

**AGREEMENT REGARDING EXPENDITURE OF
EXCESS BOND PROCEEDS**

This Agreement Regarding Expenditure of Excess Bond Proceeds (this “**Agreement**”) is entered into effective as of _____, 2016 (“**Effective Date**”) by and between the Successor Agency to the Redevelopment Agency of the City of San Leandro (the “**Successor Agency**”) and the City of San Leandro, a California charter city (the “**City**”). The Successor Agency and the City are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the “**CRL**”), the former Redevelopment Agency of the City of San Leandro (“**Redevelopment Agency**”) had responsibility to implement the three redevelopment plans for the San Leandro Redevelopment Project (collectively, the “**Project Area**”).

B. Pursuant to that certain Indenture of Trust dated as of July 1, 2008 and executed by and between the Redevelopment Agency and U.S. Bank, National Association, as Trustee (the “**Indenture**”), the Redevelopment Agency issued Tax Allocation Bonds in the original principal amount of \$27,530,000 (the “**Bonds**”).

C. 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 commencing upon dissolution of the Redevelopment Agency on February 1, 2012, pursuant to Assembly Bill x1 26 (as further amended by AB 1484 and SB 107, the “**Dissolution Law**”).

D. 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**”).

E. Health and Safety Code Section 34191.4(c) of the Dissolution Law provides that once a successor agency has received a finding of completion, the successor agency is authorized to use the proceeds of bonds issued on or before December 31, 2010 for the purposes for which the bonds were sold, and is further authorized to expend bond proceeds in excess of amounts needed to satisfy previously approved enforceable obligations (“**Excess Bond Proceeds**”) in a manner consistent with the original bond covenants;

F. Health and Safety Code Section 34191.4(c) further provides that the expenditure of Excess Bond Proceeds must be listed separately on the Recognized Obligation Payment Schedule (“**ROPS**”) (as defined in the Dissolution Law).

G. The Parties desire to enter into this Agreement to address the use of Excess Bond Proceeds for the purposes identified herein and consistent with the Bond covenants, and to provide for the transfer of Excess Bond Proceeds to the City to be used for such purposes.

H. The Successor Agency currently holds approximately \$2,300,000 in available Excess Bond Proceeds that can be used to pay all or a portion of the costs of projects located in the Project Area, as set forth in the redevelopment financing plan.

I. The Successor Agency desires to initially transfer Six Hundred Thousand Dollars (\$600,000) in Excess Bond Proceeds to the City for improvements to the downtown parking garage, which include, but are not limited to, replacement of nonfunctional equipment, installation of new parking management technology, implementation of license plate readers and other enforcement mechanisms (the “**Project**”), and to put such request on the ROPS.

J. The execution of this Agreement was approved by the City Council and by the governing board of the Successor Agency by resolutions adopted on _____, 2016.

K. The execution of this Agreement by the Successor Agency was approved by the Oversight Board to the Successor Agency by resolution adopted on _____, 2016.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, the Parties hereby agree as follows.

1. Incorporation of Recitals. The Parties acknowledge the truth of the foregoing Recitals which by this reference are incorporated into this Agreement.

2. Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect until the date that all Excess Bond Proceeds are expended in accordance with the requirements of this Agreement.

3. Transfer of Excess Bond Proceeds; ROPS Submittal. Successor Agency hereby agrees to transfer Six Hundred Thousand Dollars (\$600,000) of Excess Bond Proceeds to the City, for construction of the Project in accordance with the terms, conditions, and purposes set forth in this Agreement. The Successor Agency further agrees to put the Project on the ROPS for approval for financing with the Excess Bond Proceeds.

4. Use of Excess Bond Proceeds. The City agrees that it shall use the Excess Bond Proceeds solely for the purposes identified in this Agreement for construction of the Project, or if otherwise directed at a future date, and with approval of the Oversight Board for other public improvement projects consistent with the Bond covenants and applicable provisions of the CRL. The City shall keep the Excess Bond Proceeds in dedicated accounts separate from the City’s General Fund. The Parties shall cooperate with each other as may be necessary to ensure that the Excess Bond Proceeds are expended in a manner consistent with this Agreement. Unless the City expressly agrees otherwise, the City is not obligated to provide funding for any project, activity, or program in an amount greater than the Excess Bond Proceeds transferred to the City under this Agreement.

5. Project Approvals: Environmental Review. This Agreement is not intended to limit in any manner the discretion of City in connection with the issuance of approvals and entitlements for any projects funded with Excess Bond Proceeds, including without limitation, the undertaking and completion of any required environmental review pursuant to CEQA and NEPA, as applicable, and the review and approval of plans and specifications.

6. Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be

accomplished. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

7. No Third-Party Beneficiaries; Assignments. Nothing in this Agreement is intended to create any third-party beneficiaries to this Agreement, and no person or entity other than the Successor Agency and the City, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

8. Further Assurances. Each Party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of the transactions contemplated by this Agreement.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

11. Amendments. This Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

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

Agency Counsel

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