

OVERSIGHT BOARD
FOR THE SUCCESSOR AGENCY TO THE
PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY

BOARD REPORT

MEETING DATE: December 16, 2013

NEW BUSINESS

TITLE: APPROVING A CASH FLOW LOAN IN THE AMOUNT OF \$24,350 FROM THE CITY OF PALM SPRINGS TO THE SUCCESSOR AGENCY, TO BE PLACED ON THE NEXT RECOGNIZED OBLIGATIONS PAYMENT SCHEDULE ("ROPS") AS AN ENFORCEABLE OBLIGATION TO BE PAID FROM THE REDEVELOPMENT PROPERTY TAX TRUST FUND ("RPTTF"), FOR THE PURPOSE OF FUNDING THE INSPECTION AND REVIEW OF THE PHYSICAL CONDITION OF THE PLAZA THEATRE, A SUCCESSOR AGENCY-OWNED PROPERTY

INITIATED: Department of Community & Economic Development

RECOMMENDATION:

1. Adopt Resolution No. _____, "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY APPROVING A CASH LOAN FROM THE CITY OF PALM SPRINGS TO THE SUCCESSOR AGENCY, TO BE PLACED ON THE NEXT RECOGNIZED OBLIGATIONS PAYMENT SCHEDULE ("ROPS") AS AN ENFORCEABLE OBLIGATION TO BE PAID FROM THE REDEVELOPMENT PROPERTY TAX TRUST FUND ("RPTTF"), FOR THE PURPOSE OF FUNDING AN INSPECTION AND REVIEW OF THE PHYSICAL CONDITION OF THE PLAZA THEATRE, A SUCCESSOR AGENCY-OWNED PROPERTY"

BACKGROUND AND ANALYSIS:

The Dissolution Act calls for the Successor Agency, under the direction of the Oversight Board, to dispose of real property it received from the Dissolved RDA either for limited public uses, or for disposition into the private market expeditiously and with a view toward reasonably maximizing value, with the disposition proceeds ultimately made available for distribution to the affected taxing entities.

One of the requirements under the Dissolution Act was the preparation and submittal to the State Controller's Office of an Asset Transfer Assessment prepared by the Successor Agency, showing the assets that were owned by the Agency and transferred to the Successor Agency upon the dissolution on February 1, 2012. The State Controller also ordered any transfers of properties undertaken after January 1, 2011 to be "unwound" and the properties returned to the Successor Agency. However, several

Item 3.B.

legal challenges to the retroactivity of the Dissolution Act were made by several cities, and the issue remained unclear. As a result, it was the City's position and the Successor Agency's position that all of the properties described in the Asset Transfer Form were in the hands of the City, not the Successor Agency.

On January 23, 2013, the City received a letter from the State Controller's Office advising the City that, pursuant to Health and Safety Code section 34167.5, the State Controller would conduct a review of the Palm Springs Redevelopment Agency to determine whether any asset transfers occurred after January 1, 2011, between the city or any other public agency and the redevelopment agency. The review included an assessment of whether each asset transfer to the City was allowable or whether the asset should be turned over to the Successor Agency.

In the category of Community Assets, the Plaza Theatre was included in the list of properties that should be retained by or transferred to the City because of its importance to the community as a tourism asset and its status as a significant historical property. On March 5, 2013, the Oversight Board, in accordance with the general direction provided by the State Controller's Office, adopted a Resolution ordering a number of properties be conveyed back to the Successor Agency and that other properties, including the Plaza Theater, should be retained by or transferred to the City after finding that the properties to be retained by or conveyed to the City were constructed and used for a governmental purpose.

However, on June 14, 2013 and again on July 26, 2013 (Revised), the California Department of Finance responded to the Oversight Board action and disallowed a number of the transfers of properties, particularly those that the City held for governmental use "because they are not reserved for the sole use of governmental agencies or persons visiting those agencies." In September, 2013 the State Controller's Office concurred with DOF and ordered the properties to be returned to the Successor Agency.

