



*CITY COUNCIL AND
HOUSING AUTHORITY
AGENDA REPORT*

MEETING DATE: July 1, 2014

ITEM NUMBER ____

SUBJECT: COOPERATION AGREEMENT BETWEEN THE CITY OF COSTA MESA AND THE COSTA MESA HOUSING AUTHORITY FOR AN ADVANCE AND LOAN OF FUNDS BY THE CITY TO THE AUTHORITY RELATING TO CIVIC CENTER BARRIO HOUSING CORPORATION PROJECTS LOCATED AT 707, 711 W. 18TH ST., 745 W. 18TH ST., 717, 721 JAMES ST. AND 734, 740, 744 JAMES ST.; AUTHORIZE APPROPRIATION FROM THE CITY'S GENERAL FUND FOR SUCH LOAN

DATE: JUNE 25, 2014

FROM: CHIEF EXECUTIVE OFFICER/EXECUTIVE DIRECTOR

PRESENTATION BY: THOMAS R. HATCH, CEO/EXECUTIVE DIRECTOR
CELESTE STAHL BRADY, CITY SPECIAL COUNSEL
AND HOUSING AUTHORITY GENERAL COUNSEL

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RECOMMENDED ACTION OF CITY COUNCIL AND AUTHORITY

Adopt Joint City Council/Authority Resolution No. 14- ____ Approving a Cooperation Agreement, with attached Loan Agreement, between the City and the Authority and Authorizing the City's Appropriation of Funds to Pay the First Lien Balances from the General Fund Relating to Civic Center Barrio Housing Corporation Projects Located at 707, 711 W. 18th St., 745 W. 18th St., 717, 721 James St. and 734, 740, 744 James St.

BACKGROUND

In May 2014, the City of Costa Mesa ("City") and Costa Mesa Housing Authority ("Authority") through the City Attorney initiated litigation against Civic Center Barrio Housing Corporation, a California non-profit corporation ("CCBHC"), relating CCBHC defaults on all four of its affordable housing projects located in the City for which the

City as to three projects and the former Costa Mesa Redevelopment Agency now the Authority, as housing successor, as to one project, provided subordinate financing as described below. The pending legal action in Orange County Superior Court is titled: *City of Costa Mesa, a municipal corporation, et al., v. Civic Center Barrio Housing*, Case No. 30-2014-00715552-CU-BC-CJC (“Action”). The causes of action in the Action alleged against CCBHC include breach of contract and judicial foreclosure.

The four CCBHC affordable housing projects include and are described in summary as follows:

- (1) 717 and 721 James Street;** 8 units in two 4-plexes; restricted to Very Low Income Tenants; Affordable Housing Agreement with City dated August 27, 2002; subject to a 55-year Affordability Period until 2057; First Amendment May 10, 2011; Residual Receipts Loan to CCBHC in original principal amount of \$1,041,940; First Lien lender Low Income Investment Fund (as agent for Self-Help Credit); City payoff of such loan (\$311,826.25) on December 6, 2013 pursuant to City Council authorization on September 17, 2013; Costa Mesa issued Notice of Defaults July 16, 2013; LIIF Notice of Default recorded August 21, 2013 (non-judicial foreclosure by REFS, Inc.); the City Attorney will settle with and dismiss LIIF and Self-Help as defendants conditioned upon LIIF’s recordation of a reconveyance deed.
- (2) 734, 740 and 744 James Street;** 11 units in one 3-plex and two 4-plexes; 9 units restricted to Low Income Tenants, 2 units restricted to Very Low Income Tenants; Affordable Housing Agreement with City dated December 20, 1993; 55-year Affordability Period until 2048; First Amendment May 10, 2011; Residual Receipts Loan to CCBHC by City \$690,921; First Lien Lender CCRC to Wells Fargo to Pacific Life as agent for Low Impact Fund with a First Lien in original principal amount of \$558,675; Costa Mesa issued Notice of Defaults July 16, 2013; Costa Mesa initiated non-judicial foreclosure on November 1, 2013 that was substituted by the pending Action.
- (3) 745 W. 18th Street;** 3 units in one 3-plex; restricted to Very Low Income Tenants; Affordable Housing Agreement with City dated May 1, 1995; 55-year Affordability Period until 2050; First Amendment May 10, 2011; Residual Receipts Loan to CCBHC original principal amount of \$370,000; First Lien lender American Savings Bank as succeeded by Chase Bank First Lien in original principal amount of \$50,000; Costa Mesa issued Notice of Defaults July 16, 2013; Costa Mesa initiated non-judicial foreclosure on November 1, 2013 that was substituted by the pending Action.
- (4) 707 and 711 W. 18th Street;** 8 units in two 4-plexes; restricted to Low Income Tenants; Affordable Housing Agreement with former RDA and thus now with Authority, as housing successor, dated October 11, 1995; 55-year Affordability Period until 2050; First Amendment August 12, 1996 (to add \$7000 to CM loan); another amendment May 10, 2011; Lender American Savings Bank, as succeeded by Chase Bank First Lien in original principal amount of \$333,868; Residual Receipts Loan to CCBHC by RDA in original principal amount \$577,192; Costa Mesa issued Notice of Defaults July 16, 2013; Costa Mesa City

initiated non-judicial foreclosure on November 1, 2013 that was substituted by the pending Action.

The Costa Mesa Residual Receipts loans on the four CCBHC Projects originally totaled \$2,680,053 for a total of 30 covenanted Affordable Units pursuant to recorded Regulatory Agreements in senior position, except subordinated only as to the First Lien loans. The four Residual Receipts loans require annual audited Financial Statements, and either annual debt service of fifty percent (50%) of Residual Receipts, if any, or submittal of First Amendment Certificates of compliance. For calendar years 2012 and 2013 no annual audited Financial Statements, no residual receipts payments, and no First Amendment Certificates were submitted or paid by CCBHC.

Excluding the 717, 721 James St. project as that First Lien loan was paid off in December 2013, the total of the outstanding balances of the three remaining First Lien loans, (i) one Pacific Life First Lien loan on 734, 740 744 James St. project and (ii) the two Chase Bank First Lien loans on 707, 711 W. 18th St. and 745 W. 18th St., are estimated at \$636,000 plus lenders' costs and fees due under the respective deeds of trust (together cumulatively, the "First Lien Balances"). The full amount of the First Lien Balances will be expended by Costa Mesa if this agenda item is approved, which funds will be allocated from the General Fund balance to make the loan to the Authority. Then, through the pending legal Action, Costa Mesa will cause payment of the full amounts due to Pacific Life and Chase Bank to pay off their First Lien Balances, which is the amount to be allocated from the General Fund balance and the amount authorized to be loaned by the City to the Authority. The payment of the First Lien Balances will settle the Action as to senior lenders Pacific Life and Chase Bank, which as noted are the only remaining First Lien lenders on the CCBHC projects.

Pursuant to contract with HUD, the City has received and administers certain funds pursuant to the HOME Investments Partnership Act and Home Investment Partnership Program ("HOME Funds") pursuant to Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 12839) and the HOME Program regulations codified at 24 CFR Part 92, as amended by the "2013 HOME Final Rule" at 24 CFR Part 92 (together, the "HOME Program"). Costa Mesa must comply with the HOME Program in the preservation of the 30 Affordable Units in the CCBHC projects. Therefore, through the Action, Costa Mesa seeks to preserve the affordability and proper, compliant ownership, operation, maintenance and management of the 30 Affordable Units as required by HUD, which was the primary source of funding for all four of the subordinate Residual Receipts loans by Costa Mesa to CCBHC.

In the Action, all lienholders are named in the title company's litigation guarantee and thus named as defendants by the City Attorney in the Action, including Pacific Life Chase Bank. The defaults alleged by Costa Mesa against CCBHC are the basis of cross-defaults under the Pacific Life and Chase Bank First Lien loans. Pacific Life and Chase Bank are the only senior First Lien lenders on the four projects; thus, if these senior lenders were to initiate foreclosures against CCBHC on their respective loans due to CCBHC's defaults, then Costa Mesa's Regulatory Agreements establishing the

affordable housing covenants of record and Costa Mesa's subordinate loans may be at risk of termination or payment of less than the full amounts due.

In connection with the Action, the City Attorney and Authority General Counsel have recommended that Pacific Life's and Chase Bank's First Lien Balances be paid in full, then all amounts paid are required to, and will be, added to Costa Mesa's loans under the terms of Costa Mesa's promissory notes and deeds of trust evidencing and securing the Costa Mesa Residual Receipts loans, which would cause Costa Mesa to be the senior and primary lender on all four CCBHC projects. This approach is recommended by legal counsels to protect Costa Mesa's interests and to preserve the affordable housing in the community and as required by HUD.

Under the attached Cooperation Agreement between the City and the Authority, the City will advance and loan to the Authority the full amount of the First Lien Balances in order to settle the Action as to Pacific Life and Chase Bank, the only remaining senior lenders. Under the Cooperation Agreement, the City will loan the First Lien Balances amount to the Authority and the Authority will repay such advance and loan from monies expected to be on account with the Authority, as housing successor, in August 2014 or soon thereafter.

ANALYSIS

In order to preserve these at-risk affordable housing units, staff and legal counsels recommend that the City and Authority enter into the Cooperation Agreement and authorize the City Attorney to settle and resolve the Action as to the Pacific Life and Chase Bank loans.

On July 16, 2013, Costa Mesa issued the Notice of Defaults to CCBHC under Costa Mesa's Affordable Housing Agreements and related loan documents. Costa Mesa's Notice of Defaults alleged: (i) cross-default, (ii) failure to submit Annual Financial Statements, (iii) failure to make Residual Receipts payments or file First Amendment Certificates on all four projects, (iv) failure of representations and warranties, and (v) other non-performance. CCBHC did not cure any of the defaults; Costa Mesa caused non-judicial foreclosures to commence on November 1, 2013, and then in May 2014 the pending Action was filed by the City Attorney to convert to judicial foreclosures and assert causes of action for breach of contracts, and to have the authority, if necessary, for a receiver to be appointed as to all four projects.

Staff and legal counsel have been in discussions over the past year with senior HUD representatives about the pending defaults because the primary source of funding by Costa Mesa for all four CCBHC projects was HOME Program monies. HUD has informed staff and counsel that if any or all of the Regulatory Agreements of record on the CCBHC projects are extinguished, or Costa Mesa's loans were to be foreclosed that too would extinguish the affordable covenants, then the City would be required to repay in full all HOME Program monies invested in each of the projects.

Keyser Marston Associates ("KMA"), Costa Mesa's economic/housing consultant, has also reviewed this matter and recommends the City and Authority enter into the

Cooperation Agreement. Kathleen Head, Managing Principal at KMA, prepared the following table to summarize the original principal amounts of the senior First Lien loans and the estimated First Lien Balances as of December 2011, in connection with her preparation of a loan impairment analysis for the City, Successor Agency and Authority related to the dissolution of the former Agency.

CCBHC Senior Loans			
	Original Loan Balance	Loan Balance as of Dec. 2011	Loan Payoff Year
707 – 711 West 18 th Street	\$333,868	\$250,000	2026
745 West 18 th Street	\$50,000	\$37,000	2025
734, 740, 744 James Street	\$558,675	\$349,000	2024
Total	\$942,543	\$636,000	

The total of \$636,000 in the above table is a figure as of December 2011; thus, since CCBHC has continued to make payments on its First Liens the outstanding balances are presumed lower as of July 2014.

FISCAL IMPACT

The total of the First Lien Balances on the one Pacific Life loan and the two Chase Bank First Lien loans will be expended, which if this action item is approved will be allocated from the General Fund balance to make the loan to the Authority, and then through the pending legal Action Costa Mesa will cause the payoffs to Pacific Life and Chase Bank. It is anticipated that the Authority will be receiving adequate funds through the Dissolution Law and from payoff of other outstanding loans made by the former Agency, which assets are now held by the Authority, so the City/Authority loan under the Cooperation Agreement is expected to be repaid by the Authority in the coming months.

LEGAL IMPACT

The City Attorney and Authority General Counsel have reviewed this matter and recommend the City Council and Authority Board adopt the attached Joint Resolution that approves the Cooperation Agreement and appropriates the necessary funds, which is the recommended action.

CONCLUSION

Staff recommends the City Council and Authority Board Adopt the Joint Resolution No. 14- ____ Approving a Cooperation Agreement and Authorizing the City's Appropriation of the First Lien Balances from the General Fund Relating to Civic Center Barrio Housing Corporation Projects

THOMAS R. HATCH
Chief Executive Officer/Executive Director

Attachment A: [Joint City Council/Authority Resolution and Cooperation Agreement](#)