

**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. 14th St.
San Leandro, CA 94577
Attention: Executive Director

If to City City of San Leandro
835 E. 14th 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
Pre Dissolution - Actual Payments						
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
Post Dissolution - Estimated Payments						
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
Total - Post Dissolution		3,368,496				
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 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. 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