Since 1991 the Plaza Theatre has been leased to the Fabulous Palm Springs Follies ("Follies"). The Follies announced that this season will be their last.

While there has been a lot of interest from prospective operators, tenants, or producers in becoming the new user of the facility, the disposition of the property by the Successor Agency will need to go through the Long Term Asset Management Plan process with the State. If the City determines it would acquire the property for future use, it could reach a compensation agreement with the other taxing entities and acquire it for governmental use or for future development and then seek a new operator.

If the Successor Agency chooses to sell the property, an accurate assessment of its physical condition would assist in the determination of its overall value. Over the time the Agency has owned the property, both the City and the Agency have been responsible for the big maintenance items in the building (namely, the HVAC and the sewer system) but the day-to-day running of the facilities has generally fallen to the

tenant. Given the length of the Follies tenure in the building, the City has a general idea of the building's status but not a lot of specifics.

The City in its capacity as the Successor Agency, undertook the process of hiring an architect to assess the physical condition of the building and then make recommendations on what needs to be done there. Obviously, there may be specific things that would be required for one type of user but not another, but the focus was on the big systems, the overall condition of the improvements, and its accessibility.

The basic tasks to be performed by the Architect are described in Exhibit "A" to this Board Report.

The Successor Agency is a separate legal entity from the City, even when the City is acting as the Successor Agency; the Successor Agency and the City is not a merged governmental entity (Section 34173(g)). The Successor Agency retains the liabilities of the Dissolved RDA, including the maintenance and operation of Successor Agency properties. These liabilities are not transferred to the City (Section 34173(g)).

Therefore, City is not the financial "backstop" or guarantor of obligations of separate government entities, regardless of its status as a Successor Agency. The City is a separate legal entity even when it is acting as the Successor Agency to the Redevelopment Agency. The obligations of the Successor Agency do not impose any burden or obligations on the general fund of the City. By procuring the contractor to investigate the condition of this asset, the City is simply carrying out its responsibilities as the Successor Agency to administer the assets of the former Redevelopment Agency. In this case, the asset is the Plaza Theatre which is scheduled to lose a tenant during the period when the Successor Agency will have its Long Term Property Management Plan submitted to and reviewed by the Department of Finance.

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

This action is to seek approval from the Oversight Board for a cash flow loan from the City for the purpose of carrying out those tasks.

The loan in the contract amount of \$24,350 will be placed on a future Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2014 through December 31, 2014 or the following period. The City would be paid from available cash flow of the Redevelopment Property Tax Trust Fund ("RPTTF").

This action authorizes the Executive Director or his designee to take all actions necessary to implement this action. The action is also subject to DOF review.

Exhibit "A"

Scope of Services

DATA GATHERING

1. Tour the Plaza Theatre: Document interior and exterior existing conditions photographically
2. Collect existing documentation: drawings, specifications and reports regarding the Plaza Theatre from city sources
3. Review the Site Leases and Easements (alleyway and courtyard, including signage and use of Plaza Las Flores restrooms)
4. Collect existing utility information:
 - a. Electrical service entry points and panel sizes
Off-site transformer serving Plaza Theater and other nearby properties
 - b. Existing sewer main, lateral connection, and on-site size
 - c. Cable, phone service entry points
 - d. Gas service and size
5. Review existing conditions of adjacent properties to understand possible inter-relatedness and impacts on Theater itself
6. Review recent compliance assessment of the property related to Americans with Disabilities Act compliance:
 - a. On-site restroom facilities
 - b. Restroom facilities in adjacent privately-owned office/retail structure
 - c. Ingress and egress
 - d. Seating
7. Review building in regards Historic values:
 - a. City's Register of Historic Places
 - b. Historic Site Preservation Ordinance and Board procedures
 - c. Requirements regarding historic preservation
8. Review existing building systems:
 - a. Plumbing
 - b. Mechanical
 - c. Electrical
 - d. House lighting
 - e. Fire suppression
 - f. Exterior building envelop: roof, walls, openings
 - g. Exterior lighting
 - h. Interior finishes and surfaces: flooring/carpeting, wall finishes and materials theatre seating, ceiling and acoustic treatment
9. Review existing back-stage, stage and performance systems:
 - a. Lighting (controls and fixtures)
 - b. Sound system
 - c. Rigging and support system

- d. Electrical panel
- 10. Review existing documentation/studies related to the facility
 - a. Recommend and provide pricing for supplemental studies
- 11. Review overall building in terms of historic and current codes (in conference with Chief Building Official)
 - a. Use and occupancy
 - b. Building height and area
 - c. Construction type
 - d. Occupancy load & exiting

Sustainability features (Title 24, Parts 6 and 11) (no energy modeling) 12. Interview Follies staff

- a. Gather information from staff regarding experience with existing building and performance systems
- b. Gather recommendations for upgrades to building and performance systems

DOCUMENTATION

1. Prepare schematic and illustrative graphics to communicate the main points regarding the Data Gathering phase
 - a. Photographs with commentary
 - b. Aerial and assessor maps
 - c. Schematic (not "record") drawings

Note: these documents will be diagrammatic, not precise. The intent is to communicate the essential information about the building and its systems for purposes of common understanding among various parties. These will not be "record" or "construction" drawings, though reasonable efforts will be made to be accurate in terms of scale, location and size of elements. Wherever existing drawings and other documents exist, a reasonable effort will be made to confirm the general and approximate accuracy, and where significant and major differences are evident, reasonable effort will be made to clarify and/or resolve the differences.

The drawings may include a roof plan, balcony and main floor plans, building sections (if possible) and diagrammatic building systems plans, (e.g. an Electrical Plan may be developed to show location and description of the main and sub- panels, photographs of the common fixture types, and photographs of other unusual or essential electrical features. However, precise fixture count or locations will be done.)

2. Prepare narrative of existing conditions
 - a. Follies staff comments
 - b. Code compliance/deficiencies

- c. Adjacency factors
- d. Building systems description
- 3. Executive summary of findings
 - a. Major system deficiencies
 - b. Probable scope of remediation/upgrade
 - c. Project time framework (data gathering, documentation, cost projection, testing and design, bidding and construction)

PROJECT BUDGET OPINION

- 1. Professional services related to remediation/upgrade
 - a. Pre-design
 - i. Non-destructive testing
 - ii. Field documentation
 - iii. Code compliance conference/determination
 - iv. Adjacent property impacts and resolution
 - b. Design documentation
 - i. Architectural
 - 1. Schematic design, entitlements, and demolition
 - 2. Design development and construction documents
 - 3. Coordination and administration
 - ii. Structural system (sub-consultant)
 - iii. Mechanical system (sub-consultant)
 - 1. HVAC
 - 2. Plumbing
 - iv. Electrical (sub-consultant)
 - 1. Power and distribution
 - 2. Lighting
 - v. Performance systems (sub-consultant)
 - vi. Fire suppression system (sub-consultant)
 - vii. Interior design (sub-consultant)
 - viii. Utility services (off-site to on-site) capacity and location (sub-consultant)
- 2. Construction cost projection
 - a. Schematic cost projection based upon "Data Gathering and Documentation" phases and Scope

RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY APPROVING A CASH LOAN FROM THE CITY OF PALM SPRINGS TO THE SUCCESSOR AGENCY, TO BE PLACED ON THE NEXT RECOGNIZED OBLIGATIONS PAYMENT SCHEDULE ("ROPS") AS AN ENFORCEABLE OBLIGATION TO BE PAID FROM THE REDEVELOPMENT PROPERTY TAX TRUST FUND ("RPTTF"), FOR THE PURPOSE OF FUNDING THE INSPECTION AND REVIEW OF THE PHYSICAL CONDITION OF THE PLAZA THEATRE, A SUCCESSOR AGENCY-OWNED PROPERTY.

WHEREAS, the Community Redevelopment Agency of the City of Palm Springs ("Redevelopment Agency") was a redevelopment agency in the City of Palm Springs ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

WHEREAS, the Community Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, AB X1 26 and AB X1 27 were signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code which effectively dissolves the Redevelopment Agency ("Dissolution Act"); and

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

WHEREAS, AB 1484, signed by the Governor of California on June 27, 2012, redefines "successor agency" to mean the successor entity to the Dissolved RDA pursuant to Health and Safety Code Section 34173 and that "a successor agency is a separate legal entity from the public agency that provides for its governance;" and

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

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

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

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

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

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

WHEREAS, on January 23, 2013, the City received a letter from the State Controller's Office advising it that, pursuant to Health and Safety Code section 34167.5, the Controller would conduct a review of the Agency to determine whether any asset transfers occurred after January 1, 2011, between the city or any other public agency, and the redevelopment agency, and whether each asset transfer is allowable and whether the asset should be turned over to the Successor Agency; and

WHEREAS, the Plaza Theatre was included in included the list of properties the Successor Agency requested to designate as Governmental Use because of its importance to the community as a tourism asset and significant historical property; and

WHEREAS, On March 5, 2013, the Oversight Board, in accordance with the direction provided by the State Controller's Office, adopted a Resolution ordering a number of properties back to the Successor Agency and making the findings that a number of properties were constructed and used for a governmental purpose, and approved the transfer of those to the City, including the Plaza Theatre; and

WHEREAS, on June 14, 2013 and on July 26, 2013, the California Department of Finance responded to the Oversight Board action and disallowed a number of the transfers of properties, particularly those that the City held for governmental use "because they are not reserved for the sole use of governmental agencies or persons visiting those agencies," and in September, 2013 the State Controller's Office concurred with DOF and ordered the properties to be returned to the Successor Agency; and

WHEREAS, the City undertook the process of hiring an architect on behalf of the Successor Agency to assess the physical condition of the Palm Canyon Theater and then make recommendations on what needs to be done there, including without limitation the major building systems and accessibility; and

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

WHEREAS, a finding of completion from the DOF allows the winding down process to continue expeditiously and loan agreements entered into between the former Redevelopment Agency and the City are deemed to be enforceable obligations if the Oversight Board makes a finding that the loan was for bona fide redevelopment purposes and as enforceable obligations, such payments are listed on ROPS; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS AS FOLLOWS:

SECTION 1. The Oversight Board hereby finds and determines that the foregoing recitals are true and correct, and incorporates them herein by reference.

SECTION 2. The Contractual Services Agreement by and between the City of Palm Springs and the Interactive Design Corporation, Inc. in the amount of \$24,350 for the purpose of providing advisory services to the Successor Agency property (the Plaza Theatre) is hereby approved as a Cash Flow Loan from the City to the Successor Agency.

SECTION 3. The Oversight Board hereby directs staff of the Successor Agency to submit the approved Agreement to the County Auditor-Controller, the State Controller and the State Department of Finance; and post this Resolution on the Successor Agency's website.

SECTION 4. The loan in the contract amount of \$24,350 will be placed on a future Recognized Obligation Payment Schedule for the period of July 1, 2014 through December 31, 2014 or the following period. The City would be repaid from available cash flow of the Redevelopment Property Tax Trust Fund.

SECTION 5. This Resolution shall take effect five days of its adoption.

THOMAS FLAVIN, Chairman
CRA Oversight Board

ATTEST:

JAMES THOMPSON, Clerk/Secretary

CERTIFICATION

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

I, James Thompson, Secretary of the Oversight Board of the Successor Agency of the Palm Springs Community Redevelopment Agency hereby certify that Resolution No. _____ was adopted by the Oversight Board at a Special Meeting held on the 16th day of December, 2013, and that the same was adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMES THOMPSON, Secretary
CRA Oversight Board