

COUNTY OF ALAMEDA COUNTYWIDE OVERSIGHT BOARD

RESOLUTION NUMBER NO. OB-2021 - 04

**A RESOLUTION OF THE COUNTY OF ALAMEDA
COUNTYWIDE OVERSIGHT BOARD**

**APPROVING THE LOAN AGREEMENT BETWEEN THE CITY OF EMERYVILLE
AND THE SUCCESSOR AGENCY OF THE EMERYVILLE REDEVELOPMENT
AGENCY PURSUANT TO HEALTH AND SAFETY CODE 34180 (h)**

WHEREAS, the Redevelopment Dissolution Law (AB 1X 26, enacted June 28, 2011, as amended by AB 1484, enacted June 27, 2012 and SB 107, enacted on September 22, 2015) and Section 34177 of the Health and Safety Code (“HSC”) required the successor agencies, among other things, to expeditiously wind down affairs of each former redevelopment agency (“RDA”), while continuing to meet the former RDA’s enforceable obligations, and overseeing completion of redevelopment projects and disposing of the assets and properties of the former RDA, all as directed by the successor agencies’ oversight boards pursuant to HSC Section 34179(a); and

WHEREAS, HSC Section 34179(j) provided for the creation of the County of Alameda Countywide Oversight Board (“Oversight Board”) commencing on and after July 1, 2018; and

WHEREAS, On August 13, 2020, the California Environmental Protection Agency, Department Of Toxic Substances Control (“DTSC”) issued an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order (“Order”) to the Successor Agency of the Emeryville Redevelopment Agency (“Successor Agency”) to remediate hazardous substances contamination in soil and groundwater at the Marchant/Whitney Site, 5679 Horton Street, Emeryville, California (“FMW Site”), which is owned by the Successor Agency; and

WHEREAS, the Order is an enforceable obligation pursuant to HSC §34171(d)(1)(C) of the Redevelopment Dissolution Act, and requires the Successor Agency to, among other matters, promptly undertake work to finalize the Feasibility Study/Remedial Action Plan (“FS/RAP”) for the FMW Site and then implement the cleanup of the FMW Site; and

WHEREAS, HSC §34177.3 (b) authorizes a successor agency to create an enforceable obligation to conduct the work of winding down the redevelopment agency, including site remediation, as required by an enforceable obligation; and

WHEREAS, in order to promptly respond to the Order, pursuant to Resolution No. SA07-20, adopted December 15, 2020, the Successor Agency authorized the creation of an enforceable obligation, evidenced by that certain Professional Services Agreement by and between the Successor Agency and EKI Environment & Water, Inc. (“EKI”), in the amount not to exceed \$39,000, to provide environmental engineering services on behalf of the Successor Agency in response to, and as required by, the Order which is an enforceable obligation (“EKI Contract”); and

WHEREAS, the Successor Agency acknowledges that it does not have funds authorized and available to it pursuant to its current recognized obligation payment schedule for fiscal year 2020-21 (“ROPS 20-21”) to undertake work required in response to, and as required by, the Order

and thus will be unable to pay EKI invoices with funding from the real property tax trust fund (“RPTTF”) since it is not authorized on ROPS 2020-21 and therefore needs other funds to compensate EKI for services rendered during the ROPS 2020-21 cycle; and

WHEREAS, HSC §34173(h) authorizes the city that formed a redevelopment agency to loan funds to the successor agency to the dissolved redevelopment agency for enforceable obligations, provided that the use of such funds is reflected on the successor agency’s Recognized Obligation Payment Schedule (“ROPS”), subject to the review and approval of the successor agency’s oversight board and the State of California, Department of Finance (“DOF”); and

WHEREAS, HSC §34173(h) further provides that an enforceable obligation shall be deemed to be created for the repayment of such loans; and

WHEREAS, pursuant to HSC §34180 (h), the Oversight Board shall first approve any request by the Successor Agency to enter into a loan agreement with the City of Emeryville (“City”), as it is the entity that formed the former redevelopment agency; and

WHEREAS, subject to approval by the Oversight Board and DOF, pursuant to Resolution No. 20-136, adopted December 15, 2020, the City Council of the City of Emeryville has authorized the Loan Agreement with the Successor Agency in the form attached hereto; and

WHEREAS, subject to approval by the Oversight Board and DOF, pursuant to Resolution No. SA06-20, adopted December 15, 2020, the Successor Agency has authorized the Loan Agreement with the City of Emeryville in the form attached hereto; and

WHEREAS, the Loan Agreement provides for the extension of a loan by the City to the Successor Agency in an amount up to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000), in accordance with the following terms: (i) interest will accrue on the principal balance outstanding from time to time at the Local Agency Investment Fund rate for the Pooled Money Investment Account (“LAIF Rate”) as posted on the State Treasurer’s website in effect from time to time immediately prior to the date on which a payment is due; (ii) the Loan will be repayable by the Successor Agency semi-annually from RPTTF funds over a period of up to one (1) year, provided however, payments may be deferred and the Loan term shall be extended accordingly if insufficient RPTTF funds are available to pay all Successor Agency enforceable obligations and the Successor Agency’s administrative allowance payable during any particular six-month period; (iii) the proceeds of the Loan shall be used to pay for Successor Agency enforceable obligations evidenced by the EKI Contract, line item 123 on ROPS 21-22; and (iv) the receipt and use of the proceeds of the Loan shall be reflected on ROPS 21-22 and shall be subject to approval by the Oversight Board and DOF; and

WHEREAS, the Oversight Board held a public meeting on January 20, 2021, and considered the Loan Agreement between the Successor Agency and the City of Emeryville following the notice required by law; and

WHEREAS, the Oversight Board finds that the Loan Agreement between the Successor Agency and the City of Emeryville will facilitate the timely remediation of hazardous materials in soil and groundwater at the FMW Site and thus is in the best interest of the taxing entities.


NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby approves the Loan Agreement between the Successor Agency and the City of Emeryville in the form substantially the same as attached hereto.

PASSED AND ADOPTED at a regular meeting of the Oversight Board for the Successor Agency of the Emeryville Redevelopment Agency this 20th day of January, 2021 by the following vote:

Board Members	Carson County Board of Supervisors	Halliday City Selection Committee	Sethy Ind. Special District Committee	Mack-Rose County Office of Education	Dela Rosa Chancellor of the CA Comm. College	O'Connell County Board of Supervisors (Public)	Katz Mulvey Recognized Employee Organization
AYES:	✓	✓	✓	✓		✓	✓
NOES:							
ABSENT:					✓		
ABSTAIN							

DocuSigned by:

 DB75EA2D01574B9...
 Chairperson, Barbara Halliday

ATTEST:

 Secretary of the Countywide Oversight Board
 of the County of Alameda

Attachment 3

Loan Agreement Between The City of Emeryville And The Successor Agency of the Emeryville Redevelopment Agency

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2021 ("**Effective Date**") by and between the City of Emeryville as Successor Agency of the Emeryville Redevelopment Agency (the "**Successor Agency**") and the City of Emeryville, a municipal corporation (the "**City**"). Successor Agency and City are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, pursuant to Resolution No. 2012-12 adopted by the City Council of the City of Emeryville on January 17, 2012, the City agreed to serve as the successor to the Emeryville Redevelopment Agency ("**Redevelopment Agency**") commencing upon dissolution of the Redevelopment Agency on February 1, 2012 pursuant to Assembly Bill x1 26 ("**AB 26**");

WHEREAS, the Successor Agency is an independent public entity pursuant to Health and Safety Code Section 34173(g);

WHEREAS, on August 13, 2020, the California Environmental Protection Agency, Department Of Toxic Substances Control ("**DTSC**") issued an Imminent and/or Substantial Endangerment Determination Order and Remedial Action Order ("**Order**") to the Successor Agency to remediate hazardous substances contamination in soil and groundwater at the Marchant/Whitney Site, 5679 Horton Street, Emeryville, California ("**FMW Site**"), which is owned by the Successor Agency; and

WHEREAS, the Order is an enforceable obligation pursuant to Health and Safety Code §34171(d)(1)(C) of the Redevelopment Dissolution Act, and requires the Successor Agency to, among other matters, promptly undertake work to finalize the Feasibility Study/Remedial Action Plan ("**FS/RAP**") for the FMW Site and then implement the cleanup of the FMW Site; and

WHEREAS, Health and Safety Code §34177.3 (b) authorizes a successor agency to create an enforceable obligation to conduct the work of winding down the redevelopment agency, including site remediation, as required by an enforceable obligation; and

