



**REPORT TO THE
REDEVELOPMENT AGENCY
AND CITY COUNCIL
of the City of Sacramento**

915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

Consent
February 24, 2009

**Honorable Mayor and Members of the City Council
Honorable Chair and Members of the Board**

Title: Contract Amendment/Agreement: Railyards Redevelopment Project Area

Location/Council District: District 1, Railyards Redevelopment Area

Recommendation: Adopt 1) a **Redevelopment Agency Resolution:** a) authorizing the Executive Director or her designee to enter into a Loan Agreement between the City of Sacramento and the Redevelopment Agency of the City of Sacramento in the amount of \$300,000 from the City's Parking Enterprise Fund for the Railyards Redevelopment Project Area; b) increasing the budget for predevelopment activities and administrative costs for the Railyards Redevelopment Project Area by \$300,000; and c) authorizing the Executive Director or her designee to amend the existing contract with Stoel Rives, LLP to increase the budget by \$250,000 for legal services related to the Railyards Redevelopment Project Area; and 2) a **City Council Resolution** authorizing the City Manager or his designee to enter into a Loan Agreement between the City of Sacramento and the Redevelopment Agency of the City of Sacramento in the amount of \$300,000 from the City's Parking Enterprise Fund for the Railyards Redevelopment Project Area.

Contact: Denise Malvetti, Senior Project Manager, 808-7064, Leslie Fritzsche, Downtown Development Manager, 808-5450

Presenters: None

Department: Economic Development

Division: Downtown Development

Organization No: 180000

Description/Analysis

Issue:

In May 2008, the City Council adopted Ordinance 2008-023 establishing the Railyards and adjacent parcels as a separate Redevelopment Project Area (the "Railyards Redevelopment Area"). The Agency also established a budget in the amount of \$350,000 for predevelopment activities and administrative costs, such as redevelopment consulting and legal services, to support the start-up of the Railyards redevelopment before this redevelopment area generates its own tax increment revenues. The \$350,000 budget was funded through an internal loan.

These start-up funds have now been fully expended, primarily on legal fees for the two lawsuits challenging the Railyards Specific Plan Environmental Impact Report (Specific Plan EIR) and the two lawsuits challenging the Railyards Redevelopment Plan Environmental Impact Report (Redevelopment Plan EIR). A court hearing for the lawsuits has been scheduled for early March. To complete preparation of the briefs and conduct oral arguments at the hearing, the Railyards Redevelopment Project Area needs additional funds to pay its legal fees and other administrative costs.

Staff is recommending that the Railyards Redevelopment Project Area budget be increased by \$300,000 to pay for these legal fees and upcoming consulting expenses. The contract with Stoel Rives, LLP, outside counsel handling the Agency's and City's defense, will be increased by \$250,000. The balance of the funds will be set-aside for other costs associated with the lawsuits. If the proposed Loan Agreement is approved, these funds will be borrowed from the Parking Enterprise Fund's portion of the Sheraton Hotel sale proceeds and repaid when the Railyards Redevelopment Project Area begins generating tax increment (estimated to be 2012). The loan would accrue an annual interest rate of 4.5%.

To date, the Agency has paid approximately \$325,000 to Stoel Rives, LLP to defend the lawsuits against the City and the Agency. In addition to that amount, Thomas Enterprises has committed to contribute approximately \$80,000 toward the preparation of the Administrative Record for the Specific Plan EIR.

Policy Considerations: Developing the Railyards has long been a priority for the City and the Agency. The actions proposed in this staff report support the Railyards Redevelopment Plan goals to stimulate economic growth, guide development and improve the Railyards Redevelopment Project Area.

Not funding the defense of the litigation at this stage would be detrimental to the Railyards Redevelopment Project Area. Ceasing to defend the lawsuits could result in the Judge invalidating the Redevelopment Plan EIR and ordering the Agency to suspend or readopt the Redevelopment Plan, which could have significant financing and timing impacts on the development of the Railyards Redevelopment Project Area.

Environmental Considerations:

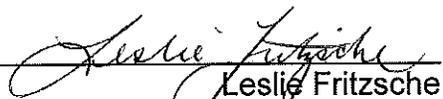
California Environmental Quality Act (CEQA): The proposed action does not constitute a project subject to environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15378 (b) (4), which exempts government fiscal activities that do not involve a commitment to any specific project from environmental review. No environmental review is required.

