

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



FROM: Executive Office

SUBMITTAL DATE:
March 21, 2012

SUBJECT: Authorization to Execute Release of Claim by County against City of Palm Desert and the Successor Agency to the Palm Desert Redevelopment Agency Regarding Past Due Payment of Specific Pass-through Owed the County under the 1992 Cooperative Agreement with Palm Desert

RECOMMENDED MOTION: That the Board approve and authorize the Chairman to sign the attached release of claims by the County of Riverside against the City of Palm Desert and the Successor Agency to the City of Palm Desert Redevelopment Agency pertaining to payment of back due pass-through in the amount of \$2,675,800 owed under Section 11 of the 1992 Cooperative Agreement, conditional on receipt by County of payment in this amount made payable to the County and effective on the date such payment amount is confirmed by the County as cleared through the County Treasury.

BACKGROUND: Under Section 11 of the 1992 Cooperative Agreement with Palm Desert, the County is to receive pass-through payments equal to sales and use tax received by Palm Desert from certain properties. As a result of the Triple Flip legislation, Palm Desert altered calculation of the pass-through payments, causing a shortfall in the pass-through paid. On review of revised provisions of the legislation, Palm Desert agrees the full amounts should have been paid, and is prepared at this time to pay the back due amount of \$2,675,800. Under the terms of the 1992 Cooperative Agreement, pass-through received pursuant to Section 11 must be deposited to the County's Health and Juvenile Services Fund and used for health, mental health, and juvenile services facilities and program needs in the eastern area of the County.

Denise C. Harden
Denise C. Harden, Principal Management Analyst

FINANCIAL DATA

Current F.Y. Total Cost:	\$	In Current Year Budget:
Current F.Y. Net County Cost:	\$	Budget Adjustment:
Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *George A. Johnson*
George A. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: March 26, 2013
xc: E.O.

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.:

District: 4/4

Agenda Number:

3-35

FORM APPROVED BY COUNTY COUNSEL
BY: ANITA C. WILLIS
DATE: 3-21-13
DATE: [unclear] Concurrence

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

1 RELEASE OF CLAIMS BY THE COUNTY OF RIVERSIDE
2 TO THE CITY OF PALM DESERT AND THE
3 SUCCESSOR AGENCY TO THE CITY OF PALM DESERT REDEVELOPMENT AGENCY
4 PERTAINING TO PAYMENT OF BACK DUE PASS-THROUGH OWED UNDER
5 SECTION 11 OF THE 1992 COOPERATIVE AGREEMENT

6 WHEREAS, pursuant to the California Health and Safety Code Section 33401, the County, the City
7 and the Palm Desert Redevelopment Agency (the "Redevelopment Agency") entered into a pass through
8 agreement pertaining to Redevelopment Agency's Project Areas Nos. 1 and 3 effective February 13,
9 1992, entitled "Cooperative Agreement Among the County of Riverside, the City of Palm Desert and the
10 Palm Desert Redevelopment Agency" (the "1992 Cooperative Agreement");

11 WHEREAS, paragraph (a) of Section 11 of the 1992 Cooperative Agreement provides, in pertinent
12 part, as follows: "Each fiscal year, the Agency shall pay to the County for deposit into the Health and
13 Juvenile Services Fund, established pursuant to paragraph (b) below, an amount of Tax Increment for
14 such fiscal year which is equal to the amount of sales taxes paid to the City from sales occurring on the
15 Site." The "Site" is defined specifically in the 1992 Cooperative Agreement to mean property located at
16 the northwest and northeast corners of the intersection of Monterey Avenue and Dinah Shore Drive in
17 Palm Desert, California;

18 WHEREAS, paragraph (b) of Section 11 of the 1992 Cooperative Agreement provides, in pertinent
19 part, that: "The County Auditor-Controller shall establish and maintain a Health and Juvenile Services
20 Fund for health, mental health, and juvenile services facilities and program needs in the eastern area of the
21 County....";

22 WHEREAS, chapter 162 of the Statutes of 2003 (the "Triple Flip Legislation") modified the sales
23 tax rate and distribution of sales tax revenues among the State of California, the County and the City.
24 Prior to the effective date of the Triple Flip Legislation, the State enacted Chapter 2 of the Statutes of
25 2003, which further modified the sales tax rate of the County and the City;

26 WHEREAS, the Triple Flip Legislation added California Revenue and Taxation Code Section 97.68,
27 which was later amended by Chapter 211 of the Statutes of 2004 to clarify that amounts defined as "in
28 lieu local sales and use tax revenues" ("Triple Flip In Lieu") must be taken into account when calculating

1 tax exchange or revenue sharing arrangements pursuant to tax sharing agreements such as the 1992
2 Cooperative Agreement;

3 WHEREAS, subsequent to passage of the Triple Flip Legislation, in calculating amounts owed to
4 the County pursuant to Section 11 of the 1992 Cooperative Agreement the Redevelopment Agency relied
5 on iterations and interpretations of Section 97.68 that did not recognize the Triple Flip In Lieu was and is
6 to be accounted for in kind as sales and use tax for tax sharing purposes;

7 WHEREAS, Chapter 5 of the Statutes of 2011 ("ABX1 26") enacted legislation dissolving
8 redevelopment agencies throughout the State of California and establishing a system whereby a successor
9 agency assumes responsibility for, among other things, assuring that existing enforceable obligations, as
10 defined in ABX1 26, of each redevelopment agency are fulfilled;

11 WHEREAS, ABX1 26 was upheld by the California Supreme Court in Community Redevelopment
12 Association, et al. v. Matosantos, et al. S194861, which ruled that February 1, 2012, was the effective date
13 for dissolution of redevelopment agencies;

14 WHEREAS, pursuant to ABX1 26, on February 1, 2012, the Palm Desert Redevelopment Agency
15 was dissolved and succeeded by the Successor Agency to the Palm Desert Redevelopment Agency (the
16 "Successor Agency");

17 WHEREAS, prior to dissolution, the County brought to the attention of the Redevelopment Agency
18 that the provisions of Section 97.68(g) specifically provide that Triple Flip In Lieu shall be treated as
19 sales and use tax for tax sharing purposes, and that those provisions were, and continue to be, applicable
20 to the calculation of amounts owed under Section 11 of the 1992 Cooperative Agreement. Prior to
21 dissolution, the Redevelopment Agency recognized and acknowledged that the provisions of Section
22 97.68(g) should have been applied to include the Triple Flip In Lieu when the Redevelopment Agency
23 calculated amounts owed and due to the County under Section 11 of the 1992 Cooperative Agreement and
24 consequently, at the time of the Redevelopment Agency's dissolution, the past due amount owed to the
25 County was and is \$2,675,800. The parties have acknowledged and concurred that, but for the error
26 described above in calculating the amounts due to the County, this amount would have been paid in
27 accordance with the agreements in place at that time;

1 WHEREAS, the 1992 Cooperative Agreement was an enforceable obligation of the Redevelopment
2 Agency in full effect prior to the enactment of ABX1 26, and is therefore an enforceable obligation of the
3 Successor Agency; and,

4 WHEREAS, pursuant to ABX1 26, the Successor Agency listed the contractual obligations owed
5 pursuant to the 1992 Cooperative Agreement on their Enforceable Obligation Payment Schedule (EOPS),
6 and subsequently listed the amount due of \$2,675,800 for this particular obligation on their Recognized
7 Obligation Payment Schedules, which have been reviewed and approved by the Successor Agency's
8 Oversight board and the Department of Finance;

9 WHEREAS the parties are in agreement as to the nature of the error and the resulting amount due,
10 the Successor Agency has taken steps necessary under ABX1 26 to obtain approval to pay this obligation
11 to the County, and the Department of Finance has confirmed the payment qualifies as an enforceable
12 obligation of the Successor Agency;

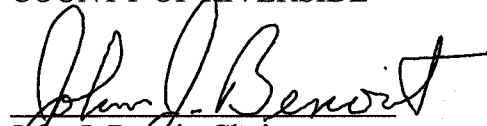
13 NOW THEREFORE, in exchange for receipt by the County of Riverside of payment of the past due
14 amount of \$2,675,800 made payable to the County of Riverside, and effective on the date such payment in
15 the foregoing amount is received by the County of Riverside, as confirmed cleared through the County
16 Treasury, the County of Riverside hereby releases the Successor Agency and the City of Palm Desert,
17 together with their respective officers, employees, successors, affiliates, assigns and attorneys, from any
18 and all claims, legal or equitable, demands, damages, liabilities, known or unknown, of any nature or
19 kind, arising out of, or related in any way to payment of this past due payment in the amount of
20 \$2,675,800 owed to the County of Riverside under Section 11 of the 1992 Cooperative Agreement
21 entered into between the County of Riverside, the City of Palm Desert and the former Palm Desert
22 Redevelopment Agency.

23
24 REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

25
26
27 (SIGNATURES ON FOLLOWING PAGE)

1 The execution of this Release has been authorized by the Riverside County Board of Supervisors
2 on this 26th day of March, 2013.

3
4 COUNTY OF RIVERSIDE

5 
6 John J. Benoit
7 Board of Supervisors

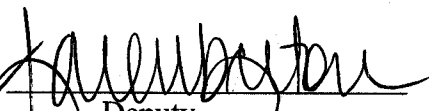
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9
10 APPROVED AS TO FORM:

11 PAMELA J. WALLS
12 County Counsel

13 
14 Anifa C. Willis, Assistant County Counsel

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16
17
18 ATTEST:

19 KECIA HARPER-IHEM
20 Clerk of the Board

21 
22 Kecia Harper-Ihem
23 Deputy