



# City of San Leandro

Meeting Date: January 19, 2016

## Staff Report

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**File Number:** 15-730 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.D.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for Resolutions of the City Council and the Successor Agency to the Redevelopment Agency of the City of San Leandro Re-Entering Into a Loan Agreement for the Plaza Project Loan with the City of San Leandro

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### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council and the Governing Body of the Successor Agency to the former Redevelopment Agency of the City of San Leandro approve the Resolutions Reinstating the Loan Agreement and Amending and Restating the Promissory Note for the Plaza Project Loan, with an outstanding balance of \$2,299,315, plus interest.

### BACKGROUND

In 2002, the City of San Leandro loaned the Redevelopment Agency of the City of San Leandro \$2,887,617.44 for the purposes of carrying out redevelopment activities in the Plaza Project Area ("Plaza Project Loan"). On December 5, 2002, a Promissory Note was executed to acknowledge the loan. On June 21, 2004, Resolution 2004-011 RDA confirmed and codified the loan, which had a remaining balance at the time of \$2,569,400.00.

On March 7, 2011, in response to a proposal by the State Legislature to eliminate all redevelopment agencies state-wide, the Redevelopment Agency passed Resolution No. 2011-006 RDA, which authorized full repayment of the Plaza Project Loan in the amount of \$2,137,273.49. Earlier that year, the Redevelopment Agency also made a regularly scheduled debt service payment on the loan of \$300,000. Total payments made in 2011 were \$2,437,273.

In June of 2011, the State Legislature adopted Assembly Bill AB x1 26 ("AB 26"), which caused the dissolution of all redevelopment agencies. AB 26 included a "claw back" provision that retroactively invalidated payments made on City-Agency loan agreements after January 1, 2011. On December 12, 2013, the Successor Agency initiated litigation challenging the "claw back" of payments made toward Redevelopment Agency loans after January 2011, as

well as the California Department of Finance's (DOF) denial of approximately \$11.1 million in enforceable obligations for the Joint Project Loan (\$2.0 million) and capital projects (\$9.1 million).

On September 23, 2014, the Superior Court of California issued an order for the Successor Agency on the issue of the \$11.1 million in enforceable obligations, predominantly siding with the DOF on the issue of the "claw back". The court determined that the Successor Agency was obligated to remit \$2,437,273 reversing the two payments made on the Plaza Project Loan in 2011.

On October 19, 2015, the City Council approved Resolution 2015-177 appropriating \$2,437,273 from the General Fund Economic Uncertainty Reserve Fund to reverse the Plaza Project Loan payments made in 2011. The funds were then remitted to the Alameda County Auditor-Controller and subsequently redistributed to the local taxing entities. The City, as a taxing entity itself, received \$321,305.46 from the redistribution.

On October 28, 2015, the Successor Agency received a Finding of Completion from the DOF certifying that all payments that were required pursuant to the dissolution of the Redevelopment Agency were made. With the approval of the Oversight Board, the Successor Agency may now reinstate the Plaza Project Loan and repay the remaining amount owed to the City. Approval from the Oversight Board will be requested at its January 27, 2016 meeting.

In order for the loan to become an enforceable obligation, the Oversight Board must make a finding that the loan was made for legitimate redevelopment purposes. In keeping with the goals of the Plaza Project Area, improvements resulted in significant revitalization of the area, and have been of benefit to all taxing entities that share in the property tax revenue, removing impediments to development, eliminating adverse conditions in the project area, and catalyzing private development, thus resulting in an increase in assessed valuation and property tax revenue that accrues to the taxing entities. This includes projects such as the West Estudillo pedestrian connection, downtown pedestrian and light improvements, the downtown history walk, and the acquisition and assembly of properties within development opportunity sites.

If approved, the Successor Agency's debts under the loan to the City may be restored as an enforceable obligation and listed on the Recognized Obligation Payment Schedule (ROPS). Funds to pay the obligation to the City will be provided to the Successor Agency by the Alameda County Auditor-Controller via the Redevelopment Property Tax Trust Fund and then the Successor Agency can pay the City consistent with the terms of the re-entered Agreement.

Repayment of the loan will be subject to several amended terms, per Health and Safety Code, Section 34191.4:

- Interest rate will be recalculated from 6% to 3% from the point of inception.
- Payments will be made to principal first, then interest.
- For each ROPS period, the loan will be repaid after other enforceable obligations are paid (such as capital projects on the ROPS).

- Maximum payment per year will be 50% of the increase between the amount distributed to the taxing entities in the Plaza Project Area from the Redevelopment Property Tax Trust Fund during that year and the amount distributed to the taxing entities during the base year of 2012-13 (the increment).
- 20% of yearly payments received by the City must be transferred to the City's Low and Moderate Income Housing Asset Fund.

The current outstanding balance on the loan is \$2,299,315. Including interest, the City will receive approximately \$3,369,000 in payments towards the loan by fiscal year 2022-23. Of this, approximately \$2,695,000 will be remitted to the General Fund and \$674,000 (20%) will be remitted to the Low and Moderate Income Housing Asset Fund and used to support the development of affordable housing.

In keeping with State law, a defined repayment schedule was developed with annual payments of \$574,829. Payments will be made based upon availability of funds after payment of other enforceable obligations on the ROPS and the yearly cap. Based upon this requirement, sufficient funds are projected to be available to begin payments in fiscal year 2017-18 and complete loan payoff by fiscal year 2022-23. The total amount of the payments will also vary based on the availability of funds because a longer payment period will result in increased interest.

