

11/5/2020

**AMENDED AND RESTATED
AGREEMENT FOR ADMINISTRATION OF
CITY OF FRESNO HOUSING RELIEF GRANT PROGRAM**

THIS AMENDED AND RESTATED AGREEMENT (Agreement) is made and entered into effective the 5th day of November 2020, (Effective Date), by and between the CITY OF FRESNO, a California municipal corporation (City), and Fresno Center, a California Non-profit Corporation (Administrator).

RECITALS

- A. On March 13, 2020, President Trump declared a National Emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak, and on March 16, 2020, Mayor Brand declared a Local Emergency, ratified by Council.
- B. City seeks assistance with the administration of Housing Retention Grants to individuals and families to mitigate financial impacts and prevent future homelessness for those that have suffered as a result of the COVID-19 outbreak.
- C. The Council has appropriated \$5,000,000 for a Housing Retention Grant Program (Program).
- D. Program funds may only be awarded to applicants that meet Program requirements, and any guidelines the City establishes.
- E. Administrator is engaged in the business of furnishing technical and expert services as an administrator of grant programs, and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.
- F. This Agreement will be administered for the City by its City Manager or designee.
- G. This Agreement amends and restates the original Agreement for Administration of City of Fresno Housing Relief Grant Program (Original Agreement) and the parties confirm that all prior actions made pursuant to the Original Agreement are effective as if made under this Agreement on the date made and that no provision of this Agreement is intended to result in the duplication of any such prior action by any party.

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. Services. City engages Administrator to provide the services set forth in **Exhibit A** and to market and administer the Program that complies with the City's guidelines set forth herein (collectively, the Services). The City has contributed \$5,000,000 to the Program fund which shall be used exclusively for housing relief within the City and Program administration as set forth herein.

Program funds may be released immediately to Administrator in an amount mutually agreed upon by the Parties. The Administrator shall ensure the Program is run

in compliance with the approved procedures as determined by the Parties and agrees that all funds allocated under this Program are subject to audit and recapture.

2. Compensation. As to the initial \$1,500,000, City will pay Administrator an administration fee of 10%, payable from Program funds. As to the remaining \$3,500,000, City will pay Administrator an administration fee of 20% payable from Program Funds. Administrator may use the administration fee for payment of its staff time to the extent the activities are reasonably related to administration of the Program. Except as provided herein, Administrator shall be entitled to no other compensation, and will not charge any fees to applicants.

3. Term of Agreement; Suspension and Termination.

(a) The term of this Agreement shall begin on the Effective Date, and terminate December 30, 2020, or when Program funds are exhausted, unless extended by mutual agreement of the parties, and subject to any earlier termination in accordance with this Agreement.

(b) The City may terminate this Agreement without cause by giving the Administrator thirty days' prior written notice. Upon written notice to the Administrator, City may suspend new activity by Administrator pending Administrator's taking corrective actions as specified by the City. Either party may terminate this Agreement with cause after giving the other party prior written notice and at least thirty days to cure the default. Upon expiration or early termination of this Agreement by City without cause, Administrator shall aid the City in continuing, uninterrupted, the requirements of this Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the City, for a specified term not to exceed twelve months.

(c) The parties understand and agree that pursuant to the CARES Act (42 U.S.C. 801), all Program funds must be awarded or otherwise committed by December 30, 2020. Program funds awarded to recipients by December 30, 2020, may be delivered in the usual course of business pursuant to CARES Act guidance issued by the Department of Treasury. City and Administrator shall meet regularly to ensure all funding will be awarded or otherwise committed by December 30, 2020. The City reserves the right to recoupment of, and Administrator acknowledges its obligation to repayment of, Program funds not awarded or otherwise committed by December 30, 2020.

(d) On expiration or termination of this Agreement, any undisbursed Program funds will be returned to the City. Unless modified by mutual agreement of the parties, on expiration or termination of the Agreement, Administrator will return all documents to City.

(e) If Administrator fails to perform any obligation under this Agreement, and does not cure the failure within thirty calendar days after City gives written notice of it, the failure will be a material breach of this Agreement. The City may after that immediately terminate this Agreement, and exercise any right, remedy, or privilege available to it under this Agreement, at law or in equity.

4. Compliance with all Laws and Regulations. Administrator will perform the Services in compliance with all applicable laws, ordinances, regulations, and guidelines, as existing, and after this amended, whether federal, state, regional, or by local administrative or regulatory agencies.

5. Books and Records. Administrator will maintain segregated accounts, books, and records for the Program, and will not combine any accounts, books, or records with those for grants or loans it administers for any other program or entity, or its general books, accounts and records. Administrator will maintain the records for at least four years after this Agreement terminates, or four years after each grant is paid, whichever is later. This section shall survive expiration or termination of this Agreement.

6. Audits and Reports. Administrator will comply with Coronavirus Aid, Relief, and Economic Security (CARES) Act guidelines as promulgated by the United States Department of Treasury. Administrator shall be solely responsible for complying with reporting and audits as may be required. Upon City's request, Administrator shall immediately make available and give City staff access to Administrator's Program books, records, grant files, financial statements, and computer or other electronic records. City will conduct any audits during normal business hours. Audits performed by outside Certified Public Accountants will be at the expense of the requesting party. Any monies determined to be owed to the City's Program shall be paid promptly by Administrator.

7. Independent Contractor. In the furnishing of the Services, Administrator is acting solely as an independent contractor. Neither Administrator, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Administrator shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Administrator is performing its obligations in accordance with the terms and conditions thereof.

8. Indemnification. City shall indemnify, hold harmless and defend Administrator 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 Administrator, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents, or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

Administrator shall indemnify, hold harmless and defend 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, Administrator or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of Administrator or any of its officers, officials, employees, agents, or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by Administrator of governmental immunities including California Government Code section 810 et seq..

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents, or volunteers, and Administrator or any of its officers, officials, employees, agents, or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

Notwithstanding the aforementioned, Administrator recognizes that the source of funds for the Agreement is the City's allocation from the federal Coronavirus Relief Fund, distributed pursuant to the CARES Act (42 U.S.C. 801.) To this end Administrator shall, without limitation, indemnify the City, and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages incurred by the City from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of Administrator or any of its officers, officials, employees, agents, or volunteers in the performance of this Agreement and compliance with the federal CARES Act, including specifically reimbursement to the United States Department of Treasury under 42 U.S.C. 801(f)(2) for failure to comply with the CARES Act.

This section shall survive termination or expiration of this Agreement.

9. Nondiscrimination. To the extent required by controlling federal, state and local law, Administrator 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, or ethnicity.

10. General Terms.

(a) City Authorized Signature. Except as otherwise provided by law, all notices expressly required of 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) Notices. Any notice, request, demand, consent, approval or other communication (the "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 electronic mail provided the noticing party provides a hard copy by mail, or sent by United States registered or certified mail with postage prepaid, return receipt requested, addressed to the

party to which the 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. Unless otherwise specified, a Notice will be deemed given when received if sent return receipt requested or the date of receipt is otherwise verifiable, but if delivery is not accepted or verifiable, then delivery will be deemed on the earlier of the date that delivery is refused or 48 hours after Notice is sent.

(c) Binding. Subject to paragraph (d), 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 party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

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

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) Time is of the Essence. Time is of the essence of every provision herein contained.

(m) Further Assurances. The parties will sign all further documents and take any further steps necessary to carry out the intent and purpose of this Agreement.

(n) Extent of Agreement. The exhibit is incorporated into and made a part of this Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement is the entire Agreement between the parties hereto with respect to the administration of the City's Program and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may not be modified, amended, or otherwise changed in any manner except by a writing signed by an authorized representative of the party against whom enforcement is sought.

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO,
A California municipal corporation

By: [Signature]
Wilma Quan, City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: [Signature]
Tracy N. Parvanian Date
Senior Deputy City Attorney 11-10-20

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: [Signature] 11/16/2020
BERNARD CANEZ Date
Deputy

Addresses:

CITY:
City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8371

FRESNO CENTER,
a California Non-profit Corporation

By: [Signature]

Name: Pao Yang

Title: President & CEO
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

By: [Signature]

Name: Jensen Vang

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

ADMINISTRATOR:

[Administator Name]

Attention: [Name]

[Title]

[Street Address]

[City, State Zip]

Phone: (559)

Attachments: Exhibit A - Scope of Services

Exhibit A
SCOPE OF SERVICES

Administrator shall perform the following services:

1. Administer the City of Fresno Housing Retention Grant Program (Program) as follows:
 - (i) The following grants shall be available:
 - a. Individual: \$3,000 assistance to an individual, or \$4,500 to a household, to cover housing related expenses (rent or mortgage)
 1. Administrator shall prioritize any backlog of Applicants prior to considering new applications.
 2. Administrator may award funding to applicants previously awarded grant funds if they meet Program criteria; any subsequent award shall be limited to the difference between the original award and the maximum award allowed under for the period covered by the request.
 - b. Individual applying jointly with landlord: 80% of back rent accruing for the months of April through December, or any portion thereof, with landlord accepting the grant funds as payment in full for the missed or insufficient rent.
 - (ii) To be eligible an applicant must:
 - a. Be a City of Fresno resident
 - b. Have a signed rental agreement or an alternate form of documentation verifying applicant's tenancy and monthly rent, or similar documentation in the case of mortgage assistance
 - c. Provide evidence the grant will be used to prevent eviction or support housing related financial assistance. This may include, but is not limited to payment of rent, future rent, non-City utilities, and needed health and safety related home repairs that, if left unaddressed, will jeopardize occupancy.
 - d. Be at or below 80% Area Median Income (AMI), verified by documentation from a third party or an affidavit signed by the applicant stating current income during and prior to the COVID-19 crisis.
 - e. Have not received assistance for rent or other living expenses from another government program relating to COVID-19.

- f. Provide documentation that the assistance is required due to loss of income during the COVID-19 crisis. Acceptable documentation may include:
 1. Proof of decrease in income occurring after March 1, 2020.
 2. Proof of COVID-19 related financial losses occurring after March 1, 2020.
 3. Proof that Applicant has fallen behind on rent due to other factors related to COVID-19, to be approved at the discretion of the Administrator within the context of the CARES legislation and guidelines.
 - g. Applicants previously awarded grant funds may re-apply and may be awarded grant funds if they meet Program criteria; any subsequent award shall be limited to the difference between the original award and the maximum award allowed under for the period covered by the request.
- (iii) A participating landlord shall accept grant funds as payment in full of the missed or insufficient rent for April through December, or any portion thereof in 2020, and are prohibited from increasing rent or charging late fees during that term.
- (iv) City and Administrator shall jointly develop additional eligibility criteria based on guidance from the Council subcommittee. The Program does not provide for an appeal process and the City and Administrator's determination on awards of Program funds is final.
- (v) Administrator shall make grant applications available as soon as possible.
- (vi) Grants shall be awarded from qualified applicants on a first-come first-served basis. Applicant's submission of an application does not guarantee financial assistance.
- (vii) Grant awards shall begin by _____.
4. Marketing and community outreach. This will be done independently, and in collaboration with partnering nonprofit organizations, in coordination with and as directed by the City. Administrator may, in its sole discretion, use its administration fee for marketing and community outreach. Administrator shall not use Program funds for marketing and community outreach without the written consent of the City Manager.
5. Disburse funds as directed and in accordance with this Scope of Work.
6. Maintain all documents and records in a safe and secure facility.
7. Prepare status reports on a monthly basis, or as requested by the City.

8. Work cooperatively with the City to develop any modifications to the Program if they become necessary due to changes in laws, regulations, or changes that will make administration of the program more effective. This shall also include making recommendations to City, and responding to questions from City, about the program and for the purpose of making administration of the program more effective.
9. Operate the Program in accordance with generally accepted accounting principles.
10. Administrator will verify that each application is complete, and meets the City's threshold eligibility requirements, as the City may revise the requirements from time to time, with notice to Administrator, and shall evaluate each application to decide whether the proposed grantee is eligible under the Program Requirements as set forth in this Exhibit A.
11. Administrator will set up an application process that includes, without limitation, giving the applicant an information checklist containing the specific Program Requirements of the Program.
12. Administrator will maintain all Program funds in a segregated Program account.
13. Administrator shall report the final distribution of grants to the City Controller, reporting shall consist of the total number of applications with a copy of all the applications received with the final grant distribution for each Recipient.
14. Administrator shall maintain records of applications and grants distributed and ensure that all distributions follow CARES expenditure guidelines.