

**Agenda Item: ID#17-1332 (4-B)**

**Date: 10/12/17**

# FRESNO CITY COUNCIL



## Supplemental Information Packet

**Agenda Related Item(s) – ID#17-1332 (4-B)**

### **Contents of Supplement: Amended Agreement (Amendment on Page 11 – Signature Page)**

#### **Item(s)**

Approve an agreement with the Southwest Community Development Corporation for \$100,000, for Fiscal Year 2017-2018 (Council District 3)

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**AGREEMENT BETWEEN THE CITY OF FRESNO AND THE  
SOUTHWEST COMMUNITY DEVELOPMENT  
CORPORATION FOR FISCAL YEAR 2017-18**

THIS AGREEMENT is made and entered into on the first day of July 1, 2017, by and between the CITY OF FRESNO, a municipal corporation (CITY), and the SOUTHWEST COMMUNITY DEVELOPMENT CORPORATION (SWCDC), a California nonprofit corporation.

WHEREAS, the CITY recognizes the importance of a balanced and diversified economy as one of its most important priorities for ensuring the future well-being of the citizens of Fresno; and

WHEREAS, the CITY is committed to the attainment of its economic development and customer service goals related to the location of new businesses to ensure the economic vitality of the CITY; and

WHEREAS, the CITY recognizes that market competitive economic development services require a collaborative partnership of local economic development agencies to gain market visibility, and ultimately, to create jobs; and

WHEREAS, the SWCDC continues to maintain regional, national, and international marketing and promotional efforts to attract the location and expansion of businesses and industries in all of the communities within Fresno, while also providing technical assistance to its member agencies; and

WHEREAS, the CITY desires to fund staffing, and allocates funds to the SWCDC for the purpose of hiring staff to assist in implementing and administering certain local economic development activities such as advocacy, marketing and promotion, and technical support for the CITY through the SWCDC in business attraction goals to create ongoing employment opportunities for both cities' residents; and

WHEREAS, the SWCDC recognizes that the generation of leads, qualifying those leads, and facilitating site visits of qualified prospects are important steps in a successful job creation program; and

WHEREAS, the SWCDC has the organization, facilities, and expertise to carry out such economic development services as both an individual contributor and a team member, in accordance with the purpose of this Agreement;

NOW, THEREFORE, BE IT RESOLVED that the CITY and the SWCDC agree as follows:

## **I. SERVICES**

SWCDC shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

## **II. TERM**

The term of this Agreement shall commence on July 1, 2017, and end June 30, 2018, regardless of the date in which this Agreement is executed by both parties.

## **III. TERMINATION**

This Agreement shall terminate without any liability of CITY to SWCDC upon CITY'S non- appropriation of funds sufficient to meet its obligations hereunder, or insufficient funding for the Project, or expiration of this Agreement.

Either party shall have the right to terminate this Agreement upon thirty (30) days' written notice thereof being served to the other party.

In the event this Agreement is terminated by the CITY for its convenience, SWCDC shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the SWCDC covered by this Agreement, as determined by CITY, less any payments from compensation previously made.

## **IV. PAYMENT**

For performance of the services described in Section I above, the CITY agrees to pay the SWCDC the sum of **\$100,000.00**, to be paid in one (1) with the installment paid no later than 30 days after the date in which the Agreement is executed. The SWCDC shall submit an annual corresponding report on performance to the CITY 30 days before the end of the one year contract.

No funds paid by the CITY shall be used directly or indirectly for lobbying or political activity.

## **V. INSURANCE**

### **A. COVERAGE REQUIREMENTS**

Throughout the life of this Agreement, the SWCDC shall pay for and maintain in full force and effect all policies of insurance 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 not less than "A-VII" in Best's Insurance Rating Guide; or (ii) as may be authorized, in writing, by the CITY's Risk Manager or 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. 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. The following policies of insurance are required:

(1) COMMERCIAL GENERAL LIABILITY (“CGL”) 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, providing liability coverage arising out of your business operations. The CGL shall be written on an occurrence form and shall provide coverage, bodily injury property damage and personal 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:

- (a) \$1,000,000 per occurrence for bodily injury and property damage;
- (b) \$1,000,000 per occurrence for personal and advertising injury;
- (c) \$2,000,000 aggregate for products and completed operations.
- (d) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

(2) COMMERCIAL AUTOMOBILE LIABILITY (“CAL”) insurance which shall be at least as broad as 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 CAL 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) with combined single limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(3) PROFESSIONAL LIABILITY insurance (Errors and Omissions):

- (a) \$1,000,000 per claim/occurrence; and
- (b) \$2,000,000 policy aggregate.

(4) WORKERS' COMPENSATION insurance as required by the State of California with statutory limits.

(5) Employer's Liability Insurance with limits of liability of not less than:

- (a) \$1,000,000 each accident for bodily injury;
- (b) \$1,000,000 disease policy limit; and,
- (c) \$1,000,000 disease each employee.

(6) UMBRELLA OR EXCESS POLICIES - In the event SWCDC 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). Any excess insurance policy(ies) shall contain a

provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of CITY, its officers, officials, employees, agents and volunteers.

The fact that insurance is obtained by SWCDC shall not be deemed to release or diminish the liability of SWCDC, 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 SWCDC. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SWCDC, its principals, officers, agents, employees, persons under the supervision of SWCDC, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

## **B. ENDORSEMENTS**

(1) All policies of insurance required herein 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 days written notice, certified mail, return receipt requested, has been given to CITY. SWCDC is also responsible for providing written notice to CITY under the same terms and conditions. Upon issuance by the insurer, broker or agent of a notice of cancellation, non-renewal or reduction in coverage or in limits, SWCDC shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policies are due to expire during the term of this Agreement, SWCDC 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(ies).

(2) The CGL and CAL insurance policies shall name CITY, its officers, officials, agents, employees and volunteers as an additional insureds. SWCDC shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

(3) For any claims related to this Agreement, SWCDC's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of SWCDC'S insurance and shall not contribute with it. SWCDC and any subcontractor shall establish primary and non- contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

(4) The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

(5) The Workers' Compensation insurance policy shall contain or be endorsed to contain a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

### **C. CLAIMS-MADE POLICIES**

If any coverage required is written on a claims-made coverage form:

(1) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by SWCDC.

(2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or following the termination of this Agreement, whichever occurs first.

(3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, SWCDC must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever occurs first.

(4) A copy of the claims reporting requirements must be submitted to CITY for review.

(5) These requirements shall survive termination or expiration of this Agreement.

### **D. PROVIDING OF DOCUMENTS**

SWCDC shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY's Risk Manager or designee prior to CITY's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, SWCDC shall immediately furnish 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. All subcontractors working under the direction of SWCDC shall also be required to provide all documents noted herein.

### **E. MAINTENANCE OF COVERAGE**

If at any time during the life of the Agreement or any extension, SWCDC or any of its subcontractors fail to maintain the 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 SWCDC shall be withheld until written 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 herein shall in any way relieve SWCDC 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.

The fact that insurance is obtained by SWCDC shall not be deemed to release or diminish the liability of SWCDC, including, without limitation, liability under the indemnity provisions of this 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 SWCDC. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SWCDC, its principals, officers, agents, employees, persons under the supervision of SWCDC, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

#### **F. SUBCONTRACTORS**

If SWCDC should subcontract all or any portion of the services and work to be performed under this Agreement, SWCDC shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and SWCDC shall ensure that CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and applicable endorsements shall be on file with SWCDC and CITY prior to the commencement of any services and work by the subcontractor.

#### **VI. INDEMNIFICATION:**

SWCDC shall indemnify, hold harmless, and defend CITY, its officers, agents, and employees, from all claims for money, damages, or other relief arising in any form from the performance of this Agreement by SWCDC, its officers, agents, or employees. SWCDC's obligations under the preceding sentence shall apply regardless of whether the 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 willful misconduct, of the City or any of its officers, officials, employees, agents or authorized volunteers.

If SWCDC should subcontract all or any portion of the services to be performed under this Agreement, SWCDC 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 subsection shall survive termination of the Agreement.

SWCDC shall take out and maintain for the full term of this agreement liability insurance providing protection for personal injury, wrongful death, and property damage; such insurance to be in amounts and issued by carriers acceptable to CITY. SWCDC shall provide CITY with a Certificate of Insurance evidencing such coverage.

## **VII. REPORTING AND AUDIT**

In addition to the records listed above, the SWCDC will maintain records, books and accounts in accord with generally accepted accounting practices. In addition to periodic reports to the City Manager, the SWCDC will submit quarterly status reports to the City Manager, detailing the progress of the SWCDC's activities, and will provide a workshop presentation upon request.

As part of the annual financial audit of the books and records of SWCDC by the SWCDC's independent auditor, the audit shall include tests for compliance with this Agreement. These tests shall be performed in conformance with generally accepted auditing standards. The auditor shall prepare a separate written report on the compliance with the provisions of this Agreement. CITY reserves the right to review and copy, during normal business hours, the books and records of SWCDC's expenditures which are related to the programs required by the provisions of this Agreement.

## **VIII. CONFLICT OF INTEREST**

Prior to CITY's execution of this Agreement, SWCDC shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said Statement is attached hereto as "Exhibit A" and incorporated herein by reference. During the term of this Agreement, SWCDC shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by SWCDC on **Exhibit B**.

SWCDC shall comply, and require any of its subcontractors to comply, with all laws and regulations including, without limitation, conflict of interest laws, such as Government Code 1090 et. seq., the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of the CITY, SWCDC shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, SWCDC and the respective subcontractor(s) are in full compliance with all laws and regulations. SWCDC shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, SWCDC shall immediately notify the CITY of these facts in writing.



SWCDC represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

Neither SWCDC nor any of SWCDC's subcontractors performing any work on this program, shall bid for, assist anyone in the preparation of a bid for, or perform any work pursuant to, any other contract in connection with this program. SWCDC and any of its subcontractors shall have no interest, direct or indirect, in any other contract in connection with this program unless such interest is fully disclosed to and approved by CITY, in advance and in writing.

**IX. COMPLIANCE WITH GOVERNMENTAL REGULATIONS**

SWCDC represents that it shall, at its sole cost and expense, comply with all applicable municipal, county, state and federal requirements now in force pertaining to any and all activities contemplated under this Agreement including any legal limitations placed upon the SWCDC as a result of the source of funds received by the SWCDC under this Agreement.

**X. SUBCONTRACTS**

SWCDC shall not enter into subcontracts in the amount of Ten Thousand Dollars (\$10,000.00) or more, for any work contemplated under this Agreement without first obtaining CITY's written approval.

**XI. ASSIGNMENT**

Without CITY's prior written consent, this Agreement is not assignable by SWCDC, either in whole or in part.

**XII. SUCCESSORS AND ASSIGNS**

The terms, conditions and provisions herein contained shall apply to and bind the successors, executors, administrators and assigns of all the parties hereto.

**XIII. NOTICES**

All notices and communications to be given to either party may be given in writing, depositing the same in the United States mail, postage prepaid, and addressed to the appropriate party as follows:

To SWCDC: To CITY:

Wilma Quan-Schechter, City Manager  
2600 Fresno Street  
Fresno, CA 93721

#### **XIV. ATTORNEY'S FEES**

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.

#### **XV. INDEPENDENT CONTRACTOR STATUS**

In the furnishing of the services provided for herein, SWCDC is acting solely as an independent contractor. Neither SWCDC, nor any of its officers, agents or employees, shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which SWCDC shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that SWCDC is performing its obligations in accordance with the terms and conditions hereof.

This Agreement does not evidence a partnership or joint venture between SWCDC and City. SWCDC shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, SWCDC shall bear its own costs and expenses in pursuit thereof.

Because of its status as an independent contractor, SWCDC and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. SWCDC shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, SWCDC shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of SWCDC's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, SWCDC may be providing services to others unrelated to City or to this Agreement.

#### **XVI. NONDISCRIMINATION.**

To the extent required by controlling federal, state and local law, SWCDC shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex,

age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

**XVII. NO THIRD PARTY BENEFICIARIES**

The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

**XVIII. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. 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 County, California.

**XIX. EXTENT OF AGREEMENT**

Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

[Signatures follow on the next page.]

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

**CITY OF FRESNO,  
a California municipal corporation**

**SOUTHWEST COMMUNITY DEVELOPMENT  
CORPORATION SERVING FRESNO  
COUNTY, a California nonprofit corporation**

By: \_\_\_\_\_  
Wilma Quan-Schechter      Date  
City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Title: \_\_\_\_\_  
(If corporation or LLC., Board Chair, Pre  
or Vice Pres.)

By: \_\_\_\_\_  
Brandon M. Collet      Date  
Deputy

By: \_\_\_\_\_

Name: \_\_\_\_\_

ATTEST:  
YVONNE SPENCE  
City Clerk

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

By: \_\_\_\_\_  
Deputy

Attachments:  
EXHIBIT A – Scope of Services  
EXHIBIT B – Conflict of Interest Disclosure

**EXHIBIT A**  
**SCOPE OF SERVICES**

The purpose of this funding request is to support capacity building for the SWCDC which includes: recruiting and hiring an executive director and securing professional services (subcontractors for fund development, web/social media design. Please see proposed scope of work for FY17-FY18 below.

Line item	Timeline	Activities / Justification	Estimate	Totals
SWCDC Board to Recruit/hire executive director.	10/01/2017 – 12/01/2017	E.D. salary /benefits/taxes/	\$70,000 \$16,100	\$86,100
Recruit /hire subcontractor(s)	10/01/2017 – 12/01/2017	Fund development Web/social design media	\$9,000 \$4,900	\$13,900
Executive Director	12/01/2017 – 06/01/2018	Guide board in decision making process; implement SWCDC board approved SOW activities		
Subcontractor (s)	12/01/2017 – 06/01/2018	Facilitate community outreach/resident engagement, fundraising efforts, and design and launch of social media sites.		
			Total	\$100,000.00

**EXHIBIT B  
DISCLOSURE OF CONFLICT OF INTEREST**

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?		X
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?		X
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?		X
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?		X
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?		X
*If the answer to any question is yes, please explain in full.			

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company/Agency

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip