

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (this “Agreement”) is entered into as of August _____, 2013, by and between the City of San Jose, a municipal corporation (“City”) and the Successor Agency for the San Jose Redevelopment Agency, an entity pursuant to California Health and Safety Code (“Code”) §34177 et. seq. (“Successor Agency”).

RECITALS

- A. WHEREAS, in June 2011, the Legislature enacted Assembly Bill X1 26 to eliminate redevelopment agencies, which legislation was subsequently amended in June 2012 by Assembly Bill 1484 (together, the “Dissolution Act”). Unless otherwise specified, all Code sections cited herein are to the California Health & Safety Code as amended by the Dissolution Act.
- B. WHEREAS, under the Dissolution Act, as of February 1, 2012, the Redevelopment Agency of the City of San Jose (the “Former Agency”) was dissolved, and the City of San Jose elected to act as Successor Agency.
- C. WHEREAS, under the Dissolution Act, the Successor Agency must, among other statutory duties, perform the following duties relevant to this Agreement:
 - i. Continue making payments for and perform obligations under enforceable obligations of the Former Agency;
 - ii. Dispose of assets and properties of the Former Agency; and
 - iii. Continue to oversee development of properties until the contracted work has been completed, including using bond proceeds for purposes for which the bonds were sold.
- D. WHEREAS, certain of the Successor Agency’s actions are subject to the approval and direction of the Oversight Board to the Successor Agency, established pursuant to Section 34179 (“Oversight Board”).
- E. WHEREAS, §34173(h) allows a city to loan or grant funds to a successor agency to pay for administrative costs, enforceable obligations, or project related expenses at the city’s discretion, subject to approval of the Oversight Board and §34180(h) gives the Oversight Board the authority to approve “a request by a successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency” and on April 12, 2012, the Oversight Board adopted its Resolution No. 2012-04-1009, directing the Successor Agency to prepare a Reimbursement Agreement with the City for the purpose of establishing an Enforceable Obligation (as defined in the Dissolution Act) to repay the City for

future expenditures expected to be incurred by the City on behalf of the Successor Agency commencing Fiscal Year 2012-13 and projected to continue for several years thereafter, due to revenues that are projected to be insufficient to meet the projected remaining Enforceable Obligations after payment of statutory obligations and senior and subordinate debt service.

- F. WHEREAS, certain of the Former Agency's Enforceable Obligations are supported by pledges of City funds. As such, the City anticipates advancing funds for all, or a portion of, the following enforceable obligations on behalf of the Former Agency until such time as redevelopment tax revenues are sufficient to resume payment for debt service and related costs: 1) the City of San Jose Financing Authority Revenue Bonds Series 2001A (4th & San Fernando Parking Facility); 2) the City of San Jose Financing Authority Lease Revenue Bonds Series 2001F (Convention Center); and 3) two loans from the California State Communities Development Authority for the purpose of making the state mandated 2005 and 2006 Educational Revenue Augmentation Fund payments ("ERAF Loans") (collectively, "City Supported Agency Obligations"); and 4) three HUD 108 Loans ("Agency HUD Obligations").
- G. WHEREAS, to the extent that there are insufficient redevelopment tax revenues in any fiscal year, the City on behalf of the Successor Agency, will pay for employee costs (for administrative, professional, technical, financial and legal staffing), office equipment and supplies, and other apportioned operational costs, in order to implement the remaining projects of the Former Agency, and to administer and implement Enforceable Obligations ("Administrative Costs").
- H. WHEREAS, in order for the City to continue to advance funds for City Supported Agency Obligations, Agency HUD Obligations and Administrative Costs on behalf of the Successor Agency and for the Successor Agency to carry out its administrative obligations (collectively, "City Funded Costs"), a reimbursement agreement between the City and Successor Agency is necessary to reimburse the City for accrued City Funded Costs once sufficient tax revenues are realized in the future.
- I. WHEREAS, on April 28, 2012, Successor Agency staff recommended that the Oversight Board adopt a resolution approving the terms of a Reimbursement Agreement which would allow for the reimbursement of City funds advanced for the payment of City Supported Agency Obligations and Administrative Costs on an ongoing basis. Instead, the Oversight Board directed staff to make certain revisions to the proposed terms of the agreement and to approve the revised terms contingent on the concurrence of County staff.
- J. WHEREAS, on August 23, 2012, the Oversight Board adopted Resolution No. 2012-08-1026, approving the ROPS for January – June 2013, and directing that the proposed Reimbursement Agreement be deleted from the ROPS with a Note that "the item may be brought back for inclusion on a future ROPS at such time as the

Successor Agency and County Auditor-Controller staff agree upon the terms of the Reimbursement Agreement or the Reimbursement Agreement is otherwise approved by the Oversight Board. In any event, the effective date of such agreement, for the purposes of the City of San Jose's ability to recover such amounts advanced to pay for certain Successor Agency debts shall be July 1, 2012."

- K. WHEREAS, on June 27, 2013, the Oversight Board adopted Resolution No. 2013-06-1045 approving the Fiscal Year 2012-13 Reimbursement Agreement between the City and the Successor Agency ("FY 2012-13 Reimbursement Agreement") for the purpose of establishing enforceable obligations to repay the City for expenditures made on behalf of the Successor Agency in the amount of approximately \$18,842,000, restating the Oversight Board's intent to have the advances and repayment obligations under the Reimbursement Agreement be effective as of July 1, 2012; and approving the inclusion of the FY 2012-13 Reimbursement Agreement on the 13-14B ROPS (January 1 – June 30, 2014) and authorizing the Successor Agency's cash balance available at the end of FY 2012-13 be separately listed on the 13-14B ROPS as the source of funds for the repayment of the Intra-Year Repayment Obligation in an amount not to exceed \$11 million.
- L. WHEREAS, Successor Agency and County Auditor-Controller staff agree on the terms of this Reimbursement Agreement.
- M. WHEREAS, commencing in Fiscal Year 2013-2014 and each Fiscal Year thereafter, the Successor Agency and City intend to provide for the reimbursement to the City for payment on behalf of the Successor Agency, of City Funded Costs by entering into this Reimbursement Agreement.

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. Purpose of this Agreement:

In consideration for the City's advances, assistance and administrative support in the carrying out and implementation of the obligations of the Successor Agency, including its obligations to (a) continue to oversee the development of properties to completion, (b) administer and fulfill obligations, including payment obligations under enforceable obligations, and (c) continue the day-to-day administration of the Successor Agency, the Successor Agency agrees to reimburse, and make whole the City pursuant to the terms of this Agreement. The parties agree that this Agreement is negotiated and intended to be binding on all parties and their respective successors in interest.

The City and the Successor Agency desire to enter into this Agreement to acknowledge the above recitals and to provide for reimbursement from tax revenues or

other available Successor Agency revenues of the advances made by the City of funds to pay City Funded Costs.

2. Term; Effect and Duration of Covenants.

This Agreement shall be effective as of July 1, 2013 and shall remain in effect until the earlier of: 1) full repayment of all outstanding City Advance amounts plus interest, or 2) June 30, 2042, which is six months after the termination of the last redevelopment project area. The covenants established in this Agreement shall be binding on the parties hereto and their successors in interest.

3. City to Provide Staff for Administration of Successor Agency Obligations

To the extent that redevelopment tax revenues are insufficient, City may, at its election, agree to pay all or a portion of salaries, benefits and costs of Successor Agency employees performing the work of the Successor Agency in administering enforceable obligations and the duties and obligations of the Successor Agency. In addition, City will provide City employees to assist the Successor Agency in performing such duties.

4. Annual City Advance Amount

The amount advanced to the Successor Agency by the City in any fiscal year ("Advance Amount") shall be at the sole discretion of the City, but in no event will ~~not~~ exceed the annual obligations of the Successor Agency for the following:

- a. **City Supported Agency Obligations** including: San Jose Financing Authority Revenue Bonds Series 2001A (4th & San Fernando Parking Facility); San Jose Financing Authority Lease Revenue Bonds Series 2001F (Convention Center); and ERAF loan payments.
- b. **Agency HUD Obligations** including HUD 108 Loan payments.
- c. **Administrative Costs** pursuant to an administrative cost budget approved by the Oversight Board, including employee costs (for administrative, professional, technical, financial and legal staffing), third party contractual services, office equipment and supplies, (including staffing from the City Manager's Office, City Clerk's Office, City Attorney's Office, City Finance Department, and the City's Housing Department) and other operational costs related to the general winding down of the former Redevelopment Agency.

5. Determination and Budgeting of Annual City Advance Amount

a. The Successor Agency, in cooperation with City staff, will, on an annual basis, construct cash flow projections to determine if ~~an insufficiency of funds will occur~~ will be available in the next fiscal year to pay all Successor Agency enforceable obligations, including for City Supported Agency Obligations, Agency HUD Obligations and Administrative Costs.

b. On an annual basis, through the City budget process, City staff will present the recommended ~~City Advance~~ Amount to City Council for consideration. The amount will be based on anticipated disbursement to the Successor Agency from its Redevelopment Property Tax Trust Fund, and other Successor Agency revenues, and the anticipated expenditures on enforceable obligations listed on the Recognized Obligation Payment Schedule.

c. The Advance Amount may be modified during a given fiscal year through City Council approved budget action(s).

d. The payment of the Advance Amount will be subject to annual appropriation.

6. Intra-Year Repayment Obligations

a. As of June 30 of each fiscal year, to the extent the City has advanced funds for City Supported Agency Obligations in such fiscal year, the Successor Agency shall be obligated to reimburse the City up to the Advance Amount for that year, to the extent funds are available and such reimbursement will not impair the Successor Agency's ability to make the August debt service payments on its Tax Allocation Bonds (the "Intra-Year Repayment Obligation").

b. Amounts paid to reimburse the City for the Intra-Year Repayment Obligation shall be paid without interest.

c. Within 60 days of the end of the fiscal year, the City will issue to the Successor Agency an invoice and reconciliation in the form attached hereto as Exhibit A setting forth the Advance Amount provided to the Successor Agency in such fiscal year. The invoice will be reviewed in conjunction with a completed cash fund balance reconciliation to determine the portion of the Advance Amount eligible for the Intra-Year Repayment Obligation.

The Intra-Year Repayment Obligation shall be determined as follows: The Advance Amount in the applicable fiscal year shall be allocated towards the following costs in the following order of priority: (i) Administrative Costs; (ii) Unsecured Enforceable Obligations as defined below; (iii) Agency HUD Obligations; and (iv) City Supported Agency Obligations. The Intra-Year Payment Obligation in the applicable fiscal year

shall be the amount of the Advance Amount allocated towards City Supported Agency Obligations.

For purposes of this Subsection c, the term “Unsecured Enforceable Obligations” shall mean any enforceable obligation, which is actually paid during the applicable fiscal year and which is junior to (i) bonded debt, including the City Supported Agency Obligations, and (ii) the county passthrough obligation to the extent such obligation is senior to the Successor Agency’s enforceable obligations other than bonded debt..

~~_____c. Within 60 days of the end of the fiscal year, the exact amount of the Intra-Year Repayment Obligation shall be calculated, evidenced by an invoice delivered to the Successor Agency, and paid. In calculating the exact amount of the Intra-Year Repayment Obligation, City staff shall reconcile the Successor Agency’s actual revenues and expenditures for the applicable fiscal year and shall provide the reconciliation to the Successor Agency as support for the invoice in the form used for the FY 2012-2013 Reconciliation attached hereto as **Exhibit A**.~~

7. Accrued Repayment Obligations.

a. Any portion of the Advance Amount remaining outstanding after the reimbursement of the Intra-Year Repayment Obligation has been made, together with any amounts allocated to Unsecured Enforceable Obligations as provided in Section 6 (c) above, shall be accrued as an Enforceable Obligation under the Dissolution Law and shall be repaid as set forth in Health and Safety Code Section 34183 (a) (2) (C) (“Accrued Advance Amounts”).

b. As of July 1, 2013, it has been determined that of the City’s \$18,842,094 invoiced, \$13,653,128 has been determined to be eligible for intra-year reimbursement. However, per the 2012-2013 Reimbursement Agreement, only \$11 million can be reimbursed. Therefore, the outstanding Accrued Advance Amount owed to the City under the FY 2012-13 Reimbursement Agreement is \$7,842,094. (the “Initial Accrued Advance Amount”).

c. The interest on the Initial Accrued Advance Amounts shall be begin accruing as of July 1, 2013 and shall be calculated at the rate of the earned income yield on the average quarterly Local Agency Investment Fund rate for the fiscal year ended June 30, 2014, and compounded annually.

d. The Accrued Advance Amount, if any, for each succeeding fiscal year, shall be added to the previous balance of Accrued Advance Amounts, and the interest shall be calculated as set forth above.

e. The Accrued Advance Amounts shall be repaid after payment of pre-existing obligations of the Former Agency, including any outstanding county passthrough obligations.

f. No portion of the Accrued Advanced Amounts representing Administrative Costs shall be repaid to the City until all outstanding amounts due under Enforceable Obligations of the Successor Agency as well as any outstanding county passthrough obligations have been satisfied.

8. Default.

If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party. All notices of defaults shall clearly indicate a notice of default under this Agreement.

9. Law Governing

This Agreement is made in the State of California under the constitution and laws of the State of California, and is to be so construed.

10. Amendments

This Agreement may be amended at any time, and from time to time, by an agreement executed by both parties to this Agreement and with approval of the Oversight Board.

11. Severability

If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Agreement is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Agreement and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases, words, or portions thereof be declared invalid.

12. Interpretation

Parties agree that this Agreement was jointly negotiated and drafted and shall be interpreted as such. This Agreement shall not be interpreted or construed against any one party as if it was drafted by any such party.

13. Recitals

_____ The parties hereby represent and warrant that the Recitals set forth above are true and correct.

14. No Third Party Rights.

Nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

“City”

City of San José

“Successor Agency”

City of San José Acting in its Capacity
as the Successor Agency to the
Redevelopment Agency of the City of
San José

By: _____
Toni J. Taber, CMC
Acting City Clerk

APPROVED AS TO FORM:

By: _____
Patricia A. Deignan
Chief Deputy City Attorney

By: _____
Debra Figone
Executive Officer

APPROVED AS TO FORM:

By: _____
Thomas D. Murtha
Senior Deputy City Attorney

EXHIBIT A
City of San José Financial Support to Successor Agency
2012-2013

INVOICE: REIMBURSEMENT FOR CITY FUNDING SUPPORT

DRAFT/WORK IN PROGRESS

Period: July 1, 2012 - June 30, 2013

Date: 9/6/2013

Description	2012-2013 All Funds
<u>Bonded Debt</u> 533 4th Street Debt 001 Convention Center Debt 001 ERAF	3,362,653 10,290,475 0
<i>Subtotal Bonded Debt</i>	\$ 13,653,128
<u>Loans</u> 441 HUD 108 Loan	1,866,823 1,866,823
<i>Subtotal Loans</i>	\$ 1,866,823
<u>Unsecured Enforceable Obligations</u> 001 Various Agreements	368,000 368,000
<i>Subtotal Unsecured Legally Binding Enforceable Obligations</i>	\$ 368,000
<u>Direct Administrative Costs*</u> 001 Direct SARA Administrative Services	1,685,000 1,685,000
<i>Subtotal Direct Admin</i>	\$ 1,685,000
<u>Indirect City Support Services</u> 001 City Attorney's Office (2.0 positions) - legal support 001 City Clerk's Office (1.0 position) - agenda posting 001 City Manager's Office (0.11 position) - budget oversight 001 Finance Department (1.55/1.30 positions) - financial support 346 Housing Department (0.75/0.50 position) - housing audits, finances, debt 001 City Hall Rent - 14th floor offices	521,889 161,344 28,708 336,092 121,110 100,000
<i>Subtotal Indirect City Support Services</i>	\$ 1,269,143
TOTAL INVOICE	\$ 18,842,094

* Direct Administrative Service Costs are preliminary and are currently under review.

