

RESOLUTION NO. OB-05-14

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY FINDING THAT THE LOAN AGREEMENT EVIDENCED BY THE PROMISSORY NOTE BETWEEN THE FORMER EL CAJON REDEVELOPMENT AGENCY AND THE CITY OF EL CAJON IS AN ENFORCEABLE OBLIGATION, MADE FOR LEGITIMATE REDEVELOPMENT PURPOSES; AND APPROVING A MODIFICATION TO SAID PROMISSORY NOTE PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34191.4(b)(2).

WHEREAS, on May 24, 2011, the former El Cajon Redevelopment Agency ("Agency") approved acquisition of the former police station headquarters at 100 Fletcher Parkway (the "Site") from the City of El Cajon ("City") under a Purchase and Sale Agreement ("PSA") for the as-demolished value of \$4,850,000; and

WHEREAS, the property was programmed for acquisition of the Site by the Agency specifically due to completion of the new Public Safety Center in 2011 and to redevelop the site with new commercial/retail activities that would yield significant economic benefits to the City and taxing entities, including creation of new sales tax, property taxes, and job creation; and

WHEREAS, under the PSA, the Agency and City entered into a loan agreement (the "Loan Agreement") wherein the Agency deposited \$1 million as a down payment at close of escrow, and the Agency financed the balance of \$3,850,000 at 3% per annum over five years, with payments of \$840,665 due each December 1st, beginning December 1, 2011, pursuant to a Promissory Note and Deed of Trust (collectively, the Security Documents"), and escrow closed on June 16, 2011, at which time title to the Site was conveyed to the Agency; and

WHEREAS, the Security Documents were included on the Enforceable Obligations Payment Schedule ("EOPS") approved by the Agency on August 23, 2011, and the amended EOPS dated January 24, 2012, which were later approved by the California Department of Finance ("DOF") on April 6, 2012; and

WHEREAS, the DOF denied the December 2012 and 2013 Note payments pursuant to Health and Safety Code Section 34191.4(b)(1), which states that "upon application by the successor agency and approval by the oversight board, loan agreements entered between the redevelopment agency and the city, county, or city and county that created the redevelopment agency shall be deemed enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes"; and

WHEREAS, Section 34191.4 requires that a Finding of Completion must also be received by the successor agency in order for a loan agreement between a redevelopment agency and the city that created the redevelopment agency to be

deemed an enforceable obligation, and Section 34191.4 further provides that loan repayments must be made under a defined schedule over a reasonable term of years at an interest rate not to exceed the Local Agency Investment Fund ("LAIF") rate, and limitations to the amount of repayment apply prior to placement on the next Recognized Obligation Payment Schedule ("ROPS"); and

WHEREAS, under the provisions of Assembly Bill 1484 ("AB 1484"), as interpreted by the DOF, the interest rate applicable to the Note shall also be the rate paid by LAIF at the time the Oversight Board makes the required finding as set forth in this resolution; and

WHEREAS, the current LAIF rate of interest is 0.26%, and the applicable AB 1484 provisions require the Note to be recalculated from the date of origination (i.e., June 16, 2011) with interest at the current LAIF rate added to the principal; and

WHEREAS, based on the current 0.26% LAIF rate, the existing balance of the loan is \$2,181,134.86 as of December 1, 2012, the proposed amortization schedule ensures that sufficient tax increment revenue is available to meet all other obligations, and the loan is proposed to be repaid by December 2015 or upon close of escrow, whichever occurs first; and

WHEREAS, the Successor Agency received its Finding of Completion on April 11, 2013; and

WHEREAS, the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency held a regularly scheduled meeting on January 15, 2014, for the purpose of requesting that the Oversight Board find that the Loan Agreement evidenced by the Promissory Note ("Note") entered into between the City of El Cajon and the former El Cajon Redevelopment Agency, is an enforceable obligation that was made for legitimate redevelopment purposes, and to approve a modification to Note to reduce the interest rate from 3.0% to 0.26% pursuant to Health and Safety Code Section 34191.4(b)(2).

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

A. The Oversight Board finds that:


1. The above recitals are true and correct and by incorporation herein by this reference are the findings of the Oversight Board.
2. Approval of the Loan Agreement is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed agreements will not cause a significant adverse physical change to the environment either directly or indirectly.

