

**Recording Requested by:**  
City of Fresno  
No Fee-Gov't. Code Sections  
6103 and 27383

**When Recorded, Mail to:**  
City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623

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*SPACE ABOVE THIS LINE FOR RECORDER'S USE*

APN No. 316-022-27S, -28ST, -29ST,  
-30ST, -31T, -32, -33, -34, and -35T

DEPARTMENT OF PUBLIC UTILITIES  
CITY OF FRESNO

**IMPROVEMENT AND REIMBURSEMENT AGREEMENT  
FOR SANGER UNIFIED SCHOOL DISTRICT EDUCATIONAL CAMPUS PROJECTS  
AT ARMSTRONG AVENUE AND FOWLER AND JENSEN AVENUES**

This Agreement is made and entered on this 24th day of April, 2018, (the Effective Date), by and between the CITY OF FRESNO, a municipal corporation (City), and SANGER UNIFIED SCHOOL DISTRICT, a California public school district (District). City and District are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

- A. City and District are parties to that certain Extra-Territorial Service and Offsite Infrastructure Agreement between Sanger Unified School District and City of Fresno dated July 28, 2011, and on record as Document No. 20110104288 in the Official Records of Fresno County (the Elementary School Infrastructure Agreement) which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- B. In 2011, District constructed Sequoia Elementary School at 1820 S. Armstrong Ave in Fresno, California (Elementary School Project). At the time, the Elementary School Project did not have sufficient water and sewer services available to it and was outside of the City of Fresno city limits. Because District did not wish to annex the Elementary School Project to City at that time, the District agreed to construct its own water and sewer extension infrastructure, in exchange for City providing water and sewer connections to District at the edge of District's property line, within City's right-of-way. The Parties' understanding was memorialized in the Elementary School Infrastructure Agreement.

- C. Certain of District's obligations under the Elementary School Infrastructure Agreement remain outstanding, and District now wishes to complete those outstanding items.
- D. District also proposes to further develop in the area and construct an educational center across Armstrong Avenue from the Elementary School Project on the northeast corner of Fowler Avenue and Jensen Avenue (the High School Project), on Assessor's Parcel Numbers 316-022-27S, -28ST, -29ST, -30ST, -31T, -32, -33, -34, and 35T (Subject Properties), encompassing the area bounded by Church Avenue to the north, Jensen Avenue to the south, Fowler Avenue to the west and Armstrong Avenue to the east, as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.
- E. Ultimate plans for the High School Project are to construct an educational campus for 4,532 middle and high school students on approximately 120.45 acres on the Subject Properties. The High School Project is phased. Phases 2 and 3 of the High School Project includes the construction of middle school facilities, shared high school, and associated fields and lighted hard-courts at the southwest corner of the High School Project site, all more particularly described in Final Environmental Impact Report – State Clearing House No. 2014121038 (the Project EIR).
- F. The construction of the High School Project will require District to connect to City water and sewer facilities and meet conditions required by the City of Fresno and pursuant to the Project EIR. Such Obligations, subject to this Agreement, are more particularly described in part in Paragraph 3 below (the Obligations).
- G. District is unable to fund all of the Obligations at this time and has requested City to fund the construction of a portion of the Obligations, subject to reimbursement to City as set forth herein.
- H. By this Agreement, City and District wish to address the outstanding items under the Elementary School Infrastructure Agreement, set forth the Parties' obligations in association with the High School Project, and clarify the terms of District's reimbursement obligation.

### **AGREEMENT**

THEREFORE, IN CONSIDERATION of the foregoing recitals and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledge, the Parties agree as follows:

1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.

2. District's Obligations. Pursuant to the Elementary School Infrastructure Agreement, the Project EIR and City of Fresno Public Utilities requirements, District agrees to complete the following Obligations prior to occupancy at the High School Project site:
- a. Fowler Avenue Water Main Extension. Extend the existing 14 inch public water main in Fowler Avenue south along Fowler Avenue to Jensen Avenue.
  - b. Armstrong Avenue Private Water Main Extension and Dedication. Extend the existing 14 inch private water main in Armstrong Avenue south along Armstrong Avenue to Jensen Avenue and dedicate the entire water line (from Church Avenue to Jensen Avenue) to the City of Fresno.
  - c. Jensen Avenue Water Main Extension. Install a 16 inch water main in the public right-of-way along Jensen Avenue from Fowler Avenue to Armstrong Avenue.
  - d. Removal of Backflow Prevention Device. Remove the backflow prevention device at the intersection of Armstrong Avenue and Church Avenue to convert the private water main in Armstrong Avenue to a public water main.
  - e. Water Meter Installation. Install a water meter, including radio transmitter, on the groundwater well located at Sequoia Elementary School for irrigation water.
  - f. Water Utility Account. Establish a water utility account for the groundwater well at Sequoia Elementary School.
  - g. Payment of Water Quantity Charges. Pay forty-eight months of back charges in the amount of Seven Thousand Two Hundred and Eighty Eight Dollars and 04/100 (\$7,288.04) for Water Quantity Charges (i.e. Recharge Fee) not previously paid by the District, and as required by previous Public Utilities Conditions of Approval.
  - h. Payment of Water Capacity Fee. Pursuant its obligation under Section 5 of the Elementary School Infrastructure Agreement, District shall pay 50% of the City's current Water Capacity Fee for an 8-inch domestic water meter in the amount of One Hundred Twenty-Seven Thousand Three Hundred and Eighty-One Dollars and 50/100 (\$127,381.50). It is acknowledged that effective June 2017, certain of City's UGM Water Supply Fees were repealed and replaced with the City's Water Capacity Fee.

- i. Ancillary Work. Complete any and all ancillary work necessary of the above-listed Obligations.
3. Performance Standards. The performance and installation of the Obligations shall comply with the latest edition of the standard specifications and drawings of the City at the time of the issuance of a street work permit, including details therewith and amendments thereto. District shall perform, install and provide all work, Obligations, and materials under the supervision of the Public Works Director and the Director of Public Utilities, as appropriate; work shall be inspected under the direction of the Public Works Director as it progresses.
4. Development Impact Fee Program. District agrees to participate in City's Development Impact Fee Program and pay fees as required by City and as set forth in the certain Improvement and Reimbursement Agreement for Phase 2 of Sanger Unified School District Middle and High School Campus Project at Fowler and Jensen Avenues, executed April 24, 2018. District shall receive cost reimbursement in the form of fee credit for eligible Obligations.
5. Eligible Development Impact Fee Cost Reimbursement. The following work is eligible for reimbursement from the City's Development Impact Fee Program:
  - a. Water Main Extensions and Installations. The improvements required for completing a looped water main system along Church, Fowler, Jensen, and Armstrong Avenues are for the benefit of the District to provide a reliable and redundant water supply system for the District's Project. A portion of the costs to construct the water system Obligations described above is eligible for reimbursement. The District shall be reimbursed by the City in accordance with City ordinances using funds from the two revenue sources described in the City's Master Fee Schedule: Frontage Charge and Transmission Grid Reimbursement.
6. Reimbursement Priority. All reimbursements to District from the City's Development Impact Fee Program are subject to the availability of funds. Reimbursements are paid in accordance with the Fresno Municipal Code. District will be reimbursed once all eligible projects with reimbursement priority are repaid.
7. Improvement Cost Obligation. The City is not required or obligated by this Agreement to construct or complete the Obligations. If District fails to timely complete the Obligations, City may elect to install the Obligations to protect the public safety and welfare and the District agrees that it shall be fully responsible for all costs incurred by the City in connection with

completion of the Obligations. A final accounting of such costs shall be sent to District by the Director of Public Utilities and shall be payable within thirty days of such date. If District does not pay the costs in full within thirty days after the date the Director of Public Utilities mails notice of such actual costs, interest shall accrue on the unpaid balance at the maximum legal rate from the date the accounting of costs was confirmed. The remedy provided in this paragraph shall be in addition to and without limitation on any other rights or remedies that may be available to the City.

