

Memorandum of Understanding Between:

**City of Merced
County of Merced
Merced Union High School District
Merced County Office of Education**

THIS MEMORANDUM OF UNDERSTANDING, hereinafter referred to as “Agreement,” is made and entered into this 17th day of October, 2023 (“Effective Date”) by and between the City of Merced, a California Charter Municipal Corporation, hereinafter referred to as “City”, the County of Merced, a Political Subdivision of the State of California, hereinafter referred to as “County”, the Merced Union High School District, hereinafter referred to as “MUHSD”, and the Merced County Office of Education, hereinafter referred to as “MCOE”, referred to collectively herein as the “Parties” and each a “Party”.

RECITALS

WHEREAS, the City owns certain real property located at the northwest corner of Mission Avenue and Tyler Road, APN 259-130-035, known as CP-42 (“City Property”) which it acquired in 2007 and is in the process of developing as a sports park; and,

WHEREAS, MUHSD owns property adjacent to CP-42 located at the southwest corner of Gerard Avenue and Tyler Road, APN 259-130-010 (“MUHSD Property”); and,

WHEREAS, the City Property and the MUHSD Property encompass a total of seventy-six (76) acres that the Parties intend to develop jointly for use as a sports complex (“Sports Complex”), for continuity, efficiency, and economies of scale, including, without limitation storm drainage, road design upgrades, and other public improvements; and,

WHEREAS, for purposes of this Agreement, the Parties wish to collaborate on the initial planning phase of the MUHSD Property, including, without limitation, environmental review, design, entitlements, and annexation (the “Project”); and,

WHEREAS, the Parties intend to form a Joint Powers Authority (“JPA”) to own, subject to parkland restrictions, and operate the Sports Complex following annexation of the MUHSD Property; and,

WHEREAS, Phase One of the Sports Complex will include four (4) soccer/football fields, two (2) basketball courts, two (2) volleyball courts, two (2) tennis courts, a futsal court, a concession/restroom building, an additional restroom building, shade structures and other utilities and appurtenances as recommended by the Community during the City’s American Rescue Plan Act (ARPA) public hearing process, totaling Eight Million, Three Hundred, and Fifty Thousand Dollars (\$8,350,000) in improvements; and,

WHEREAS, the City will pursue additional funding to complete the construction of Phase Two and Phase Three of the Sports Complex, subsequent to the completion of the construction of Phase One; and,

WHEREAS, the City will contribute the City Property to the JPA following its formation, and will serve as lead agency for the Project; and,

WHEREAS, MUHSD will contribute the MUHSD Property to the JPA upon formation and consents to the City serving as lead agency for the Project; and,

WHEREAS, the County hosted public meetings and administered a survey to solicit input from the community on their desired use of American Rescue Plan Act (“ARPA”) funds, resulting in a determination that improved public facilities and parks are a priority to the community; and,

WHEREAS, on June 7, 2022, the County Board of Supervisors approved an allocation of One Million Five Hundred Thousand Dollars (\$1,500,000) in ARPA funds to be used for the Project; and,

WHEREAS, MCOE has committed funds in the amount of Six Hundred Fifty Thousand Dollars (\$650,000) for the construction of a futsal court at the Sports Complex, as set forth in the Futsal Agreement.

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereby agree as follows:

AGREEMENT

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **PROJECT.** For purposes of this Agreement, the Project consists of initial planning work for the MUHSD Property located on the northern half of the Sports Complex, including, without limitation, environmental review, design, entitlements, and annexation.

Design to include elements allowing for green space to be activated in support of baseball, softball, soccer, and other outdoor activities until such time as additional funding can be secured to include an indoor facility and aquatic facilities. Additional improvements must be approved by the MUHSD Board of Trustees.

3. **TERM OF THE AGREEMENT.** The term of this Agreement shall commence from the date it is fully executed by the Parties and continue until December 31, 2025, unless sooner terminated as provided herein. This Agreement may be extended through execution of an amendment by the Parties.
4. **FUNDING.** The County will provide funding for the Project in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000), with actual expenses to be invoiced on a monthly basis, to pay for environmental review, design, entitlements, annexation, and related costs ("Funding").
 - a. The Parties will work cooperatively to pursue grants and private funding for the Sports Complex until the JPA is formed, at which time the JPA will manage all fiscal activities of the Sports Complex.
5. **JOINT POWERS AUTHORITY.**
 - a. Prior to operation of Phase One of the Sports Complex, the Parties will use best efforts to form a JPA which will own, subject to parkland restrictions, and operate the Sports Complex following annexation of the MUHSD Property. The JPA will indemnify, defend, and hold the Parties harmless from and against any claims, losses, liabilities, costs, expenses, etc., arising out of or in any way connected with the Sports Complex or the JPA's activities. No Party to the JPA shall be obligated

to contribute any funding toward the Sports Complex without the consent of its governing board. Should the future JPA be disbanded, property ownership would revert back to the original agency of ownership. Management techniques will ensure equitable access to field use among the Parties and will prohibit exclusive use agreements with private parties.

- b. Voting members of the JPA shall be as follows:
 - City – Two (2) voting members
 - County – Two (2) voting members
 - MUHSD – Two (2) voting members
 - MCOE – One (1) voting member

6. **TERMINATION.**

- a. **Without Cause:** Any Party may terminate this Agreement without cause by giving at least thirty (30) days advance written notice of such termination to the other Parties.
- b. **Breach of Contract:** Any Party may immediately suspend or terminate this Agreement in whole or in part, if it is determined that a Party, other than the Party seeking to terminate, is in breach of any of the following:
 - i. An illegal or improper use of funds.
 - ii. A failure to comply with any terms of this Agreement.
 - iii. A substantially incorrect or incomplete report has been submitted.

The aggrieved Party shall give written notice of such termination to the breaching Party and all other Parties.

Upon termination of this Agreement, City shall be compensated for all work performed pursuant to this Agreement, up to and including the date of termination.

- c. **Non-Allocation of Funds:** The terms of this Agreement and any extensions, and the services to be provided, are contingent on the approval of funds by the appropriating government agency. If sufficient

funds are not allocated, the services provided may be modified, or this Agreement shall be terminated at any time by giving thirty (30) days advance written notice.

7. CITY RESPONSIBILITIES.

- a. The City shall serve as lead agency for the Project, in consultation with the County.
- b. The City shall be jointly responsible, along with MUHSD, for maintenance of the MUHSD Property until the JPA is established.
- c. The City shall cooperate with the Parties as necessary to facilitate the Project.

8. COUNTY RESPONSIBILITIES.

- a. The County shall contribute the Funding.
- b. The County shall cooperate with the City in determining how the MUHSD Property is developed.
- c. The County shall support annexation of the MUHSD Property.
- d. The County shall cooperate with the Parties as necessary to facilitate the Project.

9. MUHSD RESPONSIBILITIES.

- a. MUHSD consents to City operating as lead agency for the Project.
- b. MUHSD shall contribute the MUHSD Property to the JPA upon formation.
- c. MUHSD shall be jointly responsible, along with the City, for maintenance of the MUHSD Property until the JPA is established.
- d. MUHSD shall cooperate with the Parties as necessary to facilitate the Project.

10. **MCOE RESPONSIBILITIES.**

MCOE shall contribute Six Hundred Fifty Thousand Dollars (\$650,000) for the construction of a futsal court at the Sports Complex, as set forth in the Futsal Agreement, and shall retain equal access to the Sports Complex Phase One, as outlined in the Futsal Agreement.

MCOE shall cooperate with the Parties as necessary to facilitate the Project.

11. **NOT A PARTNERSHIP.** This Agreement does not create a partnership, joint powers agreement, or a joint venture, and does not create any financial commitments, except as expressly stated herein. No Party has the authority to bind the other to any obligation. The Parties agree to consult with one another in good faith and to resolve any disagreements that may arise from or related to this Agreement.
12. **MODIFICATION.** Any modifications to this Agreement shall be effective and binding upon the Parties only if specifically, mutually agreed upon in writing by the Parties' respective duly authorized representatives. This Agreement shall not be modified, nor shall any Party's rights hereunder be waived except by such a writing reflecting the Parties' specific intent to modify the Agreement.
13. **NON-ASSIGNMENT.** No Party may assign, transfer, or subcontract their obligations under this Agreement or any rights hereunder without the prior written consent of the other Parties.
14. **INDEMNIFICATION.** Each Party shall, at its own expense, defend, indemnify and hold the other Parties and their employees, officers, directors, contractors and agents, harmless from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for bodily injury or death, to the extent caused by or arising out of the active and/or passive negligence or willful misconduct of indemnifying Party, its employees, officers, agents or subcontractors.
15. **INSURANCE.** Each Party shall bear its own cost and exposure for maintaining Commercial General Liability (CGL) and Automobile Liability insurance or self-insurance, with limits no less than One Million Dollars (\$1,000,000) per occurrence covering bodily injury, personal injury and

property damage, and Workers Compensation Insurance as required according to the California Labor Code, including Employer's Liability limits of One Million Dollars (\$1,000,000) per accident, during the term of the Agreement.

Each Party shall provide the other Parties certificates of insurance upon request. Each Party and its officers, employees and agents shall be endorsed to the other's CGL policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.

16. **NOTICES.** Any and all notices between the Parties provided for under this Agreement shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such Party. The persons and their addresses having authority to give and receive notices under this Agreement include the following:

CITY

City of Merced
678 W. 18th Street
Merced, CA 95340
Attn: City Manager

COUNTY

County of Merced
2222 M. Street
Merced, CA 95340
Attn: County Executive Officer

MUHSD

Merced Union High School District
PO Box 2147
Merced, CA 95344
Attn:

MCOE

Merced County Office of Education
632 West 13th Street
Merced, CA 95341
Attn:

17. **GOVERNING LAW.** Sole and exclusive jurisdiction and venue for any action, suit, or litigation arising out of this Agreement shall be in the Merced County Superior Court. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.
18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Parties with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings,

advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

19. **CAPACITY TO ENTER AGREEMENT.** The persons executing this Agreement on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this Agreement on behalf of the entity for which they sign.

{signatures on next page}

* * * * *

IN WITNESS WHEREOF, the foregoing Agreement is executed on the

17th day of October, 2023.

COUNTY OF MERCED,
a Political Subdivision of
the State of California

CITY OF MERCED,
a California Charter Municipal
Corporation

By: [Signature]

By: _____

Dated: OCT 17 2023

Dated: _____

ATTEST:
RAUL LOMELI MENDEZ,
CLERK OF THE BOARD

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

By: [Signature]
Deputy

By: _____
Assistant/Deputy City Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: [Signature]
Forrest W. Hansen

By: _____

Dated: 10-16-23

Dated: _____

{Signatures continued on next page}

* * * * *

IN WITNESS WHEREOF, the foregoing Agreement is executed on the

_____ day of _____, 2023.

COUNTY OF MERCED,
a Political Subdivision of
the State of California

CITY OF MERCED,
a California Charter Municipal
Corporation

By: _____

By: [Signature]

Dated: _____

Dated: 11/7/2023

ATTEST:
RAUL LOMELI MENDEZ,
CLERK OF THE BOARD

ATTEST:
Scott McBride, CITY CLERK

By: _____
Deputy

By: [Signature]
Assistant/Deputy City Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: _____

By: [Signature]

Dated: _____

Dated: 10/16/2023

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FUNDS/ACCOUNTS VERIFIED

[Signature] 10/27/23
FINANCE OFFICE DATE # 1474
No funds to encumber. 10/25/23
10/25/23

{Signatures continued on next page}



MERCED UNION HIGH SCHOOL
DISTRICT

MERCED COUNTY OFFICE OF
EDUCATION

By: Tiffany Pickle

By: [Signature]

Dated: Jan. 10, 2024

Dated: 1. 25. 24

ATTEST:

ATTEST:

By: [Signature]
Clerk

By: Yolanda Campos
Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

By: [Signature]

By: _____

Dated: 12/11/2023

Dated: _____