

# AGENDA

## OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY

**James M. Righeimer**  
Chair

**Jeff Trader**  
Vice-Chair  
**Dan Baker**  
Board Member  
**Andy Dunn**  
Board Member

**Rick Francis**  
Board Member  
**Thomas R. Hatch**  
Board Member  
**Gary Monahan**  
Board Member

**Regular Meeting**  
**Thursday, February 20, 2014**  
**2:00 P.M.**  
**CONFERENCE ROOM 1A - CITY HALL**  
**77 FAIR DRIVE**  
**COSTA MESA, CALIFORNIA**

In compliance with the Americans with Disabilities Act, if special assistance is required to participate in this meeting, please contact the Oversight Board Secretary at (714) 754-5635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35.102.35 ADA Title II).

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### CLERK'S STATEMENT

The Agenda for the February 20, 2014 Oversight Board Meeting was posted at the City Hall and City Council Chambers, on Friday, February 14, 2014.

### PUBLIC COMMENTS (Limited to three (3) minutes per person on items not on the Agenda)

Any person wishing to address the Oversight Board on any matter, whether or not it appears on this agenda, is requested to complete a "Request to Speak" form, available at the door and with the Secretary. The completed form is to be submitted to the Secretary prior to an individual agenda item being heard by the Oversight Board. No action will be taken on any item not on the agenda unless the Oversight Board makes a determination that an emergency exists or that the need to take action on the item rose subsequent to the posting of the agenda.

Public comments shall be limited to a maximum of three (3) minutes per person and an overall time period of fifteen minutes for items not considered on the regular agenda.

## PRESENTATIONS

None.

## NEW BUSINESS

1. 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

### *Recommended Action*

**Adopt Oversight Board Resolution No. 14-01** Finding that the City/Agency Loan between City and Former Agency Was Made for Legitimate Redevelopment Purposes and Authorizing the Successor Agency to Enter into that Certain *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

(Note: Pursuant to Section 34179(h) as amended by Assembly Bill 1484 effective June 27, 2012, 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.

2. UPDATE FROM SUCCESSOR AGENCY STAFF REGARDING DISSOLUTION LAWS MATTERS

### *Recommended Action*

Receive report from Successor Agency staff.

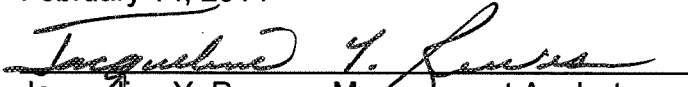
## CHAIR AND BOARD MEMBERS' COMMENTS AND SUGGESTIONS

MOTION TO ADJOURN MEETING TO DATE AND TIME CERTAIN OF FEBRUARY 27, 2014 AT 2:00, CITY HALL, CONFERENCE ROOM 1A. Due to the recent advisements from the DOF, it is necessary that the Oversight Board's review and take action about reinstatement of the loan between the City and its former Agency pursuant to Section 34191.4 at a meeting separate from the Oversight Board's review and action on ROPS 14-15A. Therefore, Successor Agency legal counsel recommends that this regular meeting be adjourned to an adjourned regular meeting of the Oversight Board to be held on Thursday, February 27, 2014 at 2:00 p.m. at the same location, Conference Room 1A, City Hall, and City of Costa Mesa.

Copies of the staff reports or other written documentation related to each item of business described above are on file in the office of the Oversight Board Secretary located on the 2<sup>nd</sup> floor of the Costa Mesa City Hall - 77 Fair Drive, Costa Mesa, CA 92626 and are available for public inspection during regular business office hours. Copies of staff reports and written materials may be purchased for \$.10 per page. In addition, staff reports can be reviewed online at <http://www.ci.costa-mesa.ca.us>

AFFIDAVIT OF POSTING

I, Jacqueline Y. Reeves, on behalf of the Oversight Board of the Successor Agency to the Costa Mesa Redevelopment Agency, hereby certify, under penalty of perjury, that I caused the posting of this Agenda and Notice and Call for a regular meeting of the Oversight Board on February 20, 2014 at 2:00 p.m., at City Hall and City Council Chambers, on Friday, February 14, 2014

