

AGENDA ITEM NO. 14

COUNCIL MEETING 7/15/08

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER



July 15, 2008

FROM: RANDALL L. COOPER, Director
Parks, Recreation and Community Services

Presented to City Council

Date: 7/15/08

Disposition: *Approved*

BY: JERRY HAYNES, Assistant Director
Parks, After-School, Recreation and Community Services Department

SUBJECT: APPROVE BASIN "XX" AGREEMENT BETWEEN THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT AND THE CITY OF FRESNO FOR JOINT USE OF DRAINAGE BASIN PARK.

RECOMMENDATIONS

It is recommended that Council approve the attached Agreement between the Fresno Metropolitan Flood Control District and the City of Fresno for Joint Use of Drainage Basin XX. The Basin will serve as a public park for recreational use. It is also recommended that Council authorize the Director of Parks, After-School, Recreation and Community Services (PARCS), or his designee, to execute all documents pertaining thereto on behalf of the City.

EXECUTIVE SUMMARY

PARCS staff have met and discussed with Fresno Metropolitan Flood Control District (FMFCD) provisions for a "Basin Park Agreement" between the City of Fresno (City) and FMFCD regarding Drainage Basin "XX" on Hughes Avenue South of McKinley. Pursuant to the Basin Park Agreement, Drainage Basin "XX" has been developed for joint use as a drainage basin and park. It is the desire of both parties that FMFCD build a handicap ramp at Basin "XX" and the City shall pay to FMFCD \$20,000 toward the cost of the handicap ramp within 30 days of invoice. City shall also approve construction plans prior to bidding, and FMFCD shall keep Basin "XX" free and clear of project liens. Furthermore, the City shall operate Basin "XX" as a public park for recreational use.

FMFCD's rights of use and responsibilities shall include, but are not necessarily limited to, the following:

- A. District shall retain all of its rights of use, may discharge and store storm water runoff within Basin "XX", and shall:
- (1) Pay for and be responsible for all maintenance and repair of drainage facilities installed by District in Basin "XX";
 - (2) Desilt Basin "XX" as required;
 - (3) Reconstruct and repair damage to the Basin "XX" caused by storm or flood waters;
 - (4) Maintain and repair fences and gates as required to maintain control of ingress, when said damage results from operating Basin "XX" for drainage purposes.

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FMFCD, Basin "XX"

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- (5) Furnish all energy required for operation of Basin "XX" for drainage purposes.
- (6) Mow and maintain all lawn areas and irrigate, prune and care for all plantings.

CITY'S rights of use and responsibilities shall include, but are not necessarily limited to, the following:

B. City may operate the upper floor of Basin "XX" as an active public park, and shall perform the following on the entirety of Basin "XX", or pay District for performing said work:

- (1) Pick up and dispose of trash and litter on a scheduled basis;
- (2) Inspect Basin "XX" on a scheduled basis;
- (3) Maintain and repair Basin "XX";
- (4) Remove graffiti;
- (5) Furnish water required for irrigation and other purposes;
- (6) Maintain, repair and replace the automatic sprinkler system;
- (7) Furnish all energy required for landscaping park operation, and maintain, repair and replace any electrical fixtures emplaced by City; and
- (8) Maintain and repair fences and gates when damage results from park uses.

PARCS has a long standing business relationship with FMFCD, and we do not foresee any difficulties in entering this contract.

BACKGROUND

The Joint Maintenance and Operation Agreement for the Flood Control District's Basin "XX" is for the property located at Hughes and McKinley adjacent to Jane Addams Elementary School.

FMFCD is anxious to begin this new recreation project in partnership with the City. Officials from FMFCD met with PARCS staff regarding the type and placement of recreation equipment in the basin site. PARCS suggested installing one softball diamond and one set of soccer goals. Equipment choice is under consideration, and PARCS will provide the backstops and fencing for the ball fields. An immediate start to this project is desired in order to be able to plant turf this year.

Under the terms of this agreement, this basin will be operated during the "dry" season (May 1 – November 14) by the City and the FMFCD during the "wet" season.

The City has completed an Environmental Assessment of this project under EA No. 08-13 resulting in a Finding of Conformity with the 2025 General Plan. The document was filed on May 27, 2008; therefore, the City has complied with the notification guidelines. (Please see attached Environmental Assessment EA-08-13)

FISCAL IMPACT

There will be nominal impact for the City because FMFCD will pay and be responsible for all maintenance and repair of drainage facility installed by District.

Attachment: Agreement and Environmental Assessment 08-13

AGREEMENT FOR JOINT USE OF
BASIN "XX"

THIS AGREEMENT, made and entered into this 15th day of July, 2008 by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public agency, hereinafter referred to as "District," and the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "City."

