

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

925



FROM: Economic Development Agency

SUBMITTAL DATE:
December 2, 2010

SUBJECT: Resolution Number 2010-314 Withdrawing from and Terminating the Joint Exercise of Power Agreement of the Riverside San Bernardino Housing Finance Agency

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt Resolution Number 2010-314 authorizing the withdrawal and termination of the joint exercise and power agreement of the Riverside San Bernardino Housing Finance Agency; and
2. Authorize the Assistant County Executive Officer/EDA, or his designee, to take the necessary steps to implement Resolution Number 2010-314 including, but not limited to, signing necessary and relevant documents and receiving surplus funds, if any, from the Riverside San Bernardino Housing Finance Agency

BACKGROUND: The Riverside San Bernardino Housing and Finance Agency is a public agency created June 1, 1999, for the purpose of implementing a Lease to Own Homeownership Program in the region of Riverside and San Bernardino Counties.

(Continued)

Lisa Brandl for

Robert Field
Assistant County Executive Officer/EDA
By Lisa Brandl, Managing Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: Private Tax Exempt Bond Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
Jennifer L. Sargent
BY: _____
County Executive Office Signature Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL
BY: *Anita C. Willis* 11-23-10
Departmental Concurrence

Consent
 Policy
 Consent
 Policy
 Dept't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.: N/A District: ALL Agenda Number: **3.20**

BACKGROUND: (Continued)

The voting and non-voting member cities/county includes the following:

1. City of Chino
2. City of Colton
3. City of Corona
4. City of Hemet
5. City of Highland
6. City of Norco
7. City of Perris
8. City of Redlands
9. City of Rialto
10. City of Riverside
11. County of Riverside
12. City of San Bernardino
13. City of San Jacinto

Each member has a designated representative from their staff represented as a member on the Board of the Agency.

\$72 million in tax-exempt bonds were issued in May 2001. The Agency established a program under which the Agency acquired homes and leased the homes to persons of low and moderate income. The objective was to provide decent, safe, and sanitary housing for purposes of implementing a lease with an option to purchase program. The bond proceeds financed the purchase of the homes by the Agency. The program was intended to serve those families and individuals who had slight credit problems and limited financial resources to afford a down-payment and closing costs, and who met certain program requirements established by the Federal Home Loan Mortgage Corporation (FHLMC).

The program originated 68 loans totaling approximately \$10,500,000 (15% of the program funds) in loans. The lack of activity versus the Demand Study may have partially been due to a significant reduction in interest rates and a variety of loan products entering the market around the same time that provided other more competitive options. In addition, the Agency hired two different consultants to administer and operate the program. In hind sight, both companies could have been more aggressive and performed a better outreach to realtors and lenders.

Over 20 other similar governmental housing agencies across the country issued bonds to finance the same type of Lease to Own Homeownership Program with similar success.

BACKGROUND: (Continued)

In November 2005, the Agency Board was informed that the Internal Revenue Service (IRS) was investigating the tax exempt status of the bonds for several other agencies. The IRS investigation has expanded to now include over 20 agencies across the country. On November 15, 2006 the Agency received a letter from the IRS stating a preliminary determination that the bonds are taxable and do not meet the various requirements for tax-exempt bonds. This meant that the IRS could make a final determination that there is a federal tax liability owed by the bondholders of approximately \$1.4 million dollars due to the interest paid on the bonds being taxable income. The amount owed the IRS depended upon the IRS's final determination and what was eventually negotiated with them as a settlement of the tax liability. The Agency hired a tax-attorney who is an expert in this area. It is the Agency's position that the financial responsibility for the bondholders' tax liability lies with those consultants who issued the bonds (i.e. bond counsel, underwriter, liquidity provider, etc). On May 29, 2007 the IRS executed a negotiated tax settlement prepared by the Agency Staff, Agency legal counsel and special legal counsel for an amount of only \$500,000 (IRS exonerated \$900,000) with no further tax liability to the bond holders or the Agency.

DISSOLUTION OF THE AGENCY

All of the remaining property assets have been disposed of and the Agency is prepared to complete final dissolution.

According to Section 7.02(b) Distribution of Assets of the First Amended and Restated Joint Exercise of Powers Agreement, upon termination of the agreement "if no contributions have been made, any assets remaining shall be distributed to the Voting Members in equal proportions." Staff does not recall any contributions from the members so the remaining assets of approximately \$75,000 will be divided equally among the nine voting members (approximately \$8,333).

Also, per Section 7.03 Continued Existence of Agency "Upon termination, this Agreement and the Agency shall continue to exist for the limited purpose of distributing the assets of the Agency and all other functions necessary to close out the affairs of the Agency."

RESOLUTION NUMBER 2010-314

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE
WITHDRAWING FROM AND TERMINATING THE JOINT EXERCISE OF POWER
AGREEMENT OF THE RIVERSIDE-SAN BERNARDINO HOUSING & FINANCE AGENCY

- I. *WHEREAS*, on or about June 1, 2000, the County of Riverside and a number of local government agencies in Riverside and San Bernardino Counties, including the County of Riverside, entered into that certain First Amended and Restated Joint Exercise of Powers Agreement ("Agreement") of the Riverside-San Bernardino Housing & Finance Agency ("Agency"); and
- II. *WHEREAS*, the stated purpose of the Agency was to provide a program "of furthering home ownership in the geographical area of the member agencies and of financing other capital improvements, through the sale of revenue bonds, the purchase, construction or rehabilitation of housing or other capital improvements, the entering into of leases, the sale of housing, [and] the provision of low-down-payment mortgages for buyers"; and
- III. *WHEREAS*, since its inception the Agency has successfully carried out its purpose through a lease-purchase program that provided home ownership opportunities for persons and families who would otherwise not qualify for typical first-time and other affordable housing programs offered by individual member agencies; and
- IV. *WHEREAS*, the bonds and indebtedness issued by the Agency to carry out the lease-purchase program were repaid as of June 30, 2007, all real property owned by the Agency has been sold or otherwise divested, and the Board of Directors of the Agency have determined it is now appropriate to terminate the Agreement and dissolve the Agency; and

1 V. WHEREAS, Section 7.01 of the Agreement provides that the Agreement may be
2 terminated upon mutual agreement of all members of the Agency; and

3
4 VI. WHEREAS, Section 7.03 of the Agreement provides that, following termination, the
5 Agreement and Agency shall continue to exist for the limited purpose of distributing the
6 assets of the Agency and all other functions necessary to close out the affairs of the
7 Agency.

8 NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of
9 Riverside:

- 10
- 11 1. The foregoing recitals are true and correct and are incorporated herein by reference as
12 if set forth in full.
 - 13 2. Pursuant to Section 3.04 of the Agreement, the County of Riverside hereby withdraws
14 from membership in the Agency.
 - 15 3. Pursuant to Section 7.01 of the Agreement, the County of Riverside hereby agrees to
16 terminate the Agreement effective upon agreement of all members of the Agency.
 - 17 4. The Board of Supervisors hereby directs the Assistant County Executive Officer, EDA
18 or his designee to provide notice to the Agency of the adoption of this Resolution and
19 the foregoing withdrawal and termination.
 - 20 5. The Board of Supervisors hereby directs the Agency to distribute the remaining assets
21 of the Agency in accordance with the Agreement and to notify the County of Riverside
22 when all assets are distributed and the termination of the Agreement and Agency are
23 final.
 - 24
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FORM APPROVED COUNTY COUNSEL

BY: ANITA C. WILKINS - 11-23-10

DATE: 11/23/10