

OVERSIGHT BOARD RESOLUTION NO. 2012-12

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY APPROVING A RE-ENTERED 2005 FINANCING AGREEMENT BY AND BETWEEN THE CITY OF IRVINE AND THE CITY OF IRVINE AS SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY

WHEREAS, City of Irvine is a California charter city and municipal corporation existing and operating under the Constitution of the State of California; and

WHEREAS, the Irvine Redevelopment Agency (RDA) was a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (CRL); and

WHEREAS, RDA was established to exercise and undertake redevelopment activities for purposes of implementing the Redevelopment Plan for the Orange County Great Park Redevelopment Project Area; and

WHEREAS, under the CRL, the City had the express authority to provide RDA with financial assistance for purposes of implementing redevelopment activities (see, e.g., Health and Safety Code Sections 33220, 33600, 33601, 33610, 33614; see also Government Code Section 53600 *et seq.*); and

WHEREAS, pursuant to the authority granted under the CRL, the City and RDA entered into that certain Financing Agreement, dated June 14, 2005 (2005 Financing Agreement) which effected a loan by the City to the RDA; and

WHEREAS, on or about January 10, 2011, the Governor of California first proposed the dissolution of redevelopment agencies as part of his 2011-12 budget proposal; and

WHEREAS, pursuant to Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature (ABx1 26), enacted as a bill related to the 2011-12 Budget Act in June 2011, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies in California were dissolved on February 1, 2012; and

WHEREAS, pursuant to Health and Safety Code Section 34173(a) and (b), added by ABx1 26, the City, as the Successor Agency to the RDA, assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code; and

WHEREAS, pursuant to Health and Safety Code Section 34179, added by ABx1 26, members of the Oversight Board to the Successor Agency to the former RDA have been duly appointed; and

WHEREAS, it has been asserted by the State of California Department of Finance (DOF) that under ABx1 26, as of February 1, 2012, all agreements between the city that formed the redevelopment agency and the former redevelopment agency are voided except agreements providing for loans by the city to the redevelopment agency entered into during the first two years after the formation of the redevelopment agency; and

WHEREAS, ABx1 26, however, provides that even if agreements between the city that created the redevelopment agency and the former redevelopment agency are voided as asserted by DOF (a position with which the Oversight Board disagrees and does not concede), under Health and Safety Code Sections 34178(a) and 34180(h), added to the CRL by ABx1 26, the Oversight Board has the authority to approve, at the request of the Successor Agency, the re-entering into any of those agreements; and

WHEREAS, the City and Successor Agency, at their meeting of June 12, 2012, approved a Re-Entered 2005 Financing Agreement pursuant to Health and Safety Code Sections 34178(a) and 34180(h); and

WHEREAS, pursuant to the direction of the Successor Agency, the staff of the Successor Agency has requested Oversight Board approval of the Re-Entered 2005 Financing Agreement, as approved by the City Council and Successor Agency, attached to this resolution as Exhibit A, pursuant to Health and Safety Code Sections 34178(a) and 34180(h); and

WHEREAS, the Re-Entered 2005 Financing Agreement and this resolution were considered by the Oversight Board at its meeting of June 14, 2012;

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Oversight Board hereby finds and declares as follows:

A. The 2005 Financing Agreement was lawfully entered into by the City and the RDA. The Community Redevelopment Law expressly authorized the City to provide financial assistance to the Agency (Health and Safety Code sections 33220,33600,33601,33614 and Government Code section 53600).

B. If instead of borrowing seed money from the City, the RDA had financed its activities with bonds issued to private third party lenders or loans from third parties, there is no question Department of Finance would find such bonds or loans to be enforceable obligations within the meaning of ABx1 26. The fact the City was willing to invest its own funds and took the financially prudent step of avoiding the need for the RDA to borrow money on the open market and pay interest to third parties, the City As

Successor Agency does not believe there is a fair rationale for the Department of Finance's determination that the 2005 Financing Agreement should not be recognized as an enforceable obligation.

C. The 2005 Financing Agreement provided for repayment of a reasonable term and interest rate and was accepted as indebtedness by the State Controller prior to ABx1 26.

D. The 2005 Financing Agreement was approved prior to January 1, 2011 and was not a last minute attempt to avoid Governor Brown's proposal on or about January 10, 2011, to eliminate redevelopment agencies or any legislation that resulted from his proposal.

