

RESOLUTION NO. OB-2014-08

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE FORMER GONZALES REDEVELOPMENT AGENCY APPROVING A LOAN AGREEMENT BETWEEN THE CITY OF GONZALES AND THE SUCCESSOR AGENCY TO THE FORMER GONZALES REDEVELOPMENT AGENCY FOR ENFORCEABLE OBLIGATIONS PURSUANT TO HEALTH AND SAFETY CODE SECTION 34173 (H)

WHEREAS, pursuant to Health and Safety Code (the “HSC”) § 34172 (a)(1), the Gonzales Redevelopment Agency was dissolved February 1, 2012; and

WHEREAS, consistent with the provisions of the HSC, the City Council of the City of Gonzales (the “City”) previously elected to serve in the capacity of the Successor Agency to the Gonzales Redevelopment Agency (the “Successor Agency”); and

WHEREAS, the Oversight Board for the Successor Agency (“Oversight Board”) has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

WHEREAS, due to cash-flow insolvency, the Successor Agency has borrowed funds from the City to finance a portion of its enforceable obligations during past Recognized Obligation Payment Schedule (“ROPS”) periods that in total equals \$804,538; and

WHEREAS, pursuant to HSC § 34173 (h), the City may loan funds to the Successor Agency for administrative costs, enforceable obligations, or project-related expenses, and subject to Oversight Board approval, the Successor Agency shall include such borrowed funds on its ROPS as an enforceable obligation for the repayment of the borrowed funds; and

WHEREAS, consistent with HSC § 34173 (h), the Successor Agency has included the repayment of the \$804,538 that it borrowed from the City as enforceable obligation No. 18 on its Recognized Obligation Payment Schedule (“ROPS”) 14-15B, and shall continue to include this repayment enforceable obligation on future ROPS until the debt to the City has been fully repaid; and

WHEREAS, the Oversight Board’s adoption of this Resolution will confirm the Oversight Board’s approval of the establishment of an enforceable obligation for repayment of the City’s loan to the Successor Agency to be used to finance a portion of the Successor Agency’s enforceable obligations, as reflected on ROPS 14-15B and any future ROPS in which the repayment of the City loan may appear; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board for the Successor Agency to the Gonzales Redevelopment Agency, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Oversight Board hereby approves the Loan Agreement between the City of Gonzales and the Successor Agency in an amount of \$804,538, in the form attached hereto as Attachment '1', and authorizes the Successor Agency Director to execute the Agreement and to 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 22nd day of September 2014 by the following vote to wit:

AYES: BOARD MEMBERS: Scott Funk, Jayanti Addleman, Sara Perez, and Alfred Munoz

NOES: BOARD MEMBERS: None

ABSENT: BOARD MEMBERS: Chair Simon Salinas, Vice Chair Matt Gourley, and Rene Mendez

ABSTAIN: BOARD MEMBERS: None



Scott Funk, Board Member

ATTEST:



René L. Mendez, Secretary

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

THIS LOAN AGREEMENT (this “**Loan Agreement**”) is entered into as of September 22, 2014 (the “**Effective date**”), by and between the City of Gonzales, a California municipal corporation (“**City**”) and the Successor Agency to the Gonzales Redevelopment Agency (the “**Successor Agency**”). The City and the Successor Agency are hereinafter collectively referred to as the “**Parties.**”

RECITALS

WHEREAS, pursuant to Health and Safety Code (the “HSC”) § 34172 (a)(1), the Gonzales Redevelopment Agency was dissolved February 1, 2012; and

WHEREAS, consistent with the provisions of the HSC, the City Council of the City of Gonzales (the “City”) previously elected to serve in the capacity of the Successor Agency to the Gonzales Redevelopment Agency (the “Successor Agency”); and

WHEREAS, the Oversight Board for the Successor Agency (“Oversight Board”) has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

WHEREAS, due to cash-flow insolvency, the Successor Agency has borrowed funds from the City to finance a portion of its enforceable obligations during past Recognized Obligation Payment Schedule (“ROPS”) periods that in total equals \$804,538; and

WHEREAS, pursuant to HSC § 34173 (h), the City may loan funds to the Successor Agency for administrative costs, enforceable obligations, or project-related expenses and, subject to Oversight Board approval, the Successor Agency shall include such borrowed funds on its ROPS as an enforceable obligation for the repayment of the borrowed funds; and

WHEREAS, consistent with HSC § 34173 (h), the Successor Agency has included the repayment of the \$804,538 that it borrowed from the City as an enforceable obligation on its ROPS 14-15B and shall continue to include this repayment enforceable obligation on future ROPS until the debt to the City has been fully repaid; and

WHEREAS, the Oversight Board has adopted a Resolution confirming its approval of the establishment of an enforceable obligation for repayment of the City’s loan to the Successor Agency to be used to finance a portion of the Successor Agency’s enforceable obligations, as reflected on ROPS 14-15B and any future ROPS in which the repayment of the City loan may appear; and

WHEREAS, consistent with the foregoing, the Successor Agency wishes to enter into a formal loan agreement with the City (“Loan Agreement”) for the purpose of confirming and evidencing the funding provided by the City to finance a portion of the Successor Agency’s enforceable obligations during past ROPS periods that in total equals \$804,538; and

WHEREAS, the Successor Agency has included the repayment of the amount borrowed pursuant to the Loan Agreement on its ROPS 14-15B (January through June 2015); and

WHEREAS, funding for said loan will come from the City’s pooled cash; and

WHEREAS, as of the Effective Date of this Agreement, the City has approved the loan from the City to the Successor Agency.

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 Eight-Hundred Four Thousand Five-Hundred Thirty-Eight Dollars (\$804,538) (“**Loan Proceeds**”).
- (b) Loan Repayment. The outstanding principal balance of the loan together with accrued interest thereon, is due and payable on or before June 30, 2015 (the “**Maturity Date**”). In the event that the any portion of the outstanding principal balance of the loan together with accrued interest thereon cannot be repaid by the Maturity Date, the remaining balance, if any, shall be repaid as soon as possible from RPTTF received during a subsequent ROPS cycle (the “**Extended Maturity Date**”). The obligations of the Successor Agency pursuant to this Loan Agreement shall not expire until and unless all of the outstanding principal balance of the loan together with accrued interest thereon, has been repaid in full.
- (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 RPTTF revenues collected for the Successor Agency by Imperial County.

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 fund any approved enforceable obligation included within the ROPS for which the distribution of RPTTF was insufficient, but for no other purpose.

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:

- (a) declare that outstanding principal of the Loan, all interest accrued and outstanding, and all other sums owing to City immediately due and payable, and
- (b) take whatever other action at law or in equity which may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

6.4 Disclaimer. If City elects to employ any of the remedies available to it in connection with any Event of Default, City will not be liable for: (1) the payment of any expenses incurred in connection with the exercise of any remedy available to City, and (2) the performance or nonperformance of any other obligations of City under this Agreement.

ARTICLE 7 MISCELLANEOUS

7.1 Conflict of Interest; Interest of Employees, Agents, Consultants, Officers and Officials of City or Successor Agency. Except for approved eligible administrative or personnel costs, no employee, agent or consultant who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

7.2 Notices. Any notice, request or consent required pursuant to this Agreement shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, addressed as follows:

If to Successor Agency: Successor Agency to the Gonzales Redevelopment Agency
147 Fourth Street
Gonzales, CA 93926
Attention: Executive Director

If to City City of Gonzales
147 Fourth Street
Gonzales, CA 93926
Attention: City Manager

or to such other addresses as the parties may designate by notice as set forth above.

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.

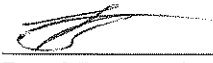
IN WITNESS WHEREOF, City and the Successor Agency have executed this Agreement as of the date first above written.

City of Gonzales
a municipal corporation

**Successor Agency to the
Gonzales Redevelopment
Agency**

By: 

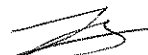
René L. Mendez, City Manager

By: 


René L. Mendez, Executive Director

Attest:

Attest:



René L. Mendez, City Clerk



René L. Mendez, Secretary