### **Previous Actions**

- On June 21, 2004 the Redevelopment Agency passed Resolution No. 2004-011 RDA confirming the loan from the City General Fund to the Plaza Project Area.
- On March 7, 2011 the Redevelopment Agency passed Resolution No. 2011-006 RDA appropriating funding to pay the full remaining balance on the Plaza Project Loan of \$2,137,273.49 to the City.
- On October 19, 2015 the City Council passed Resolution No. 2015-177 appropriating \$2,437,273 to be paid to the Alameda County Auditor-Controller to reverse the payments made to the City towards the Plaza Project Loan in 2011.

### **Fiscal Impacts**

If this action is approved by the City Council and the Oversight Board, the City will receive approximately \$3,369,000 in loan payments by fiscal year 2022-23. Of this, approximately \$2,695,000 will be remitted to the General Fund and approximately \$674,000 (20%) will be remitted to the Low and Moderate Income Housing Asset Fund and used to support the development of affordable housing. The amount paid each year may vary, based upon availability of funds after payment of other enforceable obligations and the yearly cap.

### **ATTACHMENTS**

#### **Attachments to Resolutions**

- Plaza Loan Restated Loan Agreement, Payment Schedule and Promissory Note

**PREPARED BY:** Katie Bowman, Business Development Specialist, Community Development Department



# City of San Leandro

Meeting Date: January 19, 2016

## Resolution - Council

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**File Number:** 15-725

**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 Authorizing the Execution of a Reinstated Loan Agreement Between the City and the Successor Agency to the Redevelopment Agency of the City of San Leandro and Authorizing Execution of an Amended and Restated Promissory Note for the Plaza Project Loan

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WHEREAS, pursuant to Resolution 2012-001, adopted by the City Council of the City of San Leandro (the "**City Council**") on January 9, 2012, the City Council agreed to serve as the governing board to the Successor Agency to the Redevelopment Agency of the City of San Leandro (the "**Successor Agency**") commencing upon dissolution of the Redevelopment Agency of the City of San Leandro (the "**Former Agency**") on February 1, 2012, pursuant to Assembly Bill x1 26 (as further amended by AB 1484 and SB 107, the "**Dissolution Law**"); and

WHEREAS, prior to the dissolution of redevelopment agencies, city loans to redevelopment agencies with insufficient financing capacity were commonplace, and were not only expressly authorized but encouraged by Health and Safety Code Sections 33220, 33600, 33601 and 33610 and Government Code Section 53600 *et seq.*; and

WHEREAS, on December 5, 2002 the City of San Leandro (the "**City**") made a loan from its general fund in the amount of \$2,887,617.44 (the "**Plaza Project Loan**") to the Former Agency to support redevelopment activities undertaken by the Former Agency in the Plaza Redevelopment Project Area, adopted pursuant to Ordinance No. 1295 - N.S., adopted December 28, 1960, (as amended, the "**Plaza Project Area**"); and

WHEREAS, by Resolution No. 2004-011 adopted June 21, 2004, the City ratified the Plaza Project Loan at which time the outstanding balance was \$2,596,400.00; and

WHEREAS, to evidence its obligation to repay the Plaza Project Loan, the Redevelopment Agency executed and delivered to City a promissory note dated as of

December 5, 2002 in the amount of the Plaza Project Loan (the “**Original Note**”); and

WHEREAS, the Original Note bears interest at the rate of six percent per annum; and

WHEREAS, the Original Note provides for interest-only payments, permits prepayment of the principal balance at any time, and matures on July 5, 2038; and

WHEREAS, the current principal balance due pursuant to the Original Note is \$2,299,315 (the “**Outstanding Balance**”); and

WHEREAS, an Oversight Board for the Successor Agency was established pursuant to the Dissolution Law (the “**Oversight Board**”); and

WHEREAS, pursuant to the Dissolution Law, on October 28, 2015 the Successor Agency was granted a finding of completion from the California State Department of Finance (the “**DOF**”), allowing loan agreements between the former redevelopment agency and sponsoring entity to be placed on the ROPS; and

WHEREAS, pursuant to Section 34191.4(b) of the Dissolution Law, following the receipt of a finding of completion from the DOF, the Plaza Project Loan shall be deemed to be an enforceable obligation; subject to approval by the Oversight Board; and

WHEREAS, the City finds that the Plaza Project Loan was for legitimate redevelopment purposes and will present the Plaza Project Loan to the Oversight Board for such finding; and

WHEREAS, pursuant to Section 34191.4(b)(3) of the Dissolution Law, the outstanding interest shall be recalculated from the date of origination of the Plaza Project Loan on a quarterly basis, at a simple interest rate of three percent (3%); and

WHEREAS, staff has prepared a defined schedule for repayment of the recalculated loan over a reasonable amount of years with moneys repaid applied first to the principal and second to the interest, at an interest rate of three percent (3%); and

WHEREAS, Section 34191.4(b)(3)(A) of the Dissolution Law provides that, the maximum repayment amount authorized each fiscal year for repayments combined shall be equal to one-half of the increase between the amount distributed to the taxing entities in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012-13 base year, provided, however, that calculation of the amount distributed to taxing entities during the 2012-13 base year shall not include any amounts distributed to taxing entities pursuant to the due diligence review process; and

WHEREAS, Section 34191.4(b)(3)(C) of the Dissolution Law provides that, twenty percent of any loan payment made to the City shall be transferred to the Low and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid; and

WHEREAS, the City and the Successor Agency have agreed to enter into a Reinstated Loan Agreement to effect a payment plan for the repayment from the Successor

Agency to the City (the “**Restated Loan Agreement**”); and

WHEREAS, the Restated Loan Agreement includes terms that are consistent with the Dissolution Law; and

WHEREAS, the execution of the Restated Loan Agreement was approved by the governing board for the Successor Agency by resolution adopted on January, 19, 2016; and

WHEREAS, the Restated Loan Agreement will be presented to the Oversight Board for consideration.

NOW THEREFORE, IT IS RESOLVED by the City Council of the City of San Leandro that it hereby:

1. Finds that the above recitals are true and correct and a part of this Resolution.
2. Subject to the approval of the Oversight Board, authorizes the Execution of the Restated Loan Agreement, substantially in the form attached hereto as Exhibit A, and authorizes the City Manager to execute a restated note to evidence the loan attached hereto as Exhibit B.
3. Authorizes the City Manager or designee to execute such other documents and to take such other actions as necessary to carry out the intent of this Resolution.
4. This Resolution takes effect immediately upon its adoption.

**REINSTATED LOAN AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND THE SUCCESSOR AGENCY  
TO THE REDEVELOPMENT AGENCY  
OF THE CITY OF SAN LEANDRO  
FOR THE PLAZA PROJECT LOAN**

This Loan Agreement (this “**Agreement**”) is entered into as of January \_\_, 2016 (the “**Effective date**”), by and between the City of San Leandro, a California charter city (“**City**”) and the Successor Agency to the Redevelopment Agency of the City of San Leandro, a public agency (the “**Successor Agency**”). The City and the Successor Agency are hereinafter collective referred to as the “**Parties.**”

**RECITALS**

**WHEREAS**, the City Council of the City established the Redevelopment Agency of the City of San Leandro (the “**Agency**”) and approved the Redevelopment Plan for the Agency pursuant to California Health and Safety Code Sections 33000 et seq. (“**Redevelopment Law**”); and

**WHEREAS**, the City and the Agency entered into that certain note dated December 5, 2002 (the “**Loan Agreement**”) pursuant to which the City agreed to loan the Agency Two Million Eight Hundred Eighty-Seven Thousand Six Hundred Seventeen and 44/100 Dollars (\$2,887,617.44) from the general fund (the “**Loan**”), as permitted under the Redevelopment Law, to fund redevelopment activities; and

**WHEREAS**, pursuant to the Loan Agreement, the Loan accrued interest at a rate of six percent (6%); and

**WHEREAS**, the Loan was subsequently confirmed under Redevelopment Agency Resolution 2004-011 RDA at which time the remaining balance was \$2,596,400; and

**WHEREAS**, the Redevelopment Agency prepared a repayment schedule with payments scheduled to be completed in Fiscal Year 2020-21; and

**WHEREAS**, the current principal balance due under the Loan Agreement is \$2,299,315 (“**Outstanding Balance**”); and

**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 Redevelopment Law and provided for the dissolution of redevelopment agencies; and

**WHEREAS**, pursuant to AB 26 (together with AB 1484 and SB 107, the “**Dissolution Law**”) and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26, the Agency was dissolved on February 1, 2012; and

**WHEREAS**, the Successor Agency is the successor in interest to the Agency under the Dissolution Law; and

**WHEREAS**, pursuant to Section 34191.4 of the Dissolution Law, following the receipt of a finding of completion from the California State Department of Finance (the “DOF”), the Loan Agreement shall be deemed to be an enforceable obligation; subject to approval by the oversight board, and provided further that the oversight board make a finding that the Loan was for legitimate redevelopment purposes; and

**WHEREAS**, upon the finding of the oversight board that the Loan is an enforceable obligation, the interest on the Outstanding Balance of the Loan shall be recalculated from origination at the rate of 3%; and

**WHEREAS**, Pursuant to Section 34191.4(b) of the Dissolution Law, repayment of the Loan is subject to the following restrictions:

- (a) the Loan must be repaid over a reasonable term of years at an interest rate not to exceed 3%; and
- (b) the maximum repayment amount authorized each fiscal year for repayment of the Loan cannot exceed one-half of the increase between the amount distributed to the taxing entities in that fiscal year and the amount distributed to taxing entities in fiscal year 2012-2013; and
- (c) twenty percent of any Loan repayments shall be deducted from the amount repaid and transferred to the Low and Moderate Income Housing Asset Fund (as defined in the Dissolution Law); and

**WHEREAS**, the Successor Agency has prepared a repayment schedule that reflects the requirements of Section 34191.4(b).

**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 REPAYMENT TERMS**

### **1.1 Repayment Terms.**

- (a) Repayment Amount. Successor Agency agrees to repay to City, the principal amount of the Loan of Two Million Two Hundred and Ninety-Nine Thousand Three Hundred and Fifteen Dollars (\$2,299,315.00) plus interest, calculated as set forth in Section 1.1(b).



- (b) Interest Rate. Commencing from the origination date of the loan agreement and continuing until all principal amount of the Loan is repaid in full, interest will accrue at the rate of 3%, computed quarterly and compounded annually.
- (c) Annual Payment. Commencing in Fiscal Year 2017/2018, Successor shall make payments to City in the amount not to exceed the maximum repayment amount authorized by Section 34191.4(b)(3) of the Dissolution Law. Payments shall be applied first to the principal balance due and second to interest. Successor Agency has set forth a proposed repayment schedule in Exhibit A attached to this Agreement and incorporated herein by this reference.
- (d) Maturity Date. Successor will make each Payment upon the receipt of tax revenues from the Alameda County Auditor Controller. The total outstanding Repayment Amount, is due and payable on July 5, 2022 (the “**Maturity Date**”).

1.2 Prepayment. Subject to the requirements of Section 34191.4, the Successor Agency may prepay the outstanding principal of the Loan, in whole or in part, at any time.

## **ARTICLE 2 SUCCESSOR AGENCY REPRESENTATIONS AND WARRANTIES**

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

2.2 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.

2.3 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.

