

**RESOLUTION NO. 2014-01**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE MISSION VIEJO COMMUNITY DEVELOPMENT AGENCY RECONSIDERING AND THEN RE-APPROVING AND RE-AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO THAT CERTAIN COOPERATION AGREEMENT AND LOAN AGREEMENT PURSUANT TO HEALTH & SAFETY CODE SECTION 34173(h) BY AND BETWEEN THE CITY OF MISSION VIEJO AND THE SUCCESSOR AGENCY AND MAKING CERTAIN FINDINGS IN ACCORDANCE THEREWITH**

**WHEREAS**, the Community Development Agency of the City of Mission Viejo ("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 Mission Viejo ("City"); and

**WHEREAS**, Assembly Bill x1 26 chaptered and effective on June 27, 2011 added Parts 1.8 and 1.85 to Division 24 of the California Health & 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 chaptered and effective on June 27, 2012 (together, the "Dissolution Laws"); and

**WHEREAS**, as of February 1, 2012 the former Agency was dissolved pursuant to the Dissolution Act and as a separate public entity, corporate and politic the Successor Agency to the Community Development Agency of the City of Mission Viejo ("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 Successor Agency is a public body corporate and politic, organized and operating under the Dissolution Laws and pursuant to Section 34173(g) thereof the Successor Agency is a separate public entity from the City, the public agency that provides for its governance and the two entities shall not merge; and

**WHEREAS**, pursuant to Section 34179 the Successor Agency's Oversight Board has been formed and the initial meeting has occurred on March 29, 2012; 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 Act; and

**WHEREAS**, the City and Successor Agency approved entering into that certain Cooperation and Loan Agreement Pursuant to Health & Safety Code Section 34173(h) on September 16, 2013 ("Agreement")

**WHEREAS**, the Oversight Board authorized the Successor Agency to enter into such Agreement on September 25, 2013; and

**WHEREAS**, the Agreement was submitted to the State of California, Department of Finance ("DOF") for its review and approval; and

**WHEREAS**, by letter from the DOF dated November 10, 2013 to the Successor Agency, the DOF directed that the Agreement be submitted again to the Oversight Board for reconsideration; and

**WHEREAS**, the Successor Agency listed the Agreement as an enforceable obligation No. 41 on the Recognized Obligation Payment Schedule ("ROPS") 13-14B, but the DOF denied item No. 41 as an enforceable obligation due to its prior decision and direction to submit the Agreement to the Oversight Board for reconsideration; and

**WHEREAS**, therefore, the City and Successor Agency have presented the Agreement again to the Oversight Board for reconsideration and approval, and if approved the Agreement must be submitted again to the DOF for its review and approval; and

**WHEREAS**, in connection with the Agreement the following recitals are set forth as additional background for and a material part of the findings and determinations of the Oversight Board regarding its reconsideration and approval of the Agreement; 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**, the Successor Agency previously adopted ROPS for the six-month fiscal periods between January 1, 2012 through December 31, 2013 (ROPS I, II, III, 13-14A, and 13-14B, respectively) each of which was approved by the Oversight Board and by the California Department of Finance ("DOF") subject to certain disapproved items, such as item No. 41 on ROPS 13-14B, i.e., the Agreement; and

**WHEREAS**, Section 34183.5 provides that the Successor Agency was to have made a purported "true-up" payment by July 12, 2012 to the County of Orange Auditor-Controller ("CAC") based on calculations and a demand made by the State Department of Finance ("DOF") as of July 9, 2012 ("True-up Amount"); however, the payment amount demanded was wrong and both the DOF and CAC refused to adjust the calculation that should have been a negative number; and

**WHEREAS**, due to CAC and DOF's refusal to so modify the True-up Amount and payment demand the Successor Agency filed legal action against the DOF and CAC and other interested parties in Sacramento County Superior Court, which was resolved through a stipulated judgment in favor of the Successor Agency evidencing the such True-up Amount was in fact a negative number ("34183.5 Legal Action"); and

**WHEREAS**, the 34183.5 Legal Action took time to resolve through the courts albeit the final judgment was in favor of the Successor Agency and determined no True-up Amount was due from the Successor Agency, but the initial miscalculations and misinformation about the Successor Agency's accounts by the DOF and CAC that resulted in the wrong True-up Amount, caused a kind of domino effect of continued incorrect calculations, and figures, and underpayments of monies from the Redevelopment Property Tax Trust Fund ("RPTTF") and otherwise available to pay for enforceable obligations, administrative costs and project related expenses attributable to the fiscal periods of ROPS I, ROPS II, ROPS III, ROPS 13-14-A and 13-14B; and

**WHEREAS**, due to such miscalculations, underpayments and shortfalls of available money, and in order to keep accounts current and not expose the Successor Agency to potential default on enforceable obligations, the City advanced and loaned monies to the Successor Agency to pay for the DOF-approved enforceable obligations, administrative costs, and project-related expenses in a cumulative total amount of \$352,622.00 (together, "Approved Costs"), and a summary and spreadsheet detailing the Approved Costs is set forth in Exhibit A, "Approved Cost Summary" attached hereto and fully incorporated by this reference; and

**WHEREAS**, certain items on the Approved Cost Summary include debt service and bond-related costs on the 1999 Variable Rate Demand Revenue Bonds (MV Mall Improvement Project) ("Bonds"), and there was no desire or intent by the Successor Agency, the City, or the Mission Viejo Community Development Financing Authority to default on such Bonds, so the City advanced and paid such amount when due on the enforceable obligation for the Successor Agency; and

**WHEREAS**, in addition to this Agreement the Successor Agency will list each of the items in Exhibit A on ROPS 14-15A; and

**WHEREAS**, Section 34173(h) provides that a city may loan funds to a successor agency for enforceable obligations, administrative costs, and/or project-related expenses at the city's discretion, and the loan of funds is then reflected on a successor agency ROPS that is subject to the approval of the successor agency's oversight board, and Sections 34178 and 34180 authorize certain contracts to be entered into between a successor agency and its sponsoring community, which here is the City of Mission Viejo; and

**WHEREAS**, relying on this authority and due to the DOF and CAC's miscalculation of the True up Amount and resulting domino effect of miscalculations and underpayments, the City advanced and loaned monies (together, "Loan") to the Successor Agency to pay for the shortfalls in the Approved Costs in a cumulative amount of \$352,622 ("Loan Amount"); and

**WHEREAS**, the Successor Agency, in preparing ROPS 14-15A scheduled for the fiscal period July 1, 2014 to December 31, 2014 ("ROPS 14-15A"), will list the Agreement, the Loan, and each item listed in Exhibit A as enforceable obligations thereon; and

**WHEREAS**, the City and Successor Agency approved entering into the Agreement on September 16, 2013 to evidence the Loan, and the Successor Agency hereby has presented the Agreement to the Oversight Board for its reconsideration, review and action,

and the Oversight Board has reconsidered the Agreement, desires to approve the Agreement, affirms the Successor Agency's prior execution of the Agreement, and directs the Successor Agency to transmit the Agreement and this Oversight Board resolution to the DOF for its review and approval pursuant to the Dissolution Laws.

**NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO:**

**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 Oversight Board has reconsidered the Agreement and hereby approves the Cooperation and Loan Agreement Pursuant to Section 34173(h) submitted herewith as Attachment 1, which agreement is incorporated herein by this reference, and authorizes the Successor Agency to execute such agreement.

**Section 3.** The Successor Agency shall list the Agreement, the Loan, and each of the items in Exhibit A to the Agreement on ROPS 14-15A as enforceable obligations when such ROPS 14-15 A is prepared for submittal to this Oversight Board and then to the DOF.

**Section 4.** The Oversight Board authorizes transmittal of the Agreement by the Successor Agency to the DOF.

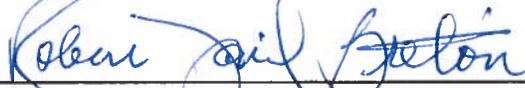
**Section 5.** The Administrative Services Director of the Successor Agency or her authorized designee is directed to post this Resolution on the Successor Agency website pursuant to the Dissolution Act.

[Resolution Continued on next page]

**Section 6.** The Secretary of the Oversight Board shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this 23<sup>rd</sup> day of January 2014.

Robert David Breton



Chair, Oversight Board of the Successor Agency  
to the Community Development Agency of the  
City of Mission Viejo

ATTEST:



Sherry Merrifield, Secretary  
Oversight Board of the Successor Agency  
to the Community Development Agency of the City of Mission Viejo

APPROVED AS TO FORM:  
HARPER & BURNS LLP



John R. Harper, Esq.  
Oversight Board Counsel

STATE OF CALIFORNIA            )  
COUNTY OF ORANGE            ) ss.  
CITY OF MISSION VIEJO        )

I, Sherry Merrifield, Secretary of the Oversight Board of the Successor Agency to the Community Development Agency of the City of Mission Viejo, hereby certifies that the foregoing resolution was duly adopted by the Oversight Board at a regular meeting held on the 23<sup>rd</sup> day of January 2014, and that it was so adopted by the following vote:

- AYES:           Chairperson Breton, Board Member Butterfield, Board Member Dyas, Board Member Hampton, Board Member Peebles, and Vice Chair Probolsky
  
- NOES:           None
  
- ABSENT:        Board Member Reardon

  
\_\_\_\_\_  
Sherry Merrifield, Secretary  
Oversight Board of the Successor Agency to the  
Community Development Agency of the City of  
Mission Viejo

**ATTACHMENT 1**

**COOPERATION AND LOAN AGREEMENT PURSUANT TO SECTION 34173(h)**

(attached)

**COOPERATION AND LOAN AGREEMENT  
PURSUANT TO HEALTH & SAFETY CODE SECTION 34173(h)**

This **COOPERATION AND LOAN AGREEMENT PURSUANT TO HEALTH & SAFETY CODE SECTION 34173(h)** ("Agreement") is entered into and effective as of September 16, 2013 ("Date of Agreement") and is made by and between the **CITY OF MISSION VIEJO**, a California municipal corporation ("City") and the **SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO**, a public body corporate and politic ("Successor Agency"), 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.

**C.** Assembly Bill x1 26 ("AB x1 26") chaptered and effective on June 27, 2011 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") that was chaptered and effective on June 27, 2012 (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 Act 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.** Pursuant to Section 34179 the Successor Agency's Oversight Board has been formed and the initial meeting has occurred on March 29, 2012.

**F.** 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.

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

**H.** 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.

I. The Successor Agency previously adopted ROPS for the six-month fiscal periods between January 1, 2012 through December 31, 2013 (ROPS I, II, III, and 13-14A, respectively) each of which was approved by the Oversight Board and by the California Department of Finance (“DOF”).

J. Section 34183.5 provides that the Successor Agency was to have made a purported “true-up” payment by July 12, 2012 to the County of Orange Auditor-Controller (“CAC”) based on calculations and a demand made by the State Department of Finance (“DOF”) as of July 9, 2012 (“True-up Amount”); however, the payment amount demanded was wrong and both the DOF and CAC refused to adjust the calculation that should have been a negative number.

K. Due to CAC and DOF’s refusal to so modify the True-up Amount and payment demand the Successor Agency filed legal action against the DOF and CAC and other interested parties in Sacramento County Superior Court, which was resolved through a stipulated judgment in favor of the Successor Agency evidencing the such True-up Amount was in fact a negative number (“34183.5 Legal Action”).

L. The 34183.5 Legal Action took time to resolve through the courts albeit the final judgment was in favor of the Successor Agency but the initial miscalculations and misinformation about the Successor Agency’s accounts by the DOF and CAC and wrong True-up Amount, resulted, in a kind of domino effect, in incorrect figures, miscalculations, and underpayments of monies from the Redevelopment Property Tax Trust Fund (“RPTTF”) and otherwise available for enforceable obligations, administrative costs and project-related expenses attributable to the fiscal periods of ROPS I, ROPS II and ROPS III.

M. Due to such miscalculations, underpayments and shortfalls, in order to keep accounts current and not expose the Successor Agency to potential default on enforceable obligations, the City advanced and loaned monies to the Successor Agency to pay for the DOF-approved enforceable obligations, administrative costs, and project-related expenses in a cumulative total amount of **\$352,622.00** (together, “Approved Costs”). A summary and spreadsheet detailing the Approved Costs is set forth in Exhibit A, “Approved Cost Summary” attached hereto and fully incorporated by this reference.

N. Certain items on the Approved Cost Summary include debt service and bond-related costs on the 1999 Variable Rate Demand Revenue Bonds (MV Mall Improvement Project) (“Bonds”), and there was no desire or intent by the Successor Agency, the City, or the Mission Viejo Community Development Financing Authority, a joint exercise of powers authority (together, referred to herein as “Mission Viejo”) to default on such Bonds, so the City advanced and paid such amount due on the enforceable obligation for the Successor Agency.

O. Section 34173(h) provides that a city may loan funds to a successor agency for enforceable obligations, administrative costs, and/or project-related expenses at the city’s discretion. The loan of funds is then reflected on a successor agency ROPS that is subject to the approval of the successor agency's oversight board. Further Sections 34178 and 34180 also authorize certain contracts to be entered into between a successor agency and its sponsoring community, which here is the City of Mission Viejo.

P. Relying on this authority and due to the DOF and CAC's miscalculation of the True-up Amount and resulting domino effect of miscalculations, the City advanced and loaned monies (together, "Loan") to the Successor Agency to pay for the shortfalls in the Approved Costs in a cumulative amount of \$352,622 ("Loan Amount").

Q. The Successor Agency, in preparing ROPS 13-14B scheduled for the fiscal period January 1 to June 30, 2014 ("ROPS 13-14B") has listed the Loan as an enforceable obligation thereon.

R. The City and Successor Agency desire and intend to enter into this Agreement to evidence the Loan and then present this Agreement to the Oversight Board for review and action, and if approved to submit this Agreement and the Oversight Board resolution approving the same to the DOF for its review and approval pursuant to the Dissolution Laws.

### 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 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.* The City and Successor Agency hereby evidence the Loan for monies remitted to or on behalf of the Successor Agency for the Approved Costs in the Loan Amount of \$352,622.00 and the Successor Agency agrees to pay back the City for the full Loan Amount of such monies advanced and loaned by City to Successor Agency subject to review and approval by the Oversight Board and thereafter by DOF pursuant to the Dissolution Laws.

**Section 3.** *Loan Proceeds Expended for Approved Costs.* The Successor Agency represents and warrants that the Loan proceeds were advanced by the City and used to pay for Approved Costs from prior ROPS as herein described.

**Section 4.** *Loan Conditioned on Oversight Board Approval.* The Successor Agency shall present the Loan set forth in this Agreement to the Oversight Board for its review and approval in conformity with Sections 34179(h) and 34180.

**Section 5.** *Source of Repayment; Limited Subordination.*

**5.1** The Loan shall be repaid on par with any enforceable obligations falling within Section 34183(a)(2)(C) (debts not qualifying as tax allocation bonds and certain revenue bonds).

**5.2** Unless legally prohibited or waived by the City, any portion of the unpaid Loan shall also be repaid from other revenues, if any, available to the Successor Agency, such as the proceeds of asset sales and rents. These payments shall augment and supplement the required payments described above in paragraph 5.1.

**Section 6.** *Placement of Loan Obligation on the Successor Agency's ROPS 13-14B and Subsequent ROPS, While Loan Is Outstanding.* Provided that this Agreement is approved by the Oversight Board (and City and Successor Agency) and thereafter approved by the DOF, the Successor Agency shall prepare and approve ROPS 13-14B, and each subsequent ROPS while the Loan is outstanding that includes this Agreement as a listed enforceable obligation. The amount of that listed enforceable obligation shall be the Loan Amount (or such lesser amount as remains outstanding.) The Agreement shall be included on each successive ROPS for the Successor Agency until the City is repaid the full Loan Amount.

**Section 7.** *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 8.** *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 9.** *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.

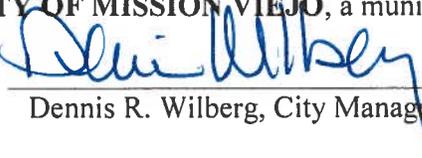
[Signature blocks for Agreement on next page]

[Agreement continued from previous page]

**APPROVED AND EXECUTED** this Cooperation and Loan Agreement Pursuant to Section 34173(h) by signature of the authorized representatives of each of the parties on September 19, 2013.

**CITY:**

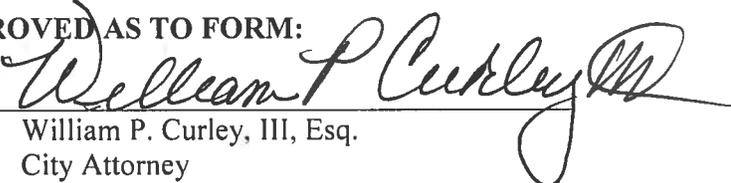
**CITY OF MISSION VIEJO**, a municipal corporation

By:   
Dennis R. Wilberg, City Manager

**ATTEST:**

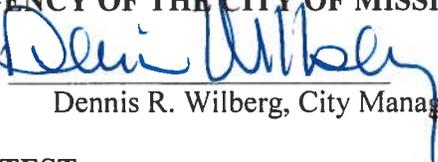
By:   
Karen Hamman, City Clerk

**APPROVED AS TO FORM:**

By:   
William P. Curley, III, Esq.  
City Attorney

**SUCCESSOR AGENCY:**

**SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO**, a public body, corporate and politic

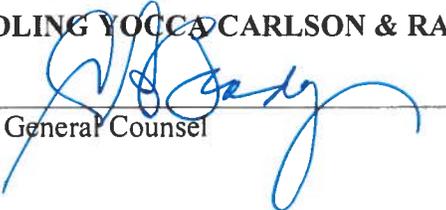
By:   
Dennis R. Wilberg, City Manager

**ATTEST:**

By:   
Karen Hamman, Secretary

**APPROVED AS TO FORM:**

**STRADLING YOCCA CARLSON & RAUTH**

By:   
General Counsel

**EXHIBIT A**

**SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE  
CITY OF MISSION VIEJO**

**APPROVED COSTS SUMMARY**

<b>Project Name/Debt Obligation</b>	<b>Purpose</b>	<b>Actual Payment</b>	<b>RPTTF Available Funding</b>	<b>Amount Loaned by City of Mission Viejo</b>
<b>City/MVCDA Loan Agreement</b>	Litigation cost for DOF's denial of loan repayment	\$28,302	\$0	\$28,302
<b>1999 Variable Rate Demand Revenue Bonds (MV Mall Improvement Project)</b>	Principal payment for bond payment	\$469,000	\$362,500	\$106,500
<b>1999 Variable Rate Demand Revenue Bonds (MV Mall Improvement Project)</b>	Legal costs to enforce bond covenants	\$10,464	\$10,000	\$464
<b>1999 Variable Rate Demand Revenue Bonds (MV Mall Improvement Project)</b>	Consultant services to renew bond Letter of Credit	\$12,887	\$0	\$12,887
<b>1999 Variable Rate Demand Revenue Bonds (MV Mall Improvement Project)</b>	Arbitrage Compliance	\$2,100	\$0	\$2,100
<b>Administration Allowance</b>	ROPS I period administrative allowance	\$250,000	\$47,631	\$202,369
<b>Total</b>				<b>\$352,622</b>