

LOAN / FUNDING AGREEMENT

THIS LOAN / FUNDING AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2017 (“**Effective Date**”) by and between the Successor Agency to the Redevelopment Agency of the City of Fresno (the “**Successor Agency**”) and the City of Fresno, a municipal corporation (the “**City**”).

RECITALS

WHEREAS, pursuant to Resolution No. 2012- [REDACTED] adopted by the City Council of the City of Fresno, the City agreed to serve as the successor to the Redevelopment Agency of the City of Fresno (“**Redevelopment Agency**”) commencing upon dissolution of the Redevelopment Agency on February 1, 2012 pursuant to Assembly Bill x1 26 (“**AB 26**”); and

WHEREAS, Health and Safety Code Section 34171(d)(1)(F) authorizes the city that formed a redevelopment agency (“**Sponsoring Jurisdiction**”) to provide funds to the successor agency to the dissolved redevelopment agency for payment of legal expenses related to civil actions initiated by the successor agency, including writ proceedings, challenging the validity of Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code (the “**Dissolution Law**”) or actions taken pursuant thereto; and

WHEREAS, Health and Safety Code Section 34171(d)(1)(F) further provides that if the successor agency obtains a final judicial determination granting the requested relief, the funds provided by the Sponsoring Jurisdiction shall be deemed an enforceable obligation that may be repaid in accordance with the terms set forth in Health and Safety Code Section 34173(h), but if the successor agency does not receive such determination, the funds shall be considered a grant and not eligible for repayment; and

WHEREAS, Health and Safety Code Section 34173(h) provides that with respect to the repayment of funds provided by a Sponsoring Jurisdiction to a successor agency: (i) interest shall be calculated on a fixed annual simple basis at a rate not to exceed the most recently published interest rate earned by funds deposited into the Local Agency Investment Fund during the previous fiscal quarter, (ii) repayments shall be applied first to principal and then to interest, and (iii) repayment shall be subordinate to other enforceable obligations approved on the successor agency’s Recognized Obligation Payment Schedule (“**ROPS**”); and

WHEREAS, the Successor Agency will incur legal expenses related to two civil actions contesting the interpretation and application of the Dissolution Law with respect to the reinstatement and repayment of loans provided by the City to the Redevelopment Agency; and

WHEREAS, the Successor Agency has insufficient funds available to pay such legal expenses; and

WHEREAS, the City Council of the City of Fresno has authorized the provision of funds to the Successor Agency on the terms and conditions set forth in this Agreement, and the Governing Board of the Successor Agency has authorized the acceptance of such funds.

NOW, THEREFORE, the Successor Agency and the City agree as follows:

1. Agreement to Provide Funds. The City agrees to provide funds to the Successor Agency in an amount up to Two Hundred and Twenty Thousand Dollars (\$220,000) (the “**Funds**”) upon the terms and conditions and for the purposes set forth in this Agreement.

2. Use of Proceeds. The Funds shall be used solely to cover Successor Agency legal expenses relating to litigation filed by the Successor Agency contesting the interpretation and application of the Dissolution Law with respect to the reinstatement and repayment of loans provided by the City to the Redevelopment Agency. Up to \$100,000 of the Funds may be used to pay legal expenses incurred in connection with the defense of an appeal filed by the Department of Finance (“DOF”) of the ruling issued by the Sacramento Superior Court in Case Number 34-2015-80002174 (Court of Appeal Case Number C083084) -- a matter involving reinstatement of loans provided by the City to the Redevelopment Agency, and up to \$120,000 of the Funds may be used to pay legal expenses incurred in connection with the filing and pursuit of a Petition for Writ of Mandate challenging DOF’s position regarding the interest rate that applies to repayment of reinstated loans provided by the City to the former Redevelopment Agency.

3. Repayment. If the Successor Agency obtains a final judicial determination granting the Successor Agency’s requested relief in one or both of the matters described in Section 2, the Funds advanced for such successful matter(s) shall be treated as a loan which shall be listed as an enforceable obligation on the Successor Agency’s ROPS, and shall be repaid in accordance with the terms set forth in Health and Safety Code Section 34173(h). If the Successor Agency does not receive a favorable final judicial determination in one or both such matters, the Funds advanced for such unsuccessful matter(s) shall be considered a grant and not eligible for repayment.

4. Interest Rate. If the Successor Agency’s obligation to repay the Funds, or part thereof, has been deemed an enforceable obligation pursuant to Health and Safety Code Section 34171(d)(1)(F) because the Successor Agency has received final judicial determination(s) granting the Successor Agency’s requested relief, interest shall accrue on the outstanding balance of the Funds advanced by the City for such successful matter(s) on a fixed annual simple basis at a rate equal to the most recently published interest rate earned by funds deposited into the Local Agency Investment Fund during the fiscal quarter immediately preceding the date of disbursement, commencing upon the date of disbursement of the Funds and continuing until the Funds are repaid in full, (ii) repayments shall be applied first to the outstanding principal balance and then to accrued interest, and (iii) repayment of the Funds shall be subordinate to other enforceable

obligations and expenses approved on the Successor Agency's ROPS, including without limitation, the Successor Agency's administrative allowance.

5. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the parties as partners, co-venturers, or principal and agent with one another.

6. Amendments. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the parties.

7. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Successor Agency shall be personally liable to City in the event of any default or breach by the Successor Agency, or for any amount of money which may become due to City, or for any obligation of the Successor Agency under this Agreement.

8. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

9. Captions. The headings of the sections and paragraphs of this Agreement have been inserted for convenience only and shall not be used to construe this Agreement.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties are materially altered or abridged by such invalidation, voiding or unenforceability.

12. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the parties with respect thereto.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the City and the Successor Agency have executed this Loan / Funding Agreement as of the date first written above.

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO**

By: _____
Marlene Murphey, Executive Director

Attest: _____
Yvonne Spence, CMC, Ex-Officio Clerk

Approved as to form:

Douglas T. Sloan, Ex-Officio Attorney

CITY OF FRESNO

By: _____
Bruce Rudd, City Manager

Attest: _____
Yvonne Spence, CMC, City Clerk

Approved as to form:

Douglas T. Sloan, City Attorney