



City Council Staff Report

Date: January 18, 2017 NEW BUSINESS

Subject: CONSIDERATION OF A POLICY ON SCIP PUBLIC FINANCING FOR RESIDENTIAL DEVELOPMENT PROJECTS

From: David H. Ready, City Manager

Initiated by: Community & Economic Development Department

SUMMARY

This item will allow the City Council to provide direction to staff on consideration of a policy regarding public financing through the Statewide Community Infrastructure Program ("SCIP") for required public improvements and development impact fees associated with residential development projects.

RECOMMENDATION:

Provide direction to staff as appropriate.

STAFF ANALYSIS:

The City Council last adopted a policy regarding public financing for new development projects in 2002. The 2002 policy implemented certain requirements for the City's establishment of an Assessment District or Mello-Roos Community Facilities District, (a "Special District"), for development projects. Generally, the requirements stated were:

- Public facilities to be financed must provide major infrastructure improvements that significantly benefit the general public;
- Development project must have significant financial benefit to the City;
- \$2,000,000 minimum financing amount;
- The development must have a property value to lien ratio of at least 4:1 after considering the value of the financed public improvements and considering any prior or pending special taxes
- The maximum amount of special taxes to be levied, together with general property taxes and any other special taxes or assessments cannot exceed 2%

A copy of the City's policy adopted in 2002 is included as **Attachment 1**.

ITEM NO. 5.E.

The City last formed a Special District to finance public improvements and development impact fees for a residential project on December 1, 2004, when the City Council established Assessment District No. 164 for the Mountain Gate II development.

On November 2, 2005, the City subsequently established Community Facilities District ("CFD") 2005-1 for public safety services as a requirement for approval of all new residential projects located on "fee" land. Similarly, on November 7, 2007, the City established CFD 2007-1 for public safety services as a requirement for approval of all new residential projects located on allotted and leased Tribal land. The maximum tax rate that can be levied by the City for public safety services via CFD 2005-1 or 2007-1 is \$500 annually per property.

On October 1, 2014, the City Council adopted Resolution No. 23671 authorizing the City to join the Statewide Community Infrastructure Program ("SCIP"), and to accept applications from property owners, conduct special assessment proceedings, and levy assessments within the City. The SCIP is coordinated by the California Statewide Communities Development Authority ("CSCDA"), a joint powers authority sponsored by the League of California cities and the California State Association of Counties.

The SCIP was instituted by CSCDA in 2002 to allow private property owners in participating cities and counties to finance the construction of public improvements or payment of development impact fees as a special assessment to be levied on the property tax roll. A private property owner developing a project in a participating agency has the ability to request approval from that agency to pay for public improvements and development impact fees through the SCIP, which is financed by the issuance of tax-exempt bonds by the CSCDA. Subsequently, in those cases, CSCDA will impose a special assessment on the property owner's tax bill to repay the portion of the bonds issued to finance the cost of the public improvements and/or development impact fees.

In its action from 2014, the City Council authorized the City to be a participating agency in the SCIP through CSCDA. The SCIP is an alternative public financing tool to a Special District formed and approved by the City Council for a specific property. The advantage of the SCIP is that the City avoids all of the administration responsibility in establishing a Special District, and avoids the liability for the tax-exempt bonds used to finance the public improvements or development impact fees through that Special District. CSCDA assumes all responsibility and liability for the tax-exempt bonds and annual debt payments levied on the tax roll.

A copy of the October 1, 2014, staff report and Resolution No. 23671 is included as **Attachment 2**.

Since the City Council's authorizing actions taken in 2014, only one commercial project – the Arrive Hotel – has taken advantage of the SCIP. In that case, certain public improvements (utility undergrounding, water lines, and street improvements) and development impact fees (sewer connection and storm drainage fees) were financed through the SCIP.

Another commercial project, the Dream Hotel, also intends to take advantage of the SCIP to finance construction of parking facilities and development impact fees.

At this time, staff requests City Council direction generally on allowing financing of public improvements or development impact fees through the SCIP for new residential projects. Issues for the City Council's consideration is the fact that all new residential projects are required to annex into the City's existing Community Facilities District 2005-1 or 2007-1 for public safety services, which imposes a maximum tax rate of \$500 per unit annually. Participation in the SCIP to financing public improvements or development impact fees for new residential projects would add another layer of property taxes, resulting in higher overall tax rates for those properties than with other similar residential properties within the City.

As an example, on previously approved residential projects, staff has recently received requests for residential SCIP participation. Specifically, Arroyo Vista Partners, LLC, is seeking City approval to pursue public financing through the SCIP to pay certain development impact fees for the 28 lots remaining at the "Agave" (Tract No 33161), and for the 82 condominium units remaining at the "Palermo" (Tract No. 33561) project. Each of these projects were previously approved by the City Council without any public financing proposed, and both of these projects have been partially completed.

"Agave" (Tract No. 33161)

The "Agave" project is a subdivision of 32 single family homes located west of Indian Canyon Drive between Rosa Parks Road and Radio Road, as shown in Figure 1.



Figure 1 – "Agave" Project

The "Agave" project, was approved by the City Council on November 2, 2005, as Tentative Tract Map 33161. At that time, the original developer, (Sherman Las Vegas Road Housing, Inc.), did not propose public financing assistance. A final map for Tract No. 33161 was approved by the City Council on February 21, 2007, and the original developer commenced with construction of on-site and off-site improvements. A model

complex consisting of four single family homes was constructed. However, further completion of the "Agave" project did not continue as a result of the economic recession, and the 28 remaining lots remain vacant. The four model homes were subsequently sold by the original developer and are individually owned.

In its letter of November 17, 2016, the new developer, (Arroyo Vista Partners, LLC), has requested that the City allow public financing through the SCIP for the following development impact fees: \$5,576 per lot for Quimby park fees, and \$3,000 per lot for sewer connection fees. The total request for public financing is \$240,128 which would result in an estimated special assessment levy of \$450 annually for the 28 remaining lots. A copy of the new developer's request letter is included as **Attachment 3**. Approval of SCIP public financing for the 28 remaining lots, will carry a higher property tax rate (estimated at \$450 more annually) than the 4 existing homes within the development.

“Palermo” (Tract No. 33561)

The “Palermo” project is a mixed-used development allowing for construction of up to 211 condominium units and 10,000 square feet of commercial space located east of Indian Canyon Drive and north of San Rafael Drive, as shown in Figure 2.



Figure 2 – “Palermo” Project

The "Palermo" project, was approved by the City Council on October 5, 2005, as Tentative Tract Map 33561. At that time, the original developer, (P.S. Venture Indian Canyon/San Rafael, LLC), did not propose public financing assistance. A final map for Tract No. 33561 was approved by the City Council on March 15, 2006, and the original developer commenced with construction of on-site and off-site improvements. The developer also constructed approximately 129 of the 211 condominium units. However, further completion of the "Palermo" project did not continue as a result of the economic recession, and the 82 remaining condominium units have not been constructed. All of the previously constructed condominium units were sold by the original developer and are individually owned.

In its letter of November 17, 2016, the new developer, (Arroyo Vista Partners, LLC), has requested that the City allow public financing through the SCIP for the following development impact fees: \$5,576 per lot for Quimby park fees, and \$3,000 per lot for sewer connection fees. The total request for public financing is \$703,150 which would result in an estimated special assessment levy of \$450 annually for the 82 remaining condominium units. A copy of the new developer's request letter is included as **Attachment 4**. Approval of SCIP public financing for the 82 remaining condominium units, will carry a higher property tax rate (estimated at \$450 more annually) than the 129 existing condominium units within the development.

Likewise, City Council should expect developer requests for SCIP participation on development fees on future new residential projects. For example, the Serena Park development project – a redevelopment of the former Palm Springs Country Club into 386 residential units – the developer has indicated his intent to publicly finance the in lieu open space fee through the SCIP or a Special District approved by the City Council.

ENVIRONMENTAL IMPACT:

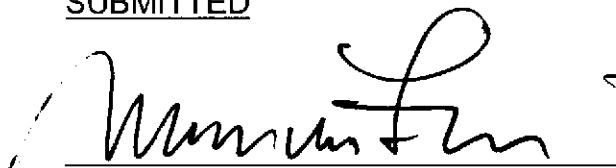
The requested City Council action is not a "Project" as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The requested action is to consider authorizing public financing for payment of development impact fees, and is exempt from CEQA pursuant to Section 15378(b), in that a "Project" does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

FISCAL IMPACT:

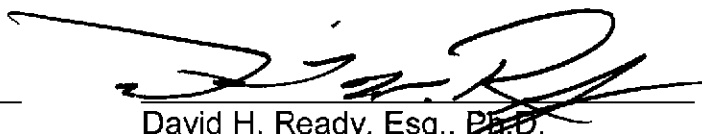
The City does not assume liability for tax-exempt bonds issued by the CSCDA used to finance the construction of public improvements or payment of development impact fees associated with residential projects. CSCDA assumes all responsibility and liability for the tax-exempt bonds and annual debt payments levied on the tax roll. However, for residential projects that are allowed to participate in the SCIP, financing of public

improvements or development impact fees will result in higher overall property tax rates relative to other properties, in addition to the tax levied by the City for public safety services (capped at \$500 annually) via CFD 2005-1 or 2007-1.

SUBMITTED



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.
City Manager

Attachment:

1. 2002 Policy on Public Financing of New Development Projects
2. October 1, 2014, staff report and Resolution 23671
3. "Agave" Project Request Letter
4. "Palermo" Project Request Letter

Attachment 1

**SPECIAL ASSESSMENT AND COMMUNITY FACILITY DISTRICT
FINANCING PROGRAMS**

**STATEMENT OF POLICIES AND PROCEDURES FOR
NEW DEVELOPMENT PROJECTS**

APRIL 2002

CITY OF PALM SPRINGS

**Special Assessment District and
Community Facilities**

Financing Programs

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1. BACKGROUND

Since the City was incorporated in 1938 there have been over 150 assessment districts formed by property owners for various public improvements in Palm Springs. Typical improvements are for streets, sewers, storm drains, neighborhood street lighting, parkways maintenance or other improvements in the public right-of-way. Those types of property owner initiated projects will continue to occur as needs arise in neighborhood situations when the "petition" the City for the improvements.

