



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Debra Figone

SUBJECT: SEE BELOW

DATE: June 16, 2012

**SUBJECT: REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF SAN JOSÉ
AND THE SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY**

RECOMMENDATION

- (a) Adopt resolutions authorizing the City Manager and Executive Officer of the Successor Agency to the Redevelopment Agency of the City of San José (the “Successor Agency”) to negotiate and execute a reimbursement agreement between the City of San José (the “City”) and the Successor Agency for the purpose of establishing enforceable obligations to repay the City for future expenditures made on behalf of the Successor Agency in an annual amount not to exceed the annual outstanding debt obligations for the City of San José Financing Authority Lease Revenue Bonds, Series 2001F (Convention Center Refunding), City of San José Financing Authority Revenue Bonds, Series 2001A (4th Street & San Fernando Parking Facility Project), Housing and Urban Development (HUD) 108 loans and Education Revenue Augmentation Fund (ERAF) payments (collectively the “City Supported Agency Obligations”) and the Successor Agency annual administrative budget (“Administrative Costs”) and City support service expenses (“Enforceable Obligations Implementation Costs”), subject to approval of the Oversight Board.
- (b) Adopt a resolution by the City Council acting in its capacity as the Successor Agency Board, authorizing the Executive Officer to negotiate and execute a temporary loan from the County of Santa Clara pursuant to the resolution of the Board of Supervisors adopted on May 22, 2012, for the purposes of managing cash flow shortages in FY 2012-13 resulting from the implementation of ABX1 26.

OUTCOME

Approval of the recommendations will: 1) enable the City to be reimbursed from future redevelopment tax revenues for funds advanced by the City to cover certain enforceable obligations (City Supported Agency Obligations, Administrative Costs, Enforceable Obligations Implementation Costs) of the former Redevelopment Agency to the extent that there are insufficient tax revenues in any fiscal year to cover such obligations; and 2) enable the Successor Agency to borrow on an intra-year basis from the County Treasurer Comingled Pool funds as may be necessary to even out cash flow issues during the fiscal year.

The above recommendations address only the current contractual obligations of the City and the operating and administrative costs of the Successor Agency. It does not address any other potential funding insufficiencies including senior and subordinate Tax Allocation Bonds and other enforceable obligations of the Successor Agency.

BACKGROUND

On February 1, 2012, all redevelopment agencies in the State of California were dissolved pursuant to AB X1 26. The successor agencies created by the legislation are charged with winding down the operations of the former agencies and authorizing payment of all enforceable obligations. The legislation requires that the successor agency prepare a Recognized Obligation Payment Schedule (ROPS), which details the authorized payment obligations of the former redevelopment agency every six months. Recognized Enforceable Obligations include: bonds secured by tax increment, loans due to third parties, payments required by law (including pass through payments and intergovernmental agreements), judgments or settlements, contracts and agreements with third parties, administrative costs, and funds previously borrowed from the former 20% Low and Moderate Income Housing Fund to pay non-housing obligations.

On April 12, 2012, the Oversight Board adopted a resolution, directing the Successor Agency to prepare a Reimbursement Agreement with the City for the purpose of establishing an Enforceable Obligation to repay the City for future expenditures of City Supported Agency Obligations, Administrative Costs, and Enforceable Obligations Implementation Costs in years when tax increment and other successor agency revenues are insufficient to cover these costs. The Oversight Board is scheduled to consider the proposed Reimbursement Agreement at its June 28, 2012 meeting.

ANALYSIS

A. Proposed City/Successor Agency Reimbursement Agreement.

Recognized Enforceable Obligations do **not** include agreements between the former Agency and the City **unless** a written agreement was entered into at the time of issuance of indebtedness obligations for the sole purpose of securing or repaying that indebtedness (Health and Safety Code Section 34171 (d) (2)). The Second Amended and Restated Reimbursement Agreement between the City and the former Redevelopment Agency, dated as of July 1, 2001 related to the Convention Center bonds and the Agency Pledge Agreement between the former Agency and the City dated as of April 1, 2001, related to the 4th and San Fernando Garage Project both fall under this exception and remain enforceable obligations under the legislation. However, unlike the outstanding Tax Allocation Bonds of the former Agency, to the extent that there are insufficient redevelopment tax revenues to make debt service payments on these obligations as they become due each year, the City is obligated to make those payments.

As of June 30, 2011, with regard to indebtedness secured by the Non-Housing portion of the former tax increment from the Agency's Merged Project Area ("80% Debt") the former Agency had total outstanding bond indebtedness of \$2,369,575,000 consisting of approximately \$1.7 billion in senior tax allocation bonds, \$97 million in subordinate variable-rate bonds, and approximately \$223 million of additional subordinate debt. Included in the \$223 million of additional subordinate debt are four obligations which the City has a direct legal obligation to support in the event that tax increment and other successor agency revenues are insufficient to pay them. These obligations, which collectively are the "City Supported Agency Obligations", include:

- City of San José Financing Authority Revenue Bonds, Series 2001A (4th & Fernando Street Parking Facility Project (the "2001A Bonds");
- City of José Financing Authority Lease Revenue Bonds, Series 2001F (Convention Center Refunding (the "2001F Bonds");
- Three separate Housing and Urban Development (HUD) 108 loans
- Two separate loans from the California State Communities Development Authority borrowed in 2005 and 2006 (verify) so that the former Agency could make its state mandated Education Revenue Augmentation Fund (ERAF) payments.

In addition to the aforementioned bond indebtedness the dissolution legislation provides for an administrative costs allowance to pay for administrative costs of administering and implementing the Successor's Agencies obligations ("Administrative Costs") pursuant to an administrative cost budget approved by the Oversight Board. In addition to Administrative Costs, the legislation provides that the Successor Agency may pay for staffing and consultant costs required to complete implementation of projects that are unfinished. ("Enforceable Obligations Implementation Costs") To the extent that redevelopment tax revenues are not sufficient to cover these costs, and the City has to advance funds to the Successor Agency to cover these

Enforceable Obligations Implementation Costs to implement the wind down of the former Agency's activities, the City will seek reimbursement for its advances.

On May 1, 2012, the Successor Agency submitted to the County Auditor-Controller a notice of insufficient revenues for the period of July 1, 2012 through December 31, 2012. On June 8, 2012, the Auditor Controller transmitted to the State Controller, per the legislation a verified insufficiency of funds report. The annual City Supported Agency Obligations (City Supported Agency Obligations, Administrative Costs, Enforceable Obligations Implementation Costs) are currently estimated to total approximately \$27 million in 2012-2013. Additionally, preliminary long-term cash flow analysis indicates that an annual structural insufficiency of funds is projected to continue for several years.

B. Terms of the City/Successor Agency Reimbursement Agreement.

Outlined below are the key terms and conditions of the Reimbursement Agreement:

Annual City Advance Amount

The annual City Advance amount should not exceed the annual aggregate amount for City Supported Agency Obligations, Administrative Costs and Enforceable Obligation Implementation Costs as defined above.

City Advance Funding Mechanics

For the purposes of this Agreement a structural deficit is defined as when, based on Successor Agency cash flow projections, it is projected that an insufficiency of funds will occur in a given fiscal year for City Supported Agency Obligations, Enforceable Implementation Costs, and Administrative Cost. Successor Agency and City staffs will evaluate the financial status of the Successor Agency and in the event that a structural deficit is projected, funding assumptions surrounding City Supported Agency Obligations, Enforceable Obligations Implementation Costs, and Administrative costs will be evaluated and included, as necessary, as part of the City's Annual Budget process. The Successor Agency will present the recommended City Advance amount to the Oversight Board for consideration to be included as an Enforceable Obligation on the subsequent ROPS submission, which is subject to review by the State Department of Finance and State Controllers Office. The estimated City Advance payment may be modified during a given fiscal year through City Council approved action and an amendment to the ROPS approved by the Oversight Board. The Advance amount will be appropriated subject to the approval of the City Council in a given year.

Successor Agency City Advance Repayment Obligations

- **Principal** – Principal is defined as the City Advance amount in a given year and accrued to subsequent years.

- **Interest** - The interest shall be calculated on an annual basis in arrears and defined as the earned income yield on the City's Investment Portfolio Fund 1 for the fiscal year ended June 30th prior to the disbursement of loan funds. This yield is reported in the 4th quarter investment report.

Term & Maturity

The term of the Reimbursement Agreement is the earlier of: 1) full repayment of all outstanding City Advance amounts plus interest, or 2) June 30, 2042, which is six months after the termination of the last redevelopment project area.

The City advances will become due and payable when, and to the extent that redevelopment tax revenues and other redevelopment revenues are sufficient to cover the City advances in accordance with the "waterfall" of priorities set forth in the legislation.

C. Potential Cash Flow Loan from the County.

On May 22, 2012, the Santa Clara County Board of Supervisors adopted a resolution authorizing the County Treasurer to provide temporary loans ("Temporary Loans") for FY 2012-13 cash flow timing imbalances of successor agencies. The resolution stipulates the successor agencies requesting such loans must provide cash flow estimates which are to reviewed and approved by the County Treasurer. Following are the key terms and conditions of the Temporary Loans:

- Successor agencies shall make a formal request for a short-term loan to the County Director of Finance
- Successor agencies shall provide cash flow estimates in a form acceptable to the Director of Finance, at his or her discretion, that the loan amounts will be paid in full upon the next apportionment from the relevant Redevelopment Property Tax Trust Fund (RPTTF).
- All loans shall accrue interest at County Commingled Pool rates.
- All loans shall be repaid by the County Auditor-Controller from the next apportionment from the relevant RPTTF on June 1 or January 16.
- All loans shall be limited to assistance with temporary cash flow needs, and no loan shall issue for a structural deficit or long-term borrowing need.

In the event the Successor Agency requires cash flow financing, the Successor Agency will be authorized to enter into a short-term loan agreement with the County under the set forth above.

EVALUATION AND FOLLOW-UP

Each year, as part of the development of the City's Operating Budget recommendations for funding City Supported Agency Obligations, Enforceable Obligations Implementation Costs, and Administrative Costs will be brought forward for City Council review and approval. These City advances will be accounted for as obligations due to the City from the Successor Agency and reported in the annual financial statements.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This report was prepared by the Finance Department in coordination with the City Attorney's Office, the City Manager's Budget Office, the Successor Agency to the Redevelopment Agency, and Housing Department.

COST SUMMARY/IMPLICATIONS

The annual City Supported Agency Obligations (City Supported Agency Obligations, Administrative Costs, Enforceable Obligations Implementation Costs) are currently estimated to total approximately \$27 million in 2012-2013 and are forecasted to range between \$20.6 million to \$25.4 million annually through 2022-2023. The current approved 2012-2013 City Operating Budget includes funding of approximately \$16.3 million in all funds, (\$11 million in the General Fund) to advance funding for these costs. Depending on many variables including the potential growth or decline in tax increment receipts, this figure could be higher or lower to a maximum of the full \$27 million. The actual amount, if any, of an annual City advance will be brought forward as part of the City's annual budget process.

HONORABLE MAYOR AND CITY COUNCIL

June 15, 2012

Subject: Reimbursement Agreement Between the City and the Successor Agency

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CEQA

Not a project, PP10-066, Agreements/Contracts (New or Amended).



DEBRA FIGONE

City Manager and

Executive Officer, Successor Agency

Attachment

Attachment 1 - Reimbursement Agreement Terms & Conditions

<p>Parties to Agreement(s): Lender – Borrower -</p>	<ul style="list-style-type: none"> • City of San José • Successor Agency for the San José Redevelopment Agency (SARA)
<p>Annual City Advance Amount</p>	<p>Annual City Advance amount not to exceed the annual obligations of the Successor Agency for the following:</p> <ul style="list-style-type: none"> • City Supported Agency Obligations including; San José Financing Authority Revenue Bonds Series 2001A (4th & San Fernando Parking Facility); San José Financing Authority Lease Revenue Bonds Series 2001F (Convention Center); ERAF loan payments; HUD 108 Loan payments • Enforceable Obligations Implementation Costs including; employee costs (for administrative, professional, technical, financial and legal staffing), office equipment and supplies, and other apportioned operational costs related to specific enforceable obligations of the former Agency, • Administrative Costs pursuant to an administrative cost budget approved by the Oversight Board,
<p>Determination of Annual City Advance Amount</p>	<p>The Successor Agency in cooperation with City staff will construct cash flow projections to determine if an insufficiency of funds will occur on an annual basis for City Supported Agency Obligations, Enforceable Implementation Costs, and Administrative Costs.</p>
<p>Sources of Funding for City Advance Amount</p>	<p>The City Council through its annual budgetary process will appropriate any legally available funds subject to City Council approval of the City’s annual budget. The purpose of advancing funds is for payment of any insufficiencies associated with City Supported Agency Obligations, Enforceable Implementation Costs, and Administrative Costs.</p>

<p>Funding Mechanics</p>	<ul style="list-style-type: none"> • Successor Agency and City staff will evaluate the financial status of the Successor Agency and in the event a structural deficit is projected, funding assumptions surrounding City Supported Agency Obligations, Enforceable Obligations Implementation Costs, and Administrative costs will be evaluated and included, as necessary, as part of the City’s Annual Budget process. • The Successor Agency will present the recommended City Advance amount to Oversight Board for approval and inclusion as an Enforceable Obligation on the subsequent ROPS submission and acceptance of the Oversight Boards action by the State Department of Finance and State Controllers Office. • The estimated City Advance payment may be modified during a given fiscal year through City Council approved action and an amendment to the ROPS approved by the Oversight Board. <p>The Advance amount will be appropriated subject to the approval of the City Council in a given year.</p>
<p>Successor Agency City Advance Repayment Obligations:</p> <p>Principal –</p> <p>Interest -</p>	<ul style="list-style-type: none"> • Principal is defined as the City Advance amount in a given year and any subsequent years. • The interest shall be calculated on an annual basis in arrears and defined as the earned income yield on the City’s Investment Portfolio Fund 1 for the fiscal year ended June 30th prior to the disbursement of loan funds. This yield is reported in the 4th quarter investment report.
<p>City Advance Repayment Term & Maturity</p>	<p>The term of the Reimbursement Agreement is the earlier of: 1) full repayment of all outstanding City Advance amounts plus interest, or 2) June 30, 2042, which is six months after the termination of the last redevelopment project area.</p> <p>The maturity of City advances are will be whenever excess redevelopment tax revenues and any other legally available funds are available after all other obligations are paid in accordance with the priority of payment terms contained herewith.</p>
<p>Annual Reconciliation of Advance</p>	<p>In any given year that the City has provided an advance for a projected structural deficit, year end reconciliation will be completed of actual advances versus actual expenditures. Excess funds shall be remitted back to the City within 60 days and reported to the City Council each year as part of the City’s Annual Report.</p>
<p>Source of Successor Agency City Advance Repayment</p>	<p>The Successor Agency’s repayment to the City shall be from redevelopment tax revenues and any other funds of the Successor Agency.</p>