

Agenda Item: File ID 20-00495 (1-T)

Date: 04/20/2020

FRESNO CITY COUNCIL



RECEIVED

2020 APR 20 P 2:04

CITY OF FRESNO
CITY CLERK'S OFFICE

Information Packet

Agenda Related Item(s) – File ID 20-00495 (1-T)

ITEM(S)

File ID 20-00495 (1-T) – Actions pertaining to Granit Park.

Contents of Supplement: Amended and Restated Ground Lease and Operating Agreement with Granite Park Sports Complex.

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

AMENDED AND RESTATED GROUND LEASE AND OPERATING AGREEMENT

by and between

THE CITY OF FRESNO

and

GRANITE PARK SPORTS COMPLEX

Regarding **GRANITE PARK**

This Amended and Restated Ground Lease and Operating Agreement ("Agreement") is made as of the 23rd day of April 2020, (the "Effective Date") by and between the CITY OF FRESNO, a municipal corporation ("City"), CENTRAL VALLEY COMMUNITY SPORTS FOUNDATION, a California nonprofit corporation ("CVCSF"), and GRANITE PARK SPORTS COMPLEX, a California nonprofit corporation ("Foundation").

RECITALS

WHEREAS, City is the owner of all of the real property commonly known as Granite Park (the "Property") situated in Fresno, California;

WHEREAS, Foundation is a successor to Central Valley Community Sports Foundation;

WHEREAS, pursuant to the original Lease dated December 7, 2015, as amended October 28, 2016 ("Original Lease"), and the Service Agreement dated December 7, 2015 ("Original Service Agreement"), CVCSF has developed a portion of the Property (the "Premises") as a regional recreational asset providing a wide array of recreational opportunities and valuable public activity space, including baseball fields, soccer fields, and associated commercial development, and Foundation wishes to continue to develop and operate the Premises;

WHEREAS, the Property is located in an area of the City that has historically been and continues to be underserved by recreational opportunities and green space. Continued operation of the Premises will provide approximately 10 acres of green space for the public, as well as in-demand recreation programming to serve the community, and in particular underprivileged youth;

WHEREAS, upon review of the Original Lease and Original Service Agreement, as well as the books and records, the parties have determined Granite Park is more expensive to operate than originally anticipated, and there is an operational shortfall between revenue and expenses;

WHEREAS, a review by City of CVCSF books and records shows City payments, as well as other revenues, are being expended properly and are being utilized to the benefit of the sports fields operations and for the benefit of the public; and

WHEREAS, City wishes to continue to lease the Premises to Foundation for operation as a recreational facility, together with all rights, privileges, and easements appurtenant thereto, and improvements thereon, on the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Foundation hereby agree as follows:

1. Lease of Premises. City hereby leases, transfers and demises to Foundation, and Foundation hereby leases and takes from City, the Premises for the terms and upon the agreements, covenants and conditions set forth in this Agreement. A description of the Premises is more fully set forth in Exhibit A attached hereto. Upon the full approval and execution of this Agreement, all rights and obligations of CVCSF under the Lease will be terminated.
2. Term. The Initial Term of this Agreement shall be twenty-five years (the "Initial Term") commencing December 7, 2015 ("Original Effective Date"). This Agreement shall automatically renew for five additional ten-year terms thereafter, unless either party

gives written notice to the other at least three months prior to the end of the then current term of that party's desire to modify all or any portion of this Agreement at the end of the current Term, which modifications must be approved by both parties. Together, the Initial Term and any extensions shall be referred to herein as the "Term."

3. Rent. Rent shall be accrued at \$62,500 annually and credited against the value of the Capital Improvements constructed on the Premises by CVCSF and Foundation, estimated to be \$2.7 million, and more fully described in Section 10.2 of this Agreement. Rent shall be increased annually at a rate of 2.75%. At the conclusion of the Initial Term, rent shall be renegotiated, taking into account the value of (i) any capital improvements made during the Initial Term in addition to the \$2.7 million in Capital Improvements contemplated in this Agreement, and (ii) any capital improvements contemplated over the next extension term. Foundation shall be given rent credit for the value or anticipated value of those improvements.

4. Taxes and Assessments.

4.1 Except as otherwise set forth in this Agreement, Foundation covenants and agrees to pay and discharge subject to reimbursement by City, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or any buildings or improvements which are now or hereafter located thereon, or against any of Foundation's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby, except for those the City has expressly agreed to pay or provide reimbursement to Foundation. In addition, Foundation shall pay, subject to reimbursement by City, any tax assessed exclusively on rental income of City to the extent such income is allocable to this Agreement, if and only if such tax is assessed by State or local authorities upon the elimination and in lieu of taxation based on the ownership of real property. At the commencement and at the end of the Term, such taxes, assessments and other charges to be paid by Foundation shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the commencement and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the commencement or extending beyond the end of the Term, Foundation will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the commencement and preceding the end of the Term bears to the entire fiscal year.

4.2 Possessory interest tax accrued after the Effective Date shall be paid directly by the City, upon receipt of a tax bill from Foundation, which shall be provided to the City upon receipt by Foundation.

4.3 Following 60 days' notice to Foundation, and failure by Foundation to pay, City shall have the right, but not the obligation, at all times during the Term to pay any taxes, assessments or other charges levied or assessed upon or against the Premises or any buildings or improvements which are now or hereafter located thereon, and to pay, cancel and clear off all tax sales liens, charges and claims upon or against the Premises or any buildings or improvements which are now or hereafter located thereon, and to redeem the Premises from the same, or any of them, from time to time, without being obligated to inquire as to the validity of the same. Any sum so paid by City shall become due and payable by Foundation within 45 days of notice from City.

4.4 City shall provide Foundation a credit against water, sewer, and electrical utilities in the amount of \$100,000 annually, beginning on the Effective Date (the "Utility Credit"). The Utility Credit shall first be applied toward payment of City utilities (water and sewer). At each anniversary of the Effective Date, the balance of funds left over after credit against City utilities shall be immediately paid to Foundation as reimbursement of electrical utilities. As of the Effective Date, Foundation shall receive a credit for all past-due City utilities.

4.5 Foundation shall be subject to and responsible for compliance with any Granite Park Common Area regulations. City shall directly pay Granite Park Common Area Maintenance (CAM) charges applicable to the Premises.

5. Quiet Enjoyment. City covenants that upon payment by Foundation of the rent herein reserved and upon performance and observance by Foundation of all of the agreements, covenants and conditions herein contained on the part of Foundation to be

performed and observed, Foundation shall peaceably hold and quietly enjoy the Premises during the entire Term without hindrance, molestation or interruption by City or by anyone lawfully or equitably claiming by, through or under City.

6. Management and Operations. Foundation shall have the right to use the Premises for any lawful purpose; provided, however, in no event shall the Premises be used for any purpose or use (nor shall any activity be carried on upon the Premises) which in any manner causes, creates or results in a public or private nuisance, or diminishes the value of City's fee estate. The Premises shall not be utilized for any residential use or occupancy.

6.1 In exchange for the City providing the Utility Credit, the public shall be permitted free access to the approximate 10 acres of soccer/multi-use fields, but not Foundation's equipment, and not the baseball fields, during daylight hours daily, when those portions of the Premises are not then reserved and currently in use for organized activities, except during such time those portions of the Premises are undergoing improvements or repairs. The City Parks Director shall be kept informed by the Foundation at all times when those portions of the Premises are not available to the public as set forth in this Section. If the Premises are not made available to the public as required, the City Parks Director or designee, after 24 hours' notice, has the authority to open the facility to make them available. Public access shall not include any use that is reasonably likely to damage or impair the use of the facilities, such as any vehicular use, or use during a time that damage is likely, for example, periods of heavy rain or soon after seeding.

6.2 Foundation shall provide sports and recreational programming for the benefit of City residents, including but not limited to baseball and softball leagues, clinics, and tournaments. Foundation shall provide reasonable staffing for all programs. All personnel, either paid or volunteer, shall be qualified to perform the duties assigned to them. If the services provided hereunder (i) involve direct contact with minors or if minors are supervised as part of the services provided hereunder, or (ii) if services provided hereunder include services in the human services field and involve the care and security of children, the elderly, the disabled, or the mentally impaired, then Foundation represents and warrants to City that prior to services being provided hereunder by any personnel or volunteers retained by Foundation that Foundation has or will conduct a criminal background check as provided in California Penal Code Section 11105.3, as well as an FBI criminal database background check and, has or will verify prior to services being provided that the personnel or volunteers do not have any criminal record for the offenses listed in California Penal Code Section 11105.3, which include, certain offenses related to the possession or use of controlled substances, sex offenses or any criminal offense involving violence.

6.3 Beginning February 1, 2021, in exchange for the recreational services outlined in Section 6.2, City shall pay Foundation an annual fee of \$250,000 per year (the "Service Fee"), in two equal installments, payable on February 1 and August 1. Within 14 days of the Effective Date, Foundation will receive a one-time retroactive service payment of \$200,000 to cover operational shortfalls, due to an imbalance in revenue and expenses as originally estimated by the Parties.

6.4 In addition to sports events, Foundation may hold or allow other special events, as long as those events do not cause a nuisance to the surrounding neighborhood and are not otherwise a violation of the terms of this Agreement, or other City entitlements, including, but not limited to, the Conditional Use Permit (CUP) and liquor license.

6.5 Foundation shall provide such security for the operation of all special events as shall be reasonably necessary to protect program participants, customers, employees, guests, and invitees to the Premises. Foundation shall report any suspicious or illegal behavior or activity at the Premises or surrounding grounds to appropriate authorities, including timely reporting graffiti or vandalism.

6.6 Foundation shall, at its expense, employ an on-site, full-time manager dedicated to operations at the Premises.

6.7 Billboard and Signage Rights. Foundation shall own the exclusive right to sublease or operate limited areas on the Premises for digital or other billboard signage. The exact location and dimensions of digital billboard signage is to be mutually agreed upon by City and Foundation. The number and location of other

billboards and signs shall be determined as required by applicable provisions of the Fresno Municipal Code. Signage must comply with the regulations of any state, federal or local agency with jurisdiction over such matters, such as Caltrans. Obtaining approval from state, federal or local agencies shall be the sole responsibility of Foundation.

6.8 Foundation shall retain the first \$80,000 in revenue generated by the billboard. An amount equal to fifty percent of any revenue in excess of \$80,000 annually shall be placed in the Capital Reserve Fund. All revenue generated from the sublease or operation of billboards and signs shall be reinvested into the Premises, for uses including but not limited to, payment of debt service, operating expenses, funding capital improvements, and community and municipal recreational programming.

6.9 Concessions. Concessions shall be subject to Foundation's CUP and liquor license for the Premises.

6.10 Proximity to Airport. Because of the proximity of the Premises to Fresno Yosemite International Airport, Foundation acknowledges it shall not engage in or conduct or permit the conduct of any activity on the Premises which will interfere in any manner with the operation of the Airport or with aircraft operations or related operations conducted at the Airport by City or its lessees, and shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute an Airport hazard.

7. Title to Buildings and Improvements.

7.1 Title to all buildings, structures and improvements that now, or may from time to time constitute a part of the Premises, shall be and remain in Foundation until the expiration of this Agreement. Upon the expiration of the term of this Agreement, title to all such property, buildings, structures and improvements shall pass to and vest in City without cost or charge to it, free and clear of all liens, and in good condition, reasonable wear and tear excepted. If the lease is terminated prior to the end of its term, City shall pay to Foundation the prorated remaining value of the buildings, structures and improvements.

7.2 Foundation, on expiration of this Agreement, shall execute and deliver any and all deeds, bills of sale, assignments, and other documents which in City's sole judgment may be necessary or appropriate to transfer, to evidence or to vest in City clear title to any of the property described in the foregoing Subsection 7.1 located on the Premises at the time of such termination.

7.3 Foundation, in addition, shall deliver to City on expiration of this Agreement originals or certified copies of any plans, reports, surveys, contracts or other items relating to the ownership or operation of the Premises.

8. Permits, Licenses, etc. When requested by Foundation, City will from time to time during the Term execute and deliver all applications for permits, licenses or other authorizations relating to the Premises required by any municipal, county, state, or Federal authorities, or required in connection with the construction, reconstruction, repair or alteration of any buildings or improvements now or hereafter constituting a part of the Premises. When requested by Foundation, City will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, and other facilities and utilities reasonably required for the use and occupancy of the Premises.

9. Maintenance, Repairs, Governmental Regulations and Waste.

9.1 Foundation shall, during the Term, at its own cost and expense and without any cost or expense to City:

9.1.1 Assume all maintenance, security, repair, landscaping, and associated costs for the Premises. This includes but is not limited to keeping and maintaining all buildings and improvements now or hereafter located on the Premises and all appurtenances thereto in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Foundation shall likewise keep and maintain the grounds, sidewalks, roads and parking and landscaped areas on the Premises in good and neat order and repair. City shall

not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or any buildings or improvements now or hereafter located thereon, and Foundation hereby expressly waives all right to make repairs at City's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof; and

9.1.2 Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations, including without limitation, the Americans with Disabilities Act, affecting the Premises, all buildings and improvements now or hereafter located thereon, or any activity or condition on or in the Premises.