2.4 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 3 SUCCESSOR AGENCY COVENANTS**

3.1 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 which might materially and adversely affect its ability to perform its obligations under this Agreement, or which constitutes, or which 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 4 INDEMNITY REQUIREMENTS**

4.1 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 5 DEFAULT AND REMEDIES**

5.1 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 to make payments pursuant to Article 1 hereof.
- (b) Failure to Perform. Failure, neglect or refusal of the Successor Agency to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

5.2 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) calendar days after the Date of Default (defined herein), or any extension approved in writing by City, City may enforce its rights and remedies under Section 5.3 below. Any default that has occurred will be deemed to commence on the date that written notice of default is effective pursuant to Section 6.1 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.

5.3 Remedies. Upon the occurrence of any Event of Default, City, in addition to any other remedies provided herein or by law, has 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 Loan, and all other sums owing to City under this Agreement 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 the rights of City hereunder.

5.4 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 6 MISCELLANEOUS**

6.1 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 Community Development  
Agency of the City of San Leandro  
835 E. 14<sup>th</sup> St.  
San Leandro, CA 94577  
Attention: Executive Director

If to City                              City of San Leandro  
835 E. 14<sup>th</sup> St.  
San Leandro, CA 94577  
Attention: City Manager

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

6.2 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.

6.3 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.

6.4 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.

6.5 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, alteration 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.

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

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

6.8 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 construed 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.

6.9 Duration/Survival. This Agreement continues in full force and effect until the Repayment is repaid in full.

6.10 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.

6.11 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 Successor Agency have executed this Agreement as of the date first above written.

**City of San Leandro,**  
a charter city

**Successor Agency of the Redevelopment  
Development Agency of the City of  
San Leandro,** a public agency

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Executive Director

Attest:  
  
\_\_\_\_\_  
City Clerk

Attest:  
  
\_\_\_\_\_  
Secretary

Approved as to Form:  
  
\_\_\_\_\_  
City Attorney

Approved as to Form:  
  
\_\_\_\_\_  
Successor Agency Counsel

Exhibit A  
**San Leandro Redevelopment Agency**  
**Plaza Project Area Loan**

**RECALCULATION OF CITY LOAN AT 3% RATE - BASED ON LEVEL FUTURE PAYMENTS**

FY Ending	Beginning Balance	Principal Payments (2)	Interest Payments	Principal Ending Balance	Annual Interest Recalculated (1)	Cumulative Unpaid Interest
<b>Pre Dissolution - Actual Payments</b>						
2004	2,596,400	0	155,784	2,596,400	68,979	68,979
2005	2,596,400	0	155,784	2,596,400	68,979	137,959
2006	2,596,400	0	155,784	2,596,400	68,979	206,938
2007	2,596,400	0	155,784	2,596,400	68,979	275,918
2008	2,596,400	0	155,784	2,596,400	68,979	344,897
2009	2,596,400	144,216	155,784	2,452,184	68,979	413,877
2010	2,452,184	152,869	147,131	2,299,315	68,979	482,856
2011	2,299,315	0	0	2,299,315	68,979	551,836
<b>Post Dissolution - Estimated Payments</b>						
2012	2,299,315	0	0	2,299,315	68,979	620,815
2013	2,299,315	0	0	2,299,315	68,979	689,794
2014	2,299,315	0	0	2,299,315	68,979	758,774
2015	2,299,315	0	0	2,299,315	68,979	827,753
2016	2,299,315	0	0	2,299,315	68,979	896,733
2017	2,299,315	0	0	2,299,315	68,979	965,712
2018	2,299,315	574,829	0	1,724,486	51,735	1,017,447
2019	1,724,486	574,829	0	1,149,657	34,490	1,051,936
2020	1,149,657	574,829	0	574,829	17,245	1,069,181
2021	574,829	574,829	0	0	0	1,069,181
2022	0	0	574,829	0	0	494,353
2023	0	0	494,353	0	0	0
<b>Total - Post Dissolution</b>		<b>3,368,496</b>				
Amount Applied to Housing SA (3)		673,699				
Net Repayment to General Fund		2,694,797				

- (1) Per HSC Sec. 34191.4(b)(3), interest on the remaining principal of the loan (\$2,299,315) has been recalculated from the date of origination at a rate of 3%
- (2) Future payments have been applied first to principal and then to accrued interest.
- (3) 20% of the payment amount after dissolution must be paid to the Housing Successor Agency.

**AMENDED AND RESTATED PROMISSORY NOTE**

\$2,299,315.00

San Leandro, California  
\_\_\_\_\_, 2016

**FOR VALUE RECEIVED**, the City of San Leandro, acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of San Leandro (“**Successor Agency**”) promises to pay to the City of San Leandro, a municipal corporation (“**City**”), in lawful money of the United States of America, the principal sum of Two Million, Two Hundred Ninety-Nine Thousand, Three Hundred Fifteen Dollars (\$2,299,315.00), together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Amended and Restated Promissory Note (this “**Reinstated Note**”) amends and restates in its entirety that certain Promissory Note dated as of December 5, 2002, executed by the Redevelopment Agency of the City of San Leandro for the benefit of the City of San Leandro in the original principal amount of \$2,887,617.44 (the “**Original Note**”).

Execution of this Note has been approved by resolutions duly adopted by the City Council of the City of San Leandro, the governing board of the Successor Agency, and pursuant to Health and Safety Code Section 34178(a), by the Oversight Board appointed to review the actions of the Successor Agency pursuant to Assembly Bill x1 26.

1. **INTEREST RATE; REPAYMENT.** Interest shall accrue on the outstanding principal balance of this Note at the rate of three percent (3%) interest per annum, commencing upon the origination date of the Original Note. Interest shall be computed quarterly and compounded annually, calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.
2. **PAYMENT DATES; MATURITY DATE.** Commencing upon July 1, 2017, (the “**First Payment Date**”), and on the first day of July during each year thereafter, Successor Agency shall make annual payments of combined principal and interest until the entire indebtedness evidenced hereby is fully paid, except that all remaining indebtedness, if not sooner paid, shall be due and payable upon the Maturity Date (defined below). The amount of the annual payments to be paid beginning on the First Payment Date will be an amount equal to the payment necessary to fully amortize the principal amount of this Note, together with interest at the interest rate specified in Section 1 above. The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on July 5, 2022 (the “**Maturity Date**”). Payments shall be credited first to principal, and second to

the interest. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Successor Agency.

3. PREPAYMENT. Successor Agency may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

4. MANNER OF PAYMENT. All payments on this Note shall be made to City at 835 East 14<sup>th</sup> Street, San Leandro, CA 94577 or such other place as City shall designate to Successor Agency in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

5. MAXIMUM PAYMENT. Pursuant to Section 34191.4 (b), the maximum repayment amount authorized each fiscal year shall be equal to one-half of the increase between the amount distributed to the taxing entities in that fiscal year and the amount distributed to taxing entities pursuant in the 2012-13 base year, provided, however, that calculation of the amount distributed to taxing entities during the 2012-13 base year shall not include any amounts distributed to taxing entities pursuant to the due diligence review process.

6. DEDUCTION FROM PAYMENT. Twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to the Low and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid. Transfers to the Low and Moderate Income Housing Asset Fund are subject to the reporting requirements of subdivision (f) of Section 34176.1 of the Health and Safety Code.

7. EVENTS OF DEFAULT. An event of default ("**Event of Default**") shall arise hereunder if Successor Agency fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Successor Agency thereof in writing.

8. REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Successor Agency, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under this Note or under applicable law. Successor Agency shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder.

9. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum



(the “**Default Rate**”); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Successor Agency is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

## 10. MISCELLANEOUS

10.1 WAIVER. The rights and remedies of City under this Note shall be cumulative and not alternative. No waiver by City of any right or remedy under this Note shall be effective unless in writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of City arising out of this Note can be discharged by City, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by City; (b) no waiver that may be given by City will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Successor Agency will be deemed to be a waiver of any obligation of Successor Agency or of the right of City to take further action without notice or demand as provided in this Note. Successor Agency hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

10.2 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

10.3 GOVERNING LAW. This Note shall be governed by the laws of the State of California.

10.4 PARTIES IN INTEREST. This Note shall bind Successor Agency and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

10.5 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

10.6 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

*SIGNATURES ON FOLLOWING PAGE*

IN WITNESS WHEREOF, Successor Agency has executed and delivered this Note as of the date first written above.

**SUCCESSOR AGENCY**

**THE CITY OF SAN LEANDRO, ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO**

By: \_\_\_\_\_  
Executive Director

ATTEST:  
By: \_\_\_\_\_  
Successor Agency Secretary

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
Successor Agency Counsel

The City of San Leandro, a municipal corporation, hereby acknowledges and agrees to the terms set forth in this Note, and agrees that this Note supersedes in its entirety the Original Note defined above.

**CITY OF SAN LEANDRO, A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
City Manager

ATTEST:  
By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
City Attorney



# City of San Leandro

Meeting Date: January 19, 2016

## Resolution - SA

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**File Number:** 15-729 **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 Authorizing the Execution of a Reinstated Loan Agreement between the City And The Successor Agency and Authorizing Execution of an Amended and Restated Promissory Note for the Plaza Project Loan

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WHEREAS, pursuant to Resolution 2012-001, adopted by the City Council of the City of San Leandro (the "**City Council**") on January 9, 2012, the City Council agreed to serve as the governing board to the Successor Agency to the Redevelopment Agency of the City of San Leandro (the "**Successor Agency**") commencing upon dissolution of the Redevelopment Agency of the City of San Leandro (the "**Former Agency**") on February 1, 2012, pursuant to Assembly Bill x1 26 (as further amended by AB 1484 and SB 107, the "**Dissolution Law**"); and

WHEREAS, prior to the dissolution of redevelopment agencies, city loans to redevelopment agencies with insufficient financing capacity were commonplace, and were not only expressly authorized but encouraged by Health and Safety Code Sections 33220, 33600, 33601 and 33610 and Government Code Section 53600 et seq.; and

WHEREAS, on December 5, 2002 the City of San Leandro (the "**City**") made a loan from its general fund in the amount of \$2,887,617.44 (the "**Plaza Project Loan**") to the Former Agency to support redevelopment activities undertaken by the Former Agency in the Plaza Redevelopment Project Area, adopted pursuant to Ordinance No. 1295 - N.S., adopted December 28, 1960, (as amended, the "**Plaza Project Area**"); and

WHEREAS, by Resolution No. 2004-011 adopted June 21, 2004, the City ratified the Plaza Project Loan at which time the outstanding balance was \$2,596,400.00; and

WHEREAS, to evidence its obligation to repay the Plaza Project Loan, the Redevelopment Agency executed and delivered to City a promissory note dated as of

December 5, 2002 in the amount of the Plaza Project Loan (the “**Original Note**”); and

WHEREAS, the Original Note bears interest at the rate of six percent per annum; and

WHEREAS, the Original Note provides for interest-only payments, permits prepayment of the principal balance at any time, and matures on July 5, 2038; and

WHEREAS, the current principal balance due pursuant to the Original Note is \$2,299,315 (the “**Outstanding Balance**”); and

WHEREAS, an Oversight Board for the Successor Agency was established pursuant to the Dissolution Law (the “**Oversight Board**”); and

