

RESOLUTION NO. 2014-05

**CITY OF SOUTH GATE
LOS ANGELES COUNTY, CALIFORNIA**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF SOUTH GATE AUTHORIZING
THE SUCCESSOR AGENCY TO ENTER INTO A LOAN
AGREEMENT (HCS §34173(h)) WITH THE CITY OF SOUTH
GATE**

WHEREAS, the Community Development Commission of the City of South Gate (“Agency”) previously was a public body, corporate and politic formed, organized, existing and exercising its powers pursuant to Section 34100, *et seq.* of the California Health and Safety Code, and exercised the powers, authority, functions, and jurisdiction of a community redevelopment agency formed, organized, existing and exercising its powers pursuant to the California Community Redevelopment Law, Health and Safety Code, Section 33000, *et seq.* (“CRL”), and specifically formed by the City Council (“City Council”) of the City of South Gate (“City”); and

WHEREAS, Part 1.85, Division 24 of the California Health & Safety Code is the law governing the dissolution and wind down of all redevelopment agencies (“Dissolution Law”); and

WHEREAS, as of and on and after February 1, 2012, the Successor Agency is administering the enforceable obligations of the former Agency and otherwise unwinding the former Agency’s affairs, all subject to the review and approval by a seven-member oversight board (“Oversight Board”); and

WHEREAS, pursuant to Section 34179 the Successor Agency’s Oversight Board has been formed and the initial meeting occurred on April 23, 2012; and

WHEREAS, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Act; and

WHEREAS, Section 34171(d)(1)(F) defines “enforceable obligation” to include: “Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part,...”; and

WHEREAS, Section 34173(h) authorizes the City, as sponsoring community, to loan funds to the Successor Agency for administrative costs, enforceable obligations, or project-related expenses at its discretion; and

WHEREAS, the Successor Agency adopted a ROPS for the fiscal period July 1, 2014 to December 31, 2014 (“ROPS 14-15A”) that was approved by the Oversight Board and thereafter submitted to the State of California, Department of Finance (“DOF”); however, DOF denied Item

No. 3 on ROPS 14 15A relating to the debt service payment due on August 1, 2014 under the HUD 108 Loan Documents (as the term is defined in the next recital), which denial was described in a letter from DOF to the Successor Agency issued and dated May 16, 2014; and

WHEREAS, on July 28, 1999 the City and The Secretary of Housing and Urban Development (“HUD”) entered into that certain Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974, as Amended, 42 U.S.C. §5308 for Series HUD 2000-A Certificates dated September 8, 1999 (“HUD 108 Loan Contract”). The HUD 108 Loan Contract required various kinds of security and collateral for repayment and debt service on the “HUD 108 Loan”, which were evidenced in the 1999 HUD 108 Loan Contract and several ancillary agreements and instruments that were defined, incorporated by reference, and attached to that contract, including Promissory Note 95 MC-06-0530 executed by the City in favor of HUD, the Subrecipient Cooperation and Pledge Agreement entered into between the City and former RDA under which pursuant to the requirements of the HUD 108 Loan Contract the former RDA pledged tax increment as security for the HUD 108 Loan (Attachment 3 thereof, “Tax Increment Pledge Agreement”), the description of the Tax Increment Financing Revenues pledged thereunder (Attachment 5 thereof, “Pledged Tax Increment Revenues”), the Fiscal Agency Agreement, the Trust Agreement (defined together in the HUD 108 Loan Contract as the “Fiscal Agency/Trust Agreements”), and other related documents. Thereafter, in mid-2000, HUD issued its 2000-A Certificates that were pooled bonds secured by multiple participating jurisdictions, including the original principal amount of \$3,625,000 for the subject HUD 108 Loan, which bonds and related instruments are obligations of South Gate to the federal government as further described in that certain Contract for Loan Guarantee Assistance executed by the City on May 30, 2000 and by HUD on June 14, 2000 as part of the bond closing documents for HUD’s issuance of such HUD 2000 A Certificates (together, “HUD 108 Loan Documents”); and

