



CITY COUNCIL AGENDA REPORT

MEETING DATE: September 6, 2011 ITEM No.:

SUBJECT: PARTICIPATION IN VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM

DATE: August 25, 2011

FROM: THOMAS R. HATCH, C.E.O. AND AGENCY EXECUTIVE DIRECTOR

PRESENTATION BY: HILDA VETURIS, MANAGEMENT ANALYST

**FOR FURTHER INFORMATION CONTACT: HILDA VETURIS, MANAGEMENT ANALYST
714-754-5608**

RECOMMENDED ACTIONS:

1. Adopt Costa Mesa City Council Resolution Electing to Serve as a Successor Agency under Part 1.85 of Division 24 of the California Health and Safety Code in the Event the Agency is Required to be Dissolved
2. Adopt Costa Mesa City Council Resolution Declaring its Intention to Enact an Ordinance Whereby the City Elects to Comply with and Participate in the Voluntary Alternative Redevelopment Program Set Forth in Division 24, Part 1.9 of the California Health and Safety Code
3. Introduce and Conduct a First Reading of an Ordinance of the City of Costa Mesa Electing to Comply with and Participate in the Voluntary Alternative Redevelopment Program contained in Part 1.9 of Division 24 of the California Health & Safety Code

BACKGROUND:

This agenda item is presented in follow-up to the Costa Mesa Redevelopment Agency's ("Agency") special meeting on August 26, 2011 at which the Agency's Enforceable Obligation Payment Schedule was approved. As background, on June 28, 2011 Governor Brown signed two budget trailer bills, AB X1 26 and AB X1 27, that were chaptered on June 29, 2011 and had been adopted by the Legislature on June 15, 2011 ("2011 Redevelopment Legislation") all in connection with approval of the State Budget. AB X1 26 adds Parts 1.8 and 1.85 to the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"). Part 1.8 provides for certain immediate restrictions on the powers of redevelopment agencies and Part 1.85 provides for agencies to be dissolved and for successor agencies and oversight boards to wind up the affairs of the agencies. In contrast, AB X1 27 adds Part 1.9 to the CRL, the Voluntary Alternative Redevelopment Program, which allows for an agency's host city (or county) to commit to make annual payments to the county auditor-controller in order to

exempt the agency from dissolution by Parts 1.8 and 1.85, and thereby continue to exist and carry out the provisions of the CRL. The amount to be paid by the City of Costa Mesa ("City") in FY 2011-12 as posted by Department of Finance ("DOF") on August 1, 2011 is \$1,475,173, which is the Agency's proportionate share of \$1.7 billion pursuant to a formula specified in AB X1 27. The Agency's proportionate share of \$400 million per year and thus the annual remittances for FY 2012-13 and subsequent fiscal years' will be calculated by the County Auditor-Controller ("CAC") and reported to the Department of Finance ("DOF") and State Controller's Office ("SCO").

On July 18, 2011, the California Redevelopment Association, the League of California Cities, along with the cities of San Jose and Union City filed a petition with the California Supreme Court seeking original jurisdiction and challenging both AB X1 26 and AB X1 27 on constitutional grounds (*California Redevelopment Association, et al. v. Ana Matosantos, et al.*) ("CRA Action"). The Supreme Court accepted the case on August 11, 2011, notified the parties of the briefing schedule for petitioners, respondents, and amicus curiae, and, importantly, issued a stay order affecting Part 1.85 and Part 1.9, but the court did not stay Sections 34161 to 34167 of Part 1.8. Then, on August 17, 2011, the Supreme Court modified its stay order, which released the stay on Sections 34167.5 to 34169.5 of Part 1.8 and Section 34194(b)(2) of Part 1.9, making those laws now effective (together, "Supreme Court Stay"). The Supreme Court also stated that the briefing schedule "is designed to facilitate oral argument as early as possible in 2011, and a decision before January 15, 2012."

At the July 12 joint meeting and August 26 special meeting, the City Council and Agency Board directed staff to prepare and present for consideration and action the actions necessary to "opt-in" to Part 1.9, the Voluntary Alternative Redevelopment Program ("Program"), which is the subject of this report and attachments. These actions include a City Council resolution of intention ("Resolution of Intention") and an ordinance to opt-in under Part 1.9 ("Ordinance"), along with a resolution electing that the City serve as the successor agency in the event that dissolution and wind down of the Agency is required to be implemented, such as if a court decision requires dissolution or if the City were to fail to make a required remittance payment.

ANALYSIS:

Due to the Supreme Court Stay, the action to participate in the Program would be effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption of the Ordinance, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.

Under the 2011 Redevelopment Legislation as adopted, cities opting to make annual remittance payments under the Program ("Remittances") do so by an ordinance enacted by October 1, 2011. An agency may adopt the non-binding Resolution of Intention by October 1, 2011 that allows the Ordinance to be enacted by November 1, 2011. Cities must notify the DOF, SCO, and CAO of adoption of resolutions of intention and ordinances. For the City's first Remittance of \$1,475,173, half is due by January 15, 2012 and the other half is due by May 15, 2012 for FY 2011-12. Remittances due for FY 2012-13 and subsequent years will be determined by the CAC (albeit future legislation imposing more payment obligations is possible.) Should the City enter into additional indebtedness subsequent to October 1, 2011, the City's annual remittances for FY 2012-13 and thereafter

will increase to allow for additional tax increment (“net school share”) to flow through to local educational agencies.

The Resolution of Intention is a non-binding declaration by the City of its intent to adopt the Ordinance. Although a Resolution of Intention is not strictly necessary to the extent that the City Council adopts the Ordinance before October 1, 2011, among redevelopment consultants and counsels there have been conflicting opinions. The prudent approach, and one the DOF had required at one point, is for the City to adopt the Resolution of Intention first, then consider and take action on the Ordinance.

If the City elects to opt-in and if Part 1.9 is found constitutional, the Agency will be reactivated and may restart its redevelopment activities pursuant to the CRL. While the Remittances are an obligation of the City, not the Agency, pursuant to Part 1.9, the Agency may transfer a portion of its tax increment to the City in an amount not to exceed the annual Remittance required that fiscal year “for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals”; this commonly has been referred to as the “backfill”. The Agency and City may enter into an agreement to receive the backfill of tax increment (“Agreement to Receive Tax Increment”), which agreement will be presented for consideration and action if and when second reading of the Ordinance occurs, which will enable the Agency to pay tax increment to the City up to the Remittance amount. For FY 2011-12 only, the Agency transfer to the City may include the full low- to moderate- income housing fund (“Housing Fund”) allocation as long as the Agency makes a finding that there are insufficient other moneys available.

As noted, the Ordinance has been prepared with knowledge of the CRA Action, therefore the date that the Ordinance is to become is effective will be the *later* to occur of: (i) thirty (30) days after the date of the final passage and adoption of the Ordinance, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.

If the Agency does not desire to introduce and adopt the Ordinance and subject to the Supreme Court Stay in the CRA Action, then pursuant to Parts 1.8 and 1.85 the Agency will be dissolved. Likewise, if the City fails to make any Remittance payment, then the DOF will cause a determination of non-compliance and the Agency will be dissolved. Revenues formerly allocable as tax increment would be distributed to the “successor agency” to pay recognized enforceable obligations (see Finance Dept. Attachment) and for limited wind down administration; and, all Agency assets would be transferred to the successor agency for liquidation. Any encumbered monies in the Housing Fund and housing assets would be transferred to the Orange County Housing Authority (“OCHA”) All remaining (former) tax increment proceeds would be distributed to affected taxing entities; including the existing unencumbered balances sourced from the Housing Fund.

The successor agency is the host city/city council that created the agency; if a city does not elect to be the successor agency then another local public agency may become the successor agency. The recommended actions for this agenda item include a City Council resolution electing to serve as the successor agency in the event the Agency is dissolved. Successor agencies are supervised by “oversight boards”, which are comprised of seven members appointed by: Board of Supervisors (2), Mayor (1), County Superintendent of Education (1), Chancellor of California Community Colleges (1), largest special district

taxing entity (1), and a former agency employee (appointed by Mayor) (1). The oversight board is empowered to cause early termination of enforceable obligations if determined to be in the best interest of the taxing entities, including arrangements between the agency and another local agency that obligate the agency to fund debt service or to pay for construction or operation of public facilities. Parts 1.8 and 1.85 provide that CAO, DOF, and SCO each have additional responsibilities in the dissolution and implementation of enforceable obligations.

Pursuant to the Supreme Court Stay and the provisions of Parts 1.8 (and pending the effectiveness of the Ordinance, if adopted), all agencies' powers are limited to carrying out "enforceable obligations" that are defined to include: (i) existing bonds, (ii) payment of agency loans, (iii) payments required by federal or state government or for employee pension obligations, (iv) pay and perform judgments or settlements, (v) pay or perform "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy"; (vi) administer contracts for administration or operation of the agency, (vii) fund reserves for existing bonds, (viii) preserve assets and records and minimize agency liabilities, (ix) cooperate with the successor agency and state and county auditing agencies, and (x) avoid triggering defaults under enforceable obligations. Enforceable obligations exclude agreements or arrangements between the agency and city and between the agency and another local public agency, which are declared to be invalid and not binding unless the monies were committed by contract to a third party. Such provisions do not apply to (i) an agreement entered into prior to December 31, 2010 for issuance of bonds, notes, certificates of participation or other similar bonded indebtedness, and (ii) an agreement between an agency and its host city that was entered into within two years of formation of the agency. Technical reporting requirements listing all enforceable obligations are a critical part of the wind down process and the timing and completeness are critical.

Petitioners in the CRA Action allege the legislation violates the California Constitution, including: (1) Article XIII, Section 24 that prevents the Legislature from restricting the use of taxes imposed by local governments for their local purposes; (2) Article XIII A, Section 25.5 that prohibits city or county property tax from being used for schools, proscribes indirect allocation of tax increment to schools, transit districts and fire protection districts, and prohibits city and county property tax from being transferred to special districts without a 2/3 vote; and Section 1 that prohibits the transfer of property tax to transit districts; (3) Article XIII B that prohibits the diversion and use of property taxes to fund state mandates; (4) Article XVI, Section 6 that bans the transfer of city or county revenues to schools and transit districts and fire protection districts as an unlawful gift of public funds; and (5) Section 16 that mandates tax increment to be expended only to repay indebtedness of redevelopment agencies and to pay for implementation of redevelopment projects. Even with the Supreme Court Stay, most likely the status of redevelopment agencies will remain unresolved until lawsuit(s) are concluded.

As of the preparation of this agenda report, the Legislature is back in session and is expected to consider and approve "clean up" legislation relating to the 2011 Redevelopment Legislation; however, due to the Supreme Court Stay this may or may not occur. From an advisement to CRA members, apparently, one bill would be technical clean-up legislation to correct internal inconsistencies, ambiguous drafting and omissions that require clarification; another bill would contain language to correct specific problems identified by individual agencies and their legislators; and a third bill may include substantive policy changes,

including requiring repayment of monies to the Housing Fund if the Agency and City avail the provisions of Sections 34194.2 and 34194.3 that allows no deposit to the Housing Fund for FY 2011-12 based on certain findings and that authorizes the backfill of this amount as part of an Agreement to Receive Tax Increment between the City and Agency, as above described. If more information is available by the meeting date, we will update the Council and Agency.

LEGAL REVIEW:

Agency special counsel prepared this report and the attached Resolution of Intention, the Ordinance, and the successor agency resolution.

ALTERNATIVES CONSIDERED:

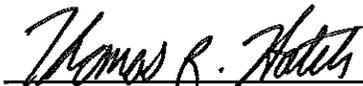
The City Council may choose not to adopt the Resolution of Intention, or conduct first reading of the Ordinance, and/or may reject becoming the successor agency. If the City does not opt-in, then subject to the Supreme Court Stay, this would result in the Agency being dissolved as discussed above. As explained in the Finance Department attachment, the Agency would stand to lose significant Agency funds if the City does not opt-in to Part 1.9 of the 2011 Redevelopment Legislation.

FISCAL REVIEW:

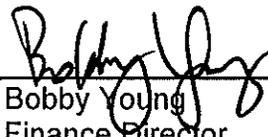
The City will expend \$1,475,173 for the FY 2011-12 Annual Remittance Payment, half due January 15 and half due May 15, 2012. The Agency would backfill an amount equal to the Remittance pursuant to the Agreement to Transfer Tax Increment, if later approved.

CONCLUSION:

It is recommended that City Council adopt the attached successor agency resolution, the Resolution of Intention, and introduce and conduct a first reading of the Ordinance. Due to the Supreme Court Stay, the effective date of the Ordinance would be the later to occur of: (i) thirty (30) days after the date of the final passage and adoption, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.



Thomas R. Hatch, Chief Executive Officer
Agency Executive Director



Bobby Young
Finance Director



Hilda Veturis
Management Analyst

ATTACHMENTS:

- A - City Council Resolution Making Election re Successor Agency under Part 1.85
- B - City Council Resolution of Intention under Part 1.9
- C - City Council Ordinance Electing into Voluntary Alternative Redevelopment Program
- D - Finance Department Fiscal Analysis of Opt-in versus Opt-out

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA ELECTING TO SERVE AS A SUCCESSOR AGENCY UNDER PART 1.85 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN THE EVENT THE AGENCY IS REQUIRED TO BE DISSOLVED; AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

RECITALS

WHEREAS, the Costa Mesa Redevelopment Agency, City of Costa Mesa, California (“Agency”) is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.* (“CRL”) and is responsible for the administration of redevelopment activities within the City of Costa Mesa; and

WHEREAS, the City adopted the Redevelopment Plan (“Redevelopment Plan”) for the Costa Mesa Downtown Project (“Project Area”) that was originally adopted by the City Council by Ordinance No. 73-74 on December 24, 1973, and thereafter amended by Ordinance No. 77-27 on July 5, 1977, Ordinance No. 80-22 on November 18, 1980, Ordinance No. 86-24 on December 15, 1986, Ordinance No. 94 15 on November 7, 1994, Ordinance Nos. 03-12 and 03-13 on November 17, 2003, and Ordinance No. 07-13 on June 19, 2007; and

WHEREAS, the City and Agency are responsible for implementation of the Redevelopment Plan for the Project Area, and the Redevelopment Plan sets forth a plan for redevelopment of the Project Area consistent with the policies and standards of the General Plan of the City; and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, continued redevelopment of the Project Area to eliminate blight, improve public facilities and infrastructure, provide affordable housing, and enter into public and private partnerships to improve the community, create jobs, and expand the local economy is vital to the health, safety and welfare of the City; and

WHEREAS, Parts 1.8, 1.85 and 1.9 of Division 24 of the CRL were added by Assembly Bill X1 26 and Assembly Bill X1 27 (together, “2011 Redevelopment Legislation”), which laws purport to become effective immediately; and

WHEREAS, the 2011 Redevelopment Legislation is a part of multiple trailer bills to the FY 2011-2012 California budget bills that were approved by both Houses of the State Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011; and

WHEREAS, Part 1.8 of the CRL added by the Redevelopment Legislation (“Part 1.8”) provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain “enforceable obligations” and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

WHEREAS, Part 1.85 of the CRL added by the 2011 Redevelopment Legislation (“Part 1.85”) provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency’s affairs, all subject to the review and approval of an oversight committee; and

WHEREAS, Part 1.9 of the CRL (“Part 1.9”) provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 (“Program”); and

WHEREAS, the City is aware that the validity, passage, and applicability of the 2011 Redevelopment Legislation is the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* (“CRA Action”); and

WHEREAS, the Supreme Court accepted original jurisdiction of the CRA Action on August 11, 2011, notified the parties of the briefing schedule, and, importantly, issued a stay order affecting Part 1.85 and Part 1.9, but the court did not stay Sections 34161 to 34167 of Part 1.8, then on August 17, 2011, the Supreme Court modified its stay order, which released the stay on Sections 34167.5 to 34169.5 of Part 1.8 and on Section 34194(b)(2) of Part 1.9, making those laws now effective (“Supreme Court Stay”); and

WHEREAS, pursuant to Part 1.85 Sections 34171(j) and 34173(a) provide that a successor agency is designated as successor entity to the former redevelopment agency and the host city that created the agency may elect to serve, or not to serve, as the successor agency under Part 1.85, albeit subject to the Supreme Court Stay; and

WHEREAS, as of the date of adoption of this Resolution, the City Council has not completed the process and/or the time for the “opt-in” ordinance to become effective has not elapsed due to the Supreme Court Stay in for order the Agency to participate in the Alternative Voluntary Redevelopment Program, therefore, the City Council desires to adopt this Resolution making an election in connection with the City to serve as the successor agency under Part 1.85 in the event the Agency is dissolved pursuant to Part 1.85.

NOW, THEREFORE, the City Council hereby finds, determines resolves and orders as follows:

Section 1. The above Recitals are true and correct and are a substantive part of this Resolution.

Section 2. Subject to the Supreme Court Stay, this Resolution is adopted pursuant to Part 1.85, Sections 34171 and 34173.

Section 3. The City Council hereby elects to serve as a successor agency under Part 1.85 in the event the Agency is required to be dissolved pursuant to Part 1.85.

Section 4. The City Clerk is hereby authorized and directed to file a certified copy of this Resolution with the County Auditor-Controller.

Section 5. The Chief Executive Officer (and designees, as officers and staff of the City) is hereby authorized and directed to do any and all things which they may deem necessary or advisable to effectuate this Resolution and any such actions previously taken by the CEO (and designees) are hereby ratified and confirmed.

Section 6. Subject to the Supreme Court Stay and at such time as the City and Agency become exempt from Parts 1.8 and 1.85 based on the effectiveness of its actions to “opt-in” pursuant to Part 1.9, this Resolution shall be of no further force or effect.

Section 7. This Resolution shall in no way be construed as requiring the City (or Agency) to abide by the 2011 Redevelopment Legislation in the event either, or both, bills are found unconstitutional or otherwise legally invalid in whole or in part, nor shall this Resolution effect or give rise to any waiver of rights or remedies the City (and/or Agency) may have, whether in law or in equity, to challenge 2011 Redevelopment Legislation. This Resolution shall not be construed as the City’s (and/or Agency’s) willing acceptance of, or concurrence with the 2011 Redevelopment Legislation, either AB X1 26 or AB X1 27; nor does this Resolution evidence any assertion or belief whatsoever on the part of the City (and/or Agency) the 2011 Redevelopment Legislation is/are constitutional or lawful.

Section 8. This Resolution has been reviewed with respect to applicability of the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*, hereafter the “Guidelines”), and the City’s environmental guidelines. The City Council has determined that this Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment. (Guidelines Section 15378(b) (5)).

Section 9. This Resolution shall take effect upon the date of its adoption.

Section 10. The City Clerk shall certify to the adoption of this Resolution.

PASSED AND ADOPTED this 6TH day of September 2011.

CITY OF COSTA MESA, a California municipal corporation

Mayor

ATTEST:

City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF COSTA MESA)

I, _____, City Clerk of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. _____ was introduced and adopted at a regular meeting of the City Council held on the 6th day of September 2011 by the following vote of the members thereof:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

CITY OF COSTA MESA, a California municipal corporation

City Clerk

ATTACHMENT B

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA DECLARING ITS INTENTION TO ENACT AN ORDINANCE WHEREBY THE CITY ELECTS TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM SET FORTH IN DIVISION 24, PART 1.9 OF THE CALIFORNIA HEALTH AND SAFETY CODE

WHEREAS, the Costa Mesa Redevelopment Agency, City of Costa Mesa, California (“Agency”) is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* (“CRL”) and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council (“City Council”) of the City of Costa Mesa (“City”); and

WHEREAS, the Agency adopted the Redevelopment Plan for the Costa Mesa Downtown Project (“Project Area”) that was originally adopted by the City Council by Ordinance No. 73-74 on December 24, 1973, and thereafter amended by Ordinance No. 77-27 on July 5, 1977, Ordinance No. 80-22 on November 18, 1980, Ordinance No. 86-24 on December 15, 1986, Ordinance No. 94-15 on November 7, 1994, Ordinance Nos. 03-12 and 03-13 on November 17, 2003, and Ordinance No. 07-13 on June 19, 2007; and

WHEREAS, Assembly Bills X1 26 and X1 27, which are trailer bills to the 2011-12 budget bills, were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, “2011 Redevelopment Legislation”); and

WHEREAS, Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purport to have become effective immediately; and

WHEREAS, Part 1.8 of the CRL (“Part 1.8”) provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain “enforceable obligations” and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

WHEREAS, Part 1.85 of the CRL (“Part 1.85”) provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency’s affairs, all subject to the review and approval by an oversight committee; and

WHEREAS, Part 1.9 of the CRL (“Part 1.9”) provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 (“Program”); and

WHEREAS, the City is aware that the validity, passage, and applicability of the 2011 Redevelopment Legislation are the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* (“CRA Action”); and

WHEREAS, on August 11, 2011 the California Supreme Court issued a stay as to Parts 1.85 and 1.9, but not as to Part 1.8, Sections 34161-34167' and

WHEREAS, on August 17, 2011 the Supreme Court modified its stay affirming its order that Part 1.85 is stayed, that Part 1.9 is stayed except Section 34194(b)(2) is not stayed, and that Part 1.8, Sections 34161-34169.5, is not stayed, and therefore Sections 34161-34169.5 of Part 1.8 are effective laws; and

WHEREAS, the dissolution of the Agency would be detrimental to the health, safety, and economic well-being of the residents of the City and cause irreparable harm to the community, because, among other reasons, the redevelopment activities and projects made possible, implemented, and funded by the Agency are highly significant and of enduring benefit to the community and the City, and are a critical component of its future; and

WHEREAS, pursuant to Part 1.9, as a condition of the Agency's continued existence and operation of its community redevelopment agency, the City is required to make certain annual remittances to the County Auditor-Controller ("CAC") commencing with Fiscal Year 2011-2012 ("First Remittance") that is due in two equal installments on January 15, 2012 and May 15, 2012; and

WHEREAS, the City expects it will have sufficient moneys and revenues to fund an amount equal to the City's payment of the First Remittance and further expects to have sufficient moneys and revenues to fund the subsequent fiscal years' remittances required by Part 1.9; and

WHEREAS, the City's needs are such that it can commit to spend the funds received from the Agency pursuant to the Agreement to Transfer Tax Increment (defined below) "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals"; and

WHEREAS, the City intends to adopt the ordinance required by Part 1.9, in order to allow the Agency to continue in operation and performing its functions ("Ordinance"); and

WHEREAS, the City intends to adopt the Ordinance and desires to adopt this Resolution as a first step thereto, albeit this resolution is non-binding pursuant to Part 1.9 and may be subject to the Supreme Court's stay as set forth hereinafter; and

WHEREAS, the City and Agency desire to enter into an agreement pursuant to CRL Section 34194.2 whereby the Agency shall make an initial transfer of a portion of its tax increment to the City in an amount equal the First Remittance, and thereafter to transfer amounts of tax increment equal to any subsequent remittance that the City is required to make to the CAC pursuant to the City's participation in the Program ("Agreement to Transfer Tax Increment"); and

WHEREAS, the City Council, by the adoption of this Resolution, does not represent, disclaim, or take any position whatsoever on the issue of the validity of the 2011 Redevelopment Legislation, but rather the Agency seeks to comply with the Constitution and laws of the State of California, including the 2011 Redevelopment Legislation, in order to preserve the ability of the Agency to continue to operate and perform its obligations and thereby benefit the community; and

WHEREAS, the City has duly considered all other related matters and has determined that the City's participation in the Program is in the best interests of the City, and the health, safety, and

welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES RESOLVE AS FOLLOWS:

Section 1. The foregoing Recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

Section 2. Pursuant to CRL Section 34193(b), the City hereby expresses its intent to adopt the Ordinance to comply with Part 1.9. This resolution is that “nonbinding resolution of intent” referred to in CRL Section 34193(b) and shall be interpreted and applied in all respects in accordance with such section and Part 1.9, to the fullest extent permitted by law provided however the City Council acknowledges the pending CRA Action and to the extent the City is not authorized to cause this Resolution to be effective at this time, then this Resolution shall be effective upon order of a court of competent jurisdiction and/or upon a determination that the California Supreme Court, or other court of competent jurisdiction, has made a final determination that AB X1 27 are valid and enforceable.

Section 3. On or before October 1, 2011, the City Manager is hereby authorized and directed to notify the CAC, the State Department of Finance, and the State Controller’s Office concerning this Resolution in accordance with Section 34193(b).

Section 4. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 6th day of September 2011.

CITY OF COSTA MESA,
a California municipal corporation

Mayor

ATTEST:

City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF COSTA MESA)

I, _____, City Clerk of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. _____ was introduced and adopted at a regular meeting of the City Council held on the 6th day of September 2011 by the following vote of the members thereof:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

**CITY OF COSTA MESA, a California
municipal corporation**

City Clerk

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COSTA MESA ELECTING TO COMPLY WITH AND PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM CONTAINED IN DIVISION 24, PART 1.9 OF THE CALIFORNIA HEALTH & SAFETY CODE

WHEREAS, the Costa Mesa Redevelopment Agency, City of Costa Mesa, California (“Agency”) is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* (“CRL”) and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council (“City Council”) of the City of Costa Mesa (“City”); and

WHEREAS, the Agency adopted the Redevelopment Plan for the Costa Mesa Downtown Project (“Project Area”) that was originally adopted by the City Council by Ordinance No. 73-74 on December 24, 1973, and thereafter amended by Ordinance No. 77-27 on July 5, 1977, Ordinance No. 80-22 on November 18, 1980, Ordinance No. 86-24 on December 15, 1986, Ordinance No. 94-15 on November 7, 1994, Ordinance Nos. 03-12 and 03-13 on November 17, 2003, and Ordinance No. 07-13 on June 19, 2007; and

WHEREAS, AB X1 26 and AB X1 27, which are trailer bills to the 2011-12 budget bills, were approved by both houses of the Legislature on June 15, 2011, signed by the Governor on June 28, 2011, and chaptered on June 29, 2011 (together, “2011 Redevelopment Legislation”); and

WHEREAS, Parts 1.8, 1.85 and 1.9 of Division 24 of the Health and Safety Code were added to the CRL by the 2011 Redevelopment Legislation and such measures purport to have become effective immediately; and

WHEREAS, Part 1.8 of the CRL (“Part 1.8”) provides for the restriction of activities and authority of the Agency in the interim period prior to dissolution to certain “enforceable obligations” and to actions required for the general winding up of affairs, preservation of assets, and certain other goals delineated in Part 1.8; and

WHEREAS, Part 1.85 of the CRL (“Part 1.85”) provides for the statewide dissolution of all redevelopment agencies, including the Agency, as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of the Agency and otherwise wind up the Agency’s affairs, all subject to the review and approval by an oversight committee; and

WHEREAS, Part 1.9 of the CRL (“Part 1.9”) provides that a redevelopment agency may continue in operation if a city or county that includes a redevelopment agency adopts an ordinance agreeing to comply with and participate in the Voluntary Alternative Redevelopment Program established in Part 1.9 (“Program”); and

WHEREAS, the City is aware that the validity, passage, and applicability of the 2011 Redevelopment Legislation are the subject of judicial challenge(s), including the action: *California Redevelopment Association, et al v. Ana Matosantos, et al* (“CRA Action”); and

WHEREAS, on August 11, 2011 the California Supreme Court issued a stay as to Parts 1.85 and 1.9, but not as to Part 1.8, Sections 34161-34167; and

WHEREAS, on August 17, 2011 the Supreme Court modified its stay affirming its order that Part 1.85 is stayed, that Part 1.9 is stayed except Section 34194(b)(2) is not stayed, and that Part 1.8, Sections 34161-34169.5, is not stayed, and therefore Sections 34161-34169.5 of Part 1.8 are effective laws; and

WHEREAS, the dissolution of the Agency would be detrimental to the health, safety, and economic well-being of the residents of the City and cause irreparable harm to the community, because, among other reasons, the redevelopment activities and projects made possible, implemented, and funded by the Agency are highly significant and of enduring benefit to the community and the City, and are a critical component of its future; and

WHEREAS, as a condition of the Agency's continued existence and operation of its community redevelopment agency, the City is required to make certain annual remittances to the County Auditor-Controller ("CAC") pursuant to Chapter 3 of Part 1.9, beginning with FY 2011-12 ("First Remittance"), to be paid in two equal installments on January 15, 2012 and May 15, 2012; and

WHEREAS, the City will have sufficient moneys and revenues to fund an amount equal to the City's payment of the First Remittance and expects to have sufficient moneys and revenues to fund the subsequent fiscal years' remittances required by Part 1.9; and

WHEREAS, the City's needs are such that it can commit to spend the funds received from the Agency pursuant to the Agreement to Transfer Tax Increment (defined below) "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals", including but not limited to payment for the land for and/or installation and/or construction of public improvements, better and more advantageous use of land and a reduction of incompatible land uses in the Project Area, improvement or replacement of obsolete and/or deteriorating commercial and residential structures, improvement of disadvantageous parcelization pattern, improvement of defective or hazardous traffic conditions and infrastructure, improvement of public facilities; and elimination of blight; and

WHEREAS, the City and Agency desire to enter into an agreement pursuant to new CRL Section 34194.2, whereby the Agency will make an initial transfer of a portion of its tax increment to the City in an amount equal the First Remittance, and thereafter to transfer amounts of tax increment equal to each and all subsequent fiscal years' remittances that the City is required to make to the CAC pursuant to the City's participation in the Program ("Agreement to Transfer Tax Increment"); and

WHEREAS, due to and based on the stay issued by the Supreme Court if, as and when this Ordinance is adopted the City intends that it become effective only upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption hereof, or (ii) upon order of a court of competent jurisdiction and/or upon a determination that the California Supreme Court, or other court of competent jurisdiction, has made a final determination that AB X1 27 are valid and enforceable; and

WHEREAS, the City is the lead agency concerning this Ordinance pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq.*) (“CEQA”) and the State CEQA Guidelines; and

WHEREAS, the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15378 (b)(4) because such authorization is not considered a project subject to CEQA review because the City’s First Remittance and each subsequent years’ remittances are government funding mechanisms and fiscal activities that do not involve any commitment to any specific project which may result in a potentially significant environmental impact; and

WHEREAS, while the City currently intends to make the City’s First Remittance and all subsequent years’ remittances under the Program under protest and without prejudice to the City’s right to recover such amounts and interest thereon, to the extent there is a final determination by the Supreme Court (or other court(s)) that AB 1X 26 and AB 1X 27, all or parts thereof, are constitutional or unconstitutional; and

WHEREAS, the City reserves the right, regardless of any community remittance made under the Program pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

WHEREAS, in connection with the stay issued by the California Supreme Court in the CRA Action on the effectiveness of the Program’s payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make the City’s First Remittance and each subsequent years’ remittances for the duration of such stay or other court order; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred; and

WHEREAS, the City has duly considered all other related matters and has determined that the City’s participation in the Program is in the best interests of the City, and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

Section 1. The foregoing Recitals are true and correct and a substantive part of this Ordinance.

Section 2. The City hereby finds that (i) the dissolution of the Agency would be detrimental and cause irreparable harm to the community and to the health, safety, and economic well-being of the citizens of the City, and (ii) the types of activities and projects made possible, implemented, and funded by the Agency are highly significant and of enduring benefit to the community and the City, and are a critical component of its future.

Section 3. The City hereby commits to spend those funds received under the Agreement to Transfer Tax Increment or otherwise pursuant to CRL Section 34194.2 “for the purpose of financing activities within the redevelopment area that are related to accomplishing the

redevelopment agency project goals” or as otherwise determined by the courts or subsequent law and in accordance with the laws of the United States and the State of California, all as applicable.

Section 4. The City hereby ordains that the City shall comply with the Constitution and the laws of the State of California, including Part 1.9, including the determination of remittance amounts, appeal rights in relation thereto, and the making of the remittances referred to in CRL Section 34194(b) and (c) at the times and in the manner described in Part 1.9. This Ordinance is that ordinance referred to in CRL Section 34193 and shall be interpreted and applied in all respects so as to comply with Part 1.9, to the fullest extent permitted by law.

Section 5. On or before November 1, 2011, the City’s Chief Executive Officer is hereby authorized and directed to notify the County Auditor-Controller, the State Controller’s Office, and the State Department of Finance that the City agrees to comply with the provisions of Part 1.9 as provided under Section 34193, such notice to be in accordance with CRL Section 34193.1.

Section 6. The City’s remittances to the County Auditor-Controller made pursuant to Part 1.9 may be paid from any legally available funds of the City not otherwise obligated for other uses in accordance with Section 34194.1. Nothing herein is intended or shall be interpreted to require any payments or impose any financial or other obligation of the City other than in accordance with the Constitution and laws of the State of California, including Part 1.9.

Section 7. The City Council determines that approval of this Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15378 (b)(4), because such approval is not considered a project subject to CEQA review; the commitment to make the remittance payments is a government funding mechanism and fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant environmental impact.

Section 8. The City Council hereby authorizes and directs that a Notice of Exemption shall be filed with the Clerk of the Board of Supervisors of the County of Orange, California, within five (5) working days following the date of adoption of this Ordinance.

Section 9. The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk’s office located at 77 Fair Drive, Costa Mesa California 92628. The custodian for these records is the City Clerk.

Section 10. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 11. This Ordinance shall become effective upon the later to occur of: (i) thirty (30) days after the date of the final passage and adoption hereof, or (ii) upon order of a court of competent jurisdiction and/or a decision or order from the California Supreme Court, or other court of competent jurisdiction, that the provisions of AB X1 27 are valid and enforceable.

Section 12. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

PASSED APPROVED AND ADOPTED this ____th day of September 2011.

CITY OF COSTA MESA,
a California municipal corporation

Mayor

ATTEST:

City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF COSTA MESA)

I, _____, City Clerk of the City of Costa Mesa, do hereby certify that the foregoing Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of Costa Mesa, held on the ___th day of September 2011, and that the same was duly passed and adopted at [an adjourned regular] a regular meeting of said City Council held on the ___th day of September 2011.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

CITY OF COSTA MESA, a California municipal corporation

City Clerk

ATTACHMENT D

Costa Mesa Redevelopment Agency

	FY 11-12 <u>Opt In</u>	FY 11-12 <u>Opt Out</u>
Current Available Fund Balance	1,485,831	1,872,214
Total 80% Revenues	3,358,310	3,358,310
Total 20% Revenues	-	833,250
Subtotal Fund Balance and Revenues	<u>4,844,141</u>	<u>5,230,524</u>
80% Tax Increment		
Expenditures:		
Enforceable Obligations	(2,003,272)	(2,003,272)
Administration	(435,431)	(250,000)
Opt In Payment to State	<u>(1,475,173)</u>	-
Subtotal Expenditures	<u>(3,913,876)</u>	<u>(2,253,272)</u>
Available for Allowable Projects	<u>930,265</u>	
Increase in General Fund Property Tax Revenue		<u>446,588</u>

20% Tax Increment

Current Available Fund Balance	676,383	-
Total Revenues	<u>833,250</u>	-
Subtotal Fund Balance and Revenues	<u>1,509,633</u>	<u>-</u>
Expenditures:		
Administration	(416,342)	-
Rehabilitation Program and Grants	<u>(167,200)</u>	-
Subtotal Expenditures	<u>(583,542)</u>	<u>-</u>
Available for Allowable Projects	<u>926,091</u>	<u>-</u>