8. Advance of Costs by City. The Parties acknowledge that improvements required for completing a looped water main system along Church, Fowler, Jensen, and Armstrong Avenues (set forth in Paragraph 2.b. and 2.c. above) are necessary at this time and are for the benefit of the District to provide a reliable and redundant water supply system for the District's Project. District represents that it does not have adequate funding allocated for loop completion at this time because District's approved construction schedule allocates such funding with Phase 3 construction (which includes the installation of fields and lighted hard-courts at the southwest corner of the High School Project site). District has requested the City to pay for completing the redundancy loop, with the understating that District will reimburse City as set forth herein. To ensure adequate water delivery the City agrees to advance District for the costs associated with the redundancy loop and to pay all invoiced costs associated with the Phase 3 portion of loop completion.
  - a. Cost Reimbursement by District. District shall reimburse City for the entire City Cost Advance at the time that District submits its plans for Phase 3 High School Project approval. City shall not accept or approve any Phase 3 High School Project plans until and unless, District meets its City Cost Advance reimbursement obligation set forth herein.
9. District's Additional Obligations. As a part of the obligation of the District, the City shall be entitled to costs and reasonable expenses and fees, including reasonable attorney's fees, which may be incurred in successfully enforcing this Agreement against the District. All work and Obligations shall be done at the sole cost and expense of the District. The costs of engineering, inspection, testing, surveying, staking, and all applicable fees as required by Fresno Municipal Code shall be the sole responsibility of the District.
10. Binding. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of respective Parties hereto.

11. Gender. Whenever the context requires, the neuter shall include the masculine or feminine, or both, and the singular shall include the plural.
12. Time of the Essence. Time is of the essence of this Agreement.
13. Assignment. The District shall make no assignment of this Agreement or of any duty or obligation of performance hereunder, in whole or in part, without the prior written consent of the City, which shall not be unreasonably withheld.
14. Indemnification. City shall indemnify, hold harmless and defend District 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 District, City 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 from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

District 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 the City, District 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 from the negligent or intentional acts or omissions, or willful misconduct of District or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by District of governmental immunities including California Government Code section 810 et seq.

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or volunteers, and District or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

15. Insurance. Contractors of District's Obligations shall pay for and maintain in full force all insurance policies pursuant to City's insurance requirements and policies at time of permit issuance and prior to commencement of any work within City right-of-way.
16. 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.
17. 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 of, or against any Party, but rather by construing the terms in accordance with their generally accepted meaning.
18. 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, California.
19. 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 Parties.
20. 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 provisions

[SIGNATURES APPEAR ON NEXT PAGE.]

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

CITY:

City of Fresno,  
a California municipal corporation


By: \_\_\_\_\_  
Andrew Benelli, P.E., T.E  
Assistant Public Works Director  
City Engineer

DISTRICT:

Sanger Unified School District  
a California public school district

By:   
Matthew Navo, Superintendent

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By:  5-10-18  
Raj Singh Badhesha      Date  
Senior Deputy City Attorney

ATTEST:  
YVONNE SPENCE, MMC  
City Clerk

By: \_\_\_\_\_  
Deputy

Attachments: Exhibit "A" – Elementary School Infrastructure Agreement  
Exhibit "B" – Legal Description



**Exhibit "A"**

**Elementary School Infrastructure Agreement**

**Recording Requested by:**

City of Fresno  
No Fee-Gov't. Code Sections  
6103 and 27383

**When Recorded, Mail to:**

City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623

08/08/2011, 20110104288

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONFORMED COPY

**EXTRA-TERRITORIAL SERVICE AND OFFSITE INFRASTRUCTURE AGREEMENT  
BETWEEN SANGER UNIFIED SCHOOL DISTRICT AND CITY OF FRESNO**

**EXTRA-TERRITORIAL SERVICE AND OFFSITE INFRASTRUCTURE  
AGREEMENT BETWEEN SANGER UNIFIED SCHOOL DISTRICT  
AND CITY OF FRESNO**

THIS AGREEMENT is made and entered into effective the 28<sup>th</sup> day of July, 2011, ("Effective Date") by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and SANGER UNIFIED SCHOOL DISTRICT, a California public school (hereinafter referred to as "SANGER UNIFIED").

**RECITALS**

WHEREAS, SANGER UNIFIED is engaged in a construction project consisting of the acquisition of a school site and the development and operation of an elementary school on the site. The proposed school site is located on the east side of Armstrong Avenue between Jensen and Church Avenues, southeast of the City of Fresno in Fresno County, and encompasses Fresno County Assessor's Parcel Number 316-022-59T, previously referenced as a portion of Assessor's Parcel Number 316-022-40. The project site consists of 13.36 acres located in a portion of the South West ¼ of the South East ¼ of Section 15, Township 14 South, Range 21 East, M.D.B. & M., as shown on the Malaga, California Quadrangle 7.5 Minute Series USGS Map (Topographic), more specifically designated as "Total Property" as represented on exhibit "A" attached to this Agreement (hereinafter referred to as "Property");

WHEREAS, the proposed elementary school is anticipated by SANGER UNIFIED to be a full-service facility designed for approximately six hundred (600) students grades K-8 in permanent facilities, with classrooms, faculty work areas, administrative offices, multi-purpose facilities, athletic/recreation areas, and parking lots on the Property;

WHEREAS, SANGER UNIFIED anticipates the school will be constructed and operational on the Property by the 2011-2012 school year. The actual timing for construction will be subject to funding availability and enrollment growth;

WHEREAS, there are insufficient water and sewer services currently available for the Project;

WHEREAS, the Property is within CITY's sphere of influence, but is currently outside of CITY's limit boundary;

WHEREAS, Fresno Local Agency Formation Commission ("LAFCo") has reviewed SANGER UNIFIED's request for comments on the Initial Study and determined that if SANGER UNIFIED chooses not to annex the Property to CITY, an extension of CITY water and sewer services to the school project site Property would be appropriate upon an extension of services application filed with LAFCo;

WHEREAS, SANGER UNIFIED does not desire to annex the Property to CITY at this time and has filed an extension of services application with LAFCo and obtained the necessary approvals; and

WHEREAS, CITY has available water and sewer services which may be extended to the Property, and is willing to provide water and sewer service to the Property so long as SANGER UNIFIED installs all infrastructure needed to provide CITY water and sewer service to the Property and SANGER UNIFIED agrees to install said infrastructure in accordance with the provisions of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, agree as follows:

A. Provisions Specific To Water Service: Connection to CITY's municipal water system by SANGER UNIFIED shall be subject to the following conditions:

1. Metered Service Connection. CITY will allow a metered service connection for fire and domestic use to an existing water main in South Fowler Avenue at East Church Avenue ("Point of Service").