WITNESSETH

WHEREAS, in connection with the development of planned local drainage facilities, District has or will have acquired and developed to District standards, certain areas within the City as reservoirs and drainage basins for the reception of storm and flood waters, and the term "drainage basin," wherever, used herein, shall be deemed to refer to such areas: and

WHEREAS, such drainage basins have been or will be developed by District with various Storm Drainage Master Plan improvements, including, but not limited to, excavations, drainage structures and devices, hereinafter referred to collectively as "drainage facilities," to accommodate collection and storage of storm, flood and other surface waters and to facilitate the return of such waters to the underground; and

WHEREAS, Basin "XX" as described/depicted in Exhibit No. 1 attached hereto and incorporated herein, is being developed for joint use as a drainage basin and park; and

WHEREAS, the parties mutually desire to jointly utilize Basin "XX" as a drainage basin and a park pursuant to the terms hereof.

NOW, THEREFORE, THE PARTIES HERETO agree as follows:

1. The above recitals are true and correct and incorporated herein. Basin "XX" shall be jointly utilized by the parties hereto as a drainage basin (by District) and a park (by City) pursuant to the terms hereof. In pursuit hereof the parties are acting in an independent capacity.

2. A. The District, as lead agency and project owner, shall conduct the environmental review, bidding process for and cause completion of the installation of a handicap ramp at Basin "XX" by not later than June 30, 2008. The City shall pay to the District the costs for said ramp within 30 days of the District's mailing of the invoice therefor following award of the construction contract, unless otherwise agreed in writing by parties. City shall approve construction plans prior to bidding.

B. The District upon City's written request shall install a water line, drinking fountain, and quick coupler (collectively, the "Water Facilities") per a landscaping contract with District choice of contractor, provided the City commits in writing to the reimburse the District of all costs of said Water Facilities.

C. The amount the City shall pay pursuant to Paragraphs No. 2(A) and 2(B) hereof to the District shall not exceed \$20,000, in annually allocated and available City funds.

3. City may operate the upper floor of Basin "XX" as shown on Exhibit No. 1 hereto as a public park for recreational use. In addition to the specific provisions set forth in this Agreement, the City shall be responsible to satisfy all land use requirements associated with this use, including coordinating with adjoining property owners. Any and all costs and liabilities associated with operation of the public park, in addition and

those specifically identified herein in Section 3.B(1) through (8), are the responsibility of City.

A. District shall retain all of its rights of use, may discharge and store storm water runoff within Basin "XX", and shall:

- (1) Pay for and be responsible for all maintenance and repair of drainage facilities installed by District in Basin "XX";
- (2) Desilt Basin "XX" as required;
- (3) Reconstruct and repair damage to the Basin "XX" caused by storm or flood waters;
- (4) Maintain and repair fences and gates as required to maintain control of ingress, when said damage results from operating Basin "XX" for drainage purposes.
- (5) Furnish all energy required for operation of Basin "XX" for drainage purposes.
- (6) Mow and maintain all lawn areas and irrigate, prune and care for all plantings including the upper floor of Basin "XX."

(B) City may operate the upper floor of Basin "XX" as a public park, and shall perform the following on the entirety of Basin "XX", or at City's discretion pay District for performing said work:

- (1) Pick up and dispose of trash and litter on a scheduled basis;
- (2) Inspect Basin "XX" on a scheduled basis;
- (3) Maintain and repair Basin "XX" except to the extent District is responsible per subsection "A" above;

- (4) Remove graffiti;
- (5) Furnish water required for irrigation and other purposes;
- (6) Maintain, repair and replace the automatic sprinkler system;
- (7) Furnish all energy required for landscaping park operation, and maintain, repair and replace any electrical fixtures emplaced by City;
- (8) Maintain and repair fences and gates when damage results from park uses; and
- (9) Pay for and provide park/recreation related improvement, upon notice to and approval by District, which shall be owned by/responsibility of the City.

C. Annually during the period from November 15 to April 30, and at any time when Basin "XX" is flooded to the extent that District determines it impractical to use for park purposes, District shall assume possession control and operation of Basin "XX", and shall continue in exclusive possession, control and operation thereof until District determines and notifies City in writing that Drainage Basin "XX" is safe for use by City for park purposes, and City acknowledges in writing that City assumes control and operation thereof for such purposes. During such periods from November 15 to April 30 and during any other period when Basin "XX" is deemed unsafe or in a condition where it is considered impractical for use as a park and recreation area, District shall keep Basin "XX" locked to prevent ingress thereto by all persons except authorized employees of District and City.

D. Whenever District deems Basin "XX" to be safe and in a condition to be used for park purposes, it shall notify the Parks, Recreation and Community Services Department Director of City in writing, or the Director's designated representative. Upon receipt of such written notification and until City acknowledges in writing that City assumes control and operating of the basin, the basin shall remain locked pursuant to Paragraph No. 3(C) hereof. Upon the Director's determination that Basin "XX" is safe, and in a suitable condition for use for park purposes, City shall assume control of the upper floor of Basin "XX" for park purposes. During any period when Basin "XX" is in use for park purposes, City shall have the sole responsibility for securing Basin "XX" from ingress by persons other than authorized employees of District and City during the hours when, in the sole discretion of City, Basin "XX" shall be closed for use as a park.

E. District shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, consultants and volunteers from any and all claims, loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of District or any of its officers, officials, employees, agents, consultants or volunteers in the performance of this Agreement, provided that nothing herein shall constitute a waiver by District of governmental immunities including California Government Code Section 810 et seq. This subsection shall survive termination or expiration of this Agreement.

F. City shall indemnify, hold harmless and defend District and each of its officers, officials, employees, agents, consultants and volunteers from any and all claims, loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of City or any of its officers, officials, employees, agents, consultants or volunteers in the performance of this Agreement, provided that nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq. This subsection shall survive termination or expiration of this Agreement.

G. In the event of concurrent negligence on the part of District or any of its officers, officials, employees, agents, consultants or volunteers, and City or any of its officers, officials, employees, agents, consultants or volunteers, the liability for any and all claims, demands and actions in law or 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. This subsection shall survive termination or expiration of this Agreement.

H. It is understood and agreed that District and City maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective policies and programs and their respective policies for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, employees, agents, consultants and volunteers.

Evidence of insurance, certificates of insurance or other similar documentation shall not be required of either party under this Agreement.

I. If either party commences any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, each party shall pay its own attorney's fees and legal expenses.

4. Any notice required under this Agreement to be given in writing may be served upon District by mailing the same by certified mail or personal delivery, addressed to the General Manager of the District at its principal office, 5469 East Olive, Fresno CA 93727. Any notice required to be given in writing under this Agreement may be served upon City by delivering the same personally to the Parks, Recreation and Community Services Director or by mailing the same by certified mail addressed to the City, attention of the Parks, Recreation and Community Services Director, 2326 Fresno Street, Room 101, Fresno, CA 93721-1824.

5. This Agreement shall continue through June 30, 2013 and shall automatically renew for additional renewal terms of 1 year each, provided that either party may terminate (i) on written notice following an event of nonperformance not covered within 30 days notice thereof (ii) or 30 days written notice following an event of non-appropriation by a party's governing body. If this Agreement terminates during the first 5 years by the District, the District shall pay the City the value of improvements funded by the City per section 2.C hereof.

6. This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or

representatives. This Agreement may be assigned only upon the consent of the non-assigned party. Time is of the essence in pursuit hereof.

7. This Agreement is the parties' complete Agreement as to the subject matter hereof. This Agreement does not supersede or modify the parties 8-26-65 Joint Maintenance and Operation Agreement, as amended.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first hereinabove written.

APPROVED AS TO FORM:

BAKER, MANOCK & JENSEN

By John L. B. Smith
Title Counsel

ATTEST:

REBECCA E. KLISCH, City Clerk

By Jessica M. Jensen
Deputy 7/30/08

APPROVED AS TO FORM:

