



# OVERSIGHT BOARD

Oversight Board Meeting Date: December 18, 2013  
Staff Report

Agenda Item #: Item 3

## REGULAR BUSINESS:

Consider adopting a Resolution of the Oversight Board of the former Community Development Agency of the City of Menlo Park Approving an Amendment to the Amended and Reinstated Letter of Credit and Reimbursement Agreement and Authorizing Certain Actions in Connection Therewith

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## RECOMMENDATION

Staff recommends adoption of a Resolution of the Oversight Board of the former Community Development Agency of the City of Menlo Park approving an amendment to the amended and reinstated Letter of Credit and Reimbursement Agreement and authorizing certain actions in connection therewith.

## BACKGROUND

The Menlo Park Community Development Agency (CDA) issued \$72,430,000 of Ambac-insured variable rate tax allocation bonds in May, 2006. The purpose of that 2006 bond issue was to refinance outstanding bonds that were issued in 1996 and 2000 at lower interest rates. The expected impact of the refinancing was to save the Agency approximately \$5,122,000 in interest costs on a gross basis (\$4,733,500 on a “net present value” basis).

In 2008, the agreement was modified to substitute a letter of credit in lieu of the insurance formerly provided by the firm Ambac which had declared bankruptcy. The letter of credit is similar to bond insurance in that it guarantees the timely payment of principal and interest on the bonds. The Letter of Credit is currently provided by a firm named State Street.

In 2011, State Street and the former Community Development Agency entered into an Amended and Reinstated Letter of Credit and Reimbursement Agreement, whereby State Street and the Prior Agency agreed to extend the term of the Letter of Credit until May 25, 2013 and provided for its optional annual renewal on each 25<sup>th</sup> of May thereafter. This renewal option was exercised by the letter of credit providers in May of 2013 under the existing terms. After this was done, staff initiated discussions with State Street to negotiate improved terms for the Letter of Credit.

Since 2012, all California Redevelopment Agencies (RDA's) were dissolved through legislative acts. The dissolution was followed by a downgrading or withdrawal of bond ratings by Moody's on California (former) RDA's debt. Staff appealed this downgrading, but Moody's ultimately confirmed that Ba1 downgrade, which caused the Letter of Credit fee to increase to 2.75%. A withdrawal of the Moody's (instead of a downgrade) rating *would have* caused the Letter of Credit fee to increase an additional 1% to 3.75%.

## **ANALYSIS**

Staff sought a new rating from Fitch, which would be in addition to the Standard and Poor's and Moody's rating. Fitch issued a BBB rating (stable). This is an investment grade rating, unlike the Moody's rating, which is below investment grade. The higher rating provided a basis for improving the terms of the Letter of Credit.

The cost of the Letter of Credit is now indirectly borne by the all the taxing agency's – not the City of Menlo Park, but the cost seemed excessive. Despite a strong effort to identify additional options, in the end, the new State Street proposal seems to be the best offer. The complexity of the debt structure, and the overall downgrading of RDA's by Moody's throughout California impeded a competitive environment. It is possible that the overall quality of the former RDA area will continue to improve, providing more options for reducing the overall debt in the future.

The amended letter of credit broadens some areas of the agreement, but any risk is to the Successor Agency, not the City. The amended agreement provides the option to utilize two of the three rating agencies providing the Successor Agency with more flexibility, particularly since there is the possibility that Moody's will withdraw from rating any former RDA debt. The ability to utilize the higher Fitch rating provides a basis for the improved pricing offered by State Street. Given the complexity of the original debt structure, and the uncertainties impacting Successor Agencies, and the high quality of the former RDA area which may not be as evident to those not as familiar with the building boom in Silicon Valley, staff recommends proceeding with the Amended and Restated Letter of Credit, as attached. The terms of the Letter of Credit extension provide both greater flexibility and lower cost to the Successor Agency. The Oversight Board must also authorize the proposed changes by adopting a Resolution of the Oversight Board to approve an amendment to the amended and reinstated Letter of Credit and Reimbursement Agreement and authorizing certain actions in connection therewith

## **IMPACT ON CITY RESOURCES**

The overall impact of the amended Letter of Credit is an immediate reduction in cost from 2.75% to 2.00%, or approximately \$450,000 annually, and a protection from a further increase if Moody's withdraws ratings on former RDA debt.

## **POLICY ISSUES**

The key policy issue is the reduction in the annual cost of the letter of credit, which is the overall purpose of amending and restating the Letter of Credit.

## **ENVIRONMENTAL REVIEW**

An environmental review is not required.

## **PUBLIC NOTICE**

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

## **ATTACHMENTS**

- A. Resolution
- B. March 25, 2008 staff report
- C. Reinstated and Amended Letter of Credit

Report prepared by:  
*Starla Jerome-Robinson*  
*Assistant City Manager*

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## OB RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MENLO PARK APPROVING ACTION TAKEN BY THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MENLO PARK AUTHORIZING AN AMENDMENT TO THE AMENDED AND RESTATED LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT AND THE TAKING OF CERTAIN ACTIONS IN CONNECTION THEREWITH**

**WHEREAS**, pursuant to the Community Redevelopment Law (Part 1 of Division 24 of the California Health and Safety Code and referred to herein as the “Law”), the City Council of the City of Menlo Park (the “City”) created the former Community Development Agency of the City of Menlo Park (the “Prior Agency”); and

**WHEREAS**, the Former RDA was a redevelopment agency, a public body, corporate and politic duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Law, and the powers of such agency included the power to issue bonds and to obtain letters of credit in connection therewith for any of its corporate purposes; and

**WHEREAS**, California Assembly Bill No. 26 (First Extraordinary Session) (“AB X1 26”) enacted on June 29, 2011, dissolved all redevelopment agencies and community development agencies in existence in the State of California as of February 1, 2012, and designated “successor agencies” and “oversight boards” to satisfy “enforceable obligations” of the former redevelopment agencies and administer dissolution and wind down of the former redevelopment agencies; and

**WHEREAS**, pursuant to California Health and Safety Code Section 34173(d) a resolution of the City Council, the City is the successor agency (as successor agency to the Former RDA, the “Agency”); and

**WHEREAS**, pursuant to that certain Indenture dates as of May 1, 2006 (the “Master Indenture”), by and between the Prior Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and a First Supplemental Indenture, dated as of May 1, 2006 (the “First Supplemental Indenture”) by and between the Prior Agency and the Trustee, and, together with the Master Indenture, the “2006 Indenture”), the Prior Agency issued its Las Pulgas Community Development Project Tax Allocation Refunding Bonds, Series 2006 (the “Bonds”); and

