

AGREEMENT AMENDING THAT CERTAIN AGREEMENT
FOR JOINT MAINTENANCE AND OPERATION OF
DRAINAGE BASIN PARKS (DATED AUGUST 26, 1965) AS
AMENDED BY AGREEMENTS DATED MARCH 24, 1987,
JULY I, 1995, AND MAY 30, 1998 BASINS "F" AND "EG"

THIS AGREEMENT made and entered into this ____ day of _____, 2015, by
and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California
public agency ("District"), and the CITY OF FRESNO, a municipal corporation ("City").

WITNESSETH

WHEREAS, in connection with the development of planned local drainage
facilities, District has or will have acquired and developed to District standards, certain
areas within the City as reservoirs and drainage basins for the reception of storm and
flood waters and the term "Drainage Basin," wherever, used herein, shall be deemed to
refer to such areas: and

WHEREAS, such Drainage Basins have been or will be developed by District
with various Storm Drainage Master Plan improvements, including, but not limited to,
excavations, drainage structures and devices, hereinafter referred to collectively as
"Drainage Facilities," to accommodate collections and storage of storm, flood and other
surface waters and to facilitate the return of such waters to the underground; and

WHEREAS, pursuant to that certain Agreement for Joint Maintenance of
Drainage Basins Parks, dated August 26, 1965, as amended by Agreements dated
March 24, 1987, July I, 1995, and May 30, 1998 ("Basin Park Agreement"), City may
operate and maintain Drainage Basins "G," "BB," "BIE," "D," "AH-1," "CN," and "FF" as
listed in **Exhibit A** hereto as park facilities; and

WHEREAS, the parties mutually desire to amend such **Exhibit A** to include Drainage Basins "F" and "EG," as identified on Attachments 1 and 2, attached hereto and made a part hereof; and

WHEREAS, pursuant to the Basin Park Agreement, Drainage Basins "F" and "EG" have been developed for joint use as Drainage Basins and parks; and

WHEREAS, pursuant to said Basin Park Agreement, City is required to maintain at all times adequate public liability insurance or self-insurance to protect the District against such park-related liability; and

WHEREAS, City is self-insured and District's insurance carrier has previously determined the City's holding of the underlying fee title of the real property is essential to effective insurance coverage, thereby protecting District against park-related liability and avoiding closure of Drainage Basins for City's park uses.

NOW, THEREFORE, THE PARTIES HERETO agree as follows:

1. **Exhibit A** of the Basin Park Agreement is amended to add Drainage Basins "F" and "EG" attached as Attachments 1 and 2, respectively.
2. The District hereby sells to City by grant deed of even date herewith and City accepts from District, District's fee interest in the real properties developed by District as Drainage Basins "F" and "EG," identified on Attachments 1 and 2 hereof. Such sale of the fee interest shall be limited to the real properties only and shall specifically exclude all Drainage Facilities which have been and may be installed by District on the said properties.

3. The City shall pay to District as full compensation for said fee interest and District shall accept the sum of One Dollar (\$1.00) for each real property, equaling a total purchase price of Two Dollars (\$2.00).

4. It is understood by the parties that the City may operate Drainage Basins “F” and “EG” as public parks for recreational use. In addition to the specific provisions set forth in this agreement, the City shall be responsible to satisfy all land use requirements associated with this use, including coordinating with adjoining property owners. Further, any and all costs and liabilities associated with operation of the public parks, in addition and those specifically identified herein in Section 5.A (2) (a) through (i), are the responsibility of the City.

5. District shall retain all of its rights of use and performance responsibilities as to Drainage Basins “F” and “EG” provided in the Basin Park Agreement; and City shall likewise retain its rights of use and performance of responsibilities as to said Drainage Basins, as provided in such Basin Park Agreement.

A. Such right of use and responsibilities shall include, but are not necessarily limited to, the following:

(1) District may discharge and store storm water runoff within said Drainage Basins and shall throughout Drainage Basins “F” and “EG”;

(a) Pay and be responsible for all maintenance and repair of drainage facilities installed by District in said basins;

(b) Desilt drainage facilities as required;

(c) Reconstruct and repair damage to the Drainage Basins caused by storm or flood waters;

(d) Be responsible for maintenance and repair of fences and gates as required to maintain control of ingress when said damage results from operating the basins for storm water purposes.

(2) City may operate said Drainage Basins as active public parks and shall perform the following or pay District for performing said work:

(a) Pick up and dispose of trash and litter on a scheduled basis;

(b) Inspect park facilities on a scheduled basis;

(c) Maintain and repair park facilities;

(d) Remove graffiti;

(e) Irrigate all plantings;

(f) Furnish water required for irrigation and other purposes;

(g) Maintain, repair, and replace automatic sprinkler systems;

(h) Furnish all energy required for drainage basin park operation and maintain, repair, and replace all electrical fixtures; and

(i) Maintain and repair fences and gates when damage results from park uses.

B. Annually during the period from November 15 to April 30, and at any other time when Drainage Basins “F” and “EG” are flooded to the extent that District determines it impractical to use for park purposes, District shall assume control and operation of Drainage Basins “F” and “EG” and shall continue in exclusive control thereof until District determines Drainage Basins “F” and “EG” are safe for use by City for park purposes and City expressly assumes control and operation thereof for such purposes. During such period from November 15 to April 30 and during any other period when said Drainage Basins are deemed unsafe or in a condition where it is considered impractical for use as parks and recreation areas, as aforesaid, District shall keep Drainage Basins “F” and “EG” locked at all times to prevent ingress thereto by all persons except authorized employees of District and City. Drainage Basins “F” and “EG” shall not be used as parks at any time and shall remain under the control and operation of the District.

C. Whenever District deems Drainage Basins “F” and “EG” to be safe and in a condition to be used for park purposes, it shall notify the Parks, Recreation and Community Services Department Director (“Director”) of City or the Director's designated representative. Upon receipt of such notification, City shall assume control of Drainage Basins “F” and “EG” or portions thereof, as the case may be, for park purposes; provided, that City shall not be required to assume control of Drainage Basins “F” and “EG” until, in the opinion of the Director, such Drainage Basins are safe and in a suitable condition for use for park purposes. During any period when Drainage Basins “F” and “EG” are in use

for park purposes, City shall have the sole responsibility for securing Drainage Basins "F" and "EG" from ingress by persons other than authorized employees of District and City during the hours when, in the sole discretion of the City, Drainage Basins "F" and "EG" shall be closed for use as parks.

D. District shall defend, indemnify and hold City harmless for any and all liability for damages of any nature whatsoever, including injury or death of any person or persons and damage to property of third persons, arising out of the collection and storage of storm and flood waters in Drainage Basins "F" and "EG" or the negligent maintenance by District of the Drainage Facilities, and agrees that it will maintain at all times adequate insurance coverage to provide protection against such liability.

E. City shall defend, indemnify, and hold District harmless from any and all liability for damages of any nature whatsoever, including injury or death of any person or persons and damage to property of third persons, arising out of the use by City of Drainage Basins "F" and "EG" for park purposes or the negligent maintenance by City of facilities installed by City, and agrees that it will at all times maintain adequate public liability insurance or self-insurance to protect against such liability.

(1) City hereby grants District the right and option to repurchase from the City for the sum of One Dollar (\$1.00) each the fee interest in Drainage Basins "F" and "EG." Such right of District to repurchase shall be exercised:

(a) As a result of first refusal in such event City proposes to sell or is requested to sell any portion of or all of such Drainage Basins to a third party;

(b) Upon District's decision to repurchase said Drainage Basins upon modification of District's liability insurance program permitting such repurchase; or upon City's ceasing to use said Drainage Basins for park purposes.

(2) City shall notify District in writing of a proposal to sell or a request to purchase any portion of or all of Drainage Basin "F" or "EG" within fifteen (15) days of said proposal or request as such proposals or requests may be received from time to time in regard to said basins. Upon receipt of such notice from City or in the event of a District decision to repurchase pursuant to a modification in the District's insurance permitting such repurchase, District shall prepare and submit to City a repurchase agreement. Such agreement, accompanied by a warrant equaling the agreed repurchase price set forth in Subsection (E)(1) above, shall restore the provisions of the Basin Park Agreement, unless such provisions are to be then modified by mutual consent of the District and City.

6. In the event of conflict between the provisions of the Basin Park Agreement and/or the Amendment, and the provisions set forth herein, the provisions hereof shall take precedence.

7. Any notice required under agreement to be given in writing may be served upon District by mailing the same by certified mail addressed to District at its principal office, 5469 East Olive, Fresno, CA 93727. Any notice required to be given in writing under agreement may be served upon City by delivering the same personally to the Parks, Recreation and Community Services Director or by mailing the same by certified mail addressed to the City, attention of the Parks, Recreation and Community Services Director, 1515 E. Divisadero Street, Fresno, CA 93721.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first hereinabove written.

CITY OF FRESNO,
a California municipal corporation

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT,
a California public agency

By _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Deputy

By: _____

Name: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Title: _____

By: _____
Brandon M. Collet Date
Deputy City Attorney