



City Council/Redevelopment Agency Staff Report

DATE: March 16, 2011 NEW BUSINESS

SUBJECT: APPROVAL AND EXECUTION OF CONSOLIDATED AMENDED AND RESTATED PROMISSORY NOTE

FROM: David H. Ready, Esq., Ph.D., City Manager/Executive Director

BY: Thomas Wilson, Assistant City Manager
John Raymond, Director, Community & Economic Development
Geoffrey Kiehl, Director of Finance & Treasury

RECOMMENDATION

Acting as the City Council:

1. Adopt Resolution No. ____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING EXECUTION OF A CONSOLIDATED AMENDED AND RESTATED PROMISSORY NOTE WITH THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS."

Acting as the Agency Board:

2. Adopt Resolution No. ____ "A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS AUTHORIZING EXECUTION OF A CONSOLIDATED AMENDED AND RESTATED PROMISSORY NOTE WITH THE CITY OF PALM SPRINGS."

BACKGROUND AND ANALYSIS:

The Governor of the State released his Budget Proposal on Monday, January 10, 2011. The Budget Proposal included a provision that would eliminate all redevelopment agencies in California starting on July 1, 2011 and to redirect property tax dollars from redevelopment agencies to schools, fire districts and other local entities. Draft legislation implementing this proposal was released by the Department of Finance of the State on February 23, 2011 (the "Proposed Legislation"). On March 3, 2011, after making certain revisions to the Governor's Proposed Budget, the Joint Budget

Committee of the California Legislature voted six to four in favor of the Governor's Proposed Budget (as revised), which still includes the Proposed Legislation.

The Proposed Legislation, if enacted, would prohibit redevelopment agencies from, among other things:

- incurring new or expanding existing monetary or legal obligations unless specifically provided for in the Proposed Legislation. These prohibitions include the issuance of bonds and other obligations, and refinancing or restructuring existing indebtedness (except in limited circumstances);
- entering into new contracts for redevelopment activities;
- modifying terms and conditions of existing agreements, obligations or commitments; and
- disposing of assets.

The following discusses the mechanics of disposing of the Agency's assets and payment of its liabilities as described in the Proposed Legislation.

The Proposed Legislation would establish successor agencies to administer each agency's existing "enforceable obligations" and would establish a series of special funds to effectuate the payments of such obligations and administer the transfer of property taxes to other local entities and the disposition of an agency's other assets such as real property and cash.

Oversight Board

The Proposed Legislation would dissolve all redevelopment agencies as of July 1, 2011 and vest their remaining powers in successor agencies. Each successor agency would be governed by a new seven-member oversight board, which would consist of, among others, a member selected by the county board of supervisors, a member selected by a non-enterprise special district, and two members selected by the county superintendent of education to represent schools and community college districts. The City Council could select only one member of the oversight board. The result of this make up of the oversight board is that its actions may not be in the best interest of, and may be adverse to, the Agency and the City.

Payment of Existing Obligations

Subject to the approval of the oversight board, each successor agency would be charged with preparing "Recognized Obligation Payment Schedules" which document the minimum payments and due dates of payments required by enforceable obligations for each half-year fiscal period. Commencing January 1, 2012, only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from funds specified in the Recognized Obligation Payment Schedule. For fiscal year 2011/12, the draft of the Recognized Obligation Payment Schedule must be

reviewed and certified, as to its accuracy, by an external auditor. The initial Recognized Obligation Payment Schedule must also be certified by the county auditor-controller.

Priority of Payments

The Proposed Legislation provides that any legally binding obligations that were entered into with a pledge of tax increment will continue to have the revenues that were formerly tax increment and which are deposited into a new "Redevelopment Obligation Retirement Fund" to be held by the successor agency. However, the draft legislation establishes a priority of allocation with respect to property tax increment that would have been allocated to each redevelopment agency without regard for existing priority relationships; these property taxes would be deposited in a Redevelopment Property Tax Trust Fund (to be administered by the county auditor-controller) and then, in fiscal year 2012/13 and following, allocated as follows. The allocation is the same for fiscal year 2011/12, except as noted below.

First, to schools and community college districts in the amount that they would have received if the draft legislation had not been adopted into law.

Second, on June 1 and January 2, to successor agencies, for payments listed in the Recognized Obligation Payment Schedule for the next six month fiscal period beginning on the next July 1 or January 1, in the following priority order: (A) debt service payments scheduled to be made for tax allocation bonds, (B) payments scheduled to be made on revenue bonds, but only to the extent the revenues pledged for them are insufficient to make the payments and only when the agency's tax increment revenues were also pledged for the repayment of such bonds, and (C) payments scheduled for other debts and obligations listed in the Recognized Obligation Payment Schedule. For fiscal year 2011/12, the draft legislation provides that, before being used to make the payments listed in the Recognized Obligation Payment Schedule, the property taxes would be used to pay each successor agency's share of an aggregate \$1.7 billion payment to a "Public Health and Safety Fund."

Third, on January 2 and June 1, to each successor agency for administrative costs. Beginning in fiscal year 2012-13, the amount allocated for administrative costs may not exceed 3% of the amount allocated for the purposes described in *Second* above.

Fourth, on January 2 and June 1, any moneys remaining in the Redevelopment Tax Trust Fund after the payments and transfers authorized by *First*, *Second* and *Third* will be distributed to cities, counties, non-enterprise special districts, schools and community college districts (schools and community college districts receive no additional allocation in fiscal year 2011/12). If a successor agency is other than the agency that formed a redevelopment agency, the share that would have been allocated to that agency will instead be allocated to the agency that is the successor agency. If a local agency other than the county auditor-controller has accepted responsibility for administering the Public Health and Safety Fund in a county, the county share will be allocated to that local agency.

In years after fiscal year 2011/12, if the successor agency reports to the county auditor-controller, no later than December 1 or May 1, that the total amount available to the successor agency from the Redevelopment Property Tax Trust Fund allocation to that successor agency's Redevelopment Obligation Retirement Fund, from other funds transferred from the each redevelopment agency, and from funds that have or will become available through asset sales and all redevelopment operations is insufficient to fund the payments required by this section in the next six-month fiscal period, the county auditor-controller will notify the State Controller and the Department of Finance no later than 10 days later.

The county auditor will verify whether the successor agency will have sufficient funds from which to service debts according to the schedule and will report the findings to the Controller. If the Controller concurs that there are insufficient funds to pay required debt service, the amount of such deficiency will be deducted first from the amount remaining to be distributed to taxing entities pursuant to *Fourth*, and if that amount is exhausted, from amounts available for distribution for administrative costs in Third. If an agency made pass-through payment obligations subordinate to debt service payments required for enforceable obligations, funds for servicing bond debt may be deducted from the amounts for pass-through payments under *First*, if the amounts remaining to be distributed to taxing entities pursuant to *Fourth* and the amounts available for distribution for administrative costs in Third have all been exhausted. In fiscal year 2011/12, amounts available for allocation to the Public Health and Safety Fund may also be available for this purpose.

Outstanding Promissory Notes between the City and the Agency

The Community Redevelopment Agency of the City of Palm Springs has entered into three separate Promissory Notes with the City for acquisition of property and wishes to document and record the repayment schedule for such Notes for inclusion in the Recognized Obligation Payment Schedules described above.

If approved, the resolutions would authorize the execution of a consolidated amended and restated promissory note between the City and the Agency relating to these transactions.

Given the scope and breadth of the Proposed Legislation and its potential impact on the Agency's assets, it is prudent to take action at this time to formalize a repayment schedule with respect to these existing obligations.

FISCAL IMPACT:

The Agency has previously entered into three promissory notes with the City for the acquisition of property associated with redevelopment of the Agency's project areas. The Agency is already obligated to repay the Outstanding Notes and the Consolidated

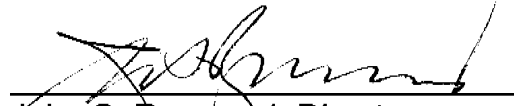
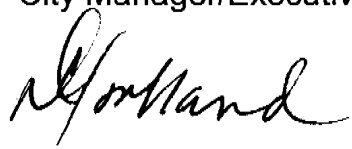
Amended and Restated Note does not represent any additional obligation on the part of the Agency.



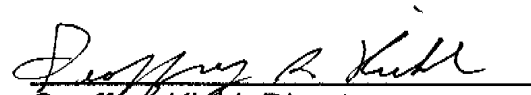
David H. Ready, Esq., Ph.D.
City Manager/Executive Director



Thomas Wilson
Assistant City Manager



John S. Raymond, Director
Community & Economic Development



Geoffrey Kiehl, Director
Finance & Treasury

- Attachments:
- Agency Resolution
 - City Resolution
 - Agreement

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF PALM SPRINGS AUTHORIZING EXECUTION OF A CONSOLIDATED AMENDED AND RESTATED PROMISSORY NOTE WITH THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS

WHEREAS, the Agency has prepared Redevelopment Plans for the Merged Project No. 1 and Merged Project No. 2 Redevelopment Projects (the "Project Areas"), which results in the allocation of taxes from the Project Areas to the Agency for purposes of redevelopment; and

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WHEREAS, the Agency has previously entered into three separate promissory notes with the City for the acquisition of property; and

WHEREAS, the City and the Agency desire to enter into a consolidated amended and restated promissory note to acknowledge the foregoing recitals and to provide for a payment schedule for such obligations by the Agency to the City.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City of Palm Springs, as follows:

1. The Mayor and City Clerk are hereby authorized and directed to execute and attest to the Consolidated Amended and Restated Promissory Note for and in the name and on behalf of the City. The City hereby authorizes the delivery and performance of the Consolidated Amended and Restated Promissory Note pursuant to the terms thereof.

PASSED AND ADOPTED this ___ day of _____, 2011, by the following vote:

AYES: Council Members
NOES: Council Members
ABSENT: Council Members

Mayor

ATTEST: _____
City Clerk

Approved as to form:

City Attorney

RESOLUTION NO. _____

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WHEREAS, the City and the Agency desire to enter into a consolidated amended and restated promissory note to acknowledge the foregoing recitals and to provide for a payment schedule for such obligations by the Agency to the City

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Community Redevelopment Agency of the City of Palm Springs, as follows:

1. The Chairman and Secretary of the Agency are hereby authorized and directed to execute, and attest to the Consolidated Amended and Restated Promissory Note for and in the name and on behalf of the Agency. The Agency hereby authorizes the delivery and performance of the Consolidated Amended and Restated Promissory Note pursuant to the terms thereof.

PASSED AND ADOPTED this ____ day of _____, 2011, by the following vote:

AYES: Directors
 NOES: Directors
 ABSENT: Directors

 Chairperson

ATTEST: _____
 Secretary

Approved as to form:

 Agency Counsel

CONSOLIDATED AMENDED AND RESTATED PROMISSORY NOTE

THIS CONSOLIDATED AMENDED AND RESTATED PROMISSORY NOTE (the "Note") is entered into this 16th day of March, 2011, by and between the CITY OF PALM SPRINGS (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS (the "Agency"), with reference to the following facts:

A. The Agency has prepared Redevelopment Plans for the Merged Project No. 1 and Merged Project No. 2 Redevelopment Projects (the "Project Areas"), which results in the allocation of taxes from the Project Areas to the Agency for purposes of redevelopment.

B. The intent of the Redevelopment Plans is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the repair, restoration and/or replacement of existing public facilities and to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Areas; and to increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside the Redevelopment Project Areas; and to take all other necessary actions to implement the redevelopment plans for the respective redevelopment projects and to expend tax increment to accomplish the goals and objectives of the respective redevelopment projects.

C. Pursuant to California Redevelopment law, section 33220, certain public bodies, including the City may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. The Agency has previously entered into certain Promissory Notes as follows:

- Promissory Note dated December 12, 2007 in the initial amount of \$4,823,000, of which \$797,000 currently remains outstanding and will accrue interest at 6% to June 30, 2011 for an estimated outstanding balance of \$844,820 at June 30, 2011;
- Promissory Note dated December 12, 2007 in the initial amount of \$4,675,000, all of which currently remains outstanding and will accrue interest at 6% to June 30, 2011 for an estimated outstanding balance of 4,955,500 at June 30, 2011; and
- Promissory Note dated February 7, 2008 in the initial amount of \$51,297,000, all of which currently remains outstanding, and has accrued but unpaid interest of \$3,704,357 as of June 30, 2010 and will accrue additional interest at 10% to June 30, 2011 for an estimated balance of \$60,675,921 at June 30, 2011;

which are incorporated herein by this reference (the "Outstanding Notes").

E. The Agency wishes to enter into this Note with the City for the pledge of net available tax increment to repay amounts borrowed or otherwise to be reimbursed for the Outstanding Notes.

F. Net available tax increment is defined as any tax increment, net of existing debt service payments, and existing contractual obligations received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. The pledge of net available tax increment will constitute obligations to make payments authorized and incurred pursuant to Section 33445 and other applicable statutes. The obligations set forth in this Note will be contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

G. The City Council (the "Council") and the Agency by resolution have each found that the use of Agency redevelopment funding for the Outstanding Notes was, if applicable, in accordance with Section 33445 of the California Community Redevelopment Law (Health & Safety Code Section 33000 et seq.) ("CRL") and Section 33445(a) of the CRL and other applicable law at time the financial obligation was originally incurred. The said Council and Agency resolutions are each based on the authority of the Agency, with the consent of the Council, to pay all or part of the cost of the installation and construction of any building, facility, structure, or other improvements which is publicly owned either within or outside a project area, if the Council makes certain determinations.

H. By approving and entering into this Note, the Agency has approved the pledge of net available tax increment from the Project Areas to pay for the Note.

I. The obligations of the Agency under this Note shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plans for the Project Areas.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. INTRODUCTORY PROVISIONS

The recitals above are an integral part of this Note and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Note.

II. AGENCY'S OBLIGATIONS

1. The Agency's obligations under this Note, including without limitation the Agency's obligation to make the payments to the City required by this Note, shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment of the Project Areas and are obligations to make payments authorized

and incurred pursuant to Section 33445 and other applicable statutes. The obligations of the Agency set forth in this Note are contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

2. The Note shall bear interest at the 6% starting July 1, 2011.

3. The obligations of Agency under this Note shall be payable out of net available tax increments, as defined in the above recitals and/or as defined or provided for in any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, levied by or for the benefit of taxing agencies in the Redevelopment Project Areas, and allocated to the Agency and/or any lawful successor entity of the Agency and/or any entity established by law to carry out any of the redevelopment plans for the Project Areas and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Section 33670, et seq., of the California Community Redevelopment Law or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, in the minimum amounts set forth in the Payment Schedule attached hereto as Exhibit 1 and incorporated herein by this reference.

4. The Payment Schedule reflects the payments from the respective Redevelopment Project Areas in the same proportionate share as the Outstanding Notes.

5. The indebtedness of Agency under this Note shall be subordinate to the rights of the holder or holders of any existing bonds, notes or other instruments of indebtedness (all referred to herein as "indebtedness") of the Agency incurred or issued to finance the Project Areas, including without limitation any pledge of tax increment revenues from the Project Areas to pay any portion of the principal (and otherwise comply with the obligations and covenants) of any bond or bonds issued or sold by Agency with respect to the Redevelopment Project Areas.

6. All payments due to be made by the Agency to the City under this Note shall be made by the Agency in accordance with the schedule set forth in Exhibit 1 and as otherwise necessary to reimburse the City for the cost to the City of performing its obligations hereunder.

IV. LIABILITY AND INDEMNIFICATION

In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or

wrongful acts or omissions occurring in the performance of this Note to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

V. ENTIRE NOTE; WAIVERS; AND AMENDMENTS

1. This Note integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Note.
2. This Note is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Note to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Note.
3. All waivers of the provisions of this Note and all amendments to this Note must be in writing and signed by the authorized representatives of the parties.

VI. SEVERABILITY

If any term, provisions, covenant or condition of this Note is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

VII. DEFAULT

If either party fails to perform or adequately perform an obligation required by this Note within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Note, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Note or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party. All notices of defaults shall clearly indicate a notice of default under this Note.

VIII. BINDING ON SUCCESSORS

This Note shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

IN WITNESS WHEREOF, the parties have executed this Note as of the date first set forth above.

CITY OF PALM SPRINGS

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

COMMUNITY REDEVELOPMENT AGENCY

David H. Ready, City Manager

ATTEST:

James Thompson, Assistant Secretary

APPROVED AS TO FORM:

Douglas C. Holland, City Attorney

**EXHIBIT 1
PAYMENT SCHEDULE**

Payment Date <u>June 30</u>	Merged Project No. 1 <u>Payments (1)</u>	Merged Project No. 2 <u>Payments (1)</u>
2012	\$895,500	\$ 1,000,000
2013	-	1,100,000
2014	-	1,210,000
2015	-	1,331,000
2016	-	1,464,100
2017	-	1,610,510
2018	-	1,771,561
2019	-	1,948,717
2020	-	2,143,589
2021	-	2,357,948
2022	-	2,593,742
2023	-	2,853,117
2024	-	3,138,428
2025	-	3,452,271
2026	-	3,797,498
2027	-	4,177,248
2028	-	4,594,973
2029	-	5,054,470
2030	-	5,559,917
2031	-	6,115,909
2032	-	6,727,500
2033	-	7,400,250
2034	-	8,140,275
2035	-	8,954,302
2036	-	50,000,000
2037	-	60,093,584

(1) Includes interest at 6%

	<u>Merged 2 Notes</u>		<u>Merged 1 Note</u>
Balance 6/30/10	4,675,000	55,159,928	797,000
Interest FY 10-11	<u>280,500</u>	<u>5,515,993</u>	<u>47,820</u>
Balance 6/30/11	4,955,500	60,675,921	844,820