WHEREAS, pursuant to the Dissolution Law, on October 28, 2015 the Successor Agency was granted a finding of completion from the California Department of Finance (the “**DOF**”), allowing loan agreements between the former redevelopment agency and sponsoring entity to be placed on the ROPS; and

WHEREAS, pursuant to Section 34191.4(b) of the Dissolution Law, following the receipt of a finding of completion from the DOF, the Plaza Project Loan shall be deemed to be an enforceable obligation; subject to approval by the Oversight Board, and;

WHEREAS, the Successor Agency finds that the Plaza Project Loan was for legitimate redevelopment purposes, and will present the Plaza Project Loan to the Oversight Board for such finding; and

WHEREAS, pursuant to Section 34191.4(b)(3) of the Dissolution Law, the outstanding interest shall be recalculated from the date of origination of the Plaza Project Loan on a quarterly basis, at a simple interest rate of three percent (3%); and

WHEREAS, staff has prepared a defined schedule for repayment of the recalculated loan over a reasonable amount of years with moneys repaid applied first to the principal and second to the interest, at an interest rate of three percent (3%); and

WHEREAS, Section 34191.4(b)(3)(A) of the Dissolution Law provides that, the maximum repayment amount authorized each fiscal year for repayments combined shall be equal to one-half of the increase between the amount distributed to the taxing entities in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012-13 base year, provided, however, that calculation of the amount distributed to taxing entities during the 2012-13 base year shall not include any amounts distributed to taxing entities pursuant to the due diligence review process; and

WHEREAS, Section 34191.4(b)(3)(C) of the Dissolution Law provides that, twenty percent of any loan payment made to the City shall be transferred to the Low and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid; and

WHEREAS, the City and the Successor Agency have agreed to enter into a

Reinstated Loan Agreement to effect a payment plan for the repayment from the Successor Agency to the City (the “**Restated Loan Agreement**”); and

WHEREAS, the Restated Loan Agreement includes terms that are consistent with the Dissolution Law; and

WHEREAS, the execution of the Restated Loan Agreement was approved by the City Council by resolution adopted on January 19, 2016; and

WHEREAS, the Restated Loan Agreement will be presented to the Oversight Board for consideration.

NOW THEREFORE, IT IS RESOLVED by the Governing Board of the Successor Agency to the Redevelopment Agency of the City of San Leandro that it hereby:

1. Finds that the above recitals are true and correct and a part of this Resolution.
2. Subject to approval of the Oversight Board, authorizes the Execution of the Restated Loan Agreement, substantially in the form attached hereto as Exhibit A, and authorizes the Executive Director to execute a restated note to evidence the loan attached hereto as Exhibit B.
3. Authorizes the Executive Director, or his designee to execute such other documents and to take such other actions as necessary to carry out the intent of this Resolution, including without limitation, listing the Restated Loan Agreement on the Recognized Obligation Payment Schedule for the Successor Agency.
4. This Resolution takes effect immediately upon its adoption.

**REINSTATED LOAN AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND THE SUCCESSOR AGENCY  
TO THE REDEVELOPMENT AGENCY  
OF THE CITY OF SAN LEANDRO  
FOR THE PLAZA PROJECT LOAN**

This Loan Agreement (this “**Agreement**”) is entered into as of January \_\_, 2016 (the “**Effective date**”), by and between the City of San Leandro, a California charter city (“**City**”) and the Successor Agency to the Redevelopment Agency of the City of San Leandro, a public agency (the “**Successor Agency**”). The City and the Successor Agency are hereinafter collective referred to as the “**Parties.**”

**RECITALS**

**WHEREAS**, the City Council of the City established the Redevelopment Agency of the City of San Leandro (the “**Agency**”) and approved the Redevelopment Plan for the Agency pursuant to California Health and Safety Code Sections 33000 et seq. (“**Redevelopment Law**”); and

**WHEREAS**, the City and the Agency entered into that certain note dated December 5, 2002 (the “**Loan Agreement**”) pursuant to which the City agreed to loan the Agency Two Million Eight Hundred Eighty-Seven Thousand Six Hundred Seventeen and 44/100 Dollars (\$2,887,617.44) from the general fund (the “**Loan**”), as permitted under the Redevelopment Law, to fund redevelopment activities; and

**WHEREAS**, pursuant to the Loan Agreement, the Loan accrued interest at a rate of six percent (6%); and

**WHEREAS**, the Loan was subsequently confirmed under Redevelopment Agency Resolution 2004-011 RDA at which time the remaining balance was \$2,596,400; and

**WHEREAS**, the Redevelopment Agency prepared a repayment schedule with payments scheduled to be completed in Fiscal Year 2020-21; and

**WHEREAS**, the current principal balance due under the Loan Agreement is \$2,299,315 (“**Outstanding Balance**”); and

**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 Redevelopment Law and provided for the dissolution of redevelopment agencies; and

**WHEREAS**, pursuant to AB 26 (together with AB 1484 and SB 107, the “**Dissolution Law**”) and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26, the Agency was dissolved on February 1, 2012; and

**WHEREAS**, the Successor Agency is the successor in interest to the Agency under the Dissolution Law; and

**WHEREAS**, pursuant to Section 34191.4 of the Dissolution Law, following the receipt of a finding of completion from the California State Department of Finance (the “DOF”), the Loan Agreement shall be deemed to be an enforceable obligation; subject to approval by the oversight board, and provided further that the oversight board make a finding that the Loan was for legitimate redevelopment purposes; and

**WHEREAS**, upon the finding of the oversight board that the Loan is an enforceable obligation, the interest on the Outstanding Balance of the Loan shall be recalculated from origination at the rate of 3%; and

**WHEREAS**, Pursuant to Section 34191.4(b) of the Dissolution Law, repayment of the Loan is subject to the following restrictions:

- (a) the Loan must be repaid over a reasonable term of years at an interest rate not to exceed 3%; and
- (b) the maximum repayment amount authorized each fiscal year for repayment of the Loan cannot exceed one-half of the increase between the amount distributed to the taxing entities in that fiscal year and the amount distributed to taxing entities in fiscal year 2012-2013; and
- (c) twenty percent of any Loan repayments shall be deducted from the amount repaid and transferred to the Low and Moderate Income Housing Asset Fund (as defined in the Dissolution Law); and

**WHEREAS**, the Successor Agency has prepared a repayment schedule that reflects the requirements of Section 34191.4(b).

