

**AGREEMENT AND RELEASE  
CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT AND RELEASE is made and entered into effective the 12<sup>th</sup> day of July, 2013, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Andrew Heckman, an individual (hereinafter referred to as "HECKMAN").

**RECITALS**

WHEREAS, CITY desires to obtain all rights to the caricature map of Fresno, California and surrounding areas designed by HECKMAN in substantially the form attached hereto as Exhibit A, except that the watermark shall be removed and the title "Fresno- The Heart of California" shall be added to the top (the Map); and

WHEREAS, HECKMAN is a graphic designer and hereby represents that he has personally designed and produced such Map and is the sole and rightful owner of any and all rights to said Map;

WHEREAS, this Agreement and Release sets forth the terms and conditions under which HECKMAN shall receive final payment for such Map from Airports Department funds in exchange for physical and electronic delivery of said Map to CITY and the full release by HECKMAN of any and all intellectual property rights he has or may have in the Map, as well as the full release by the parties of any and all claims they may have related to the Map or creation thereof; and

WHEREAS, HECKMAN acknowledges receipt of the initial FIVE THOUSAND DOLLARS (\$5,000) from CITY on June 22, 2012, and further acknowledges receipt of the sum of, an additional **TEN THOUSAND DOLLARS (\$10,000.00)**;

WHEREAS, HECKMAN and City agree as a further consideration and inducement for this Agreement and Release that it shall apply to all unknown and unanticipated injuries and damages resulting from said events, as described in HECKMAN'S letter to Ronda Jorn dated June 20, 2013, as well as those now disclosed.

HECKMAN and City hereby agrees to the special considerations which follow:

**AGREEMENT AND RELEASE**

1. HECKMAN shall immediately provide CITY with one physical set of accepted reproducible tracings and documents for the Map. In addition, HECKMAN shall provide CITY with two complete sets of CAD/System disk files of drawings and complete disk files of specifications in the following formats: TIFF and JPEG.

2. Any reports, information, or other data prepared or assembled by HECKMAN pursuant to creation of the map or pursuant to this Agreement and Release shall not be made available to any individual or organization by HECKMAN without the prior written approval of CITY. HECKMAN shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement and Release shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

3. Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings, artwork and other documents prepared or provided by HECKMAN pursuant to creation of the Map or pursuant to this Agreement and Release, and all data, intellectual property rights and copyrights related to such Map, shall be for the benefit of City. City reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the copyright in the Map and any related work developed pursuant to the creation of such Map or under this Agreement and Release.

4. HECKMAN shall not reproduce (such as photographs and prints), duplicate, distribute reproductions, or incorporate into any trademark or service mark, the Map or any portion thereof without the prior written consent of CITY. Any rights of HECKMAN in the Map terminate upon the death of HECKMAN and do not extend to HECKMAN'S heirs, successors or assigns.

5. Title to the Map shall pass to CITY upon execution of this Agreement and Release, and HECKMAN agrees to execute any other documents necessary to perfect CITY's title or copyright. CITY reserves the right to reproduce, donate, transfer or sell the Map or any portion thereof. City shall have the exclusive right to publicly display the Map and shall have a license to reproduce (such as photographs and prints) or create three-dimensional reproductions of the Map for any purpose (including, but not limited to, books, slides, postcards, film, Internet sites, additional maps, tee shirts, and/or reproductions for advertising, and other media). CITY reserves the right to modify the Map at any time. CITY may incorporate the Map into any trademark or service mark to be utilized by City to register the same in accordance with Federal, state or local law.

6. HECKMAN and City forever release and discharge each other, and by these presents do, for themselves, their heirs, executors, administrators and assigns, hereby forever and fully release, acquit and discharge each other, and their administrators, directors, officers, managers, agents, servants, employees, successors, assigns, and attorneys; and any and all other persons, firms or corporations who are or can ever in any way be liable to the undersigned; of and from all claims, demands, damages, actions and causes of action of every kind and nature,

including, but not limited to, attorney's fees, costs and expenses, known or unknown, existing, claimed to exist, or which can ever hereafter arise out of or result from or in connection with the certain events which occurred in the City of Fresno, County of Fresno, State of California, which are related to the Map or the creation thereof; and as alleged in the letter from Andrew Heckman to Rhonda Jorn, dated June 20, 2013.

7. Any liability for all such claims is denied by the parties herein released, and this final Agreement and Release shall never be treated as an admission of liability or responsibility at any time for any purpose.

8. The provisions of section 1542 of the Civil Code of the State of California are hereby expressly waived, and the undersigneds understand that said section provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

9. HECKMAN has been fully advised and understands that the injuries and/or damages sustained are of such character that the full extent and type of damages and/or injuries are not known at the date hereof. It is further understood that said damages and/or injuries, whether known or unknown at the date hereof, might possibly become progressively worse, and that as a result thereof further damage may be sustained by him; nevertheless, HECKMAN desires by these presents to forever and fully release and discharge the parties hereinabove released and discharged, and understands that by the execution of these presents no further claims may ever be asserted by HECKMAN, his heirs or assigns.

10. HECKMAN hereby agrees to defend, indemnify and hold the City released and discharged, harmless for any damages, loss or claims resulting from any and all lien, copyright, and/or intellectual property claims (past, present or future), including, but not limited to, any and all claims by any artist, graphic designer, cartographer, compensation carrier, medical care provider, medical carrier, retirement board or employer (past or present), which relate to or result from said events as described above.

11. In the event legal action is brought to enforce any provision of this Agreement and Release, save and except subsequent claims for indemnity and/or contribution, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs of suit.

12. HECKMAN hereby authorizes and directs that payment of the sum of ten thousand dollars (\$10,000) be made by check or draft payable to Andrew Heckman.

13. Each of the parties hereby represents, warrants and agrees that it has received or has had an opportunity to engage independent legal advice from an attorney with respect to meaning of California Civil Code Section 1542, and the effect of the provisions of this Agreement and Release.

14. The individuals who execute this Agreement and Release hereby expressly represent that they have the authority to execute this Agreement and Release, and have the authority to bind the party on whose behalf they are signing.

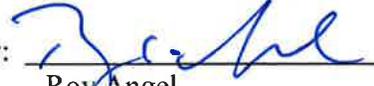
15. This Agreement and Release shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and Release and any rights and duties hereunder shall be Fresno County, California.

Dated: 7-11-13

  
\_\_\_\_\_  
Andrew Heckman

Dated: \_\_\_\_\_

CITY OF FRESNO,  
a California municipal corporation

By:   
\_\_\_\_\_  
Roy Angel  
Risk Manager

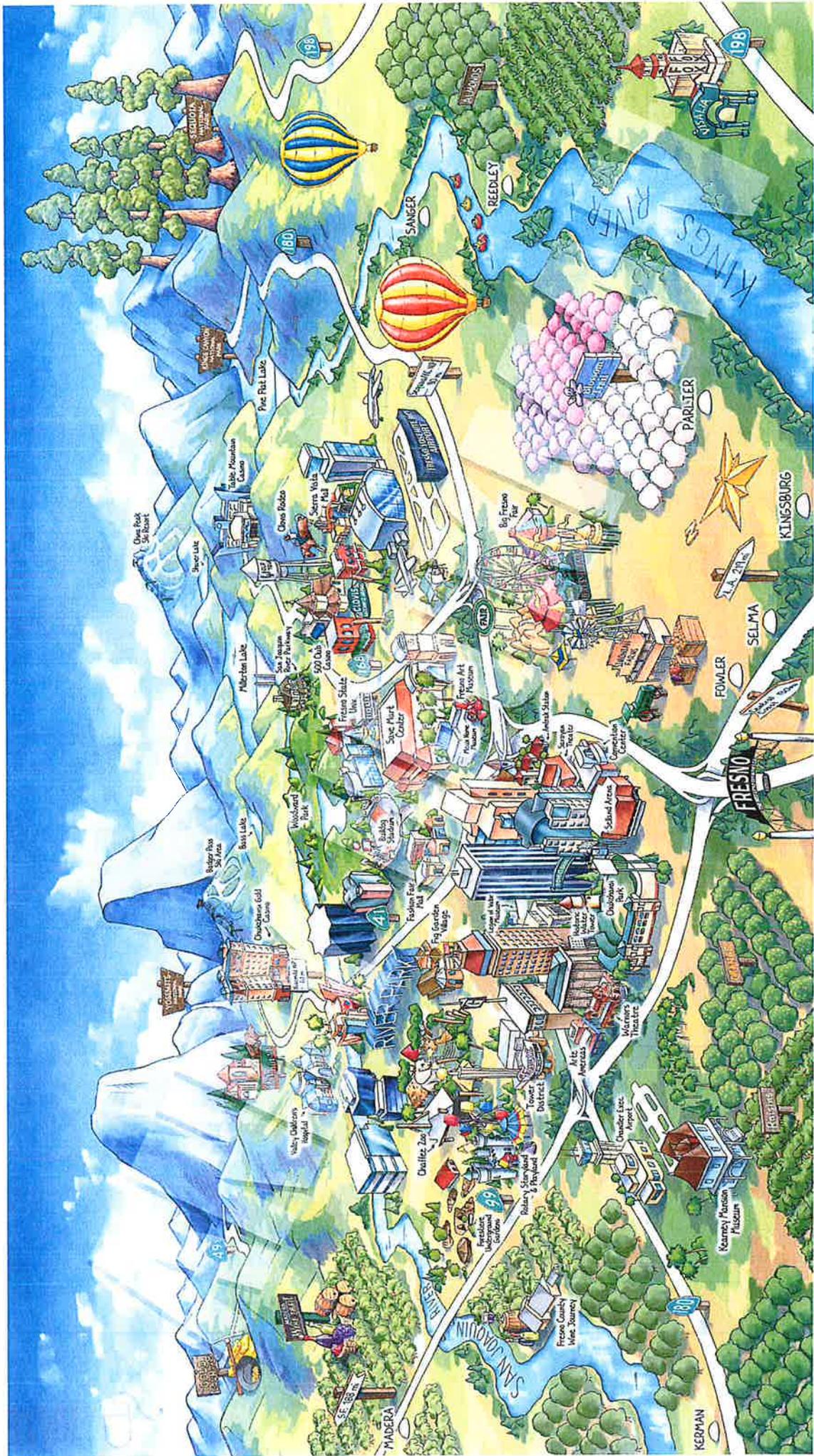
APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Mary Anne B. Tooke, Deputy City Attorney  
FRESNO CITY ATTORNEY'S OFFICE

ATTEST:  
YVONNE SPENCE, CMC  
CITY CLERK  
By:   
\_\_\_\_\_  
Deputy 7/12/2013

Attachments:

“Exhibit A” Caricature Map “Fresno- The Heart of California”



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SE. 99

SE. 99

SE. 99

SE. 99

ONE ROCK

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SHOWER LAKE

BUDDER PASS

WILLY CHILDREN

MADERA

REEDLEY

SANGER

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