

AFFORDABLE HOUSING
BOND PROCEED
EXPENDITURE AGREEMENT

This Affordable Housing Bond Proceed Expenditure Agreement (the "Agreement") is entered into effective January 23, 2017, by and between the City of West Hollywood, a municipal corporation (the "City"), and the Successor Agency to the West Hollywood Community Development Commission ("Successor Agency").

Recitals

- A. Pursuant to Health and Safety Code Section 34173, the City of West Hollywood ("City") is the Successor Agency to the dissolved West Hollywood Community Development Commission ("CDC"), confirmed by City Council Resolution No. 11-4219.
- B. Pursuant to Health and Safety Code Section 34176, the City is the housing successor entity to the dissolved CDC ("Housing Successor"), confirmed by City Council Resolution No. 12-4266.
- C. The Successor Agency received its finding of completion under Health and Safety Code Section 34179.7 from the California Department of Finance on April 26, 2013.
- D. Health and Safety Code Section 34191.4(c)(2) allows a successor agency that has received a finding of completion to use bond proceeds derived from bonds issued on or after January 1, 2011, in excess of the amounts needed to satisfy approved enforceable obligations as defined in Health and Safety Code Section 34171(d), in a manner consistent with the original bond covenants.
- E. Health and Safety Code Section 34176(g)(1)(A) permits a housing successor to designate the use of and commit bond proceeds derived from bonds issued for the purposes of affordable housing prior to June 28, 2011, that were backed by the Low and Moderate Income Housing Fund, that remain after the satisfaction of enforceable obligations that have been approved on a ROPS and that are consistent with the bond covenants. It is the intent of the State Legislature to authorize housing successors to designate the use of and commit 100 percent of such proceeds.
- F. The Successor Agency has bond proceeds that remain after the satisfaction of enforceable obligations from the 2011 Tax Allocation Bonds, Series B issued by the former CDC dated March 2, 2011 ("2011 Housing TAB"). The Housing Successor wishes to use such proceeds for affordable housing purposes consistent with applicable bond covenants pursuant to Health and Safety Code Section 34176(g)(1)(A).
- G. The California Community Redevelopment Law (Health and Safety Code Section 33000, *et seq.*) provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of former redevelopment agencies. Under Health and Safety Code Section 33220, a city may aid and

cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Health and Safety Code 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. Health and Safety Code Section 34178 allows a successor agency and its sponsoring city to enter into agreements with the approval of the oversight board.

H. The Successor Agency desires to provide bond proceeds remaining from the 2011 Housing TAB ("Excess Bond Proceeds") to the City to enable the City to use such funds in a manner consistent with the original bond covenants. The transfer of these funds to the City would advance the City's community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. The City Council has found that the use of Excess Bond Proceeds to fund projects is in accordance with Health and Safety Code Sections 33445, 33445.1, and 33679, the bond covenants, and other applicable law. The Oversight Board has determined that the expenditure of Excess Bond Proceeds in accordance with this Agreement will benefit the affected taxing entities, and has approved the execution of this Agreement and the provision of Excess Bond Proceeds to the City for the purposes described herein.

I. In order to facilitate the use of Excess Bond Proceeds consistent with the bond covenants, the Successor Agency and the City have negotiated this Agreement requiring the transfer of current Excess Bond Proceeds by the Successor Agency to the City, and the City's use of such proceeds consistent with applicable bond covenants. The parties intend that this Agreement shall constitute an excess bond proceeds obligation within the meaning of Health and Safety Code Sections 34191.4(c)(2) ("Excess Bond Proceeds Obligation") to be paid from Excess Bond Proceeds. The Successor Agency will list this Agreement, and the requirement to transfer Excess Bond Proceeds herein, on its Last and Final ROPS as an Excess Bond Proceeds Obligation. The California Department of Finance shall review such listing pursuant to its statutory right of review and approval of a ROPS.

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. THE SUCCESSOR AGENCY'S OBLIGATIONS

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

2.1. **CURRENT EXCESS BOND PROCEEDS.** The Successor Agency shall transfer to the City Excess Bond Proceeds held by the Successor Agency in an amount of \$5,647,427 from the 2011 Housing TAB. This amount is equal to 100 percent of the remaining proceeds derived from the 2011 Housing TAB.

2.2. **FUTURE EXCESS BOND PROCEEDS.** The Successor Agency shall transfer to the City all future Excess Bond Proceeds held or received by the Successor Agency from the 2011 Housing TAB. Such future Excess Bond Proceeds shall include, without limitation, bond proceeds from the 2011 Housing TAB that: (1) were previously obligated to a project or other

Enforceable Obligation that become unobligated for any reason, (2) 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 2011 Housing TAB 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 from the 2011 Housing TAB under this Agreement. For purposes of this Agreement, "Enforceable Obligation" shall have the meaning ascribed to such term in Health and Safety Code Section 34171(d).

The parties intend that payments of future Excess Bond Proceeds from the 2011 Housing TAB be made to the City as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond Proceeds shall be made pursuant to an approved amendment to a Last and Final ROPS within 30 days of the commencement of the relevant six-month ROPS period. The Successor Agency shall be responsible for ensuring that payments of future Excess Bond Proceeds, as such funds become available, are paid in the next possible six-month ROPS period.

2.3. PROJECTS FUNDED BY EXCESS BOND PROCEEDS. The Successor Agency assigns to the City all responsibilities in relation to the administration 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 or the former West Hollywood Community Development Commission related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations.

3. CITY'S OBLIGATIONS

The City shall have the following obligations under this Agreement:

3.1. RETENTION OF EXCESS BOND PROCEEDS. The City shall accept, hold, and disburse 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 such funds for uses consistent with applicable bond covenants.

3.2. USE OF EXCESS BOND PROCEEDS. The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity consistent with the original bond covenants applicable to the particular Excess Bond Proceeds, and must comply with all requirements of federal tax law and all applicable requirements of the California Community Redevelopment Law as to the use of such funds. The City shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws. The City may transfer funds between approved projects, programs and activities, as long as the transfer is within a single project area if applicable bond covenants restrict such funds to a particular project area.

The City shall indemnify and defend the Successor Agency, and its officers and agents, against, and shall hold the Successor Agency, and its officers and agents, harmless from, any claims, causes of action, or liabilities arising from the misuse of Excess Bond Proceeds by the

City or the failure of the City to ensure that Excess Bond Proceeds are used in accordance with bond covenants, federal tax law, and the California Community Redevelopment Law.

The City assumes all contracts entered into by the Successor Agency or the former West Hollywood Community Development Commission related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations. 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 shall timely complete the work required for each project.

4. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS

4.1. 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.

4.2. 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.

4.3. 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.

5. SEVERABILITY

If any term, provisions, 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.

6. DEFAULT

If either party fails to perform or 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.

7. 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.

8. 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]

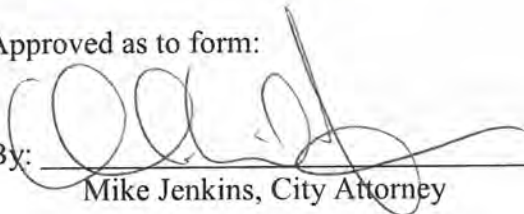
In witness whereof, the undersigned parties have executed this Affordable Housing Bond Proceed Expenditure Agreement effective as of the date first above written.

“CITY”

THE CITY OF WEST HOLLYWOOD,
a municipal corporation

By: 
Paul Arevalo, City Manager


Attest:
By: 
Yvonne Quarker, City Clerk

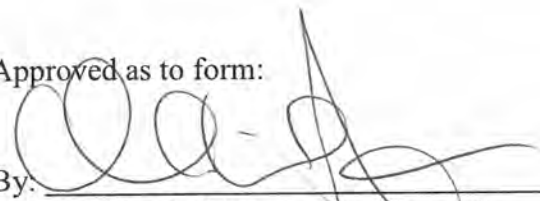
Approved as to form:
By: 
Mike Jenkins, City Attorney

“THE SUCCESSOR AGENCY”

**SUCCESSOR AGENCY TO THE WEST HOLLYWOOD COMMUNITY
DEVELOPMENT COMMISSION,** the Successor Agency to the West Hollywood Community
Development Commission under Health and Safety Code Section 34173

By: 
Paul Arevalo, Agency Executive Director

Attest:
By: 
Yvonne Quarker, Agency
Secretary

Approved as to form:
By: 
Mike Jenkins, Agency Counsel