JAMES C. SANCHEZ, City Attorney

By R 7-09-08
Robert Coyle, Sr. Deputy

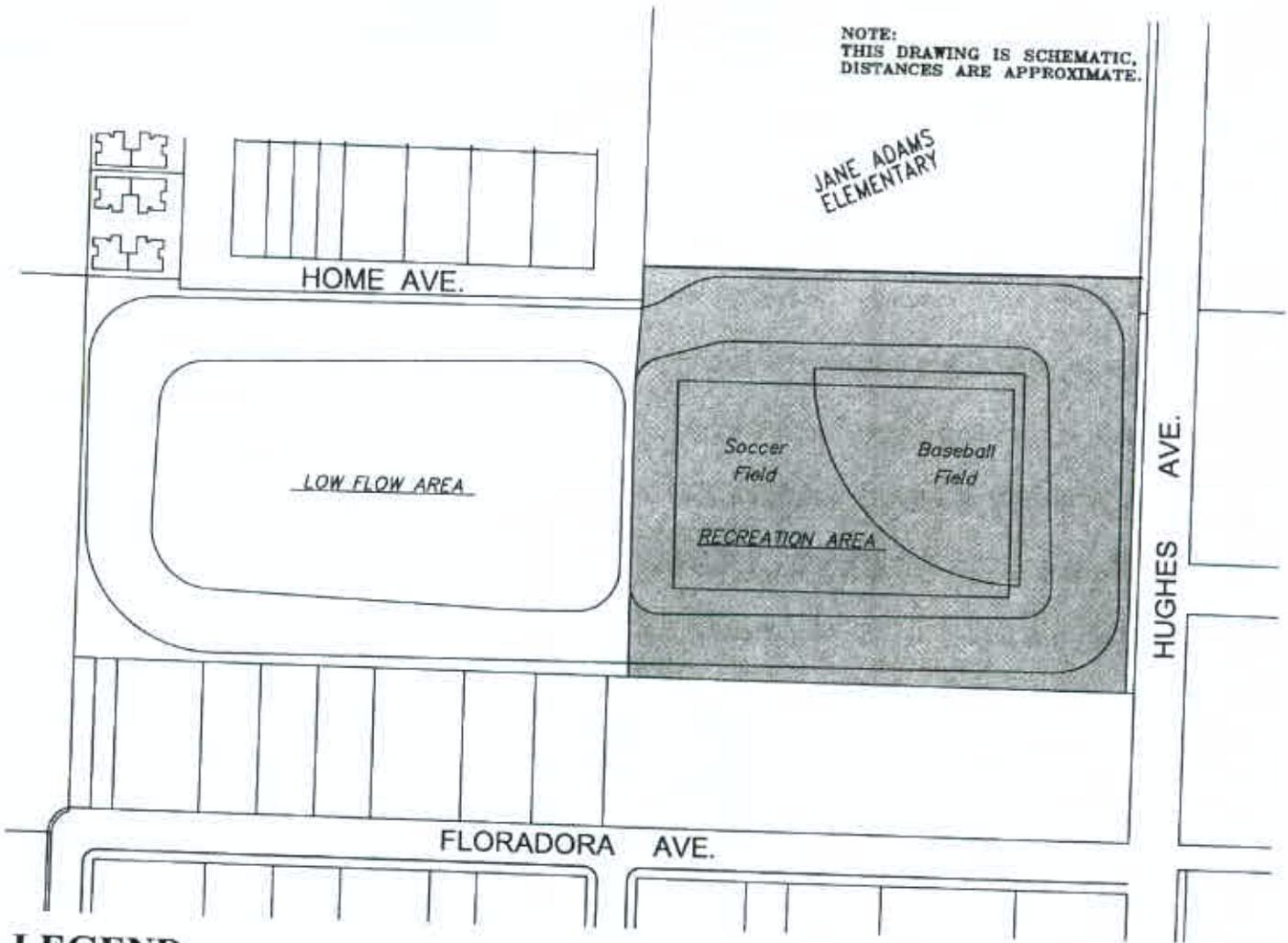
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
a California public agency

By James Taksonian
Title District Engineer

CITY OF FRESNO
a municipal corporation

By Bill Coyle
Title City Attorney

NOTE:
THIS DRAWING IS SCHEMATIC,
DISTANCES ARE APPROXIMATE.



LEGEND



PORTION OF BASIN "XX" UPPER FLOOR TO BE USED BY THE CITY OF FRESNO AS A PUBLIC PARK FOR RECREATIONAL USE

Basin XX Legal Description

The West on-half of Lot 102 of Roeding's Villa Colony, Fresno County, California, according to the map thereof recorded in Book 2 at page 43 of Record of Surveys, Fresno County Records; excepting therefrom the South 180 feet thereof; and

The North two-fifths of the East one-half of Lot 102 of Roeding's Villa Colony, Fresno County, California, according to the map thereof recorded in Book 2 at page 43 of Record of Surveys, Fresno County Records; and

The East 150 feet of the North 140 feet of the South three-fifths of the East one-half of Lot 102 of Roeding's Villa Colony, Fresno County, California, according to the map thereof recorded in Book 2 at page 43 of Record of Surveys, Fresno County Records; and

The South 3/5ths of the East one-half of Lot 102 of ROEDING'S VILLA COLONY, according to map thereof recorded December 12, 1902 in Book 2 at page 43 of Record of Surveys in the office of the recorder of said County; EXCEPTING THAT East 150 feet of the North 140 feet thereof. ALSO EXCEPTING THEREFROM the South 180 feet thereof; ALSO EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and other hydrocarbons or minerals as heretofore reserve of record.

SCALE 1"=200'



**BASIN "XX" LANDSCAPE
DRAINAGE AREA: "XX"**

EXHIBIT NO. 1
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT



July 16, 2008

NO RETURN

Council Adoption: 7/15/08

Mayor Approval:

Mayor Veto:

Override Request:

TO: MAYOR ALAN AUTRY
FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 7/15/08, Council took legislative action entitled **Appv Basin XX agrmnt w/FMFCD, joint maintenance and operation of drainage basin park**, Item No. **1V**, by the following vote:

Ayes : Calhoun, Caprioglio, Dages, Duncan, Perea, Sterling, Xiong
Noes : None
Absent : None
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before July 28, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Alan Autry, Mayor

Date: _____

COUNCIL OVERRIDE ACTION:

Ayes :
Noes :
Absent :
Abstain :

Date: _____