

## **BOND PROCEEDS EXPENDITURE AGREEMENT**

This **BOND PROCEEDS EXPENDITURE AGREEMENT** (“Agreement”) is entered into as of April 11, 2016, by and between the **CITY OF CHULA VISTA**, a California municipal corporation and charter city (“City”), and the **SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA**, a public body corporate and politic pursuant to Parts 1.8 and 1.85 of Division 24 of the California Health & Safety Code (“Successor Agency”).

### **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 body, corporate and politic, organized and operating under Part 1.85 of Division 24 of the Dissolution Law (as defined in Recital D below).

C. The Redevelopment Agency of the City of Chula Vista (“former Agency”) previously was a California public body, corporate and politic, duly formed by the City Council of the City (“City Council”) and was organized, existed and exercised the powers of a community redevelopment agency under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* (“CRL”).

D. Assembly Bill x1 26 (“AB x1 26”), effective on June 28, 2011, added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code and which laws were modified, in part, and determined constitutional by the California Supreme Court in the petition *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 (“*Matosantos* Decision”), which laws and court opinion caused the dissolution of all redevelopment agencies and winding down of the affairs of former redevelopment agencies. Thereafter, such laws were amended further by Assembly Bill 1484 (“AB 1484”) that was effective on June 27, 2012, and thereafter further amended by subsequent legislation (together AB x1 26, the *Matosantos* Decision, AB 1484, and subsequent amending legislation are referred to as the “Dissolution Law”). All statutory references herein are to the Dissolution Law unless otherwise stated.

E. As of February 1, 2012, the former Agency became a dissolved community redevelopment agency pursuant to the Dissolution Law.

F. As of and on and after February 1, 2012, the Successor Agency is performing its functions as the successor agency under the Dissolution Law to administer the enforceable obligations of the former Agency and is engaged in activities necessary and appropriate to wind down the affairs of the former Agency, all subject to the review and approval by a seven-member “Oversight Board” formed thereunder.

G. Section 34191.4(c)(1)(A) of the Dissolution Law allows a successor agency that has received a Finding of Completion (“Finding”) to use bond proceeds from bonds issued on or before December 31, 2010 for the purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall

constitute “excess bond proceeds obligations” that shall be listed separately on the successor agency’s Recognized Obligation Payment Schedule (“ROPS”).

H. The Successor Agency received the Finding from the State of California Department of Finance dated as of May 7, 2013.

I. The CRL pre-dissolution provided for, and the Dissolution Law post-dissolution continues to provide for, a cooperative relationship between sponsoring cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies. Under CRL Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. CRL Section 33220(e) specifically authorizes a city to enter into an agreement with its redevelopment agency or any other public entity to further redevelopment purposes. Section 34178(a) of the Dissolution Law allows a successor agency and its sponsoring city to enter into agreements, subject to Oversight Board approval under Section 34180(h) of the Dissolution Law.

J. The Successor Agency has and will have proceeds of its Redevelopment Agency of the City of Chula Vista 2008 Tax Allocation Refunding Bonds (Merged Redevelopment Project) (the “2008 Bonds”; and, together with other funds described in Section 2.1 below, “Bond Proceeds”) that are not otherwise obligated for a project or other enforceable obligation. The Successor Agency desires to transfer such Excess Bond Proceeds (defined below) to the City to enable the City to expend or allocate such Excess Bond Proceeds for expenditures consistent with all applicable covenants of the 2008 Bonds.

K. The Successor Agency desires to transfer its Excess Bond Proceeds to the City to enable the City to use or allocate such Excess Bond Proceeds in a manner consistent with the covenants of the 2008 Bonds and to undertake projects and programs that were not previously funded and obligated by the former Agency pre-dissolution or by the Successor Agency post-dissolution, or by the City pre- or post-dissolution. The City previously took action to allocate such Excess Bond Proceeds to certain public improvement projects undertaken by the City. The City Council and former Successor Agency Board have found that the use of Excess Bond Proceeds to fund various capital improvements within and outside the Merged Chula Vista Redevelopment Project Area complies with CRL Sections 33445, 33445.1, and 33679 and other applicable law. On April 11, 2016, the Oversight Board determined that the expenditure of Excess Bond Proceeds in accordance with this Agreement will benefit the affected taxing entities, and approved the execution of this Agreement and the transfer of Excess Bond Proceeds to the City for the purposes described herein.

L. In order to facilitate the use of Excess Bond Proceeds consistent with all applicable bond covenants, the Successor Agency and the City have negotiated this Agreement requiring the transfer of current and future excess bond proceeds by the Successor Agency to the City, and the City’s agreement to use such proceeds consistent with all applicable covenants, conditions, restrictions and obligations under the 2008 Bonds. The parties intend that this Agreement shall constitute an excess bond proceeds obligation within the meaning of the Dissolution Law to be paid from Excess Bond Proceeds. With Oversight Board approval and a successful Meet and Confer process with the California Department of Finance, the Successor Agency will list this Agreement, and the requirement to transfer excess bond proceeds herein, on its ROPS 2016-17 as an obligation to be funded with Excess Bond Proceeds, and as and if applicable on successive ROPS if required by the Dissolution Law.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **RECITALS**

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

2. **DEFINITIONS**

For purposes of this Agreement, the following terms shall have the indicated meaning:

2.1 “Dissolution Law” is defined in Recital D.

2.2 “Bond Proceeds” is defined in Recital J and also includes (1) proceeds from tax allocation bonds issued on or before December 31, 2010, (2) rents, sale proceeds and other revenues generated by properties acquired and/or improved with proceeds from tax allocation bonds issued on or before December 31, 2010, (3) interest and principal paid on loans funded by proceeds from tax allocation bonds issued on or before December 31, 2010, (4) moneys held by the trustee in connection with the issuance of the 2008 Bonds, and (5) other income or revenues generated from assets acquired or funded with proceeds from tax allocation bonds issued on or before December 31, 2010.

2.3 “Excess Bond Proceeds” means Bond Proceeds that are not needed to satisfy Enforceable Obligations listed on an approved ROPS.

2.4 “Enforceable Obligations” mean enforceable obligations, other than Excess Bond Proceeds obligations, as defined under the Dissolution Law.

3. **SUCCESSOR AGENCY OBLIGATIONS**

The Successor Agency shall have the following obligations under this Agreement:

3.1 **Current Excess Bond Proceeds.** The Successor Agency shall transfer to the City, as soon as practicable and no later than January 1, 2017, Excess Bond Proceeds currently held by the Successor Agency in an amount not to exceed (i) \$47,595 (the “Base Amount”), together with (ii) \$1,282,793 as held by the trustee for the 2008 Bonds (the “Trustee Amount”), for a total of \$1,330,388.

3.2 **Future Excess Bond Proceeds.** The Successor Agency shall transfer to the City all future Excess Bond Proceeds held or received by the Successor Agency. Such future Excess Bond Proceeds shall include, without limitation, (1) Bond Proceeds previously obligated to a project or other Enforceable Obligation that become unobligated for any reason, (2) Bond Proceeds that become available in the form of rents, sale proceeds, loan repayments, other income, or other revenues that are generated by properties or other assets acquired and/or improved with Bond Proceeds and that are not otherwise obligated to a project, program, or other Enforceable Obligation, and (3) any other funds held by the Successor Agency that qualify as Excess Bond Proceeds under this Agreement.

The parties intend that payments of future Excess Bond Proceeds be made to the City as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond

Proceeds to the City shall be made pursuant to an approved ROPS within 30 days of the commencement of the relevant ROPS period. The Successor Agency shall be responsible for ensuring that payments of future Excess Bond Proceeds to the City, as such funds become available, are included on the next possible ROPS.

3.3 **Projects Funded By Excess Bond Proceeds.** The Successor Agency assigns to the City all responsibilities in relation to the administration and implementation of any projects or programs funded by Excess Bond Proceeds. The Successor Agency assigns to the City all contracts entered into by the Successor Agency post-dissolution or the former Agency pre-dissolution related to the expenditure of Excess Bond Proceeds and any activities to be funded by Excess Bond Proceeds, with the exception of those contracts relating to Enforceable Obligations, including the bond documents for the 2008 Bonds, which shall be retained by the Successor Agency. The transfer of moneys held by the trustee for the 2008 Bonds shall remain subject to the terms of the indenture of trust prepared in connection with the issuance of the 2008 Bonds (the “2008 Indenture”) and the Tax Certificate executed by the former Agency in connection with the issuance of the 2008 Bonds (the “2008 Tax Certificate”).

#### 4. **CITY OBLIGATIONS**

The City shall have the following obligations under this Agreement:

4.1 **Excess Bond Proceeds.** The City shall accept, hold, disburse and administer Excess Bond Proceeds transferred to the City by the Successor Agency under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City shall retain any Excess Bond Proceeds that it receives, such as revenue generated from properties acquired or improved with Excess Bond Proceeds or payments on loans funded from Excess Bond Proceeds, without any obligation to return such funds to the Successor Agency, and shall use or allocate such funds for uses consistent with applicable covenants of the 2008 Bonds.

The City may spend or allocate Excess Bond Proceeds (including the Base Amount and the Trustee Amount) received or retained under this Agreement on any project, program, or activity authorized under the 2008 Indenture and the 2008 Tax Certificate. Notwithstanding anything to the contrary in this Agreement, the City shall spend or allocate Excess Bond Proceeds consistent with all covenants of the 2008 Bonds applicable to the particular Excess Bond Proceeds. The City shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent (or allocated to expenditures) in accordance with all covenants of the 2008 Bonds and other applicable laws. The City may transfer funds between approved projects, programs and activities.

The City hereby assumes all contracts entered into or assumed by the Successor Agency post dissolution or entered into by the former Agency pre-dissolution related to the expenditure of Excess Bond Proceeds and any activities to be funded by Excess Bond Proceeds, with the exception of those contracts relating to Enforceable Obligations, which shall be retained by the Successor Agency. The City shall perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA and/or NEPA, and shall timely complete the work required for each project commenced by the City pursuant to this Agreement and the 2008 Indenture and the 2008 Tax Certificate.

**5. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS**

5.1 This Agreement constitutes the entire understanding and agreement of the parties with respect to the transfer and use of Excess Bond Proceeds. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

5.2 This Agreement is intended solely for the benefit of the City and the Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Successor Agency, there shall be no third party beneficiaries under this Agreement.

5.3 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

**6. SEVERABILITY**

If any term, provision, covenant or condition 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 have been materially altered or abridged by such invalidation, voiding or unenforceability. In addition, the parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

**7. DEFAULT**

If either party fails to adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract or to seek specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

**8. BINDING ON SUCCESSORS**

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

**9. NON-LIABILITY OF MEMBERS, OFFICIALS, EMPLOYEES ANGE AGENTS; NON-RECOURSE OBLIGATION**

No member, officer, official, employee, agent or representative of the Successor Agency or the City shall be personally liable for performance by the Successor Agency or City hereunder, for breach or default by the City or Successor Agency hereunder, for any amounts which may be payable or become due hereunder, or for any judgment or execution thereon entered in any action.

10. **FURTHER ASSURANCES**

Each party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

**[SIGNATURES ON NEXT PAGE]**

In witness whereof, the undersigned parties have executed this Bond Proceeds Expenditure Agreement as of the date first above written.

**“CITY”**

**CITY OF CHULA VISTA**, a California municipal corporation and charter city

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Donna Norris, City Clerk

**“SUCCESSOR AGENCY”**

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA**, a public body corporate and politic

By: \_\_\_\_\_  
Successor Agency Chair

**ATTEST:**

\_\_\_\_\_  
Donna Norris, Successor Agency Secretary