

GRANT AGREEMENT BETWEEN THE CITY OF FRESNO AND THE AFRICAN AMERICAN HISTORICAL AND CULTURAL MUSEUM OF THE SAN JOAQUIN VALLEY, A NON-PROFIT CORPORATION REGARDING FUNDING FOR THE FACILITY DEFERRED MAINTENANCE PROJECT

THIS GRANT AGREEMENT (AGREEMENT) is made and entered into effective upon execution by both parties on _____ (the Effective Date), by and between the CITY OF FRESNO (the CITY), and the AFRICAN AMERICAN HISTORICAL AND CULTURAL MUSEUM OF THE SAN JOAQUIN VALLEY (AAHCMSJV), a California Non-Profit Corporation (the GRANTEE), to provide funding for the FACILITY DEFERRED MAINTENANCE PROJECTS. (PROJECT).

RECITALS

WHEREAS, The African American Historical and Cultural Museum of the San Joaquin Valley was founded in 1989 and resides in a facility constructed in 1956; and

WHEREAS, the City Council appropriated funding to the GRANTEE for this PROJECT to invest in the continuance of AAHCMSJV's services in the City of Fresno; and

WHEREAS, the GRANTEE acknowledges that grant funds provided under this AGREEMENT will be derived from the City of Fresno General Fund, and is subject to the requirements of the Fresno Municipal Code; and

WHEREAS, the GRANTEE represents it desires to and is professionally and legally capable of completing the scope of work outlined in this AGREEMENT; and

WHEREAS, this AGREEMENT will be administered for the CITY by its City Manager or their 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 GRANTEE shall perform to the satisfaction of the CITY the scope of work described in Exhibit A, including all work incidental to, or necessary to perform, such scope even though not specifically described in Exhibit A.

2. **Grant Amount.** The CITY shall provide the GRANTEE the amount of \$200,000 with an upfront cost of \$30,000 for the PROJECT described in **Exhibit A**. The funding shall be distributed for eligible costs incurred as described in section 5.

(a) Disbursement of funds for deferred maintenance items.

i. This award will be distributed throughout the grant term as needed when GRANTEE has obtained ready-to-pay invoices from licensed general contractor for the proposed activities. This AGREEMENT allows for one upfront payment totaling up to \$30,000. An invoice template will be provided and will require supporting documentation for all eligible expenses.

ii. For the aforementioned PROJECT, the CITY agrees to distribute funds to the GRANTEE solely from allocated and available funds. Compensation for satisfactory performance of all services required or rendered pursuant to this AGREEMENT for eligible costs incurred by the GRANTEE in pursuit hereof, shall be reimbursed in an amount not to exceed \$200,000.

iii. Detailed itemized invoice statements shall be submitted to the CITY by GRANTEE quarterly by the 15th of the month for services performed in the preceding quarter and will be payable in the normal course of the CITY's business. An invoice template will be provided and will require supporting documentation for all eligible expenses.

iv. Payment of grant funds to the GRANTEE shall be contingent on the CITY'S receipt of an undisputed invoice and any reports and substantiation materials required by the CITY.

3. **Term of Agreement and Time for Performance.**

(a) This AGREEMENT shall be effective for two (2) years from the Effective Date through _____ (date) subject to earlier termination in accordance with this AGREEMENT. The services as described in **Exhibit A** are to commence upon the Effective Date and shall be completed prior to expiration of this AGREEMENT and in accordance with any performance schedule set forth in **Exhibit A**.

(b) The CITY may exercise the option to extend the AGREEMENT for an additional year at the sole discretion of the City Manager or their designee. Any extensions to the term of the AGREEMENT must be made by written amendment to the AGREEMENT signed by an authorized representative for each party.

4. **Project Amendments.**

(a) The CITY will consider project amendments and budget modifications between line items, including changes to the awarded scope of services to maximize the overall benefits to the community. Any change in the scope of services must be requested in writing and submitted to PARCSContracts@Fresno.gov. The written request for an amendment must be signed by an authorized representative of the GRANTEE.

(b) The written request shall include:

- An explanation of the proposed scope change
- Reason(s) for the proposed scope change
- Impact the proposed scope change will have on the original scope
- Impact the proposed scope change will have on the overall cost, budget, timeline and proposed deliverables.

(c) Requests for any amendments shall be reviewed by the City Manager or their designee. The CITY will review all written requests and respond with an approval or denial for amendment within 30 calendar days of receipt.

(d) The GRANTEE shall not be entitled to any additional compensation if services are performed prior to an approval notice from the CITY.

