



City Council Staff Report

Date: May 7, 2014

CONSENT

Subject: AGREEMENT FOR ASSIGNMENT OF GRANT FROM THE CITY TO THE PALM SPRINGS HISTORICAL SOCIETY FOR FUNDING OPERATING EXPENSES AT VILLAGE GREEN AND MCCALLUM ADOBE

From: Douglas Holland, City Attorney

SUMMARY

This Agreement for Assignment of Grant transfers the principal and unexpended earned interest of a grant from the McCallum Desert Foundation from the City to the Palm Springs Historical Society to fund the Society's operating expenses for Village Green and the McCallum Adobe.

RECOMMENDATION:

1. Approve the Agreement for Assignment of Grant from the City to the Palm Springs Historical Society.
2. Authorize the City Manager to execute the Agreement on behalf of the City.

STAFF ANALYSIS:

In 1986 the City received a grant from the McCallum Desert Foundation in the amount of \$250,000.00 "as a permanent endowment for the benefit of the Palm Springs Historical Society" subject to various conditions as described in Resolution No. 15894 of the City Council of City. The principle, any unexpended earned interest on the principle, and the terms and conditions of the Grant are described in the Agreement for Assignment of Grant attached to this Staff Report and the Exhibit to the Agreement.

Subsequent to the receipt of the Grant, the PSHS organized itself as a California non-profit corporation with tax-exempt status under federal law. PSHS has requested that the Grant be transferred to PSHS.

City staff has determined that the amount of the Grant and unexpended earned interest is \$251,517.00. The Agreement specifically provides that Society will comply with the following conditions, consistent with the provisions of the original grant as accepted by the City Council in 1986:

ITEM NO. 29

1. PSHS will apply the "prudent investor standard" in the management and investment of the grant funds with safety of the principal as the foremost objective considered when investing the funds. (The City accepted the grant subject to compliance with specific investment requirements under the Government Code which are applicable solely to government agencies. This revised provision recognizes the funds should be prudently and conservatively invested in a manner intended to preserve the Grant.)

2. All interest earned on the grant funds will be used solely for purposes of funding PSHS operating expenses for the Village Green and McCallum Adobe.

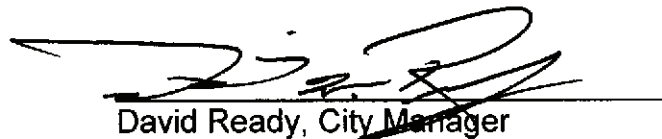
3. The principal amount of \$250,000.00 can only be used for historical preservation of the McCallum Adobe, currently located at the Village Green. If the McCallum Adobe is damaged beyond repair, the funds shall be used for the preservation of other historic structures and sites in the City of Palm Springs.

FISCAL ANALYSIS

The grant funds will be transferred to the Palm Springs Historical Society upon its acceptance of the assignment of the City's obligations and the City no longer have any obligations regarding the administration of the grant funds. It is anticipated that approval of the Agreement for Assignment of the Grant will not have a financial effect on the City.



Douglas Holland, City Attorney



David Ready, City Manager

Attachment: Agreement for assignment of Grant

AGREEMENT FOR ASSIGNMENT OF GRANT

This AGREEMENT FOR THE ASSIGNMENT OF A GRANT ("Agreement") is entered into as of May 8, 2014 by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and the Palm Springs Historical Society, a California non-profit corporation ("PSHS"), and administered by the City Manager of the City or the City Manager's designee ("Administrator").

RECITALS

A. In 1986 the City received a grant from the McCallum Desert Foundation in the amount of \$250,000.00 "as a permanent endowment for the benefit of the Palm Springs Historical Society" subject to various conditions as described in Resolution No. 15894 of the City Council of City. A copy of Resolution No. 15894 is attached to this Agreement. The principle, any unexpended earned interest on the principle, and the terms and conditions of Resolution No. 15894 are described in this Agreement as the "Grant."

B. Subsequent to the receipt of the Grant, the PSHS organized itself as a California non-profit corporation with tax-exempt status under federal law. PSHS has requested that the Grant be transferred to PSHS.

C. The City has determined that the amount of the Grant and unexpended earned interest is \$251,517.00 and is willing to transfer this amount to PSHS subject to all conditions and terms of the Grant and the provisions of this Agreement.

D. The Parties recognize the Grant to the City was accepted by the City subject to the City complying with specific investment requirements of the Government Code applicable only to government agencies. The Parties further recognize the grant funds should be prudently and conservatively invested in a manner intended to preserve the Grant.

NOW, based on the Recitals, which are a substantive part of this Agreement, and the provisions of this Agreement, the City and PSHS agree as follows:

1. ASSIGNMENT OF GRANT. The City assigns all of its rights, title, and interest in the Grant to PSHS and PSHS accepts the assignment of the Grant subject to each and every condition and term of the Grant and this Agreement. The express conditions of the Grant are:

1.1 PSHS shall maintain the grant funds as a permanent endowment and apply the "prudent investor standard" in the management and investment of the grant funds. Safety of the principal will be the foremost objective considered when investing the grant funds.

1.2 All interest earned on the grant funds will be used solely for purposes of funding PSHS operating expenses for the Village Green and McCallum Adobe.

1.3 The principal amount of \$250,000.00 can only be used for historical preservation of the McCallum Adobe, currently located at the Village Green. If the McCallum Adobe is damaged beyond repair, the funds shall be used for the preservation of other historic structures and sites in the City of Palm Springs.

2. STATUS OF PSHS. PSHS is and shall at all times be deemed to be an independent entity and shall be wholly responsible for the manner in which it performs the obligations and conditions required of it by the terms of this Agreement. Nothing in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between City and PSHS or any of PSHS's agents or employees. PSHS knowingly, voluntarily, and expressly assumes exclusively the responsibility for the acts of its employees or agents as they relate directly or indirectly to the obligations of PSHS under this Agreement and its officers, agents, employees, and contractors shall not, in any respect whatsoever, be considered in any manner to be City employees. City shall neither have nor exercise any control or direction over the methods by which PSHS shall perform its obligations under this Agreement. City shall not be responsible or liable for the acts or failure to act, whether intentional or negligent, of any employee, agent, or volunteer of PSHS.

3. INDEMNIFICATION. PSHS agrees to and shall indemnify, defend, hold harmless City and its officers, agents, and employees from and against all liability, claims, losses and demands, damages to property or injuries to or death of any person or persons, including property of officers, employees, or agents of City, including defense costs (together, "Claims"), or claims of any nature regarding the use of the Grant, whether resulting from court action or otherwise, resulting from, related in any manner to, or arising out of the intentional, malicious, negligent acts, inactions, errors or omissions of PSHS, its officers, employees, agents, and/or its contractors in the performance of this Agreement.

4. GENERAL TERMS AND CONDITIONS.

4.1 Compliance with Laws. PSHS will perform its obligations under this Agreement in accordance with all applicable federal and state laws, statutes and regulations and local ordinances and resolutions.

4.2 Severability. If a court of competent jurisdiction declares any provision of this Agreement or its application to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement or its application shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

4.3 California Law. This Agreement shall be construed and interpreted both as to validity and to performance in accordance with the laws of the State of California. Legal actions concerning any default, dispute, interpretation, declaration of rights, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in the county, and PSHS covenants and agrees to submit to the personal jurisdiction of the court in the event of any action.

4.4 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair any right or remedy or be construed as a waiver. One party's consent or approval of any act by the other party requiring the other party's consent or approval shall not be deemed to waive or render unnecessary the party's consent to or approval of any subsequent act of the party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

4.5 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of the rights or remedies shall not preclude the exercise by

it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

4.6 Covenant against Discrimination. In the performance of this Agreement, PSHS shall not engage in, nor permit any employee or agent to engage in discrimination in employment of persons or provision of Services or assistance, nor exclude any person from participation in, nor deny any person the benefits of, nor or subject any person to discrimination under any program or activity funded in whole or in part with Grant funds on the grounds of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender or sexual orientation, except as permitted by applicable provisions of Federal and State law.

4.7 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

4.8 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the non-prevailing party.

5. REPRESENTATIONS AND WARRANTIES OF PSHS. PSHS makes the following representations and warranties to City. These representations and warranties are ongoing and PSHS shall advise Administrator in writing if there is any change pertaining to any matters set forth or referenced in the following Subparagraphs 5.1 through 5.3, inclusive.

5.1 No Conflict. To the best of PSHS's knowledge, PSHS's negotiation, consideration and action on this Agreement and PSHS's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which PSHS is a party or by which it is bound.

5.2 No Bankruptcy. PSHS is not the subject of any current or threatened bankruptcy.

5.3 No Pending Legal Proceedings. PSHS is not the subject of a current or threatened litigation that would or may materially affect PSHS's performance under this Agreement.

6. AUDIT OF PERFORMANCE. Administrator shall have access to any books, documents, papers, and records of PSHS which Administrator determines to be pertinent to this Agreement for the purpose of reviewing PSHS performance under this Agreement.

7. NOTICES. Unless otherwise specified, all formal notices, invoices, claims, correspondence, or reports shall be addressed as follows:

City: City of Palm Springs
3200 E. Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, CA 92263
ATTN: City Manager

PSHS: Palm Springs Historical Society
P.O. Box 1498
Palm Springs, CA 92263
ATTN: President

All notices shall be deemed effective when in writing and personally delivered or deposited in the United States mail, express, priority, or first class, postage prepaid and addressed as above. Any notices addressed in any other fashion shall be deemed not given. Administrator and PSHS may mutually agree in writing to change the addresses to which notices are sent.

8. TERMINATION.

8.1 Termination of Agreement. The provisions of this Agreement shall terminate upon the expenditure of all principle and accrued interest of the Grant.

8.2 Termination by Both Parties. Notwithstanding the provisions of Section 8.1 above, this Agreement can terminate upon agreement of both City and PSHS.

8.3 Termination for Cause Due to Default of PSHS. City reserves the express right to terminate this Agreement for cause due to the default by PSHS in its performance obligations under this Agreement. City may in any notice of default advise PSHS it also intends to terminate the Agreement for cause. The notice of default from City shall advise PSHS if City intends to elect to terminate the Agreement and in this event PSHS shall immediately cease performance and provision of Services as of the date the notice of default is received or deemed received, whichever is earlier.

9. DEFAULT. Failure by PSHS to perform and/or comply with any provision, covenant, or condition of this Agreement shall be a default of this Agreement. In the event of default Administrator, in the Administrator's sole discretion, may avail on behalf of City any remedies available at law, in equity, or otherwise specified in this Agreement (including immediate termination for cause as set forth in Subsection 8.3 above) and may elect any of the following:

9.1 Afford PSHS a time period of fifteen (15) days from the date notice is mailed to cure the default, or to commence to cure the breach and diligently pursue to completion the cure of the breach within thirty (30) days of date notice is mailed; and/or

9.2 Request that PSHS immediately remit to City any remaining Grant funds, including principal and accrued interest.

IN WITNESS, City and PSHS have executed this Agreement in the County of Riverside, State of California.

City of Palm Springs

Dated: _____ By: _____
David Ready, City Manager

Palm Springs Historical Society

Dated: _____ By: _____
Name, Title: _____

RESOLUTION NO. 15894

OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS,
CALIFORNIA, ACCEPTING A \$250,000 GRANT FROM THE
McCALLUM DESERT FOUNDATION TO BE HELD AS A
PERMANENT ENDOWMENT FOR THE PALM SPRINGS
HISTORICAL SOCIETY.

WHEREAS it is the intent of the Palm Springs City Council
to preserve the McCallum Adobe, currently located at the Village
Green, as an historical structure; and

WHEREAS, to help accomplish this goal the McCallum Desert
Foundation has agreed to make a \$250,000 grant to the City
of Palm Springs as a permanent endowment:

NOW THEREFORE BE IT RESOLVED by the City Council of the City
of Palm Springs, that a \$250,000 grant from the McCallum Desert
Foundation is hereby accepted as a permanent endowment for
the benefit of the Palm Springs Historical Society, subject
to the following:

Section 1. That the \$250,000 grant is to be placed in a trust
fund and invested by the City Treasurer in an
investment vehicle authorized by Section 53600
of the Government Code. Safety of the principal
will be the major factor considered when investing,
as it is with City funds which are also covered
by Section 53600.

Section 2. That interest earned on the \$250,000 endowment
will be used only for purposes of funding the
Palm Springs Historical Society's operating expenses
for the Village Green and McCallum Adobe; and
annually, each June, upon written request of the
City Librarian to the City Treasurer, an amount
necessary to cover such operating expenses, but
not exceeding interest earnings, will be transferred
to the Library Fund from the trust fund.

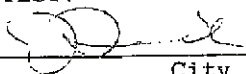
Section 3. That the principal can only be spent for historical
preservation of the McCallum Adobe, currently
located at the Village Green. If the McCallum
Adobe is damaged beyond repair, the funds shall
be used for preservation of other historic
structures and sites in the City of Palm Springs
through the Palm Springs Historical Society or
its successor in interest.

ADOPTED this 4th DAY OF June, 1986.

AYES: Councilmembers Apfelbaum, Birer, Foster and Smith
NOES: None
ABSENT: Mayor Bogert

ATTEST: CITY OF PALM SPRINGS, CALIFORNIA

By


City Clerk


City Manager

REVIEWED & APPROVED 