

# REPORT TO THE CITY COUNCIL, JOINT MEETING OF THE CITY OF FRESNO AND THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

**DATE:** February 9, 2017

**FROM:** MARLENE MURPHEY, Executive Director

## **SUBJECT:**

### **..Title**

Actions pertaining to Successor Agency litigation expenses:

1. \*\*\*RESOLUTION - Authorizing the Provision of Funds to the Successor Agency to the Redevelopment Agency of the City of Fresno for Litigation Expenses, and the Execution of a Loan/Funding Agreement (City action)
2. \*\*\*RESOLUTION - Authorizing the Acceptance of Funds from the City of Fresno for Legal Expenses and Authorizing Execution of a Loan/Funding Agreement (Successor Agency action)

### **..Body**

## **RECOMMENDATION**

It is recommended that the City Council adopt the attached resolution authorizing the City to provide funds to the Successor Agency to the Redevelopment Agency of the City of Fresno ("**Successor Agency**") for legal expenses, and authorizing execution of a Loan/Funding Agreement and adopt the attached resolution authorizing the acceptance of funds from the City of Fresno for legal expenses and authorizing execution of a Loan/Funding Agreement.

## **EXECUTIVE SUMMARY**

Health & Safety Code Section 34171(d)(1)(F) provides that sponsoring jurisdictions may provide funds to successor agencies for payment of legal expenses related to civil actions relating to the Dissolution Act. These funds may be repaid as an enforceable obligation if the successor agency prevails in the litigation; otherwise they are considered a grant. The City Council is asked to approve the provision of funds to the Successor Agency in an amount not to exceed \$220,000 for legal expenses associated with two litigation matters, and the execution of a Loan/Funding Agreement that provides for repayment of the funds in accordance with the Dissolution Act if the Successor Agency prevails in the litigation.

## **BACKGROUND**

Pursuant to Health and Safety Code Section 34171(d)(1)(F), the City is authorized to provide funds to the Successor Agency for payment of legal expenses related to civil actions initiated by the Successor Agency challenging the validity or implementation of

the Dissolution Law. Health and Safety Code Section 34171(d)(1)(F) further provides that if the Successor Agency obtains a final judicial determination granting the requested relief, the funds provided by the City will be deemed an enforceable obligation of the Successor Agency that may be repaid to the City, but if the litigation is unsuccessful, the City funds will be considered a grant and not eligible for repayment.

The Successor Agency will incur legal expenses related to two civil actions contesting the interpretation and application of the Dissolution Law with respect to the reinstatement and repayment of loans that the City provided to the former Redevelopment Agency of the City of Fresno.

In the first matter, the Successor Agency filed a petition for writ of mandate challenging the Department of Finance's (DOF) refusal to allow reinstatement of 13 loans that the City provided to the former Redevelopment Agency of the City of Fresno. On July 21, 2016, the Sacramento Superior Court ruled that two of the loans were eligible for reinstatement, and remanded the remaining 11 loans for further consideration consistent with the court's ruling. The contested loans total approximately \$5,639,768. The DOF has filed a notice of appeal of the trial court ruling and the City Council and the Successor Agency Governing Board have approved undertaking a defense of the appeal ("Defense of the Appeal").

The second matter involves the filing of a new petition for writ of mandate ("Interest Rate Writ Petition") to challenge DOF's interpretation of the interest rate applicable to repayment of City loans that have been approved for reinstatement. The amount of interest at issue is approximately \$1,835,183. The City Council and the Successor Agency Governing Board have approved filing a petition for writ of mandate challenging DOF's interpretation.

The Successor Agency has insufficient funds available to pay the legal expenses associated with the Defense of the Appeal or the filing of the Interest Rate Writ Petition. Staff recommends that the City Council approve the City's advance of funds to the Successor Agency for such purposes pursuant to a Loan/Funding Agreement that provides for repayment consistent with the requirements of the Dissolution Law if the litigation is successful.

The City Council is asked to approve the provision of funds to the Successor Agency for litigation expenses in an amount up to \$220,000 (up to approximately \$100,000 for the Defense of the Appeal, and up to approximately \$120,000 for the Interest Rate Writ Petition), and the execution of a Loan/Funding Agreement substantially in the form attached to this Staff Report.

## **RECOMMENDATION**

Staff recommends that the City Council approve the attached Resolutions which approves the provision of funds to the Successor Agency for litigation expenses associated with the Defense of the Appeal and the Interest Rate Writ Petition, and the execution of a Loan/Funding Agreement substantially in the form attached to this Staff

Report.

## **ENVIRONMENTAL FINDINGS**

N/A

## **LOCAL PREFERENCE**

N/A

## **FISCAL IMPACT**

If the Successor Agency prevails in the Defense of the Appeal, the City would be eligible to receive repayment of the contested loans in the amount of approximately \$5,639,768. If the Successor Agency prevails in the Interest Rate Writ Petition, the City would be eligible to be repaid approximately \$1,835,183 million in interest payments. If the Successor Agency prevails in the litigation, the funds advanced by the City pertaining to the successful litigation will constitute an enforceable obligation of the Successor Agency that is repayable to the City with interest at the LAIF rate. If the Successor Agency does not receive a favorable final judicial determination, then the funds advanced by the City would be treated as a grant that is not eligible for repayment.

Attachments: Resolution Authorizing Provision of Funds to the Successor Agency for Legal Expenses, and the Execution of a Loan/Funding Agreement

Form of Loan/Funding Agreement