



*COSTA MESA CITY COUNCIL AND
SUCCESSOR AGENCY TO THE
COSTA MESA REDEVELOPMENT
AGENCY*

AGENDA REPORT

Meeting Date

February 18, 2014

ITEM NUMBER: 1

SUBJECT: CITY COUNCIL AND SUCCESSOR AGENCY APPROVAL OF 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 PURSUANT TO THE DISSOLUTION LAWS

DATE: FEBRUARY 18, 2014

FROM: FINANCE DEPARTMENT

PRESENTATION BY: COLLEEN O'DONOGHUE, CPA, ASST. FINANCE DIRECTOR

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RECOMMENDED ACTIONS

1. Adopt City Council Resolution Approving *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 Following the Obtaining of a Finding of Completion Pursuant to the Dissolution Laws; and
2. Adopt Successor Agency Resolution Approving *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 Following the Obtaining of a Finding of Completion Pursuant to the Dissolution Laws; Directing Submittal of such Loan Agreement to the Oversight Board to Consider and Find that the City/Agency Loan Was for Legitimate Redevelopment Purposes; and Making other Findings in Connection Therewith

BACKGROUND AND DISCUSSION

Pursuant to authority granted to both the City of Costa Mesa ("City") and the former Costa Mesa Redevelopment Agency ("former Agency") in the Redevelopment Plan for the Downtown Project Area ("Redevelopment Plan"), the City made a series of cash advances to the former Agency from April 16, 1973 (a date that occurred within two years of creation of the former Agency) 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"). 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 at 12% with such City/Agency Loan continuing to be booked and accounted for by the former Agency and City as a single loan. 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 reflect then-current market conditions. Each such consolidated promissory note was payable "upon demand." The last consolidated promissory note dated July 1, 1993, which note was not refinanced or replaced and the remaining balance remains due and owing from the Successor Agency to the City.

All of 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.

From approximately 1978 through 1992, as the community's Redevelopment Plan progressed, the former Agency made sporadic repayments to the City on the City/Agency Loan when cash was available. In 1992, the City requested that regular loan repayments begin from the former Agency pursuant to a payment schedule; and, in response, the former Agency began making 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 after 20 years. 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. The former Agency began making these scheduled annual loan repayments to the City in 2004, which continued to 2011-2012 fiscal year.

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, in its decision letter of 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. Further, in that decision letter and other decision letters relating to ROPS, the DOF reversed its position from ROPS II and determined 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.

Even though the City and Successor Agency disagree with the DOF's determinations, the Dissolution Laws, in particular Section 34191.4, authorize the Successor Agency to re-establish the City/Agency Loan after the issuance of a Finding of Completion. In a letter dated May 24, 2013, the DOF issued to the Successor Agency a Finding of Completion; therefore, the objective of this agenda item is for the City and Successor Agency to re-establish the City/Agency Loan by entering into a new loan agreement between the City and Successor Agency pursuant to 34191.4 substantially in the form of the Agreement to Re-Establish Loan Pursuant to Section 34191.4, Attachment 1. to this report ("Section 34191.4 Loan Agreement"). The remaining principal balance of the City/Agency Loan is \$12,596,073.58. The Section 34191.4 Agreement sets forth the terms of the reinstated loan with repayments to the City in accordance with a new, defined repayment schedule over a "reasonable" term of years (Exhibit A thereto) with the accumulated interest on the remaining principal amount of the loan calculated at the interest rate earned by funds deposited into the Local Agency Investment Fund ("LAIF") pursuant to the formula and other limitations of Section 34191.4 and the Dissolution Laws. The repayment schedule was prepared by one of the City's financial consultants, HdL Coren.

If the *Agreement to Re-Establish Loan Pursuant to Section 34191.4* is approved by the City and Successor Agency, then the Successor Agency next will present such agreement to the Oversight Board for review and approval at their February 20, 2014 regular meeting. The Oversight Board will review the *Agreement to Re-Establish Loan Pursuant to Section 34191.4* and will consider and make certain findings, including (i) the City/Agency Loan was for "legitimate redevelopment purposes", (ii) the reinstated loan is an enforceable obligation, and (iii) approve and authorize the Successor Agency to enter into the *Agreement to Re-*

Establish Loan Pursuant to Section 34191.4.

Following the Oversight Board's action, if approved, the *Agreement to Re-Establish Loan Pursuant to Section 34191.4* will be submitted to the DOF for review and approval, and will be listed on the Successor Agency's 14-15A subject to the formula and payment limitations in Section 34191.4.

FISCAL AND LEGAL REVIEW

The Finance Department staff has worked with the Successor Agency's special counsel Stradling Yocca Carlson & Rauth in preparation of the Section 34191.4 Agreement including the repayment schedule over a reasonable term of years prepared by HdL Coren pursuant to the Dissolution Laws.

CONCLUSION

Staff recommends adoption of the attached resolutions by the Successor Agency and the City Council.

Thomas R. Hatch
Chief Executive Officer

Colleen O'Donoghue, CPA
Assistant Finance Director

Attachments

1. [Successor Agency Resolution](#)
2. [City Council Resolution](#)
3. [Agreement to Re-Establish Loan Pursuant to Section 34191.4 with Exhibit A \(repayment schedule\)](#)
4. [Department of Finance – Finding of Completion letter dated May 24, 2013](#)