

**MEMORANDUM OF UNDERSTANDING
FOR ADMINISTRATIVE SUPPORT BETWEEN THE CITY OF FRESNO AND
THE FRESNO ENHANCED INFRASTRUCTURE FINANCING DISTRICT**

This Memorandum of Understanding (MOU) is made and entered into by and between the CITY OF FRESNO, a municipal corporation (City), and the FRESNO ENHANCED INFRASTRUCTURE FINANCING DISTRICT (District), an agency of the State of California, (each individually, a Party, and jointly, the Parties).

RECITALS

- A. The California Legislature enacted California Government Code Sections 53398.50 through 53398.88 (EIFD Law) authorizing cities and counties to form enhanced infrastructure financing districts and use specified property tax increment revenue generated within such districts to finance certain infrastructure and community benefit projects.
- B. In enacting the EIFD Law, the California Legislature found and determined that with the dissolution of redevelopment agencies, public benefits will accrue, if local agencies finance public infrastructure and community benefit projects authorized under the EIFD Law.
- C. The Council of the City of Fresno (Council) adopted Resolution 2020-084, effective April 23, 2020, determining that it would be beneficial to the City to establish, and stating the Council's intent to establish, the District.
- D. The Council also adopted Resolution 2020-099, effective May 14, 2020, establishing the Public Financing Authority (PFA) to act as the governing board of the District, all in accordance with the EIFD Law.
- E. The Council adopted the District's Infrastructure Financing Plan (IFP) by Resolution 2020-239, effective September 25, 2020, and the PFA adopted the same by its Ordinance No. 2020-01/Resolution 2020-01, effective November 30, 2020.
- F. The IFP acknowledges and contemplates that the City will concur costs in administering the District and division of taxes.
- G. By this MOU the City and the District desire to memorialize the process for the City to recover the administrative costs associated with providing support to the District and the PFA.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

- 1. **Recitals.** Each and all the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
- 2. **Scope of Services.** Subject to the terms of this MOU, City shall provide all administrative support necessary for the District and the PFA to conduct business

and perform their respective tasks, including all work incidental or necessary to perform such services even though not specifically described herein, including but not limited to the hiring of specialists, consultants, financial advisors, etc.

3. **Term of Agreement.** This MOU shall be effective from July 1, 2021 (Effective Date) and shall continue in full force and effect, subject to any earlier termination in accordance with this Agreement. This agreement may be terminated at any time by mutual agreement of the parties hereto.
4. **Compensation.**
 - a. The City's sole compensation for satisfactory performance of all services required or rendered pursuant to this MOU shall be a total fee not to exceed \$100,000 annually, unless otherwise agreed to in writing by the Parties. Such fee includes all expenses incurred by City in performance of the services.
 - b. Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of the District's business. The District shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense. The costs of City staff incurred by District shall accrue during any period that District does not have revenue to pay such costs and shall be payable when District has revenue available to pay such costs.
 - c. The Parties may modify this MOU to increase or decrease the scope of services or provide for the rendition of services not required by this MOU, which modification shall include an adjustment to the City's compensation. Any change in the scope of services must be made by written amendment to the MOU signed by an authorized representative for each Party.
5. **Notices.** Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
6. **Binding.** Subject to Section 9, below, once this MOU is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.
7. **Assignment.** Neither Party shall have any right to assign all or any portion of this MOU to a third person. Any putative assignment of either Party's rights, obligations, or duties under this MOU shall not create a contractual relationship between the other Party and any putative assignee, and any such assignment shall

be ineffective, null and void. Any assignment in violation of this section is grounds for immediate termination of this MOU, at the sole and absolute discretion of the Party not making the assignment.

8. **Compliance with Law.** In performing the services and obligations required under this MOU, the parties shall at all times comply with all applicable laws of the United States, the State of California, and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this MOU.
9. **Waiver.** The waiver by either Party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
10. **Governing Law and Venue.** This MOU 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 MOU and any rights and duties hereunder shall be Fresno County, California.
11. **Headings.** The section headings in this MOU 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 MOU.
12. **Severability.** The provisions of this MOU are severable. The invalidity, or unenforceability of any one provision in this MOU shall not affect the other provisions.
13. **Interpretation.** The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.
14. **Attorney's Fees.** If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.
15. **Exhibits.** Each exhibit and attachment referenced in this MOU is, by the reference, incorporated into and made a part of this MOU.
16. **Precedence of Documents.** In the event of any conflict between the body of this MOU and any exhibit or attachment hereto, the terms and conditions of the body of this MOU shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the

allocation of risk between the parties, provided for within the body of this MOU, shall be null and void.

17. **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.
18. **No Third-Party Beneficiaries.** The rights, interests, duties, and obligations defined within this MOU are intended for the specific parties hereto as identified in the preamble of this MOU. Notwithstanding anything stated to the contrary in this MOU, it is not intended that any rights or interests in this MOU benefit or flow to the interest of any third parties.
19. **Extent of Agreement.** Each Party acknowledges that they have read and fully understand the contents of this MOU. This MOU represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This MOU may be modified only by written instrument duly authorized and executed by both the District and the City.
20. **Contract Administration.** The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF FRESNO,
a California municipal corporation

FRESNO ENHANCED INFRASTRUCTURE
FINANCING DISTRICT,
a public body, corporate and politic

By: _____
Georgeanne White
City Manager

By: _____
Nelson Esparza
Public Financing Authority Chair

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Raj Singh Badhesha Date
Assistant City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy