
Housing Authority Special Meeting Agenda

Thursday, January 16, 2014

1:00 p.m.

City Hall Council Chambers at
44-950 Eldorado Drive, Indian Wells



Indian Wells Villas

WELCOME TO A SPECIAL MEETING OF THE HOUSING AUTHORITY. ALL PERSONS WISHING TO ADDRESS THE HOUSING AUTHORITY SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM BEFORE THE MEETING BEGINS, AND GIVE IT TO THE AUTHORITY SECRETARY. WHEN THE CHAIR HAS RECOGNIZED YOU, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A 3-MINUTE TIME LIMIT IS CUSTOMARY. PLEASE NOTE THAT YOU MAY ADDRESS THE HOUSING AUTHORITY ON AN AGENDA ITEM AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE CHAIR. ANY PUBLIC RECORD, RELATING TO AN OPEN SESSION AGENDA ITEM, THAT IS DISTRIBUTED WITHIN 72 HOURS PRIOR TO THE MEETING IS AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL RECEPTION AREA 44-950 ELDORADO DRIVE, INDIAN WELLS DURING NORMAL BUSINESS HOURS.

1. CONVENE THE SPECIAL MEETING OF THE HOUSING AUTHORITY, PLEDGE OF ALLEGIANCE AND ROLL CALL

CHAIR TED J. MERTENS
VICE CHAIR TY PEABODY
COMMISSIONER PATRICK MULLANY
COMMISSIONER DOUGLAS HANSON
COMMISSIONER MARY T. ROCHE
COMMISSIONER BOBBI FLETCHER
COMMISSIONER BOB MITCHELL

2. APPROVAL OF THE FINAL AGENDA

3. APPROVAL OF THE MEETING MINUTES.

- A. December 19, 2013 Special Meeting Minutes. Page 5.
- B. December 19, 2013 Regular Meeting Minutes. Page 11.

4. PUBLIC COMMENTS

ALLOWED FOR ONLY THE LISTED ITEMS ON THE SPECIAL MEETING AGENDA

ALL PERSONS WISHING TO ADDRESS THE HOUSING AUTHORITY SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM IN ADVANCE AND HAND IT TO THE AUTHORITY SECRETARY. PLEASE NOTE THAT YOU MAY ADDRESS THE HOUSING AUTHORITY ON AN AGENDA ITEM LISTED ON THE SPECIAL MEETING AGENDA ONLY, BUT ONLY AFTER BEING RECOGNIZED BY THE CHAIR. AT THE APPROPRIATE TIME, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A THREE-MINUTE LIMIT IS CUSTOMARY. NOTWITHSTANDING THE FOREGOING, COMMISSIONERS AND STAFF MAY BRIEFLY RESPOND TO STATEMENTS MADE OR QUESTIONS POSED DURING PUBLIC COMMENTS, AS LONG AS SUCH RESPONSES DO NOT CONSTITUTE ANY DELIBERATION OF THE ITEM.

5. GENERAL BUSINESS

- A. Approve Amendment No. 4 to the South of Miles Indemnification Agreement. Page 18.

RECOMMENDED ACTIONS:

HOUSING AUTHORITY APPROVES AMENDMENT NO. 4 TO THE SOUTH OF MILES INDEMNIFICATION AGREEMENT; AND

AUTHORIZES AND DIRECTS THE MAYOR TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY.

6. EXECUTIVE DIRECTOR'S REPORT/COMMENTS AND MATTERS FROM STAFF

7. COMMISSIONERS' REPORTS AND COMMENTS

- A. COMMISSIONER BOB MITCHELL
- B. COMMISSIONER BOBBI FLETCHER
- C. COMMISSIONER MARY T. ROCHE
- D. COMMISSIONER DOUGLAS HANSON
- E. COMMISSIONER PATRICK MULLANY
- F. VICE CHAIR TY PEABODY
- G. CHAIR TED J. MERTENS

8. CLOSED SESSION

- A. Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 1.
- B. Conference with Legal Counsel Regarding Anticipated Litigation. Initiation of Litigation Pursuant to Government Code Section 54956.9(d)(4). Number of Potential Cases: 1.

9. ADJOURNMENT

TO A REGULARLY SCHEDULED MEETING OF THE INDIAN WELLS HOUSING AUTHORITY TO BE HELD AT 1:00 P.M. ON MARCH 20, 2014 IN THE CITY HALL COUNCIL CHAMBERS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CITY CLERK AT (760) 346-2489. NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING. 128 CFR 35.102.35.104 ADA TITLE III

AFFIDAVIT OF POSTING

I, Anna Grandys, certify that on January 10, 2014, I caused to be posted and served upon all members of the Housing Authority, a notice of a Housing Authority Special Meeting to be held on Thursday, January 16, 2014 at 1:00 p.m. in the City Hall Council Chambers/Executive Conference Room.

Notices were posted at Indian Wells Civic Center, Village 1 [Ralph's], and Indian Wells Plaza [Indian Wells Chamber of Commerce], and were delivered to all Housing Authority members.


Anna Grandys
Chief Deputy City Clerk

City of Indian Wells

44-950 Eldorado Drive
Indian Wells, CA 92210-7497
(760) 346-2489



Meeting Minutes (Long)

Thursday, December 19, 2013

10:00 AM

City Hall Council Chambers/Executive Conference Room

Special Meeting

WELCOME TO A SPECIAL MEETING OF THE CITY COUNCIL. ALL PERSONS WISHING TO ADDRESS THE CITY COUNCIL SHOULD FILL OUT A BLUE PUBLIC COMMENT REQUEST FORM BEFORE THE MEETING BEGINS. GIVE IT TO THE CITY CLERK. WHEN THE MAYOR HAS RECOGNIZED YOU, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A 3-MINUTE TIME LIMIT IS REQUESTED. PLEASE NOTE THAT YOU MAY ADDRESS THE CITY COUNCIL ON AN AGENDA ITEM AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE MAYOR. ANY PUBLIC RECORD, RELATING TO AN OPEN SESSION AGENDA ITEM, THAT IS DISTRIBUTED WITHIN 72 HOURS PRIOR TO THE MEETING IS AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL RECEPTION AREA 44-950 ELDORADO DRIVE, INDIAN WELLS, CA DURING NORMAL BUSINESS HOURS.

PLEASE TURN OFF CELL PHONES AND PAGERS

1. CONVENE THE CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY, PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Mertens convened the Special Meeting of the City Council/Successor Agency of the City of Indian Wells at 10:02 a.m. on December 19, 2013 in the City Hall Executive Conference Room.

Chair Mertens convened the Housing Authority at 11:35 a.m. on December 19, 2013 in the City Hall Executive Conference Room.

PRESENT: 7 - Chairman Ted Mertens, Vice Chairman Ty Peabody, Board Member Patick Mullany, Board Member Douglas Hanson, Board Member Mary T. Roche, Board Member Bobbi Fletcher, and Board Member Bob Mitchell

PRESENT: Mayor Ted Mertens, Mayor Pro-Tem Ty Peabody, Council Member Patrick Mullany, Council Member Douglas Hanson and Council Member Mary Roche

2. APPROVAL OF THE FINAL AGENDA

A motion was made by Mayor Pro-Tem Peabody, seconded by Council Member Hanson, to Approve the Agenda as Submitted. The motion carried unanimously.

3. PUBLIC COMMENTS

[10:03] None.

4. GENERAL BUSINESS

- A. Discussion and Direction Relating to 2014 Council "Draft" of Assignments to Various Internal and External Committees. Page 6.

[10:03] Mayor Mertens lead the discussion as to any modifications to existing committee's, council member assignment changes, and the number of ex-officio members serving on resident committees. It was the CONSENSUS of the Council to ELIMINATE the Highway 111 Widening Ad-Hoc and the Village Underground Ad-Hoc committees, to have the Council Assignment matrix reflect the fact that Council Member Mullany is the alternate to Riverside County Transportation Committee not Mayor Pro Tem Peabody as currently shown, and to place the Coachella Valley Economic Partnership (CVEP) assignment on hiatus as the City is not contributing to the agency; therefore, the City believes it is not entitled to a board seat. The Council DIRECTED staff to receive clarification from CVEP as to the City's status. Council Member Mullany motioned, and Council Member Roche seconded that the funding for CVEP be revisited during the mid-year budget review process. The motion passed unanimously.

Mayor Mertens inquired if there were any changes Council Members wished to make to their existing assignments. Council Member Mullany stated he would like to be off CVAG Energy. Council Member Roche stated she would take CVAG Energy, and asked the Mayor if he would like her to take CVAG Conservation as those two meetings are back-to-back. It was the CONSENSUS of the Council that Council Member Roche is the City's representative to both CVAG Energy and CVAG Conservation, and Council Member Mullany is the alternate for CVAG Energy and Mayor Mertens is the alternate for CVAG Conservation.

There was discussion as to the number of Council Members on the Community Activities, Golf Resort Advisory, Grants-in-Aid and Marketing committees. It was the CONSENSUS of the Council that the Marketing Committee continue to have two voting Council Members, that the Community Activities and the Grants-in-Aid committees have one ex-officio member and one alternate, the Golf Resort Advisory continue to have two ex-officio members, and that there were no changes to Council Member assignments for those committees.

Sets the formal approval of the 2014 Council committee assignments for the January 16, 2014 City Council meeting.

- B. PARTICIPATE IN COMMITTEE DRAFT PROCESS:
Annual Draft Process for Council Committee Assignments.

There was no draft of Council assignments.

- c. ANNUAL REVIEW OF APPLICABLE REGULATION/POLICY:
Annual Review of Regulation/Policy Pertaining to FPPC Gift Restrictions, City Ticket Distribution Policy, and City Campaign Contribution Report Requirement. Page 17.

[10:25] City Attorney Stephen Deitsch reviewed the Fair Political Practices Commission fact sheet on limitations and restrictions on gifts, focusing on the definition of gift, the annual limit, exceptions to the gift definition, returning of a gift within 30 days, and behested payments, and highlighted some of the government/public purposes the City has for city controlled ticket distribution. There were questions of Mr. Deitsch as to spousal attendance at city events/functions. Mr. Deitsch stated the FPPC, Measure S and the City's ticket policy all allow the attendance of spouses at events that have a governmental or public purpose. Mr. Deitsch stated spousal attendance at dinners is also allowed.

Mr. Deitsch finally reviewed the City's policy in relation to disclosure of campaign contributions.

5. CLOSED SESSION

[11:00] Mayor Mertens stated the City Council would hold a Closed Session to discuss the following agenda items:

- A. Conference with Legal Counsel Regarding Anticipated Litigation Pursuant to Government Code Section 54956.9(b)(1): Claimant: Tyrone Colgrove.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

- B. Conference with Legal Counsel Regarding Anticipated Litigation Pursuant to Government Code Section 54956.9(b)(1): Claimant: Laurie Muhlhauser.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

- C. Conference with Legal Counsel Regarding Anticipated Litigation Pursuant to Government Code Section 54956.9(b)(1): Claimant: Claire Joles.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

- D. Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 1.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

- E. Conference with Legal Counsel Regarding Anticipated Litigation. Initiation of Litigation Pursuant to Government Code Section 54956.9(d)(4). Number of Potential Cases: 1.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

6. SUCCESSOR AGENCY CLOSED SESSION

Mayor Mertens stated the Successor Agency would hold a Closed Session to discuss the following agenda item:

- A. Conference with Agency's Real Property Negotiator Pursuant to Government Code Section 54956.8. Real Property: Property Generally Located on the Northeast Corner of Miles Avenue and Highway 111 Known as Miles Crossing, Also Known as APNs 633-310-005, 633-310-006, 633-310-011, 633-310-015, 633-310-016, 633-310-017, 633-310-020, 633-310-023, 633-410-036, 633-410-037, 633-410-041, 633-410-045 and 633-410-046. Agency Negotiator: Negotiating Parties: On Behalf of City of Indian Wells: Wade G. McKinney, City Manager. Other Negotiating Party: Miles Retail Crossing, LLC, Michael Kiner, and Excel Trust L.P. Under Negotiation: Price and Terms of Payment.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

7. HOUSING AUTHORITY CLOSED SESSION

[11:35] Chair Mertens stated the Housing Authority would hold a Closed Session to discuss the following agenda items:

- A. Conference with Agency's Real Property Negotiator Pursuant to Government Code Section 54956.8. Real Property: Property Generally Located on the Northeast Corner of Miles Avenue and Highway 111 Known as Miles Crossing, Also Known as APNs 633-310-005, 633-310-006, 633-310-011, 633-310-015, 633-310-016, 633-310-017, 633-310-020, 633-310-023, 633-410-036, 633-410-037, 633-410-041, 633-410-045 and 633-410-046. Agency Negotiator: Negotiating Parties: On Behalf of City of Indian Wells: Wade G. McKinney, City Manager. Other Negotiating Party: Miles Retail Crossing, LLC, Michael Kiner, and Excel Trust L.P. Under Negotiation: Price and Terms of Payment.

At 3:46 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

8. ADJOURNMENT

At 12:50 p.m., Mayor Mertens ADJOURNED the special meeting of the City Council/Successor Agency/Housing Authority to a regularly scheduled meeting of the Housing Authority to be held at 1:00 p.m. on December 19, 2013 in the City Hall Council Chambers; and thereafter to a regularly scheduled afternoon session of the City Council to be held at 1:30 p.m. on December 19, 2013 in the City Hall Council Chambers.

Respectfully submitted,

Wade G. McKinney, City Manager/City Clerk

City of Indian Wells

44-950 Eldorado Drive
Indian Wells, CA 92210-7497
(760) 346-2489



Meeting Minutes (Long)

Thursday, December 19, 2013

1:00 PM

City Hall Council Chambers

Indian Wells Housing Authority

WELCOME TO A REGULARLY SCHEDULED MEETING OF THE INDIAN WELLS HOUSING AUTHORITY. ALL PERSONS WISHING TO ADDRESS THE HOUSING AUTHORITY SHOULD FILL OUT A BLUE PUBLIC COMMENT REQUEST FORM BEFORE THE MEETING BEGINS AND HAND IT TO THE AUTHORITY SECRETARY. WHEN THE CHAIRMAN HAS RECOGNIZED YOU, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A 3-MINUTE TIME LIMIT IS REQUESTED. PLEASE NOTE THAT YOU MAY ADDRESS THE HOUSING AUTHORITY ON AN AGENDA ITEM LISTED ON THE MEETING AGENDA AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE CHAIRMAN. ANY PUBLIC RECORD, RELATING TO AN OPEN SESSION AGENDA ITEM, THAT IS DISTRIBUTED WITHIN 72 HOURS PRIOR TO THE MEETING IS AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL RECEPTION AREA 44-950 ELDORADO DRIVE, INDIAN WELLS, CA DURING NORMAL BUSINESS HOURS.

PLEASE TURN OFF CELL PHONES AND PAGERS

1. RECONVENE THE INDIAN WELLS HOUSING AUTHORITY, AND ROLL CALL

Chairman Mertens reconvened the Housing Authority of the City of Indian Wells at 1:03 p.m. on December 19, 2013 in the City Hall Council Chambers.

PRESENT: 7 - Chairman Ted Mertens, Vice Chairman Ty Peabody, Board Member Patrick Mullany, Board Member Douglas Hanson, Board Member Mary Roche, Commissioner Bobbi Fletcher and Commissioner Bob Mitchell

2. APPROVAL OF THE FINAL AGENDA

[1:03:40]

A motion was made by Board Member Mullany, seconded by Board Member Hanson, to Approve the Agenda as Submitted. The motion carried unanimously.

3. APPROVAL OF MEETING MINUTES

[1:48:33]

A. October 3, 2013 Housing Authority Minutes.

A motion was made by Board Member Mullany, seconded by Board Member Hanson, to Approve the Minutes as Submitted. The motion carried unanimously.

4. PUBLIC COMMENTS

[1:03:53] None.

5. GENERAL BUSINESS

A.

INDIAN WELLS CROSSING RETAIL:

Approve the Repurchase Election Agreement for Indian Wells Crossing Retail - Phase 1 Commercial Property and Authorize the Executive Director to Execute Same. Page 54.

UNOFFICIAL

[1:04:05] Staff recommended the following changes to the Repurchase Election Agreement for Indian Wells Crossing Retail Phase 1 Commercial Property: (1) Extend the timeline for Excel to pay off the outstanding promissory note allowance date from April 30, 2014 to June 30, 2014 with mutual agreement; (2) change the Housing Authority buy back property clause to January 1, 2015; and (3) a Force Majeure clause be included in the aggregate of 90 days.

Council Member Hanson requested the City Attorney Deitsch read the proposed Force Majeure clause which was as follows: "Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, all performance and other duties specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Housing Authority which shall not excuse performance by the Housing Authority). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of ninety (90) days), if Notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Excel expressly agrees that adverse changes in economic conditions, either of Excel specifically or the economy generally, changes in market conditions or demand, and/or Excel's inability to obtain financing or other lack of funding shall not constitute grounds of enforced delay pursuant to this Section. Excel expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the Date of the Agreement."

Council Member Hanson requested City Attorney Deitsch suggest additional language to define more specifically what is an act or lack of action of Excel to allow the Housing Authority to repurchase the property. Mr. Deitsch stated added language would be "notwithstanding any provision herein to the contrary if Excel obtains required permits to undertake the project on or before January 1, 2015 then the Authority's limited right to repurchase shall be extended as follows: any failure by Excel to commence work pursuant to each issued permit within 60 days of issuance and thereafter to continuously and diligently proceed with completion of work thereunder shall enable the Authority to exercise its right to repurchase the property in accordance with the procedures otherwise described in this agreement and the Authority's authority to extend its right to repurchase shall automatically be extended until 60 days after it has sent written notice of Excel's failure to diligently and continuously proceed with completion of the work and Excel has failed to cure such failure within 30 days of such notice. Provided

3 B

however that Excel shall be entitled to not more than one such cure in the aggregate and a second such notice by the Authority shall entitle the Authority to exercise its limited authority to repurchase."

Mr. Bill Stone, Senior Vice President of Excel Indian Wells LLC, responded to questions of Council on the budget of estimated costs and when could Excel come back to the City with a budget of hard and soft costs as it pertains to the Authority buy back clause.

City Attorney Deitsch stated a recommendation for inclusion in the motion "the Authority has directed the Executive Director to just do due diligence with regard to Excel, who are a reputable well known large entity publicly and it is recommended that the motion include the Executive Director is authorized and directed to execute this agreement on condition that the Executive Director is first satisfied after due diligence and background checks, that Excel is indeed a party with whom the Authority should enter into such an agreement."

City Attorney Deitsch stated with that proviso just mentioned the motion that is recommended is that the Housing Authority approves the Repurchase Election Agreement for the Miles Crossing Retail Phase 1 Commercial Property with Excel Indian Wells LLC subject to as presented in the agenda packet subject to the following: In Section 3.3 would delete the words "up to 30 days by" so it would read "the Closing Date may be extended by mutual written agreement of the parties". Would correct typographical error in Section 3.4.1, third line down, the word "on" should be "one" day after the election deadline. The agreement would include Section 3.2.2 which is before the Housing Authority Commissioners as presented by email from Excel on December 19, 2013 and this provision deals among other things the limited opportunity of the Authority to repurchase the property. However, instead of the March 1, 2015 outside date of that, it would read January 1, 2015 and that date could be extended simply by mutual agreement of the parties and we would add to that provision the language substantially in the form and content that Mr. Deitsch read which defines the opportunity of the Authority to repurchase. Mr. Deitsch stated not just pulling permits but that construction actually commence and that it be diligently and continuously prosecuted to completion. Mr. Deitsch further stated we would add a force majeure provision as read into the record and that Excel and the Authority staff bring back to the Authority a proposed Addendum on hard and soft costs to be presented on or before February 6, 2014; and that the "the Authority has directed the Executive Director to do due diligence with regard to Excel, who are a reputable well known large entity publicly and it is recommended that the motion include the Executive Director is authorized and directed to execute this agreement on condition that the Executive Director is first satisfied that after due diligence and background checks Excel indeed is a party with whom the Authority should enter into such an agreement."

It was determined to APPROVE the changes read into the record by City Attorney Deitsch to the Repurchase Election Agreement for the Miles Crossing Retail Phase 1 Commercial Property with Excel Indian Wells LLC; and

to DIRECT the Staff to prepare an Addendum to the Repurchase Election Agreement for the Miles Crossing Retail Phase 1 Commercial Property on the hard and soft costs cap reimbursement limit and present to the Authority at the February 6, 2014 meeting; and

to DIRECT the Executive Director to have conducted a due diligence and background check on Excel to determine if Excel is a party with whom the Authority should enter into such an agreement; and

to AUTHORIZE and DIRECT the Executive Director to execute the Agreement as Amended.

A motion was made by Vice Chairman Peabody, seconded by Board Member Roche, that this matter be Approved As Amended. The motion carried unanimously.

- B. AFFORDABLE HOUSING PROJECTS:
Receive and File Quarterly City Affordable Housing Inspection Reports. Page 71.

[1:48:49] It was determined to RECEIVE and FILE the quarterly City affordable housing inspection reports.

A motion was made that this matter be Approved. The motion carried unanimously.

5. EXECUTIVE DIRECTOR'S COMMENTS AND MATTERS FROM STAFF

None.

6. COMMISSIONERS' COMMENTS

None.

7. ADJOURNMENT

At 1:53 p.m. Chairman Mertens ADJOURNED to a regularly scheduled meeting of the Indian Wells Housing Authority to be held at 1:00 p.m. on March 20, 2014 in the City Hall Council Chambers.

Respectfully submitted,

Wade G. McKinney, Executive Director

Indian Wells Housing Authority

Staff Report – City Manager’s Office

January 16, 2014

Approve Amendment No. 4 to the South of Miles Indemnification Agreement

RECOMMENDATIONS:

Housing Authority **APPROVES** Amendment No. 4 to the South of Miles Indemnification Agreement; and

AUTHORIZES and **DIRECTS** the Chairman to execute the amendment on behalf of the Housing Authority.

BACKGROUND:

The City acquired a 27 acre parcel of land south of Miles Avenue (City Property) from the Garden of Champions (GOC) in March 2006 for \$15 million and entered a series of agreements, described below. At the time of the 2006 purchase, the eastern 10 acres of the 27 Acre Parcel:

1. Were part of the Turf Farm;
2. Contained a water well that is used to irrigate the Turf Farm and the Indian Wells Tennis Garden (IWTG); and
3. Contained the access to the tunnel that runs underneath Miles Avenue and connects to the IWTG.

As part of the 2006 purchase, the City and GOC entered into a number of agreements that were conditions to the City’s purchase of the 27 Acre Parcel. These included:

Covenant and Agreement dated March 23, 2006: This agreement had a 60 month term and granted the City the right, in its sole discretion, to make GOC at its sole cost (1) close the tunnel access on the 27 Acre Parcel and/or (2) cease use of the Water Well (within 30 days after written notice from the City) and cause the Water Well to be capped (within 180 days after written notice from the City). Section 4 provides that following expiration of 60 months, the City will execute and record a written termination of this agreement; provided, the agreement won’t terminate until that has been done. No such notice of termination has been given or recorded.

Partial Assignment of Turf Maintenance Agreement dated March 23, 2006. The City and GOC are parties to this document under which (1) the City is assigned certain financial benefits under the Turf Maintenance Agreement (as amended), (2) the City will not disturb the use of the City Property under the West Coast Turf (WCT) Agreement, (3) Desert Champions (DC) is responsible for satisfying various obligations to WCT, including tickets for the tournament and (4) DC agrees to defend, hold harmless and indemnify the City as provided in Section 4.

A sponsorship agreement that through 2026 lets the City use Suite 332 for the BNP Paribas Open and other events. For each tournament the City receives a \$75,000 catering credit, sixteen box seats, sixteen loge seats and sixteen grandstand seats, parking passes, eight (two each on four courts) on court signage positions (two each on the four televised courts), two sidewall signage positions in Stadium 2 and Stadium 3, a 20' by 20' display booth, and various promotional and marketing benefits. No fee is charged the City for this sponsorship.

An amendment to the Naming Rights Agreement that reduces the fee for extending the term of that agreement should admission taxes received by the City from the IWTG be less than \$1 million during the last year of the immediately preceding term. The Naming Rights Agreement provides for two ten-year extension terms, the first of which was exercised by the City in December 2012. This extension was at the full amount of \$2.5 million because admission taxes received in 2012 by the City from the IWTG exceeded \$1 million.

A covenant from DC and GOC that the BNP Paribas Open (or equivalent) will be held at the IWTG for twenty years or GOC/DC would pay liquidated damages if it is not. The liquidated damages are five percent (5%) of the gross sales price of the BNP Paribas Open or equivalent (not including the land).

A twenty year ground lease in favor of GOC for the 12.64 acre parcel on Warner Trail that the City developed as a parking lot.

The City Property (27 acre parcel south of Miles Avenue) was transferred to the City's Housing Authority upon elimination of redevelopment agency.

DISCUSSION:

The Indian Wells Housing Authority now owns the City Property and the GOC/DC continues to conduct certain activities on the City Property. In particular, the City Property is used by GOC/DC for event parking when events are held at the Indian Wells Tennis Garden. Furthermore, a sod farm is operated on the City Property by West Coast Turf, and the event parking is at least partially located on the sod farm. Finally, a water well is located and operated on the City Property and supplies water used for irrigation of the sod farm and Indian Wells Tennis Garden. The Coachella Valley Water District

assesses production of groundwater from the well and invoices GOC for the water produced from the well.

The City and Housing Authority earlier entered into the indemnification with the GOC/DC parties so that the GOC and DC would jointly and severally indemnify, defend and hold harmless the City and Housing Authority from and against liability and the like regarding the City Property and the above described use of the City Property by GOC/DC and West Coast Turf. The indemnification originally was due to expire May 17, 2013 and has been extended twice, most recently to January 21, 2014.

CONCLUSION:

Approval of the proposed Amendment No. 4 will continue the protections provided to the City and Housing Authority by GOC/DC for their use of the City Property. There was discussion to insure that the City and Housing Authority maximized their revenue potential from the City Property. The Indian Wells Tennis Garden Ad Hoc Committee discussed this issue with the Tennis Garden representatives on a number of occasions and are working on a strategy to use the remaining seventeen acres for parking.

The Committee also analyzed the various agreements connecting the City and its various affiliated agencies with the DOC/DC and found the City receives significant benefit from the BNP Paribas Tournament and the relationship with GOC/DC. This information is documented in a report entitled *Indian Wells Tennis Garden Agreements – Valuation*, released to the City Council and community in November 2013. The Committee recommends that the existing agreements be continued by implementing a two year extension of the indemnification agreement.

CEQA:

The California Environment Quality Act is not applicable to this action as there is no potential for causing a significant effect on the environment.

ATTACHMENT:

1. Amendment No. 4 to the South of Miles Indemnification

AMENDMENT NO. 4 TO
SOUTH OF MILES INDEMNIFICATION

This Amendment No. 4 ("Amendment No. 4") is entered into as of the ___ day of January, 2014, concerning that certain South of Miles Indemnification ("Indemnification") made and effective as of March 1, 2013 by and between the City of Indian Wells, a charter city duly organized under the Constitution and laws of the State of California ("City"), and the City of Indian Wells Housing Authority ("Authority" and, collectively with City, "City Parties"), a housing authority established under the laws of the State of California, and Garden of Champions LLC, a California limited liability company ("GOC"), and Desert Champions LLC, a California limited liability company ("DC" and, collectively with GOC, "GOC/DC"), as amended by Amendment No. 1 entered into on or about June 18, 2013, by Amendment No. 2 entered into on or about August 8, 2013 and by Amendment No. 3 entered into on or about October 3, 2013.

City Parties and GOC/DC agree as follows:

1. Section 3 of the Indemnification, as amended by Amendment No. 3, is amended by deleting "October 4, 2013", and by substituting therefor "January 31, 2016".
2. City Parties and GOC/DC reaffirm all terms and provisions set forth in the Indemnification except insofar as they are expressly amended by this Amendment No. 4.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 to the Indemnification, as previously amended by Amendment No. 1, Amendment No. 2 and Amendment No. 3, as of the date first above written.

"CITY"

City of Indian Wells, a charter city duly
organized under the Constitution and laws of
the State of California

By: _____
Name: Ted J. Mertens
Its: Mayor

"Authority"

City of Indian Wells Housing Authority, a
housing authority established under the laws of
the State of California

By: _____
Name: Ted J. Mertens
Its: Chairman

"GOC"

Garden of Champions LLC, a California
Limited liability company

By: *SR*
Name: Steve R. Simon
Its: Chief Operating Officer

"DC"

Desert Champions LLC, a California limited
Liability company

By: *SR*
Name: Steve R. Simon
Its: Chief Operating Officer

Attest:

By: _____
Anna Grandys
Chief Deputy City Clerk

Approved as to form:

By: _____
Stephen P. Deitsch
City Attorney