

SUCCESSOR AGENCY RESOLUTION NO. 14-05-06-01

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY (1) APPROVING A PLAN FOR SPENDING EXCESS HOUSING BOND PROCEEDS, (2) AUTHORIZING A HOUSING BOND PROCEEDS EXPENDITURE AGREEMENT WITH THE SAN JUAN CAPISTRANO HOUSING AUTHORITY TO TRANSFER SUCH FUNDS TO THE HOUSING AUTHORITY FOR HOUSING BOND-ELIGIBLE PURPOSES, (3) DIRECTING THE TRANSFER OF SUCH HOUSING BOND PROCEEDS TO THE HOUSING AUTHORITY, AND (4) MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, the San Juan Capistrano Housing Authority (“Housing Authority”) is a public body, corporate and politic, organized and operating under the Housing Authorities Law, Health and Safety Code Section 34200, *et seq.*, of the State of California.; and,

WHEREAS, the Successor Agency to the San Juan Capistrano Community Redevelopment Agency (“Successor Agency”) is a public body, corporate and politic, organized and operating under Part 1.85 of Division 24 of the Dissolution Act (defined below); and,

WHEREAS, the San Juan Capistrano Community Redevelopment Agency (“former Agency”) previously was a California public body, corporate and politic, duly formed by the City Council of the City of San Juan Capistrano (“City Council”) and was organized, existed and exercised the powers of a community redevelopment agency under the California Community Redevelopment Law, Health & Safety Code Section 33000, *et seq.*; and,

WHEREAS, 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 & Safety Code, 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 (together AB x1 26, the *Matosantos Decision*, and AB 1484 are referred to as the “Dissolution Act”); and,

WHEREAS, as of February 1, 2012, the former Agency became a dissolved community redevelopment agency pursuant to the Dissolution Act; and,

WHEREAS, as of and on and after February 1, 2012, the Successor Agency is performing its functions as the successor agency under the Dissolution Act 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; and,

WHEREAS, Section 34191.4(c) of the Dissolution Act allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for the purposes for which the bonds were sold and 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,

WHEREAS, the Successor Agency received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on November 8, 2013; and,

WHEREAS, pursuant to Health and Safety Code Section 34176, the City Council designated the Housing Authority as the successor housing agency to the former Agency; and,

WHEREAS, in its capacity as successor housing agency, pursuant to Health and Safety Code Section 34176(g), the Housing Authority has the authority to designate the use of and commit indebtedness obligation proceeds that are derived from indebtedness obligations that were issued for the purposes of affordable housing prior to January 1, 2011, and were backed by the Low and Moderate Income Housing Fund; and,

WHEREAS, the Successor Agency has and will have proceeds of its San Juan Capistrano Community Redevelopment Agency, San Juan Capistrano Central Redevelopment Project, 2008 Tax Allocation Bonds, Subordinate Taxable Series B Bonds (Housing) (together with other funds described in the Agreement, "Bond Proceeds") that are not otherwise obligated for a project or other enforceable obligation; and,

WHEREAS, the Successor Agency desires to transfer its Excess Bond Proceeds (defined in the Agreement) to the Housing Authority to enable the Housing Authority to use such Excess Bond Proceeds in a manner consistent with the original bond covenants and to undertake projects and programs that were not previously funded and obligated by the Successor Agency or the Housing Authority; and,

WHEREAS, Housing Authority and Successor Agency staff have prepared a spending plan for using such Excess Bond Proceeds ("Bond Spending Plan") to advance the Housing Authority's affordable housing goals; and,

WHEREAS, in order to facilitate the use of Excess Bond Proceeds consistent with all applicable bond covenants, the Successor Agency and the Housing Authority have negotiated the terms of that certain Housing Bond Proceeds Expenditure Agreement ("Agreement") requiring the transfer of current and future excess bond proceeds by the Successor Agency to the Housing Authority, and the Housing Authority's use of such proceeds consistent with all applicable bond covenants; and,

WHEREAS, the Successor Agency and Housing Authority intend that the Agreement shall constitute an excess bond proceeds obligation within the meaning of Health and Safety Code Section 34191.4(c)(2)(A) to be paid from Excess Bond Proceeds; and,

