

AMENDED AND RESTATED PROMISSORY NOTE

\$2,040,767.68

San Leandro, California
_____, 2012

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, Forty Thousand, Seven Hundred Sixty-Seven and 68/100 Dollars (\$2,040,767.68), together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Amended and Restated Promissory Note (this "**Note**") amends and restates in its entirety that certain Promissory Note dated as of April 8, 2004, 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 \$4,372,774 (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 this Note. Interest shall be 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 January 31, 2013, (the "**First Payment Date**"), and on the last day of January 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 over a five-year period. The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on January 31, 2017 (the "**Maturity Date**"). Payments shall be credited first to accrued interest, and then to principal. 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 14th 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. 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.

6. 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.

7. 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.

8. MISCELLANEOUS

8.1 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.

8.2 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.

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

8.4 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.

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

8.6 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