Office of the Executive Officer

CONSENT CALENDAR
September 10, 2013

To: Honorable Chairperson and Members of the Successor Agency to the Redevelopment Agency

From: Christine Daniel, Executive Officer

Submitted by: Eric Angstadt, Director, Planning and Development

Subject: Approval for Loan Agreement between the City and Successor Agency for the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan

RECOMMENDATION

Adopt a Resolution approving and accepting a loan from the City of Berkeley to the Successor Agency for the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan in the amount of $58,960.

FISCAL IMPACTS OF RECOMMENDATION

Approving the loan will allow the Successor Agency to pay this obligation of the former redevelopment agency, using funds borrowed from the City. In order to obtain reimbursement in the future if the Savo Island debt service payments are determined to be approved enforceable obligations, the Successor Agency must enter into a legally binding loan agreement with the City.

The funds for the loan will come from the General Fund and will be officially appropriated as part of the First Amendment to the FY 2014 Annual Appropriations Ordinance. The appropriation will consist of a transfer from the General Fund to the Savo Island Debt Service Fund. Once the funds have been transferred to the Savo Island Debt Service Fund, they will be appropriated in this fund and used to pay the various retiree medical trust funds. The appropriation of the funds in the Savo Island Debt Service Fund will also be included in the First Amendment to the FY 2014 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Successor agencies can only make payments included in approved Recognized Obligation Payment Schedules ("ROPS") for each six-month fiscal period. The Agency requested funds in the ROPS III and ROPS IV periods to pay the Savo Island Debt Service Payments, but they were denied as enforceable obligations by the Department

of Finance (DOF). Failure to deem the Savo Island Loan Payable as an enforceable obligation prompted the Successor Agency to file a Petition for Writ against the DOF.

The DOF's rejection of these obligations on ROPS III and IV caused the Successor Agency to default on its debt service payment obligation of March 1, 2013 in the amount of $18,480 and $40,480; which was due on September 1, 2013. A loan from the City of Berkeley (COB) will allow debt service to be paid, if litigation is successful, COB will be repaid from Redevelopment Property Tax Trust Fund (RPTTF).

The receipt and use of this loan must be reflected on the ROPS and is subject to approval of the Oversight Board and submittal to the Department of Finance for their review. This loan will provide cash to the Successor Agency so all enforceable obligations can be met. The Agreement becomes effective five (5) business days after notice has been provided to the DOF, pending approval by the DOF. If approved, the loan will be listed on the ROPS for January – June 2014. To the extent there are insufficient available property tax allocations, the unpaid balance will be carried over as an enforceable obligation on the subsequent ROPS cycles until paid in full.

BACKGROUND

Funding for the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan in the ROPS III period (January 1, 2013 – June 30, 2013) was denied on October 18, 2012 as an enforceable obligation by the Department of Finance (DOF). The Successor Agency challenged the DOF's findings and requested a Meet and Confer which was held on November 29, 2012. The Successor Agency submitted additional information and documentation to Finance during the Meet and Confer process.

After review, the Department of Finance issued a final determination on December 18, 2012, to deny this item as an enforceable obligation. On February 22, 2013 the Successor Agency filed a Petition for Writ against the DOF regarding its denial of the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan.

The Successor Agency prepared a ROPS 13-14A for the period between July 1, 2013 and December 31, 2013 (the "Fourth ROPS"); again listing the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan as an enforceable obligation. On April 13, 2013, the Department of Finance disapproved the Savo Island Loan Payable as an enforceable obligation. The Successor Agency challenged the DOF's findings and requested a Meet and Confer which was held on April 25, 2013; the Department of Finance issued a final determination on May 17, 2013, again, denying the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan.

RATIONALE FOR RECOMMENDATION

Adoption of a loan agreement will allow the Successor Agency to meet debt service payment obligations. If the Agency prevails in litigation, the proposed loan will allow reimbursement from the Redevelopment Property Tax Trust Fund (RPTTF).

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Wendy Cosin, Deputy Director, Planning and Development, 981-7402

Attachments:

1: Resolution

Exhibit A: Loan Agreement

RESOLUTION NO.

APPROVING AND AUTHORIZING A LOAN AGREEMENT BETWEEN THE CITY AND THE SUCCESSOR AGENCY FOR THE SAVO ISLAND PROJECT AREA DEBT SERVICE PAYMENTS OF THE RETIREE MEDICAL TRUS FUND LOAN

WHEREAS, on January 17, 2012, pursuant to Resolution No. 65,574-N.S., the City of Berkeley (the "City") elected to become the successor (the "Successor Agency") to the former Berkeley Redevelopment Agency upon the Berkeley Redevelopment Agency's dissolution on February 1, 2012, pursuant to Section 34173 of the Health and Safety Code; and

WHEREAS, the Successor Agency currently has obligations in the amount of $58,960 which includes past due debt service payments of $18,480 and $40,480, which were denied by the Department of Finance (DOF) and must be paid; and

WHEREAS, on February 22, 2013 the Successor Agency filed a Petition for Writ against the DOF regarding its disapproval of the Retiree Medical Trust Fund Loan Payable as an enforceable obligation; and

WHEREAS, the Successor Agency requires a loan in an amount of $58,960 to make payments and meet its enforceable obligations; and

WHEREAS, it is in the best interest of the Successor Agency and the City that the Successor Agency pay the enforceable obligations; and

WHEREAS, the loan would be evidenced by a Loan Agreement, attached as Exhibit A, requiring repayment of the loan by the Successor Agency at no interest, and the receipt of funds shall be reflected on the Recognized Obligation Payment Schedule of the Successor Agency and therefore subject to Oversight Board approval.

NOW THEREFORE, BE IT RESOLVED by the Successor Agency to the Berkeley Redevelopment Agency, that it hereby approves Exhibit A, the attached Loan Agreement in the amount of $58,960 between the City and Successor Agency for the Savo Island Project Area Debt Service Payments of the Retiree Medical Trust Fund Loan.

Exhibits

A. Loan Agreement

LOAN AGREEMENT
(City Advance to Successor Agency)

This Loan Agreement (the "Loan Agreement") is made and entered into as of September 10, 2013, by and between the City of Berkeley, a municipal corporation (the "City"), and the Berkeley Successor Agency, the successor to the former Berkeley Redevelopment Agency ("Successor Agency").

RECITALS

WHEREAS, pursuant to AB1x 26 (the "Dissolution Act"), the Successor Agency must prepare a Recognized Obligation Payment Schedule ("ROPS") for each six-month period setting forth all enforceable obligations (as defined in the Dissolution Act) of the Successor Agency; and

WHEREAS, the Dissolution Act created an oversight board ("Oversight Board") to oversee the wind down of the Berkeley Redevelopment Agency; and

WHEREAS, the Successor Agency prepared a ROPS for the period between July 1, 2013 through December 31, 2013; and

WHEREAS, on February 5, 2013, the Oversight Board approved the Fourth ROPS 13-14A by resolution No. 2013-03; and

WHEREAS, as part of the ROPS 13-14B, the Successor Agency requested that the Oversight Board include a loan between the City and Successor Agency pursuant to Health & Safety Code Section 34173(h), wherein the City would advance funds to the Successor Agency in an amount not to exceed $58,960 (the "Loan") for the purpose of paying for the Retiree Medical Trust Fund Loan; and

WHEREAS, pursuant to Health & Safety Code Sections 34173(h), the ROPS 13-14B reflects receipt of the Loan from the City and the use of the Loan to pay certain obligations of the Successor Agency; and

WHEREAS, at its September 16, 2013 meeting the Oversight Board will vote to approve the Loan and the Oversight Board thereby will authorize the Successor Agency to enter into this Loan Agreement with the City pursuant to the authority granted by Health & Safety Code Sections 34173(h) and 34180(h); and

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

WHEREAS, pursuant to Health & Safety Code Section 34179(h), written notice about the approval of this Agreement by the Oversight Board is provided to the Department of Finance (DOF) and this Agreement becomes effective five (5) business days after notice has been provided to the DOF, pending a request for review by the DOF.

NOW, THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties hereto do hereby agree as follows. The foregoing recitals are hereby incorporated by reference and made part of this Loan Agreement.

ARTICLE I.

LOAN PROVISIONS

Section 1.01 Loan. The City hereby agrees to lend to the Successor Agency the principal amount of Fifty Eight Thousand Nine Hundred Sixty Dollars ($ 58,960) (the "Loan") for the purposes set forth in Section 1.03.

Section 1.02 Interest. The City hereby agrees not to charge any interest on the Loan.

Section 1.03 Use of Loan Funds. The Successor Agency shall use the Loan for the purpose of paying the following obligations shown on the ROPS 13-14B: Payment to the City Retiree Medical Trust Fund for Savo Island Debt Service Payments per Section 34179.5 (Item No. 29 on the ROPS 13-14B).

Section 1.04 Repayment of Loan.

(a) Pursuant to Health & Safety Code Section 34173(h), the Loan is an enforceable obligation of the Successor Agency and is payable on September 1 and March 1 of each year from the RPTTF maintained by the Alameda County Auditor-Controller for the purpose of paying enforceable obligations of the Successor Agency.

(b) If not repaid in full from the ROPS 13-14B, the Loan shall be set forth in full as an enforceable obligation of the Successor Agency on the ROPS for the period from July 1, 2014 through December 31, 2014 (the ROPS 14-15A). It shall be due and payable in full from the RPTTF. However, should the Successor Agency receive insufficient funds from the RPTTF to pay all costs shown on the Sixth ROPS, then the amount due and payable on the Loan shall equal the amount deposited into the RPTTF less all other approved costs shown on the ROPS 14-15A, and the balance of any Loan principal shall be due and payable in full on the next ROPS.

(c) The procedure described in subsection (b) of this Section shall continue to be followed for each ROPS until the Loan principal is paid in full. Any

remaining principal due on the Loan shall continue to be shown as an enforceable obligation on each ROPS until the Successor Agency has received sufficient funds to pay all principal due on the Loan.

Section 1.05 Optional Prepayment of the Loan. The Successor Agency shall have the right to prepay the unpaid Loan principal at any time.

Section 1.06 Books and Accounts; Financial Statements. The Successor Agency will keep, or cause to be kept, proper books of record and accounts showing the use of the Loan funds and Loan repayments.

ARTICLE II.

DEFAULT AND REMEDIES

Section 2.01 Event of Default. Failure by the Successor Agency to pay the principal on the Loan when due and payable shall constitute a Default.

Section 2.02 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 2.03 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 III.

MISCELLANEOUS

Section 3.01 No Merger. In entering into this Loan Agreement, the City is acting in its capacity as a municipal corporation, and, pursuant to Health & Safety Code Section 34173(g), the Successor Agency is a separate public entity from the City; and both the City and the Successor Agency are acting pursuant to the specific authority granted by the Oversight Board and by Health & Safety Code Sections 34173(h) and 34180(h) authorizing agreements between the City and the Successor Agency. In consequence, the parties to this Loan Agreement are not merged.

Section 3.02 Successor is Deemed Included in All References to Predecessor. Whenever in this Loan Agreement either the Successor Agency or the City is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Loan Agreement contained by or on behalf of the Successor Agency or the City shall bind and inure to

the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 3.03 **Amendment**. This Loan 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 3.04 **Effective Date.** This Loan Agreement shall take effect upon approval by the Oversight Board and, following that approval, at the time and in the manner prescribed in Health & Safety Code Section 34179(h) (the "Effective Date").

Section 3.05 **Severability.** If any Section, paragraph, sentence, clause or phrase of this Loan Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Loan Agreement. The City and the Successor Agency hereby declare that they would have adopted this Loan Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the Loan irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Loan Agreement may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the City of Berkeley and the Successor Agency have caused this Agreement to be signed by their respective officers.

CITY OF BERKELEY, CALIFORNIA,
a California municipal corporation ("CITY")

Approved: Date:

_____ _____
_____, City Manager

APPROVED AS TO FORM:

_____ _____
_____, City Attorney

BERKELEY SUCCESSOR AGENCY,
the successor to the former Berkeley Redevelopment Agency
("SUCCESSOR AGENCY")

Approved: Date:

_____ _____
Title

APPROVED AS TO FORM:

_____ _____
_____, Successor Agency Attorney