

ATTACHMENT 1

OVERSIGHT BOARD RESOLUTION NO. 2014-04

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY AFFIRMING ITS PRIOR FINDING THAT THE CITY/AGENCY LOAN BETWEEN CITY AND FORMER AGENCY WAS MADE FOR LEGITIMATE REDEVELOPMENT PURPOSES AND APPROVING THAT CERTAIN *AMENDED AND RESTATED AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4* BETWEEN THE CITY AND THE SUCCESSOR AGENCY FOLLOWING THE OBTAINING OF A FINDING OF COMPLETION AND FOLLOWING THE RETURN OF SUCH LOAN BY THE DOF TO THE OVERSIGHT BOARD

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 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"); 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 and subsequent legislation (together AB x1 26, the *Matosantos Decision*, and subsequent legislation 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; 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. 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 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 each such consolidated promissory note was payable "upon demand"; and

WHEREAS, the last consolidated promissory note dated July 1, 1993 in a principal amount of \$12,596,073.58, which note was not refinanced or replaced and the loan remains due and owing from the Successor Agency to the City; and

WHEREAS, in 2004, the City required that the former Agency to make fully amortized loan repayments so as to reduce the loan balance to zero after 20 years, which 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 these scheduled annual loan repayments to the City in 2004, which continued through the 2011-2012 fiscal year; and

WHEREAS, in 2012 as an approved line item in ROPS II for fiscal period July 1 to December 31, 2012 the DOF approved as an enforceable obligation the monies necessary to pay the scheduled loan payment for fiscal year 2012-2013; and

WHEREAS, 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 two loan repayments made to the City allocable to the 2010-2011 and 2011-2012 fiscal years, demanded payment of both repayments and due to monies due to the Successor Agency a net amount of \$2,492,747 was clawed back; and

WHEREAS, further, in its decision letter regarding the Other Funds and Accounts Due Diligence Review 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, on May 24, 2013, the Successor Agency received a letter from the DOF that issued the finding of completion and therefore, the City and Successor Agency on February 18, 2014 approved that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* (“Initial 34191.4 Agreement”) to reinstate and re-establish and set forth the terms of the City/Agency Loan pursuant to 34191.4; and

WHEREAS, on February 18, 2014 the City and Successor Agency by resolution each approved the Initial 34191.4 Agreement, and then on February 20, 2014 the Oversight Board by Resolution No. 14-01 approved such agreement; and

WHEREAS, the Initial 34191.4 Agreement and Oversight Board Resolution 14-01 were submitted to the DOF in order to cause reinstatement of the City/Agency Loan under the authority of Section 34191.4(b) that authorizes the City and Successor Agency to re-establish prior loan agreement(s) between the City and the former Costa Mesa Redevelopment Agency (“former Agency”); and

WHEREAS, the Initial 34191.4 Agreement was listed on the Successor Agency's ROPS 14-15A for the six-month fiscal period of July 1, 2014 to December 31, 2014, which ROPS was approved by the Successor Agency on February 18, 2014 and the Oversight Board on February 27, 2014 and then submitted to the DOF; and

WHEREAS, by letter dated April 4, 2014, the DOF disapproved the reinstated loan as set forth in the Initial 34191.4 Agreement and returned the matter to the Oversight Board for reconsideration; and

WHEREAS, the April 4 DOF letter stated that (i) “[t]he [Oversight Board] has approved an agreement that allows for late fees and penalties in the event the City does not receive the proscribed payment amount as outlined in the repayment schedule. However, [Health & Safety Code] section 34191.4 does not allow the payment of such penalties[]”, and (ii) “[t]he [Successor] Agency has improperly calculated the interest and principal due by using the incorrect Local Agency Investment Fund (LAIF) rate; and

WHEREAS, the letter continued that pursuant to section 34191.4(b)(2), 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 LAIF; therefore, the loans must be recalculated using the LAIF that was applicable at the time of the [Oversight Board] finding” authorizing reinstatement of the loan; and

WHEREAS, by letter dated April 8, 2014 the DOF also denied the Initial 34191.4 Agreement as an enforceable obligation on the same grounds stated in the April 4 DOF letter and declared the item as not eligible for Redevelopment Property Tax Trust Fund (“RPTTF”) funding; and

