

RESOLUTION NO. \_\_\_\_\_ (CM)  
RESOLUTION NO. \_\_\_\_\_ (SA)

**A JOINT RESOLUTION OF THE CITY OF WATSONVILLE AND OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF WATSONVILLE APPROVING A FIFTH LOAN AGREEMENT BETWEEN THE CITY AND THE SUCCESSOR AGENCY UNDER HEALTH & SAFETY CODE SECTION 34173(h)**

**WHEREAS**, in accord with the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq. (“**CRL**”), the City Council of the City of Watsonville (“**City**”) previously established the Redevelopment Agency of the City of Watsonville, a public body, corporate and politic (“**Agency**”) to carry out the purposes of and exercise the powers granted to community redevelopment agencies under the CRL; and

**WHEREAS**, on February 1, 2012, the Agency was dissolved pursuant to Assembly Bill 1X26 (Stats. 2011, 1st Ex. Sess., Ch. 5) (“**AB 26**”), and its rights, powers, duties and obligations were transferred to a “successor agency” (as defined by CRL Section 34171(j) and Section 34173); and

**WHEREAS**, the City Council determined that the City would become the Agency’s successor agency (“**Successor Agency**”) under CRL Section 34173; and

**WHEREAS**, pursuant to CRL Section 34179, an oversight board (“**Oversight Board**”) was established for the Successor Agency; and

**WHEREAS**, CRL Section 34177.3 authorizes the Successor Agency to make enforceable obligations related to the winding up of the Agency’s affairs, including for the acquisition of legal services; and

**WHEREAS**, with the Oversight Board's approval, CRL section 34173(h) permits the City to loan the Successor Agency funds to pay the Successor Agency's administrative costs, enforceable obligations, and project-related expenses; and

**WHEREAS**, in accord with CRL Section 34177.3, the Successor Agency created various enforceable obligations to conduct the work of winding down the Agency's affairs, including enforceable obligations related to the services of legal counsel needed in connection with various litigation matters in which the Successor Agency is involved; and

**WHEREAS**, the City and the Successor Agency have prepared an agreement entitled "**Fifth Loan Agreement for Enforceable Obligations, Administrative Costs and Project-Related Expenses**" ("**Fifth Loan Agreement**") (a copy of which is attached as Exhibit "A") providing for a loan ("**Fifth Loan**") from the City to the Successor Agency in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000); and

**WHEREAS**, the Fifth Loan Agreement is entered into for the purpose of providing a source of funds to fund the Successor Agency's legal expenses and costs related to the appeal of the matter entitled *City of Watsonville, et al. v. California Department of Finance, et al.*, Sacramento County Superior Court Case No. 34-2014-80001910 ("**Action**"); and

**WHEREAS**, the Successor Agency's maximum repayment obligation under the Fifth Loan Agreement, inclusive of principal and interest, is limited to One Hundred Fifty-One Thousand Five Hundred Dollars (\$151,500); and

**WHEREAS**, prior to becoming effective, the Fifth Loan Agreement must be approved by the Oversight Board and submitted to the State Department of Finance (“**DOF**”) for review in accord with CRL Section 34179(h); and

**WHEREAS**, the City and the Successor Agency desire to approve the Fifth Loan Agreement and to make the Fifth Loan from the funding source described in Section 3, below.

**NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE AND THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF WATSONVILLE AS FOLLOWS:**

**Section 1.** Under the authority of CRL Sections 34173(h) and 34180(h), the City and the Successor Agency jointly approve the Fifth Loan Agreement, in the form attached as Exhibit “A.”

**Section 2.** The City Council and the governing board for the Successor Agency direct the Interim City Manager to execute the Fifth Loan Agreement on behalf of the City and on behalf of the Successor Agency. The Interim City Manager is further authorized, with the concurrence of the City Attorney and Successor Agency legal counsel, to approve technical, non-substantive amendments to the Fifth Loan Agreement on the City’s and the Successor Agency’s behalf and to otherwise carry out the actions authorized by this Resolution.

