



United Way Merced

Agreement #2023-005-041

Memorandum of Agreement (MOA)

This Memorandum of Agreement ("Agreement") is made and entered into by and between **United Way of Merced County ("UWMC")**, a California nonprofit public corporation and **City of Merced ("Contractor")**.

The conditions set forth in this Agreement are deemed to be agreed to by UWMC and Contractor if the Contractor accepts any funds from UWMC. No payments will be released until a signed copy of this Agreement is returned to UWMC.

I. Duties of Contractor

1.1 Services. Contractor shall provide to UWMC the services and perform the duties set forth on Exhibit A ("Services") attached hereto and incorporated herein by reference. Contractor shall deliver written reports from time to time to UWMC, as requested by UWMC. Contractor shall respond fully and promptly to all reasonable inquiries of UWMC as to the status of the Services performed by Contractor hereunder.

1.2 Place of Work. Except as otherwise provided herein, Contractor shall perform the Services at Contractor's office, or at any other location selected by Contractor.

1.3 Access. UWMC shall permit Contractor reasonable access to staff, documents, facilities and officers of UWMC as necessary for Contractor to carry out Contractor's obligations under this Agreement. Similarly, Contractor shall permit UWMC reasonable access to staff, documents, facilities and officers of Contractor as necessary for UWMC to evaluate Contractor's performance of its duties under this Agreement.

1.4 Reporting to UWMC. Contractor shall provide reports directly to UWMC for all purposes of this Agreement as specified in Exhibit A of this Agreement.

1.5 Indemnity.

1.5.1 UWMC shall, during and after the term of this Agreement, indemnify, hold harmless and, at the Contractor's request, defend Contractor and Contractor's directors, officers, employees, affiliates, and agents, past or present, against all losses, claims, demands, actions, causes of action, suits, liabilities, damages, expenses, and fees (including but not limited to reasonable attorney fees) arising out of or related to any actual or alleged: (i) personal injury or property damage, but only to the extent caused by the negligent or willful acts, errors or omissions of UWMC in performing the Agreement; (ii) misrepresentation, breach of warranty, or breach of covenant or other promise by UWMC of any representation, warranty, covenant or other promise in this Agreement; (iii) infringement by UWMC of any third party's patent, trademark or copyright, or misappropriation of any third party's trade secret; and (iv) violation of any applicable laws or regulations, including failure to comply with any applicable taxing authority.

1.5.2 Contractor shall, during and after the term of this Agreement, indemnify, hold harmless and, at UWMC's request, defend UWMC and UWMC's trustees, directors, officers, faculty, employees, affiliates, and agents past or present, against all losses, claims, demands, actions, causes of action, suits, liabilities, damages, expenses, and fees (including but not limited to reasonable attorney fees) arising out of or related to any actual or alleged: (i) personal injury or property damage, but only to the extent caused by the negligent or willful acts, errors or omissions of Contractor in performing the Agreement; (ii) misrepresentation, breach of warranty, or breach of covenant or other promise by Contractor of any representation, warranty, covenant

or other promise in this Agreement; (iii) infringement by Contractor of any third party's patent, trademark or copyright, or misappropriation of any third party's trade secret; and, (iv) violation of any applicable laws or regulations, including failure to comply with any applicable taxing authority; and, (v) from and against any employment related claims whatsoever made in connection with the performance of Services under this Agreement.

1.6 Prohibited Use of Funds. The activities conducted pursuant to this Agreement will be of a charitable nature. The Parties agree that while performing the work contemplated under this Agreement, none of the communications with the public or related activities shall contain any endorsement or opposition, implicit or explicit, of any candidate for public office. No communications that include the name of UWMC may be distributed by Contractor without prior written approval by UWMC in advance. In addition, Contractor shall not share or provide any information, data or other resources derived through the provision of Services under this Agreement to any other organization or individual, including but not limited to any political organization, political party, candidate or candidate's campaign. This award may not be used to fund any of the following items:

- Expenses incurred before the start date or after the ending date of the Initial Term of this Agreement
- Fundraising activities or services such as grant writing, annual campaigns, or fundraising events
- Lobbying activities that are intended to influence the actions, policies, or decisions of government officials or specific legislation
- Programs or services intended for private use, or for use by restricted membership
- Projects with religious purposes
- Trusts, endowment funds, or investments
- Construction projects, purchase of land and buildings, or capital expenditures used to maintain, upgrade, acquire, or repair capital assets
- Equipment purchases (equipment rentals are eligible)
- Debt repayment
- Hospitality expenses, meals, or food
- Out-of-state travel

1.6 Non-Discrimination Clause. During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veterans' status.

II. Goals and Objectives

2.1 Goals. Goals and objectives to be accomplished by UWMC with the support of the Contractor will include, but not be limited to, those delineated in Exhibit A. The objectives are organized in subsections based on UWMC's obligations to its funders and stakeholders.

III. Compensation

3.1 Fee. UWMC agrees to pay to Contractor a fee during the term of this Agreement in the amount and at the times as specified in Exhibit A, attached hereto and incorporated herein by reference.

IV. Termination, Survival of Provisions

4.1 Initial Term. The term of this Agreement is June 15, 2023 through June 30, 2024, the "Initial Term". Unless earlier terminated as provided for in this Section 4 the initial term of this Agreement shall begin on the Effective Date and shall end on June 30, 2024 (the "Initial Term").

4.2 Renewal Terms. The Initial Term shall not be extended, unless agreed upon by the parties in writing. If funding is available and if mutually agreed upon by UWMC and the Contractor in writing, this Agreement shall be amended to include additional funding. Additional funding or extensions to the Initial Term shall be done through the formal amendment process.

4.3 Termination for Breach; Cure. This Agreement shall terminate effective on the date either party gives written notice of a non-curable material breach of any representation, warranty, covenant, or agreement by the other party. Furthermore, this Agreement shall terminate on the last date of the cure period applicable to a curable, material breach of any representation, warranty, covenant, or agreement by either party, unless such breach is cured as provided for herein.

4.3.1 Cure Period. The non-breaching party shall provide written notice describing the nature of the default or breach and the steps, if any, which can be taken to correct such breach, and the breaching party shall effect the cure within fifteen (15) days of the notice, unless the parties agree to a longer period.

4.4 Termination for Convenience. Either party may terminate this Agreement without cause by providing the other party hereto with 30 days' written notice.

4.5 Payment Upon Early Termination. In the event of early termination of this Agreement for any reason, UWMC shall no longer be obligated to make any payments of any kind whatsoever to Contractor. However, any payments for services rendered satisfactorily as defined in Exhibit A prior to such termination but not yet made shall be made on a pro rata basis. Any such payment shall be due and payable within thirty (30) days of the receipt of notice of termination by the parties.

V. Audit and Record Retention

5.1 Audit. UWMC reserves the right to conduct an audit of Contractor's records if UWMC deems an audit to be appropriate and necessary in its sole discretion. Contractor will preserve and retain all of its financial records, supporting documentation and all other records, documents, papers and other materials pertinent to this Agreement for three years from the end of the Initial Term.

VI. Independent Contractor

6.1 Independent Contractor. In the performance of this Agreement, it is mutually understood and agreed that Contractor is at all times acting and performing as an independent contractor, and nothing in this MOA is intended nor shall be construed to create between UWMC and Contractor an employer-employee, joint venture, agency, or partnership relationship. UWMC shall not make deductions from payments made to Contractor for taxes, nor shall it make any Social Security, worker's compensation, or unemployment insurance payments on behalf of Contractor, all of which shall be the Contractor's sole responsibility as an independent contractor. In this regard, Contractor represents and warrants to UWMC that Contractor shall act as an independent contractor and shall pay all taxes, including federal, state and local income taxes, FICA, disability, and others, to the extent owned by Contractor. UWMC has no control over the manner or method by which Contractor meets UWMC's obligations under this MOA provided that Contractor's services shall be performed in a competent and proficient

manner.

VII. Miscellaneous

7.1 Notice. Except as provided elsewhere in this Agreement, each party giving or making any notice, request, demand or other official communication (each, a "Notice") pursuant to this Agreement shall give the Notice in writing and use one of the following methods of delivery: (i) personal delivery, (ii) Registered or Certified Mail (with return receipt requested and postage prepaid), (iii) nationally recognize overnight courier (with all fees prepaid), or (iv) e-mail. A party giving Notice shall send it to the other party at the following address(es) or e-mail addresses for an email:

7.2 Acknowledgement. Contractor shall display the Heartland Creative Corps logos on all printed and electronic matter (websites, programs, catalogs, postcards, newsletters, leaflets, publication, etc.). Contractor shall display the Logo in a size and dimension that assures their visibility and the viewers' comprehension of them. While we recommend you use the logo below, alternative logos can be downloaded using this [link](#).



UWMC	Contractor
Robert Hypes United Ways of Merced County 531 W Main St Merced, CA 95340 Phone: (209)383-4242 Email: roberth@unitedwaymerced.org	Stephanie Dietz City of Merced 678 W 18th St Merced, CA 95340 Phone: (209) 385-6232 Email: DietzS@cityofmerced.org

Agreed and Accepted

United Way of Merced County
Robert Hypes, Interim CEO
roberth@unitedwaymerced.org

10/16/23
Date Signed

Stephanie Dietz
DietzS@cityofmerced.org

9/27/23
Date Signed

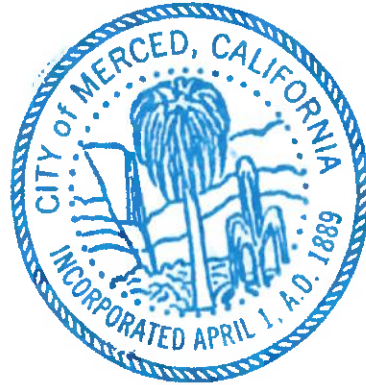
**MEMORANDUM OF AGREEMENT (MOA) City of Merced and United
Way of Merced County**

APPROVED:

BY: Stephanie Dietz
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: Dijandra Medina 9.27.2023
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 8/28/2023
City Attorney Date

471
ACCOUNT DATA:

BY: [Signature]
Verified by Finance Officer #8293
No funds to encumber. AC 9/22/23
R 9/22/23
DL 9/25/23 Customer 8293

EXHIBIT A – Services

This Memorandum of Agreement ("Agreement") is made and entered into by and between **United Way of Merced County ("UWMC")**, a California nonprofit public corporation and **City of Merced ("Contractor")**. This Exhibit A is attached and incorporated into the Agreement with Agreement #2023-005-041

The Services to be performed by the Contractor include, but are not limited to, those delineated in Section 1 below. The Contractor will assist UWMC by performing these Services and report on their progress as described below in a format which UWMC may determine. In return, UWMC agrees to compensation the Contractor according to the payment schedule and terms explained in Section 2. Reporting requirements are explained in Section 3.

1. Goals and Objectives

1.1 Description of Section. Section 1 of Exhibit A serves to explain the Services which Contractor is obliged to perform. The Contractor agrees to employ their staff or contracted employees to accomplish these Services, as directed by UWMC staff, within the timeline indicated below. If no timeline is indicated, the Contractor agrees to accomplish the following objectives during the Initial Term of this Agreement.

1.2 Purpose of Program. The Services described in this Exhibit A are funded through the California Arts Council. The California State Budget included \$60 million one-time General Fund allocation to the California Arts Council to implement the California Creative Corps pilot program, a media, outreach, and engagement campaign desired to increase (1) public health awareness messages to stop the spread of COVID-19; (2) public awareness related to water and energy conservation, climate mitigation, and emergency preparedness, relief, and recovery; (3) civic engagement, including election participation; and (4) social justice and community engagement. The California Arts Council sees this program primarily as a job creation and infrastructure development opportunity that will increase the ways in which artists are engaged in public work so that they can continue to support the realization of these goals—and intersectional public interest goals—beyond the pilot funding timeline. See attached Application for full description of Contractor's proposal and purpose of project.

1.3 Contractors Project. With support from the Heartland Creative Corps, the City of Merced aspires to create job opportunities for local artists to tell stories about Merced's history and culture that will create conversations between community members with different backgrounds and cultures. This project will provide mural artists and sculptors the resources to paint large scale murals and sculptures, in otherwise underappreciated and at times blighted areas to strengthen our community's character.

1.4 Objectives and Activities. The Project, Sharing Merced's rich cultural story to inspire reflection, and form community connections through public art, will accomplish the following objectives and activities. See attached timeline for additional details.

- a) **Phase 1 – Planning.** During this planning the phase the Contractor will be expected to accomplish the following goals:
 - a. City Council accepts grant funding, RFQ issued
 - b. ACA review and score submissions
 - c. Artists notified of awarded projects
 - d. City PIO to meet with artists at project site
 - e. Project timeline agreement

- f. City to promote projects on social media sites
- g. Artists to submit 1st itemized invoice
- b) Phase 2 – Creation/Implementation. During this planning the phase the Contractor will be expected to accomplish the following goals:
 - a. Project work in progress
 - b. Artists to submit 2nd itemized invoice
 - c. Document progress
- c) Phase 3 –Distribution/Exhibition. During this planning the phase the Contractor will be expected to accomplish the following goals:
 - a. Artists to submit 3rd itemized invoice
 - b. City to meet artists at sites to review completed project
 - c. City to continue to promote projects on social media sites
- d) Phase 4 –Evaluation. During this planning the phase the Contractor will be expected to accomplish the following goals:
 - a. Artists to submit final invoice
 - b. City to meet with artists to confirm completion and issue Notice of Completion
 - c. Finalize financials
 - d. Complete all communication/ reporting requested by UWMC

1.5 Costs and Reimbursement. All costs incurred by Contractor pertaining to these Services are the responsibility of Contractor. UWMC will not provide reimbursement for any costs.

2. Compensation

2.1 Fee. For providing the services described, UWMC will pay to Contractor a fee of \$79,288. Payments to Contractor will be issued according to the Compensation Schedule described below. See attached budget for additional details.

2.2 Compensation Schedule. UWMC shall issue the following Payments to Contractor.

Payment shall be issued upon approximately the following dates:

Fee Payment #	Fee Payment Date	Fee Payment Amount
1	Upon execution of Agreement	\$79,288

Table 1. Compensation Schedule

2.3 Funder Non-Payment. If for any reason UWMC is not paid by the funder for which these Services are obligated, or UWMC's grant agreement with the funder is dissolved, broken, or cancelled, UWMC will give notice to the Contractor and all Agreement obligations, including further compensation, will be terminated. UWMC will have no obligation to issue payment to the Contractor if it has not received the funds from its funder.

2.4 Remedies. If UWMC determines, in its reasonable discretion, that Contractor has substantially violated or failed to carry out any provision of this Agreement, including but not limited to failure to submit reports when due, UWMC may, in additions to any other legal remedies it may have, refuse to make any further payments to Contractor under this or any other grant agreement, and UWMC, may demand the return of all or part of the funds not properly spent or committed to third parties, which Contractor shall immediately repay to UWMC. UWMC may also

avail itself of any other remedies available by law.

3. Reports

3.1 Reports. Contractor shall make written reports to UWMC as requested. Each such written report shall describe in detail, if requested, the use of the awarded funds, compliance with the terms of the grant, and the progress made by Contractor toward achieving the Goals and Objectives for which the Agreement was made during the period covered by such report. Final reports are due no later than July 31st, 2024



APPLICATION #: 12

ARTIST/ORGANIZATION: City of Merced

HEARTLAND CREATIVE CORPS TIMELINE	
PHASE 1: PLANNING	PHASE 2: CREATION/IMPLEMENTATION
Time Period: 9/5/23 to 10/17/23	Time Period: 10/18/23 to 4/30/24
<u>Activities:</u> <ul style="list-style-type: none">*City Council accept grant funding RFQ issued*ACAC review and score submissions*Artists notified of awarded projects*City PIO to meet with artists at project site*Project timeline agreement*City to promote projects on social media sites*Artists to submit 1st itemized invoice*\$8,488.00	<u>Activities:</u> <ul style="list-style-type: none">* Project work in progress*Artists to submit 2nd itemized invoice*Document progress* \$47,800.00
<u>Outcomes</u>	<u>Outcomes</u>

HEARTLAND CREATIVE CORPS TIMELINE		
PHASE 3: DISTRIBUTION/EXHIBITION	PHASE 4: EVALUATION	
Time Period: 4/1/24 to 4/30/24	Time Period: 5/1/24 to 6/15/24	
Activities:	Activities:	
<ul style="list-style-type: none"> * Artists to submit 3rd itemized invoice * City to meet artists at sites to review completed project * City to continue to promote projects on social media sites * \$18,000.00 	<ul style="list-style-type: none"> * Artists to submit final invoice * City to meet with artists to confirm completion and issue official Notice of Completion * City to finalize financial report for final grant report * \$5,000.00 	
Outcomes	Outcomes	

Awardee Name: City of Merced

Total Funded Amount \$79,288.00

1. Personnel / Salaries

Directions: Provide the name, role, hourly rate, and total number of planned hours of all individuals that will be paid directly by this grant

Examples of role's include: (Artist, Musician, Painter, Set Designer, Vocalist, Etc.)

Hourly rates should include all applicable fringe benefits (Workers Comp, Taxes, Etc)

Position #	Name	Role	Hourly Rate (\$/hour)	# of planned hours	Total Wages
Person #1	Gilbert Macias Basketball Court	Artist	\$75.00	114	\$8,550.00
Person #2	McCombs Youth Center	Artist	\$75.00	300	\$22,500.00
Person #3	McNamara Basketball Court	Artist	\$75.00	114	\$8,550.00
Person #4	Art Alley Mural - Dumpster Enclosure	Artist	\$75.00	104	\$7,800.00
Person #5	Joe Herb Park Concession Stand Mural	Artist	\$75.00	104	\$7,800.00
Person #6	Gilbert Macias Restroom Exterior Wall	Artist	\$75.00	104	\$7,800.00
Person #7	Mini Youth Sports Complex Concession M	Artist	\$75.00	104	\$7,800.00
Person #8					\$0.00
Person #9					\$0.00
Person #10					\$0.00
Total Personnel / Salaries:					\$70,800.00

2. Direct Project Expenses

Directions: For each type of expense that will be incurred under this grant, provide the expense type, description, and amount

Descriptions should be brief, but clear and concise

Expense Type	Description	Amount
Material Costs	Paint and supplies for seven projects	\$8,188.00
Space Rental/Storage		
Equipment Rental	One Lift	\$300.00
Costume Rental		
Construction Materials		
Transportation & Travel		
Permits & Fees		
Insurance		
Other (Please describe)		
Other (Please describe)		
Other (Please describe)		
Other (Please describe)		
Other (Please describe)		
Total Direct Project Expenses:		\$8,488.00

Total Budgeted Expenses:

Funded Amount

Difference:

\$79,288.00

\$79,288.00

\$0.00



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

Legislation Details (With Text)

File #: 23-571 **Version:** 2 **Name:**
Type: Consent Item **Status:** Agenda Ready
File created: 6/23/2023 **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority/Successor Agency to the Redevelopment Agency
On agenda: 9/18/2023 **Final action:**
Title: **SUBJECT:** Acceptance of Grant Award for a Maximum of \$79,288 From the United Way of Merced County as the Administering Organization for the Heartland Creative Corps for Art Projects on City Owned Properties in the City of Merced

REPORT IN BRIEF

Considers accepting a Grant Award for a maximum of \$79,288 from the United Way of Merced County as the Administering Organization for the Heartland Creative Corps for Art Projects on City owned properties in the City of Merced.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting grant funds up to maximum of \$79,288 from the United Way of Merced County as the Administering Organization for the Heartland Creative Corps for Art Projects on City Owned Properties in the City of Merced; and,
- B. Authorizing the City Manager or Deputy City Manager to execute the contract/standard agreement, including any amendments, and other necessary documents pertaining to the life of the grant; and,
- C. Increasing revenue in the amount of \$79,288, and appropriating the same in Fund 1000-General Fund-City Manager, project GR240011; and,
- D. Authorizing the use of pooled cash to cover the appropriation until grant funds are reimbursed; and
- E. Authorizing the Finance Officer to make the necessary budget adjustments.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Heartland Grant Award Notice, 2. Heartland Memorandum of Understanding

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Report Prepared by: Jennifer Flachman, Public Information Officer, City Manager Department

SUBJECT: Acceptance of Grant Award for a Maximum of \$79,288 From the United Way of Merced County as the Administering Organization for the Heartland Creative Corps for Art Projects on City Owned Properties in the City of Merced

REPORT IN BRIEF

Considers accepting a Grant Award for a maximum of \$79,288 from the United Way of Merced

County as the Administering Organization for the Heartland Creative Corps for Art Projects on City owned properties in the City of Merced.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting grant funds up to maximum of \$79,288 from the United Way of Merced County as the Administering Organization for the Heartland Creative Corps for Art Projects on City Owned Properties in the City of Merced; and,
- B. Authorizing the City Manager or Deputy City Manager to execute the contract/standard agreement, including any amendments, and other necessary documents pertaining to the life of the grant; and,
- C. Increasing revenue in the amount of \$79,288, and appropriating the same in Fund 1000-General Fund-City Manager, project GR240011; and,
- D. Authorizing the use of pooled cash to cover the appropriation until grant funds are reimbursed; and
- E. Authorizing the Finance Officer to make the necessary budget adjustments.

ALTERNATIVES

1. Approve, as recommended by Staff; or,
2. Approve with modifications; or,
3. Refer to staff for reconsideration of specific items as requested by Council; or,
4. Continue to a future Council meeting; or,
5. Deny.

AUTHORITY

Municipal Code Section 200; Local Government Planning Support Grants Program pursuant to Chapter 3.1 of Health and Safety Code (Sections 50515.05; Chapter 159, Statutes of 2019).

CITY COUNCIL PRIORITIES

This grant program aligns with the City Council's FY 2023/24 Goals and Priorities to continue the open call for art projects.

DISCUSSION

The California Creative Corps was developed by the California Council on the Arts in collaboration with the state legislature. California Creative Corps is a \$4.2 million economic and jobs recovery pilot program designed to support pandemic recovery and environmental, civic, and social engagement in California's hardest-hit communities. Using a variety of art forms, including visual, performing, and traditional arts, artists will promote positive community outcomes by creating locally focused, contextual, and culturally sensitive messages and public works.

Merced, Stanislaus, and Tuolumne counties have an abundance of talented individuals who tell the stories and express the culture of our communities through art. We want to support our artists to

create projects that are locally focused and spread awareness related to public health messages, civic engagement, social justice & community engagement, and water & energy conservation, climate mitigation, & emergency preparedness.

Funding will provide project opportunities for local artists to create public art installations to contribute to our City of Merced neighborhoods' rich and vibrant character and cultures. These projects will visually represent our community's cultural perspectives, priorities, and contributions that positively impact our environment that community members can embrace, appreciate, and respect.

The City will issue an RFP for this collective community art project. The Arts and Cultural Advisory Commission (ACAC) will review and score all submissions based on each of the project descriptions and budgets. Artists selected for each project will be reviewed and approved by City Council. Once awarded, an artist will be required to enter into a professional services agreement with the City of Merced. The Senior Management Analyst/Public Information Officer will manage the project with City Manager oversight.

All projects will support social justice and community engagement. The City of Merced is interested in engaging with people of multiple ethnicities to promote interest and involvement in these community-based projects. We aim to encourage people in neighborhoods where these murals and sculptures are located to have a vested interest and a sense of ownership and connection to these projects. Studies have shown that public art encourages residents to develop respect and responsibility for these areas. Community members take an interest in protecting and maintaining murals. We will promote each project through the City's social media platforms to encourage community involvement during production.

Building community is essential in supporting the health and wellness of residents within the City of Merced - an effort that the City Council is committed to across all service areas. In every way possible, the City of Merced strives to provide equal access to all its residents and supports services and programs that promote inclusivity.

Additionally, each artist's progress will be documented and shared on the City's social media platforms and a project page at engage.cityofmerced.org. All artists will be required to meet the June 2024 project completion date.

The project aims to benefit artists and engage communities in the bottom quartile of the California Healthy Place Index. The Healthy Place Index will support the City of Merced in addressing environmental equity. The selected projects will focus on areas within the City of Merced identified as the lowest quartile of the California Healthy Places Index.

IMPACT ON CITY RESOURCES

Increasing revenue in the amount of \$79,288 and appropriating the same in Fund 1000-General Fund-City Manager, project GR240011. No match is required.

ATTACHMENTS

1. Heartland Grant Award Notice
2. Heartland Memorandum of Understanding