

**AGREEMENT REGARDING PARKING  
FRESNO DOWNTOWN STADIUM PROJECT**

**PARTIES:**            **REDEVELOPMENT AGENCY  
OF THE CITY OF FRESNO,**  
a Public Body, Corporate and Politic (the "**Agency**")

**THE FRESNO DIAMOND GROUP, LLC**  
a California limited liability company ("**FDG**")

**THE CITY OF FRESNO** (the "**City**")

**RECITALS:**

1.        FDG, the Fresno Grizzlies, Inc., a California corporation, (the "Grizzlies") and the City have entered into a Sublease Agreement (the "Sublease"), dated the same date as this Parking Agreement, under which the City will construct a multi-purpose stadium in downtown Fresno and sublease it to FDG and the Grizzlies (the "**Stadium**").

2.        The City and the Agency own and operate public parking lots and garages, in the vicinity of the Stadium and the City operates on-street parking spaces.

3.        The use of the Stadium is dependent on the availability of safe, well-lit, and well-operated parking near the Stadium. There are few privately owned parking lots or garages near the Stadium, and they have insufficient capacity to meet the needs of the Stadium.

4.        The parties have determined that baseball and other events that will be held at the Stadium will occur most often in the evenings and on weekends, which are the times during which there is currently little demand for parking in downtown Fresno.

5.        This Parking Agreement sets out the terms and conditions under which the Agency and the City will make public parking lots, garages, and on-street parking spaces available for use by the Stadium's employees, players and visitors.

**AGREEMENT:**

The parties agree as follows:

**Section 1.    Definition of Stadium Parking Area.**

The area in which parking is to be provided under this Parking Agreement (the "**Stadium Parking Area**") is described in the attached Exhibit "A" and by this reference made a part hereof.

**Section 2. Definition of Public and Private Parking Spaces.**

(a) Lots and garages owned by either the City or the Agency are hereinafter referred to as "**Public Lots**". On-street parking spaces and parking spaces located in the Public Lots are hereinafter referred to as "**Public Parking Spaces**".

(b) Parking spaces located in lots or garages not owned by either the City or the Agency are hereinafter referred to as "**Private Parking Spaces**".

**Section 3. Definition of Other Significant Terms.**

The following terms, when used in this Parking Agreement, have the meanings set forth in this Section unless expressly provided to the contrary.

(a) "**Minimum Parking Spaces**" means the number of parking spaces within the Stadium Parking Area that is three thousand.

(b) "**Non-Stadium Parking Spaces Demand**" means the number of parking spaces within the Stadium Parking Area that are required for public use, other than for Stadium Events, during Peak Stadium Event Hours (Section 4(d) provides for the right of the City and the Agency to count Private Parking Spaces in determining the availability).

(c) "**Parking/Attendance Ratio**" means the number of parking spaces required in relation to the number of persons in attendance at a Stadium Event. The parties agree that until changed in accordance with the provisions of Section 4(c), the Parking/Attendance Ratio is 1:2.6, i.e., one parking space for each 2.6 people in attendance as customers or in any other capacity at a Stadium Event.

(d) "**Peak Stadium Event Hours**" means the period from 6:00 P.M., through midnight, on any day either FDG, the Grizzlies or City holds a Stadium Event.

(e) "**Season Parking Pass**" means a pass that admits the holder to an area designated for Season Pass Space(s) for any regular season home baseball game. (The Season Parking Pass, as defined, does not allow the holder to use the Season Parking Pass for concerts, exhibition baseball games, or Stadium Events other than regular season home baseball games).

(f) "**Season Pass Holders**" are those holders of passes to regular season home baseball games at the Stadium. (The passes held by Season Pass Holders do not allow the Season Pass Holder to use the Season Parking Pass for concerts, exhibition baseball games, or Stadium Events other than regular season home baseball games).

(g) "Season Pass Space(s)" means the parking space(s) in areas reserved for use by Season Pass Holders.

