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6/27/13

**TRI-PARTY AGREEMENT BETWEEN
CITY OF FRESNO, HOUSING AUTHORITY AND
FRESNO UNIFIED SCHOOL DISTRICT
RELATING TO THE JOINT USE OF
VIKING ELEMENTARY GREENSPACE**

CITY OF FRESNO
City Clerk's Office (Original)

This Agreement is made and entered into as of this 27th day of June, 2013, between the City of Fresno, a municipal corporation (the "City"), the Fresno Unified School District, a public school district (the "District"), and the Housing Authority of the City of Fresno, a public entity (the "HACF").

RECITALS

- A. The District is authorized by California Education Code Section 10910 to allow use of District properties by other public authorities for community recreational purposes.
- B. Conditioned upon the occurrence of the "Condition Precedent" specified herein, City, District, and HACF hereby desire to expand the overall capacity for utilization of District green space at Viking Elementary for use by the HACF and City residents, to facilitate community recreational uses and to authorize the City and HACF residents to make use of such facilities in accordance with the terms of the license granted in this Agreement. The "Viking Fields" subject to this license are more particularly detailed on the attached Exhibit A.
- C. City has an objective of, where feasible, using school sites for community use and to maximize the efficient use, maintenance, and supervision of public facilities, which such objectives are met by this Agreement.
- D. The use of Viking Fields is consistent with and supportive of the applicable Plan designations, findings and determinations including that the Project will further and

facilitate public and community recreational uses per joint use relationships with school districts. The Project is further consistent with all applicable Plan policies, and with the applicable zoning designation, and related zoning regulations.

E. The use of Viking Fields also will cause the enhancement of under-utilized school district property to more effective and viable uses; will improve the aesthetics and appearance of the Project area and the surrounding area; and will contribute to improved opportunities for public and community recreational activity in the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree as follows:

1. **Acknowledgement of Recitals and Definitions.** All the foregoing recitals are true and correct and incorporated herein by this reference as though fully set forth herein.

a. Definitions.

- 1) The term ““Base Maintenance and Vandalism Costs” means the amounts reasonably determined by the District as the annual costs incurred by the District in its present maintenance of the Viking Fields, including resolution of the costs of vandalism events. The amount as determined by the District, in its sole discretion, is as detailed on Exhibit B.
- 2) The term “District Use” shall mean District’s Educational Program and Related School Activities. For purposes of this Agreement, the

term "Educational Program and Related School Activities of the District shall mean "an activity that is organized and administered by the District, including but not limited to, athletic games/meets, drama, carnivals, district community meetings, District meetings, requests from other schools within the district, and the like, but excluding use of the facilities by nonprofits, leagues, and other community groups".

- 3) The term "Community Use" shall mean use by community groups and organizations scheduled through the District.
- 4) The term "General Public Use" shall mean unscheduled use by the general public that is not a programmatic activity of the District, the HACF or the City.

2. **Grant of License.** Conditioned upon the occurrence of the Condition Precedent defined in Section 4 below, in consideration of the HACF and the City's contributions as set forth hereunder, District hereby grants the HACF and the City a no fee license (the "License") to use the Viking Fields. The term of the License (the "License Term") shall initiate upon the occurrence of the Condition Precedent (the "Effective Date"), and shall continue for a term that will expire ten (10) years following its Effective Date. However, the parties hereto may terminate this Agreement; in their sole and absolute discretion, at any time during the term of this Agreement by providing written notice to all parties specifying an effective termination date at least ninety (90) days from the date of notice. The License is limited to use of the Viking Fields for general public use, as further detailed below. The priority of use of the Viking Fields is as follows:

- a. Priority of Use. The priority of use for Facilities shall be as follows:
 - 1) District Use activities and programs;
 - 2) Community Use by community groups and organizations, whose use shall be scheduled through the District; and
 - 3) General Public Use not scheduled and not a programmatic activity of the District, City, or HACF.

b. General Public Uses. The District commits to regularly make available to the general public on an unscheduled basis, use of its Viking Fields, in circumstances where such use does not conflict with organized activities of the District or scheduled community group activities. The District agrees to make such facilities available to the general public on a daily basis, from after school until dusk, or later, as provided below. After school use will be permitted so long as it does not interfere with normal school activity and/or use by afterschool programs. District will provide access to Viking Fields from 9 a.m. to dusk on weekends.

3. Obligations of the Parties.

a. Downtime for Maintenance. Downtime is required to maintain the condition of Viking Fields. Activities cannot be scheduled at the sites during this maintenance period. The District shall be responsible for notifying the City and HACF of the estimated downtime maintenance schedule a minimum of 14 days in advance.

b. HACF Maintenance Obligations.

- i. HACF shall pay to District, on a quarterly basis, the amount by which expenses incurred by the District for maintenance and vandalism resolution

activities for the Viking Fields exceeds one-fourth (1/4) above and beyond the Base Maintenance and Vandalism Costs.

ii. HACF shall further be responsible to address, in an immediate fashion, and in a manner otherwise reasonably directed by the District, the cleanup of the Viking Fields that would otherwise render the Viking Fields unusable for its intended purpose in support of the Viking school site, in those instances where the District reasonably determines that such event of vandalism (an "Extraordinary Vandalism Event") was associated with a Community Use or a General Public Use. In the case of an Extraordinary Vandalism Event associated with a Community Use or a General Public Use, HACF shall be responsible for the costs of repair and/or replacement of the vandalized components of Viking Fields up to \$500,000. In addition, HACF shall be responsible for unlocking and locking all gates to the Viking Fields for the hours specified for General Public Use.

iii. If the District is unable to provide personnel to address the maintenance activities described in (i) above, the District shall contract for such services and the additional costs associated with any contracting activities shall be considered maintenance expenses that are above the Base Maintenance and Vandalism Costs.

iv. HACF shall provide for the installation and for the regular maintenance of a sufficient quantity of portable restroom facilities at the Viking Field to address the demands of the public use. HACF shall be responsible to lock and unlock the portable restroom facilities so they are available during General Public Use only.

c. City shall, at its sole cost and expense, patrol the Viking Field in the same fashion as it patrols City owned parks that are open to public use.

4. **Condition Precedent to Effective Date of License Term.** The Condition Precedent to the Effective Date of the License Term is the satisfaction of all conditions precedent necessary to obtain tax credit financing, together with such other fundings, as shall be necessary by HACF to conduct the modernization of the 40 units of residential units owned by HACF and commonly referred to as the Viking Village, which modernization project is anticipated to cost approximately Seven Million Dollars (\$7,000,000.00). The Condition Precedent shall be satisfied and the Effective Date will commence concurrent with the delivery by HACF to the District of a written notice certifying that the Condition Precedent has been satisfied, together with reasonable documentation reflecting HACF entitlement to the use of fundings associated with the tax credit financing, conditioned solely upon construction activities associated with the modernization project described in such tax credit applications filed by HACF.

5. **Indemnification.**

a. **City and HACF Indemnification.** As authorized by Government Code Section 895.4, during the License Term, City and HACF shall jointly and severally indemnify, save and hold harmless the District, its officials, officers, agents, employees, and volunteers against any and all claims, causes of action, liability, suits, judgments and expenses, including reasonable attorneys fees and costs, for death or injury to persons, or loss of or damage to property, arising or alleged to have arisen directly or indirectly from: (a) active or passive negligent acts or omissions, or intentional acts (other than willful misconduct), of the City or HACF, their officials, officers, agents, employees or volunteers in the performance of this Agreement; or (b) use of the Viking Fields by the City or HACF or their authorized users or invitees. Nothing herein shall

constitute a waiver by City or HACF of governmental immunities including California Government Code Section 810 et seq.

In the event of concurrent negligence on the part of the City and HACF, as between City and HACF, the liability for any and all such claims demands, and actions in law or in 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. Notwithstanding the foregoing, City and HACF shall be jointly and severally liable to District for the contractual indemnity obligations established by this provision.

b.. District Indemnification. As authorized by Government Code Section 895.4, during the License Term, District shall indemnify, save and hold harmless the City and HACF, their officials, officers, agents, employees, and volunteers against any and all claims, causes of action, liability, suits, judgments and expenses, including reasonable attorney's fees and costs, for death or injury to persons, or loss of or damage to property, arising or alleged to have arisen directly or indirectly from: (a) active or passive negligent acts or omissions, or intentional acts (other than willful misconduct), of District, its officials, officers, agents, employees or volunteers in the performance of this Agreement; or (b) use of the Facilities by the District or its authorized users or invitees (other than City, HACF and their authorized users or invitees). Nothing herein shall constitute a waiver by District of governmental immunities including California Government Code Section 810 et seq.

c. In the event of concurrent negligence on the part of the District, on the one hand, and City and/or HACF on the other hand, the liability for any and all such claims

demands, and actions in law or in 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.

d. This section shall survive termination or expiration of this agreement.

6. **Insurance.** The City and HACF, their officials, officers, agents, employees, and volunteers shall be added as an additional insured on the District's general liability coverage throughout the term of this Agreement. The District, its officials, officers, agents, employees, and volunteers shall be added as an additional insured on the HACF liability coverage throughout the term of this Agreement, and as an additional insured on the City's excess coverage policy throughout the term of this Agreement. In addition, District shall provide in its bidding materials that the City and HACF shall be named as an additional insured under all policies of liability insurance that District requires to be provided by any contractor or service provider engaged by District with respect to any work to be performed on or for the benefit of Viking Fields.

7. **Independent Contractors.** The parties are acting as independent contractors. Neither party, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of the other for any purpose. Each party shall retain as program income any and all income generated by its respective use hereunder.

8. **Attorneys 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.

9. **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 or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on

[remainder of page intentionally left blank]

the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

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

CITY OF FRESNO

By: [Signature]
Print Name: Gene Smith
Title: Asst. City Manager

FRESNO UNIFIED SCHOOL DISTRICT

By: [Signature]
Print Name: Ruth P. Quinto
Title: Deputy Superintendent / CFO

FRESNO HOUSING AUTHORITY

By: [Signature]
Print Name: Preston Prince
Title: CEO/Executive Director

ATTEST:
YVONNE SPENCE, CMC
CITY CLERK
By: [Signature]
Deputy 7/2/13

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
[Signature]
DEPUTY
KATHERINE B. DOERR

Exhibit A – Viking Fields



Exhibit B - Base Maintenance and Vandalism Costs

School Year	Vandalism Cost (Vandalism types graffiti, playground, & broken windows)	Routine Maintenance Cost (Maintenance of grounds, irrigation, playground, benches & etc.)
09-10	\$9,082.19	\$12,047.47
10-11	\$4,296.29	\$9,308.92
11-12	\$7,387.43	\$33,384.56*
12-13 (to date)	\$7,772.36	\$17,329.94
Base Costs	\$7,100,000	\$12,500.00

*excluded from average