E. The Re-Entered Agreement does not supersede the existing 2005 Financing Agreement but effects a re-entering of the 2005 Financing Agreement pursuant to the terms of Health and Safety Code Section 34178(a).

F. In considering whether to approve the Re-Entered 2005 Financing Agreement, the Oversight Board has taken into consideration its fiduciary responsibilities to the holders of enforceable obligations and the taxing entities that benefit from the distribution of property taxes.


Section 3. The Oversight Board approves the Re-Entered 2005 Financing Agreement between the City of Irvine and the City of Irvine As Successor as set forth in Exhibit A attached to this resolution and in so approving the Oversight Board finds and determines the Re-Entered 2005 Financing Agreement is an enforceable obligation and should be recognized as such pursuant to ABx1 26.

Section 4. The Secretary shall certify to the adoption of this resolution.

PASSED AND ADOPTED by the Oversight Board at a special meeting held on the 14th day of June, 2012.


MARIAN BERGESON, CHAIR

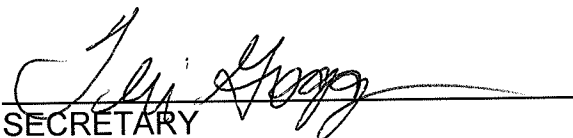
ATTEST:


SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF IRVINE)

I, TERRI GOGGIN, Secretary to the Oversight Board, hereby certify that the foregoing resolution was duly adopted at a special meeting of the Oversight Board, held on the 14th day of June 2012.

AYES: 5 BOARDMEMBERS: BERGESON, DOLLESHELL, DUNN,
FOGARTY AND LANDERS
NOES: 1 BOARDMEMBERS: COMPTON
ABSENT: 1 BOARDMEMBERS: FITZSIMONS


SECRETARY

RE-ENTERED 2005 FINANCING AGREEMENT

This RE-ENTERED 2005 FINANCING AGREEMENT (“Re-Entered Agreement”), dated June 12, 2012 for reference purposes only (“Reference Date”), by and between the CITY OF IRVINE, a charter city and municipal corporation existing and operating under the Constitution of the State of California (“City”), and the CITY OF IRVINE, in its capacity as the Successor Agency (“Successor Agency”) to the dissolved Irvine Redevelopment Agency (“RDA”).

RECITALS

A. City is a California charter city and municipal corporation existing and operating under the Constitution of the State of California.

B. RDA was a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.* (“CRL”).

C. RDA was established to exercise and undertake redevelopment activities for purposes of implementing the Redevelopment Plan for the Orange County Great Park Redevelopment Project Area.

D. Under the CRL, the City had the express authority to provide the RDA with financial assistance for purposes of implementing redevelopment activities (see, e.g., Health and Safety Code Sections 33220, 33600, 33601, 33610, 33614; see also Government Code Section 53600 *et seq.*).

E. Pursuant to the authority granted under the CRL, the City and RDA entered into that certain Financing Agreement, dated June 14, 2005, a copy of which is attached to this Re-Entered Agreement as Exhibit “A” and incorporated herein by this reference (the “2005 Financing Agreement”).

F. On or about January 10, 2011, the Governor of California first proposed the dissolution of redevelopment agencies as part of his 2011-12 budget proposal.

G. Pursuant to Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature (“ABx1 26”), enacted as a bill related to the 2011-12 Budget Act in June 2011, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies in California were dissolved on February 1, 2012.

H. Pursuant to Health and Safety Code Section 34173(a) and (b), added by ABx1 26, the City, as the Successor Agency to the RDA, assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code.

I. Pursuant to Health and Safety Code Section 34179, added by ABx1 26, members of the Oversight Board of the Successor Agency to the former RDA have been duly appointed.

EXHIBIT A

J. It has been asserted by the State of California Department of Finance (“DOF”) that under ABx1 26, as of February 1, 2012, all agreements between the city that formed the redevelopment agency and the former redevelopment agency are voided except such agreements entered into during the first two years after the formation of the redevelopment agency.

K. ABx1 26, however, provides that even if agreements between the city that created the redevelopment agency and the former redevelopment agency are voided (a position with which the City in its capacity as a charter city and municipal corporation, and the City in its capacity as Successor Agency, disagree and do not concede), under Health and Safety Code Sections 34178(a) and 34180(h), added to the CRL by ABx1 26, the Oversight Board has the authority to approve, at the request of the Successor Agency, the re-entering into any of those agreements.

L. Pursuant to Health and Safety Code Sections 34178(a) and 34180(h), the City, in its capacity as a charter city and municipal corporation, and in its capacity as the Successor Agency, re-enters into the 2005 Financing Agreement as set forth in this Re-Entered Agreement.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the City As Successor Agency agree as follows:

1. Re-Entry Into 2005 Financing Agreement. Subject to the terms and conditions in this Re-Entered Agreement, the City in its capacity as a charter city and municipal corporation and in its capacity as the Successor Agency, re-enter into the 2005 Financing Agreement pursuant to the authority set forth in Health and Safety Code Section 34178(a), subject to the provisions set forth in Paragraph 3 hereof. This Re-Entered Agreement does not supersede the existing 2005 Financing Agreement but effects a re-entering of the 2005 Financing Agreement pursuant to the terms of Health and Safety Code Section 34178(a) subject to the provisions set forth in Paragraph 3 hereof.

2. Reservation of Rights. The City, in its capacity as a charter city and municipal corporation existing and operating under the Constitution of the State of California, and the City As Successor Agency, hereby reserve any and all rights, and does not waive any rights which it may now or in the future have, for repayment under the existing 2005 Financing Agreement, including but not limited to the right to receive repayment under the existing 2005 Financing Agreement as may be authorized pursuant to any current or future law, amendment to ABx1 26, administrative or judicial decision, or otherwise.

3. Effective Date. This Re-Entered Agreement shall not be effective unless and until the Oversight Board has approved it pursuant to Health and Safety Code Sections 34178(a) and 34180(h) by adoption of a resolution. The date of adoption of a resolution by the Oversight Board approving this Re-Entered Agreement shall be the effective date of this Re-Entered Agreement. If the City in its capacity as a charter city and municipal corporation, and the City As Successor Agency, have not approved this Re-Entered Agreement prior to its approval by the Oversight Board, the City and the City As Successor Agency may approve this Re-Entered Agreement by ratification of the Oversight Board approval at a duly noticed public meeting of the City Council.

4. City Manager Authorization. The City Manager and authorized designees shall have the authority to execute such other and further agreements and documents, and take such other and further actions, necessary to implement this Re-Entered Agreement on behalf of the City, in its capacity as a charter city and municipal corporation, and on behalf of the City As Successor Agency.

IN WITNESS WHEREOF, the City, in its capacity as a charter city of the State of California and a municipal corporation, and the City in its capacity as the Successor Agency, approves and enters into this Re-Entered Agreement as of the Reference Date and subject to the approval by the Oversight Board.

“City”

CITY OF IRVINE, a charter city and municipal corporation

By: _____
Sukhee Kang, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“Successor Agency”

CITY OF IRVINE As Successor Agency to the dissolved Irvine Redevelopment Agency

By: _____
Sukhee Kang, Mayor

ATTEST:

Secretary of the Successor Agency

APPROVED AS TO FORM:

Successor Agency Counsel

EXHIBIT "A"

2005 FINANCING AGREEMENT

[SEE FOLLOWING PAGES]

FINANCING AGREEMENT

THIS FINANCING AGREEMENT ("Agreement") is made and entered into this 14th day of June, 2005, by and between the IRVINE REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency"), and the CITY OF IRVINE, a charter city and municipal corporation ("City").

RECITALS

A. Agency is a public body, corporate and politic, organized under the California Community Redevelopment Law (Health & Safety Code § 33000 et seq.).

B. City is a charter city and municipal corporation.

C. Agency was activated by Ordinance No. 99-09 adopted by the City Council of City on April 27, 1999.

D. On March 8, 2005, by Ordinance No. 05-04, the Irvine City Council, adopted the Redevelopment Plan for the Orange County Great Park Redevelopment Project Area ("Redevelopment Plan") for purposes of assisting with the transition of the former United States Marine Corp Air Station El Toro to civilian uses which would benefit the local economy.

E. Agency, by Redevelopment Agency Resolution No. 99-02, adopted on July 27, 1999, and City, by City Council Resolution No. 99-99, adopted on July 27, 1999, approved a Cooperation Agreement ("Cooperation Agreement") between City and Agency to enable Agency to obtain from City financial, personnel, and other assistance for the purposes of undertaking redevelopment activities in the City.

F. Agency now desires to borrow from City, and City desires to loan to Agency, pursuant to the terms set forth in this Agreement, a sum not to exceed \$4,468,137.

G. City and Agency mutually desire to enter into this Agreement to set forth their respective obligations with respect to the loan appropriation in an amount not to exceed \$4,468,137.

H. Agency, by Redevelopment Agency Resolution No. 05-09, adopted on June 14, 2005, and City, by City Council Resolution No. 05-70, adopted on June 14, 2005, approved this Financing Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, Agency and City agree as follows:

Section 1. City Loan. City hereby loans to Agency the principal amount not to exceed \$4,468,137 ("Loan Principal"), to be appropriated from the City's adopted 2005-2006 budget and defined as a loan to the Agency from the City's Asset Management Plan Fund. The Agency, in its sole discretion, may draw on the Loan Amount in one disbursement or, from time to time, in multiple draws of lesser amounts with the total of all disbursements not to exceed \$4,468,137.

Section 2. Interest. Interest shall accrue on the outstanding Loan Principal at such rate as the parties herein may agree upon, not to exceed the maximum legal rate. The initial rate of interest shall be equal to the City's annualized return on the Operating Portfolio, using a rolling twelve (12) month period based on the loan date, plus 3%. Interest shall be compounded annually. The interest rate applicable to the outstanding Loan Principal and compounded accrued interest shall be adjusted annually on the anniversary date of this Agreement.

Section 3. Agency Repayment. The Loan Principal and any accrued interest shall be repaid by Agency out of tax increment funds allocated to and received by Agency. Agency shall repay outstanding principal and accrued interest in ten (10) annual installment payments of principal and interest commencing in Fiscal Year 2015-16, generally in accordance with the amortization schedule shown in Exhibit "A" attached hereto and incorporated herein. The parties acknowledge that the amortization schedule attached as Exhibit "A" assumes a constant interest rate of 7% per annum compounded annually, and that the actual annual repayment amounts may be greater or lesser depending on the annual interest rate adjustments set forth in Section 2. Notwithstanding anything in this Agreement to the contrary, Agency shall be entitled to repay all or part of the Loan Principal and all accrued interest at any time with no other charges, fees, or penalties. All amounts due under this Agreement shall be payable at the offices of City. City is authorized to extend the repayment schedule or any annual installment.

Section 4. Indebtedness of Agency. The Loan Principal and accrued interest described in this Agreement shall constitute an indebtedness of Agency.

Section 5. Subordination. The repayment of the Loan Principal and accrued interest by Agency shall be junior and subordinate to (i) all Agency tax allocation bonds or other direct long-term indebtedness of Agency, (ii) all pledges by Agency of tax increments for tax allocation bonds or other direct long-term indebtedness of Agency, and (iii) Agency financial agreements and other contractual obligations of Agency, whether any of the foregoing in clauses (i), (ii), or (iii) are incurred before or after the date of this Agreement.


Section 6. Non-Liability of City and Agency Officials, Officers, and Employees. No officer, official, employee, agent, or representatives of Agency or City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, employee, agent, or representative.

Section 7. Entire Agreement; Amendment. This Agreement shall constitute the entire agreement of the parties. This Agreement may be amended or modified only by an agreement in writing signed by the parties.

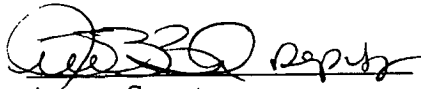
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives, as of the date first above written.

"AGENCY"

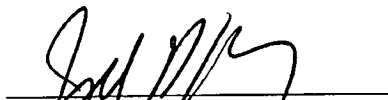
IRVINE REDEVELOPMENT AGENCY

By: 
Chair, Irvine Redevelopment Agency

ATTEST:

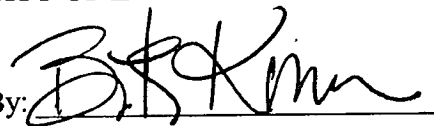

Agency Secretary

APPROVED AS TO FORM:



Agency Counsel

"CITY"

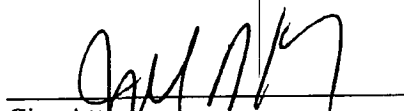
CITY OF IRVINE

By: 
Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney