

**RESOLUTION NO. OB-2014-01**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF GONZALES APPROVING A LOAN AGREEMENT BETWEEN THE CITY OF GONZALES AND THE SUCCESSOR AGENCY IN AN AMOUNT NOT TO EXCEED \$185,630 TO PAY ENFORCEABLE OBLIGATIONS**

**WHEREAS**, the City Council of the City of Gonzales (the “**City**”) adopted an ordinance establishing the Redevelopment Agency of the City of Gonzales (the “**Redevelopment Agency**”) and approving the Redevelopment Plan for the Gonzales Redevelopment Project (the “**Project Area**”); 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

**WHEREAS**, pursuant to AB 26 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**, AB 26 provides for payments on the former Agency bonds (the “**Bonds**”) from the Redevelopment Property Tax Trust Fund (“**Trust Fund**”), which is held by Monterey County (“**County**”); and

**WHEREAS**, on June 27, 2012, the legislature passed and the Governor signed budget trailer bill AB 1484 (“**AB 1484**,” and together with AB 26 the “**Dissolution Law**”); and

**WHEREAS**, upon formation, the Successor Agency started with a deficit cash balance, resulting in an on-going cash flow problem requiring the Successor Agency to draw on Bond reserve funds to make debt service payments on the Bonds; and

**WHEREAS**, there are insufficient funds in the Trust Fund allocated to the Successor Agency for the second half of fiscal year 2013-2014 to replenish the Bond reserve funds, as required under the Bond documents; and

**WHEREAS**, pursuant to Health and Safety Code Section 34173(h) under AB 1484, the city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency to make enforceable obligations, with the repayment of the loan to be included on a subsequent Recognized Obligation Payment Schedule (“**ROPS**”); and

**WHEREAS**, the Successor Agency will need to enter into a loan with the City in order to repay debt service reserve funds for the Bonds, and a Loan Agreement facilitating said loan has been prepared for Successor Agency and City consideration; and

**WHEREAS**, the City approved the loan from the City to the Successor Agency on February 20<sup>th</sup>, 2014; and

**WHEREAS**, the Successor Agency approved the loan from the City to the Successor Agency on February 20<sup>th</sup>, 2014

**WHEREAS**, the loan from the City to the Successor Agency will be included on the July through December 2014 ROPS; and

**WHEREAS**, approval of the Loan Agreement by the Oversight Board to the Successor Agency of the Former Redevelopment Agency of the City of Gonzales is reviewable by the County Auditor-Controller, the County Administrative Officer, the California Department of Finance and the California State Controller's Office.

**NOW, THEREFORE, BE IT RESOLVED** by the Oversight Board to the Successor Agency of the Former Redevelopment Agency of the City of Gonzales as follows:

**Section 1.** All of the recitals set forth above are true and correct and are incorporated herein.

**Section 2.** The Oversight Board hereby approves the Loan Agreement and loan between the City of Gonzales and the Successor Agency in an amount not to exceed \$185,630, in the form attached hereto as Attachment '1', and authorizes the Successor Agency Director or designee, to take all actions and to execute any and all documents necessary and to make all approvals and take all actions necessary and appropriate to carry out and implement the terms of this Resolution.

**Section 3.** This Resolution shall take effect upon the date of its adoption.

**PASSED AND ADOPTED** by the Oversight Board at a special meeting held on the 24<sup>th</sup> day of February 2014 by the following vote:

**AYES: BOARD MEMBERS:** Rene Mendez, Scott Funk, Alfred Munoz, and Sara Perez

**NOES: BOARD MEMBERS:** None

**ABSENT: BOARD MEMBERS:** Chair Simon Salinas, Vice Chair Matt Gourley, Jayanti Addleman

**ABSTAIN: BOARD MEMBERS:** None

  
\_\_\_\_\_  
**Scott Funk**

**ATTEST:**

  
\_\_\_\_\_  
**Rene L. Mendez, Secretary**

**LOAN AGREEMENT BETWEEN  
THE CITY OF GONZALES AND THE SUCCESSOR AGENCY  
TO THE CITY OF GONZALES**

THIS LOAN AGREEMENT (this “**Agreement**”) is entered into as of February 21, 2014 (the “**Effective date**”), by and between the City of Gonzales, a California municipal corporation (“**City**”) and the Successor Agency to the Redevelopment Agency of the City of Gonzales (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 of Gonzales (the “**City**”) adopted an ordinance establishing the Redevelopment Agency of the City of Gonzales (the “**Redevelopment Agency**”) and approving the Redevelopment Plan for the Gonzales Redevelopment Project (the “**Project Area**”); 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

**WHEREAS**, pursuant to AB 26 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**, AB 26 provides for payments on the former Agency bonds (the “**Bonds**”) from the Redevelopment Property Tax Trust Fund (“**Trust Fund**”), which is held by Monterey County (“**County**”); and

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**WHEREAS**, upon formation, the Successor Agency started with a deficit cash balance, resulting in an on-going cash flow problem requiring the Successor Agency to draw on Bond reserve funds to make debt service payments on the Bonds; and

**WHEREAS**, there are insufficient funds in the Trust Fund allocated to the Successor Agency for the second half of fiscal year 2013-2014 to replenish the Bond reserve funds, as required under the Bond documents; and

**WHEREAS**, pursuant to Health and Safety Code Section 34173(h) under AB 1484, the city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency to make

enforceable obligations, and the repayment of the loan will be included on the ROPS; and

**WHEREAS**, the Successor Agency will need to enter into a loan with the City in order to repay debt service reserve funds for the Bonds; and

**WHEREAS**, the City approved the loan from the City to the Successor Agency on February 20, 2014; and

**WHEREAS**, the loan from the City to the Successor Agency will be included on the July –December 2014 Recognized Obligation Payment Schedule (“**ROPS**”).

**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 LOAN TERMS**

### 1.1 Loan.

- (a) Loan Amount. City agrees to lend to Successor Agency, and Successor Agency agrees to borrow from and repay to City, a Loan in the amount not to exceed One Hundred and Eighty Five Thousand Six Hundred and Thirty Dollars (\$185,630) (“**Loan Proceeds**”).
- (b) Loan Repayment. The total outstanding Loan principal together with accrued interest thereon, is due and payable on June 2, 2014 (the “**Maturity Date**”).
- (c) Interest. Commencing on the date of initial disbursement of the proceeds of the Loan and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the Loan will accrue on the outstanding principal balance, at the rate equal to the “Apportionment Rate” earned by the California Local Agency Investment Fund (“**LAIF**”) maintained by the California Treasurer’s Office (Government Code 16429.1) for the most recently completed fiscal quarter. Interest will be calculated on the basis of a year of 365 days and charged for the actual number of days that principal is outstanding.

1.2 Prepayment. Successor Agency may prepay the Loan, including any outstanding accrued and unpaid interest, in whole or in part, at any time, without penalty or other charge. Any partial prepayment shall be applied first to accrued and unpaid interest that is due, then to the outstanding principle balance of the Loan.

1.3 Payment. The outstanding principal of the City funds, together with any outstanding accrued and unpaid interest, is due and payable immediately upon the receipt of Trust Fund revenues collected for the Successor Agency by Monterey County and the State of California.

## **ARTICLE 2 DISBURSEMENT AND ACCOUNTING; USE OF FUNDS**

2.1 Disbursement. Loan proceeds may be disbursed to the Successor Agency upon the receipt of a drawdown request executed by the City Manager, in his capacity as staff to the Successor Agency.

2.2 Use of Loan Proceeds. Successor Agency may use the Loan Proceeds to repay Bond debt service reserves.

## **ARTICLE 3 SUCCESSOR AGENCY REPRESENTATIONS AND WARRANTIES**

3.1 Standing. Successor Agency warrants that it is in good standing with respect to all laws and regulations related to Successor Agency operations.

3.2 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.

3.3 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. Successor Agency hereby waives any defense to the enforcement of the terms of this Agreement related to alleged invalidity of any provisions or conditions contained in this Agreement.

3.4 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 4 CITY COVENANTS**

4.1 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 with might materially and adversely affect its ability to perform its obligations under this Agreement, or which constitutes, or with 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 5 INDEMNITY REQUIREMENTS**

5.1 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 6 DEFAULT AND REMEDIES**

6.1 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 Agency to make payments pursuant to Article 1 hereof.
- (b) Failure to Perform. Successor Agency's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

6.2 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) calendars after the Date of Default (defined herein), or any extension approved in writing by City, City may enforce its rights and remedies under Section 6.3 below. Any default that has occurred will be deemed to commence on the date that written notice of default is effective pursuant to Section 7.2 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.

6.3 Remedies. Upon the occurrence of any Event of Default, City, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or any combination of the following remedial steps:



7.3 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.

7.4 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.

7.5 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.

7.6 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, alternation 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.

7.7 Time. Time is of the essence in the performance of the terms and conditions of this Agreement.

7.8 Governing Law. The laws of the State of California govern this Agreement.

7.9 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 constructed 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.

7.10 Duration/Survival. This Agreement continues in full force and effect until the Loan is repaid in full.

7.11 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.

7.12 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 the Successor Agency have executed this Agreement as of the date first above written.

**City of Gonzales**  
a municipal corporation

**Successor Agency of the  
Redevelopment Agency of the  
City of Gonzales,**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Executive Director

Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Secretary

Reviewed as to Form:

Reviewed as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Successor Agency Counsel