, to be provided by the City.

The City and SLSF agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. SLSF agrees and acknowledges that its employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment, or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations, or on the exercise of their rights under this MOU, including without limitation income, payroll or employment-related taxes and payments. The parties agree that funding for construction of the Skate Park shall come from private sources and no public funds will be used.

No party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

6. INDEMNIFICATION

To the furthest extent allowed by law, Fresno BHC and SLSF 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, Fresno BHC and/or SLSF, 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 performance of this Agreement. Fresno BHC's and SLSF's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or

any of its officers, officials, employees, agents, or volunteers.

If Fresno BHC or SLSF should subcontract all or any portion of the work to be performed under this Agreement, Fresno BHC or SLSF shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

7. INSURANCE

Throughout the life of this MOU, Fresno BHC and SLSF or its subcontractors shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) as may be authorized in writing by the City's Risk Manager or his/her designee at any time in his/her sole discretion. The required policies of insurance shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insured, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to be the named insured.

Coverage shall be at least as broad as:

- A. **COMMERCIAL GENERAL LIABILITY (CGL):** Insurance Services Office (ISO) form CG 00 01 covering CGL on an "occurrence" basis and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$2,000,000 aggregate for products and completed operations, and \$2,000,000 general aggregate.
- B. **COMMERCIAL AUTOMOBILE LIABILITY:** Insurance Services Office (ISO) form CA 00 01 covering Code 1, and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage. C. **WORKERS' COMPENSATION** insurance as required by the State of California Labor, with statutory limits, and **EMPLOYERS' LIABILITY** insurance with minimum limits of not less than \$1,000,000 per accident for bodily injury or disease.
- C. **COMMERCIAL CRIME** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Crime and Fidelity Form CR 00 20 with limits of insurance of not less than \$200,000.

Umbrella or Excess Insurance: In the event Fresno BHC and/or SLSF or its subcontractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such

umbrella or excess insurance policy(ies) shall also apply on a primary and noncontributory basis for the benefit of City, its officers, officials, employees, agents and volunteers.

Deductibles & Self-Insured Retentions: Fresno BHC and/or SLSF or its subcontractors shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Foundation shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Fresno BHC and/or SLSF or its subcontractors shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Endorsements: The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this MOU, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Fresno BHC and SLSF shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The *General Liability and Automobile Liability insurance policies* are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, agents, employees, and volunteers are to be covered as an additional insured. Fresno BHC and/or SLSF or its subcontractors shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this MOU, Fresno BHC's and/or SLSF's or its subcontractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Fresno BHC's and/or SLSF's or its subcontractor's insurance and shall not contribute with it. Fresno BHC and/or

SLSF or its subcontractors shall establish primary and noncontributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and noncontributory status as board as that contained in ISO Form CG 20 01 014 13.

The Crime insurance policy shall name the City as a joint loss payee.

The Workers' Compensation insurance policy is to contain or be endorsed to contain, the following provision: Fresno BHC and/or SLSF and its insurer shall waive any right of subrogation against City and each of its officers, officials, employees, agents, and volunteers.

Fresno BHC and/or SLSF or its subcontractors shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance prior to the City's execution of this MOU.

Maintenance of Insurance: If at any time during the life of this MOU or any extension, Fresno BHC and/or SLSF (or its subcontractors) fails to maintain any required insurance in full force and effect, all of SLSF's activities under this MOU shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this MOU. No action taken by City pursuant to this section shall in any way relieve Fresno BHC and/or SLSF or its subcontractors of their responsibilities under this MOU.

Verification of Coverage: Upon request of City, Fresno BHC and/or SLSF or its subcontractors shall immediately furnish City with a complete copy of any insurance policy required under this MOU, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this MOU.

Duty to Indemnify: The fact that insurance is obtained by Fresno BHC and/or SLSF or its subcontractors shall not be deemed to release or diminish the liability of Fresno BHC and/or SLSF or its subcontractors, including, without limitation, liability under the indemnification provisions of this MOU. The duty to indemnify City and its officials, officers, employees, agents, and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Fresno BHC and/or SLSF or its subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Fresno BHC and/or SLSF or its subcontractors, or any of their officers, board members, employees, agents, volunteers, invitees, caterers, concessionaires, suppliers, vendors, consultants, or other contractors.

Subcontractors: If Fresno BHC and/or SLSF should subcontract all or any portion of the services to be performed under this MOU, Fresno BHC and/or SLSF shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents, and authorized volunteers in accordance with the terms of this section. All required certificates and applicable endorsements shall be on file with

Fresno BHC and/or SLSF and City prior to the commencement of any services by the subcontractor.

8. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

9. NOTICES

Any notice required or intended to be given to a party under the terms of this MOU shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the Fresno BHC and/or SLSF Representative, or (c) three (3) business days after the date of mailing (postage pre-paid return receipt requested). Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other.

10. BINDING

Once this MOU is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives. The terms and conditions of this MOU, express or implied, exist only for the benefit of the parties to this MOU and their respective successors and assigns. No other person or entity will be deemed to be a third party beneficiary of this MOU.

11. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this MOU without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

12. WAIVER

The waiver by any party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and approved by and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this MOU unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the MOU shall be implied from

any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

13. GOVERNING LAW AND VENUE

This MOU 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 MOU and any rights and duties hereunder shall be Fresno, California.

14. HEADINGS

The section headings in this MOU 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 MOU.

15. SEVERABILITY

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.

16. INTERPRETATION

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

17. REPRESENTATIONS AND WARRANTIES

SLSF represents and warrants that it is a duly authorized and existing California nonprofit corporation in good standing, and shall remain in good standing during the term of this MOU. Fresno BHC represents and warrants that it is a duly authorized and existing nonprofit unincorporated association in good standing, and shall remain in good standing during the term of this MOU. Each party hereby represents and warrants to the other party, and agrees that it has the full power and authority to enter into this MOU and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this MOU.

18. ENTIRE MOU

It is mutually understood and agreed that the foregoing constitutes the entire MOU between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

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IN WITNESS THEREOF, the parties have caused their authorized agents to execute this MOU as of the date first set forth above:

CITY OF FRESNO, a municipal corporation

Fresno Building Healthy Communities, a California nonprofit unincorporated association

By: _____
Manuel A. Mollinedo, Director
PARCS Department

By: _____

Name: _____

Title: _____
(Director, Officer, or Agent)

ATTEST

YVONNE SPENCE, CMC
City Clerk

Street League Skateboarding Foundation,
a California nonprofit public benefit corporation

By: _____
Deputy

By: _____

Name: _____

Title: _____
(Board Chair, Pres. or Vice Pres.)

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____

By: _____
Amanda B. Freeman Date
Deputy

Name: _____

Title: _____
(CFO, Treasurer, Secretary or
Assistant Secretary)