CITY OF MODESTO
REDEVELOPMENT SUCCESSOR AGENCY

AGENDA

City of Modesto
Special Redevelopment Successor Agency Meeting
Chambers, Basement Level
Tenth Street Place, 1010 10th Street
Modesto, California
Tuesday, January 11, 2022 at 5:30 PM

*Roll Call – Agency Members Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

* Some Councilmembers may be participating in the meeting remotely via teleconferencing or other electronic means consistent with the AB 361.

THIS MEETING WILL BE PHYSICALLY OPEN TO THE PUBLIC AND BY ZOOM VIDEO CONFERENCING AND TELEPHONE

In order to minimize the spread of the COVID-19 virus, this meeting will be conducted pursuant to AB 361, which amended the Brown Act’s teleconferencing provisions. If you choose to attend the Council meeting in person, you will be required to wear a face covering and maintain appropriate social distancing. Please note, seating will be limited.

You may observe a livestream of the meeting at http://media.modestogov.com. You may also participate in the meeting as indicated below.

PARTICIPATING IN CITY COUNCIL MEETINGS IN CONFORMANCE WITH AB 361

The City of Modesto is providing alternatives to view Council meetings and provide public comments. If you wish to make either a general public comment or to comment on a specific agenda item, you may use one of the following options:
SUBMITTING COMMENTS BY E-MAIL

Written comments may be submitted via email to: ccmeetings@modestogov.com (include Agenda Item Number in the subject line). All comments will be shared with the Councilmembers and placed in the record, but will not be read aloud during the meeting. Written comments must be received by 3:00 p.m. on the day of the meeting.

VIRTUAL PARTICIPATION BY ZOOM VIDEO CONFERENCING AND TELEPHONE

Joining the City Council meeting via Zoom

The City of Modesto is now offering the ability to view and participate in Council meetings via telephonic conferencing via “Zoom” video conferencing computer technology. The meeting may be accessed through the use of Zoom using the following options:

- Enter the following link into an Internet Browser https://us02web.zoom.us/j/86945970570.
- Enter the following link into an Internet Browser https://zoom.us/ and using the Webinar ID 869 4597 0570
- Passcode 84326

To use Zoom, please visit: https://zoom.us/ and either sign-up for a free Zoom account or continue as a guest. Once you have downloaded the app onto your mobile device, joined from your web browser, or downloaded the Zoom software on your computer you will be ready for the upcoming Council meeting.

Joining the City Council meeting via Telephone

If you don’t have a smart phone or computer to access the meeting via Zoom, you can participate by phone, by calling 1-877-853-5257 (Toll Free) or 1-888-475-4499 (Toll Free) and enter the Webinar ID 869 4597 0570 Passcode 84326

Providing Public Comment on Zoom and by Telephone

The Mayor will request public comment during the Public Comment periods on the meeting agendas and during each Public Hearing and Regular Calendar Item on the Council Agenda. Once the Mayor has announced the public comment period, please do one of the following.

USING A COMPUTER OR SMART PHONE APP:

- Click on the “Raise Hand” feature in the webinar controls. This will notify City staff that you have raised your hand.
- City staff will unmute your microphone when it is your turn to provide public comment.
- A prompt will appear to confirm you would like to be unmuted and then you will have three minutes to provide public comment.
- Once your public comment has ended, you will be muted again.

**USING A REGULAR PHONE (not using a computer or smart phone APP):**

- Dial *9 (star 9), this will notify City staff that you have “raised your hand” for public comment.
- City staff will unmute your microphone when it is your turn to provide public comment.
- You will hear “you are unmuted” and then you will have three minutes to provide public comment.
- Once your public comment has ended, you will be muted again.
- If your phone is unmuted, and you are unable to be heard, the host may ask that you Dial *6 to toggle mute on/off in Zoom.

**Additional Zoom resources/support**
Please visit Zoom’s website support page on helpful tips to prepare for the meeting: [https://support.zoom.us/hc/en-us/categories/201146643](https://support.zoom.us/hc/en-us/categories/201146643)

**PUBLIC COMMENT PERIOD**

Please refer to special public comment instructions above

Three minute time limit per speaker

Only interested persons in the audience may present these matters. Under State law, Agency Members may respond to matters being presented under this item only as follows:

a. Briefly respond to statements made or questions raised.

b. Ask a question for clarification.

c. Provide a reference to staff or other resources for factual information.

d. Request staff to report back at a subsequent meeting.

e. Finally, an Agency Member or the Council itself may take action to direct staff to place a matter of business on a future agenda.

**CONSENT ITEMS – ROLL CALL VOTE REQUIRED**

Information concerning the consent items listed below has been forwarded to each Councilmember prior to this meeting for study. Unless some member of the audience or Councilmember has a question concerning an item and asks that it be withdrawn from the consent list, the Council approves the items at one time. The action taken by the Council in approving consent items is set forth in the explanation of this individual item.

Any and all of the following agenda items are subject to action by the Modesto City Council.
This Agenda is on file at the Modesto-Stanislaus Library Reference Room, 1500 I Street, Modesto, in the City Clerk’s Office, Sixth Floor, 10th Street Place, and is available on the City’s Web site at www.modestogov.com.

In accordance with the requirements of Title II of the Americans with Disabilities Act (“ADA”) of 1990, the Fair Employment & Housing Act (“FEHA”), the Rehabilitation Act of 1973 (as amended), Government Code section 11135 and other applicable codes, the City of Modesto (“City”) will not discriminate against individuals on the basis of disability in the City’s services, programs, or activities. For more information, please visit the City of Modesto website at https://www.modestogov.com/865/Americans-with-Disabilities-Act-ADA

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (209) 577-5396. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

CONSENT ITEMS

An item may be removed from consent and discussed at the request of an audience member or Councilmember.

CONSENT
A. Consider approving the minutes from the Redevelopment Successor Agency June 23, 2020. (Funding Source: Not Applicable)

Staff Recommendations:
• Motion approving the minutes from the Redevelopment Successor Agency of June 23, 2020.
  Clerk; Dana Sanchez, 209-577-5396 dasanchez@modestogov.com

CONSENT
B. Consider approving a Settlement Agreement between Successor Agency and Civic Partners Modesto, Inc. in the amount of $300,000 and Loan Agreement from the City to the Successor Agency to fund the Settlement Agreement. (Funding Source: General Fund and RPTTF Fund)

Staff Recommendations:
• Resolution approving a Settlement and General Release with Civic Partners Modesto, Inc. in the amount of $300,000, and authorizing the Executive Director or his designee, to execute the settlement agreement.
• Resolution approving a Loan Agreement from the City of Modesto to the Successor Agency in the amount of $300,000 pursuant to Health and Safety Code Section 34173(h)(1), and authorizing the Executive Director or his designee, to execute the loan agreement.
  CAO; Jose Sanchez, 209-577-5284 jsanchez@modestogov.com

MATTERS TOO LATE FOR THE AGENDA
These may be presented by members of the City Council and staff upon determination by a
majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that (1) there is a need to take immediate action, and (2) that the need for action came to the City’s attention after the agenda was posted.

ADJOURNMENT

Posted pursuant to Government Code Section 54954.2 on the bulletin board at Tenth Street Place on

__________________________________________

Date                        Time                        Signature
CITY OF MODESTO REDEVELOPMENT SUCCESSOR AGENCY

MINUTES

City of Modesto

Special Redevelopment Successor Agency Meeting

Tenth Street Place
Second Floor, Room 2001
1010 Tenth Street
Modesto, California

Tuesday, June 23, 2020 at 5:30 p.m.

Roll Call – Present: Agency Members Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Chairperson Brandvold
Absent: None

PUBLIC COMMENT PERIOD

None.

CONSENT ITEMS – ROLL CALL VOTE REQUIRED: 1 and 2
ACTION CONSENT ITEMS 1-2: (Kenoyer/Madrigal; 7/0)

CONSENT ITEMS

An item may be removed from consent and discussed at the request of an audience member or Commissioner.

CONSENT

A. Consider approving the minutes from the Redevelopment Successor Agency of March 1, 2016. (Funding Source: Not Applicable)

Staff Recommendations:
• Motion approving the minutes from the Redevelopment Successor Agency of March 1, 2016.

Clerk; Stephanie Lopez, 577-5397, slopez@modestogov.com
ACTION: Motion (Kenoyer/Madrigal; 7/0) approving the minutes from the Redevelopment Successor Agency of March 1, 2016.

CONSENT

B. Consider approving the declaration of City of Modesto Redevelopment Successor Agency-owned property of the approximately 1.5-acre surface parking lot adjacent to the Modesto Centre Plaza at the corner of 11th and K streets (APN 105-048-011) as surplus land and directing the Executive Director to follow the procedures set forth in the Surplus Land Act for the sale of surplus land. (Funding Source: Redevelopment Successor Agency)

Staff Recommendations:

• Resolution approving the declaration of City of Modesto Redevelopment Successor Agency-owned property of approximately 1.5-acre surface parking lot adjacent to the Modesto Centre plaza at the corner of 11th and K Streets (APN 105-048-011) as surplus land and directing the Executive Director to follow the procedures set forth in the Surplus Land Act for the sale of surplus land.

Community & Economic Development; Laurie Smith, 577-5347, lsmith@modestogov.com

ACTION: Resolution 01-2020 (Kenoyer/Madrigal; 7/0) approving the declaration of City of Modesto Redevelopment Successor Agency-owned property of the approximately 1.5-acre surface parking lot adjacent to the Modesto Centre Plaza at the corner of 11th and K streets (APN 105-048-011) as surplus land and directing the Executive Director to follow the procedures set forth in the Surplus Land Act for the sale of surplus land.

MATTERS TOO LATE FOR THE AGENDA

None.

ADJOURNMENT

This meeting was adjourned at 7:20 p.m.

Attest: ________________________________

STEPHANIE LOPEZ, Agency Secretary
TO: Chair & Agency Members

THROUGH: Joseph P. Lopez, Executive Director

FROM: Jose M. Sanchez, Agency Counsel

SUBJECT: Settlement Agreement between Successor Agency and Civic Partners Modesto, Inc. and Loan Agreement between City and Successor Agency for Payment of the Settlement Amount

CONTACT: Jose M. Sanchez, Agency Counsel, 209-577-5284, jsanchez@modestogov.com

DESCRIPTION:
Consider approving a Settlement Agreement between Successor Agency and Civic Partners Modesto, Inc. in the amount of $300,000 and Loan Agreement from the City to the Successor Agency to fund the Settlement Agreement. (Funding Source: General Fund and RPTTF Fund)

STRATEGIC PLAN ELEMENT:
This item is related to the 2020-2025 Strategic Plan goal of promoting trust and engagement.

BACKGROUND:
On May 25, 2016 the City of Modesto Redevelopment Successor Agency received a claim for money or damages from Civic Partners Modesto, Inc. (“Civic Partners”). Following rejection by the Successor Agency of the claim, Civic Partners filed Case No. 9000266 in Stanislaus Superior Court (the “Litigation”).

The Litigation includes claims against the Successor Agency under that certain Lease Agreement between the former Redevelopment Agency (the “Former Agency”) and Civic Partners, pursuant to which Civic Partners leased property from the Former Agency at 1010 10th Street and that certain Parking Agreement between Civic Partners and the Former Agency for parking related to the leased property. Both the Lease Agreement and the Parking Agreement are “Enforceable Obligations,” as defined in the redevelopment Dissolution Act (ABx1 26, together with AB 1484 and SB 107) that were in place prior to June 28, 2011. The Successor Agency can only enter into a new Enforceable Obligation unless it is related to an existing Enforceable Obligation.

DISCUSSION
After several years of negotiation, including mediation, on the Litigation claim, the Successor Agency and Civic Partners have agreed to a Settlement Agreement, pursuant to which the
Successor Agency will pay $300,000 (the “Settlement Amount”) to Civic Partners to Settle the Litigation. A copy of the Settlement Agreement is attached as Exhibit A. The Successor Agency is requesting approval of the Settlement Agreement with Civic Partners.

The Successor Agency can only pay an Enforceable Obligation if it is included on a Recognized Obligation Payment Schedule that has been approved by the Oversight Board to the Successor Agency and the Department of Finance. In order to pay the Settlement Amount, the Successor Agency will need to borrow funds from the City, as permitted by Section 34173(h)(1) of the Dissolution Act.

The City and Agency staff have prepared the Loan Agreement attached as Exhibit B. Under the Loan Agreement, the City will loan the Successor Agency the Settlement Amount, and will charge interest at the LAIF rate until repayment. In turn, the Successor Agency has included the Loan on the Recognized Obligation Payment Schedule (“ROPS”) for 2022-2023. Once the ROPS is approved, the Successor Agency will repay the City Loan from Redevelopment Property Tax Trust Funds as approved on the ROPS.

The Successor Agency has requested that the Oversight Board to the Successor Agency approve the Settlement Agreement and the Loan Agreement at its meeting on January 10, 2022, subject to approval of these agreements by the Successor Agency and the City.

**FISCAL IMPACT:**
By entering into the Settlement Agreement, the Successor Agency is avoiding the risk of the additional costs of going to trial and any potential liability if the Successor Agency loses the case. There is also the risk that if the Successor Agency wins the case that it may not be able to recover the additional costs of trying the case.

The City will be loaning the funds to the Successor Agency to pay for the Settlement Amount of $300,000, and the Successor Agency will not be able to repay the City until the next ROPS payment is received by the Successor Agency to reimburse the City for the amounts due under the Loan Agreement.

**COMMITTEE RECOMMENDATION:**
This agenda item was not presented to a Council Committee.

**RECOMMENDED MODESTO REDEVELOPMENT SUCCESSOR AGENCY ACTION:**
**Staff Recommendations:**
Resolution approving a Settlement and General Release with Civic Partners Modesto, Inc. in the amount of $300,000, and authorizing the Executive Director or his designee, to execute the settlement agreement.
Resolution approving a Loan Agreement from the City of Modesto to the Successor Agency in the amount of $300,000 pursuant to Health and Safety Code Section 34173(h)(1), and authorizing the Executive Director or his designee, to execute the loan agreement.

Approved by: Jose M. Sanchez, City Attorney
City Council, January 11, 2022

Settlement Agreement between Successor Agency and Civic Partners Modesto, Inc. and Loan Agreement between City and Successor Agency for Payment of the Settlement Amount

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________________________________________
Joseph P. Lopez, City Manager

Attachments:
1. RDSA Resolution approving a Settlement and General Release with Civic Partners Modesto, Inc.
2. RDSA Resolution approving a Loan agreement from the City of Modesto to the Successor Agency
3. Exhibit A-Settlement Agreement
4. Exhibit B-Loan Agreement

5039959.1
WHEREAS, the City of Modesto Redevelopment Successor Agency (the “Successor Agency”) is the successor in interest to the Redevelopment Agency of the City of Modesto and is subject to, among other things, provisions in Assembly Bill x1 26 (together with AB 1484 and SB 107, the “Dissolution Act”); and

WHEREAS, on January 23, 2017 Civic Partners Modesto, Inc. (“Civic Partners”) filed Case No. 9000266 against the Successor Agency in Stanislaus Superior Court (the “Litigation”); and

WHEREAS, after years of negotiation and mediation, the Successor Agency and Civic Partners have agreed to settle the Litigation; and

WHEREAS, in order to settle the Litigation, the Successor Agency has agreed to provide a settlement amount to Civic Partners in the amount of Three Hundred Thousand Dollars ($300,000) (the “Settlement Amount”); and

WHEREAS, pursuant to Section 34177.3 of the Dissolution Act, the Agency may not create a new enforceable obligation (defined in Section 34171(d) of the Dissolution Act) except in compliance with an enforceable obligation that existed prior to June 28, 2011; and

WHEREAS, the Successor Agency is entering into the Settlement Agreement, thereby creating a new enforceable obligation, with respect to agreements that were in
full force and effect between the Successor Agency and Civic Partners prior to June 28, 2011; and

WHEREAS, the City Attorney has negotiated a settlement agreement (the “Settlement Agreement”), substantially in the form on file with the Successor Agency Secretary and as presented to this Successor Agency Board.

NOW, THEREFORE, BE IT RESOLVED by the governing Board of the City of Modesto Redevelopment Successor Agency that it hereby approves the Settlement Agreement, substantially in the form on file with the Successor Agency Secretary, and as presented to this Board.

BE IT FURTHER RESOLVED, that the Executive Director, or his designee, is hereby authorized to execute the Settlement Agreement, in a form approved by the Agency Counsel, and to execute all documents and to take all actions necessary to carry out the intent of this Resolution.

The foregoing Resolution was introduced in a regular meeting of the governing board of the City of Modesto Redevelopment Successor Agency held on the 11 day of January, 2022, by Board Member ________, who moved its adoption, which motion being duly seconded by Board Member ______, was upon roll call carried and the resolution adopted by the following vote:

AYES:  Board Members:

NOES:  Board Members:

ABSENT:  Board Members:

ATTEST: _____________________________
DANA SANCHEZ, Interim Secretary
(SEAL)
APPROVED AS TO FORM:

BY: ________________________________
   JOSE M. SANCHEZ, Successor Agency Counsel

5039792.1
RESOLUTION APPROVING A LOAN AGREEMENT FROM THE CITY OF MODESTO TO THE SUCCESSOR AGENCY IN THE AMOUNT OF $300,000 PURSUANT TO HEALTH AND SAFETY CODE SECTION 34173(h)(1) AND AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE, TO EXECUTE THE LOAN AGREEMENT

WHEREAS, the City of Modesto Redevelopment Successor Agency (the “Successor Agency”) is the successor in interest to the Redevelopment Agency of the City of Modesto and is subject to, among other things, provisions in Assembly Bill 26 (together with AB 1484 and SB 107, the “Dissolution Act”); and

WHEREAS, on January 23, 2017 Civic Partners Modesto, Inc. (“Civic Partners”) filed Case No. 9000266 against the Successor Agency in Stanislaus Superior Court (the “Litigation”); and

WHEREAS, after years of negotiation and mediation, the Successor Agency and Civic Partners have agreed to settle the Litigation (the “Settlement Agreement”); and

WHEREAS, in order to settle the Litigation, the Successor Agency has agreed to provide a settlement amount to Civic Partners in the amount of Three Hundred Thousand Dollars ($300,000) (the “Settlement Amount”); and

WHEREAS, pursuant to Section 34177.3 of the Dissolution Act, the Agency may not create a new enforceable obligation (defined in Section 34171(d) of the Dissolution Act) except in compliance with an existing enforceable obligation that existed prior to June 28, 2011; and

WHEREAS, the Successor Agency is entering into the Settlement Agreement, thereby creating a new enforceable obligation, with respect to agreements that were in
full force and effect between the Successor Agency and Civic Partners prior to June 28, 2011; and

WHEREAS, in order to pay the Settlement Amount within the time period negotiated in the Settlement Agreement, the Successor Agency will need to borrow funds from the City and reimburse the City from Redevelopment Property Tax Trust Funds (“RPTTF”), as defined in the Dissolution Act; and

WHEREAS, pursuant to Section 34173(h)(1) of the Dissolution Act, the City is authorized to loan funds to the Successor Agency to pay for enforceable obligations (the “City Loan”), and an enforceable obligation shall be deemed to be created for the repayment of the City Loan; and

WHEREAS, the Successor Agency is entering into this Agreement to borrow the Settlement Amount to be paid under the Settlement Agreement; and

WHEREAS, the Successor Agency Board approved the Settlement Agreement on January 11, 2022; and

WHEREAS, concurrently at this meeting, the City Council is approving the City Loan from the City to the Successor Agency; and

WHEREAS, City and Successor Agency staff have prepared a loan agreement (the “Loan Agreement”), substantially in the form on file with the Successor Agency Secretary and as presented to this Successor Agency Board; and

WHEREAS, the Settlement Agreement and the Loan Agreement were both approved by the Oversight Board to the Successor Agency on January 10, 2022, contingent on the approval by the Successor Agency of the Settlement Agreement and the
approval of the City Council and the Successor Agency Board of the Loan Agreement;

and

WHEREAS, the loan from the City to the Successor Agency was included on the 2022-2023 Recognized Obligation Payment Schedule (“ROPS”), which was approved by the Oversight Board on January 10, 2022.

NOW, THEREFORE, BE IT RESOLVED by the governing Board of the City of Modesto Redevelopment Successor Agency that it hereby approves the Loan Agreement, substantially in the form on file with the Successor Agency Secretary, and as presented to this Board.

BE IT FURTHER RESOLVED, that the Executive Director, or his designee, is hereby authorized to execute the Loan Agreement, in a form approved by the Agency Counsel, and to execute all documents and to take all actions necessary to carry out the intent of this Resolution.

The foregoing Resolution was introduced in a regular meeting of the governing board of the City of Modesto Redevelopment Successor Agency held on the 11 day of January, 2022, by Board Member ________, who moved its adoption, which motion being duly seconded by Board Member _______, was upon roll call carried and the resolution adopted by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST: _____________________________
DANA SANCHEZ, Interim Secretary
(SEAL)
APPROVED AS TO FORM:

BY: _________________________________________
    JOSE M. SANCHEZ, Successor Agency Counsel

5039297.1
SETTLEMENT AGREEMENT AND GENERAL RELEASE

Civil Partners Modesto, Inc. v. The City of Modesto Redevelopment Successor Agency, et al.
Stanislaus Superior Court, Case No.: 9000266

This Settlement Agreement and General Release (this “Agreement”) is made by and between Plaintiff and Cross-Defendant Civic Partners Modesto, Inc. (“Plaintiff”) and Defendant and Cross-Complainant the City of Modesto Redevelopment Successor Agency (the “Agency”), on behalf of itself and all of its current and former officers, employees and agents. Plaintiff and the Agency shall be referred to collectively as the “Parties.”

The Agency is the successor in interest to the Redevelopment Agency of the City of Modesto and is subject to, among other things, provisions in Assembly Bill x1 26 and together with AB 1484 and SB 107, the “Dissolution Act.”

Pursuant to Section 34177.3 of the Dissolution Act, the Agency may not create a new enforceable obligation (defined in Section 34171(d) of the Dissolution Act) except in compliance with an enforceable obligation that existed prior to June 28, 2011.

The Agency is entering into this Agreement with respect to one or more Enforceable Obligations that were in full force and effect between the Parties prior to June 28, 2011.

This Agreement encompasses all claims of any type between the Parties, including but not limited to, the claims arising in any way out of the facts alleged in any pleading, including any complaint or cross-complaint, filed by the Parties in the Stanislaus Superior Court case captioned above (9000266) (the “Litigation”).

The Parties now desire, without any admission of liability by any of the Parties, to settle all claims arising out of the Litigation in exchange for dismissals with prejudice of all pleadings, including complaints and cross-complaints, in the Litigation and the consideration set forth in this Agreement.

Except as expressly provided herein, once this Agreement is fully executed by the Parties, (a) the Parties will cease all litigation activity in the Litigation, including, but not necessarily limited to, discovery, requests for documents through California’s Public Records Act, and motion practice (the “Agreement to Stay Litigation”) and (b) the Agency will recommend and both actively and diligently take all necessary actions to obtain any required approval of the terms of this Agreement by the Oversight Board and the California Department of Finance (“Approval Obligations”).

With the exception of the Agreement to Stay Litigation and the Agency’s Approval Obligations, the performance provided for in this Agreement, as described herein, is contingent upon approval of such actions by the Oversight Board to the Agency and the California Department of Finance as provided in California Health & Safety...
Code Section 34179. The Parties acknowledge that time is of the essence for securing such approvals.

In the event any required approvals described herein have not been obtained on or before January 24, 2022, Plaintiff shall have the right, upon written notice to Agency, to suspend the Agreement to Stay Litigation, in order to seek to have a new trial date set by the Court to avoid application of any mandatory dismissal rule and engage in other litigation activities in the Litigation. In the event Plaintiff elects to suspend the Agreement to Stay Litigation, each Party upon written notice to the other Party shall have the right to terminate this Agreement at any point before all approvals by the Oversight Board and the California Department of Finance set forth herein have been obtained.

Subject to obtaining the Oversight Board and the California Department of Finance approvals described herein, the Parties further agree as follows:

1. The Agency will deliver to Plaintiff Three Hundred Thousand Dollars and Zero Cents ($300,000.00) in good funds (“Settlement Amount”). The payment will be made within five (5) days after, and provided that, all the following have occurred: (i) receipt of this Agreement executed by Plaintiff; (ii) execution of this Agreement by the Agency; (iii) approval of the Agreement by the Agency’s governing board; (iv) approval of the Agreement by the Agency’s Oversight Board; (v) approval of the Agreement by the California Department of Finance; and (vi) approval by the California Department of Finance of a loan from the City of Modesto to the Agency sufficient to cover the Settlement Amount pursuant to Section 34173(h)(1) of the Dissolution Act, which approvals the Agency shall promptly seek.

The Settlement Amount shall be made by check payable to FSG Lawyers Client Trust Account FBO Civic Partners Modesto, Inc., and delivered to:

FSG Lawyers PC
19800 MacArthur Blvd., Suite 1100
Irvine, CA 92612-2425
Attn: James D. Stroffe, Esq.

2. Within ten (10) days of the payment under this Agreement having been delivered, each Party shall cause all of that Party’s claims, pleadings, and complaints pending in the Litigation to be dismissed with prejudice, and Plaintiff shall promptly cause the Litigation to be closed.

3. Plaintiff and the Agency fully and finally release and waive any and all claims, controversies, liabilities, judgments, causes of action, damages, demands, liens, costs, attorneys’ fees and expenses, known and unknown, vested or contingent, direct or indirect, whether recoverable under the Constitution, statutes or common law of the United States of America or the State of California, or any other state, including but not limited to 42 U.S.C. §§ 1983 and 1988, that the Parties may have, had, or may now have against the other party and any of their respective officials, boards, officers, directors, employees, agents, heirs, successors, assigns,
representatives, attorneys, insurers, insurance programs and risk pools (collectively referred to as the “Released Parties”), arising from, relating to or pursuant to the Litigation. The releases contained herein do not extend to liability for breach of this Agreement. The Parties explicitly acknowledge reading Section 1542 of the California Civil Code, which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” The Parties hereby waive application of Section 1542 of the Civil Code, understanding that, as a consequence of this waiver, the Parties will not be permitted to make any further claims against Released Parties, regardless of whether the Parties should eventually suffer or discover additional loss, damage, or injury related to the claims arising in the Litigation or related to the subject matter of the Litigation. This Agreement expresses a full and complete settlement of all liability claimed and denied, regardless of the aforesaid consideration.

4. The Parties further acknowledge and agree that settlement of these claims is not an admission of liability of unconstitutional or illegal or otherwise wrongful conduct by or on the part of any of the Released Parties, the same being denied, and shall not serve as evidence or notice of wrongdoing by or on the part of the Released Parties. The Parties also further acknowledge and agree that settlement is made to avoid the uncertainty of the outcome of litigation and the expense in time and money of further litigation.

5. Each Party will bear its own costs, fees and expenses, including each Party’s own attorneys’ fees.

6. This Agreement shall be governed and construed in accordance with the laws of the State of California.

7. This Agreement constitutes the entire agreement between the Parties on the subject matters that this Agreement covers and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing, signed by the Parties.

8. The Parties acknowledge they have been represented by attorneys in the negotiations for and preparation of this Agreement, they have read this Agreement, they are fully aware of its contents, and they have freely and voluntarily entered into the settlement and terms set forth in this Agreement.

9. Each party or agent thereof executing this Agreement is duly authorized to enter into and execute this Agreement in such capacity.
10. This Agreement may be executed in multiple original counterparts, each of which shall constitute an original document, and all of which in the aggregate shall constitute one and the same agreement. Unless otherwise stated herein, facsimile and electronic signatures transmitted via PDF attachment or DocuSign shall be effective for all purposes as if original.

11. If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall nonetheless continue in full force and effect without being impaired or invalidated in any way.

12. In any action to enforce the terms of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys’ fees and costs of litigation.

13. Time is of the essence with respect to all provisions of this Agreement, including, without limitation, securing approval of this Agreement by the Agency’s governing board, Agency’s Oversight Board, and the California Department of Finance.

In witness thereof, the Parties, by their duly authorized representatives, affix their signatures hereto.

Dated: ____________________________
CIVIC PARTNERS MODESTO, INC.
Plaintiff and Cross-Defendant

By: ____________________________
Steven P. Semingson, President

Dated: ____________________________
THE CITY OF MODESTO
REDEVELOPMENT SUCCESSOR AGENCY
Defendant and Cross-Complainant

By: ____________________________
Joseph Lopez

Dated: ____________________________
Approved as to form
David Mehretu
Meyers Nave
Counsel for Defendant and Cross-Complainant
THE CITY OF MODESTO
REDEVELOPMENT SUCCESSOR AGENCY

By: ____________________________
David Mehretu
LOAN AGREEMENT BETWEEN
THE CITY OF MODESTO AND THE CITY OF MODESTO
REDEVELOPMENT SUCCESSOR AGENCY

THIS LOAN AGREEMENT (this “Agreement”) is entered into as of January 11, 2022 (the “Effective date”), by and between the City of Modesto, a California municipal corporation (“City”) and the Modesto Redevelopment Successor Agency (the “Successor Agency”). The City and the Successor Agency are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Successor Agency is the successor in interest to the Redevelopment Agency of the City of Modesto and is subject to, among other things, provisions in Assembly Bill x1 26 (together with AB 1484 and SB 107, the “Dissolution Act”); and

WHEREAS, on January 23, 2017 Civic Partners Modesto, Inc. (“Civic Partners”) filed Case No. 9000266 against the Successor Agency in Stanislaus Superior Court (the “Litigation”); and

WHEREAS, after years of negotiation and arbitration, the Successor Agency and Civic Partners have agreed to settle the Litigation (the “Settlement Agreement”); and

WHEREAS, in order to settle the Litigation, the Successor Agency has agreed to provide a settlement amount to Civic Partners in the amount of Three Hundred Thousand Dollars ($300,000) (the “Settlement Amount”); and

WHEREAS, pursuant to Section 34177.3 of the Dissolution Act, the Agency may not create a new enforceable obligation (defined in Section 34171(d) of the Dissolution Act) except in compliance with an existing enforceable obligation that existed prior to June 28, 2011; and

WHEREAS, the Successor Agency is entering into the Settlement Agreement, thereby creating a new enforceable obligation, with respect to agreements that were in full force and effect between the Successor Agency and Civic Partners prior to June 28, 2011; and

WHEREAS, in order to pay the Settlement Amount within the time period negotiated in the Settlement Agreement, the Successor Agency will need to borrow funds from the City of Modesto (the “City”) and reimburse the City from Redevelopment Property Tax Trust Funds (“RPTTF”), as defined in the Dissolution Act; and

WHEREAS, pursuant to Section 34173(h)(1) of the Dissolution Act, the City is authorized to loan funds to the Successor Agency to pay for enforceable obligations (the “City Loan”), and an enforceable obligation shall be deemed to be created for the repayment of the City Loan; and
WHEREAS, the Successor Agency is entering into this Agreement to borrow the Settlement Amount to be paid under the Settlement Agreement; and

WHEREAS, the Successor Agency Board approved the Settlement Agreement on January 11, 2022; and

WHEREAS, the City Council and the Successor Agency Board approved the City Loan from the City to the Successor Agency on January 11, 2022; and

WHEREAS, the Settlement Agreement and this Agreement were both approved by the Oversight Board to the Successor Agency on January 10, 2022, contingent on the approval by the Successor Agency of the Settlement Agreement and the approval of the City Council and the Successor Agency Board of this Agreement; and

WHEREAS, the loan from the City to the Successor Agency was included on the 2022-2023 Recognized Obligation Payment Schedule ("ROPS"), which was approved by the Oversight Board on January 10, 2022.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

ARTICLE 1
LOAN TERMS

1.1 City Loan.

(a) Loan Amount. City agrees to lend to Successor Agency, and Successor Agency agrees to borrow from and repay to City, the City Loan in the amount not to exceed Three Hundred Thousand Dollars ($300,000) ("Loan Proceeds").

(b) Loan Repayment. The total outstanding City Loan principal together with accrued interest thereon, is due and payable on June 30, 2022 (the “Maturity Date”).

(c) Interest. Commencing on the date of initial disbursement of the proceeds of the City Loan and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the City Loan will accrue on the outstanding principal balance, at the rate equal to the “Apportionment Rate” earned by the California Local Agency Investment Fund ("LAIF") maintained by the California Treasurer’s Office (Government Code 16429.1) for the most recently completed fiscal quarter. Interest will be calculated on the basis of a year of 365 days and charged for the actual number of days that principal is outstanding.
1.2 **Prepayment.** Successor Agency may prepay the City Loan, including any outstanding accrued and unpaid interest, in whole or in part, at any time, without penalty or other charge. Any partial prepayment shall be applied first to the outstanding principle balance of the City Loan and then accrued and unpaid interest that is due.

1.3 **Payment.** The outstanding principal of the City Loan, together with any outstanding accrued and unpaid interest, is due and payable immediately upon the receipt of RPTTF collected for and distributed to the Successor Agency by the Auditor-Controller of Stanislaus County.

**ARTICLE 2**
**DISBURSEMENT AND ACCOUNTING; USE OF FUNDS**

2.1 **Disbursement.** Loan Proceeds may be disbursed to the Successor Agency upon the receipt of a drawdown request executed by the City Finance Director, in her capacity as staff to the Successor Agency.

2.2 **Use of Loan Proceeds.** Successor Agency may use the Loan Proceeds to pay the Settlement Amount.

**ARTICLE 3**
**CITY REPRESENTATIONS AND WARRANTIES**

3.1 **Standing.** Successor Agency warrants that it is in good standing with respect to all laws and regulations related to Successor Agency operations.

3.2 **Authority.** Successor Agency warrants that it has authority, and has completed all proceedings and obtain all approvals necessary to execute, deliver, and perform under this Agreement.

3.3 **Valid and Binding Obligations.** Successor Agency warrants that, when duly executed by the Successor Agency, this Agreement shall constitute the legal, valid and binding obligations of Successor Agency enforceable in accordance with its terms. Successor Agency hereby waives any defense to the enforcement of the terms of this Agreement related to alleged invalidity of any provisions or conditions contained in this Agreement.

3.4 **No Adverse Action.** Successor Agency warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect the Successor Agency with respect to this Agreement.
ARTICLE 4
CITY COVENANTS

4.1 Notification. Until the City Loan is repaid in full, the Successor Agency covenants that it will promptly notify City in writing of the occurrence of any event with might materially and adversely affect its ability to perform its obligations under this Agreement, or which constitutes, or with the giving of notice or passage of time or both would constitute, an Event of Default under this Agreement. Such occurrences include, but are not limited to, the threat or initiation of lawsuits or administrative proceedings against the Successor Agency that results in a final judgment, order or decree that has a materially adverse effect on the business of the Successor Agency and its ability to perform its obligations under this Agreement, the revocations of material operating licenses, or problems with vendors, suppliers, or customers that has a material effect on the business of the Successor Agency and its ability to perform its obligations under this Agreement.

ARTICLE 5
INDEMNITY REQUIREMENTS

5.1 Indemnity. Successor Agency shall defend hold harmless and indemnify City, its officers, employees and agents from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorney’s fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement and any of its operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

ARTICLE 6
DEFAULT AND REMEDIES

6.1 Events of Default. Each of the following events will constitute an event of default (“Event of Default”) under this Agreement:

(a) Nonpayment. Failure of the Successor Agency to make payments pursuant to Article 1 hereof.

(b) Failure to Perform. Successor Agency’s failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

6.2 Declaring Default. Whenever any Event of Default has occurred, other than a failure to pay any sums due, City shall give written notice of default to Successor Agency. If the default is not cured within thirty (30) calendars after the Date of Default (defined herein), or any extension approved in writing by City, City may enforce its rights and remedies under Section 6.3 below. Any default that has occurred will be deemed to
commence on the date that written notice of default is effective pursuant to Section 7.2 of this Agreement (the “Date of Default”). In the event of a default in the payment of any payment when due, the Successor Agency shall have ten (10) calendar days from the payment due date to cure such default whether or not City gives written notice.

6.3 Remedies. Upon the occurrence of any Event of Default, City, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) declare that outstanding principal of the City Loan, all interest accrued and outstanding, and all other sums owing to City immediately due and payable, and

(b) take whatever other action at law or in equity which may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

6.4 Disclaimer. If City elects to employ any of the remedies available to it in connection with any Event of Default, City will not be liable for: (1) the payment of any expenses incurred in connection with the exercise of any remedy available to City, and (2) the performance or nonperformance of any other obligations of City under this Agreement.

ARTICLE 7
MISCELLANEOUS

7.1 Conflict of Interest; Interest of Employees, Agents, Consultants, Officers and Officials of City or Successor Agency. Except for approved eligible administrative or personnel costs, no employee, agent or consultant who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

7.2 Notices. Any notice, request or consent required pursuant to this Agreement shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, addressed as follows:

If to Successor Agency: Successor Agency of the Redevelopment Agency of the City of Modesto
1010 10th St.
Modesto, CA
Attention: Executive Director
7.3 Successors and Assigns. All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of City and Successor Agency, respectively, and all personal claiming or through them.

7.4 Attorney’s Fees. If any action is instituted by any party to enforce this Agreement or to collect any sums due hereunder or pursuant to this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

7.5 Severability. If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

7.6 Amendments/Entire Agreement. City and Successor Agency reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alternation or variation of the terms of this Agreement is valid unless in writing and signed and acknowledged and approved by both Parties. This Agreement constitutes the entire agreement of the Parties and no oral understandings or agreement not incorporated herein shall be binding on either Party.

7.7 Time. Time is of the essence in the performance of the terms and conditions of this Agreement.

7.8 Governing Law. The laws of the State of California govern this Agreement.

7.9 City's Rights and Consent. No forbearance, failure or delay by City in exercising any right, power, or remedy, nor any single or partial exercise of City or any right or remedy hereunder shall preclude the further exercise of such right, power or remedy. The consent of City to any act or omission by Successor Agency may not be constructed as City consent to any other or subsequent act or omission or as a waiver of the requirement to obtain City consent in any other instance. All of City rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by the City.

7.10 Duration/Survival. This Agreement continues in full force and effect until the City Loan is repaid in full.
7.11 **Headings.** The headings within this Agreement are for the purpose of reference only and do not limit or otherwise affect any of the terms of this Agreement.

7.12 **Counterparts, Facsimile Copies.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. This Agreement is effective upon transmission by any party to the other parties of a fully signed facsimile copy of the Agreement after the formal approval by the governing body of the Successor Agency and the City Council. In case of any conflict, the counterpart maintained by the City Council will be deemed to be determinative.

**SIGNATURES ON FOLLOWING PAGE**
IN WITNESS WHEREOF, City and the Successor Agency have executed this Agreement as of the date first above written.

**City of Modesto**, a municipal corporation

By: __________________________________
    City Manager

Attest:

_______________________________
   City Clerk

Approved as to Form:

_______________________________
   City Attorney

**City of Modesto Redevelopment Successor Agency**, a public agency

By: ______________________________
    Executive Director

Attest:

_______________________________
   Secretary

Approved as to Form:

_______________________________
   Successor Agency Counsel