

STAFF REPORT

CITY OF SAN LEANDRO SUCCESSOR AGENCY OVERSIGHT BOARD

DATE: May 10, 2012

TO: Successor Agency Oversight Board

FROM: Cynthia Battenberg, Business Development Manager

BY: Jeff Kay, Business Development Analyst

SUBJECT: Oversight Board Resolution Authorizing Execution of an Amended and Restated Promissory Note

SUMMARY AND RECOMMENDATION

Staff recommends that the Successor Agency Oversight Board approve a Resolution re-entering into an Amended and Restated Promissory Note, thereby re-affirming a 2004 loan between the City and the Redevelopment Agency.

BACKGROUND

On April 8, 2004, the Redevelopment Agency of the City of San Leandro (Agency) executed a Promissory Note to acknowledge a loan of \$4,372,774 from the City to the City of San Leandro - Alameda County (Joint) Redevelopment Project Area. That loan was subsequently memorialized via Agency Resolution 2004-011 RDA, approved on June 21, 2004. At the time of the Agency's dissolution on February 1, 2012, the balance on this loan was \$2,040,767.68 and that amount was added to the Agency's Enforceable Obligation Payment Schedule (EOPS) and Recognized Obligation Payment Schedule (ROPS).

This loan was made to advance redevelopment projects, most particularly the development of the San Leandro Automall. The interest rate was set at 6 percent per annum. Based on the most current debt service schedule, annual payments of \$173,477.05 were owed to the City through 2032.

After the approval of the ROPS by the City Council (serving as Successor Agency) on April 2, 2012 and the Successor Agency Oversight Board on April 6, 2012, the California Department of Finance (DOF) exercised its right to conduct a review of the list of Enforceable Obligations. Upon completion of that review, the DOF informed the City that it did not consider some items to be enforceable because, with very limited exceptions, Assembly Bill x1 26 does not recognize agreements between a redevelopment agency and the city that created it. This determination impacts the aforementioned loan from the City to the Joint Project Area and four cooperative agreements to fund capital improvement projects.

ANALYSIS

Although the language of AB x1 26 is relatively clear regarding the treatment of City-Agency agreements as unenforceable, many cities throughout California have questioned the Legislature's authority to invalidate financial agreements that pre-dated the dissolution bill and had the full force of law. Multiple AB x1 26 "clean-up" bills have been proposed to provide recognition of comparable City-Agency loans, although the fate of those proposals is not clear at this time.

Nevertheless, given the DOF's determination, the recommended course of action for the Successor Agency at this time is to take advantage of a clause in AB x1 26 that allows a Successor Agency to re-enter into an agreement with the City. This clause is contained in Health and Safety Code Section 34178 (a) and reads as follows:

"Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board."

The original loan had an interest rate of 6 percent, however the rate in the Amended and Restated Promissory Note has been reduced to 3 percent, a rate more consistent with current yields. The goal of this action is to protect funds owed to the City, while also reducing the debt burden of the Successor Agency. The term has been set at five years, consistent with an Oversight Board interest in processing debt of the former Redevelopment Agency expeditiously. Annual debt payments will be approximately \$445,000, commencing in 2013 and terminating in 2017.

This Amended and Restated Promissory Note was approved by the City Council, representing both the City of San Leandro and the Successor Agency, on May 7, 2012. If approved by both the Successor Agency (City Council) and the Oversight Board, staff believes that the remaining balance due on this loan will be restored as an enforceable obligation on the ROPS. Funds to pay the obligation will be provided to the Successor Agency by the Alameda County Auditor Controller via the Redevelopment Property Tax Trust Fund and then the Successor Agency can pay the City, consistent with the terms of the new Agreement.

Without this action, the City General Fund would lose a receivable equal to the remaining principal balance, or \$2,040,767.68 even though the original loan was legally established and used for legitimate economic development purposes.

Legal Analysis

The report and recommendation have been reviewed and approved as to form by the City Attorney's Office.

Attachments

- Oversight Board Resolution
- Amended and Restated Promissory Note
- Original Promissory Note and Resolution 2004-011 RDA, memorializing the loan

RESOLUTION NO. 2012-001 OB

**RESOLUTION OF THE OVERSIGHT BOARD
FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE
CITY OF SAN LEANDRO**

**AGREEING TO A MODIFICATION TO A LOAN PAYABLE BY THE
REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO TO THE CITY OF
SAN LEANDRO AND AUTHORIZING EXECUTION OF AN AMENDED AND
RESTATED PROMISSORY NOTE**

WHEREAS, pursuant to Resolution 2012-001, adopted by the City Council of the City of San Leandro on January 9, 2012, the City of San Leandro agreed to serve as the Successor Agency to the Redevelopment Agency of the City of San Leandro (“**Redevelopment Agency**”) commencing upon dissolution of the Redevelopment Agency on February 1, 2012 pursuant to Assembly Bill x1 26 (“**AB 26**”);

WHEREAS, Health and Safety Code Section 33220 authorized any public body to enter into an agreement with a redevelopment agency for the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of redevelopment projects located within the jurisdiction in which such public body is authorized to act, upon the terms and with or without consideration as such public body determines;

WHEREAS, by Resolution No. 2004-11 adopted June 21, 2004, the City of San Leandro (“**City**”) confirmed its agreement to advance City general funds in the amount of \$4,372,774 (“**the Joint City/County Project Area Loan**”) to the Redevelopment Agency to support redevelopment activities undertaken by the Redevelopment Agency in the City of San Leandro/Alameda County Joint Redevelopment Project Area adopted pursuant to Ordinance No. 93-012, adopted on July 12, 1993 (the “**Joint City/County Project Area**”);

WHEREAS, to evidence its obligation to repay the Joint City/County Project Area Loan, the Redevelopment Agency executed and delivered to City a promissory note dated as of April 8, 2004 in the amount of the Joint City/County Project Area Loan (the “**Note**”);

WHEREAS, the Note bears interest at the rate of six percent per annum;

WHEREAS, the Note provides for interest-only payments, but permits prepayment of the principal balance at any time;

WHEREAS, the current principal balance payable pursuant to the Note is \$2,040,797.30;

WHEREAS, in accordance with AB 26, the City, acting in its capacity as Successor Agency, prepared a Recognized Obligation Payment Schedule (“**ROPS**”) setting forth the schedule of existing Redevelopment Agency obligations, including among others, repayment of the Note;

WHEREAS, this oversight board for the Successor Agency was established pursuant to AB 26 (the “**Oversight Board**”);

WHEREAS, the Oversight Board approved the ROPS on April 6, 2012;

WHEREAS, the State Department of Finance reviewed the ROPS, but by letter dated April 11, 2012, indicated that it objected to the Note;

WHEREAS, Health and Safety Code Section 34178(a) provides that, with specified exceptions, commencing upon February 1, 2012, agreements, contracts and arrangements between a redevelopment agency and the city that formed the redevelopment agency are invalid; provided however, a successor agency that wishes to reenter into agreements with the city that formed the agency may do so upon obtaining approval of the oversight board;

WHEREAS, the improvements undertaken by the Agency in the Joint City/County Project Area using the advance of City funds have resulted in significant revitalization of the Joint City/County Project Area, and have been of benefit to all taxing entities that share in the property tax revenue generated by property located within the Joint City/County Project Areas because such improvements have removed impediments to development, eliminate adverse conditions in the project area and catalyzed private development, thus resulting in an increase in assessed valuation and property tax revenue that accrues to the taxing entities;

WHEREAS, the City and the Successor Agency desire to ratify the Successor Agency’s obligation to repay the Note, and desire to enter into an Amended and Restated Promissory Note stating modified terms for repayment (“**Restated Note**”); and

WHEREAS, the execution of the Restated Note was approved by the City Council and by the governing board for the Successor Agency by resolutions adopted on May 7, 2012.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of San Leandro that it hereby:

