

STAFF REPORT

CITY OF SAN LEANDRO SUCCESSOR AGENCY OVERSIGHT BOARD

DATE: June 6, 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 a Second Amended and Restated Cooperation Agreement

SUMMARY AND RECOMMENDATION

Staff recommends that the Successor Agency Oversight Board approve a Resolution authorizing the execution of an Amended and Restated Cooperative Agreement between the City of San Leandro and the Successor Agency, thereby re-affirming a 2011 Agency funding commitment of approximately \$5.5 million for improvements to MacArthur Boulevard and Doolittle Drive.

BACKGROUND

Historically, a common method used by redevelopment agencies to fund capital improvements was through the execution of a cooperation agreement with the City that created the Agency. Cities generally have staff and expertise required to complete complex infrastructure projects, and cooperative agreements provided a mechanism for redevelopment agencies to pledge the funds needed to pay for those improvements.

On January 17, 2011, the Redevelopment Agency and City of San Leandro (Agency) executed a Cooperative Agreement whereby the Agency pledged \$8,967,754. At the time of the Agency's dissolution on February 1, 2012, the full balance of this obligation was still owed and that amount was added to the Agency's Enforceable Obligation Payment Schedule (EOPS) and Recognized Obligation Payment Schedule (ROPS).

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 Cooperative Agreement and a loan from the City to the Joint Project Area.

On May 7, 2012, the City Council and the Successor Agency approved an Amended and Restated Cooperative Agreement, restoring funding for the Eden Road and Hays Street projects. The Amended and Restated Agreement was subsequently approved by the Successor Agency Oversight Board on May 10, 2012. At that meeting, the Oversight Board directed staff to further amend the Agreement to restore funding for the remaining projects, MacArthur Boulevard and Doolittle Drive. The City Council, serving as Successor Agency, approved an amended agreement covering all four projects from the original 2011 Cooperative Agreement on June 4, 2012. To become effective, the latest version of the Agreement must now be approved by the Oversight Board.

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.

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.”

Re-authorized agreements between the City and Successor Agency must also receive approval from the Successor Agency Oversight Board. If approved by both the Successor Agency (City Council) and the Oversight Board, staff believes that the Agency's debts under the Cooperative Agreement will be restored as enforceable obligations 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 Agreement.

The original January 17, 2011 Cooperative Agreement pledged Agency funds for four projects:

1. **Eden Road Construction:** The estimated cost for this project is approximately \$5,800,000, of which \$800,000 represents land acquisitions costs already paid. The requested Agency contribution is \$1,500,000. Remaining costs will be funded by an assessment district and other sources.
2. **MacArthur Boulevard Improvements:** The estimated cost for this project is \$1,274,143 all of which was to be funded by Redevelopment tax increment.

3. **Doolittle Drive Improvements:** The estimated cost for this project is \$4,193,611 all of which was to be funded by Redevelopment tax increment.
4. **Hays Street Improvements:** The estimated cost for this project is \$2,000,000 all of which was to be funded by Redevelopment tax increment.

For the first Amended and Restated Agreement approved in May, staff took a conservative approach and recommended that the City and the Successor Agency only re-enter in the portion of the Agreement covering Eden Road and Hays Street. This is because the City has already made a significant investment in these projects and that investment would be wasted if the committed redevelopment funding were lost.

At the May 10, 2012 Oversight Board meeting, the Board requested the inclusion of the remaining two projects. The MacArthur Boulevard and Doolittle Drive projects constitute the final phases of streetscape improvements that have already been completed along different segments of those roads. For MacArthur Boulevard, approval of the latest amendment will provide funding to make improvements between Lewis Avenue and Dutton Avenue. For Doolittle Drive, the funding will cover the segment between Davis Street and Fairway Drive. In recommending the re-establishment of funding for these projects, the Oversight Board cited the fact that the original plans for streetscape improvements were designed for specific portions of these key arterials and that failure to complete the projects would result in the remaining segments being left unimproved for the foreseeable future. The Board also noted that promises had been made to neighboring property owners when the streetscape improvements were initially designed.

The Department of Finance has yet to issue an official statement on how it is interpreting agreements that are re-entered or re-authorized under Health and Safety Code Section 34178 (a). A May 25, 2012 letter to the San Leandro Successor Agency from the Department continued to list the General Fund loan and the Cooperative Agreements as unrecognized obligations, although no justification was given for this determination. Given that many Successor Agencies throughout the State have re-authorized agreements pursuant to Section 34178(a), it is possible that litigation may ultimately be necessary. At this time, the San Leandro Successor Agency has no plans for legal action and intends to continue to monitor the issue.

Additional detail on the planned improvement projects is included in Exhibit A of the Cooperative Agreement.

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 Cooperative Agreement

AMENDED AND RESTATED COOPERATIVE AGREEMENT

This Amended and Restated Cooperative Agreement (this “**Agreement**”) is entered into effective as of June ____, 2012 (“**Effective Date**”) by and between 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**”) and the City of San Leandro, a municipal corporation (“**City**”). The Successor Agency and the City are hereinafter collectively referred to as the “**Parties.**”

RECITALS

WHEREAS, pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (“**CRL**”), the Redevelopment Agency of the City of San Leandro (“**Redevelopment Agency**”) had responsibility to implement the redevelopment plan for the West San Leandro-MacArthur Boulevard Redevelopment Project established by the Redevelopment Plan adopted pursuant to Ordinance No. 99-025, adopted on July 19, 1999 and the Plaza Redevelopment Project established by the Redevelopment Plan adopted pursuant to Ordinance No. 1295 N.S., adopted on December 28, 1960 (collectively, the “**Project Areas**”);

WHEREAS, CRL 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, Section 33126(b) of the CRL authorized redevelopment agencies to enter into contracts with any other public agency pursuant to which the public agency would agree to furnish necessary staff services associated with or required by redevelopment;

WHEREAS, Section 33445 of the CRL authorized redevelopment agencies, with the consent of the legislative body of the community, to pay for all or a portion of the cost of the land for, and the cost of construction of, any building, facility, structure, or other improvements that are publicly owned and located within or contiguous to the redevelopment project areas upon the legislative body’s adoption of findings based upon substantial evidence that:

(1) The acquisition of the land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned would be of primary benefit to the project areas;

(2) The acquisition of the land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned would benefit the project areas by helping to eliminate blight within the project areas, or would directly assist in the provision of housing for low- or moderate-income persons;

(3) No other reasonable means of financing the acquisition of the land or the installation or construction of the buildings, facilities, structures, or other improvements that are publicly owned, is available to the community;

(4) The payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements that are publicly owned is consistent with the implementation plan adopted pursuant to CRL Section 33490; and

(5) The acquisition of land and the installation of each building, facility, structure, or improvement that is publicly owned is provided for in the redevelopment plan.

WHEREAS, the governing board of the Redevelopment Agency and the San Leandro City Council (“**City Council**”) each adopted the findings described in the foregoing Recital with respect to the public improvements described in Exhibit A attached hereto, consisting of the Eden Road Improvements, the Hays Street Improvements, the MacArthur Boulevard Improvements and the Doolittle Drive Improvements (collectively, the “**Public Improvements**”), by resolutions adopted on January 17, 2011;

WHEREAS, the City and the Agency entered into that certain Cooperative Agreement dated as of January 17, 2011 (the “**Original Cooperative Agreement**”), pursuant to which the City agreed to undertake the construction and installation of the Public Improvements, and the Agency agreed to provide funding for such work;

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

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, the Original Cooperative Agreement;

WHEREAS, an 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 Original Cooperative Agreement;

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 City has made a significant investment in the Public Improvements, including the purchase of right-of-way and completion of project design for the Eden Road Improvements, and the establishment of procedures for the formation of an assessment district to secure additional funds required for the Eden Road Improvements;

WHEREAS, the City's Transit Oriented Development Strategy identified the Town Hall Square location as a key opportunity site for future development, and the City has determined that development of this site would be severely hindered without reconfiguration of Hays Street;

WHEREAS, the planned Streetscape Improvements on MacArthur Boulevard represent the final phase of a two-stage project that was initiated in 2004, on which the Redevelopment Agency had already expended approximately \$2,500,000 and made assurances to adjacent property owners that the project would be completed in its entirety;

WHEREAS, the planned Streetscape Improvements on Doolittle Drive represent the final phase of a three-stage project that was initiated in 2004, on which the Redevelopment Agency had already expended approximately \$2,000,000 and made assurances to adjacent property owners that the project would be completed in its entirety;

WHEREAS, completion of the Public Improvements will be of benefit to all taxing entities that share in the property tax revenue generated by property located within the Project Areas because such improvements will remove impediments to development, eliminate adverse conditions in the Project Areas, improve vehicular circulation, provide safer routes for pedestrians, and catalyze private development, thus resulting in an increase in assessed valuation and property tax revenue;

WHEREAS, the Parties desire to enter into this Agreement to set forth the construction activities and services that the City will undertake or make available in furtherance of the completion of the Public Improvements, and to provide that the Successor Agency will pay for or reimburse the City for actions undertaken and costs and expenses incurred in connection with such work;

WHEREAS, the Parties intend this Agreement to evidence the Parties desire to re-enter into the Original Cooperative Agreement as approved by the Oversight Board;

WHEREAS, the execution of this Agreement was approved by the City Council and by the governing board of the Successor Agency by resolutions adopted on May 7, 2012 and June 4, 2012; and

WHEREAS, the execution of this Agreement was approved by the Oversight Board by resolutions adopted on May 10, 2012 and on June 6, 2012.

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

1. Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect until the earlier of the date that the Public Improvements are completed, or the date that the City has received all property tax revenue payable to City pursuant to this Agreement.
2. City to Construct Public Improvements. The City agrees to undertake or otherwise cause to be performed the construction and installation of the Public Improvements described in the attached Exhibit A.
3. Agency to Pay for Public Improvements. The Successor Agency agrees to provide to the City the amounts set forth in Exhibit A to pay for the cost of construction of the public improvements therein identified and in accordance with the schedule set forth therein. The Successor Agency agrees to take all actions reasonably necessary to make such funds available to City, including without limitation, the listing of this Agreement on the Successor Agency's Recognized Obligation Payment Schedule.
4. Source of Funds. The Parties acknowledge that the sole source of funds available to the Successor Agency to make the payments to City required pursuant to this Agreement is the allocation of property tax revenue by the County Auditor-Controller to the Successor Agency from the Redevelopment Property Tax Trust Fund established by the County Auditor-Controller for the Successor Agency pursuant to Health and Safety Code Section 34170.5.
5. Subordination. The obligation of the Successor Agency to make payments to City pursuant to this Agreement shall be subordinate to any obligation of the Successor Agency to pay debt service on bonds heretofore or hereafter issued by the Redevelopment Agency.
6. 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 the projects described in this Agreement, 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.
7. 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.
8. 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.

9. 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.

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

11. 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.

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

13. Incorporation of Recitals and Exhibits. The Recitals set forth above are hereby incorporated into this Agreement as though fully set herein. Exhibit A attached hereto is hereby incorporated into this Agreement by reference.

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

CITY:

**CITY OF SAN LEANDRO,
a municipal corporation**

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

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

EXHIBIT A

PUBLIC IMPROVEMENTS

	Name	Description	Total Cost	Agency Payment(s)	Payment Date
	Eden Road	Construction of a two-lane roadway along the existing dirt road plus a segment connection the Business Center Drive/Davis intersection with Eden Road, and associated streetscape improvements.	\$5,800,000	\$1,500,000	July 1, 2013
	Hays Street (between Davis and East 14 th)	Construction of curb and gutter, sidewalks, improved landscaping, new parking, and signal modifications.	\$2,000,000	\$2,000,000	July 1, 2016
	MacArthur Boulevard (between Lewis and Dutton)	Construction of bulb-outs, street trees, site furnishings and sidewalk improvements.	\$1,274,134	\$1,274,134	July 1, 2014
	Doolittle Drive (between Davis and Fairway)	Construction of new curbs and gutters, sidewalks, bike lanes, and landscaped medians.	\$4,193,611	\$2,000,000 \$2, 193,611	Jan. 1, 2015 Jan. 1, 2017

RESOLUTION NO. 2012-004 OB

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

**AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED
COOPERATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO AND THE CITY OF
SAN LEANDRO REGARDING THE CONSTRUCTION AND FUNDING OF
PUBLIC IMPROVEMENTS**

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, Health and Safety Code Section 33126(b) authorized redevelopment agencies to enter into contracts with any other public agency pursuant to which the public agency would agree to furnish necessary staff services associated with or required by redevelopment;

WHEREAS, the governing board of the Redevelopment Agency and the San Leandro City Council (“**City Council**”) each adopted the findings required by Health and Safety Code Section 33445 with respect to the public improvements described in Exhibit A attached hereto, consisting of the Eden Road Improvements, the Hays Street Improvements, the MacArthur Boulevard Improvements and the Doolittle Drive Improvements (collectively, the “**Public Improvements**”), by resolutions adopted on January 17, 2011;

WHEREAS, the City of San Leandro (“**City**”) and the Redevelopment Agency entered into that certain Cooperative Agreement dated as of January 17, 2011 (the “**Original Cooperative Agreement**”), pursuant to which the City agreed to undertake the construction and installation of the Public Improvements, and the Redevelopment Agency agreed to provide funding for such work;

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, the Original Cooperative Agreement;

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 Original Cooperative Agreement;

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 City has made a significant investment in the Public Improvements, including the purchase of right-of-way and completion of project design for the Eden Road Improvements, and the establishment of procedures for the formation of an assessment district to secure additional funds required for the Eden Road Improvements;

WHEREAS, the City’s Transit Oriented Development Strategy identified the Town Hall Square location as a key opportunity site for future development, and the City has determined that development of this site would be severely hindered without reconfiguration of Hays Street;

WHEREAS, the planned Streetscape Improvements on MacArthur Boulevard represent the final phase of a two-stage project that was initiated in 2004, on which the Redevelopment Agency had already expended approximately \$2,500,000 and made assurances to adjacent property owners that the project would be completed in its entirety;

WHEREAS, the planned Streetscape Improvements on Doolittle Drive represent the final phase of a three-stage project that was initiated in 2004, on which the Redevelopment Agency had already expended approximately \$2,000,000 and made assurances to adjacent property owners that the project would be completed in its entirety;

WHEREAS, completion of the Public Improvements will be of benefit to all taxing entities that share in the property tax revenue generated by property located within the redevelopment project areas because such improvements will remove impediments to development, eliminate adverse conditions in the project areas, improve vehicular circulation, provide safer routes for pedestrians, and catalyze private development, thus resulting in an increase in assessed valuation and property tax revenue;

WHEREAS, the City and the Successor Agency desire to enter into an Amended and Restated Cooperative Agreement (the “**Agreement**”) to set forth the construction activities and services that the City will undertake or make available in furtherance of the completion of the

Public Improvements, and to provide that the Successor Agency will pay for or reimburse the City for actions undertaken and costs and expenses incurred in connection with such work;

WHEREAS, the execution of an amended and restated version of the Original Cooperative Agreement was approved by the governing board of the Successor Agency and by the City Council by resolutions adopted on May 7, 2012;

WHEREAS, the Oversight Board approved execution of an amended and restated version of the Original Cooperative Agreement by resolution adopted May 10, 2012 and in connection with such approval directed staff to revise such agreement to reinstate certain Public Improvements that had been included in the Original Cooperative Agreement;

WHEREAS, the City Council and the governing board of the Successor Agency approved the execution of the revised Agreement by resolutions adopted on June 4, 2012, subject to approval by the Oversight Board; and

WHEREAS, the City and the Successor Agency intend the Agreement to evidence their desire to re-enter into the Original Cooperative Agreement, as approved by the Oversight Board.

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), approves the Agreement and authorizes the Successor Agency to execute and deliver the Agreement substantially in the form presented to the Oversight Board.
2. Authorizes the Agreement 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 JUNE 6, 2012 BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Secretary

Chair