2. Construction of New Water System. SANGER UNIFIED shall design, construct, operate and maintain, as its sole responsibility and expense, a private 14-inch diameter water main from the Point of Service in East Church Avenue from South Fowler Avenue alignment to South Armstrong Avenue to the south boundary of the Property site (hereinafter "New Water System"), including installation of fire hydrants. The New Water System shall initially consist entirely of a "Private Portion," which is the sole responsibility of SANGER UNIFIED as set forth in this Agreement. If any portion of the New Water System is accepted by CITY, that portion shall become the "Public Portion" of the New Water System. SANGER UNIFIED shall submit engineered water facility improvements plans, prepared by a Registered Civil Engineer, to CITY's Department of Public Utilities, for review and approval of the New Water System by CITY. CITY approval, at CITY's sole discretion, shall be required before construction and operation of the New Water System by SANGER UNIFIED. SANGER UNIFIED is solely responsible to insure the New Water System is capable of delivering fire flows acceptable to the local fire protection agency, that public water quality standards are complied with, including any necessary testing and reporting, and shall protect CITY's public potable water supply by installation of an approved reduced pressure principal backflow device at the Point of Service connection of the New Water System to CITY's municipal water system.

3. Alignments and Permits. Pipeline construction by SANGER UNIFIED for the New Water System shall follow an alignment acceptable to Fresno County and shall comply with any required permits issued by Fresno County.

4. Easements Required for New Water System. SANGER UNIFIED will secure, and if necessary, pay for all easements required for the construction and installation of the New Water System. Street easements and deeds for the New Water System shall be recorded by SANGER UNIFIED prior to approval of the improvement plans for the New Water System.

5. Payment of Fees to CITY. SANGER UNIFIED shall pay to CITY, at the time CITY approves engineered water facility improvements plans for the New Water System submitted by SANGER UNIFIED, standard UGM 501S, TGM and any other applicable fees required by CITY. Samples of types of fees required by CITY, and estimated rates, are attached as exhibit "B." Notwithstanding the foregoing, SANGER UNIFIED shall be required to pay only 50% of the UGM water supply fee at the time of plan approval. If and when the New Water System is accepted by CITY into CITY's municipal water system, or when CITY water facilities are available to provide two points of connection to the Property as determined by CITY in CITY's sole discretion, SANGER UNIFIED shall pay an additional 50% of the UGM water supply at the then existing rate of the UGM water supply or successor fee, but in no amount less than the initial 50% of the UGM water supply fee paid to CITY by SANGER UNIFIED due at the time of installation of the water meter at the Point of Service, whichever amount is higher.

6. CITY to Provide Water. Upon SANGER UNIFIED's full and complete performance of all of SANGER UNIFIED's obligations and responsibilities under this Agreement, CITY agrees to provide SANGER UNIFIED's Property with water from CITY's municipal water system. CITY's obligation to provide SANGER UNIFIED's Property with water from CITY's municipal water system is conditioned upon CITY and SANGER UNIFIED obtaining the consent of all applicable governmental agencies including, without limitation, approval of this Agreement by Fresno LAFCo and obtaining all consents from Fresno County including, without limitation, obtaining necessary encroachment permits from Fresno County to install a private water pipeline and related fixtures for the New Water System along right of ways as appropriate into SANGER UNIFIED's Property.

7. No Representation Regarding Water Service, Pressure or Volume For any Private Portion of the New Water System. CITY does not make any representation, warranty or guarantee of any kind or nature and hereby specifically disclaims any kind of representation, warranty or guarantee any Private Portion of the New Water System when constructed and installed by SANGER UNIFIED will yield any specific volume of water or provide any specific water pressure to the Property under static or demand scenarios or for any use by SANGER UNIFIED and its tenants, lessees, purchasers, successors or assigns. SANGER UNIFIED assumes full responsibility for the adequacy of volume of water and water pressure from the point of connection to the Public Portion of the CITY's municipal water system for the entire Private Portion of the New Water System for any and all purposes related to the Property. If any part of the Private Portion of the New Water System is accepted by City as the Public Portion as described in Paragraph A(11), CITY will provide appropriate water services and delivery up to the point of connection of the Private Portion to the Public Portion.

8. Maintenance and Repair of New Water System. Prior to acceptance by CITY, SANGER UNIFIED shall, at its sole cost and expense, design, construct and install the New Water System and related fixtures necessary to transport water from CITY's municipal water system to the Property. SANGER UNIFIED shall, at its sole cost and expense, maintain, repair and replace any portion of the New Water System not accepted by the City as the Public Portion. Under no circumstances shall CITY be required or accountable to maintain, repair or replace the Private Portion of the New Water System unless and until CITY may, at its sole discretion and

option, accept dedication of the New Water System, or any portion thereof in increments or otherwise, at some future date. SANGER UNIFIED's obligation to maintain, repair and replace the Private Portion of the New Water System shall include, without limitation, any operation and maintenance, repair, replacement or modification of the Private Portion of the New Water System as may be required by CITY. Should SANGER UNIFIED fail to operate, maintain, repair and replace the Private Portion of the New Water System required by this paragraph, CITY shall have the right, but not the obligation, to stop providing water.

- a. Leak Repair. It is the sole responsibility of SANGER UNIFIED to respond and repair leaks caused by unforeseen conditions or damage including those caused by SANGER UNIFIED, other parties or acts of God. As part of its duty to maintain the Private Portion of the New Water System, SANGER UNIFIED shall promptly repair all leaks, no matter how said leaks may be caused, in the Private Portion of the New Water System at its sole cost and expense. SANGER UNIFIED acknowledges unrepaired leaks waste water, may cause property damage or affect public health, safety and welfare. If SANGER UNIFIED fails to promptly repair all leaks, CITY, at its sole discretion, may stop providing water at the Point of Connection or otherwise. Thereafter, CITY shall have no obligation to provide water until SANGER UNIFIED repairs the leaks to the Private Portion of the New Water System.
- b. Right to Inspect and Access to Water Meters. CITY shall have the right to inspect and examine the New Water System at any time, including during construction and operation of the New Water System. CITY shall have the right of access to all water meters, including the required irrigation meter(s) complying with AWWA standards, whether located on the New Water System or the Property. SANGER UNIFIED shall promptly repair or replace damaged water meters.

9. Exclusive Use of Private Portion of New Water System by SANGER UNIFIED. The Private Portion of the New Water System shall be for the exclusive use of the Property at all times until accepted by CITY. SANGER UNIFIED shall not permit the Private Portion of the New Water System to be used, either directly or indirectly, to provide water service to any other property regardless whether the other property is owned by SANGER UNIFIED or a third party.

10. Removal of New Water System. Upon completion of any future public water main capable of serving the Property, such as when additional CITY water facilities are available to provide two points of connection to the Property as determined by CITY in its sole discretion, SANGER UNIFIED shall then connect the Property to the public main(s) and cause any other Private Portion of the New Water System and temporary service(s) to be abandoned or removed. SANGER UNIFIED is solely responsible for all costs and expenses associated with the abandonment or removal of the Private Portion of the New Water System. SANGER UNIFIED shall not abandon or remove the Private Portion of the New Water System until there is a future public water main installed capable of serving the Property and CITY water facilities available to provide two points of connection to the Property as determined by CITY in CITY's sole discretion.