1. Pursuant to Health and Safety Code Section 34178(a), authorizes the modification of terms as set forth in the Restated Note attached hereto as Exhibit A, and authorizes the Successor Agency to execute and deliver the Restated Note substantially in such form.
2. Authorizes the Restated Note to be listed on an updated ROPS for the Successor Agency.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO ON MAY 10, 2012 BY THE FOLLOWING VOTE:

AYES:

NOES:
ABSTAIN:
ABSENT:

ATTEST:

Secretary

Chair

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

IN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2004-011 RDA

(1485)

COPY

RESOLUTION CONFIRMING OUTSTANDING LEVELS OF DEBT FOR THE PLAZA
PROJECT AREA AND WEST SAN LEANDRO/MACARTHUR BOULEVARD PROJECT
AREA AND MEMORIALIZING DEBT OWED FOR THE CITY OF SAN LEANDRO /COUNTY
OF ALAMEDA JOINT PROJECT AREA

RESOLVED, by the Redevelopment Agency of the City of San Leandro (the "Agency"), as follows:

WHEREAS, the Agency, pursuant to the Community Redevelopment Law, being Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California (the "Law"), is undertaking redevelopment activities within and of benefit to its redevelopment project areas;

WHEREAS, in order to aid the Agency in such redevelopment activities, the City of San Leandro (the "City") has previously advanced not to exceed \$2,887,617 to the Agency with respect to the Plaza Project Area; which obligation was secured by Promissory Note executed on December 5, 2002 for said amount; and

WHEREAS, in order to aid the Agency in such redevelopment activities, the City of San Leandro (the "City") has previously advanced \$2,000,000 to the Agency with respect to the West San Leandro/MacArthur Boulevard Project Area; which obligation was secured by Promissory Note executed on January 15, 2003 pursuant to Resolution 2003-001 RDA; and

WHEREAS, in order to aid the Agency in such redevelopment activities, the City of San Leandro (the "City") desires to advance not to exceed \$4,372,774 to the Agency with respect to the City of San Leandro/County of Alameda Joint Project Area; and

WHEREAS, in order to evidence its obligation to repay the City such amounts advanced to the Agency for the City of San Leandro/County of Alameda Joint Project Area, the City desires to execute and deliver to the Agency a promissory note (the "Promissory Note") in the amount of not to exceed \$4,372,774;

NOW, THEREFORE, it is hereby ORDERED AND DETERMINED, as follows:

Section 1. Confirmation of Promissory Note for the Plaza Project Area. The Agency hereby confirms the execution and delivery of the Promissory Note dated December 5, 2002 in substantially the form thereof on file with the Secretary. The confirmation of the Promissory Note shall be deemed conclusive evidence of the Agency's approval of such obligation, provided that no change shall increase the amount of the Promissory Note to an amount greater than \$2,887,617 or provide for an interest rate on the Promissory Note in excess of 6.00%. The Agency confirms that Chair, the Executive Director and the Treasurer of the Agency (each, a "Designated Officer"), each acting alone, were authorized and directed to execute, and the Secretary of the Agency was authorized to attest, the Promissory Note for and in the name and on behalf of the Agency. The Agency hereby confirms the delivery and performance of the said Promissory Note on behalf of the Plaza Redevelopment Project Area. Further, the Agency confirms that principal and interest payment have been made as required and in the manner specified in the Promissory Note and that the balance as of July 1, 2004 is \$2,596,400; and

Section 2: Approval of Promissory Note for the City of San Leandro/County of Alameda Joint Project Area. The Agency hereby authorizes the execution and delivery of the Promissory Note in substantially the form thereof to file with the Secretary, together with any additions thereto or changes therein deemed necessary or advisable by the Executive Director or Treasurer of the Agency, upon advice of the Agency's counsel. The execution of the Promissory Note shall be deemed conclusive evidence of the Agency's approval of such additions or changes, provided that

no such change shall increase the amount of the Promissory Note to an amount greater than \$4,372,774 or provide for an interest rate on the Promissory Note in excess of 6.00%. The Chair, the Executive Director and the Treasurer of the Agency (each, a "Designated Officer"), each acting alone, are hereby authorized and directed to execute, and the Secretary of the Agency is hereby authorized to attest, the Promissory Note for and in the name and on behalf of the Agency. The Agency hereby authorizes the delivery and performance of the Promissory Note.

Section 3. Confirmation of Repayment of Promissory Note for the West San Leandro /MacArthur Blvd. Project Area. The Agency confirms that the Promissory Note in the amount of \$2,000,000 executed on January 15, 2003 for the benefit of the West San Leandro/MacArthur Boulevard Redevelopment Project Area was repaid in full during the fiscal year ending June 30, 2004.

Section 3. Effective Date. This resolution shall take effect from and after the date of approval and adoption thereof.

NOW THEREFORE, the Redevelopment Agency of the City of San Leandro does RESOLVE as follows:

That said agreements are hereby approved and execution thereof are hereby authorized.

Introduced by Agency Member Badger and passed and adopted this 21st day of June, 2004 by the following called vote:

Members of the Agency:

AYES: Members Badger, Glaze, Grant, Nardine, Santos, Stephens; Chair Young (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Marian Handa
Marian Handa, Agency Secretary

REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO

PROMISSORY NOTE

\$4,372,774.

April 8, 2004

FOR VALUE RECEIVED, the Redevelopment Agency of the City of San Leandro (the "Agency") acknowledges itself indebted to and promises to pay the City of San Leandro, on or before July 11, 2034 the principal sum of Four Million Three Hundred Seventy-Two Thousand Seven Hundred Seventy-Four Dollars (\$4,372,774) ("Loan") in lawful money of the United States of America, together with interest thereon, including interest on unpaid interest, at the rate of 6%. The Agency shall make interest only payments annually on June 30th of each year. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. To the extent not paid, interest shall be added to the principal amount hereof and thereafter treated as principal hereunder.

It is hereby certified, recited and declared that this Promissory Note is made, executed and given pursuant to authority of the Resolution under and by authority of Article 5 of Chapter 6 of Part 1 of Division 24 of Title 1 of the California Health and Safety Code (commencing with Section 33640), and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Promissory Note have existed, happened and been performed in regular and due time, form and manner as required by law.

The principal of and interest on this Promissory Note shall be payable from tax increment revenue derived from the Agency's Alameda County – City of San Leandro ("Joint") Redevelopment Project. Payments hereunder shall be subordinate to the payment of debt service on the Agency's 2001 Certificates of Participation and any other legally binding agent (DDA, OPA) requiring payments, heretofore entered into by the Redevelopment Agency.

Notwithstanding the foregoing, this Promissory Note and the interest to accrue hereon may also be repaid from any other available funds of the Agency lawfully available therefore. Neither this Promissory Note nor any interest therein may be transferred in any way without the consent of the Agency, which consent shall not be unreasonably withheld.

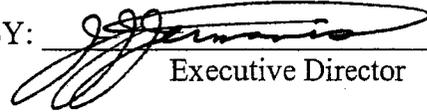
This Promissory Note is subject to prepayment, in whole or in part, on any date.

This Promissory Note restates in full all of the obligations owing to the City by the Agency with respect to the Alameda County – City of San Leandro (“Joint”) Redevelopment Project as of the date hereof. The City, by signing below, hereby accepts the restatement contained in this Promissory Note.

IN WITNESS WHEREOF, the Redevelopment Agency of the City of San Leandro has caused this Promissory Note to be executed by its Executive Director on this 8th day of April, 2004.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN LEANDRO

BY: _____


Executive Director

ATTEST

By: Marian Handa
Secretary

ACCEPTED

CITY OF SAN LEANDRO

By: _____
Assistant City Manager