WHEREAS, with Oversight Board approval, the Successor Agency has listed the transfer of Excess Bond Proceeds to the Housing Authority on its Recognized Obligation Payment Schedule (ROPS) 14-15A (July 1 to December 31, 2014) as an obligation to be funded with Excess Bond Proceeds, subject to execution of the Agreement and delivery thereof to the Department of Finance; and,

WHEREAS, the Successor Agency intends to transfer the remaining Excess Bond Proceeds (estimated to be approximately \$2.7 million) to the Housing Authority on its Recognized Obligation Payment Schedules for January 1 through June 30, 2015 (“ROPS 14-15B”) and July 1 through December 31, 2015 (“ROPS 15-16A”) as applicable; and,

WHEREAS, the Successor Agency desires to approve the Agreement and the Bond Spending Plan in substantially the form attached hereto as Exhibits A and B, respectively.

NOW, THEREFORE, BE IT RESOLVED BY THE SUCCESSOR AGENCY TO THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY:

Section 1. Each of the foregoing recitals is true and correct.

Section 2. The Successor Agency hereby finds and determines, based on all evidence and testimony contained in the record before it, that the use of Excess Bond Proceeds in accordance with the Bond Spending Plan is in accordance with the Dissolution Act, specifically Health and Safety Code Section 34176, and the former Agency’s bond covenants applicable to the Excess Bond Proceeds.

Section 3. The Successor Agency hereby approves the Housing Bond Proceeds Expenditure Agreement in substantially the form attached hereto as Exhibit A and incorporated herein.

Section 4. The Successor Agency hereby approves the Bond Spending Plan in substantially the form attached hereto as Exhibit B and incorporated herein. The Successor Agency acknowledges that, pursuant to the terms of the Housing Bond Proceeds Expenditure Agreement, the Housing Authority may amend the Bond Spending Plan, subject to compliance with all applicable bond covenants.

Section 5. The Chairman of the Successor Agency is hereby authorized and directed to execute the Housing Bond Proceeds Expenditure Agreement in the form presented herewith with such changes, insertions and omissions as may be approved by the Executive Director of the Successor Agency, said execution being conclusive evidence of such approval.

Section 6. With Oversight Board approval, the Successor Agency has listed the transfer of \$4,000,000 of Excess Bond Proceeds to the Housing Authority on its Recognized Obligation Payment Schedule for July 1 through December 31, 2014 (“ROPS 14-15A”), as an obligation to be funded with Excess Bond Proceeds, subject to execution of this Agreement and delivery hereof to the Department of Finance. The Executive Director transfer of the remaining Excess Bond Proceeds (estimated to be

approximately \$2.7 million) to the Housing Authority will be listed on the Successor Agency's Recognized Obligation Payment Schedules for January 1 through June 30, 2015 ("ROPS 14-15B") and July 1 through December 31, 2015, ("ROPS 15-16A") as applicable.

Section 7. This Resolution shall take effect immediately upon its adoption.

APPROVED AND ADOPTED this 6th day of May, 2014.



Larry Kramer, Chairman
Successor Agency to the San Juan Capistrano
Community Redevelopment Agency

(SEAL)

ATTEST:



Deputy
Maria L. Morris, Secretary
Successor Agency to the San Juan Capistrano
Community Redevelopment Agency

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN JUAN CAPISTRANO)

I, MARIA MORRIS, appointed Agency Secretary of the Board of Directors of the Successor Agency to the San Juan Capistrano Community Redevelopment Agency, do hereby certify that the foregoing **Resolution No. SACRA 14-05-06-01** was duly adopted by the City Council of the City of San Juan Capistrano at a Regular meeting thereof, held the 6th day of May 2014, by the following vote:

AYES: BOARD MEMBERS: Allevato, Reeve, Taylor, Byrnes and Chair Kramer
NOES: BOARD MEMBERS: None
ABSENT: BOARD MEMBERS: None



Deputy
MARIA MORRIS, Agency Secretary

HOUSING BOND PROCEEDS EXPENDITURE AGREEMENT

This HOUSING BOND PROCEEDS EXPENDITURE AGREEMENT ("Agreement") is entered into as of May 6, 2014, by and between the SAN JUAN CAPISTRANO HOUSING AUTHORITY, a public body, corporate and politic ("Housing Authority"), and the SUCCESSOR AGENCY TO THE SAN JUAN CAPISTRANO COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Successor Agency").

Recitals

A. The Housing Authority is a public body, corporate and politic, organized and operating under the Housing Authorities Law, Health and Safety Code Section 34200, *et seq.*, 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 Act (as defined in Recital D below).

C. The San Juan Capistrano Community Redevelopment Agency ("former Agency") previously was a California public body, corporate and politic, duly formed by the City Council of the City of San Juan Capistrano ("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.*

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 (together AB x1 26, the *Matosantos Decision*, and AB 1484 are referred to as the "Dissolution Act"). All statutory references herein are to the Dissolution Act unless otherwise stated.

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

F. As of and on and after February 1, 2012, the Successor Agency is performing its functions as the successor agency under the Dissolution Act 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) of the Dissolution Act allows a successor agency that has received a Finding of Completion to use bond proceeds from bonds issued prior to 2011 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. Pursuant to Health and Safety Code Section 34176, the City Council designated the Housing Authority as the successor housing agency to the former Agency. In its capacity as successor housing agency, pursuant to Health and Safety Code Section 34176(g), the Housing Authority has the authority to designate the use of and commit indebtedness obligation proceeds that are derived from indebtedness obligations that were issued for the purposes of affordable housing prior to January 1, 2011, and were backed by the Low and Moderate Income Housing Fund.

I. The Successor Agency has and will have proceeds of its San Juan Capistrano Community Redevelopment Agency, San Juan Capistrano Central Redevelopment Project, 2008 Tax Allocation Bonds, Subordinate Taxable Series B Bonds (Housing) (together with other funds described in Section 2.1 below, "Bond Proceeds") that are not otherwise obligated for a project or other enforceable obligation.

J. The Successor Agency desires to transfer its Excess Bond Proceeds to the Housing Authority to enable the Housing Authority to use such Excess Bond Proceeds in a manner consistent with the original bond covenants and to undertake projects and programs that were not previously funded and obligated by the Successor Agency, the former Agency or the Housing Authority. The Housing Authority Board has adopted a spending plan for using such Excess Bond Proceeds ("Bond Spending Plan") to advance the Housing Authority's community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. The Housing Authority Board and Successor Agency Board have found that the use of Excess Bond Proceeds in accordance with the Bond Spending Plan is in accordance with Health and Safety Code Section 34176 and the covenants set forth in the former Agency's bond documents. The Oversight Board has determined that the expenditure of Excess Bond Proceeds in accordance with this Agreement will benefit the affected taxing entities and is consistent with the former Agency's bond covenants and has approved the execution of this Agreement and the transfer of Excess Bond Proceeds to the Housing Authority for the purposes described herein.

K. In order to facilitate the use of Excess Bond Proceeds consistent with all applicable bond covenants, the Successor Agency and the Housing Authority have negotiated this Agreement requiring the transfer of current and future excess bond proceeds by the Successor Agency to the Housing Authority, and the Housing Authority's use of such proceeds consistent with all applicable bond covenants. The parties intend that this Agreement shall constitute an excess bond proceeds obligation within the meaning of Health and Safety Code Section 34191.4(c)(2)(A) to be paid from Excess Bond Proceeds.

With Oversight Board approval, the Successor Agency has listed the transfer of \$4,000,000 of Excess Bond Proceeds to the Housing Authority on its ROPS 14-15A for July 1 through December 31, 2014, as an obligation to be funded with Excess Bond Proceeds, subject to execution of this Agreement and delivery hereof to the Department of Finance. The Successor Agency intends to transfer the remaining Excess Bond Proceeds (estimated to be approximately \$2.7 million) to the Housing Authority on its Recognized Obligation Payment Schedules for January 1 through June 30, 2015 ("ROPS 14-15B") and July 1 through December 31, 2015 ("ROPS 15-16A") as applicable.

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 Act" is defined in Recital D.

2.2 "Bond Proceeds" is defined in Recital H and also includes (1) proceeds from tax allocation bonds issued on or before December 31, 2010 and secured by the Low and Moderate Income Housing Fund, (2) rents, sale proceeds and other revenues generated by properties acquired and/or improved with proceeds from such tax allocation bonds issued on or before December 31, 2010, (3) interest and principal paid on loans funded by proceeds from such tax allocation bonds issued on or before December 31, 2010, and (4) other income or revenues generated from assets acquired or funded with proceeds from such 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 Act.

2.5 "Bond Spending Plan" is defined in Recital J.

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 Housing Authority, no later than December 31, 2015, Excess Bond Proceeds currently held by the Successor Agency in an amount not to exceed \$6,700,000.

3.2 FUTURE EXCESS BOND PROCEEDS. The Successor Agency shall transfer to the Housing Authority 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, 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 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 Housing Authority as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond Proceeds to the Housing Authority 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 Housing Authority, 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 Housing Authority all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. The Successor Agency assigns to the Housing Authority all contracts entered into by the Successor Agency or the former Agency 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.

4. HOUSING AUTHORITY OBLIGATIONS

The Housing Authority shall have the following obligations under this Agreement:

4.1 EXCESS BOND PROCEEDS. The Housing Authority shall accept, hold, and disburse Excess Bond Proceeds transferred to the Housing Authority by the Successor Agency under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The Housing Authority 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 such funds for uses consistent with applicable bond covenants.

The Housing Authority may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity authorized under the Bond Spending Plan. Notwithstanding anything to the contrary in this Agreement or the Bond Spending Plan, the Housing Authority shall spend Excess Bond Proceeds consistent with the original bond covenants applicable to the particular Excess Bond Proceeds. The Housing Authority shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws. The Housing Authority may transfer funds between approved projects, programs and activities.

The Housing Authority hereby assumes all contracts entered into by the Successor Agency or the former Agency 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 Housing Authority 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 shall timely complete the work required for each project commenced by the Housing Authority pursuant to this Agreement and the Bond Spending Plan.

4.2 BOND SPENDING PLAN. The Housing Authority shall be solely responsible for maintaining and implementing the Bond Spending Plan. The Housing Authority may amend the Bond Spending Plan as the Housing Authority deems necessary in its sole

discretion. Any amendments to the adopted Bond Spending Plan will consider uses that advance the Housing Authority's community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. Notwithstanding any contrary provision hereof, unless the Housing Authority expressly agrees otherwise, the Housing Authority shall not be obligated to provide funding for any program or project in an amount exceeding the Excess Bond Proceeds provided to the Housing Authority pursuant to this Agreement.

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 Housing Authority and the Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the Housing Authority 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. FURTHER ASSURANCES

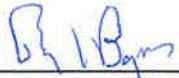
Each party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

[SIGNATURES ON NEXT PAGE]

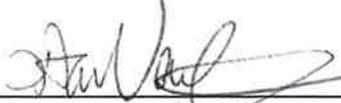
In witness whereof, the undersigned parties have executed this Housing Bond Proceeds Expenditure Agreement as of the date first above written.

"HOUSING AUTHORITY"

SAN JUAN CAPISTRANO HOUSING AUTHORITY,
a public body, corporate and politic

By: 
Roy L. Byrnes, Chairman

Approved as to form:

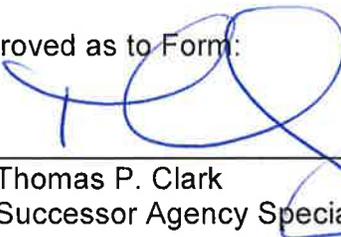
By: 
Hans Van Ligten
Housing Authority Counsel

"SUCCESSOR AGENCY"

**SUCCESSOR AGENCY TO THE
SAN JUAN CAPISTRANO
COMMUNITY REDEVELOPMENT AGENCY**

By: 
Larry Kramer, Chairman

Approved as to Form:

By: 
Thomas P. Clark
Successor Agency Special Counsel

ATTEST:

By:  Deputy
Maria Morris, City Clerk and
Successor Agency Secretary

EXHIBIT B

BOND SPENDING PLAN

San Juan Capistrano Community Redevelopment Agency, San Juan Capistrano Central Redevelopment Project, 2008 Tax Allocation Bonds, Taxable Series B Bonds (Housing)

<u>Project Description</u>	<u>Amount</u>
The Groves Affordable Housing Project and other affordable housing projects to be determined	<u>\$ 6,700,000</u>