

RESOLUTION OB NO. 2013-06

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS, CALIFORNIA, APPROVING A COOPERATION AGREEMENT BETWEEN THE CITY OF INDIAN WELLS AND THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS

WHEREAS, pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), the City Council of City activated the Redevelopment Agency of the City of Indian Wells (the "Redevelopment Agency") and subsequently adopted the Redevelopment Plan for the Whitewater Redevelopment Project (the "Redevelopment Plan"); and

WHEREAS, the City and Redevelopment Agency entered into a Cooperation Agreement, dated February 17, 2011 ("Cooperation Agreement"), whereby the City agreed to provide the Redevelopment Agency with staff assistance, supplies, technical services and other services and construction of facilities, as well as a loan in the amount of \$16,400,000, in order to assist the Redevelopment Agency to carry out its functions under the Community Redevelopment Law and to assist with implementation of the Redevelopment Plan; and

WHEREAS, the Cooperation Agreement further provides for the Redevelopment Agency to reimburse the City for actions undertaken and costs and expenses incurred by the City for and on behalf of the Redevelopment Agency; and

WHEREAS, Assembly Bill 1X 26 ("AB 26"), enacted as part of the 2011-2012 State of California budget bill, and as modified by the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 ("Legal Action"), dissolved and set out procedures for the wind-down of all redevelopment agencies throughout the State effective February 1, 2012, and in June 2012, the California Legislature adopted Assembly Bill 1484 ("AB 1484," and collectively with AB 26, the "Dissolution Act") further modifying some of the procedures set forth in AB 26, and adding certain other procedures and requirements for the dissolution and wind-down of redevelopment agencies; and

WHEREAS, the Successor Agency is the successor entity to the former Redevelopment Agency and, pursuant to the Dissolution Act, is responsible for the wind-down of the former Redevelopment Agency, including without limitation the performance and repayment of all enforceable obligations of the former Redevelopment Agency; and

WHEREAS, Health and Safety Code Section 34171(d)(2), as modified by AB 1484, provides, with a few exceptions, that "enforceable obligation" does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency; and

WHEREAS, Health and Safety Code Section 34179.7, added by AB 1484, provides that upon completion of certain requirements and payment of certain amounts as required by Sections 34179.6 and 34183.5, the Department of Finance ("DOF") shall issue, within five business days, a finding of completion of the requirements of Section 34179.6 to the successor agency; and

WHEREAS, Health and Safety Code Section 34191.4, also added by AB 1484, provides in part that, following issuance of a finding of completion by DOF, and upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county or city and county that created the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes; and

WHEREAS, the Oversight Board is the oversight board to the Successor Agency and, pursuant to the Dissolution Act, is responsible to oversee the actions of the Successor Agency in the wind-down of the former Redevelopment Agency, including without limitation the performance and repayment of all enforceable obligations of the former Redevelopment Agency.

NOW, THEREFORE, THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Finding. The Oversight Board hereby **FINDS** and **DETERMINES** that the loan and advance of funds by the City to the former Redevelopment Agency under the Cooperation Agreement was for legitimate redevelopment purposes. This finding is based on the following:

a. The amounts due and owing to the City under the Cooperation Agreement reflect the reimbursement to the City for costs incurred by the City to provide staff assistance, supplies, technical services and other services and facilities to the Redevelopment Agency during the redevelopment plan adoption process, and in implementing the Redevelopment Plan following its adoption, up to the dissolution of the Redevelopment Agency under the Dissolution Act.

b. Health and Safety Code Section 33127 provides a redevelopment agency with the power to obtain, hire, purchase or rent office space, equipment, supplies, insurance or services in order to carry out its redevelopment activities. Health and Safety Code Section 33133 authorizes a redevelopment agency to accept assistance from any public or private source for the redevelopment agency's activities, powers and duties.

c. The Redevelopment Agency was established for the purpose of improving, rehabilitating and redeveloping the blighted areas constituting the Redevelopment Project Area pursuant to the adopted Redevelopment Plan, and the Redevelopment Agency entered into the Cooperation Agreement with the City in order to obtain the staffing services, equipment and facilities required to carry out its duties under the Community Redevelopment Law and the Redevelopment Plan.

d. The amounts loaned to or advanced on behalf of the Redevelopment Agency under the Cooperation Agreement were loaned or advanced to the Redevelopment Agency to further the Redevelopment Agency's redevelopment activities.

SECTION 3. Approval of Cooperation Agreement. The Oversight Board hereby **APPROVES** the Cooperation Agreement between the City of Indian Wells and the former Redevelopment Agency of the City of Indian Wells, in substantially the form currently on file with the City Clerk.

SECTION 4. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 5. Certification. The City Clerk of the City of Indian Wells, acting ex officio on behalf of the Oversight Board as its Secretary, shall certify to the adoption of this Resolution.

SECTION 6. Effective Date. Pursuant to Health and Safety Code Section 34179(h), all actions taken by the Oversight Board may be reviewed by the State of California Department of Finance, and, therefore, this Resolution shall not be effective for five (5) business days, pending a request for review by the State of California Department of Finance.

PASSED AND ADOPTED by the Oversight Board of the Successor Agency to the Indian Wells Redevelopment Agency at a special meeting held on this 16th day of September, 2013.



MARY T. ROCHE
CHAIRMAN

CERTIFICATION FOR RESOLUTION OB NO. 2013-06

I, Anna Grandys, Secretary of the Oversight Board of the Successor Agency to the Indian Wells Redevelopment Agency, **DO HEREBY CERTIFY** that the whole number of the members of the Oversight Board of the Successor Agency to the Indian Wells Redevelopment Agency is six (6); that the above and foregoing Resolution was duly and regularly passed and adopted at a special meeting of the Oversight Board of the Successor Agency to the Indian Wells Redevelopment Agency on the 16th day of September, 2013, by the following vote:

AYES: McDaniel, McKinney, Powell, Roche
NOES: None
ABSENT: Aguilar, Renew

ATTEST:


ANNA GRANDYS
SECRETARY

EXHIBIT "A"

**RATIFICATION AND AMENDMENT TO COOPERATION AGREEMENT
BETWEEN THE CITY OF INDIAN WELLS AND THE
FORMER REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS**

THIS RATIFICATION AND AMENDMENT TO COOPERATION AGREEMENT (this "Amendment") is entered into this 12th day of September, 2013, by and between the CITY OF INDIAN WELLS, a municipal corporation (the "City"), and the SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS, a public body, corporate and politic (the "Successor Agency").

RECITALS

The City and the Successor Agency (individually, a "Party" and collectively, the "Parties") enter into this Amendment with reference to the following facts and circumstances:

A. Pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), the City Council of City activated the Redevelopment Agency of the City of Indian Wells (the "Redevelopment Agency") and subsequently adopted the Redevelopment Plan for the Whitewater Redevelopment Project (the "Redevelopment Plan").

B. The City and Redevelopment Agency entered into a Cooperation Agreement, dated February 17, 2011 ("Cooperation Agreement"), whereby the City agreed to provide the Redevelopment Agency with staff assistance, supplies, technical services and other services and construction of capital facilities, as well as a loan in the amount of \$16,400,000, in order to assist the Redevelopment Agency to carry out its functions under the Community Redevelopment Law and to assist with implementation of the Redevelopment Plan. The Cooperation Agreement further provides for the Redevelopment Agency to reimburse the City for actions undertaken and costs and expenses incurred by the City for and on behalf of the Redevelopment Agency.

C. Assembly Bill 1X 26 ("AB 26"), enacted as part of the 2011-2012 State of California budget bill, and as modified by the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 ("Legal Action"), dissolved and set out procedures for the wind-down of all redevelopment agencies throughout the State effective February 1, 2012. In June 2012, the California Legislature adopted Assembly Bill 1484 ("AB 1484," and collectively with AB 26, the "Dissolution Act") further modifying some of the procedures set forth in AB 26, and adding certain other procedures and requirements for the dissolution and wind-down of redevelopment agencies.

D. The Successor Agency is the successor entity to the former Redevelopment Agency and, pursuant to the Dissolution Act, is responsible for the wind-down of the former Redevelopment Agency, including without limitation the performance and repayment of all enforceable obligations of the former Redevelopment Agency.

E. Health and Safety Code Section 34171(d)(2), as modified by AB 1484, provides, with a few exceptions, that “enforceable obligation” does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency.

F. Health and Safety Code Section 34179.7, added by AB 1484, provides that upon completion of certain requirements and payment of certain amounts as required by Sections 34179.6 and 34183.5, the Department of Finance (“DOF”) shall issue, within five business days, a finding of completion of the requirements of Section 34179.6 to the successor agency. Health and Safety Code Section 34191.4, also added by AB 1484, provides in part that, following issuance of a finding of completion by DOF, and upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county or city and county that created the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.

G. In addition to establishing when a loan agreement will be deemed to be an enforceable obligation, Section 34191.4 further establishes certain restrictions and limitations on, among other things, the calculation of interest on the remaining principal amount of the loan, the amounts that can be repaid from time to time under the loan agreement, and requires that twenty percent of any loan repayment shall be deducted from the loan repayment amount and shall be transferred to a Low and Moderate Income Housing Asset Fund.

H. The parties desire to enter into this Amendment in order to ratify the existence and validity of the Cooperation Agreement, and to establish their understanding and agreement as to the limitations and restrictions that will apply to the repayment to the City of all amounts due and owing the City by the former Redevelopment Agency under the Cooperation Agreement pursuant to the Dissolution Act.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1. Purpose. The purpose of this Amendment is (a) to ratify the existence and validity of the Cooperation Agreement, and (b) to establish the understanding and agreement of the parties as to the limitations and restrictions that will apply to the repayment to the City of all amounts due and owing the City by the former Redevelopment Agency under the Cooperation Agreement pursuant to the Dissolution Act.

2. Loan Amount. The outstanding principal amount owed to the City under the Cooperation Agreement, as of February 1, 2012 (the date of dissolution of the former Redevelopment Agency), is \$16,400,000.

3. Loan was for Legitimate Redevelopment Purposes. The parties acknowledge and agree that the amounts due to the City under the Cooperation Agreement reflect:

a. Amounts due and owing to the City to reimburse the City for costs incurred by the City to provide staff assistance, supplies, technical services and other services and facilities to the Redevelopment Agency during the redevelopment plan adoption process, and in implementing the Redevelopment Plan following its adoption. Health and Safety Code Section 33127 provides a redevelopment agency with the power to obtain, hire, purchase or rent office space, equipment, supplies, insurance or services in order to carry out its redevelopment activities. Health and Safety Code Section 33133 authorizes a redevelopment agency to accept assistance from any public or private source for the agency's activities, powers and duties. The Redevelopment Agency was established for the purpose of improving, rehabilitating and redeveloping the blighted areas constituting the Redevelopment Project Area pursuant to the adopted Redevelopment Plan, and the Redevelopment Agency entered into the Cooperation Agreement with the City in order to obtain the staffing services, equipment and facilities required to carry out its duties under the Community Redevelopment Law and the Redevelopment Plan.

b. Repayment to the City of amounts loaned to or advanced on behalf of the Redevelopment Agency to further the Redevelopment Agency's redevelopment activities.

4. Conditions Precedent to Repayment. The Parties understand and agree that, pursuant to the Dissolution Act, the Cooperation Agreement will be deemed to be an "enforceable obligation" only after completion of the following actions:

a. The Successor Agency shall have been issued a finding of completion by DOF pursuant to Health and Safety Code Section 34179.7; and

b. The Successor Agency shall have applied for and the Oversight Board shall have approved the Cooperation Agreement, and made a finding that the loan of funds to the Redevelopment Agency under the Cooperation Agreement was for legitimate redevelopment purposes.

The Parties acknowledge and agree that DOF has issued a finding of completion to the Successor Agency pursuant to Health and Safety Code Section 34179.7. The Successor Agency and City shall cooperate in providing any documentation and evidence to the Oversight Board as necessary to obtain from the Oversight Board approval of the Cooperation Agreement, together with a finding that the loan of funds by the City to the former Redevelopment Agency under the Cooperation Agreement was for legitimate redevelopment purposes.

5. The Parties acknowledge and agree that the repayment of amounts owing to the City under the Cooperation Agreement shall be subject to the limitations and restrictions set forth in Health and Safety Code Section 34191.4(b).

[Signatures on following pages]

IN WITNESS WHEREOF, the City and Successor Agency have executed this Amendment as of the date first set forth above.

CITY OF INDIAN WELLS:

By: _____
Mary T. Roche, Mayor

APPROVED AS TO FORM:

By: _____
Stephen P. Deitsch, City Attorney

ATTEST:

By: _____
Anna Grandys, Chief Deputy City Clerk

**SUCCESSOR AGENCY TO THE FORMER
REDEVELOPMENT AGENCY OF THE
CITY OF INDIAN WELLS**

By: _____
Mary T. Roche, Chair

APPROVED AS TO FORM:

By: _____
Stephen P. Deitsch, Agency Counsel

ATTEST:

By: _____
Anna Grandys, Chief Deputy City Clerk