11. Future Acceptance of New Water System by CITY. Notwithstanding subsection A(10), above, if SANGER UNIFIED designs, constructs, completes, operates and maintains the

New Water System in the prescribed ultimate alignment and in compliance with CITY Public Works Standard Specifications and Drawings, the New Water System will be considered by CITY for future acceptance into CITY's municipal water system and will not require abandonment or removal. CITY, at CITY's sole discretion, may accept, incrementally or in its entirety, the New Water System into CITY's municipal water system, and any portion so accepted by CITY will then become the Public Portion of the New Water System and the responsibility of CITY as set forth in this Agreement. The Parties anticipate the "Public Portion" of the New Water System may eventually consist of that part of the New Water System from the point of connection along East Church Avenue from South Fowler Avenue to South Armstrong Avenue. Further, when additional CITY water facilities are available to provide two points of connection to the Property as determined by CITY in its sole discretion, SANGER UNIFIED shall promptly offer in writing to dedicate any remaining Private Portion of the New Water System to CITY for acceptance by CITY, in whole or in part, at CITY's sole discretion. For any portion of the New Water System to be considered by CITY for future acceptance into CITY's municipal water system, the following shall apply:

- a. Prior to construction of the New Water System SANGER UNIFIED shall pay all applicable inspection fees and obtain all necessary construction permits to ensure the New Water System is in compliance with CITY Public Works Standard Specifications and Drawings. All fees required by CITY are due from SANGER UNIFIED at the time CITY approves engineered water facility improvements plans for the New Water System submitted by SANGER UNIFIED.
- b. Prior to construction of the New Water System it shall be the responsibility of SANGER UNIFIED to coordinate all work done by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of CITY be placed in the position of making decisions that are the responsibility of SANGER UNIFIED. It shall further be the responsibility of SANGER UNIFIED to give CITY's City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started on the New Water System. All improvements associated with the New Water System must be inspected by CITY, and SANGER UNIFIED shall request CITY inspections in accordance with CITY's policies, conditions and ordinances. Failure on the part of SANGER UNIFIED to notify CITY's City Engineer of either the actual date on which work is to be started or to request CITY inspections may cause delay for which SANGER UNIFIED shall be solely responsible.
- c. Future discretionary acceptance by CITY will also require bacteriologic samples taken at locations along the New Water System determined by CITY. Upon written notice by CITY that CITY will accept the New Water System or a portion thereof into CITY'S municipal water system, SANGER UNIFIED shall promptly take all required and necessary actions to ensure dedication and transfer of the New Water System or a portion thereof to CITY, including making an irrevocable offer of dedication, free of charge, of the entire New Water System to CITY or any portion of the New Water System requested by CITY.
- d. All easements necessary for the New Water System shall be conveyed, free of charge, by SANGER UNIFIED to CITY and shall be in a form acceptable to

CITY. CITY agrees to accept said dedications and conveyances within a reasonable time.

- e. SANGER UNIFIED shall be responsible for all costs associated with any future acceptance of the New Water System by CITY into CITY's municipal water system, including, but not limited to, bacteriologic sampling, testing, removal of the metered service connection, removal of the reduced pressure principal backflow device, and installation of new water meters for the Property. If incremental acceptance of the Public Portion of the New Water System occurs, SANGER UNIFIED shall be eligible for incremental reimbursement as to that accepted portion as set forth by the CITY'S Master Fee Schedule.
- f. SANGER UNIFIED shall remedy any defective work or labor or any defective materials relating to the construction and installation of the New Water System and pay for any damage to other work or improvements resulting therefrom which shall occur within a period of one (1) year from the date of CITY's acceptance(s) of each part of the New Water System.

12. Utilization of Surface Water. To the extent possible, SANGER UNIFIED shall ensure the Property shall utilize surface water for all irrigation needs.

13. Reduction of Property Water Consumption. Site improvements and design for water consumption for the Property shall be shown by SANGER UNIFIED to be a reduction of at least 20% relative to a standard campus. Consideration shall be given by SANGER UNIFIED to the use of artificial turf and other measures to reduce water consumption. SANGER UNIFIED shall construct the irrigation system(s) on the Property to utilize future availability of tertiary treated wastewater for all landscape irrigation purposes.

14. Existing Wells. SANGER UNIFIED shall seal and abandon any existing on-site well(s) in compliance with the State of California Well Standards, Bulletin 74-90 or current revisions issued by California Department of Water Resources and City of Fresno Public Works Standard Specifications and Drawings, standards, specifications and policies. Notwithstanding the foregoing, the parties recognize there is a single existing well for irrigation (hereinafter "Irrigation Well") located on the Property. If surface water cannot be used for all irrigation needs, SANGER UNIFIED need not seal and abandon the Irrigation Well subject to the following conditions:

- a. SANGER UNIFIED shall install a water meter on the Irrigation Well at SANGER UNIFIED's sole cost and expense.
- b. SANGER UNIFIED shall pay to CITY the water recharge fee as specified in CITY's Master Fee Schedule as it may be amended from time to time. The water recharge fee shall be a continuing obligation and responsibility of SANGER UNIFIED subject to Paragraph C(1).
- c. The Irrigation Well is separate from, and shall not be considered a part of, the New Water System. SANGER UNIFIED shall, at its sole cost and expense, maintain and repair the Irrigation Well subject to the Irrigation Well capacity limitations and obligations in Paragraph A(14)(f). Under no circumstances shall CITY be required or accountable to maintain, repair or replace the Irrigation Well,



and CITY shall not have any liability or obligation whatsoever for the Irrigation Well.

- d. SANGER UNIFIED shall not allow connection of the Irrigation Well to the New Public Water System. SANGER UNIFIED shall not allow water from the Irrigation Well to be used to provide water to any other property regardless whether the other property is owned by SANGER UNIFIED or a third party. SANGER UNIFIED shall only use the water from the Irrigation Well for and on the Property, and shall not allow said water to be used for other purposes.
- e. SANGER UNIFIED acknowledges additional development is anticipated to occur in the region around the Property. SANGER UNIFIED also acknowledges CITY primarily relies upon groundwater to serve the current and future water needs and demands within the City of Fresno and surrounding area. SANGER UNIFIED further acknowledges and agrees CITY is authorized, at CITY's sole discretion, to provide for or to take steps to meet those current and future water needs including, but not limited to, utilizing existing wells, increasing the capacity of existing wells, drilling new wells, accessing other sources of water or authorizing third parties to utilize existing or new wells. **Finally, SANGER UNIFIED acknowledges the CITY's actions may result in the loss of some or all water capacity associated with the Irrigation Well.** Notwithstanding any provision of the California Water Code, SANGER UNIFIED hereby waives any and all loss, liability, penalties, forfeitures, costs and damages and any claims associated with the CITY's taking any discretionary or required actions to meet water needs including, but not limited to, utilizing existing wells, increasing the capacity of existing wells, drilling new wells, accessing other sources of water or authorizing third parties to utilize existing or new wells, even if CITY's acts or inaction, negligent or intentional, result in partial or complete loss of water capacity of the Irrigation Well. The indemnity, hold harmless and defend obligations in Paragraph C(9) apply to the entire Agreement, including this subsection.
- f. **SANGER UNIFIED shall not expand, enlarge or increase the capacity of the Irrigation Well by any method whatsoever without prior approval from City.** Such approval shall not be unreasonably withheld so long as the Irrigation Well depth does not exceed a completed depth of three hundred and sixty (360) feet below ground level or four hundred (400) gallons per minute. SANGER UNIFIED shall not dig, drill, or take other action to restore reduced water production capacity from the Irrigation Well without said approval from City. If the Irrigation Well completely loses water production capacity, SANGER UNIFIED no longer actively uses the Irrigation Well, or the Irrigation Well is not used for a continuous period of nine (9) months, SANGER UNIFIED shall seal and abandon the Irrigation Well in compliance with the State of California Well Standards, Bulletin 74-90 or current revisions issued by California Department of Water Resources and City of Fresno Public Works Standard Specifications and Drawings, standards, specifications and policies.
- g. Notwithstanding any other section of this Agreement, SANGER UNIFIED shall connect SANGER UNIFIED's irrigation system(s) to CITY's tertiary treated wastewater distribution facilities when said facilities are installed in the public right of way within one hundred (100) feet of the Property. Thereafter, SANGER

UNIFIED shall immediately cause the Irrigation Well to be abandoned, and promptly seal the Irrigation Well in compliance with the State of California Well Standards, Bulletin 74-90 or current revisions issued by California Department of Water Resources and City of Fresno Public Works Standard Specifications and Drawings, standards, specifications and policies.

