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3/28/13

CITY OF FRESNO  
City Clerk's Office (Original)

**Memorandum of Understanding  
Between the City of Fresno and  
the Clovis Unified School District  
Regarding Property Use at Pinedale Community Center**

**SUBJECT: PROPERTY USE AT PINEDALE ELEMENTARY SCHOOL AND  
PINEDALE COMMUNITY CENTER**

**PURPOSE:**

The purpose of this Memorandum of Understanding (MOU) is to establish a framework for the City of Fresno (City) to continue to have the use of facilities located on certain real property within the Pinedale Elementary School Site owned by Clovis Unified School District (District) for a public swimming pool for the benefit of the Pinedale community, while allowing the District to regain use of certain of its adjacent real property to the north of the swimming pool.

**RECITALS:**

- A. Whereas, the District's Pinedale Elementary School is located on certain real property in the City of Fresno located at 7171 North Sugar Pine Avenue (School Property); and
- B. Whereas, the City owns and operates the Pinedale Community Center on a parcel of real property located at 7170 North San Pablo Avenue, and which is adjacent to the School Property, as shown on Exhibit 1, attached; and
- C. Whereas, certain portions of the Pinedale Community Center facilities, including a small playground and a public swimming pool, were constructed on a portion of the School Property, generally depicted as areas A and B on the attached Exhibit 1; and
- D. Whereas, the District desires to regain the use of a portion of the School Property which is occupied by the City's facilities, but is agreeable to allowing the continued operation and use of the swimming pool by the City; and
- E. Whereas the City desires to continue to use and operate the swimming pool, but is agreeable to returning the use of a portion of the School Property to the District.

THEREFORE, the City and District agree to the return of control of a portion of the School Property to the District, and the continued use and operation of the swimming pool by the City on the terms and conditions as follow.

**APPROVED BY CITY COUNCIL**  
March 28, 2013  
By Sherril S. Budutcher  
**DEPUTY**

## **MEMORANDUM OF UNDERSTANDING:**

1. The City will return use and control of the portion of the School Property north of the swimming pool and between the swimming pool and West Spruce Avenue, and generally depicted as area A on the attached Exhibit 1, to the District.
2. The District will relocate the pump house located on the School Property to a new location to be determined by the City, at no cost to the City.
3. The District will relocate the small playground (“tot lot”) located within the portion of the School Property to the north of the swimming pool (area A), or replace it with a comparable playground that complies with current standards, at a location within the Pinedale Community Center property that is approved by the City, at no cost to the City.
4. The City and District agree to negotiate a mutually convenient schedule for these relocation or replacement projects, with the removal of the pump house and tot lot from their current locations to be completed on or before June 10, 2013.
5. The District will relocate the gate entrance on the north side of the swimming pool to a location approved by the City at no cost to the City.
6. The District will provide adequate covering along the fence on the east side of the swimming pool to mitigate any debris that might otherwise find its way to the swimming pool.
7. The District grants the City a revocable license to continue to use the portion of the School Property occupied by the swimming pool, generally depicted as area B on the attached Exhibit 1, for a consideration of one dollar (\$1.00) per year.
8. This MOU shall be effective as of the date of execution by both parties, and shall be for a term of ten (10) years. This MOU may be extended for an additional term upon mutual agreement by the parties. This MOU may be terminated by either party for breach of any material provision herein, after the terminating party gives the other party thirty (30) days notice to cure and correct said breach. Should the City plan to discontinue its use of the School Property as a swimming pool, City shall provide written notice to District and the parties will discuss and agree upon terms to transition the School Property to another use or to return use to the District. Should the District require use of the School Property generally depicted as area B, the District will provide 90 days advanced written notice to the City and the parties will discuss terms to transition the use to the District.
9. The City and the District each acknowledge that the City is solely responsible for its use of the School Property, including the design, construction, reconstruction, repair, operation and

maintenance of the swimming pool, pump house, and the relocated or reconstructed tot lot. The City agrees to indemnify, defend and hold harmless the District and its board members, agents, officers and employees from and against any and all claims, demands, lawsuits or other proceedings, bodily injury, property damages, personal injury and other liabilities and damages, including attorney's fees and costs, related to its use of the School Property, the swimming pool, the pump house and the relocated or reconstructed tot lot, including the design, construction, reconstruction, repair, operation or use of the swimming pool, pump house or tot lot, or from any use of the School Property depicted as Area B on attached Exhibit 1, by any person, whether or not such use is authorized by the City. The indemnity, defense and hold harmless obligations herein set forth shall survive the termination of this MOU, including, but not limited to, termination for any actual omission, willful act or sole negligence in the performance or failure to perform its obligations under this MOU that occurred during the term of this MOU.

10. City, at its own expense, shall obtain and maintain in force during the term of this MOU comprehensive general liability insurance coverage in an amount not less than \$1,000,000.00 per occurrence for each bodily injury, property damage, and personal injury arising out of its alleged or actual omission, act or negligence in the performance or failure to perform its obligations under this MOU, with the District named as an additional insured party. Insurance coverage required under this MOU shall constitute primary coverage for any bodily injury, property damage and personal injury arising out of City's actual omission, willful act or sole negligence in the performance or failure to perform its obligations under this MOU. Neither the existence of any of the insurance coverage required under this MOU nor the minimum coverage limits specified herein with respect to any such coverage shall be deemed to limit or restrict in any way City's liability arising under this MOU.

11. All notices or other communications required or permitted under this MOU shall be deemed duly given if in writing and delivered personally or sent by a reputable overnight courier service (with package tracking capability) or certified mail, return receipt requested, first class postage prepaid, addressed as follows:

CITY OF FRESNO  
Bruce A. Rudd  
Assistant City Manager  
2600 Fresno Street, Room 2064  
Fresno, CA 93721

CLOVIS UNIFIED SCHOOL DISTRICT  
Steven D. Ward  
Associate Superintendent, Administrative Services  
1450 Herndon Avenue  
Clovis, CA 93611

12. This MOU represents the total and complete understanding of the parties. This MOU supersedes all previous memoranda of understanding and agreements made by and entered into between the parties. Any other oral understandings or other prior understandings shall have no force or effect. This MOU is intended to be comprehensive as an integrated agreement containing all of the understandings and contractual obligations of the parties regarding these issues.

13. City may not assign or delegate this MOU or any other interest herein or responsibility hereunder without the prior written consent of District.

14. If any provision of this MOU is as a matter of law unenforceable, then such provision shall be deemed to be deleted and this MOU shall otherwise remain in full force and effect.

15. Any matters of this MOU may be modified only by the written consent of the parties.

16. This MOU may be executed in counterparts such that the signatures may appear on separate pages. A copy, or an original, with all signatures appended together shall be deemed a fully executed agreement. Signatures transmitted by facsimile shall be deemed original signatures.

17. The language of all parts of this MOU shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

18. In the event of litigation arising out of this MOU, the MOU shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in Fresno County or in the Fresno Division of the Eastern District of California, respectively.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have executed this AGREEMENT to be effective as of the date of execution by both parties.

CITY OF FRESNO,  
a municipal corporation

CLOVIS UNIFIED SCHOOL DISTRICT

By: 

Bruce A. Rudd, Assistant City Manager

By: 

Steven D. Ward, Associate Superintendent  
Administrative Services

Date: 3/3/13

Date: 3/14/13

ATTEST:

YVONNE SPENCE/CITY CLERK

By: 

Title: Deputy

Date: 4/5/2013

APPROVED AS TO FORM

~~FRANCINE M. KANNE/INTERIM CITY~~  
~~ATTORNEY~~



Deputy City Attorney

Date: 4/4/13