

**CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 045-2012**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING A LOAN AGREEMENT
BETWEEN THE CITY OF CLOVERDALE AND THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR
AGENCY FOR THE PURPOSE OF MAKING DEBT SERVICE PAYMENTS**

WHEREAS, the Redevelopment Agency of the City of Cloverdale (Agency) was established under the provisions of the Community Redevelopment Law (California Health and Safety Code § 33000 et seq.) (CRL); and

WHEREAS, pursuant to the CRL, the Agency issued Tax Allocation Bonds (Bonds); and

WHEREAS, on June 29, 2011, the Governor signed into law ABx1 26, which automatically suspended redevelopment activities, and on December 29, 2011, the California State Supreme Court upheld the provisions of ABx1 26, thereby dissolving all redevelopment agencies on February 1, 2012; and

WHEREAS, pursuant to Health and Safety Code § 34173(d), the City of Cloverdale elected to become the Successor Agency to the Cloverdale Community Development Agency by Resolution No. 003-2012 on January 11, 2012; and

WHEREAS, on June 27, 2012, the Governor signed AB 1484, a budget trailer bill that made substantial amendments and additions to ABx1 26, the redevelopment dissolution bill. Among other things, AB 1484 added Health and Safety Code § 34173(5), which provides that a successor agency to a redevelopment agency is a separate public entity from the sponsoring jurisdiction; and

WHEREAS, on July 11, 2012, Resolution No. SA 001-2012 was approved, establishing the Cloverdale Community Development Successor Agency (Successor Agency), designating officers, and adopting administrative, governance and operating rules for the Successor Agency; and

WHEREAS, ABx1 26 provides for payments on the Bonds from the Redevelopment Property Tax Trust Fund (Trust Fund); and

WHEREAS, there were insufficient funds in the Trust Fund allocated to the Successor Agency to meet its obligations to make debt service payments on the Bonds for fiscal year 2012-2013; and

WHEREAS, as a result of the dissolution of the Agency, the Successor Agency is now administering the daily operations of the former Agency; and

WHEREAS, Health and Safety Code § 34173(h) authorizes a loan between a city and a successor agency for the purpose of funding enforceable obligations for which there are insufficient funds in a trust fund; and

WHEREAS, pursuant to Section 34180(h) of ABx1 26, an oversight board may approve a request by a successor agency to enter into an agreement with a city; and

WHEREAS, on August 29, 2012, the Oversight Board to the Successor Agency (Oversight Board) approved the recognized obligation payment schedule (ROPS) for the period of January 1-June 30, 2013 by Oversight Board Resolution No. OB 004-2012, including the repayment of the loan; and

WHEREAS, the City of Cloverdale and Successor Agency wish to enter into a loan agreement (Exhibit A), in the amount of thirty-nine thousand, nine hundred fifty-four dollars (\$39,954), which includes principal and interest, for the purpose of providing the Successor Agency temporary funding in order for it to make debt service payments on the Bonds.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Cloverdale that it does hereby:

1. Find and determine that the above recitals are true and correct.

2. Approve the loan agreement between the City and the Successor Agency substantially in the form attached as Exhibit A.
3. Authorize the City Manager to execute the loan agreement and related documents and to take such further actions as may be necessary or appropriate to carry out the City's obligations pursuant to this Resolution.

It is hereby certified that the foregoing Resolution No. 045-2012 was duly introduced and legally adopted by the City Council of the City of Cloverdale at its regular Meeting held on this 10th day of October, 2012, by the following voice vote: (4 ayes - 0 noes – 1 absent)

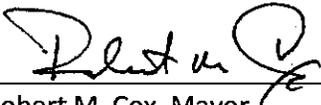
AYES: Mayor Cox, Councilmember Maacks, Councilmember Russell, and Councilmember Wolter

NOES:

ABSENT: Vice Mayor Palla

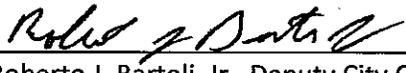
ABSTAIN:

Approved



Robert M. Cox, Mayor

Attested



Roberto J. Bartoli, Jr., Deputy City Clerk

**LOAN AGREEMENT BETWEEN THE CITY OF CLOVERDALE
AND THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR AGENCY**

This Loan Agreement (Agreement) is entered into as of July 1, 2012 (Effective date), by and between the City of Cloverdale, a municipal corporation (City) and the Cloverdale Community Development Successor Agency (Successor Agency). The City and the Successor Agency are hereinafter collective referred to as the Parties.

RECITALS

WHEREAS, the Redevelopment Agency of the City of Cloverdale (Agency) was established under the provisions of the Community Redevelopment Law (California Health and Safety Code § 33000 et seq.) (CRL); and

WHEREAS, pursuant to the CRL, the Agency issued Tax Allocation Bonds (Bonds); and

WHEREAS, on June 29, 2011, the Governor signed into law ABx1 26 which automatically suspended redevelopment activities, and on December 29, 2011, the California State Supreme Court upheld the provisions of ABx1 26 thereby dissolving all redevelopment agencies on February 1, 2012; and

WHEREAS, ABx1 26 provides for payments on the Bonds from the Redevelopment Property Tax Trust Fund (Trust Fund); and

WHEREAS, there will be insufficient funds in the Trust Fund allocated to the Successor Agency for the fiscal year 2012-2013 to meet its obligations to make debt service payments on the Bonds for fiscal year 2012-2013; and

WHEREAS, as a result of the dissolution of the Agency, the Successor Agency is now administering the daily operations of the former Agency; and

WHEREAS, Health and Safety Code § 34173(h) authorizes a loan between a city and a successor agency for the purpose of funding enforceable obligations for which there are insufficient funds in a trust fund; and

WHEREAS, pursuant to Section 34180(h) of ABx1 26, an oversight board may approve a request by a successor agency to enter into an agreement with a city; and

WHEREAS, on August 29, 2012, the Oversight Board to the Successor Agency (Oversight Board) approved the recognized obligation payment schedule (ROPS) for the period of January 1-June 30, 2013 by Oversight Board Resolution No. OB 004-2012, including the repayment of the loan; and

WHEREAS, the City and Successor Agency wish to enter into a loan agreement (Exhibit A), in the amount of thirty-nine thousand, nine hundred fifty-four dollars (\$39,954), which includes principal and interest, for the purpose of providing the Successor Agency temporary funding in order for it to make debt service payments on the Bonds.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

**ARTICLE 1
LOAN TERMS**

1.1 Loan.

- (a) **Loan Amount.** City agrees to lend to Successor Agency, and Successor Agency agrees to borrow from and repay to City, a Loan in the amount not to exceed thirty-nine thousand nine hundred fifty-four Dollars (\$39,954), which includes principal and interest.
- (b) **Maturity Date.** The total outstanding Loan principal together with accrued interest thereon, is due and payable by June 30, 2013.
- (c) **Interest.** Commencing on the date of initial disbursement of the proceeds of the Loan and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the Loan will accrue on the outstanding principal balance, at the rate equal to the "Apportionment Rate" earned by the California Local Agency Investment Fund (LAIF) maintained by the California Treasurer's Office (Government Code § 16429.1) for the most recently completed fiscal quarter. Interest will be calculated on the basis of a year of 365 days and charged for the actual number of days that principal is outstanding.
- (d) **Interest Payment.** Upon each principal repayment or partial repayment, Successor Agency shall pay to City all accrued and unpaid interest outstanding on the date of such repayment.

1.2 **Prepayment.** Successor Agency may prepay the Loan, including any outstanding accrued and unpaid interest, in whole or in part, at any time, without penalty or other charge. Any partial prepayment shall be applied first to accrued and unpaid interest that is due, then to the outstanding principal balance of the Loan.

1.3 **Payment.** The outstanding principal of the Loan, together with any outstanding accrued and unpaid interest, is due and payable on the Maturity Date.

1.4 **Security for the Loan.** As security for the repayment of principal and interest on the Loan, the Successor Agency hereby pledges certain Unrestricted Revenues (defined below) (Pledged Revenues) which are received, accrued or held by the Successor Agency and are provided within or attributable to fiscal year 2012-13, and the principal of the loan and the interest accrued thereon constitute a first lien and charge on the Pledged Revenues, and are payable from the first moneys received by the Successor Agency from the Pledged Revenues.

The term Unrestricted Revenues means property taxes assessed and levied by Sonoma County on behalf of the Successor Agency allocated to the Successor Agency in accordance with ABx1 26, together with any other income, revenue, cash receipts and any other moneys of the Successor Agency lawfully available for repayment of the Loan.

**ARTICLE 2
DISBURSEMENT AND ACCOUNTING; USE OF FUNDS**

2.1 **Disbursement.** Loan proceeds may be disbursed to the Successor Agency in accordance with this Agreement upon approval of drawdown requests executed by the City Finance & Accounting Manager and reviewed and approved by the City Manager.

2.2 Use of Loan Proceeds. Successor Agency may use proceeds of the Loan for meeting the debt service obligations incurred for purposes of Successor Agency, as described in Section 6 of Article XVI of the California Constitution.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Authority. Successor Agency warrants that it has authority, and has completed (or will complete, as applicable) all proceedings and obtain all approvals necessary to execute, deliver, and perform under this Agreement and the transactions contemplated thereby.

3.2 Valid and Binding Obligations. Successor Agency warrants that, when duly executed by the Successor Agency, this Agreement shall constitute the legal, valid and binding obligations of Successor Agency enforceable in accordance with their respective terms. Successor Agency hereby waives any defense to the enforcement of the terms of this Agreement related to alleged invalidity of any provisions or conditions contained in this Agreement.

3.3 No Adverse Action. Successor Agency warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect the Successor Agency with respect to this Agreement.

ARTICLE 4 SUCCESSOR AGENCY COVENANTS

4.1 Notification. Until the Loan is repaid in full, Successor Agency covenants that it will promptly notify City in writing of the occurrence of any event with might materially and adversely affect its ability to perform its obligations under this Agreement, or which constitutes, or with the giving of notice or passage of time or both would constitute, an Event of Default under this Agreement.

4.2 Legal Compliance. Successor Agency covenants that this Agreement does not violate the Constitutional debt limitation for municipal governments set forth in Article XVI, Section 18 of the California Constitution.

ARTICLE 5 INDEMNITY REQUIREMENTS

5.1 Indemnity. Successor Agency and City shall each defend, hold harmless and indemnify the other, its officers, employees and agents from and against all claims, liability, cost, expenses, loss or damages of any nature whatsoever, including reasonable attorneys' fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement and any of its operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

**ARTICLE 6
DEFAULT AND REMEDIES**

6.1 Events of Default. Each of the following events will constitute an event of default (Event of Default) under this Agreement:

- (a) Nonpayment. Successor Agency's failure to repay the transfer pursuant to Article 1 hereof.
- (b) Failure to Perform. Successor Agency's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

6.2 Declaring Default. Whenever any Event of Default has occurred, other than a failure to pay any sums due, City shall give written notice of default to Successor Agency. If the default is not cured within thirty (30) calendar days after the Date of Default (defined herein), or any extension approved in writing by City, City may enforce its rights and remedies under Section 6.3 below. Any default that has occurred shall be deemed to commence on the date that written notice of default is effective pursuant to Section 7.2 of this Agreement (Date of Default). In the event of a default in the payment of any Installment payment when due, Successor Agency shall have ten (10) calendar days from the payment due date to cure such default whether or not City gives written notice.

6.3 Remedies. Upon the occurrence of any Event of Default, City, in addition to any other remedies provided herein or by law, has the right, at its option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) declare that outstanding balance of the Loan and all other sums owing to City under this Agreement immediately due and payable, and
- (b) take whatever other action at law or in equity which may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

6.4 Default Interest. Commencing on the Date of Default and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the Loan will accrue on the outstanding balance, at the rate equal to LAIF plus one percent (1%).

6.5 Disclaimer. If City elects to employ any of the remedies available to it in connection with any Event of Default, City will not be liable for: (1) the payment of any expenses incurred in connection with the exercise of any remedy available to City, and (2) the performance or nonperformance of any other obligations of Successor Agency.

**ARTICLE 7
MISCELLANEOUS**

7.1 Conflict of Interest; Interest of Employees, Agents, Consultants, Officers and Officials of City or Successor Agency. Except for approved eligible administrative or personnel costs, no employee, agent or consultant who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in

any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for him/herself or for those with whom s/he has family or business ties, during his/her tenure and for one year thereafter.

7.2 Notices. Any notice, request or consent required pursuant to this Agreement shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, addressed as follows:

If to Successor Agency:

Cloverdale Community Development
Successor Agency
124 N. Cloverdale Blvd.
P.O. Box 217
Cloverdale, CA 95425
Attention: Executive Director

If to City:

City of Cloverdale
124 N. Cloverdale Blvd.
P.O. Box 217
Cloverdale, CA 95425
Attention: City Manager

With copy to Oversight Board of the
Cloverdale Community Development
Successor Agency

or to such other addresses as the parties may designate by notice as set forth above.

7.3 Successors and Assigns. All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of City and Successor Agency, respectively.

7.4 Attorney's Fees. If any action is instituted by any party to enforce this Agreement or to collect any sums due hereunder or pursuant to this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

7.5 Severability. If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

7.6 Amendments/Entire Agreement. City and Successor Agency reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alternation or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Agreement constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either party.

7.7 Time. Time is of the essence in the performance of the terms and conditions of this Agreement.

7.8 Governing Law. The laws of the State of California govern this Agreement.

7.9 City's Rights and Consent. No forbearance, failure or delay by City in exercising any right, power, or remedy, nor any single or partial exercise of City or any right or remedy hereunder shall preclude the further exercise of such right, power or remedy. The consent of City to any act or omission by Successor Agency may not be constructed as City consent to any other or subsequent act or omission or as a waiver of the requirement to obtain City consent in any other instance. All of City rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by the City.

7.10 Duration/Survival. This Agreement continues in full force and effect until the Loan is repaid in full.

7.11 Headings. The headings within this Agreement are for the purpose of reference only and do not limit or otherwise affect any of the terms of this Agreement.

7.12 Counterparts, Facsimile Copies. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. This Agreement is effective upon transmission by any party to the other parties of a fully signed facsimile copy of the Agreement after the formal approval by the governing body of the Successor Agency and the City Council. In case of any conflict, the counterpart maintained by the City Council will be deemed to be determinative.

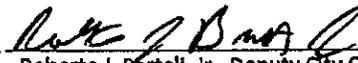
IN WITNESS WHEREOF, City and the Successor Agency have executed this Agreement as of the date first above written.

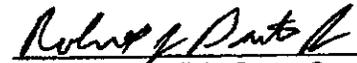
City of Cloverdale

Cloverdale Community Development
Successor Agency

By: 
Nina D. Regor, City Manager

By: 
Nina D. Regor, Executive Director

Attest:

Roberto J. Bartoli, Jr., Deputy City Clerk

Attest:

Roberto J. Bartoli, Jr., Deputy Secretary

Approved As to Form:

Eric W. Danly, City Attorney