

**UTILITIES AND OFFSITE IMPROVEMENTS DEFERMENT
AGREEMENT BETWEEN CENTRAL UNIFIED SCHOOL DISTRICT
AND CITY OF FRESNO**

THIS AGREEMENT is made and entered into effective the 10th day of September, 2014, ("Effective Date") by and between the CITY OF FRESNO, a California municipal corporation ("CITY"), and CENTRAL UNIFIED SCHOOL DISTRICT, a California public school ("CENTRAL UNIFIED").

RECITALS

WHEREAS, CENTRAL UNIFIED is engaged in a construction project consisting of the development and operation of a temporary elementary school facility (hereinafter referred to as "Temporary Facility") followed by the development and operation of a permanent elementary school facility (hereinafter referred to as "Permanent Facility") on the site. The proposed school site is located on the east side of Valentine Avenue between Clinton and Weldon Avenues, and encompasses Fresno County Assessor's Parcel Numbers 422-022-15, 422-022-16, and 422-022-17. The project site consists of ±14.02 acres, hereinafter referred to as the "Property" and more particularly described in the attached **Exhibit A**;

WHEREAS, the proposed elementary school is anticipated by CENTRAL UNIFIED to first be a Temporary Facility designed for approximately four hundred fifty (450) students grades K-6 in temporary classrooms, faculty work areas, administrative offices, and parking lot, and to become a Permanent Facility designed for full service for approximately eight hundred fifty (850) students grades K-6 in permanent facilities, with classrooms, faculty work areas, administrative offices, multi-purpose facilities, athletic/recreation areas, and parking lots on the Property;

WHEREAS, CENTRAL UNIFIED anticipates the Temporary Facility will be constructed and operational on the Property by October 1, 2014, and the Permanent Facility will be constructed and operational on the Property by October 1, 2017. The actual timing for construction will be subject to funding availability;

WHEREAS, there are insufficient streets, utilities, offsite improvements, and water and sewer services currently available on the Property;

WHEREAS, the Property is within City's limit boundary;

WHEREAS, CITY would normally require all necessary streets, utilities, and offsite improvements to be completed with the development of the Temporary Facility, but will allow deferment of some of those requirements until the development of the Permanent Facility, or until October 1, 2017, whichever occurs first, so long as CENTRAL UNIFIED agrees to install those streets, utilities, and offsite improvements in accordance with the provisions of this Agreement. Time for completion may be extended on a yearly basis upon the written agreement of the CITY Public Works Director and CENTRAL UNIFIED Superintendent. No extension will be made except upon a written request by the CENTRAL UNIFIED Superintendent, or his or her designee, at least 30 days prior to the expiration of the deferment. Where timing of completion or fulfillment of those streets, utilities, offsite improvements, and

development impact fees are further considered in this agreement, the possible extensions, as previously described, shall accompany those considerations; and

WHEREAS, CITY has available water and sewer services which may be extended to the Property, and is willing to provide water and sewer service to the Property so long as CENTRAL UNIFIED installs all infrastructure needed to provide CITY water and sewer service to the Property and CENTRAL UNIFIED agrees to install said infrastructure in accordance with the provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, agree as follows:

A. Provisions Specific to Construction of Streets and Offsite Improvements.

1. Current Requirements and Deferred Requirements. Some portions of necessary street construction and offsite improvements are required to be completed along with the construction and development of the Temporary Facility and some portions of street construction and offsite improvements may be deferred until construction of the Permanent Facility or until October 1, 2017, whichever occurs first.

a. Prior to the opening of the Temporary Facility, CENTRAL UNIFIED shall design and construct, as its sole responsibility, required street construction and offsite improvements, consisting of:

i. Construction of a portion of Valentine Avenue to safely allow the operation of the Temporary Facility and alleviate health and safety concerns associated with the Temporary Facility. Any and all utilities necessary and/or required by CITY for the Permanent Facility must be constructed in Valentine Avenue when the street is constructed with development of the Temporary Facility. These necessary utilities include, but are not limited to, sewer lines, water lines, gas lines, and storm drains.

ii. Offsite improvements necessary to adequately serve the Temporary Facility and ensure local, state, and federal health and safety standards are met; including, but not limited to, asphalt and/or concrete along Valentine Avenue, curbs and gutters, sidewalks, and landscaping.

iii. An asphalt concrete path built on the north side of Weldon Avenue alignment and on the east side of Valentine Avenue to create a pedestrian walkway to the existing sidewalk on the north side of Weldon Avenue.

iv. A concrete driveway built to connect the new parking lot driveways on Valentine Avenue to the proposed edge of pavement on the east side of Valentine Avenue. Location and construction of the parking lot driveways is subject to City approval to ensure their location adheres to CITY standards and the Fresno Municipal Code.

b. Prior to the opening of the Permanent Facility, or by October 1, 2017, whichever occurs first, CENTRAL UNIFIED shall design and construct, as

its sole responsibility, required street construction and offsite improvements, consisting of:

i. Complete construction of Valentine Avenue frontage improvements that the Permanent Facility will occupy, including, but not limited to, all remaining curbs and gutters, sidewalks, landscaping, and all remaining asphalt concrete work, which includes the reconstruction of asphalt pavement to achieve at least forty-five to forty-seven feet of permanent asphalt pavement, measured from the school frontage concrete curb, not completed prior to Temporary Facility and as shown on CITY approved construction plan sheet numbers 15-C-16481 through 15-C-16486.

ii. Construction of Weldon Avenue between Valentine Avenue and the existing terminus to the east, including shifting the new alignment of Weldon Avenue to meet the existing alignment on the west side of Valentine Avenue. Weldon Avenue shall be constructed in a manner that allows two way traffic east of the Permanent Facility site.

2. Construction of Offsite Improvements. All streets, utilities, and offsite improvements shall be constructed in accordance with CITY Public Works Standard Specifications and Drawings, CITY standards and policies, void of any health and safety concerns, and in accordance with requirements set forth in this agreement.

B. Provisions Specific to Water Service: Connection to CITY's municipal water system by CENTRAL UNIFIED shall be subject to the following conditions:

1. Metered Service Connection. CITY will allow metered and unmetered service connections for domestic and fire use, respectively, to existing and or proposed water mains.

2. Construction of New Water System. Prior to the opening of the Temporary Facility, CENTRAL UNIFIED shall design and construct, as its sole responsibility, a 14-inch diameter water main in North Valentine Avenue from the intersection of North Valentine and Normal Avenues to the intersection of North Valentine and West McKinley Avenues, and a 12-inch water main in West McKinley Avenue from the intersection of North Valentine and West McKinley Avenues to the existing water main terminus near North Feland Avenue; prior to the opening of the Permanent Facility, or by October 1, 2017, whichever occurs first, CENTRAL UNIFIED shall design and construct, as its sole responsibility, an 8-inch water main in a future location of West Weldon Avenue (all improvements for both Temporary and Permanent Facilities are hereinafter referred to as "New Water System"). Construction of the New Water System shall include installation of fire hydrants at standard City spacing in accordance with CITY Public Works Standard Specifications and Drawings.

3. Water Facility Improvement Plans for New Water System. Prior to installation of the New Water System, CENTRAL UNIFIED shall submit engineered water facility improvements plans, prepared by a Registered Civil Engineer, to CITY's Department of Public Utilities, for review and approval of the New Water System by

CITY. CITY approval, at CITY's sole discretion, shall be required before construction and operation of the New Water System by CENTRAL UNIFIED.

4. Alignments and Permits. Pipeline construction by CENTRAL UNIFIED for the New Water System shall follow an alignment acceptable to CITY and shall comply with any required permits issued by CITY.

5. Inspection Fees and Permits. CENTRAL UNIFIED shall pay all applicable inspection fees and obtain all necessary construction permits to ensure the New Water System is in compliance with CITY Public Works Standard Specifications and Drawings, conditions, policies, and ordinances. The New Water System shall comply with CITY Public Works Standard Specifications, conditions, policies, and ordinances related to providing water service including payment by CENTRAL UNIFIED to CITY of all CITY water connection charges established in CITY's Master Fee Schedule. Said fees shall be paid by CENTRAL UNIFIED to CITY at the time CITY approves engineered water facility improvements plans for the New Water System submitted by CENTRAL UNIFIED.