  
Jacqueline Y. Reeves, Management Analyst

*Copies of the staff reports or other written documentation related to each item of business described above are on file in the office of the City Clerk/Secretary to the Successor Agency to the Costa Mesa Redevelopment Agency, 77 Fair Drive, Costa Mesa, CA 92626 and are available for public inspection during regular business office hours. Copies of staff reports and written materials may be purchased for \$.10 per page. In addition, staff reports can be reviewed online at <http://www.ci.costa-mesa.ca.us/>*

**REGULAR MEETING OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO  
THE COSTA MESA REDEVELOPMENT AGENCY**

**SEPTEMBER 19, 2013**

*These meeting minutes represent an "action minute" format. A copy of the meetings can be obtained at the Costa Mesa Housing Authority Office located on the 2<sup>nd</sup> floor of the Costa Mesa City Hall.*

The Oversight Board of the Successor Agency to the Costa Mesa Redevelopment Agency met in a Regular Meeting held on Thursday, September 19, 2013 at 2:00 p.m. in Conference Room 1A of the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa.

Vice-Chair Jeff Trader called the meeting to order at 2:07 p.m. Vice-Chair Jeff Trader led in the Pledge of Allegiance.

**I. ROLL CALL**

Members Present: Jeff Trader, Vice-Chair  
Tom Hatch, Board Member  
Rick Francis, Board Member  
Dan Baker, Board Member

Members Absent: Jim Righeimer, Chair  
Andy Dunn, Board Member  
Gary Monahan, Board Member

Officials Present: Gary Armstrong, Economic and Development Services  
Director/Deputy CEO  
Colleen O'Donoghue, Asst. Finance Director  
Hilda Veturis, Management Analyst/Recording Secretary  
Celeste Brady, Successor Agency Special Counsel

**II. CLERK'S STATEMENT**

The Agenda for the September 19, 2013 Oversight Board meeting was posted at the City Council Chambers and at the Headquarters Police Department on Friday, September 16, 2013.

**III. PUBLIC COMMENTS**

Any person wishing to address the Oversight Board on any matter, whether or not it appears on this Agenda, is requested to complete a "Request to Speak" form, available at the door and with the Secretary. The completed form is to be submitted to the Secretary prior to an individual Agenda item being heard by the Oversight Board. No action will be taken on any item not on the Agenda unless the Oversight Board makes a determination that an emergency exists or that the need to take action on the item rose subsequent to the posting of the Agenda. Public comments shall be limited

to a maximum of three (3) minutes per person and an overall time period of 15 minutes for items not considered on the regular Agenda.

#### IV. MINUTES

Approval of the June 20, 2013 Regular Oversight Board Meeting

**MOTION: Approve Minutes of the June 20, 2013 Regular Oversight Board meeting. Moved by Member Tom Hatch, second by Member Dan Baker.**

The motion carried by the following vote:

Ayes: Vice-Chair Jeff Trader, Board Members Andy Dunn, Rick Francis, and Dan Baker

Noes: None

Absent: Chair Jim Righeimer, Board Members Andy Dunn and Gary Monahan

#### V. PRESENTATIONS

None

#### VI. NEW BUSINESS

1. Oversight Board review and approval of the Successor Agency's Administrative Budget for the 13-14B six-month fiscal period of January 1, 2014 to June 30, 2014.

Ms. O'Donoghue introduced the Successor Agency's Administrative Budget which the State Department of Finance requires to be reviewed and submitted semi-annually. This budget is for the period of January 1, 2014 to June 30, 2014 and relates primarily to matters which affect the Successor Agency. The budget attached to the Agenda is not correct, but a correct/loose copy was provided. Ms. O'Donoghue further stated the Successor Agency is guaranteed \$250,000, which is broken-up into two installments to pay for staff support, audit services and consulting matters regarding the Successor Agency. Ms. Brady added that these expenses are essentially the same as what has been reviewed in the last four ROPS, with this now being the 5<sup>th</sup> ROPS. Each ROPS includes an administrative budget which must be reviewed and approved prior to submittal to the State.

Vice-Chair Trader asked if this budget has been difficult to absorb. Ms. O'Donoghue responded that typically the expenses are greater than what is provided. Therefore, the City has had to absorb staffing costs to the general fund. Board Member Hatch stated it might change as the City gets through the majority of the related items. Ms. Brady stated there is still the issue of the outstanding Agency/City loan, which may cost a little more. But hopefully, by this time next year it may be less, as staff with Ms. Brady's assistance has refined the process considerably. She further stated that it is much less labor intensive now than it use to be, however there is still a lot going on which will be addressed in a later agenda item.

