

**COST SHARING AGREEMENT BETWEEN MERCED UNION
HIGH SCHOOL DISTRICT
AND
CITY OF MERCED**

This Cost Sharing Agreement (“Agreement”) is entered into as of _____, 2008, (Effective Date”) by and between the MERCED UNION HIGH SCHOOL DISTRICT (“District”) and the CITY OF MERCED (“City”). District and City may hereinafter collectively be referred as the “Parties,” or individually be referred to as “Party.”

RECTIALS

WHEREAS, District is planning a high school site to be located at the southwest corner of Gerard Avenue and Tyler Road, Merced, and commonly known as the Tyler and Gerard High School Site (the “School Site”), a description of which is attached hereto as **Exhibit “A”** and incorporated herein by this reference; and,

WHEREAS, City of Merced has purchased 38.9 acres at the southwest corner of Mission Avenue and Tyler Road for the purpose of developing a South Merced Community Sports Park “CP-42, starting with a site master plan and phase I development including seventeen (17) acres of joint use facilities, a description of which is attached hereto as Exhibit “A” lots 208 and 209, also known as APN 259-130-017; and,

WHEREAS, City’s 2004 adopted Park and Open Space Master Plan includes a regional sports park with facilities needed by both City and District including; 6-8 soccer fields, baseball and softball fields, restrooms, hard surface sports courts, amphitheater, parking, children’s play areas, trails/pathway systems, group picnic areas, concessions, water spray park, tables, benches, bike racks, drinking fountains, trash receptacles, and large fast-growing trees; and,

WHEREAS, the Parties agree that public recreation is important and necessary for the development of good citizenship and the promotion, as well as the preservation, of the health and general welfare of the residents of the District and City; and,

WHEREAS, the Parties are willing to collaborate on the construction, operation and maintenance of certain areas of permanent soccer fields, baseball fields, softball fields, and parking for 200 cars; and

WHEREAS, the Parties agree the District shall seek State of California, Type I Joint-Use Project Funding in accordance with Education Code section 17077.40, et seq.; and,

WHEREAS, the Parties intend to pay for and share the total estimated cost of the Facilities in accordance and consistent with the Preliminary Cost Estimate attached hereto as Exhibit "E" and incorporated herein by the references; and,

WHEREAS, the Parties desire to set forth their respective rights, duties, obligations and procedures in regards to the construction of the Facilities.

NOW, THEREFORE, for the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Incorporation of Recitals. The Parties hereby acknowledge and agree that the RECITALS above are true and correct, and are incorporated into this Agreement.

Section 2. Conditions Precedent.

- 2.1 This Agreement is contingent upon all of the following conditions precedent:
- 2.2 Each Party obtaining and committing its share of the funding for the park master plan by November 30, 2008; and its share of funding for construction, land allocation, off-site improvements, furniture, fixtures, equipment, soft costs, and contingencies for development of related facilities as described above by January 1, 2010 in accordance and consistent with the Preliminary Cost Estimate attached as **Exhibit "C"** hereto;
- 2.3 District's Board and Merced City Council approving the plans specifications, and construction of the Facilities as generally illustrated in **Exhibit "B"** attached hereto.

Construction documents for phase I completed by October 2010 prepared by the City will describe this work and will be available for District review.

- 2.4 City's substantial completion of the park improvement of parking lot, playfields, and courts, by October, 2012; and District's substantial completion of school by the end of 2017.
- 2.5 In the event one or more of the conditions precedent stated in Section 2.1 is not satisfied, then this Agreement shall automatically terminate and the Parties shall enter into good faith negotiations in order to renegotiate the terms of a new joint use agreement concerning the Facility contemplated herein.

Section 3. Special Requirements.

- 3.1 The Parties acknowledge the incorporation of the California Education Code, including without limitation the provisions of Education Code sections 17077.40, *et seq.*, requiring the Parties commit to provide the appropriate joint use services consistent with the intent of this Agreement.
- 3.2 The Parties acknowledge and agree that (1) as to any of its employees or volunteers working at the School Site, each Party must comply with Education Code sections 44830.1, *et seq.*, or 45125.1, *et seq.*, as appropriate, regarding employment of felons convicted of a violent or serious felony; and (2) as to any person or entity contracting with a Party to provide "school site services" as that term is used in Education Code sections 45125.1 and 45125.2, that Party will comply and require that person or entity comply with all the requirements pursuant to said sections, regarding fingerprinting and criminal history background check requirements of employees providing school site services; and pupil safety requirements as to construction and contractors for on site work.
- 3.3 No one shall be permitted to use alcohol, tobacco or any illegal drugs at the School Site or Facility at any time.