The first California legislature in 1850 authorized special assessments in the act providing for the incorporation of cities. The legislature authorized the paving of streets and the construction of sewers, making the cost thereof payable by the owners of fronting properties. The Assessment Acts since 1850 have been widely used and enhanced. The current enabling legislative Acts of 1911, 1913, 1915, 1972 and 1982 are the basis of current Assessments and Community Facilities Districts, with the expenses of the Districts being passed on to the benefiting properties. State law also provides funding sources for certain governmental operational and maintenance expenses.

The most recent trend in private development techniques is for California developers to approach governmental agencies and request financing assistance via Community Facilities Districts (C.F.D.'s). These are commonly called "Mello-Roos" districts.

In 1982 Henry Mello and Mike Roos, two California Legislators, authored the Mello-Roos Community Facilities Act. This act was more or less a direct result of government financing shortfall problems that arose after the passage of Proposition 13 (the Jarvis/Gann California Initiative that became law in 1978). The Proposition 13 property tax cuts and limits to future tax increases began to severely restrict local governments' ability to build infrastructure and public facilities. The following are examples of the types of improvements or funding allowable under Mello-Roos (C.F.D.'s):

- o Streets, sidewalks, Bridges etc.
- o Sewers, Storm Drains, Flood Control
- o Traffic Signals, Street Lighting
- o Water, Electric, Gas Utilities
- o Parking Lots
- o Pedestrian Malls
- o Parks and Parkways
- o Recreation Facilities (Public)
- o Schools, Libraries
- o Transportation and related public improvements

REASON FOR SPECIAL DISTRICTS POLICY

The City has received requests from private developers who wish to form Mello-Roos C.F.D.'s in Palm Springs. When staff received the requests we contacted other cities/agencies in California to find out how others handled the process. We contacted some 24 municipalities or County agencies to obtain pro and con input and obtain copies of their written policies. Generally the agencies with the most experience established written policies to control the process and avoid financial losses.

Note that those cities we contacted generally prefer to use Mello-Roos C.F.D.'s only on commercial/industrial projects because of the many property owner complaints they have received on past residential single family (subdivision) type districts. Residents don't like the term "Special Tax" on their annual tax rolls and there have been many problems with disclosure. This has generally not been a problem for high-end commercial/industrial projects.

One of the first California public agencies to prepare a written policy and procedure on Mello-Roos and Acquisition Districts was the County of Riverside. Since then many other cities/agencies have adopted variations of the concepts originated by the County.

In nearly all of the adopted policies we received from other agencies, the basic formats are similar to our proposed policy.

2. DEFINITIONS

Unless the context otherwise requires, the terms employed in the following policies shall have the meaning specified below:

"A.D." means Assessment District under the Improvement Acts of 1911, 1913 or 1915.

"Bonds" mean bonds authorized and issued under the Mello-Roos Community Facilities Act of 1982 or the Municipal Improvement Act of 1911 and the Improvement Bond Act of 1915.

"C.F.D." means Community Facilities District under the Mello-Roos Community Facilities Act of 1982.

"City" means the City of Palm Springs.

"District" means a Community Facilities District formed under the Mello-Roos Community Facilities Act of 1982 or an Assessment District formed under the Improvement Act of 1911 or the Municipal Improvement Act of 1913.

"Public Facilities" means improvements authorized to be constructed or acquired under the Mello-Roos and Municipal Improvement Acts including, but not limited to, fees for capital facilities imposed by public agencies as a condition to approval of the development encompassed by the district or as a condition to service the district.

"Value" or "Fair Market Value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of a difficulty of the other and both have

knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.

3. GENERAL POLICY STATEMENT

The City does not wish to encourage assessment district or community facilities district financing but will consider its implementation in certain circumstances which are clearly beneficial to the City.

Developer Initiated Districts:

The City encourages the development of upscale commercial, mixed-use, and high wage producing industrial property. The City Council will consider the use of community facilities districts ("C.F.D.'s") or special benefit assessment districts ("Assessment Districts") to assist these types of development.

Where, in the City Council's opinion the public facilities or other regional amenities of a residential development represents a significant public benefit, Assessment District financing may also be considered to assist such a residential development. Mello-Roos C.F.D.'s will not be permitted for residential development districts due to many current industry problems associated with single family ownerships in those districts. The City will, however, consider the use of 1913 and 1915 Act "Acquisition" districts for residential development type districts.

Neighborhood Initiated Districts:

Neighborhood assessment districts requested by existing property owners will continue to be processed on a case-by-case basis when the residents petition the City for the improvements. Those would be for typical street, sewer, storm drain and street lighting under the 1911, 1913 and 1915 Acts or Landscape and Lighting Maintenance under the 1972 Act. Those neighborhood districts will not be subject to up front fees or cash deposits associated with developer requested districts primarily addressed in this policy and procedure document.

City Initiated Districts:

Assessment Districts and Mello-Roos C.F.D.'s initiated by the City will not be governed by the development requirements addressed in the Special District Policy and Procedures.

4. MINIMUM REQUIREMENTS

For a private development project to qualify for City-assisted financing via an Assessment District (1911, 1913, or 1915 Act) or Community Facilities District (Mello-Roos C.F.D.), the following minimum criteria is required:

1. **BENEFIT** - That the proposed public facilities to be financed must meet a public need:

- A. The proposed project shall provide major infrastructure improvements that significantly benefit the general public, and/or
- B. The project shall provide significant financial benefit to the City.

The determination of benefit will be at the sole discretion of the City of Palm Springs.

2. QUALIFICATIONS AND FINANCIAL STATUS

- A. The proposed development project must be consistent with the City's General Plan and secure appropriate land use approvals from the City to allow for the implementation of the ultimate development of the area.
- B. The project must be reviewed and approved by the Special Districts Committee and the City's Financial Advisor must determine that the project is a sound investment for the City.
- C. Bond Sale Minimum - That the total proposed bond sale, including construction and all incidental costs, be at least \$2,000,000 or greater for reasons of cost effectiveness. In special circumstances City Council may approve lesser bond amounts by formal action.

3. AGREEMENT - That the following elements have been properly completed:

- A. Application - (Development Projects)- To be completed by developer.
- B. Petition - Signed by sufficient property owners.
- C. Boundary Map - Submitted by developer's engineer.
- D. Cash Deposit - Costs deposited up-front by developer to cover City and City consultant costs during the formation process. This would be sufficient to cover all City administrative costs prior to the Public Hearing and Bond Sale process.
- E. Agreement - Executed in a form satisfactory to the City and consistent with this policy and special district proceedings.

5. SPECIAL DISTRICTS COMMITTEE

Special Districts committee will be established to review all proposed Assessment District and Communities Facilities Districts (Mello-Roos) projects. The committee shall consist of at least the following staff:

City Manager
Assistant City Manager
Finance Director

City Engineer
Director of Planning & Building

Director of Economic Development
City Attorney

Resources Consultants to the City:

Bond Counsel (May be City Attorney)
Assessment Engineer
Special Tax Consultant (May be Assessment Engineer)
Financial Advisor
Appraiser
Bond Underwriter
Trustee/Paying Agent (Bank)
Market Absorption Study Consultant

6. ELIGIBLE PUBLIC FACILITIES

Facilities to be financed must be public facilities for which the City, or a public agency as determined appropriate by the City, will be the owner or will have normal operating and maintenance responsibility. The types of facilities eligible to be financed are:

A. Streets, Roads and Infrastructure

All public roads and facilities to be maintained by the City, including streets, curbs and gutters, sidewalks, sewers, storm drains, street lights, traffic signals and other public facilities within the City right-of-way

B. Utilities and Drainage Facilities

As permitted by law, provided they are located within an eligible road (as defined in "A") or within public right-of-way or easements, or otherwise provide significant public benefit.

C. City and Regional Public Facilities

As permitted under the Mello-Roos Community Facilities Act, such as parks, freeways, schools, libraries and fire stations.

D. Development Fees

City sewer connection fees, City/County drainage fees, CVAG/County Transportation Uniform Mitigation fees (TUMF) and Palm Springs Unified School district fees.

The City has final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a financing district. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City and Bond Counsel on a case-by-case basis.

7. VALUE-TO-LIEN RATIO

The district (or improvement area) property value-to-lien ratio should be a least 4:1 after calculating the value of the financed public improvements to be installed and considering any prior or pending special taxes or improvement liens. A project may be approved with a ratio between 4:1 and a minimum of 3:1 if the ratio is recommended by the City's Financial Advisor, Appraiser and Bond Counsel. Acceptance by the City of the value-to-lien ratio will be dependent upon an appraisal with recommendations from bond counsel, financial advisor and the underwriter with consideration of the project and diversification of land ownership.

The value-to-lien ratio shall be determined based upon an appraisal of the proposed district. The appraisal shall be coordinated by, under the direction of, and addressed to the City. All costs associated with the preparation of the appraisal report shall be paid by the applicant through the advance deposit mechanism. The appraisal shall be conducted in accordance with criteria established by the City, based upon the recommendations received by the underwriter and financial advisor designated by the City. In every case, the appraisal shall reflect nationally recognized appraisal standards and employ all, or a combination of: a discounted cash flow, bulk sale comparables, raw land value as is, and project build-out values.

Upon receiving an appraisal if the district wide value-to-lien ratio is 4:1 or greater, the district shall not require letters of credit or other security to secure payment of the special taxes to be levied annually on properties within the district. However, letters of credit or other security may be required for individual parcels within a district that have a value-to-lien ratio of less than 4:1.

The City will require a market absorption study, and will retain a consultant to prepare a report to verify market absorption assumptions and projected sales prices of the properties which may be subject to the maximum special tax or assessment in the district.

8. SECURITY

For new developments, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes before full build-out has taken place. Additional security such as credit enhancement may be required by the City in certain instances. The City's Financial Advisor shall review and recommend all proposed credit enhancements to determine appropriateness and eligibility for the district.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the district applicant or developer, not the City or district. Any security required to be provided by the applicant shall be discharged by the City upon the opinion of a qualified appraiser retained by the City, that a value-to-lien ratio of 4:1 has been retained.

A project may be approved with a ratio between 4:1 and a minimum of 3:1 if the ratio is recommended by the City's Bond Counsel, Underwriter, the Financial Advisor and Appraiser. The final determination will be made by the City, not by the developer's consultants.

9. SPECIAL TAX FORMULA

The maximum amount of special taxes to be levied on any parcel of property within a community facilities district, in any given fiscal year to pay debt service bonds, together with the general property taxes and other special taxes and assessments levied on such parcel, shall not exceed an amount equal to two-percent (2%) based on the full cash value of the parcel estimated at the time of sale and consistent with the market absorption study for all homes. Special tax allocation formulas or methodologies with respect to the levy of special taxes to pay for public facilities will specify maximum amounts of special tax for all categories of taxable property which will be used for private residential purposes. The dollar amount will be established no later than the date on which the parcel is first subject to the levy of special taxes because of its use for private residential purposes.

The maximum special tax shall establish for undeveloped land tax rates corresponding to the adopted land use designation for each parcel. Undeveloped land shall not be taxed at a rate below that of developed properties of the same land use designation for a period exceeding seven years from the formation of the C.F.D.

The maximum special tax formula shall adhere to the following requirements:

- A. The maximum special tax shall include the annual costs incurred by the City to administer the district, including consultant costs.
- B. The special tax formula shall not include escalator rates allowing annual tax increases above the maximum special tax established upon district formation.
- C. The maximum special tax shall establish for underdeveloped land tax rates corresponding to the adopted land use designations on each parcel. Undeveloped land shall be taxed at rates equal to developed properties of the same land use designation.
- D. The City shall have discretion to allow a special tax in excess of the established limits for any land within the C.F.D. which are designated as commercial or industrial.
- E. For residential districts, once issuance of building permits commences, the City will not take any actions to modify the established tax formula.
- F. A backup special tax to protect against changes in densities resulting in insufficient annual special tax revenues to pay annual debt service and administrative expenses shall be required.

The City shall retain a special tax consultant to prepare a report which:

- A. Recommends a special tax for the proposed C.F.D.
- B. Evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the C.F.D. The rate and method of special tax apportionment shall

be designed to ensure sufficient revenues are produced in case of final development at lower densities than anticipated.

- C. Consultants shall not have performed an aggregate of \$250.00 worth of services for any owner in the proposed district within the twelve months prior to retention and shall perform no work for any owner during the term of retention in order to avoid any conflict of interest to the Fair Political Practices Commission and Section 87100 of the California Government Code.

10. TERMS AND CONDITIONS OF BONDS

All terms and conditions of the bonds shall be established by the City. The City will control, manage and invest or direct the management and investment of all district issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes or assessments, credit enhancements, foreclosure covenant, and special reserve. Unless otherwise authorized by the City, the following shall serve as bond requirements.

- A. A reserve fund equal to an amount of ten percent (10%) or maximum annual debt service or 125% of average annual debt service, whichever is less shall be established.
- B. The special taxes or special assessment shall be levied for the first fiscal year following sale of the bonds for which they may be levied. Interest shall not be funded (capitalized) beyond the earliest interest payment date for which sufficient special tax revenues will be available for payment of interest.
- C. The repayment of principal shall begin on the earliest principal payment date for which sufficient special tax revenues can be made available.
- D. Beginning with the commencement of the repayment of principal, annual debt services shall be level. The City will consider an increasing annual debt service for commercial and/or industrial districts only, but such increases shall not exceed two percent (2%) per year for the term of the bonds.
- E. The maximum special tax shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least 110% of the average annual debt service.
- F. Prior to the issuance of the bonds, the City shall authorize its bond counsel to commence and process to final judgement an actio establishing the validity of the proceedings, special tax and issuance of bonds, unless advised to the contrary by such bond counsel.
- G. In instances where multiple series of bonds are to be issued, the first series shall include public facilities of highest priority to the City, as determined by the City.

- H. All statements and materials related to the sale of special assessment or community facilities district bonds shall emphasize and state that neither the good faith, credit nor the taxing power of the City is pledged to security or repayment of the bonds. The sole source of revenues to secure bond owners are special taxes, annual assessments or foreclosure proceedings.

11. DISTRICT COST DEPOSITS AND REIMBURSEMENTS

All City and consultant costs incurred in the evaluation of district applications and the establishment of districts will be paid by the applicant by advance deposit increments. The City shall not incur any non-reimbursable expenses for processing and administering assessment districts or C.F.D.'s. Expenses not chargeable to the district shall be directly borne by the applicant.

Each application for formation of an assessment district of C.F.D. shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with district review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds and the applicant shall comply with each demand within seven (7) calendar days of receipt of such notice. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the proceedings relating to the district. Typical district costs prior to the sale of bonds, to be funded by the applicant by the advance deposit mechanism, may be 5% to 10% of the estimated project expenditures. Expenses vary with the complexity of the project. Expenses to be funded typically include: required notification, printing, publication, assessment engineering, special tax report, bond counsel, appraisals, market absorption study, traffic study, miscellaneous tests and studies, financial advisors, city staff administration and design engineering.

DEPOSITS AND FEES:

A. Development Districts: (Initiated by Private Developers):

1. Application Fee - \$10,000.00 (non-refundable) deposited with Initial Special District Application. (See application process.)
2. Deposit - An advance deposit to cover all anticipated City and City consultant costs to be incurred prior to Bond Sale. Amount to be determined prior to district formation based on size and scope of the proposed project.

B. Neighborhood Districts: (Initiated by existing Property Owners):

1. Non-development type districts formed by existing property owners for traditional 1911, 1913, and 1915 Act A.D.'s or 1972 Act

Maintenance Districts will be exempt from the above deposits and fees.

C. City Initiated Districts:

Special Districts initiated by the City will be exempt from the above fees and deposits.

The district shall refund any unexpended portion of the deposits upon the following conditions:

- A. The district is not formed;
- B. Bonds are not issued and sold by the district;
- C. The proceedings for formation of the district or issuance of bonds is disapproved by the City; or
- D. The proceedings for formation of the district or issuance of bond is abandoned in writing by the applicant.

Except as otherwise provided herein, the applicant shall be entitled to reimbursement for all reasonable costs and expenses incident to the proceedings and construction of the public facilities as provided under the Mello-Roos Community Facilities Act of 1982 or the Municipal Improvement Act of 1911 or 1913 and the Improvement Bond Act of 1915, provided that all such costs and expenses shall be verified by the City as a condition of reimbursement.

The applicant or property owner shall not be entitled to reimbursement from bond proceeds for any of the expenses specified as follows:

- A. In-house administrative and overhead expenses incurred by the applicant;
- B. Interest expense incurred by the applicant on deposits advanced or expended during the proceedings and construction of public facilities; and
- C. Any other costs and expenses incurred by the applicant which are not otherwise authorized for reimbursement under the Mello-Roos or Improvement Acts.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant or property owner from any funds other than the proceeds of bonds issued by the district.

12. **ORIGINATION FEE (For Development Type Districts)**

For any developer-requested improvement district in which the improvements are to be financed by issuance of assessment district bonds, bonds may be authorized and issued by authority of City Council under the provisions of the 1911 Act, the 1913 Act, 1915 Act or the 1982 Mello-Roos Community Facilities Act.

For any such issuance, an Origination Fee of two (2) percent of the amount of the total bond issue (unless otherwise approved by City Council) shall be paid to the City's Assessment District Reserve Fund to be used exclusively for the financing of assessment districts as authorized by the City Council. Such fee shall be paid out of the proceeds of the sale of bonds, and shall be in addition to any other applicable fees, charges or incidental expenses. The fee will be reviewed on an annual basis and may be adjusted by Council action due to inflation or other economic changes.

The Origination Fee does not apply to non-developer type neighborhood districts formed by existing property owners for typical 1911, 1913, 1915 Act Districts or 1972 Act Maintenance Districts or City initiated districts.

13. AGREEMENTS

Agreements will be prepared incidental to district proceedings in a form satisfactory to the City and consistent with these policies. These agreements shall include, but not be limited to:

- A. Reimbursement Agreements.
- B. Covenants, Conditions, Restrictions and Easements (C.C.&R's)
- C. Agreements with any other public agency entitled to receive any portion of the bond proceeds or entitled to own and operate any of the public facilities financed by bond proceeds.

As a condition to the issuance and sale of bonds, all of the agreements specified shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by the Special Districts Committee, Bond Counsel and the City Attorney, and approved by the City Council. Such approval by the City Attorney shall be indicated thereon.

14. USE OF CONSULTANTS

The City shall have the sole discretion as to selection of consultants and determination of fees and expenses of all consultants necessary for the formation of the district and the issuance of bonds, including the underwriter(s), bond counsel, financial advisor, assessment engineer, appraiser, trustee, paying agent, market absorption study consultant, and the special tax consultant after reasonable consultation with the applicant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

The City shall also be responsible for determining the structure of the bonds to be issued, including the method of sale (negotiated or competitive), the need for bond ratings, investment of bond proceeds, and all other terms and conditions incidental to structuring and closing an assessment or community facilities bond issue.

No firm may serve as both design engineer or engineer of work and assessment engineer or special tax consultant on the same district pursuant to Section 87100 of the Government Code.

15. ACQUISITION PROVISIONS

The City generally supports acquisition districts to limit financial exposure and administrative efforts by the City. The City shall have final determination as to whether it will allow the financing of public facilities through acquisition, and will grant rare exceptions where an overriding justification exists concerning public benefit, safety or health. Such waiver shall be subject to City Council approval.

In the event the acquisition provisions of the Municipal Improvement Act of 1913 or the Mello-Roos Act are utilized, the City, at its sole discretion, will determine the facilities to be acquired and the method of determining reasonable acquisition costs. A funding and acquisition agreement shall be required and approved by the City Council prior to the adoption of the resolution of intention to form the district. Bidding and prevailing wage requirements are extensive and will be addressed during the preparation of the funding and acquisition agreement.

The City has determined (pursuant to Section 53329.5(c) of the Government Code) that the public interest will not be served by allowing property owners to elect to enter into agreements with the City to perform construction work after the publication by the City of the notice of the award of the contract for such work. The City Council will make such a determination in the resolution of intention regarding the formation of a community facilities district.

16. DISCLOSURE TO PURCHASERS

The applicant or property owner will be required to demonstrate to the satisfaction of the City that there will be full disclosure of the assessment or Mello-Roos special taxes and any other special tax, assessment or other liens on individual parcels to existing and future property owners, including interim purchasers and sales to merchant builders. In addition to all requirements of law, the City shall require the applicant to provide disclosure of such information as the City deems appropriate to the purchasers of property within the district with respect to the existence of the district, maximum and/or backup special taxes to be levied within the district facilities to be constructed, the foreclosure process and the terms and conditions of bond issued on behalf of the district. Such disclosure statement shall include homebuyer notifications requiring signature of the (attached) Disclosure Statement prior to home purchases, as well as notification of subsequent home purchasers through the C.C.&R.'s via a covenant that runs with the title of each individual parcel of property. (See Exhibit "B"). All project advertising, recorded media advertising, signage and other advertising shall disclose that the project includes Mello-Roos Community Facilities District (C.F.D.) Municipal bond financing for the public improvements.

If a Mello-Roos Community Facilities District is formed, the City will file and record a Notice of Special Tax Lien, as required by Streets and Highways Code Section 3114.5.

The City shall prepare a disclosure form guideline to be used by special district developers. All initial sales will require that an original signed and dated disclosure form must be submitted to the City from each new property owner.

17. PROPERTY OWNER SUPPORT

In the instance of multiple property owners, the district applicant shall be required to produce letters evidencing other property owners' support for the scope and establishment of the district as an attachment to the district application. The district must have concurrence of a substantial percentage of the other property owners to be included in the proposed district, unless there is an overriding need for the public facilities, or the applicant is willing to separately fund the facilities on the non-participating property(s).

18. LAND USE APPROVALS

Proposed district properties must possess a land use determination such that proposed development land uses and specific facility requirements can be adequately assessed. The City will accept application for assessment and/or Mello-Roos financing for residential properties only when they are included in an approved development plan.

19. JOINT FINANCING POLICY

In certain cases a development may wish to enter into joint financing agreements with other agencies or utility companies in order to include certain fees or costs in the incidental expenses and bond sale of a special district.

The City and its related Districts will not enter into a Joint Financing Agreement with regard to a community facilities district or a Utility Agreement (pursuant to Section 10110 of the Streets & Highways Code) with regard to a non-City initiated special assessment district unless the project meets the City's minimum Special Districts Policy and Procedures requirements.

An administrative review will be made by the City's Special Districts Committee of all non-City initiated community facilities districts or special assessment districts subject to minimum requirements. Only those requests not satisfying the minimum requirements would be brought before the Special Districts Committee for special consideration.

20. TREATMENT OF DELINQUENCIES

The City will develop a foreclosure covenant to be signed by all developers and property owners within a private development special district. The foreclosure covenant will address (1) the amount of the delinquency; (2) the duration of the delinquency; and (3) the condition of the reserve fund. The specific details of the covenant will depend upon the size and duration of the bond issue along with the concentration of the special tax base at the time of bond issuance. The purpose of the policy is to foreclose when necessary to protect the credit quality of the bonds and to hold the property owners accountable to terms addressed in the covenant.

21. EXCEPTIONS TO THESE POLICIES

The City may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special City benefits to be derived from such waiver. Such waivers are granted only by action of the City Council and based upon specific public purpose and/or health and safety findings.

22. APPLICATION PROCESS

Early communication with the City is encouraged to assist applicants in evaluating the feasibility of available financing programs and to discuss program procedures.

1. **Pre-Application Conference:** Applicant meets with City to discuss the proposed project and application procedures.
2. **Application Submission:** Applicant submits an initial application and a \$10,000 non-refundable application fee for review by City Staff.
3. **Project Review:** Applicant and City staff meet to discuss initial application, including any issues raised and further information that might be required. If necessary, applicant submits revised application.
4. **Application Processing:** Upon City determination that application is complete, staff prepares a staff report which forwards the request for district formation and project financing and staff recommendation to the City Council.
5. **City Council Consideration:** The City Council grants or denies the application, selects consultants (if approval is granted) and either approves contracts or directs staff to negotiate contracts, authorizes staff to receive the selection and directs staff to collect the applicant's deposit.
6. **Project Initiation:** Staff submits consultant contracts, reimbursement agreements and other similar items for City Council consideration.
7. **Project Implementation:** Applicant, staff and consultants meet to determine preliminary project schedule and begin work necessary to initiate district formation.

23. **SPECIAL ASSESSMENT DISTRICT FORMATION PROCEEDINGS**

1913 Act Assessment Districts

Assessment district proceedings under the Municipal Improvement Act of 1913 normally provide for the construction of improvements by the City and the financing of such improvements with improvement bonds, which are secured by a fixed lien on the benefited property. In certain instances, if authorized by the City, the developer may construct the improvements (or portion thereof) which would be acquired by the City as provided in the proceedings. This procedure requires the developer to enter into an Acquisition and Financing Agreement with the City and to pay all administrative and consultant costs which may be incurred.

The formation proceedings are subject to, and contingent upon satisfaction of all environmental zoning and land use regulations.

1. **Initiation of Proceedings.** The district is initiated by an applicant or landowner petition for City Council action. Upon initiation, the design engineer prepares plans, specifications and cost estimates of the proposed public improvements. The assessment engineer begins preparing the Engineer's Report, including the assessment diagram, assessment roll,

description of improvements and preliminary cost spread. The EIR consultant begins processing the appropriate environmental documentation for the public improvements.

2. **Presentation of Report.** Upon completion of the preliminary engineering work, the City Council adopts a resolution of intention to form the assessment district, approves the Engineer's Report, calls for construction bids, authorizes the future sale of bonds, sets the date, time and place for the public hearing and directs assessment notices to be mailed.
3. **Bid Process.** Finance Department receives construction bids. Assessment Engineer modifies the assessment roll and Engineer's Report and notifies property owners of revised assessments.
4. **Public Hearing.** City Council holds public hearing at which written protests are presented and public testimony is taken. If no protests have been received, or if the City Council determines to overrule such protests, City Council approves district formation, awards bids, orders construction work, confirms the assessments, directs Treasurer to mail assessment bills and approves the bond sale.
5. **Cash Collection Period.** Treasurer may receive cash payments during the 30 days following confirmation if property owners elect to pay off the assessment or portion thereof prior to the issuance of bonds.
6. **Authorize Issuance of Bonds.** City Council determines the balance of unpaid assessments and provides for the issuance of bonds to be secured thereby.
7. **Sale of Bonds.** Bonds are issued in exchange for the cash proceeds of the sale, which are held by the City or its fiscal agent (or paying agent/registrar) and utilized for the purposes described in the Engineer's Report.

24. **MELLO-ROOS COMMUNITY FACILITIES DISTRICT FORMATION PROCEEDINGS**

A Community Facilities District ("C.F.D.") is a legally constituted governmental entity created for the purpose of financing public facilities and services. It is similar in effect to an assessment district except that the resulting security for debt in an assessment district is a fixed lien, while under a C.F.D. it is a special tax. A C.F.D. may finance a broad range of facilities, including facilities which benefit an area in a general way as opposed to benefiting specifically identified properties as required in an assessment district.

The formation proceedings are subject to, and contingent upon satisfaction of all environmental, zoning and land use regulations.

1. **Initiation of Proceedings.** Proceedings must be instituted when a written request is made by a petition signed by ten percent (10%) of the registered voters (or ten percent (10%) of the landowners by area if less than twelve (12) registered voters) within the proposed C.F.D. The written request or

petition shall be accompanied by payment of a fee determined by the City Council to be sufficient to pay for costs incurred in conducting the proceedings. The Local Agency Formation Commission ("LAFC") has no jurisdiction over the formation of or annexation of territory to, or detachment of, territory from a C.F.D.

2. **Resolution of Intention.** Within ninety (90) days of the receipt of a written request or petition, the City Council must adopt a resolution of intention to establish a C.F.D., stating the name of the proposed C.F.D., the types of facilities or services to be financed and that, except where funds are otherwise available, a special tax to pay for such facilities and services will be annually levied. The resolution of intention shall also fix a time and place for a public hearing between thirty (30) and (60) days after the adoption of the resolution of intention, describe the method of levy and apportionment of the special tax and describe the proposed voting procedure. In addition, the resolution may specify conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied. The City Council directs its responsible officers to study the proposed district and to file a report at or before the public hearing describing the proposed public facilities and services and an estimate of costs.
3. **Public Hearing.** Protests against the establishment of the C.F.D., the extent of the C.F.D. or the furnishing of specified types of public facilities or services may be made orally or in writing by interested persons or taxpayers. If fifty percent (50%) or more of the registered voters, or six (6) registered voters, whichever is more, residing within the proposed C.F.D. or the owners of one-half (1/2) or more of the area of land in the proposed C.F.D. file written protests against the establishment of the C.F.D., the proceedings are abandoned. If the protests are directed toward certain types of facilities or services, or against a specified special tax, those specific items may be eliminated from the resolution forming the C.F.D. The hearing may be continued for up to thirty (30) days without special findings and up to six (6) months if the City Council makes specified findings.
4. **Resolution of Formation.** If the City Council decides to establish the C.F.D., it shall adopt a resolution of formation containing similar information as contained in the resolution of intention.
5. **Election.** If the City Council determines to form the C.F.D., it submits the question of whether special taxes should be levied to an election of the voters (or land owners if less than 12 registered voters) of the proposed C.F.D. Combined with the tax proposition, there may be a proposition on the question of incurring bonded indebtedness. The tax, in order to be levied, must be approved by two-thirds (2/3) of the votes cast and thereafter levied by adoption of an ordinance of the City Council. The Act provides that the election shall be at the next general election or at a special election to be held between 90 and 180 days following the close of the protest hearing. The election time limits may be shortened by the

unanimous consent of the qualified electors within the proposed district and the concurrence of the election official conducting the election.

6. **Improvement Bonds.** A C.F.D. may be created solely to provide the services permitted by statute. However, most C.F.D.'s have been created specifically for the purpose of levying special taxes to service bonded indebtedness incurred by the C.F.D. in order to finance the construction of facilities. The proceedings to authorize and incur bonded indebtedness usually parallel the proceedings for formation of the C.F.D. and the authorization to levy the special tax, although the bond proceedings should be conducted separately and at a later date. The proceedings to authorize bonded indebtedness involve a resolution of intention, public hearing and election, all conducted in a manner very similar to proceedings to form the C.F.D. and levy the tax. C.F.D. bonds may be sold competitively or through negotiated sale and may bear fixed or variable interest rates. In some cases, specified facilities may be provided by a C.F.D. for only a portion of the land within the C.F.D. In that event, the Act provides for the formation of improvement areas for which separate elections are conducted and to which a specified special tax applies.

DISCUSS REVISED POLICY & PROCEDURES FOR:
**SPECIAL ASSESSMENT and COMMUNITY FACILITY DISTRICT (CFD)
MUNICIPAL BOND FINANCING PROGRAMS**

(Originally Adopted by Council Resolution No.17774 in January, 1992)

1992 POLICY:

2002 POLICY: (Current)

<p>A. MUNICIPAL BONDS can be issued for <u>Public Improvements</u> for development projects, providing financing assistance to qualifying private developments in City.</p>	<p>A. (Same as current policy). <u>Mello-Roos Community Facility Districts (CFDs)</u> and <u>Assessment Districts</u> are approved bond financing methods in City.</p>
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<p>B. ELIGIBLE DEVELOPMENTS: Commercial and Industrial Developments can use <u>CFD financing</u>.</p>	<p>B. Commercial, Industrial and <u>Residential</u> developments can use CFD bond financing.</p>
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<p>C. 4:1 VALUE TO LIEN RATIO: The ratio can be as low as 3:1 (w/credit enhancements) if recommended by City's Financial Advisor, Market Absorption Analyst and Bond Counsel.</p>	<p>C. (Same- no changes) Note: <u>3:1</u> ratio is only allowed if additional security is provided by letter of credit or other form of credit enhancement to increase value to lien ratio.</p>
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<p>D. ELIGIBLE PUBLIC IMPROVEMENTS:</p> <ol style="list-style-type: none"> 1. Streets, Roads & Infrastructure 2. Utilities & Drainage Facilities 3. City & Regional Public Facilities (Parks, Parking Lots, Schools, Libraries, etc.) 	<p>D. (Same), but add <u>Eligible Development Fees:</u></p> <ol style="list-style-type: none"> 1. Sewer Connection Fee 2. Drainage Fees 3. TUMF Fees (need financing agreement) 4. School Fees (need financing agreement)
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<p>E. SPECIAL TAX FORMULA: Shall not exceed <u>1%</u> of appraised Fair Market Value of property and not exceed <u>2%</u> of appraised property values, including ad valorem taxes. (Undeveloped and developed lands are taxed at equal rates).</p>	<p>E. Maximum Special Taxes shall not exceed <u>2% of appraised Fair Market Value of property</u>, including combined general property taxes and CFD special taxes. Allow undeveloped land to be taxed at a lower rate than developed land for a period up to 7 years.</p>
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<p>F. DEVELOPER DEPOSIT: Non-refundable \$6,000 deposit pays for City administration costs during initial formation process. A 4-pg. application is completed by developer. Note the developer must also fund new Real Estate Appraisal Report & Market Absorption Study.</p>	<p>F. (Same policy), but increase amount to <u>\$10,000</u> for initial City administration costs to assist with CFD formation process.</p>
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CITY OF PALM SPRINGS ASSESSMENT DISTRICT POLICIES

**City Council Adopted
Land Secured Financing Policies
And in 1992 Amended Policies in
2003 to include Residential Projects**

Policy Goals:

- Encourage Development
- Set Minimum Lien to Value Standards of 4 to 1 at time of bond issue
- Set Maximum Property Tax Rate at 2% of Home Sale Price

Existing Assessment Districts:

- AD 155 (Commercial)
- AD 157 (SFR/Commercial)
- AD 158 (Andreas Hills)
- AD 161 (Mountain Gate)

Typical Improvements/Fees Financed:

- Water and Sewer Fees
- Development Impact Fees
- Undergrounding Utilities
- Landscaping

Benefit to Homeowner

**Lowers down payment requirement
while costing approximately the
same over a 30 year mortgage**

Attachment 2



CITY COUNCIL STAFF REPORT

DATE: OCTOBER 1, 2014

PUBLIC HEARING

SUBJECT: AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF PALM SPRINGS; APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENTS

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY

This resolution approves the City of Palm Springs' participation in the Statewide Community Infrastructure Program ("SCIP"), which is sponsored by the California Statewide Communities Development Authority ("CSCDA"). The statute requires the City Council hold a public hearing to take public testimony on SCIP and bonds to be issued by CSCDA, and consideration of a resolution making the findings and authorizing City participation in SCIP.

RECOMMENDATION:

1. Open the public hearing.
2. Adopt Resolution No. _____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF PALM SPRINGS; APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE;" and

3. AUTHORIZE THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED TO THE ABOVE AGREEMENTS.

Background:

CSCDA is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. The member agencies of CSCDA include approximately 356 cities and 57 counties throughout California, including the City of Palm Springs (the "City").

SCIP was instituted by CSCDA in 2002 to allow owners of property in participating cities and counties to finance the payment of development impact fees payable by property owners receiving development entitlements or building permits. The program has since been expanded to include financing of public capital improvements directly. If a property owner chooses to participate, the selected public capital improvements and the development impact fees owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will impose a special assessment on the owner's property to repay the portion of the bonds issued to finance the fees and the cost of public capital improvements.

The benefits to the property owner include:

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- Instead of paying cash for public capital improvements and/or development impact fees, the property owner receives low-cost, long-term tax-exempt financing of those fees, freeing up capital for other purposes.
- The property owner can choose to pay off the special assessments at any time.
- For home buyers, paying for the costs of public infrastructure through a special assessment is superior to having those costs "rolled" into the cost of the home. Although the tax bill is higher, the amount of the mortgage is smaller, making it easier to qualify. Moreover, because the special assessment financing is at tax-exempt rates, it typically comes at lower cost than historic mortgage rates.
- Owners of smaller projects, both residential and commercial, can have access to tax-exempt financing of infrastructure. Before the inception of SCIP, only projects large enough to justify the formation of an assessment or community facilities district had access to tax-exempt financing.

The benefits to the City include:

- As in conventional assessment financing, the City is not liable to repay the bonds issued by CSCDA or the assessments imposed on the participating properties.
- CSCDA handles all district formation, district administration, bond issuance and bond administration functions. A participating city can provide tax-exempt financing to property owners through SCIP while committing virtually no staff time to administer the program.


- Providing tax-exempt financing helps participating cities and counties cushion the impact of rising public capital improvements costs and development impact fees on property owners.
- The availability of financing will encourage developers to pull permits and pay fees in larger blocks, giving the participating city immediate access to revenues for public infrastructure, rather than receiving a trickle of revenues stretched out over time. As part of the entitlement negotiation process, the possibility of tax-exempt financing of fees can be used to encourage a developer to pay fees up front.
- In some cases, the special assessments on successful projects can be refinanced through refunding bonds. Savings achieved through refinancing will be directed back to the participating city for use on public infrastructure, subject to applicable federal tax limitations.

The proposed resolution authorizes CSCDA to accept applications from owners of property within the City to apply for tax-exempt financing of public capital improvements and development impact fees through SCIP. It also authorizes CSCDA to form assessment districts within the City's boundaries, conduct assessment proceedings and levy assessments against the property of participating owners. It approves the form of an Acquisition Agreement, attached to the resolution as Exhibit B, that provides the terms and conditions under which financing for public capital improvements will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities. The proposed resolution also authorizes miscellaneous related actions and makes certain findings and determinations required by law.


Attached to the resolution as Exhibit A is a "Form of Resolution of Intention to be Adopted by CSCDA". This is for informational purposes and does not require action by the Council.

FISCAL IMPACT

Selected public capital improvements and certain development impact fees owed to the City may be financed by the issuance of tax-exempt bonds by CSCDA through this program. This does not create any financial obligation on the part of the City. Conversely, the availability of financing will encourage developers to pull permits and pay fees in larger blocks, giving the City immediate access to revenues for public infrastructure, rather than receiving a trickle of revenues stretched out over time.



John S. Raymond, Director of
Community & Economic Development



David H. Ready, City Manager

Attachments:

1. SCIP Resolution
2. Public Hearing Notice

RESOLUTION NO. 23671

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM, AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS, AND LEVY ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF PALM SPRINGS, AND APPROVING THE STANDARD FORM ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE.

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of Palm Springs (the "City"); and

WHEREAS, the Authority has established the Statewide Community Infrastructure Program ("SCIP") to allow the financing of certain development impact fees (the "Fees") levied in accordance with the Mitigation Fee Act (California Government Code Sections 66000 and following) and other authority providing for the levy of fees on new development to pay for public capital improvements (collectively, the "Fee Act") through the levy of special assessments pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the "1913 Act") and the issuance of improvement bonds (the "Local Obligations") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid special assessments; and

WHEREAS, SCIP will also allow the financing of certain public capital improvements to be constructed by or on behalf of property owners for acquisition by the City or another public agency (the "Improvements"); and

WHEREAS, the City desires to allow the owners of property being developed within its jurisdiction ("Participating Developers") to participate in SCIP and to allow the Authority to conduct assessment proceedings under the 1913 Act and to issue Local Obligations under the 1915 Act to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such assessments; and

WHEREAS, in each year in which eligible property owners within the jurisdiction of the City elect to be Participating Developers, the Authority will conduct assessment proceedings under the 1913 Act and issue Local Obligations under the 1915 Act to

finance fees payable by such property owners and improvements and, at the conclusion of such proceedings, will levy special assessments on such property within the territory of the City;

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by the Authority in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for SCIP (provided that each Participating Developer consents to such assessment) shall be coterminous with the City's official boundaries of record at the time of adoption of each such ROI (the "Proposed Boundaries"), and reference is hereby made to such boundaries for the plat or map required to be included in this Resolution pursuant to Section 10104 of the Streets and Highways Code; and

WHEREAS, there has also been presented to this meeting a proposed form of Acquisition Agreement (the "Acquisition Agreement"), a copy of which is attached hereto as Exhibit B, to be approved as to form for use with respect to any Improvements to be constructed and installed by a Participating Developer and for which the Participating Developer requests acquisition financing as part of its SCIP application; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Local Obligations or any other bonds issued in connection with SCIP; and

WHEREAS, pursuant to Government Code Section 6586.5, notice was published at least five days prior to the adoption of this resolution at a public hearing, which was duly conducted by this Council concerning the significant public benefits of SCIP and the financing of the Improvements and the public capital improvements to be paid for with the proceeds of the Fees.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City hereby consents to the conduct of special assessment proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the issuance of Local Obligations under the 1915 Act on any property within the Proposed Boundaries; provided, that

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and

(2) The Participating Developers, who shall be the legal owners of such property, execute a written consent to the levy of assessment in connection with SCIP by the

Authority and execute an assessment ballot in favor of such assessment in compliance with the requirements of Section 4 of Article XIID of the State Constitution.

SECTION 2. The City hereby finds and declares that the issuance of bonds by the Authority in connection with SCIP will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and the more efficient delivery of local agency services to residential and commercial development within the City.

SECTION 3. The Authority has prepared and will update from time to time the "SCIP Manual of Procedures" (the "Manual"), and the City will handle Fee revenues and funds for Improvements for properties participating in SCIP in accordance with the procedures set forth in the Manual.

SECTION 4. The form of Acquisition Agreement presented to this meeting is hereby approved, and the [Mayor] is authorized to execute and the City Clerk is authorized to attest the execution of a completed Acquisition Agreement in substantially said form and pertaining to the Improvements being financed on behalf of the applicable Participating Developer.

SECTION 5. The appropriate officials and staff of the City are hereby authorized and directed to make SCIP applications available to all property owners who are subject to Fees for new development within the City and/or who are conditioned to install Improvements and to inform such owners of their option to participate in SCIP; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The staff persons listed on the attached Exhibit C, together with any other staff persons chosen by the City Manager from time to time, are hereby designated as the contact persons for the Authority in connection with the SCIP program.


SECTION 6. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents, including but not limited to such documents as may be required by Bond Counsel in connection with the participation in SCIP of any districts, authorities or other third-party entities entitled to own Improvements and/or to levy and collect fees on new development to pay for public capital improvements within the jurisdiction of the City, as are reasonably required by the Authority in accordance with the Manual to implement SCIP for Participating Developers and to evidence compliance with the requirements of federal and state law in connection with the issuance by the Authority of the Local Obligations and any other bonds for SCIP. To that end, and pursuant to Treasury Regulations Section 1.150-2, the staff persons listed on Exhibit C, or other staff person acting in the same capacity for the City with respect to SCIP, are hereby authorized and designated to declare the official intent of the City with respect to the public capital improvements to be paid or reimbursed through participation in SCIP.

SECTION 7. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority.

ADOPTED THIS 1ST DAY OF OCTOBER, 2014.


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, California, hereby certify that Resolution No. 23671 was adopted by the Palm Springs City Council at a regular meeting held on the 1st of October, 2014, by the following vote:

AYES: Councilmember Foat, Councilmember Lewin, Councilmember Mills,
Mayor Pro Tem Hutcheson, and Mayor Pognet.
NOES: None.
ABSENT: None.
ABSTAIN: None.

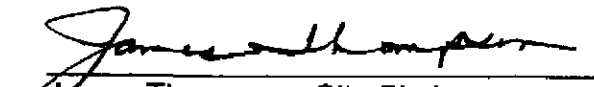

James Thompson, City Clerk 10/20/2014

EXHIBIT A TO THE RESOLUTION

**FORM OF RESOLUTION OF INTENTION
TO BE ADOPTED BY CSCDA**

RESOLUTION OF INTENTION OF THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO FINANCE IMPROVEMENTS AND/OR THE PAYMENT OF DEVELOPMENT IMPACT FEES FOR PUBLIC CAPITAL IMPROVEMENTS IN THE PROPOSED ASSESSMENT DISTRICT NO. _____ (COUNTY OF RIVERSIDE, CALIFORNIA), APPROVING A PROPOSED BOUNDARY MAP, MAKING CERTAIN DECLARATIONS, FINDINGS AND DETERMINATIONS CONCERNING RELATED MATTERS, AND AUTHORIZING RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (the "1913 Act"), being Division 12 (commencing with Sections 10000 and following) of the California Streets and Highways Code, the Commission (the "Commission") of the California Statewide Communities Development Authority (the "Authority") intends to finance, through its Statewide Community Infrastructure Program, the payment of certain development impact fees for public capital improvements as described in Exhibit A attached hereto and by this reference incorporated herein (the "Fees") and to finance certain public capital improvements to be constructed by or on behalf of the property owner(s) and to be acquired by the City or another local agency (the "Improvements"), all of which are of benefit to the property within the proposed Assessment District No. _____ (County of Riverside, California) (the "Assessment District"); and

WHEREAS, the Commission finds that the land specially benefited by the Fees and the Improvements is shown within the boundaries of the map entitled "Proposed Boundaries of Assessment District No. _____ (County of Riverside, California)," a copy of which map is on file with the Secretary and presented to this Commission meeting, and determines that the land within the exterior boundaries shown on the map shall be designated "Assessment District No. _____ (County of Riverside, California)".

NOW, THEREFORE, BE IT RESOLVED that the Commission of the California Statewide Communities Development Authority hereby finds, determines and resolves as follows:

1. The above recitals are true and correct, and the Commission so finds and determines.
2. Pursuant to Section 2961 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (the "1931 Act"), being Division 4 (commencing with Section 2800) of the California Streets and Highways Code, the

Commission hereby declares its intent to comply with the requirements of the 1931 Act by complying with Part 7.5 thereof.

3. The Commission has or will designate a registered, professional engineer as Engineer of Work for this project, and hereby directs said firm to prepare the report containing the matters required by Sections 2961(b) and 10204 of the Streets and Highways Code, as supplemented by Section 4 of Article XIID of the California Constitution.

4. The proposed boundary map of the Assessment District is hereby approved and adopted. Pursuant to Section 3111 of the California Streets and Highways Code, the Secretary of the Authority is directed to file a copy of the map in the office of the County Recorder of the County of Riverside within fifteen (15) days of the adoption of this resolution.

5. The Commission determines that the cost of the Fees and Improvements shall be specially assessed against the lots, pieces or parcels of land within the Assessment District benefiting from the payment of the Fees and the provision of the Improvements. The Commission intends to levy a special assessment upon such lots, pieces or parcels in accordance with the special benefit to be received by each such lot, piece or parcel of land, respectively, from the payment of the Fees and the provision of the Improvements.

6. The Commission intends, pursuant to subparagraph (f) of Section 10204 of the California Streets and Highways Code, to provide for an annual assessment upon each of the parcels of land in the proposed assessment district to pay various costs and expenses incurred from time to time by the Authority and not otherwise reimbursed to the Authority which result from the administration and collection of assessment installments or from the administration or registration of the improvement bonds and the various funds and accounts pertaining thereto.

7. Bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in the manner provided by the Improvement Bond Act of 1915 (Division 10, Streets and Highways Code), and the last installment of the bonds shall mature not to exceed thirty (30) years from the second day of September next succeeding twelve (12) months from their date.

8. The procedure for the collection of assessments and advance retirement of bonds under the Improvement Bond Act of 1915 shall be as provided in Part 11.1, Division 10, of the Streets and Highways Code of the State of California.

9. Neither the Authority nor any member agency thereof will obligate itself to advance available funds from its or their own funds or otherwise to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the Authority or any such member agency from, in its sole discretion, so advancing funds.

10. The amount of any surplus remaining in the improvement fund after payment of the Fees, acquisition of the Improvements and payment of all claims shall be distributed in accordance with the provisions of Section 10427.1 of the Streets and Highways Code.

11. To the extent any Fees are paid to the Authority in cash with respect to property within the proposed Assessment District prior to the date of issuance of the bonds, the amounts so paid shall be reimbursed from the proceeds of the bonds to the property owner or developer that made the payment.

[End of Form of Resolution of Intention]

EXHIBIT B TO THE RESOLUTION
FORM OF ACQUISITION AGREEMENT

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

ACQUISITION AGREEMENT

BY AND BETWEEN
CITY OF PALM SPRINGS
AND
[DEVELOPER]

Dated as of _____, 20__

ACQUISITION AGREEMENT

Recitals

A. The parties to this Acquisition Agreement (the "Agreement") are the CITY OF PALM SPRINGS, (the "Local Agency"), and [DEVELOPER], a [here indicate type of legal entity] (the "Developer").

B. The effective date of this Agreement is _____, 20__.

C. The Developer has applied for financing of certain public capital improvements (the "Acquisition Improvements") and capital facilities fees through the Statewide Community Infrastructure Program ("SCIP") administered by the California Statewide Communities Development Authority (the "Authority") and such application has been approved by the Local Agency.

D. Under SCIP, the Authority intends to issue bonds to fund, among other things, all or a portion of the costs of the Acquisition Improvements, and the portion of the proceeds of such bonds allocable to the cost of the Acquisition Improvements to be constructed and installed by the Developer, together with interest earned thereon prior to such acquisition, is referred to herein as the "Available Amount".

E. SCIP will provide financing for the acquisition by the Local Agency of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A are descriptions of the Acquisition Improvements, which descriptions are subject to modification by written amendment of this Agreement, subject to the approval of the Authority.

F. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the Local Agency will acquire such completed Acquisition Improvements with the Available Amount.

G. Any and all monetary obligations of the Local Agency arising out of this Agreement are the special and limited obligations of the Local Agency payable only from the Available Amount, and no other funds whatsoever of the Local Agency shall be obligated therefor.

H. In consideration of Recitals A through G, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Local Agency and the Developer agree as stated below.

Agreement

ARTICLE I

DEFINITIONS; ASSESSMENT DISTRICT FORMATION AND
FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

"Acceptable Title" means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the Local Agency Engineer in his sole discretion not to interfere with the intended use and therefore are not required to be cleared from the title.

"Acquisition Improvements" shall have the meaning assigned to such term in Recital C and are described in Exhibit A.

"Acquisition Price" means the amount paid to the Developer upon acquisition of all of the Acquisition Improvements as provided in Section 2.03.

"Actual Cost" means the cost of construction of all of the Acquisition Improvements, as documented by the Developer to the satisfaction of the Local Agency, as certified by the Local Agency Engineer in an Actual Cost Certificate.

"Actual Cost Certificate" shall mean a certificate prepared by the Developer detailing the Actual Cost of all of the Acquisition Improvement to be acquired hereunder, as revised by the Local Agency Engineer pursuant to Section 2.03.

"Agreement" means this Acquisition Agreement, dated as of _____, 20__.

"Assessment District" means the assessment district established by the Authority pursuant to SCIP which includes the Developer's property for which the Acquisition Improvements are being funded.

"Authority" means the California Statewide Communities Development Authority.

"Available Amount" means the amount of funds deposited in the Developer Acquisition Account by the Authority pursuant to SCIP, together with any interest earnings thereon.

"Code" means the Streets and Highways Code of the State of California.

"Developer" means [Developer], a [here indicate type of legal entity].

"[Developer] Acquisition Account" means the account by that name established by the Authority pursuant to SCIP for the purpose of paying the Acquisition Price of the

Acquisition Improvements.

"Local Agency" means the City of Palm Springs.

"Local Agency Engineer" means the Director of Public Works of the Local Agency (the "Director") or the designee of the Director, who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

"Project" means the land development program of the Developer pertaining to the Developer's property in the Assessment District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within or adjacent to the Assessment District.

"SCIP" means the Statewide Community Infrastructure Program of the Authority.

"SCIP Requisition" means a requisition for payment of funds from the [Developer] Acquisition Account in substantially the form attached hereto as Exhibit B.

"SCIP Trust Agreement" means the Trust Agreement entered into by the Authority and the SCIP Trustee in connection with the financing for the Acquisition Improvements.

"SCIP Trustee" means Wells Fargo Bank, National Association, as trustee under the SCIP Trust Agreement.

"Title Documents" means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements) necessary or convenient to the operation, maintenance, rehabilitation and improvement by the Local Agency of that Acquisition Improvement (including, if necessary, easements for ingress and egress) and a Bill of Sale or similar instrument evidencing transfer of title to that Acquisition Improvement (other than said real property interests) to the Local Agency, where applicable.

Section 1.02. Participation in SCIP . Developer has applied for financing thorough SCIP of the Acquisition Improvements, and such application has been approved by the Local Agency. Developer and Local Agency agree that until and unless such financing is completed by the Authority and the Available Amount is deposited in the Developer Acquisition Account, neither the Developer nor the Local Agency shall have any obligations under this agreement. Developer agrees to cooperate with the Local Agency and the Authority in the completion of SCIP financing for the Acquisition Improvements.

Section 1.03. Deposit and Use of Available Amount .

(a) Upon completion of the SCIP financing, the Available Amount will be deposited by the Authority in the [Developer] Acquisition Account.

(b) The Authority will cause the SCIP Trustee to establish and maintain the [Developer] Acquisition Account for the purpose of holding all funds for the Acquisition Improvements. All earnings on amounts in the [Developer] Acquisition Account shall remain in the [Developer] Acquisition Account for use as provided herein and pursuant to SCIP. The amounts in the [Developer] Acquisition Account shall be withdrawn by the Local Agency in accordance with SCIP procedures upon completion of the Acquisition Improvements within 30 days (or as soon thereafter as reasonably practicable) of receipt by the Local Agency of the certification of the Local Agency Engineer required by Section 2.03 of this Agreement, and subject to satisfaction of all other conditions precedent to such acquisition pursuant to Section 2.04 of this Agreement, to pay the Acquisition Price of such completed Acquisition Improvements, as specified in Article II hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, any remaining funds in the [Developer] Acquisition Account (less any amount determined by the Local Agency as necessary to reserve for claims against such account) (i) shall be applied to pay the costs of any additional improvements eligible for acquisition with respect to the Project as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority as provided in Section 10427.1 of the Code to pay a portion of the assessments levied on the Project property in the Assessment District.

Section 1.04. No Local Agency Liability; Local Agency Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the Local Agency or any actual or alleged omission or failure to act by the Local Agency with respect to SCIP subject the Local Agency to monetary liability therefor. Further, nothing in this Agreement shall be construed as affecting the Developer's or the Local Agency's duty to perform their respective obligations under any other agreements, public improvement standards, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the Local Agency's rights and obligations under this Agreement.

ARTICLE II

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The parties presently anticipate that the Developer has awarded and administered or will award and administer engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the Local Agency or directly to the design consultant) shall be reimbursed at the time of acquisition of such Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of or prior to the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts. State law requires that all Acquisition Improvements shall be constructed as if they were constructed under the direction and supervision of the Local Agency. In order to assure compliance with those provisions, except for any contracts entered into prior to the date hereof, Developer agrees to comply with the guidelines of the Local Agency for letting and administering said contracts. The Developer agrees that all such contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the Local Agency the Acquisition Improvements to be constructed by Developer (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvements, to the extent not already publicly owned) when such Acquisition Improvements are completed to the satisfaction of the Local Agency for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvements. Exhibit A, attached hereto and incorporated herein, contains a list of each Acquisition Improvement. At the time of completion of each Acquisition Improvement, the Developer shall deliver to the Local Agency Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, where necessary. In the event that the Local Agency Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and the related Acquisition Improvement, the Local Agency Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If such further documentation is still not adequate, the Local Agency Engineer may revise the Actual Cost Certificate to delete any disallowed items, and such determination shall be final and conclusive.

In the event that the Actual Cost is in excess of the Available Amount, the Local Agency shall withdraw the Available Amount from the [Developer] Acquisition Account and transfer said amount to the Developer. In the event that the Actual Cost is less than the Available Amount, the Local Agency shall withdraw an amount from the [Developer] Acquisition Account equal to the Actual Cost, and shall transfer said amount to the Developer. Any amounts then remaining in the [Developer] Acquisition Account shall be applied as provided in Section 1.03.

In no event shall the Local Agency be required to pay the Developer more than the amount on deposit in the [Developer] Acquisition Account at the time such payment is requested.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment by the Local Agency to the Developer from the [Developer] Acquisition Account of the Acquisition Price for an Acquisition Improvement shall be conditioned first upon the determination of the Local Agency Engineer, pursuant to Section 2.03, that such Acquisition Improvement is all complete and ready for acceptance by the

Local Agency, and shall be further conditioned upon prior satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the Local Agency with lien releases or other similar documentation satisfactory to the Local Agency as evidence that the property which is subject to the special assessment liens of the Assessment District is not subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

(b) The Developer shall be current in the payment of all due and payable property taxes and installments for the special assessments of the Assessment District on property owned by the Developer or under option to the Developer.

(c) The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

(d) The Developer shall have provided the Local Agency with Title Documents needed to provide the Local Agency with title to the site, right-of-way, or easement upon which the subject Acquisition Improvements are situated. All such Title Documents shall be in a form acceptable to the Local Agency (or applicable governmental agency) and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the Local Agency Engineer insuring the Local Agency as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the Local Agency and the Developer. Each title insurance policy required hereunder shall be in the amount equal to or greater than the Acquisition Price.

Section 2.05. SCIP Requisition. Upon a determination by the Local Agency Engineer to pay the Acquisition Price of the Acquisition Improvements pursuant to Section 2.04, the Local Agency Engineer shall cause a SCIP Requisition to be submitted to the SCIP Trustee and the SCIP Trustee shall make payment directly to the Developer of such amount pursuant to the SCIP Trust Agreement. The Local Agency and the Developer acknowledge and agree that the SCIP Trustee shall make payment strictly in accordance with the SCIP Requisition and shall not be required to determine whether or not the Acquisition Improvements have been completed or what the Actual Costs may be with respect to such Acquisition Improvements. The SCIP Trustee shall be entitled to rely on the SCIP Requisition on its face without any further duty of investigation.

ARTICLE III

MISCELLANEOUS

Section 3.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the Local Agency, the Authority, and each of its respective officers, directors, employees and agents, from

and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees in the performance of this Agreement, or arising out of any contract for the design, engineering and construction of the Acquisition Improvements or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the SCIP financing (provided that the Developer shall have been furnished a copy of such official statement and shall not have objected thereto); and provided, further, that nothing in this Section 3.01 shall limit in any manner the Local Agency's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 3.01 shall be understood or construed to mean that the Developer agrees to indemnify the Local Agency, the Authority or any of its respective officers, directors, employees or agents, for any negligent or wrongful acts or omissions to act of the Local Agency, Authority its officers, employees, agents or any consultants or contractors.

Section 3.02. Audit. The Local Agency shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement) in constructing the Acquisition Improvements.