Vice-Chair Trader asked if the City was suing the State. Ms. Brady responded that the City will be, as authorization has been given by the City Council and Successor Agency to do proceed on this matter and an update will be provided. Vice-Chair Trader asked if those costs would be charged to the State. Ms. Brady stated that the City is attempting to recover those costs by including it on the next ROPS in a line item. However, it is not known whether the DOF will approve it or not, but we believe it is litigation-related expenses which are an eligible ROPS item. There are quite a few agencies who have attempted to put these costs on their ROPS, as there 150 cases already pending against the State of California related to the Dissolution Act. Mr. Armstrong asked if those agencies are realizing any net benefit after the costs of their legal expenses. Ms. Brady responded, no the Sacramento Superior Court Judges have been more aligned with the State than with the Successor Agencies. Last week Ontario lost its request for a temporary restraining order. It is about \$21 million in property and sales tax that the State is seeking to take from the City of Ontario. Notices have gone out to other Successor Agencies stating that if payment is not made in the amount demanded those funds will be taken from the respective property tax and sales tax. Costa Mesa did make its payment under protest and will be challenging it.

**MOTION: Approve the Successor Agency's proposed Administrative Budget for the period of January 1, 2013 to June 30 and adopt Oversight Board Resolution No. 2013-04. Moved by Member Tom Hatch, second by Member Rick Francis**

The motion carried by the following vote:

Ayes: Vice-Chair Jeff Trader, Board Members Tom Hatch, Rick Francis, and Dan Baker  
Noes: None  
Absent: Chair James M. Righeimer, Board Members Andy Dunn and Gary Monahan

2. Oversight Board review and approval of Recognized Obligation Payment Schedule 13-14B for the six-month fiscal period of January 1, 2014 to June 30, 2014

Ms. O'Donoghue presented the Recognized Obligation Payment Schedule (ROPS)13-14B for the period of January 1, 2014 to June 30, 2014. She referred to the handout, provided to replace the original ROPS that had inadvertently been included. Ms. O'Donoghue showed the Board Members where the Administrative Budget amount of \$125,000 was listed. She also stated that the City/Successor Agency is seeking reimbursement on a few items from the State. Those items include the \$55,000 interest payment on the debt, the \$3,000 for the required annual report, and the \$1,299,000 service payment on the RDA loan. If litigation is needed, the City is seeking monies to fund it and that is why it is listed on the ROPS. Ms. Brady added that there is still disagreement with the DOFs two decisions stating that the City/Agency Loan is invalid, and their determination on ROPS 4 that they would not reimburse the funds pertaining to the loan. It is important to keep this item listed on the ROPS until a resolution from a court has been made on whether this is a valid enforceable obligation. It is expected that DOF will reject this item again, however for litigation purposes; the City will continue to list it on the ROPS to show that it is a valid

and enforceable obligation. Ms. O'Donoghue mentioned line-item No. 52 pertains to assigning litigation costs with the State. Ms. Brady further mentioned the City is seeking the reimbursement/payment of those costs related to the costs estimated and anticipated to be incurred between January 1 and June 30 of next year.

Member Francis asked that when cities are litigating and they get these hearing dates or trials, do they all have to go up to Sacramento. Ms. Brandy responded yes, everything has to be handled through Sacramento Superior Court. Pursuant to the original ABx1 26, the jurisdiction for anything related to the Dissolution Act lies solely in Sacramento Superior Court. There have been a couple of agencies that felt they had issues that were sort of outside the Dissolution Act related to their enforceable obligations and they filed in their county Superior Court and the venue was moved up to Sacramento. A Jones Mayer client tried to file in a federal court on an issue thought to be federally related and they could not get it out of Sacramento Superior Court.

Ms. Brady stated that in discussions with City Attorneys there are some interesting conflict/ethical issues because there are three branches of government; executive, judicial, and legislative, and normally the judicial branch would identify a budget and it would to be approved by the Governor without much review as the judicial branch determines how much money is needed. However, with Jerry Brown, the executive branch is reviewing the judicial branch and yet they have to go through the DOF to get funding to fund the courts. There are some interesting conflict issues which have resulted in there being several agencies that have lawsuits pending against the State bringing this up as the cause of action for conflict of interest.

We do not receive money unless Successor Agency prepares a ROPS, submits it to the Oversight Board, who then sends it to the DOF. The DOF then authorizes what is allowed to be on the ROPS and they tell the County what funds can be released to the City of Costa Mesa. The City would not receive any funds without going through this process. Therefore staff will present a ROPS every six months to the Oversight Board until 2016 when the boards are consolidated into three boards which will be located in Orange County.

In comparison to other Successor Agencies, Costa Mesa's ROPS is quite simple. Economic and Development Services Director/Deputy CEO, Gary Armstrong, stated that he get about 3 calls a week asking if the City has any surplus property as a result of the Dissolution and they are surprised that we do not. Ms. Brady confirmed that the City does not have any surplus property. The one asset in which we own the underlying fee is the housing asset. The Costa Mesa Housing Authority has the underlying fee, but it is on a long-term ground lease for 50 years.

**MOTION: Approve proposed Recognized Obligation Payment Schedule 13-14B for the six-month fiscal period of January 1, 2014 to June 30, 2014 and adopt Oversight Board Resolution No. 2013-05. Moved by Member Rick Francis, second by Member Dan Baker**

The motion carried by the following vote:

Ayes: Vice-Chair Jeff Trader, Board Members Tom Hatch, Rick Francis, and Dan Baker  
Noes: None  
Absent: Chair James M. Righeimer, Board Members Andy Dunn and Gary Monahan

3. Oversight Board review and approval of the Successor Agency's Long Range Property Management Plan (LRPMP)

Ms. Brady presented the Successor Agency's LRPMP mentioning that last summer language was added to AB 1484 regarding the disposition of real property interests of a Successor Agency that are non-housing, by stating that the Agency has no property. And although Costa Mesa's Redevelopment Agency has no property, the DOF requires staff to complete the LRPMP have it reviewed and approved by the Successor Agency and the Oversight Board then submit it to the DOF for their review and approval. The LRPMP must be submitted along with the related checklist. Vice-Chair Jeff Trader asked if there were Vehicle Parking Districts that would be included in this plan. Ms. Brady responded that none of the Vehicle Parking Districts are vested with the Redevelopment Agency. They are vested with the City of Costa Mesa. The Vehicle Parking District Commission apparently was with the former Redevelopment Agency, but the ownership of the properties was the City of Costa Mesa. Those two lots off Newport Boulevard remain City parking lots. There are adjoining business owners who think they have vested rights in those lots through their frequent use. However, there are no prescriptive rights in public property no matter how long you might have used them.

**MOTION: Approve proposed Successor Agency's Long Range Property Management Plan (LRPMP) and adopt Oversight Board Resolution No. 2013-06. Moved by Member Dan Baker, second by Member Rick Francis**

The motion carried by the following vote:

Ayes: Vice-Chair Jeff Trader, Board Members Tom Hatch, Rick Francis, and Dan Baker  
Noes: None  
Absent: Chair James M. Righeimer, Board Members Andy Dunn and Gary Monahan

4. Update from Successor Agency Staff regarding Dissolution Matters

Ms. Brady stated that the Finding of Completion was issued by the State on May 24, 2013. That meant that the Costa Mesa Successor Agency had paid the monies due and demanded by the State for the housing due diligence review and for the non-housing due diligence review, both which were made under protest particularly the non-housing due diligence review and which are related to the claw back of \$2.4 million related to the City/Agency loan. Because those payments were made, within a day the DOF provided a Finding of Completion to Costa Mesa's Successor Agency, without the City applying for it. Staff will return to the Oversight Board, who is vested



with the responsibility to determine that the original City/Agency loan was for redevelopment purposes, which from Ms. Brady's perspective was. Staff is waiting for direction from litigation counsel as to when to agendize this item for the Board. But as we have received the Finding of Completion, if we were to concede that it is not an enforceable obligation, it is not a City/Agency loan, it is within that safe harbor those that were determined not to be valid can be placed on ROPS and we ask request repayment. The repayment is subject to reduced LAIF rates and we do not know how long they go back. These are some of the issues that will be a part of that petition and the challenge to the note. We will be saying that it is an enforceable obligation initially incurred within two years of creation of the redevelopment agency. If the court does not agree with that, the alternative is that we want them to declare that the LAIF rate is going forward not retroactive. If the LAIF rate is retroactive there is very significant reduction in the principal amount due, if any, on the City/Agency loan. Mr. Armstrong asked is there any light at the end of the tunnel beyond the 2016 obligation. Ms. Brandy responded that the Successor Agency will survive until 100 percent of the Agency's debts are repaid including tax allocation bonds, the resolution of the City/Agency loan and the payback of that City/Agency loan. The initial bonds were issued in 1987 and then refinanced in 1994 with the proceeds used to pay down the principal due on the City/Agency loan with a healthy interest rate which was the prevailing rate at that time, which did create a lot of accrued interest. In 2004 the bonds were amortized and the fixed payments that were being made were intended to pay down 100 percent of the loan; principal and interest by 2024.

**Report from Successor Agency Staff regarding Dissolution Matters – Received and Filed**

- VII. **CHAIR AND BOARD MEMBERS' COMMENTS AND SUGGESTIONS - None**
- VIII. **ADJOURNMENT – Vice-Chair Jeff Trader adjourned the meeting at 2:35 p.m.**

**APPROVED AND ADOPTED** this 19<sup>th</sup> day of September 2013.

---

Jeff Trader, Vice Chair  
Oversight Board of the Successor Agency to the Costa  
Mesa Redevelopment Agency

(SEAL)

ATTEST:

---

Jacqueline Y. Reeves, Secretary  
Oversight Board of the Successor Agency  
to the Costa Mesa Redevelopment Agency

# AGENDA REPORT

## Oversight Board of the Successor Agency to the Community Development Agency of the City of Costa Mesa

**MEETING DATE:** February 20, 2014

**SUBJECT/ACTION:** 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

### RECOMMENDED ACTION

**Adopt Oversight Board Resolution No. 14-01** Finding that the City/Agency Loan between the City and the Former Agency Was Entered into for Legitimate Redevelopment Purposes and Authorizing the Successor Agency to Enter into that Certain *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

(Note: Pursuant to Section 34179(h) as amended by Assembly Bill 1484 effective June 27, 2012, 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.

### 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.

From approximately 1978 through 1992, as the community's Redevelopment Plan progressed, the former Agency made sporadic repayments of interest to the City on the City/Agency Loan when cash was available. In 1992, the City required regular loan repayments from the former Agency according to a payment schedule as and if tax increment funds were available; in

Agenda Report  
February 20, 2014

response, the former Agency began making more regular loan repayments in 1993. In 2004, the City required that the former Agency change its loan repayment schedule to require fully 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.

As an approved line item in ROPS II, in 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 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, 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 and subject to review and certain findings being made by the Oversight Board. The Successor Agency received a Finding of Completion from the DOF by letter dated May 24, 2013. Pursuant to Section 34191.4 on February 18, 2014, the City and Successor Agency considered and approved re-establishing the City/Agency Loan pursuant to that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* ("Agreement") between the City and the Successor Agency that set forth the terms and conditions of the subject loan consistent with the statutory requirements (Attachment 1. to this report. A copy of the City Council and Successor Agency resolutions are included as Attachment No. 2 to this agenda report.

The remaining principal balance of the City/Agency Loan is \$12,596,073.58. The 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 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. One of the City's finance consultants, HDL Coren prepared the repayment schedule, Exhibit A to the Agreement.

All of the cash advances attributable to 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; however, Section 34191.4 requires that the Oversight Board make an independent finding thereof. Therefore, one objective of this agenda report and the recommended action includes the Oversight Board making such finding.

Further, on January 31, 2013, the DOF issued its "guidance" that city/agency loans that are intended to be reinstated pursuant to Section 34191.4 be considered and approved by the Oversight Board at a meeting separate from the Oversight Board's consideration and action on ROPS 14-15A. Therefore, this February 20 regular meeting of the Oversight Board includes as an action item the Agreement, and Successor Agency counsel recommends that this regular

Agenda Report  
February 20, 2014

meeting be adjourned to a date/time certain as an adjourned regular meeting on February 27, 2014 at which the Oversight Board will consider and take action on the Administrative Budget and ROPS 14-15A both for the six-month fiscal period of July 1, 2014 to December 31, 2014.

The Successor Agency staff requests that the Oversight Board consider, for the above-described reasons, and determine that the former Agency entered into the City/Agency Loan for legitimate redevelopment purposes, that such reinstated loan is an enforceable obligation, and approve the *Agreement to Re-Establish Loan Pursuant to Section 34191.4* in the form approved by the City Council and the Successor Agency at their February 18, 2014 meeting as set for in the attached Oversight Board Resolution. If the resolution is adopted, then the Successor Agency will submit the new agreement to the DOF for review and approval.

Attachments:

1. Oversight Board Resolution Re-Establishing City/Agency Loan
2. City Council and Successor Agency Resolutions Re-Establishing City/Agency Loan
3. DOF letter of May 24, 2013 issuing Finding of Completion to the Successor Agency
4. *Agreement to Re-Establish Loan Pursuant to Section 34191.4* with Exhibit A (repayment schedule)

**ATTACHMENT 1  
to Oversight Board Resolution No. 14-\_\_\_**

**Oversight Board Resolution Re-Establishing City/Agency Loan**

**(Attached)**

**OVERSIGHT BOARD RESOLUTION NO. 2014-01**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY FINDING THAT THE CITY/AGENCY LOAN BETWEEN CITY AND FORMER AGENCY WAS ENTERED INTO FOR LEGITIMATE REDEVELOPMENT PURPOSE, THAT THE REINSTATED LOAN IS AN ENFORCEABLE OBLIGATION, AND APPROVING THAT CERTAIN 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**

**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 ("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; 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 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 required regular loan repayments from the former Agency according to a set payment schedule, so in response, the former Agency began making more regular loan repayments as tax increment monies were available; then, in 2004, the City required that the former Agency change its loan repayment schedule to require 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 and clawed back \$2,492,747; 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* ("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 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**, 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 find that the City/Agency Loan was entered into for legitimate redevelopment purposes, that the Agreement establishing the City/Agency Loan is an enforceable obligation, and to approve the Agreement and consent to the Successor Agency entering into the Agreement; and

**WHEREAS**, pursuant to Section 34179(h) as amended by Assembly Bill 1484, 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 finds 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 is approved.

**Section 3.** The Oversight Board consents to the Successor Agency entering into 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) as amended by Assembly Bill 1484, 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 20<sup>th</sup> day of February 2014.

---

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

(SEAL)

ATTEST:

---

Jacqueline Y. Reeves, 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, Jacqueline Y. Reeves, 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 20<sup>th</sup> day of February 2014, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

---

Jacqueline Y. Reeves, Secretary  
Oversight Board of the Successor Agency to the  
Community Development Agency of the City of  
Costa Mesa

(SEAL)

**ATTACHMENT 1**  
**to Successor Agency Resolution No. 14-\_\_\_**

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE COSTA MESA  
REDEVELOPMENT AGENCY APPROVING AN AGREEMENT TO RE-ESTABLISH LOAN  
PURSUANT TO SECTION 34191.4**

**(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 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 18<sup>th</sup> day of February 2014 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

James M. Righeimer, Chair

ATTEST:

---

Brenda Green  
Secretary, Successor Agency

**ATTACHMENT 2**

**CITY COUNCIL AND SUCCESSOR AGENCY RESOLUTIONS RE-ESTABLISHING  
CITY/AGENCY LOAN**

**(attached)**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA APPROVING AN AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4 BY AND BETWEEN THE CITY OF COSTA MESA AND THE SUCCESSOR AGENCY TO THE COSTA MESA REDEVELOPMENT AGENCY**

**WHEREAS**, the former Costa Mesa Redevelopment Agency (“former Agency”) was established as a redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* (“CRL”), and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council of the City of Costa Mesa (“City”); and

**WHEREAS**, Assembly Bill x1 26 added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code, which caused the dissolution of all redevelopment agencies and wind down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484 (together, the “Dissolution Laws”); 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 to the Costa Mesa Redevelopment Agency (“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**, the City of Costa Mesa is a California municipal corporation and the sponsoring community of the Successor Agency under the Dissolution Laws; 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**, the City and Successor Agency desire to enter into that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* pursuant to the Dissolution Laws.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COSTA MESA:**

**Section 1.** The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution and such Recitals evidence the intent of the parties regarding the Agreement and loan thereunder.

**Section 2.** Pursuant to the Dissolution Laws, the City approves the *Agreement to Re-Establish Loan Pursuant to Section 34191.4* submitted herewith as Attachment 1., which Agreement is incorporated herein by this reference.

**Section 3.** The City Clerk shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this 18<sup>th</sup> day of February 2014.

---

James M. Righeimer, Mayor  
City of Costa Mesa

(SEAL)

ATTEST:

---

Brenda Green, City Clerk

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

I, Brenda Green, City Clerk of the City of Costa Mesa, hereby certifies that the foregoing resolution was duly adopted by the City Council at a regular meeting held on the 18<sup>th</sup> day of February 2014, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

---

Brenda Green, City Clerk

(SEAL)

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 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 18<sup>th</sup> day of February 2014 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

James M. Righeimer, Chair

ATTEST:

---

Brenda Green  
Secretary, Successor Agency

**ATTACHMENT 3**

**DOF LETTER OF MAY 24, 2013 ISSUING FINDING OF COMPLETION TO THE  
SUCCESSOR AGENCY**

**(attached)**



DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 24, 2013

Ms. Colleen O'Donoghue, Assistant Finance Director  
City of Costa Mesa  
77 Fair Drive, 1<sup>st</sup> Floor  
Costa Mesa, CA 92626

Dear Ms. O'Donoghue:

Subject: Request for a Finding of Completion

The California Department of Finance (Finance) has completed the Finding of Completion for the City of Costa Mesa Successor Agency.

Finance has completed its review of your documentation, which may have included reviewing supporting documentation submitted to substantiate payment or obtaining confirmation from the county auditor-controller. Pursuant to Health and Safety Code (HSC) section 34179.7, we are pleased to inform you that Finance has verified that the Agency has made full payment of the amounts determined under HSC section 34179.6, subdivisions (d) or (e) and HSC section 34183.5.

This letter serves as notification that a Finding of Completion has been granted. The Agency may now do the following:

- Place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC section 34191.4 (b) (1). Loan repayments will be governed by criteria in HSC section 34191.4 (a) (2).
- Utilize proceeds derived from bonds issued prior to January 1, 2011 in a manner consistent with the original bond covenants per HSC section 34191.4 (c).

Additionally, the Agency is required to submit a Long-Range Property Management Plan to Finance for review and approval, per HSC section 34191.5 (b), within six months from the date of this letter.

Please direct inquiries to Andrea Scharffer, Staff Finance Budget Analyst, or Chris Hill, Principal Program Budget Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY  
Local Government Consultant

cc: Mr. Bobby Young, Finance Director, City of Costa Mesa  
Ms. Willa Bouwens-Killeen, Principal Planner, City of Costa Mesa  
Mr. Frank Davies, Property Tax Manager, Orange County  
California State Controller's Office

**ATTACHMENT 4**

**AGREEMENT TO RE-ESTABLISH LOAN PURSUANT TO SECTION 34191.4 WITH  
EXHIBIT A (REPAYMENT SCHEDULE)**

**(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**  
**SCHEDULE OF LOAN REPAYMENT**  
**(attached)**



# AGENDA REPORT

## Oversight Board of the Successor Agency to the Costa Mesa Redevelopment Agency

**MEETING DATE:** February 20, 2014

**SUBJECT/ACTION:** UPDATE FROM SUCCESSOR AGENCY STAFF REGARDING  
DISSOLUTION LAWS MATTERS

---

Successor Agency staff will update the Oversight Board about recent communications with and advisements from the DOF.

In further update to the Oversight Board, Successor Agency staff informs the Oversight Board that a *Complaint for Declaratory Relief and Petition for Writ of Mandate* was filed by the *City of Costa Mesa and the Successor Agency to the Costa Mesa Redevelopment Agency vs. Michael Cohen, et al*, Case No. 34-2013-80001875 ("Petition") on October 29, 2013 against the Director of the Department of Finance, State of California and the Auditor-Controller of the County of Orange and related parties challenging the State's decisions relating to the City/Agency loan and other items denied by the DOF through the ROPS, due diligence reviews, and related actions. The DOF filed its answer to the Petition on January 9, 2014 and the County filed its answer to the Petition on January 3, 2014. Litigation counsel Benjamin Pugh of the Enterprise Counsel Group in Irvine is Costa Mesa's counsel in this matter with oversight by the City Attorney.

Respectfully submitted,

Successor Agency to the  
Costa Mesa Redevelopment Agency