



CITY COUNCIL/SUCCESSOR
AGENCY STAFF REPORT

DATE: November 20, 2013

CONSENT CALENDAR

SUBJECT: LOAN TO SUCCESSOR AGENCY TO COMPLY WITH HEALTH AND SAFETY CODE SECTION 34179.6(f), IN THE AMOUNT OF \$1,500,000

FROM: David H. Ready, City Manager

BY: Department of Finance and Treasury

SUMMARY

This is a loan of \$1,500,000 from the City of Palm Springs to its Successor Agency to enable it to make a required payment to the Riverside County Treasurer pursuant to Health and Safety Code Section 34179.6(f), which requires former redevelopment agencies to remit the cash balances in their former redevelopment agency's Low and Moderate Income Housing Fund to the County for distribution to the other taxing entities. This amount was "held back" from a payment made to the County in the amount of \$7,701,693.13 because the Successor Agency disputed the California Department of Finance's (DOF) disallowance of an item in the amount of \$1,500,000. The Successor Agency still disputes the disallowance but is required to settle the required amount with the State to be eligible to receive a Finding of Completion from the DOF. Since this is a "new loan" to the Successor Agency, the City anticipates being able to place it on a future Recognized Obligations Payment Schedule (ROPS) for repayment by the Successor Agency in FY 2014-2015.

RECOMMENDATION:

CITY COUNCIL RECOMMENDATION:

- 1) The City Council approves the Loan Agreement, issuing a new loan to the Successor Agency in the amount of \$1,500,000 for the purpose of complying with Health and Safety Code Section 34179.6(f); and

SUCCESSOR AGENCY RECOMMENDATION:

- 1) The Successor Agency to the former Community Redevelopment Agency accepts a new loan from the City of Palm Springs in the amount of \$1,500,000; and

ITEM NO. 21

- 2) Adopt Resolution No. _____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ACTING SOLELY IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE CITY OF PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, AND IN ITS CAPACITY AS THE HOUSING SUCCESSOR AGENCY TO THE CITY OF PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, AMENDING THE SUCCESSOR AGENCY AND HOUSING SUCCESSOR AGENCY BUDGETS FOR FISCAL YEAR 2013-14."

BACKGROUND:

Pursuant to Health and Safety Code (HSC) section 34176(a)(2), the City of Palm Springs submitted a Housing Assets Transfer Form (Form) to the California Department of Finance (DOF) on July 31, 2012 for the period February 1, 2012 through July 31, 2012. On August 30, 2012, DOF responded, objecting to one item. DOF determined that the item was a loan issued on August 3, 2011 under an Owner Participation Agreement with an affordable housing developer. DOF further stated that HSC Section 34163 (b) prohibited an agency from entering into agreements, obligations, or contracts with any entity for any purpose after June 27, 2011.

It was the opinion of the City that DOF erred in disallowing the loan "issued" on August 3, 2011, as all of the Redevelopment Agency's approvals related to the Loan, including the Promissory Note, Deed of Trust, Regulatory Agreement, and Owner Participation Agreement itself, were made on June 15, 2011, prior to the effective dissolution date of June 27, 2011. Executing and recording the Note and Deed of Trust for the development project, as part of the escrow, did in fact occur in August to coincide with the close of escrow, but the formal Agency approval of the item was made in June.

The loan, then, was executed to effectuate the Agency's performance under an undeniably allowed enforceable contractual housing obligation, not as a separate approval of an agreement entered into after the effective date. The City provided copies of the full Owner Participation Agreement with the Exhibits, which were deemed approved at the time of the original approval, as well as evidence of the approval on June 15, 2011 and escrow documents that show the escrow on the property was opened prior to the Agency approval on June 15, 2011.

Except for the single disallowed item as noted above, DOF did not object to any of the remaining items listed on the Form.

In September, 2012, the Successor Agency commissioned a required Due Diligence Review (DDR) of its Low and Moderate Income Housing Fund. The DDR determined the amount of unencumbered cash in the Low and Moderate Income Housing fund,

which was then required to be remitted to the Riverside County Treasurer pursuant to Health and Safety Code Section 34179.6(f). In November, 2012 the City wired the amount of \$7,701,693.13 to the County, which was less than the demanded in the November 7, 2012 letter from DOF, and was reduced by the amount of the disputed Housing Asset Transfer Form item of \$1,500,000.

The requested amount was \$9,189,521. The City calculated interest in the amount of \$9,515.50 for the July through September period and \$2,656.63 for October, and then subtracted \$1,500,000 for the item in dispute, resulting in the total listed above.

The Successor Agency is still disputing the disallowance of the item in question and has filed an action in Superior Court in Sacramento, as is prescribed in the Dissolution Act.

As a separate legal entity, the Successor Agency is not merged with the City, the public agency that provides for the Successor Agency's governance (Section 34173(g)). The Successor Agency retains the liabilities of the Dissolved RDA as those do not transfer to the City (Section 34173(g)). The Successor Agency can sue and be sued in its own name (Section 34173(g)) and all litigation involving the Dissolved RDA is automatically transferred to the Successor Agency (Section 34173(g)).

Therefore, City is not the financial "backstop" or guarantor of obligations of separate government entities, regardless of its status as a Successor Agency. The City is a separate legal entity and its willingness to serve as the Successor Agency to the Redevelopment Agency and the Redevelopment Agency's housing program does not impose any burden or obligations on the general fund of the City. The City is simply carrying out its responsibilities to administer the assets of the Redevelopment Agency. In this case, the assets are the OPA and the notes. Thus, the City did propose that this current dispute can be reasonably resolved by the Successor Agency of the Redevelopment Agency housing program transferring the assets in the form of the OPA and the notes to the Successor Agency of the Redevelopment Agency. That remedy has not been accepted yet.

However, AB 1484 also allows a Successor Agency, subject to Oversight Board approval, to enter into an enforceable obligation whereby a Successor Agency borrows money from the City for administrative costs, enforceable obligations, or project-related expenses and to wind down the Dissolved RDA (Sections 34173(h), 34177.3(b), and 34178(a)), which is the basis for this transaction.


At the conclusion of the DDR process, if the Successor Agency remits the cash assets to the County and if the Successor Agency has also made the other required payments, the DOF will issue a finding of completion for the Successor Agency (a "Finding of Completion"). The issuance of the Finding of Completion makes the Successor Agency eligible to retain Dissolved RDA properties, reinstate loans between the Dissolved RDA and the Sponsoring Community, and spend unspent bond proceeds

from bonds issued prior to January 1, 2011 for the purposes for which the bonds were issued (subject to restrictions).

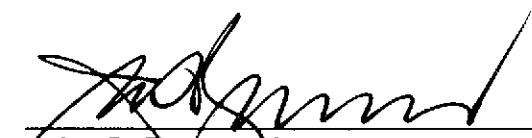
The loan will be placed on a future Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2014 through December 31, 2014 or the following period. The City would be paid from available cash flow of the Redevelopment Property Tax Trust Fund ("RPTTF").

This action authorizes the City Manager or designee to take all actions necessary to implement this action. The action also needs to be approved by the Oversight Board, which is then subject to DOF review.

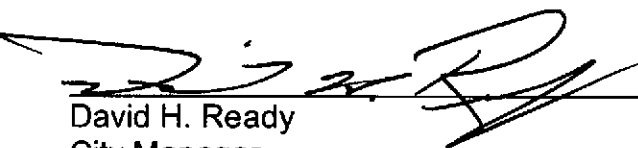
There is also a budget resolution attached amending the 2013-2014 budget of the Successor Agency in the amount of the loan.



Geoffrey S. Kiehl
Director of Finance and Treasurer



John S. Raymond
Director of Community & Economic
Development



David H. Ready
City Manager

Attachments: Successor Agency Resolution
 Loan Agreement

LOAN AGREEMENT

_____, 2013
Palm Springs, California

THIS LOAN AGREEMENT (herein referred to as the "Loan Agreement"), made and entered into this ____ day of _____, 2013 (the "Effective Date") by and between the SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, CALIFORNIA, a public body, corporate and politic ("Successor Agency"), and THE CITY OF PALM SPRINGS, a municipal corporation and Charter City ("City").

RECITALS

WHEREAS, under the Redevelopment Dissolution Act (AB 1X 26), the term "successor agency" was defined to refer to the Dissolved RDA's Sponsoring Community (the city, county or city and county that formed the Dissolved RDA), unless that Sponsoring Community adopted a resolution electing not to serve in that capacity; and

WHEREAS, AB 1484 redefines "successor agency" to mean the successor entity to the Dissolved RDA pursuant to Health and Safety Code Section 34173 and that "a successor agency is a separate legal entity from the public agency that provides for its governance;" and

WHEREAS, as a separate legal entity, the Successor Agency is not merged with the City, the public agency that provides for the Successor Agency's governance (Section 34173(g)); and

WHEREAS, the City is not the financial "backstop" or guarantor of obligations of separate government entities, regardless of its status as a Successor Agency; and

WHEREAS, Health & Safety Code Section 34171(d)(1)(F) recognizes as an "Enforceable Obligation" of the Agency contracts or agreements necessary for the administration or operation of the Successor Agency, including, but not limited to, agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition; and

WHEREAS, Health and Safety Code Section 34173(h) provides that the City may loan or grant funds to the Successor Agency for administrative costs, enforceable obligations or project-related expenses and that receipt and use of these funds shall be reflected on the ROPS or in the administrative budget subject to Oversight Board approval; and

WHEREAS, Health and Safety Code Section 34177.3(b) authorizes the Successor Agency to create "Enforceable Obligations" to conduct the work of winding down the Dissolved RDA; and

WHEREAS, Health and Safety Code Section 34178(a) authorizes the Successor Agency to enter into agreements with the City upon obtaining approval of the Oversight Board; and

WHEREAS, in September, 2012, the Successor Agency commissioned a required Due Diligence Review (DDR) of its Low and Moderate Income Housing Fund, which determined the amount of unencumbered cash in the Low- and Moderate Income Housing fund, which was then required to be remitted to the Riverside County Treasurer pursuant to Health and Safety Code Section 34179.6(f); and

WHEREAS, in November, 2012 the City wired the amount of \$7,701,693.13 to the County, which was less than the amount demanded in the November 7, 2012 letter from the California Department of Finance (DOF), which sought the additional amount of \$1,500,000 that the former redevelopment agency had loaned to a developer for a low-moderate income senior housing project that in the DOF's opinion was voided by the Redevelopment Dissolution Act; and

WHEREAS, the Successor Agency engaged the DOF in a "Meet and Confer" process and is pursuing litigation to make its case as to the validity of the loan to the low-moderate income senior housing developer, but so far has been unsuccessful and the litigation is pending; and

WHEREAS, the DOF will issue a finding of completion to a successor agency that pays the following amounts: (a) The amount determined in the audit of the LMIHF; (b) The amount determined in the audit of all other funds; and (c) The amount (if any) owing to taxing entities from the December 2011 property tax payment; and

WHEREAS, a finding of completion from the DOF allows loan agreements entered into between the redevelopment agency and the city are deemed to be enforceable obligations if the oversight board makes a finding that loan was for legitimate redevelopment purposes. As enforceable obligations, payments are listed on ROPS; and

WHEREAS, in order to establish and declare the terms and conditions upon which the Loan is to be made and secured, the Successor Agency and the City wish to enter into this Loan Agreement; and

WHEREAS, all acts and proceedings required by law necessary to make this Loan Agreement, when executed by the Successor Agency and the City, the valid, binding and legal obligations of the Successor Agency and the City, and to constitute this Loan Agreement a valid and binding Agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Loan Agreement have been in all respects duly authorized.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I.

THE LOAN; ESTABLISHMENT OF FUNDS

Section 1.01 Authorization. The City hereby agrees to loan to the Successor Agency, to enable it to make a required payment to the Riverside County Treasurer pursuant to Health and Safety Code Section 34179.6(f), which requires successor agencies to remit the cash balances in their former redevelopment agency's Low and Moderate Income Housing Fund to the County for distribution to the other taxing entities, the amounts specified in Section 1.02, the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) all under and subject to the terms of this Loan Agreement (the "Loan"). This Loan Agreement constitutes a continuing agreement with the Successor Agency to secure the full and final payment of the Loan, subject to the covenants, agreements, provisions and conditions herein contained.

Section 1.02 Terms of the Loan. The Loan shall be deemed as an Enforceable Obligation of the Successor Agency and shall be paid in one installment placed on a future Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2014 through December 31, 2014 or the following period. The City would be paid from available cash flow of the Redevelopment Property Tax Trust Fund ("RPTTF").

Interest shall be calculated at the Local Area Investment Fund ("LAIF") rate.

Interest on each installment of the Principal of a Loan will be calculated on the basis of a 360-day year of twelve 30-day months. Any installment of principal and interest which is not paid when due will continue to accrue interest from and including the Interest Payment Date with respect to which principal or interest is payable to but not including the date of actual payment.

Any principal balance due may be repaid in full without penalty in the event that the Successor Agency receives sooner repayment its loan to the senior housing developer.

Loan Payments shall be payable by the Successor Agency to the City in immediately available funds which constitute lawful money of the United States of America.

Acceleration of Obligation. Upon the failure to make payment due under this Agreement as and when the same becomes due and payable (whether by extension, acceleration or otherwise), or any breach of any other promise or obligation in this Agreement or in any other instrument now

or hereafter securing the indebtedness evidenced hereby, then, and in any of such events, City may, at its option, declare this Agreement and the entire indebtedness hereby evidenced, including, without limitation, all accrued interest, to be immediately due and payable and collectible then or thereafter as City may elect, regardless of the date of maturity, and notice of the exercise of said option is hereby expressly waived by Successor Agency.

ARTICLE II.

OTHER PROVISIONS

Severability. The unenforceability or invalidity of any provision or provisions of this Agreement as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other provisions or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

Modifications. Neither this Agreement nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Successor Agency and City. No delay or omission on the part of City in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Agreement.

No Waiver by City. No waiver of any breach, default or failure of condition under the terms of this Agreement or the obligation secured thereby shall be implied from any failure of the City to take, or any delay be implied from any failure by the City in taking action with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.

Governing Law. This Agreement has been executed and delivered by Successor Agency in the State of California and is to be governed and construed in accordance with the laws thereof.

Oversight Board Approval and Department of Finance Review. All actions taken by the Successor Agency are subject to review and approval by the Oversight Board of the Successor Agency, constituted under Health and Safety Code Section 34179, and all Oversight Board actions are subject to review and approval of the DOF. No action taken by the Successor Agency is deemed effective until five days after the approval by the Oversight Board, and is still subject to review by the DOF.

IN WITNESS WHEREOF, Successor Agency has executed this Agreement as of the date and year first above written.

"Successor Agency"

SUCCESSOR AGENCY TO THE
COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF PALM
SPRINGS, a public body

By: _____
Executive Director

ATTEST:

Assistant Secretary

APPROVED AS TO FORM:

Successor Agency Counsel

"City"

THE CITY OF PALM SPRINGS, a
California Charter City

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ACTING SOLELY IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE CITY OF PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY AND IN ITS CAPACITY AS THE HOUSING SUCCESSOR AGENCY TO THE CITY OF PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, AMENDING THE SUCCESSOR AGENCY AND HOUSING SUCCESSOR AGENCY BUDGETS FOR FISCAL YEAR 2013-14.

WHEREAS, Resolution No. 23342 approving the Budget for the Fiscal Year 2013-2014 was adopted on May 15, 2013; and

WHEREAS the City Manager has recommended, and the City Council acting solely in its capacity as the Successor Agency to the Palm Springs Community Redevelopment Agency desires to approve, certain amendments to said budget.

NOW THEREFORE THE CITY COUNCIL DETERMINES, RESOLVES AND APPROVES AS FOLLOWS: that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and Resolution No. 23342, adopting the Budget for Fiscal Year 2013-14 is hereby amended as follows:

SECTION 1. ADDITIONS

Fund	Activity	Account	Amount
879 Successor Agency Low/Mod Housing	8536 Successor Agency Low/Mod Housing	26279 Note Payable to General Fund	\$1,500,000

Purpose: Loan from the General Fund to the Successor Agency to enable it to make a required payment to the Riverside County Treasurer pursuant to Health and Safety Code Section 34179.6(f), which requires former redevelopment agencies to remit the cash balances in their former redevelopment agency's Low and Moderate Income Housing Fund to the County for distribution to the other taxing entities.

SECTION 2. SOURCES

Fund	Activity	Account	Amount
001 General Fund	001-12416	Successor Agency Note Receivable	\$1,500,000

SECTION 3. In retaining the responsibilities of the Palm Springs Community Redevelopment Agency as provided in California Health and Safety Code Sections

34173 and 34176, the City Council expressly determines, recognizes, reaffirms and ratifies the statutory limitation on the City and the City Council's liability in retaining the responsibilities of the Palm Springs Community Redevelopment Agency pursuant to AB 1X26. Nothing in this Resolution shall be construed as a commitment, obligation or debt of the City or any resources, funds or assets of the City to fund the City's service as the successor agency to the Palm Springs Community Redevelopment Agency as provided in the Resolution.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL, ACTING SOLELY IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, THIS 20TH DAY OF NOVEMBER, 2013.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the Successor Agency of the City of Palm Springs on _____, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California