



MEMORANDUM

Date: August 1, 2014
To: Mayor and Councilmembers
From: Derek P. Cole, City Attorney
Subject: Consideration of a Resolution between the City of Oakley and the Successor Agency to the Oakley Redevelopment Agency Authorizing the Transfer of \$1,450,500 to the Successor Agency in Exchange for All Rights, Title, and Interest in the Construction Loan Associated with Carpaccio's Restaurant and Adjoining Retail Space

FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF AUGUST 12, 2014

In July of this year, the City entered into a Settlement Agreement with the Department of Finance ("DOF") and the County Auditor-Controller concerning the litigation it filed concerning Recognized Obligation Payment Schedule ("ROPS") III. The lawsuit, filed in February 2013, had challenged a number of determinations DOF made concerning certain loans, agreements, and obligations the City claimed were enforceable under the Redevelopment Dissolution Act. The approval of the Settlement Agreement, along with a full copy of the agreement, is included as a separate agenda item for the City Council meeting in which this item appears.

One of the conditions of the Settlement Agreement requires the City to transfer \$1,450,400 to the Successor Agency to effectively restore the amounts of redevelopment funds that were used to create the Development and Disposition Agreement assets for Carpaccio's Restaurant and the adjacent retail space (now occupied by the Republic of Cake). The City is required to undertake this obligation by adopting a resolution that is substantially in the form of the attached resolution, which was included as an exhibit to the Settlement Agreement.

To ensure that the City can meet its obligations under the Settlement Agreement, the City Attorney recommends that the City Council adopt the attached resolution, as written. In doing so, the City Council would be acting both in its capacity as City Council for the City and as the governing board for the Successor Agency to the former City Redevelopment Agency.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AUTHORIZING THE PAYMENT OF \$1,450,500 IN CITY FUNDS TO THE
SUCCESSOR AGENCY OF THE CITY OF OAKLEY, AND ACCEPTANCE OF
THE SAME BY THE SUCCESSOR AGENCY, IN EXCHANGE FOR ALL
RIGHTS, TITLE, AND INTERESTS TO AND IN THE DESIGN AND
CONSTRUCTION LOAN ASSOCIATED WITH THE CARPACCIO'S
RESTAURANT AND FOR ALL RIGHTS, TITLE, AND INTERESTS IN THE
ADJACENT RETAIL BUILDING AT 3080 MAIN STREET**

WHEREAS, on October 19, 2010, the Redevelopment Agency of the City of Oakley ("RDA") acquired the fee interest in 3070 Main Street (the Listek Property, APN 037-200-006) as part of an effort to redevelop the City's downtown area;

WHEREAS, on January 19, 2011, the City of Oakley and RDA entered into a Cooperation Agreement by which the RDA transferred all assets to the City and the City agreed to administer and perform on behalf of the RDA all programs and activities authorized by the Community Redevelopment Law (Health & Safety Code section 33000 et seq.);

WHEREAS, on February 23, 2011, the RDA transferred title to 3070 Main Street to the City pursuant to the Cooperation Agreement;

WHEREAS, on March, 25, 2011, the City, pursuant to the Cooperation Agreement, acquired the fee interest in 3080 Main Street (a portion of the Centromart Property, APN 037-200-008) through a Final Order in Condemnation;

WHEREAS, following the enactment of AB 1x 26 in June 2011, which required the dissolution of redevelopment agencies, the City Council on August 9, 2011 enacted an urgency ordinance pursuant to companion legislation, AB 1x 27, electing to participate in the Voluntary Alternative Redevelopment Program;

WHEREAS, on August 9, 2011, pursuant to the Cooperation Agreement, the City of Oakley ("City") entered into a Development and Disposition Agreement ("DDA") with Manuel's Five Star, Restaurant, Inc. ("Manuel's") authorizing the City to provide Manuel's a loan in the amount of \$1.2 million for the design and construction of a restaurant ("Carpaccio's Restaurant") at that location;

WHEREAS, on August 9, 2011, pursuant to the DDA, the City of Oakley, entered into a Lease Agreement with Manuel's for the design and construction of Carpaccio's Restaurant.

WHEREAS, on April 24, 2012, the City entered into an amendment of the DDA in the amount of up to \$375,000 with Manuel's for construction of an additional retail space immediately next to the Carpaccio's Restaurant, located at the 3080 Main Street property;

WHEREAS, at the time the City executed the above-mentioned agreements related to the development of the Restaurant and the DDA amendment concerning adjacent retail space, the City did so under the apparent authority of the Cooperation Agreement and election to participate in the Voluntary Alternative Redevelopment Program;

WHEREAS, on December 29, 2011, the State Supreme Court upheld AB 1x 26 and the dissolution of redevelopment agencies, but invalidated AB 1x 27 as unconstitutional, in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231;

WHEREAS, on January 10, 2012, the City Council Adopted Resolution No. ___-12, authorizing the City to become the Successor Agency to the RDA.

WHEREAS, on June 27, 2012, the Legislature enacted AB 1484, which among other things, declared that actions taken by redevelopment agencies after the effective date of AB 1x 26 (i.e., June 28, 2011) were void *ab initio*, and that certain agreements between redevelopment agencies and their sponsoring agencies were invalid and unenforceable;

WHEREAS, On August 20, 2012, the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of Oakley ("Oversight Board") adopted Resolution No. 09-12, approving and adopting a ROPS for the period of January 1 through June 30, 2013, known as "ROPS III."

WHEREAS, ROPS III identified the DDA and Lease Agreement related to the Carpaccio's Restaurant and DDA amendment concerning the adjacent retail space as enforceable obligations pursuant to the Dissolution Act (i.e., AB 1x 26, as amended by AB 1484);

WHEREAS, the Department of Finance ("Department") denied recognition of these items (specifically, ROPS III items 15 and 17) as enforceable obligations on October 6, 2012, and affirmed these denials on December 18, 2012, following a meet-and-confer conference with the City;

WHEREAS, the City commenced a civil action in Sacramento Superior Court on February 8, 2013 challenging the Department's resolution of all disputed ROPS III items ("Legal Action," *City of Oakley et al. v Matosantos et al.*, Case No. 34-2013-80001435-CU-WM-GDS), including Items 15 and 17, pertaining to the agreements for Carpaccio's Restaurant and the adjacent retail space;

WHEREAS, in accordance with the Dissolution Act, due-diligence reviews (“DDR’s”) were conducted of the Successor Agency’s Low and Moderate Income Housing Fund (“LMIHF”) and Other Funds and Accounts (“OFA”). The Department determined that the Successor Agency owed \$537,576 from the LMIHF and \$952,264 from the OFA;

WHEREAS, as of December 17, 2013, the Department determined the City had not remitted \$466,020 in LMIHF funds and \$952,264 to the Contra Costa County Auditor-Controller (“Auditor-Controller”) as required by the Dissolution Act. The Department accordingly directed the Auditor-Controller in writing on that date to withhold \$124,500 from the Real Property Tax Trust Fund (“RPTTF”) allocation for the Successor Agency for the ROPS 13-14B period. The Department issued this order pursuant to Health and Safety Code section 34179.6(h)(2);

WHEREAS, the \$124,500 withheld from the RPTTF for ROPS 13-14B resulted in the City not receiving funds sufficient to pay the City an Administrative Allowance in the amount of \$120,000 or \$4,500 for bond-administration, notwithstanding that such expenditures were approved during the same ROPS period;

WHEREAS, as part of a settlement of the Legal Action, the City is willing to forego asserting the position that ROPS III Items 15 and 17 are enforceable obligations, and to restore to the Successor Agency all funds expended in association with those transactions, specifically in the amount of \$1,575,000 (i.e., the value of the original DDA concerning design and construction loan related to the restaurant space, \$1.2 million, plus the value of the DDA amendment concerning construction of the adjacent retail building, \$375,000) less the \$124,500 that was effectively restored to the Successor Agency because of the RPTTF withholding for ROPS Period 13-14B.

WHEREAS, in exchange for the restoration of \$1,450,500 to the Successor Agency in association with ROPS III Items 15 and 17 (i.e., \$1,575,000 minus \$124,500), the City will receive all of the Successor Agency’s rights, title, and interests to and in the assets related to the those items.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakley authorizes the appropriation and payment from General Fund balances in the amount of \$1,450,500 to the Successor Agency in exchange for all of the Successor Agency’s rights, title, and interests in the assets related to the Carpaccio’s Restaurant and adjoining retail space.

BE IT FURTHER RESOLVED by the City Council, in its capacity as governing body for the Successor Agency, that the Successor Agency is authorized to accept, and shall accept, the payment of the \$1,450,500 for the purposes set forth above.

BE IT FURTHER RESOLVED by the City Council, in its capacity as governing body for the Successor Agency, that the Successor Agency shall utilize the transferred funds to forthwith remit to the Auditor-Controller the amounts necessary to pay the outstanding LMIHF and OFA DDR obligations for distribution to affected taxing entities.

BE IT FURTHER RESOLVED that the City Council of the City of Oakley finds that the payment of funds authorized within is purely a fiscal activity and not a "project," as defined under California Environmental Quality Act Guideline section 15378(b)(4).

The foregoing resolution was adopted at a regular meeting of the City Council of the City of Oakley held on the ____ day of _____, 2014, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk Date