**City of San José Financial Support to Successor Agency
2012-2013**

REIMBURSEMENT FOR CITY FUNDING SUPPORT BACK-UP

DRAFT/WORK IN PROGRESS

Period: July 1, 2012 - June 30, 2013

ROPS II/III

FUND #	ROPS #	Description	2012-2013 TOTAL	NOTES
FUNDING SOURCES				
<u>City Funds Advanced (wired to SARA)</u>				
001	60/61	Convention Center Payment - 08/16/2012	12,343,475	
001	62/63	ERAF	0	
533	58/59	4th Street Debt - 08/10/2012	1,681,326	
533	58/59	4th Street Debt - 02/15/2013	1,681,326	
441	64-66	HUD 108 Loan - 11-12 interest accrual	-33,670	
441	64-66	HUD 108 Loan - Principal 7/17/2012	1,740,000	
441	64-66	HUD 108 Loan - Interest 7/17/2012	50,505	
441	64-66	HUD 108 Loan - Other 7/17/2012	100	
441	64-66	HUD 108 Loan - Interest 10/17/2012	43,394	
441	64-66	HUD 108 Loan - Other 10/17/2012	100	
441	64-66	HUD 108 Loan - Interest 1/18/2013	34,337	
441	64-66	HUD 108 Loan - Other 1/18/2013	100	
441	64-66	HUD 108 Loan - Interest 04/09/2013	31,858	
441	64-66	HUD 108 Loan - Other 04/09/2013	100	
Subtotal City Funds Advanced			\$ 17,572,951	
<u>Non-Cash Funding</u>				
001	140	City Attorney's Office (2.0 positions) - legal support	521,889	
001	140	City Clerk's Office (1.0 position) - agenda posting	161,344	
001	140	City Manager's Office (0.11 position) - budget oversight	28,708	
001	140	Finance Department (1.55/1.30 positions) - financial support	336,092	
346	140	Housing Department (0.75/0.50 position) - housing audits, finances, debt	121,110	
001	141	City Hall Rent - 14th floor offices	100,000	
Subtotal Non-Cash Funding			\$ 1,269,143	Reflects expenditures incurred but not wired. Accrual reimb
TOTAL FUNDING SOURCES			\$ 18,842,094	

FUNDING USES (12-13 REVERSE WATERFALL)*

<u>Indirect City Support Services (Non-Cash transactions)</u>				
001	140	City Attorney's Office (2.0 positions) - legal support	(521,889)	
001	140	City Clerk's Office (1.0 position) - agenda posting	(161,344)	
001	140	City Manager's Office (0.11 position) - budget oversight	(28,708)	
001	140	Finance Department (1.55/1.30 positions) - financial support	(336,092)	
346	140	Housing Department (0.75/0.50 position) - housing audits, finances, debt	(121,110)	
001	141	City Hall Rent - 14th floor offices	(100,000)	
Subtotal Indirect City Support Services			\$ (1,269,143)	
<u>Direct Administrative Costs**</u>				
001	117-139, 142	Direct SARA Administrative Services	(1,685,000)	Funding Source on ROPS = "Other Funds"
Subtotal Direct Admin			\$ (1,685,000)	
<u>Unsecured Enforceable Obligations</u>				
001	TBD	Various Agreements	(368,000)	Funding Source on ROPS = "Other Funds"
Subtotal Direct Admin			\$ (368,000)	
<u>Loans</u>				
441	64-66	HUD 108 Loan	(1,866,823)	
Subtotal Loans			\$ (1,866,823)	
Total INTER YR Expenditures (accrual amount for ROPS)			\$ (5,188,966)	Reflects expenditures not eligible for intra year reimbursement per current approved agreement.
NET CITY ADVANCED ELIGIBLE FOR INTRA YR REIMBURSEMENT*			\$ 13,653,128	Sources less "Total INTER YR Expenditures"
<u>Bonded Debt</u>				
001	62/63	ERAF	0	Below for City Purposes:
533	58/59	4th Street Debt	(3,362,653)	
001	60/61	Convention Center Debt***	(10,290,475)	Formula: GF Contribution less Admin Costs and ROPS Obl
Bonded Debt to be Reimbursed			\$ (13,653,128)	
TOTAL FUNDING USES			\$ (18,842,094)	

* Reflects priority of obligations per the current court ruling and placement of the County Pass-through agreement as well as current approved OB reimbursement agreement.

** Direct Administrative Service Costs are preliminary and are currently under review.

*** Convention Center Debt is preliminary and is currently under review.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.