

OVERSIGHT BOARD RESOLUTION NO. 2014-05

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO APPROVING THE SERAF REPAYMENT SCHEDULE PURSUANT TO SECTION 34191.4

WHEREAS, the City of Mission Viejo ("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 Mission Viejo ("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 Act; 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; and

WHEREAS, the City and Successor Agency entered into that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* that included Attachment 1 thereto; and

WHEREAS, such Attachment 1 established a repayment schedule over a reasonable term of years for both (i) the reinstated loan, and (ii) the former Agency's Supplemental Education Revenue Augmentation Fund ("SERAF") borrowings that remain due to the housing successor's Low and Moderate Income Housing Asset Fund ("LMIHAF"); and

WHEREAS, on October 16, 2013, by resolution the Oversight Board approved the *Agreement to Re-Establish Loan Pursuant to Section 34191.4* that incorporated such Attachment 1, which contract also acknowledged that the former Agency borrowed \$1,420,644 from the Low to Moderate Income Housing Fund ("LMIHF") to make State-mandated SERAF payments and stated that such SERAF borrowings would be repaid in senior payment priority to the reinstated loan by listings on each ROPS and allocation of residual monies allowed pursuant to Section 34191.4 until repaid; and

WHEREAS, on December 17, 2013, the DOF issued its decision letter and approved that reinstated loan as set forth in the *Agreement to Re-Establish Loan Pursuant to Section 34191.4*, including Attachment 1 thereto, and determined that both the SERAF borrowings and reinstated loan are enforceable obligations of the Successor Agency and eligible for repayment; and

WHEREAS, on January 31, 2014, the DOF issued an email to all successor agencies (and oversight boards) stating DOF's interpretation of the statutory requirements of Section 34191 as follows:

"HSC section "34191.4(b)(2)(B) requires any outstanding amounts borrowed from or owed to the Low and Moderate Income Housing Fund (LMIHF) for purposes of the SERAF to be retired prior to requesting repayment for RDA/sponsoring entity loans. Pursuant to HSC section 34176 (e) (6) (B), the repayments related to SERAF are subject to the same formula restrictions as RDA/sponsoring entity loans. Specifically, the maximum repayment amount authorized each fiscal year shall be equal to one-half of the increase between "the amount distributed" to the taxing entities in that fiscal year and the amount distributed to taxing entities in the 2012-13 base year.

Further, pursuant to HSC section 34171(d)(1)(G), amounts borrowed from, or payments owing to the LMIHF are enforceable obligations, provided the [Successor] Agency's Oversight Board approves a repayment schedule. Therefore, a separate OB action is required, approving a repayment schedule for amounts due to the Low and Moderate Income Housing Asset Fund. Additionally, this OB action must be emailed individually to the RDA Administration email inbox at: Redevelopment_Administration@dof.ca.gov (Emphasis added); and

WHEREAS, after DOF issued that guidance the County of Orange provided to the Successor Agency staff actual figures for fiscal years 2012-2013 and 2013-2014 with the "residual" amounts distributed from the Redevelopment Property Tax Trust Fund ("RPTTF") to the affected taxing entities; and

WHEREAS, these updated figures have allowed Successor Agency/City staff to prepare an updated, more accurate repayment schedule over a reasonable term of years for the SERAF borrowings, which is attached as Attachment 1 to this resolution, the "SERAF Repayment Schedule"; and

WHEREAS, while the Dissolution Laws do not expressly require that separate actions by the Oversight Board occur as to the repayment schedule for the SERAF borrowings and for the reinstated loan, the Oversight Board has reviewed and desires by this Resolution to approve, separately, the updated SERAF Repayment Schedule; and

WHEREAS, the monies remitted to the Successor Agency under the formula of Section 34191.4 toward repayment of the SERAF borrowings will be deposited into the Mission Viejo Housing Authority's, as housing successor, Low and Moderate Income Housing Asset Fund ("LMIHAF"); and

WHEREAS, the Successor Agency shall list the SERAF borrowings as an enforceable obligation on each successive ROPS prepared by the Successor Agency until such SERAF borrowings are repaid in full; 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 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 Section 34191.4 of the Dissolution Act, the Oversight Board finds (i) that the SERAF borrowings occurred for legitimate redevelopment purposes, and (ii) that the SERAF borrowings are an enforceable obligation.

Section 3. The Oversight Board approves the SERAF Repayment Schedule, Attachment 1 to this Resolution, that sets forth a repayment schedule for the SERAF borrowings over a reasonable term of years.

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

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.

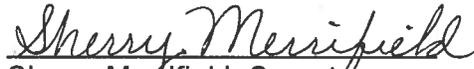
Section 7. The Secretary of the Oversight Board shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this 27th day of February 2014.



Robert D. 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 certify that the foregoing resolution was duly adopted by the Oversight Board at a regular meeting held on the 27th day of February 2014, and that it was so adopted by the following vote:

AYES: Chairperson Breton, Vice-Chairperson Butterfield, Board Member
 Dyas, Board Member Hampton and Board Member Reardon

NOES: None

ABSENT: Board Member Peebles and Board Member Probolsky



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

**ATTACHMENT 1
to Oversight Board Resolution No. 2014-05**

**SERAF REPAYMENT SCHEDULE
Pursuant to Section 34191.4**

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

**SERAF LOAN REPAYMENT SCHEDULE
(Principal Amounts)**

<u>Payment Date</u>	<u>50% of Residual Balance (estimate)</u>	<u>SERAF Repayment</u>
Principal Balance Due	\$1,420,644	
July 1, 2014	\$879,098	\$879,098
July 1, 2015	\$391,960	\$391,960
July 1, 2016	\$632,853	\$149,586