

OVERSIGHT BOARD RESOLUTION NO. 2013-11

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO FINDING THAT THE ORIGINAL LOAN AGREEMENT BETWEEN CITY AND 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

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") 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; 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, 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, 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 reestablish 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 City and the former Agency entered into that certain Loan Agreement dated July 20, 2009 under which the City loaned \$520,000.00 to the former

Agency for funding of redevelopment projects, including Crown Valley Widening and Oso Parkway Widening ("Original Loan Agreement"); and

WHEREAS, the redevelopment purpose for the Original Loan Agreement and loan of \$520,000 was that the former Agency did not have adequate funds to carry out redevelopment purpose projects while making mandatory Low and Moderate Income Housing Fund payments, mandatory pass through payments to affected taxing entities and ongoing mandatory ERAF/SERAF payments to the State of California ; and

WHEREAS, in June 2010 the former Agency made a loan payment to the City in the amount of \$28,000 thereby reducing the principal and accrued interest on such loan; the current amount due under such loan is \$498,303, including principal and accrued interest; and

WHEREAS, during the DOF's review of the Successor Agency's other available funds due diligence review, the DOF disallowed a payment made to the City on March 17, 2011 pursuant to the Original Loan Agreement, demanded and received repayment of such sum, and disallowed the Original Loan Agreement as an enforceable obligation under the Dissolution Laws; and

WHEREAS, the Original Loan Agreement set the interest rate for the loan due to the City at the LAIF rate, so there is no change in the interest rate necessary in the re-entry into and re-establishment of the subject loan under the Agreement approved hereunder; and

WHEREAS, on October 21, 2013 the City and Successor Agency approved entering into that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* ("Agreement") (see Attachment 1) to re-establish the loan established by the Original Loan Agreement on the same terms and conditions set forth therein pursuant to the authority of Section 34191.4 of the Dissolution Laws; and

WHEREAS, by the Agreement also establishes a repayment schedule for the loan over a reasonable term of years, continues interest at the LAIF rate, and the Successor Agency agrees to list the loan as an enforceable obligation on each successive ROPS prepared by the Successor Agency until such loan is repaid in full both principal and interest; and

WHEREAS, the former Agency did borrow \$1,420,644 from the low to moderate income housing fund to make State-mandated ERAF/SERAF payments, which the Successor Agency recognized will be repaid through listings on each ROPS until repaid in payment priority senior to the re-established loan; and

WHEREAS, by this Resolution the Oversight Board desires to find that the Original Loan Agreement was entered into for legitimate redevelopment purposes, that the new loan is an enforceable obligation, and to consent to the Successor Agency entering into the attached 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 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.

Pursuant to Section 34191.4 of the Dissolution Act, the Oversight Board finds (i) that the Original Loan Agreement was entered into for legitimate redevelopment purposes, and (ii) that the loan is an enforceable obligation.

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.

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

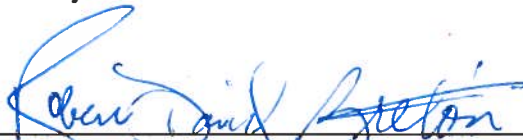
Section 2. The Administrative Services Director of the Successor Agency or her authorized designee is directed to post this Resolution on the Successor Agency website pursuant to the Dissolution Act.

Section 3. 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.

[resolution continues on next page]

Section 4. The Secretary of the Oversight Board shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this 23rd day of October 2013.



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 23rd day of October 2013, and that it was so adopted by the following vote:

AYES: Chair Breton, Board Member Butterfield, Board Member Dyas, Board Member Peebles, Vice Chair Probolsky, Board Member Reardon

NOES: None

ABSENT: Board Member Hampton



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. 2013-11**

Agreement to Re-Establish Loan Pursuant to Section 34191.4

(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 October 21, 2013 (“Date of Agreement”) between the **CITY OF MISSION VIEJO**, a municipal corporation, (“City”) and the **SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO**, 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 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”).

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 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. 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. 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.”

J. The Successor Agency received its Finding of Completion from the State Department of Finance (“DOF”) by letter dated May 24, 2013.

K. The City and the former Agency entered into that certain Loan Agreement dated July 20, 2009 under which the City loaned \$520,000.00 to the former Agency for funding of

redevelopment projects, including Crown Valley Widening and Oso Parkway Widening (“Original Loan Agreement”).

L. The redevelopment purpose for the Original Loan Agreement and loan of \$520,000 was that the former Agency did not have adequate funds to carry out redevelopment purpose projects while making mandatory Low and Moderate Income Housing Fund payments, mandatory pass through payments to affected taxing entities, and ongoing mandatory ERAF/SERAF payments to the State of California.

M. In June 2010 the former Agency made a loan payment to the City in the amount of \$28,000 thereby reducing the principal and accrued interest on such loan; the current amount due under such loan is \$498,303, including principal and accrued interest.

N. During the DOF’s review of the Successor Agency’s other available funds due diligence review, the DOF disallowed a payment made to the City on March 17, 2011 pursuant to the Original Loan Agreement, demanded and received repayment of such sum, and disallowed the Original Loan Agreement as an enforceable obligation under the Dissolution Laws.

O. The Original Loan Agreement set the interest rate for the loan due to the City at the LAIF rate, so there is no change in the interest rate necessary in the re-entry into and re-establishment of the subject loan under the Agreement approved hereunder.

P. By that certain *Agreement to Re-Establish Loan Pursuant to Section 34191.4* (“Agreement”) the City and Successor Agency desire to re-enter into and re-establish the loan established by the Original Loan Agreement on the same terms and conditions set forth therein as are reiterated in this Agreement pursuant to the authority of Section 34191.4 of the Dissolution Laws.

Q. By the Agreement the City and Successor Agency also establish a repayment schedule for the re-established loan over a reasonable term of years, continuing at the LAIF interest rate, and agree 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.

R. The former Agency did borrow \$1,420,644 from the low to moderate income housing fund to make State-mandated ERAF/SERAF payments, which the Successor Agency recognizes will be repaid through listings on each ROPS until repaid in payment priority senior to the re-established loan.

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 has loaned to the Successor Agency the sum of Four Hundred Ninety-eight Thousand Three Hundred Three Dollars (\$498,303.00) (“Loan Amount”).

Section 3. Interest. 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 Treasurer.

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 for this Agreement and 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 2 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 Original Loan Agreement was for a legitimate redevelopment purpose. Thereafter, 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.)

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]

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 MISSION VIEJO, a municipal corporation

Rhonda Reardon, Mayor

ATTEST:

Karen Hamman
City Clerk

APPROVED AS TO FORM:
RICHARDS WATSON GERSHON

William P. Curley, III City Attorney

**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
AGENCY**, a public body corporate and
politic

Rhonda Reardon, Chair

ATTEST:

Karen Hamman
Secretary

APPROVED AS TO FORM:
STRADLING YOCCA CARLSON & RAUTH

Celeste Stahl Brady, Special Counsel

EXHIBIT A
SCHEDULE OF LOAN REPAYMENT
(attached)

Exhibit A
Schedule of Loan Repayment

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SUCCESSOR AGENCY
TO THE
MISSION VIEJO COMMUNITY DEVELOPMENT AGENCY

LOAN REPAYMENT SCHEDULE
(Principal Amounts)

<u>Payment Date</u>	<u>50% of Residual Balance (estimate)</u>	<u>SERAF Repayment</u>	<u>City Loan Repayment</u>
Principal Balance Due		\$1,420,700	\$498,303
July 1, 2014	\$470,000	\$470,000	\$0
July 1, 2015	\$659,000	\$659,000	\$0
July 1, 2016	\$697,000	\$291,700	\$405,300*
July 1, 2017	\$635,500	\$0	\$ 93,003*

*Payment due will include interest accrued on the principal balance of the loan at the stated LAIF rate.