**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 REPAYMENT TERMS**

### **1.1 Repayment Terms.**

- (a) Repayment Amount. Successor Agency agrees to repay to City, the principal amount of the Loan of Two Million Two Hundred and Ninety-Nine Thousand Three Hundred and Fifteen Dollars (\$2,299,315.00) plus interest, calculated as set forth in Section 1.1(b).



- (b) Interest Rate. Commencing from the origination date of the loan agreement and continuing until all principal amount of the Loan is repaid in full, interest will accrue at the rate of 3%, computed quarterly and compounded annually.
- (c) Annual Payment. Commencing in Fiscal Year 2017/2018, Successor shall make payments to City in the amount not to exceed the maximum repayment amount authorized by Section 34191.4(b)(3) of the Dissolution Law. Payments shall be applied first to the principal balance due and second to interest. Successor Agency has set forth a proposed repayment schedule in Exhibit A attached to this Agreement and incorporated herein by this reference.
- (d) Maturity Date. Successor will make each Payment upon the receipt of tax revenues from the Alameda County Auditor Controller. The total outstanding Repayment Amount, is due and payable on July 5, 2022 (the “**Maturity Date**”).

1.2 Prepayment. Subject to the requirements of Section 34191.4, the Successor Agency may prepay the outstanding principal of the Loan, in whole or in part, at any time.

## **ARTICLE 2 SUCCESSOR AGENCY REPRESENTATIONS AND WARRANTIES**

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

2.2 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.

2.3 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.

2.4 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 3 SUCCESSOR AGENCY COVENANTS**

3.1 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 which might materially and adversely affect its ability to perform its obligations under this Agreement, or which constitutes, or which 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 4 INDEMNITY REQUIREMENTS**

4.1 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 5 DEFAULT AND REMEDIES**

5.1 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 to make payments pursuant to Article 1 hereof.
- (b) Failure to Perform. Failure, neglect or refusal of the Successor Agency to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

5.2 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) calendar days after the Date of Default (defined herein), or any extension approved in writing by City, City may enforce its rights and remedies under Section 5.3 below. Any default that has occurred will be deemed to commence on the date that written notice of default is effective pursuant to Section 6.1 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.

5.3 Remedies. Upon the occurrence of any Event of Default, City, in addition to any other remedies provided herein or by law, has 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 Loan, and all other sums owing to City under this Agreement 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 the rights of City hereunder.

5.4 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 6 MISCELLANEOUS**

6.1 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 Community Development  
Agency of the City of San Leandro  
835 E. 14<sup>th</sup> St.  
San Leandro, CA 94577  
Attention: Executive Director

If to City                              City of San Leandro  
835 E. 14<sup>th</sup> St.  
San Leandro, CA 94577  
Attention: City Manager

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

6.2 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.

6.3 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.

6.4 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.

6.5 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, alteration 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.

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

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

6.8 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 construed 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.

6.9 Duration/Survival. This Agreement continues in full force and effect until the Repayment is repaid in full.

6.10 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.

6.11 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 Successor Agency have executed this Agreement as of the date first above written.

**City of San Leandro,**  
a charter city

**Successor Agency of the Redevelopment  
Development Agency of the City of  
San Leandro,** a public agency

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Executive Director

Attest:  
  
\_\_\_\_\_  
City Clerk

Attest:  
  
\_\_\_\_\_  
Secretary

Approved as to Form:  
  
\_\_\_\_\_  
City Attorney

Approved as to Form:  
  
\_\_\_\_\_  
Successor Agency Counsel

Exhibit A  
**San Leandro Redevelopment Agency**  
**Plaza Project Area Loan**

**RECALCULATION OF CITY LOAN AT 3% RATE - BASED ON LEVEL FUTURE PAYMENTS**

FY Ending	Beginning Balance	Principal Payments (2)	Interest Payments	Principal Ending Balance	Annual Interest Recalculated (1)	Cumulative Unpaid Interest
<b>Pre Dissolution - Actual Payments</b>						
2004	2,596,400	0	155,784	2,596,400	68,979	68,979
2005	2,596,400	0	155,784	2,596,400	68,979	137,959
2006	2,596,400	0	155,784	2,596,400	68,979	206,938
2007	2,596,400	0	155,784	2,596,400	68,979	275,918
2008	2,596,400	0	155,784	2,596,400	68,979	344,897
2009	2,596,400	144,216	155,784	2,452,184	68,979	413,877
2010	2,452,184	152,869	147,131	2,299,315	68,979	482,856
2011	2,299,315	0	0	2,299,315	68,979	551,836
<b>Post Dissolution - Estimated Payments</b>						
2012	2,299,315	0	0	2,299,315	68,979	620,815
2013	2,299,315	0	0	2,299,315	68,979	689,794
2014	2,299,315	0	0	2,299,315	68,979	758,774
2015	2,299,315	0	0	2,299,315	68,979	827,753
2016	2,299,315	0	0	2,299,315	68,979	896,733
2017	2,299,315	0	0	2,299,315	68,979	965,712
2018	2,299,315	574,829	0	1,724,486	51,735	1,017,447
2019	1,724,486	574,829	0	1,149,657	34,490	1,051,936
2020	1,149,657	574,829	0	574,829	17,245	1,069,181
2021	574,829	574,829	0	0	0	1,069,181
2022	0	0	574,829	0	0	494,353
2023	0	0	494,353	0	0	0
<b>Total - Post Dissolution</b>		<b>3,368,496</b>				
Amount Applied to Housing SA (3)		673,699				
Net Repayment to General Fund		2,694,797				

