

**LOAN AGREEMENT BY AND BETWEEN
THE CITY OF SAN JOSE
AND
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE**

This loan agreement ("Agreement") is made and entered into this _____ day of _____, 2009, by and between the City of San Jose, a municipal corporation ("City") and the Redevelopment Agency of the City of San Jose, a public body, corporate and politic ("Agency").

RECITALS

- A. In November and December 2008, the Agency issued tax exempt debt in the amount of \$117,000,000 for the construction of governmental projects in the Agency's Adopted FY2008-2010 Two Year Spending Plan in the aggregate amount of \$,(TBD).
- B. The City is presently constructing improvements of benefit to various redevelopment areas, as specified in Exhibit A (collectively, the "Project").
- C. In order to facilitate the Agency's prioritization of delivery of all of the projects in its Spending Plan, the parties desire to enter into this Loan Agreement.
- DE. Because the City and the Agency are related entities under the Internal Revenue Code, the federal IRS restrictions on the use of tax exempt bond proceeds arguably continue to apply until the funds are spent by the City. The Project is a proper use of tax exempt proceeds under the federal regulations.
- EF. In consideration for this loan, the City will collect and retain interest from the Agency for the amounts loaned.
- EG. This loan from the City to the Agency constitutes indebtedness under the California Redevelopment Law.
- GH. It is the intent of the City and the Agency that the General Fund, including any expectation of interest from the Sewer Funds, be protected.

The City and Agency hereby agree:

1. Loan Amount.

Upon approval, and subject to the terms of this Agreement, the City agrees to make and the Agency agrees to accept a loan in the amount of \$12,000,000 (the "Loan"). It is anticipated that the transaction will occur on (date).

2. Use of Loan Proceeds.

The Agency shall use the proceeds of the Loan for all lawful uses and Agency obligations as needed, such as capital and operating expenses in the Adopted 2008-2009 Agency budget.

3. Repayment.

Immediately upon receipt of the Loan proceeds from the City, the Agency shall transfer from available funds the full amount of the Loan to the City plus one day's interest in the amount of \$1,023.78.

4. City Representations Regarding the Use of Repaid Funds.

The City acknowledges that the Agency may use the proceeds of tax exempt indebtedness to repay the Loan. The City acknowledges that proceeds of tax exempt indebtedness are not "spent" for certain federal income tax purposes until the City spends the proceeds. As such, City makes the following representations regarding the use of the repaid funds ("Project Funds"):

- a. The City shall track the Project Funds in the same manner that it tracks all of its Bond funds in order to monitor investment earnings as described in detail below.
- b. Project Funds will be used for the payment of costs and expenses of acquisition and construction of the Project. It is not intended that these funds will be used to reimburse costs already incurred.
- c. The City will proceed with due diligence to completion of the Project. It is expected that these sums will be expended within three (3) years of the date of issuance of such tax-exempt obligations, being November 13, 2008..
- d. Project Funds will be invested without yield restrictions for the period necessary to complete the Project. To the extent the interest earned on such amounts exceeds the yield on the tax exempt obligations, such excess investment earnings will be subject to the rebate requirements of federal tax law through November 13, 2011, and thereafter be subject to yield reduction payments as provided in federal tax law. Interest earnings and gains resulting from investment of the -Project Funds will be retained by City and used for the payment of costs and expenses of the Project, unless otherwise needed to make rebate or yield reduction payments. Any Project Funds remaining upon completion of the Project will be used for additional capital improvement projects of the City which are of benefit to a redevelopment project area.

- e. City shall take all actions reasonably necessary with respect to the Project Funds to assure the exclusion of interest from the gross income of the holders of any Agency issued debt instrument, the proceeds of which are used to fund the Project, to the same extent interest is permitted to be excluded from gross income under the Internal Revenue Code of 1986 as in effect on the date hereof.
- f. The City shall provide the Agency with all information regarding investment and expenditure of the Project Funds that is necessary in order for the Agency to compute and pay rebate on the loan proceeds if applicable.

5. Indemnification.

The Agency agrees to defend, indemnify and hold harmless the City's General Fund from and against any loss, liability, claim or expense resulting from or arising out of this Agreement.

6. Events of Default.

- a. The Agency shall be in default in the event it does not repay the full amount of the Loan pursuant to Paragraph 3 of this Agreement.
- b. The City shall be in default in the event of a material breach of any of the representations, covenants or restrictions imposed by federal law and specified in Paragraph 4 of this Agreement.

7. Remedies.

Either party may exercise from time to time any rights and remedies available to it at law or in equity.

8. Notice.

All notices, requests and other communications provided for hereunder shall be in writing, delivered addressed as follows:

To the City: Scott Johnson, Director
 City of San Jose
 Department of Finance
 200 East Santa Clara Street, 13th Floor
 San Jose, CA 95113

Jennifer Maguire, Director

City of San Jose
City Manager's Budget Office
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113

To the Agency: David Baum
Director of Finance
Redevelopment Agency of the City of San Jose
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113

9. No Third Party Beneficiaries.

No person or entity, other than the City and the Agency, shall have any right of action under this Loan Agreement.

10. Time.

Time is of the essence in this Agreement.

11. Amendments.

Amendments to this Agreement shall be effective only upon the mutual agreement in writing of the parties hereto.

12. Severability.

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

13. Governing Law.

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

Executed by the City and Agency on the day and year first above written.

Approved to form:

Senior Deputy City Attorney

CITY OF SAN JOSE

City Clerk

Approved to form:

Chief Deputy General Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

Harry S. Mavrogenes
Executive Director

Approved as to content:

City Manager

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