



CITY COUNCIL STAFF REPORT

DATE: SEPTEMBER 17, 2014 CONSENT AGENDA

SUBJECT: CONSENT TO WAIVER OF CONFLICT OF INTEREST BY SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS TO RETAIN BRENT HAWKINS, ESQ.,

FROM: Douglas Holland, City Attorney

SUMMARY

For several years, the City has used the service of Brent Hawkins to assist on certain redevelopment matters and most recently to assist in the review of various state actions involving the wind-up of redevelopment activities. The City as the successor agency to the Redevelopment Agency is currently considering its legal options regarding Department of Finance actions affecting the Successor Agency's Recognized Obligation Payment Schedule ("ROPS). Mr. Hawkins current firm represents the County of Riverside, a "taxing agency" under the law and could be a potential party in any proceeding the Successor Agency may initiate. The City Attorney is recommending the City Council approve a waiver of conflict of interest.

RECOMMENDATION:

1. Approve the waiver of conflict of interest and authorize the City Attorney to execute the waiver for Brent Hawkins and his current firm, Best, Best and Kreiger LLP, to represent the Successor Agency to the Former Redevelopment Agency of the City of Palm Springs in matters relating to the State of California Department of Finance ("DOF") regarding certain items listed on the Successor Agency's ROPS; and
2. Authorize the City Attorney to execute the waiver on behalf of the Successor Agency.

Background

The City has retained Brent Hawkins to assist the City and its Redevelopment Agency on various redevelopment issues over the years. Mr. Hawkins is currently a partner with the firm of Best, Best and Krieger, LLP, a firm that periodically represents the County of Riverside on various matters. The Successor Agency of the City of Palm Springs Redevelopment Agency desires to continue to retain Mr. Hawkins on redevelopment matters, including issues relating to DOF's recent handling of the certain items included in the Successor Agency's ROPS. The County Board of Supervisors approved the waiver last week. The City Attorney is recommending the Successor Agency approve the waiver.



Douglas C. Holland
City Attorney

Attachments:

Conflict Waiver Letter from Brent Hawkins of Best, Best & Krieger, LLP.



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August 7, 2014

Via E-Mail

Douglas Holland
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626

Re: Successor Agency to the Community Redevelopment Agency of the City of Palm Springs/ County of Riverside; Conflict Waiver

Dear Doug:

You have asked me to investigate the legality of certain decisions by the State Department of Finance (DOF") with respect to determinations made concerning the Recognized Obligation Payment Schedule ("ROPS") of the Successor Agency to the Community Redevelopment Agency for the City of Palm Springs. The matter involves potential litigation against DOF. Although DOF is the primary party with a position adverse to the Palm Springs Successor Agency, because of the role of the Riverside County Auditor-Controller in distributing funds under the AB 26x1/AB 1484 wind-down process, the Riverside County Auditor-Controller must also be a party to the action.

Best Best & Krieger LLP has provided special legal services to the County of Riverside over the years with respect to a variety of unrelated matters, including government finance, personnel and land use matters. This creates a conflict of interest for BBK. When a potential or actual conflict of interest exists, a law firm is ethically obligated to disclose the conflict to the clients and obtain their waiver and written consent to continue with the representation.

RULES OF PROFESSIONAL CONDUCT

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

(C) A member [of the Bar] shall not, without the informed written consent of each client:



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- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

OUR REPRESENTATION

In this matter, we will represent the interests of the Successor Agency to the Community Redevelopment Agency for the City of Palm Springs. This will involve naming the County Auditor-Controller as a defendant and serving the County. However, we will continue to represent the County in existing and future unrelated special legal counsel matters. Separate attorneys will represent the County on those other, separate matters that the County has, or will in the future, assign to BBK, and an ethical wall will be created within the firm to prevent intentional or inadvertent disclosure of confidential information.

As we have discussed, many of the actions filed by successor agencies against DOF have included affected taxing entities as real parties in interest. Several recent Superior Court decisions have concluded that affected taxing agencies are not indispensable parties to these actions. For this reason and to simplify the litigation, we will not initially name affected taxing agencies as real parties in interest. We will carefully check the answers of DOF and Riverside County to see if either of them raise this issue as an affirmative defense. If they do, we will demur to that affirmative defense and have the issue adjudicated as quickly as possible. If the demurrer to the answer is denied, it may be necessary to amend the petition to add affected taxing agencies as real parties in interest. It is likely that BB&K represents some of those potential real parties and we may need to seek additional conflict waivers at that time.

ADVERSE CONSEQUENCES

We are obliged to inform you of any actual or reasonably foreseeable adverse effects of our representation of the County and the Successor Agency to the Palm Springs Community Redevelopment Agency under these circumstances. It is impossible to foresee every possible circumstance that might occur, however, some of the following could occur:

- We may be tempted to favor the interests of one client over another.



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- Our exercise of independent judgment to the Successor Agency to the Palm Springs Redevelopment Agency may be impaired or clouded by our relationship with the County of Riverside.
- We may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.
- There may be an appearance of impropriety in our representation of both clients simultaneously.

YOUR CONSENT

Please execute a copy of this letter in the space provided below and return to me. It is understood that this consent will not waive any protection that you may have with regard to attorney-client communications with us. Those communications will remain confidential and will not be disclosed to any third party without your consent.

I believe that you are familiar with the factual background in this matter, and I have given you a sufficiently-detailed description for obtaining informed written consent. However, if you believe that there is any other information that you or I need to have before such consent can be granted, please let me know immediately.

In the event that circumstances change or we become aware of new information that requires a new consent from the parties, you will be notified of that fact immediately, and continued representation will be subject to the informed written consent of involved parties. However, BBK will not seek another conflict waiver for any additional special legal counsel work that the County asks BBK to perform while the Palm Springs Successor Agency litigation is pending.

I should emphasize that you are entitled to and should consider obtaining an independent legal opinion regarding the advisability of signing this consent form.

Your execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct previously quoted in this letter. Further, your execution of this consent form will also warrant that you are authorized to execute this consent form on behalf of the Successor Agency to the Redevelopment Agency of the City of Palm Springs.



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If you have any questions, please do not hesitate to call.

Sincerely,

T. Brent Hawkins
of BEST BEST & KRIEGER LLP

TBH:lmg
Enclosure

AGREED AND ACCEPTED:

By: _____
Dated: _____