3. The Oversight Board has reviewed the Finding of Completion issued to the Successor Agency by the Department of Finance, dated April 11, 2013, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference.
 4. The Loan Agreement, evidenced by the Promissory Note, as reflected in Exhibit "2" and herein modified, is an enforceable obligation and the Note should be included on the next Recognized Obligation Payment Schedule ("ROPS") for reimbursement until paid.
 5. The Loan Agreement, evidenced by the Promissory Note, is for a legitimate redevelopment purpose, specifically to acquire the former police station headquarters property for redevelopment with new commercial/retail activities that would yield significant economic benefits to the City and taxing entities, including creation of new sales tax, property taxes, and job creation.
 6. The Promissory Note Modification, as reflected in Exhibit "3", to reduce the interest rate from 3.0% to 0.26%, or the LAIF rate as of the date of adoption of this resolution as required under Health and Safety Code Section 34191.4(b)(2).
- B. A true and correct copy of this Resolution shall be submitted to the County Auditor Controller, the State Department of Finance, the County Administrative Officer, the State Controller's Office, and to post on the Successor Agency website upon approval by the Oversight Board.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 15th day of January 2014, by the following vote to wit:

AYES: CHADWICK, GRIFFIN, GRIFFITHS, RANU, TURNER-EMERSON
NOES: NONE
ABSENT: ABUSHABAN, BUXBAUM



Debra Turner-Emerson, Chairperson

ATTEST:



Majed Al-Ghafry, Oversight Board Secretary

**DEPARTMENT OF
FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 11, 2013

Ms. Victoria Danganan, Senior Accountant
City of El Cajon
200 Civic Center Way
El Cajon, CA

Dear Ms. Danganan:

Subject: Request for a Finding of Completion

The California Department of Finance (Finance) received the City of El Cajon's request for a Finding of Completion.

Finance has completed its review of your request, which may have included reviewing supporting documentation submitted to substantiate payment or obtaining confirmation from the county auditor-controller. Pursuant to Health and Safety Code (HSC) section 34179.7, we are pleased to inform you that Finance concurs that the Agency has made full payment of the amounts determined under HSC section 34179.6, subdivisions (d) or (e) and HSC section 34183.5.

This letter serves as notification that a Finding of Completion has been granted. The Agency may now do the following:

- Place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC section 34191.4 (b) (1). Loan repayments will be governed by criteria in HSC section 34191.4 (a) (2).
- Utilize proceeds derived from bonds issued prior to January 1, 2011 in a manner consistent with the original bond covenants per HSC section 34191.4 (c).

Additionally, the Agency is required to submit a Long-Range Property Management Plan to Finance for review and approval, per HSC section 34191.5 (b), within six months from the date of this letter.

Please direct inquiries to Andrea Scharffer, Staff Finance Budget Analyst, or Chris Hill, Principal Program Budget Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Ron Luis Valles, Administrative Secretary
Ms. Tracy Sandoval, Assistant Chief Financial Officer
State Controller's Office

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**PROMISSORY NOTE SECURED BY
DEED OF TRUST WITH ASSIGNMENT OF RENTS**

June 15, 2011 ("Note Date")

FOR VALUE RECEIVED, the undersigned, EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic, hereinafter referred to as "Borrower," promises to pay to the CITY OF EL CAJON, a municipal corporation, hereinafter referred to as "City," so much principal as may be outstanding in accordance with the terms of this Promissory Note (the "Note") and that certain Deed of Trust of even date hereof, by and between Borrower and City (as these documents may be amended, supplemented, replaced, or otherwise modified from time to time), not exceeding THREE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$3,850,000), plus accrued interest on the unpaid principal, plus such other costs, charges, and fees which may be owing from time to time, all subject to the terms, conditions, and provisions hereinafter set forth.

1. Principal Amount; Interest Amount. The principal amount of the City's loan to Borrower (the "City Loan") is THREE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$3,850,000) ("Loan Amount"). Interest shall accrue on the outstanding principal balance at three percent (3%) per annum during the term hereof, starting on the date of this Note. Interest shall accrue as set forth in Paragraph 4 in the event of a Borrower default.

2. Term of Promissory Note. Subject to the provisions of Paragraph 4 herein, which provide for acceleration of the then outstanding principal and accrued interest and immediate payment thereof in the event of a default by Borrower, the term of this Note shall commence on the date hereof and continue until the date Borrower's obligation is paid in full.

3. Repayment. Repayment shall commence on December 1, 2011, in the initial amount of \$840,665.10, with annual installments thereafter on the 1st day of every December, until paid in full. Borrower shall have the right to prepay all or any portion of this Note at any time without penalty.

4. Default; Acceleration; Cross-Default. In the event Borrower is in default of any of the covenants, terms, or provisions of this Note, and Borrower fails to timely cure such default under the terms herein, Borrower shall be in default of this Note and all accrued interest thereon shall become immediately due and payable. The rate of interest applicable to periods of default for the defaults set forth in this Paragraph 4 shall be calculated at the lesser of ten percent (10%) per annum or the maximum legal rate, and shall accrue as of the date such payment was originally due.

5. Additional Terms.

a. All payments shall be first credited to accrued interest, next to costs, charges, and fees, which may be owing from time to time, and then to principal. All

payments shall be made in lawful money of the United States. Payments shall be made to City at the address set forth in Paragraph 8 herein or at such other address as City or the holder of this Note may direct pursuant to notice delivered to Borrower in accordance with Paragraph 8.

b. Borrower agrees to pay the following costs, expenses, and reasonable attorney's fees paid or incurred by City, or adjudged by the court, in the collection of amounts in default or other costs incurred as a result of a default by Borrower: (i) reasonable costs of collections, costs and expenses and attorney's fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; and (ii) costs of suit and such sums as the court may adjudge as attorney's fees in any action to enforce payment of this Note or any part of it if City prevails in such suit.

6. Nonassumability. This Note shall not be assumable without the prior, express, written consent of City Manager, which shall not be unreasonably withheld or delayed.

7. Presentment, Etc. Notwithstanding any other provision herein to the contrary, to the extent permitted by law Borrower hereby waives the following: (a) notice of default or delinquency; (b) notice of acceleration; (c) notice of nonpayment; (d) notice of costs, expenses and losses and interest thereon; (e) notice of interest on interest and late charges; (f) diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and presentment for payment, demand, protest, and notices of dishonor and/or protest; (g) the benefits of all waivable exemptions; and (h) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

8. Notices. Any notices required by law or this Note shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery; or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested.

To City:

City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1716
Attention: City Manager

With a copy to:

El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1798
Attention: Morgan Foley, Esq.

To Borrower: El Cajon Redevelopment Agency
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1716
Attention: Executive Director

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1798
Attention: Morgan Foley, Esq.

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Either party may designate that notices be sent to other or additional addresses by complying with the requirements of this section.

9. Litigation. This Note shall be governed by and construed under the internal laws of the State of California without regard to conflicts of law. The parties agree that in any litigation between the parties arising out of this Note, the Superior Court of the State of California in and for the County of San Diego shall have exclusive jurisdiction. Borrower hereby waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394. The prevailing party in any litigation between the parties arising out of or connected to this Note, in addition to whatever other relief to which the prevailing party is entitled, shall also be entitled to reasonable attorney's fees, including fees and costs for discovery, and any fees and costs for appeal. In the event of such legal action, service of process on City shall be made in such manner as provided by law for service on a California public entity; service of process on Borrower shall be made in such manner as may be provided for by law, and shall be valid whether made within or without the State of California.

10. Waiver. No waiver of any breach, default, or failure of condition under the terms of this Note, or the obligations secured hereby, shall be implied from any failure of City to take, or any delay by City in taking, action with respect to such breach, default, or failure from any previous waiver or any similar or unrelated breach, default, or failure; and a waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

11. Time of Essence. Time is of the essence in this Note.

12. Severability. In the event that any term or provision of this Note is held to be unenforceable, the remainder of this Note shall remain in full force and effect to the fullest extent without inclusion of the unenforceable term or provision.

13. Interpretation. The terms of this Note shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Note or any other rule of construction which might otherwise apply. The paragraph headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Note.

14. Assignment. City, at its option, may assign its right to receive payment under this Note without obtaining the consent of the Borrower or the holder or beneficiary of the lien of any deed of trust or other security instrument, whether recorded or unrecorded. Borrower shall not be permitted to assign or transfer this Note or any portion thereof without the prior express written consent of the City Manager, which shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, Borrower has executed this Note as of the Note Date.

“Borrower”

**EL CAJON REDEVELOPMENT AGENCY,
a public body, corporate and politic.**

Date: June 15, 2011

By: Kathi J. Henry
Kathi J. Henry, Executive Director

By: Kathie J. Rutledge
Kathie J. Rutledge, Agency Secretary

WHEN RECORDED PLEASE MAIL TO:

City of El Cajon
Housing Division
200 Civic Center Way
El Cajon, CA 92020-3996

(SPACE ABOVE FOR RECORDER'S USE ONLY)

APN# 483-071-52 (formerly 483-071-31 and -30)

LOAN#

MODIFICATION OF NOTE SECURED BY DEED OF TRUST

This agreement made and entered into this ____ day of _____, 2014, by and between the CITY OF EL CAJON as Beneficiary, and THE CITY OF EL CAJON AS SUCCESSOR IN INTEREST TO THE EL CAJON REDEVELOPMENT AGENCY as Trustor;

WITNESSETH:

WHEREAS, Beneficiary is the owner and holder of a promissory note secured by a Deed of Trust recorded on the 16th day of June, 2011, as Instrument No. 2011-0306746 of Official Records of San Diego County, California, and,

WHEREAS, Trustor is the owner of real property described in said Deed of Trust subject to the lien thereof, and,

WHEREAS, the parties hereto desire to change and modify the terms of said promissory note.

NOW THEREFORE, in consideration of the promises and covenants herein contained it is mutually agreed as follows:

1. That the principal balance of said promissory note is the sum of \$3,850,000 with interest thereon at the rate of 0.26% per annum, or the Local Agency Investment Fund ("LAIF") rate as of the date of adoption of the resolution approving this Modification of Note by the Oversight Board from June 16, 2011.
2. That the terms of said promissory note are changed and modified as follows, TO-WIT:
 - a. Section 1. Principal Amount; Interest Amount. The principal amount of the City's loan to Borrower (the "City Loan") is THREE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$3,850,000) ("Loan Amount"). Interest shall accrue on the outstanding principal balance at the Local Agency Investment Fund ("LAIF") rate of 0.26% per annum, or the LAIF rate as of the date of adoption of the resolution approving any Modification of Note Secured by Deed of Trust by the Oversight Board, during the term hereof, starting on the date of this Note.
3. That in all other respects said note and Deed of Trust shall remain unaffected, unchanged, and unimpaired by reason of the execution of this agreement.
4. That the Trustor agrees to pay said promissory note according to the terms thereof that are herein changed and modified and agrees to perform all of the acts to be performed by the Trustor under the terms of said Deed of Trust.

IN WITNESS WHEREOF, The parties hereto have executed this agreement the date and year first above written.

CITY OF EL CAJON

CITY OF EL CAJON AS SUCCESSOR
AGENCY TO THE EL CAJON
REDEVELOPMENT AGENCY

By:
Its:

ATTEST

BY: Belinda Hawley, Secretary

ACKNOWLEDGMENT:

**State of California,
County of San Diego**

On _____ before me, _____

(insert name and title of the officer) personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT "A"

Legal Description of the Property

Real property in the City of El Cajon, County of San Diego, State of California, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

That portion of Lot 14 of Magnolia Ranch Tract, in the City of El Cajon, County of San Diego, State of California, according to Map thereof No. 1674, filed in the Office of the County Recorder of San Diego County, September 29, 1915, described as follows:

Beginning at a point on the North line of the East one-half of said Lot 14, distant along said North line, North 89°57'39" East, 234.20 feet from the Northwest corner of said East one-half of Lot 14; thence along the following courses:

1. Leaving said North line, South 67°17'57" East, 286.37 feet; thence 2. From a tangent that bears North 6°39'55" East, Southwesterly along a curve concave to the Northwest, with a radius of 218 feet, through an angle of 83°17'44", a distance of 316.92 feet; thence 3. Tangent to said curve South 89°57'39" West 281.84 feet to said West line of the East one-half of said Lot 14; thence 4. Continuing South 89°57'39", 6.67 feet; thence 5. From a tangent that bears North 19°13'16" West, Northerly along a curve concave to the East with a radius of 70 feet, through an angle of 33°48'51", a distance of 41.31 feet to a point of compound curvature; thence 6. From a tangent that bears North 14°35'35" East, Northeasterly along a curve concave to the Southeast with a radius of 365 feet, through an angle of 47°12'41", a distance of 300.76 feet; thence 7. Tangent to said curve North 61°48'16" East, 69.85 feet to the Point of Beginning.

Parcel 2:

That portion of the East Half of Lots 13 and 14 of Magnolia Ranch Tract, in the City of El Cajon, County of San Diego, State of California, according to Map thereof No. 1674, filed in the Office of the County Recorder of San Diego County, September 29, 1915, described as follows:

Commencing at the Northwest corner of the East Half of said Lot 14; thence along the Northerly line of said Lot 14, North 89°57'39" East, 234.20 feet to the Southeasterly corner of land described in Deed to the City of El Cajon, recorded August 25, 1965 as File No. 154881 and the True Point of Beginning; thence along the Southeasterly boundary of said land as follows; North 61°48'16" East, 99.67 feet to the Southwesterly terminus of a tangent 435.00 foot radius curve therein, concave Northwesterly and Northeasterly along the arc of said curve through a central angle of 24°48'31", a distance of 188.35 feet to the Northwesterly corner of land described in Deed to Title Insurance and Trust Company, recorded August 25, 1965 as File No. 1548821; thence along the boundary of said land as follows; continuing Northeasterly along the arc of said 435.00 foot radius curve, through a central angle of 23°01'28", a distance of 174.81 feet; South 05°16'03" West, 432.50 feet to the beginning of a tangent 218.00 foot radius curve, concave Northwesterly; Southwesterly along the arc of said curve through a central angle of 01°23'52", a distance of 5.32 feet and North 67°17'57" West 286.37 feet to the True Point of Beginning.

EL CAJON REDEVELOPMENT AGENCY
Due to the City of El Cajon for Sale of
100 Fletcher Parkway

EXHIBIT "B"

AMENDED AMORTIZATION SCHEDULE

NOTE AMOUNT:	\$3,850,000.00				
DATE OF NOTE:	June 16, 2011				
INTEREST RATE:	LAIF Interest Rate per AB1484				
Date	LAIF Interest Rate	Beginning Loan Balance	Interest	Payment	Ending Loan Balance
06/16/11		3,850,000.00		0.00	3,850,000.00
12/01/11	0.26%	3,850,000.00	4,607.34	(840,665.10)	3,013,942.24
12/01/12	0.26%	3,013,942.24	7,857.72	(840,665.10)	2,181,134.86
12/01/13	0.26%	2,181,134.86	5,670.95		2,186,805.81
03/01/14	0.26%	2,186,805.81	1,401.95	840,665.10	3,028,872.86
07/01/14	0.26%	3,028,872.86	2,632.21	(840,665.10)	2,190,839.98
01/01/15	0.26%	2,190,839.98	4,775.43	(840,665.10)	1,354,950.31
07/01/15	0.26%	1,354,950.31	4,700.38	(840,665.10)	518,985.59
01/01/16	0.26%	518,985.59	2,029.59	(521,015.18)	0.00
	Total		33,675.58	(3,883,675.58)	

ORIGINAL AMORTIZATION SCHEDULE

NOTE AMOUNT:	\$3,850,000.00				
DATE OF NOTE:	June 16, 2011				
INTEREST RATE:	3.000% per Promissory Note				
Date	Note Interest Rate	Beginning Loan Balance	Interest	Payment	Ending Loan Balance
06/16/11		3,850,000.00		0.00	3,850,000.00
12/01/11	3.00%	3,850,000.00	53,161.64	(840,665.10)	3,062,496.54
12/01/12	3.00%	3,062,496.54	92,126.61	(840,665.10)	2,313,958.05
12/01/13	3.00%	2,313,958.05	69,418.74	(840,665.10)	1,542,711.69
12/01/14	3.00%	1,542,711.69	46,281.35	(840,665.10)	748,327.94
12/01/15	3.00%	748,327.94	22,449.84	(770,777.78)	0.00
			283,438.18	(4,133,438.18)	
			(249,762.61)	(249,762.61)	