

**JOINT USE AGREEMENT BETWEEN
CITY OF FRESNO AND CENTRAL UNIFIED SCHOOL DISTRICT
RELATING TO USE OF
GREEN SPACE AT STIENBECK AND MCKINLEY ELEMENTARY SCHOOL SITES**

This Agreement is made and entered into as of this _____ day of _____, 2016, between the City of Fresno, a municipal corporation (the "City") and Central Unified School District, a public school district (the "District").

RECITALS

- A. The District is authorized by California Education Code Section 10910 to allow for use of District properties by other public authorities for community recreational purposes.
- B. City has an objective of, where feasible, using school sites for community use and to maximize the efficient use, maintenance, and supervision of public facilities, which such objectives are the intended purpose of this Agreement.
- C. Expanded community use of District school sites will maximize utilization of school District property and improve opportunities for public and community recreational activity in the City and its various communities.
- D. City and District mutually desire to enter into this agreement for purposes of expanding access to District facilities and green space at various sites, in accordance with the terms granted herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree as follows:

- 1. **Acknowledgement of Recitals and Definitions.** All the foregoing recitals are true and correct and incorporated herein by this reference as though fully set forth herein.
 - a. **Definitions.**
 - 1) The term "District Use" shall mean District's Educational Program and Related School Activities. For purposes of this Agreement, the term "Educational Program and Related School Activities of the District" shall mean "an activity that is organized and administered by the District, including but not limited to, athletic games/meets, drama, carnivals, District community meetings, District meetings, requests from other schools within the District, and the like, but excluding use of the facilities by nonprofits, leagues, and other community groups and organizations".
 - 2) The Term "City Use" shall mean City's recreation programs and activities organized and administered by the City.

- 3) The term “Community Use” shall mean use by community groups, nonprofits, leagues and other organizations scheduled through the District.
- 4) The term “General Public Use” shall mean unscheduled use by the general public that is not a programmatic activity of the District or the City.

2. **Grant of License.** In consideration of the City’s contributions as set forth hereunder, District hereby grants the City a no fee license (the “License”) to use the facilities and green space at sites selected by the City and District upon mutual written letter agreement of their respective authorized agents (“Sites”). The term of the License (the “License Term”) shall initiate upon the effective date of this Agreement and shall continue from year to year until terminated by either party. Either party may terminate the Agreement, in its sole discretion, at any time during the term of the Agreement by providing written notice to the other party specifying an effective termination date at least sixty (60) days from the date of notice. The License is limited to use of the facilities and green space at Sites for City programmed use and general public use, as further detailed below. The priority of facilities/green space use at the Sites is as follows:

a. **Priority of Use.** The priority of use for facilities/green space shall be as follows:

- 1) District Use activities and programs
- 2) City Use recreation program and activities.
- 3) Community Use by community groups, organizations, nonprofits and leagues whose use is scheduled through the District.
- 4) General Public Use not scheduled and not a programmatic activity of the District or City.

b. **Scheduling of Use.** The facilities/green space at Steinbeck and McKinley Elementary Schools shall be made available for City Use and General Public Use at a minimum from 9:00 a.m. to 6:00 p.m. Saturday and Sunday. Upon mutual written letter agreement of the parties’ authorized agents, sites may be changed based on availability and program needs. If a portion of the Site is committed to District Use, the remainder shall be available for City/General Public Use. Notwithstanding the foregoing, annually, prior to each July 31, City and District shall meet and coordinate City’s schedule for use of the Sites for the upcoming year including with regards to conflict(s) with any existing third party contract(s). The District shall not unreasonably fail to accept City’s schedule for use of the Sites. The parties shall exercise good faith efforts to obtain agreement on any amendments to the joint use schedule and to resolve any conflicting uses thereunder. The City acknowledges and agrees that, if the City makes a request to schedule use through the District after August 1 of each year, then the City’s request shall be denied to the extent the District has already issued a contract for the facility, time and date requested by City. The City shall be responsible for

and supervise its use of the Sites, in consultation with the respective school principal and the District.

c. Auxiliary Facilities. City's no cost priority use of the Sites shall also include the right to make use of auxiliary facilities including restroom facilities in reasonable proximity to such facilities (as designated from time to time by District). Auxiliary facilities and fixed equipment, such as parking lots, bleacher seats, and other fixtures designated for use in connection with such auxiliary facilities, shall be included herein. If restroom facilities are necessitated by City's use and access to such facilities requires the expenditure of costs by the District, the City agrees to reimburse the District for such costs upon presentation of the same; the District hourly rate of, \$31.16 and daily rate of, \$249.28. This rate shall be adjusted according to any change in the applicable salary schedule on an annual basis.

d. General Public Uses. In addition, the District commits to regularly make available to the general public on an unscheduled basis, use of its facilities and green space not located within stadium facilities, in circumstances where such use does not conflict with organized activities of the District, the City, or scheduled community group activities. The District agrees to make such facilities available to the general public on a daily basis, from dawn until dusk, expressly excepting times in which school is in session..

e. City Use During Regular District Hours. Subject to scheduling requirements and use priorities specified in Subsections (a) and (b) above, priority use of the Sites shall be made available to the City for its organized and supervised recreation programs at no charge during regular District hours of operation (hours during which building maintenance or appropriate supervisory staff are usually scheduled). The City shall be responsible for all litter and related clean-up attributable to City's use of such facilities.

f. City's Use Outside Regular District Hours. Subject to the scheduling requirements and use priorities specified in Subsections (a) and (b) above, priority use of the Sites shall be made available to the City for its organized and supervised recreation programs at no charge outside regular District hours of operation. The District will not require District custodial staff to be on duty unless access to restrooms and or/other buildings is needed. In such a situation city agrees to reimburse the District in the same fashion as specified in subsection 2c, For stadium use, the District will require the stadium manager be on duty and said costs will be the responsibility of the City. The City shall be responsible for all litter and related clean-up attributable to City's' use of such facilities.

g. Maintenance and Repair. Except as specified below (and subject to City's obligations specified in Subsection (f) above), District shall be responsible for all maintenance and repair of the Sites. Nothing in this Agreement shall be deemed to impose duty/responsibility upon City to inspect District Facilities. City shall make reasonable efforts to notify District of any Sites being utilized by City actually observed to need repair or maintenance. City shall repair, at its sole

cost, damage to the Sites and associated auxiliary facilities caused solely by City's use of such Sites.

h. Downtime for Maintenance. Downtime is required to maintain the condition of the designated sites. Activities cannot be scheduled at the site during this maintenance period. The District shall be responsible for notifying the City of the estimated downtime maintenance schedule a minimum of 14 days in advance.

i. Community and General Public Uses. Except to any extent expressly provided in this Agreement and/or otherwise agreed to by the City in a writing signed by the City's authorized agent, the City shall have no obligation, responsibility, or liability as to Community and/or General Public uses.

3. Indemnification.

a. City Indemnification. As authorized by Government Code Section 895.4, during the License Term, the City shall indemnify, hold harmless and defend the 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 out of the Use of DISTRICT Grounds and Facilities by the City or any of his/her/Its officers, officials, employees, agents, volunteers or invitees. The City's obligations under the preceding sentence shall apply regardless of whether DISTRICT, or any of their 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 DISTRICT or any of their officers, officials, employees, agents or authorized volunteers. Nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

Throughout the life of this Agreement, the City shall pay for and maintain in full force and effect all policies of insurance as required in Section "4", which is incorporated into and part of this Agreement, or as may be authorized or required in writing by the Assistant Superintendent/Chief Business Officer or his/her designee at any time and in his/her sole discretion. The required policy(ies) of insurance as stated in Section "4" shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the DISTRICT or any of their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds available to the named insured.

The City shall conduct all defenses at his/her/its sole cost. The fact that insurance is obtained by City shall not be deemed to release or diminish the liability of City, including, without limitation, liability assumed under this Agreement. The duty to indemnify shall apply to all claims regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from

the duty to indemnify and such duty to defend exists regardless of any ultimate liability of the City. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by the City. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of City, its officials, officers, employees, agents, volunteers or invitees.

DISTRICT shall be reimbursed for all costs and attorney's fees incurred by the DISTRICT in enforcing this Agreement.

d. This section shall survive termination or expiration of this agreement.

4. Insurance. It is understood and agreed that District and City maintain insurance policies or self-insurance programs to fund their respective liabilities. Notwithstanding, the City shall maintain, at its own cost, the following minimum insurance coverage and shall identify the District as an additional insured under the same:

a. Commercial general liability insurance. Said insurance shall not be less than \$2,000,000 per occurrence;

b. Commercial automobile liability insurance which shall cover all owned, non-owned and hired automobiles. Said insurance shall not be less than \$2,000,000 per occurrence.

c. Workers compensation and employer liability which shall not be less than \$1,000,000.

d. Umbrella or excess liability insurance which shall provide the same coverage for additional insured's. The policy shall include coverage for bodily injury to a participant in any activity and shall not include a Participant's exclusion, athletic participant exclusion or a sub-limit liability for bodily injury to a participant.

Evidence of identifying the District as an additional insured shall be provided by the City upon request. Should City contract out any of the above responsibilities or obligation to this Joint Use Agreement, City will require contractor, in writing, to indemnify and defend District as required in this License Agreement. Contractor will also be required to provide the following insurance requirements in favor of District and City.

5. Funding Contingency. Except for the indemnity obligations specified herein, the obligations of the City and the District are limited to and contingent upon appropriation of sufficient funding in each fiscal year during the term of the Agreement.

6. Independent Contractors. The parties are acting as independent contractors. Neither party, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of the other for any purpose. Each party shall retain as program income any and all income generated by its respective use hereunder.

8. 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.

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

CITY OF FRESNO,
a California municipal corporation

CENTRAL UNIFIED SCHOOL DISTRICT

By: _____
Bruce Rudd, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Katherine B. Doerr
Assistant City Attorney

By: _____
Deputy

KBD:ns [70154ns/kbd] 1-13/15