

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