

**AGREEMENT BETWEEN THE CITY OF FRESNO AND FRESNO AREA  
HISPANIC FOUNDATION REGARDING ADMINISTRATION OF FUNDING UNDER  
THE AMERICAN RESCUE PLAN ACT FOR A FAÇADE GRANT PROGRAM**

THIS AGREEMENT (AGREEMENT) is made and entered into effective upon execution by both parties (the Effective Date), by and between the CITY OF FRESNO (the CITY), and FRESNO AREA HISPANIC FOUNDATION (ADMINISTRATOR).

**RECITALS**

WHEREAS, there is an increased need for funding for small businesses who have suffered economically due to the COVID-19 pandemic; and

WHEREAS, the City desires to provide funds to assist ADMINISTRATOR in providing a grant program designed to assist businesses in beautifying their facades in an effort to strengthen and grow their business; and

WHEREAS, ADMINISTRATOR represents it desires to and is professionally and legally capable of immediately providing these services for City of Fresno businesses; and

WHEREAS, ADMINISTRATOR acknowledges that grant funds being provided under this Agreement will be derived from the City's allocation under the American Rescue Plan Act (Pub.L. 117-2) (hereinafter ARPA), and is subject to any constraints set forth therein including but not limited to, the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) Final Rule (31 CFR Part 35); and

WHEREAS, this Agreement will be administered for the City by its City Manager or its designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. ADMINISTRATOR shall perform to the satisfaction of the 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**.

2. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$1,500,000. Such fees include all expenses incurred by the Consultant in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business.

3. Term of Agreement and Time for Performance. This Agreement shall be effective from the Effective Date through December 31, 2025, subject to earlier termination in accordance with this Agreement. The services as described in **Exhibit A** are to commence upon the Effective Date and shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

4. Amendment to Increase or Decrease Scope of Services. The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification may include an adjustment to ADMINISTRATOR's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party.

ADMINISTRATOR shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

5. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of the City or to ADMINISTRATOR upon the earlier of: (i) ADMINISTRATOR filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against ADMINISTRATOR; (ii) seven calendar days prior written notice with or without cause by the City to ADMINISTRATOR; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, ADMINISTRATOR shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of ADMINISTRATOR that are owned by the City. Subject to the terms of this Agreement, ADMINISTRATOR shall be paid compensation for services satisfactorily performed prior to the effective date of termination. ADMINISTRATOR shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of ADMINISTRATOR to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the ADMINISTRATOR, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the ADMINISTRATOR, the City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic, and incidental damages for the breach of the Agreement. If it is determined that the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) ADMINISTRATOR shall provide the City with adequate written assurances of future performance, upon the Administrator's request, in the event ADMINISTRATOR fails to comply with any terms or conditions of this Agreement.

(f) ADMINISTRATOR shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of ADMINISTRATOR and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. ADMINISTRATOR shall notify the City in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Administrator of the cessation of such occurrence.

6. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by

ADMINISTRATOR pursuant to this Agreement shall not be made available to any individual or organization by ADMINISTRATOR without the prior written approval of the City. During the term of this Agreement, and thereafter, ADMINISTRATOR shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term "Confidential Information" for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes, and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

(b) Any and all writings and documents prepared or provided by ADMINISTRATOR pursuant to this Agreement, including without limitation grant applications and supporting documents, are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement. Copies of grant applications and supporting documents shall be promptly provided to City during the term of this Agreement. ADMINISTRATOR shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If ADMINISTRATOR should subcontract all or any portion of the services to be performed under this Agreement, ADMINISTRATOR shall cause each subcontractor to also comply with the requirements of this Section 6.

(d) This Section 6 shall survive expiration or termination of this Agreement.

7. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as ADMINISTRATOR represents to the City that ADMINISTRATOR and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the ADMINISTRATOR and any subcontractors to do and perform such services in a skillful manner and the ADMINISTRATOR agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of ADMINISTRATOR or any subcontractors from said professional standards.

8. Indemnification. To the furthest extent allowed by law, ADMINISTRATOR 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of ADMINISTRATOR, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If ADMINISTRATOR should subcontract all or any portion of the services to be performed under this Agreement, ADMINISTRATOR 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.

Notwithstanding the aforementioned, ADMINISTRATOR recognizes that the source of funds for the grant to be provided hereunder is the City's allocation from the ARPA. To this end ADMINISTRATOR shall, without limitation, indemnify the City, and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages incurred by the City from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to

have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of ADMINISTRATOR or any of its officers, officials, employees, agents, or volunteers in the performance of this Agreement and compliance with ARPA.

This section shall survive termination or expiration of this Agreement.

9. Insurance. ADMINISTRATOR shall comply with all of the insurance requirements in **Exhibit C** to this Agreement.

10. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, ADMINISTRATOR shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit D**. During the term of this Agreement, ADMINISTRATOR shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by ADMINISTRATOR in such statement.

(b) ADMINISTRATOR shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California 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, ADMINISTRATOR shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, ADMINISTRATOR and the respective subcontractor(s) are in full compliance with all laws and regulations. ADMINISTRATOR shall take, and require its 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, ADMINISTRATOR shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, ADMINISTRATOR shall not employ or retain the services of any person while such person either is employed by the City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) ADMINISTRATOR 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.

(e) Neither ADMINISTRATOR, nor any of ADMINISTRATOR subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. ADMINISTRATOR and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, ADMINISTRATOR shall remain responsible for complying with Section 10(b), above.

(f) If ADMINISTRATOR should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, ADMINISTRATOR shall include the provisions of this Section 10 in each subcontract and require its subcontractors to comply

therewith.

(g) This Section 10 shall survive expiration or termination of this Agreement.

11. ARPA Compliance and Certification. ADMINISTRATOR shall submit only those expenditures which are eligible for payment and in compliance with the allowable expenditures, including the following eligibility requirements:

ADMINISTRATOR shall provide the City with quarterly expenditure and performance reports, as defined in the Final Rule and Treasury Department's SLFRF Compliance and Reporting Guidance (CRG). ADMINISTRATOR shall also provide an annual report as required under the CRG. These reports shall be in a form specified under the CRG and shall be accompanied by invoices and receipts that substantiate the figures on the expenditure report. Additionally, a certification signed by the Chief Executive or designee of ADMINISTRATOR certifying that the uses of the grant funds are consistent with those allowed under ARPA, shall be included with the expenditure report and substantiating documentation. As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80% or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. If the ADMINISTRATOR is already disclosing this information as part of another agreement involving Federal monies, ADMINISTRATOR shall provide documentation to the City that it is fulfilling this requirement. ADMINISTRATOR's failure to provide a Certification or provide either the quarterly or annual expenditure/performance reports may be considered a default of this Agreement under Section 5 of this agreement. If ADMINISTRATOR is found to have provided services to ineligible individual, households, or entities or made an ineligible expenditure, CITY shall have the right to reclaim a dollar amount from the ADMINISTRATOR that is equal to the amount determined to be ineligible.

12. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the City Manager or designee.

(b) The City is required under 2 CFR 200.332 to manage and monitor subrecipient compliance with ARPA guidance. Accordingly, ADMINISTRATOR agrees to permit City staff to conduct one performance review during the term of this agreement. City has the right to conduct additional performance reviews both during the term of this agreement and after the agreement's term should the City believe these reviews are necessary. Records of ADMINISTRATOR expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. Records related to ADMINISTRATOR's performance metrics shall be made available and retained for the same time periods as the Project's expense data. ADMINISTRATOR shall furthermore comply with all funding requirements as set forth in ARPA. If ADMINISTRATOR fails to provide City staff access or documentation necessary to conduct a City-requested performance review, City may terminate this Agreement in accordance with Section 5.

In addition, all books, documents, papers, and records of ADMINISTRATOR pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit, or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If ADMINISTRATOR should subcontract all or any portion of the services to be performed under this Agreement, ADMINISTRATOR shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 12(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by the City, ADMINISTRATOR shall have provided evidence to the City that ADMINISTRATOR is licensed to perform the services called for by this Agreement (or that no license is required). If ADMINISTRATOR should subcontract all or any portion of the work or services to be performed under this Agreement, ADMINISTRATOR shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) Prior to execution of this Agreement by the City, ADMINISTRATOR will permit City staff to conduct a subrecipient risk assessment, as required under the Uniform Guidance (2 CFR 200.332(b)). Failure to allow City staff to conduct this subrecipient risk assessment may result in the City terminating this Agreement in accordance with Section 5. Additionally, the ADMINISTRATOR's failure to be certified by City staff at the end of the risk assessment as having adequate internal controls to manage the funding provided in this agreement may result in the City terminating this Agreement in accordance with Section 5.

13. Nondiscrimination. To the extent required by controlling federal, state, and local law, ADMINISTRATOR 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. Subject to the foregoing and during the performance of this Agreement, ADMINISTRATOR agrees as follows:

(a) ADMINISTRATOR will comply with all applicable laws and regulations providing that no person shall, on the grounds 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 be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) ADMINISTRATOR will not discriminate against any employee or applicant for employment because 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. ADMINISTRATOR shall ensure that applicants are employed, and the employees are treated during employment, without regard to their 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. Such requirement shall apply to ADMINISTRATOR's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTRATOR agrees to post in conspicuous places, available to

employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) ADMINISTRATOR will, in all solicitations or advertisements for employees placed by or on behalf of ADMINISTRATOR in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to 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.

(d) ADMINISTRATOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of the ADMINISTRATOR's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If ADMINISTRATOR should subcontract all or any portion of the services to be performed under this Agreement, ADMINISTRATOR shall cause each subcontractor to also comply with the requirements of this Section 13.

14. Independent Contractor.

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

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

(c) Because of its status as an independent contractor, ADMINISTRATOR and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. ADMINISTRATOR 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, ADMINISTRATOR shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of ADMINISTRATOR'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 the City's employment benefits, entitlements, programs and/or funds offered employees of the 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, ADMINISTRATOR may be providing services to others unrelated to the City or to this Agreement.

15. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested,

addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

16. Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

17. Assignment.

(a) This Agreement is personal to ADMINISTRATOR and there shall be no assignment by ADMINISTRATOR of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by ADMINISTRATOR, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) ADMINISTRATOR hereby agrees not to assign the payment of any monies due ADMINISTRATOR from the City under the terms of this Agreement to any other individual(s), corporation(s), or entity(ies). The City retains the right to pay any and all monies due the ADMINISTRATOR directly to the ADMINISTRATOR.

18. Compliance With Law. In providing the services required under this Agreement, ADMINISTRATOR shall at all times comply with all applicable laws of the United States, including but not limited to, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), the State of California and the City, and all other applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. In addition, GRANTOR elects to receive funds from the Secretary under ARPA and will use the funds in a manner consistent with such section.

19. Waiver. The waiver by either 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 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.

20. 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.

21. 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.

22. 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.

23. 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 of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

24. 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.

25. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

26. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

27. ALTERATION OF TERMS: No alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by both parties.

28. CONTRACT CHANGES: No changes or modifications to the Contract shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent or employee of the City shall affect or modify any terms or obligations of these Specifications or any Contract resulting from this procurement.

29. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract including Special Conditions or Scope of Work. Any changes shall be made only by means of a formal amendment signed by both the City and Contractor.

30. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

31. 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.

32. 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. This Agreement may be modified only by written instrument duly authorized and executed by both the City and ADMINISTRATOR.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

CITY OF FRESNO,  
a California municipal corporation

Fresno Area Hispanic Foundation,  
a California nonprofit corporation

By: \_\_\_\_\_  
Georgeanne A. White                      Date  
City Manager, City of Fresno

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

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

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

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

By: \_\_\_\_\_  
Angela M. Karst                              Date  
Deputy City Attorney

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

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

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

By: \_\_\_\_\_  
Deputy    Date

Addresses:  
CITY:  
City of Fresno  
Attention: Kelly Trevino  
Economic Development Department  
2600 Fresno Street  
Fresno, CA 93721  
Phone: (559) 621-8426  
FAX: (559) 457-1504

Fresno Area Hispanic Foundation  
Attention: Yurubi Ramirez  
1444 Fulton Street  
Fresno, CA 93721  
Phone: (559) 222-8705

- Attachments:
1. Exhibit A - Scope of Work, Budget and Metrics
  2. Exhibit B - Map of Qualified Area
  3. Exhibit C - Insurance Requirements
  4. Exhibit D - Conflict of Interest Disclosure Form

## EXHIBIT A SCOPE OF WORK, BUDGET AND METRICS

### EXECUTIVE SUMMARY

The City of Fresno ARPA Grant Program (Program) provides a total of \$1,500,000 for façade improvements of buildings and eligible commercial businesses located in the City of Fresno who have been disproportionately impacted by the COVID-19 Pandemic. The Program is designed to fund physical improvements to commercial buildings or business facades visible from public rights-of-way. The intent is to strengthen the economic vitality of Fresno by improving the exterior physical appearances of qualified businesses. The appearance of individual business storefronts is believed to have a significant influence on economic success. By improving their physical appearance, businesses will have a much greater potential for attracting and retaining customers.

Funding of individual façade improvement projects will be provided for project costs that meet specific criteria. The program provides for funding to an approved applicant of 100% of the costs actually paid for certain façade improvements identified in the program with a maximum reimbursement of up to \$25,000 for single storefront properties and up to \$50,000 for properties with multiple storefronts. Only exterior renovations of existing businesses qualify. New construction is **NOT** eligible under the Program.

### GOALS AND OBJECTIVES

It is anticipated that the Program will provide 25 – 50 façade grants. This is dependent on the number and type of qualified applications that are received and selected for funding.

### BUDGET:

Façade Improvement Grants to Qualified Businesses	\$1,245,000
Grant Management and Administration <ul style="list-style-type: none"><li>• Marketing</li><li>• Overhead</li><li>• Staffing</li><li>• Other grant management costs</li></ul>	\$ 120,000
Technical Assistance <ul style="list-style-type: none"><li>• Application assistance</li><li>• Consultations</li><li>• Project Management</li></ul>	\$60,000
Outreach	\$75,000*
<b>TOTAL</b>	<b>\$1,500,000</b>

\*The Outreach funding shall be used to subcontract with partner agencies to provide a more effective and targeted outreach program throughout the grant eligible areas. FAHF will give highest priority to other proposers/respondents to this RFP.

**PROGRAM QUALIFICATIONS AND CRITERIA:**

Existing Properties with Single Storefront	Maximum Reimbursement: \$25,000
Existing Properties with Multiple Storefronts	Maximum Reimbursement: \$50,000
Other Criteria	<ol style="list-style-type: none"><li>1) Applicant must be physically located and operating in the City of Fresno in an area designated as being disproportionately impacted by the COVID-19 Pandemic (see map attached – Exhibit B)</li><li>2) Only EXTERIOR façade renovations of EXISTING businesses are eligible,</li><li>3) All historic properties must comply with the Secretary of the Interior Standards for the Rehabilitation of Historic Structures and receive approval from the City of Fresno Historic Preservation Commission.</li><li>4) All work must be performed by a verified licensed contractor with a valid City of Fresno Business Tax Certificate.</li><li>5) Not a Chain – Businesses receiving façade grant improvements must not be part of a larger or national chain operation.</li><li>6) Businesses receiving façade grant improvements must meet Small Business Criteria as defined in 15 U.S.C. 632 – meaning a business is independently owned and operated and is not dominate in its field of operation.</li><li>7) Workforce – Businesses must have 25 or fewer employees.</li></ol>

<p>Other Eligibility Requirements</p>	<ol style="list-style-type: none"> <li>1. Applicant must meet the designation of a business that is designated as “Disproportionately Impacted by the COVID-19 Pandemic per the U.S. Treasury as outlined in the Assistance to Small Business section of the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Final Rule. (<a href="https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf">https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf</a> ) See also SLRF Final Rule Overview (<a href="https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf">https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf</a>). Note: Please see map attached showing qualified area (Exhibit B)</li> <li>2. Priority may be given to businesses operating in Chinatown, downtown and the Bus Rapid Transit (BRT)/Transit Oriented Development (TOD) corridor areas along Blackstone and Kings Canyon.</li> <li>3. If a tenant business owner is applying, a signed letter from the building owner approving the project must be submitted.</li> <li>4. Proof of appropriate insurance for contractor must be provided.</li> <li>5. Application must be completed with all proper documentation and required attachments before work can begin.</li> <li>6. Business that are owned (in whole or part) by City of Fresno Staff, Councilmembers, Fresno Area Hispanic Foundation Staff or their spouses or domestic partners are NOT eligible.</li> </ol>
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**TIMELINE**

The program timeline will be implemented as follows:

Months 1 - 2

1. FAHF will design the application and all marketing material. They will work with community partners to develop material in the necessary languages including English, Spanish, Hmong and Punjabi. All material will be approved by City of Fresno Staff before it is distributed publicly.
2. FAHF will develop a database for the enrollment and tracking of applicants/businesses that participate in the program.
3. A landing page within the FAHF website will be developed to provide additional information and allow potential participants to enroll directly online.
4. Once finalized/approved, marketing of the Program via multiple media outlets including television, radio, printed media ads and direct door-to-door outreach will begin and will continue until December 31, 2024, or all funding is allocated, whichever comes first.
5. Workshops and information sessions will be scheduled at various locations throughout Fresno’s business corridors to promote the program and answer questions.

Month 3 – program end

1. Applications and documentation will be received and assessed based on the eligibility qualifications above. FAHF must ensure that applications deemed qualified comply with the ARPA guidelines before proceeding with a grant.
2. FAHF Staff will track all applicants/applications.
3. Once approved, a portion of the grant amount (up to \$12,500) will be provided up front to the qualified business.
4. Once the project is completed, and proof of all work and costs is submitted, the remainder of the funding (up to \$25,000 for single storefronts and \$50,000 for multiple storefronts) will be provided to the applicant.

Marketing and technical assistance may be subcontracted to partner organizations as needed in an effort to effectively market to and assist qualified businesses in Fresno.

## **PROJECT REPORTING AND METRICS**

1. FAHF will keep track of the following program metrics and will provide the City of Fresno with reports as needed showing, at a minimum, the following: Number of small businesses reached;
2. Number of applications received and status of each
3. Names and relevant information (address, ownership info, Council District and demographic information) for each business that submits an application (funded AND not-funded)
4. Detailed information on businesses that have been awarded including reimbursements received/due, work done or planned, before and after photos, demographic information, address, ownership info, Council District...etc.
5. Number of applicants/businesses that accessed loan funds from FAHF to cover additional costs of façade improvements.
6. Number of one-on-one consultation hours provided.
7. Number of businesses that received technical assistance.
8. Information on outreach methods used.
9. Industries of businesses awarded.
10. Number of applicants/businesses that have received reimbursements from the City of Fresno and corresponding dollar amounts/amounts due.
11. Status of applicants'/businesses' façade improvement projects.
12. Any other information deemed necessary by the City of Fresno.

FAHF will track the processes within their management system and provide monthly updates to staff.

**Quarterly Reports** – will be required on the dates listed below and will include required narrative, program metrics and expenses to date. A quarterly reporting template will be provided. Quarterly reporting will be required if project is operational during the performance period.

**Annual Reports** – will be required on the dates below and are not dependent on when your project started. An annual reporting template will be provided. Annual reporting will be required if project is operational during the performance period.

Performance Period	Quarterly Report Due
Grant Execution – 3/31/2023	4/14/2023
4/1/2023 – 6/30/2023	7/14/2023
7/1/2023 – 9/30/2023	10/13/2023
10/1/2023 – 12/31/2023	1/12/2024
1/1/2024 – 3/31/2024	4/12/2024
4/1/2024 – 6/30/2024	7/12/2024
7/1/2024 – 9/30/2024	10/11/2024
10/1/2024 – 12/31/2024	1/10/2025

Performance Period	Annual Report Due
Grant Execution – 6/30/2023	7/14/2023
7/1/2023 – 6/30/2024	7/12/2024
7/1/2024 – 6/30/2025	7/11/2025

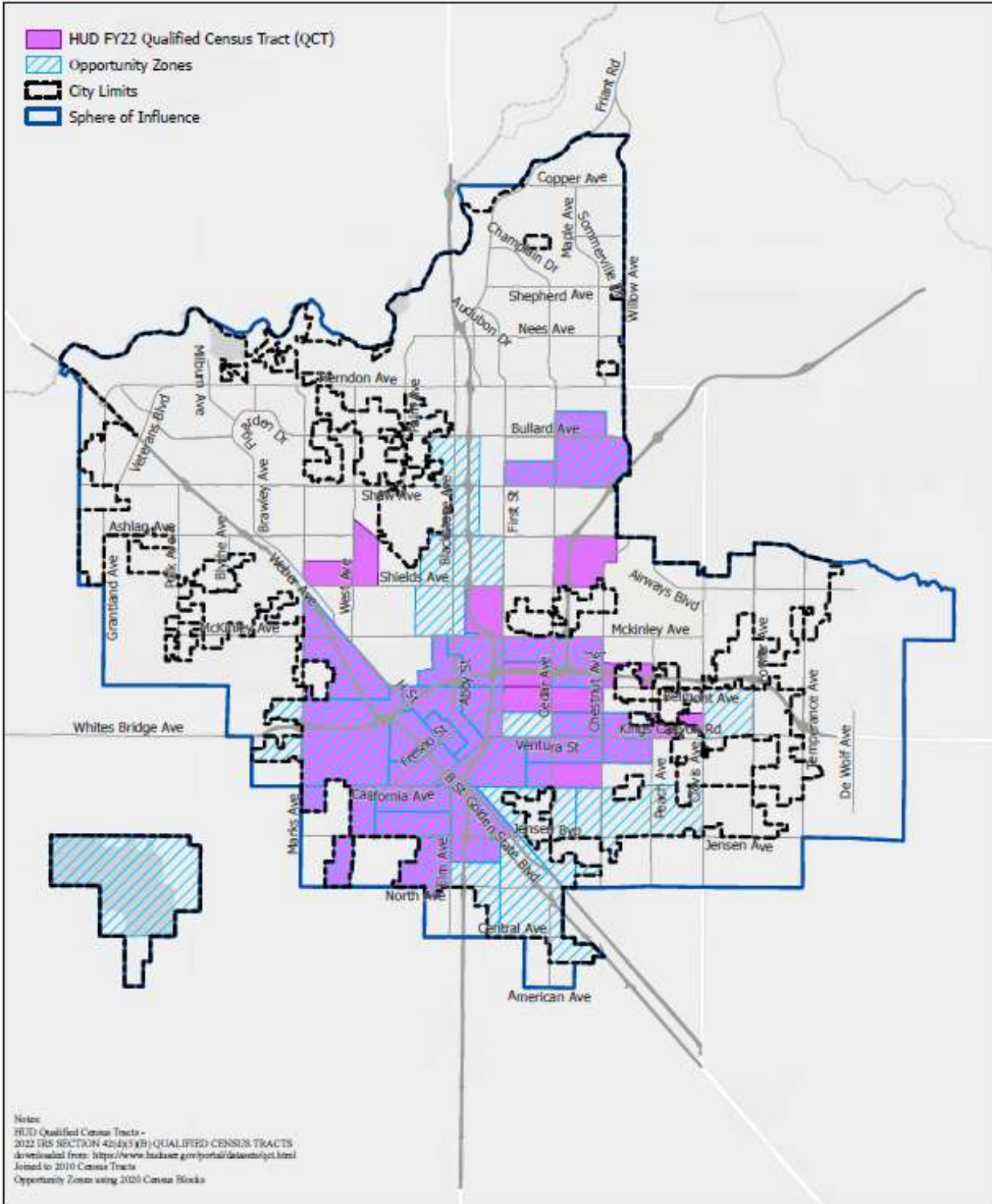
In order to disburse additional funding, an audit will be done to show the progress of the program.

**ALL FUNDING MUST BE ALLOCATED BY 12/31/2024 and EXPENDED by 6/30/2025.**

**EXHIBIT B**  
**Map of Qualified Area**



**2022 ARPA Façade Grant Program**  
**Qualified Area Map**





## **EXHIBIT C INSURANCE REQUIREMENTS**

(a) Throughout the life of this Agreement, ADMINISTRATOR 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 designee at any time and in his/her sole discretion. If the ADMINISTRATOR is self-insured, the following requirements will outline the responsibility of the self-insured coverage. 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 and STATE and each of their 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, ADMINISTRATOR fails 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 ADMINISTRATOR 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 ADMINISTRATOR 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 ADMINISTRATOR shall not be deemed to release or diminish the liability of ADMINISTRATOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY and STATE by ADMINISTRATOR 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 ADMINISTRATOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of ADMINISTRATOR, vendors, suppliers, invitees, consultants, medical professionals, subcontractors, 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.
4. Professional Liability (Errors and Omissions) insurance appropriate to ADMINISTRATOR'S profession.

### **MINIMUM LIMITS OF INSURANCE**

ADMINISTRATOR shall procure and maintain for the duration of the contract insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY and STATE and each of their 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:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY:**
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

### **UMBRELLA OR EXCESS INSURANCE**

In the event ADMINISTRATOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," 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 and STATE and each of their officers, officials, employees, agents and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

ADMINISTRATOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and ADMINISTRATOR shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or designee. At the option of the CITY'S Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects

CITY and STATE or any of their officers, officials, employees, agents and volunteers; or

- (ii) ADMINISTRATOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) 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 calendar days' written notice has been given to CITY, except ten days for nonpayment of premium. ADMINISTRATOR is also responsible for providing written notice to the 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, ADMINISTRATOR shall furnish 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 CITY, ADMINISTRATOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name CITY and STATE and each of their officers, officials, agents, employees and volunteers as an additional insured. ADMINISTRATOR shall establish additional insured status for the CITY and STATE for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsements providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the ADMINISTRATOR'S insurance shall be primary to and require no contribution from the CITY or STATE. The Commercial General Liability policy is required to include primary and non-contributory coverage in favor of the CITY and STATE for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to CITY and STATE and each of their officers, officials, employees, agents and volunteers. If ADMINISTRATOR maintains higher limits of liability than the minimums shown above, CITY and STATE requires and shall be entitled to coverage for the higher limits of liability maintained by ADMINISTRATOR.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, ADMINISTRATOR'S insurance

coverage shall be primary insurance with respect to the CITY and STATE and each of their officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY and STATE and each of their officers, officials, agents, employees and volunteers shall be excess of the ADMINISTRATOR'S insurance and shall not contribute with it.

- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY and STATE and each of their officers, officials, agents, employees and volunteers.
- (viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY and STATE and each of their officers, officials, agents, employees and volunteers.

If the *Professional Liability (Abuse & Molestation) insurance policy* is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by ADMINISTRATOR.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
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 the commencement of work by ADMINISTRATOR, ADMINISTRATOR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement 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 expiration or termination of the Agreement.

**PROVIDING OF DOCUMENTS** - ADMINISTRATOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. **All certificates and applicable endorsements are to be received by CITY's Risk Manager within a reasonable time after execution of this agreement.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, ADMINISTRATOR 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 ADMINISTRATOR shall also be required to provide all documents noted herein.

**SUBCONTRACTORS** - If ADMINISTRATOR subcontracts any or all of the services to be performed under this Agreement, ADMINISTRATOR shall 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 and shall indemnify CITY and STATE if failure to comply with this provision results in damages to the CITY or the ADMINISTRATOR.

**EXHIBIT D  
DISCLOSURE OF CONFLICT OF INTEREST**

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional page(s) attached.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State Zip)