**WHEREAS**, in 2008 State Street Bank and Trust Company (“State Street”) provided Letter of Credit No. ILC-1486/BSN (the “Letter of Credit”) to support the Bonds in connection with the execution and delivery of that certain Second Supplemental Indenture, dated as of April 1, 2008, by and between the Prior Agency and the Trustee, amending and supplementing the 2006 Indenture; and

**WHEREAS**, in 2011, State Street and the Prior Agency entered into that certain Amended and Reinstated Letter of Credit and Reimbursement Agreement, whereby State Street and the Prior Agency agreed to extend the term of the Letter of Credit until May 25, 2013 and provided for its automatic annual renewal on each 25<sup>th</sup> of May thereafter; and

**WHEREAS**, pursuant to Section 34173 of the Health and Safety Code of the State of California, except for those provisions of the Redevelopment Law that were repealed, restricted, or revised pursuant to AB X1 26, all authority, rights, powers, duties, and obligations previously vested with the Prior Agency under the Redevelopment Law are vested in the Successor Agency; and

**WHEREAS**, the Successor Agency and State Street now wish to further extend the term of the Letter of Credit for three (3) additional years; and

**WHEREAS**, a form of Amendment No. 1 to Amended and Restated Letter of Credit and Reimbursement Agreement has been presented to and approved by the Governing Board of the Successor Agency pursuant to Resolution No. 6176 of the Successor Agency, adopted December 10, 2013; and

**WHEREAS**, the Oversight Board of the Successor Agency to the Community Development Agency of the City of Menlo Park (the "Oversight Board") now wishes to approve the action taken by the Successor Agency;

**NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF LAFAYETTE DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by reference.

Section 2. Approval of Extension. This Oversight Board hereby approves the Successor Agency authorization of the extension of the Letter of Credit, and approves the Successor Agency Resolution No. 6176, on file with the clerk of this Board, adopted by the Successor Agency on December 10, 2013.

Section 3. Approval of Amendment. The form of Amendment No. 1 to Amended and Restated Letter of Credit and Reimbursement Agreement in substantially the form on file with this Oversight Board on or prior to this meeting is hereby approved, with such insertions, deletions or changes therein as the officers executing and delivering the same may require or approve, such approval to be conclusively evidenced by execution and delivery thereof.

Section 4. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 5. Effective Date. Pursuant to Health and Safety Code section 34179(h), all actions taken by the Oversight Board may be reviewed by the State of California Department of Finance, and, therefore, this Resolution shall not be effective for five (5) business days from the date of adoption, pending a request for review by the State of California Department of Finance.

I certify that the foregoing Resolution was passed and adopted by the Oversight Board, at a regular meeting held on December 18, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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Chairperson

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Oversight Board Secretary

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## ADMINISTRATIVE SERVICES

Council Meeting Date: March 25, 2008  
Staff Report #: 08-038

Agenda Item #F-1



**REGULAR BUSINESS:** Community Development Agency Adoption of a Resolution Authorizing the Executive Director of the Community Development Agency to Execute an Agreement with State Street Bank to Effect a Letter of Credit for the Agency's Tax Allocation Refunding Bonds, Series 2006.

City Council Adoption of a Resolution Approving the Execution of an Agreement with State Street Bank to Effect a Letter of Credit for Community Development Agency's Tax Allocation Refunding Bonds, Series 2006.

Community Development Agency Authorization of an Additional Appropriation of \$402,500 to Fund the Letter of Credit Agreement in Fiscal Year 2007-08 and Associated Costs of Issuance, with a Minimum Total Cost of \$840,000.

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### RECOMMENDATION

Staff recommends:

- (1) The Community Development Agency Board adopt the attached Resolution (Attachment A) authorizing the Executive Director to execute an agreement with State Street Bank to effect a letter of credit for the Agency's 2006 bonds;
- (2) the City Council approve the attached Resolution (Attachment B) authorizing the execution of an agreement with State Street Bank to effect a letter of credit for the Agency's 2006 bonds; and
- (3) the Community Development Agency Board authorize an additional appropriation of \$402,500 to fund the letter of credit agreement (for the remainder of the 2007-08 fiscal year) and associated costs of issuance. The minimum-term (eighteen months) total cost of the agreement is approximately \$840,000.

### BACKGROUND

The Menlo Park Community Development Agency issued \$72,430,000 of Ambac-insured variable rate tax allocation bonds in May, 2006. The purpose of that 2006 bond issue was to refinance outstanding bonds that were issued in 1996 and 2000 at lower interest rates. The expected impact of the refinancing was to save the Agency approximately \$5,122,000 in interest costs on a gross basis (\$4,733,500 on a "net present value" basis).

A synthetic fixed-rate bond structure was utilized for the 2006 refunding issue. Although this type of bond structure was new to the City of Menlo Park, many cities throughout California have used synthetic fixed-rate bond structures in order to allow for the issuance of variable rate bonds, but debt service payments at a lower fixed rate (to the counterparty.) Details of the refinancing bonds and the associated swap structure were presented to the Council in February 2006 and throughout the development of the refinancing. Potential risks not present in traditional fixed-rate financings were identified and the financing team implemented measures to mitigate each of these risks. The Agency entered into a floating-to-fixed interest rate swap with Piper Jaffray Financial Products as the swap counterparty.

The bonds were made more attractive to investors by procuring insurance from Ambac. As insurer, Ambac is contractually committed to pay the debt service should the Agency fail to make a scheduled debt service payment. In effect, the Agency's 'BBB+'-rated bonds assumed Ambac's 'AAA' rating as a result of this insurance arrangement. In addition, State Street Bank and Trust Company (State Street) serves as the bonds "liquidity facility". The 2006 series was further secured through the attachment of a "put" feature to the bonds. If at any time an investor wished to liquidate a bond holding, the bond could be "put" back to the market at face value. Piper Jaffray serves as the remarketing agent for the bonds.

As reported in the City's Mid-Year Report (Staff Report # 08-022 presented February 12th) and as further reported at the March 11<sup>th</sup> City Council meeting (Staff Report #: 08-036), the municipal bond market has come under enormous pressure recently due to concerns about the financial health of several large 'AAA' rated municipal bond insurance companies including Ambac, CIFG, FGIC, MBIA and XLCA. The impact of this crisis has been broad-based and has caused market instability and higher interest rates for state and local government variable rate financings across the country.

Bond insurers play a crucial role in the municipal bond market by guaranteeing the timely payment of principal and interest on hundreds of billions of dollars of debt. Institutional investors who rely on these guarantees are now concerned about the financial health of these bond insurers because of the insurers' decisions to guarantee sub-prime mortgage-linked bonds, collateralized debt obligations (CDO's) and other non-municipal securities. Rating agencies have expressed similar concerns and have either downgraded or threatened to downgrade the ratings of most 'AAA' rated bond insurers. As a result, a significant dislocation occurred in the market with many traditional buyers of daily and weekly variable rate and auction rate bonds shunning these securities. Due to this unprecedented and sudden lack of demand for these variable rate bonds, the interest rates necessary to attract buyers for these bonds increased dramatically. On January 18th, Fitch downgraded the ratings of Ambac - the insurer of the Community Development Agency Series 2006 Refunding Bonds – from AAA to AA. Many of the Agency's bondholders sold their bonds back to the remarketing agent – Piper Jaffray. As there were relatively few bondholders now willing to own the bonds, the interest rates they demanded were driven sharply higher. The Agency's variable rate bonds began to trade at a rate associated with their underlying BBB+ rating; interest rates jumped from 2.94 percent on January 21st to 5.0 percent the next day and then to 7.0 percent for the

following six days. During the month of February, the bonds traded in the 5.50-6.50 percent range, nearly doubling the interest costs to the Agency.

In dollar terms, the interest cost during the month of February 2008 was approximately \$192,500 greater than would have been the case had interest rates remained at their pre-crisis levels. And March interest costs are likely to be very similar to those in February. As this major market upheaval in the bond insurance industry was totally unforeseen by market experts, there is no immediate resolution or market product on which to draw for relief. The anticipated savings from the 2006 bond refinancing continue to erode, and mitigating this financial predicament for the Agency will require an innovative approach by all of the involved parties.

## **ANALYSIS**

Piper Jaffray has worked with staff to provide restructuring alternatives for the CDA's variable rate tax allocation bonds. Options examined include:

- 1) Remarket the bonds at elevated interest while Ambac gradually recovers by the end of calendar year 2008. This scenario represents no change to current remarketing efforts, and assumes a gradual process whereby Ambac regains market acceptance over a 10-12 month period.
- 2) Refinance the bonds with a traditional fixed structure
- 3) Purchase new bond insurance from an 'AAA' rated provider whose credit is not impaired by sub-prime concerns.
- 4) Convert the liquidity facility currently from State Street (which insures a market for the bonds) into a direct-pay letter of credit (LOC) and renew the LOC for the entire term of the bonds
- 5) Convert the liquidity facility into a direct-pay LOC for one to three years. Thereafter, the assumption is that Ambac would regain market acceptance from investors and the letter of credit would be replaced with a liquidity facility.

The annual cost of option 1 is currently estimated to be over \$2.7 million. This is likely the most expensive scenario, but the hardest to predict as the timeline for market stability is uncertain. Ambac recently completed a \$1.5 billion stock sale in order increase its capital base and to reassure market participants of its restored financial health. Nonetheless, investors remain wary, evidenced by a continued reluctance to buy Ambac-insured bonds. Although it is possible that Ambac will gradually stabilize and regain market favor over time, current conditions are such that stabilization could still take many months, a year or possibly even longer. There is no current market basis to support the assumption that a favorable resolution to the situation is imminent.

In the meantime, the Agency is incurring sharply higher interest costs, averaging \$6,500 to \$8,500 per day. Therefore, the idea of taking no decisive action now to restructure the bonds in anticipation of gradual market stabilization is very risky. This market-related acceleration of the Agency's debt service costs is an urgent matter that needs to be promptly addressed in an effective and economic manner. Piper Jaffrey has therefore worked with staff to identify restructuring alternatives that will lower the interest rates on the bonds as soon as possible.

Option 2 does not provide for lower interest rates desired in the short term. In addition, the interest rate savings would be uncertain over the long term due to the higher rates now being paid for uninsured BBB+ rated redevelopment agency bonds. The cost of unwinding the swap agreement associated with this bond structure would be substantial in the current market, as would be the costs of re-issuance. Preliminary cost estimates for this option are in the range of \$6 million.

Option 3 is not being pursued at this time. There are only two insurers in the industry that have been unaffected by the recent rate downgrades; the two firms have captured the entire bond insurance markets, and have increased their rates significantly. These insurers are very selective as to which financings they are willing to insure at any cost, and the Agency's underlying BBB+ rating reduces the likelihood of qualifying for such insurance. As of yet the two insurers have been unwilling to discuss the possibility of insuring the Agency's bonds.

The cost of Option 4 is speculative at this time. However, a full-term letter of credit would necessitate an expensive re-issuance of the bonds and would surrender any value of the original bond insurance policy with Ambac, for which the City prepaid at the time of issuance, when the market regains stability.

The proposed solution is to obtain a temporary letter of credit (Option 5). A letter of credit is similar to bond insurance in that the letter of credit provider guarantees the timely payment of principal and interest on the bonds. Investors view a letter of credit from a highly-rated bank as a secure guarantee. In the current market, a letter of credit from the proposed provider – State Street Bank – would substantially lower the daily variable interest rate on the Menlo Park bonds. Although the bonds would still be variable rate bonds and the interest rate would fluctuate over time, the letter of credit would enhance the security of the bonds, allowing the lowest possible interest rate throughout the term of the agreement. Because State Street Bank currently serves as liquidity provider for the Agency's bond issuance, they are more willing to negotiate such an agreement/transaction than other credit providers that have no current affiliation with the bonds. Substituting the current liquidity facility ("Standby Agreement") with the letter of credit agreement allows for the transaction to be structured more economically for the Agency, and provides for a full three years of coverage (through the term of the current agreement with State Street) if needed.

The proposed restructuring alternative – a Letter of Credit from State Street Bank – has several specific advantages:

- State Street Bank is highly rated and highly regarded by investors. A letter of credit from State Street Bank will immediately lower the interest rate on the bonds and reduce the interest cost to the Agency.
- Although the Ambac bond insurance policy currently has diminished market value, experts are hopeful that this is a temporary situation and that within 18-months Ambac will regain its stable 'AAA' ratings and acceptance from investors. This approach keeps the bond insurance policy intact.

- The letter of credit can be cancelled by the Agency after 18 months, at no additional cost to the Agency, if Ambac regains the confidence of investors.
- If, after 18 months, Ambac still has not regained the confidence of investors, the letter of credit can remain in place until its expiration. Thereafter, the letter of credit may be renewed by the Agency, if necessary.
- Among all of the restructuring alternatives evaluated, a temporary letter of credit is the least costly to implement.

It should be noted that written consent and approval from Ambac is required in order to implement this restructuring alternative. Ambac is currently conducting a review of the proposed restructuring and has expressed a willingness to grant its consent on a timely basis if various reasonable conditions are satisfied. Nonetheless, Ambac has not yet granted its consent and there can be no assurance that such consent will be granted.

Moreover, like any bank or large financial institution, it is possible that State Street may unexpectedly experience financial difficulties that could affect its credit ratings and its reputation in the market among investors. If that were to happen, the interest rate on the bonds could increase, in which case the Agency would have the option to terminate the letter of credit at no additional cost.

At the time of the packeting of this staff report, Ambac and State Street Bank have not fully resolved all terms of the agreement as currently drafted. Although the documents as attached are substantially in final form, there may be modifications to the agreement that impact the fee structure, such as the timing of the Agency's payments. However, there will be no change to the ultimate cost to the agency.

Of course, if the final terms cannot be agreed upon, and Ambac does not consent to this restructuring, staff will withdraw the request for authorization of the agreement and the associated budget revision. As explained in the March 11<sup>th</sup> staff report, the only cost to the Agency associated with exploring this letter of credit option would then be the \$40,000 in legal fees necessary to prepare the agreement and associated documents. Piper Jaffray will continue to remarket the Agency's bonds at the lowest possible rates as the Agency re-examines remaining options and additional opportunities that may arise in order to mitigate the increased costs of its debt service.

### **Documents**

In order to effect the letter of credit from State Street Bank, the following documents are necessary:

**Supplemental Indenture:** the purpose of the Supplemental Indenture is to provide the Trustee with proper authorization and specific instructions on how to effect the substitution and administer the letter of credit. The Trustee is only authorized to perform those tasks specifically detailed in the Indenture. The original 2006 Indenture does not

include specific instructions on how to administer a letter of credit; hence, the need for this Supplemental Indenture.

**Reimbursement Agreement:** the Reimbursement Agreement is the formal contract between the Agency and the letter of credit provider – State Street Bank – that describes all of the terms and conditions of the letter of credit, including the cost, method of payment, obligations of the Bank to guarantee the bonds, etc.

**Remarketing Memorandum:** this is the document that describes for investors the structure of the bonds including the letter of credit. Investors rely on this document to evaluate the risks associated with owning the bonds.

At the time of this staff report's preparation, the details of these documents have been negotiated and drafted incorporating comments from all involved parties. The documents attached to this staff report represent the current standing of the agreement with State Street. As previously noted, Ambac must consent to the restructuring proposal before it can be moved forward.

These documents are included in substantially final form as Attachment C to this staff report. The Agency resolution (Attachment A, section 6) authorizes the Executive Director to take all actions necessary to effect the letter of credit from State Street Bank.

### **City Council Action**

Community Redevelopment Law of the State of California dictates that any debt obligation of a redevelopment agency must be approved by the governing body of the sponsoring agency (the City). The reimbursement agreement is in fact of form of debt, requiring Council approval as provided with the resolution authorizing the agreement (Attachment B).

### **IMPACT ON AGENCY RESOURCES**

The cost of the State Street letter of credit is approximately \$525,000 for 18 months of coverage<sup>1</sup>. In addition, there are costs associated with the bond restructuring estimated as follows:

Legal Services <sup>2</sup>	125,000
Restructuring & Remarketing Fee	140,000
Financial Advisor Fee	20,000
Ratings	20,000
Miscellaneous (trustee, printing)	10,000
TOTAL	<u>\$315,000</u>

<sup>1</sup> The letter of credit fee is payable in quarterly installments of approximately \$87,500 per quarter, for a minimum term of 18 months.

<sup>2</sup> All restructuring fees and expenses are contingent upon closing except \$40,000 in legal fees incurred in drafting the Reimbursement Agreement. This amount was approved by the Agency Board on March 11<sup>th</sup>.

Therefore, the total cost of the letter of credit will approximate \$840,000 for the minimum 18-month term of the agreement. The amount pertaining to the Agency's 2007-08 fiscal year budget would be the cost of the line of credit for three months of coverage in addition to the other restructuring costs. For this reason staff seeks authorization for an additional appropriation of \$402,500 to fund the letter of credit agreement in the current fiscal year.

## **POLICY ISSUES**

The pursuit of a line of credit for the restructuring of the Agency's bonds as recommended in this report presents no change in Agency policy.

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Carol Augustine  
Finance Director

## **ATTACHMENTS:**

- A. [Agency Resolution Authorizing the Executive Director to Execute an Agreement with State Street Bank to Effect a Letter of Credit for the Agency's Tax Allocation Refunding Bonds, Series 2006](#)
- B. [City Council Resolution Authorizing the Execution an Agreement with State Street Bank to Effect a Letter of Credit for the Agency's Bonds](#)
- C. [Reimbursement Agreement between the Agency and State Street Bank and Trust Company](#)
- D. [Second Supplemental Indenture between the Agency and the Bank of New York Trust Company](#)
- E. [Remarketing Memorandum for the Agency's Tax Allocation Refunding Bonds, Series 2006](#)

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NRF Draft – 11/1213

**AMENDMENT NO. 1 TO  
AMENDED AND RESTATED  
LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT**

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, dated as of \_\_\_\_ 1, 2014 (this “Amendment No. 1”), and effective on \_\_\_\_\_, 2014 (the “Amendment Date”), to AMENDED AND RESTATED LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, dated as of March 1, 2011 (the “Reimbursement Agreement” and, together with this Amendment No. 1, the “Agreement”), is made by and between the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MENLO PARK (the “Successor Agency”) and STATE STREET BANK AND TRUST COMPANY (“State Street”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Reimbursement Agreement or, if not defined in the Agreement, the Indenture (as defined hereafter).

WHEREAS, pursuant to the Indenture, dated as of May 1, 2006 (the “Master Indenture”), between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and a First Supplemental Indenture, dated as of May 1, 2006 (the “First Supplemental Indenture”) between the Agency and the Trustee and has entered into a Second supplemental Indenture, dated as of April 1, 2008 (the “Second Supplemental Indenture” and, together with the First Supplemental Indenture, the “Indenture”), each by and between the Community Development Agency of the City of Menlo Park (the “Predecessor Agency”) and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), the Predecessor Agency issued its Las Pulgas Community Development Project Tax Allocation Refunding Bonds, Series 2006 (the “Bonds”); and

WHEREAS, State Street provided Letter of Credit No. ILC-1486/BSN (the “Letter of Credit”) to support the Bonds; and

WHEREAS, the California State legislature enacted Assembly Bill x1 26 and Assembly Bill 1484 (together, the “Dissolution Act”) to dissolve redevelopment agencies formed under the Redevelopment Law, Part 1 of Division 24 of the Health and Safety Code of the State of California, as amended (the “Redevelopment Law”), including, without limitation, the Predecessor Agency; and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities’ petition challenging the constitutionality of the Assembly Bill x1 26 and, on December 29, 2011, ruled that Assembly Bill x1 26 is substantially constitutional; and

WHEREAS, as a result of the California Supreme Court’s decision, all California redevelopment agencies (including, without limitation, the Predecessor Agency) dissolved on February 1, 2012 pursuant to the Dissolution Act and the Successor Agency was constituted; and

WHEREAS, pursuant to Section 34173 of the Health and Safety Code of the State of California, except for those provisions of the Redevelopment Law that were repealed, restricted, or revised pursuant to AB X1 26, all authority, rights, powers, duties, and obligations previously vested with the Predecessor Agency under the Redevelopment Law are vested in the Successor Agency; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency has established a Redevelopment Obligation Retirement Fund in compliance with Section 34170.5(a) of the Redevelopment Law; and

WHEREAS, pursuant to Section 7.02 of the Agreement, the Agreement may be amended by a written amendment thereto; and

WHEREAS, the parties hereto wish to amend certain provisions of the Agreement to reflect the Successor Agency as successor agency to the Predecessor Agency and the assumption by the Successor Agency of all the rights, powers, duties and obligations of the Predecessor Agency under the Agreement and all Related Documents; and

WHEREAS, State Street and the Successor Agency have agreed to extend the Expiration Date of the Letter of Credit to \_\_\_\_\_, 2017, and the Successor Agency, approved such extension on \_\_\_\_\_, 2014, and the Oversight Board of the Successor Agency approved such extension on \_\_\_\_\_, 2014; and **[update with DOF review conclusion or determination not to review when available]**

NOW, THEREFORE, for and in consideration of the mutual premises and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant, agree and bind themselves as follows:

## **ARTICLE I**

### **AUTHORITY**

SECTION 1. This Amendment No. 1 amends the Reimbursement Agreement.

SECTION 2. This Amendment No. 1 is entered into in accordance with Sections 2.07 and 7.02 of the Agreement.

## ARTICLE II

### AMENDMENTS

SECTION 1. Section 1.01 of the Agreement is hereby amended by adding or amending and restating the following defined terms thereto, to appear in the appropriate alphabetical sequence:

“Alternate Base Rate” shall mean at any time, the highest of (i) the Base Rate plus one percent (1.0%) per annum, (ii) the Federal Funds Rate plus two percent (2.0%) per annum, or (iii) seven and one-half percent (7.5%) per annum.

“Agency” means the Successor Agency of the Community Development Agency of the City of Menlo Park.

“Amendment Resolutions” means (i) Resolution No. \_\_\_\_ of the Board of Directors of the Successor Agency of the Community Development Agency of the City of Menlo Park, adopted on \_\_\_\_\_, 201\_\_ and (ii) Resolution No. \_\_\_\_ of the Oversight Board adopted on \_\_\_\_\_, 201\_\_.

“Bank Interest Rate” shall mean, with respect to Bank Bonds, a rate per annum equal to: (i) the Alternate Base Rate from and including the date the Bonds become Bank Bonds to and including the date 30 days from the date the Bonds become Bank Bonds, (ii) the Alternate Base Rate plus one percent (1.0%) per annum, from and including the date 31 days following the date the Bonds become Bank Bonds to and including the date 60 days from the date the Bonds become Bank Bonds, (iii) the Alternate Base Rate plus two percent (2.0%) per annum, from and including the date which is 61 days following the date the Bonds become Bank Bonds until paid in full; provided, however, that upon the occurrence and during the continuance of any Event of Default, “Bank Interest Rate” shall mean the Default Rate; provided, further, however, that to the extent that during any period in which any Bank Bonds are outstanding, the Bank Interest Rate exceeds the Maximum Interest Rate, such Bank Bonds shall continue to bear interest at the Maximum Rate if and to the extent necessary for State Street to recover the interest that would have accrued on the Bank Bonds if the rate of such interest had not been limited to the Maximum Interest Rate. At no time shall the Bank Interest Rate be less than the highest rate of interest on any outstanding Bond that is not a Bank Bond.

“Change of Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption, issuance, implementation, promulgation, taking effect of, or any change in, any law, rule, treaty or regulation, or any request, policy, guideline or directive of, or any change in the interpretation, administration or application thereof by any court, central bank or other administrative or Governmental Authority or other

fiscal, monetary or other authority having jurisdiction over State Street, any parent of State Street (in each case whether or not having the force of law), (b) compliance by State Street, any parent of State Street with any law, rule, treaty or regulation, request, policy, guideline or directive of any such court, central bank or other administrative or Governmental Authority or other fiscal, monetary or other authority having jurisdiction over State Street, any parent of State Street or (in each case whether or not having the force of law) or (c) any change in the application, interpretation or enforcement of any of the foregoing; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, standards, guidelines, regulations or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision and Supervisory Practices (or any successor or similar authority or organization) or the United States or foreign regulatory authorities shall in each case be deemed to be a “Change of Law,” regardless of the date enacted, adopted or issued.

“Commitment” means \$60,588,968, of which \$59,725,000 shall support the payment of principal with respect to the Bonds, and \$ 863,968 shall support the payment of up to forty-four (44) days accrued interest with respect to the Bonds computed at a rate of interest equal to twelve percent (12%) per annum on the basis of a year of 365 days for the actual number of days elapsed.

“County Auditor-Controller” means the County Auditor-Controller of the County of San Mateo, California.

“Dissolution Act” means Parts 1.8 (commencing with Section 34161) and 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code of the State of California, as amended.

“Expiration Date” means \_\_\_\_\_, 2017 or such later date as may have been agreed to by State Street as provided in Section 2.07.

“Governmental Authority” shall mean the United States or any state or political subdivision thereof or any foreign nation or political subdivision thereof, any entity, body or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in the United States (or any state, municipality or political subdivision thereof) or any foreign nation or political subdivision thereof, including, without limitation, the Federal Deposit Insurance Corporation or the Federal Reserve Board, any central bank or any comparable authority or other governmental or quasi-governmental authority exercising control over State Street, any parent of State Street or other financial institutions, and any corporation or other entity or authority

owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“Oversight Board” means the oversight board relating to the Agency duly constituted pursuant to Section 34179 of the Dissolution Act.

“Predecessor Agency” means the Community Development Agency of the City of Menlo Park.

“Recognized Obligation Payment Schedule” or “ROPS” means a Recognized Obligation Payment Schedule, prepared and approved from time to time pursuant to subdivision (1) of Section 34177 of the Dissolution Act.

“Redevelopment Obligation Retirement Fund” means the fund created within the treasury of the Agency pursuant to Section 34170.5 of the Dissolution Act.

“Redevelopment Property Tax Trust Fund” means the Redevelopment Property Tax Trust Fund established for the Agency and held and administered by the County Auditor-Controller pursuant to subdivision (c) of Section 34172 of the Dissolution Act.

“State Street” means State Street Bank and Trust Company and its permitted successors and assigns.

“Successor Agency Resolution” means Resolution No. \_\_\_ adopted by the Board of Directors of the Agency on \_\_\_\_\_, 201\_\_.

SECTION 2. Section 2.03(b) of the Agreement is hereby amended and restated in its entirety as follows:

2.03(b). Fees. The Commitment Fee shall be 2.0% per annum for the three-year period beginning \_\_\_\_\_, 2014. If there is an Event of Default that has occurred and is continuing the then applicable Letter of Credit Fee shall be increased by an additional rate of 1.0% per annum on the average daily amount of the Commitment on the date such Event of Default occurs and continuing until such Event of Default is remedied or waived by State Street or until the Letter of Credit is terminated and all amounts due and owing thereunder to State Street and this Agreement have been paid in full. Further, the Agency shall use its best efforts to maintain ratings by at least two Rating Agencies on the Bonds. If any of the underlying ratings on the Bonds are cancelled, withdrawn or suspended by any of the Rating Agencies for credit-related reasons or due to the failure of the Agency to comply with any Rating Agency’s notice or information requirements, then the Commitment Fee shall be the Default Rate. State Street may in its sole discretion allow the Agency not to maintain a rating from Moody’s on the Bonds. However, if no Moody’s

rating is maintained on the Bonds, any downgrade of a rating on the Bonds by any remaining Rating Agency below investment grade shall result in a Commitment Fee of 2.75% per annum. The Letter of Credit Fee shall be considered earned when paid and shall not be refundable.

SECTION 3. Section 2.06 of the Agreement is hereby amended and restated in its entirety as follows:

2.06 Increased Costs.

(a) If any Change of Law shall (i) change the basis of taxation of payments to State Street or any parent of State Street of any amounts payable hereunder (except for taxes on the overall net income of State Street or its parent), (ii) impose, modify or deem applicable any reserve, special deposit, liquidity coverage ratio, or similar requirement against letters of credit issued by, or assets held by, or deposits in or for the account of, State Street or any parent of State Street or (iii) impose on State Street any other condition regarding this Agreement, the Letter of Credit, and the result of any event referred to in clause (i), (ii), or (iii) above shall be to (A) increase the cost to State Street of issuing or maintaining the Letter of Credit or holding any Bank Bonds or (B) reduce the amount of any sum received or receivable by State Street or its parent hereunder or the amount receivable or to be received with respect to the Letter of Credit (which increase in cost or reduction in amount shall be determined by State Street's reasonable allocation of the aggregate of such cost increases or such reduced amounts resulting from such event), then, within nine (9) months after a written demand by State Street, the Agency shall pay to State Street, from time to time as specified by State Street, additional amounts which shall be sufficient to compensate State Street or its parent, as applicable, for such increased cost or such reduced amount. A certificate setting forth such increased cost incurred by State Street or its parent as a result of any event mentioned in clause (i), (ii), or (iii) above and giving a reasonable explanation thereof, submitted by State Street to the Agency, shall constitute such demand and shall, in the absence of manifest error, be conclusive and binding for all purposes as to the amount thereof.

(b) If any Change of Law, shall impose, modify or deem applicable any capital adequacy or similar requirement (including, without limitation, a request or requirement that affects the manner in which State Street, any corporation controlling State Street allocates capital resources to its commitments, including its obligations under lines of credit) that either (A) affects or would affect the amount of capital to be maintained by State Street, any corporation controlling State Street or (B) reduces or would reduce the rate of return on State Street's or its parent's capital to a level below that which State Street or its parent could have achieved but for such adoption, change or compliance (taking into consideration State

Street's policies with respect to capital adequacy) by any amount deemed by State Street to be material, then from time to time, within nine (9) months after demand by State Street, the Agency shall pay to State Street such additional amount or amounts as will compensate State Street for such reduction. With such demand, State Street shall provide the Agency with a statement in reasonable detail setting forth the calculation of the amount of such compensation. Such statement shall constitute demand for payment of the amount or amounts set forth therein and shall, in the absence of manifest error, be conclusive and binding for all purposes as to the amount or amounts thereof.

SECTION 4. For all purposes of the Agreement and the Related Documents, the Successor Agency is the legal successor to the Predecessor Agency and has the obligations of a successor agency as set forth in the Dissolution Act. All of the recitals set forth in this Amendment No. 1 shall be incorporated by reference into the recitals of the Agreement as though set forth therein and all defined terms and definitions set forth herein shall be incorporated by reference into Section 1.01 of the Agreement as though set forth therein in the appropriate alphabetical sequence.

SECTION 5. A new subparagraph (l) is added to Section 4.01 of the Agreement immediately following Section 4.01(k) as follows:

(l) The Bonds, the Indenture, this Agreement and each Related Document constitutes an "enforceable obligation" of the Agency for purposes of Section 34171 of the Health and Safety Code of the State of California, as amended. The performance and payment of all of the Agency's obligations under this Agreement are further secured by and payable from the Redevelopment Obligation Retirement Fund and the Redevelopment Property Tax Trust Fund.

SECTION 6. A new subparagraph (m) is added to Section 4.01 of the Agreement immediately following Section 4.01(l) as follows:

(m) Pursuant to the Dissolution Act and the Successor Agency Resolution, the Agency is the successor agency to the Predecessor Agency and, except for those provisions of the Redevelopment Law that were repealed, restricted, or revised pursuant to the Dissolution Act, all authority, rights, powers, duties, and obligations previously vested with the Predecessor Agency under the Redevelopment Law, including, without limitation, all duties and obligations under this Agreement and the other Related Documents are vested with the Successor Agency.

SECTION 7. Section 5.01(a) of the Agreement is hereby amended and restated in its entirety as follows:

(a) Preservation of Existence, Etc. Preserve and maintain its existence and rights as a Successor Agency to the Predecessor Agency under

Section 34173(d)(1) of the Redevelopment Law and maintain its status to carry out all of its obligations hereunder.

SECTION 8. A new subparagraph (n) is added to Section 5.01 of the Agreement immediately following Section 5.01(m) as follows:

(n) (i) The Agency hereby covenants that, if an amount due under this Agreement or any Related Document listed on a Recognized Obligation Payment Schedule is not approved or is rejected by the Oversight Board or State Department of Finance (the “Rejected Amount”), the Agency shall pursue reinstatement on a Recognized Obligation Payment Schedule of such Rejected Amount through administrative means. The Agency further covenants that if administrative means are not successful within a reasonable period of time, as determined by State Street, the Agency will, to the extent within its power (and the Agency shall seek approval from the Oversight Board if necessary), file and prosecute a petition for writ of mandate and, if appropriate, declaratory relief, in the Superior Court of the State of California with respect thereto and otherwise cooperate with State Street to the fullest extent provided under this Agreement and in particular Section 7.09 hereof. This Section 5.01(m) shall not be construed to limit any other provision of this Agreement.

(ii) The Agency hereby covenants and agrees to provide State Street with copies of each draft Recognized Obligation Payment Schedule at least two (2) Business Days in advance of the meeting during which the Oversight Board is expected to approve the Recognized Obligation Payment Schedule.

