

## RULES & REGULATIONS

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1. By submitting an application, applicant agrees to abide by the Policies & *Regulations* of the City of Fresno's *Adopt a Planter Program MOU*.
  - After the Planter has been transferred to the possession of the selected applicant, applicant understands that they agreement rest between the business owner and the City of Fresno as per the City of Fresno's *Adopt a Planter Program MOU*, releasing the Downtown Fresno Partnership of any responsibilities.
2. The Downtown Fresno Partnership and City of Fresno reserves the right to accept or reject any submission.
3. Applicant understands that review, evaluation and selection of submitted application are made at the discretion of the Downtown Fresno Partnership. All decisions are final.
4. Applicants submitting *Adopt a Planter* must be 18 years of age or older.
5. Applicant understands that they must be a business and/or property owner within the PBID.
6. Applicant agrees that all risk and expenses incurred by applicant are solely the responsibility of the applicant.
7. Applicant will get \$100 stipend for materials, plants, etc.
8. City of Fresno will be responsible for transportation of plant to property or business
9. Planter will be maintained by selected applicant. Failure to maintain planter shall result in termination of Adopt A Planter agreement and removal of planter by the City of Fresno.
10. Planter Guidelines
  - Must leave at least 48 inches of walking space on the sidewalk between the building wall and curb (including planter 36 inches in diameter).
  - Planters shall not be altered without prior approval by the City of Fresno.
  - Advertisement, decals, or logos are not permitted.
11. The Downtown Fresno Partnership reserves the right utilize applicants' names and likeness for program advertising and reports.

Printed name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_



**PARTICIPATION RELEASE**

This agreement is made between the Downtown Fresno Partnership ("Partnership"), a 501 (c) 6 Corporation, and \_\_\_\_\_, herein after referred to as Participant.

Participant, which for and in consideration of participating in the *Adopt a Planter Program*, agrees to the policies and regulations governing, receipt of which is hereby acknowledged, and hereby agrees to hold harmless, indemnify and defend the PARTNERSHIP, their officers, officials, employees, agents, vendors, contractors 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 PARTNERSHIP, Participant 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 out of or in connection with Participant's involvement in the event and related activities.

Participant's obligations under the preceding sentence shall apply regardless of whether the PARTNERSHIP, or any of their officers, officials, employees, agents, vendors, contractors, or authorized volunteers are negligent, and shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the PARTNERSHIP or any of their officers, officials, employees, agents or authorized volunteers.

Participant shall conduct all defenses at his/her/its sole cost. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Participant. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Participant. Policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by Participant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Participant, its officials, officers, employees, agents, vendors, contractors, volunteers or invitees.

PARTNERSHIP shall be reimbursed for all costs and attorney's fees incurred by PARTNERSHIP in enforcing this Agreement.

This Indemnification and Hold Harmless Agreement shall survive the event.

The undersigned acknowledges that he/she (i) has read and fully understands the content of this indemnification and Hold Harmless Agreement; (ii) is aware that this is a contract between the PARTNERSHIP in conjunction with PARTNERSHIP and Participant; (iii) has had the opportunity to consult with his/her attorney, in his/her discretion; (iv) is fully aware of the legal consequences of signing this document; and (v) is the Participant or his/her authorized signatory.

DATED: \_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Address Telephone Number

DATED: \_\_\_\_\_  
Downtown Fresno PARTNERSHIP Representative Signature



**MEMORANDUM OF UNDERSTANDING  
Regarding the Adopt-a-Planter Program**

The following document (MEMORANDUM OF UNDERSTANDING) from the City of Fresno is not required to be filled out and signed until after selected applicants have been announced to receive a planter. Please review and understand if selected as an "Adopt a Planter" recipient, you will need to abide by the contract and signature will be required before delivery of planter.

**MEMORANDUM OF UNDERSTANDING  
Regarding the Adopt-a-Planter Program**

This Memorandum of Understanding (Agreement) is entered into this day of \_\_\_\_\_ 2022, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation (City), and \_\_\_\_\_ (Business Owner).