15. Construction of Public Water Facilities. All public water facilities shall be constructed in accordance with CITY's Public Works Department Standard Specifications and Drawings, standards, specifications, and policies.

16. Assignment of Water Entitlements. As a condition of water service from the City's municipal water system, SANGER UNIFIED shall provide water usage offsets to CITY through a water service entitlement exchange. **SANGER UNIFIED shall take all required and necessary actions to transfer and assign all water entitlements associated with the Property, including water entitlements with the Fresno Irrigation District, to CITY.** SANGER UNIFIED is solely responsible for all costs, fees and expenses associated with transfer and assignment of water entitlements to CITY.

17. Water Facilities on Property: All water lines and facilities located from and including the point of connection with the New Water System to and through the Property premises are private water facilities, the property of SANGER UNIFIED, and shall not be considered a portion of the New Water System. SANGER UNIFIED shall have the same responsibilities, duties and obligations for its private water facilities, including repair and maintenance, as would a property owner within the jurisdiction of the City of Fresno subject to the Fresno Municipal Code, as may be amended, including enforcement by CITY of Fresno Municipal Code section 6-500 et. seq. ("Water Regulations").

B. Provisions Specific to Sewer Service: Connection to CITY's municipal sewer system by SANGER UNIFIED shall be subject to the following conditions:

1. Location for Connection to CITY Municipal Sanitary Sewer Main. SANGER UNIFIED and CITY acknowledge the nearest CITY municipal sanitary sewer main to serve the Property is a 36-inch sewer main located in East Church Avenue at the intersection of East Church and South Armstrong Avenue. Connection to CITY's municipal sewer system by SANGER UNIFIED shall be made at this location.

2. Location of New Public Sewer System to be Constructed at SANGER UNIFIED's Expense. SANGER UNIFIED shall design and construct at its sole responsibility and expense, a 12-inch sanitary sewer main in South Armstrong Avenue, from CITY's existing 36-inch sewer main at the intersection of East Church Avenue and South Armstrong Avenue, proceeding south from the intersection of East Church Avenue and South Armstrong Avenue, which will reduce in size to a 10-inch sanitary sewer main at a location to be determined by CITY during plan check review and approval by CITY, along South Armstrong Avenue across the frontage of the Project ("New Public Sewer System").

3. Sewer Facility Improvement Plans for New Public Sewer System. Prior to installation of the New Public Sewer System, SANGER UNIFIED shall submit engineered sanitary sewer facility improvement plans, prepared by a Registered Civil Engineer, to CITY's Department of Public Utilities, for review and approval of the proposed New Public Sewer System by CITY. CITY approval, at CITY's sole discretion, shall be required before construction and operation of the New Public Sewer System by SANGER UNIFIED.

4. Compliance with Alignments and Permits. SANGER UNIFIED is solely responsible to ensure construction of the New Public Sewer System and the New Public Sewer System shall follow an alignment acceptable to CITY and Fresno County. SANGER UNIFIED shall obtain all necessary permits from CITY and Fresno County to ensure the New Public Sewer System is in compliance with CITY Public Works Standard Specifications and Drawings.

5. Easements Required for New Public Sewer System. SANGER UNIFIED shall secure and, if necessary, pay for all easements required for the construction and installation of the New Public Sewer System. Street easements and deeds for the New Public Sewer System shall be recorded by SANGER UNIFIED prior to approval of improvement plans for the New Public Sewer System.

6. Construction of New Public Sewer System. The New Public Sewer System shall be constructed in accordance with CITY Public Works Standard Specifications and Drawings, policies, conditions and ordinances. All improvements and materials for the New Public Sewer System shall be done, performed and installed in strict accordance with the approved construction plans for said work, on file with the City Engineer for CITY, and the CITY's Public Works Standard Specifications and Drawings, which construction plans and Public Works Standard Specifications and Drawings are incorporated herein by reference and made a part of this Agreement. In the event there are not Public Works Standard Specifications and Drawings for any of the improvements or materials associated with the construction of the New Public Sewer System, it is agreed that the same shall be done, performed and installed in accordance with the standards and specifications of the State of California, Department of Transportation (Caltrans). SANGER UNIFIED agrees it will correct any and all deficiencies in the construction and installation of the New Public Sewer System identified by CITY's City Engineer or Public Works Department.

7. Coordination of Work by SANGER UNIFIED, Notice to CITY. It shall be the responsibility of SANGER UNIFIED to coordinate all work done by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of CITY be placed in the position of making decisions that are the responsibility of SANGER UNIFIED. It shall further be the responsibility of SANGER UNIFIED to give CITY's City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started on the New Public Sewer System. All improvements associated with the New Public Sewer System must be inspected by CITY, and SANGER UNIFIED shall request CITY inspections in accordance with CITY polices, conditions and ordinances. Failure on the part of SANGER UNIFIED to notify CITY's City Engineer of either the actual date on which work is to be started or to request CITY inspections may cause delay for which SANGER UNIFIED shall be solely responsible.

8. Notice for CITY Inspections. Whenever SANGER UNIFIED varies the period during which work is carried on each day, it shall give due notice to CITY's City Engineer so that proper inspection by CITY may be provided. If SANGER UNIFIED fails to duly notify CITY as herein required, any work done in the absence of CITY's City Engineer will be subject to rejection. The inspection of the improvements and materials associated with the New Public Sewer Project shall not relieve SANGER UNIFIED of any of its obligations to fulfill this Agreement as prescribed. Defective work shall be made good by SANGER UNIFIED, and unsuitable materials may be rejected by CITY, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by CITY's City Engineer or City Inspector and accepted.

9. Inspection Fees and Permits. SANGER UNIFIED shall pay all applicable inspection fees and obtain all necessary construction permits to ensure the New Public Sewer System is in compliance with CITY's Public Works Standard Specifications and Drawings, conditions, policies and ordinances. The New Public Sewer System shall comply with CITY Public Works Standard Specifications, conditions, policies and ordinances related to providing sanitary sewer service including payment by SANGER UNIFIED to CITY of all CITY wastewater impact and sewer connection charges established in CITY's Master Fee Schedule. Said fees shall be paid by SANGER UNIFIED to CITY at the time CITY approves engineered water facility improvements plans for the New Water System submitted by SANGER UNIFIED. Samples of types of fees required by CITY, and estimated rates, are attached as exhibit "B."

10. Maintenance of New Public Sewer System Prior to Acceptance by CITY. Until the New Public Sewer System is dedicated to and accepted by CITY, SANGER UNIFIED shall, at its sole cost and expense, maintain, repair and replace the New Public Sewer System. CITY's acceptance of the New Public Sewer System shall not be unreasonably withheld. SANGER UNIFIED's obligation to maintain, repair and replace the New Public Sewer System shall include, without limitation, any maintenance, repair, replacement or modification of the New Public Sewer System that may be required by CITY. Should SANGER UNIFIED fail to maintain, repair and replace the New Public Sewer System required by this paragraph, CITY shall have the right, but not the obligation, to maintain, repair and replace the New Public Sewer System. Should CITY elect to maintain, repair and replace the New Public Sewer System pursuant to this paragraph, SANGER UNIFIED shall reimburse CITY and all fees, costs and expenses incurred by CITY to maintain, repair and replace the New Public Sewer System within ten (10) days after the date of invoice from CITY.

11. Maintenance of Private Sewer Facilities. All sewer facilities installed by SANGER UNIFIED related to the Property not part of the New Public Sewer System, including the installation of sewer facilities from the point of connection with the New Public Sewer System, including the connection itself, upstream to and including facilities in the Property site or within private streets, shall be private ("Private Sewer Facilities"). It is the sole responsibility of SANGER UNIFIED to repair, maintain and replace all Private Sewer Facilities, and CITY shall have no responsibility or liability for these Private Sewer Facilities. SANGER UNIFIED shall obtain all necessary permits or other approvals necessary for constructing and connecting SANGER UNIFIED's Private Sewer Facilities to the New Public Sewer System.

12. Abandonment of Existing On-Site Private Sanitary Sewer System(s). SANGER UNIFIED shall abandon all existing on-site private sanitary sewer system(s) in accordance with CITY Public Works Standard Specifications and Drawings, conditions, policies and ordinances, including the abandonment of any existing sewer septic systems.

13. Dedication of New Public Sewer System to City: Upon completion of the New Public Sewer System by SANGER UNIFIED and compliance with the conditions of Section B(1) "Sewer Service Provisions":

- a. SANGER UNIFIED shall make an irrevocable offer of dedication, free of charge, of the entire New Public Sewer System to CITY. CITY agrees to accept said dedications and conveyances within a reasonable time.
- b. All easements necessary for the New Public Sewer System shall be conveyed to CITY and shall be in a form acceptable to CITY.
- c. SANGER UNIFIED shall remedy any defective work or labor or any defective materials relating to the construction and installation of the New Public Sewer System and pay for any damage to other work or improvements resulting therefrom which shall occur within a period of one (1) year from the date of CITY's acceptance of the New Public Sewer System.

14. CITY to Provide Sewer Services. Upon SANGER UNIFIED's full and complete performance of all of SANGER UNIFIED's obligations and responsibilities under this Agreement, CITY agrees to provide SANGER UNIFIED's Property with sewer services from CITY's municipal sanitary sewer system. CITY's obligation to provide SANGER UNIFIED's Property with sanitary sewer services from CITY's municipal sanitary sewer system is conditioned upon CITY and SANGER UNIFIED obtaining the consent of all applicable governmental agencies. As a condition to providing sewer service, CITY shall have the right of access to water meters, including the required irrigation meter(s) complying with AWWA standards, whether located on the New Water System or the Property. SANGER UNIFIED shall promptly repair or replace damaged water meters.

C. Additional Provisions:

The following provisions shall apply to this entire Agreement, including the provisions addressing water and sewer service:

1. Continuing Obligations and Responsibilities of SANGER UNIFIED. SANGER UNIFIED agrees to promptly pay to City any and all fees for water and sewer service supplied by City to SANGER UNIFIED's Property. All fees listed in CITY's Master Fee Schedule are regularly updated and amended from time to time by CITY's Council. Notwithstanding any other section of this Agreement, the fees and rates set forth by the Master Fee Schedule, as currently in effect or as it may be amended, are incorporated herein and shall have precedence over the fees listed in this Agreement and attached exhibits. SANGER UNIFIED is responsible to pay the fees and rates as set forth by the Master Fee Schedule, except as otherwise specified in section A(5), above, regarding just the UGM water supply fee. SANGER UNIFIED agrees to maintain its water and sewer service accounts with CITY in a current status. SANGER

UNIFIED acknowledges and agrees that should its water or sewer service account with CITY become sixty (60) days delinquent, City shall have the right, at CITY's sole option, to discontinue water or sewer service to SANGER UNIFIED's Property as to the delinquent water or sewer service account.

2. Consent to Future Annexation. In further consideration of CITY's agreement to provide water and sewer sanitary services from CITY's municipal water and sewer sanitary system to SANGER UNIFIED's Property in accordance with the provisions of this Agreement, SANGER UNIFIED agrees not to oppose or protest, in any way, the future annexation of SANGER UNIFIED's Property to CITY and to pay SANGER UNIFIED's share of all applicable fees and charges CITY or any other governmental agency may require at the time of annexation of SANGER UNIFIED's Property to CITY. SANGER UNIFIED will sign a petition to annex the Property when asked by CITY.

3. Covenants Running with the Land. SANGER UNIFIED acknowledges and agrees that all of SANGER UNIFIED's covenants, agreements, promises, representations and warranties as set forth in this Agreement are covenants running with SANGER UNIFIED's Property as defined in the applicable provisions of Sections 1457 et seq. of the California Civil Code. SANGER UNIFIED's covenants, agreements, promises, representations and warranties as contained in this Agreement, shall run with SANGER UNIFIED's Property and shall be binding on SANGER UNIFIED and SANGER UNIFIED's successors and assigns and all parties and persons claiming under them. Within thirty (30) days of execution by the last party to sign, SANGER UNIFIED agrees to record a copy of this Agreement as a covenant running with the land.

4. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. SANGER UNIFIED may not assign its rights and/or obligations under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld. Any such consent by CITY shall not, in any way, relieve SANGER UNIFIED of its obligations and responsibilities under this Agreement.

5. 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, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, 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. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

6. Binding. Subject to Section 19, 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 parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

7. Compliance With Law. In providing the services required under this Agreement, SANGER UNIFIED shall at all times comply with all applicable laws of the United States, the State of California and CITY, 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 term of this Agreement. SANGER UNIFIED, not CITY, is responsible for determining applicability of and compliance with all local, State and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, and Government Code; the Fresno City Charter; and the Fresno Municipal Code. CITY makes no representations regarding the applicability of any such laws to this Agreement, the project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. CITY shall not be liable or responsible, in law or equity, to any person for SANGER UNIFIED's failure to comply with any such laws, whether CITY knew or should have known of the need for SANGER UNIFIED to comply, or whether CITY failed to notify SANGER UNIFIED of the need to comply. SANGER UNIFIED is referred to CITY's Department of Public Works, Construction Management Division, to obtain the current prevailing wage rates, to the extent said rates are applicable to the construction of any of the improvements regarding the New Water System and New Public Sewer System.

8. 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.

9. Indemnification of City: To the greatest extent allowed by law, SANGER UNIFIED 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, SANGER UNIFIED or any other person, and from any and all claims, demands, liabilities, damages and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement or the performance of any or all work to be done in and upon the street rights-of-way, the Property, and premises adjacent thereto, pursuant to this Agreement, or arising or alleged to have arisen directly or indirectly in any way related to the construction, installation and operation of the New Water System or New Public Sewer System by anyone occupying any portion of SANGER UNIFIED's property, including, without limitation, any such claims, causes of action, damages, liabilities, fees, costs, expenses and attorney fees arising from water quality compliance, a lack of volume of water, inadequate fire flow, lack of water pressure in, from or delivered to the New Water System, or lack of flow capacity in the New Public Sewer System. SANGER UNIFIED's obligations under the preceding sentence shall apply regardless of whether SANGER UNIFIED or any of its officers, officials, boards, 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 or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If SANGER UNIFIED should subcontract all or any portion of the work to be performed under this Agreement, SANGER UNIFIED 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. Notwithstanding the preceding sentence, any subcontractor who is a "design professional," as defined in Section 2782.8 of the California Civil Code, shall, in lieu of indemnity requirements set forth in the preceding paragraph, be required to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agency and volunteers, to the furthest extent allowed by law, 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

SANGER UNIFIED further agrees that the use for any purpose and by any person of any and all of the New Water System, New Public Sewer System, and other water or sanitary sewer improvements hereinbefore specified in this Agreement, shall be at the sole and exclusive risk of SANGER UNIFIED at all times prior to final acceptance by CITY of the completed improvements described herein.

This section shall survive termination or expiration of this Agreement.

10. Public Health, Safety and Welfare. Nothing contained in this Agreement shall limit CITY's authority to exercise its police powers, governmental authority or take other appropriate actions to address threats to public health, safety and welfare, including temporarily suspending water and sewer services as deemed appropriate by CITY in its sole determination and discretion.

11. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. 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.

12. 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.

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

14. 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 of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.



15. 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.

16. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

17. 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.

18. 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.


19. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. 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 SANGER UNIFIED. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and SANGER UNIFIED.

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

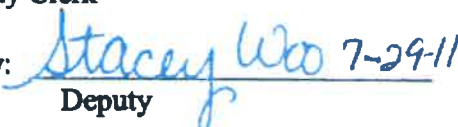
SANGER UNIFIED SCHOOL DISTRICT,  
a California Public School

By:   
Patrick Wlemiller  
Director of Public Utilities


By:   
Eduardo Martinez,  
Associate Superintendent  
Sanger Unified School District

ATTEST:  
REBECCA E. KLISCH  
City Clerk

Address:  
Sanger Unified School District  
1905 Seventh Street  
Sanger, CA 93657  
Phone: (559) 524-6521  
FAX: (559) 875-0311

By:   
Stacey Woo 7-29-11  
Deputy

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By:   
Shannon L. Chaffin Date 7/27/11  
Sr. Deputy City Attorney

Address:  
City of Fresno  
Attn: Martin A. Querin, Assistant Director  
Water Division  
Department of Public Utilities  
Fresno, CA 93703  
Phone: (559) 621-5300  
FAX: (559) 488-1024

Attachments:  
A. Plat of Property  
B. Fee Estimate

SLC:sah [55123sah-cg/slc] 071/05/11

**CLERK'S CERTIFICATION**

State of California)  
County of Fresno )

On August 8, 2011, before me, Cindy Bruer, Deputy City Clerk, personally appeared Patrick Wiemiller, Public Utilities Director of the City of Fresno who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to be within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), acted, executed the instrument.

I certify under PENALTY OR PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

REBECCA E. KLISCH. CMC  
CITY CLERK, City of Fresno

By Cindy Bruer  
Deputy



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On July 27, 2011 before me, Deborah A. Michaelson, Notary Public

personally appeared Eduardo Martinez



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Extra Territorial Service & Offsite Infrastructure Agreement

Document Date: 7/27/11 Number of Pages: 16

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



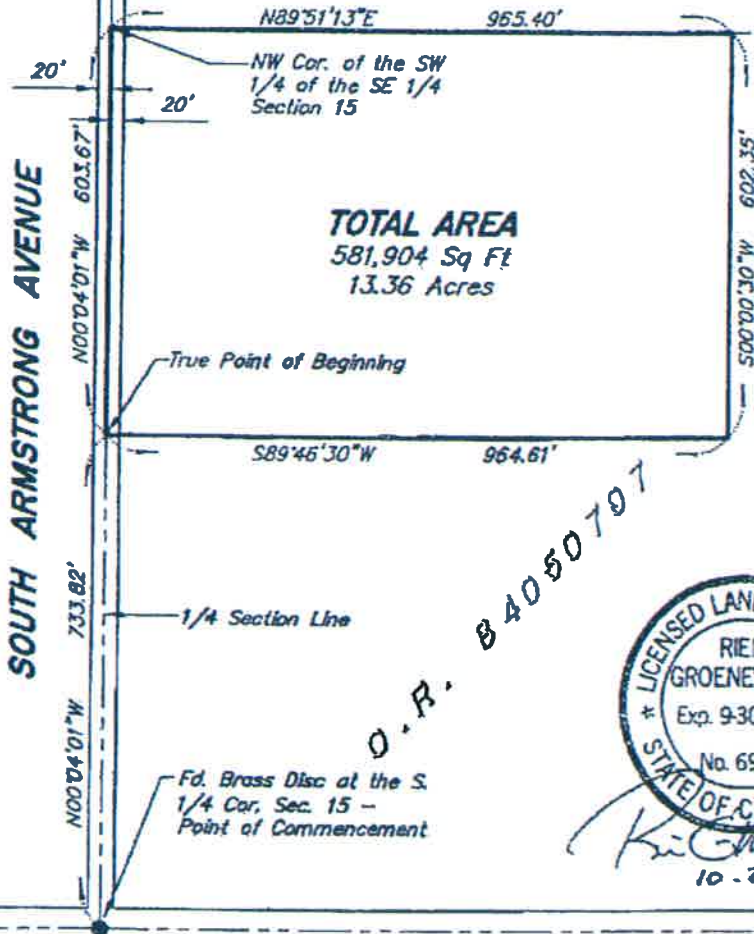
Signer Is Representing: \_\_\_\_\_

# EXHIBIT A



SCALE: 1"=250'

North Line of the SW 1/4 of the SE 1/4 Section 15



**TOTAL AREA**  
581,904 Sq Ft  
13.36 Acres

O.R. B 4050707



*R. Groenewoud*  
10-20-09

JENSEN AVENUE



Drawn By: RG  
 Date: 10/20/09  
 Scale: 1"=250'  
 Job No.: SC08141A  
 Phone: 866.526.4214

**PLAT TO ACCOMPANY  
LEGAL DESCRIPTION**

OF A PORTION OF THE SW 1/4 OF THE SE 1/4  
OF SECTION 15, TOWNSHIP 14 SOUTH,  
RANGE 21 EAST, MOUNT DIABLO MERIDIAN.  
FRESNO COUNTY CALIFORNIA



SHEET  
**1**  
OF 1

Per Chapter 28, Article 10, Section 100900 of the California Code of Regulations

# EXHIBIT B

**EXHIBIT B**

**CITY OF FRESNO DEVELOPMENT AND IMPACT FEE ESTIMATE**

The following estimates are based on preliminary conceptual information. The exact fee obligation will be computed at the time of development by the Planning and Development Department. The fee rates in effect at the time of development shall apply.

Proposed Development: School Site - S. Armstrong Ave., N/ E. Jensen Ave.

A.P.N. 316-022-59T

Proposed Zoning: Outside City

Site Area: 13.36 ac.

Living Units / LUE: 40 LUE

Estimate Date: January 25, 2011

WATER CONNECTION CHARGES						
	Service Area	Quantity	Units	Fee Rate	Amount Due	Notes
Frontage Charge		0	LF.	\$6.50	\$0.00	
Transmission Grid Main (TGM)	D	13.36	AC	\$643.00	Const. Credits Applied	
TGM Bond Debt		13.36	AC	\$243.00	\$3,246.48	
UGM Water Supply Fee	501-S	20	L.U.E.	\$1,738.00	\$34,760.00	
UGM Wellhead Treatment Fee	501	20	L.U.E.	\$79.00	\$1,580.00	
UGM Recharge Area Fee	501	40	L.U.E.	\$56.00	\$2,240.00	
1994 Bond Debt Service Fee	501	40	L.U.E.	\$93.00	\$3,720.00	

<b>Total Water Connection Charges</b>	<b>\$45,546.48</b>
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<b>Total Fees and Charges</b>	<b>45,546.48</b>
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**Notes:**

On July 22, 2008, the Fresno County Board of Supervisors passed Ordinance No. 2008 – 023 requiring the payment of County Public Impact Facilities Impact Fees. The effective date of this ordinance is September 20, 2008. Contact the County of Fresno, Public Works and Planning Department to determine payment of this fee obligation. Confirmation by the County of Fresno is required before the City of Fresno can issue building permits.

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[1] Fees for Water Service Connections and/or Meters due at time of development. Charges based on service sizes to be determined by the Developer.

[2] Sewer House branches to be installed by Developer at the Developer's cost.

[3] Upon occupancy of the project, the subdivider shall pay the appropriate sewer facility charge pursuant to the Simple Tiered Equity Program (STEP) as determined by the Department of Public Utilities, Wastewater Division, Environmental Services Section (559-621-5153).

[4] The Wastewater Facilities Charge (WWFC) is applicable to single family, duplex, and triplex developments. (FMC 6-302(f)); For Condominium conversions, WWFC may stay in the S.T.E.P. if the project continues to be master metered for water. If the condominiums are individually metered, the developer will pay the pro-rated portion of these fees.

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[6] Due at Building Permit

[7] Due with Certificate of Occupancy

[8] Traffic Signal Charge Average Daily Trips (ADT's) provided by Traffic Engineering.

[9] Construction Fee Credits may be applicable.

[10] Parks fee applicable only to residential developments

Prepared By: Frank Saburft

Date: January 25, 2011

621-8077

City of Fresno Planning and Development Department  
Planning Division - Land Division & Engineering Section

## CITY OF FRESNO DEVELOPMENT AND IMPACT FEE ESTIMATE

The following estimates are based on preliminary conceptual information. The exact fee obligation will be computed at the time of development by the Planning and Development Department. The fee rates in effect at the time of development shall apply.

Proposed Development: School Site - S. Armstrong Ave., N/ E. Jensen Ave.

A.P.N. 316-022-59T

Proposed Zoning: Outside City

Site Area: 13.36 ac.

Living Units / LUE: 40 LUE

Estimate Date: January 25, 2011

CITYWIDE/REGIONAL IMPACT FEES						
	Service Area	Quantity	Units	Fee Rate	Amount Due	Notes
Citywide Fire Facilities Impact Fee	Pub. School	0	Sq.Ft.	\$150.00	Outside City	[7]
Citywide Park Facility Impact Fee	Pub. School	0	Units	n/a	Outside City	[7] [10]
Citywide Police Facilities Impact Fee	Pub. School	0	Sq.Ft.	\$422.00	Outside City	[7]
Citywide Regionally Significant	Pub. School	0.00	AC	\$3,633.00	Outside City	[6] [9]
New Growth Area Major Street Charge	Pub. School	0.00	AC	\$8,204.00	Outside City	[6] [9]
Citywide Traffic Signal Charge	Pub. School	0	ADT's [8]	\$47.12	Outside City	[6] [9]
Regional Traffic Mitigation Fee	Pub. School	0	Sq.Ft.	exempt	Outside City	[6] [9]

<b>Total Citywide/Regional Impact Fees</b>	<b>\$0.00</b>
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<b>Total Fees and Charges</b>	<b>0.00</b>
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**Notes:**

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## CITY OF FRESNO DEVELOPMENT AND IMPACT FEE ESTIMATE

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**Proposed Development:** School Site - S. Armstrong Ave., N/ E. Jensen Ave.

**A.P.N.:** 316-022-59T

**Proposed Zoning:** Outside City

**Site Area:** 13.36 ac.

**Living Units / LUE:** 40 LUE

**Estimate Date:** January 25, 2011

SEWER CONNECTION CHARGES						
	Service Area	Quantity	Units	Fee Rate	Amount Due	Notes
House Branch Sewer Charge		[2]	EA	\$0.00	[2]	[2]
Lateral Sewer Charge		0	Sq.Ft.	\$0.10	\$0.00	[6] [9]
Oversized Sewer Charge	35	60,367	Sq.Ft.	\$0.05	Const. Credits Applied	[6] [9]
Fowler Trunk Sewer Interim Fee Surety		40	L.U.E.	\$574.00	n/a	[6]
Wastewater Facilities Charge		STEP		[3]	[3]	[4] [7]
Trunk Sewer Charge	Fowler	STEP		[3]	[3]	[5] [7]

<b>Total Sewer Connection Charges</b>	<b>\$0.00</b>
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<b>Total Fees and Charges</b>	<b>0.00</b>
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Notes:

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**Remaining Fees Due Upon Acceptance of Entire Water Pipeline**

**CITY OF FRESNO DEVELOPMENT AND IMPACT FEE ESTIMATE**

Proposed Development: School Site - S. Armstrong Ave., N/ E. Jensen Ave.

A.P.N. 316-022-59T

Proposed Zoning: Outside City

Site Area: 13.36 ac.

Living Units / LUE: 40 LUE

Estimate Date: January 25, 2011

WATER CONNECTION CHARGES						
	Service Area	Quantity	Units	Fee Rate	Amount Due	Notes
UGM Water Supply Fee	501-S	20	L.U.E.	\$1,738.00	\$34,760.00	
UGM Wellhead Treatment Fee	501	20	L.U.E.	\$79.00	\$1,580.00	

**Total Water Connection Charges** \$36,340.00

**Total Fees and Charges** 36,340.00

## Remaining Fees Due Upon Acceptance of Entire Water Pipeline

### Notes:

On July 22, 2008, the Fresno County Board of Supervisors passed Ordinance No. 2008 -- 023 requiring the payment of County Public Impact Facilities Impact Fees. The effective date of this ordinance is September 20, 2008. Contact the County of Fresno, Public Works and Planning Department to determine payment of this fee obligation. Confirmation by the County of Fresno is required before the City of Fresno can issue building permits.

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Date: January 25, 2011

621-8077

City of Fresno Planning and Development Department  
Planning Division - Land Division & Engineering Section

**Exhibit "B"**  
**Legal Description**



## EXHIBIT "B"

### LEGAL DESCRIPTION

#### New Education Center Site- Gross Area

That portion of the Southwest quarter of Section 15, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, more particularly described as follows:

**BEGINNING** at the West quarter corner of said Section 15; thence South  $00^{\circ}14'30''$  East, along the West line of the Southwest quarter of said Section 15, a distance of 2,680.23 feet to the Southwest corner of said Section 15 ; thence North  $89^{\circ}43'15''$  East, along the South line of the Southwest quarter of said Section 15, a distance of 2,638.70 feet to the South quarter corner of said Section 15; thence North  $00^{\circ}07'46''$  West, along the East line of the Southwest quarter of said Section 15, a distance of 1,337.39 feet to the point of intersection with the North line of the Southeast quarter of the Southwest quarter of said Section 15; thence South  $89^{\circ}46'48''$  West, along the North line of the Southeast quarter of the Southwest quarter of said Section 15, a distance of 1,320.66 feet to the point of intersection with the East line of the Northwest quarter of the Southwest quarter of said Section 15; thence North  $00^{\circ}10'58''$  West, along the East line of the Northwest quarter of the Southwest quarter of said Section 15, a distance of 1,108.76 feet to the point of intersection thereof with a line which is parallel with and 230.00 feet South of the North line of the Southwest quarter of said Section 15; thence South  $89^{\circ}50'20''$  West, along said parallel line, a distance of 250.06 feet; thence North  $00^{\circ}11'08''$  West, a distance of 230.00 feet to the point of intersection with the North line of the Southwest quarter of said Section 15 ; thence South  $89^{\circ}50'20''$  West, along the North line of the Southwest quarter of said Section 15, a distance of 1,071.97 feet to the **POINT OF BEGINNING**.

Containing an area of 5,246,662 square feet (120.45 acres), more or less.

END DESCRIPTION

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