(iii) The Agency hereby covenants and agrees to provide State Street with copies of each Recognized Obligation Payment Schedule approved by the Oversight Board within two (2) Business Days and shall notify State Street of any objection to such Recognized Obligation Payment Schedule by the Oversight Board or the State Department of Finance relating to items listed thereon in connection with the Agreement or any Related Document.

(iv) The Agency hereby covenants and agrees that it shall notify State Street immediately upon its actual knowledge that funds are or will be insufficient to pay amounts owing under this Agreement or any Related Document or any other obligation payable from tax revenues as and when due. The Agency further covenants and agrees to provide State Street with copies of all correspondence with the County Auditor-Controller regarding any such deficiency.

(v) The Agency hereby covenants and agrees that upon its actual knowledge that amounts under this Agreement a Related Document are not or have not been paid when due, it shall promptly seek the approval of



the Oversight Board to pay amounts due under this Agreement or Related Documents in the amounts identified in the Recognized Obligation Payment Schedule from amounts in the Redevelopment Obligation Retirement Fund or the Redevelopment Property Tax Trust Fund so long as there is a reasonable basis for believing that there are or should be sufficient funds in the Redevelopment Obligation Retirement Fund and the Redevelopment Property Tax Trust Fund legally available to pay such amounts.

(vi) The Agency hereby covenants and agrees that it shall take all actions necessary and within its powers to compel the County Auditor-Controller to properly collect, allocate and distribute Subordinate Pledged Tax Revenues and amounts for, in and with respect to the Redevelopment Property Tax Trust Fund as necessary to pay amounts under this Agreement and the Related Documents as and when due and it shall take corrective action if the County Auditor-Controller fails to do so.

(vii) The Agency hereby covenants and agrees that it shall separately segregate and hold in trust amounts in the Redevelopment Obligation Retirement Fund from amounts in the City treasury and shall only permit amounts due under this Agreement and the Related Documents and other “enforceable obligations” of the Agency for purposes of Section 34171 of the Health and Safety Code, as amended, to be paid from such Redevelopment Obligation Retirement Fund. To maintain the pledge of Subordinate Pledged Tax Revenues for amounts due and owing under the Indenture and this Agreement, the Agency shall use its best efforts to coordinate with the County Auditor-Controller to separately segregate all Pledged Tax Revenues received for the benefit of obligations payable from such Pledged Tax Revenues. The Agency shall use its best efforts coordinate efforts with the County Auditor-Controller to create subaccounts to provide for sufficient payments of amounts due under this Agreement and the Related Documents as and when due.

(vii) The Agency hereby covenants and agrees that it shall report to State Street the assessed valuations for the Project Area and the City as soon as possible after such assessed valuations are released each year by the County Auditor-Controller.

SECTION 9. Section 7.03 of the Agreement is hereby amended and restated in pertinent part as follows:

If to the Agency:

City of Menlo Park, acting in its capacity as the Successor Agency to the Community Development Agency of the City of Menlo Park

701 Laurel Street  
Menlo Park, California 94025  
Attention: City Manager  
Facsimile: (680) 328-7935

SECTION 10. Subsection 2.12(b) of the Agreement is hereby amended by adding the following to such Subsection:

In addition the performance and payment of all of the Agency's obligations under this Agreement are further secured and payable from the Redevelopment Obligation Retirement Fund and the Redevelopment Property Tax Trust Fund.

SECTION 11. Section 7.14 of the Agreement is hereby amended and restated in its entirety as follows:

7.14 Jury Trial Waiver. (a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF STATE STREET AND THE AGENCY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION OR PROCEEDING ARISING OUT OF, OR BASED UPON, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY RELATED DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

(b) IF, IN CONNECTION WITH ANY ACTION OR PROCEEDING BEFORE A STATE OR FEDERAL COURT IN THE STATE OF CALIFORNIA, SUCH COURT, OR ANY APPELLATE COURT, DETERMINES THAT THE JURY WAIVER REFERENCED IN PARAGRAPH (A) OF THIS SECTION 7.14 IS UNENFORCEABLE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631, THE PARTIES HERETO AGREE THAT ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT, OR ANY RELATED DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, SHALL BE SUBJECT TO JUDICIAL REFERENCE PURSUANT TO THE TERMS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. IN SUCH EVENT, (I) THE REFEREE SHALL BE A RETIRED STATE OR FEDERAL JUDGE WITH EXPERIENCE IN PUBLIC FINANCE ISSUES AND (II) THE REFEREE SHALL DETERMINE ALL OF THE ISSUES IN THE ACTION OR PROCEEDING, WHETHER OF FACT OR OF LAW, AND WILL REPORT A STATEMENT OF DECISION. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS CONSENT AND EACH KNOWINGLY AND VOLUNTARILY CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) THE PARTIES HERETO HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE STATE OF

CALIFORNIA AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST OR BY IT IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RELATED THERETO, AND THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD OR DETERMINED IN SUCH CALIFORNIA FEDERAL OR STATE COURT. THE PARTIES AGREE THAT A FINAL NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN THE EVENT ANY SUIT, ACTION, CLAIM OR OTHER PROCEEDING IS BROUGHT IN ANY COURT REFERRED TO IN THE IMMEDIATELY PRECEDING SENTENCE, THE PARTIES HEREBY WAIVE AND AGREE NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, THAT THE SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, OR ANY RELATED DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, OR ANY RELATED DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, IS IMPROPER.

(d) THE COVENANTS AND CONSENTS MADE PURSUANT TO THIS SECTION 7.14 SHALL BE IRREVOCABLE AND UNMODIFIABLE, WHETHER IN WRITING OR ORALLY, AND SHALL BE APPLICABLE TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

SECTION 12. The Successor Agency shall at all times (i) cause Bonds which are not Bank Bonds to be assigned a CUSIP Number and (ii) cause Bank Bonds to be assigned a Bank Bond CUSIP Number (the "Bank Bond CUSIP Number"). The Successor Agency shall use its best efforts to cause, at the Successor Agency's expense, within sixty (60) days of a written request by State Street, a long-term rating to be assigned to the Bank Bonds bearing the Bank Bond CUSIP Number by at least one of Fitch, Moody's or S&P. The Agency shall ensure, to the extent reasonably achievable, that the CUSIP number and the rating assigned to Bank Bonds are available electronically to the Bank pursuant to a third-party provider of such information.

SECTION 13. The Successor Agency shall pay to State Street all costs and expenses incurred by State Street, including, without limitation, attorneys' fees in connection with the execution and delivery of this Amendment No. 1. The Successor Agency hereby agrees that all costs and expenses incurred by State Street in connection with the transactions contemplated herein and the satisfaction of the foregoing conditions, including, without limitation, attorneys' fees, are included as obligations under the Original Reimbursement Agreement.

## **ARTICLE III**

### **CONDITIONS PRECEDENT**

SECTION 1. The effectiveness of this Amendment No. 1 is subject to the satisfaction of or waiver by State Street of all of the following conditions precedent:

1. Delivery by the Successor Agency of an executed counterpart of this Amendment No. 1.
2. The following statements shall be true and correct as of the date hereof:
  - (a) the representations and warranties of the Agency contained in the Agreement (as amended by this Amendment No. 1 and the effect of the Dissolution Act and Assembly Bill 1484) and each of the Related Documents, each as amended, are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date or violate the Dissolution Act); and
  - (b) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Amendment No. 1.
3. State Street shall have received a copy of a resolution or other authorizing documentation of the Successor Agency and the Oversight Board authorizing its execution and delivery of this Amendment No. 1 and the performance of its obligations under the Agreement, as amended by this Amendment No. 1.
4. State Street shall have received satisfactory written evidence that the Successor Agency has received all necessary third party approvals (including, without limitation, all necessary approvals of the Oversight Board of the Successor Agency or the State Department of Finance) required in connection with the Successor Agency's execution and delivery of this Amendment No. 1.
5. State Street shall have received an opinion of counsel to the Successor Agency in form and substance satisfactory to State Street and its counsel.
6. State Street shall have received an opinion of Bond Counsel to the Successor Agency in form and substance satisfactory to State Street and its counsel, to the effect that (i) pursuant to the Dissolution Act and the Redevelopment Law, the Successor Agency is the legal successor agency for the Community Development Agency of the City of Menlo Park and has assumed all rights, powers, duties and obligations with respect to the Bonds, the Indenture, the Agreement and each Related Document, (ii) this Amendment No. 1 constitutes a legal, valid and binding obligation of the Successor Agency, enforceable against the Successor Agency in accordance with its terms, (iii) the Bonds, the Indenture, the Agreement, and each Related Document constitutes an "enforceable obligation" of the Successor Agency for purposes of Section 34171 of the Health and Safety Code, as amended, and the respective amounts due thereunder are payable from the Successor Agency's Redevelopment Obligation Retirement Fund and the Redevelopment Property Tax Trust Fund and (iv) the Successor Agency is obligated

to continue to make payments due under the Agreement and each Related Document and perform its respective obligations thereunder and maintain reserves in the amount, if any, required by the Indenture and the Agreement.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE SUCCESSOR AGENCY**

In addition to the representations given in Article IV of the Agreement, the Successor Agency hereby represents and warrants as follows:

SECTION 1. The execution, delivery and performance by the Successor Agency of this Amendment No. 1 and the Agreement, as amended hereby are within its powers, has been duly authorized by all necessary action and does not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the Successor Agency.

SECTION 2. No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body, which has not already been obtained prior to the Amendment Date is required for the due execution, delivery and performance by the Successor Agency of this Amendment No. 1 or the Agreement, as amended hereby. All such authorizations and approvals obtained prior to the Amendment Date with respect to the due execution, delivery and performance by the Successor Agency of this Amendment No. 1, the Agreement, as amended hereby, remain in full force and effect and have not been rescinded or modified.

SECTION 3. This Amendment No. 1 and the Agreement, as amended hereby, constitutes the legal, valid and binding obligations of the Successor Agency enforceable against the Successor Agency in accordance with its terms, except that (i) the enforcement thereof may be limited by principles of sovereign immunity and by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of the bankruptcy, reorganization, insolvency, liquidation or similar situation of the Successor Agency by judicial discretion in appropriate cases and by limitations on legal remedies against public entities in the State of California, and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

## **ARTICLE V MISCELLANEOUS**

SECTION 1. Terms and Conditions. All terms and conditions of the Reimbursement Agreement remain unchanged and in effect, except as specifically provided herein. This Amendment No. 1 is to be considered a part of the Reimbursement Agreement and must be attached thereto. This Amendment No. 1 is effective as of the date indicated above.

SECTION 2. Severability. Any provision of this Amendment No. 1 which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the

remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

SECTION 3. Headings. Section headings in this Amendment No. 1 are included herein for convenience of reference only and shall not constitute a part of this Amendment No. 1 for any other purpose.

SECTION 4. Execution in Counterparts. It shall not be necessary that all parties execute and deliver the same counterpart of this Amendment No. 1. This Amendment No. 1 shall therefore become effective when each party has executed any counterpart hereof and delivered the same to the other parties. All such counterparts, collectively, shall be deemed a single agreement.

[Reminder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

SUCCESSOR AGENCY TO THE COMMUNITY  
DEVELOPMENT AGENCY OF THE CITY OF  
MENLO PARK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE STREET BANK AND TRUST  
COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Signature Page to Amendment No. 1 to Letter of Credit and Reimbursement Agreement]

NOTICE OF EXTENSION OF EXPIRATION DATE AND  
AMENDMENT OF LETTER OF CREDIT

To:

The Bank of New York Mellon Trust Company, N.A.  
550 Kearny Street, Suite 600  
San Francisco, California 94108-2527  
Attention: Corporate Trust

Re: Letter of Credit No. ILC-1486/BSN

Ladies and Gentlemen:

Reference is hereby made to the Irrevocable Letter of Credit No. ILC-1486/BSN, dated \_\_\_\_\_, \_\_\_\_ (the "Letter of Credit"), established by State Street Bank and Trust Company in your favor. We hereby notify you that the Expiration Date of the Letter of Credit has been extended to \_\_\_\_\_, 2017.

We hereby also notify you of the following administrative amendments to the Letter of Credit:

1. The address of the Bank that appears on pages 3, and 6 of the Letter of Credit is deleted and the following shall be substituted therefore:

For Letter of Credit Draws and Communications:

State Street Bank and Trust  
Company Loan Operations Department  
Attention: Standby Letter of  
Credit Unit, Mailstop: CPH0453  
100 Huntington Ave., Tower 1  
4th Floor  
Boston, MA 02116  
Attention: Peter J. Connolly  
Telephone: (617) 662-8588  
Facsimile: (617) 988-6674

2. The Facsimile Transmission No. for the Bank that appears on pages 3 and 5 of the Letter of Credit is deleted and the following shall be substituted therefor: (617) 988-6674.

3. The Telephone No. for the Bank that appears on pages 3 and 6 of the Letter of Credit is deleted and the following shall be substituted therefor: (617) 662-8588.



4. The address of the Bank is:

State Street Bank and Trust Company  
Loan Operations Department  
Attention: Standby Letter of Credit Unit  
Mailstop: CPH0453  
100 Huntington Ave., Tower 1, 4th Floor  
Boston, Massachusetts 02116

5. All references to the "Agency" shall mean the Successor Agency to the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MENLO PARK.

This Notice should be attached to the Letter of Credit and made a part thereof, as an amendment thereof.

Very truly yours,

STATE STREET BANK AND TRUST  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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