

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

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

RECITALS

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

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree as follows:

1. Acknowledgement of Recitals and Definitions. All the foregoing recitals are true and correct and incorporated herein by this reference as though fully set forth herein.

a. Definitions.

1) The term "District Use" shall mean District's Educational Program and Related School Activities. For purposes of this Agreement, the term "Educational Program and Related School Activities of the District" shall mean "an activity that is organized and administered by the District, including but not limited to, athletic games/meets, drama, carnivals, District community meetings, District meetings, requests from other schools within the District, and the like, but excluding use of the facilities by nonprofits, leagues, and other community groups and organizations."

2) The term "Community Use" shall mean use by community groups, nonprofits, leagues and other organizations with a contract for use of District Sites.

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

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

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

3. Grant of License. In consideration of the City's contributions as set forth hereunder, District hereby grants the City a no fee license to use the play fields, green space and outdoor hard courts ("Facilities") at sites selected by the City and District and set forth in Exhibit A hereto ("Sites"), as may be modified from time to time upon mutual written letter agreement of the parties respective authorized agents. Gymnasiums are not included in this license. The term of the License (the "License Term") shall initiate upon the effective date of this agreement and continue for a term of one year. At the end of the License Term, upon mutual agreement of the parties and approval of the School Board, this Agreement may be extended by preparing an addendum hereto. City is authorized to administratively extend this Agreement from year to year so long as sufficient appropriations are in place to fund the Weekend Community Open Space Program. The parties may terminate the Agreement, in their sole discretion, at any time during the term of the Agreement by providing written notice to the other party specifying an effective termination date at least sixty days from the date of notice.

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

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

5. Scheduling of Use.

a. The facilities/green space at the Sites shall be made available for City Use and General Public Use at a minimum from 9:00 a.m. to 6:00 p.m. Saturday, Sunday, and Holidays, as may be adjusted seasonally ("City Use Hours"). If a portion of the Site is committed to District Use or Contracted Community Use, the remainder shall be available for City and General Public Use. City will coordinate scheduling with the District utilizing the normal Civic Center process, not to exceed 12 months in advance of anticipated use. If City determines a site is no longer able to be used for City Use due to conflicting contracted community use, City and District shall mutually agree on a substitute site in close proximity that may be used for the duration of the conflicting community use. District shall reimburse City for the cost incurred as a result of City's relocation of its programming, including but not limited to cost to relocate portable restrooms and storage, and advertising the relocation of City Use.

b. Additional days, facilities, and/or extended hours may be added for special events based on mutual agreement of the parties' authorized agents, subject to a separate agreement as to costs that may be incurred by District and reimbursed by City for such periods of additional or extended use. Prior to the event, District shall provide City an estimate of the costs District will incur as a result of the extended hours or days

of use. Such costs may include but are not limited to the cost of running the lights at a facility. After the event, District shall invoice City for the actual costs incurred by District, and City shall pay the invoice within forty-five days of receipt.

6. Downtime for Maintenance. Downtime is required to maintain the condition of the Sites. Activities cannot be scheduled at the site during this maintenance period. The District shall be responsible for notifying the City of the estimated downtime maintenance schedule a minimum of fourteen days in advance.

7. Terms of City Use.

a. City shall provide Parks, After-school, Recreation and Community Service personnel at each site, during all hours of City use, to supervise and monitor use of the site.

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

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

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

e. City shall provide two portable restrooms per site, securely affixed to District fencing in a manner and at a location acceptable to District. City shall arrange to have portable restrooms serviced weekly on Mondays, or on the next business day if Monday is a holiday. City shall hold District harmless for any damage, theft, vandalism or loss to portable restrooms utilized by City under this agreement during the period of City use of District facilities. City and District shall equally share in costs resulting from damage and/or replacement during non-City use periods.

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

g. City shall have access to school based storage facility space where available and upon agreement with Site Principals, or the ability to utilize school grounds to put a portable storage unit on premises, approved by District, in a designated area, agreed upon by both parties. City shall hold District harmless for any damage, theft, vandalism or loss to storage units utilized by City under this agreement during the period of City use of District facilities. City and District shall equally share in costs resulting from damage and/or replacement during non-City use periods.

h. If District determines there is a need for additional security at any of the Sites, District shall notify City of the need for such service, and give City an opportunity to provide a workable solution. If City cannot resolve the problem to District's satisfaction, then City shall reimburse District for contracted security patrol services to

the Sites in accordance with the fee schedule in Exhibit B, to the extent such patrol services do not align with existing patrol service hours currently provided by District.

i. City shall reimburse District's cost to repair damage to the Facilities caused solely by City's Use of the Facilities, or General Public Use during City Use Hours. City shall survey each Site at the beginning and end of each City Use day. Any damage or vandalism caused during City Use Hours shall be reported to District and shall be the responsibility of City to reimburse District's cost to repair. Any damage discovered by City that occurred outside City Use hours shall be reported to District, and shall be the responsibility of District to repair. In addition, annually prior to each July 31, City and District shall consult with one another regarding any significant maintenance/rehabilitation that may need to be made to the Facilities and the unreimbursed impact the City's use has contributed to such maintenance/rehabilitation requirements. Such consultations shall include good faith negotiations concerning possible City contributions towards maintenance/rehabilitation expenses for Facilities utilized by the City and possible modifications to the use of the Facilities by the City. In no event shall the City's contributions under this section exceed the lesser of (i) the prorata maintenance/rehabilitation expense caused by the City's usage, or (ii) 50% of the total maintenance/rehabilitation cost.

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

k. Both City and District shall prepare and present an annual report to their governing bodies that addresses the activities that have occurred, plans for the future, and any concerns that need to be addressed.

8. Indemnification.

As authorized by Government Code Section 895.4, during the License Term, the City shall indemnify, hold harmless and defend the District and each of its officers, officials, employees, agents and volunteers, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by District, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the Use of District Grounds and Facilities by the City or any of his/her/its officers, officials, employees, agents, volunteers or invitees. The City's obligations under the preceding sentence shall apply regardless of whether District, or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct of District or any of their officers, officials, employees, agents or authorized volunteers. Nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

Throughout the life of this Agreement, the City shall pay for and maintain in full force and effect all policies of insurance as required in Section 9, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by the Assistant Superintendent/Chief Business Officer or his/her designee at any time and in his/her sole discretion. The insurance limits available to the District or any of their officers, officials, employees, agents and volunteers as additional insureds, shall be the

greater of the minimum limits specified therein or the full limit of any insurance proceeds available to the named insured.

The City shall conduct all defenses at his/her/its sole cost. The fact that insurance is obtained by City shall not be deemed to release or diminish the liability of City, including, without limitation, liability assumed under this Agreement. The duty to indemnify shall apply to all claims regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of the City. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by the City. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of City, its officials, officers, employees, agents, volunteers or invitees.

District shall be reimbursed for all costs and attorney's fees incurred by the District in enforcing this Agreement.

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

10. Independent Contractors. The parties are acting as independent contractors. Neither party, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of the other for any purpose. Each party shall retain as program income any and all income generated by its respective use hereunder.

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

12. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

13. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. Extent of Agreement. Each party acknowledges they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof. This Agreement in its final form is the result of the combined efforts of the parties, and should any provision be found to be ambiguous, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning. Each exhibit is, by this reference, incorporated into and made a part of this Agreement. In the event of any

conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control.

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

CITY OF FRESNO,
a California municipal corporation

FRESNO UNIFIED SCHOOL DISTRICT

By: _____
Bruce Rudd, City Manager

By: _____
Ruth F. Quinto, Deputy Superintendent/CFO

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

APPROVED AS TO FORM:

By: _____
Katherine B. Doerr
Assistant City Attorney

By: _____
Andrew DeLaTorre, Risk Manager

ATTEST:
YVONNE SPENCE, CMC
City Clerk

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

By: _____
Deputy

EXHIBIT A
Program Sites

Elementary School Sites

Addams
Vang Pao (or Sequoia)
Yokomi
Wilson

Middle School Sites

Scandanavian
Terronez
Wawona

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

EXHIBIT B
Cost Schedule

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

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