

BOND PROCEEDS EXPENDITURE AGREEMENT

This Bond Proceeds Expenditure Agreement (Agreement) is entered into effective _____, 20__ by and between the CITY OF FRESNO, IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, (City), and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO (Successor Agency), a public body, corporate and politic, formed under Health and Safety Code (HSC) Section 34173.

Recitals

A. The former Redevelopment Agency of the City of Fresno (former Agency) was a California public body, corporate and politic, duly formed by the City Council of the City (City Council) and was organized, existed, and exercised the powers of a community redevelopment agency under the California Community Redevelopment Law, Health and Safety Code (HSC) Section 33000, et seq. (CRL).

B. Pursuant to the authority granted under the CRL the former Agency had responsibility to implement the Redevelopment Plan for the Mariposa Redevelopment Project Area adopted by Ordinance 69-11 on January 14, 1969, and amended by Ordinance 72-26 on April 20, 1972, Ordinance 75-124 on December 4, 1975, Ordinance 79-112 on June 19, 1979, Ordinance 82-78 on August 3, 1982, Ordinance 86-204 on December 16, 1986, Ordinance 88-23 on February 2, 1988, Ordinance 88-116 on September 13, 1988, Ordinance 92-55 on July 28, 1992, Ordinance 94-112 on December 6, 1994, Ordinance 95-19 on February 28, 1995, Ordinance 98-48 on July 14, 1998, Ordinance 08-9 on February 26, 2008, Ordinance 08-47 on July 22, 2008, and Ordinance 10-30 on July 22, 2010.

C. The former Agency issued Tax Allocation Bonds, Series A, in the original principle amount of \$5,445,000, pursuant to that certain Indenture of Trust dated January 1, 1993, by and between the Agency and the Bank of New York as successor to Meridian Trust Company of California. In 2003, the Agency refunded the 1993 bonds with Tax Allocation Refunding Bonds 2003, Series A, in the total principle amount of \$5,005,000 (the "Bonds").

D. Assembly Bill (AB) xl 26, effective on June 28, 2011, added Parts 1.8 and 1.85 to Division 24 of the HSC and which laws were modified, in part, and determined constitutional by the California Supreme Court in the petition California Redevelopment Association, et al. v. Ana Matosantos, et al., Case No. S194861 (Matosantos Decision), which laws and court opinion caused the dissolution of all redevelopment agencies and winding down of the affairs of former redevelopment agencies. Thereafter, such laws were amended further by AB 1484 that was effective on June 27, 2012, and further amended by Senate Bill (SB) 107, which was effective September 22, 2015, (together AB xi 26, the Matosantos Decision, AB 1484, and SB 107 are referred to as the Dissolution Act).

E. As of February 1, 2012, the former Agency was dissolved pursuant to the Dissolution Act.

F. As of February 1, 2012, the Successor Agency is performing its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the former Agency and is engaged in activities necessary and appropriate to wind down the affairs of the former Agency, all subject to the review and approval by the local oversight board and now a county-wide consolidated "Oversight Board."

G. HSC Section 34191.4(c) provides that once a successor agency has received a finding of completion, the successor agency is authorized to use the proceeds from bonds issued on or before December 31, 2010, for the purposes for which the bonds were sold, and is further authorized to expend proceeds in excess of amounts needed to satisfy approved enforceable obligations (Excess Bond Proceeds) in a manner consistent with the original bond covenants. Such expenditures constitute "excess bond proceeds obligations" that must be listed separately on the successor agency's Recognized Obligation Payment Schedule (ROPS).

H. The Successor Agency received its Finding of Completion under HSC Section from the California Department of Finance on June 2, 2014.

I. The CRL provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies. Under HSC Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. HSC Section 33220(e) specifically authorizes a city to enter into an agreement with its redevelopment agency or any other public entity to further redevelopment purposes. HSC Section 34178 allows a successor agency and its sponsoring city to enter into agreements subject to Oversight Board approval pursuant to HSC Section 34180(h).

J. The Successor Agency has Excess Bond Proceeds from the Bonds and wishes to use such proceeds for redevelopment purposes consistent with applicable bond covenants.

K. The Successor Agency desires to transfer its Excess Bond Proceeds to the City to enable the City to use such funds, in a manner consistent with the original bond covenants; to undertake projects and programs that were not previously funded and obligated by the Successor Agency or the City. The City Council has determined that the use of Excess Bond Proceeds to fund projects is in accordance with HSC Sections 33445, 33445.1, and 33679, the bond covenants, and other applicable law.

L. On _____, 201_, the Oversight Board determined that this Agreement will effectuate the wind down of the Successor Agency consistent with HSC 34177.3(b) and approved this Agreement by resolution pursuant to HSC 34178(c).

M. To facilitate the use of Excess Bond Proceeds consistent with the bond covenants, the Successor Agency and the City have negotiated this Agreement requiring the transfer of current Excess Bond Proceeds by the Successor Agency to the City, and the City's use of such proceeds consistent with applicable bond covenants. The parties intend that this Agreement constitutes an excess bond proceeds obligation within the meaning of HSC Section 34191.4(c)(2)(A) (Excess Bond Proceeds Obligation) to be paid from Excess Bond Proceeds. Upon approval by the Oversight

Board, the Successor Agency will list this Agreement, and the requirement to transfer Excess Bond Proceeds herein, on its ROPS for July 1, 2020 through June 30, 2021, (ROPS 20-21) as an Excess Bond Proceeds Obligation.

NOW, THEREFORE, the parties mutually agree as follows:

1. Incorporation of Recitals. The recitals above are an integral part of this Agreement and set forth the intentions of the parties and are incorporated into this Agreement by this reference.

2. Successor Agency Obligations. The Successor Agency has the following obligations under this Agreement:

2.1. Current Excess Bond Proceeds. Once the transfer of Excess Bond Proceeds has been listed on ROPS 20-21, and such ROPS has been approved by the Department of Finance, the Successor Agency will transfer to the City, no later than June 30, 2021, Excess Bond Proceeds held by the Successor Agency as of the date of transfer in an amount not to exceed the lesser of available, unobligated Bond Proceeds and FOUR HUNDRED SEVENTY EIGHT THOUSAND, SIXTEEN DOLLARS (\$478,016).

2.2. Future Excess Bond Proceeds. The Successor Agency will transfer to the City all future Excess Bond Proceeds held or received by the Successor Agency. Such future Excess Bond Proceeds may include, without limitation, (1) Bond Proceeds previously obligated to a project or other Enforceable Obligation that become unobligated for any reason, (2) Bond Proceeds that become available in the form of rents, sale proceeds, loan repayments, or other revenues that are generated by properties or other assets acquired and/or improved with Bond Proceeds and that are not otherwise obligated to a project or other Enforceable Obligation, and (3) any other funds held by the Successor Agency that qualify as Excess Bond Proceeds under this Agreement. For purposes of this Agreement, "Enforceable Obligation" has the meaning ascribed to such term in HSC Section 3417 I(d).

The parties intend that payments of future Excess Bond Proceeds be made to the City as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond Proceeds will be made pursuant to an approved ROPS within 30 days of the commencement of the relevant ROPS period. The Successor Agency is responsible for ensuring that payments of future Excess Bond Proceeds, as such funds become available, are included on the next possible ROPS.

2.3. Projects Funded by Excess Bond Proceeds. The Successor Agency assigns to the City all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. The Successor Agency assigns to the City all contracts entered into by the Successor Agency or the former Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations.

3. City Obligations. The City has the following obligations under this Agreement:

3.1. Retention of Excess Bond Proceeds. The City will accept, hold, and

disburse Excess Bond Proceeds transferred to the City by the Successor Agency under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City will retain any Excess Bond Proceeds that it receives, such as revenue generated from properties acquired or improved with Excess Bond Proceeds or payments on loans funded from Excess Bond Proceeds, without any obligation to return such funds to the Successor Agency and will use such funds for uses consistent with applicable bond covenants.

3.2. Bond Spending Plan. The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity consistent with the original bond covenants and applicable provisions of the CRL and must comply with all requirements of federal tax law as to the use of such funds. The City intends to spend the Excess Bond Proceeds on maintenance and upgrades, consistent with the language identified in the original bond covenants, which stated proceeds could be used to finance improvements within, or beneficial to, the Project Area.

3.3. The City is solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws. The City may transfer funds between approved projects, programs, and activities, as long as the transfer is within a single project area if applicable bond covenants restrict such funds to a particular project area.

The City agrees to indemnify and defend the Successor Agency and its officers and agents against, and to hold the Successor Agency and its officers and agents harmless from, any claims, causes of action, or liabilities arising from the misuse of Excess Bond Proceeds by the City or the failure of the City to ensure that Excess Bond Proceeds are used in accordance with bond covenants, federal tax law, and the CRL.

The City assumes all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. The City assumes all contracts entered into by the Successor Agency or the former Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations. The City will perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA, and will timely complete the work required for each project.

4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to the transfer and use of Excess Bond Proceeds. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

5. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the City and the Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Successor Agency, there are no third-party beneficiaries under this Agreement.

6. Waivers and Amendments. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

7. Severability. If any term, provisions, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability. In addition, the parties will cooperate in good faith to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

8. Default. If either party fails to perform or adequately perform an obligation required by this Agreement within 30 calendar days of receiving written notice from the non- defaulting party, the party failing to perform will be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract or to seek specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and will not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

9. Binding On Successors. This Agreement is binding on and inures to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

10. Further Assurances. Each party agrees to execute, acknowledge, and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

11. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of California.

[SIGNATURE PAGE TO FOLLOW]

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

CITY OF FRESNO, in its capacity as
Housing Successor,
A California municipal corporation

By: _____
[Name],
[Title]

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Laurie Avedisian-Favini Date
Assistant City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

Addresses:

CITY:

City of Fresno

Attention: [Name]

[Title]

[Street Address]

Fresno, CA [Zip]

Phone: (559) [#]

FAX: (559) [#]