**RECITALS**

- A. Business Owner owns a business at \_\_\_\_\_, in the Downtown Fresno; and
- B. In the interest of beautifying Downtown Fresno, the City wishes to enter into this Agreement to provide large planters for placement outside Business Owner's business.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals, which are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. **PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS.**

City Representatives:      City Manager  
   2600 Fresno Street  
   Fresno, CA 93721  
   Tel: (559) 621-7770

Business Owner:            \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

2. **CITY RESPONSIBILITIES.**

- a. Provide, transport, and install \_\_\_ large planter(s) (the Improvements) at no cost to Business Owner. City shall retain ownership of the Improvements.
- b. Install the Improvements at a location mutually agreeable to City and Business Owner.
- c. Photograph the condition and location of the Improvements and attach to the Agreement as Exhibit "A".
- d. Remove the Improvements if, in the City's discretion, the Improvements become a safety hazard or nuisance. Improvements may be removed whether such safety hazard or nuisance is caused by Business Owner or not.
- e. Remove the Improvements if Business Owner fails to perform any of its responsibilities under this Agreement.

3. BUSINESS OWNER RESPONSIBILITIES.
  - a. Maintain Improvements with plantings year-round and regularly weed, water, and remove trash/debris from Improvements. City shall have no responsibility to maintain the Improvements.
  - b. Refrain from painting or relocating the Improvements without prior written approval from the City.
  - c. Use the FresGo app to report graffiti on the Improvements.
  - d. Report any damage or safety issues involving the Improvements by calling 311.
4. TERM AND EFFECTIVENESS. This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect until terminated by either party. Either party may terminate this agreement with or without cause upon thirty days' written notice to the other party.
5. COMPLIANCE WITH GOVERNING LAW. Each party shall comply with all federal, state, and local laws, rules, and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices 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.
6. CAPACITY OF THE PARTIES. Each party is acting in an independent capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally. The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder.
7. INDEMNIFICATION AND INSURANCE. Business Owner 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, Business Owner 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 Business Owner or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement. Business Owner agrees that this Agreement shall in no way act to abrogate or waive any immunities available to City under the Tort Claims Act of the State of California.

This section shall survive termination or expiration of this Agreement.

Throughout the life of this Agreement, Business Owner 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, 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.

If at any time during the life of the Agreement or any extension, Business Owner fails to maintain any required insurance in full force and effect, improvements can be removed at CITY's discretion. 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 Business Owner 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.

The fact that insurance is obtained by Business Owner shall not be deemed to release or diminish the liability of Business Owner, 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 Business Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Business Owner, contractors, suppliers, invitees, vendors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

8. ATTORNEY'S FEES. If a 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/their reasonable attorney's fees and legal expenses.
9. ASSIGNMENT. There shall be no assignment by any Business Owner of its rights or obligations under this Agreement without the prior written approval of the City. Any attempted assignment by Business Owner, its successors or assigns, shall be null and void unless approved in writing by the other party.
10. WAIVER. The waiver by any 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 approved by 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.
11. GOVERNING LAW AND VENUE. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. 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, California.

12. 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.
13. REPRESENTATIONS AND WARRANTIES. Each party hereby represents and warrants to the other party and agrees that it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement.
14. ENTIRE AGREEMENT. It is mutually understood and agreed that the foregoing along with the attached Exhibit(s) constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement as of the date set forth above.

CITY OF FRESNO,  
a California municipal corporation

BUSINESS OWNER

By: \_\_\_\_\_  
    Georgeanne White,  
    City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Title: \_\_\_\_\_

By: \_\_\_\_\_  
    Tracy Parvanian                      Date  
    Senior Deputy City Attorney

ATTEST:  
Todd Stermer,  
City Clerk

By: \_\_\_\_\_  
    Deputy

Attachments:  
Exhibit A – Photograph of Improvement on Business Owner’s Property  
Exhibit B – Insurance Requirements



**EXHIBIT "A"**

Photograph Depicting Condition and Location of Planter on Business Owner's Property

**EXHIBIT “B”**  
**INSURANCE REQUIREMENTS**

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.”

**MINIMUM LIMITS OF INSURANCE**

**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.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Business Owner shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Business Owner 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. BUSINESS OWNER 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, BUSINESS OWNER 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, BUSINESS OWNER 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 Liability insurance policy shall be written on an occurrence form.
- (iii) The Commercial General Liability insurance policy shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. BUSINESS OWNER shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General Liability insurance shall contain, or be endorsed to contain, that the BUSINESS OWNERS' insurance shall be primary to and require no contribution from the City. The Commercial General policies are required to include primary and non contributory coverage in favor of the City for ongoing 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 BUSINESS OWNER 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 BUSINESS OWNER.
- (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) For any claims related to this Agreement, BUSINESS OWNER'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 BUSINESS OWNER'S insurance and shall not contribute with it.
- (vii) The Commercial General Liability insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees, and volunteers.

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