

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FRESNO AND UP HOLDINGS, LLC FOR THE
CONSTRUCTION OF SUSTAINABLE TRANSPORTATION INFRASTRUCTURE AND
TRANSIT RELATED AMENITIES FOR 3787 N BLACKSTONE AVENUE,, FRESNO,
CA 93726**

This Memorandum of Understanding (Agreement) is entered into this 30th day of March, 2023, by and between the City OF FRESNO, a municipal corporation, (City), and Up Holdings, LLC, (Developer).

RECITALS

WHEREAS, the State of California, the Strategic Growth Council (SGC) and the Department of Housing and Community Development (HCD) issued a Notice of Funding Availability dated January 30, 2023 (the AHSC NOFA), under the Affordable Housing and Sustainable Communities (AHSC) Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200; and

WHEREAS, Developer is applying for AHSC Funds in response to the AHSC NOFA to provide funding for (A) construction of the **3787 N Blackstone Avenue** affordable housing project in Fresno, California (the Housing Project); (B) the construction of certain housing related infrastructure (the HRI Improvements); (C) the construction of certain sustainable transportation infrastructure (the STI Improvements); (D) the construction of certain transit related amenities (the TRA Improvements); and (E) certain costs related to ongoing programming (the AHSC Programs). These improvements are described in more detail in the Final Application to be submitted by April 4, 2023 (collectively, the AHSC Application); and

WHEREAS, the AHSC Application seeks an award to the Developer in an aggregate amount of not to exceed \$50,000,000 in AHSC Funds, as set forth herein and in Exhibit A, consisting of: (A) up to \$34,250,000 of a combination of AHSC loan Funds for a permanent loan (AHSC Loan) which will be disbursed to a limited partnership to be formed later (the Partnership), for construction of the Housing Project, and (B) AHSC grant funds which shall be used for the purpose of reimbursing the cost of the HRI Improvements; (C) up to \$15,000,000 of the AHSC grant funds for the purpose of reimbursing the cost of the STI and TRA Improvements; and (D) up to \$750,000 of AHSC grant funds for reimbursing the costs of the AHSC Programs. The AHSC grants shall be referred to collectively as the AHSC Grants. The AHSC Loan and the AHSC Grants are collectively referred to herein as the AHSC Financing; and

WHEREAS, the City and Developer are required to enter into an Agreement in order to comply with the specific AHSC Program Threshold Requirement stated the 2023 AHSC Program Guidelines dated December 15, 2022, and subsequent technical amendments which allows applicants to demonstrate the requisite transportation experience by using the past experience of work completed of a non-applicant locality so long as the applicant provides an executed agreement with the non-applicant locality for the completion of the related work in the AHSC Application for which funding is sought.

The purpose of this Agreement is to comply with the Transportation City Prior Experience Threshold Requirement; and

WHEREAS, the City is a non-applicant, but will perform STI Improvements and TRA Improvements included in the AHSC Application (collectively, the Transit Obligations) as set forth in this Agreement and in Exhibit A; and

WHEREAS, the City can demonstrate prior experience and provide evidence of at least two prior projects that are similar in scope and size which have been completed during the ten years preceding April 4, 2023 as set forth in this Agreement and in Exhibit B; and

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Philip Skei
Assistant Director of Planning & Development
Department
2600 Fresno Street
Fresno, CA 93721
(559) 621-8012

Developer Representative: Jessica H. Berzac
Principal
7370 N. Lincoln Ave, Suite A
Lincolnwood, IL 60712
(773) 736-1244

2. ROLES, CONTRIBUTIONS, AND RESPONSIBILITIES

A. Upon full funding of the AHSC Grants, the City, as a non-applicant, will:

(i) Perform up to \$15,000,000 worth of STI Improvements and bus stop upgrades and bus fleet enhancements (TRA Improvements) included in the AHSC Application (collectively, the Transit Obligations) as set forth in Exhibit A.

(ii) Demonstrate prior experience and provide evidence of at least two projects that are similar in scope and size which have been completed during the ten years proceeding April 4, 2023, as set forth in this Exhibit B.

(iii) Assume financial responsibility for developing, constructing, and completing the Transit Obligations in accordance with the terms of the AHSC documents.

(iv) Provide Developer with copies of all requisitions for work related to their respective portions of the project, the notice of completion, and other documents related to their respective work that another party may reasonably request.

(v) Abide by all requisite HCD grant administration regulations that specify indemnity, payment, performance schedules, and progress reports.

B. Developer will:

(i) Assume financial responsibility for constructing and developing the Housing Project, the HRI Improvements and the AHSC Programs (together the Developer Obligations), and for all costs and expenses related thereto.

(ii) Enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where Developer will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project, HRI, STI and TRA Improvements, and funding of the AHSC Programs, as described in the AHSC Application. The AHSC Application and all standard agreements required by HCD in connection with AHSC Financing shall be collectively referred to as "AHSC Documents."

(iii) Assume financial responsibility for paying all costs required to complete the Housing Project and all associated improvements including, but not limited to HRI Improvements, STI Improvements and TRA Improvements, irrespective of whether such costs exceed the AHSC Loan and AHSC Grant.

(iv) Provide City with copies of all requisitions for work related to their respective portions of the project, the notice of completion, and other documents related to their respective work that another party may reasonably request.

(v) Abide by all requisite HCD grant administration regulations that specify indemnity, payment, performance schedules, and progress reports.

3. EFFECTIVENESS, DURATION AND TERMINATION

This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall terminate upon the earlier of (i) non-award of AHSC funds; (ii) Non-appropriation of City funds; (iii) completion of all obligations under the AHSC documents; or (iv) mutual written agreement of the parties hereto. Either party may terminate this Agreement with cause upon written notice to the other party, including the Construction Lender as defined in Section 12, following the other party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days written notice thereof. Termination shall be effective (the Effective Date of Termination) as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this Agreement shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein.

4. RECORDKEEPING AND PERFORMANCE DATA

Each party shall keep and maintain proper records and documentation sufficient to substantiate its contributions hereunder and shall make such available for review and audit during normal operating hours upon the reasonable written request of the other party for a period of three years following expiration or earlier termination of this Agreement.

5. COMPLIANCE WITH GOVERNING LAW

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, and ethnicity, status as a disabled veteran or veteran of the Vietnam era.

6. CAPACITY OF CITY AND DEVELOPER

Each party is acting in an independent contractor capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

In addition, and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of the Developer. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by Developer will not for any purpose be considered employees or agents of the City. Developer assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and Developer agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by Developer. Developer agrees and acknowledges that Developer's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each

shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations or on the exercise of their rights under this Agreement, including without limitation income, payroll or employment-related taxes and payments.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other, without the prior written consent of both parties.

7. INDEMNIFICATION

To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all 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) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation expenses, and costs to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the work to be performed under this Contract, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. INSURANCE

(a) Throughout the life of this Agreement, Developer shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Developer or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all

payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Developer of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Developer shall not be deemed to release or diminish the liability of Developer, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, vendors, suppliers, invitees, contractors, sub- contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Developer shall procure and maintain for the duration of the contract, and for five (5) years thereafter, insurance with limits of liability not less than those set forth below.

However, insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage
\$2,000,000 per occurrence for personal and advertising injury
\$4,000,000 aggregate for products and completed operations
\$4,000,000 general aggregate applying separately to work performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYEE LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 diseased each employee.

(v) BUILDERS RISK (Course of Construction) insurance, obtained by the Developer or subcontractor in an amount equal to the completion value of the Project with no coinsurance penalty provisions.

(vi) CONTRACTOR POLLUTION LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

\$1,000,000 per occurrence
\$2,000,000 general aggregate per annual policy period

In the event the work involves any lead-based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by the DEVELOPER pursuant to the SLFRF Agreement.

In the event the work involves any lead-based environmental hazard (e.g., lead-based paint), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event the DEVELOPER involves any asbestos environmental hazard (e.g., asbestos remediation), the DEVELOPER's Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event the SLFRF Agreement involves any mold environmental hazard (e.g., mold remediation), the Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

In the event the Developer purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

The Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and the Developer shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the City, its officers, officials, employees, agents and volunteers; or (ii) the Developer shall provide a financial guarantee, satisfactory to the City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice has been given to the City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the Developer shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Developer shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The General Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability, Automobile Liability and Pollution Liability

insurance policies shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. All such policies of insurance shall be endorsed so the Developer's insurance shall be primary and no contribution shall be required of the City. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents and volunteers. If the Developer maintains higher limits of liability than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits of liability maintained by the Developer. The General and Pollution Liability insurance policy shall also name the City, its officers, officials, agents, employees and volunteers as additional insureds for all ongoing and completed operations. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City as loss payee. All insurance policies required including the Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City, its officers, officials, agents, employees and volunteers.

The Developer shall furnish the City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee before work commences. Upon request of the City, the Developer shall immediately furnish the City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, the Developer, its contractor, or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Developer shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate the Agreement. No action taken by City hereunder shall in any way relieve the Developer of its responsibilities under the Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by the Developer shall not be deemed to release or diminish the liability of the Developer, including, without limitation, liability under the indemnity provisions of the Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Developer. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Developer, its principals, officers, agents, employees, persons under the supervision of the Developer, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Agreement and the final acceptance by the City of the work or materials to be performed or supplied thereunder, the Developer shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Developer or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Agreement.

SUBCONTRACTORS - If Developer subcontracts any or all of the services to be performed under this Agreement, Developer shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, CONTRACTOR will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

The DEVELOPER shall furnish the CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or his/her designee before work commences. Upon request of the CITY, the DEVELOPER shall immediately furnish the CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Property Insurance. The Developer shall maintain in full force and effect, throughout the remaining life of this Agreement, a policy(ies) of property insurance acceptable to the City, covering the Project premises, with limits reflective of the value of the Project premises upon issuance of the Certificate of Completion or substantial completion of the project referenced in this agreement, including fire and Extended Comprehensive Exposure (ECE) coverage in an amount, form, substance, and quality as acceptable to the City's Risk Manager. The City shall be added by endorsement as a loss payee thereon.

9. ATTORNEY'S FEES

If a 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/their reasonable attorney's fees and legal expenses.

10. NOTICES

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the Developer Representative, or (c) three business days after the date of mailing (postage pre- paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

11. BINDING

Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The terms and conditions of this Agreement, express or implied, exist only for the benefit of the parties to this Agreement, their respective successors and assigns, and the Construction Lender as set forth in Section 12. No other person or entity will be deemed to be a third-party beneficiary of this Agreement.

12. ASSIGNMENT

City hereby acknowledges and approves the assignment by Developer and UP Dakota LP (the "Partnership") to the Housing Project's senior lender (Construction Lender) of all their respective right, title and interest in, to and under the Agreement as collateral security for the Partnership's obligations to Construction Lender under, and in connection with the Construction Lender's loan to the Partnership. In the event Construction Lender forecloses upon the Collateral, City hereby agrees that Construction Lender shall have all of the Developer's rights and interests under the Agreement. Construction Lender is hereby made an express third-party beneficiary of this Section. There shall be no other assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

13. WAIVER

The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this Agreement unless the injured party first notifies the other party of the purported breach in writing setting forth

the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

14. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

15. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

16. SEVERABILITY

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

17. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. REPRESENTATIONS AND WARRANTIES

Each party hereby represents and warrants to the other party, and agrees, that it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement.

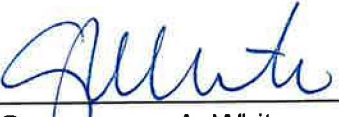
19. ENTIRE AGREEMENT

It is mutually understood and agreed that the foregoing constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

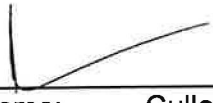
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement as of the date first set forth above:

CITY OF FRESNO,
a California municipal corporation

By: 
Georgeanne A. White
City Manager

Up Holdings, LLC, an
Illinois LLC, dba Up Holdings
California, LLC

By: 
Name: Cullen J Davis
Its: Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By:  4/3/23
Kristi M. Costa Date
Senior Deputy City Attorney

ATTEST
TODD STERMER, MMC
City Clerk

By:  4-3-23
Deputy
Records Supervisor

Attachments:

Exhibit A – Scope of Work

Exhibit B – City of Fresno Prior Experience of Similar Projects Completed

EXHIBIT A

Scope of Work

Responsible Party	Typy of Funds	Amount of Funds	Purpose	Estimated Date of Completion
Developer	AHSC Affordable Housing Development Loan and Housing Related Infrastructure Grant	Not to exceed \$34,250,000	Construction of affordable housing units and infrastructure on and around housing site	5 years from date of AHSC award
Developer	AHSC Program funds	Not to exceed \$750,000	Programs related to transit use and sustainable transportation	Ongoing for three years after the occupancy of the project
City of Fresno	Sustainable Transportation Infrastructure (STI) and Transit Related Amenities	Not to exceed \$ 15,000,000	Active transportation infrastructure, electric buses and transit stop improvements	5 years from date of AHSC award

EXHIBIT B

City's Prior Experience of Similar Projects Completed

1. Van Ness / Wishon Class IV Bike Lanes

The City of Fresno recently installed parking protected Class IV bike lanes on Van Ness Avenue from Alhambra Avenue to Weldon Avenue. A second phase of this project will be completed in the next few months when higher temperatures allow placing asphalt and paint. The second phase will construct Class IV and Class II bike lanes on Wishon from McKinley Avenue to Belmont Avenue. Van Ness and Wishon are adjacent one-way streets that form a couplet. The completed section is approximately 4,200 feet in length. The second phase will add 5,300 feet of class IV and class II bike lanes.

Date Completed: March 2023

2. Maple Avenue Class IV Bike Lanes

The City of Fresno installed Class IV bike lanes on Maple Avenue between Gettysburg Avenue and Shaw Avenue in 2021. This section of Maple is near Fresno State University and has several multi-family units for student housing. The bike lanes were installed on both sides of the street. The length of the project is 2,500 feet.

Date Completed: June 2022

3. R Street Class IV Bike Lanes

The City of Fresno installed Class IV bike lanes on R Street from Tulare Avenue to Ventura Street. The bike lanes were installed on both sides of R Street. The length of the project is 1,800 feet.

Date Completed: July 2021

4. Ashlan Avenue Sidewalk Installation

The City of Fresno installed eight- to ten-foot wide sidewalks on both sides of Ashlan Avenue between Effie Street and State Route 41. The project also included installation of ADA ramps at all of the corners and replacement of several driveways. The project installed 1,300 feet of new sidewalk.

Date Completed: October 2020

5. Zero Emission Bus Purchases and Bus Stop Improvement Projects

As the transit operator for the City of Fresno, FAX is well-equipped to purchase zero emission buses and rehabilitate bus stops. FAX has been expanding its zero-emission fleet to meet the goals set forth in its Zero Emission Bus (ZEB) Rollout Plan, approved

by the Fresno City Council in 2020, which satisfies the state of California's Innovative Clean Transit (ICT) requirements. To date, FAX has purchased nine (9) battery electric and two (2) hydrogen fuel cell electric buses. FAX has also completed the charging infrastructure to allow for up to forty-six (46) battery electric buses to be charged simultaneously at the Bus Maintenance Yard. FAX's recent experience with bus stop improvements includes a \$32 million Bus Rapid Transit project which covered 54 stops along Blackstone and Kings Canyon Avenues (completed in 2018), a \$2 million project that covered 19 median island bus stops throughout Fresno (completed in 2020), and a \$4 million project that covered 63 standard bus stops along Shaw and Cedar Avenues (anticipated for completion by summer 2023). The FAX team is well-equipped to manage procurements, contracts, and projects associated with purchasing zero emission buses and completing bus stop improvements.

Form **LLC-5.5**

**Illinois
Limited Liability Company Act
Articles of Organization**

FILE # 04758633

Secretary of State Jesse White
Department of Business Services
Limited Liability Division
www.cyberdriveillinois.com

Filing Fee: \$500
Expedited Fee: \$100
Approved By: REH

FILED
APR 09 2014
Jesse White
Secretary of State

1. Limited Liability Company Name: UP HOLDINGS, LLC

2. Address of Principal Place of Business where records of the company will be kept:
900 W JACKSON BLVD, SUITE 2W
CHICAGO, IL 60607

3. Articles of Organization effective on the filing date.

4. Registered Agent's Name and Registered Office Address:

HENRY C. KRASNOW
500 N DEARBORN ST STE 200
CHICAGO, IL 60654-3372

COOK

5. Purpose for which the Limited Liability Company is organized:
"The transaction of any or all lawful business for which Limited Liability Companies may be organized under this Act."

6. The LLC is to have perpetual existence.

7. The Limited Liability Company is managed by the manager(s).

DAVIS, CULLEN J.
900 W JACKSON BLVD, STE 2W
CHICAGO, IL 60607

8. Name and Address of Organizer

I affirm, under penalties of perjury, having authority to sign hereto, that these Articles of Organization are to the best of my knowledge and belief, true, correct and complete.

Dated: APRIL 09, 2014

ALEX FLORES
500 N DEARBORN, STE 200
CHICAGO, IL 60654

201922810017



Secretary of State

LLC-5

Application to Register a Foreign Limited Liability Company (LLC)

IMPORTANT — Read Instructions before completing this form.

Must be submitted with a current Certificate of Good Standing issued by the government agency where the LLC was formed. See Instructions.

Filing Fee — \$70.00

Copy Fees — First page \$1.00; each attachment page \$0.50;
Certification Fee — \$5.00

Note: Registered LLCs in California may have to pay minimum \$800 tax to the California Franchise Tax Board each year. For more information, go to <https://www.ftb.ca.gov>.

FILED
Secretary of State
State of California

AUG 14 2019

1pc This Space For Office Use Only

1a. LLC Name (Enter the exact name of the LLC as listed on your attached Certificate of Good Standing.)

UP HOLDINGS, LLC

1b. California Alternate Name, if Required (See Instructions — Only enter an alternate name if the LLC name in 1a not available in California.)

UP HOLDINGS CALIFORNIA, LLC

2. LLC History (See Instructions — Ensure that the formation date and jurisdiction match the attached Certificate of Good Standing.)

a. Date LLC was formed in home jurisdiction (MM/DD/YYYY)

04 / 09 / 2014

b. Jurisdiction (State, foreign country or place where this LLC is formed.)

Illinois, USA

c. Authority Statement (Do not alter Authority Statement)

This LLC currently has powers and privileges to conduct business in the state, foreign country or place entered in Item 2b.

3. Business Addresses (Enter the complete business addresses. Items 3a and 3b cannot be a P.O. Box or "in care of" an individual or entity.)

a. Street Address of Principal Executive Office - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
900 W. Jackson Blvd., Suite 2W	Chicago	IL	60607
b. Street Address of Principal Office in California, if any - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
		CA	
c. Mailing Address of Principal Executive Office, if different than Item 3a	City (no abbreviations)	State	Zip Code

4. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL — Complete Items 4a and 4b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
		CA	

CORPORATION — Complete Item 4c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete Item 4a or 4b

COGENCY GLOBAL INC.

5. Read and Sign Below (See Instructions. Title not required.)

I am authorized to sign on behalf of the foreign LLC.

Signature

Cullen J. Davis

Type or Print Name

State of California
Secretary of State

CERTIFICATE OF REGISTRATION

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify:

That on the **14th** day of **August, 2019**, **UP HOLDINGS CALIFORNIA, LLC**, complied with the requirements of California law in effect on that date for the purpose of registering to transact intrastate business in the State of California; and further purports to be a limited liability company organized and existing under the laws of **Delaware** as **UP HOLDINGS, LLC** and that as of said date said limited liability company became and now is duly registered and authorized to transact intrastate business in the State of California, subject, however, to any licensing requirements otherwise imposed by the laws of this State.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great Seal
of the State of California this day of
August 16, 2019.



A handwritten signature in black ink, appearing to read "Alex Padilla".

ALEX PADILLA
Secretary of State

GS