

ATTACHMENT 1
Successor Agency Resolution No. 14-____

(attached)

RESOLUTION NO. ____

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY APPROVING AN AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4 BETWEEN THE CITY OF COSTA MESA AND THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY; DIRECTING SUBMITTAL OF SUCH LOAN AGREEMENT TO THE OVERSIGHT BOARD TO CONSIDER THAT THE LOAN AGREEMENT WAS FOR LEGITIMATE REDEVELOPMENT PURPOSES; AND MAKING OTHER FINDINGS IN CONNECTION THEREWITH

WHEREAS, the City of Costa Mesa ("City") is a municipal corporation organized and operating under the laws of the State of California; and

WHEREAS, the Successor Agency is a public body corporate and politic, organized and operating under Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code, and the successor the former Costa Mesa Redevelopment Agency ("former Agency") that was previously a community redevelopment agency organized and existing pursuant to the Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"); and

WHEREAS, Assembly Bill x1 26 ("AB x1 26") added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code and which laws were modified, in part, and determined constitutional by the California Supreme Court in the petition *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 ("*Matosantos Decision*"), which laws and court opinion caused the dissolution of all redevelopment agencies and winding down of the affairs of former redevelopment agencies; thereafter, such laws were amended further by Assembly Bill 1484 ("AB 1484") (together AB x1 26, the *Matosantos Decision*, and AB 1484 are referred to as the "Dissolution Laws"), and all statutory references herein are to the Health and Safety Code of the Dissolution Laws unless otherwise stated; and

WHEREAS, as of February 1, 2012 the former Agency was dissolved pursuant to the Dissolution Laws and as a separate public entity, corporate and politic the Successor Agency administers the enforceable obligations of the former Agency and otherwise unwinds the former Agency's affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board"); and

WHEREAS, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the affected taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Laws; and

WHEREAS, Section 34177(a) permits the Successor Agency to make payments due for enforceable obligations; and

WHEREAS, Section 34177(l) requires the Successor Agency to prepare a Recognized Obligation Payment Schedule ("ROPS") before each six-month fiscal period that lists its Enforceable Obligations; and

WHEREAS, Section 34191.4(b) authorizes the City and Successor Agency to re-establish prior loan agreement(s) between the City and the former Agency as follows:

"(1) Notwithstanding subdivision (d) of Section 34171, upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.

(2) If the oversight board finds that the loan is an enforceable obligation, the accumulated interest on the remaining principal amount of the loan shall be recalculated from origination at the interest rate earned by funds deposited into the Local Agency Investment Fund [LAIF]. The loan shall be repaid to the city, county, or city and county in accordance with a defined schedule over a reasonable term of years at an interest rate not to exceed the interest rate earned by funds deposited into the Local Agency Investment Fund. The annual loan repayments provided for in the recognized obligations payment schedules shall be subject to all of the following limitations:

(A) Loan repayments shall not be made prior to the 2013–14 fiscal year. Beginning in the 2013–14 fiscal year, the maximum repayment amount authorized each fiscal year for repayments made pursuant to this subdivision and paragraph (7) of subdivision (e) of Section 34176 combined shall be equal to one-half of the increase between the amount distributed to the taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012–13 base year. Loan or deferral repayments made pursuant to this subdivision shall be second in priority to amounts to be repaid pursuant to paragraph (7) of subdivision (e) of Section 34176.

(B) Repayments received by the city, county or city and county that formed the redevelopment agency shall first be used to retire any outstanding amounts borrowed and owed to the Low and Moderate Income Housing Fund [LMIHF] of the former redevelopment agency for purposes of the Supplemental Educational Revenue Augmentation Fund [SERAF] and shall be distributed to the Low and Moderate Income Housing Asset Fund established by subdivision (d) of Section 34176.

(C) Twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to the Low and Moderate Income Housing Asset Fund, after all outstanding loans from the Low and Moderate Income Housing Fund for purposes of the Supplemental Educational Revenue Augmentation Fund have been paid."

WHEREAS, the Successor Agency received its Finding of Completion from the State Department of Finance ("DOF") by letter dated May 24, 2013; and

WHEREAS, the former Agency did *not* have any outstanding amounts borrowed or owed to the LMIHF for purposes of the SERAF; and

WHEREAS, pursuant to authority granted to both the City and the former Agency in the Redevelopment Plan for the Downtown Project Area the City made a series of cash advances to the former Agency from April 16, 1973 and advances continued pursuant to such original borrowing to March 16, 1981; and

WHEREAS, each advance was documented by a promissory note, and both the former Agency and City booked and accounted for this series of advances as a single loan with a revolving balance (together, "City/Agency Loan"); and

WHEREAS, the cash advances were to fund redevelopment activities of the start-up of the former Agency (commencing more than 40 years ago) and then for implementation of the original Redevelopment Plan, acquisition of properties, public improvements related to and benefiting the Project Area, and development projects all of which were authorized by the Community Redevelopment Law and were made for legitimate redevelopment purposes; and

WHEREAS, on July 7, 1982, the cumulative total of monies loaned, including accrued interest, was consolidated and evidenced in a single promissory note in the principal amount of \$6,747,050.00 bearing interest with such City/Agency Loan continuing to be booked and accounted for by the former Agency and City as a single loan; and

WHEREAS, from 1982 to 1993, this promissory note was refinanced via another promissory note each year (or less than a year), and the interest rate was changed to 8% to reflect then-current market conditions, and each such consolidated promissory note was payable "upon demand"; and

WHEREAS, the last consolidated promissory note dated July 1, 1993, which note was not refinanced or replaced and the balance remains due and owing from the Successor Agency to the City; and

WHEREAS, from approximately 1978 through 1992, as the community's Redevelopment Plan progressed, the former Agency made sporadic repayments of interest due to the City on the City/Agency Loan when cash was available, and in 1992, the City requested more regular loan repayments from the former Agency according to a payment schedule; and

WHEREAS, in response, the former Agency began making regular loan repayments and then in 2004, the City required that the former Agency change its loan repayment schedule to require regular amortized loan repayments so as to reduce the loan balance to zero after 20 years, and the loan repayment and amortization schedule required the former Agency to make loan repayments once per year in a fixed amount of \$1,299,705; and

WHEREAS, the former Agency began making such scheduled annual loan repayments to the City in 2004, which continued to 2011-2012 fiscal year; and

WHEREAS, in 2012 as an approved line item in ROPS II for the fiscal period July 1 to December 31, 2012, the DOF approved as an enforceable obligation the monies necessary to make the loan payment for fiscal year 2012-2013, however, as a result of the DOF's review of the Successor Agency's Other Funds and Accounts Due Diligence Review submitted pursuant to Section 34179.6, and in April 2013 the DOF disallowed the loan repayments made to the City allocable to the 2010-2011 and 2011-2012 fiscal years and clawed back \$2,492,747; and

WHEREAS, further, the DOF reversed its position from ROPS II and determined that the City/Agency Loan is not an enforceable obligation; and

WHEREAS, these DOF decisions are the subject of a pending lawsuit filed by the City and Successor Agency against the State, the County of Orange, Auditor-Controller ("CAC") and other interested parties filed in Sacramento Superior Court; and

WHEREAS, even though the City and Successor Agency disagree with the DOF's determinations, Section 34191.4 of the Dissolution Laws authorizes the Successor Agency to re-establish the City/Agency Loan after the issuance of a finding of completion; and

WHEREAS, the DOF sent a letter to the Successor Agency dated May 24, 2013 that issued a Finding of Completion and therefore, the City and Successor Agency desire by that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* ("Agreement") to reinstate and re-establish and set forth the terms of the City/Agency Loan pursuant to 34191.4; and

WHEREAS, the Agreement sets forth the terms of the reinstated loan with a remaining principal balance of \$12,596,073.58 with repayments to the City in accordance with a new, defined repayment schedule over a reasonable term of years, which is set forth in Exhibit A to the Agreement with interest accruing at the rate earned by funds deposited into the Local Agency Investment Fund ("LAIF") pursuant to Section 34191.4 and other terms as set forth therein; and

WHEREAS, by the Agreement the Successor Agency agrees to list the Agreement and loan thereunder as an enforceable obligation of the Successor Agency on each successive ROPS prepared by the Successor Agency, approved by the Oversight Board, and reviewed and approved by the DOF until such loan is repaid in full both principal and interest.

NOW, THEREFORE, BE IT RESOLVED BY THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY 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 the Dissolution Laws, the Successor Agency finds and determines that the City/Agency Loan monies were advanced were for legitimate redevelopment

purposes within the meaning of Section 34191.4 and the Agreement reinstates and re-establishes the City/Agency Loan as an enforceable obligation.

SECTION 3. The Successor Agency approves that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4*, which is attached to this Resolution as Attachment 1. and fully incorporated by this reference.

SECTION 4. The Successor Agency approves the re-establishment of the City/Agency Loan by the Agreement and approves inclusion of the Agreement as an enforceable obligation on each subsequent ROPS until the loan is repaid in full, commencing with ROPS 14-15A for the fiscal period July 1, 2014 to December 31, 2014. In addition, the Successor Agency requests that the Oversight Board authorize and approve the Agreement, find the loan was for legitimate redevelopment purposes, find the Agreement is an enforceable obligation, and authorize its inclusion on each ROPS of the Successor Agency until repaid in full.

SECTION 5. This Resolution shall be effective as of the date of adoption by the Successor Agency.

SECTION 6. The Successor Agency shall certify to the adoption of this Resolution and maintain on file as a public record this Resolution.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Successor Agency to the Costa Mesa Redevelopment Agency, held on the 18th day of February 2014 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

James M. Righeimer, Chair

ATTEST:

Brenda Green
Secretary, Successor Agency