

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (A) MEMORIALIZING THE DESIGNATION OF THE CITY OF SAN JOSE IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE; (B) ELECTING TO RETAIN THE HOUSING ASSETS AND FUNCTIONS OF THE REDEVELOPMENT AGENCY WITH REGARD TO THE LOW AND MODERATE INCOME HOUSING PROGRAM; (C) ESTABLISHING A NEW FUND FOR THE SUCCESSOR HOUSING AGENCY, EFFECTIVE FEBRUARY 1, 2012, ENTITLED "AFFORDABLE HOUSING INVESTMENT FUND"

WHEREAS, in accordance with the California Community Redevelopment Law, California Health and Safety Code section 33000 et. seq. (the "CRL"), the Council of the City of San Jose ("City") created the Redevelopment Agency of the City of San Jose ("Agency") and approved redevelopment plans to alleviate blight in various parts of the City. For more than 55 years, the Agency has been engaged in state-authorized activities to implement those plans; and

WHEREAS, since the Agency Board of Director's ("Board") adoption of those redevelopment plans, it has played a critical role in alleviating physical and economic blight in disadvantaged neighborhoods in San Jose, by attracting private investment and leveraging public resources to increase the City's supply of affordable housing, improve public facilities and infrastructure, create jobs and expand the local economy; and

WHEREAS, the Agency has twenty-one active redevelopment project areas approved by the Agency Board, consisting of (1) Alameda, (2) Almaden Gateway, (3) Alum Rock Avenue, (4) Century Center, (5) Civic Plaza, (6) East Santa Clara Street, (7) Edenvale, (8) Guadalupe-Auzerais, (9) Japantown, (10) Julian-Stockton, (11) Market Gateway, (12) Monterey Corridor, (13) Neighborhood Business Clusters, (14) Olinder, (15) Park

Center, (16) Pueblo Uno, (17) Rincon de Los Esteros, (18) San Antonio Plaza, (19) Story Road, (20) Strong Neighborhoods Initiative, and (21) West San Carlos Street; and

WHEREAS, in furtherance of redevelopment plans that the Board approved and pre-existing binding contracts and other enforceable obligations that the Agency has entered into with third parties, the Agency has been engaged in implementing three remaining Non-Housing revitalization projects: North San Pedro, Center for Employment Training and various Façade Improvement Projects; (collectively, the "Approved Non Housing Development Projects"); and numerous approved Low and Moderate Income Housing Projects, as more particularly described on the Enforceable Obligation Payment Schedule ("EOPS") approved by the Board on September 27, 2011, by Resolution No. 6030, as such schedule may be revised from time to time (collectively, "Approved Affordable Housing Projects") and together "Approved Development Projects" and

WHEREAS, enforceable obligations for the Approved Development Projects, including, among others, agreements with or for the express benefit of private investors as well as regional, state and federal agencies, require the pledge for the duration of those projects of incremental property tax revenues generated in the project areas for the purpose of building public infrastructure and public facilities to support development of projects and of developing affordable housing, and specifically oblige the issuance of bonds or other evidences of indebtedness (collectively, "Bonds") for those purposes that the Agency will pay back based on such pledges of increment according to the terms and conditions of those binding agreements; and

WHEREAS, completion of the Approved Development Projects is in the City's best interests, is consistent with earlier Board and City Council approvals and is required under the terms and conditions of all enforceable obligations that the City, as Successor

Agency to the Agency is obligated to perform under AB 26, including Section 34177(c) of the CRL; and

WHEREAS, in 1988, the Agency and City entered into a Cooperation Agreement under which the Agency delegated to the City the administration of the Low and Moderate Income Housing Program; and

WHEREAS, the Agency through the City's Housing Department (i) has assisted in the development of over 18,000 affordable housing units restricted to low and moderate income households, (ii) has numerous enforceable obligations, including housing projects in the planning, pre-development and construction stages to provide housing for low and moderate income residents, and (iii) has replacement housing obligations, all as more particularly described on the EOPS, and

WHEREAS, the Agency has been required, under Section 33334.3 of the CRL, to deposit all funds to be used for the purposes of increasing, improving, and preserving the supply of affordable housing in a separate Low and Moderate Income Housing Fund and the current amount in the fund is about \$27.2 million; and

WHEREAS, the Agency, through the City's Housing Department, performs important functions relating to the production and protection of affordable housing under the CRL including, but not limited to:

1. exercising any and all powers, as described in Section 33334.2 and other CRL sections, for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income person or families ("Affordable Housing");
2. fulfilling Affordable Housing obligations specified in Section 33333.8 and Section 33333.7;

3. receiving tax increment pledged to Affordable Housing and deposit these funds in the Low and Moderate Income Housing Fund;
4. fulfilling enforceable obligations, as defined in Section 34171 (d) related to Affordable Housing including the issuance of Bonds secured by affordable housing tax increment;
5. receiving payments related to Agency Affordable Housing including earlier Agency loans or land leases;
6. lending or granting funds from the Low and Moderate Income Housing Fund for Affordable Housing;
7. guaranteeing commercial loans related to the development of Affordable Housing;
8. adopting and amending Affordable Housing policies and agreements consistent with the CRL;
9. acquiring and disposing of real property, including long term ground leases, for the purposes of Affordable Housing;
10. enforcing affordability restrictions of existing Agency agreements, such as ground leases, owner participation agreements and development and disposition agreements;
11. managing Affordable Housing developments under development by the Agency;
12. managing Affordable Housing implementation in the remaining redevelopment project areas; and

WHEREAS, on June 15, 2011, as part of a special session that the Governor called to address the State's fiscal emergency and as trailers to the State's budget bill for the 2011-2012 fiscal year, the California Legislature, by majority vote, adopted two companion bills relating to community redevelopment; and

WHEREAS, the first of those bills, Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26"), (1) suspends most new activities of redevelopment agencies (other than making payments due, enforcing covenants and performing its obligations under Bonds and other "enforceable obligations" as defined in the act) as of the effective date of the act and before their dissolution; (2) dissolves all redevelopment agencies in the State as of October 1, 2011 (which date has been extended as described below), and (3) designates successor agencies – generally the cities and counties where the agencies operated – to receive assets of the former redevelopment agencies, satisfy enforceable obligations, preserve assets for the benefit of taxing entities and wind up the affairs of former redevelopment agencies; and

WHEREAS, AB 26 places successor agencies' performance of their duties under the supervision of newly established oversight boards, which are separate from the local legislative bodies and which will oversee the fiscal management of future successor agency activities regarding the enforceable obligations. AB 26 provides that the oversight boards, in performing their functions required under the act, have fiduciary responsibilities to the holders of enforceable obligations and the taxing entities that benefit from the distribution of property tax revenues under the act. Some actions by the oversight boards and successor agencies are also subject to discretionary review by the State Department of Finance under AB 26; and

WHEREAS, AB 26 requires the City, as Successor Agency, to create within its treasury a Redevelopment Obligation Retirement Fund to pay indebtedness and satisfy enforceable obligations of the former Agency; and

WHEREAS, AB 26 added Section 34176(a) to the CRL, which provides that a city that authorized the creation of a redevelopment agency may elect to retain the housing assets and housing functions previously performed by the redevelopment agency, including all of its rights, duties, and obligations under the CRL; and

WHEREAS, the funds in the Low and Moderate Income Housing Fund were previously encumbered as required and necessary to fulfill enforceable obligations and complete previously-authorized projects, preserve existing affordable housing assets and comply with legal restrictions governing the use of affordable housing bond proceeds, and the intent and purpose of AB 26 is to include at a minimum the proceeds of all Bonds as well as all other restricted and encumbered funds, in the transfer of housing assets and functions to the successor housing agency; and

WHEREAS, AB 26 expressly requires that the successor agency complete approved development projects with enforceable obligations, by expressly requiring the successor agency to make payments and perform obligations under enforceable obligations of the former redevelopment agency (adding Sections 34177(a), (b) and (c) to the CRL), and to continue to oversee development of properties until the contracted work has been completed or the contractual obligations can be transferred to other parties (adding Section 34177(i) to the CRL). AB 26 further expressly mandates that pledges of increment associated with enforceable obligations of former redevelopment agencies be honored (Section 34175(a) of the CRL and see also Sections 34172(c) and (d) and 34174(a)); and

WHEREAS, AB 26 insulates successor agencies such as the City from General Fund liability associated with the dissolution of redevelopment agencies and transfer of assets and obligations by providing that the liability of any successor agency acting under the powers granted under AB 26 shall be limited to the extent of the total sum of property tax revenues the successor agency receives under AB 26 and the value of the assets transferred to it as a successor agency for a dissolved redevelopment agency (see Section 34174(e), added to the CRL); and

WHEREAS, the second bill, Assembly Bill No. 1X 27 (Chapter 6, Statutes of 2011-12, First Extraordinary Session) ("AB 27"), would have allowed a city or county (the "Community") to provide for redevelopment agencies within that Community to continue to exist and operate, despite AB 26, if the local legislative body timely enacted an ordinance to comply with AB 27; and

WHEREAS, on June 28, 2011, the Governor approved AB 26 and AB 27, on June 29, 2011, the Secretary of State chaptered those bills, and on June 30, 2011, the Governor signed the State budget bill. As a result, most of the Agency's new redevelopment activities have been suspended since June 30th, except for those activities related to the performance of enforceable obligations and those related to future actions that a successor agency may be required to take; and

WHEREAS, on July 18, 2011, the City joined with the California Redevelopment Association, League of California Cities, and certain other parties and filed a petition for writ of mandate and an application for temporary stay in the Supreme Court of the State of California (the "Court"), challenging the constitutionality of AB 26 and AB 27, California Redevelopment Association v. Matosantos, No. S194861 (the "Action"). In the Action the petitioners sought, among other things, to invalidate AB 26 and AB 27 and to stay the enforcement of those provisions dissolving redevelopment agencies and requiring payment of the community remittance. The Court accepted original jurisdiction in the Action, granted a partial stay pending its resolution of the case but kept in place the moratorium on most new redevelopment activities and the requirement that redevelopment agencies adopt enforceable obligation payment schedules; and

WHEREAS, on December 29, 2011, the Court issued its final decision in the Action, (1) upholding most of AB 26 regarding the dissolution of redevelopment agencies and the transfer to successor agencies, (2) invalidating all of AB 27 because the payment obligation on its face violates the State Constitution and in particular Proposition 22, and

the payment obligation was not severable from the rest of that act, and (3) extending various deadlines under AB 26 by four months corresponding to the period the Court's stay was in effect, and in so doing extended the deadline for the automatic dissolution of redevelopment agencies, including the Agency, to February 1, 2012; and

WHEREAS, the City Council wishes to (i) acknowledge its designation as the Successor Agency to the Agency, (ii) elect to retain the housing assets and functions of the Agency with regard to the Low and Moderate Income Housing Program, (iii) perform all enforceable obligations of the former Agency consistent with AB 26, (iv) achieve an efficient winding down of the Agency's affairs, and (v) ensure that the Approved Development Projects continue forward without delay and can be completed in a coordinated, centralized and timely manner; and

WHEREAS, the City has received an inventory of the Agency's Non Housing and Housing real property assets, copies of which are attached to the Memorandum to the Agency Board and City Council dated January 20, 2012 from City Manager Deborah Figone and Redevelopment Agency Managing Director Richard Keit; and

WHEREAS, under Section 801 of the City Charter, the City Manager directs and supervises the administration of all departments, offices and agencies of the City, unless otherwise provided for in the Charter. Accordingly, upon dissolution of the Agency, staff has recommended that the City Manager be appointed and act in the capacity as Executive Officer of the Successor Agency; and

WHEREAS, the City desires to establish a new fund, effective February 1, 2012, entitled "Affordable Housing Investment Fund", which fund shall be used by the successor housing agency to administer the housing assets and functions related to the Low and Moderate Income Housing Program retained by the City; and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines promulgated thereunder (collectively, "CEQA"), as amended to date, the provisions of this Resolution were determined to be exempt from environmental review and a Statement of Exemption has been issued under File No. PP12-008; and

WHEREAS, the City Council is the decision-making authority for this Resolution and has considered the Statement of Exemption prepared for this Resolution;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

- (a) Accepts the responsibility to act as the Successor Agency to the Redevelopment Agency of the City of San Jose pursuant to the terms and limitations of AB 26.
- (b) Elects to retain the housing assets and functions of the Agency with regard to the Low and Moderate Income Housing Program pursuant to the terms of Health and Safety Code Section 34176.

//
//
//
//
//

- (c) Establishes a new fund for the successor housing agency, effective February 1, 2012, entitled "Affordable Housing Investment Fund".

ADOPTED this ____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk