

**CITY OF FRESNO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

BY AND BETWEEN

**THE CITY OF FRESNO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

**The Gap, Inc.
A DELAWARE CORPORATION**

CITY OF FRESNO

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS CITY OF FRESNO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is entered into this _____ day of March 2018 ("Execution Date") by and between THE CITY OF FRESNO, a California municipal corporation (the "City") and The Gap, Inc., a Delaware corporation ("Company"). City and Company may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

The Parties enter into this Agreement with reference to the following circumstances:

- A. Company is currently seeking to realign e-commerce operations including investing approximately \$100 million to upgrade e-commerce administration including on-line order receipt and fulfillment ("E-Commerce Project" or "Site") for the Western United States and centralizing online order receipt.
- B. Company does not currently operate an E-Commerce fulfillment center in California, and its orders shipped to California are not currently considered fulfilled within California for sales and use tax purposes. It is expected that the Site would be the primary online order receipt and fulfillment facility for Company's California customers, as well as other Western states.
- C. Company expects, upon full implementation of the E-Commerce Project, to employ at least 515 additional full-time employees at the selected location, and potentially hundreds more part-time or seasonal employees during peak business periods.
- D. The City anticipates over the term of the Agreement to collect tens of millions of dollars in new sales tax and employment driven benefits over and above the incentive investment set forth in this Agreement.
- E. The purpose of this Agreement is to provide certain incentives and guarantees to Company to create certain jobs and business activities in the City (collectively, "Business Activities").
- F. The City wishes to provide Company with incentives to further invest in the City, locate its E-Commerce Project in the City, and increase over time its employment and Business Activities that are likely to result in substantial public benefits to the City, including full-time job creation and the increase of Local Sales and Use Tax Revenues (defined below).
- G. Company wishes to locate its Business Activities in a city offering operational advantages including, but not limited to, a qualified workforce, cost advantages, access to customers, high quality of living, affordable housing and capacity to staff a certain number of jobs in the City.
- H. The City wishes to encourage Company's location and growth of Business Activities because the City expects Business Activities will create jobs, promote the stability and growth of City taxes and other revenues, further the City's economic development goals.
- I. The incentives herein are intended exclusively to reward and encourage Company for relocating e-commerce order receipt and fulfillment jobs and

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TERMS AND CONDITIONS

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, and in addition to certain terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings:

“Agreement Year” means any of 30 consecutive 12-month periods beginning July 1, 2018 and ending June 30, 2048.

“Available Measure” means the amount of Attributable Revenue determined on an annual basis after subtracting the Threshold Revenue.

“Attributable Revenue” means that portion of incremental revenues collected by the City caused by the E-Commerce Project including sales and use taxes and property taxes on the E-Commerce Project investment, as specified in Section 2.2, and sales and use taxes on E-Commerce.

“Baseline Employment” means the number of Full-Time Equivalent Positions employed by Company in the City of Fresno, excluding retail employees, as of February 3, 2018, or 320 Full-Time Equivalent Positions, whichever is greater.

“City’s Fiscal Year” means the City of Fresno’s financial reporting period, which runs from July 1 to June 30.

“Commencement of Operations” means the earliest date of the following: the date on which the first online transaction is received and fulfilled at the Site; the date in which equipment needed for the E-Commerce Project is ordered and sales or use tax is paid on said equipment, to be documented based on taxable sales reported on California Department of Tax and Fee Administration (“CDTFA”) Sales Tax returns pursuant to the Sales Tax Law; or, the date the first employee is hired for the E-Commerce project.

“Company” shall mean The Gap, Inc., and affiliates of The Gap, Inc. generating tax in the City or assigned by The Gap, Inc. to receive the benefits of this Agreement. Affiliates shall mean any legal entity where more than 50% of voting stock of such entity is owned by The Gap, Inc., directly or indirectly, or who is under common ownership and control with The Gap, Inc.

“Company’s Fiscal Year” means the Company’s financial reporting period, which runs from approximately February 1 to January 31.

“Company’s Taxable Products” means all taxable personal property subject to the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax. Code §§ 7200-7212, 7221 -7226).

“Full-Time” means hourly employment by a single employee of an average of 35 or more hours per week.

“Full-Time Equivalent Position” means a position of Full-Time employment, or combination of multiple positions of Full-Time employment, in the City at which an employee is, or combination of employees are, compensated for no fewer than 1,750 hours during any consecutive 365-day period of time, inclusive of paid leave including sick days and/or vacation days.

“Local Sales and Use Tax Revenues” means that portion of the sales and use taxes, if any, levied under the authority of the Sales Tax Law, paid or collected by Company, which are finally and irrevocably allocated and paid to the City by the CDTFA pursuant to the Sales Tax Law.

“Net New Job” means a Full-time Equivalent Position of employment at Company in the City, which represents an increase over the Baseline Employment in the number of Full-Time Equivalent Positions Company employs in the City, excluding retail employees.

“Sales Tax Law” means California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax Code § 7200 et seq.), and any successor law thereto, and all regulations of the CDTFA and other binding rulings and interpretations relating thereto.

“Taxable Sales” means Company’s sales of Company’s Taxable Products within the City’s jurisdiction, which the CDTFA finally and irrevocably determines the reported “point of sale” is the City. “Taxable Sales” does not include sales made and reported to jurisdictions in California other than the City.

“Term” shall mean the term of this Agreement as described in Section 3.

“Threshold Revenue” means that portion of the amount of Attributable Revenue that actually accrues to the City as a result of the E-Commerce Project investment that must be excluded from the annual incentive calculation for Job Creation incentives in a given Agreement Year as specified in Section 2.2.

2. ECONOMIC INCENTIVES

2.1 Eligibility Requirements. The Parties agree that creation of jobs and growth of tax revenue generated by Company and received by the City as a result of Company’s Business Activities are both central to this Agreement. Accordingly, to be eligible to receive the economic incentives (“Incentives”) described in this Agreement, Company shall fulfill all of the following eligibility requirements:

Business Activities:

(a.) Establish and maintain e-commerce order receipt and fulfillment operations. Establish or cause to be established Business Activities (excluding retail storefront positions) that result in the increase of sales tax revenues correctly sourced to the City. Such activities include, but are not limited to, investment in equipment and improvements to facilities, operation of the E-Commerce Project including order receipt and fulfillment in the City, among other functions; and

“Full-Time” means hourly employment by a single employee of an average of 35 or more hours per week.

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(b.) New Job Creation. Create and maintain a minimum of 500 Net New Full-time Equivalent Positions at the E-Commerce Project.

(c.) Maximum Incentive. The total Incentives payable pursuant to this Agreement shall be as described in Section 2.2(a).

Company will provide information, as commercially reasonable, to City, from time to time, in order to implement the terms of the Agreement, including, without limitation, completed employment surveys, in the format of Exhibit 1, certifying the Baseline Employment in the City no later than April 1, 2018 and Net New Employment Annually on April 1 of each year beginning in 2019 and ending in 2048 during the Term of this Agreement.

2.2 Calculation and Payment of Incentives. The City shall provide Incentives to Company, so long as Company continues to comply with the eligibility requirements set forth above. Company shall be eligible to receive Incentives commencing upon satisfaction of (a.) in section 2.1 of this Agreement. After the third anniversary of the Execution Date, no Incentives shall be paid in any year in which the Net New Jobs on an annual average Full-Time Equivalent Position basis is less than 500. If Company does not achieve 500 Full-Time Equivalent Positions by Company's Fiscal Year Ending January 30, 2021, any and all Incentives paid to Company on or before that date must be refunded to the City and said refund shall be paid in full within thirty days. Company may receive Incentives following said refund in any year in which it achieves an annual average of 500 Full-Time Equivalent Positions or more.

(a.) For the E-Commerce Project in the City, the Incentives shall be as follows:

\$15,000 per Full-time Equivalent Position

(b.) Company expects to create at least 515 Full-time Equivalent Positions at a Western E-Commerce Fulfillment Center ("E-Commerce Project"). Company may, in its sole discretion, expand its business activities at the E-Commerce Project or another non-retail storefront facility within the City.

(c.) The total Incentives payable under this Agreement shall be up to a maximum total payment of \$10,000,000, except as otherwise provided herein ("Incentives Cap").

(d.) Incentives based on job creation will be deemed fully earned and not subject to recapture when a Full-Time Equivalent Position has been maintained and remains filled for a minimum of three 365-day periods following creation of the Full-Time Equivalent Position. Incentives paid for job creation that does not meet the three-year maintenance requirement are subject to recapture. Company may offset recapture with creation of additional positions subject to the same conditions. Incentives paid for job creation that satisfied the three-year maintenance requirement are deemed fully earned and not subject to recapture. The Parties intend for the calculation of Net New Jobs to be the net increase from the Baseline Employment of full-time equivalent positions in Company's Fiscal Year ending February 3, 2018, or 320, whichever is greater. The Incentives are not based upon a particular position of employment or employee but rather the total number of Full Time Equivalent Positions created.

(e.) In the event a new position under this Agreement is initially created as a part-time or contract position, and should Company later convert that position to a Full-Time Equivalent Position, Company would be eligible for an Incentive for such position at the time Company converts that position to a Full-Time Equivalent Position as referenced in Section 2.2(d) above.

(f.) To ensure that Incentives do not exceed City debt limitations, the payment of job creation Incentives shall be contingent upon the collection of incremental revenues.

1. Threshold Revenue - The first One Million Dollars in Attributable Revenue in each Agreement year shall be retained by the City as Threshold Revenue until Seven Million Dollars (\$7,000,000) of cumulative Threshold Revenue has been collected by the City. In Agreement Years after the Seven Million Threshold has been satisfied, the amount of Threshold Revenue excluded from the incentive calculation shall be reduced to Five Hundred Thousand (\$500,000) annually. In any given Agreement Year, no job creation incentive shall be payable until the Threshold Revenue requirement is satisfied. Incentives shall be calculated on the Available Measure of annual Attributable Revenue after subtraction of the Threshold Revenue. For purposes of calculating Threshold Revenue, the City shall include, in the following order of priority, until the Threshold Revenue amount is reached for each Agreement Year:

a. Actual property taxes received by the City each Agreement Year on property placed in service and related to the E-Commerce Project from the date of this Agreement through December 31, 2022.

b. Actual sales and use taxes received by the City on property placed in service at the E-Commerce Project from the date of this Agreement through December 31, 2022.

c. Actual Local Sales and Use Tax Revenue attributable to Company's Taxable Sales paid by Company and reported to the City, in accordance with the Sales Tax Law, for the Term of this Agreement.

2. Job creation Incentives pursuant to this Agreement shall be payable annually in each Agreement Year in which there is an Available Measure of Attributable Revenue after subtracting the Threshold Revenue as follows:

The lesser of:

\$15,000 multiplied by the cumulative number of Net New Jobs created and maintained, less the number of Net New Jobs for which an incentive has been paid, or

Twenty-Five Percent (25%) of the Available Measure of Attributable Revenue after subtracting the Threshold Revenue.

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2.3 Timing of Incentives Payment. Subject to the provisions of this Agreement, City shall pay the Incentives to Company, in an amount not to exceed the Incentives Cap, in an annual payment on or before July 1 of each year during the term of this Agreement (“Annual Payment”). Before making each Annual Payment, City shall confirm that Company is eligible to receive Incentives under Section 2.1 and has created and maintained net new Full-Time Equivalent Positions in accordance with Section 2.2 and City has received Local Sales and Use Tax Revenues from the CDTFA and Personal Property Tax revenues from the County Assessor.