(e) If the GRANTEE should fail to comply with any provision of the AGREEMENT, the CITY shall be relieved of its obligation for further compensation.

5. Termination, Remedies and Force Majeure.

(a) This AGREEMENT shall terminate without any liability of the CITY or to the GRANTEE upon the earlier of: (i) the GRANTEE filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the GRANTEE; (ii) seven calendar days prior written notice with or without cause by the CITY to the GRANTEE; (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) If the GRANTEE should fail to comply with any provision of the AGREEMENT, the CITY shall be relieved of its obligation for further compensation. Immediately upon any termination or expiration of this AGREEMENT, the GRANTEE 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 GRANTEE that are owned by the CITY. Subject to the terms of this AGREEMENT, the GRANTEE shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The GRANTEE 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 GRANTEE 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 GRANTEE, 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 GRANTEE, 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 GRANTEE shall provide the CITY with adequate written assurances of future performance, upon the Administrator's request, in the event the GRANTEE fails to comply with any terms or conditions of this AGREEMENT.

(f) The GRANTEE shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the GRANTEE 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 GRANTEE shall notify the CITY in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Administrator of the cessation of such occurrence.

(g) Events of Default. When in the opinion of the CITY, there is an occurrence of any one or more of the following provisions it will represent an Event of Default for purposes of this AGREEMENT.

- i. An illegal or improper use of funds.
- ii. A failure to comply with any term, covenant or condition of this AGREEMENT. Report(s) are submitted to the CITY which are incorrect or incomplete in any material respect.
- iii. The services required hereunder are incapable of or are improperly being performed by the GRANTEE.
- iv. Refusal of the GRANTEE to accept change under Section 18.
- v. The GRANTEE fails to maintain any required insurance.
- vi. There is a loss of third-party funding (see Section 5 above).
- vii. The GRANTEE's breach of any other material condition, covenant, warranty, promise or representation contained in this AGREEMENT not otherwise identified within this Section.

(h) Upon the occurrence of an Event of Default, the CITY shall give written notice to the GRANTEE of the Event of Default by specifying (1) the nature of the event or deficiency giving rise to the default, (2) the action required to cure the deficiency, if, in the sole discretion of the CITY, any action to cure is possible, and (3) if the Event of Default is curable, a date, which shall not be less than thirty calendar days from the date of the notice, by which such deficiency must be cured.

6. **Confidential Information and Ownership of Documents.**

(a) Any reports, information, or other data prepared or assembled by the GRANTEE pursuant to this AGREEMENT shall not be made available to any individual or organization by the GRANTEE without the prior written approval of the CITY. During the term of this AGREEMENT, and thereafter, the GRANTEE shall not, without the prior written consent of the CITY, disclose to anyone any Confidential Information.

(b) 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.

(c) Any and all writings and documents prepared or provided by the GRANTEE pursuant to this AGREEMENT 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 GRANTEE shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

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

(e) This Section 6 shall survive expiration or termination of this AGREEMENT.

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

8. **Indemnification.** To the furthest extent allowed by law, including California Civil Code section 2782, GRANTEE shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract . GRANTEE'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, GRANTEE, whenever there is any causal connection between the GRANTEE's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, GRANTEE expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by GRANTEE expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to GRANTEE as reasonably determined by CITY.

Upon the tender by CITY to GRANTEE, GRANTEE shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by GRANTEE that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and GRANTEE fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and GRANTEE shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance GRANTEE may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If GRANTEE should subcontract all or any portion of the work to be performed under this Contract, GRANTEE shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

This section 8 shall survive termination or expiration of this AGREEMENT.

9. **Insurance.** The GRANTEE shall comply with all of the insurance requirements in Exhibit B to this AGREEMENT. Failure to comply and maintain the appropriate insurance may result in immediate termination of the AGREEMENT.

10. **Conflict of Interest and Non-Solicitation.**

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

(b) The GRANTEE shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et.

seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of the CITY, the GRANTEE shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the GRANTEE and the respective subcontractor(s) are in full compliance with all laws and regulations. The GRANTEE 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 GRANTEE shall immediately notify the CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, the GRANTEE 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.

(d) The GRANTEE represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this AGREEMENT or any rights/benefits hereunder.

(e) Neither the GRANTEE, nor any of the GRANTEE's subcontractors performing any services on this PROJECT, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this PROJECT unless fully disclosed to and approved by the City Manager, in advance and in writing. The GRANTEE 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 laws 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 GRANTEE shall remain responsible for complying with Section 10(b), above.

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

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

11. **General Terms.**

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

(b) Prior to execution of this AGREEMENT by the CITY, the GRANTEE will permit the CITY staff to conduct a subrecipient risk assessment. Failure to allow the CITY staff to conduct this subrecipient risk assessment (EXHIBIT D) may result in the CITY terminating this AGREEMENT in accordance with Section 5. Additionally, the GRANTEE's failure to be certified by the CITY staff at the end of the risk assessment as

having adequate internal controls to manage the funding provided in this AGREEMENT may result in the CITY terminating this AGREEMENT in accordance with Section 5.

(c) Any portion of the program funded with public funds shall not require participants to take part in any activity or exercise intended to advance or promote religion, in compliance with the Article I, Section 1 of the California Constitution.

12. **Financial Reporting, Auditing and Document Retention.**

(a) The GRANTEE agrees to permit the CITY staff to conduct one performance review during the term of this AGREEMENT. The CITY has the right to conduct additional performance reviews both during the term of this AGREEMENT and after the AGREEMENT's term should the CITY believe these reviews are necessary.

(b) Records of the GRANTEE expenses pertaining to the PROJECT shall be kept on a generally recognized accounting basis and shall be available to the CITY or its authorized representatives upon request during regular business hours throughout the life of this AGREEMENT and for a period of three years after final payment or, if longer, for any period required by law. Records related to the GRANTEE's performance metrics shall be made available and retained for the same time periods as the PROJECT's expense data. If the GRANTEE fails to provide the CITY staff access or documentation necessary to conduct a CITY-requested performance review, The CITY may terminate this AGREEMENT in accordance with Section 5.

(c) In addition, all books, documents, papers, and records of the GRANTEE 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 GRANTEE should subcontract all or any portion of the services to be performed under this AGREEMENT, the GRANTEE shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 12(b) shall survive expiration or termination of this AGREEMENT.

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

(e) Prior to execution of this AGREEMENT by the CITY, the GRANTEE must disclose Program Funding Award & Pending Applications whether it has (or is proposed as a sub-recipient under) any pending applications for funded grants or cooperative agreements that (1) include requests for funding to support the same scope being proposed in this AGREEMENT, and (2) would cover any identical cost items outlined in the budget submitted to City of Fresno as part of the application under this AGREEMENT. The contractor is to disclose applications made directly to awarding

agencies, and also applications for subawards funds (e.g., applications to Private Foundations, State agencies that will subaward (subgrant) federal funds).

(f) The GRANTEE shall calculate, document and record the organization's program income, if applicable. Federal Uniform guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Recipients may add program income to their Federal award. The program income must be used for the purposes and under the conditions of the Federal award.

13. **Nondiscrimination.**

(a) To the extent required by controlling federal, state, and local law, the GRANTEE 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 GRANTEE agrees as follows:

(b) The GRANTEE 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.

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

(d) The GRANTEE will, in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE 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.

(e) The GRANTEE 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 GRANTEE's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) If the GRANTEE should subcontract all or any portion of the services to be performed under this AGREEMENT, the GRANTEE shall cause each subcontractor to also comply with the requirements of this Section 15.

14. **Independent Contractor.**

(a) In the furnishing of the services provided for herein, the GRANTEE is acting solely as an independent contractor. Neither the GRANTEE, 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 GRANTEE shall perform its work and functions. However, the CITY shall retain the right to administer this AGREEMENT so as to verify that the GRANTEE 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 GRANTEE and the CITY. The GRANTEE 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 GRANTEE shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the GRANTEE and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the CITY employees. The GRANTEE 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 GRANTEE 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 GRANTEE's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the CITY's employment benefits, entitlements, programs and/or funds offered employees of the CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this AGREEMENT, the GRANTEE may be providing services to others unrelated to the CITY or to this AGREEMENT.

15. **Notices.** Any notice required or intended to be given to either party under the terms of this AGREEMENT shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this AGREEMENT or at such other address as

the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof. Notices may also be delivered via email with written confirmation of receipt.

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

17. **Assignment.**

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

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

18. **Compliance With Law.** In providing the services required under this AGREEMENT, the GRANTEE shall at all times comply with all applicable laws of the United States, including but not limited to, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), the State of California and the CITY, and all other applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this AGREEMENT.

19. **Waiver.** The waiver by either party of a breach by the other of any provision of this AGREEMENT shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this AGREEMENT. No provisions of this AGREEMENT may be waived unless in writing and signed by all parties to this AGREEMENT. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

20. **Governing Law and Venue.** This AGREEMENT shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this AGREEMENT and any rights and duties hereunder shall be Fresno County, California.

21. **Headings.** The section headings in this AGREEMENT are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this AGREEMENT.

22. **Severability.** The provisions of this AGREEMENT are severable. The invalidity, or unenforceability of any one provision in this AGREEMENT shall not affect the other provisions.

23. **Interpretation.** The parties acknowledge that this AGREEMENT in its final form is the result of the combined efforts of the parties and that, should any provision of this AGREEMENT be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this AGREEMENT in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

24. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this AGREEMENT, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

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

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

27. **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.

28. **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.

29. **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 GRANTEE.

30. The City Manager, or designee, is hereby authorized and directed to execute and implement this AGREEMENT.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

CITY OF FRESNO,
a California municipal corporation

AFRICAN AMERICAN HISTORICAL
AND CULTURAL MUSEUM OF THE SAN
JOAQUIN VALLEY,
a California nonprofit corporation

By: _____ Date
Georgeanne A. White
City Manager

By: _____ Date
DocuSigned by:
Alondra Williams Vasquez /2024
E9E41C9CBD75480...
Alondra Williams Vasquez
Executive Director

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____ Date
DocuSigned by:
Christine Charitar /2024
66086C14193B4F5...
Christine C. Charitar
Deputy City Attorney

By: _____ Date
DocuSigned by:
Sabrina Kelley 5/14/2024
5336511A1A4B493...
Sabrina Kelley
Treasurer

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____ Date
Deputy

Addresses:

CITY:
City of Fresno
Attention: Aaron Aguirre, Director
Parks, After School, Recreation and
Community Services
1515 Divisadero Street
Fresno, CA 93721
Phone: (559) 621-2900
FAX: (559) 475-1575
Email: PARCSContracts@Fresno.gov

AFRICAN AMERICAN
HISTORICAL AND CULTURAL
MUSEUM OF THE SAN
JOAQUIN VALLEY
Attention: Lynnette Brown
President – Board of Directors
Address: 1857 Fulton Street
Fresno, CA 93721
Phone: 559-544-1857
Email: aahcmsjv@gmail.com

Attachments:

- 1. Exhibit A – Scope of Work, Schedule, Budget and Deliverables
- 2. Exhibit B – Insurance Requirements
- 3. Exhibit C – Conflict of Interest Disclosure Form
- 4. Exhibit D – Risk Assessment

EXHIBIT A**SECTION I - SCOPE OF WORK, SCHEDULE, BUDGET & DELIVERABLES****Task #1 – Licensed General Contractor (15%).....\$30,000**

Grantee to hire a licensed general contractor to manage the repairs of the deferred maintenance and serve as Project Manager.

Deliverable(s): Grantee shall provide detailed project timeline for deferred maintenance items.

Timeline: Licensed general contractor to be hired within the first 1 month of the agreement.

Task #2 – Licensed General Contractor Deferred Maintenance Plan and Construction Contingency (85%).....\$170,000

Licensed general contractor to hire licensed subcontractors to complete the deferred maintenance repairs. Licensed General Contractor shall provide construction documents for deferred maintenance repairs, including, but not limited to:

- A detailed cost estimate including line items, quantities, and unit costs.
- A detailed construction schedule.
- Stamped architectural, structural, electrical, plumbing, landscape, parking and mechanical plans and specifications suitable for plan submittal, permitting and construction (when applicable).

Preliminary Estimate for Deferred Maintenance Repairs:	Cost
2a. Electrical Systems (31.40%)	\$ 62,800
2b. HVAC Repair (22%)	\$ 44,000
2c. Central Fire Alarm System/Panel Replacement (4.25%)	\$ 8,500
2d. Cladding/Exterior Repainting and Recalk (6.36%)	\$12,712
2e. Upgrade/Refurbish break area/kitchen (5.78%)	\$11,550
2f. Sewer Line Camera Inspection (1%)	\$ 2,000
2g. Insurance Policy Cost for 2 years (1 year = \$1038) (1.04%)	\$2076

2h. Contingency Cost (6.43%)	\$12,862
2i. Immediate Repairs (6.75%)	\$13,500

Deliverable(s): Grantee to provide ready-to-pay invoices from General Contractor detailing the work performed.

Timeline: to be completed within the remainder of the agreement timeframe.

Grand Total.....\$200,000

SECTION II – PAYMENT REQUESTS AND PROGRESS REPORTING

1. Grantee shall submit invoices quarterly along with progress reports. An invoice and quarterly progress reporting template will be provided to the Grantee by the City.
2. All invoices shall include a written update describing the progress made toward each deliverable during the period, as well as the total amount of funding requested by task.
3. Up to \$30,000 may be requested upfront to enable Grantee to begin work.
4. Invoices shall be submitted to PARCSContracts@Fresno.gov by the deadlines outlined in the payment and reporting schedule.
5. Invoices shall include supporting documentation such as receipts, estimates, agreements, quotes, contracts, design plans, timesheets and other materials as requested.
6. The amount of grant funding paid to the Grantee for Task #2 - Licensed General Contractor Deferred Maintenance Plan and Construction Contingency shall only be issued upon receipt of ready-to-pay invoices and satisfactory evidence of progress towards deferred maintenance project completion, as per the predetermined timeline. The invoices must accurately reflect the agreed terms and be submitted in a timely manner. The City shall not release payment(s) for grant funds unless there is evidence of demonstrated progress towards the deferred maintenance projects identified in Section I – Task 2 of this agreement.

SECTION III – PAYMENT SCHEDULE

<u>Period Costs Incurred</u>	<u>Invoice Due Dates</u>
Invoice for upfront licensed general contractor:	July 15, 2024
May – August 2024	September 15, 2024
September – November 2024	December 15, 2024
December – February 2025	March 15, 2025
March – May 2025	June 15, 2025
June – August 2025	September 15, 2025
September – November 2025	December 15, 2025
December – February 2026	March 15, 2025
March – May 2026	May 15, 2026

EXHIBIT B

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, GRANTEE shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, GRANTEE or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to GRANTEE shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve GRANTEE of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by GRANTEE shall not be deemed to release or diminish the liability of GRANTEE, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by GRANTEE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of GRANTEE, vendors, suppliers, invitees, contractors, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without

limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to GRANTEE'S profession.

MINIMUM LIMITS OF INSURANCE

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

1. COMMERCIAL GENERAL LIABILITY

(i) \$1,000,000 per occurrence for bodily injury and property damage;

(ii) \$1,000,000 per occurrence for personal and advertising injury;

(iii) \$2,000,000 aggregate for products and completed operations;

and,

(iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

(i) \$1,000,000 each accident for bodily injury;

(ii) \$1,000,000 disease each employee; and,

(iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event GRANTEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

GRANTEE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and GRANTEE shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. GRANTEE is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, GRANTEE shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, GRANTEE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

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

(iv) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. GRANTEE shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(v) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the GRANTEES' insurance shall be

primary to and require no contribution from the City. The Commercial General policy is required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If GRANTEE maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by GRANTEE.

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

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

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

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

PROVIDING OF DOCUMENTS

GRANTEE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, GRANTEE shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of GRANTEE shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If GRANTEE subcontracts any or all of the services to be performed under this Agreement, GRANTEE shall require, at the discretion of the CITY Risk Manager

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

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input 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: _____
N/A

Y Additional page(s) attached.

DocuSigned by:
Alondra Williams Vasquez
E9E41C9CBD75480...

Signature

5/14/2024

Date

Alondra williams Vasquez

(Name)

The African American Museum

(Company)

1857 Fulton Street

(Address)

Fresno, CA 93721

(City, State Zip)

Exhibit D – Risk Assessment

The Risk Assessment shall be completed and provided to the City of Fresno PARCS Department by _____ Information contained within the Risk Assessment is collected for contract compliance purposes.

Grantee Contact Information			
Full Legal Organization/Business Name: The African American Historical & Cultural Museum Address: 1857 Fulton Street City, State, Zip: Fresno, CA 93721 Telephone number: 559-724-9533 E-mail address: awvasquez@aamcentralvalley.org Website: aamcentralvalley.org How long has your organization been in business? 37 years Number of employees: 4 EIN (Employee ID Number): 77-0286794 Organization fiscal year range: Oct 1st - sept 30th			
Grantee Type of Organization (select one):			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Government	Nonprofit corporation	Other corporation	Individual
Grantee Personnel Contact Information			
Name: Alondra Williams-Vasquez Title: Executive Director Telephone Number: 559-681-9491 E-mail Address: awvasquez@aamcentralvalley.org			
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 checked="" type="checkbox"/>	<input type="checkbox"/>

b.	Form 990 or 990-EZ from the last two (2) years, including Form 990-T and all supporting schedules and attachments	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c.	List of all awards to Service Provider from City of Fresno during the last two (2) years	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Pay Rates and Benefits | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Discrimination | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Purchasing/Procurement | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Property and Equipment | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Segregation of Duties | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Record Retention | <input checked="" 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: DocuSigned by:
Alondra Williams Vasquez
E9E41C9CBD75480...
Alondra Williams-Vasquez

Printed Name: _____
Executive Director

Title: _____

Phone Number: _____
559-681-9491

Date: _____
5/14/2024