

OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE ALBANY COMMUNITY
REINVESTMENT AGENCY
RESOLUTION NO. OB 2015-3

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE
ALBANY COMMUNITY REINVESTMENT AGENCY APPROVING A SETTLEMENT
AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF FINANCE

WHEREAS, pursuant to ABx1 26 enacted in June 2011 (as amended by AB 1484 enacted in June 2012, the "Dissolution Law"), the Albany Community Reinvestment Agency (the "Dissolved RDA") was dissolved as of February 1, 2012, and the City of Albany, acting in a separate limited capacity and known as the Successor Agency of the Albany Community Reinvestment Agency, has elected to serve as the successor agency (the "Successor Agency") of the Dissolved RDA; and

WHEREAS, pursuant to Health and Safety Code Section 34173(g), as added by the Dissolution Law, the Successor Agency is a separate legal entity from the City of Albany (the "City"); and

WHEREAS, the City Council (the "City Council") of the City serves in a separate capacity as the governing board of the Successor Agency; and

WHEREAS, an oversight board for the Successor Agency (the "Oversight Board") has been formed and is functioning in accordance with Health and Safety Code Section 34179; and

WHEREAS, the Successor Agency to the Albany Community Reinvestment Agency ("Successor Agency") filed litigation (the "Lawsuit") naming the California Department of Finance ("DOF"), Michael Cohen in his capacity as Director of the California Department of Finance ("Director Finance") and Steve Manning, in his official capacity as the Auditor-Controller of the County of Alameda ("Auditor-Controller") challenging the DOF's final determination of the amounts available for distribution to the taxing entities pursuant to the Other Funds Due Diligence Review; and

WHEREAS, the Successor Agency, the DOF, the Director of Finance and the Auditor-Controller have reached agreement on the terms of a settlement of the Lawsuit in accordance with the Settlement Agreement on file with the Secretary of the Successor Agency; and

WHEREAS, pursuant to the terms of the Settlement Agreement, the DOF has agreed to reduce the amount owed on the Other Funds Due Diligence Review to zero in return for the Successor Agency and the City of Albany agreeing to waive any rights they may have to repayment for certain Re-instated Loan Agreements; and

WHEREAS, the Oversight Board has determined, based on the information provided to it, that the Settlement Agreement is in the best interest of the taxing entities.

NOW, THEREFORE, BE IT RESOLVED, the Oversight Board hereby finds that the above Recitals are true and correct, and together with the Staff Report and other information provided by the Successor Agency staff and the public, form the basis for the findings and actions set forth in this Resolution.

BE IT FURTHER RESOLVED, that the Oversight Board hereby approves the Settlement Agreement substantially in the form on file with the Secretary to the Successor Agency.

BE IT FURTHER RESOLVED, the Oversight Board hereby directs its Designated Contact Official, or the Designated Contact Official's designee, to provide written notice and information about this Resolution to the California Department of Finance in accordance with Health and Safety Code Section 34179(h). The actions set forth in this Resolution shall be subject to effectiveness in accordance with Health and Safety Code 34179(h).

ALBANY, CALIFORNIA, September 21, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: 4	BOARD MEMBERS: McQuaid, Peoples, Williams, Leach
NOES: 0	BOARD MEMBERS:
ABSTAIN: 0	BOARD MEMBERS:
ABSENT: 3	BOARD MEMBERS: Braun, Lieber, Rinne

ATTEST:

Nick Hg
Secretary of the Oversight Board to
the Albany Successor Agency

SETTLEMENT AGREEMENT

Successor Agency to the Albany Community Reinvestment Agency, et al. v. Michael Cohen, et al.,
Sacramento Superior Court, Case No. 34-2013-80001660
Third District Court of Appeal, Case No. C078065

PARTIES

This Settlement Agreement (“**Agreement**”) is entered into by the following parties: (1) the City of Albany (“**City**”); (2) the Successor Agency to the Albany Community Reinvestment Agency, a public entity (“**Successor Agency**”); (4) the California Department of Finance (“**Finance**”); (5) Michael Cohen, in his official capacity as Director of the California Department of Finance (“**Director of Finance**”); and (6) Steve Manning, in his official capacity as the Auditor-Controller of the County of Alameda (“**Auditor-Controller**”) (collectively, the “**Parties**”).

RECITALS

A. The litigation resolved by this Agreement relates to the dissolution of the Redevelopment Agency for the City of Albany, known as the Albany Community Reinvestment Agency (“**RDA**”), pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature (“**AB x1 26**”) and Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature (“**AB 1484**”) (AB x1 26 and AB 1484, collectively the “**Dissolution Law**”).

B. Pursuant to the Dissolution Law, the Successor Agency has submitted Recognized Obligation Payment Schedules (“**ROPS**”) to Finance. The Successor Agency identified three loan agreements as the basis for certain items listed on the ROPS. The City and the RDA entered into these agreements prior to the RDA’s dissolution on February 1, 2012, and the City and the Successor Agency re-entered into the agreements on May 7, 2012. The Oversight Board approved the reinstatement of these agreements on or about May 22, 2012. These agreements are referred to as the “**Reinstated Loan Agreements.**” The ROPS items that were based on the Reinstated Loan Agreements are Items 1 through 5 on ROPS I and ROPS II; items 2 through 6 on ROPS III, ROPS 13-14A, and ROPS 13-14B; and items 2 through 7 on ROPS 14-15A, 14-15B, and 15-16A. The outstanding obligations for the Reinstated Loan Agreements, excluding accrued interest, total \$1,536,203. Finance has not approved any of these items as enforceable obligations as defined in the Dissolution Law.

C. On May 14, 2013, Finance issued its final determination on the Other Funds and Accounts Due Diligence Review (“**OFA DDR**”) submitted by the Successor Agency pursuant to Health & Safety Code section 34179.5. Finance determined, among other things, that a transfer of \$1,050,000 from the RDA to the City in accordance with a cooperation agreement between the RDA and the City was not made pursuant to an enforceable obligation as defined in the Dissolution Law and ordered the City to return the funds to the Successor Agency for distribution to the County Auditor-Controller.

D. On October 4, 2013, the City and the Successor Agency filed a Petition for Writs of

Mandate and Prohibition and Complaint for Declaratory and Injunctive Relief, in an action entitled *Successor Agency to the Albany Community Reinvestment Agency, et al. v. Michael Cohen, et al.*, Sacramento County Superior Court Case No. 34-2013-80001660 (“**Action**”). The Action named Finance, the Director of Finance, and the Auditor-Controller as defendants and respondents. The Action challenged Finance’s OFA DDR determination that the transfer of \$1,050,000 from the RDA to the City was not made pursuant to an enforceable obligation as defined in the Dissolution Law.

E. Finance and the Director of Finance opposed the Action. The Auditor-Controller did not take a position on the merits of the Action. The Court issued its ruling in the Action in a Ruling on Submitted Matter dated October 3, 2014. The Court denied the petition for peremptory writ and dismissed the remaining causes of action. Finance filed a notice of entry of judgment on November 3, 2014.

F. The City and Successor Agency filed a timely notice of appeal with respect to the judgment in the Action on December 16, 2014. The appeal is entitled *Successor Agency to the Albany Community Reinvestment Agency et al. v. Cohen et al.*, Third Appellate District, Court of Appeal, Case No. C078065 (“**Appeal**”).

G. Notwithstanding the Court’s decision in the Action, and without admission of fault or wrongdoing, the Parties have agreed to completely resolve any and all disputes between the Parties pertaining to, or in any way relating to the Reinstated Loan Agreements, the Action and the Appeal by entering into this Agreement.

AGREEMENT

Accordingly, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Principal Terms: The Parties agree to the following resolution of the litigation:
 - (a) The City and the Successor Agency waive any and all rights to, and release each other and the other parties to this Agreement, from all claims to repayment of any amounts due pursuant to the Reinstated Loan Agreements, including the principal amount of \$1,536,203 and accrued interest thereon. The waiver and release of all claims for repayment pursuant to the Reinstated Loan Agreements terminates the Reinstated Loan Agreements and will result in the Successor Agency having no enforceable obligations as defined in the Dissolution Law.
 - (b) The City and the Successor Agency waive any and all rights to, and release each other and the other parties to this Agreement, from all claims for any money for administrative costs incurred after December 31, 2015. This subparagraph shall not affect the Successor Agency’s right to retain the amounts approved as administrative costs in ROPS 14-15B (\$46,000) and ROPS 15-16A (\$32,500) pursuant to Paragraph 1(f)(4) of this Agreement.
 - (c) Finance and the Auditor-Controller will not enforce the OFA DDR determination

that the transfer of \$1,050,000 from the RDA to the City was not made pursuant to an enforceable obligation as defined in the Dissolution Law as long as the City and Successor Agency are in compliance with this Agreement and the Oversight Board does not take actions or direct the Successor Agency to take actions contrary to the terms and goals of this Agreement. Upon the Oversight Board's approval of the resolution described in Paragraph 1(f)(5), the remittance amount for the OFA DDR shall be deemed reduced to \$0.00.

- (d) No later than five business days after the effective date of this Agreement, the City and Successor Agency will file either (1) an abandonment of the Appeal under California Rules of Court, Rule 8.244, subdivision (b), if the record for the Appeal has not yet been filed, or (2) a request to dismiss the Appeal under California Rules of Court, Rule 8.244, subdivision (c), if the record has already been filed.
- (e) The Auditor-Controller shall not allocate property tax to the Redevelopment Property Tax Trust Fund for the Successor Agency (as defined in Health and Safety Code section 34170.5, subdivision (b)) after the effective date of this Agreement. Any property tax revenues in the Redevelopment Property Tax Trust Fund for the Successor Agency as of the effective date of this Agreement shall be distributed to the taxing entities pursuant to Health and Safety Code section 34188.
- (f) The Successor Agency will formally dissolve no later than December 31, 2016 as follows:
 - (1) No later than five business days after the effective date of this Agreement, the Successor Agency will submit to the Oversight Board for approval:
 - a. A proposed resolution approving this Agreement;
 - b. A proposed resolution stating that the Successor Agency has no assets of the former RDA to report on a long-range property management plan and approving a letter from the Successor Agency to Finance indicating this; and
 - c. A proposed resolution stating that the Successor Agency will formally dissolve by no later than December 31, 2016, and including statements that (1) the Successor Agency has no outstanding amounts owed for any "enforceable obligations" as defined by Health and Safety Code section 34171, (2) all of the debt of the Successor Agency has been retired or paid off, and (3) the Successor Agency has no assets or if the Successor Agency has any assets, such assets shall be disposed of and the proceeds of the disposition of such assets shall be transferred to the Auditor-Controller for distribution to the affected taxing entities pursuant to Health and Safety Code Section 34183.

- (2) The Successor Agency shall schedule an Oversight Board meeting to consider approval of the resolutions described in Paragraph 1(f)(1) no later than 30 business days after submitting the resolutions to the Oversight Board, or as soon thereafter as a quorum of the Oversight Board can be assembled. Immediately upon approval of the resolutions, the Successor Agency shall submit the approved resolutions to Finance.
 - (3) Finance shall approve the Oversight Board actions approving the resolutions described in Paragraph 1(f)(1) no later than 30 business days after receiving the resolutions.
 - (4) The Successor Agency shall dispose of all remaining assets as directed by the Oversight Board no later than October 23, 2016. However, in order to efficiently conclude the operations of the Successor Agency, the Successor Agency may retain the estimated amount of its reasonable and necessary administrative costs, including attorneys' fees, incurred up to the date the Successor Agency is dissolved. The amount retained shall not exceed the amounts approved as administrative costs in ROPS 14-15B (\$46,000) and ROPS 15-16A (\$32,500). Any proceeds from the disposition of remaining assets shall be transferred to the Auditor-Controller for distribution to the affected taxing entities pursuant to Health and Safety Code section 34188.
 - (5) The Successor Agency shall submit for approval a final resolution of dissolution to the Oversight Board that states that it has complied with Paragraph 1(f)(4) of this Agreement no later than 5 business days after compliance. The Successor Agency shall schedule an Oversight Board meeting to consider approval of this resolution no later than December 1, 2016. Upon approval by the Oversight Board, the attorney for the Successor Agency shall provide notice of the final resolution of dissolution to Finance, and the Auditor-Controller.
- (g) In the event that the Oversight Board does not approve the resolutions described in Paragraphs 1(f)(1) and 1(f)(5), or the Oversight Board directs the Successor Agency to take actions contrary to the terms of this Agreement or seeks to prevent any of the Parties from fulfilling their obligations under this Agreement, including, but not limited to, preventing the dissolution of the Successor Agency or directing the Successor Agency to place the Reinstated Loan Agreements for payment on a ROPS, the City shall transfer, within 10 days of such Oversight Board action, \$1,050,000 to the Auditor-Controller for distribution to the affected taxing entities pursuant to Health and Safety Code section 34188. This transfer will constitute full payment of amounts required to be paid pursuant to Finance's determination on the Successor Agency's OFA DDR under Health and Safety Code section 34179.6. If the City transfers \$1,050,000 to the Auditor-Controller pursuant to this Paragraph 1(g), then this Agreement shall have no further force and effect and the Successor Agency and the City shall retain their rights to place the Reinstated Loan Agreements on a subsequent ROPS and continue in existence

until payment of such Reinstated Loan Agreements

- (h) Legal counsel for the City, the Successor Agency and Finance are authorized to agree in writing to reasonable extensions of time to complete the tasks set forth in this Paragraph 1. Notwithstanding Paragraph 9, such extensions of time, if any, shall constitute and be incorporated as amendments to this Agreement without execution by the Parties.

2. Claims Disputed: The Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. This Agreement is a compromise settlement of all issues arising out of the Reinstated Loan Agreements, the Action and Appeal, and by executing this Agreement, none of the Parties admits wrongdoing, liability, or fault in connection with the Reinstated Loan Agreements, the Action or Appeal, or the allegations asserted in the Action or Appeal.

3. Mutual Release: The Parties specifically and mutually release and discharge each other, including their respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns from all obligations, damages, costs, expenses, liens, attorney fees of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, pertaining to the Reinstated Loan Agreements, the Action and Appeal, the dissolution of the Albany Community Reinvestment Agency, and the OFA DDR.

4. Successors and Assigns: This Agreement shall be binding upon the Parties' respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, departments, divisions, sections, successors and assigns.

5. Assumption of Risk: The Parties each represent that they fully understand that if the facts pertaining in any way to the Action and Appeal are later found to be different from the facts now believed to be true by any Party, each of them expressly accepts and assumes the risk of such possible differences in facts and agrees that this Agreement shall remain effective notwithstanding such differences in facts. The Parties also each represent that this Agreement was entered into under the laws current as of the effective date, and agree that this Agreement shall remain effective notwithstanding any future changes in the law.

6. Independent Advice of Counsel: The Parties each represent that they know and understand the contents of the Agreement and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations and with respect to the execution of this Agreement.

7. Entire Agreement: No promise, inducement, understanding, or agreement not expressed has been made by or on behalf of the Parties, and this Agreement contain the entire agreement between the Parties related to the Action and Appeal.

8. Assignment: Each Party represents that it has not assigned, transferred, or purported to

assign or transfer to any person or entity any matter released herein.

9. Amendments in Writing: This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by the Parties. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

10. Construction: The Parties agree that this Agreement is to be construed and interpreted without regard to the identity of the party drafting this Agreement.

11. Additional Acts: The Parties agree to take such actions and to execute such documents as are necessary to carry out the terms and purposes of this Agreement.

12. Attorneys Fees: The Parties shall each bear their respective attorney fees and costs incurred in the litigation.

13. Enforcement: If any Party to this Agreement files a lawsuit to enforce or interpret this Agreement, the prevailing Party in any such suit shall be entitled to reimbursement for reasonable attorney fees and costs.

14. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Sacramento, California.

15. Counterparts: This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one single original this Agreement.

16. Effective Date: The date on which the last counterpart of this Agreement is executed shall be the effective date of this Agreement.

17. Authority to Execute: Each Party represents that they have the authority to enter into and perform the obligations necessary to provide the consideration described in this Agreement. Each person signing this Agreement represents and warrants that they have the authority to sign on behalf of the Party for which they sign.

This Agreement consists of Recital Paragraphs A - G and Paragraphs 1 – 17.


DATED: 9/21/15

CITY OF ALBANY

By 
Peter Maass, Mayor

DATED: 9/24/15

SUCCESSOR AGENCY TO THE ALBANY
COMMUNITY REINVESTMENT AGENCY

By 
Penelope Leach, Vice-Chair

DATED: _____

MICHAEL COHEN & CALIFORNIA
DEPARTMENT OF FINANCE

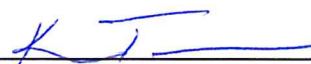
By _____
Kari Krogseng
Its Chief Counsel

DATED: _____

COUNTY OF ALAMEDA AUDITOR-
CONTROLLER AGENCY

By _____
Steve Manning
County of Alameda Auditor-Controller

Approved as to Form and Content:
GOLDFARB & LIPMAN LLP

By: 
Karen Tiedemann
*Attorneys for Petitioners/Plaintiffs City of Albany;
Successor Agency to the Albany Community
Reinvestment Agency*

Approved as to Form and Content:
KAMALA D. HARRIS
Attorney General of California

By: _____
P. Patty Li
*Attorneys for Respondents and Defendants Michael
Cohen and California Department of Finance*