- 3.4 The safety and security of District students and staff are of the utmost importance. Therefore, use of the Facility during school hours will be limited to use by students, teachers, and other District staff. The use of the Facility by City will take place when school is not in session and will be governed by District's Board policies and administrative regulations regarding facilities use and by this agreement.

Section 4. Facility Management. The Parties designate the City Manager and District Superintendent as responsible for oversight of the Facility. Such oversight shall include:

- 4.1 Preparation and submission of the annual operating budget to the Parties for approval.
- 4.2 Development and implementation of policies and procedures to facilitate the operation of the Facility. In no event shall any established policies and procedures conflict with any express provision of this Agreement or conflict with any governing rules, regulations, procedures or policies of either District or City.
- 4.3 Construction Observation. The **City Manager and District Superintendent** shall monitor the construction of the Facility as well as its ongoing condition and operation and keep the Parties informed of the status of each.

A Cost Sharing Agreement between the Parties pertaining to certain duties and obligations as to the construction of the Facility, including but not limited to cost sharing and a payment schedule, is attached as **Exhibit "E"** to this Agreement.

- 4.4 The City Manager and District Superintendent are hereby authorized to delegate their authority in such manner as mutually agreed upon.

Section 5. Grant of License. District hereby grants a license to City and the City grants a license to the District to use the Facility in accordance with the terms of this Agreement. City shall prohibit participation by any person who, on any prior occasion, caused substantial damage to the Facility or whose prior

activities have resulted in a disturbance of the peace or have resulted in actions contrary to law or District policy or regulation.

Section 6. Disaster Relief Area. In the event any federal, state or local government agency determines a state of emergency in which the School Site and/or the Facility is designated or determined to be a “disaster relief area,” the Parties acknowledge and agree that this Agreement, including any and all rights hereunder, are suspended until a reasonable time following the removal of such designation or determination of a “disaster relief area.”

Section 7. Use of Facility by District and City. Use and operation of the Facility shall be on a shared basis between District and City, and to that end, the following shall apply:

7.1 Scheduling. District and City agree that the City shall be responsible for and maintain the master schedule for the Facility.

Representatives from District and City shall submit their respective scheduling requests by March 1 (for uses between June through October), on June 1 (for uses between November and February) and November 1 (for uses between March and June).

Once District’s use schedule has been submitted, all requests for additional usage shall be coordinated through City.

7.2 Times Assigned to City. Notwithstanding anything to the contrary herein, the Parties acknowledge and agree to the Guaranteed Use Times For City of Merced Programs attached hereto as **Exhibit “D”** and incorporated herein by this reference.

Any schedules of use pertaining to the Facility shall be consistent with said Guaranteed Use Times For City of Merced Programs, or as mutually agreed upon in writing by the Parties.

City may request use of the Facility in addition to its assigned times, by arrangement with District. Any such use shall be scheduled and supervised so as to avoid the co-mingling of students and the general public.

7.3 Times Assigned to District.

District is assigned use of the Facility on school days during school hours, as well as all hours which are not already assigned to the City, as described in Section 7.2 and **Exhibit “D”** of this Agreement.

7.3.1 During certain times of the year, District may request to use the Facility during times assigned to the City. District will anticipate such uses in advance and submit requests to the City, as outlined in Section 7.1.

District requests for practices and other activities during the City’s assigned time periods will be considered by City on a space available basis.

City’s request for practice and other activities during the District’s assigned time periods will be considered by District on a space available basis.

7.3.2 Interscholastic Competition. District shall advise City sixty (60) days prior to any regularly scheduled interscholastic competition, which may extend into the City’s assigned use times.

City will make every attempt to accommodate District interscholastic competitions when notice is given to City sixty (60) days prior to the proposed event.

If interscholastic competition events are unavoidably rescheduled, or in the case of special games or competitions such as playoff contests or league championships, District will advise City as soon as it has notice of the events.

When City is notified by District of a proposed interscholastic competition less than sixty (60) days prior to the date requested, City will meet with District and consider the request.

7.4 Disruption of Use. Both District and City recognize the need to plan and schedule programs with as much

foresight as possible so as to minimize the unanticipated re-scheduling or disruption of activities once they are publicized and agree to keep such unexpected disruptions to a minimum.

- 7.5 Supervision and Control of Facility. Each of the Parties to this Agreement is responsible to provide security, supervision, and control during its respective assigned periods and in and around its respective assigned areas or when each Party is permitted to use the Facility and adjacent grounds such as parking areas during the guaranteed use hours of the other Party.

District and City shall each provide at least two (2) phone numbers to the contact representatives, for notification in the event of an emergency. Consistent with Section 28 of this Agreement, City will provide at least two emergency contact phone numbers to the District Director of Maintenance; District will provide at least two emergency contact phone numbers to the City Director of Parks and Community Services.

Section 8. Public Use of the Facility.

Use of the Facility shall continue to be regulated by the Civic Center Act.

- 8.1 Availability of Facility. Once District and City schedules are established, any remaining time shall be made available for public and/or private use. All such requests shall be submitted in writing on mutually acceptable forms to City for review and approval and added to the master schedule. All public and/or private use reservations of the Facility shall use the *Use of Facilities* form of City.

The Parties will ensure that renters adhere to all District policies, such as safety requirements, liability waivers, and insurance requirements.

Copies of forms for use of the Facility submitted to the City by public and/or private groups shall be provided to District Director of Maintenance on a monthly basis.

- 8.2 Policies and Fees. District and City shall mutually develop policies and parameters for determining priorities of use for all public and/or private reservations, including fee schedules. All use fees for those hours designated to City shall be collected and retained by City.

All collection fees will conform to the laws governing school grounds and those, which are applicable to the City's property. In the event of conflict between laws governing school grounds and those applicable to City property, the laws governing school grounds shall prevail.

- 8.3 Facility Attendant. City shall provide a building attendant who will remain on-site during the times the Facility is used by all non-District users. The costs for such attendant shall be included as part of the Facility Use Fees paid by all public and/or private uses.

Section 9. Maintenance of Facility.

- 9.1 Responsibility for Maintenance. City shall be responsible for the safety, security, and operations of the Facility located on City property, including the performance of all maintenance:

9.1.1 the landscaping, mowing, edging, parking, paving, lighting, fixtures and preventive maintenance

9.1.2 refuse and litter removal

9.1.3 all necessary utilities

9.1.4 the wages and salaries of any employees, contractors, or consultants used to maintain the Facility.

City shall perform any other maintenance deemed necessary and appropriate by District and City, and as approved by the City Manager and District Superintendent. District and City shall contribute to these expenses in a manner consistent with Section 10 of this Agreement.

9.2 Maintenance Scheduling. In performing its maintenance responsibilities, District will use its best efforts to minimize interference with City's scheduled use of Facility and notify City when such scheduled maintenance activity will be performed. It is recognized that some odd or unusual hours may be required of maintenance personnel.

If deemed necessary, City may require that the Facility be closed for annual maintenance or necessary repairs within a time frame mutually agreed upon by District and City. During this time, neither District students nor the general public will be permitted to be within the Facility.

9.3 Emergencies. In the event of an emergency or imminent safety hazard, including without limitation, earthquakes, fires, flooding or other similar events, District or City may perform non-scheduled repair or maintenance work at the Facility without prior notification. District or City shall notify each other of such emergency work within a reasonable time.

Section 10. Maintenance and Operation Funding. Each year of this Agreement, District and City shall budget for and expend any moneys necessary and appropriate to the performance of the maintenance and operation of the Facility.

10.1 Proportionate Share Formula shall be 47% District and 53% City as attached hereto as **Exhibit "D"** attached hereto.

Notwithstanding anything to the contrary herein, the Parties acknowledge that proportionate share will be determined with consideration to parking lot, playfield area and time assigned, as described below.

The proportionate share formula may be revised throughout the term of the Agreement as mutually agreed upon in writing by the Parties.

10.1.1 Playfield area and parking facility: the Facility will be 17 acres of the 39-acre city park, or 43.6 percent.

10.1.2 Time Assigned: The Parties acknowledge the Guaranteed Use Times for the District and the City of Merced Programs as attached hereto as **Exhibit “D”** and incorporated herein by this reference. The District’s time assigned to the portion of the Facility on City property equates to 33 % of the total available hours.

