DATE: February 5, 2015

TO: City Council, City of Oxnard
Governing Board, Successor Agency

FROM: Kymberly R. Horner
Interim Redevelopment Services Manager

SUBJECT: Reimbursement Agreement

RECOMMENDATION

(1) That the City Council approve the City’s entry into a Reimbursement Agreement with the
Oxnard Community Development Commission Successor Agency; and

(2) That the Governing Board approve, and recommend to its Oversight Board approval of, the
Successor Agency’s entry into a Reimbursement Agreement with the City of Oxnard.

DISCUSSION

California Health and Safety Code Section 34177(l) requires the Successor Agency to prepare a
Recognized Obligation Payment Schedule (ROPS) every six months. On October 6, 2014, the
Successor Agency submitted the ROPS (ROPS 14-15B) for the January 1 – June 30, 2015 period
(ROPS 14-15B Period), and the California Department of Finance (DOF) approved ROPS 14-15B on
December 17, 2014. The Successor Agency is not permitted to make any expenditures for the ROPS
14-15B Period that do not appear on ROPS 14-15B, as approved by the DOF.

However, in order to preserve assets, move forward with the dissolution process, avoid contract
defaults, and allow the Successor Agency to function, it is necessary that certain work occur (ROPS 14-
15B Period Necessary Work) and certain payments be made (ROPS 14-15B Period Necessary
Payments) during the ROPS 14-15B Period, consisting of the following:

(i) Property management for three Downtown buildings, to be performed by Alert Property
Management Company, in the amount of up to $7,200;
(ii) Property maintenance for three Downtown buildings, to be performed by Alert Property
Management Company, in the amount of up to $7,883;
(iii) Property tax and tax increment preparation, to be performed by Hdl Coren & Cone, in the
amount of up to $30,000;
(iv) Maintenance and repair work for various Heritage Square properties, buildings and
structures, to be performed by Mr. Gary Blum, in the amount of up to $71,124;
(v) Litigation services, to be performed by Kane, Ballmer & Berkman, in the amount of up to $75,000;

(vi) Elevator maintenance and repair services, to be performed by ThyssenKrupp Elevator Corporation, in the amount of up to $9,000; and

(vii) Phase Two of Long-Range Property Management Plan Advisory Services Pursuant to Assembly Bill No. 1484, to be performed by Kosmont & Associates, Inc. doing business as Kosmont Companies, in the amount of up to $50,000.

Because the ROPS 14-15B Period Necessary Work and the ROPS 14-15B Period Necessary Payments do not appear on ROPS 14-15B, as approved by the DOF, but such work needs to be performed and such payments need to be made during the ROPS 14-15B Period, the City desires to make such payments during the ROPS 14-15B Period, provided that the City shall be reimbursed in full by the Successor Agency during the subsequent ROPS period (ROPs 15-16A Period) for any such payments made.

The City and the Successor Agency desire to document their respective payment and reimbursement obligations through their entry into a Reimbursement Agreement, pursuant to the authority granted by California Health and Safety Code Sections 33220, 34173(h), 34177.3 and 34180(h). The Reimbursement Agreement would take effect upon its approval by the Successor Agency’s Oversight Board and the California Department of Finance (DOF).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The requested actions of the City Council and the Successor Agency have been reviewed with respect to applicability of CEQA, the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq., (Guidelines)), and the City’s environmental evaluation procedures. Neither these actions, or subsequent approvals by the Oversight Board and the DOF, constitute a “project” for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.

FINANCIAL IMPACT

The maximum amount of ROPS 14-15B Period Necessary Payments that would be paid by the City would be $250,207, and such payments would occur during the ROPS 14-15B Period. If the Reimbursement Agreement receives all necessary approvals, then it would be deemed to be an “enforceable obligation”, and the City would be reimbursed in full by the Successor Agency during the ROPS 15-16A Period or as soon as possible thereafter, depending upon the availability of sufficient funds from the Redevelopment Property Tax Trust Fund, also known as RPTTF. If the Reimbursement Agreement is not approved, then it could have negative impacts during the ROPS 14-15B Period on the Successor Agency’s ability to preserve assets, to move forward with the dissolution process, to avoid contract defaults, and to function properly.

Attachment #1 - Reimbursement Agreement
REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (this “Agreement”) is made and entered into as of ______________, 2015, by and between the CITY OF OXNARD, a municipal corporation of the State of California (the “City”), and the OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY, a public body, corporate and politic (the “Successor Agency”).

RECITALS

WHEREAS, Assembly Bill x1 26 (“AB 26”) and AB x1 27 were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 28, 2011; and

WHEREAS, among other things, AB 26 amends Sections 33500, 33501, 33607.5 and 33607.7 of the California Health and Safety Code and adds Part 1.8 and Part 1.85 to Division 24 of the California Health and Safety Code; and

WHEREAS, by enactment of Part 1.85 of Division 24 of the California Health and Safety Code, the Oxnard Community Development Commission (the “Commission”) was dissolved as of February 1, 2012 such that the Commission shall be deemed to be a former redevelopment agency under California Health and Safety Code Section 34173(a); and

WHEREAS, California Health and Safety Code Section 34173(a) designates successor agencies as successor entities to former redevelopment agencies; and

WHEREAS, on January 10, 2012, by Resolution 14,135, the City Council of the City declared itself as the successor agency upon the dissolution of the Commission, subject to all reservations stated in such resolution; and

WHEREAS, the California Supreme Court in California Redevelopment Association v. Matosantos, Case No. S194861, upheld the constitutionality of AB 26 and established May 1, 2012 as the date by which the draft Recognized Obligation Payment Schedule ("ROPS") must be prepared; and

WHEREAS, California Health and Safety Code Section 34177(l) provides that a successor agency must prepare a ROPS every six months after the initial ROPS period; and

WHEREAS, the ROPS ("ROPS 14-15B") for the period of January 1, 2015 through June 30, 2015 (the "ROPS 14-15B Period") was prepared and submitted by the Successor Agency to the California Department of Finance (the "DOF") on October 6, 2014; and

WHEREAS, the DOF approved ROPS 14-15B on December 17, 2014; and

WHEREAS, ROPS 14-15B, as approved by the DOF, lists all of the expenditures that the Successor Agency is permitted to make for the ROPS 14-15B Period; and
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WHEREAS, the Successor Agency is not permitted to make any expenditures for the
ROPS 14-15B Period that do not appear on ROPS 14-15B, as approved by the DOF; and

WHEREAS, (i) in order to avoid preventable adverse effects upon assets required to be
maintained by the Successor Agency prior to disposition thereof for the benefit of the other
taxing entities, (ii) in order to further the dissolution process initiated by AB 26, (iii) in order to
prevent defaults under existing or pending agreements, and/or (iv) for the proper functioning of
the Successor Agency, it is necessary for certain work to occur (collectively, the “ROPS 14-15B
Period Necessary Work”) and certain payments to be made (collectively, the “ROPS 14-15B
Period Necessary Payments”) during the ROPS 14-15B Period; and

WHEREAS, the ROPS 14-15B Period Necessary Work and the ROPS 14-15B Period
Necessary Payments consist of the following:

(i) Property management for three Downtown buildings, to be performed by Alert
Property Management Company, in the amount of up to $7,200;
(ii) Property maintenance for three Downtown buildings, to be performed by Alert
Property Management Company, in the amount of up to $7,883;
(iii) Property tax and tax increment preparation, to be performed by Hdl Coren & Cone, in the amount of up to $30,000;
(iv) Maintenance and repair work for various Heritage Square properties, buildings
and structures, to be performed by Mr. Gary Blum, in the amount of up to
$71,124;
(v) Litigation services, to be performed by Kane, Ballmer & Berkman, in the amount
of up to $75,000;
(vi) Elevator maintenance and repair services, to be performed by ThyssenKrupp
Elevator Corporation, in the amount of up to $9,000; and
(vii) Phase Two of Long-Range Property Management Plan Advisory Services
Pursuant to Assembly Bill No. 1484, to be performed by Kosmont & Associates,
Inc. doing business as Kosmont Companies, in the amount of up to $50,000.

WHEREAS, the ROPS 14-15B Period Necessary Work cannot occur during the ROPS
14-15B Period unless the ROPS 14-15B Period Necessary Payments are made during the ROPS
14-15B Period; and

WHEREAS, because the ROPS 14-15B Period Necessary Work does not appear on
ROPS 14-15B, as approved by the DOF, the Successor Agency may not make the ROPS 14-15B
Period Necessary Payments during the ROPS 14-15B Period; and

WHEREAS, (i) in order to avoid preventable adverse effects upon assets required to be
maintained by the Successor Agency prior to disposition thereof for the benefit of the other
taxing entities, (ii) in order to further the dissolution process initiated by AB 26, (iii) in order to
prevent defaults under existing or pending agreements, and/or (iv) for the proper functioning of
the Successor Agency, the City desires to make the ROPS 14-15B Period Necessary Payments
during the ROPS 14-15B Period in order to allow the ROPS 14-15B Period Necessary Work to occur during the ROPS 14-15B Period, provided that the City shall be reimbursed in full by the Successor Agency during the subsequent ROPS period (the “ROPS 15-16A Period”) for any such ROPS 14-15B Period Necessary Payments made by the City during the ROPS 14-15B Period; and

WHEREAS, the City and the Successor Agency desire to enter into this Agreement in order to provide for: (i) the City’s payment of the ROPS 14-15B Period Necessary Payments for the ROPS 14-15B Period Necessary Work during the ROPS 14-15B Period and (ii) the Successor Agency’s reimbursement in full to the City during the ROPS 15-16A Period of any amounts paid by the City during the ROPS 14-15B Period of ROPS 14-15B Period Necessary Payments for the ROPS 14-15B Period Necessary Work; and

WHEREAS, the Oversight Board of the Oxnard Community Development Commission Successor Agency (the “Oversight Board”) has been established under AB 26 to direct the Successor Agency to take certain actions to wind down the affairs of the Commission and perform other related functions; and

WHEREAS, subject to Oversight Board approval, the Successor Agency may enter into this Agreement with the City pursuant to the authority granted by California Health and Safety Code Sections 33220, 34173(h), 34177.3 and 34180(h); and

WHEREAS, the City and the Successor Agency have determined that entering into this Agreement is in the best interests of the City and the Successor Agency.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I.

INTRODUCTORY PROVISIONS

Section 1.01 Recitals. The recitals above are an integral part of this Agreement and set forth the intentions of the parties hereto and the premises on which the parties hereto have decided to enter into this Agreement.

ARTICLE II.

PAYMENT AND REIMBURSEMENT PROVISIONS

Section 2.01 City Payment. The City shall pay promptly during the ROPS 14-15B Period the ROPS 14-15B Period Necessary Payments for the ROPS 14-15B Period Necessary Work, as directed by the Successor Agency.
Section 2.02 Successor Agency Reimbursement. The Successor Agency shall reimburse the City in full during the ROPS 15-16A Period for any payment by the City during the ROPS 14-15B Period of ROPS 14-15B Period Necessary Payments for the ROPS 14-15B Period Necessary Work. If the City is not reimbursed by the Successor Agency in full during the ROPS 15-16A Period, then the remaining amount shall be due and payable in full to the City on every subsequent ROPS until paid. This reimbursement obligation is an enforceable obligation of the Successor Agency payable solely from property tax receipts maintained in the Redevelopment Property Tax Trust Fund ("RPTTF") by the Ventura County Auditor-Controller for the purpose of paying enforceable obligations of the Successor Agency. This reimbursement obligation is not subject to the restrictions of Section 34176(e)(6)(B) or Section 34191.4(b) of the California Health and Safety Code and shall be paid from first available RPTTF funds not required for other enforceable obligations.

ARTICLE III.

DEFAULT AND REMEDIES

Section 3.01 Event of Default. Failure by the Successor Agency to reimburse the City as described herein shall constitute a default (a "Default").

Section 3.02 No Waiver. A waiver of any Default by the City shall not affect any subsequent Default or impair any rights or remedies on the subsequent Default.

Section 3.03 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

ARTICLE IV.

MISCELLANEOUS

Section 4.01 No Merger. In entering into this Agreement, the City is acting in its capacity as a municipal corporation, while the Successor Agency is acting in its capacity as a successor agency; and both the City and the Successor Agency are acting pursuant to the specific authority granted by California Health and Safety Code Sections 33220, 34173(h), 34177.3 and 34180(h) authorizing agreements between the City and the Successor Agency. In consequence, the parties to this Agreement are not merged.

Section 4.02 Amendment. This Agreement may be amended by the parties hereto but only by a written instrument signed by both parties and with the approval of the Oversight Board.
Section 4.03 Effective Date. This Agreement shall take effect upon approval by the Oversight Board and, following that approval, at the time and in the manner prescribed in California Health and Safety Code Section 34179(h).

Section 4.04 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either the City or the Successor Agency of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then the City and the Successor Agency shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to the City and the Successor Agency.

Section 4.05 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 4.06 Authority. Each person executing this Agreement represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors’, shareholders’, partners’ and other approvals have been obtained.

Section 4.07 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[signatures on following page]

[remainder of page intentionally left blank]
IN WITNESS WHEREOF, the City and the Successor Agency have caused this Agreement to be signed by their respective officers all as of the day and year first above written.

“City”

CITY OF OXNARD, a municipal corporation
of the State of California

By: ________________________________
Name: ______________________________
Title: ______________________________

APPROVED AS TO FORM AND CONTENT:

KANE, BALLMER & BERKMAN
Re development Special Counsel

By: ________________________________
Name: Todd C. Mooney
Title: Senior Associate

“Successor Agency”

OXNARD COMMUNITY DEVELOPMENT
COMMISSION SUCCESSOR AGENCY,
a public body, corporate and politic

By: ________________________________
Name: ______________________________
Title: ______________________________

APPROVED AS TO FORM AND CONTENT:

KANE, BALLMER & BERKMAN
Successor Agency Special Counsel

By: ________________________________
Name: Todd C. Mooney
Title: Senior Associate