- (1) Per HSC Sec. 34191.4(b)(3), interest on the remaining principal of the loan (\$2,299,315) has been recalculated from the date of origination at a rate of 3%
- (2) Future payments have been applied first to principal and then to accrued interest.
- (3) 20% of the payment amount after dissolution must be paid to the Housing Successor Agency.

**AMENDED AND RESTATED PROMISSORY NOTE**

\$2,299,315.00

San Leandro, California  
\_\_\_\_\_, 2016

**FOR VALUE RECEIVED**, the City of San Leandro, acting in its capacity as the Successor Agency to the Redevelopment Agency of the City of San Leandro ("**Successor Agency**") promises to pay to the City of San Leandro, a municipal corporation ("**City**"), in lawful money of the United States of America, the principal sum of Two Million, Two Hundred Ninety-Nine Thousand, Three Hundred Fifteen Dollars (\$2,299,315.00), together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Amended and Restated Promissory Note (this "**Reinstated Note**") amends and restates in its entirety that certain Promissory Note dated as of December 5, 2002, executed by the Redevelopment Agency of the City of San Leandro for the benefit of the City of San Leandro in the original principal amount of \$2,887,617.44 (the "**Original Note**").

Execution of this Note has been approved by resolutions duly adopted by the City Council of the City of San Leandro, the governing board of the Successor Agency, and pursuant to Health and Safety Code Section 34178(a), by the Oversight Board appointed to review the actions of the Successor Agency pursuant to Assembly Bill x1 26.

1. **INTEREST RATE; REPAYMENT.** Interest shall accrue on the outstanding principal balance of this Note at the rate of three percent (3%) interest per annum, commencing upon the origination date of the Original Note. Interest shall be computed quarterly and compounded annually, calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.
2. **PAYMENT DATES; MATURITY DATE.** Commencing upon July 1, 2017, (the "**First Payment Date**"), and on the first day of July during each year thereafter, Successor Agency shall make annual payments of combined principal and interest until the entire indebtedness evidenced hereby is fully paid, except that all remaining indebtedness, if not sooner paid, shall be due and payable upon the Maturity Date (defined below). The amount of the annual payments to be paid beginning on the First Payment Date will be an amount equal to the payment necessary to fully amortize the principal amount of this Note, together with interest at the interest rate specified in Section 1 above. The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on July 5, 2022 (the "**Maturity Date**"). Payments shall be credited first to principal, and second to

the interest. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Successor Agency.

3. PREPAYMENT. Successor Agency may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

4. MANNER OF PAYMENT. All payments on this Note shall be made to City at 835 East 14<sup>th</sup> Street, San Leandro, CA 94577 or such other place as City shall designate to Successor Agency in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

5. MAXIMUM PAYMENT. Pursuant to Section 34191.4 (b), the maximum repayment amount authorized each fiscal year shall be equal to one-half of the increase between the amount distributed to the taxing entities in that fiscal year and the amount distributed to taxing entities pursuant in the 2012-13 base year, provided, however, that calculation of the amount distributed to taxing entities during the 2012-13 base year shall not include any amounts distributed to taxing entities pursuant to the due diligence review process.

6. DEDUCTION FROM PAYMENT. Twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to the Low and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid. Transfers to the Low and Moderate Income Housing Asset Fund are subject to the reporting requirements of subdivision (f) of Section 34176.1 of the Health and Safety Code.

7. EVENTS OF DEFAULT. An event of default ("**Event of Default**") shall arise hereunder if Successor Agency fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Successor Agency thereof in writing.

8. REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Successor Agency, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under this Note or under applicable law. Successor Agency shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder.

9. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum



(the "Default Rate"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Successor Agency is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

## 10. MISCELLANEOUS

10.1 WAIVER. The rights and remedies of City under this Note shall be cumulative and not alternative. No waiver by City of any right or remedy under this Note shall be effective unless in writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of City arising out of this Note can be discharged by City, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by City; (b) no waiver that may be given by City will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Successor Agency will be deemed to be a waiver of any obligation of Successor Agency or of the right of City to take further action without notice or demand as provided in this Note. Successor Agency hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

10.2 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

10.3 GOVERNING LAW. This Note shall be governed by the laws of the State of California.

10.4 PARTIES IN INTEREST. This Note shall bind Successor Agency and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

10.5 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

10.6 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

*SIGNATURES ON FOLLOWING PAGE*

IN WITNESS WHEREOF, Successor Agency has executed and delivered this Note as of the date first written above.

**SUCCESSOR AGENCY**

**THE CITY OF SAN LEANDRO, ACTING IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO**

By: \_\_\_\_\_  
Executive Director

ATTEST:  
By: \_\_\_\_\_  
Successor Agency Secretary

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
Successor Agency Counsel

The City of San Leandro, a municipal corporation, hereby acknowledges and agrees to the terms set forth in this Note, and agrees that this Note supersedes in its entirety the Original Note defined above.

**CITY OF SAN LEANDRO, A MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
City Manager

ATTEST:  
By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
City Attorney