9.2 Capital Reserve Fund. A Capital Reserve Fund shall be created and maintained jointly by Foundation and City to fund capital repairs. All repairs made from the Capital Reserve Fund shall be made with all legally required permits. The City Manager, or designee, shall have the authority to approve capital repairs to the extent funds are available in the Capital Reserve Fund or will be paid by the Foundation. Such approval shall be timely and shall not be unreasonably withheld. Such repairs shall be made in accordance with section 10 herein. Unless otherwise agreed to by the parties, Foundation shall contract for agreed upon repairs and send invoices to the City for reimbursement.

9.3 Deferred Maintenance. Within 45 days of the Effective Date, the City shall perform a facilities assessment of the Premises, and the parties shall mutually agree upon a priority schedule for deferred maintenance based on the outcome of the assessment. The City shall place \$150,000 in a Deferred Maintenance Fund for deferred maintenance upon completion of the facilities assessment. The City may, if the work may be performed more economically, perform work under City contract, to be paid from the Deferred Maintenance Fund. The City shall prioritize performance of work to address deferred maintenance during times the Premises may be closed.

9.4 City may, but is not required to, pay for or provide improvements or repairs deemed necessary for the preservation of property or safety of users of the Premises, nearby residents, or commercial occupants, or the public.

9.5 The Premises have not undergone inspection by a Certified Access Specialist (CAsp).

9.6 Foundation agrees that it will not commit or permit waste upon the Premises.

10. Improvements, Changes, Alterations, Demolition and Replacement.

10.1 Foundation shall have the right at any time and from time to time during the Term to make such improvements to the Premises and such changes and alterations, structural or otherwise, to any buildings, improvements, fixtures and equipment now or hereafter located on the Premises as Foundation shall deem necessary or desirable.

10.2 Foundation has completed the construction on the Premises of the following: (i) completely refurbish three baseball fields, with irrigation, fencing, turf, and lighting; (ii) approximately 10 acres of turf for soccer (multi-use) fields; (iii) site electrical and plumbing for all requisite fire, storm water, and sanitary sewer lines; and (iv) signage, fencing, and site clean-up (collectively, the "Capital Improvements").

Foundation may also construct basketball, volleyball, and/or sand volleyball courts, additional stadiums, restaurant, shop and sundry facility, and/or dining patio, in a manner consistent with the provisions of this Agreement. Capital Improvements shall be valued at least at \$2.7 million.

10.3 Any demolition activity and all improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment, or improvements, changes or alterations involving costs less than Fifty Thousand Dollars (\$50,000)) shall be undertaken in all cases subject to the following additional conditions which Foundation covenants to observe and perform:

10.3.1 No improvement, change or alteration, and no demolition and replacements shall be undertaken until Foundation, or Foundation's subcontractors, shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits of the

various municipal departments and governmental subdivisions having jurisdiction. When requested by Foundation, City agrees to join in the application for such permits whenever such action is necessary.

10.3.2 All work done in connection with any improvement, change, alteration or demolition and replacement shall be done promptly and in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All such work shall be at the sole cost and expense of Foundation. Any improvement or repair shall be constructed by a contractor licensed and bonded by the California Contractor's State License Board. Foundation may be subject to Conditional Use Permit approval. Certain planning, land use, zoning, conditional use permits, and public actions required in connection with any Foundation improvement project are discretionary government actions. Nothing in this Agreement obligates City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. City shall not be liable, in law or equity, to Foundation or any of its executors, administrators, transferees, successors-in-interest, or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.

10.3.3 Foundation shall be solely responsible for determining whether payment of prevailing wage is required. Foundation shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Foundation, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations.

10.3.4 Foundation will notify City at least ten days prior to the commencement of any construction over \$50,000. City shall have the right to post and keep posted on the Premises, and record, a Notice of Non-responsibility. Foundation shall keep the Premises free from any and all liens and encumbrances arising out of or in any way connected with the work performed, materials furnished or obligations incurred by Foundation in connection with any alteration, addition or improvement to the Premises.

10.3.5 Foundation covenants and agrees Foundation shall conduct Foundation's activities in such a manner so as to protect the Premises, the Property, the environment and human health and safety. Foundation shall not cause or permit any Hazardous Substances, as defined herein, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of, the Premises. In the event City determines Foundation's activities in any way endanger the Premises, the Property, the environment, or human health and safety, City may, at City's sole discretion, require Foundation halt its activities until appropriate protective measures may be taken to eliminate such endangerment to City's satisfaction. Foundation shall hold City harmless for any claims in any way resulting from any delay under this section. City's right to halt activities under this section shall not in any way alter or affect Foundation's insurance or indemnity obligations under this Agreement, nor shall it relieve Foundation from any of Foundation's obligations hereunder that pertain to health, safety, or the protection of the environment.

10.3.6 In addition to the insurance coverage referred to in Section 15 below, Workers' Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against City, Foundation or the Premises, and a general liability policy coverage, naming City with limits of not less than Two Million Dollars (\$2,000,000), shall be maintained by Foundation, at Foundation's sole cost and expense, at all times when any work is in process in connection with any improvement, change, alteration or demolition and replacement. All such insurance shall be obtained and kept in force as otherwise provided in Section 15 below.

10.4 City reserves the right to restrict access to the Premises in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in

connection with City's response thereto, or if emergency repairs or maintenance are required to City facilities within or in the vicinity of the Premises, or otherwise when City deems it advisable to do so.

10.5 Foundation is prohibited from demolishing or removing any improvements without the prior written consent of City.

10.6 Construction of all improvements shall be done in such a manner as to reduce interference to the Property and other tenants on the Property, as well as neighboring tenants who share the common area.

11. Damage or Destruction. No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of any building, structure, or other improvement on the Property, shall operate to terminate this Agreement, or to relieve or discharge Foundation and/or City from the payment of rents or amounts payable as rent as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Foundation and/or City to be performed and observed. Foundation and City hereby waive the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time.

12. Representations of Foundation. Foundation represents that it is, and for the life of this Agreement shall remain, a California nonprofit corporation in good standing and licensed to business in the State of California, County of Fresno, and City of Fresno. Foundation shall operate the Premises and provide the services outlined in this Agreement. Foundation shall not commingle funds with any other operation or facility. The nonprofit shall meet at least twice annually. The City shall appoint one member to sit on the board of the nonprofit, as appointed by the Mayor and approved by the Council and the board.

13. Financial Assurances. The Foundation shall cause an annual "review," as defined by generally accepted accounting standards, of its books and records, and then provide the review report to the City by May 1 of each calendar year. The parties understand the review report will be considered a public record under California law.

14. Assignment and Subletting. Foundation may assign its entire interest in this Agreement to Clearinghouse Community Development Financial Institution ("Clearinghouse"), its successors and assigns, without the prior written consent of City provided that Foundation is not in default under the Agreement, and such assignee assumes in writing all of Foundation's obligations hereunder. Except for the foregoing, Foundation shall not assign all or any portion of this Agreement or sublet any portion of the Premises without the prior written consent of City, which consent shall not be unreasonably denied.

15. Mortgage of Leasehold. Subject to the prior written approval of City, Foundation shall have the right to encumber the leasehold estate created by this Agreement by a mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises (the "Leasehold Mortgage") to secure repayment of any loan to Foundation, and associated obligations. Foundation shall give prompt notice to City when the Leasehold Mortgage is extinguished.

16. Protection of Lender. During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

16.1 City shall not accept any surrender of this Agreement without the prior written consent of any Lender. Foundation shall obtain the prior written consent of Lender for any amendment or modification of this Agreement.

16.2 Notwithstanding any default by Foundation in the performance or observance of any agreement, covenant or condition of this Agreement on the part of Foundation to be performed or observed, City shall have no right to terminate this Agreement or interfere with the occupancy, use, and enjoyment of the Premises unless (i) an event of default shall have occurred and is continuing, (ii) City shall have given any Lender written notice of such event of default, and (iii) the Lender(s) shall have failed to remedy such default, acquire Foundation's leasehold estate created hereby, or commence foreclosure or other appropriate proceedings, all as set forth in, and within the time specified by, this Section 16.

16.3 Any Lender shall have the right, but not the obligation, at any time prior to termination of this Agreement and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Foundation hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Agreement. All payments so made and all things so done and performed by a Lender shall be as effective to prevent a termination of this Agreement as the same would have been if made, done and performed by Foundation instead of by a Lender.

16.4 Should any event of default under this Agreement occur, any Lender shall have ninety days after receipt of written notice from City setting forth the nature of such event of default, within which to remedy the default; provided that in the case of a default which cannot with due diligence be cured within such ninety day period, the Lender(s) shall have the additional time reasonably necessary to accomplish the cure, provided that (i) such Lender has commenced the curing within such ninety days and (ii) thereafter diligently prosecutes the cure to completion. If the default is such that possession of the Premises may be reasonably necessary to remedy the default, the Lender(s) shall have a reasonable additional time after expiration of such ninety day period, within which to remedy such default, provided that (i) the Lender(s) shall have fully cured any default in the payment of any monetary obligations of Foundation under this Agreement within such ninety day period and shall continue to pay currently such monetary obligations as and when the same are due and (ii) the Lender(s) shall have acquired Foundation's leasehold estate or commenced foreclosure or other appropriate proceedings seeking such acquisition within such period, or prior thereto, and is diligently prosecuting any such proceedings. In any event, under no circumstances may City terminate this Agreement so long as the contractually obligated rent is being paid.

16.5 Any event of default under this Agreement which is not susceptible to remedy by a Lender shall be deemed to be remedied if (i) within ninety days after receiving written notice from City setting forth the nature of such event of default, or prior thereto, a Lender shall have acquired Foundation's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) a Lender shall diligently prosecute any such proceedings to completion, and (iii) a Lender shall have fully cured any default in the payment and performance of any monetary or other obligations of Foundation hereunder which do not require possession of the Premises within such ninety day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, a Lender shall perform all other obligations of Foundation hereunder as and when the same are due.

16.6 If a Lender is prohibited by any process or Injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Foundation from commencing or prosecuting foreclosure or other appropriate proceedings the times specified in subsections above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of Foundation under this Agreement and shall continue to pay currently such monetary obligations as and when the same fall due.

16.7 City shall mail by certified or registered post, return receipt requested, or personally deliver to any Lender a duplicate copy of any and all notices in writing which City may from time to time give to or serve upon Foundation pursuant to the provisions of this Agreement, and such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given or served by City. No notice by City to Foundation hereunder shall be deemed to have been given unless and until a copy thereof shall have been so mailed or delivered to any Lender. Upon the execution of any Leasehold Mortgage, City shall be informed in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Notwithstanding any other provision of this Section 14, any Lender shall be deemed to have waived any right to receive notice pursuant to this Section unless and until City has received such information.

16.8 Foreclosure of the Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold

Mortgage, or any assignment or conveyance of the leasehold estate created by this Agreement from Foundation to a Lender or other purchaser through, or in lieu of, foreclosure or other appropriate proceedings of a similar nature shall not constitute a breach of any provision of or a default under this Agreement. Upon such foreclosure, sale or conveyance, City shall recognize the Lender, or any other foreclosure sale purchaser, as lessee hereunder. In the event a Lender becomes lessee under this Agreement, such Lender shall be liable for the obligations of Foundation under this Agreement only for the period of time that such Lender remains lessee. Such Lender shall have the right to assign this Agreement at any time after becoming lessee, without the approval of City, and shall be fully released from liability under the Agreement from and after the date of such assignment.

16.9 Should City terminate this Agreement by reason of any default by Foundation hereunder, City shall, upon written request by a Lender given within thirty days after such termination, immediately execute and deliver a new lease of the Premises to such Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Foundation prior to termination) as are contained herein and with priority equal to that hereof; provided, however, that such Lender shall promptly cure any defaults of Foundation susceptible to cure by such Lender and that such Lender's right to possession of the Premises under the new lease shall commence only upon Foundation's vacating of the Premises. Upon execution and delivery of such new lease City, at the expense of the new lessee, which expenses shall be paid by the new Foundation as they are incurred, shall take such action as shall be necessary to cancel and discharge this Agreement and to remove Foundation from the Premises.

16.10 City and Foundation will cooperate in including in this Agreement by suitable amendment from time to time any provision which may reasonably be necessary to implement the provisions of this Section 14; provided, however, that such amendment shall not in any way affect the Term hereby demised nor affect adversely in any material respect any rights of City under this Agreement.

16.11 City may encumber its fee estate only with the prior written approval of Lender(s), which approval shall not be unreasonably withheld, delayed or conditioned. Provided that it shall be reasonable for Lender(s) to require that City, Foundation and the fee lender enter into a subordination, non-disturbance and attornment agreement in commercially standard form and acceptable to Lender(s).

17. Insurance.

17.1 Throughout the life of this Agreement, Foundation and each of its contractors and subcontractors shall pay for and maintain in full force and effect all insurance as required in the attached Exhibit "B."

17.2 If at any time during the life of this Agreement or any extension, Foundation or any of its contractors or subcontractors fail to maintain any required insurance in full force and effect, following 48 hours' written notice, all Foundation's activities under this Agreement shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement, or, alternatively, if the Foundation fails to provide City proof of the required insurance, City may, but is not required to, procure equivalent insurance coverage and deduct the cost from future payments due to Foundation. No action taken by City pursuant to this section shall in any way relieve Foundation of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that insurer is insolvent.

17.3 The fact that insurance is obtained by Foundation shall not be deemed to release or diminish the liability of Foundation, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify indemnitees (as defined in this Agreement) shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Foundation. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Foundation, or its contractors or subcontractors.

17.4 Upon request of City, Foundation shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

17.5 Foundation is also responsible for the compliance of Foundation's consultants, contractors and subcontractors with the insurance requirements in this section, except that any required certificates and applicable endorsements shall be on file with Foundation and City prior to the commencement of any work or services by the respective contractor or subcontractor.

18. Mechanics' and Other Liens. Foundation shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the Premises for or in connection with any operations of Foundation, any alterations, improvements, repairs or additions which Foundation may make or permit or cause to be made, or any work or construction by, for or permitted by Foundation on or about the Premises, and to save and hold City and all of the Premises and all buildings and improvements thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto. Foundation covenants and agrees to give City written notice not less than ten days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of Fifty Thousand Dollars (\$50,000) in order that City may post appropriate notices of City's non-responsibility.

19. Indemnity.

19.1 To the furthest extent allowed by law, Foundation shall indemnify, hold harmless and defend City and 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, including damage by fire or other casualty) incurred by City, Foundation 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 Foundation's: (i) occupancy, maintenance, use, renovation and/or improvement of the Property; or (ii) performance of, or failure to perform, this Agreement. Foundation's obligations under the preceding sentence shall not apply to the active negligence of City, and shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the sole negligence or willful misconduct, of City.

19.2 To the furthest extent allowed by law, City shall indemnify, hold harmless and defend Foundation and 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, including damage by fire or other casualty) incurred by Foundation, 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 City's free public use of the Premises. City's obligations under the preceding sentence shall not apply to the active negligence of City, and shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the negligence, willful misconduct, or dangerous and defective conditions of the Premises, of Foundation.

19.3 If Foundation should contract any work on the Property or subcontract any of its rights or obligations under this Agreement, Foundation shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

19.4 If City should contract any work on the Property or subcontract any of its rights or obligations under this Agreement, City shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of Subsection 19.2.

19.5 Foundation's occupancy, maintenance, use, renovation and improvement of the Property shall be at Foundation's sole risk and expense.

Foundation accepts all risk relating to Foundation's: (i) occupancy, maintenance, use, renovation and/or improvement of the Property; and (ii) the performance of, or failure to perform, this Agreement. City shall not be liable to Foundation or Foundation's insurer(s) for, and Foundation and his insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Property in any way related to the Foundation's operations and activities. Foundation shall immediately notify City of any occurrence on the Property resulting in serious injury or death to any person or serious damage to property of any person.

19.6 The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

20. Eminent Domain.

20.1 If the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term, or if a substantial portion of the Premises should be taken so as to materially impair the use of the Premises contemplated by Foundation, and thereby frustrate Foundation's purpose in entering into this Agreement, then, in either of such events, this Agreement shall terminate at the time of such taking. In such event, of the compensation and damages payable for or on account of the Property, exclusive of the buildings and improvements thereon, Foundation and Lender, as their interests may appear, shall receive a sum equal to the worth at the time of the compensation award of the amount by which the fair rental value of the Premises exceeds the rental payable pursuant to the terms of this Agreement for the balance of the Term; the balance of such compensation and damages shall be payable to and be the sole property of City. All compensation and damages payable for or on account of the buildings and improvements located on the Premises made or paid for by Foundation, and constituting a part of the Premises shall be paid to Foundation, and Foundation's Lenders.

20.2 If less than the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term and this Agreement is not terminated as provided in subsection (a) above, Foundation shall promptly reconstruct and restore the Premises, with respect to the portion of the Premises not so taken, as an integral unit of the same quality and character as existed prior to such taking. The Minimum Rent payable by Foundation following such taking shall be equitably reduced by agreement of City and Foundation in accordance with the reduced economic return to Foundation, if any, which will occur by reason of such taking. The compensation and damages payable for, or on account of, such taking shall be applied to the reconstruction and restoration of the Premises by Foundation pursuant to this subsection (b) by application, first, of any sums payable for or on account of the buildings and improvements situated on the Property, and second, of any sums payable for or on account of the Property exclusive of such buildings and improvements. The remainder, if any, after reconstruction and restoration shall be retained by Foundation and Lender.

20.3 No taking of any leasehold interest in the Premises or any part thereof shall terminate or give Foundation the right to surrender this Agreement, nor excuse Foundation from full performance of its covenants for the payment of rent and other charges or any other obligations hereunder capable of performance by Foundation after any such taking, but in such case all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Foundation and Lender.

21. City's Right of Inspection. Following 48 hours' written notice, or at such times the Premises is open to the public, City may, at any reasonable time and from time to time during the Term, enter upon the Premises for the purpose of inspecting the buildings or improvements now or hereafter located thereon and for such other purposes as may be necessary or proper for the reasonable protection of its interests.

22. Foundation's Defaults and City's Remedies. It shall be an event of default hereunder (each an "Event of Default") if (i) default shall be made by Foundation in the punctual payment of any rent or other moneys due hereunder and shall continue for a period often days after written notice thereof to Foundation; (ii) default shall be made by Foundation in the performance or observance of any of the other agreements, covenants or conditions of this Agreement on the part of Foundation to be performed and observed and such default shall continue for a period of sixty days after written notice thereof to Foundation, or, in the case of a default which cannot be cured by the

payment of money and cannot be cured within sixty days, shall continue for an unreasonable period after such written notice; (iii) Foundation shall abandon the Premises; (iv) Foundation shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to, or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises; (v) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Foundation or of the whole or any substantial part of the Premises, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; (vi) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Foundation under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree shall not be vacated, set aside or stayed within sixty days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or (vii) under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Foundation or of the whole or any substantial part of the Premises, and such custody or control shall not be terminated within sixty days from the date of assumption of such custody or control. Upon the occurrence of any Event of Default by Foundation hereunder, and following expiration of the notices required herein, City shall have the following rights and remedies, in addition to all other rights and remedies of City provided hereunder or by law:

22.1 The right to terminate this Agreement, in which event Foundation shall immediately surrender possession of the Premises, and pay to City all rent and all other amounts payable by Foundation hereunder to the date of such termination;

22.2 The remedies described in California Civil Code Section 1951.2, including, without limitation, the right to recover the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss for the same period that Foundation proves could be reasonably avoided, as computed pursuant to subdivision (b) of section 1951.2 of the California Civil Code;

22.3 The remedies described in California Civil Code Section 1951.4, including, without limitation, the right to collect, by suit or otherwise, each installment of rent or other sums that become due hereunder, or to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Foundation to be performed or observed; or

22.4 The right to cause a receiver to be appointed in any action against Foundation to take possession of the Premises or to collect the rents or profits therefrom. Neither appointment of such receiver nor any other action taken by City shall constitute an election on the part of City to terminate this Agreement unless written notice of termination is given to Foundation.

22.5 City's remedies contained in Subsections 22 through and including 22.4 shall be subject to any stay order issued by a bankruptcy court.

23. Nonwaiver. If any action or proceeding is instituted or if any other steps are taken by City or Foundation, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by City or Foundation of any agreement, covenant or condition of this Agreement or of any subsequent breach thereof. No waiver by City or Foundation of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by City or Foundation shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by City or Foundation, as the case may be. The receipt by City of rent with knowledge of any default under this Agreement shall not constitute or operate as a waiver of such default. Payment by Foundation or receipt by City of a lesser amount than the stipulated rent or other sums due City shall operate only as a payment on account of such rent or other sums. No endorsement or

statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by City, and City may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Foundation and pursue any remedy provided under this Agreement or by law.

24. No Merger.

24.1 There shall be no merger of the leasehold estate created by this Agreement with any other estate in the Premises, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Agreement, or an interest in such leasehold estate, and such other estate in the Premises, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until City, Foundation and any Lender shall join in a written instrument effecting such merger and shall duly record the same.

24.2 No termination of this Agreement shall cause a merger of the estates of City and Foundation, unless City so elects and any such termination shall, at the option of City, either work a termination of any sublease in effect or act as an assignment to City of Foundation's interest in any such sublease. Notwithstanding the foregoing, in the event of the termination of this Agreement and the execution of a new lease with Lender or its nominee, the termination of this Agreement shall neither work a merger of estates nor a termination of any subleases in effect unless Lender so elects.

25. No Partnership. It is expressly understood and agreed that City does not, in any way or for any purpose by executing this Agreement, become a partner of Foundation in the conduct of Foundation's business, or otherwise, or a joint venturer or a member of a joint enterprise with Foundation. Design, construction and site preparation for improvements and repairs at the Premises as well as ongoing operations and staffing will be at Foundation's sole cost and expense. City may assist Foundation with grant opportunities which from time to time become available.

26. Covenants Run With Land.

26.1 The agreements, covenants and conditions in this Agreement contained are and shall be deemed to be covenants running with the land and the reversion and shall be binding upon and shall inure to the benefit of City and Foundation and their respective successors and assigns and all subsequent lessors and lessees respectively hereunder.

26.2 All references in this Agreement to "Foundation" or "City" shall be deemed to refer to and include successors and assigns of Foundation or City, respectively, without specific mention of such successors or assigns.

27. Notices. Except as otherwise provided hereunder; any notice or communication to City, Foundation or Lender shall be in writing and be mailed by certified mail, postage prepaid. Notices or communications shall be addressed to City at:

City of Fresno
2600 Fresno Street
Fresno, California 93721
Attention: City Manager

or such other address or addresses as City shall from time to time designate, or to such agent of City as it may from time to time designate, by notice in writing to Foundation. Notices or communications shall be addressed to Foundation at:

Granite Park Sports Complex
2141 Tuolumne Street, Suite M
Fresno, California 93721
Attention: Terance Frazier, President

or such other address or addresses as Foundation shall from time to time designate, or to such agent of Foundation as it may from time to time designate, by notice in writing to City. Notices or communications to Lender shall be addressed to Lender at such address as Lender shall from time to time designate by notice in writing to City. Any notice mailed in the manner above set forth shall be deemed to have been received

unless returned to the sender by the post office.

28. Limitation of City's Liability. In the event of any transfer of City's interest in this Agreement, the City (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all personal liability for the performance of any covenants or obligations on the part of City contained in this Agreement thereafter to be performed; provided, however, that any funds in the hands of City or the then transferor at the time of such transfer, in which Foundation has an interest shall be turned over to the transferee and any amount then due and payable to Foundation by City or the then transferor under any provision of this Agreement shall be paid to Foundation; and provided, further, that upon any such transfer, the transferee shall expressly assume, subject to the limitations of this Section, all of the agreements, covenants and conditions in this Agreement to be performed on the part of City, it being intended hereby that the covenants and obligations contained in this Agreement on the part of City shall, subject as aforesaid, be binding on each lessor, its successors and assigns, only during its period of ownership.

29. Estoppel Certificates. Foundation or City, as the case may be, will execute, acknowledge and deliver to the other and/or to Lender, promptly upon request, its certificate certifying (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which the Minimum Rent, Percentage Rent, and other monetary obligations have been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by City of any agreement, covenant or condition hereof on the part of Foundation to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by Foundation in the performance or observance by Foundation of any agreement, covenant or condition hereof on the part of Foundation to be performed or observed and whether any notice has been given to Foundation of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee under a deed of trust of the Premises or any part thereof.

30. Holding Over. This Agreement shall terminate without further notice upon the expiration of the Term, and any holding over by Foundation after the expiration of the Term shall not constitute a renewal hereof or give Foundation any rights hereunder or in or to the Premises, except as otherwise herein provided, it being understood and agreed that this Agreement cannot be renewed, extended or in any manner modified except in writing signed by City and Foundation.

31. Default Interest. In the event that City or Foundation shall fail to pay any monetary obligations owed to the other hereunder within ten days of the date that such amounts are due and payable, each shall pay to the other, in addition to such amounts, interest thereon at 2% above the "prime rate" of interest, or the maximum interest rate permitted by law, whichever is less, from the first day of the month in which such monetary obligation was payable to the date of actual payment thereof by one to the other.

32. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

33. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Agreement.

34. Attorney Fees. In the event of any action or proceeding at law or in equity between City and Foundation to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney fees shall be included in and as a part of such judgment.

35. Integration. This instrument constitutes the entire agreement between City and Foundation with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

36. Amendments. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed at the time of modification by City, Foundation, and, if required by any Lender, by Lender.

37. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be Fresno County.

38. Option to Purchase. Commencing with the date that is two years from the Original Effective Date, and continuing throughout the Term of the Agreement, City hereby grants to Foundation the exclusive right to purchase the Property at a price and under the terms and conditions set forth herein. This option is granted in consideration of Foundation's payment for the improvements made by Foundation to the site. If Foundation is not in breach of this Agreement, it may exercise this option by execution and tender to City of a written notice of Foundation's intent in accordance with the procedure set forth in Section 25 of this Agreement. The purchase price shall be determined based upon the average value established by two appraisals, one obtained by City and one obtained by Foundation, following the delivery of Foundation's notice of intent to purchase as set forth herein. This option may not be assigned by Foundation.

39. Foundation's Right of First Refusal. Subject to the rights set forth in Subsection 39.3 below, in the event City desires to sell, transfer, or convey City's interest in the Premises, or any portion thereof, City shall have the right to sell, transfer or convey City's interest, or any portion thereof, only after complying with the following requirements:

39.1 In the event City desires to sell the Premises, or any portion of its interest in the Premises, City shall give written notice of its intent to sell (the "Notice of Intent to Sell") to Foundation, and Foundation shall have the option to purchase the Premises or such interest at the then-appraised value, as determined by a qualified appraiser acceptable to both City and Foundation. If Foundation elects to exercise its option, it shall give City written notice of such election within sixty days after receipt of the Notice of Intent to Sell. If Foundation fails to exercise its option within such sixty day period, (a) City shall be free to solicit and accept an offer to sell the Premises or interest therein at the then-appraised value or greater, at any time within ninety days after expiration of the sixty day period, and (b) Foundation shall, upon request, deliver to City a written acknowledgement of Foundation's failure to exercise its option and City's right to sell the Premises or interest therein pursuant to this section.

39.2 In the event City desires to sell the Premises, or any portion of its interest in the Premises, and has received an acceptable bona fide offer to purchase the Premises or such interest (the "Offer"), City shall give Notice of Intent to Sell to Foundation, together with an executed copy of the Offer setting forth all of the terms of the proposed purchase and identifying the prospective purchaser. Foundation shall have the right to purchase the Premises or such interest on the same terms and conditions as set forth in the Offer. If Foundation elects to exercise its right, it shall give City written notice of such election within sixty days after receipt of the Notice of Intent to Sell. If Foundation fails to exercise its right within such sixty day period, (a) City shall be free to accept an offer to sell the Premises or interest therein on the terms set forth in the Offer at any time within ninety days after the expiration of such sixty day period, and (b) Foundation shall, upon request, deliver to City a written acknowledgement of Foundation's failure to exercise the option and City's right to sell the Premises or interest therein pursuant to this section.

39.3 Notwithstanding the foregoing, City shall be free to convey, transfer or assign the Premises or any portion of its interest in the Premises without compliance with Subsection 39.1 in the event such conveyance, transfer or assignment is made to any mortgagee of City's fee estate in the Premises, provided that the lien of any fee mortgage or other security instrument shall expressly remain subordinate to Foundation's leasehold interest herein created.

40. Memorandum of Agreement. A memorandum of this Agreement, substantially in the form as attached hereto as Exhibit C, shall be recorded in the land records of Fresno County, California, after full execution by Foundation and Clearinghouse of the Clearinghouse Loan Agreement and upon the request of the Foundation.

41. Release. The parties shall execute a general release, attached hereto as Exhibit C.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.


CITY:
CITY OF FRESNO, a municipal corporation

CVCSF:
CENTRAL VALLEY COMMUNITY SPORTS FOUNDATION, a California non-profit corporation

By: _____
Wilma Quan, City Manager

By:  _____
Terance Frazier, President

FOUNDATION:
GRANITE PARK SPORTS COMPLEX, a California non-profit corporation

By:  _____
Terance Frazier, President

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By _____
(Deputy)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____
Katherine B. Doerr
Chief Assistant City Attorney

APPROVED AS TO FORM:

By _____
David J. Weiland
Attorney for CVCSF and Foundation

- Exhibit A: Description of the Premises
- Exhibit B: Insurance Requirements
- Exhibit C: Release and Estoppel
- Exhibit D: Disclosure of Conflict of Interest

Assessor's Office
County of Fresno

Assessor's Office Fresno County

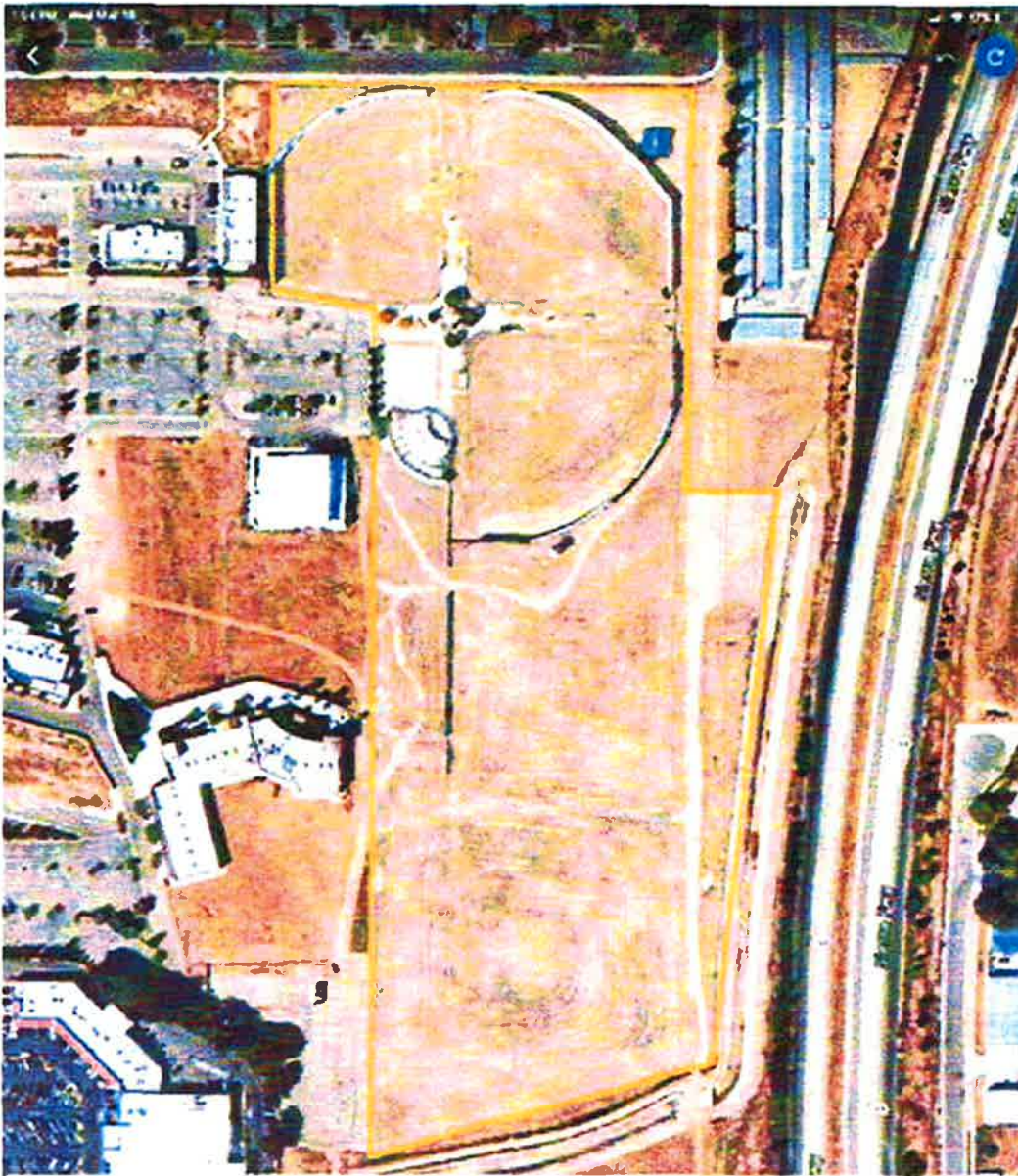
Parcel Map No. 2007-12 - Bl. 60, Pgs. 93 & 94
Parcel Map No. 2002-13 - Bl. 62, Pgs. 14 & 15
Parcel Map No. 73-22 - Bl. 11, Pgs. 100
Soudanman County - Part Bl. 2, Pgs. 2
Borden Avenue Tract No. 1973 - Part Bl. 14, Pgs. 2
Borden Avenue Tract No. 1973 - Part Bl. 14, Pgs. 2
Borden Avenue Tract No. 1973 - Part Bl. 14, Pgs. 2



SUBDIVIDED LAND IN POR SECS 13 & 24 T13S R20E M.D.B.&N

Be prepared to show the location of the parcel on the map.

For more information
Call (559) 438-2200
or visit our website
www.fresnoassessor.com



4652 R

905,618 FT

EXHIBIT B
INSURANCE REQUIREMENTS
Agreement between City of Fresno ("City")
and Granite Park Sports Complex ("Foundation")
Granite Park
Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, fire legal liability and contractual liability (including, without limitation, indemnity obligations under the Agreement).
2. Property insurance with a Cause of Loss – Special or All Risk Form. Only required of Foundation and not of Foundation's consultants, contractors, or subcontractors. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance

Foundation shall maintain limits of liability of not less than:

1. General Liability:

- \$2,000,000 per occurrence for bodily injury and property damage
- \$2,000,000 per occurrence for personal and advertising injury
- \$2,000,000 aggregate for products and completed operations
- \$2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Property: Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation).

3. Employer's Liability:

- \$1,000,000 each accident for bodily injury
- \$1,000,000 disease each employee
- \$1,000,000 disease policy limit

Umbrella or Excess Insurance

In the event Foundation purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

Foundation shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Foundation shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Foundation shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
3. Foundation's insurance coverage shall be primary and no contribution shall be required of City.

The Property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City shall be named as a loss payee.
2. The coverage shall contain:
 - (i) No coinsurance penalty.
 - (ii) No limitations or exclusions for vacancy.
 - (iii) No special limitations on the scope of protection afforded to City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Foundation and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the

coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Foundation shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Foundation shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide.

Verification of Coverage

Foundation shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.

EXHIBIT C

RELEASE AND ESTOPPEL

Parties: The City of Fresno, a municipal corporation

Central Valley Community Sports Foundation, a California nonprofit corporation

Granite Park Sports Complex, a California nonprofit corporation

Terance Frazier, an individual

Scope of Release: Claims arising from or relating to the lease and operation of Granite Park, including occupancy, maintenance, use, renovation, and improvement of the property or performance of or failure to perform the original Lease dated December 7, 2015, as amended October 28, 2016 ("Original Lease"), and the Service Agreement dated December 7, 2015 ("Original Service Agreement").

The parties hereto hereby agree: (a) there are no pending claims against the other under the Original Lease or Original Service Agreement; and (b) to each of their knowledge, there are no defaults by the other under the Original Lease or Original Service Agreement.

It is the intention of the parties that this Agreement constitutes a complete and final compromise and settlement of any and all actions, causes of action, suits, liabilities, claims, demands, obligations, rights, agreements, promises, or liens by or against the parties prior to execution of this Agreement. In furtherance of this intention, the parties acknowledge they are familiar with California Civil Code Section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THIS RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR

Parties Initials: TF _____

The parties hereby waive and relinquish any rights or benefits which they currently have or currently may have under California Civil Code Section 1542 to the fullest extent that it may lawfully waive rights and benefits thereunder pertaining to the subject matter of this Agreement. In connection with such waiver and relinquishment, the parties hereby acknowledge they are aware that they may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Agreement. but it is the intention of the parties to hereby fully, finally, and forever settle and release all the disputes, actions, causes of action, suits, liabilities, claims, demands, obligations, rights, agreements, promises, or liens, known or unknown, suspected or unsuspected, which may now exist or concerning the subject matter of this Agreement. The parties acknowledge the significance and consequences of this waiver of California Civil Code Section 1542 and that even if they should eventually suffer additional damages arising out of the matters released herein, then

they will not be able to make a claim for those damages. Further, the parties acknowledge they intend these consequences even as to claims for damages that may exist as of the date of this release but which the parties do not know exist, and which, if known, would materially affect the parties' decision to execute this release, regardless of the parties' lack of knowledge or whether the parties' lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The parties agree the release contained herein shall not be subject to termination or rescission.

CITY:
CITY OF FRESNO, a municipal
corporation

CVCSF:
CENTRAL VALLEY COMMUNITY SPORTS
FOUNDATION, a California non-profit
corporation

By: _____
Wilma Quan, City Manager


By:  _____
Terance Frazier, President

FOUNDATION:
GRANITE PARK SPORTS COMPLEX, a
California non-profit corporation

By:  _____
Terance Frazier, President

 _____
Terance Frazier, an individual

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____
Katherine B. Doerr
Chief Assistant City Attorney

APPROVED AS TO FORM:

By: _____
David J. Weiland
Attorney for CVCSF, Foundation, and Individuals

EXHIBIT D

DISCLOSURE OF CONFLICT OF INTEREST

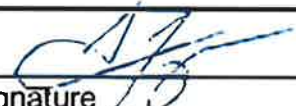
**EXHIBIT D
DISCLOSURE OF CONFLICT OF INTEREST**

Granite Park Sports Complex

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Additional page(s) attached.


Signature

Date

(Name)

(Company)

(Address)

(City, State Zip)
