

AGREEMENT
BETWEEN CITY OF FRESNO AND
FRESNO ARTS COUNCIL, INC.

This AGREEMENT (Agreement) is made and entered into, effective _____, by and between the CITY OF FRESNO, A California municipal corporation (City), and Fresno Arts Council, Inc. (FAC), a California 501(c)3 public corporation.

RECITALS

WHEREAS, the Clean California Local Grant Program was created to beautify and clean up local streets and roads, tribal lands, parks, pathways, transit centers, and other public spaces. The program is part of the nearly \$1.1 billion Clean California initiative that aims to assist the California Department of Transportation (CALTRANS) with addressing the continuous trash generation that overwhelms California's public spaces; and

WHEREAS, in February 2022, the City of Fresno (City) applied for funding for the Downtown Fresno Neighborhood Beautification and Cleanup Project and were awarded \$5 million for the project; and

WHEREAS, Transportation Art includes graphic or sculptural artwork, either freestanding or placed upon a required engineered transportation feature located on CALTRANS' right-of-way (such as a noise barrier, retaining wall, bridge, bridge abutment, bridge rail, or slope paving) that expresses unique attributes of a community's history, resources, or character; and

WHEREAS, the project is located in the Anthony, Webster, and Hidalgo neighborhoods and includes Transportation Art which will consist of large murals on columns and abutment slopes at four freeway interchanges and a mural installation at the Romain Community Center; and

WHEREAS, the City has determined the need for certain Art related services to complete the Transportation Art included in the project, and FAC has agreed to provide the same in accordance with the terms and conditions contained herein; and

WHEREAS, for the consideration hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which the parties by their signatures below affirm, the parties do mutually agree as follows; and

WHEREAS, this Agreement will be administered for the City by its Public Works Director (Director) or designee.

TERMS

The foregoing recitals are incorporated herein for all purposes as if fully set forth.

1. **SERVICES AND PERFORMANCE SCHEDULE**. FAC shall perform the services set forth in Exhibit A, Scope of Services, Performance Schedule, and Compensation (the

"Services"), in accordance with the performance schedule established therein. FAC shall include in the Call to Artists that the selected artist shall execute a waiver of moral rights to the public arts on a form acceptable to the City.

2. **INDEPENDENT CONTRACTOR.** FAC is an independent contractor and is not in a joint venture, partnership, principal-agent, or employer-employee relationship with the City. As such, FAC shall be solely responsible for the means, methods, techniques, sequences, and procedures utilized in the performance of the Services, and shall have sole direction and control over its employees, agents, servants, and lower-tier subcontractors. FAC, consistent with its status as an independent contractor, shall not hold itself out as, or claim to be, an officer, agent, representative, or employee of the City, or allow its personnel to do so.

3. **TERM.** This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or June 14, 2024, subject to any earlier termination in accordance with this Agreement. The Services of FAC as described in Exhibit A are to commence upon the City's issuance of a written "Notice to Proceed."

4. **COMPENSATION.** FAC shall perform the Services for the fixed price/lump sum amount of _____.

5. **INVOICES.** FAC shall submit its invoice to the City promptly upon completion of all Services and obligations under the Contract.

For services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt of and approval of the invoices by the City, the City agrees to compensate FAC with a lump sum payment of _____ for a Call for Artists, which includes, but is not limited to administration and processing. The remaining funds for the completed murals should not exceed an amount of _____ upon completion of services as described herein. The total value of the agreement shall not exceed _____.

6. **PAYMENT.** Contingent upon FAC's submittal of a proper invoice and supporting documentation, City shall pay those undisputed amounts due and owing within the normal course of City business.

7. **INSURANCE.** City and FAC shall adhere to the insurance requirements provided in EXHIBIT B. City and FAC shall maintain insurance at their own cost and expense for the duration of this Contract. FAC does not provide insurance and will be held harmless in any subsequent contracts or subcontracts that the City may enter into as a result of this agreement.

8. **INDEMNIFICATION.**

To the furthest extent allowed by law, FAC shall indemnify, hold harmless and defend CITY, State of California, and each of their 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 CITY, State of CA, FAC 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. FAC'S obligations under the preceding sentence shall apply regardless of whether CITY, State of California, or any of their officers, officials, employees, agents and 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 CITY, State of California, or any of their officers, officials, employees, agents and volunteers.

If FAC should subcontract all or any portion of the work to be performed under this Agreement, FAC shall require each subcontractor to indemnify, hold harmless and defend CITY, State of California, and each of their 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.

9. **NOTICES**. All required notices shall be given in writing, signed by the party giving notice, and delivered to the following addresses.

City of Fresno
1626 E Street
Fresno, CA 93706
Mark.Standriff@fresno.gov
Attention: Mark Standriff
Project Liaison/Program Admin

Fresno Arts Council, Inc.
1245 Van Ness
Fresno, CA 93721
Lilia@fresnoartscouncil.org
Attention: Lilia G. Chavez
Executive Director

10. **ENTIRE AGREEMENT**. This Contract, consisting of this document, Exhibit A and, Exhibit B represents the entire and integrated agreement between City of Fresno and the Fresno Arts Council and supersedes and replaces all prior and contemporaneous inducements, understandings, agreements, arrangements, negotiations, and representations, whether written or oral, with respect to the subject matter hereof. This Contract may not be modified except in writing, by an amendment signed by the parties hereto.

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

CITY OF FRESNO,
A California municipal corporation

FRESNO ARTS COUNCIL,
a California 501(c)3 public corporation

By: _____
Georgeanne White
City Manager

By: _____
Name: _____

APPROVED AS TO FORM:
ANDREW JANZ

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

By: _____
Heather Thomas Date
Deputy City Attorney

By: _____
Name: _____

ATTEST:
TODD STERMER, CMC
City Clerk

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

By: _____
Deputy

Addresses:
City of Fresno
Attention: Mark Standriff, Project
Liaison/Program Admin
1626 E Street
Fresno, CA 93706
Phone: (559) 621-8626
E-mail: Mark.Standriff@fresno.gov

Fresno Arts Council, Inc.
Attention: Lilia G. Chavez, Executive
Director
1245 Van Ness
Fresno, CA 93721
Phone: [area code and #]
E-mail: Lilia@fresnoartscouncil.org

Attachments:

1. Exhibit A - Scope of Services and Performance Schedule
2. Exhibit B - Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES AND PERFORMANCE SCHEDULE

Agreement between City of Fresno (City) and Fresno Arts Council, Inc. (FAC)

FAC shall perform the following Services and shall complete the Services according to the following schedule:

- Subcontract selected Artist/s by September 1, 2023

Projects: Select and subcontract with up to three (3) artists to install eight (8) murals at five (5) separate locations including a 1,300 square foot mural at the Romain Community Center for a total of 7,300 square feet of murals as follows:

1. Within Caltrans' right-of-way on one (1) abutment slope along SR-180 at Blackstone Avenue.
2. Within Caltrans' right-of-way on one (1) abutment slope along SR-180 at Abby Street.
3. Within Caltrans' right-of-way on one (1) abutment slope along SR-180 at Fresno Street.
4. Within Caltrans' right-of-way on one (1) abutment slope and on three (3) columns along SR-180 at First Street.
5. On the north wall of the Romain Community Center.

Each of the projects identified above will follow the tasks noted below.

Task 1: Request for Proposals

- a) FAC shall prepare the Call to Artists
- b) FAC shall identify a list of artists to receive the Call to Artists
- c) FAC shall coordinate and facilitate a pre-proposal meeting

Task 2: Art Selection Committee Formation

- a) FAC shall, in conjunction with the City, identify three (3) to 7 people to serve on the Art Selection Committee.
- b) FAC shall contact and obtain commitments from at least three (3) members to serve on the Art Selection Committee.

Task 3: Art Selection Meetings

- a) FAC shall coordinate up to four (4) meetings for the selection of art. Coordination refers to scheduling meetings to meet members' availability, identifying a location for the meeting, facilitating the meeting, and preparing a record of the meeting.
- b) The four (4) meetings are expected to consist of the following general agendas:
 - Meeting 1: Orientation to the project (project background; development and or review of the Call to Artist)
 - Meeting 2: Review of proposals received from artists; select up to three (3) artists for more refined proposals.
 - Meeting 3: Presentations from finalists; select artist(s)
 - Meeting 4: Contingency meeting if necessary

Task 4: Subcontract

- a) FAC shall subcontract with the selected artist/s as an agent of City to provide artist payment for the project.

Task 5: Oversight of Traffic Control

- a) FAC shall contract with a Traffic Control Consultant to determine the Traffic Control requirements for the installation.
- b) FAC shall acquire and pay for the recommended Traffic Control measures.
- c) FAC shall maintain Traffic Control throughout the time required for installation of the 8 murals.

Deliverables:

- Art Selection Committee
- Coordination and facilitation of up to four (4) Art Selection Committee meetings
- Scope of Work for Public Art Call to Artists
- Coordinate and facilitate a pre-proposal meeting
- Subcontract selected Artist/s

Due: Work to be completed by June 14, 2024.

EXHIBIT B

INSURANCE REQUIREMENTS

Agreement between

City of Fresno (City) and Fresno Arts Council, Inc. (FAC)

MINIMUM SCOPE OF INSURANCE

(a) Throughout the life of this Agreement, FAC shall pay for and maintain in full force and effect all insurance as required in Exhibit B 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, State of California, and their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, FAC 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 FAC 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 FAC 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 FAC shall not be deemed to release or diminish the liability of FAC, 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 FAC. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of FAC, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

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

MINIMUM LIMITS OF INSURANCE

FAC 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, State of California, and their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

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

2. **COMMERCIAL AUTOMOBILE LIABILITY**

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

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

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **UMBRELLA OR EXCESS INSURANCE**

- (i) \$5,000,000 per occurrence/aggregate

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, State of California, and their officers, officials, employees, agents and volunteers; or
- (ii) FAC shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. FAC 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, FAC 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, FAC shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Automobile, and Excess Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. FAC 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.
- (iv) The Commercial General, Automobile, and Excess Liability insurance shall contain, or be endorsed to contain, that the FACS' insurance shall be primary to and require no contribution from the City and State of CA. These coverages shall contain no special limitations on the scope of protection afforded to CITY, State of California, and their officers, officials, employees, agents and volunteers. If FAC maintains higher limits of liability than the minimums shown above, City and State of CA requires and shall be entitled to coverage for the higher limits of liability maintained by FAC.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, State of CA, and their officers, officials, agents, employees and volunteers.
- (vii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, State of CA, and their officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - FAC 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, FAC 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 FAC shall also be required to provide all documents noted herein.

SUBCONTRACTORS - If FAC subcontracts any or all of the services to be performed under this Agreement, FAC will be solely responsible for ensuring that it's subcontractors maintain insurance coverage as required herein.