

CONDITIONAL LICENSE

**Basin “B/E”
Rotary West Wrought Iron Fencing**

THIS LICENSE AGREEMENT (“License Agreement”) is made and entered into this _____ day of _____, 2024 by and between the FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a public corporation, hereinafter referred to as “Licensor,” and the City of Fresno, a municipal corporation, hereinafter referred to as “Licensee.” (individually, a “Party,” and collectively, the “Parties”) on the terms and conditions that follow.

W I T N E S S E T H

A. On March 24, 1987, Licensor and Licensee entered into the “Agreement Amending That Certain Agreement for Joint Maintenance and Operation of Drainage Basin Parks”, (hereinafter referred to as the “Parks Agreement”), to include Basin “B/E” (hereinafter referred to as the “Basin”); and

B. Licensor constructed a six (6’) high chain link fence (hereafter referred to as “Chain Link Fence”) around the perimeter of Basin “B/E”, maintained by Licensor per the Parks Agreement; and

C. By this License Agreement, Licensor desires to grant to Licensee a license to replace the Chain Link Fence along the northern portion of Basin “B/E” with tubular steel fence, (hereinafter referred to as the “Architectural Fence”), to be maintained by Licensee, within the County of Fresno, State of California, under the terms and conditions herein stated; and

D. Licensee commits to amending the Parks Agreement to include Licensee's acceptance of maintenance responsibilities for the Architectural Fence.

NOW, THEREFORE, in consideration of the recitals set forth above, and the mutual covenants and undertakings contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. TERM. The term of this License Agreement is at the will of Licensor and shall commence on _____, 2024 and continue until the earliest occurrence of one of the following: (1) Upon the Parties' amendment of the Parks Agreement to include Licensee's acceptance of maintenance responsibilities of the Architectural Fence; or (2) Upon revocation of the License Agreement as provided in Section 3 below. Should the Licensor revoke the License Agreement, the Licensee shall be required to immediately remove the Architectural Fence and restore the Licensor's Chain Link Fence to its original condition at no cost to Licensor.

2. PURPOSE. This License Agreement authorizes Licensee to replace the Chain Link Fence along the northern portion of Basin "B/E" with Architectural Fence, to be maintained by Licensee, and for no other purpose.

3. REVOCATION. Licensee shall have the right in its sole and absolute discretion to terminate or cancel this License Agreement at any time upon giving the Licensor seven (7) days' written notice at the address set forth in paragraph 13 hereof.

4. HOLD HARMLESS. To the fullest extent permitted by law, Licensee agrees to be solely responsible for any and all injuries, damages, and claims to persons or property arising out of its actions taken pursuant to this License Agreement, except for any such claims arising out of the sole active negligence or willful misconduct of Licensor or its directors, officers, agents, employees, authorized volunteers or consultants (collectively "Indemnified Parties"). Licensee

shall defend the Indemnified Parties upon Licensor's tender, at Licensee's own cost, expense and risk, any and all suits, actions, or other legal proceedings regarding the aforesaid injuries, damages and claims (including attorneys' fees associated therewith) of every kind that may be brought or instituted against the Indemnified Parties, arising from this License Agreement, notwithstanding whether or not Licensee's liability has been or can be established. Licensee's obligation to indemnify the Indemnified Parties shall survive the termination or completion of this License Agreement for the full period of time allowed by law and shall not be restricted by the insurance requirements contained in this License Agreement or to insurance proceeds, if any, received by Licensee, or its directors, officers, employees, or authorized volunteers.

5. INSURANCE REQUIREMENTS: Licensee and its contractor(s) shall procure and maintain for the duration of the contract insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Licensee, his agents, representatives, employees or sub-contractors.

Coverage - Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Licensor) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability** - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if Licensee has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation:** The insurer(s) named above agree to waive all rights of subrogation against the Licensor, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Licensor; but this provision applies regardless of whether or not the Licensor has received a waiver of subrogation from the insurer.

If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the Licensor requires and shall be entitled to the broader coverage and/or higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensor.

Other Required Provisions - The general liability policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Licensor, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 10 01), with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations.

2. **Primary Coverage:** For any claims related to this project, the Licensee's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Licensor, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Licensor its directors, officers, employees and authorized volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Licensor.

Self-Insured Retentions - Self-insured retentions must be declared to and approved by the Licensor. The Licensor may require the Licensee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Licensor.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by Licensor.

Verification of Coverage – Licensee shall furnish the Licensor with certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Licensor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The Licensor reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages.

Sub-Licensees - Licensee shall require and verify that all sub-Licensees maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Licensor its

directors, officers, employees, and authorized volunteers are an additional insured on Commercial General Liability Coverage.

6. COMPLIANCE WITH LAW. Licensee shall comply with all applicable local, State and Federal laws, regulations, and ordinances, and shall secure any and all permits which may be required by any government agency having jurisdiction to require the same for the use of the Basin for the purposes herein described. Any of the costs related to compliance by Licensee within the provisions of this License Agreement, whether directly or indirectly related, shall be borne by Licensee. Licensee further warrants that it shall not allow any liens or encumbrances to arise out of any costs or obligations herein described, and that if any lien or encumbrance creates a cloud on Licensor's title, Licensee must pay all reasonable costs and expenses, including attorneys' fees, upon thirty (30) days written demand for payment by Licensor.

7. PROPERTY DAMAGE. Licensee shall be responsible for any and all damage to the Basin and any facilities located therein or thereon occasioned by the use thereof by Licensee, and consent is hereby given to Licensor to have any such damage repaired at the expense of Licensee.

8. NON-ASSIGNABILITY. This License Agreement is personal to Licensee, and may not be assigned to any other person, firm, or corporation by Licensee without the express written consent of Licensor first had and obtained.

9. ENTRY BY LICENSEE. Licensee, or its representatives, shall have the right to enter into and upon the Basin without notice. The right to entry by Licensee shall be a priority right of use of the Basin.

10. ENTRY BY LICENSOR. Licensor, or its representatives, shall have the right to enter into and upon the Basin, without notice, for the conduct of any operation reasonably

necessary or desirable to effectuate the purpose for which Licensor was organized. It is expressly understood that the rights of Licensor to improve, operate and/or maintain the Basin in accordance with the purposes and objectives for which Licensor was created and to perform all functions of maintenance necessary thereto shall be superior to any and all rights of Licensee.

11. IMPROVEMENTS. Licensee shall place no improvements of any kind or nature within or upon the Basin without the prior written permission of Licensor except as herein indicated.

12. POLICIES. Licensee agrees to comply with any and all lawful written policies, ordinances, and directives of Licensor which pertain to Licensee's use of the Basin contemplated in this License Agreement.

13. NOTICE. Any notice to be given to either Party by the other shall be in writing and shall be served either personally or by first class mail, addressed as follows:

To Licensor: Fresno Metropolitan Flood Control District
5469 East Olive Avenue
Fresno, CA 93727

To Licensee: City of Fresno
2600 Fresno Street
Fresno, CA 93721

14. SAFETY. In the performance of this contract the Licensee shall comply with all applicable federal, state and local statutory and regulatory requirements including, but not limited to California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, related to their scope of work and operations. In case of conflict in regulations, the most stringent shall apply. The Licensee shall provide all safeguards, safety devices and protective equipment and take any other needed actions necessary to protect the life and health of employees on the job and the safety of the public

and to protect property in connection with the performance of the work covered by the contract. Safety precautions shall include but shall not be limited to: adequate life protection and life-saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses (including but not limited to exposure to the Coccidioides fungus and Valley Fever); and adequate facilities for the proper inspection and maintenance of all safety measures.

Licensee must obtain all applicable Division of Occupational Safety and Health (CAL-OSHA) permit(s) and others required by California Labor Code and California Government Code, prior to the initiation of any practices, work, method, operation, or process related to the work covered in the contract. Permits required by governmental authorities will be obtained at Licensee's expense.

It is a condition of this contract, and shall be made a condition of each subcontract which the Licensee enters into pursuant to this contract, that the Licensee and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under Cal/OSHA safety and health standards.

15. SPECIAL PROVISIONS. Licensors will inspect the Basin upon expiration or termination of this License Agreement, and any damage proximately caused by Licensee or its representatives shall be repaired at Licensee's expense. Licensee shall be responsible for all maintenance of the Architectural Fence during the term of this License Agreement.

The Licensee shall contact the Licensor's Construction Manager two working days prior to beginning construction.

16. AUTHORITY. Each individual executing this License Agreement on behalf of Licensee represents and warrants that that individual is duly authorized to execute and deliver this Agreement on behalf of the Parties, and that this License Agreement is binding upon the Parties in accordance with its terms. The terms of this License Agreement are intended by the Parties as a final expression of their agreement with respect to such terms as are included in this License Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement, arrangement, understanding, or negotiation (whether oral or written).

17. COUNTERPARTS. This License Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this License Agreement.

18. ENTIRE AGREEMENT. This License Agreement constitutes the entire agreement between Licensor and Licensee relating to the License. Any prior agreements, promises, negotiations, or representations not expressly set forth in this License Agreement are of no force and effect. Any amendment to this License Agreement shall be of no force and effect unless it is in writing and signed by Licensor and Licensee.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed on the day and year first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

Licensors:
FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT, a public corporation

Licensee:
CITY OF FRESNO,
A California municipal corporation

By:
Peter Sanchez, General Manager

By:
Georgeanne White
City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Brent Richardson Date
Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date