

ADMINISTRATIVE SERVICES AGREEMENT FOR THE EXPANDED ACCESS TO ARTS AND CULTURE GRANT PROGRAM

THIS AGREEMENT is made and entered into effect on August 10, 2023, by and between the City of Fresno, a California municipal corporation (City), and Fresno Arts Council, a non-profit corporation (Service Provider) to provide grant management and administration of the Measure P Expanded Access to Arts and Culture Grant Program.

RECITALS

WHEREAS, The Fresno Arts Council entered into a Memorandum of Understanding with the City of Fresno on December 20, 1989, wherein the Fresno Arts Council's role in partnering, seeking funding, conducting research, preparing plans, holding public meetings and advising on matters relating to cultural arts policy, planning and budgeting issues are outlined; and

WHEREAS, in 2018 a majority of Fresno voters approved Measure P – the Fresno Clean and Safe Neighborhood Parks Transaction and Use Tax (Measure P), which was thereafter codified in Chapter 7, Article 15 of the Fresno Municipal Code (FMC); and

WHEREAS, Measure P imposes a retail and transaction tax for the purpose of providing clean and safe parks; new parks and recreation facilities; youth and senior recreation and after-school facilities and job training; improved walking and biking trails; the San Joaquin River Parkway; beautification of streets; and expanded access to arts and culture; and

WHEREAS, FMC Section 7-1506(b)(4)(A) requires that 12% of the funds made available pursuant to Measure P be made available on an annual basis to invest in competitive grants for nonprofit organizations that support and expand access to arts and cultural programming; and

WHEREAS, FMC Section 7-1508(a) states the authority to expend funds, issue grants, or enter into contracts or memoranda of understanding relating to Measure P revenues is delegated to the City of Fresno; and

WHEREAS, grants funded pursuant to FMC Section 7-1506(b)(4)(B) shall be implemented by the Parks, Recreation and Arts Commission (PRAC) in partnership with the Fresno Arts Council, or its successor local arts agency; and

WHEREAS, The Fresno City Council passed a resolution on May 25, 2023, which directs the City of Fresno to contract with the Fresno Arts Council for administrative services relating to implementing the provisions of FMC Section 7-1506(b)(4)(A), subject to the provisions of Measure P and further Council direction in accordance therewith; and

WHEREAS, this Agreement will be administered for the City by its PARCS Director (Administrator) or 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. The Service Provider shall perform to the satisfaction of City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect for a five-year period concluding on **August 10, 2028**, subject to any earlier termination in accordance with this Agreement. The services of the Service Provider as described in **Exhibit A** are to commence upon a written notice to proceed provided to the Service Provider and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Notice to Proceed.

(a) The Parks, Recreation and Arts Commission (PRAC) shall work in partnership with the Service Provider and cultural stakeholders, to develop a Cultural Arts Plan for the City of Fresno that would identify needs in the arts and cultural community; prioritize outcomes and investments; and develop a vision and goals for the future of Fresno arts and cultural programs that are reflective of the cultural, demographic, and geographic diversity of Fresno. This process shall include a robust community engagement process, including multiple public meetings.

(b) Following adoption of the Cultural Arts Plan by the Fresno City Council, and the completion of the Risk Assessment by the Service Provider (**Exhibit B**) the Fresno Arts Council shall receive a written notice to proceed from the City Manager or designee. Upon receipt of the notice to proceed, the Fresno Arts Council may begin work under this Agreement.

(c) The City Manager or designee shall, each fiscal year, provide a written notice to proceed to the Service Provider which includes the total funding available for Services and the total funding available for grants.

4. Measure P Compliance.

(a) The Scope of services outlined in this Agreement shall be implemented in compliance with the Fresno Clean and Safe Neighborhood Parks Transactions and Use Tax (Measure P) FMC Chapter 7, Article 15, attached herein as **Exhibit C**. The Service Provider shall provide quarterly updates to the PRAC on the status of the deliverables outlined in the scope of work (**Exhibit A**). Quarterly reports shall be submitted on October 1st, January 1st, April 1st, and July 1st.

(b) Pursuant to FMC Section 7-1510(b), no bonds or liens shall be secured by any revenues or interest generated from Measure P funding.

5. Compensation for Administration

(a) The Service Provider's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be an annual total fee not to exceed 2% of funding accrued pursuant to Section 7-1506(b)(4)(A) and authorized under Section 7-1508(e)(3) of Measure P.

(b) Total fee shall be paid on the basis of the rates set forth in the schedule of fees and expenses contained in Section II of **Exhibit A**. Such fee includes all expenses incurred by the Service Provider in performance of the services.

(c) Funding received for the purposes of administering the Expanded Access to Arts and Culture grant program shall be held by the Service Provider in a separate account and the Service Provider must maintain a separate method of tracking all Measure P funding provided for administration costs. Funding shall not be comingled with revenue from other sources, including revenue made available for grants to non-profits described in Section 5 of this Agreement.

(d) In fulfilling the obligations contained within this Agreement, the Service Provider shall not self-award grant funding to the Service Provider for administrative costs associated with administering the Expanded Access to Arts and Culture Grant program pursuant to Section 7-1506(b)(4).

(e) The City of Fresno Finance Department shall notify the Service Provider annually, in writing, of the total accruals available for program implementation/administration authorized under Section 7-1508(e)(3). The Finance Department shall remit funds to the Service Provider for program implementation annually by October 1st of each calendar year (see Section II of **Exhibit A**- Service Provider Total Compensation and Payment Terms).

(f) The parties may modify this Agreement to increase or decrease the scope of services (see Section I of **Exhibit A**, intended to be all encompassing such that Service Provider handles all aspects of any services and appurtenant requirements) or provide for the retention of services not required by this Agreement, which modification shall not receive additional compensation for such services. Should additional services outside the scope of services be necessary, the Parties may modify this Agreement in writing. Any additional compensation, therefore, shall be from sources other than Measure P. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Service Provider shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

6. Expanded Access to Arts and Culture Grant Program Funding.

(a) Pursuant to Section 7-1506(b)(4)(A) funding shall be provided to the Service Provider for the purposes of the Expanded Access to Arts and Culture Grant Program. Grant Program funding shall be held by the Service Provider in a separate account and the Service Provider must maintain a separate method of tracking all Measure P funding. Funding shall not be comingled with revenue from other sources, or with funding allocated for program administration under Section 4 of this Agreement. Any carryover funding shall be identified.

(b) All interest earned from this grant award shall be used by the Service Provider for arts and culture grants pursuant to Section 7-1506(b)(4)(A).

(c) Annually the City of Fresno Finance Department shall notify the Service Provider, in writing, of the total accruals available for competitive grants pursuant to Section 7-1506(b)(4)(A). The Finance Department shall remit funds to the Service Provider for competitive grants annually by October 1st.

7. Audit Requirements.

(a) The Service provider shall maintain financial records in accordance with Generally Accepted Accounting Principles (GAAP) and will be subject to an annual independent audit for financial reporting and program compliance. The annual independent audit shall be funded and coordinated by the City of Fresno Department of Finance and conducted by an external auditor. The Service provider shall provide all requested financial records no later than September 30th for each preceding year.

(b) The City of Fresno is required to prepare and publish an Annual Comprehensive Financial Report (ACFR) which includes an independent auditor's report. The results of audit findings associated with the funds managed under this Administrative Service Agreement by the Service Provider may have a material impact on the City of Fresno's ACFR. If at any time the annual independent audit results in significant or material findings, this Agreement shall be subject to reopening, renegotiation and/or termination.

8. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any liability of the City to the Service Provider upon the earlier of: (i) The Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Service Provider; (ii) fourteen calendar days' prior written notice with or without cause by the City to the Service Provider; (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, the Service Provider 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 the Service Provider that are owned by the City. Subject to the terms of this Agreement, the Service Provider shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The Service Provider 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 the Service Provider 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 Service Provider, 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 Service Provider, 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) The Service Provider shall provide the City with adequate written assurances of future performance, upon Administrator's request, in the event the Service Provider fails to comply with any terms or conditions of this Agreement.

(f) The Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Service Provider 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. The Service Provider shall notify Administrator 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 Administrator of the cessation of such occurrence.

9. Confidential Information and Ownership of Documents

(a) Any reports, information, or other data prepared or assembled by the Service Provider pursuant to this Agreement shall not be made available to any individual or organization by the Service Provider without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, the Service Provider 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 the Service Provider pursuant to this Agreement for the purposes of administering the Expanded Access to Arts and Culture Grant Program 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. The Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If the Service Provider should subcontract all or any portion of the services to be performed under this Agreement, the Service Provider shall cause each subcontractor to also comply with the requirements of this Section 9.

(d) This Section 9 shall survive expiration or termination of this Agreement.

10. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Service Provider represents to the City that the Service Provider and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and the Service Provider 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 the Service Provider or any subcontractors from said industry and professional standards.

11. Indemnification. To the furthest extent allowed by law, the Service Provider shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the Service Provider or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this Agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The Service Provider's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

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

This section shall survive termination or expiration of this Agreement.

12. Insurance.

(a) Throughout the life of this Agreement, the Service Provider shall pay for and maintain in full force and effect all insurance as required in Exhibit B, which is incorporated into and part of this Agreement, 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 designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit D shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the 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, the Service Provider 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 the Service Provider 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 the Service Provider 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 the Service Provider shall not be deemed to release or diminish the liability of the Service Provider, 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 the Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Service Provider, its principals, officers, agents, employees, or persons under the supervision of the Service Provider, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

13. Conflict of Interest and Non-Solicitation.

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

(b) As the Expanded Access to Arts and Culture Grant Program administrator, the Service Provider shall not apply for grant funding.

(c) The Service Provider shall not serve as an administrative agent on behalf of any grant applicant or any grantee awarded funding under the Expanded Access to Arts and Culture Grant Program.

(d) The Service Provider shall comply with, and require its grant review and scoring committee members or any subcontractor, 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, the Service Provider shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Service Provider and the respective subcontractor(s) are in full compliance with all laws and regulations. The Service Provider 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, the Service Provider shall immediately notify the City of these facts in writing.

(e) In performing the work or services to be provided hereunder, the Service Provider 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 the 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.

(f) The Service Provider 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.

(g) The Service Provider 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, the Service Provider shall remain responsible for complying with Section 9(a), above.

(h) If the Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Service Provider shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(i) This Section 13 shall survive expiration or termination of this Agreement.

14. Public Right of Way.

(a) The Service Provider shall not recommend for award any grant applications within the City of Fresno right of way for award without prior written approval to proceed from the City of Fresno. The Service Provider shall provide a list of grant applications within the City of Fresno right of way that are recommended for award to the PARCS Department. The PARCS Department shall coordinate with the City Manager to facilitate preliminary review and written approval to proceed. The Service Provider shall incorporate 10 business days in the grant review and award schedule to account for this process.

(b) Any projects within the public right of way that are awarded grant funds are subject to all City of Fresno permitting and approval processes. Service Provider shall ensure costs associated with permitting and approval for projects within the public right of way are eligible for reimbursement in grant agreements..

(c) Any art or cultural installation or capital improvement installed or affixed to the City's right of way shall become property of the City of Fresno. This does not apply to temporary installations or exhibits.

15. Recycling Program. In the event the Service Provider maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, the Service Provider at its sole cost and expense shall:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling the City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

16. 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 Administrator or designee.

(b) Records of the Service Provider's 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 (3) years from project completion or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Service Provider 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 the Service Provider should subcontract all or any portion of the services to be performed under this Agreement, the Service Provider shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 16(b) shall survive expiration or termination of this Agreement.

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

17. Nondiscrimination. To the extent required by controlling federal, state and local law, the Service Provider 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, the Service Provider agrees as follows:

(a) The Service Provider 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) The Service Provider 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. The Service Provider 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 the Service Provider'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. The Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Service Provider 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) The Service Provider 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 Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If the Service Provider should subcontract all or any portion of the services to be performed under this Agreement, the Service Provider shall cause each subcontractor to also comply with the requirements of this Section 17.

18. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Service Provider is acting solely as an independent contractor. Neither the Service Provider, 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 the Service Provider shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the Service Provider is performing its obligations in accordance with the terms and conditions thereof.

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

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

19. 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.

20. Binding. Subject to Section 21, below, 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.

21. Assignment.

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

(b) the Service Provider hereby agrees not to assign the payment of any monies due the Service Provider 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 Service Provider directly to the Service Provider.

22. Compliance With Law. In providing the services required under this Agreement, the Service Provider shall at all times comply with all applicable laws of the United States, the State of California and the City, and with all 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

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

30. 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.

31. Amendments. The City Manager or designee is authorized to modify the Scope of Work (**Exhibit A-** Section I), including modifications to the timelines, set forth herein. Any changes shall be made only by means of a written amendment dually signed by the City Manager and Service Provider.

32. 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.

33. 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.

34. 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 the Service Provider.

35. The City Manager or designee is hereby authorized and directed to execute and implement this Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

EXHIBIT A

SCOPE OF SERVICES & COMPENSATION Administrative Service Agreement between the City of Fresno and the Fresno Arts Council

SECTION I

Scope of Services

Deliverable #1: Grant Guideline Development for the Measure P Expanded Access to Arts and Culture Grant Program.

1. The Service Provider, in partnership with the PRAC, will develop written Grant Guidelines to make grant awards consistent with the priorities, recommendations, and strategies identified in the City adopted Cultural Arts Plan and the requirements outlined in the Fresno Municipal Code Article 15 – Fresno Clean and Safe Neighborhood Parks Tax Ordinance (Measure P).
2. The Service Provider, in partnership with the PRAC, shall seek community engagement and incorporate community feedback into grant guidelines.
3. The Service Provider, in partnership with the PRAC, shall develop a list of acknowledgement requirements including, but not limited to, required use of the Measure P logo, signage and funding statements(s) on all programs and projects funded in whole or in part by Measure P.
4. Grant Guidelines shall include all information necessary to ensure a transparent process, including, but not limited to:
 - (a) Scoring criteria and project selection process for grant proposals.
 - (b) Eligible scoring committee members.
 - (c) A written process for public disclosure of potential conflicts of interest.
 - (d) Priority funding categories.
 - (e) Expenditure or project delivery deadlines, if applicable.
 - (f) Risk assessment – Optional (see **Exhibit B**)
5. Grant guidelines shall include a list of funding acknowledgement requirements including, but not limited to, required use of the Measure P logo, signage and funding statement(s) on all programs and projects funded in whole or in part by Measure P.
6. Grant guidelines shall include reporting requirements and the methods to be used to evaluate the extent to which grants expanded access to arts or culture in the City of Fresno. At a minimum, data collected shall include information needed to demonstrate compliance with Section 7-1506(b)(4)(D) such as:
 - (a) Attendance data:

- (i) Number of youth participants served. Youth shall be defined as age seventeen (17) and younger.
 - (ii) Number of adult participants served. Adult shall be defined as ages eighteen (18) through sixty-one (61).
 - (iii) Number of senior participants served. Senior shall be defined as age sixty-two (62) and older.
 - (b) Participant zip code data to identify the number and percentage of Fresnans served.
 - (c) race, ethnicity, household income and gender identity.
 - (d) For murals only: total square feet installed and location/address.
7. Grant Guidelines shall acknowledge site control requirements for public or private facilities not owned by the grantee, including any permit or approval requirements for projects or programs within the City of Fresno's right of way per the terms outlined in Section 14 of this agreement.
 8. Grant Guidelines shall list, describe and adhere to requirements for grant funding outlined within Section 7-1506(b)(4)(D) and Section 7-1506(b)(4)(E).
 9. Grant Guidelines shall be reviewed by PRAC in partnership with the Service Provider, at a minimum, every five (5) years to ensure compliance with the grant program.
 10. By majority vote, PRAC may review and amend the Grant Guidelines no more than once a year. Grant guidelines and any subsequent amendments must be adopted by the Fresno City Council (FMC Section 7-1509(e)(3)) prior to proceeding with Deliverable #3.

Timeline: Development of Grant Guidelines will commence upon approval of this agreement by the Fresno City Council.

Deliverable #2: Grant Guideline Approval

1. Prior to releasing the notice of funding opportunity to non-profits, the PRAC along with the Service provider shall present draft guidelines before the PRAC. In accordance with Section 7-1509(e)3, the PRAC shall review and make recommendations for the City Council's adoption of competitive grant program guidelines.
2. The Grant Guidelines prepared by the Service Provider and PRAC shall be presented to the Fresno City Council by the PARCS Department, for consideration and adoption.

Timeline:

Year one:

- **September 25, 2023*** - The first draft of the grant guidelines will be presented to the PRAC.
- **October 5, 2023*** - Final draft guidelines will be presented to the Fresno City Council for consideration and adoption.

*timeline is subject to change based on PRAC and/or Council actions.

Deliverable #3: Release Notice of Funding Opportunity (NOFO) Announcements and Grant Application(s) for Grant Solicitations

1. Grant solicitations shall be released according to the terms outlined in the Measure P expenditure plan Section 7-1506(b)(4). At a minimum, grant solicitations shall occur at least once per year.
2. The PRAC in partnership with the Service Provider shall use multiple solicitations that allow for a diverse set of programs, with different program sizes and reach, including core operating and project-support grants.
3. The Service Provider shall provide, at minimum, a 60-day public NOFO for all grant solicitations.
4. The Service Provider, in partnership with the PRAC, shall ensure that grant solicitations are provided in English, Hmong, Punjabi and Spanish and other languages as requested.
5. The Service Provider, in partnership with the PRAC, shall ensure that grant solicitations are provided in an accessible format, in accordance with the Americans with Disabilities Act (ADA) requirements.

Timeline:

- NOFO shall be released within thirty calendar days of completion of deliverable #2.
- NOFO shall, at a minimum, be posted for 60 calendar days.

Deliverable #4: Provide Technical Assistance to Grantees

1. The Service Provider shall provide technical assistance and support to all applicants at no-cost to the applicant to ensure equitable access to available funds.

Timeline:

- Technical Assistance will be available for 60 calendar days from the release date of any NOFO/grant application.

Deliverable #5: Collect, Review and Make Recommendations for Award of Grant Funds

1. Grant applications shall be submitted to the Service Provider.
2. The Service Provider shall convene a scoring committee which includes the PRAC Cultural Arts Subcommittee, to review, score and prepare recommendations for grant awards to PRAC.
3. Pursuant to FMC Section 7-1506(b)(4)(B), PRAC shall ensure that the grant applications are reviewed in a transparent, competitive process.
4. The Service Provider shall ensure that all grantees recommended for award are verified nonprofit organizations with a 501(c)3 in good standing with state and federal entities prior to entering into a grant agreement. The Service Provider shall keep documents substantiating this verification on file for three (3) years from project completion.

Timeline:

- Grant application review will begin within 30 calendar days from the date the NOFO/ grant application period closes.
- Grant application review will be completed within 60 to 90 calendar days from the date the NOFO/grant application period closes.

Deliverable #6: Acceptance of Recommended Grant Awards

1. In partnership with the PRAC Cultural Arts Subcommittee, the Service Provider shall present a list of recommended grantees, award amounts, project titles and a brief summary of the project location, scope, schedule and anticipated impact to PRAC for review and acceptance of the list of recommended grantees.
2. Following PRAC acceptance in deliverable 6.1, the Service Provider shall have the delegative authority to make awards under the Expanded Access to Arts and Culture Grant Program on behalf of the City.
3. The Service Provider shall maintain a list of all applicants including the amount of grant funding requested by each applicant and the scope of work. The list shall be furnished to the City upon request.

Timeline:

- Service Provider to present grant recommendations to PRAC within 120 calendar days of the date the NOFO/grant application period closes.

Deliverable #7: Grant Agreements

1. Service Provider to enter into grant agreements with all grantees that include a detailed scope of work, budget, schedule for project or program completion, expected project or program deliverables, and any information needed to ensure transparency including, but not limited to, progress reporting requirements and metrics to measure the community impacts of the grant as outlined in Deliverable #1. Grant agreements shall also include a list of funding acknowledgement requirements including, but not limited to, use of the Measure P logo, signage and funding statement(s) on all programs and projects funded in whole or in part by Measure P.
2. Fully executed copies of all grant agreements shall be retained by the Service Provider for a minimum of three (3) years from grant completion, and available to the City of Fresno upon request.
3. In pursuit to FMC Section 7-1506(b)(4)(A), Service Provider to collect all documents required to ensure non-profits are in good standing, including tax ID information, signature authority and other documentation required in the grant guidelines provided.
4. The Service Provider shall submit any proposed grant project or program occurring within the City of Fresno right of way to the City Manager for written approval prior to executing a grant agreement with grantee. At least 10 business days must be allowed for review.
5. The Service Provider shall include any expenditure deadlines and/or carryover provisions within the grant agreement.

Timeline:

- Grantee Agreements shall be fully executed within 30-calendar days from completion of Deliverable #6 – Adoption by PRAC.

Deliverable #8: Project Delivery

1. The Service Provider shall manage grantee oversight and monitoring to ensure Expanded Access to Arts and Culture grants are delivered according to the scope of work, schedule, budget and expected deliverables stated in the grant agreement and available to the City of Fresno upon request.
2. The Service Provider shall provide limited-scope technical assistance to all grantees for the duration of each grant agreement.
3. Any grant funding that remains unspent following the conclusion or cancelation of grants awarded by the Service Provider shall be re-appropriated for the Expanded Access to Arts and Culture Grant Program. Unspent grant funding shall not be appropriated to Grant Program administration, which is limited to a maximum of 2% of annual accruals under the Measure P Ordinance.

Timeline:

- Ongoing, throughout term of agreement

Deliverable #9: Payment Processing and Fiscal Oversight

1. The Service Provider shall manage all grant payment processes and record management according to Generally Accepted Accounting Principles (GAAP).
2. The Service Provider will ensure all awardees are compliant and are verified 501(c)(3) organizations in good standing with State and Federal Entities prior to all grant funding disbursements.
3. Service Provider to maintain and make available to the City of Fresno upon request fiscal documentation including general ledgers, invoices, encumbrances, receipts, progress reporting and other records and population requests as necessary for fiscal oversight.
4. Service Provider shall make available a general ledger listing of annual activity; including, but not limited to transaction date, dollar amount, a brief description of each expenditure, and vendor name.

Timeline:

- Annually by September 30th for the preceding fiscal year.

Deliverable #10: Reporting and Accountability

1. Service Provider to provide a minimum of quarterly progress updates to PRAC on the status **Exhibit A** deliverables #1 through #8 in accordance with section 4 of the agreement.

Timeline:

Quarterly updates will be presented to the PRAC according to the following schedule:

- October Report – July through September
 - January Report – October through December
 - April Report – January through March
 - August report – April through June
2. Service Provider shall provide annual reporting to the City of Fresno PARCS Department and PRAC which includes, at a minimum:
 - (a) A written report on the progress made toward achieving each of the goals and priorities listed in the Cultural Arts Plan.

- (b) A written report demonstrating that grants funded pursuant to Section 7-1506 (4) (B) prioritized organizations and programs that support and expand diverse public or youth engagement or equity, consistent with Section 7-1506(4)(E) requirements.
- (c) Data demonstrating that funding for operating support that was distributed supported organizational stability for arts and cultural organizations that reflect the cultural, geographic and demographic diversity of the City of Fresno; and reflect the proportion of each grantee's overall operations that serves residents within, or visitors to, the City of Fresno Sphere of Influence. (Section 7-1506(4)(D)

Data shall include:

- (a) Attendance data by grantee:
 - (i) Total number of youth participants served. Youth shall be defined as age seventeen (17) and younger.
 - (ii) Total number of adult participants served. Adult shall be defined as ages eighteen (18) through sixty-one (61).
 - (iii) Total number of senior participants served. Senior shall be defined as age sixty-two (62) and older.
- (b) Participant zip code data to identify the number and percentage of Fresnans served.
- (c) Summary of total Race, ethnicity, household income and gender identity.
- (d) Photos and/or videos highlighting grant funded projects, events, programs, etc.
- (e) For murals only: total square feet installed and location/address.
- (f) Other information, as requested by PRAC.

Timeline: Annually by September 30th for the preceding fiscal year.

Note: timelines listed within Exhibit A-Section I may be modified in accordance with Section 31 of this agreement.

SECTION II**Service Provider Total Compensation and Payment Terms**

1. In making the expenditures provided in Section 7-1506(4), the Service Provider shall be permitted to use no more than two percent (2%) of the funds allocated pursuant to Section 7-1506(4) and authorized under Section 7-1508(e)(3) on an annual basis for administrative costs associated with the delivery of programs and projects pursuant to each paragraph.
2. City to compensate the Service Provider according to the following schedule:

Agreement Year	Measure P Receipts	Compensation	Payment Date
1	June 1, 2021 to June 30, 2023	Total fee not to exceed 2% of funding received pursuant to Section 7-1506(b)(4)(A) and authorized under Section 7-1508(e)(3) of Measure P during the agreement year 1 accrual period.	October 1, 2023 or within thirty days of contract execution if executed after October 1, 2023.
2	July 1, 2023 to June 30, 2024	Total fee not to exceed 2% of funding received pursuant to Section 7-1506(b)(4)(A) and authorized under Section 7-1508(e)(3) of Measure P during the agreement year 2 accrual period.	October 1, 2024
3	July 1, 2024 to June 30, 2025	Total fee not to exceed 2% of funding received pursuant to Section 7-1506(b)(4)(A) and authorized under Section 7-1508(e)(3) of Measure P during the agreement year 3 accrual period.	October 1, 2025
4	July 1, 2025 to June 30, 2026	Total fee not to exceed 2% of funding received pursuant to Section 7-1506(b)(4)(A) and authorized under Section 7-1508(e)(3) of Measure P during the agreement year 4 accrual period.	October 1, 2026
5	July 1, 2026 to June 30, 2027	Total fee not to exceed 2% of funding received pursuant to Section 7-1506(b)(4)(A) and authorized under Section 7-1508(e)(3) of Measure P during the agreement year 5 accrual period.	October 1, 2027

EXHIBIT B – Risk Assessment

Completion of the risk assessment below is required prior to issuing the notice to proceed. The Risk Assessment shall be completed and provided to the City of Fresno PARCS Department. Information contained within the Risk Assessment is collected for program and financial compliance purposes.

Service Provider Contact Information			
Full Legal Organization/Business Name:			
Address:			
City, State, Zip:			
Telephone number:			
E-mail address:			
Website:			
How long has your organization been in business?			
Number of employees:			
EIN (Employee ID Number):			
Organization fiscal year range:			
Service Provider Type of Organization (select one):			
<input type="checkbox"/> Government	<input type="checkbox"/> Nonprofit corporation	<input type="checkbox"/> Other corporation	<input type="checkbox"/> Individual
Service Provider Personnel Contact Information			
Contact for Subaward			
Name:			
Title:			
Telephone Number:			
E-mail Address:			
Attachments: Please attach the following or check N/A if not applicable.			
	<u>Document</u>	<u>Attached</u>	<u>N/A</u>
a.	IRS Determination Letter (granting income tax exemption under IRC § 501(c)(3))	<input type="checkbox"/>	<input type="checkbox"/>
b.	Form 990 or 990-EZ from the last two (2) years, including Form 990-	<input type="checkbox"/>	<input type="checkbox"/>

	T and all supporting schedules and attachments		
c.	List of all awards to Service Provider from City of Fresno during the last two (2) years	<input type="checkbox"/>	<input type="checkbox"/>

1. Has your agency operated with or managed grant funds (within the last 3 years)?

Yes

No

2. Has your agency's annual financial statements been audited by an independent audit firm? If yes, provide a copy of the statement from the last fiscal year.

Yes

No

3. If the answers to Questions 2 or 3 is yes, were there any findings or questioned costs in the last two (2) fiscal years? If yes, please explain any findings or questioned costs.

Yes

No

Not Applicable

Explanation (if applicable):

4. Are all payments properly documented with evidence or receipt of goods or performance of services?

Yes

No

5. Has your agency had any significant changes in key personnel within the past 12 months? (e.g., Controller, Exec. Director, Program Manager, Accounting Manager, etc.) If yes, please explain.

Yes

No

Explanation (if applicable):

6. Does your agency have policies that address the following? If yes, please provide a copy.

- | | | |
|-----------------------------|------------------------------|-----------------------------|
| Ethics/Professional Conduct | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Pay Rates and Benefits | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Discrimination | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Purchasing/Procurement | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Property and Equipment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Segregation of Duties | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Record Retention | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

7. Does your agency certify that they are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State department or agency?

- Yes
 No

By its authorized signatory below, your agency hereby certifies and attests to the accuracy of the above responses and all corresponding information has been transmitted to the City of Fresno PARCS Department.

Signature: _____

Printed Name: _____

Title: _____

Phone Number: _____

Date: _____

EXHIBIT C – Measure P Ordinance

- MUNICIPAL CODE OF THE CITY OF FRESNO
CHAPTER 7 - CITY FINANCES, REVENUE, AND TAXATION
ARTICLE 15 FRESNO CLEAN AND SAFE NEIGHBORHOOD PARKS TRANSACTIONS AND USE TAX

ARTICLE 15 FRESNO CLEAN AND SAFE NEIGHBORHOOD PARKS TRANSACTIONS AND USE TAX

SEC. 7-1501. TITLE.

This ordinance shall be known as the Fresno Clean and Safe Neighborhood Parks Tax Ordinance.
(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1502. OPERATIVE DATE.

"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being certification by the City Clerk that this measure has received approval by a majority of those voting in the election. The Operative date is expected to be July 1, 2021.
(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 2, eff. 4-22-21).

SEC. 7-1503. PURPOSE.

This ordinance is adopted to achieve the following and directs that the provisions hereof be interpreted in order to achieve those purposes:

- (a) To adopt a retail transactions and use tax ordinance within the City in the amount of three-eighths of a cent per dollar (a rate of 0.375%) as provided herein for the specific purpose of generating funds to be deposited into the Clean and Safe Neighborhood Parks Account that may only be used for the purposes specified herein including, but not limited to, clean and safe parks; new parks and recreation facilities; youth and senior recreation and after-school facilities and job training; improved walking and biking trails; the San Joaquin River Parkway; beautification of streets; and expanded access to arts and culture.
- (b) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with section 7251) of Division 2 of the Revenue and Taxation Code and section 7285.91 of Part 1.7 of Division 2 of the Revenue and Taxation Code which authorizes the City to adopt this tax ordinance provided that a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- (c) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- (d) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

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- (e) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.
 - (f) It is the intent of the voters in adopting this ordinance that the expenditures made pursuant to this ordinance shall supplement the levels of spending made by the City of Fresno in Fiscal Year 2017-18 in the areas funded by this ordinance and that the additional expenditures shall not supplant the 2017-18 spending levels.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 3, eff. 4-22-21).

SEC. 7-1504. IMPOSITION OF TAX, DEPOSIT INTO SPECIAL ACCOUNT AND ANNUAL ACCOUNTING.

The following provisions shall govern the imposition of the transactions and use tax and the deposit and use of revenues generated by this ordinance.

- (a) For the privilege of selling tangible personal property at retail, a transactions tax is hereby imposed upon all retailers in the City at the rate of three-eighths of a cent per dollar of the gross receipts of any retailer (a rate of 0.375%) from the sales of all tangible personal property sold at retail in the City on or after the operative date of this ordinance for a period of 30 years beginning on and after the operative date of this ordinance.
- (b) A use tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on or after the operative date of this ordinance for storage, use or other consumption in said city at the rate of three-eighths of a cent per dollar of the sale price of the property (a rate of 0.375%) for a period of 30 years beginning on and after the operative date of this ordinance. The sales price shall include delivery charges when such charges are subject to the State sales or use tax regardless of the place to which delivery is made.
- (c) The City Controller shall establish a Clean and Safe Neighborhood Parks Account and all retail transactions and use tax proceeds generated by this ordinance shall be deposited by the City Controller into the Clean and Safe Neighborhood Parks Account. Such proceeds shall only be used for the specific purposes identified in Section 7-1506.
- (d) For so long as any proceeds of the retail transactions and use tax remain unexpended, the City Controller shall cause a report to be prepared by an independent auditor and filed with the City Council no later than December 31st of each year, stating: (i) the amount of retail transactions and use tax proceeds collected and expended in the prior fiscal year; and (ii) the status of any projects or description of any programs or services funded from proceeds of the retail transactions and use tax.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1505. SEPARATE SECTION WITH TRUE AND IMPARTIAL STATEMENT OF FACTS IDENTIFYING THE TAX AND SPECIFIC LIMITATIONS ON HOW THE REVENUE CAN BE SPENT.

This ordinance enacts a transactions and use tax in the City at the rate of three-eighths of a cent per dollar to be used only for the purposes in Section 7-1506 including, but not limited to, clean and safe parks; new parks and recreation facilities; youth and senior recreation and after-school facilities and job training; improved walking and

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biking trails; the San Joaquin River Parkway; beautification of streets; and expanded access to arts and culture. The Expenditure Plan in Section 7-1506 is intended as a specific and legally binding and enforceable limitation on how the proceeds of the transactions and use tax imposed by this ordinance may be spent. The revenues collected as a result of this tax may not be used for any purpose not specifically identified in this ordinance.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1506. EXPENDITURE PLAN.

The revenues generated by the retail transactions and use tax imposed by this ordinance shall be allocated by the City of Fresno on an annual basis with additional independent oversight provided by the Commission to ensure expenditures are consistent with this Section.

- (a) Funds shall be allocated for programs and projects that do one of the following:
 - (1) Provide clean, safe neighborhoods parks for all Fresno residents;
 - (2) Reduce crime and homelessness in parks;
 - (3) Update and maintain park bathrooms and playgrounds;
 - (4) Reduce graffiti and vandalism in parks;
 - (5) Maintain and improve after-school, youth, and senior recreational programs;
 - (6) Provide job training for at-risk youth and veterans;
 - (7) Beautify landscaping and remove weeds and litter along major roads and highways;
 - (8) Create parks in neighborhoods that don't have good park access, including soccer and sports fields;
 - (9) Improve walking and biking access to parks and trails, including the San Joaquin River Parkway; and
 - (10) Expand access to local arts and cultural programs.
- (b) The funds deposited in to the Clean and Safe Neighborhood Parks Account pursuant to Section 7-1504 shall be expended according to the following schedule:
 - (1) **Improving and Maintaining Safe, Clean Neighborhood Parks and Playgrounds.**
 - (A) Forty-six percent (46%) percent of funds made available from Section 7-1504 shall be dedicated as described in this paragraph.
 - (B) Funds in this paragraph shall be made available for the improvement, restoration, rehabilitation, operations, and maintenance of projects and programs including, but not limited to, the following:
 - i. Park rehabilitation and other capital improvements in existing parks, including lighting;
 - ii. Facility upgrades to improve efficiency and safety;
 - iii. Playgrounds and picnic areas;
 - iv. New restrooms and restroom improvements;
 - v. Park access for individuals with disabilities;
 - vi. Improved maintenance and operations of existing parks;

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- vii. A park ranger program to improve safety in and around park facilities;
 - viii. Publicly owned sport facilities and swimming pools;
 - ix. City-owned arts, cultural, and recreational facilities located in parks, including Storyland/Playland and the Veterans Memorial Auditorium;
 - x. Other projects consistent with the Parks Master Plan, and subsequent updates;
 - xi. The planning, designing, engineering, and permitting activities associated with the above improvements.
- (C) Of the funds available pursuant to this paragraph, no less than fifty percent (50%) shall be made available for highest-need neighborhoods as defined in Section 7-150B.
- (D) Except for projects funded pursuant to subparagraph (C), projects that leverage state, federal, or philanthropic funding shall receive funding priority.
- (E) Of the funds available pursuant to this paragraph, no less than five million dollars (\$5,000,000) annually shall be designated for improving operations and maintenance of existing parks and facilities.
- (F) Projects funded pursuant to this paragraph shall attempt to provide multiple benefits, including water conservation, air quality improvements, climate pollution reductions, habitat protection, and public health improvements.
- (2) **New Neighborhood Parks; Senior and Youth Recreation Facilities.**
- (A) Twenty-one point five (21.5%) of the funds made available from Section 7-1504 shall be made available on an annual basis to improve the park system by investing in new park development and recreational facilities consistent with the Plan.
- (B) Funds in this paragraph shall be made available for acquisition, development, operations, maintenance and improvement projects including, but not limited to, the following:
- i. New neighborhood parks, pocket parks, and community gardens;
 - ii. Public restrooms in new parks;
 - iii. New senior and community centers associated with the park system;
 - iv. New regional parks located in the City of Fresno;
 - v. Playgrounds and picnic areas in new parks;
 - vi. New public sport facilities and swimming pools;
 - vii. The planning, designing, engineering, and permitting activities associated with the above improvements.
- (C) Of the funds available pursuant to this paragraph, no less than fifty percent (50%) shall be made available for highest-need neighborhoods as defined in Section 7-150B.
- (D) Except for projects funded pursuant to subparagraph (C), projects that leverage state, federal or private funding shall receive funding priority.
- (E) Projects funded pursuant to this paragraph shall attempt to provide multiple benefits, including water conservation, air quality improvements, climate pollution reductions, habitat protection, and community health improvements that result in reduced health burdens.

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- (3) **Youth and Senior Recreation Programs; After School Programs; and Job Training for Youth and Veterans.**
- (A) Eight point five percent (8.5%) of the funds made available from Section 7-1504 shall be dedicated as described in this paragraph.
- (B) Funds in this paragraph shall be available for the planning and delivery of projects and programs including, but not limited to, the following:
- i. Physical activity programming that promotes recreation and accessibility to recreational facilities;
 - ii. Sports, arts and active programs;
 - iii. Community and senior recreation center programs;
 - iv. Swimming and water-oriented recreation programs;
 - v. Junior lifeguard, science and education, summer day camps, and other youth-oriented programs;
 - vi. After-school programs for youth;
 - vii. Job-training and employment opportunities for youth, young adults, and veterans.
- (C) Of the funds made available from this paragraph, not less than fifty percent (50%) shall be made available on an annual basis for programs that provide job training, career development, or both, to youth, young adults and veterans, including education and/or certification for jobs within the conservation, science, arts, green technology, and parks and recreation fields.
- (D) Programs funded pursuant to this paragraph shall prioritize service for at-risk youth and seniors as defined by the PARCS Department, in conjunction with the Commission.
- (4) **Expanded Access to Arts and Culture.**
- (A) Twelve percent (12%) percent of the funds made available from Section 7-1504 shall be made available on an annual basis to invest in competitive grants for nonprofit organizations that support and expand access to arts and cultural programming.
- (B) Grants funded pursuant to this paragraph shall be implemented by the Commission in partnership with the Fresno Arts Council, or its successor local arts agency, using multiple solicitations that allow for a diverse set of programs, with different program sizes and reach, including core operating and project-support grants, to be funded. The Commission shall ensure that grant applications are reviewed in a transparent, competitive process.
- (C) Prior to the implementation of subparagraph (B), the Commission shall work in partnership with the Fresno Arts Council, and local arts and cultural stakeholders, to develop a Cultural Arts Plan for the City of Fresno that would identify needs in the arts and cultural community; prioritize outcomes and investments; and develop a vision and goals for the future of Fresno arts and cultural programs that are reflective of the cultural, demographic, and geographic diversity of Fresno. This process shall include a robust community engagement process, including multiple public meetings. The Cultural Arts Plan shall be updated every five years by the Commission.
- (D) Funding for operating support distributed pursuant to this paragraph shall support organizational stability for arts and cultural organizations that reflect the cultural, geographic and demographic diversity of the City of Fresno; and reflect the proportion of

each grantee's overall operations that serves residents within, or visitors to, the City of Fresno sphere of influence.

- (E) Grants funded pursuant to subparagraph (B) shall prioritize organizations and programs that support and expand diverse public or youth engagement and equity.
- (5) **Safe Walking and Biking Trails; Street Beautification and Litter Removal; and the San Joaquin River Parkway.**
 - (A) Eleven point twenty-five percent (11.25%) of the funds made available from Section 7-1504 shall be dedicated as described in this paragraph.
 - (B) Of the funds made available pursuant to this paragraph, forty-seven percent (47%) shall be made available for acquisition, development, improvement, restoration, operations, maintenance, or rehabilitation projects including:
 - i. Trail development, including bike, pedestrian and equestrian trails, as identified in the Active Transportation Plan, including trails that support safe routes to schools;
 - ii. Urban greening and tree planting along designated trails in the Active Transportation Plan;
 - iii. The planning, designing, engineering, and permitting activities associated with the above improvements.
 - (C) Of the funds made available pursuant to subparagraph (B), no more than twenty percent (20%) of the funds shall be made available for operations and maintenance of trails.
 - (D) Of the funds made available pursuant to subparagraph (B), no less than twenty-five percent (25%) of the funds shall be prioritized for Class I and Class IV pedestrian and bicycle pathways along the "Priority Network" as identified in the Active Transportation Plan.
 - (E) Of the funds made available pursuant to this paragraph, eighteen percent (18%) shall be made available for operations and projects consistent with the San Joaquin River Parkway Master Plan, in coordination with the San Joaquin River Conservancy and the San Joaquin River Parkway Trust.
 - (F) Of the funds made available pursuant to this paragraph, thirty-five percent (35%) shall be made available for development, improvement, restoration, maintenance, or rehabilitation of projects including, but not limited to, the following:
 - i. Litter and debris removal along major roads and streets within the City of Fresno, and along highways within the City of Fresno and its county islands;
 - ii. Landscape beautification and restoration projects along major roads and streets within the City of Fresno, and along highways within the City of Fresno and its county islands;
 - iii. The planning, designing, engineering, and permitting of activities associated with the above improvements.
 - (G) Of the funds made available pursuant to subparagraph (F), prioritization shall be given to projects that
 - i. Reduce overall water usage or include drought-tolerant plantings in landscaping;
 - ii. Leverage local, state, federal and private funding.

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- (H) Where appropriate, projects funded pursuant to subparagraph (F) shall be coordinated with Caltrans.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1507. DEFINITIONS.

The following definitions shall apply to this Measure:

- (a) "Active Transportation Plan" means the City of Fresno's currently adopted Active Transportation Plan, or any subsequent update.
- (b) "City" means the City of Fresno.
- (c) "Department" means the City of Fresno Parks, After School, Recreation, and Community Services Department.
- (d) "Commission" means the Parks, Arts and Recreation Commission established in Section 7-1509.
- (e) "Council" means the City of Fresno's City Council.
- (f) "Cultural Facility" means a building owned and/or operated by the City of Fresno which shall be used for the programming, production, presentation, and/or exhibition of natural history and any of the arts and/or cultural disciplines. These disciplines include music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, and visual arts.
- (g) "Highest-need neighborhoods" means those communities as defined pursuant to Section 7-1508.
- (h) "Interpretation" means, a visitor serving amenity that enhances the ability to understand and appreciate the significance and value of natural, historical, cultural and recreational resources that may utilize educational materials in multiple languages, digital information, and the expertise of a naturalist or other skilled specialist.
- (i) "Forest or Forestry" means the cultivation and management of trees in an urban area for their present and potential contribution to the economic, physiological, sociological, and ecological well-being of urban society.
- (j) "The Fresno Arts Council" means the current partnering organization of the City and County of Fresno that is tasked to promote the arts industry, or its successor.
- (k) "Plan" means the Fresno City Master Parks Plan as adopted in 2018 or any subsequently adopted amendments or updates.
- (l) "Joint-use" means shared management of facilities, land, utilities, programs, or other common elements between two or more parties, especially schools and flood control facilities.
- (m) "Multi-benefit project" means a project that maximizes or enhances recreation opportunities and one or more of the following: protection or enhancement of the natural environment, stormwater capture, water and air quality improvements, greenhouse gas emission reductions, carbon sequestration, heat-island reductions; habitat protection and biodiversity, community health improvements that reduce health burdens, or any combination thereof.
- (n) "Nonprofit Organization" means any charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which has among its purposes the provision of park, recreation or community services or facilities; art appreciation; trail development or management; gang prevention, intervention, and services for at-risk youth; conservation corps; environmental education and interpretation; or tree-planting.

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- (o) "Park" means those facilities described in the Plan or subsequently added to the City's public park system.
 - (p) "State" means the State of California, except as otherwise provided herein.
 - (q) "Veterans" means any person who served in the United States armed forces as defined by Title 38 of the Code of Federal Regulations.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1508. PROGRAM IMPLEMENTATION AND FISCAL CONTROLS.

- (a) Authority to expend funds, issue grants, or enter into contracts or memoranda of understanding relating to the revenues deposited into the Clean and Safe Neighborhood Parks Account pursuant to Section 7-1504 is delegated to the City of Fresno, provided that no expenditures may be made from the Account except as provided in this ordinance.
- (b) In an effort to provide efficient administration and implementation of the program and project funding pursuant to this ordinance, the City may enter into interagency agreements with city departments, local agencies, county and/or state agencies, and provide grants to nonprofit organizations.
- (c) Of the funds made available pursuant to this ordinance, the City may periodically dedicate a portion of funds to competitive grant solicitations for local education agencies, public agencies, and nonprofit organizations to develop and implement projects and programs.
- (d) Of the funds made available pursuant to this ordinance, the City shall promote the use of the local conservation corps and other local youth and veteran training programs in the implementation of programs and projects funded.
- (e) Identification of highest-needs neighborhoods:
 - (1) Up to and including December 31, 2021, the City, in conjunction with the Commission, shall define the highest-need neighborhoods as those areas that are located within census tracts that rank within the top twenty-five percent (25%) of Fresno census tracts as identified in the State's CalEnviroScreen 3.0; and whose nearest park is identified as being in poor condition, according to the Plan, or is located within a priority zone for new parks, as defined by the Plan.
 - (2) No later than January 1, 2022, the City, in conjunction with the Commission, shall adopt a new definition of highest-needs neighborhoods, after conducting a public process, to be updated every three years and included in subsequent updates to the Plan. The City and Commission shall create a weighted index incorporating the following data in developing the definition:
 - (A) Existing conditions of parks and facilities based on needs assessment data in the Plan;
 - (B) The proportion of the population that lives within walking distance (1/2 mile) to a park;
 - (C) Park acreage per 1,000 residents;
 - (D) Population density;
 - (E) Neighborhood youth and senior population;
 - (F) Neighborhood safety;
 - (G) Neighborhoods of concentrated poverty;
 - (H) Pollution burden, as defined by CalEnviroScreens 3.0, or subsequent updates;
 - (I) Pre-term birth rates;

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- (J) Years of potential life lost;
 - (K) Neighborhood composite mortality rate.
- (3) In making the expenditures provided in Section 7-1506, the City shall be permitted to use no more than two percent (2%) of the funds allocated pursuant to each paragraph of that Section on an annual basis for administrative costs associated with the delivery of programs and projects pursuant to each paragraph.
 - (4) Starting with the 2029-30 fiscal year, the City may adjust the percentage funding allocations within each paragraph of Section 7-1506(b) by up to two percentage points each year, and between paragraphs of Section 7-1506(b) by up to one-half percentage point each year.
 - (5) Up to zero point seventy-five percent (0.75%) of the total funds made available pursuant to this Measure shall be made available on an annual basis to invest in program implementation, planning and plan updates, program and project innovation, and audit and oversight support to ensure the investments made by the citizens of Fresno create a world class set of facilities and programs and that funds are spent in accordance with the voters' will, including, but not limited to the following:
 - (A) Technology, community outreach, and technical assistance for program implementation;
 - (B) Interpretation and special language needs;
 - (C) Strategic planning and updates to the Parks Master Plan and Cultural Arts Plan;
 - (D) Costs associated with program oversight and accountability, including audits.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , §§ 4, 5, eff. 4-22-21).

SEC. 7-1509. FISCAL OVERSIGHT AND BUDGET ACCOUNTABILITY.

- (a) A new Parks, Recreation and Arts Commission consisting of nine (9) members is hereby created, to be appointed by the Mayor with approval by the City Council in accordance with Article IX of the Fresno City Charter.
- (b) The Mayor and City Council shall appoint all members of the Commission no later than June 30, 2021.
- (c) The membership of the Commission shall reflect the cultural, demographic, and geographic diversity of the City of Fresno, with at least one-third of the Commissioners residing in highest-need neighborhoods, as defined in Section 7-1508.
- (d) The Commission shall include members with the following areas of demonstrated expertise:
 - (1) Community parks and open space management;
 - (2) Youth development or recreation programs;
 - (3) Trails and San Joaquin River Parkway development and programming;
 - (4) Arts and culture programming;
- (e) The Commission shall have primary authority on behalf of the City to:
 - (1) Conduct hearings and receive public input on allocations related to this ordinance, updates to the Parks Master Plan and Cultural Arts Plan, and annual PARCS Department Budget and Capital Improvement Plans; make recommendations to the City Council;
 - (2) Review City staff recommendations for budget allocations related to this ordinance to ensure consistency with the ordinance and Expenditure Plan; make recommendations to the City Council for adoption of expenditures in connection with annual budget process and any amendments thereto;

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- (3) Review and recommend for City adoption guidelines for competitive grant programs established with funds from this Measure;
 - (4) Oversee development and recommend City Council adoption of the Cultural Arts Plan and subsequent updates;
 - (5) Review and make recommendations to the Mayor and City Council on fees related to parks, trails, and open space;
 - (6) Review the Controller's annual independent audit of the Clean and Safe Neighborhood Parks Account; ensure that a complete accounting of all expenditures each year is published and posted on a publicly accessible website;
 - (7) Every five years, submit an evaluation of the program to the public and the City of Fresno;
 - (8) Provide input on an annual report prepared by City staff that includes:
 - (A) Update on the percentage of Frensans that live within ¼ mile of a park;
 - (B) Update on the number and percentage of Frensans accessing PARCS programs;
 - (C) Update on the implementation of the Parks Master Plan;
 - (D) Update on the implementation of the Active Transportation Plan;
 - (E) Update on the implementation of deferred maintenance and improvements to existing parks and recreational facilities in the City.
 - (f) The City Council shall have the authority to further define the role and powers of the Commission by adopting implementing ordinances and revising them over time.
 - (g) In consultation with the City Attorney, City Clerk, and appropriate City staff, the Commission shall have authority to determine operating procedures consistent with the City Charter and the Municipal Code, including the other provisions of this ordinance.
 - (h) The Commission shall hold public meetings and operate pursuant to California Government Code section 54950.
 - (i) The Commission members shall be governed by and comply with State conflict of interest laws (e.g., Government Code section 87000 et seq. and section 1090 et seq.) and the City's conflict of interest policies.
- (Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 6, eff. 4-22-21).

SEC. 7-1510. MISCELLANEOUS PROVISIONS.

- (a) Parks or other public facilities acquired, developed, rehabilitated or maintained with funds from this Measure shall be open, accessible, and affordable to the public without discrimination as to race, color, sex, sexual orientation, age, religious belief, national origin, marital status, physical or medical handicap, medical condition or place of residence.
- (b) The department shall not sell bonds secured by any revenues made available by this ordinance.
- (c) The City shall not use funds generated from this resolution to develop facilities on existing or former landfills or waste refuse facilities.
- (d) No provision of this ordinance shall be construed as authorizing the condemnation of privately-owned lands. Acquisition of property through eminent domain shall be strictly prohibited with the funds generated by this ordinance.

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- (e) Reasonable public access to lands acquired in fee simple with funds made available pursuant to this ordinance shall be provided except where that access may interfere with resource protection or to ensure public safety. For purposes of this ordinance, reasonable public access shall include parking and public restrooms.
 - (f) All real property acquired pursuant to this ordinance shall be acquired in compliance with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the California Government Code. Public Agencies and Nonprofit Organizations receiving funds pursuant to this resolution shall certify compliance to the City. Funds disbursed to a Public Agency in accordance with this ordinance may be expended by that agency pursuant to an agreement, or by an entity, authorized or established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1511. CONTRACT WITH THE STATE.

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this retail transactions and use tax ordinance; provided, that if the city shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 7, eff. 4-22-21).

SEC. 7-1512. PLACE OF SALE.

For the purpose of this ordinance, all retail transactions are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated, for the purposes of this ordinance, shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 8, eff. 4-22-21).

SEC. 7-1513. ADOPTION OF PROVISIONS OF STATE LAW.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1514. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF TAXES.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

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- (a) Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made:
- (1) When the word "State" is used as part of the title of the State Controller, State Treasurer, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California.
 - (2) Where the result of that substitution would require action to be taken by or against this City or any agency, officer or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.
 - (3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - (A) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - (B) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that code.
 - (4) In sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code.
- (b) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in section 6203 of the Revenue and Taxation Code, and in the definition of that phrase in section 6203.
- (1) "A retailer engaged in business in the City" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For the purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and regulations thereunder.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , §§ 9—11, eff. 4-22-21).

SEC. 7-1515. PERMIT NOT REQUIRED.

If a seller's permit has been issued to a retailer under section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1516. EXEMPTIONS AND EXCLUSIONS.

- (a) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- (b) There are exempted from the computation of the amount of transactions tax the gross receipts from:

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- (1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 - (2) Sales of property to be used outside the City which are shipped to a point outside the City, pursuant to the contract of sale, by delivery to that point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
 - (A) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that the address is, in fact, his or her principal place of residence; and
 - (B) With respect to commercial vehicles, by registration to a place of business out-of-City and a declaration under penalty of perjury signed by the buyer, that the vehicle will be operated from that address.
 - (3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 - (4) A lease of tangible personal property which is a continuing sale of that property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 - (5) For purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.
- (c) There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
- (1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 - (2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by the operators directly and exclusively in the use of the aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in sections 6366 and 6366.1 of the Revenue and Taxation Code.
 - (3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 - (4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to the operative date of this ordinance.
 - (5) For the purposes of subparagraphs (3) and (4) of this section, the storage, use or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the

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contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

- (6) Except as provided in paragraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 - (7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- (d) Any person subject to use tax under this ordinance shall be entitled to credit against that tax or any transactions tax or reimbursement for transactions tax, paid to the city or retailer in the city liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1517. STATE LAW AMENDMENTS.

All amendments subsequent to the effective date of this ordinance to part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1518. AMENDMENT OF ORDINANCE.

Except for amendments that would increase the tax rate, impose the tax on transactions and uses not previously subject to the tax (unless the amendment occurs pursuant to Section 7-1517), extend the tax, allow expenditures other than those provided in Section 7-1506, or be inconsistent with the purposes of this ordinance, the City Council may amend this ordinance without submitting the amendment to the voters for approval.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

SEC. 7-1519. ENJOINING COLLECTION FORBIDDEN.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

EXHIBIT D - INSURANCE REQUIREMENTS
Administrative Service Agreement between the City of Fresno (City)
and the Fresno Arts Council (Service Provider)

MINIMUM SCOPE OF INSURANCE

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.
4. Professional Liability (Errors and Omissions) insurance appropriate to the Service Provider’s profession.

MINIMUM LIMITS OF INSURANCE

The Service Provider, or any party the Service Provider subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to the 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:**
 1. \$1,000,000 per occurrence for bodily injury and property damage;
 2. \$1,000,000 per occurrence for personal and advertising injury;

3. \$2,000,000 aggregate for products and completed operations; and,
4. \$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** (Errors and Omissions) appropriate to the Service Provider's profession:

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

UMBRELLA OR EXCESS INSURANCE

In the event the Service Provider 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

The Service Provider shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Service Provider shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to 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:

1. The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents and volunteers; or
2. The Service Provider 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

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. The Service Provider 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 04 13 and CG 20 37 04 13 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.
2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, the Service Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Service Provider's insurance and shall not contribute with it. The Service Provider shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non- contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: The Service Provider and its insurer shall waive any right of subrogation against the City, its officers, officials, employees, agents and volunteers.

If the Professional (Errors and Omissions) 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 the Service Provider.
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 the Service Provider, the Service Provider 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 the City for review.
5. These requirements shall survive expiration or termination of the Agreement.

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 by certified mail, return receipt requested, has been given to the City. The Service Provider 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, the Service Provider shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Service Provider 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.

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.

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

VERIFICATION OF COVERAGE

The Service Provider shall furnish the City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee 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, the Service Provider 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.

SUBCONTRACTORS

If the Service Provider should subcontract all or any portion of the services to be performed under this Agreement, the Service Provider shall require and verify that all subcontractors maintain insurance meeting all the requirements stated. The subcontractors' certificates and endorsements shall be on file with the Service Provider prior to the commencement of any work by the subcontractor.

EXHIBIT E
DISCLOSURE OF CONFLICT OF INTEREST
ADMINISTRATIVE SERVICES AGREEMENT FOR THE CITY OF FRESNO
EXPANDED ACCESS TO ARTS AND CULTURE GRANT PROGRAM

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Additional page(s) attached.

DocuSigned by:
Lilia Gonzalez Chavez
 Signature
 8/2/2023
 Date
 Lilia Gonzalez Chavez
 Name
 Fresno Arts Council
 Company
 1245 Van Ness Ave
 Address
 Fresno CA 93721
 City, State, Zip