

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 2017, by and between the FRESNO UNIFIED SCHOOL DISTRICT, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California (“District” or “Licensor”), and the CITY OF FRESNO, a municipal corporation (“City” or “Licensee”). Licensor and Licensee are sometimes referred to singularly as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, Licensor is the owner of real property located at 555 East Belgravia Avenue, Fresno, California, commonly known as the Edison High School (“District Property”); and

WHEREAS, the Parties acknowledge that the grant of this license (“License”) to use the License Area shall in no way convey to Licensee any interest in the License Area or any portion of the District’s Property and shall be revocable at any time and for any reason; and

WHEREAS, the Parties acknowledge that the Licensor may revoke this License at any time pursuant to the terms set forth below; and

WHEREAS, Licensor desires to grant to Licensee a license to use the License Area in accordance with the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and the Parties hereto intending to be legally bound hereby, agree as follows:

1. **Grant of License.** The Licensor hereby grants to Licensee a license to utilize the License Area as shown on **Exhibit A** (the “License Area”), for the sole purpose of installing and maintaining improvements to the pedestrian trail as set forth in the work proposal attached hereto as **Exhibit A** and incorporated herein by this reference, and in strict compliance with all the terms of this Agreement. Licensee shall use the License Area as a licensee only, and this Agreement shall not be construed as a lease of the License Area and such area shall be used solely by Licensee for the purposes contemplated herein during the term of this License.

2. **Term.** The term of this License (the “Term”) is from the date of adoption by both the Licensor and Licensee for perpetuity.

3. **Condition of License Area.**

(i) **As-Is Condition.** Licensee acknowledges that Licensor is making the License Area available on an “as is” “where is” basis without representation or warranty of any kind.

(ii) Licensee shall be responsible for performance and cost of all future maintenance of said pedestrian trail including the lighting and cost of electricity.

(iii) Licenser shall be responsible for the maintenance of adjacent grounds/landscaping including the cost and maintenance of irrigation for said grounds.

(iv) Revocability. Notwithstanding any other provision in this Agreement, this License shall be revocable by the Licenser at any time without excuse or consideration to the Licensee. In the event that the District Property is conveyed, the License shall be deemed revoked at the time of such conveyance.

4. **Conditions to Use.** Licenser shall allow the use by Licensee of the License Area as follows:

(i) Licensee's use of the License Area is limited to the License Area.

(ii) Licensee may use the License Area only for the purpose of installing and maintaining improvements to the pedestrian trail as shown on **Exhibit A**, as approved by agencies having jurisdiction over Licensee's work, if any.

(iii) Licensee may not use the License Area or exercise any rights under this License unless and until Licensee first submits to Licenser any and all permits or approvals required to conduct Licensee's activities in the License Area.

5. **Covenants.** Throughout the term of this License, Licensee covenants: (a) that no waste or damage shall be committed upon or to the License Area or to any other portion of District Property, and that Licensee shall take good care of the License Area and make any repairs necessary to preserve the License Area in good order and condition; (b) that the License Area shall be used for only the purposes stated herein; (c) that Licensee shall comply with all laws, rules, orders, ordinances, covenants, restrictions, and regulations at any time issued or in force (either by any governmental authority or by Licenser) applicable to the License Area or the Licensee's use thereof, including but not limited to any rules and regulations promulgated by Licenser, from time to time, for use of the License Area; and (d) that Licensee shall not permit any hazardous substances to be used, generated, or stored upon or at the License Area.

6. **Non-Assignability.** This Agreement shall not be assigned by Licensee, whether voluntarily or by operation of law, to any Party, and Licensee shall not permit the use of the License Area except in strict compliance with the provisions hereof. In the event of any attempted transfer or assignment of this License, the License shall automatically terminate. The provisions of this Agreement are for the benefit of and shall be applicable to the Licenser, its successors in interest and assigns; provided, however, that Licenser shall notify Licensee of any assignment of this Agreement.

7. **Waiver.** Licensee agrees that its use of the License Area is at its sole and exclusive risk, and Licenser shall have no responsibility or liability for any loss or damage to Licensee or Licensee's property.

8. **Indemnity.** As authorized by the 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 the licensed area by the City or any of his/her/its officers, 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 an effect all policies of insurance as required in Section 9, 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 designee at any time and in sole discretion. 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 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.

This indemnity shall survive the termination or expiration of the license.

9. **Insurance.** Licensee shall carry insurance with respect to the License Area as set forth in this Agreement. Licensee shall furnish Licensor with proof that the License Area is so covered at the commencement of the Term and thereafter upon demand by Licensor.

(i) Public Liability and Properties Damage. Licensee agrees to maintain in full force and effect throughout the duration of the License a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with Licensee's use of the License Area under this Agreement.

(ii) Notice; Additional Named Insureds. All insurance required under this Agreement shall be issued as a primary policy and contain an endorsement requiring thirty (30) days written notice from the insurance company to both Parties hereto before cancellation or change in coverage, scope or amount of any policy. Licensor shall be designated as additional named insureds.

10. Default. If Licensee shall default in the performance or observance of any agreement or condition on its part to be performed or observed, Licensee shall be liable to Licensor for all money or other damages arising from said default, and, in addition, Licensor may terminate the within License.

11. Costs of Enforcement. If either Party commences an action against the other to enforce any of the terms of this Agreement or because of the breach of either Party of any of the terms hereof, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

12. Notices. Any notice, request, information or other document to be given hereunder to any of the Parties by any other Parties shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing by United States mail as follows:

If to Licensee: City of Fresno  
Public Works Department, Capital Management  
Division  
2600 Fresno Street  
Fresno, CA 93721  
Attention: Robert Andersen, Assistant Director

If to Licensor: Fresno Unified School District  
2309 Tulare Street  
Fresno, CA 93721  
Attention: Andrew De La Torre, Director of Risk  
Management

Any Party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other Parties in the manner provided for giving notice.

13. No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the License Area to the general public or for the general public or for any public purpose whatsoever, it being the intention that this Agreement will be strictly limited to and for the purpose expressed herein.

14. **No Interest Conveyed.** Nothing contained in this Agreement shall be deemed to convey to Licensee any interest in the License Area or any portion of the District's Property.

15. **Miscellaneous.** This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. No waiver of any provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. Time is of the essence of every provision hereof.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto, intending to be legally bound thereby, under seal, as of the day and year first above written.

LICENSOR:  
FRESNO UNIFIED SCHOOL DISTRICT

LICENSEE:  
CITY OF FRESNO, A California municipal corporation

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: 

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

Name: Andrew DeLaTorre

Title: Director

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

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

By:  3/8/17  
Brandon M. Collet Date  
Deputy City Attorney

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment: Exhibit A

**EXHIBIT A**  
**DESCRIPTION AND DEPICTION OF LICENSE AREA**

# EXHIBIT "A" - FAIRVIEW TRAIL

SCALE: N.T.S.