WHEREAS, in the May 16, 2014 letter the DOF refused to recognize the HUD 108 Loan Documents as an “Enforceable Obligation” under the Dissolution Law and made a unilateral determination that characterized the Tax Increment Pledge Agreement as “junior” security in relation to the security pledged toward debt service, which payments are due each August 1 and February 1 on the remaining balance of \$1,939,370.00 on the HUD 108 Loan, despite the fact that all prior debt service payments (from loan inception in 1999 through February 2014) were sourced solely from the pledged tax increment funds, and despite the fact that DOF had approved the HUD 108 Loan, including the Tax Increment Pledge Agreement, as an Enforceable Obligation and authorized allocations of funds from the Redevelopment Property Tax Trust Fund (“RPTTF”) to the Successor Agency to pay debt service on the HUD 108 Loan for the prior five (5) six month fiscal periods of the recognized obligation payment schedule (“ROPS”) were approved by the DOF, including ROPS I (January 1, 2012 to June 30, 2012), ROPS II (July 1, 2012 to December 31, 2012), ROPS III (January 1, 2013 to June 30, 2013), ROPS 13-14A (July 1, 2013 to December 31, 2013), and ROPS 13-14B (January 1, 2014 to June 30, 2014); and

WHEREAS, because the DOF denied funding through the Redevelopment Property Tax Trust Fund (“RPTTF”) for the Successor Agency to make the August 1, 2014 debt service payment on the HUD 108 Loan and because both the City and Successor Agency did not desire or intend to default on the HUD 108 Loan and there being no other “security” as defined in the HUD 108 Loan Documents available to make such debt service payment due, the City Council authorized appropriation and advanced to the Successor Agency \$293,014.25 from the City’s General Fund Unrestricted Fund Balance (Reserve Account) to pay and make temporarily that August 1, 2014 debt service payment until such time as funding by DOF is approved through ROPS 14-15B (fiscal period January 1, 2015 to June 30, 2015) or until a court of competent jurisdiction orders the DOF to remit such funds to the Successor Agency in the pending legal action filed by the City and Successor Agency against the DOF, the County of Los Angeles, Auditor-Controller, and the affected taxing entities (Sacramento Superior Court Case No. 34-2014-80001915 (“Action”)); and

WHEREAS, as noted Section 34173(h) authorizes the City to loan funds to the Successor Agency for enforceable obligations at the City’s discretion, and that such loan must be reflected on the Successor Agency’s ROPS, which is subject to the approval of the Successor Agency’s Oversight Board; and

WHEREAS, the Successor Agency desires that the Oversight Board authorize it to enter into a Loan Agreement with the City to repay the City for advancing and loaning funds to make the August 1, 2014 debt service payment on the HUD 108 Loan; and

WHEREAS, the Loan Agreement and Loan described therein, if authorized, by this Oversight Board, will be reflected on the Successor Agency’s Recognized Obligation Payment Schedules, including the next ROPS 14-15B and thereafter; and

WHEREAS, the Oversight Board has reviewed the Loan Agreement and desires to authorize the Successor Agency to enter into such agreement, and subject to approval of such contract by the Successor Agency, and to cause posting of this Resolution on the Successor Agency website, and to direct transmittal thereof with a copy of such contract to the County Auditor-Controller and Department of Finance (“DOF”); and

WHEREAS, pursuant to Section 34179(h) written notice and information about all actions taken by the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF’s choosing, and an Oversight Board’s action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review;

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SOUTH GATE DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

SECTION 2. Pursuant to the Dissolution Act, the Oversight Board authorizes the Successor Agency to enter into the *Loan Agreement (HSC §34173(h))*, which is attached herein as Exhibit "A."

SECTION 3. The Oversight Board authorizes transmittal of such contract to the County Auditor-Controller and DOF.