WHEREAS, while the City and Successor Agency disagree with the DOF's determinations in the April 4 and April 8, 2014 letters, nonetheless the City and Successor Agency desire to return this matter to the Oversight Board as directed by the DOF and to have the loan approved for reinstatement; and

WHEREAS, the Oversight Board desires to approve the attached *Amended and Restated Agreement to Re-Establish Loan Pursuant to Section 34191.4* (“Agreement”), which amends and restates the Initial 34191.4 Agreement, deletes Section 5 of such agreement relating to late fees and penalties, and establishes the remaining principal amount due on the

reinstated loan with accumulated interest recalculated according to the LAIF rate in effect at the time such interest accrued; and

WHEREAS, the Agreement sets forth the terms of the reinstated loan with a remaining principal amount of \$10,237,174.28, which is to be repaid by the Successor Agency to the City in accordance with a new, defined repayment schedule over a reasonable term of years as set forth in Exhibit A to the Agreement, and the interest rate accruing on such remaining principal amount shall be at the rate earned by funds deposited into the Local Agency Investment Fund ("LAIF") under Section 34191.4, and the Agreement establishes other contract terms; and

WHEREAS, the Agreement has recalculated the accumulated interest on the remaining principal from origination using the LAIF rate in effect as interest accrued, resulting in a reduction of the accumulated interest from \$2,462,585 to \$127,358.19 as of June 30, 2013; and

WHEREAS, by the Agreement the City and Successor Agency also agree to list the Agreement and City/Agency 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, commencing with ROPS 14-15A and each ROPS thereafter until such loan is repaid in full both principal and interest; and

WHEREAS, despite the April 4 and April 8 letters from the DOF, the Successor Agency has requested a meet and confer session with the DOF and pursuant to Section 34179(h) DOF is expressly authorized "to agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item..." and the reinstated loan is eligible for an installment payment from the residual monies available in the RPTTF, which is estimated at about \$782,983; and

WHEREAS, the Oversight Board reaffirms that the cash advances made by the City to the former Agency for the City/Agency Loan 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, therefore by this Resolution the Oversight Board desires to re-affirm that the City/Agency Loan was entered into for legitimate redevelopment purposes, that the Agreement, as amended and restated, establishing the City/Agency Loan is an enforceable obligation, and to approve the Agreement; and

WHEREAS, pursuant to Section 34179(h) written notice and information about all actions taken by the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing, and an Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY:

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 Section 34191.4 of the Dissolution Laws, the Oversight Board re-affirms and determines: (i) the City/Agency Loan was entered into for legitimate redevelopment purposes, and (ii) the reinstated loan is an enforceable obligation; and (iii) the Agreement, as amended and restated, is approved.

Section 3. The Oversight Board approves the *Agreement to Re-Establish Loan Pursuant to Section 34191.4*, which is attached hereto and incorporated by this reference.

Section 4. The Oversight Board directs the Successor Agency to submit the Agreement and this Resolution to the DOF.

Section 5. The Assistant Finance Director of the Successor Agency or her authorized designee is directed to post this Resolution on the Successor Agency website pursuant to the Dissolution Laws.

Section 6. Pursuant to Section 34179(h) written notice and information about all actions taken by the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing. An Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

Section 7. The Secretary of the Oversight Board shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this 17th day of April 2014.

James M. Righeimer, Chair
Oversight Board of the Successor Agency to the
Costa Mesa Redevelopment Agency

(SEAL)

ATTEST:

Brenda Green, Secretary
Oversight Board of the Successor Agency
to the Community Development Agency of the City of Costa Mesa

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

I, Brenda Green, Secretary of the Oversight Board of the Successor Agency to the Costa Mesa Redevelopment Agency, hereby certify that the foregoing resolution was duly adopted by the Oversight Board at a regular meeting held on the 17th day of April 2014, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

Brenda Green, Secretary
Oversight Board of the Successor Agency to the
Community Development Agency of the City of
Costa Mesa

(SEAL)