



City of San Leandro

Meeting Date: September 21, 2015

Staff Report

File Number: 15-512 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.E.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for City and Successor Agency Resolutions Approving a Loan by the City of San Leandro to the Successor Agency to the Redevelopment Agency of the City of San Leandro to Advance Funds for the Payment of Enforceable Obligations from the General Fund Unrestricted Economic Uncertainty Reserve

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council and Successor Agency Board of Directors adopt resolutions approving a loan from the City to the Successor Agency to advance funds for the payment of enforceable obligations. This action will remedy a negative fund balance of the Successor Agency and provide a mechanism for putting the shortfall on the Successor Agency's Recognized Obligation Payment Schedule, thereby creating a process for recovering the funds.

BACKGROUND

The City of San Leandro, serving in its capacity as Successor Agency to the Redevelopment Agency of the City of San Leandro ("Successor Agency") is responsible for preparing a Recognized Obligation Payment Schedule ("ROPS") every six months. The ROPS lists all payments due on Enforceable Obligations of the former Redevelopment Agency for the upcoming six month period.

Enforceable Obligations are defined as:

- Bonds including debt service reserve set asides;
- Loans borrowed by the Agency;
- Payments required by the federal or state governments;
- Pension and unemployment payments for Agency employees;
- Judgments, settlements or binding arbitration decisions; and

- Any legally binding and enforceable contract.

After each ROPS is adopted, it is submitted to the State Department of Finance (“DOF”) for review and approval. Once the ROPS receives approval from the DOF, the funds needed to pay the Enforceable Obligations are remitted to the Successor Agency by the Alameda County Auditor-Controller. The funding comes from the Redevelopment Property Tax Trust Fund (“RPTTF”), which is the property tax increment that used to be allocated as revenue to the Redevelopment Agency.

In addition to reviewing the validity of the obligations on the ROPS, the DOF also assesses any difference between estimated and actual payments from previous ROPS periods. If any actual payments were less than the amount requested on the ROPS, the DOF reduces the amount of the next RPTTF remittance by an equivalent amount. The DOF also assesses all of the Successor Agency’s fund balances to determine if funds are available to pay enforceable obligations. If so, the RPTTF remittances are reduced accordingly. This system is designed to ensure that Successor Agencies have enough funding on hand to meet their obligations, but no more.

Analysis

In its review of the Successor Agency’s most recent ROPS, the DOF determined that the Successor Agency had a substantial amount of funding on hand to pay enforceable obligations. Therefore, the DOF made a significant reduction to the amount of RPTTF remitted to the Successor Agency. The Successor Agency believes that the DOF determination was erroneous, primarily due to the following issues:

1. Timing of the King Settlement Payment

The Successor Agency makes payments every six months pursuant to a legal settlement related to the termination of a ground lease (the “King settlement”). The ROPS period from July through December 2014 included a scheduled payment of \$750,000 due on July 1, 2014. To ensure timely payment, the Successor Agency wired the funds, in two installments on June 26 and June 27, 2014. In its review, the DOF looked only at expenditures made between July 1 and December 31. Because no payment was made during that precise period, the DOF determined that the Successor Agency had been overpaid during the prior period and should have funding on hand to make future enforceable obligation payments.

2. Use of Bond Proceeds for 2014 Refunding

In fall 2014, the Successor Agency and City issued refunding bonds to take advantage of reduced interest rates. That action included a refunding of Redevelopment Agency bonds issued in 2002 and 2004. The Successor Agency believes that the DOF did not take into account the use of remaining bond proceeds from the 2002 and 2004 bonds as part of the 2014 bond refunding. A total of \$2,784,111 in bond proceeds was used as part of the refunding to reduce the amount of principal owed. As with the King Payment, this resulted in the DOF determining that the Successor Agency had more funds on hand than it actually did.

As a result of these two issues, the Successor Agency’s RPTTF remittance for the

January-June 2015 ROPS was considerably less than what was needed to meet its obligations for that period.

City Loan to Remedy the Shortfall

The Successor Agency's Enforceable Obligations are not discretionary payments that can be adjusted as needed to meet available funding. The bulk of the payments owed are debt service on bonds and the payments due under the King settlement. Therefore, the Successor Agency will make all payments owed through December 31, 2015 and attempt to recover the shortfall on the next ROPS. The most effective means of doing this is by establishing a loan from the City to cover the negative fund balance and list that loan on the ROPS as a new enforceable obligation.

Based on a review of the current fund balances, upcoming payment obligations, and a limited amount of interest and other revenue earned by the Successor Agency, staff believes that the Successor Agency's shortfall is \$779,051.

If the loan is approved by the City Council and Successor Agency Board of Directors, the funding will be transferred from the City's General Fund reserves to the Successor Agency and the loan will be listed on the ROPS for January-June 2016. Funding for that ROPS will be remitted to the Successor Agency in early January 2016 from the RPTTF. Assuming the loan is approved by the Department of Finance as an enforceable obligation, the loan will be repaid in full upon receipt of the next RPTTF distribution.

Staff expects that the loan will be approved by DOF, since Section 34173 (h) of the California Health and Safety Code specifically allows the City to loan money to the Successor Agency to cover enforceable obligations and the ROPS is supposed to include such advances. If the obligation is not approved by the DOF - an outcome that staff does not anticipate - the City and Successor Agency will find themselves in essentially the same position they are in currently. Eventually, if the shortfall is not remedied through the ROPS process, the City would need to correct the negative balance in the Successor Agency accounts. Staff anticipates working closely with the DOF to obtain their concurrence on this action prior to the transfer of any funds.

Fiscal Impacts

This loan will require a transfer of \$779,051 from General Fund reserves, which requires increasing the FY 2015-16 Budget by the same amount. The loan is contingent on the DOF's approval of the next ROPS. Upon the DOF approval, the funds would be transferred from the City to the Successor Agency to meet cash flow requirements. Although staff cannot guarantee DOF approval, it is anticipated that the loan will be approved as an enforceable obligation and repaid in January 2016.

Budget Authority

This action will require an appropriation of \$779,051 from General Fund Unrestricted Economic Uncertainty reserves.

ATTACHMENT

Attachment to Resolutions

- Loan Agreement between the City of San Leandro and the Successor Agency

PREPARED BY: Jeff Kay, Business Development Manager, Community Development Department



City of San Leandro

Meeting Date: September 21, 2015

Resolution - SA

File Number: 15-510 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the Successor Agency to the Redevelopment Agency of the City of San Leandro Approving a Loan Agreement with the City of San Leandro to Advance Funds to the Successor Agency for the Payment of Enforceable Obligations

WHEREAS, pursuant to Resolution No. 2012-01, adopted by the City Council of the City of San Leandro on January 9, 2012, the City of San Leandro ("City") agreed to serve as Successor Agency to the Redevelopment Agency of the City of San Leandro ("Successor Agency") commencing upon the dissolution of the Agency on February 1, 2012; and

WHEREAS, the Successor Agency is required to prepare a Recognized Obligation Payment Schedule ("ROPS") for each six-month period setting forth all enforceable obligations of the Successor Agency; and

WHEREAS, an adjustment made to the Successor Agency ROPS for July-December 2015 by the State Department of Finance ("DOF") resulted in a reduction in funding that was remitted to the Successor Agency for the payment of enforceable obligations; and

WHEREAS, the DOF adjustment will result in the Successor Agency having insufficient funds to pay its enforceable obligations for the July-December ROPS period, or result in a negative fund balance at the beginning of the January 1 through June 30, 2015 ROPS period; and

WHEREAS, a loan from the City will be needed to cover the funding shortfall during the July-December 2015 ROPS period; and

WHEREAS, Section 34173 (h) of the California Health and Safety Code allows the City to loan money to the Successor Agency to pay for enforceable obligations; and

WHEREAS, the loan will be repaid in full by the Successor Agency as soon as sufficient funding is received from the Redevelopment Property Tax Trust Fund, anticipated to

be in January 2016; and

WHEREAS, a loan agreement (the "Loan Agreement") in the amount of \$779,051.00 has been negotiated between the City of San Leandro and the Successor Agency to the Redevelopment Agency of the City of San Leandro to pay for enforceable obligations of the Successor Agency, a copy of which is attached, and is presented to this Successor Agency board; and

WHEREAS, the Successor Agency Governing Board is familiar with the contents of the Loan Agreement; and

WHEREAS, the Executive Director recommends approval of the Loan Agreement.

NOW, THEREFORE, the governing board of the Successor Agency to the Redevelopment Agency of the City of San Leandro does RESOLVE as follows:

Section 1. The above recitals are true and correct and are incorporated herein in their entirety.

Section 2. The Loan Agreement in the amount of \$779,051.00 is hereby approved by the Successor Agency Board, substantially in the form presented to this Board;

Section 3. The Loan Agreement will occur contingent upon the approval of the ROPS guaranteeing the repayment of the Loan amount.

Section 4. The Executive Director is hereby authorized to execute the Loan Agreement and to take all actions and to execute any and all documents necessary and to make all approvals necessary or appropriate to carry out and implement the terms of this Resolution.

2514108.1

**LOAN AGREEMENT BETWEEN THE
CITY OF SAN LEANDRO AND THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO**

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into as of September 21, 2015 (the “**Effective date**”), by and between the City of San Leandro (the “**City**”), a California charter city and the Successor Agency to the Redevelopment Agency of the City of San Leandro (the “**Successor Agency**”). The City and the Successor Agency are hereinafter collective referred to as the “**Parties.**”

RECITALS

WHEREAS, on June 29, 2011 the legislature of the State of California (the “**State**”) adopted Assembly Bill x1 26 (“**AB 26**”), which amended provisions of the California Redevelopment Law (Cal. Health and Safety Code Sections 33000 et seq.); and

WHEREAS, pursuant to AB 26 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26 (together with AB 1484 the “**Dissolution Law**”), the Agency was dissolved on February 1, 2012; and

WHEREAS, pursuant to Resolution No. 2012-01, adopted by the City Council of the City of San Leandro on January 9, 2012, the City agreed to serve as Successor Agency to the Redevelopment Agency of the City of San Leandro commencing upon the dissolution of the Agency on February 1, 2012; and

WHEREAS, under the Dissolution Law, the Successor Agency is required to prepare a Recognized Obligation Payment Schedule (“**ROPS**”) for each six-month period setting forth all enforceable obligations of the Successor Agency; and

WHEREAS, an adjustment made to the Successor Agency ROPS for July-December 2015 by the State Department of Finance (“**DOF**”) resulted in a reduction in funding that was remitted to the Successor Agency for the payment of enforceable obligations and; and

WHEREAS, the DOF adjustment will result in the Successor Agency having insufficient funds to pay its enforceable obligations for the July-December ROPS period, or result in a negative fund balance at the beginning of the January 1 through June 30, 2015 ROPS period; and

WHEREAS, a loan from the City will be needed to cover the funding shortfall during the July-December 2015 ROPS period; and

WHEREAS, Section 34173 (h) of the Dissolution Law allows the City to loan money to the Successor Agency to pay for enforceable obligations and permits the Successor Agency to put repayment of the City loan on a subsequent ROPS; and

WHEREAS, the loan will be repaid in full by the Successor Agency as soon as sufficient funding is received from the Redevelopment Property Tax Trust Fund, anticipated to be in January 2016; and

WHEREAS, the City has agreed to provide a loan in an amount not to exceed \$779,051.00 (the "**Loan**") to the Successor Agency in accordance with Section 34173(h).

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 Loan.

- (a) Loan Amount. City agrees to lend to Successor Agency, and Successor Agency agrees to borrow from and repay to City, a Loan in the amount not to exceed Seven hundred seventy-nine thousand and fifty-one dollars (\$779,051.00) ("**Loan Proceeds**").
- (b) Loan Repayment. The total outstanding Loan principal together with accrued interest thereon, is due and payable on June 30, 2016 (the "**Maturity Date**").
- (c) Interest. Commencing on the date of initial disbursement of the proceeds of the Loan and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the 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 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 accrued and unpaid interest that is due, then to the outstanding principle balance of the Loan.

