

739



SUBMITTAL TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: Housing Authority

SUBMITTAL DATE:
June 6, 2013

SUBJECT: Memorandum of Understanding Between the Housing Authority of the County of Riverside and the City of Coachella

RECOMMENDED MOTION: That the Board of Commissioners:

1. Approve the attached Memorandum of Understanding (MOU) between the Housing Authority of the County of Riverside and the City of Coachella;
2. Authorize the Chairman of the Board of Commissioners to execute the attached MOU;

(Continued)

Robert Field
Executive Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

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

C.E.O. RECOMMENDATION:

APPROVE

BY: Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: ANITA C. WILLIS
DATE: 5-16-13
Department Concurrence

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

RECEIVED W/CLERK OF THE BOARD
MAY 20 11 58 AM '13

Prev. Agn. Ref.: N/A | District: 4/4 | Agenda Number: 10-1

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

3. Authorize the Executive Director, or designee, to execute subordination agreements related to the City of Coachella's Former Redevelopment Agency First Time Home Buyer Down Payment Assistance Loan and Grant Program and Housing Rehabilitation Loan and Grant Program, subject to approval by Housing Authority Counsel; and
4. Authorize the Executive Director, or designee, to take all necessary steps to implement the attached MOU, including, but not limited to, signing subsequent, necessary and relevant documents.

BACKGROUND:

On June 28, 2011, Governor Brown signed ABX1 26, the bill to dissolve redevelopment agencies throughout the State of California, and ABX1 27, the companion bill to allow redevelopment agencies to continue activities after making payment to the state. Both bills were to take effect on October 1, 2011.

Subsequently, on July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California, challenging the constitutionality of ABX1 26 and ABX1 27, and requesting a stay of enforcement of both bills, which was partially granted. On December 29, 2011, the California Supreme Court issued its final decision in the legal action upholding ABX1 26 and invalidating ABX1 27, which dissolved all redevelopment agencies throughout the State of California, effective February 1, 2012.

Pursuant to Part 1.85, Chapter 2, Section 34716(b)(2) of the Health and Safety Code as enacted in ABX1 26, if a city, county, or city and county does not elect to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the agency shall be transferred to the local housing authority in the territorial jurisdiction of the former redevelopment agency when there is one local housing authority.

On January 25, 2011, pursuant to Health and Safety Code 34176(b)(2), the City of Coachella (City) elected not to retain responsibility for the housing assets and functions of the former Coachella Redevelopment Agency (Former RDA), thus transferring these assets and functions to the Housing Authority of the County of Riverside (Authority).

The Authority and City have been working over the past few months to reach a consensus on whether, and how to transfer the housing activities of the Former RDA to the Authority. The Authority is now accepting the transfer of the housing assets and functions of the Former RDA under a reservation of rights pursuant to the terms of the attached Memorandum of Understanding.

(Continued)

BACKGROUND: (Continued)

Additionally, in overseeing the Former RDA's First Time Home Buyer Down Payment Assistance Loan and Grant Program and Housing Rehabilitation Loan and Grant Program (Former RDA Programs), the Authority will be required to process subordination agreements by individual homeowners who want to take advantage of low mortgage interest rates and seek to re-finance their mortgage. The Former RDA Programs were funded with Former RDA Housing Set Aside Funds and secured by recorded deeds of trust which are recorded in second and/or third position to the senior financing loans (Senior Loans). When refinancing the Senior Loans the Authority will be required to execute standard subordination agreements subordinating the Former RDA Programs loans to the new Senior. The Authority would remain in subordinate position to the new Senior and would not be lower than the current position. The Authority would not subordinate to an amount greater than the existing Senior Loans.

To facilitate implementation of the Former RDA Programs, increase program efficiency and save administrative costs, Authority is requesting that the Board delegate authority to the Executive Director or designee to approve and execute the standard subordination agreements subject to approval by Authority Counsel.

Housing Authority Counsel has approved as to form the attached Memorandum of Understanding. Staff recommends that the Board approve the attached Memorandum of Understanding.

FINANCIAL DATA:

Not applicable.

Attachment:

- Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE
AND THE CITY OF COACHELLA**

THIS MEMORANDUM OF UNDERSTANDING (the “**Memorandum of Understanding**” or “**MOU**”) dated _____, 2013 (the “**Effective Date**”) is by and between the HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, (the “**Authority**”), and the CITY OF COACHELLA, a California municipal corporation (the “**City**”), with reference to the following facts:

A. On June 28, 2011, as part of the State budget, companion bills Assembly Bill 1X 26 (“AB 26”) and Assembly Bill IX 27 (“AB 27”) were enacted, which dissolved all redevelopment agencies unless the redevelopment agencies participated in a “Alternative Voluntary Redevelopment Program”.

B. On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California, challenging the constitutionality of AB 26 and AB 27, and requesting a stay of enforcement of both bills, which was partially granted.

C. On December 29, 2011, the Supreme Court issued its final decision in the legal action upholding AB 26 and invalidating AB 27, which dissolved all redevelopment agencies throughout the State of California, effective February 1, 2012.

D. Pursuant to Health and Safety Code Section 34176, enacted by AB 26, cities then had to elect whether to retain the housing assets and functions previously performed by their redevelopment agencies.

E. If cities elected not to retain the housing functions previously performed by their redevelopment agencies, all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the former redevelopment agencies would be transferred to the appropriate agency.

F. On January 25, 2011, pursuant to Health and Safety Code §34176(b)(2), the City elected not to retain responsibility for the housing assets and functions of the former Coachella Redevelopment Agency (the “Former RDA”), thus transferring these assets and functions to the Authority.

G. The City and Authority have been working over the past few months to reach a consensus on whether, and how to transfer the housing activities of the Former RDA to the Authority, especially given the funding constraints.

H. The Authority is accepting the transfer of the housing assets and functions of the Former RDA under a reservation of rights pursuant to the terms of this Memorandum of Understanding.

I. The parties intend by this Memorandum of Understanding to memorialize the nature of their respective roles, promises and obligations relating to the transfer of the housing assets and functions of the Former RDA to the Authority.

NOW THEREFORE, based on the recitals set forth above, the Authority and City agree as follows:

I. INTENTION AND PURPOSE

The intention of this Memorandum of Understanding is to allow for the orderly transition of the housing assets and functions of the Former RDA to the Authority, and to provide funding to assist with such transition and administration.

II. PARTY OBLIGATIONS

A. Authority's Obligations. In addition to all other obligations set forth in this Memorandum of Understanding, the Authority shall have the following obligations:

1. The Authority shall accept the City's transfer of the housing assets and functions of the Former RDA transferred by the City pursuant to §34176(b)(2), as described in more detail in this MOU, and shall take such actions necessary to effectuate such transfer.

2. The Authority shall accept the transfer of all the files and documents associated with the housing loan portfolio of the Former RDA, which shall include, but not be limited to the following files:

- a. First-Time Home Buyer Down Payment Assistance Loan and Grant Program;
- b. Housing Rehabilitation Loan and Grant Program;
- c. Desert Palms Apartments Disposition and Development Agreement;
- d. Building Horizons Disposition and Development Agreement; and
- e. Rancho Housing Alliance Disposition and Development Agreement and Loan.

3. The Authority shall accept the transfer of the following two housing lawsuits the former RDA was involved in at the time of its dissolution, and agree to substitute into these two cases:

a. Redevelopment Agency of the City of Coachella vs. Rancho Housing Alliance, et al., Case No. INC 1102649

B. The City's Obligations. In addition to the obligations expressly set forth herein, the City shall have the following obligations:

1. The City shall transfer to the Authority all beneficial interest in the remaining housing bonds proceeds in the approximate amount of \$2.8 million dollars and take all steps to effectuate such transfer. With the transfer, the City shall provide the Authority with the bond documents, bond balances, bond accounting fiscal records, expenditure deadlines, and any other relevant documents, as well as inform the Authority of any outstanding bond obligations.

2. The City shall transfer to the Authority all files and documents associated with the housing loan portfolio of the Former RDA, which shall include, but not be limited the following files:

- a. First-Time Home Buyer Down Payment Assistance Loan and Grant Program;
- b. Housing Rehabilitation Loan and Grant Program;
- c. Desert Palms Apartments Disposition and Development Agreement;
- d. Building Horizons Disposition and Development Agreement; and
- e. Rancho Housing Alliance Disposition and Development Agreement and Loan.

3. The City shall provide the Authority with copies of all documents and correspondence between the City and the Department of Finance regarding the housing assets and functions of the Former RDA. This shall include any documents and correspondence about the Recognized Obligation Schedule as they relate to housing.

4. The City shall include in the Recognized Obligation Schedule the legal expenses incurred by the Authority in taking responsibility for the two housing lawsuits the Former RDA was involved in at the time of its dissolution.

5. To the extent legally possible, the City will include in the Recognized Obligation Schedule all fees and costs incurred by both the City and Authority associated with the transfer of the housing assets and functions from the Former RDA to the Authority, as well include any on-going administrative costs associated with administering the housing assets and functions of the Former RDA.

C. Mutual Obligations:

1. The City and Authority shall cooperate in transferring all files and documents associated with the housing loan portfolio of the Former RDA to the Authority.

2. The City and Authority shall cooperate in transferring the beneficial interest in the approximately \$2.8 million in bonds to the Authority to the extent this can be legally accomplished; otherwise, alternative arrangements will be made between the City and the Authority to effectuate such transfer.

3. The City and Authority shall cooperate in transferring the two litigation matters identified in this MOU from the Former RDA to the Authority.

4. The City and Authority will cooperate in providing notice to any property owners that will be affected by the transfer of the housing assets and functions from the Former RDA to the Authority.

5. The City and Authority shall make staff and resources available to assist with the orderly transition of the housing assets and functions from the Former RDA to the Authority.

6. The City and Authority shall cooperate with the execution of all agreements, notices, disclosures and other documents that may be required to facilitate the transfer of the housing assets and functions from the Former RDA to the Authority described in the MOU and shall take all actions necessary to effectuate such transfer.

D. Reservation of Rights

1. The Authority is accepting the transfer of the housing assets and functions of the Former RDA under a reservation of rights based upon the Authority's contention that the law does not require it to take on the responsibility for the litigation and bankruptcy proceedings referenced in section, and the associated legal fees and costs.

2. The Authority reserves its statutory right to seek an opinion from the California Attorney General regarding the interpretation of Health and Safety Code Section 34176(b), the rights and obligations of the City and Authority, this MOU, any remedies available to the parties, and any other matter.

3. By accepting transfer of the housing assets and functions of the Former RDA, the Authority is not assuming any responsibility or liability for any negligent, wrongful, and intentional acts of the City and of the Former RDA in administering the housing assets and functions of the Former RDA.

4. If it is later determined that the Authority is not obligated to accept the City's transfer of the housing assets and functions of the Former RDA or to continue administering the housing assets and functions, the City and Authority will cooperatively work to transfer the housing assets and functions to the appropriate entity.

III. ALTERNATIVE DISPUTE

The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in Riverside County. Each party shall bear its own expenses and costs associated with the mediation. The cost of mediator shall be shared equally by the parties.

IV. INDEMNIFICATION

A. By Authority. Authority shall indemnify, defend and hold the City harmless from any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, to the extent arising out of or in connection with the willful misconduct or the negligent acts, errors, or omissions of the Authority, its officers, agents or employees with respect to the Authority's performance of this MOU.

B. The City. City shall indemnify, defend and hold the Authority harmless from any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, to the extent arising out of or in connection with the willful misconduct or the negligent acts, errors, or omissions of the City, its officers, agents or employees with respect to the City's performance under this MOU.

V. NOTICES

Any party delivering notice or requesting information from the other shall send such notice or request as indicated below:

City: City of Coachella
Attention: City Manager
1515 Sixth Street
Coachella, CA 92236
Phone (760) 398-3502

Authority: Housing Authority of the County of Riverside
Attention: Deputy Executive Director
5555 Arlington Ave.
Riverside, CA 92504

VI. COUNTERPARTS

This MOU may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature (s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this MOU attached thereto.

VII. SEVERABILITY

If any term, covenant or condition of this MOU shall, to any extent, be invalid, void, illegal or unenforceable, the remainder of this MOU shall not be affected thereby, and each other term, covenant or condition of this MOU shall be valid and be enforced to the fullest extent permitted by law.

VIII. GOVERNING LAW

This MOU is made and entered into in the State of California and shall be governed by and construed and enforced in accordance with the laws of the State of California. The venue for resolving any disputes regarding this MOU shall be within the County of Riverside.

IX. AMENDMENT

No modification, variation or amendment of this MOU shall be effective without the written consent of all of the parties to this Memorandum of Understanding at the time of such modification, variation or amendment.

X. SUCCESSORS

This MOU shall be binding on and inure to the benefit of each of the parties' successors and assigns.

XI. ATTORNEYS FEES

In any action or proceeding brought to enforce any provision of this MOU, or where any provision hereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees and court costs in addition to any other available remedy.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding for the _____ the day and year first above written.

**HOUSING AUTHORITY OF THE
COUNTY OF RIVERSIDE:**

CITY OF COACHELLA:

By: _____
John J. Benoit, Chairman
Chairman, Board of Commissioners

By: _____
Eduardo Garcia
Mayor

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

ATTEST:

By: _____
Deputy

By: _____
Beatrice Barajas
City Clerk

APPROVED AS TO FORM:
Pamela J. Walls,
County Counsel

APPROVED AS TO FORM:

By: 
Anita C. Willis, Assistant

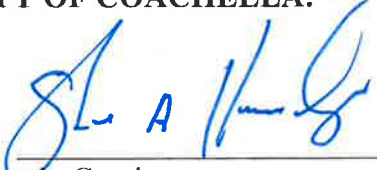
By: _____
Best Best & Krieger LLP
City Attorney

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding for the _____ the day and year first above written.

HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE:

By: _____
John J. Benoit, Chairman
Chairman, Board of Commissioners


CITY OF COACHELLA:

By:  _____
Eduardo Garcia
Mayor

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

ATTEST:

By:  _____
Beatrice Barajas
for City Clerk

APPROVED AS TO FORM:
Pamela J. Walls,
County Counsel

By: _____
Anita C. Willis, Assistant

APPROVED AS TO FORM:

By:  _____
Best Best & Krieger LLP
City Attorney