10.2 Maintenance. District and City shall each pay a proportionate share of the maintenance, repair and replacement costs required for the Facility such as:

10.2.1 mowing, fertilizing, herbicide treatment, aerating, spot leveling and striping; including materials and labor of employees, contractors, or consultants required.

10.2.2 maintenance and repair of all Facility electrical, plumbing, mechanical components, including materials and labor of employees, contractors, or consultants required.

10.2.3 the Facility exterior and any related security systems, landscaping, paving, resurfacing, painting, lighting, fixtures, preventive maintenance, including materials and labor of employees, contractors, or consultants required.

The City’s and District’s proportionate share of these expenses will be determined by applying the playfield areas and parking time assigned formula, as described in Section 10.1 of this Agreement and **Exhibit “D”**.

Example:

Invoice amount for Facility maintenance, repair or replacement: \$1,000.00

\$1,000 multiplied by 47% = District \$470.00

\$1,000 multiplied by 53% = City \$530.00

District's proportionate share of \$1,000 invoice = \$470.00

10.3 Operations and Utilities. District and City shall each pay a proportionate share of the applicable operations and utilities costs for the Facilities.

10.3.1 Water and Sewer. District and City shall pay proportionate shares of City and District use for Facility water and sewer operating expenses, during the term of this Agreement.

10.3.2 Refuse Disposal. District and City shall pay proportionate share of City and District use for Facility refuse disposal-operating expenses, during the term of this Agreement.

10.3.3 Other expenses which are routine in nature and necessary to the operations of the Facilities may be submitted to City on a case by case basis and subject to approval of District and City. In general, the proportionate share described in Section 10.1 of this Agreement will apply, except by mutual consent.

10.4 Damages Resulting from Negligence. District and City shall be solely responsible for the cost of repairing any damage to the Facilities resulting from its own negligence or misuse or that of its respective users. District and City shall be solely responsible for the cost of non-routine custodial expenses, including overtime costs, resulting from its own negligence or misuse or that of its respective users.

10.5 Reimbursement of Applicable Expenses.

Either Party shall make reimbursement to the other when presented with an itemized invoice from the party showing the actual expenditures. Such invoices will include copies of timecards or other related backup, as requested by City or District. District or City shall

present such invoice quarterly, and District or City as appropriate shall make payment within sixty (60) days from the date of presentation.

10.6 Reimbursement for Disruption of City Use.

In the event that City usage is disrupted for school-related activities by five percent or more on an annual basis, City's proportionate share of all expenses shall be credited accordingly.

Section 11. Major Capital Improvements Trust Fund.

11.1 Major Capital Improvement Trust Fund. District and City will each equally contribute \$10,000 annually into a separate account maintained by City for the purpose of undertaking major capital paving court/playfield repairs, parking lot repaving/repairs, or improvements such as re-striping, replanting, light replacement, backstop repairs, fence replacement, and the like valued over \$10,000.

11.1.1 District and City will each contribute to the Major Capital Improvement Trust Fund by August 1 of each year.

Contributions to the Major Capital Improvement Trust Fund will begin on August 1 following Notice of Completion of the high school building by District, and August 1 following Notice of Completion of joint use facilities by City as described in **Exhibit "C"**.

11.1.2 Interest which accrues to the Major Capital Improvement Trust Fund account will remain with the account. The interest can only be used for major capital playfield/parking lot repairs or improvements.

11.2 Payment from Major Capital Improvement Trust Fund. District and City shall give written authorization prior to the expenditure of any moneys from the Major Capital Improvement Trust Fund, except in cases of emergencies, as described in Section 9.4, in which case District or City shall notify the other party of such work within a reasonable time.

11.3 During the 25th year of this Agreement, the Parties shall mutually agree on an amount that each will contribute to the Major Capital Improvement Trust Fund on an annual basis during the *second* 25 year Term of this Agreement, prior to the automatic extension of the Agreement pursuant to Section 20 hereof.

Factors the Parties will consider in determining an appropriate annual contribution amount include, but are not limited to the following:

- 11.3.1 The current balance of the Major Capital Improvement Trust Fund account;
- 11.3.2 The major capital playfield/parking lot repairs and improvements already undertaken or completed at the Facility;
- 11.3.3 The major capital playfield/parking lot repairs and improvements the Facility will likely need during the second 25 year Term of the Agreement;
- 11.3.4 Cost estimates for the major capital playfield/parking lot repairs and improvements the Facility will likely need during the second 25 year Term of the Agreement;
- 11.3.5 The financial condition of the Parties.

When the Parties have reached an agreement on the amount of their respective annual contributions to the Major Capital Improvement Trust Fund for the second 25-year Term of this Agreement, the Parties will amend Section 11.1 to reflect the new annual contribution amount.

Until the Parties have agreed upon a new annual contribution amount, the current amount of \$10,000 will continue to apply.

Section 12. Equipment. The costs for repair or replacement of fixed asset equipment such as baseball backstops, basketball standards, restrooms, lights, speakers, and other installed items of the like

shall be split at the proportionate rate of 47% District, and 53% City as defined in 10.2.3 of this Agreement.

The costs for all other miscellaneous equipment such as balls, soccer goals, rackets, nets, scoreboard controls and the like, required as part of programmed activities, shall be paid for separately by District and City. Any Party to this Agreement that causes damages or disrepair to any equipment through its own negligence or misuse of that of its respective users shall be responsible for replacing or repairing such equipment at its own cost.

Section 13. Modifications to Facility. There shall be no additional structural, mechanical, or electrical development, modification, or alteration to the Facility without prior written consent of District and City.

Section 14. Operating Policies. District and City shall develop rules and regulations for operating guidelines relating to food policies, non-sporting events, and other events using the Facility and consistent with Section 3.5 of this Agreement. A copy of the operating policies will be given to each Party as well as to all public and private users of the Facility.

Section 15. Relationship of Parties. It is understood that District building maintenance workers, supervisors, teachers, coaches, volunteers and contractors are not employees of or have any contractual relationship with City and the City does not provide liability or workers' compensation insurance or other benefits for any such employees and contractors.

It is understood that City instructors, attendants, supervisors, coaches, maintenance workers, volunteers and contractors are not employees of or have any contractual relationship with and the District does not provide liability or workers' compensation insurance or other benefits for any such employees and contractors.

Section 16. Hold Harmless.

16.1 District Indemnification and Hold Harmless. District shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to

persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of District or District's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of District or its officers, employees, volunteers and agents. It is understood that the duty of District to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

16.2 City Indemnification and Hold Harmless. City shall indemnify, protect, defend, save and hold District, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of City or City's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of City or its officers, employees, volunteers and agents. It is understood that the duty of City to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Section 17. Insurance.

District shall provide property and general liability insurance in the same manner and at the same level as it does for other District facilities located on property owned by District, except that it shall add by endorsement to its general liability policy, City, its officers, agents, employees, independent contractors and elected and appointed official, as additional insured. City shall add District, its officers, agents, employees, independent contractors and elected and appointed officials, as additional insured on its existing general liability insurance policy.

Section 18. Modifications. This Agreement may be varied, modified, or altered by the mutual consent of District and City. No alterations, amended modifications or variations of the terms of

this Agreement shall be valid unless made in writing and signed by duly authorized representatives of District and City.

Section 19. Dispute Resolution.

- 19.1 If from time to time disputes relative to maintenance and operations, use, scheduling, and other items of interpretation of the provisions of this Agreement arise which are not resolved through the efforts of District and City representatives, then it is the intent of the parties to this Agreement that the District Superintendent and City Manager shall meet to discuss the issues in an effort to resolve the dispute.
- 19.2 In the event any dispute arises under the terms of this Agreement and the Parties are unable to resolve said dispute as provided under section 19.1 above, the Parties shall mutually select a mediator, who is a respected professional with expertise in the area of the dispute, to facilitate the resolution of the dispute. If the Parties are unable to mutually select a mediator, then the mediation shall be conducted in accordance with the then current commercial Mediation Rules of the American Arbitration Association. Absent written agreement of the Parties to the contrary, the mediation process shall be completed or terminated within forty-five (45) days of the initial request for mediation.
- 19.3 In the event the Parties are unable to resolve any dispute in accordance with sections 19.1 and 19.2 above, all such unresolved disputes, claims or other matters in question arising out of or relating to this Agreement or breach thereof, may ultimately be decided by means of legal action provided by California State Law. Any attorney's fees and associated costs arising from such legal action shall be paid for by the unsuccessful party in accord with the terms of this Section. Reasonable attorney's fees and court costs not to exceed \$7,500 in total may be awarded to the prevailing party by the Court.

Section 20. Term. The Term of this Agreement shall be for twenty-five (25) years from the date and day above written. At the expiration of such Term, this Agreement shall be automatically extended for an additional twenty-five (25) years, unless either

District or City provided written notice to the other at least six (6) months before the end of the Term that it wishes to terminate this Agreement. Such notification of termination by District shall only be for good cause based upon District's or City's default under this Agreement. In the event the parties disagree as to whether good cause exists for such a termination by District, the parties agree to resolve the matter according to the terms of Section 19 of this Agreement. Notwithstanding this provision, City may terminate this Agreement for any reason at any time upon six (6) months written notice to District.

Notwithstanding the foregoing, nothing herein shall be construed as affecting the agreed-upon contributions as depicted in the Preliminary Cost Estimate attached as **Exhibit C** hereto, nor affecting other costs obligations incurred by City up to the time of termination.

Section 21. Assignment. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior written consent of all Parties hereto, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to all Parties to carry out and observe each applicable Party's agreements hereunder.

Section 22. Successors. The terms and conditions herein contained shall, subject to the provision as to assignment, apply to and bind the successors of the parties hereto.

Section 23. Agreement Contains all Understandings. This document represents the entire and integrated agreement between District and City and supercedes all prior negotiations, representations, and agreements, either written or oral for the 17-acre site at South Merced Community Sports Park "CP-42".

The Parties acknowledge an existing agreement between District and City adopted August 10, 1994 and amended December 15, 2004, which pertains to other District school campuses and City facilities; the existing agreement is separate from this document, and neither has an effect upon the other. Upon completion of this project the existing agreement shall be amended to include facilities at this District and City regional Park site.

Section 24. Exhibits. The Exhibits attached to this Agreement are a part of this Agreement and are incorporated into this Agreement by reference.

Section 25. Partial Invalidity. If a court of arbitrator of competent jurisdiction holds any provision or clause herein to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining provisions or clauses, or portions thereof, shall not be affected unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision or clause.

Section 26. Binding Effect. The Agreement shall bind and benefit the Parties to this Agreement and their legal representatives and successors in interest.

Section 27. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted, and this Agreement shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either Party the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject, which are in effect as of the date of this Agreement, and any later changes, which do not materially and substantially alter the positions of the Parties.

Section 28. Representatives. For purposes of general operations, the contact representative for District shall be the Director of Maintenance and the contact representative for City shall be the Director of Parks and Community Services. Either party may amend its contact representative from time to time throughout the term of the agreement.

Section 29. Notices. All notices to either party shall be in writing and shall be addressed as follows:

District: Superintendent
Merced Union High School District
P.O. Box 2147
Merced, California 95344-0147

City: City Manager
City of Merced
678 West 18th Street
Merced, California 95340

- Section 30. Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that: (a) such Party is duly organized and existing, (b) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (c) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (d) the entering into this Agreement by a Party does not violate any provision of any other agreement to which said Party is bound.
- Section 31. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.
- Section 32. Conflicts of Interest. No director, officer, official, representative, agent or employee of any Party shall have any financial interest, direct or indirect, in this Agreement.
- Section 33. Rights and Remedies are Cumulative. Except as may be otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party or Parties.
- Section 34. Cooperation. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set out in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this Agreement.
- Section 35. Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any

partnership, joint venture or other agreement between District and City.

Section 36. Third Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

Section 37. Ambiguities Not to be Construed Against Drafting Party. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the Parties hereto with respect to this Agreement.

Section 38. Non-liability of Officials. No officer, member, employee, agent, or representative of the Parties shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.

Section 39. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

Section 40. Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

Section 41. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first herein above written.

CITY OF MERCED
A California Charter Municipal Corporation

MERCED UNION HIGH
SCHOOL DISTRICT

BY: _____
JAMES G. MARSHALL, City Manager

BY: _____
Superintendent

ATTEST:

BY: _____
Deputy City Clerk

ATTEST:

BY: _____
MIKE CARPENTER,
Clerk,
Board of Trustees

APPROVED AS TO FORM:

BY: _____
City Attorney

APPROVED AS TO FORM:

BY: _____
David Soldani
Atkinson, Adelson,
Loya, Ruud &
Romo

ACCOUNT DATA:

BY: _____
Verified by City Finance Officer

ACCOUNT DATA:

BY: _____
Verified by District Finance
Officer

**PRELIMINARY COST ESTIMATE
SOUTH MERCED COMMUNITY SPORTS PARK “CP-42”
JOINT USE PORTION OF 17-ACRE SITE/PHASE I DEVELOPMENT**

3-SOCCER FIELDS 1-BASEBALL FIELD 2-SOFTBALL FIELDS PARKING LOT –200 CARS RESTROOMS AND STORAGE	TOTAL ESTIMATED COST	STATE SHARE 50%	DISTRICT SHARE 25%	CITY SHARE 25%
PARK SITE MASTER PLAN (38.9 acres) ----- 17 - acres at \$7,712 per acre = \$131,105 Total Cost @ 50% = \$65,552	\$300,000 ----- \$131,105 (17 acres)	No Contribution	\$65,552 Reimburse City 50%	\$168,896 ----- \$65,552 (17 acres)
LAND ALLOCATION (Acquisition 38.9) ----- 17 Acres at \$102,827 per acres; Total Cost @ 50% = \$51,413 per acre	\$4,000,000 Paid by City ----- -- \$1,748,059 (17 acres)	No Contribution ----- No Contribution	\$874,029 Reimburse City 50%	\$2,251,942 Paid ----- \$874,029 Paid (17 acres)
PARKING ALLOCATION (Assuming parking count of 200 spaces @ 320 sq. ft/ space)	\$640,000	\$320,000 50%	\$160,000	\$160,000
OFF SITE IMPROVEMENTS Sewer, water, storm drain, sidewalk, Curb and gutter, street lights 16 Acres/ 38.9 acres = 43%; 43% of \$ 2million = \$860,000 50% District and City	\$ 2,000,000 \$860,000 (17 acres)	No Contribution	\$430,000 50% (17acres)	\$430,000 50% (17acres)
CONSTRUCTION 17 Acres shared –50% State; 25% District, 25% City	\$1,190,000	\$595,000 50%	\$297,500 25%	\$297,500 25%
FURNITURE, FIXTURES, AND EQUIPMENT (Bleachers, lighting, soccer goals etc.)	\$610,000	\$305,000 50%	\$25,000 25%	\$25,000 25%
SOFT COSTS 17 Acres @ 9%	\$631,916	\$315,958 50%	\$157,980 25%	\$157,980 25%
CONTINGENCIES 17 acres @ 12% = \$1,039,000	\$821,000	\$410,500 50%	\$205,250 25%	\$205,250 25%
TOTAL ESTIMATED COSTS	\$6,632,458	\$1,946,458	\$2,342,811	\$2,342,811

CITY OF MERCED SOUTH MERCED COMMUNITY SPORTS PARK “CP-42”
AND

MERCED UNION HIGH SCHOOL DISTRICT HIGH SCHOOL WEST OF TYLER ROAD AND BETWEEN MISSION AVENUE AND GERARD ROAD JOINT USE AGREEMENT

Facilities: One City baseball field, two City softball fields, three City soccer fields, restrooms, and City parking lot for 200 cars.

GUARANTEED USE TIMES FOR CITY OF MERCED PROGRAMS

<u># Hrs Week</u>	<u>Days</u>	<u>Times</u>	<u>Months</u>
22.5	Monday thru Friday	5:30 pm – 12:00 Midnight	Yr Round
16.0	Saturday	8:00 am – 12:00 Midnight	Yr Round
16.0	Sunday	8:00 am – 12:00 Midnight	Yr Round
54.5	Total hrs. Weekly guaranteed for City use (12 months per yr)		
2,725	Potential hours yearly (54.5 hrs/wk X 50 wks)		
	Grand Total guaranteed hours for City and District =5,140		
	Percentage of City use = 53%		

GUARANTEED USE TIMES FOR MUHSD PROGRAMS

<u># Hrs Week</u>	<u>Days</u>	<u>Times</u>	<u>Months</u>
57.5	Monday thru Friday	6:00am – 5:30pm	Aug. thru May
2,415	Total hours guaranteed annually for District use (10 months per yr)		
	Grand Total guaranteed hours for District and City = 5,140		
	Percentage of District use = 47%		