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**Regular Council Meeting
January 27, 2022**

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CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 22-211, 1-FF

Actions Pertaining to Leasing the City-Owned Historic Water Tower

Contents of Supplement:

Water Tower Lease Agreement

Item(s)

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.

LEASE AGREEMENT

This LEASE AGREEMENT (hereinafter referred to as "Lease") made and entered into this _____ day of _____, 2022 (the "Effective Date") by and between the CITY OF FRESNO, a municipal corporation of the State of California, (hereinafter referred to as "the City") and FRIDA CAFE, a Frida Café LLC, a California limited liability company (hereinafter referred to as "Lessee").

RECITALS

WHEREAS the City owns property located at the intersection of Fresno Street and O Street, Fresno, California, (the "Premises"), commonly referred to as the Water Tower; and

WHEREAS the Water Tower is on both the National Register of Historic Places and on the Local Historic Register for the City of Fresno; and

WHEREAS Lessee desires to operate a coffee shop to sell coffee products and pre-packaged pastry products, art, historical and City of Fresno related souvenirs at the Water Tower; and

WHEREAS the City and Lessee desire to execute a lease agreement to define the terms and conditions under which the Lessee will be allowed to operate a coffee shop to sell coffee products and pre-packaged pastry products at the Water Tower.

AGREEMENT

NOW, THEREFORE, the parties hereto, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties, agree as follows:

SECTION 1. DESCRIPTION OF THE PREMISES. The physical address of the Water Tower is 2444 Fresno St, Fresno, CA 93721. For the purposes of this Lease Agreement, the Leased Premises shall be defined as:

- (a) The interior commercial area of the Water Tower,
- (b) The paved, courtyard area surrounding the Water Tower, and
- (c) The restroom facility located adjacent to the Water Tower.
- (d) Three (3) parking stalls within 500 feet of the premises to be designated by the City for use by Lessee's employees.
- (e) The City shall also designate three metered parking spots as short-term parking.

The Lessee shall have non-exclusive use of the restroom facility and shall keep them open to the public during operating hours or as defined by an issued Conditional Use Permit.

The City and Lessee shall have shared use of the courtyard area and is subject to Section 15 of this lease.

The Lessee shall be prohibited from using any other property or land area in the vicinity of the Water Tower, except for those listed above. The City leases the Leased Premises to Lessee "as is," in its existing physical condition and without warranty, on the terms and conditions set forth herein.

The Lessee has examined the Premises prior to execution of this Lease Agreement and represents the Premises are suitable for the stated purposes contained in this Lease Agreement.

The Leased Premises, and all contents and artifacts within the Premises boundary, shall always remain the property of the City, including all alterations, repairs, and improvements commissioned by the Lessee.

Lessee is expressly prohibited from changing the locks to any doors to any part of the Leased Premises. The City shall maintain one set of keys for the Premises and the Lessee shall maintain one set of keys for the Leased Premises. If Lessee's set of keys are lost or stolen, the City will change all locks, and Lessee shall reimburse the City for the full cost to change all locks. In addition, the City shall charge Lessee a Lock Change Fee of \$200.

SECTION 2. TERM AND EFFECTIVE DATE. The term of this Lease Agreement ("Term") is for a period of three (3) years, commencing 12:00 a.m. on _____, 202__ and terminating 11:59:59 p.m. on _____, 202__ unless sooner terminated in accordance with the provisions of this Lease. The Lease may be extended for two (2), one-year extensions upon mutual written agreement of the parties. A written request for extension must be submitted by the requesting party 30 days prior to term date above. If the lease is extended for two (2), one-year extensions, the lease shall terminate four (4) years and 364 days following the commencement date.

SECTION 3. SECURITY DEPOSIT. Prior to the City granting the Lessee access to the Premise to improve the property or initiate operations, the Lessee shall deposit the sum seven-hundred and fifty dollars \$750.00 as a Security Deposit with the City. This Security Deposit will serve as a surety instrument to ensure the Lessee complies with all the terms of this Lease Agreement. This Security Deposit may not be used to pay the last month's rent without the City Manager's prior written consent. If the Lessee breaks or otherwise violates this Lease prior to the expiration of this Lease, then the City may, at the City's discretion, retain all or part of the Security Deposit to recover unpaid rent or pay for repair damage to the property. If the Lessee has complied with all terms of this Lease and returns the Premises to the City in the same condition as when Lease Agreement was executed by both parties, then City will return the \$750.00 Security Deposit within 30 days

SECTION 4. LEASE PAYMENT. Lessee shall pay the City a Lease Payment that will include two components: Rental Charge and Utilities Charge.

The City shall charge the Lessee a Rental Charge of \$1.00 per square foot per month, or fraction thereof, for the use of the 771 interior square feet of the Water Tower associated with the Leased Premises. The lease payment is inclusive of natural gas, electricity, water, and sewer. The first lease payment shall become effective and due upon Lessee being issued an occupancy permit for the Premises.

Lessee shall submit Lease Payments to the City by the 10th day of each month for the prior month's rental charge. If the Lessee submits Lease Payments after the 10th day of the month, then the City shall assess a Late Fee Charge of \$25.00.

SECTION 5. OPERATIONAL COSTS. Lessee shall pay all operational costs required to operate a coffee shop on the Premises, including daily cleaning of the courtyard area, and daily cleaning, sanitizing, and supplying of the restroom facilities. "Operational Costs" shall be defined as all business-related costs not explicitly assigned to the City herein.

SECTION 6. UTILITIES. The City shall remain the owner for electricity, natural gas, water, and sewer utilities bills associated with the Water Tower. Lessee shall secure and maintain solid waste services for the Leased Premises, until such time as separate electricity and natural gas meters have been established. At that time, electricity and natural gas bills shall become the sole responsibility of the Lessee. The City shall designate waste disposal, organics disposal, and recyclable material disposal locations for the Lessee's operation of the Leased Premises as a coffee shop. The location may be adjusted and changed based on the level of municipal solid waste, organics waste, and recyclable materials generated at the Leased Premises. Lessee is solely responsible for telephone, internet, and security services for the premises.

SECTION 7. USE OF LEASED PREMISES. Lessee shall use the Leased Premises to operate a coffee shop to sell coffee products and pre-packaged pastry products.

The Lessee shall be required to operate the coffee shop within the interior structure of the Water Tower. The Lessee shall be prohibited from operating the coffee shop outdoors.

The Lessee's shall be authorized to operate the coffee shop Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, and Sunday from 6:00 am to 12:00 midnight daily.

The Lessee shall be authorized to reduce the number of days and number of hours of operation without prior written approval from the City Manager. However, Lessee may not increase the daily hours of operation without receiving prior written approval from the City Manager.

The City and Lessee shall cooperate and operate the light-emitting-diode (LED) accent lighting system for the exterior of the Water Tower.

The Lessee shall be authorized to operate the annunciator horn at the Water Tower, one time per day for 15 seconds at 12 noon. The annunciator horn shall not be operated at any other time. Operation of the annunciator horn shall be subject to Fresno Municipal Code, Chapter 10, Article 1, Noise Regulations. If the annunciator horn becomes inoperable or requires repair and refurbishment, the costs for the work shall be incurred by the Lessee. The City shall not incur costs to repair or refurbish the annunciator horn.

The Lessee shall be authorized to purchase and install tables and chairs for the interior and exterior of the Water Tower for customer seating, and no tables and chairs may be fixed or anchored to the ground and shall remain mobile and portable. All costs for table and chairs shall be the sole responsibility of the Lessee.

The Lessee shall be prohibited from using, permitting, or allowing the Leased Premises, or any part thereof, to be used for any other purpose except as a coffee shop to sell coffee products and pre-packaged pastry products.

If Lessee desires to change or add uses for the Leased Premises, then Lessee shall submit a written request for additional uses to the City Manager for approval, provided that such uses are lawful, consistent with the Fresno Municipal Code, and are in full compliance with the Water Tower's registered historic designations. The Lessee shall not change or add uses, without receiving prior written approval from the City Manager.

If the Lessee requests City Manager approval for changed or added uses for the Premises, Lessee shall change or modify the business license to reflect the changed or

added uses, and the City Manager shall increase the monthly Lease Payments paid by the Lessee for the changed or added uses and amend the insurance requirements.

Lessee may only place or mount signs on the interior of the Water Tower that are usual and customary for a coffee shop. However, Lessee is prohibited from placing or mounting signs on the exterior of the Water Tower or any other exterior area of the Premises. The placing and mounting of signs on the interior of the Water Tower shall conform to the regulations of the Fresno Municipal Code, and not violate or compromise the Water Tower's registered historic designations.

SECTION 8. WASTE, NUISANCE, UNLAWFUL USE PROHIBITED. Lessee shall do all of the following:

- (a) At all times cooperate with the City to keep and maintain the Premises and common areas in a neat, clean, and orderly condition.
- (b) Shall remove waste materials and trash daily from the Premises to prevent the accumulation of waste materials which might constitute a fire hazard, public health hazard or public nuisance.
- (c) Not use or permit the Premises or common areas to be used for any unlawful purpose.

SECTION 9. QUIET ENJOYMENT. Neither party shall do any act which may or does disturb the quiet enjoyment of the Premises by the other party.

SECTION 10. ALTERATIONS, REPAIRS, AND IMPROVEMENTS. The City has identified a program of alterations, repairs and improvements for the Premises. The City's program for the Premises includes, but are not limited to the following:

- (a) Painting the Water Tower structure and refinishing the metal work; and
- (b) Installing new wrought-iron fencing, with access gates, for the perimeter of the Water Tower; and
- (c) Upgrading restroom fixtures and ADA access; and
- (d) Installing a new 200-amp electrical service; and
- (e) Installing security cameras.

When the City undertakes alteration, repair, and improvement projects for the Premises as described above, the Lessee shall suspend or limit operations for the duration of the project, as necessary. The City will provide at least a 90-day notice of any pending project to allow the Lessee sufficient time to prepare for the temporary suspension of operations, if necessary. The 90-day notice will include a proposed schedule for the alteration, repair and improvement project.

The Lessee is prohibited from undertaking alteration, repair, and improvement projects for the Premises without receiving prior written approval from the City Manager. Written approval from the City Manager does not relieve Lessee from obtaining all necessary and required permits and inspections from state, county, and the City government agencies. Upon receiving written approval from the City Manager to undertake alterations, repairs, and improvements for the Premises, Lessee shall be solely responsible for all costs required to complete the alteration, repair, and improvement projects. Prior to executing third-party contracts for alterations, repairs, and improvements, the Lessee shall first

obtain written approval from the City Manager that the insurance, indemnity, release, and assignment provisions in the third-party contract are acceptable to the City. All alterations, repairs, and improvements undertaken by the Lessee shall become the property of the City, subject to Lessee's use thereof during the term of this Lease. Upon expiration of the term of this Lease, or upon the earlier termination thereof, all alterations, repairs, and improvements commissioned by the Lessee for Premises shall remain the property of the City, and the Lessee shall not be reimbursed for the costs of alterations, repairs, and improvements.

The Lessee shall keep the Premises free from any liens and encumbrances because of work done, materials furnished, or obligations incurred by Lessee in connection with any alteration, addition, or improvement on or to the Premises. Lessee shall defend, and hold harmless the City from any cost or expense which the City shall incur because of any such lien or encumbrance.

SECTION 11. MAINTENANCE AND REPAIRS. The City, at City's own cost and expense, shall provide landscape maintenance for the Premises.

The Lessee, at Lessee's own cost and expense, shall:

- (a) Maintain and repair the Leased Premises, and each part thereof, in good working order, and in a neat and clean condition, during the term of this Lease.
- (b) Provide all necessary maintenance and repair services for all systems serving the Premises, including electrical, mechanical, plumbing systems, security, and fire protection systems.
- (c) Repair all non-structural damage to the Premises and adjacent common areas, and in full compliance with all maintenance and repair standards established by statute, ordinance, rule, or regulation of any governmental body, without expense to the City.

SECTION 12. ALTERATIONS, REPAIRS, AND IMPROVEMENTS OF REGISTERED HISTORICAL RESOURCE. The Water Tower portion of the Premises is on the National Register of Historic Places and is subject to additional requirements prior to any direct or indirect alteration, remodeling, demolishing, grading, removal, construction, reconstruction, or restoration of the exterior, interior, or auxiliary buildings. The Lessee shall be responsible for complying with the requirements of the City of Fresno Municipal Code, Chapter 12, Article 16, *Historical Preservation Ordinance*, and the conditions described below.

- (a) Any alteration, remodeling, demolishing, grading, removal, construction, reconstruction, or restoration of the exterior, interior, or auxiliary buildings shall conform with the State Historical Building Code and Uniform Building Conservation Code.
- (b) Within the Leased Premises resides tangible objects of historical significance that through the duration of the Lease Agreement will remain the property of the City. An inventory of these objects will be taken prior to the effective date of the Lease Agreement. The altering, moving, and storing of these historical objects must receive prior written approval from the City Manager. The Lessee shall be liable for any damage or destruction of these historic objects as of result of the Lessee's actions or neglect.

- (c) Lessee, at its own cost and expense, may alter, repair, or improve the interior portion of the Premises, subject to meeting the requirements of the *Historical Preservation Ordinance*, the conditions described herein, and receiving prior written approval of the City Manager. Prior to commencement of any alteration, repair, or improvement of the Premises, Lessee shall obtain at its own expense, and submit for the City Manager approval, cost estimates for the work, and complete drawings and specifications, including dimensioned architectural and other necessary drawings fully describing the work proposed to be done.
- (d) Alterations, repairs, or improvements to the exterior portion of the Leased Premises by the Lessee are prohibited.
- (e) The City Manager and Historic Preservation Commission shall have the right to reject the drawings or specifications, or any part thereof, or any revision thereof, as to the proposed architectural, structural, electrical, mechanical, or plumbing design; quality of materials or equipment selected; color scheme; or any feature of the proposed improvement which, the City Manager or Historic Preservation Commission determine will cause excessive damage or alteration, degrade the appearance, or compromise the historic designation of the Premises.
- (f) Lessee shall be bound by, and comply with, all applicable provisions of the Labor Code and such other Federal, State, and local laws which affect the conduct of the work.
- (g) Inspection of alteration, repair, or improvement work shall be performed during the progress of construction and upon final completion of construction and shall be the responsibility of the architect acting for, and compensated for such inspection and approval by, Lessee. The City shall have the right, however, to reject any work not in compliance with the drawings or specifications, and Lessee shall remove the non-compliant work, and repeat the installation of the work at no cost to the City.
- (h) All alterations, repairs, and improvements made or installed on the Leased Premises by the Lessee pursuant to this section, or other sections in the Lease Agreement, shall become a part of the realty and be the property of the City from and after the date of the installation thereof on the Leased Premises.
- (i) Lessee shall obtain and pay for all applications, permits, and inspections required by any governmental authority for any alteration, repair, or improvement made or installed by Lessee on the Leased Premises. Any approval or consent of the City provided for in this section shall be in addition to, and separate and apart from, that required by any law or ordinance governing the issuance of any such permit.

SECTION 13. DAMAGES TO OR DESTRUCTION OF THE PREMISES. If the Leased Premises are damaged or destroyed, the City may elect to terminate this Lease Agreement. The complete destruction of the Leased Premises shall terminate this Lease Agreement as of the date of the casualty. Lessee shall be liable to the City for all damages resulting from such destruction caused by Lessee's, its agent's, servant's or employee's want of ordinary care or degree of greater culpability.

SECTION 14. USE BY THE CITY. The City may use the Leased Premises for public meetings, events, or other similar uses if:

- (a) The City notifies Lessee in writing thirty (30) calendar days prior to any proposed use; and

- (b) Lessee consents in writing to the City's proposed use, which consent shall only be withheld if the proposed use unreasonably interferes with Lessee's use.

The City shall not be required to pay Lessee for any such use. This section is not intended to waive any rights or obligations either party may have pursuant to Government Code section 7260 et seq., if any.

SECTION 15. THE CITY OBLIGATIONS CONTINGENT ON APPROPRIATION OF FUNDS. The City's obligation to perform any obligation under this Lease Agreement shall be contingent upon the appropriation of funds by the City's governing body sufficient to provide such services or payments during the City's respective fiscal year (July 1 through June 30). The performance of obligations shall be funded only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for funding such service obligations throughout the term of the Lease Agreement, and it is not a pledge of the City's full faith and credit. During its annual budgeting process, the City shall consider, and will use best efforts to appropriate funding to meet its estimated costs under this Lease Agreement for the fiscal year under consideration.

SECTION 16. RIGHT OF ENTRY AND INSPECTION. The City, by its officers, agents, or employees, shall have the right to enter on the Leased Premises at all reasonable times for purposes of inspecting the Leased Premises; observing the performance by Lessee of its obligations under this Lease Agreement; making necessary alterations, repairs, and improvements; or performing any act which the City is obligated to perform, or has the right to perform under this Lease Agreement or otherwise.

SECTION 17. TERMINATION OF AGREEMENT. Notwithstanding any other termination provisions contained herein, in the event that Lessee fails to maintain and operate said Premises as a coffee shop, or fails to maintain reasonable and adequate supervision and maintenance of said Leased Premises, or Lessee fails to perform any provision of this Lease, or to comply with any requirement of law or any requirement imposed on Lessee or the Leased Premises by any duly authorized governmental agency or political subdivision, relating to the Lessee's use or occupancy of the Leased Premises, and further fails to remedy any such faults or defects within ten (10) days after written notice to do so from the City Manager, then the City Manager may terminate and cancel this Lease Agreement as to some or all of the Leased Premises, in the City's discretion.

In addition, this Lease may be terminated by the City or Lessee without cause, upon 90 calendar days prior written notice. Any amounts outstanding by Lessee will immediately become due and owing to the City. If the Lessee terminates the agreement prior to end of the lease's term without cause, the Lessee forfeits the Security Deposit.

SECTION 18. REPRESENTATIONS OF THE CITY. Prior to the execution of this Lease Agreement, both Lessee and the City shall inspect the Leased Premises to determine the "as-is" condition.

Neither the City, nor any agent of the City, has made any representation or promise with respect to the Leased Premises, except as herein expressly set forth. Execution of the Lease Agreement shall be conclusive evidence, as against Lessee, that the Leased Premises, were in good and satisfactory condition at the time of Lease Agreement was executed by both parties.

SECTION 19. INDEMNIFICATION. Lessee shall indemnify, hold harmless, and defend the City, its officers, officials, agents, employees and volunteers from any and all loss,

liability, fines, penalties, 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 the City, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) incurred by the City, Lessee or any other person, arising out of the active or passive negligence or willful misconduct of Lessee, or any of its agents, employees, guests or invitees, or in connection with this Lease. Lessee's obligations under the preceding sentence shall apply regardless of whether the City, or any of its officers, officials, employees, or agents are actively or passively negligent, but shall not apply to any loss, liability, costs or damages caused solely by the active negligence or willful misconduct of the City.

SECTION 20. INSURANCE.

INSURANCE REQUIREMENTS

- (a) Throughout the life of this Agreement, Lessee 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 The City's' Risk Manager or his/her designee at any time and in his/her sole discretion. The City, its officers, officials, employees, agents, and volunteers (hereinafter referred to collectively as "The City") requires 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 THE CITY, 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, Lessee 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 Lessee 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 this Agreement. No action taken by The City pursuant to this section shall in any way relieve Lessee of its responsibilities under this 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.
- (c) The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, 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 Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, vendors, suppliers, invitees, contractors, subcontractors, 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). If personal automobile coverage is used, the City, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Lessee, or any party the Lessee subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to The City 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 and EMPLOYER’S LIABILITY with limits of liability not less than:
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.

4. PROPERTY: Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Lessee's business property.

UMBRELLA OR EXCESS INSURANCE

In the event Lessee 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 each of their officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Lessee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Lessee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, 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 The City, its officers, officials, employees, agents and volunteers; or
- (ii) LESSEE 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.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

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 has been given to The City, except ten (10) days for nonpayment of premium. Lessee 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, Lessee 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, Lessee 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 Commercial General and Automobile Liability policies of insurance shall be endorsed to name The City, its officers, officials, employees, agents and volunteers as additional insureds.

Lessee 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.

The Commercial General and Automobile Liability policies of insurance shall be endorsed so Lessee'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 Lessee 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 Lessee.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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

PROVIDING OF DOCUMENTS - Lessee shall furnish The 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 his/her designee prior to The 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 the City, Lessee 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. All subcontractors working under the direction of Lessee shall also be required to provide all documents noted herein.

SUBCONTRACTORS - If Lessee should subcontract all or any portion of the services to be performed under this Agreement, Lessee shall require, at the discretion of the City, to enter into a separate Side Agreement to provide indemnification and insurance protection to The City. Lessee shall verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Lessee shall ensure that The City, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Lessee prior to the commencement of any work by the subcontractor.

SECTION 21. ASSIGNMENT. Lessee shall not assign, sublet, or otherwise transfer this Lease Agreement, any right or interest in the Leased Premises. Any attempt to assign or transfer the Lease Agreement shall be void and shall terminate the Lease Agreement.

SECTION 22. DEFAULT BY LESSEE. The failure of either party to fulfill, perform or observe any promise, covenant, condition, or term of this Lease Agreement, where such failure continues for more than thirty (30) calendar days after written notice for correction thereof, shall constitute a material default and breach of this Lease and the non-defaulting party may terminate the Lease immediately.

In the event either party terminates the Lease Agreement, the non-defaulting party may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease Agreement, or to recover direct, indirect, consequential, or incidental damages for the breach of the Lease Agreement.

SECTION 23. SURRENDER AND REMOVAL. Lessee agrees to surrender to the City, at the expiration of the Term of this Lease, or any extension thereof or period of holding over, or upon any sooner termination of the Term, the entire Leased Premises, and all alterations, repairs, improvements, furniture thereon, complete and in good condition and repair, reasonable use and wear thereof excepted. Lessee shall have the right to remove all personal property belonging to Lessee, including, without limitation, product inventory for coffee shop. Any of said personal property remaining on the Leased Premises after the expiration or sooner termination of the Term of this Lease Agreement, or any extension thereof or period of holding over, shall, at the City's election, become the property of the City. All damage done to the Leased Premises or any improvement thereon belonging to the City, by or during the removal by the City of said personal property, shall be repaired by Lessee at Lessee's expense.

SECTION 24. PAYMENTS, NOTICES AND DEMANDS.

All rents and other sums payable by Lessee to the City hereunder shall be delivered in person or mailed to:

The City of Fresno Finance Department
Monthly Water Tower Lease Payment
2600 Fresno Street
Fresno, California 93721

All Notices and Demands between the City and Lessee shall be delivered in person or mailed to:

To Lessee.

Frida Café
c/o Attention: Albee Sanchez, Owner
2425 Fresno Street
Fresno CA 93721
Phone: (559) 442-3140

To the City:

City of Fresno
c/o City Manager
2600 Fresno Street
Fresno, California 93721

Any notice required or intended to be given to either party under the terms of this Lease shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by email 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 Lease 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.

SECTION 25. RULES AND REGULATIONS. Lessee agrees during the life of this Lease, to comply with and conform to all rules, regulations, and ordinances of the City of Fresno and County of Fresno and all laws of the State of California and the United States, and all orders of any governmental agency which shall be applicable to Lessee's use of the

said Leased Premises or the business thereon being conducted by Lessee. Nothing in this Lease shall be construed as a limitation on the City's police power.

Lessee acknowledges that Lessee, not the City, is responsible for determining applicability of and complying with all local, state, and federal laws. The City makes no express or implied representation as to the applicability or inapplicability of any such laws to this Lease or the parties, respective rights, or obligations hereunder.

SECTION 26. ATTORNEYS' FEES. In the event any action, suit or proceeding is brought to collect any rental or other sums payable or to take possession of the Premises, or to enforce compliance with any of the covenants or conditions of this Lease, the party in whose favor final judgment is entered shall be entitled to reasonable attorneys' fees from the other party, to be fixed by the court in which judgment is entered, in addition to the ordinary costs of suit awarded to the prevailing party.

SECTION 27. NONWAIVER. Any waiver by either party of any breach of covenant or condition required herein to be performed and observed shall not be deemed or considered a continuing waiver and shall not operate to prevent said party from declaring a default for any subsequent breach, either of the same covenant or condition, or otherwise.

SECTION 28. EXCLUSIVE VENUE. Exclusive venue in all actions arising under the Lease shall be and hereby is laid in Fresno County, California.

SECTION 29. TIME OF ESSENCE. Time is of the essence in this Lease Agreement.

SECTION 30. EXTENT OF AGREEMENT. This Lease Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Lease Agreement may be modified only by written instrument duly authorized and executed by both the City and Lessee.

SECTION 31. NO PARTNERSHIP. The City does not, in any way or for any purpose by executing this Lease Agreement, become a partner of Lessee in the conduct of Lessee's coffee shop, or otherwise, or a joint venture partner, or a member of a joint-party enterprise with Lessee. Operation of the coffee shop, and any alterations, repairs, and improvements commissioned by the Lessee, will be at Lessee's sole cost and expense, without subsidy from the City.

SECTION 32. INTERNAL TRANSFER OF STEWARDSHIP. The Leased Premise is a Common Purpose Facility which is owned wholly by the City. From time-to-time stewardship of this facility is transferred among departments within the City. In those instances where stewardship is transferred to another department during the life of this agreement, the terms of this lease will remain unchanged; however, those actions requiring the City Manager approval shall be routed through the department that is currently the assigned steward for the Premise.

[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.

THE CITY OF FRESNO,
A California municipal corporation

FRIDA CAFÉ LLC
a California limited liability company

By: _____
Georgeanne A. White
City Manager

By: _____
Name: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

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

By: _____
_____ Date
Deputy City Attorney

By: _____
Name: _____
Title: _____

ATTEST:
TODD STERMER, CMC
City Clerk

(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

REVIEWED BY:

By: _____
Deputy

Addresses:
THE CITY:
The City of Fresno
c/o City Manager
2600 Fresno Street
Fresno, California 93721

LESSEE:
Frida Café
Attention: Albee Sanchez, Owner
2425 Fresno Street
Fresno CA 93721
Phone: (559) 442-3140

Attachments:
1. Exhibit A