WHEREAS, in order to promptly respond to the Order, pursuant to Resolution No. _____, adopted December 15, 2020, the Successor Agency authorized the creation of an enforceable obligation, evidenced by that certain Professional Services Agreement by and between the Successor Agency and EKI Environment & Water, Inc. ("**EKI**"), to provide environmental engineering services on behalf of the Successor Agency in response to, and as required by, the Order which is an enforceable obligation ("**EKI Contract**"); and

WHEREAS, the Successor Agency acknowledges that it does not have funds authorized and available to it pursuant to its current recognized obligation payment schedule for fiscal year 2020-21 cycle (“**ROPS 20-21**”) to undertake work required in response to, and as required by, the Order and thus will be unable to pay EKI invoices with funding from the real property tax trust fund (“**RPTTF**”) since it is not authorized on ROPS 2020-21 and therefore needs other funds to compensate EKI for services rendered during the ROPS 2020-21 cycle; and

WHEREAS, Health and Safety Code Section 34173(h) authorizes the City to loan funds to the Successor Agency for enforceable obligations, provided that the use of such funds is reflected on the Successor Agency’s recognized obligation payment schedule (“**ROPS**”), subject to the review and approval by the Alameda County Oversight Board (“**Oversight Board**”) and the State of California, Department of Finance (“**DOF**”); and

WHEREAS, Health and Safety Code Section 34173(h) further provides that an enforceable obligation shall be deemed to be created for the repayment of such loans; and

WHEREAS, subject to approval by the Oversight Board and DOF, pursuant to Resolution No. _____, adopted December 15, 2020, the City Council of the City of Emeryville has authorized the provision of a loan to the Successor Agency on the terms and conditions set forth in this Agreement, and pursuant to Resolution No. _____, adopted December 15, 2020, the Successor Agency has authorized the acceptance of such loan; and

WHEREAS, absent the provision of the loan described in this Agreement (the “**Loan**”), the Successor Agency will have insufficient funds to timely pay enforceable obligations, evidenced by the EKI Contract, during the ROPS 2020-21 cycle; and

WHEREAS, by Resolution No. _____, adopted on January ____, 2021, the Oversight Board approved the Successor Agency’s acceptance of the Loan and the listing of the Loan and the use of the Loan proceeds on the Successor Agency’s ROPS for the fiscal year 2021-22 cycle (“**ROPS 21-22**”); now, therefore, be it

RESOLVED, that the Successor Agency and the City hereby agree as follows:

1. Loan. The City agrees to loan to the Successor Agency, and the Successor Agency agrees to borrow from and repay to City the sum of up to **Two Hundred Fifty Thousand Dollars (\$250,000)** (the “**Loan**”) upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by a Promissory Note (the “**Note**”) which shall be dated as of the Effective Date and executed by the Successor Agency substantially in the form attached hereto as Exhibit A. The Loan may be extended in one or more disbursements as requested by Successor Agency, provided that the maximum principal amount that may be outstanding at any time is Two Hundred Fifty Thousand Dollars (\$250,000).

2. Interest Rate; Maturity Date; Prepayment. Interest shall accrue on the outstanding principal balance of the Loan at a rate equal to the Local Agency Investment Fund Average Annual Yield for the Pooled Money Investment Account (“**LAIF RATE**”) applicable to the fiscal year in which each payment is due, as posted on the State Treasurer’s website (http://www.treasurer.ca.gov/pmia-laif/historical/qrly_appor_rates.pdf), commencing upon the date of disbursement of the Loan proceeds and continuing until the Note is paid in full. Interest shall be calculated on the basis of a year of 365 days and charged for the actual number of days elapsed. Payments shall be due on a semi-annual basis on each January 15 and June 15 during the term of the Loan. The entire outstanding principal balance of the Loan together with interest accrued thereon and all other sums due under the Note shall be payable in one lump sum on the first (1st) anniversary of the Effective Date (the “**Maturity Date**”) unless the parties agree to extend such date. Payments may be deferred and the Maturity Date extended if insufficient RPTTF funds are available to pay all Successor Agency enforceable obligations and the Successor Agency’s administrative allowance during any six-month period. The Successor Agency may prepay the Loan in whole or in part at any time without penalty or premium. Partial prepayments shall be applied first to accrued interest and then to principal.

3. Subordination. Notwithstanding any contrary provision hereof, the Parties agree that the Successor Agency’s obligation to repay the Loan shall be subordinate to the pledge of tax increment revenue for the payment of debt service on tax allocation bonds or other indebtedness issued by the Redevelopment Agency prior to the Effective Date.

4. Use of Loan Proceeds. The Loan proceeds shall be used solely to pay for Successor Agency expenses for its enforceable obligation evidenced by the EKI Contract. Use of the Loan proceeds for payment of expenses for the EKI Contract shall be listed on the Successor Agency’s ROPS 21-22.

5. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

6. Amendments. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Successor Agency shall be personally liable to City in the event of any default or breach by the Successor Agency, or for any amount of money which may become due to City, or for any obligation of Successor Agency under this Agreement.

8. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

9. Captions. The headings of the sections and paragraphs of this Agreement have been inserted for convenience only and shall not be used to construe this Agreement.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

11. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.


12. Entire Agreement. This Agreement, together with the Note contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Loan Agreement as of the date first written above.

SUCCESSOR AGENCY OF THE EMERYVILLE REDEVELOPMENT AGENCY

By: 
Executive Director

Attest:

Agency Secretary


Approved as to form:

DocuSigned by:

204ED0666856409...
General Counsel

CITY OF EMERYVILLE

By: 
City Manager

Attest:

City Clerk

Approved as to form:

DocuSigned by:

204ED0666856409...
City Attorney

Exhibit A

PROMISSORY NOTE

PROMISSORY NOTE

\$250,000

Emeryville, California
_____, 2021

FOR VALUE RECEIVED, the City of Emeryville as Successor Agency of the Emeryville Redevelopment Agency (the "**Successor Agency**") promises to pay to the City of Emeryville, a municipal corporation (the "**City**") in lawful money of the United States of America, the principal sum of **Two Hundred Fifty Thousand Dollars (\$250,000)** or so much thereof as may be advanced by City from time to time pursuant to the Loan Agreement referred to below, in the manner provided below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the outstanding principal balance at a rate equal to the Local Agency Investment Fund Average Annual Yield for the Pooled Money Investment Account ("**LAIF RATE**") applicable to the fiscal year in which each payment is due, as posted on the State Treasurer's website (http://www.treasurer.ca.gov/pmia-laif/historical/qrtly_appor_rates.pdf), commencing upon the date of disbursement thereof. Interest shall be calculated on the basis of a year of 365 days and charged for the actual number of days elapsed.

This Promissory Note (this "**Note**") has been executed and delivered pursuant to and in accordance with that certain Loan Agreement dated as of _____, 2021, by and between Successor Agency and City (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

1. PAYMENTS

1.1 MATURITY DATE. Payments shall be due on a semi-annual basis on each January 15 and June 15 during the term of the Loan. The entire principal balance outstanding under this Note, together with interest accrued thereon and any other sums accrued hereunder, shall be due and payable in one lump sum on the date (the "**Maturity Date**") which is the first (1st) anniversary of the date of this Note.

1.2 PREPAYMENT. Successor Agency may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

1.3 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at 1333 Park Avenue, Emeryville, California or such other

place as City shall designate to Successor Agency in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

1.4 SUBORDINATION. Notwithstanding any contrary provision hereof, Successor Agency's obligation to repay the Loan shall be subordinate to the pledge of tax increment revenue for the payment of debt service on tax allocation bonds or other indebtedness issued by the Redevelopment Agency prior to the Effective Date.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) Successor Agency fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Successor Agency thereof in writing.

(b) Successor Agency breaches any other provision of this Note or the Loan Agreement and does not cure such breach within thirty (30) days following written notice from City.

2.2 REMEDIES. The rights and remedies of City under this Note shall be cumulative and not alternative. Upon the occurrence of an Event of Default hereunder, City may, at its option: (i) by written notice to Successor Agency declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under law or equity, and (iii) exercise any and all rights and remedies available to City pursuant to the Loan Agreement.

3. MISCELLANEOUS

3.1 WAIVER; AMENDMENT. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. There shall be no amendment to or modification of this Note except by written instrument executed by Successor Agency and City.

3.2 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be construed and enforced in accordance with the laws of the State of California.

3.5 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.6 RELATIONSHIP OF THE PARTIES. The relationship of Successor Agency and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note will in no manner make Successor Agency the partner or joint venturer of City.

IN WITNESS WHEREOF, Successor Agency has executed and delivered this Note as of the date first written above.

SUCCESSOR AGENCY:

**CITY OF EMERYVILLE AS SUCCESSOR AGENCY OF THE
EMERYVILLE REDEVELOPMENT AGENCY**

By: _____
Executive Director

ATTEST:

Secretary

APPROVED AS TO FORM:

General Counsel