

JOINT USE AGREEMENT BETWEEN
CITY OF FRESNO AND FRESNO UNIFIED SCHOOL DISTRICT
RELATING TO CITY'S WEEKEND COMMUNITY OPEN SPACE PROGRAM

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

RECITALS

- A. The District is authorized by California Education Code Section 10910 to allow use of District properties by other public authorities for community recreational purposes.
- B. City has an objective of providing recreational health and fitness programming to the community on weekends and holidays at certain District elementary and middle school sites ("Weekend Community Open Space Program").
- C. City and District mutually desire to enter into this agreement for purposes of providing access to District facilities and green space at various sites in support of City's Weekend Community Open Space Program, 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 "Contracted Community Use" shall mean use by community groups, nonprofits, leagues and other organizations with a current contract for use of District Sites.

3) The term "Community Use" shall mean use by community groups, nonprofits, leagues and other organizations not currently under contract with the District.

4) The term "City Use" shall mean recreational programs and activities organized and administered by the City pursuant to the Weekend Community Open Space Program.

5) The term “General Public Use” shall mean unscheduled use by the general public that is not a programmatic activity of the District, Community, or City.

2. Existing Agreements Continue in Effect. The parties acknowledge they are parties to certain existing agreements including “Agreement between City of Fresno and Fresno Unified School District Relating to the Joint Use of District High School Athletic Facilities” entered June 10, 2008, and “Agreement Between City of Fresno and Fresno Unified School District Relating to the Joint Use of Fig Garden Elementary School Baseball Field Facilities” entered March 6, 2007. This Agreement shall not supersede any existing agreement, and all existing agreements shall continue in full force and effect.

3. Grant of License. In consideration of the City’s contributions as set forth hereunder, District hereby grants the City a no fee license to use the play fields, green space and outdoor hard courts (“Facilities”) at sites selected by the City and District and set forth in Exhibit A hereto (“Sites”), as may be modified from time to time upon mutual written letter agreement of the parties respective authorized agents. The term of the License (the “License Term”) shall initiate upon the effective date of this agreement and continue for a term of one year. Thereafter, upon mutual agreement, this Agreement may be administratively extended from year to year by the parties’ authorized agents. The parties may terminate the Agreement, in their 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 days from the date of notice.

4. Priority of Use. The priority of use for Facilities shall be as follows:

- 1) District Use.
- 2) Contracted Community Use.
- 3) City Use.
- 4) Community Use.
- 5) General Public Use.

5. Scheduling of Use.

a. The facilities/green space at the Sites 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, Sunday, and Holidays, as may be adjusted seasonally (“City Use Hours”). If a portion of the Site is committed to District Use or Contracted Community Use, the remainder shall be available for City and General Public Use.

b. Additional days, facilities, and/or extended hours may be added based on mutual agreement of the parties’ authorized agents, subject to a separate agreement as to costs that may be incurred by District and reimbursed by City for such periods of additional or extended use. Prior to the event, District shall provide City an estimate of the costs District will incur as a result of the extended hours or days of use. Such costs may include but are not limited to the cost of running the lights at a facility. After the event, District shall invoice City for the actual costs incurred by District, and City shall pay the invoice within forty-five days of receipt.

6. Downtime for Maintenance. Downtime is required to maintain the condition of the 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 fourteen days in advance.

7. Terms of City Use.

a. While City shall be primarily responsible for litter removal at the Sites, District shall notify City if District deems supplemental custodial services necessary at any or all of the Sites, and City shall reimburse District for the cost of custodial for City Use days in accordance with the cost schedule in Exhibit B.

b. City shall reimburse District, in accordance with the cost schedule in Exhibit B, for the cost of garbage removal and disposal for City Use days.

c. City shall be responsible for unlocking and locking all gates at each respective site, for the hours specified for City Use.

d. City shall provide two port-a-potties per site, securely affixed to District fencing in a manner and at a location acceptable to District. City shall arrange to have port-a-potties serviced weekly on Mondays, or on the next business day if Monday is a holiday.

e. City shall enforce the following restrictions for use of the Sites: (i) No dogs; (ii) no barbecues; (iii) no inflatables/bounce houses. District shall provide signage alerting the public to prohibited uses. City and District agree additional prohibited uses may be identified by District from time to time and communicated in writing to City, and thereafter shall be enforced by City. Any exception to these rules must be approved in advance by District.

f. City shall have access to school based storage facility space or have the ability to utilize school grounds to put a portable storage unit on premises, in a designated area, agreed upon by both parties. City shall hold District harmless for any damage, theft, vandalism or loss of City equipment/supplies/portable storage unit(s) utilized by City under this agreement.

g. If District determines there is a need for additional security at any of the Sites, District shall notify City of the need for such service, and give City an opportunity to provide a workable solution. If City cannot resolve the problem to District's satisfaction, then City shall reimburse District for contracted security patrol services to the Sites in accordance with the fee schedule in Exhibit B, to the extent such patrol services do not align with existing patrol service hours currently provided by District.

h. City shall repair, at its sole cost, damage to the Facilities caused solely by City's Use of the Facilities, or General Public Use during City Use Hours. City shall survey each Site at the beginning and end of each City Use day. Any damage or vandalism caused during City Use Hours shall be reported to District and shall be the responsibility of City to repair at City's expense. Any damage discovered by City that occurred outside City Use hours shall be reported to District, and shall be the responsibility of District to repair. In addition, annually prior to each July 31, City and District shall consult with one another regarding any significant maintenance/rehabilitation that may need to be made to the Facilities and the unreimbursed impact the City's use has contributed to such maintenance/rehabilitation requirements. Such consultations shall include good faith negotiations concerning

possible City contributions towards maintenance/rehabilitation expenses for Facilities utilized by the City and possible modifications to the use of the Facilities by the City. In no event shall the City's contributions under this section exceed the lesser of (i) the prorata maintenance/rehabilitation expense caused by the City's usage, or (ii) 50% of the total maintenance/rehabilitation cost.

j. City shall pay all fees contemplated in this Agreement within forty-five days of receipt of invoice from District.

8. Indemnification.

a. City Indemnification. As authorized by Government Code Section 895.4, during the License Term, City shall indemnify, save and hold harmless the District, its officials, officers, agents, employees, and volunteers against any and all claims, causes of action, liability, suits, judgments and expenses, including reasonable attorney's fees and costs, for death or injury to persons, or loss of or damage to property, arising or alleged to have arisen directly or indirectly from: (a) active or passive negligent acts or omissions, or intentional acts (other than willful misconduct), of the City, its officials, officers, agents, employees or volunteers in the performance of this Agreement; or (b) use of the respective District sites by the City or its authorized users or invitees. Nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq. Notwithstanding the foregoing, District shall indemnify City for claims that arise from any dangerous or defective condition or negligent design of the Facilities.

b. District Indemnification. As authorize by Government Code Section 895.4, during the License Term, District shall indemnify, save and hold harmless the City, its officials, officers, agents, employees, and volunteers against any and all claims, causes of action, liability, suits, judgments and expenses, including reasonable attorney's fees and costs, for death or injury to persons, or loss of or damage to property, arising or alleged to have arisen directly or indirectly from: (a) active or passive negligent acts or omissions, or intentional acts (other than willful misconduct), of District, its officials, officers, agents, employees or volunteers in the performance of this Agreement; or (b) use of the Facilities by the District or its authorized users or invitees (other than City, and their authorized users or invitees). Nothing herein shall constitute a waiver by District of governmental immunities including California Government Code Section 810 et seq.

c. In the event of concurrent negligence on the part of the District, on the one hand, and City on the other hand, the liability for any and all such claims demands, and actions in law or in equity for such losses, fines, penalties, forfeitures costs and damages shall be appointed under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

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

9. Insurance. It is understood and agreed that District and City maintain insurance policies or self-insurance programs to fund their respective liabilities. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

10. 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.

11. Attorney 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.

12. 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.

13. 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. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. Extent of Agreement. Each party acknowledges 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. This Agreement in its final form is the result of the combined efforts of the parties, and should any provision be found to be ambiguous, 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. Each exhibit is, by this reference, incorporated into and made a part of this Agreement. 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.

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

FRESNO UNIFIED SCHOOL DISTRICT

By: _____
Bruce Rudd, City Manager

By: _____

Name: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Title: _____

By: _____
Katherine B. Doerr
Assistant City Attorney

APPROVED AS TO FORM:

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

By: _____
Deputy

KBD:ns [71145ns/kbd] 4/20/16

EXHIBIT A
Program Sites

Elementary School Sites

Addams
Vang Pao (or Sequoia)
Yokomi
Wilson

Middle School Sites

Scandanavian
Terronez
Wawona

Sites are subject to change by mutual agreement of the parties.

EXHIBIT B
Cost Schedule

Custodial	\$42/hour
Security	Up to \$180/day, maximum four guards
Garbage	\$180/month per site

All rates are subject to change upon agreement of the parties.