

GRANT AGREEMENT

THIS AGREEMENT (the Agreement) is made as of this 27th day of March, 2020, between CESAR CHAVEZ FOUNDATION, a California nonprofit public benefit corporation, (the Grantee) and the CITY OF FRESNO, a municipal corporation (the Grantor).

RECITALS

A. Pursuant to that certain commitment approved in the Second Amendment to the Amended and Restated Disposition and Development Agreement (Second Amendment) dated March 27th, 2020, City awarded Grantee the sum of \$500,000 (the Grant Funds) for the purpose of project costs associated with acquiring, developing and constructing a 135-unit multi-family and senior affordable rental housing project known as Kings Canyon Apartments (the Project).

B. Grantor wishes to grant, and Grantee wishes to accept the Grant Funds for the Project.

NOW, THEREFORE, Grantor and Grantee agree as follows:

1. GRANT. Grantor agrees to grant to Grantee, and Grantee agrees to receive the proceeds of the Grant subject to the following terms and conditions:

(a) Grantee shall not use the Grant Funds in a manner or for purposes other than project costs associated with acquiring, developing and constructing the Project.

(b) Grantee agrees that Grantee's failure to complete the Project within the time specified in the Amended and Restated Disposition and Development Agreement dated March 23, 2017, as amended (DDA), including but not limited to obtaining a Certificate of Occupancy will terminate this Agreement.

2. DISBURSEMENTS. Grantor shall fully disburse the Grant Funds to Grantee within 30 days after execution of this Agreement or upon issuance of a certificate of occupancy for the Project, whichever occurs later. Upon receipt, Grantee shall insure that Grantee uses disbursed Grant Funds only for purposes in connection with the payment of project costs associated with the acquisition, development and construction costs incurred in connection with the Project.

3. INDEMNIFICATION. Grantee covenants that Grantee shall defend, indemnify and hold harmless Grantor and all officers, trustees, agents, elected officials, and employees of the same (the Indemnitees), from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the grant of the Grant proceeds described herein.

4. GRANTEE COOPERATION WITH GRANTOR. Grantee covenants to cooperate with Grantor and respond promptly to all requests by Grantor necessary to maintain compliance with the DDA. Grantor understands that Grantee has developed the Project as affordable housing at the affordability levels approved by the California Tax Credit Allocation Committee for a term of 55 years from initial occupancy. This Agreement does not bind Grantor to participate in any tax credit allocation financing, but

it does bind Grantee to provide a low-income housing program in compliance with the DDA.

5. GRANTEE'S DEFAULT AND RIGHT TO CURE. Grantee's failure to use Grant Funds for the project costs associated with the acquisition, development and construction of the Project or to cooperate with Grantor pursuant to Section 4 of this Agreement shall be a default hereunder. Upon receipt of written notice from Grantor of such default, Grantee's failure use Grant Funds shall be cured within five calendar days. All other defaults shall be allowed a 30-day cure period, provided, that Grantee has commenced to cure within the allotted time above. Grantee shall have a reasonable period thereafter within which to fully cure the default.

6. GRANTOR'S REMEDIES. Should Grantee fail to cure a default under this Agreement pursuant to Section 5 above, in addition to other rights and remedies permitted by the Agreement or applicable law, Grantor, in its sole discretion, may proceed with any or all of the following remedies in any order or combination:

- (a) Bring an action in equitable relief seeking specific performance by Grantee of the terms and conditions of this Agreement;
- (b) Enjoin, abate, or prevent any violation of said terms and conditions of the Agreement;
- (c) Seek declaratory relief;
- (d) Bring an action for return of any Grant funds disbursed to Grantee that Grantee has not used pursuant to the terms of this Agreement;
- (e) Terminate this Agreement and cease to disburse Grant funds;
- (f) Pursue any other remedy allowed at law or in equity.

7. GOVERNING LAW AND VENUE. This Agreement shall be interpreted under and governed by the laws of the State of California. A party must bring any legal action in the Superior Court of Fresno, in an appropriate municipal court in Fresno County, or in the United States District Court serving Fresno County.

8. NO WAIVER. Any waiver by either the Grantor or Grantee of any obligation in this Agreement must be in writing. No waiver shall be implied from any failure of the Grantor or Grantee to take, or any delay or failure by Grantor to take action on any default by Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by Grantor or Grantee to any act or omission by the other party shall not be construed to be consent to any other act or omission or to waive the requirement for Grantor or Grantee's written consent to future waivers.

9. NOTICES. All notices, requests and demands given to or made upon the respective parties shall be deemed to have been given or made when upon deposit with any overnight delivery service, or three days after deposit with certified mail, return receipt requested, and addressed as follows:

Grantee: Cesar Chavez Foundation
29700 Woodford Tehachapi Road
Keene, CA 93531
Attention: Paul S. Park, Secretary

Grantor: City of Fresno
Fresno City Hall
2600 Fresno Street, Room 2084
Fresno, California 93721
Attention: City Manager

10. BINDING UPON SUCCESSORS. All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Agreement by Grantee without Grantor's consent. The term "Grantee" as used in this Agreement shall include all assigns, successors-in-interest, and transferees of Grantee.

11. RELATIONSHIP OF PARTIES. The relationship of Grantee and Grantor under this Agreement is and shall remain solely that of a grantor and grantee under a grant agreement and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Grantor neither undertakes nor assumes any responsibility or duty to Grantee (except as provided herein) or to any third party with respect to the matters described herein. Grantee shall have no authority to act as an agent of Grantor or to bind Grantor to any obligation.

12. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing, and shall be effective only if executed by both Grantee and Grantor.

13. TIME. Time is of the essence in this Agreement.

14. INTEGRATION. This Agreement contains the entire agreement of the parties and supersedes any and all prior negotiations.

15. SEVERABILITY. If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired by such holding.

16. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; provided, however, that only the counterpart delivered to the Grantor shall be deemed the original.


[SIGNATURE PAGE IS THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first hereinabove written.

GRANTOR:
CITY OF FRESNO,
A California municipal corporation

By: _____
Wilma Quan,
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ Date 4/1/20
Tracy N. Parvanian
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy

GRANTEE:
CESAR CHAVEZ FOUNDATION,
a California nonprofit public benefit
corporation

By:  _____

Name: Paul S. Park

Title: Secretary
(Secretary)

By: _____

Name: _____

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