Section 3.03. Cooperation. The Local Agency and the Developer agree to cooperate with respect to the completion of the SCIP financing for the Acquisition Improvements. The Local Agency and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 3.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 3.05. Third Party Beneficiaries. The Authority and its officers, employees, agents or any consultants or contractors are expressly deemed third party beneficiaries of this Agreement with respect to the provisions of Section 3.01. It is expressly agreed that, except for the Authority with respect to the provisions of Section 3.01, there are no third party beneficiaries of this Agreement, including without limitation

any owners of bonds, any of the Local Agency's or the Developer's contractors for the Acquisition Improvements and any of the Local Agency's, the Authority's or the Developer's agents and employees.

Section 3.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the Local Agency from any condition of development or requirement imposed by any other agreement between the Local Agency and the Developer, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the Local Agency and the Developer.

Section 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the Local Agency:

City Manager
City of Palm Springs
3200 Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, California 92262

If to the Developer:

[Developer]
[Address to Come]

Either party may change its address by giving notice in writing to the other party.

Section 3.08. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 3.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 3.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the Local Agency.

Section 3.14. Remedies in General. It is acknowledged by the parties that the Local Agency would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the Local Agency.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the Local Agency shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

CITY OF PALM SPRINGS

By

City Manager

ATTEST:
City Clerk

By _____

[DEVELOPER],
a [here indicate type of legal entity]

By _____
(Signature)

(Print Name)

EXHIBIT A TO THE ACQUISITION AGREEMENT

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND BUDGETED AMOUNTS

<u>ACQUISITION IMPROVEMENTS</u>	<u>BUDGETED AMOUNTS</u>
1.	\$
2.	
3.	
4.	

EXHIBIT B TO THE ACQUISITION AGREEMENT

FORM OF SCIP REQUISITION

To: Bond Logistix LLC
SCIP Program Administrator
777 S. Figueroa St., Suite 3200
Los Angeles, California 90017
Attention: Daniel Chang
Fax: 213-612-2499

Re: Statewide Community Infrastructure Program

The undersigned, a duly authorized officer of the CITY OF PALM SPRINGS hereby requests a withdrawal from the [DEVELOPER] ACQUISITION ACCOUNT, as follows:

Request Date: [Insert Date of Request]

Name of Developer: [Developer]

Withdrawal Amount: [Insert Acquisition Price]

Acquisition Improvements: [Insert Description of Acquisition Improvement(s) from Ex. A]

Payment Instructions: [Insert Wire Instructions or Payment Address for Developer]

The undersigned hereby certifies as follows:

1. The Withdrawal is being made in accordance with a permitted use of such monies pursuant to the Acquisition Agreement, and the Withdrawal is not being made for the purpose of reinvestment.
2. None of the items for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Withdrawal Amount is greater than the funds held in the [Developer] Acquisition Account, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the amount of such funds.
4. To the extent the Withdrawal is being made prior to the date bonds have been issued on behalf of SCIP, this withdrawal form serves as the declaration of official intent of the CITY OF PALM SPRINGS, pursuant to Treasury Regulations 1.150-2, to reimburse with respect expenditures made from the Developer Acquisition Account listed above in the amount listed above.

CITY OF PALM SPRINGS

By : _____
Title: _____

EXHIBIT C TO THE RESOLUTION

CITY OF PALM SPRINGS CONTACTS FOR SCIP PROGRAM

Primary Contact

Name: Mr. John Raymond
Title: Director of Community and Economic Development
Mailing Address: P.O. Box 2743, Palm Springs, California 92263-2743
Delivery Address: 3200 E. Tahquitz Canyon Way, Palm Springs, California 92262
E-mail: john.raymond@palmspringsca.gov
Telephone: 760-323-8259

Fax:

Secondary Contact

Name:
Title:
Mailing Address:
Delivery Address (if different):
E-mail:
Telephone:
Fax:

[Add additional contacts as needed]

CERTIFICATION OF RESOLUTION

I, the undersigned, the duly appointed and qualified City Clerk of the City of Palm Springs, do hereby certify that the foregoing Resolution No. _____ was duly adopted at a regular meeting of the City Council of the City of Palm Springs duly and regularly held at the regular meeting place thereof on the _____ day of _____, 2014, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present.

An agenda of said meeting was posted at least 72 hours before said meeting at _____, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: _____, 2014

City Clerk
City of Palm Springs

By:

[Seal]

Attachment 3

Arroyo Vista Partners, LLC

November 17, 2016

Mr. David H. Ready, Esq, Ph.D.
City Manager
City of Palm Springs
3200 E. Tahquitz Canyon Drive
Palm Springs, CA 92262

Re: SCIP financing for Agave Tract 33161

Dear Mr. Ready,

We are the owners of 28 lots in Tract 33161, the project is named Agave. This development is located at Rosa Parks Drive and El Dorado Blvd. in North Palm Springs. As you may know, Agave is a partially built community that was suspended in 2008. It currently has four existing residences and with the 28 unbuilt lots, a total of 32 lots in the project.

For the past two years, we have been marketing Agave to builders, but have been unable to attract any interest to build out the remaining 28 lots in this project. Response from Builders who have investigated the site expressed concerns relating to the high construction costs and fees, the negative image of the North Palm Springs area and the loss of the College of the Desert North Campus as reasons for not proceeding with the project. By applying to the SCIP program we are attempting to reduce the upfront builder costs resulting from reduced fees and thus make the project more attractive to small builders in the desert who will target much needed, energy efficient entry level housing in Palm Springs.

By enrolling in the SCIP program, we anticipate that we can significantly reduce the builder's costs for new homes in this community. The target price range for homes in Agave would be in the mid \$300's to the low \$400's. This price range would qualify for attractive FHA, Fannie Mae and Freddie Mae financing, allowing for low down payments and first time buyer qualifications, a market segment which is severely absent for new homes in Palm Springs.


We are requesting that lots 1-15 and 20-32 of Tract 33161 be considered for participation in the Statewide Communities Infrastructure Program financing or SCIP. The SCIP financing we are seeking would be for the Park Fees of \$5,576/per home and Sewer Facility Fee of \$3,000/per home for a total of \$8,576/ per home to be included in SCIP. Based on 28 units the total amount requested to be included in SCIP for this project would be \$240,128. The resulting special assessment levy per unit would be up to a maximum of \$450/home/year. With only a few homes built and a small additional annual tax impact, we expect no negative implications in this development to instituting the SCIP program

556 S. Fair Oaks Ave.#337
Pasadena, CA 91105
626.263.4205 p 909.992.4003 f

Mr. David H. Ready, Esq, Ph.D.
Agave SCIP Request
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The application for SCIP financing will help lower the cost of development for the new units at Agave 28 and help accelerate the built out of this project resulting in benefits to: the city; the residents of Agave; and the new home buyers by having the opportunity to own an affordable single family detached home in Palm Springs.

Sincerely,
Agave 28 Group, LP
By: Arroyo Vista Partners, LLC, Its: General Partner


Paul Onufer
Its: Manager

CC: Ms. Suzanne Harrell, Harrell & Company Advisors
Nick Mosich, Arroyo Vista Partners, LLC

Attachment 4

Arroyo Vista Partners, LLC

November 17, 2016

Mr. David H. Ready, Esq, Phd
City Manager
City of Palm Springs
3200 E. Tahquitz Canyon Drive
Palm Springs, CA 92262

Re: SCIP financing for Palermo Tract 33561

Dear Mr. Ready,

We are the owners of 82 lots located in the Southern half (phases 6-10) of Palermo Tract 33561. This development is located at the northeast corner of Indian Canyon and San Rafael Drive in Palm Springs. As you may know, Palermo is a broken development that was partially developed in the 2006-2007 by, Enterprise Companies. With the subsequent real estate recession, the lender foreclosed on the property and we acquired the property from the lender in October 2012.

For the past few years, we have been unsuccessfully in our efforts to attract a homebuilder to build out the remaining 82 lots. Builders have cited the high construction costs and fees, the negative image of the North Palm Springs market, lack of 2 car garage for units and the loss of the College of the Desert North Campus as reasons for not proceeding with the project. To address the product design issue, we have worked with the Palermo HOA to redesign the units by making them larger, eliminating the costly second story decks and designing more attached parking by incorporating two car garages for the townhomes and attached garages for the villa units. These revised plans will be submitted to the City once we have input from an interested builder.

By enrolling in the SCIP program, we anticipate that we can significantly further reduce the builder's costs for new homes in this community. The target price range for homes in Palermo would be in the mid \$200,000's for the villa units and the low to mid \$300,000's for the townhomes. This price range would qualify for attractive FHA, Fannie Mae and Freddie Mae financing, allowing for low down payments and first time buyer qualifications, a market segment which is severely absent for new homes in Palm Springs today.

We are requesting that phases 6-10 of Tract 33561 be considered for participation in the Statewide Communities Infrastructure Program financing or SCIP. The SCIP financing we are seeking would be the Park Fees of \$5,576/home and Sewer Facility Fee of \$3,000/home for a total of \$8,576/home to be included in SCIP. Based on 82 units the total SCIP financing would be \$703,150 plus associated costs and fees. The resulting special assessment levy for homeowners would be up to a maximum of \$450/home/year, helping to reduce the owners' mortgage payments while increasing their homeowner deductions for taxes.


The application for SCIP financing will help lower the cost of development for the new units at Palermo and help in accelerate the built out of this broken project. This will bring benefits to the city, the existing residents of Palermo and to new home buyers by being able to offer attractive and consistent

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Mr. David H. Ready, Esq. Phd
SCIP Request Letter
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designed product with updated energy and water savings features while offering affordable new housing in your community.

Sincerely,
Palermo 88 Group, LLC
By: San Rafael I, LLC
Its: Managing Member
By: Arroyo Vista Partners, LLC
Its: Manager


Paul Onufer
Manager

CC: Ms. Suzanne Harrell, Harrell & Company Advisors
Nick Mosich, Arroyo Vista Partners, LLC