

**SECOND AMENDMENT TO THE GRANT AGREEMENT BETWEEN THE CITY OF FRESNO AND THE CECIL C. HINTON COMMUNITY CENTER A NON-PROFIT CORPORATION REGARDING FUNDING FOR THE HINTON CENTER PROJECT**

THIS SECOND AMENDMENT TO THE GRANT AGREEMENT (Amendment) is entered into effect on 8/26/2024, between the CITY OF FRESNO, a California municipal corporation (City), and the CECIL C. HINTON COMMUNITY CENTER, a California nonprofit organization (Grantee).

**RECITALS**

WHEREAS, the City and the Grantee brought an agreement before the Fresno City Council on August 24, 2023, and executed the agreement on April 12, 2024 (Agreement), to provide grant funding for the Hinton Center Project (Project); and

WHEREAS, the City and Grantee entered into a First Amendment on April 12, 2024, to modify insurance requirements for pollution and demolition and to modify payment terms to ensure adequate insurance is in place prior to initiating any demolition or site work; and

WHEREAS, the City and the Grantee now desire to enter into a Second Amendment to modify insurance requirements for professional liability insurance and commercial general liability to ensure adequate insurance is in place prior to initiating Tasks specified in Exhibit A; and

WHEREAS, the City and Grantee now desire to waive commercial automobile liability due to the Grantee not having any company-owned automobiles; and

WHEREAS, with entry into this Amendment, the Grantee agrees it has no claim, demand, or dispute against the City and affirms that it will abide by all obligations contained in the Agreement approved by the Fresno City Council on August 24, 2023 and executed on April 12, 2024.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged the parties agree that the aforesaid Agreement be amended as follows:

1. Exhibit B to the Agreement shall be revised in its entirety as “Exhibit B – Revised Insurance Requirements” to reflect the modification of insurance requirements attached hereto and incorporated herein by reference.
2. Professional liability insurance is to be waived until Task #2 of Exhibit A to the Agreement begins. Prior to beginning Task #2, Grantee shall provide proof of insurance requirement consistent with insurance requirement outlined in “Exhibit B – Revised Insurance Requirements” attached to this Amendment. No work under Task #2 shall begin prior to receipt of a written notice to proceed from the City. The City shall issue written notice to proceed once proof of insurance is reviewed and approved.
3. Contractor’s pollution legal liability insurance is to be waived until Task #2 of Exhibit A to the Agreement begins. Prior to beginning Task #2, Grantee shall provide proof of insurance requirement consistent with insurance requirement outlined in “Exhibit B –

Revised Insurance Requirements” attached to this Amendment. No work under Task #2 shall begin prior to receipt of a written notice to proceed from the City. The City shall issue written notice to proceed once proof of insurance is reviewed and approved.

4. Prior to beginning any additional work on Tasks #1 and 2, Grantee shall provide proof of commercial general liability insurance requirement consistent with insurance requirement outlined in “Exhibit B – Revised Insurance Requirements” attached to this Amendment including increased limits. No work under Tasks #1 or 2 shall begin prior to receipt of a written notice to proceed from the City. The City shall issue written notice to proceed once proof of insurance is reviewed and approved.

5. Commercial Automobile Insurance requirements are to be waived as the Grantee does not have any company-owned automobiles.

6. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment 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 Amendment, shall be null and void.

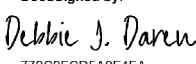
7. Except as otherwise provided herein, the Agreement executed by the City and the Grantee on April 12, 2024, and all obligations contained therein remain in full force and effect.

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

CITY OF FRESNO,  
A California municipal corporation

Cecil C. Hinton Community Center,  
A California nonprofit corporation

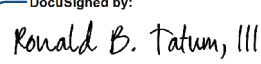
By:   
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Georgeanne A. White  
City Manager

By:   
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Name: Debbie J. Darden

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

Title: Chief Executive Officer  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

By:  8/22/2024  
0D03E4AD28E0466... Date  
Tricia Herrera  
Deputy City Attorney

By:   
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Name: Ronald B. Tatum III

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

By:  8/26/2024  
CAB3057983E04D4... Date  
Deputy

Addresses:  
CITY:  
City of Fresno  
Parks, After School, Recreation and  
Community Services Department  
Attention: Aaron A. Aguirre,  
Director  
1515 E. Divisadero  
Fresno, CA 93721

GRANTEE NAME: Cecil C. Hinton Community  
Center  
ATTENTION: Debbie J. Darden  
TITLE: Chief Executive Director  
ADDRESS: P.O. Box 12143  
Fresno, CA 93776  
Phone: 559-287-1308  
Email: debbiejarden@gmail.com

Attachments:

- 1. Exhibit B – Revised Insurance Requirements

## **Exhibit B – Revised Insurance Requirements**

(a) Throughout the life of this Agreement, GRANTEE 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 its sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, GRANTEE 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 GRANTEE 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 GRANTEE 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 GRANTEE shall not be deemed to release or diminish the liability of GRANTEE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by GRANTEE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of GRANTEE, vendors, suppliers, invitees, contractors, sub-consultants, 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).
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 GRANTEE'S profession. (Coverage required prior to Task #2).

#### MINIMUM LIMITS OF INSURANCE

GRANTEE shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

##### 1. COMMERCIAL GENERAL LIABILITY

(Coverage required prior to Tasks # 1&2)

- (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.

(Prior to any construction work, insurance must meet the increased limits)

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 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. CONTRACTOR'S POLLUTION LEGAL LIABILITY (coverage required prior to Task #2) with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

- (a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by GRANTEE pursuant to the Agreement.

#### UMBRELLA OR EXCESS INSURANCE

In the event GRANTEE 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, its officers, officials, employees, agents and volunteers.

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

GRANTEE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and GRANTEE 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, its officers, officials, employees, agents and volunteers; or
- (ii) GRANTEE 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 (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. GRANTEE 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, GRANTEE 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, GRANTEE 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.

(ii) In the event this Contract involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In

the event this Contract involves any mold environmental hazard (e.g., mold remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and “microbial matter including mold” within the definition of “Pollution” under the policy.

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

(iv) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. GRANTEE shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement 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.

(v) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the GRANTEE'S insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If GRANTEE maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by GRANTEE.

(vi) 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.

(vii) For any claims related to this Agreement, GRANTEE'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the GRANTEE'S insurance and shall not contribute with it.

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

(ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers. CITY, its officers, officials, agents, employees and volunteers.

## PROVIDING OF DOCUMENTS

GRANTEE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy

coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, GRANTEE 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 GRANTEE shall also be required to provide all documents noted herein.

### CLAIMS-MADE POLICIES

If the Professional Liability policy is written on a claims-made coverage form:

- (i) The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by GRANTEE.
- (ii) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, GRANTEE must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

### SUBCONTRACTORS

If GRANTEE subcontracts any or all of the services to be performed under this Agreement, GRANTEE shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, GRANTEE will be solely responsible for ensuring that its subcontractors maintain insurance coverage meeting the requirements herein.