6. Water Facilities on Property. CENTRAL UNIFIED shall have the same responsibilities, duties, and obligations for its private water facilities, including repair and maintenance, as would a property owner within the jurisdiction of the City of Fresno subject to the Fresno Municipal Code, as may be amended, including enforcement by CITY of Fresno Municipal Code section 6-500 et. seq. ("Water Regulations").

7. Existing Wells. Prior to the opening of Permanent Facility, or at the time CENTRAL UNIFIED connects to CITY's municipal water system, whichever occurs first, CENTRAL UNIFIED shall deconstruct and seal any existing on-site well(s) in compliance with the State of California Well Standards, Bulletin 74-90 or current revisions issued by California Department of Water Resources and CITY Public Works Standard Specifications and Drawings, standards, specifications, ordinances, and policies.

C. Provisions Specific to Sewer Service: Connection to CITY's municipal sewer system by CENTRAL UNIFIED shall be subject to the following conditions:

1. Construction of New Sewer System. Prior to the opening of the Temporary Facility, CENTRAL UNIFIED shall design and construct a 12-inch sewer main in North Valentine Avenue from approximately the northern limits of the Property to the intersection of Valentine and McKinley Avenues, and a 12-inch sewer main in West McKinley Avenue from the intersection of North Valentine and West McKinley Avenues easterly to the existing sewer terminus near North Feland Avenue; prior to the opening of the Permanent Facility, or by October 1, 2017, whichever occurs first, CENTRAL UNIFIED shall design and construct an 8 inch sewer main in a future location of West Weldon Avenue (all improvements for both Temporary and Permanent Facilities are hereinafter referred to as "New Sewer System").

2. Sewer Facility Improvement Plans for New Sewer System. Prior to installation of the New Sewer System, CENTRAL UNIFIED shall submit engineered sanitary sewer facility improvement plans, prepared by a Registered Civil Engineer, to CITY's Department of Public Utilities, for review and approval of the proposed New

Sewer System by CITY. CITY approval, at CITY's sole discretion, shall be required before construction and operation of the New Sewer System by CENTRAL UNIFIED.

3. Alignments and Permits. Pipeline construction by CENTRAL UNIFIED for the New Sewer System shall follow an alignment acceptable to CITY and shall comply with any required permits issued by CITY.

4. Sewer Facility House Branch Laterals. CENTRAL UNIFIED shall design and construct house branches connected to the sewer main for each parcel within the limits of New Sewer System construction in accordance with CITY Public Works Standard Specifications and Drawings.

5. Inspection Fees and Permits. CENTRAL UNIFIED shall pay all applicable inspection fees and obtain all necessary construction permits to ensure the New Sewer System is in compliance with CITY's Public Works Standard Specifications and Drawings, conditions, policies, and ordinances. The New Sewer System shall comply with CITY Public Works Standard Specifications, conditions, policies, and ordinances related to providing sanitary sewer service including payment by CENTRAL UNIFIED to CITY of all CITY sewer connection charges established in CITY's Master Fee Schedule. Said fees shall be paid by CENTRAL UNIFIED to CITY at the time CITY approves engineered water facility improvements plans for the New Sewer System submitted by CENTRAL UNIFIED.

6. Sewer Facilities on Property. It is the sole responsibility of CENTRAL UNIFIED to repair, maintain, and replace all Sewer Facilities on Property, and CITY shall have no responsibility or liability for these Sewer Facilities. CENTRAL UNIFIED shall obtain all necessary permits or other approvals necessary for constructing and connecting CENTRAL UNIFIED's Sewer Facilities.

7. Abandonment of Existing On-Site Private Sanitary Sewer System(s). Prior to the opening of Permanent Facility, or by October 1, 2017, whichever occurs first, CENTRAL UNIFIED shall abandon all existing on-site private sanitary sewer system(s), including existing sewer septic system(s), in accordance with CITY Building and Safety Department requirements, and Public Works Standard Specifications and Drawings, conditions, policies, and ordinances.

D. Dedication and Acceptance of Streets, Utilities, and Offsite Improvements. CENTRAL UNIFIED shall dedicate all of the streets, utilities, and offsite improvements (including parts of the New Water System and New Sewer System improvements located within a local or major street) to CITY as the improvements are completed and ready to be placed into service, and, provided that the improvements have been designed, installed, and constructed in accordance with this Agreement's requirements, CITY hereby agrees to accept for ownership and maintenance all of said improvements and to operate them immediately thereafter.

E. Reimbursement for Oversized Facilities. CITY and CENTRAL UNIFIED acknowledge that certain of the improvements CENTRAL UNIFIED is required to design, install, and construct under this Agreement are oversized in comparison with the size and capacity of the improvements necessary only to meet the impact of the Temporary Facility and Permanent Facility. CITY shall reimburse CENTRAL UNIFIED

for the costs of designing, installing, and constructing the oversized portions of said improvements, in accordance CITY's customary policies for such reimbursements.

F. Development Impact Fees:

1. Development Impact Fees. Prior to the opening of Temporary Facility, CENTRAL UNIFIED shall promptly pay to CITY the Citywide traffic signal charge that reflects Temporary Facility's impact pursuant to CITY's Master Fee Schedule. Prior to the opening of the Permanent Facility, or by October 1, 2017, whichever occurs first, CENTRAL UNIFIED shall promptly pay to CITY any and all development impact fees, including, but not limited to, Citywide fire facilities, Citywide park facilities, Citywide police facilities, Citywide regional street charge, new growth area major street charge, and Citywide traffic signal charge pursuant to CITY's Master Fee Schedule, to the extent that such charges reflect the impacts of the Permanent Facility.

G. Additional Provisions:

The following provisions shall apply to this entire Agreement, including the provisions addressing water and sewer service:

1. Continuing Obligations and Responsibilities of CENTRAL UNIFIED. CENTRAL UNIFIED agrees to promptly pay to CITY any and all fees for water and sewer service supplied by CITY to CENTRAL UNIFIED's Property as defined in the Master Fee Schedule. All fees listed in CITY's Master Fee Schedule are regularly updated and amended from time to time by CITY's Council. Notwithstanding any other section of this Agreement, the fees and rates set forth by the Master Fee Schedule, as currently in effect or as it may be amended, are incorporated herein and shall have precedence over the fees listed in this Agreement. CENTRAL UNIFIED is responsible to pay the fees and rates as set forth by the Master Fee Schedule. CENTRAL UNIFIED agrees to maintain its water and sewer service accounts with CITY in a current status. CENTRAL UNIFIED acknowledges and agrees that should its water or sewer service account with CITY become sixty(60) days delinquent, City shall have the right, at CITY's sole option, to discontinue water or sewer service to CENTRAL UNIFIED's Property as to the delinquent water or sewer service account.

2. Covenants Running with the Land. CENTRAL UNIFIED acknowledges and agrees that all of CENTRAL UNIFIED's covenants, agreements, promises, representations, and warranties as set forth in this Agreement are covenants running with CENTRAL UNIFIED's Property as defined in the applicable provisions of Sections 1457 et seq. of the California Civil Code. CENTRAL UNIFIED's covenants, agreements, promises, representations, and warranties, as contained in this Agreement, shall run with CENTRAL UNIFIED's Property and shall be binding on CENTRAL UNIFIED and CENTRAL UNIFIED's successors and assigns and all parties and persons claiming under them. Within thirty (30) days of execution by the last party to sign, CENTRAL UNIFIED agrees to record a copy of this Agreement as a covenant running with the land.

3. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. CENTRAL UNIFIED may not assign its

rights and/or obligations under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld. Any such consent by CITY shall not, in any way, relieve CENTRAL UNIFIED of its obligations and responsibilities under this Agreement.

4. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

5. Binding. Subject to Section 18, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

6. Compliance With Law. In providing the services required under this Agreement, CENTRAL UNIFIED shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. CENTRAL UNIFIED, not CITY, is responsible for determining applicability of and compliance with all local, State, and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, and Government Code; the Fresno City Charter; and the Fresno Municipal Code. CITY makes no representations regarding the applicability of any such laws to this Agreement, the project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. CITY shall not be liable or responsible, in law or equity, to any person for CENTRAL UNIFIED's failure to comply with any such laws, whether CITY knew or should have known of the need for CENTRAL UNIFIED to comply, or whether CITY failed to notify CENTRAL UNIFIED of the need to comply. CENTRAL UNIFIED is referred to CITY's Department of Public Works, Construction Management Division, to obtain the current prevailing wage rates, to the extent said rates are applicable to the construction of any of the improvements regarding the New Water System and New Sewer System.

7. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

8. Indemnification of City. To the greatest extent allowed by law, CENTRAL UNIFIED shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CENTRAL UNIFIED, or any other person, and from any and all claims, demands, liabilities, damages, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement or the performance of any or all work to be done in and upon the street rights-of-way, the Property, and premises adjacent thereto, pursuant to this Agreement, or arising or alleged to have arisen directly or indirectly in any way related to the construction and installation of the required streets, utilities, offsite improvements, New Water System, or New Sewer System by anyone occupying any portion of CENTRAL UNIFIED's Property. CENTRAL UNIFIED's obligations under the preceding sentence shall apply regardless of whether CENTRAL UNIFIED or any of its officers, officials, boards, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents, or volunteers.

If CENTRAL UNIFIED should subcontract all or any portion of the work to be performed under this Agreement, CENTRAL UNIFIED shall require each subcontractor to indemnify, hold harmless, and defend CITY and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph. Notwithstanding the preceding sentence, any subcontractor who is a "design professional," as defined in Section 2782.8 of the California Civil Code, shall, in lieu of indemnity requirements set forth in the preceding paragraph, be required to indemnify, hold harmless, and defend CITY and each of its officers, officials, employees, agents, and volunteers, to the furthest extent allowed by law, 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), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

This section shall survive termination or expiration of this Agreement.

9. Insurance. Throughout the life of this Agreement, CENTRAL UNIFIED shall pay for and maintain in full force and effect all policies of insurance required under this Agreement with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by the City's Risk Manager or his/her designee. The required policies of insurance shall maintain limits of liability of not less than those amounts stated herein. However, the insurance limits available to the City of Fresno, 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. The following policies of insurance are required:

- (a) COMMERCIAL GENERAL LIABILITY or PERSONAL LIABILITY insurance that includes coverage:
 - (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 Contract
- (b) COMMERCIAL AUTOMOBILE LIABILITY provisions with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.
- (c) WORKERS' COMPENSATION insurance as required by law. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to CITY, its officers, officials, agents, employees, and volunteers.
- (d) EMPLOYERS' LIABILITY INSURANCE with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

All the policies of insurance except the Workers' Compensation policy will be endorsed to provide an unrestricted thirty (30) day written notice in favor of the CITY for any policy cancellation and any change or reduction in coverage. The Workers' Compensation policy will provide for a ten (10) day written notice. **At least fifteen (15) days prior to the expiration date of any policy, CENTRAL UNIFIED shall provide a new certificate of insurance for a renewal policy.** If the insurer, broker, or agent issues a notice of cancellation, or a notice of change to or reduction in coverage, CENTRAL UNIFIED shall immediately file with the CITY a certified copy of the new or renewal policy and certificates.

The General Liability insurance policy will be written on an occurrence form and will name the CITY, its officers, officials, agents, employees and volunteers as an additional insured. The policy (ies) of insurance will be endorsed so CENTRAL UNIFIED'S insurance shall be primary and the CITY will not be required to contribute. The workers' compensation policy(ies) shall contain a waiver of subrogation in favor of the City. **CENTRAL UNIFIED shall furnish the CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to CITY's execution of this agreement.** CENTRAL UNIFIED shall furnish the CITY with copies of the actual policies upon the request of the CITY's Risk Manager and this requirement shall survive termination or expiration of this Agreement.

If CENTRAL UNIFIED subcontracts all or any portion of the work to be performed under this Agreement, CENTRAL UNIFIED shall require each subcontractor to provide insurance protection in favor of the CITY, its officers, officials, employees, agents, and volunteers in accordance with the terms of each of the preceding paragraphs. CENTRAL UNIFIED will cause the contractor's and subcontractors' certificates and

endorsements to be on file with CENTRAL UNIFIED and CITY before the contractor or subcontractor begins any work. Upon request by the City's Risk Manager, and at least ten (10) calendar days before beginning to construct any phase of the Development, CENTRAL UNIFIED shall promptly furnish the CITY certificate(s) confirming that the required insurance is in effect and, in the case of the public liability insurance, that the CITY and its officers, officials, employees, agents, and volunteers are named as additional insureds. Each certificate will be in a form acceptable to the City's Risk Manager. Any insurance required to be maintained by CENTRAL UNIFIED may be maintained under a blanket policy covering other locations and other persons, if the blanket policy is acceptable to the City's Risk Manager and the insurance coverage is equivalent to the coverage otherwise required under this Agreement.

10. Public Health, Safety and Welfare. Nothing contained in this Agreement shall limit CITY's authority to exercise its police powers, governmental authority, or take other appropriate actions to address threats to public health, safety, and welfare, including temporarily suspending water and sewer services as deemed appropriate by CITY in its sole determination and discretion.

11. Governing Law and Venue. This Agreement 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 any rights and duties hereunder shall be Fresno County, California.

12. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

13. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

14. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

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

16. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

17. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions

contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19. No Third Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CENTRAL UNIFIED.

(Signatures appear on next page)

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

CITY OF FRESNO,
a California municipal corporation

CENTRAL UNIFIED SCHOOL DISTRICT,
a California Public School

By: 
Scott Mozier
Director of Public Works

By: 
Michael Berg
Superintendent

ATTEST:
YVONNE SPENCE
City Clerk

By:  10/24/14
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  10/7/14
Mary Raterman-Doidge Date
Deputy City Attorney

Addresses:
City of Fresno
Attn: Scott Mozier
Department of Public Works
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-5300
FAX: (559) 488-1024

Central Unified School District
Attn: Hilbert Contreras
4605 N Polk Ave
Fresno, CA 93722
Phone: (559)
FAX: (559)

Attachments: Exhibit A

MRD:prn[64803prn/Agt] 05-16-14

EXHIBIT 'A'

APN: 442-022-15,
442-022-16,
& 442-022-17

All those portions granted to the CENTRAL UNIFIED SCHOOL DISTRICT per Grant Deeds recorded June 2, 2005 as Document No. 2005-0122024, 2005-0122025, and 2005-0122026, Official Records of Fresno County, situated in the City of Fresno, County of Fresno, State of California is more particular described as follows:

PARCEL 1

The South 253 feet of the North 932.79 feet of Lot 20 of Tract No. 1688, Victoria Colony, according to the map thereof recorded in Book 19 Page 30 of Plats, Fresno County Records.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, In, on, or thereunder, as reserved in Deeds of record.

PARCEL 2

The South 339 feet of the North.679. 79 feet of Tract No. 1688, Lot 20 of Victoria Colony, according to the map thereof recorded in Book 19 Page 30 of Plats, Fresno County Records.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, In, on, or thereunder, as reserved in Deeds of record.

PARCEL 3

Lot 20 of Tract No. 1688, Victoria Colony, according to the map thereof recorded in Book 19 Page 30 of Plats, Fresno County Records.

EXCEPTING THEREFROM the North 932.79 feet thereof.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, In, on, or thereunder, as reserved in Deeds of record.

Area contains: ±610,900 sq. ft. (±14.02 acres)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of FRESNO

On SEPTEMBER 26, 2014 before me, FREDERICK W. WONG, Notary Public

personally appeared MICHAEL BERG



who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Frederick W. Wong
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: UTILITIES AND OPSISE IMPROVEMENT AGREEMENT

Document Date: SEPTEMBER 10, 2014 Number of Pages: 12

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: MICHAEL BERG

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

SUPERINTENDENT OF
CENTRAL W. RIED SCHOOL DISTRICT

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____