

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

BOARD REPORT

MEETING DATE: June 30, 2014

UNFINISHED BUSINESS

TITLE: APPROVING LOAN TO SUCCESSOR AGENCY IN THE AMOUNT OF
\$1,500,000 TO PAY ENFORCEABLE OBLIGATIONS

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 THE AMENDED AND RESTATED LOAN AGREEMENT WITH THE CITY OF PALM SPRINGS IN THE AMOUNT OF \$1,500,000 FOR THE PURPOSE OF PAYING ENFORCEABLE OBLIGATIONS FOR THE PERIOD JANUARY 1, 2014 TO June 30, 2014."
2. Direct the Clerk of the Successor Agency to cause the execution of the Loan Agreement and direct the Director of Finance to remit the required payment to the Riverside County Auditor-Controller and provide notice of the payment to the State Controller's Office and the State Department of Finance.

BACKGROUND AND ANALYSIS:

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

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

The loan, then, was executed to effectuate the Agency's performance under an undeniably allowed enforceable contractual housing obligation, not as a separate approval of an agreement entered into after the effective date. The City provided copies

ITEM NO. 3.A.

of the full Owner Participation Agreement with the Exhibits, which were deemed approved at the time of the original approval, as well as evidence of the approval on June 15, 2011 and escrow documents that show the escrow on the property was opened prior to the Agency approval on June 15, 2011.

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

In September, 2012, the Successor Agency commissioned a required Due Diligence Review (DDR) of its Low and Moderate Income Housing Fund. The DDR determined the amount of unencumbered cash in the Low and Moderate Income Housing fund, which was then required to be remitted to the Riverside County Treasurer pursuant to Health and Safety Code Section 34179.6(f). In November, 2012 the City wired the amount of \$7,701,693.13 to the County, which was less than the demanded in the November 7, 2012 letter from DOF, and was reduced by the amount of the disputed Housing Asset Transfer Form item of \$1,500,000.

The requested amount was \$9,189,521. The City calculated interest in the amount of \$9,515.50 for the July through September period and \$2,656.63 for October, and then subtracted \$1,500,000 for the item in dispute, resulting in the total listed above. The DOF has calculated the amount in dispute of \$1,489,829.

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

The Successor Agency received a copy of a communication between the DOF and the Riverside County Auditor-Controller dated November 1, 2013, in which the DOF instructed the Riverside County Auditor-Controller to withhold \$1,487,829 from the Redevelopment Property Tax Trust Fund (RPTTF) distribution due to the Successor Agency on January 2, 2014 for already approved Enforceable Obligations during the period from January 1, 2014 through June 30, 2014 ("ROPS 13-14B"), in satisfaction of the amount that DOF asserted was due under the DDR, notwithstanding the pending litigation of the matter.

The Successor Agency had Enforceable Obligations to pay to third parties that would have been unpaid if the amount described was withheld. These Enforceable Obligations include amounts payable under a court-approved settlement agreement with a third party pursuant to settlement of litigation, third party payments under development agreements, and fees payable in connection with compliance with bond indentures for continuing disclosure and arbitrate rebate.

To avoid non-payment of the Successor Agency's obligations, the City and the Successor Agency entered into a Loan Agreement dated November 20, 2013 (the "RPTTF Loan") to provide funds to the Successor Agency to offset the DOF-directed withholding of RPTTF, to be repaid to the City from future RPTTF.

On December 16, 2013, the Oversight Board approved the Successor Agency's action to enter into Loan Agreement, and the Oversight Board action was submitted to the DOF

for review. On January 29, 2014, the Successor Agency received a communication from DOF stating that the RPTTF Loan was not approved, since they considered it a loan to pay the DDR amount and not related to payment of Enforceable Obligations.

The City and the Successor Agency staff recommend amending and restating the RPTTF Loan to clarify that the purpose of the RPTTF Loan was to provide funds to the Successor Agency to avoid disruption in the payment of its Enforceable Obligations by pre-funding the amount the DOF asserted was due under the DDR, and thereby avoid default in its obligations to third parties.

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

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

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

The loan will be placed on a future Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2015 through June 30, 2015 or the following period. The City would be paid from available cash flow of the Redevelopment Property Tax Trust Fund ("RPTTF").

This action authorizes the City Manager or designee to take all actions necessary to implement this action. The action was also approved by the Successor Agency Board and City Council on June 18, 2014.

RESOLUTION NO. _____

"A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY APPROVING AN AMENDED AND RESTATED LOAN AGREEMENT FROM THE CITY OF PALM SPRINGS TO THE SUCCESSOR AGENCY TO PAY ENFORCEABLE OBLIGATIONS, IN THE AMOUNT OF \$1,500,000

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

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

WHEREAS, the City of Palm Springs is the successor entity to the Community of the Community Redevelopment Agency of the City of Palm Springs; and

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

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

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

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

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

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

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

WHEREAS, in November, 2012 the City remitted the amount of \$7,701,693.13 to the County, which was less than the amount demanded in the November 7, 2012 letter from the California Department of Finance ("DOF"), which sought the additional amount of \$1,487,829 that the former redevelopment agency had loaned to a developer for a low-moderate income senior housing project that in the DOF's opinion was voided by the Redevelopment Dissolution Act; and

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

WHEREAS, the Successor Agency received a copy of a communication between the DOF and the Riverside County Auditor-Controller dated November 1, 2013, in which the DOF instructed the Riverside County Auditor-Controller to withhold \$1,487,829 from the Redevelopment Property Tax Trust Fund ("RPTTF") distribution due to the Successor Agency on January 2, 2014 for already approved Enforceable Obligations, in satisfaction of the amount that DOF asserted was due under the DDR, notwithstanding the pending litigation of the matter; and

WHEREAS, the Successor Agency had Enforceable Obligations to pay to third parties that would have been unpaid if the amount described was withheld, and therefore, to avoid non-payment of the Successor Agency's obligations, the City and the Successor Agency entered into a Loan Agreement dated November 20, 2013 (the "RPTTF Loan") to provide funds to the Successor Agency to offset the withholding, to be repaid to the City from future RPTTF; and

WHEREAS, on December 16, 2013, the Oversight Board approved the Successor Agency's action to enter into Loan Agreement; and

WHEREAS, the Oversight Board action was submitted to the the DOF for review and on January 29, 2014, the Successor Agency received a communication from DOF stating that the Loan was not approved, even though the funds had already been transferred to the County to avoid disruption of the RPTTF payment on January 2, 2014, and such funds had been distributed to taxing entities; and

WHEREAS, the City and the Successor Agency wish to amend and restate the RPTTF Loan to clarify that the purpose of the RPTTF Loan was to provide funds to the Successor Agency to avoid disruption in the payment of its Enforceable Obligations by pre-funding the amount the DOF claimed was due under the DDR, and thereby avoid default in its obligations to third parties; and

WHEREAS, in order to establish and declare the terms and conditions upon which the Loan is to be made and secured, the Successor Agency and the City wish to amend and restate the RPTTF Loan in full by entering into this Loan Agreement; and

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

NOW, THEREFORE, 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 Loan Agreement by and between the City of Palm Springs and the Successor Agency of the Community Redevelopment Agency of the City of Palm Springs, for the purpose of providing a cash flow loan to pay the Successor Agency's enforceable obligations as described in the Recitals, is hereby approved.

Section 3. The Oversight Board hereby directs staff of the Successor Agency to submit the approved Loan 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 5. This Resolution shall take effect five days of its adoption.

OVERSIGHT BOARD CHAIR

STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

)
) ss.
)

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 Regular Meeting held on the 30th of June, 2014, and that the same was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMES THOMPSON
OVERSIGHT BOARD SECRETARY

APPROVED AS TO FORM:

Successor Agency Counsel

AMENDED AND RESTATED LOAN AGREEMENT

_____, 2014
Palm Springs, California

THIS AMENDED AND RESTATED LOAN AGREEMENT (herein referred to as the "Loan Agreement"), made and entered into this ___ day of _____, 2014 (the "Effective Date") by and between the SUCCESSOR AGENCY TO THE PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY, CALIFORNIA, a public body, corporate and politic ("Successor Agency"), and THE CITY OF PALM SPRINGS, a municipal corporation and charter city ("City").

RECITALS

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

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

WHEREAS, the City of Palm Springs is the successor entity to the Community of the Community Redevelopment Agency of the City of Palm Springs; and

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

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

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

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

WHEREAS, Health and Safety Code Section 34177.3(b) authorizes the Successor Agency

to create "Enforceable Obligations" to conduct the work of winding down the Dissolved RDA; and

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

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

WHEREAS, in November, 2012 the City remitted the amount of \$7,701,693.13 to the County, which was less than the amount demanded in the November 7, 2012 letter from the California Department of Finance ("DOF"), which sought the additional amount of \$1,487,829 that the former redevelopment agency had loaned to a developer for a low-moderate income senior housing project that in the DOF's opinion was voided by the Redevelopment Dissolution Act; and

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

WHEREAS, the Successor Agency received a copy of a communication between the DOF and the Riverside County Auditor-Controller dated November 1, 2013, in which the DOF instructed the Riverside County Auditor-Controller to withhold \$1,487,829 from the Redevelopment Property Tax Trust Fund ("RPTTF") distribution due to the Successor Agency on January 2, 2014 for already approved Enforceable Obligations, in satisfaction of the amount that DOF asserted was due under the DDR, notwithstanding the pending litigation of the matter;

WHEREAS, the Successor Agency had Enforceable Obligations to pay to third parties that would have been unpaid if the amount described was withheld, and therefore, to avoid non-payment of the Successor Agency's obligations, the City and the Successor Agency entered into a Loan Agreement dated November 20, 2013 (the "RPTTF Loan") to provide funds to the Successor Agency to offset the withholding, to be repaid to the City from future RPTTF;

WHEREAS, on December 16, 2013, the Oversight Board approved the Successor Agency's action to enter into Loan Agreement;

WHEREAS, the Oversight Board action was submitted to the the DOF for review and on January 29, 2014, the Successor Agency received a communication from DOF stating that the Loan was not approved, even though the funds had already been transferred to the

County to avoid disruption of the RPTTF payment on January 2, 2014, and such funds had been distributed to taxing entities;

WHEREAS, the City and the Successor Agency wish to amend and restate the RPTTF Loan to clarify that the purpose of the RPTTF Loan was to provide funds to the Successor Agency to avoid disruption in the payment of its Enforceable Obligations by pre-funding the amount the DOF claimed was due under the DDR, and thereby avoid default in its obligations to third parties;

WHEREAS, in order to establish and declare the terms and conditions upon which the Loan is to be made and secured, the Successor Agency and the City wish to amend and restate the RPTTF Loan in full by entering into this Loan Agreement; and

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

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

ARTICLE I.

THE LOAN; ESTABLISHMENT OF FUNDS

Section 1.01 Authorization. The City hereby agrees to loan to the Successor Agency, , the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) all under and subject to the terms of this Loan Agreement (the "Loan"). This Loan Agreement constitutes a continuing agreement with the Successor Agency to secure the full and final payment of the Loan, subject to the covenants, agreements, provisions and conditions herein contained.

Section 1.02. Purpose. The Loan is made to enable the Successor Agency to avoid default on previously-approved Enforceable Obligations to third parties as a result of the DOF's direction to the Riverside County Auditor-Controller to withhold \$1,487,829 from the Successor Agency's January 2, 2014 RPTTF distribution,.

Section 1.03 Terms of the Loan. The Loan shall be deemed an Enforceable Obligation of the Successor Agency and shall be paid in one installment placed on a future Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2015 through June 30, 2015 or each following period until paid. The City would be paid in whole or in part from available cash flow of the RPTTF after payment of debt service on the Successor Agency's

bonded debt, up to the amount of available RPTTF in such period, subject to prior claims of other enforceable obligations.

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

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

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

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

The purpose of the Loan is to provide cashflow to the Successor Agency to meet its enforceable obligations; therefore, repayment of the Loan is not subject to the provisions of Health and Safety Code Section 34191.4.

1.04 Acceleration of Obligation. Upon the failure to make payment due under this Agreement as and when the same becomes due and payable (whether by extension, acceleration or otherwise), or any breach of any other promise or obligation in this Agreement or in any other instrument now or hereafter securing the indebtedness evidenced hereby, then, and in any of such events, City may, at its option, declare this Agreement and the entire indebtedness hereby evidenced, including, without limitation, all accrued interest, to be immediately due and payable and collectible then or thereafter as City may elect, regardless of the date of maturity, and notice of the exercise of said option is hereby expressly waived by Successor Agency.

ARTICLE II.

OTHER PROVISIONS

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

2.02 Modifications. Neither this Agreement nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver

of any provision hereof be effective except by an instrument in writing signed by Successor Agency and City. No delay or omission on the part of City in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Agreement.

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

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

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

SIGNATURES ON THE FOLLOWING PAGE

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

"Successor Agency"

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

By: _____
Executive Director

ATTEST:

Assistant Secretary

APPROVED AS TO FORM:

Successor Agency Counsel

"City"

THE CITY OF PALM SPRINGS, a
California Charter City

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney