



RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO (1) APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT AND CLOVIS COMMUNITY FOUNDATION AND (2) AUTHORIZE THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE MOU ON BEHALF OF THE CITY OF FRESNO

WHEREAS, the Fresno Metropolitan Flood Control District owns certain real property in the City of Fresno immediately south of the City Park in the easterly quadrant of the intersection of the Burlington Northern Santa Fe Railroad and Figarden Drive and commonly known as Basin "AC"; and,

WHEREAS, the City of Fresno and Fresno Metropolitan Flood Control District have previously agreed to the construction of certain improvements in Basin "AC" to promote its use as a City Park. Among the planned improvements is a walking trail linking the City Park with Figarden Elementary School; and

WHEREAS, in order to facilitate the construction of a portion of the Trail, the Clovis Community Foundation has offered to pay the City a grant in the amount of \$24,200; and

WHEREAS, in exchange for Clovis Community Foundation's monetary contribution to the Trail construction, the Trail shall be called the "Wathen-Castanos-Mazmanian Trail".

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO AS FOLLOWS:

1. The City Council approves the Memorandum of Understanding between the City of Fresno, Fresno Metropolitan Flood Control District and Clovis Community Foundation.
2. The City Council authorizes the Public Works Director or his designee to sign the Memorandum of Understanding on behalf of the City of Fresno.

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Adopted 6/25/09
Approved 7/6/09
Effective 7/6/09

2009-141



STATE OF CALIFORNIA)
COUNTY OF FRESNO) SS.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 25th day of June, 2009.

AYES : Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
NOES : None
ABSENT : None
ABSTAIN : None

Mayor Approval July 6, 2009

Mayor Approval/No Return N/A, 2009

Mayor Veto N/A, 2009

Council Override Veto N/A, 2009

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
Deputy

APPROVED AS TO FORM

JAMES C. SANCHEZ
CITY ATTORNEY

BY: [Signature]
Deputy BRADLEY



Agreement No. 1598(G)-AC

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

CITY OF FRESNO,

CLOVIS COMMUNITY FOUNDATION,

AND

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered on this 4th day of May, 2009, between the CITY OF FRESNO, a municipal corporation, ("City"), the CLOVIS COMMUNITY FOUNDATION, a California nonprofit corporation ("CCF"), and the FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a public corporation ("FMFCD").

RECITALS

WHEREAS, FMFCD owns certain real property in the City of Fresno immediately south of the city park in the easterly quadrant of the intersection of the Burlington Northern Santa Fe Railroad and Figarden Drive and commonly known as "Basin AC", and depicted on Exhibit "1" attached hereto.

WHEREAS, the City and FMFCD have previously agreed to the construction of certain improvements in Basin "AC" to promote its use as a City Park. Among the planned improvements is a walking trail (the "Trail"), more fully described herein.

WHEREAS, in order to facilitate the construction of a portion of the Trail, CCF has offered to pay the City a grant in the amount of \$24,200.

WHEREAS, in exchange for CCF's contribution, the trail shall be called the "Wathen-Castanos-Mazmanian Trail".

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



ARTICLE I ROLES AND CONTRIBUTIONS OF THE PARTIES

1. The City will construct the Trail in Basin "AC" described as "Trail Portion A: East-West concrete trail connecting park to school" ("Trail Portion A"). The completion of "Trail Portion B: Loop Trail" ("Trail Portion B") as shown on Exhibit "1" will be completed strictly at the discretion of the City. The City is under no obligation to complete Trail Portion B, and completion of Trail Portion B shall not be a condition precedent to CCF's obligations hereunder.

2. Upon completion of construction of Trail Portion A, the City will submit to CCF an invoice for \$24,200, which CCF shall pay to City within thirty (30) days of receipt of the invoice.

3. Unless waived by CCF, the Trail shall at all times be referred to and named the "Wathen-Castanos-Mazmanian Trail."

4. CCF shall provide artwork for the logo to be placed on the Trail signage. CCF shall provide the artwork to FMFCD for their approval. After approval, FMFCD shall provide and install two sign frames and four signs on the Trail including the name "Wathen-Castanos-Mazmanian Trail" and the CCF logo. After installation, FMFCD will submit an invoice for payment and City will reimburse FMFCD for the cost of the sign frames and signs in an amount not to exceed \$1,000.

5. All improvements constructed or installed pursuant to this MOU shall be the property of the FMFCD. Nothing herein shall constitute a grant of real property rights to CCF.

ARTICLE II GENERAL TERMS AND CONDITIONS

1. **CAPACITY OF THE PARTIES.** In pursuit of this MOU the parties shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the other party. Each party shall retain the right to administer this MOU so as to verify that the other party is performing respective obligations in accordance with the terms and conditions hereof. Each party shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matters herein.

2. **INDEMNITY.** CCF shall indemnify, hold harmless and defend City and FMFCD and each of its officers, officials, employees, agents and authorized 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 the City, FMFCD, and CCF 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 from the negligent or intentional acts or omissions or willful misconduct of CCF or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.



City shall indemnify, hold harmless and defend FMFCD and CCF and each of its officers, officials, employees, agents and authorized 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 FMFCD, CCF, and 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 from the negligent or intentional acts or omissions or willful misconduct of City or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

FMFCD shall indemnify, hold harmless and defend City and CCF and each of its officers, officials, employees, agents and authorized 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 City, CCF, and FMFCD 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 from the negligent or intentional acts or omissions or willful misconduct of FMFCD or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of CCF or any of its officers, officials, employees, agents or volunteers, FMFCD or any of its officers, officials, employees, agents, or volunteers and City or any of its officers, officials, employees, agents or authorized volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

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

4. **ATTORNEY'S FEES.** If any party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, each party shall pay its own attorney's fees and legal expenses.

5. **EXHIBITS.** All exhibits attached hereto are hereby incorporated into this MOU as if set forth in full herein. In the event of any conflict between the body of this MOU and any exhibit or attachment hereto, the terms and conditions of the body of this MOU shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.



6. INTEGRATION. Each party acknowledges that they have read and fully understand the contents of this MOU. This MOU represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. No other commitment other than those outlined in this MOU is made relative to the donation by CCF.

7. DURATION. This MOU shall be in effect upon its full execution by the parties through the complete rendition of the services and acceptance of all deliverables by each of the parties hereunder.

8. MODIFICATION. This MOU may be modified only by written instrument duly authorized and executed by all the parties.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed this 4th day of May, 2009.

CLOVIS COMMUNITY FOUNDATION
A California Nonprofit Corporation

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT, A Public Corporation

By: [Signature]

By: [Signature]
Bob Van Wyk, General Manager-Secretary

Its: Chairman

By: _____

Its: _____

CITY OF FRESNO
A Municipal Corporation

By: _____

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

ATTEST:
Rebecca K. Klisch
City Clerk

By: [Signature]
Deputy Katherine E. Bradley

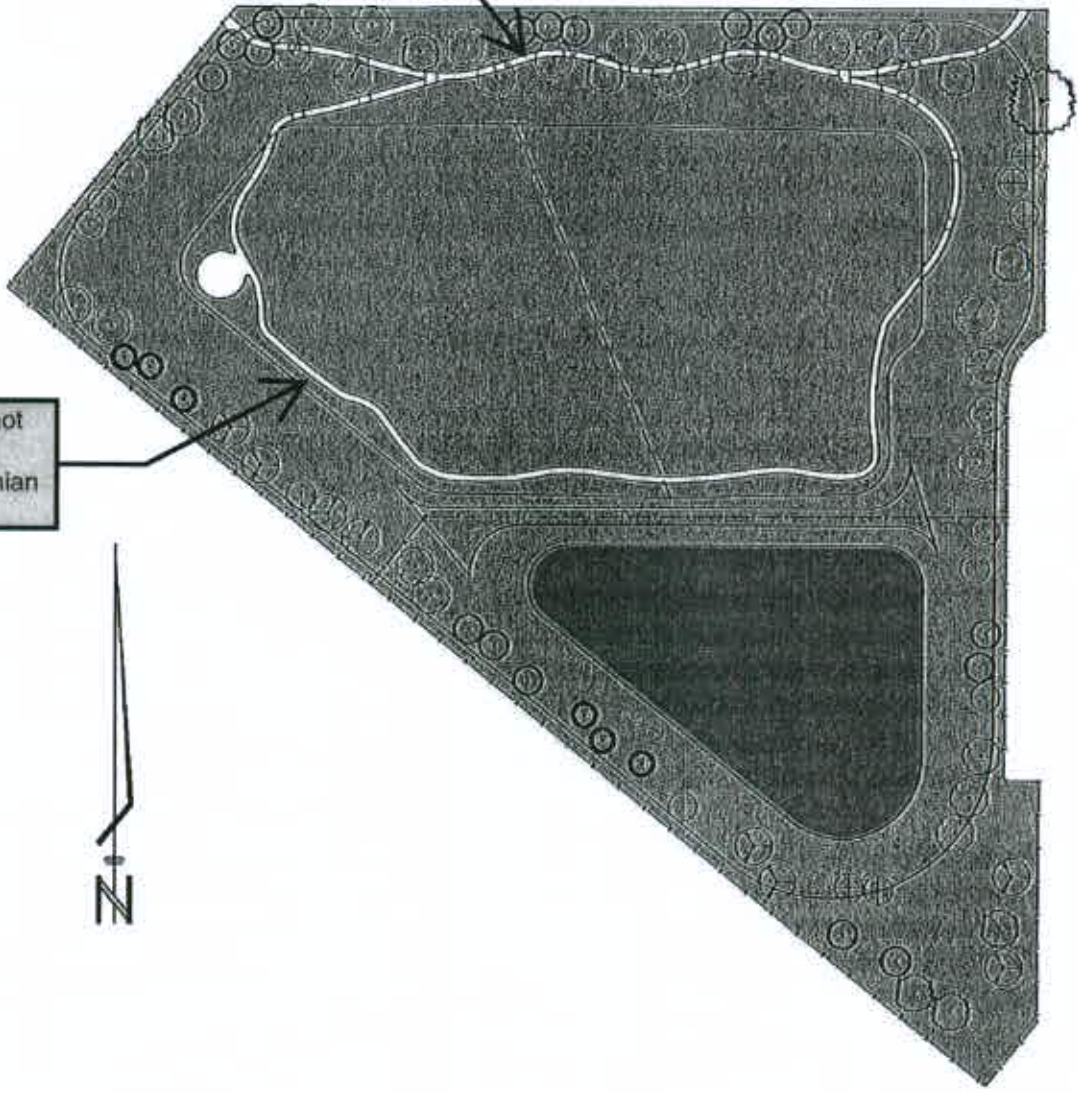
By: _____
Deputy

NOTE:
THIS DRAWING IS SCHEMATIC,
DISTANCES ARE APPROXIMATE.



Trail Portion A: Wathen-Castano-Mazmanian Trail

Trail Portion B: (not part of Wathen-Castano-Mazmanian Trail)



LEGEND

-  Landscape Improvements: Trees
-  Landscape Improvements: Turf & Irrigation System
-  Lower Floor Pond Area
-  Walks & Pavilions - Not Landscape Improvements

BASIN "AC" LANDSCAPE IMPROVEMENTS DRAINAGE AREA: "AC"

EXHIBIT 1

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT



June 26, 2009

Council Adoption: 6/25/09

TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

Mayor Approval:

Mayor Veto:

Override Request:

FROM: REBECCA E. KLISCH, CMC
City Clerk

2009 JUL -6 AM 9:10

CITY CLERK, FRESNO CA



SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 6/25/09, Council adopted the attached Resolution No. 2009-141 entitled **Appv MOU w/FMFCD and Clovis Community Foundation**, Item No. **1K**, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Westerlund, Xiong, Sterling
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before July 6, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearingin
Ashley Swearingin, Mayor

Date: 7-6-09

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	: