

ATTACHMENT 3

ATTACHMENT 1
to Oversight Board Resolution No. 14-____

Amended and Restated Agreement to Re-Establish Loan
Pursuant to Section 34191.4
with Exhibit A (repayment schedule)

(attached)

**AMENDED AND RESTATED AGREEMENT
TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4**

This **AMENDED AND RESTATED AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4** (“Agreement”) is dated as of April 17, 2014 for purposes of identification (“Date of Agreement”) and entered into 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 and other subsequent legislation (together AB x1 26, the *Matosantos Decision*, and such other 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.

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. On February 18, 2014 the City and Successor Agency by resolution each approved that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4*, and then on February 20, 2014 the Oversight Board by resolution approved such agreement (“Initial 34191.4 Agreement”).

K. The Initial 34191.4 Agreement was listed on the Successor Agency’s Recognized Obligation Payment Schedule (“ROPS”) for the 14-15A six-month fiscal period of July 1, 2014 to December 31, 2014, which ROPS was approved by the Successor Agency and the Oversight Board and submitted to the State of California, Department of Finance (“DOF”) pursuant to the Dissolution Laws.

L. 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. 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, 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. 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

M. applying the LAIF rate in effect when the Oversight Board’s took action to reinstate the loan.

N. Further, 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.

O. 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 desire by this Agreement to amend and restate the Initial 34191.4 Agreement, to delete Section 5 of such agreement relating to late fees and penalties, and to establish the remaining principal amount due on such loan with accumulated interest recalculated according to the LAIF rate in effect at the time such interest accrued.

P. By way of background, 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”).

Q. 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.

R. 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.

S. 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.” The last consolidated promissory note dated July 1, 1993 with a principal amount of \$12,596,073.58, which note was not refinanced or replaced and the remaining principal balance remains due and owing from the Successor Agency to the City.

T. 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). Copies of CAFRs dating back to the 1970s have been made available to the DOF in connection with its review of the Initial 34191.4 Agreement and ROPS 14-15A.

U. 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 of interest only. 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 and such payments continued to the 2011-2012 fiscal year.

V. 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.

W. 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 of both loan payments and with an offset of other monies due to the Successor Agency clawed back a net amount of \$2,492,747.

X. 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 and other interested parties filed in Sacramento Superior Court.

Y. Even though the City and Successor Agency disagree with the DOF's determinations, Section 34191.4 of the Dissolution Laws authorize the establishment of the City/Agency Loan after the issuance of a finding of completion.

Z. This Agreement, as amended and restated, sets forth the terms of the reinstated loan with a remaining principal amount of 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, which is set forth in Exhibit A attached hereto and fully incorporated by this reference. 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 establishing other terms as set forth hereinafter. The accumulated interest on the remaining principal has been recalculated 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.

AA. The former Agency did not borrow any monies 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 reinstated loan.

Section 2. Loan Amount. The City/Agency Loan is reinstated and affirmed, per a 1993 Promissory Note, the City loaned to the Successor Agency the principal sum of \$12,596,073.58, and the remaining principal amount on the reinstated loan is \$10,237,174.28 (“Loan Amount”). Based on the recalculation of the accumulated interest on the remaining principal amount using the LAIF in effect as such interest accrued, the accumulated interest totals \$127,358.19 as of June 30, 2013, and interest continues to accrue at the current LAIF rate.

Section 3. Interest. From the Date of Agreement and until the reinstated loan is repaid in full, the outstanding 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. As of the Date of Agreement the LAIF rate is 0.236%.

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 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. Intentionally Omitted.

Section 6. Loan for Legitimate Redevelopment Purpose; Submittal of Agreement to Oversight Board and DOF. The DOF’s April 4 and April 8, 2014 letters disapproved and denied respectively the Initial 34191.4 Agreement, but did not dispute the Oversight Board’s finding that the City/Agency Loan was for a legitimate redevelopment purpose. Nonetheless, as directed by the DOF, the loan reinstatement is being returned to the Oversight Board for its review, approval, affirmation and determination that (a) the City/Agency Loan monies advanced by the City to the Successor Agency were loaned for a legitimate redevelopment purpose, (b) this Agreement is an enforceable obligation, and (c) certain other findings. Thereafter, if approved by the Oversight Board, the reinstated loan as set forth in this Agreement shall be resubmitted 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.) Section 34179(h) provides that DOF “may also agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item[.]” In this regard, the Successor Agency intends to seek DOF’s review and determination that this Agreement may be added to ROPS 14-15A as an enforceable obligation payable from the RPTTF.

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. General Provisions

9.1 *Time.* Time is of the essence in this Agreement.

9.2 *Notices.* Any notice requirement set forth herein shall be deemed to be satisfied as follows: (i) three (3) days after mailing of the notice first class United States certified mail, postage prepaid, or (ii) the next business day after the notice or communication has been delivered by hand or sent by telecopy or overnight delivery service, addressed to the appropriate party. The designated person for delivery of notices hereunder shall be as follows: (i) to the Successor Agency Executive Director for notices to Successor Agency, and (ii) to the City Manager for notices to City.

9.3 *Attorneys' Fees.* If either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees.

9.4 *Successors and Assigns.* The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

9.5 *Construction of Words.* Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

9.6 *Partial Invalidity.* If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, then the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

9.7 *Severability.* If any term, provision, covenant or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such judicial determination.

9.8 *Governing Law.* This Agreement and instruments given pursuant hereto, if any, shall be construed in accordance with and be governed by the laws of the State of California.

9.9 *Captions and Headings.* Captions and headings in this Agreement are for convenience of reference only, and are not to be considered in construing the Agreement.

9.10 *Counterparts.* This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all Parties had executed the same page.

9.11 *Waivers and Amendments.* All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the each of the parties.

9.12 *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 *Amended and Restated 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
SCHEDULE OF LOAN REPAYMENT
(attached)

**Costa Mesa Successor Agency
Downtown Redevelopment Project - Combined**

	Property Tax RPTTF Installment Date	Projected ROPS Amount ⁽¹⁾ (July - December)	Property Tax RPTTF Installment Date	Projected ROPS Amount ⁽¹⁾ (January - June)	Loan Repmt Principal	Interest ⁽²⁾	Total Loan Pmt	Residual Payment	Remaining Loan Balance Principal
1	2012-13 June 2012		January 2013		10,237,174				10,237,174
2	2013-14 June 2013	486,689	January 2014	308,888			-		10,237,174
3	2014-15 June 2014	886,839	January 2015	279,825			-		10,237,174
4	2015-16 June 2015	884,825	January 2016	267,625	758,823	24,160	782,983	782,983	9,478,351
5	2016-17 June 2016	897,625	January 2017	252,750	760,614	22,369	782,983	782,983	8,717,737
6	2017-18 June 2017	919,750	January 2018	225,000	762,409	20,574	782,983	782,983	7,955,328
7	2018-19 June 2018	225,000	January 2019	225,000	764,208	18,775	782,983	782,983	7,191,119
8	2019-20 June 2019	225,000	January 2020	225,000	766,012	16,971	782,983	782,983	6,425,107
9	2020-21 June 2020	225,000	January 2021		767,820	15,163	782,983	782,983	5,657,288
10	2021-22 June 2021		January 2022		769,632	13,351	782,983	782,983	4,887,656
11	2022-23 June 2022		January 2023		771,448	11,535	782,983	782,983	4,116,208
12	2023-24 June 2023		January 2024		773,269	9,714	782,983	782,983	3,342,939
13	2024-25 June 2024		January 2025		775,094	7,889	782,983	782,983	2,567,845
14	2025-26 June 2025		January 2026		776,923	6,060	782,983	782,983	1,790,922
15	2026-27 June 2026		January 2027		778,756	4,227	782,983	782,983	1,012,166
16	2027-28 June 2027		January 2028		780,594	2,389	782,983	782,983	231,572
17	2028-29 June 2028		January 2029		231,572	547	232,118	343,300	0.00

(1) The amount has included \$125,000 Successor Agency Admin Allowance and DOF Lawsuit Costs Projection.

(2) Calculated based on February 2014 LAIF 0.236% annual interest rate