RESOLUTION NO. OB 2014-07

RESOLUTION OF THE OVERSIGHT BOARD FOR SUCCESSOR AGENCY TO THE FORT BRAGG REDEVELOPMENT AGENCY APPROVING A LOAN AGREEMENT IN THE AMOUNT OF $237,520 WITH THE CITY OF FORT BRAGG TO ALLOW THE FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY TO MAKE A NON-HOUSING RECOGNIZED OBLIGATION PAYMENT FOR EXPENSES THAT EXCEED CASH RECEIVED FROM THE REAL PROPERTY TAX TRUST FUND FOR ROPS 13-14B

WHEREAS, Assembly Bill x1 26 (the "Dissolution Act") resulted in the dissolution of the former Fort Bragg Redevelopment Agency; and

WHEREAS, pursuant to Health and Safety Code Section 34177(l), before each six-month fiscal period, the Successor Agency to a dissolved Redevelopment Agency is required to adopt a draft Recognized Obligation Payment Schedule ("ROPS") that lists all of the obligations that are "enforceable obligations" within the meaning of Health and Safety Code Section 34177; and

WHEREAS, each ROPS must be approved by the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Fort Bragg ("Successor Agency") and by the State Department of Finance (DOF) in order for payment of listed obligations to be made; and

WHEREAS, the size of payment of two items identified and approved as an enforceable obligation on ROPS 13-14B exceeded the cash received from the Real Property Tax Trust Fund (RPTTF) for that ROPS; and

WHEREAS, timely payment of enforceable obligations of the Successor Agency was deemed essential and could not await approval of a ROPS submitted for the next six-month fiscal period; and

WHEREAS, the Successor Agency had no other source of funding to make this payment for the enforceable obligation on its own; and

WHEREAS, the City of Fort Bragg ("City") therefore advanced, or is willing to advance, funds for the payment of said enforceable obligation; and

WHEREAS, Health and Safety Code Section 34173(h) authorizes loans between the City and the Successor Agency for the purpose of funding enforceable obligations for which there are insufficient funds in the RPTTF; and

WHEREAS, Health and Safety Code Section 34173(h) further provides that a new enforceable obligation shall be created for the repayment of each such loan, provided that the receipt and use of the loan funds is reflected on a ROPS approved by the Oversight Board for the Successor Agency and submitted to the State Department of Finance for its review and approval; and

WHEREAS, pursuant to Health and Safety Code Section 34180(h) the Oversight Board may approve a request by the Successor Agency to enter into an agreement with the City; and

WHEREAS, City and Successor Agency staff have negotiated a loan agreement covering the enforceable obligation for which there are insufficient funds available for timely payment by the Successor Agency; and

WHEREAS, funds are available to be loaned by the City for such purpose, and the loan agreement does not violate the City's debt limit under the California Constitution.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board does hereby resolve as follows:

1. The Recitals set forth above are true and correct, and are incorporated herein by reference.

2. The loan agreement, substantially in the form attached hereto, is hereby approved, and the Executive Director or her designee is hereby authorized to execute it on behalf of the Successor Agency and to take such other and further action as necessary and appropriate to implement the intent of this Resolution.

3. The loan agreement, which along with the supporting calculations and references to prior ROPS is attached to this Resolution and hereby incorporated herein, is for $237,520 to fund several former Redevelopment Agency enforceable obligations shown on ROPS 13-14B but for which insufficient funds were received from RPTTF.

4. The Successor Agency consents to the inclusion of this loan agreement on the next ROPS, and its submission, along with such supporting documentation and other information as necessary and appropriate, to the Oversight Board, the State Department of Finance and other applicable agencies.

The above and foregoing Resolution was introduced by Board Member Tichinin, seconded by Board Member Allen, and passed and adopted at a special meeting of the Oversight Board for Successor Agency to Fort Bragg Redevelopment Agency held on the 25th day of September, 2014, by the following vote:

AYES: **Board Members Allen, Cimolino, Deitz, Tichinin, and Chair Turner.**
NOES: **None.**
ABSENT: **Board Member Lindsey.**
ABSTAIN: **None.**

DAVE TURNER,
Chair

ATTEST:

Cynthia M. VanWormer

Cynthia M. VanWormer, MMC
Successor Agency Secretary

EXHBIT A

LOAN AGREEMENT BETWEEN THE CITY OF FORT BRAGG AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR AGENCY

This Loan Agreement (Agreement) is entered into as of September 25, 2014 ("Effective Date"), by and between the City of Fort Bragg, a municipal corporation ("City") and the Fort Bragg Redevelopment Successor Agency, a public entity ("Successor Agency"). City and the Successor Agency are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, the Redevelopment Agency of the City of Fort Bragg ("Redevelopment Agency") was established under the provisions of the Community Redevelopment Law (California Health and Safety Code § 33000 *et seq.*) ("CRL"); and

WHEREAS, effective June 30, 2011, the Governor signed into law ABx1 26 which automatically suspended redevelopment activities, and on December 29, 2011, the California State Supreme Court upheld the provisions of ABx1 26, thereby dissolving all redevelopment agencies on February 1, 2012; and

WHEREAS, ABx1 26 was modified by AB 1484, effective as of July 27, 2012, which together with ABx1 26 is referred to herein as the "Dissolution Law"; and

WHEREAS, as a result of the dissolution of the former Redevelopment Agency, the Successor Agency is now administering the daily operations of the former Redevelopment Agency; and

WHEREAS, Health and Safety Code § 34171(d)(1)(E) provides that any legally binding and enforceable contract that is not otherwise void as violating the debt limit or public policy constitutes an enforceable obligation authorized for payment from the Real Property Tax Trust Fund ("RPTTF") established pursuant to the Dissolution Law; and

WHEREAS, Health and Safety Code § 34171(d)(1)(F) provides that contracts or agreements necessary for the administration or operation of a successor agency constitute enforceable obligations authorized for payment from the RPTTF; and

WHEREAS, enforceable obligations must be listed on a Recognized Obligation Payment Schedule ("ROPS") and approved for payment by a successor agency's oversight board and the California Department of Finance ("DOF") in order for funds to be received therefor; and

WHEREAS,two enforceable obligations pursuant to Health and Safety Code §§ 34171(d)(1) (E) and 34171(d)(1)(F) were listed on the ROPS for the period January 1, 2014 through June 30, 2014 ("ROPS 13-14B") as line items 1 and 3 in the total amount of Three Hundred Twenty-five Thousand Nine Hundred Eighty-three Dollars ($325,983) ("Non-Housing Accounts Payable"), but the Successor Agency RPTTF funds advanced were not adequate to pay the items timely in the amount of Two Hundred Thirty-seven Thousand Five Hundred Twenty Dollars ($237,520); and

WHEREAS, accordingly, the City advanced funds for the payment of the Non-Housing Accounts Payable upon the Successor Agency's receipt of invoices therefor; and

WHEREAS, at present there are insufficient funds in the RPTTF to permit repayment of the Non-Housing Accounts Payable by the Successor Agency; and

WHEREAS, Health and Safety Code § 34173(h) authorizes a loan between a city and the successor agency to the city's redevelopment agency for the purpose of funding enforceable obligations for which there are insufficient funds in the RPTTF; and

WHEREAS, Health and Safety Code § 34173(h) further provides that a new enforceable obligation shall be created for the repayment of such a loan, provided that the receipt and use of the loan funds is reflected on a ROPS approved by the oversight board for the successor agency and submitted to the DOF for its review and approval; and

WHEREAS, pursuant to Health and Safety Code § 34180(h), an oversight board may approve a request by a successor agency to enter into an agreement with a city; and

WHEREAS, the City and Successor Agency wish to enter into a loan agreement in the principal amount of Two Hundred Thirty-seven Thousand Five Hundred Twenty Dollars ($237,520) for the purpose of enabling the Successor Agency to pay the Non-Housing Accounts Payable; and

WHEREAS, on September 22, 2014, the City and the Successor Agency each approved the Loan and authorized the execution of this Agreement, pursuant to Resolution No. 3743-2014 and Resolution No. RS 07-2014, respectively; and

WHEREAS, on September 25, 2014, the Oversight Board for the Successor Agency approved the Successor Agency's request to enter into this Agreement, pursuant to Resolution No. OB 2014-07.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

ARTICLE 1
LOAN TERMS

1.1 Loan.

(a) Loan Amount. City agrees to lend to Successor Agency, and Successor Agency agrees to borrow from and repay to City, a Loan in the principal amount of not to exceed Two Hundred Thirty-seven Five Hundred Twenty Dollars ($237,520) .

(b) Maturity Date. The total outstanding Loan principal is due and payable by September 25, 2019.

1.2 Prepayment. Successor Agency may prepay the Loan, in whole or in part, at any time, without penalty or other charge.

1.3 Payment. The outstanding principal of the Loan is due and payable on the Maturity Date.

1.4 Security for the Loan. As security for the repayment of the Loan, the Successor Agency hereby pledges certain Unrestricted Revenues (defined below) ("Pledged Revenues") that are received, accrued or held by the Successor Agency and are provided within or attributable to fiscal year 2014-15 and subsequent fiscal years up to and including the maturity date, and the principal of the Loan constitutes a first lien and charge on the Pledged Revenues, and is payable from the first moneys received by the Successor Agency from the Pledged Revenues.

The term "Unrestricted Revenues" means property taxes assessed and levied by Mendocino County on behalf of the Successor Agency allocated to the Successor Agency in accordance with the Dissolution Law, together with any other income, revenue, cash receipts and any other moneys of the Successor Agency lawfully available for repayment of the Loan.

ARTICLE 2
DISBURSEMENT AND ACCOUNTING; USE OF FUNDS

2.1 Disbursement. Loan proceeds may be disbursed to the Successor Agency in accordance with this Agreement upon approval of drawdown requests executed by the City Finance Director.

2.2 Use of Loan Proceeds. Successor Agency may use proceeds of the Loan exclusively for meeting the Non-Housing Accounts Payable obligation as described herein.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Authority. Successor Agency warrants that it has authority, and has completed (or will complete, as applicable) all proceedings and obtain all approvals necessary to execute, deliver, and perform under this Agreement and the transactions contemplated thereby.

3.2 Valid and Binding Obligations. Successor Agency warrants that, when duly executed by the Successor Agency, this Agreement shall constitute the legal, valid and binding obligations of Successor Agency enforceable in accordance with their respective terms. Successor Agency hereby waives any defense to the enforcement of the terms of this Agreement related to alleged invalidity of any provisions or conditions contained in this Agreement.

3.3 No Adverse Action. Successor Agency warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect the Successor Agency with respect to this Agreement.

ARTICLE 4
SUCCESSOR AGENCY COVENANTS

4.1 Notification. Until the Loan is repaid in full, Successor Agency covenants that it will promptly notify City in writing of the occurrence of any event that might materially and adversely affect its ability to perform its obligations under this Agreement, or that constitutes, or with the giving of notice or passage of time or both would constitute, an Event of Default under this Agreement.

4.2 Legal Compliance. Successor Agency covenants that this Agreement does not violate the Constitutional debt limitation for municipal governments set forth in Article XVI, Section 18 of the California Constitution.

ARTICLE 5
INDEMNITY REQUIREMENTS

5.1 Indemnity. Successor Agency and City shall each defend, hold harmless and indemnify the other, its officers, employees and agents from and against all claims, liability, cost, expenses, loss or damages of any nature whatsoever, including reasonable attorneys' fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement and any of its operations or activities related thereto, excluding the willful

misconduct or the gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

ARTICLE 6
DEFAULT AND REMEDIES

6.1 Events of Default. Each of the following events will constitute an event of default ("Event of Default") under this Agreement:

(a) Nonpayment. Successor Agency's failure to repay the Loan pursuant to Article 1 hereof.

(b) Failure to Perform. Successor Agency's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

6.2 Declaring Default. Whenever any Event of Default has occurred, other than a failure to pay any sums due, City shall give written notice of default to Successor Agency. If the default is not cured within thirty (30) calendar days after the Date of Default (defined herein), or any extension approved in writing by City, City may enforce its rights and remedies under Section 6.3 below. Any default that has occurred shall be deemed to commence on the date that written notice of default is effective pursuant to Section 7.2 of this Agreement ("Date of Default"). In the event of a default in the payment of any installment payment when due, Successor Agency shall have ten (10) calendar days from the payment due date to cure such default, whether or not City gives written notice.

6.3 Remedies. Upon the occurrence of any Event of Default, City, in addition to any other remedies provided herein or by law, shall have the right, at its option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) declare that outstanding balance of the Loan and all other sums owing to City under this Agreement immediately due and payable, and

(b) take whatever other action at law or in equity which may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

6.4 Default Interest. Commencing on the Date of Default and continuing through the date that all indebtedness and other amounts payable under this Agreement are paid in full, interest on the Loan will accrue on the outstanding balance, at the rate equal to LAIF plus one percent (1%).

6.5 Disclaimer. If City elects to employ any of the remedies available to it in connection with any Event of Default, City will not be liable for: (1) the payment of any expenses incurred in connection with the exercise of any remedy available to City, and (2) the performance or nonperformance of any other obligations of Successor Agency.

ARTICLE 7
MISCELLANEOUS

7.1 Conflict of Interest; Interest of Employees, Agents, Consultants, Officers and Officials of City or Successor Agency. Except for approved eligible administrative or personnel costs, no employee, agent or consultant who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may

obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for him/herself or for those with whom s/he has family or business ties, during his/her tenure and for one year thereafter.

7.2 Notices. Any notice, request or consent required pursuant to this Agreement shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. mail, addressed as follows:

If to Successor Agency:
Fort Bragg Redevelopment
Successor Agency
416 N. Franklin Street
Fort Bragg, CA 95437
Attention: City Manager

If to City:
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437
Attention: City Manager

With copy to Oversight Board for Fort
Bragg Redevelopment Successor Agency

or to such other addresses as the Parties may designate by notice as set forth above.

7.3 Successors and Assigns. All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of City and Successor Agency, respectively.

7.4 Attorneys' Fees. If any action is instituted by either Party to enforce this Agreement or to collect any sums due hereunder or pursuant to this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

7.5 Severability. If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

7.6 Amendments/Entire Agreement. City and Successor Agency reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alternation or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Agreement constitutes the entire agreement of the Parties and no oral understandings or agreement not incorporated herein shall be binding on either Party.

7.7 Time. Time is of the essence in the performance of the terms and conditions of this Agreement.

7.8 Governing Law. The laws of the State of California govern this Agreement.

7.9 City's Rights and Consent. No forbearance, failure or delay by City in exercising any right, power, or remedy, nor any single or partial exercise of City or any right or remedy hereunder shall preclude the further exercise of such right, power or remedy. The consent of

City to any act or omission by Successor Agency may not be construed as City consent to any other or subsequent act or omission or as a waiver of the requirement to obtain City consent in any other instance. All of City's rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by the City.

7.10 Duration/Survival. This Agreement continues in full force and effect until the Loan is repaid in full.

7.11 Headings. The headings within this Agreement are for the purpose of reference only and do not limit or otherwise affect any of the terms of this Agreement.

7.12 Counterparts, Facsimile Copies. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. This Agreement is effective upon transmission by either Party to the other Party of a fully signed facsimile copy of the Agreement after the formal approval by the governing body of the Successor Agency and the City Council. In case of any conflict, the counterpart maintained by the City Council will be deemed to be determinative.

IN WITNESS WHEREOF, City and the Successor Agency have executed this Agreement as of the date first above written.

City of Fort Bragg

By: _____
Linda Ruffing, City Manager

Attest:

_____
Cynthia M. VanWormer, CMC,
City Clerk

Approved as to Form:

_____
City Attorney

Successor Agency to the Redevelopment Agency of the City of Fort Bragg

By: _____
Linda Ruffing, Executive Director

_____
Cynthia M. VanWormer, CMC,
Agency Secretary

_____
Agency Counsel