

**LOAN AGREEMENT BETWEEN CITY OF MILPITAS AND THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS**

THIS LOAN AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_, 2021 by and between the CITY OF MILPITAS ("City") and SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Successor Agency").

**RECITALS**

WHEREAS, pursuant to the provisions of AB 1X 26 as enacted in 2011 and subsequently amended by AB 1484 (2012) and SB 107 (2015) (collectively, the "Dissolution Act"), the Successor Agency is the designated successor to the former Redevelopment Agency of the City of Milpitas and is responsible for winding down and disposing of all assets of the former Redevelopment Agency; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency and the City are separate legal entities; and

WHEREAS, on an annual basis pursuant to Health and Safety Code section 34177(o)(1), the Successor Agency submits and obtains approval from the Oversight Board and Department of Finance for its Recognized Obligation Payment Schedule ("ROPS"), with the expected expenditures for the following fiscal year; and

WHEREAS, the Successor Agency's June 2021 distribution for the 2021-22 ROPS was reduced by \$148,396, due to a change in accounting and reporting processes in the ROPS; and

WHEREAS, the Successor Agency is required to pay its 2015 Tax Allocation Refunding Bonds debt service on September 1, 2021, and because the Successor Agency received a reduced distribution in June 2021, the Successor Agency did not have sufficient funds to pay the required debt service; and

WHEREAS, in order to avoid a default by the Successor Agency on the obligations to make debt service payments, the City made an advance to the Successor Agency in the amount of \$65,000 so that the Successor Agency had sufficient funds to make the required debt service payments; and

WHEREAS, pursuant to Health and Safety Code section 34173(h), a City may make a loan of funds necessary to pay an enforceable obligation to the extent that the successor agency receives an insufficient distribution from the Redevelopment Property Tax Trust Fund ("RPTTF") to pay the approved enforceable obligations in the applicable ROPS period; and

WHEREAS, the loan made shall be repaid from the source of funds originally approved for payment of the underlying enforceable obligation in the ROPS once sufficient funds become available from that source; and

WHEREAS, based on the approved ROPS for fiscal year 2021-22, the City and Successor Agency anticipate that the January 2022 ROPS allocation will include sufficient funds to repay the loan to the City and pay all other enforceable obligations approved on the 2021-22 ROPS; and

WHEREAS, if such funds are not sufficient to pay all such enforceable obligations, the Successor Agency shall place this loan on the 2022-23 ROPS and each subsequent ROPS until the Loan is repaid in full, subject to the approval of the County Oversight Board; and

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Recitals

The recitals above are true and correct and incorporated herein by reference.

Section 2. City Loan to the Agency

The parties agree that the City has hereby loaned to the Successor Agency the amount of \$65,000 (the "Loan") in order to pay the Successor Agency's September 1, 2021 debt service payment on the 2015 Tax Allocation Refunding Bonds. The Loan is outstanding and shall be repaid by the Successor Agency in accordance with the terms of this Agreement and applicable law.

Section 3. Repayment of Loan by Successor Agency

In accordance with Health & Safety Code Section 34173(h) and other provisions of the Dissolution Act, the Successor Agency hereby agrees to repay the Loan out of the RPTTF received by the Successor Agency to pay the debt service on the 2015 Tax Allocation Refunding Bonds. In the event that the RPTTF funds received from the January 2022 distribution is not sufficient to repay the Loan in full, the Loan shall be placed as an "enforceable obligation" on the 2022-23 ROPS and each successive ROPS, subject to Oversight Board approval, until the Loan has been fully repaid, in order that the Loan be repaid as quickly possible. The Loan shall not accrue interest.

Section 4. Defaults.

a. Successor's Agency's failure to pay any amount due hereunder within 15 days of its due date after notice to Successor Agency shall be considered an event of default under this Agreement.

b. Upon the occurrence of any event of default and expiration of any applicable cure period at the option of the City after 30 days prior written notice, the entire unpaid balance of principal and all accrued interest owing under this Agreement shall become immediately due and payable. City's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or

is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

Section 5. Costs of Enforcement.

Successor Agency agrees to pay the following costs, expenses and attorneys' fees paid or incurred by the City or adjudged by a Court: (1) reasonable costs of collection, costs and expenses, and reasonable attorneys' fees paid or incurred in connection with the collection, enforcement for Loan Agreement, or of any covenant of this Agreement, whether or not suit is filed; (2) costs of suit and such sums the Court may adjudge as attorneys' fees in any action to enforce payment of all amounts due under this Agreement or any part of it; and (3) costs of suit and such sum as the Court may adjudge as reasonable attorneys' fees in any other litigation or controversy connected with the enforcement of this Agreement.

Section 6. Waivers.

Except as provided above, Successor Agency and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

Section 7. Assignment and Assumption.

This Agreement shall be binding upon Successor Agency, its successors and assigns. This Agreement is not transferable by the Successor Agency, and the Successor Agency shall not assign its rights and obligations hereunder without the prior written consent of the City. The City, at its option, may negotiate, transfer or assumption of this Agreement.

Section 8. Governing Law.

This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

Section 9. Integration.

This Agreement represents the entire understanding of the parties as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. Parties accept the recitals as true and accurate and incorporate those into this agreement. This Agreement may not be modified or altered except by written amendment executed by both parties.

Section 10. Partial Invalidity.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement on the day and year first above written.

CITY OF MILPITAS

By: \_\_\_\_\_  
Steven G. McHarris, City Manager

SUCCESSOR AGENCY OF THE  
REDEVELOPMENT AGENCY OF THE CITY  
OF MILPITAS

By: \_\_\_\_\_  
Steven G. McHarris, Executive Director

Approved as to Form:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney