

**MEMORANDUM OF UNDERSTANDING  
WITH  
STEPHENS INVESTMENTS INC.  
(Pilibos Bros.)**

This Memorandum of Understanding (MOU) is entered into this 15th day of September 2017, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, (City), and Stephen Investments Inc., a California corporation (Pilibos Bros.).

**WITNESS**

WHEREAS, the City owns Pilibos Park (Park), and Pilibos Bros. intends to provide funding for new main entrance entry/exit gates (south end of park) and pedestrian gates (east and west end of park);

WHEREAS, Pilibos Bros. donated the land for the current Pilibos Park to advance recreational opportunities for Fresno residents; and

WHEREAS, Pilibos Bros. will provide additional funding for park improvements; and

WHEREAS, the City and Pilibos Bros. now wish to enter into the MOU to allow Pilibos Bros. to provide funds for additional improvements to Pilibos Park; and

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

**1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS**

City Representative: Kristina Chamberlin, Assistant Department Director  
Parks, After-School, Recreation and Community Services  
Dickey Youth Development Center  
1515 E. Divisadero Street  
Fresno, CA 93721-1115  
Tel: (559) 621-2953

Pilibos Bros.  
Representative: Sarah Pilibos, President  
Stephen Investments Inc., and Pilibos Bros.  
2141 Tuolumne St., Suite A  
Fresno, CA 93721  
Tel: (559) 268-0101

**2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES**

A. The City will:

- i. Designate a representative to work with Pilibos Bros. until the project and scope has been completed.

- ii. Assume financial responsibility of the fencing project above \$15,000 donation by Pilibos Bros. (estimate not to exceed \$8,000).
- iii. Conduct a final walkthrough and approve the project work of the selected fencing project vendor.
- iv. Complete the fencing project within 4 months of the date of donation.

B. Pilibos Bros. will:

- i. Assume financial responsibility for up to \$15,000 in funding for costs associated with the construction of the Pilibos Park fencing project.
- i. Provide the City funding for \$15,000 through Fresno United Neighborhoods upon commencement of the project.

3. EFFECTIVENESS, DURATION AND TERMINATION

This MOU shall be effective September 15, 2017 through December 31, 2017.

Either party may at any time terminate this MOU with cause upon written notice to the other party following the other party's failure to reasonably cure an event of non-performance hereunder following thirty days written notice thereof. Termination shall be effective (the "Effective Date of Termination") as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this MOU shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein.

4. RECORDKEEPING AND PERFORMANCE DATA

Each party shall fund the agreed upon financial commitments contained in the agreement.

5. CAPACITY OF THE PARTIES

Each party is acting in an independent capacity. Nothing in this MOU and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

The City and Pilibos Bros. agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other.

6. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

7. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this MOU and any exhibit/attachment hereto, the terms and conditions of the body of this MOU shall control and take precedence over terms and conditions expressed within the exhibit/attachment. Furthermore, any terms or conditions contained within any exhibit/attachment hereto which purport to modify the allocation of responsibility or liability between the parties, provided for within the body of this MOU, shall be null and void.

8. NOTICES

Any notice required or intended to be given to a party under the terms of this MOU shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the Stephen Investments Inc., and Pilibos Bros. Representative, or (c) three (3) business days after the date of mailing (postage pre-paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

9. BINDING

Once this MOU is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

10. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this MOU without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

11. WAIVER

The waiver by any party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU.

No provisions of this MOU may be waived unless in writing and approved by and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the MOU shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. GOVERNING LAW AND VENUE

This MOU 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 MOU and any rights and duties hereunder shall be Fresno, California.

13. HEADINGS

The section headings in this MOU 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 MOU.

14. SEVERABILITY

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

15. INTERPRETATION

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

16. REPRESENTATIONS AND WARRANTIES

Pilibos Bros. represents and warrants that it is a duly authorized and existing California business in good standing. Each party hereby represents and warrants to the other party, and agrees that it has the full power and authority to enter into this MOU and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this MOU.

17. ENTIRE MOU

It is mutually understood and agreed that the foregoing along with the attached exhibits constitutes the entire MOU between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

[Signatures follow on the next page]

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this MOU:

CITY OF FRESNO,  
a California municipal corporation

Stephen Investments Inc.,  
a California corporation (Pilibos Bros.)

By \_\_\_\_\_  
Kristina Chamberlin  
Assistant Department Director  
Parks, After-school, Recreation and  
Community Services

By: \_\_\_\_\_  
Name: Sarah Pilibos  
Title: President  
  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Brandon M. Collet                      Date  
Deputy City Attorney

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CITY OF FRESNO,  
a California municipal corporation

Stephen Investments Inc.,  
a California corporation (Pilibos Bros.)

By \_\_\_\_\_  
Kristina Chamberlin  
Assistant Department Director  
Parks, After-school, Recreation and  
Community Services

By: 

Name: Sarah Pilibos

Title: President

(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

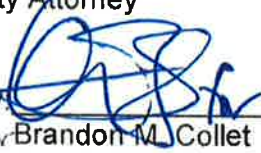
By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By:  \_\_\_\_\_ Date 10/27/17

Catie Doerr, Assistant  
for Deputy City Attorney