1.3 Payment. The outstanding principal of the Loan, together with any outstanding accrued and unpaid interest, is due and payable immediately upon the receipt of Redevelopment Property Tax Trust Fund revenues collected for the Successor Agency by Alameda County and the State of California, but no later than the Maturity Date.

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 his capacity as staff to the Successor Agency.

2.2 Use of Loan Proceeds. Successor Agency may use the Loan Proceeds to pay Enforceable Obligations (as such term is defined in the Dissolution Law).

ARTICLE 3
SUCCESSOR AGENCY 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
SUCCESSOR AGENCY COVENANTS

4.1 Notification. Until the 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 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 either 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
of the City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: Executive Director

If to City City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

or to such other addresses as the parties may designate by notice as set forth above.

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 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 San Leandro,
a charter city

**Successor Agency to the
Redevelopment Agency of the
City of San Leandro,** a public
entity

By: _____
City Manager

By: _____
Executive Director

Attest:

Attest:

City Clerk

Secretary

Reviewed as to Form:

Reviewed as to Form:

City Attorney

Successor Agency Counsel



City of San Leandro

Meeting Date: September 21, 2015

Resolution - Council

File Number: 15-511 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City Council of the City of San Leandro Approving a Loan to the Successor Agency to the Redevelopment Agency of the City of San Leandro to Advance Funds for the Payment of Enforceable Obligations Appropriated from the General Fund Unrestricted Economic Uncertainty Reserve

WHEREAS, pursuant to Resolution No. 2012-01, adopted by the City Council of the City of San Leandro on January 9, 2012, the City of San Leandro ("City") agreed to serve as Successor Agency to the Redevelopment Agency of the City of San Leandro ("Successor Agency") commencing upon the dissolution of the Agency on February 1, 2012; and

WHEREAS, the Successor Agency is required to prepare a Recognized Obligation Payment Schedule ("ROPS") for each six-month period setting forth all enforceable obligations of the Successor Agency; and

WHEREAS, an adjustment made to the Successor Agency ROPS for July-December 2015 by the State Department of Finance ("DOF") resulted in a reduction in funding that was remitted to the Successor Agency for the payment of enforceable obligations; and

WHEREAS, the DOF adjustment will result in the Successor Agency having insufficient funds to pay its enforceable obligations for the July-December ROPS period, or result in a negative fund balance at the beginning of the January 1 through June 30, 2015 ROPS period; and

WHEREAS, a loan from the City will be needed to cover the funding shortfall during the July-December 2015 ROPS period; and

WHEREAS, Section 34173 (h) of the California Health and Safety Code allows the City to loan money to the Successor Agency to pay for enforceable obligations and permits the Successor Agency to put repayment of the City loan on a subsequent ROPS; and

WHEREAS, the loan will be repaid in full by the Successor Agency as soon as sufficient funding is received from the Redevelopment Property Tax Trust Fund, anticipated to be in January 2016; and

WHEREAS, a loan agreement (the "Loan Agreement") in the amount of \$779,051.00 has been negotiated between the City of San Leandro and the Successor Agency to the Redevelopment Agency of the City of San Leandro to pay for enforceable obligations of the Successor Agency, a copy of which is attached, and it is presented to this City Council; and

WHEREAS, the City Council is familiar with the contents of the Loan Agreement; and

WHEREAS, the City Manager recommends approval of the Loan Agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

Section 1. The above recitals are true and correct and are incorporated herein in their entirety.

Section 2. The Loan Agreement in the amount of \$779,051.00 is hereby approved by the City Council, and appropriation of General Fund Unrestricted Economic Uncertainty Reserve is hereby approved, substantially in the form presented to the City Council;

Section 3. The Loan Agreement will occur contingent upon the approval of the ROPS guaranteeing the repayment of the Loan amount.

Section 4. The City Manager is hereby authorized to execute the Loan Agreement and to take all actions and to execute any and all documents necessary and to make all approvals necessary or appropriate to carry out and implement the terms of this Resolution.

2514107.1

**LOAN AGREEMENT BETWEEN THE
CITY OF SAN LEANDRO AND THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO**

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into as of September 21, 2015 (the “**Effective date**”), by and between the City of San Leandro (the “**City**”), a California charter city and the Successor Agency to the Redevelopment Agency of the City of San Leandro (the “**Successor Agency**”). The City and the Successor Agency are hereinafter collective referred to as the “**Parties.**”

RECITALS

WHEREAS, on June 29, 2011 the legislature of the State of California (the “**State**”) adopted Assembly Bill x1 26 (“**AB 26**”), which amended provisions of the California Redevelopment Law (Cal. Health and Safety Code Sections 33000 et seq.); and

WHEREAS, pursuant to AB 26 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26 (together with AB 1484 the “**Dissolution Law**”), the Agency was dissolved on February 1, 2012; and

WHEREAS, pursuant to Resolution No. 2012-01, adopted by the City Council of the City of San Leandro on January 9, 2012, the City agreed to serve as Successor Agency to the Redevelopment Agency of the City of San Leandro commencing upon the dissolution of the Agency on February 1, 2012; and

WHEREAS, under the Dissolution Law, the Successor Agency is required to prepare a Recognized Obligation Payment Schedule (“**ROPS**”) for each six-month period setting forth all enforceable obligations of the Successor Agency; and

WHEREAS, an adjustment made to the Successor Agency ROPS for July-December 2015 by the State Department of Finance (“**DOF**”) resulted in a reduction in funding that was remitted to the Successor Agency for the payment of enforceable obligations and; and

WHEREAS, the DOF adjustment will result in the Successor Agency having insufficient funds to pay its enforceable obligations for the July-December ROPS period, or result in a negative fund balance at the beginning of the January 1 through June 30, 2015 ROPS period; and

WHEREAS, a loan from the City will be needed to cover the funding shortfall during the July-December 2015 ROPS period; and

WHEREAS, Section 34173 (h) of the Dissolution Law allows the City to loan money to the Successor Agency to pay for enforceable obligations and permits the Successor Agency to put repayment of the City loan on a subsequent ROPS; and

WHEREAS, the loan will be repaid in full by the Successor Agency as soon as sufficient funding is received from the Redevelopment Property Tax Trust Fund, anticipated to be in January 2016; and

WHEREAS, the City has agreed to provide a loan in an amount not to exceed \$779,051.00 (the "**Loan**") to the Successor Agency in accordance with Section 34173(h).

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 Loan.

- (a) Loan Amount. City agrees to lend to Successor Agency, and Successor Agency agrees to borrow from and repay to City, a Loan in the amount not to exceed Seven hundred seventy-nine thousand and fifty-one dollars (\$779,051.00) ("**Loan Proceeds**").
- (b) Loan Repayment. The total outstanding Loan principal together with accrued interest thereon, is due and payable on June 30, 2016 (the "**Maturity Date**").
- (c) Interest. Commencing on the date of initial disbursement of the proceeds of the Loan and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the 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 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 accrued and unpaid interest that is due, then to the outstanding principle balance of the Loan.

1.3 Payment. The outstanding principal of the Loan, together with any outstanding accrued and unpaid interest, is due and payable immediately upon the receipt of Redevelopment Property Tax Trust Fund revenues collected for the Successor Agency by Alameda County and the State of California, but no later than the Maturity Date.

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 his capacity as staff to the Successor Agency.

2.2 Use of Loan Proceeds. Successor Agency may use the Loan Proceeds to pay Enforceable Obligations (as such term is defined in the Dissolution Law).

ARTICLE 3
SUCCESSOR AGENCY 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
SUCCESSOR AGENCY COVENANTS

4.1 Notification. Until the 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 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 either 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
of the City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: Executive Director

If to City City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

or to such other addresses as the parties may designate by notice as set forth above.

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 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 San Leandro,
a charter city

**Successor Agency to the
Redevelopment Agency of the
City of San Leandro,** a public
entity

By: _____
City Manager

By: _____
Executive Director

Attest:

Attest:

City Clerk

Secretary

Reviewed as to Form:

Reviewed as to Form:

City Attorney

Successor Agency Counsel