(h) "Stadium Event" means any baseball game, concert, soccer match, or other event held at the Stadium by either FDG, the Grizzlies or the City.

(i) "Stadium Event Parking" means parking by persons who are attending a Stadium Event as customers or in any other capacity.

(j) "Stadium Parking Hours" means the time beginning one hour before the scheduled start of the Stadium Event and ending one hour after the conclusion of the Stadium Event. (Section 8(h) provides for the City and Agency to use reasonable efforts to adjust Stadium Parking Hours to begin more than one hour before the scheduled start of certain Stadium Events).

#### **Section 4. City and Agency to Provide Parking Within Stadium Parking Area.**

(a) The City and the Agency will at all times during the term of this **Parking Agreement** use their best efforts to maintain within the Stadium Parking Area parking spaces at least equal to the Minimum Parking Spaces for Peak Stadium Event Hours.

(b) The parties expect that the Stadium and other redevelopment activity downtown will greatly improve the business vitality of the Downtown Area. The parties recognize that the success of the Agency's redevelopment effort requires that the City and the Agency have the freedom to use the Public Lots to their highest and best use, which may result in some of those Public Lots being redeveloped for office buildings, theaters, retail establishments, parking garages, hotels or other uses as designated by the Agency or City. The Agency and the City are not required to maintain or keep open specific Public Lots, but shall use their best efforts to provide the Minimum Parking Spaces at one or more locations within the Stadium Parking Area. It is understood by the parties herein that any failure of the City or Agency to supply Minimum Parking Spaces within the Stadium Parking Area during Peak Stadium Event Hours will not constitute a breach or default by City or Agency of this Parking Agreement.

(c) The Minimum Parking Spaces is calculated to provide sufficient parking spaces to accommodate the parking spaces demand for a Stadium Attendance of 7,800 persons at a Parking/Attendance Ratio of 1:2.6 ( $7,800/2.6 = 3,000$ ). The City, the Agency and FDG each shall have the right to redetermine the Parking/Attendance Ratio not more frequently than once in any calendar year by using statistically reliable methods and procedures. Any party electing to redetermine the Parking/Attendance Ratio shall inform the other parties before undertaking the work, shall meet and confer with them about the statistical method and procedures, and shall permit them to monitor and audit the collection of data and calculation of the results in accordance with the established statistical method and procedures. The Minimum Parking Spaces shall be adjusted upwards or downwards in accordance with the results obtained.

(d) The City and the Agency may count Private Parking Spaces within the Stadium Parking Area towards the Minimum Parking Spaces, if (1) the Private Parking Spaces are available for the purposes and at the times for which the City and Agency are to maintain available parking under this Parking Agreement and (2) the available Private Parking Spaces are available at charge not exceeding that allowed to the City and the Agency under Section 7 of this Parking Agreement.

#### **Section 5. Estimate of Necessary Parking for Stadium Events.**

(a) The parties agree that the City and the Agency are not required to open all of the Public Lots for all Stadium Events but will attempt to open sufficient Public Lots to meet the parking spaces demand for each Stadium Event based upon the attendance estimate for the Stadium Event.

(b) Promptly after the regular baseball season schedule is determined by the Pacific Coast League, but not later than the last business day of December in each year, FDG shall inform the City and the Agency of the date and time of all Stadium Events that are then known to FDG for the ensuing twelve month period and shall provide to the City and the Agency, FDG's then best estimate of the number of attendees expected for each such Stadium Event.

(c) As and when FDG makes changes in its schedule of Stadium Events, and as and when it revises its estimates of expected attendance, it will inform the City and the Agency of the changes in schedule and estimated attendance.

(d) The City and the Agency may use as a basis for their determinations of the number of Public Lots to be opened for each Stadium Event on the most recent attendance estimate provided to them at least forty-eight (48) hours before the beginning of the Stadium Event, taking into account the Parking/Attendance Ratio.