SECTION 4. The City Manager/Executive Director or his authorized designee is directed to post this Resolution on the Successor Agency website pursuant to the Dissolution Act.

SECTION 5. Pursuant to Section 34179(h) written notice and information about all actions taken by the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing. An Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

SECTION 6. The Secretary of the Oversight Board shall certify to the adoption of this Resolution which shall be effective upon its adoption.

PASSED, APPROVED and ADOPTED this 22nd day of September 2014.

W. H. (Bill) De Witt, Chairperson
Oversight Board of the Successor Agency to the
Community Development Commission of the
City of South Gate

ATTEST:

Carmen Avalos, Secretary
Oversight Board of the Successor Agency
to the Community Development Commission
of the City of South Gate

(SEAL)

Exhibit A

LOAN AGREEMENT (HSC §34173(h))

This **LOAN AGREEMENT (HSC §34173(h))** ("Agreement") is entered into and effective as of September 22, 2014 and is made by and between the **CITY OF SOUTH GATE**, a municipal corporation ("City") and the **SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SOUTH GATE**, a public body corporate and politic ("Successor Agency"). The City and Successor Agency may each be referred to as a "Party" and together the "Parties".

RECITALS

A. The City is a municipal corporation organized and operating under the laws of the State of California.

B. The Successor Agency is a public entity corporate and politic, organized and operating under Part 1.85 of Division 24 of the California Health and Safety Code ("Dissolution Law").

C. All statutory references in this Agreement are to the Dissolution Law unless otherwise stated.

D. Section 34177(a) permits the Successor Agency to make payments due for enforceable obligations.

E. Section 34177(l) requires the Successor Agency to prepare a Recognized Obligation Payment Schedule ("ROPS") before each six-month fiscal period that lists its enforceable obligations.

F. The Successor Agency adopted a ROPS for the July 1, 2014 to December 31, 2014 ("ROPS 14-15A") that was approved by the Oversight Board and thereafter submitted to the State of California, Department of Finance ("DOF"); however, DOF denied Item No. 3 on ROPS 14-15A relating to the debt service payment due on August 1, 2014 under the HUD 108 Loan Documents (as the term is defined in the next recital), which denial was described in a letter from DOF to the Successor Agency issued and dated May 16, 2014.

G. By way of background, on July 28, 1999 the City and The Secretary of Housing and Urban Development ("HUD") entered into that certain *Contract for Loan Guarantee Assistance* under Section 108 of the Housing and Community Development Act of 1974, as Amended, 42 U.S.C. §5308 for Series HUD 2000-A Certificates dated September 8, 1999 ("HUD 108 Loan Contract"). The HUD 108 Loan Contract required various kinds of security and collateral for repayment and debt service on the "HUD 108 Loan", which were evidenced in the 1999 HUD 108 Loan Contract and several ancillary agreements and instruments that were defined, incorporated by reference, and attached to that contract, including Promissory Note 95-MC-06-0530 executed by the City in favor of HUD, the Subrecipient Cooperation and Pledge Agreement entered into between the City and former RDA under which pursuant to the requirements of the HUD 108 Loan Contract the former RDA pledged tax increment as security for the HUD 108 Loan (Attachment 3

thereof, "Tax Increment Pledge Agreement"), the description of the Tax Increment Financing Revenues pledged thereunder (Attachment 5 thereof, "Pledged Tax Increment Revenues"), the Fiscal Agency Agreement, the Trust Agreement (defined together in the HUD 108 Loan Contract as the "Fiscal Agency/Trust Agreements"), and other related documents. Thereafter, in mid-2000, HUD issued its 2000-A Certificates that were pooled bonds secured by multiple participating jurisdictions, including the original principal amount of \$3,625,000 for the subject HUD 108 Loan, which bonds and related instruments are obligations of South Gate to the federal government as further described in that certain Contract for Loan Guarantee Assistance executed by the City on May 30, 2000 and by HUD on June 14, 2000 as part of the bond closing documents for HUD's issuance of such HUD 2000-A Certificates (together, the foregoing documents are referred to as the "HUD 108 Loan Documents").

H. In the May 16, 2014 letter, the DOF refused to recognize the HUD 108 Loan Documents as an "Enforceable Obligation" under the Dissolution Law and made a unilateral determination that characterized the Tax Increment Pledge Agreement as "junior" security in relation to the security pledged toward debt service, which payments are due each August 1 and February 1 on the remaining balance of \$1,939,370.00 on the HUD 108 Loan, despite the fact that all prior debt service payments (from loan inception in 1999 through February 2014) were sourced solely from the pledged tax increment funds, and despite the fact that DOF had approved the HUD 108 Loan, including the Tax Increment Pledge Agreement, as an Enforceable Obligation and authorized allocations of funds from the Redevelopment Property Tax Trust Fund ("RPTTF") to the Successor Agency to pay debt service on the HUD 108 Loan for the prior five (5) six month fiscal periods of the recognized obligation payment schedule ("ROPS") were approved by the DOF, including ROPS I (January 1, 2012 to June 30, 2012), ROPS II (July 1, 2012 to December 31, 2012), ROPS III (January 1, 2013 to June 30, 2013), ROPS 13-14A (July 1, 2013 to December 31, 2013), and ROPS 13-14B (January 1, 2014 to June 30, 2014)

I. Because the DOF denied funding through the Redevelopment Property Tax Trust Fund ("RPTTF") for the Successor Agency to make the August 1, 2014 debt service payment on the HUD 108 Loan and because both the City and Successor Agency did not desire or intend to default on the HUD 108 Loan and there being no other "security" as defined in the HUD 108 Loan Documents available to make such debt service payment due, the City Council authorized appropriation and advanced to the Successor Agency \$293,014.25 from the City's General Fund Unrestricted Fund Balance (Reserve Account) to pay and make temporarily that August 1, 2014 debt service payment until such time as funding by DOF is approved through ROPS 14-15B (fiscal period January 1, 2015 to June 30, 2015) or until a court of competent jurisdiction orders the DOF to remit such funds to the Successor Agency in the pending legal action filed by the City and Successor Agency against the DOF, the County of Los Angeles, Auditor-Controller, and the affected taxing entities (Sacramento Superior Court Case No. 34-2014-80001915 ("Action")).

J. The Dissolution Law, in particular Section 34173(h), authorizes the City to loan funds to the Successor Agency for administrative costs, enforceable obligations, or project-related expenses at the City's discretion, and that such loan must be reflected on the Successor Agency's ROPS, which is subject to the approval of the Successor Agency's Oversight Board. Further Sections 34178 and 34180 also authorize certain contracts to be entered into between the Successor Agency and the City, as its sponsoring community.

K. Relying on this authority, the City has extended and by this Agreement evidences a loan ("Loan") of \$293,014.25 ("Loan Amount") to the Successor Agency, which amount equals the monies appropriated from the City's General Fund to make the August 1, 2014 debt service payment on the HUD 108 Loan.

L. The Successor Agency, in preparing the Recognized Obligation Payment Schedule for the January to June 2015 period ("ROPS 14-15B"), will list the Loan as an Enforceable Obligation (again expected to be Item 3. thereon).

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the City and Successor Agency agree as follows:

1. *Recitals.* The City and Successor Agency represent and warrant to each other that each of the respective recitals is true and correct and is hereby incorporated into this Agreement by reference as if fully set forth.

2. *Loan.* Pursuant to Section 34173(h), the City loans to the Successor Agency the Loan Amount of \$293,014.25 as funded through the City's General Fund, Unrestricted Fund Balance (Reserve Account), and the Successor Agency borrows from the City such Loan Amount.

3. *Use of Loan.* The Successor Agency represents to the City that the Loan proceeds have been received and expended for the August 1, 2014 debt service payment on the HUD 108 Loan.

4. *Loan Conditioned on Oversight Board Approval.* The Successor Agency agrees to present this Agreement to the Oversight Board for its review and approval pursuant to Sections 34179(h) and 34180.

5. *Source of Repayment; Limited Subordination.*

(a) Except as provided in subparagraph (b) below of this Section 5, the Loan shall be repaid on par with any enforceable obligations falling within Section 34183(a)(2)(C) (debts not qualifying as tax allocation bonds and certain revenue bonds).

(b) The City hereby agrees to defer payment on the Loan during a six-month period covered by a ROPS to the extent that repayment in that period would leave insufficient funds to the Successor Agency to satisfy other contractual obligations covered by Section 34183(a)(2)(C) which: (i) are due in that six-month period; and (ii) were in existence as of the date of this Agreement.

(c) Unless legally prohibited or waived by the City, any portion of the unpaid Loan shall also be repaid from other revenues available to the Successor Agency, such as the proceeds of asset sales and rents. These payments shall augment and supplement the required payments described in subparagraph (a).

6. *Placement of Loan Obligation on the Successor Agency's ROPS 14-15B* Provided that this Agreement is approved by the Oversight Board (and City and Successor

Agency), the Successor Agency shall prepare and approve ROPS 14-15B for the fiscal period July 1, 2015 to December 31, 2015 that includes this Agreement as a listed Enforceable Obligation. The amount of that listed enforceable obligation shall be the Loan Amount (or such lesser amount as may be actually advanced to the Successor Agency). The Agreement shall be included on each successive ROPS for the Successor Agency until the City is repaid the full Loan Amount.

7. *Term.* This Agreement shall be in full force and effect from the date hereof until such time as the entire amount of the Loan has been repaid in full.

8. *Entire Agreement.* This Agreement constitutes the entire agreement by and between the Parties with respect to the subject matter of this Agreement, and may be amended only in writing.

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9. *Remedies.* In the event of a default, the Parties hereto shall be entitled to pursue any and all remedies available at law or equity under California law for purposes of enforcing the terms and conditions of this Agreement.

APPROVED BY ACTION OF CITY COUNCIL AND SUCCESSOR AGENCY AND EXECUTED by signature of the authorized representatives of each of the Parties on September 9, 2014, with action taken by the Oversight Board authorizing this Agreement on September 22, 2014.

CITY:

CITY OF SOUTH GATE, a municipal corporation

By: _____
Henry C. Gonzalez, Mayor

ATTEST:

By: _____
Carmen Avalos, City Clerk

APPROVED AS TO FORM:

By: _____
Raul F. Salinas, Esq., City Attorney

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SOUTH GATE, a public body, corporate and politic

By: _____
Henry C. Gonzalez, Chairperson

ATTEST:

By: _____
Carmen Avalos, City Clerk

APPROVED AS TO FORM:

STRADLING YOCCA CARLSON & RAUTH

By: _____
Counsel to the Successor Agency


RESOLUTION CERTIFICATION PAGE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF SOUTH GATE)

I, Carmen Avalos, Secretary of the Oversight Board of the Successor Agency to the Community Development Commission of the City of South Gate, California, hereby certify that the whole number of Members of the Oversight Board of said City is seven; that Resolution No. 2014-05 was adopted by the Oversight Board at their Meeting held on September 22, 2014, by the following vote:

Ayes:	Board Members:	De Witt, Liday, Torres, Shidler, el Fattal and Mendez
Noes:	Board Members:	None
Absent:	Board Members:	Bokde
Abstain:	Board Members:	None

Witness my hand and the seal of said City on September 22, 2014.



Carmen Avalos, Secretary
Oversight Board of the Successor Agency
to the Community Development Commission
of the City of South Gate, California