**Section 3.** The City Council directs that the Fifth Loan be funded from the City’s Risk Management Fund. The Fifth Loan is to be repaid to the Risk Management

Fund upon the same terms as the Fifth Loan is repaid to the City by the Successor Agency, including interest.

**Section 4.** The Successor Agency is directed to submit this Resolution and the Fifth Loan Agreement to the Oversight Board for approval in accord with CRL Sections 34173(h) and 34180(h). The approvals and other actions authorized by this Resolution will become effective as provided by CRL Section 34179(h).

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# FIFTH LOAN AGREEMENT FOR ENFORCEABLE OBLIGATIONS, ADMINISTRATIVE COSTS AND PROJECT-RELATED EXPENSES

## ARTICLE I.

### PARTIES AND EFFECTIVE DATE

1.1 Parties. This “Fifth Loan Agreement for Enforceable Obligations, Administrative Costs and Project-Related Expenses” (“**Fifth Loan Agreement**”) is reference dated as of April 14, 2015. This Fifth Loan Agreement is entered into between (1) the City of Watsonville, a California charter law city and municipal corporation (“**City**”) and (2) The Successor Agency to the Redevelopment Agency of the City of Watsonville, formed and existing in accord with Section 34173 of the California Community Redevelopment Law (“**CRL**”) (Health & Safety Code Section 33000, et seq.) (“**Successor Agency**”).

1.2 Effective Date. This Fifth Loan Agreement will not become effective until the date (“**Effective Date**”) all of the following have occurred:

A. This Fifth Loan Agreement has been approved by the City Council in its capacity as the City’s governing body and by the City Council in its capacity as the Successor Agency’s governing body and has been executed by the City’s and the Successor Agency’s authorized officials.

B. This Fifth Loan Agreement has been approved by the Successor Agency’s oversight board (“**Oversight Board**”) formed in accord with CRL Section 34179.

C. As provided in CRL Section 34179(h), five (5) business days have elapsed since notice of the Oversight Board’s action approving this Fifth Loan Agreement was provided to the State Department of Finance (“**DOF**”), unless the DOF requests to review the Oversight Board’s action, in which case the condition precedent set forth in this paragraph C will be deemed satisfied upon the DOF’s approval of the Oversight Board’s action.

## ARTICLE II.

### RECITALS

2.1 Under the provisions of the CRL, the City Council of the City of Watsonville previously established the Redevelopment Agency of the City of Watsonville, a public body, corporate and politic (“**Agency**”), to carry out the purposes of and exercise the powers granted to community redevelopment agencies under the CRL.

2.2 On February 1, 2012, the Agency was dissolved by operation of Assembly Bill 1X26 (Stats. 2011, 1<sup>st</sup> Ex. Sess., Ch. 5) (“**AB 26**”), and its rights, powers, duties and obligations were transferred to a “successor agency” (as defined in CRL Section 34171(j) and Section 34173).

2.3 As provided by AB 26, the City Council took official action electing to become the Agency's successor agency ("**Successor Agency**") under CRL Section 34173.

2.4 On or about June 27, 2012, the provisions of Assembly Bill 1484 ("**AB 1484**") became law. AB 1484 modified the CRL and AB 26 in various ways. As used herein, the term "**CRL**" means Health & Safety Code Section 33000, et seq., as modified by AB 26 and AB 1484. Specific terms used and not otherwise defined in this Fifth Loan Agreement will have the meanings given to those terms in the CRL.

2.5 In accord with CRL Section 34177.3, the Successor Agency created various enforceable obligations to conduct the work of winding down the Agency's affairs, including enforceable obligations related to the services of legal counsel needed in connection with various litigation matters in which the Successor Agency is involved. This Fifth Loan Agreement is entered into for the purpose of providing a source of funds to fund the Successor Agency's legal expenses and costs related to the appeal of the matter entitled *City of Watsonville, et al. v. California Department of Finance, et al.*, Sacramento County Superior Court Case No. 34-2014-80001910 ("**Action**") (all such expenses and costs, "**Litigation Expenses**").

2.6 CRL Section 34173(h) permits the City, as the former Agency's creating authority, to loan or grant funds to the Successor Agency to pay for enforceable obligations, administrative costs, and project-related expenses.

2.7 The Successor Agency has requested that the City loan it the principal sum of not to exceed One Hundred Fifty Thousand Dollars (\$150,000) ("**Fifth Loan**") so that the Successor Agency may pay its Litigation Expenses. The City is willing to make the Fifth Loan under the authority of CRL Section 34173(h) on the terms set forth in this Fifth Loan Agreement.

On or about August 28, 2012, the City and the Successor Agency entered into that certain "Loan Agreement for Enforceable Obligations, Administrative Costs and Project-Related Expenses (for the Period July 1, 2012 – December 31, 2012)" ("**First Loan Agreement**"). On or about August 28, 2012, the City and the Successor Agency entered into that certain "Loan Agreement for Due Diligence Review Costs (for the Period July 1, 2012 – December 31, 2012)" ("**Second Loan Agreement**"). On or about September 10, 2013, the City and the Successor Agency entered into that certain "Third Loan Agreement for Enforceable Obligations, Administrative Costs and Project Related Expenses" and amended it on December 10, 2014 (as so amended, "**Third Loan Agreement**"). On or about August 26, 2014, the City and the Successor Agency entered into that certain "Fourth Loan Agreement for Enforceable Obligations, Administrative Costs and Project Related Expenses" and amended it on February 24, 2015 (as so amended, "**Fourth Loan Agreement**"). The First, Second, Third, and Fourth Loan Agreements are collectively referred to as the "**Prior Loan Agreements.**"

2.8 This Fifth Loan Agreement does not modify the Prior Loan Agreements in any respect. The Prior Loan Agreements shall remain in full force and effect in accordance with their terms.

## ARTICLE III.

### TERMS

3.1 Fifth Loan Agreement. The City agrees to disburse the Fifth Loan to the Successor Agency in periodic installments (each, an “**Installment**” and, collectively, “**Installments**”) of any amount upon the Successor Agency’s request, so long as the total of all Installments does not exceed One Hundred Fifty Thousand Dollars (\$150,000), exclusive of accrued interest. Each disbursement request must be accompanied by documentation which reasonably evidences the amount of Litigation Expenses incurred by the Successor Agency. The Fifth Loan will be disbursed to the Successor Agency to be held in its accounts and will be used to pay the Successor Agency’s Litigation Expenses. The Fifth Loan is not a revolving line of credit and no further Installments will be disbursed once the total of all disbursements equals One Hundred Fifty Thousand Dollars (\$150,000).

3.2 Interest and Repayment Terms. Each Installment will become due and payable in full on the March 1 or October 1 (whichever occurs first) following the date of disbursement. Each disbursed and outstanding Installment will accrue interest at the rate earned by funds deposited by the City into the Local Agency Investment Fund, as it may be adjusted from time-to-time (“**LAIF Rate**”), from the date of its disbursement until fully repaid.

3.3 Limitation on Total Amount Repayable Under This Fifth Loan Agreement. Anything to the contrary in this Agreement notwithstanding, the maximum aggregate amount, inclusive of principal and interest, that may become payable under this Fifth Loan Agreement is One Hundred Fifty-One Thousand Five Hundred Dollars (\$151,500) (“**Repayment Cap**”). The City will abate any amounts of principal and interest that becomes owing in excess of the Repayment Cap and discharges the Successor Agency from any obligation to repay any principal and interest in excess of the Repayment Cap.

3.4 Inclusion on Recognized Obligation Payment Schedule.

A. The Successor Agency will identify this Fifth Loan Agreement as an enforceable obligation under CRL 34173(h) on each Recognized Obligation Payment Schedule (“**ROPS**”) to be submitted by the Successor Agency to the Department of Finance for all fiscal periods commencing after disbursement of the first Installment until the Fifth Loan has been fully repaid, including interest. The Successor Agency will request an allocation of property taxes from the “Redevelopment Property Tax Trust Fund” (established pursuant to CRL Section 34170.5 and administered by the County Auditor-Controller in accord with CRL Sections 34182 and 34183) (“**RPTTF**”) on each ROPS covering any fiscal period in which the Successor Agency has a repayment obligation under this Fifth Loan Agreement. The Successor Agency will continue to make allocation requests on all subsequent ROPS until the Fifth Loan and all accrued interest has been fully repaid, subject, however, to the limitation described in Section 3.3. The amount of each allocation request will be equal to the sum of the Successor Agency’s repayment obligation arising during the period covered by the ROPS plus the remaining balance (if any) of any repayment due during a prior ROPS period which was not fully paid.

B. The Successor Agency will prepare each ROPS as required by the CRL and submit it to the Oversight Board and such other governmental agencies as the CRL may require from time-to-time. The Successor Agency will take all other actions as required by the CRL or other applicable authority to ensure that the Successor Agency receives an allocation of taxes from RPTTF in the amounts necessary to satisfy the Successor Agency's payment obligations under this Fifth Loan Agreement.

3.5 Amendment or Modification. This Fifth Loan Agreement and the Successor Agency's obligations under it may be amended or modified only in the following ways:

A. By the mutual written agreement of the City and the Successor Agency, following all notices, hearings and approvals required by then-applicable provisions of the CRL and other legal authority.

B. As required to conform to future changes in the CRL, other applicable legal authority, or pursuant to an order or judgment of a court of competent jurisdiction.

3.6 No Other Successor Agency Income or Assets Subject to Repayment Obligation. No funds or other assets of the Successor Agency other than property tax allocations from the RPTTF may be used for the repayment of the Successor Agency's obligations under this Fifth Loan Agreement.

3.7 Successor Agency Obligation to Enforce and Defend. As a material part of the consideration given by the Successor Agency to the City under this Agreement, the Successor Agency will undertake, at its sole cost, expense and liability, the prosecution (or defense) of any action or proceeding against (or instituted by) a public or private third-party that the City determines (in its sole discretion) is necessary to enforce or defend the Successor Agency's obligations under this Agreement.

3.8 Remedies for Breach. If the Successor Agency fails for any reason whatsoever to fulfill its obligations under this Fifth Loan Agreement, the City may, without notice or demand, accelerate all payments to become due under this Fifth Loan Agreement and declare the entirety of the unpaid Fifth Loan principal and accrued interest immediately due and payable.

3.9 Attorneys' Fees. In the event of any action, proceeding or arbitration brought by either party against the other under this Fifth Loan Agreement or arising out of or related to the actions to be taken by the parties under this Fifth Loan Agreement, the prevailing party will be entitled to recover all of its reasonable costs and expenses of litigation, including court costs, attorneys' fees, costs of experts, and fees, costs and expenses incurred on appeal.

*[Signatures on following page]*

***[Signatures to Fifth Loan Agreement for Enforceable Obligations,  
Administrative Costs and Project-Related Expenses]***

**CITY**

**City of Watsonville**, a California charter law city and municipal corporation

**ATTEST:**

\_\_\_\_\_  
Beatriz Vázquez Flores, City Clerk

By: \_\_\_\_\_  
Name: Marcela Tavantzis, Interim City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Alan J. Smith, City Attorney

**SUCCESSOR AGENCY**

**The Successor Agency to the Redevelopment Agency of the City of Watsonville**, a public entity created and existing under the authority of CRL Section 34173

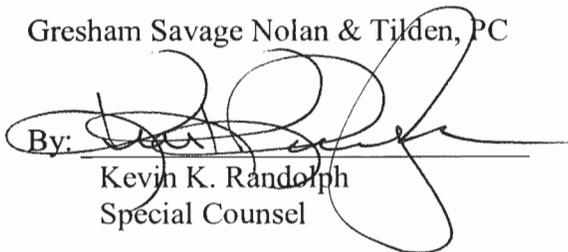
**ATTEST:**

\_\_\_\_\_  
Beatriz Vázquez Flores, City Clerk as Secretary to the Successor Agency

By: \_\_\_\_\_  
Name: Marcela Tavantzis, Interim City Manager

**APPROVED AS TO FORM:**

Gresham Savage Nolan & Tilden, PC

By:   
\_\_\_\_\_  
Kevin K. Randolph  
Special Counsel