After the end of the Company’s Fiscal Year, Company will be eligible to receive Incentives that were generated in the Company’s Fiscal Year most recently completed, beginning with Fiscal Year 2018 which ends approximately January 31, 2019. Within 90 days after the end of the Company’s Fiscal Year, Company will submit a written request for the Annual Payment, together with a copy of any supporting documentation, including the documentation described below and other documentation reasonably requested by City. Company’s written request for the Annual Payment shall include submission of Exhibit 1, the prior twelve months’ sales and use tax returns and prior year’s property tax invoices. By May 30 of each year City shall verify the information on Company’s written request. City will promptly notify Company if the City identifies issues as a result of its review of Company’s written request. City and Company will work together to resolve in a timely manner any issues identified in the City’s review of Company’s written request. After verifying the information and resolving any identified issues, the City will make an electronic payment to Company for any earned Annual Payment by July 1.

2.4 Verification of Revenue. No Incentives payment will be made by City to Company until City has verified receipt of Local Sales and Use Tax Revenues paid to the City by the CDTFA and personal property tax payments to City.

2.5 Data and Documentation. For the purposes of this Agreement, the term “Data and Documentation” means any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, statements and any other documents evidencing the amount of Local Sales and Use Tax Revenues paid by Company or collected by Company and remitted to the CDTFA, including: copies of all schedules and reports filed by Company with CDTFA during that Fiscal Quarter, including, without implied limitation, those relating to Taxable Sales and Local Sales and Use Tax Revenues paid or collected by Company. Company, on behalf of itself and any affiliate, and to the extent such consent is required by any applicable legal provision, consents to the City’s review and use of the information contained in the data and documentation Company submits to the CDTFA to the extent necessary for the City to verify the allocation and receipt of Local Sales and Use Tax Revenues.

2.6 Reduction of Amount. The amount of any Incentives payable to Company shall be reduced by the amount by which any Local Sales Taxes or Local Use Taxes are reallocated from the City by the CDTFA if such reallocation reduces the basis upon which the Incentives would otherwise be paid.

2.7 Recapture of Incentive Payments. If, at any time during or after the Term of this Agreement, the CDTFA determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or

paid Local Sales Tax Revenues, then Company shall, within thirty (30) calendar days after written demand from the City, repay all Incentives (or applicable portions thereof) previously paid to Company which reflect such repaid, offset or recaptured Local Sales Tax Revenues. If Company fails to make such repayment within thirty (30) calendar days after the City's written demand, then Company shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Company under this Section 2.7 from any future Incentives otherwise payable to Company under this Agreement. The parties will cooperate in good faith to address any disputes or discrepancies in the amount of the repayment of tax incentives. This Section 2.7 shall survive the expiration or termination of this Agreement. The City will promptly contact Company regarding any communication from the CDTFA pertaining to tax allocations associated with Company's business. Should the CDTFA question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the Company and the City may at each party's sole discretion choose to accept the CDTFA determination, separately engage legal counsel or consultant, or jointly engage legal counsel or consultant to defend such allocation in all CDTFA administrative proceedings as permitted by the rules and regulations of the CDTFA. Any jointly agreed to cost or expense associated with such efforts will be borne equally by the Parties. Any cost or expense associated with such efforts not jointly agreed to will be borne by the party incurring the cost or expense. For purposes of this paragraph, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board Members. Regardless of joint legal counsel, the Company and the City will reasonably cooperate with the other party and the other party's counsel. Additionally, Company shall have the right, but not the obligation, to participate in any such administrative proceedings.

2.8 Not a Pledge of Sales Tax. Company acknowledges that the City is not making a pledge of Local Sales Tax Revenues, property tax or any other particular source of funds, Local Sales Tax Revenues and property tax are used merely as a measure of the amount of payment due hereunder and as means of computing the City's payment of Incentives for the consideration received hereunder.

2.9 State of California Legislation Impact on Covenant Payment. Company acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Local Sales Tax Revenues which were otherwise payable to the City. Company acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Local Sales Tax Revenues and that such reduction will cause Company a corresponding reduction and/or delay in the payment of the Incentives due to Company during such time as such legislation is in effect. Furthermore, Company acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Term and may materially and negatively impact the amount of Local Sales Tax Revenues and, accordingly, Incentives. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Local Sales Tax Revenues to the City. Company agrees

paid Local Sales Tax Revenues, then Company shall, within thirty (30) calendar days after written demand from the City, repay all Incentives (or applicable portions thereof) previously paid to Company which reflect such repaid, offset or recaptured Local Sales Tax Revenues. If Company fails to make such repayment within thirty (30) calendar days after the City's written demand, then Company shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Company under this Section 2.7 from any future Incentives otherwise payable to Company under this Agreement. The parties will cooperate in good faith to address any disputes or discrepancies in the amount of the repayment of tax incentives. This Section 2.7 shall survive the expiration or termination of this Agreement. The City will promptly contact Company regarding any communication from the CDTFA pertaining to tax allocations associated with Company's business. Should the CDTFA question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the Company and the City may at each party's sole discretion choose to accept the CDTFA determination, separately engage legal counsel or consultant, or jointly engage legal counsel or consultant to defend such allocation in all CDTFA administrative proceedings as permitted by the rules and regulations of the CDTFA. Any jointly agreed to cost or expense associated with such efforts will be borne equally by the Parties. Any cost or expense associated with such efforts not jointly agreed to will be borne by the party incurring the cost or expense. For purposes of this paragraph, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board Members. Regardless of joint legal counsel, the Company and the City will reasonably cooperate with the other party and the other party's counsel. Additionally, Company shall have the right, but not the obligation, to participate in any such administrative proceedings.

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2.3 Timing of Incentives Payment. Subject to the provisions of this Agreement, City shall pay the Incentives to Company, in an amount not to exceed the Incentives Cap, in an annual payment on or before July 1 of each year during the term of this Agreement (“Annual Payment”). Before making each Annual Payment, City shall confirm that Company is eligible to receive Incentives under Section 2.1 and has created and maintained net new Full-Time Equivalent Positions in accordance with Section 2.2 and City has received Local Sales and Use Tax Revenues from the CDTFA and Personal Property Tax revenues from the County Assessor.

After the end of the Company’s Fiscal Year, Company will be eligible to receive Incentives that were generated in the Company’s Fiscal Year most recently completed, beginning with Fiscal Year 2018 which ends approximately January 31, 2019. Within 90 days after the end of the Company’s Fiscal Year, Company will submit a written request for the Annual Payment, together with a copy of any supporting documentation, including the documentation described below and other documentation reasonably requested by City. Company’s written request for the Annual Payment shall include submission of Exhibit 1, the prior twelve months’ sales and use tax returns and prior year’s property tax invoices. By May 30 of each year City shall verify the information on Company’s written request. City will promptly notify Company if the City identifies issues as a result of its review of Company’s written request. City and Company will work together to resolve in a timely manner any issues identified in the City’s review of Company’s written request. After verifying the information and resolving any identified issues, the City will make an electronic payment to Company for any earned Annual Payment by July 1.

2.4 Verification of Revenue. No Incentives payment will be made by City to Company until City has verified receipt of Local Sales and Use Tax Revenues paid to the City by the CDTFA and personal property tax payments to City.

2.5 Data and Documentation. For the purposes of this Agreement, the term “Data and Documentation” means any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, statements and any other documents evidencing the amount of Local Sales and Use Tax Revenues paid by Company or collected by Company and remitted to the CDTFA, including: copies of all schedules and reports filed by Company with CDTFA during that Fiscal Quarter, including, without implied limitation, those relating to Taxable Sales and Local Sales and Use Tax Revenues paid or collected by Company. Company, on behalf of itself and any affiliate, and to the extent such consent is required by any applicable legal provision, consents to the City’s review and use of the information contained in the data and documentation Company submits to the CDTFA to the extent necessary for the City to verify the allocation and receipt of Local Sales and Use Tax Revenues.

2.6 Reduction of Amount. The amount of any Incentives payable to Company shall be reduced by the amount by which any Local Sales Taxes or Local Use Taxes are reallocated from the City by the CDTFA if such reallocation reduces the basis upon which the Incentives would otherwise be paid.

2.7 Recapture of Incentive Payments. If, at any time during or after the Term of this Agreement, the CDTFA determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or

that it is undertaking its obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

3. AGREEMENT TERM

This Agreement shall terminate on the date upon which City provides payment to Company in the amount of the Incentives Cap, or thirty years following the Commencement of Operations, whichever occurs first. It is the intent of this Agreement to provide incentives to Company to continue to invest in and create new jobs in the City.

4. INDEMNIFICATION

Company agrees to indemnify, defend (if so requested by the City, and with counsel reasonably acceptable to both parties), and hold the city, its officers, employees, agents, and assigns (severally and collectively, any "Indemnitees"), harmless from any loss, expense or other costs (including, without limitation, attorneys' fees) related to any claim, action, lawsuit or other proceeding, whether administrative, at law or in equity, brought or maintained by or on behalf of any third party against any Indemnitee as a result of any conduct of Company in performing any obligation arising under this Agreement, except to the extent that such claim, action, lawsuit, or other proceeding was caused by an Indemnitee's sole negligence or willful misconduct. Without limitation on the foregoing provisions and notwithstanding any other provision of the Agreement, if any court or administrative body of competent jurisdiction orders the return to the City of any Incentive, Company shall hold any Indemnitee harmless from any such claims Company may have for reimbursement or contribution with respect to any such funds.

The City shall fully cooperate in the defense of any such claim, action, lawsuit or other proceeding and upon written request of Company shall provide to Company such documents and records in possession of the City that are relevant to such claim, action, lawsuit or other proceeding and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such claim, action, lawsuit or other proceeding Company shall have the right to terminate this Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Agreement shall cease except for Company's obligation of indemnity owed to the City as provided in this Section 4. For purposes of clarification, should Company exercise its termination right as provided in this Section 4, the same shall not be considered a Default and the City shall have no claims against Company for such termination.

Notwithstanding any other provision of this Agreement, (1) Company shall have no obligation to indemnify any of the Indemnitees for any punitive, indirect, incidental or consequential damages whether arising at law, in equity or otherwise; and (2) the maximum combined liability of or repayment amount due from the Company under this Agreement shall not exceed the greater of \$500,000.00, or the total amount of Incentives actually received by the Company from the City under this Agreement.

5. GENERAL PROVISIONS

5.1 Notice. Notice as referenced herein shall be deemed sufficiently given if made in writing and dispatched by any of the following methods to the addresses of the Parties set forth in this Section: (i) registered or certified mail, postage prepaid, return receipt requested (in which event, the notice shall be deemed delivered on the

date of receipt thereof); (ii) electronic facsimile transmission, followed on the same day by delivery of a "hard" copy via: first class mail, postage prepaid; or (iii) personal delivery, including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service (in which event, the notice shall be deemed delivered on the documented date of receipt).

If to City: CITY OF FRESNO
Attn: City Manager
2600 Fresno Street
Fresno, CA 93721

If to Company: THE GAP, INC.
Vice President, Taxes
Tax Department
2 Folsom Street
San Francisco, CA 94705
With a copy to

Global General Counsel
Corporate Law Department
The Gap, Inc.
2 Folsom Street
San Francisco, CA 94105

5.2 Non-Discrimination Requirements. Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Company shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Company understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, or other sanctions under applicable law.

Consistent with and not contrary to the forgoing non-discrimination requirements, the City encourages and requests that Company attempt to hire or use as many local contractors and vendors as possible and Company consider establishing a local hiring program.

5.3 Waivers. The failure by either Party to enforce at any time any provision or condition of this Agreement shall not be construed to be a waiver of such provision or condition contained herein or a waiver of any subsequent breach or violation of the same or any other provision or condition, nor in any way to "affect the validity of this Agreement or any part hereof or the right of a Party to thereafter enforce each and every such provision or condition. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

5.4 Confidentiality. City shall keep any and all proprietary and confidential information and data provided by Company under this Agreement strictly confidential to the extent permitted by law. City will use information provided by Company pursuant to this Agreement only for purposes within the scope of this Agreement. Company shall clearly mark or otherwise identify in writing all information it considers to be

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5.5 Local, State and Federal Laws. Company hereby agrees to carry out Business Activities in conformity with all applicable federal, state, and City laws.

5.6 Regulatory Approvals and Permits. Company operates an existing facility in the City and is familiar with applicable federal, state and local regulations. Company further acknowledges that the City has made no representations or warranties regarding any applicable laws, regulations or necessary permits or approvals, including but not limited to Federal Aviation Administration regulations and requirements of the California Environmental Quality Act. Except as expressly provided herein, Company shall be solely responsible for all regulatory and legal compliance and for obtaining any necessary permits.

5.7 Successors and Assigns. This Agreement shall be binding upon the Parties' successors and assigns. Company shall not assign this Agreement or any right or obligation hereunder except that it may so assign to its immediate or ultimate parent, or to a directly related corporate or business entity, by providing notice to City.

5.8 Entire Agreement. This Agreement (including the exhibits hereto, which are integral parts of this Agreement) supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives. This Agreement may not be modified except by the written agreement executed and delivered by both Parties.

5.9 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby and shall remain valid and enforceable to the greatest extent permitted by law.

5.10 Counterparts. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission or electronic transmission (including e-mail transmission of a PDF image) shall be deemed to be an original signature hereto.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

The Gap, Inc.,
A Delaware Corporation

By: _____

By: Teri List-Stoll

Name: _____

Name: Teri List-Stoll

Title: _____

Title: EVP + CFO

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
John Hastrup
Deputy City Attorney

Addresses:
CITY:
City of Fresno
Attention:
[Title]
[address]
Fresno, CA
Phone: (559)
FAX: (559)
Attachment: Exhibit 1

CONSULTANT:
[Name]
Attention:
[Title]
[address]

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A California municipal corporation

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By: Teri L. List-Stoll

Name: _____

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Deputy

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Addresses:
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Attention:
[Title]
[address]
Fresno, CA
Phone: (559)
FAX: (559)
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CONSULTANT:
[Name]
Attention:
[Title]
[address]

*Add rows as needed

Available Job Creation Incentives in Current Agreement Year

(a) Total Full-Time Equivalents Listed Above	
(b) Cumulative Full-Time Equivalents for which City paid Incentives in prior Agreement Years	
(c) Baseline Employment	
(d) Maximum Number of Full-time Positions for which an Incentive may be claimed in current Agreement Year* [(d) = (a) less (b) and (c).]	

*subject to limitations of the Agreement.

Incentives Company requests for the current Agreement Year

Number of Positions for which an Incentive was paid currently subject to recapture	
Number of Positions for which Company requests an Incentive in the current Agreement Year	
Number of Positions for which an Incentive is claimed multiplied by \$15,000 (*may not exceed 25% of Available Measure)	

I hereby certify that <<COMPANY>> employs(ed) the above individuals as described above at the E-Commerce Project locations listed above during the fiscal year ended _____ (date).

Director of Human Resources
<<COMPANY>>

Signature

Printed Name

Date