

**ATTACHMENT 3**

**AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4**

**(attached)**

## **AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4**

This **AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4** (“Agreement”) is entered into as of February 20, 2014 (“Date of Agreement”) between the **CITY OF COSTA MESA**, a municipal corporation, (“City”) and the **SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY**, a public body corporate and politic pursuant to Parts 1.8 and 1.85 of Division 24 of the California Health & Safety Code (“Successor Agency”).

### **RECITALS**

**A.** The City is a municipal corporation organized and operating under the laws of the State of California.

**B.** 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 Community Development Agency of the City of Costa Mesa (“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”).

**C.** 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”). All statutory references herein are to the Health and Safety Code of the Dissolution Laws unless otherwise stated.

**D.** 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”).

**E.** 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 Act.

**F.** Section 34177(a) permits the Successor Agency to make payments due for enforceable obligations.

**G.** 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.

**H.** 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.”

**I.** The Successor Agency received its Finding of Completion from the State Department of Finance (“DOF”) by letter dated May 24, 2013.

**J.** 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. 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”).

**K.** 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.

L. 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.

M. 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. Each such consolidated promissory note was payable "upon demand."

N. 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.

O. The City and former Agency since inception and continuing through dissolution had, and have, always booked the City/Agency Loan as one, single loan both on the official financial records and as reported each year in the City of Costa Mesa Comprehensive Annual Financial Report (CAFR).

P. 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. In 1992, the City requested more regular loan repayments from the former Agency according to payment schedule. In response, the former Agency began making more regular loan repayments. 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 (\$0) after 20 years. The loan repayment and amortization schedule required the former Agency to make loan repayments once per fiscal year in a fixed amount of \$1,299,705. The former Agency began making these scheduled annual loan repayments to the City in 2004, which continued to 2011-2012 fiscal year.

Q. Then, in 2012 as an approved line item in ROPS II for the fiscal period July 1, 2012 to December 31, 2012 the DOF approved as an enforceable obligation the monies necessary to make the loan payment for fiscal year 2012-2013.

R. 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, in April 2013 the DOF disallowed the loan repayments made to the City allocable to fiscal years 2010-2011 and 2011-2012 and demanded repayment and clawed back \$2,492,747.

S. Further, in 2013 the DOF reversed its position from ROPS II and determined in several decision letters that the City/Agency Loan is not an enforceable obligation. 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.

T. Even though the City and Successor Agency disagree with the DOF's determinations, Section 34191.4 of the Dissolution Laws authorizes the Successor Agency (and City) to re-establish the City/Agency Loan after the issuance of a finding of completion.

U. On May 24, 2013, the Successor Agency received a letter from the DOF that issued the Finding of Completion; therefore, the City and Successor Agency desire by this Agreement to reinstate and re-establish and set forth the terms of the City/Agency Loan pursuant to the Dissolution Law, in particular Section 34191.4.

V. This 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 attached hereto and fully incorporated by this reference, and the interest rate accruing on such principal shall be at the rate earned by funds deposited into the Local Agency Investment Fund ("LAIF") pursuant to Section 34191.4, and establishing other terms as set forth hereinafter.

W. The former Agency did not borrow any monies from the from the low to moderate income housing fund (LMIHF) to make State-mandated ERAF/SERAF payments.

### AGREEMENT

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the City and Successor Agency agree as follows:

**Section 1. Recitals.** The City and Successor Agency represent and warrant to each other that each and all of the respective recitals are true and correct, are a material part hereof, and are hereby incorporated into this Agreement by reference as if fully set forth and such Recitals evidence the intent of the parties regarding the Loan.

**Section 2. Loan Amount.** The City/Agency Loan is reinstated and affirmed; the City has loaned to the Successor Agency the principal sum of \$12,596,073.58 ("Loan Amount").

**Section 3. Interest.** From the Date of Agreement, the Loan Amount shall accrue interest at the LAIF rate of interest, which is the rate earned by the City on other short-term investments of the City, compounded daily, and as computed by the City's Assistant Finance Director.

**Section 4. Payment.** The Successor Agency agrees to repay the principal and all accrued interest bi-annually corresponding to the time that is within ten (10) days of the date that the Successor Agency receives monies allocated from the Redevelopment Property Tax Trust Fund ("RPTTF") for this Agreement and reinstated City/Agency Loan as an enforceable obligation as listed on the applicable ROPS for each six-month fiscal period until repaid in full pursuant to the provisions of the Dissolution Laws.

**Section 5. Penalty.** In the event the Successor Agency fails to make payment in full as required under this Agreement, the Successor Agency shall pay to the City a late charge of one percent (1%) of the overdue amount and an additional one percent (1%) of the overdue amount for each calendar month such amount remains unpaid. Any unpaid portion of the loan will continue to accrue interest at the rate provided in Section 3 until paid in full.

**Section 6. Loan for Legitimate Redevelopment Purpose; Submittal of Agreement to Oversight Board and DOF.** The Successor Agency agrees to submit this Agreement to the Oversight Board for its review, approval and determination that the City/Agency Loan monies advanced by the City to the Successor Agency were loaned for a legitimate redevelopment purpose, that this Agreement is an enforceable obligation and certain other findings. Thereafter, if approved by the Oversight Board, this Agreement shall be submitted to the DOF for its review and approval pursuant to the Dissolution Laws.

**Section 7. Successor Agency to List Agreement as an Enforceable Obligation on Each ROPS until the Loan is Repaid.** The Successor Agency agrees to list this Agreement as an enforceable obligation on each ROPS during each six-month fiscal period until repaid in full pursuant to the provisions of the Dissolution Laws, with the amount of that listed enforceable obligation to be the Loan Amount (or such lesser amount as remains outstanding.) This first ROPS to so list this Agreement will be ROPS 14-15A for the six-month fiscal period of July 1, 2014 to December 31, 2014.

**Section 8. Term.** This Agreement shall be in full force and effect from the Date of Agreement until such time as the entire Loan Amount of the Loan has been repaid in full.

**Section 9. Entire Agreement.** This Agreement constitutes the entire agreement by and between the parties with respect to the subject matter of this Agreement, and may be amended only in writing.

**Section 10. Remedies.** In the event of a default, the parties hereto shall be entitled to pursue any and all remedies available at law or equity under California law for purposes of enforcing the terms and conditions of this Agreement.

[Signature blocks on next page]

[Continued from previous page]

IN WITNESS WHEREOF, said parties have caused this *Agreement to Re-Establish Loan Pursuant to Section 34191.4* to be executed by their officers duly authorized on the Date of Agreement.

CITY OF COSTA MESA, a municipal corporation

\_\_\_\_\_  
James M. Righeimer, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Green, City Clerk

APPROVED AS TO FORM:  
JONES & MAYER

\_\_\_\_\_  
Thomas P. Duarte, City Attorney

SUCCESSOR AGENCY TO THE  
COMMUNITY DEVELOPMENT  
AGENCY, a public body corporate and  
politic

\_\_\_\_\_  
James M. Righeimer, Chair

ATTEST:

\_\_\_\_\_  
Brenda Green, Secretary

APPROVED AS TO FORM:  
STRADLING YOCCA CARLSON & RAUTH

\_\_\_\_\_  
Celeste Stahl Brady, Special Counsel

**EXHIBIT "A"**

**AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4**

(attached)

**Costa Mesa Successor Agency  
Downtown Redevelopment Project - Combined**  
PROJECTION OF INCREMENTAL VALUE AND TAX INCREMENT REVENUE

**City/Housing Loan Repayment Model**



05/28/2013

	Real Property Value	Personal Property Value	Taxable Value	Gross Tax	SB 2557 Charge (6)	Tax	Property Tax	Projected	Property Tax	Projected	Successor Agency Admin. Allowance	Estimated Residual Revenue	Available for Repayments from Residual Revenue
			Over Base	Revenue		Revenues	RPTTF Installment Date	ROPS Amount (1)	RPTTF Installment Date	ROPS Amount (1)			
1 2012-13	428,370,779	17,759,485	419,752,849	4,212,220	(47,199)	4,165,021	June 2012		January 2013			1,939,405	
2 2013-14	436,938,195	17,455,906	428,016,686	4,295,147	(48,128)	4,247,019	June 2013	486,689	January 2014	190,888	(250,000)	4,625,397	
3 2014-15	445,676,958	17,455,906	436,755,449	4,382,841	(49,111)	4,333,730	June 2014	775,867	January 2015	179,825	(250,000)	4,987,415	1,342,996
4 2015-16	454,590,498	17,455,906	445,668,989	4,472,288	(50,113)	4,422,175	June 2015	784,825	January 2016	167,625	(250,000)	5,071,558	1,524,005
5 2016-17	463,682,308	17,455,906	454,760,799	4,563,525	(51,136)	4,512,389	June 2016	797,625	January 2017	151,750	(250,000)	5,157,636	1,566,077
6 2017-18	472,955,954	17,455,906	464,034,445	4,656,586	(52,178)	4,604,407	June 2017	819,750	January 2018		(250,000)	5,118,946	1,609,115
7 2018-19	482,415,073	17,455,906	473,493,564	4,751,508	(53,242)	4,698,266	June 2018		January 2019		(250,000)	4,391,951	1,589,771
8 2019-20	492,063,374	17,455,906	483,141,865	4,848,329	(54,327)	4,794,002	June 2019		January 2020		(250,000)	4,486,560	1,226,273
9 2020-21	501,904,642	17,455,906	492,983,133	4,947,086	(55,433)	4,891,652	June 2020		January 2021		(250,000)	4,583,062	1,273,578
10 2021-22	511,942,735	17,455,906	503,021,226	5,047,818	(56,562)	4,991,256	June 2021		January 2022		(250,000)	4,681,494	1,321,828
11 2022-23	522,181,589	17,455,906	513,260,080	5,150,565	(57,714)	5,092,851	June 2022		January 2023		(250,000)	4,781,894	1,371,044
12 2023-24	532,625,221	17,455,906	523,703,712	5,255,367	(58,888)	5,196,479	June 2023		January 2024		(250,000)	4,884,302	1,421,245
13 2024-25	543,277,725	17,455,906	534,356,216	5,362,265	(60,086)	5,302,179	June 2024		January 2025		(250,000)	4,988,759	1,472,449
14 2025-26	554,143,280	17,455,906	545,221,771	5,471,300	(61,307)	5,409,993	June 2025		January 2026		(250,000)	5,095,305	1,524,677
				67,416,844	(755,424)	66,661,419							

(1) The Successor Agency must insert the projected ROPS for each fiscal year as a negative number.  
Please be aware that the July-December ROPS cycle overlaps the prior fiscal year to some degree.  
Tax revenues and pass through amounts are based on the full fiscal year.