#### **Section 6. Quality Control.**

The City and the Agency agree that they will maintain their respective Public Lots and the pedestrian routes between them and the Stadium in a clean, well-lit and attractive manner and patrolled by police or other security personnel in sufficient numbers, in the judgment of the Agency and the City, to establish public confidence in the convenience of the parking and the personal safety of the users of the Public Lots and routes. In no event does the occurrence of any criminal activity within any of the Public Lots, or the perpetration of a criminal act or acts by an individual or individuals not the City, constitute a breach of this Parking Agreement by the City or the Agency.

**Section 7. Parking Rates.**

(a) The City and the Agency will charge the "**Stadium Event Parking Charge**" for all Stadium Event Parking.

(b) The Stadium Event Parking Charge will be \$5.00 per vehicle until changed in accordance with this Parking Agreement. (The City and the Agency will have the right to set a higher charge for busses and over-sized vehicles that occupy more than one normal passenger vehicle parking space.)

(c) The City and the Agency may decrease the charge in their sole discretion.

(d) The City and the Agency may increase the charge subject to the following limit: the charge for Stadium Event Parking may not be greater than the charge made for night time event parking at Public Lots for events at Selland Arena, Saroyan Theater and the Convention Center complex.

**Section 8. Season Parking Passes and Other Special Parking Needs.**

(a) Except for the requirements of this Section, none of the Public Parking Spaces within the Stadium Parking Area are required to be set aside for the exclusive or preferential uses of the Stadium's employees, players or customers.

(b) Subject to the provisions of this paragraph for later adjustments and notwithstanding any other provision of this Parking Agreement to the contrary, at least eight hundred (800) Public Parking Spaces shall be designated and reserved for use by Season Pass Holders. The spaces reserved for Season Pass Holders shall be those having closest proximity to the Stadium, and to the extent that it is feasible to do so, shall be in Public Lots that are reserved solely for Season Pass Holders. During all regular season home games occurring outside Peak Stadium Event Hours, the Season Parking Pass may be used in any available Public Lot. During all regular season home games occurring during Peak Stadium Event Hours, the Season Pass Space(s) shall be reserved for use by Season Pass Holders. The number of Public Parking Spaces set aside for Season Pass Holders will be reviewed and adjusted from time to time to take into account additional demand for and underutilization of such spaces.

(c) The price for a Season Parking Pass shall be the product determined by multiplying the Stadium Event Parking Charge times the number of regular season home games times the utilization rate, rounded to the nearest whole dollar. The utilization rate for the first baseball season shall be 0.6 (60%). For example, using the unadjusted Stadium Event Parking Charge and the current number of regular season home games, the price for a Season Parking Pass would be \$216.00 calculated as shown here:

$\$5.00 \times 72 \text{ home games} \times .60 = \$216.00.$

The parties recognize that many Season Pass Holders will not attend all home games, and that the intention is that the average price per actual use paid by Season Pass Holders will be approximately the same as that paid by occasional visitors. The City, the Agency and FDG each shall have the right to establish a statistically reliable procedure for determining the actual utilization rate in any one or more baseball seasons. Any party electing to test the utilization rate shall inform the other parties before undertaking the test and permit them to monitor and audit the collection of data and calculation of the results in accordance with the established procedure. If the utilization rate is recalculated as described in this paragraph, it shall be applied to the next regular baseball season for which Season Parking Passes have not already been put on sale and to all subsequent years until the utilization rate is re-determined in accordance with this paragraph.

(d) FDG shall cause the Season Parking Passes to be printed and serially numbered at FDG's expense, and shall cause the printer to deliver all of the Season Parking Passes to the City. FDG shall design the Season Parking Passes, but such design shall be subject to the approval of the City, which approval may not be unreasonably delayed or withheld. Season Parking Passes will be released by the City to FDG upon payment for them.

(e) The City and the Agency agree to allow free parking for game officials (umpires, referees, etc.) and other event staff and media, not to exceed 200 Public Parking Spaces per Stadium Event. These parking requirements may be met by the reservation of on-street or off-street parking locations or by the issuance of parking passes useable at one or more Public Lots. The location(s) of the reserved parking spaces shall be determined by the City after consultation with FDG and shall, to the extent practicable, take into account FDG's recommendations and suggestions. If parking passes are issued, they shall be printed by FDG, delivered by the printer to the City, and issued by the City to FDG in reasonable increments and subject to such reasonable rules concerning accounting for their distribution and use as the City may establish.

(f) If the City or the Agency offers monthly or other periodic parking passes for daily parking use of Public Lots, they shall make them available to FDG for its employee and staff parking needs at the most favorable price at which they are offered to other users.

(g) The City and the Agency recognize that Public Lot 6A ("Lot 6A"), which abuts the Stadium site, may be needed for use by the Stadium in staging concerts and other special events. Subject to Section 4(b) for Public Lots, the City and the Agency shall reserve Lot 6A for FDG's use for special event staging for reasonable periods of time, taking into account other public needs. Lot 6A shall be reserved for FDG's use for all Stadium Events occurring during Peak Stadium Event Hours. No charge shall be imposed for use of Lot 6A. The Public Parking Spaces in Lot 6A are included in the 200 free Public Parking Spaces in paragraph (e) of this Section. In the event that Lot 6A becomes unavailable in accordance with Section 4(b), the City and the Agency will use their best efforts to work with FDG to find an alternative

location(s) for special event staging.

(h) It is understood that Stadium attendees will arrive earlier than usual for certain Stadium Events such as sold-out Stadium Events and promotions dates such as hat day, bat day and other Stadium Events when favors are provided to a limited number of attendees who arrive first. If FDG provides adequate advance notice to the City and the Agency of the occurrence of any such Stadium Event, City and Agency will make a reasonable effort to adjust the Stadium Parking Hours for one or more of the Public Lots to accommodate the needs of the attendees.

#### **Section 9. Operational Agreements.**

(a) The term of this Parking Agreement shall commence upon its execution and shall expire upon the expiration or termination of the Sublease.

(b) FDG will give notice to the City and the Agency in accordance with this Parking Agreement of any Stadium Event for which the attendance is expected to be less than 500 persons or for which the attendance is expected to be at least 500 persons but for which the parking is not expected to require all of the Public Parking Spaces to be made available. At City and Agency's sole discretion, the Special Event Parking Charge need not be collected for Stadium Events for which the attendance is expected to be less than 500 persons.

(c) The City and the Agency shall meet and confer with FDG and consider the views of FDG in all matters within the City and the Agency's authority and discretion under this Parking Agreement before the City and the Agency exercise their authority or discretion. This meet and confer requirement will not apply to City or Agency actions related to the determination of what specific Public Lots are necessary to accommodate parking for any given Stadium Event.

#### **Section 10. Entire Understanding.**

This Parking Agreement expresses the entire understanding and all agreements of the parties hereto with each other concerning its subject matter and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth herein or incorporated herein by reference. This Parking Agreement may be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Parking Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Parking Agreement.

#### **Section 11. Execution in Counterparts; One Instrument.**

This Parking Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**Section 12. Notices.**

Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first class mail, postage prepaid (return receipt requested), overnight courier or facsimile transmission (where receipt of such facsimile transmission is confirmed by the recipient thereof and where a copy of such facsimile transmission is provided to the recipient via first class mail) and addressed as follows; notices shall be deemed effective upon receipt:

If to the City, addressed to:                      City Manager  
CITY OF FRESNO  
2600 Fresno Street  
Fresno, California 93721

If to the Agency, address to:                      Executive Director  
REDEVELOPMENT AGENCY  
OF THE CITY OF FRESNO  
2344 Tulare Street, Suite 200  
Fresno, California 93721

If to FDG, addressed to:                              President  
FRESNO DIAMOND GROUP,  
LLC  
700 Van Ness  
Fresno, California 93721

Each party may from time to time by notice in writing to the other designate a different address or addresses for notice hereunder.

**Section 13. Further Assurances.**

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by any other party in order to give full effect to the Parking Agreement. Each party, in order to carry out his Parking Agreement, shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of the Parking Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

**Section 14. Binding Effect.**

This Parking Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder.

**Section 15. Amendments.**

Neither this Parking Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by each of the parties hereto.

**Section 16. Actions of the City in its Governmental Capacity.**

Nothing in this Parking Agreement shall be interpreted as precluding the City or Agency from enforcing the provision of Applicable Law of otherwise limiting the rights and obligations of the City or Agency in its governmental or regulatory capacity.

**Section 17. Severability of Agreement.**

If any term or provision of the Parking Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Parking Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Parking Agreement. If any provision or part thereof of this Parking Agreement is stricken in accordance with the provisions of this Section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

**Section 18. Ambiguities.**

Each party and its counsel have participated fully in the review and revision of this Parking Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Parking Agreement. The language in this Parking Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**Section 19. Waiver.**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provision of this Parking Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**Section 20. Headings.**

The headings in this Parking Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Parking Agreement nor affect any of the rights or obligations of the parties to this Parking Agreement.

**Section 21. Relationship of Parties.**

The City, the Agency and FDG are independent contracting parties and no relationship between them as employer and employee, partners, joint ventures or otherwise shall be created by this Parking Agreement. Neither the City nor the Agency shall be responsible or liable for the payment of any contributions or taxes for Social Security, Workmen's Compensation Insurance, Unemployment Insurance, or retirement benefits, pensions or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by FDG. Nothing in this Section 21 is intended to create any third party reliance between the City or the Agency and any third party or FDG and any third party.

**Section 22. Assignment.**

Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or part of its rights, duties, or other interests in this Parking Agreement or the proceeds thereof (collectively, "**Assignment**"), without the other party's prior written consent. Any attempt to make an Assignment in violation of this provision shall be a material default under this Parking Agreement and any Assignment in violation of this provision shall be null and void. Notwithstanding the foregoing, FDG may assign this Parking Agreement to any person to whom FDG has properly and lawfully assigned the Sublease.

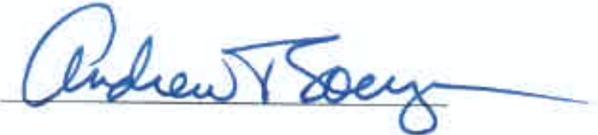
IN WITNESS WHEREOF, the Parties have caused this Parking Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

**REDEVELOPMENT AGENCY OF  
THE CITY OF FRESNO**

By: 

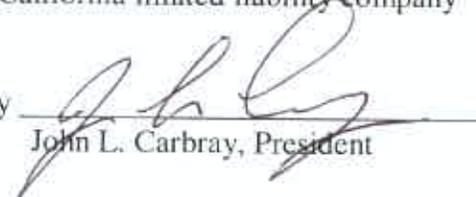
Daniel R. Fitzpatrick,  
Executive Director

**CITY OF FRESNO**

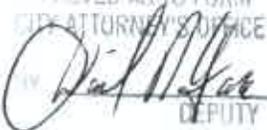
By: 

Name: Andrew T. Souza  
Title: Interim City Manager

**FRESNO DIAMOND GROUP, LLC,**  
a California limited liability company

By:   
John L. Carbray, President

By:   
Diane M. Engelken, Secretary

APPROVED AS TO FORM  
BY ATTORNEY'S OFFICE  
  
DEPUTY

DPH:cs[ 12375es/agt.7]-09/20/00

EXHIBIT "A"

STADIUM PARKING AREA

That area bounded by Tuolumne on the north, "M" Street on the east, Venture on the south, and "G" Street on the west.