

**CONCESSION AGREEMENT  
BETWEEN THE CITY OF FRESNO  
AND THE SOUTHEAST FRESNO COMMUNITY ECONOMIC DEVELOPMENT  
ASSOCIATION, INC.  
REGARDING PHASE I OF THE SOUTHEAST FRESNO REGIONAL PARK AND  
SOCCER COMPLEX (PROJECT)**

This Concession Agreement, hereinafter referred to as the "Agreement" is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Fresno, California, a municipal corporation, through its Parks, After-School, Recreation, and Community Service Department, (City), and the Southeast Fresno Community Economic Development Association, a California non-profit public benefit corporation, (Concessionaire).

Recitals

Whereas, the City, owns certain land totaling 49 acres, obtained by the City from the United States of America (USA), as surplus property, known as the Peach/Butler Park Site-CA 1578 (Subject Property), and deeded to the City on October 31, 2006. Said quitclaim deed is attached and hereinafter referred to as Exhibit A; and

Whereas, this Agreement is limited to 10 of the 49 acres contained within the Subject Property (Site) as set forth and described in Exhibit A-1; and

Whereas, a covenant of the deed states "The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreation purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior."; and

Whereas, the National Park Service (NPS), Federal Lands to Parks Program is the designated representative of the Secretary of the Interior for the approval of concession agreements.

Whereas, the Concessionaire desires to provide and fully fund park recreation and soccer complex facilities, including all associated capital, operations and maintenance costs, without financial contribution from the City, for the Site for the use and benefit of the general public and to promote better health and a better quality of life to City residents; and

Whereas, the City is satisfied that Concessionaire's provision and full funding of additional services and facilities at the Site is in the City's best interest;

Whereas, the Concessionaire intends to file a Statewide Park Development and Community Revitalization (Proposition 68) grant application with the California Parks and Recreation Department for consideration of funding of Phase I of the proposed

Southeast Fresno Regional Park and Soccer Complex Project (Project) on or before March 12, 2021; and

Whereas, in order to be eligible for the Proposition 68 grant, Concessionaire must either own the Site or obtain site control and land tenure; and

Whereas, the City and the Concessionaire intend to enter into this Agreement to allow Concessionaire to file a Proposition 68 grant application for the Project.

Whereas, the parties agree that Concessionaire's failure to receive its full Proposition 68 grant application award will be cause to immediately terminate this Agreement; and

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements contained herein, the Parties enter into this Agreement so Concessionaire is eligible to apply for Proposition 68 grant funds for the proposed Project located at the Site.

1. **Location:** The City does hereby agree to allow the Concessionaire the use of the Site; located at 2025 and 2021 S. Peach Avenue (APNs 481-02-29, 481- 02-30 and 4 73-03-07T), as set forth in more detail in Exhibit A-1, with the intent of it being turned into a new regional park and soccer complex; and

2. **Use of Premise:** Concessionaire shall accept the Site in as-is condition and use, occupy and maintain current and future improvements herein identified, in full compliance with all local, state and federal laws and regulations associated with public health and safety and environmental protection, and as may be amended in the future, for the sole purpose of park recreation and a soccer complex facility in strict accordance with all terms and provisions imposed by the Department of the Interior as set forth in Exhibit A. Written approval by the City and written concurrence by the Secretary of the Interior or his/her delegated representative, NPS, shall be required for other proposed use in conjunction with or in addition to those specified above.

3. **Personal Property:** No personal property is included in this Agreement. In the event personal property is acquired, Concessionaire shall maintain all personal property in good working condition, subject to reasonable wear and tear. Upon completion or termination of this Agreement, all items shall be accounted for and returned to City. During the course of this Agreement, any damage to personal equipment shall be reported to City. As new personal property is added to the Site, Concessionaire will keep accurate records and inventory, as required by law.

4. **Term:** The Effective Date of this Agreement is the date when the Proposition 68 Grant award is deposited with the Concessionaire. Concessionaire's failure to receive its full Proposition 68 Grant funding award shall be cause to immediately terminate this Agreement. The Commencement Date is the date which both parties execute the Agreement with the date of the second signature being the effective date if signed on different dates. The term of the Agreement shall be 48 months from the Commencement Date if Concessionaire fails to receive building permits. If Concessionaire receives all required building permits and its full Proposition 68 grant award for the Site, the term of the Agreement shall be for 30 years from the Commencement Date.

5. **Renewal:** Concessionaire will have an option to renew this Agreement for two consecutive ten-year terms upon conditions to be mutually agreed upon at that time. Any agreement reached by the City and Concessionaire for renewal of this Agreement shall be subject to the written approval of the Secretary of the Interior or his/her delegated representative, NPS, if any significant changes to the agreement are included. Concessionaire may exercise this option to renew by providing the City with notification twelve months prior to the termination date of this Agreement. Thereafter, Concessionaire and City will execute an amendment to the Agreement to formalize the renewal and any additional conditions agreed to by the Parties.

6. **Concession Payments:** The Concessionaire shall not receive funding from the City to construct, operate or maintain this Site for the general public, and in exchange, the City will not charge Concessionaire for use of the Site. The general public will have free access to this park as other parks in the City. Any fees to be charged, shall comply with applicable City policies and procedures and shall be comparable to the fees used and established by the City for City parks.

7. **Concessionaire's records and documents:** With respect to all matters covered by this Agreement concessionaire's records and documents shall be subject at all times to inspection review or audit by the City. Concessionaire will supply City any documentation that may be needed by the City to file required compliance reports to the Secretary of the Interior or his/her delegated representative, NPS. The Concessionaire will keep full and accurate accounting records, including but not limited to a general ledger, a check register, a monthly bank reconciliation, and supporting documentation to substantiate any cash receipts/cash disbursements relating to its activities involving the Site and annually provide City with its financial information including but not limited to an annual budget, a balance sheet, a profit/loss statement, a budget to actual revenues/expenditures report which includes a statement that said records will be kept and preserved for at least three years and were prepared in accordance with generally accepted accounting principles.

8. **Operations and Maintenance:** Upon the Commencement Date of this Agreement, the City shall authorize Concessionaire to assume control of the Site, and assume full responsibility to plan, permit, design, construct, operate, and maintain the park recreation and soccer complex facilities at the Site in accordance with all local, state, and federal laws and regulations that apply to the Site during construction and during operation. The Concessionaire shall provide all financing, management, administration and operation of the park recreation and soccer complex facilities, including, but not limited to, the setting and collection of rates, fees and charges for the use of facilities; recruitment and retention of employees, volunteers, interns and trainees to support Site operations, maintenance, and improvement activities. The Concessionaire shall operate the park recreation and soccer complex facilities consistent with the operating policy, practices, and procedures applied at City parks and sport complexes. City shall conduct periodic operational audits for the Site to conform compliance. City's charges for municipal service provided for the Site shall be in accordance with the City's Master Fee Schedule.

9. **Licenses and Permits:** All necessary licenses and permits to operate concession must be obtained from the appropriate offices before operation may begin. All licenses are subject to Code of Enforcement for safety, health and fire inspections.

10. **Operating Expenses and Utilities:** Concessionaire shall be responsible for payment of the cost of operating expenses and payment of utilities, as well as the costs associated with installation/upgrades of systems that are required by building codes and local ordinances relating to safety, health and fire. These systems must meet all local, state and federal requirements. Concessionaire shall take advantage of new technologies and natural resources conservation techniques that reduce operating cost and improve the efficiency of park operating efficiencies.

11. **Non-discrimination:** City and Concessionaire agree to comply with all Federal laws relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the previously described property, including, but not limited to: All requirements imposed by or pursuant to the non-discrimination regulations of the U.S. Department of the Interior (43 C.F.R. Part 17); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), which prohibits discrimination on the basis of race, color, or national origin; The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age; Federal Lands to Parks Program Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicap; The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151), which requires facilities located on the property to be accessible to the physically handicapped; and The Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which requires that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance Executive Order 13672 which prohibits discrimination on the basis of sex, sexual orientation, or gender identity.

12. **Historic Properties:** This Subject Property has not been deemed to be a historic property.

13. **Alterations and Improvements/Phase I Implementation:** The Site shall always remain the property of the City. The Concessionaire may not make alterations or improvements to the Site without written consent of the City Manager, or his/her designee. Such written consent will not be unreasonably withheld or delayed for alterations and improvements to protect public health and safety. Upon the Commencement Date, the City will release control of the Site to the Concessionaire to fully fund and manage the planning, permitting, design, and construction of the Phase I park recreation and soccer complex components for the Southeast Fresno Regional Park and Soccer Complex Project as shown on Exhibit B. City shall work with the Concessionaire to timely pay-cost reimbursable expenses during the construction period. City shall continue to provide technical support, including but not limited to, review and approval of park concept plans and the type of materials and planting that will occur on the Site as well as the proposed irrigation plans and installation for greater operational efficiencies.

The Concessionaire shall perform the following tasks associated with the start of Phase I at its own cost and expense:

a. Upon the Commencement Date, the Concessionaire shall submit a Project Implementation Schedule, in a form approved by the City, for review by the City Manager. The Implementation Schedule shall include, but not be limited to, all planning, permitting, design, construction, startup, and occupancy activities. The Concessionaire shall submit an updated Implementation Schedule to the City Manager on a monthly basis. Monthly schedule updates shall show baseline schedule and actual schedule.

b. Upon the Commencement Date, the Concessionaire shall submit a Community Engagement Plan. The Community Engagement Plan shall describe the Concessionaire's Plan to meet with and engage with the local community to keep them updated and informed about the progress and status of the park recreation and soccer complex facilities.

c. Project will be designed and built under the direction and oversight of the Concessionaire and a construction management team of engineering and landscape architect experts. A construction management firm will be selected under a competitive process.

d. Concessionaire will engage the same Landscape Architects, WRT and Urban Diversity Design who designed Phase I of the concept plan and overall Master Plan to prepare construction documents.

e. City has completed the environmental studies and will complete the plan check process and project inspection. The City PARCS Department may continue to provide technical assistance. Fresno State Parks Administration has also been providing technical expertise on parks and soccer sports requirements.

f. Concessionaire shall comply with all mitigation measures of environmental studies completed by the City for CEQA and NEPA and be ready to help neighbors who may have some questions or concerns.

g. Ensure that all Concessionaire activities are in compliance with any and all applicable development and conditional use permits and environmental mitigation concerns on the Site;

h. Ensure that the City holds title to any and all improvements on the Site;

i. Secure all land use and other entitlements, permits, and approvals that City or any other governmental agency with jurisdiction over the Site required for maintenance, construction, or installation of improvements or other activities on the Site;

j. All construction work must comply with the Historic Properties section of this agreement.

**14. Condition for Possible Reversion:** This Agreement does not dispose of any real or personal property constructed or affixed to the Site or Subject Property. Concessionaire acknowledges that the Subject Property, including the Site, is subject to

the possibility of reversion with improvements without compensation by the USA should there be a material breach of noncompliance by the City or the Concessionaire for not adhering to covenants and agreements contained within Exhibit A, including the Implementation Schedule.

15. **Maintenance and Repair:** The Concessionaire shall, at its sole cost and expense, maintain the premises in good condition and perform such repairs that become necessary from time to time during the term of this Agreement and any renewals hereof, as set forth herein. The City shall conduct periodic inspections to assess and score the condition of the park recreation and soccer complex facilities and present reports to Concessionaire. Failure to maintain facilities in good operating condition and to protect public health and safety may be subject to reversion of the Site to the City. The Concessionaire shall be allowed a period to correct the public health and safety deficiencies.

16. **Inspection of Concession Areas:** Concessionaire shall allow the PARCS Director or his/her designee representing the City, or his/her designee and/or the Secretary of the Interior's designated representative, NPS, at any and all reasonable times to inspect any facility operated under this Agreement.

17. **Indemnity:** To the furthest extent allowed by law, Concessionaire shall indemnify, hold harmless and defend the City of Fresno 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, Concessionaire 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 Concessionaire's: (i) occupancy, maintenance, use, renovation and/or improvement of the Property; or (ii) performance of, or failure to perform, this Lease. Concessionaire'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 the City of Fresno.

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

Concessionaire's occupancy, maintenance, use, renovation, and improvement of the Property shall be at Concessionaire's sole risk and expense. Concessionaire accepts all risk relating to: (i) occupancy, maintenance, use, renovation and/or improvement of the Property; and (ii) the performance of, or failure to perform, this Agreement. City of Fresno shall not be liable to Concessionaire or Concessionaire's insurer(s) for, and Concessionaire and his insurer(s) hereby waives and releases City of Fresno 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 Concessionaire's operations and activities. Concessionaire shall immediately notify City of Fresno of any occurrence on the Property resulting in injury or death to any person or damage to property of any person.

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

18. **Insurance:** City shall require Concessionaire to carry insurance as set forth in Exhibit "C".

19. **Assignment and Subletting:** Concessionaire shall not assign this Agreement or any interest therein, nor let or sublet the said premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person. Said let or underlet shall be grounds for termination of Agreement by the City or possible reversion by the USA.

20. **Amendment to Concession Agreement:** This Agreement contains all the terms and conditions between the parties, and no alteration, amendment, or addition shall be valid unless in writing and signed by both parties with written concurrence by the Secretary of the Interior or his/her delegated representative, NPS.

21. **Laws and Regulations:** Concessionaire is aware of and agrees that it will use the premises so as to conform with deeded environmental and usage controls and not violate any laws, regulations and /or requirements of the United States of America and/or State of California and/or any ordinance, rule or regulation of the City now or hereafter made, relating to the use of the premises.

22. **Signage:** Concessionaire shall place no sign or advertisement upon any location of the Site unless prior written approval has been granted by the City Manager or his/her designee. The City shall have the right, without first notifying Concessionaire, to remove at the expense of Concessionaire, any sign or signs that may be erected without prior approval.

23. **Surrender; Waste:** Concessionaire agrees that upon expiration of this Agreement or earlier termination thereof, it shall surrender the premises to the City in as good or better condition as they were in at the time of execution of this document, ordinary wear excepted. Concessionaire further agrees that it shall permit no waste nor suffer the same to be committed, nor injure nor misuse the premises.

24. **Liens:** Concessionaire shall keep the premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by Concessionaire during the term of this Agreement or any extension or renewal thereof.

25. **Waiver:** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent and approval of the other party, the other

party's consent to or approval of such action on any one occasion shall not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this Agreement, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other.

26. **Termination:** Either party may terminate this Agreement with cause following the other party's failure to reasonably cure an event of non-performance hereunder, following thirty days written notice thereof. Concessionaire's failure to obtain a fully-funded Proposition 68 grant award shall be cause to immediately terminate this Agreement. Termination shall be effective (the "Effective date of termination") as of the date specified in the notice of termination. Upon such termination, all rights and obligations of each party under this Agreement shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein.

27. **Acknowledgement:** This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America to the City, dated October 31, 2006 and recorded at Fresno County Registry of Deeds/Clerks Office/Fresno County Document #2006-0231382; and the current Program of Utilization which governs the use of the property. Violations of the said terms and conditions may be grounds for reversion to the United States of America, at its discretion and termination of this Agreement. Concessionaire owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

28. **Notice:** Any notice by either party to the other shall be in writing and shall be deemed to be given only if delivered personally or mailed by registered or certified mail as follows:

City Representative:      Office of City Manager  
                                    City of Fresno  
                                    2600 Fresno Street  
                                    Fresno, CA 93721  
                                    Tel: (559) 621-2919

Concessionaire:          Jose Leon-Barraza, Chief Executive Officer  
                                    Southeast Fresno Community Economic Development  
                                    Association, Inc.  
                                    5288 E. Heaton Avenue  
                                    Fresno, CA 93727  
                                    Tel: (559) 301-0695

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this paragraph.



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

CITY OF FRESNO,  
A California municipal corporation

By: \_\_\_\_\_  
Thomas Esqueda,  
City Manager

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Tracy N. Parvanian                      Date  
Senior Deputy City Attorney

ATTEST:  
YVONNE SPENCE, MMC  
City Clerk

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

SOUTHEAST FRESNO COMMUNITY  
ECONOMIC DEVELOPMENT  
ASSOCIATION,  
A California nonprofit public benefit  
corporation

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

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

Title: \_\_\_\_\_  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

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

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

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

REVIEWED BY:

\_\_\_\_\_

Attachment:

1. Exhibit A – Subject Property Grant Deed
2. Exhibit A-1 Legal description of Site
3. Exhibit B – Phase I Plans
4. Exhibit C – Insurance Requirements

EXHIBIT A  
GRANT DEED

ORIGINAL

Recording requested by:  
City of Fresno  
Public Works Department  
No fee-Government Code Sections  
6103 and 27380

When recorded mail to:  
Public Works Department  
2600 Fresno Street, Room 4019  
Fresno, CA 93721-3623  
Attention: Bruce Abbott

APN: 473-030-072  
481-020-29T, 30T

9  
FRESNO County Recorder  
Robert C. Werner  
DOC- 2006-0231382  
Tuesday, OCT 31, 2006 09:58:54  
Ttl Pd \$0.00 Nbr-0022337684  
CRR/R2/1-9

SPACE ABOVE THIS LINE FOR RECORDER'S USE

City of Fresno, CA  
USDA Horticultural Crops Research  
Laboratory (9-A-CA-1578)

PW-2006-14531

### QUITCLAIM DEED

THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior, acting by and through the Director, National Park Service, under and pursuant to the power and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (61 Stat. 337), as amended, and regulations and orders promulgated thereunder (hereinafter designated "Grantor"), for and in consideration of the perpetual use of the hereinafter described premises as and for public park and public recreation area purposes, by the City of Fresno, California (hereinafter designated "Grantee"), does hereby release and quitclaim to Grantee, and to its heirs, successors and assigns, all Grantor's right, title and interest, subject to the reservations, warranties, covenants, conditions, and restrictions declared herein, "as is, where is" in and to four parcels of land containing approximately 47.15 acres and containing a portion of the Northwest Quarter of Section 17 and the Southwest Quarter of Section 8, Township 14 South, Range 21 East, Mount Diablo Base and Meridian as described as follows:

#### Parcel 1:

That portion of the Northwest Quarter of Section 17, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of said Section 17; thence Easterly, along the North line of Northwest Quarter a distance of 1,329.5 feet to the Northeast corner of the Northwest quarter of the Northwest Quarter of said Section 17; thence South 0°16' East, along the East line of the Northwest Quarter of the Northwest quarter of said Section 17, a distance of 970.5 feet to the Southeast corner of the land conveyed to E. Pusey Cain by deed recorded March 20, 1934 in Book 1327, Page 437, of Official Records; thence North 89°49' West 908.32 feet, more or less to the Southeast Corner of the land conveyed to Mabel C. Pool by deed recorded February 25, 1946, in Book 2356, Page 268 of Official Records said Point being 426 feet East of the West line of said Section; thence North along the East line of said Pool Land, a distance of 205.4 feet; thence South 89°09' East 347 feet; thence North 0°11' East 324.95 feet; thence North 89°29' West 248 feet, thence North 47°45' West 91 feet; thence North 89°39' West 145 feet, thence North 54°21' West 96 feet, thence North 88°26' West 61.43 feet; thence South 0°01 East 300.63 feet; thence North 89°13' west 174.0 feet to a Point on the West line of said Northwest Quarter of said Section 17; thence North along the west line of

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USDA Horticultural Crops Research Laboratory (9-A-CA-1578)  
2006-235

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said Northwest Quarter, a distance of 621.33 feet to the Point of Beginning.

**Parcel 2:**

That Portion of the Northwest quarter of Section 17, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of said Section 17; thence South along the West line of said Northwest Quarter, a distance of 621.3 feet to a point, said point being the Northwest corner of the land described in deed to Mabel C. Pool recorded February 25, 1946, in Book 2356, Page 268 of Official Records, thence South 89°13' East along the North line of said Pool land, a distance of 174 feet as the True Point of Beginning; thence South 89°13' East 163 feet; thence South 31°57' East 167.2 feet; thence South 89°09' East 347 feet; thence North 0°11' East, 324.95 feet; thence North 89°29' West 248 feet; thence North 47°45' West 91 feet; thence North 89°39' West 145 feet; thence North 54°21' West 96 feet; thence North 88°26' West 61.43 feet; thence South 0°01' East 300.63 feet, more or less, to the True Point of Beginning.

**Parcel 3:**

That Portion of Section 17, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, described as follows:

The West 426 feet of the North 310.44 feet of the South half of the Northwest quarter of the Northwest quarter of Section 17, Township 14 South, Range 21 East.

Together with the following described parcel: Commencing at the Northwest corner of the South half of the Northwest quarter of the Northwest quarter of said Section 17; thence Easterly, along the North line of the said South half of the Northwest quarter of the Northwest quarter of said section; 426 feet to a point; thence Northerly, Parallel with and 426 feet Easterly from the West line of said Northwest Quarter, a distance of 35.56 feet, to a point, thence Westerly 426 feet to a point on the West line of said Northwest Quarter which is 38.96 feet Northerly from the Point of Commencement; thence Southerly along the West line of said Northwest Quarter, a distance of 38.96 feet to the Point of Commencement.

Excepting therefrom the following described property:

Beginning at a point which is South 89°13' East 337.0 feet and 621.3 feet South from the Northwest corner of Said Section 17; thence South 31°57' East 167.2 feet to a point on the East line of the land conveyed to Mabel C. Pool by deed recorded February 25, 1946, in Book 2356, Page 268 of Official Records; thence North along the East line of said Pool land, a distance of 140.6 feet to the Northeast Corner thereof, thence North 89°13' West 89.6 feet to the Point of Beginning.

**Parcel 4:**

Commencing at the Southwest corner of Section 8, Township 14 South, Range 21 East Mount Diablo Base and Meridian, in the city of Fresno, County of Fresno, State of California, which Point is Further Designated as Being on the South Line of Malvoisie Avenue, as such Avenue is delineated on the Map of Easterby Rancho on file and of Record in Book 2 of Plats at Page 6 in the Office of the County Recorder of the County of Fresno, State of California; thence North 660.0 feet along the West line of said Section 8 to a point; thence North 89°16' East, 1,320 feet Parallel with the South line of said Section 8 to a point; thence South parallel with the West line of said Section 8, 660.0 feet to a point on the South line of said Section 8, which is also the South line of the said

Malvoisic Avenue; thence South 89° 16' West 1320 feet along the South line of Section 8 (the South line of Malvoisic Avenue) to the point of Commencement; said land being a portion of Lot 124 of Easterly Rancho, as shown on the Map thereof recorded June 24, 1880, in Book 2, Page 6, of Plats in the Office of the County Recorder of Fresno County.

The hereinbefore described property is granted by the Grantor to the Grantee subject to any and all existing easements for streets, utility systems, rights-of-way, railroads, pipelines, sewer lines, conduits, flumes, ditches, and canals. The Grantor expressly reserves all oil, gas and mineral rights to the United States.

The Grantee by its acceptance of this deed does acknowledge its understanding of the provisions of this deed, and does covenant and agree for itself, and its heirs, successors and assigns, forever, as follows:

1. This property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in an amendment to an application submitted by the Grantee dated January 27, 2005, which program and plan may be amended from time to time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.
2. The Grantee shall, within 6 months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.
3. The property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior approves in writing. Any such disposition shall assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. Any mortgage, lien, or any other encumbrance not wholly subordinate to the reverter interest of the Grantor shall constitute an impermissible disposal. However this provision shall not preclude the Grantee and its heirs, successors and assigns from using revenue or other bonds related to the use of the property to the extent that such bonds shall not in any way restrict, encumber, or constitute a lien on the property. Furthermore, this provision shall not preclude the Grantee from providing related recreation facilities and services compatible with the approved application through concession agreements, permits, and licenses entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the National Park Service.
4. From the date of this conveyance, the Grantee, its heirs, successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.
5. As part of the consideration for this Deed, the Grantee covenants and agrees for itself, its heirs, successors and assigns, that: (1) any use, operation, program or activity on or related to the property conveyed by this Deed will be conducted in compliance with all Federal laws and regulations relating to nondiscrimination, including but not limited to the following laws and regulations as may be amended from time to time: (a) the regulations of the U.S. Department of the Interior at 43 CFR Part 17, (b) Title VI of the Civil Rights Act of 1964, (c) Title III of the Age Discrimination Act of 1975, (d) Section 504 of the Rehabilitation Act of 1973, and (e) the Architectural Barriers Act of 1968; (2) this covenant shall be subject in all respects to the provisions of said laws and regulations; (3) the Grantor, its heirs,

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USDA Horticultural Crops Research Laboratory (9-A-CA-1578)

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successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantee, its heirs, successors and assigns, will (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its heirs, successors or assigns, is authorized to provide services or benefits on or in connection with the property, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its heirs, successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior or his successor; (6) this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its heirs, successors and assigns; and (7) the Grantor expressly reserves a right of access to, and entrance upon, the above described property in order to determine compliance with the terms of this conveyance.

6. The Grantee, its heirs, successors and assigns, shall indemnify, defend, protect, save and hold harmless the Grantor, its employees, officers, attorneys, agents, and representatives from and against any and all debts, duties, obligations, liabilities, law suits, claims, demands, causes of action, damages, losses, costs, and expenses (including without limitation attorney fees and expenses, consultant fees and expenses, expert fees and court costs) arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to real or personal property or economic loss) that relates to the Grantee's failure to comply with the terms of this deed or from the use or occupancy of the property by the Grantee and/or the Grantee's successors and assigns, transferees, or agents.
7. In order to provide for the appropriate and orderly improvement of the subject property for park and recreation use the Grantee has proposed as an element of the Program of Utilization to provide for the preparation of a Park Master Plan. The Grantee covenants and agrees to provide for an environmental review of plans and proposals for the improvement of the property in accordance with the requirements of the National Environmental Policy Act and the associated guidelines of the National Park Service in coordination with similar requirements required under the California Environmental Quality Act. The Grantee covenants and agrees to provide for the preparation and submission of environmental analysis and public review as may be required by NPS guidelines prior to the implementation of any element of the program of utilization, or in association with the preparation of the proposed master plan or in the consideration of amendments to the program of utilization proposals submitted for review pursuant to Section 1.
8. Pursuant to Section 120(h)(4) of Comprehensive Environmental Response Compensation and Liability Act (CERCLA) [42 U.S.C. 9620] the United States, by the United States Department of Agriculture, Agricultural Research Service, determined based upon a review of available records no hazardous substances have been released, disposed of or stored for one year or more on said property in accordance with the regulations of the Environmental Protection Agency at 40 CFR, Part 373.
9. Pursuant to CERCLA Section 120(h)(4)(D)(i) the United States, by and through the by the United States Department of Agriculture, Agricultural Research Service covenants and warrants that any response action or corrective action found to be necessary by applicable regulatory authorities after the date of this deed regarding hazardous substances located on the property on the date of conveyance shall be conducted by the United States.
10. Pursuant to CERCLA Section 120(h)(4)(D)(ii) [42 U.S.C. 9620], the Grantor, by the through the United States Department of Agriculture, Agricultural Research Service and its officers, agencies, City of Fresno, CA  
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agents, employees, contractors and subcontractors, reserves a right of access to all portions of the property for environmental investigation, remediation, or other corrective action. This reservation includes the right of access to, and use of available utilities at reasonable cost to Grantor, its successors, assigns. These rights shall be exercisable in any case in which a response action, corrective action, or remedial action is found to be necessary after the date of this conveyance or in which access is necessary to carry out a remedial action or response action on adjoining property. Pursuant to this reservation, the United States of America and its respective officers, agencies, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the property and conduct investigations and surveys, to include drilling, test pitting, borings, data and records compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions required or necessary, including but not limited to installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with the record title owner and shall be performed in a manner which minimizes interruption with activities of authorized occupants.

11. The Grantee is hereby informed that asbestos containing materials (ACM) are believed to be present on the property. ACM is believed to be present in floor tiles, acoustical hanging ceilings, wallboard, joint tape and taping compound. The Grantee covenants and agrees, on behalf of its heirs, successors and assigns, that in its use and occupancy of the property, it will comply with all Federal, State and local laws relating to asbestos including relevant provisions of the Toxic Substances Control Act; (15 USC § 2641) and related regulations (40 CFR § 763.120-121) and Section 102-75.335 of the Federal Management Regulations (41 CFR § 102-75.335). The Grantor assumes no liability for damages for personal injury, illness, disability or death, to the Grantee, its heirs, successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property, whether Grantee, its heirs, successors or assigns have properly warned or failed properly to warn the individual(s) injured.
12. Because selected improvements on the property were constructed prior to 1978, they are assumed to contain lead based paints, presenting an exposure risk to young children and pregnant women. The presence of lead based paints within these structures affects their use for residential purposes, including but not limited to non-dwelling facility use commonly used by children under 6 years of age (i.e. childcare center or playground). In the event buildings containing lead based paints are to be reused or rehabilitated, the Grantee covenants and agrees to take all necessary actions to evaluate and abate lead based paint hazards prior to the use of said buildings. The Grantee further covenants and agrees to adhere with all applicable federal, state, or local laws regarding lead based paint hazards as a part of any demolition or renovation of structures containing lead based paints and prior to occupancy or use of said structures for residential purposes, including non-dwelling facility use commonly used by children under 6 years of age. The Grantee further agrees to indemnify the United States, its agencies and employees from any liability arising by reason of the Grantee's failure to comply with these lead-based paint abatement requirements.
13. The Grantee covenants and agrees that it has inspected the herein described and quitclaimed property and is satisfied that the property is free of any hazardous substances or petroleum products or their derivatives. The Grantee, its heirs, successors and assigns and every successor in interest to all or any part of the property shall indemnify, protect, defend, save, and hold harmless the Grantor, and Grantor's employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, law suits, cost associated with any investigation, monitoring, sampling, testing or removal of hazardous substance(s), claims, demands, causes of action, damages, losses, costs, and expenses (including, without limitation, attorney fees, and expenses and court costs) in any way related

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to, connected with, and/or arising out of discovery of any hazardous substance(s) or petroleum products or their derivatives which may have contaminated the hereinabove conveyed property after the date of this Quitclaim deed, including but not limited to any environmental response action, corrective action or remediation action.

14. The Grantee acknowledges that the said property is located within six nautical miles of a public airport and covenants and agrees to obtain a determination of no hazard to air navigation issued by the Federal Aviation Administration (FAA) in accordance with 14 CFR Part 77, or under the authority of the Federal Aviation Act of 1958, as amended, prior to initiating any construction or alteration on said property.
15. The subject property has been determined to lie within a 100-year floodplain. The Grantee further covenants and agrees to comply with the Clean Water Act, as such may be amended, Executive Order 11990 (May 24, 1977) for Protection of Wetlands, and Executive Order 11988 (May 24, 1977) for Floodplain Management, including compliance with Federal, State, and local wetlands and floodplain regulations, where and to the extent said Act and Executive Orders are applicable to the property herein conveyed, and Grantee shall be subject to any use restrictions issued under said Act and Executive Orders.
16. In the event that there is a breach by the Grantee, its heirs, successors or assigns, of any of the conditions and covenants, whether caused by the legal or other inability of the Grantee, its heirs, successors or assigns, to perform said conditions and covenants, the Grantor will give written notice, with a reasonable time stated therein, that the Grantee shall eliminate, rectify, or cure said breach. Upon failure to eliminate, rectify, or cure said breach within the time set forth in the notice, all right, title, and interest in and to all or any portion of said premises shall, at Grantor's option, revert to and become the property of the Grantor. In addition to all other remedies for such breach, the Grantee, its heirs, successors and assigns, at the Grantor's option, shall forfeit all right, title, and interest in any and all of the tenements, hereditaments, and appurtenances thereunto belonging.
17. The failure of the Grantor to require in any one of more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but obligation of the Grantee, its heirs, successors and assigns, with respect to such future performance shall continue in full force and effect.
18. The National Park Service and any representative it may so delegate shall have the right of entry upon said premises at all reasonable times to conduct inspections of the property for the purposes of evaluating the Grantee's compliance with the terms and conditions of the conveyance.
19. The Grantee, by its acceptance of this deed, covenants and agrees for itself, and its heirs, successors and assigns, that in the event the Grantor exercises its option to revert all right, title, and interest in the property to the Grantor, or the Grantee voluntarily returns title to the property in lieu of a reverter, then the Grantee shall provide protection to and maintenance of said property at all times until such time as the title is actually reverted or returned to and accepted by the Grantor, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards contained in the Federal Property Management Regulations prescribed by the General Services Administration in 41 CFR Part 101-47.4913 in effect as of the date of this deed.
20. The covenants, conditions, and restrictions set forth herein are intended to be covenants running with the land in accordance with all applicable law and shall burden and run with the property conveyance by this deed and every part thereof or interest therein, and shall be binding on Grantee, its successor(s) and assign(s), and every successor in interest to all or any part of the property, and shall benefit Grantor and Grantor's successor(s) and assign(s).





The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants and agreements therein contained.

City of Fresno, California

By Andrew T. Souza  
Andrew T. Souza

Date 10/27/2006


(COUNTY OF FRESNO )  
 ) SS  
(STATE OF CALIFORNIA )

On this 27th day of October, 2006, before me, the undersigned notary, the subscriber, personally appeared and being the duly authorized official of the City of Fresno, California and known to me to be the same person described herein and who executed the foregoing acceptance of said on behalf of the City of Fresno, California, for the purposes and uses therein described.



Witness my hand and official seal.

Theresa Saldivar  
NOTARY PUBLIC

|   |  |  |  |
|---|--|--|--|
| State of California )<br>County of Fresno )<br>On <u>October 27, 2006</u> , before me, <u>Theresa Saldívar</u><br><small>DATE NAME</small><br>Notary Public, personally appeared, <u>Andrew J. Souza</u><br><small>NAME(S) OF SIGNER(S)</small>   |  | <b>OPTIONAL SECTION</b><br><div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <small>TOP OF PAGE</small><br><input type="checkbox"/> INDIVIDUAL(S)<br><input type="checkbox"/> CORPORATE OFFICER(S)<br><small>TITLE(S)</small><br><input type="checkbox"/> PARTNERS <input type="checkbox"/> LIMITED<br><input type="checkbox"/> GENERAL<br><input type="checkbox"/> ATTORNEY-IN-FACT<br><input type="checkbox"/> TRUSTEE(S)<br><input type="checkbox"/> GUARDIANSHIP/CONSERVATOR<br>SIGNER IS REPRESENTING<br>NAME OF PERSON(S) OR ENTITY(IES)<br><div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div> <small>TOP OF PAGE</small> |  |
| <input checked="" type="checkbox"/> personally known to me - OR - <input type="checkbox"/> proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. |  | <div style="border: 1px solid black; padding: 5px; width: fit-content;">  </div>  |  |
| WITNESS my hand and official seal<br><u>Theresa Saldívar</u><br><small>SIGNATURE OF NOTARY</small>  |  |  |  |

|   |  |   |  |
|---|--|---|--|
| <b>FOR CITY OF FRESNO USE ONLY</b><br><b>CERTIFICATE OF ACCEPTANCE (Officer)</b><br>In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992, and the grantee consents to the recordation thereof by its duly authorized officer.<br>Public Works Director<br>ACCEPTED:<br>By: <u>Not applicable</u> <small>DEPUTY</small> Date: _____ |  | <b>CERTIFICATE OF ACCEPTANCE (Council)</b><br>In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.<br>Item No./Reso. No. <u>1C</u><br>Date of Council Order <u>October 17, 2006</u><br>City Clerk<br>By: <u>Erika Souza</u> <small>DEPUTY</small> Date: <u>10/30/06</u> |  |
| <b>FEE TITLE ACCEPTANCE (Officer)</b><br>City Manager<br>By: <u>See Page 8</u> <small>DEPUTY</small> Date: _____  |  | <b>APPROVED AS TO FORM</b><br>City Attorney<br>By: <u>R</u> <small>DEPUTY</small> Date: <u>9-26-06</u>  |  |
| <b>RECOMMENDED FOR ACCEPTANCE:</b><br>By: <u>Alan James</u><br>Title: <u>SUPERVISING ENGR. TECH.</u><br>Date: <u>9/26/06</u><br>Log No. <u>2006-235</u> Drawing No. <u>N/A</u>  |  | <b>CHECKED:</b><br>By: <u>David W. Cohen</u><br>Title: <u>Land Surveyor</u><br>Date: <u>9-26-06</u><br><div style="text-align: right; font-size: 2em;">9</div>  |  |

STATE OF CALIFORNIA  
COUNTY OF FRESNO

THIS IS TO CERTIFY  
THAT THIS IS A TRUE  
COPY OF THIS DOCUMENT  
FILED OR RECORDED  
IN THIS OFFICE

DATED NOV 02 2008

ROBERT C. WENNER  
COUNTY RECORDER

EM *[Signature]*  
DEPUTY



**EXHIBIT A-1**

**LEGAL DESCRIPTION OF SITE**

**EXHIBIT B**

**PHASE I PLAN**

## **EXHIBIT C**

### **Insurance Requirements (Construction Phase)**

(a) Throughout the construction phase of this Agreement, CONCESSIONAIRE shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its 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 to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONCESSIONAIRE or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONCESSIONAIRE shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore 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. No action taken by CITY pursuant to this section shall in any way relieve CONCESSIONAIRE 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 the insurer is insolvent.

(c) The fact that insurance is obtained by CONCESSIONAIRE shall not be deemed to release or diminish the liability of CONCESSIONAIRE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY 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 CONCESSIONAIRE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONCESSIONAIRE, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

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, providing liability coverage arising out of your business operations. The Commercial General Liability

policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”

2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

#### **MINIMUM LIMITS OF INSURANCE**

CONCESSIONAIRE shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

##### **1. COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

##### **2. COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

##### **3. Workers’ Compensation Insurance as required by the State of California with statutory limits and EMPLOYER’S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;



- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by CONCESSIONAIRE pursuant to the Agreement.

5. **BUILDERS RISK** (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)**

#### **UMBRELLA OR EXCESS INSURANCE**

In the event CONCESSIONAIRE 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). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONCESSIONAIRE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONCESSIONAIRE shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, 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 self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONCESSIONAIRE 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/ENDORSEMENTS**

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONCESSIONAIRE is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONCESSIONAIRE 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, CONCESSIONAIRE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. CONCESSIONAIRE shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Commercial Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONCESSIONAIRES' insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall

contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONCESSIONAIRE maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONCESSIONAIRE.

- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, CONCESSIONAIRE'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONCESSIONAIRE'S insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.
- (ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

**PROVIDING OF DOCUMENTS** - CONCESSIONAIRE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **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.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONCESSIONAIRE 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. All subcontractors working under the direction of CONCESSIONAIRE shall also be required to provide all documents noted herein.

**CLAIMS-MADE POLICIES** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by CONCESSIONAIRE.

- (ii) Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, CONCESSIONAIRE must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

**SUBCONTRACTORS** - If CONCESSIONAIRE subcontracts any or all the services to be performed under this Agreement, CONCESSIONAIRE shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONCESSIONAIRE will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

### **Insurance Requirements (Throughout the life of the agreement)**

(a) Throughout the life of this Agreement, CONCESSIONAIRE shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its 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 to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONCESSIONAIRE or any of its subcontractors fail to maintain any required insurance

in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONCESSIONAIRE shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore 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. No action taken by CITY pursuant to this section shall in any way relieve CONCESSIONAIRE 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 the insurer is insolvent.

(c) The fact that insurance is obtained by CONCESSIONAIRE shall not be deemed to release or diminish the liability of CONCESSIONAIRE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY 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 CONCESSIONAIRE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONCESSIONAIRE, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

4. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
5. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
6. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

7. Professional Liability (Abuse & Molestation) Insurance that insures against liability arising out of the bodily injury, personal injury, and third-party property damage occurring because of the wrongful or negligent acts attributable to the institution. This coverage should protect against a wide range of potential claims, including but not limited to athletics, alcohol, assault, verbal or physical abuse, campus crime, sexual molestation and other sexual misconducts.

### **MINIMUM LIMITS OF INSURANCE**

CONCESSIONAIRES, or any party the CONCESSIONAIRE subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **Professional Liability** (Abuse & Molestation):

- (i) \$1,000,000 per claim/occurrence; and,

- (ii) \$2,000,000 policy aggregate.

6. **Property:**

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

**UMBRELLA OR EXCESS INSURANCE**

In the event CONCESSIONAIRE 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). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONCESSIONAIRE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONCESSIONAIRE shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, 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) CONCESSIONAIRE 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/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are 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. CONCESSIONAIRE shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01

and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONCESSIONAIRE'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONCESSIONAIRE'S insurance and shall not contribute with it. CONCESSIONAIRE shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.
4. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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

If the Professional Liability (Abuse & Molestation) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONCESSIONAIRE.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.



3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONCESSIONAIRE, CONCESSIONAIRE must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

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.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONCESSIONAIRE is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONCESSIONAIRE 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, CONCESSIONAIRE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by CONCESSIONAIRE shall not be deemed to release or diminish the liability of CONCESSIONAIRE, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as

a limitation upon the amount of indemnification to be provided by CONCESSIONAIRE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONCESSIONAIRE, its principals, officers, agents, employees, persons under the supervision of CONCESSIONAIRE, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

### **VERIFICATION OF COVERAGE**

CONCESSIONAIRE 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. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONCESSIONAIRE 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.