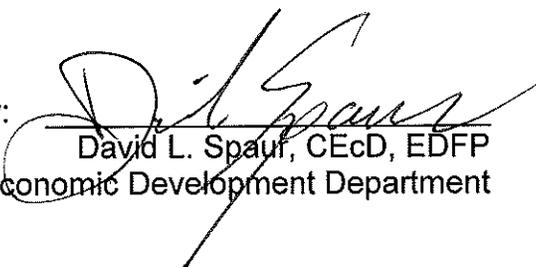
Sustainability: Actions in this staff report are consistent with the City's Sustainability Master Plan as they support infill development which reduces long commutes, promotes use of public transportation, and reduces dependence on the automobile therefore reducing dependence on fuels.

Rationale for Recommendation: The recommended actions in this report are necessary to advance the redevelopment of the Railyards and implement the larger Railyards Redevelopment Project Area Plan.

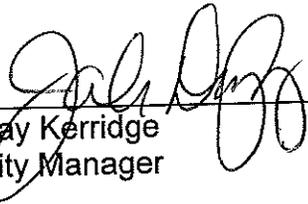
Financial Considerations: By approving the Loan Agreement, the City will lend \$300,000 to the Railyards Redevelopment Project Area from the Parking Enterprise Fund's \$7,350,000 portion of the Sheraton Hotel sale proceeds. Litigation costs constitute administrative costs that will be repaid from tax increment revenues generated by the Railyards Project Area. Projections indicate the Railyards Project Area will begin generating tax increment revenues in 2012, at which time the loan repayments can begin.

Emerging Small Business Development (ESBD): The recommended actions involve the extension of specialized legal services from a law firm already under contract to work on the project.

Respectfully Submitted by: 
Leslie Fritzsche
Downtown Development Manager
on behalf of the Redevelopment Agency
of the City of Sacramento

Approved by: 
David L. Spauf, CEcD, EDFP
Director, Economic Development Department

Recommendation Approved:



Ray Kerridge
City Manager

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Attachment 1

Background

In May 2008, the City Council adopted the Railyards Redevelopment Plan and certified the accompanying Environmental Impact Report (EIR) which established the Railyards Redevelopment Project Area. At that time, the Agency Board approved the Railyards Master and Initial Phase Owner Participation Agreements (OPAs). Both the certification of the EIR and the approval of the OPAs have been challenged in two lawsuits. The Agency was also named as a party in the lawsuits challenging the Specific Plan EIR. The Agency has expended the \$350,000 start-up budget created when the Redevelopment Area was established and needs additional funds to defend the lawsuits. The estimated cost for additional legal services is \$250,000. Litigation costs in this matter are above average because of the number of separate lawsuits, the complexity of the projects and the large size of the separate administrative records. The Redevelopment Agency engaged Stoel Rives, LLP as special counsel to defend these lawsuits.

Furthermore, it is anticipated that additional consulting services for environmental and other consultants will be needed to support the Railyards Project Area within the next fiscal year. Projections indicate the Project Area will begin generating tax increment revenues in 2012, at which time the Loan repayments can begin.

Attachment 2**LOAN AGREEMENT – PARKING ENTERPRISE FUND
FOR RAILYARDS REDEVELOPMENT PROJECT AREA EXPENSES**

THIS LOAN AGREEMENT ("Loan Agreement ") is made and entered into this __day of _____, 2009, ("Effective Date") by and between the **CITY OF SACRAMENTO**, a municipal corporation, ("CITY" or "LENDER") and the **REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**, a public body corporate and politic, ("AGENCY" OR "BORROWER"), and are also referred to herein individually as "Party and collectively as "Parties."

RECITALS

A. Railyards Redevelopment Project Area. AGENCY adopted the Railyards Redevelopment Plan in May of 2008, which established the Railyards Redevelopment Project Area. AGENCY is authorized to undertake redevelopment activities within the Railyards Redevelopment Project Area with property tax increment revenues generated from such area. Since development within the Railyards Redevelopment Project Area has not commenced, in part due to the need to complete on-going soil remediation, this project area has not generated sufficient revenues to fund AGENCY's administrative activities.

B. Redevelopment Plan Administration. AGENCY has borrowed funds from the Lot A sale proceeds to support the AGENCYs' administrative activities for the Railyards Redevelopment Project and AGENCY needs additional funding for such staff and consultant support services. There is insufficient funding in the Merged Downtown Project Area budget to provide for an additional internal loan to the Railyards Redevelopment Project Area. AGENCY needs additional funding to cover its administrative costs until tax increment revenues are generated within the Railyards Redevelopment Project Area and desires to borrow such funds from CITY.

C. Railyards Redevelopment Plan Litigation. Part of the AGENCY's administrative expenses for the Railyards Redevelopment Project Area include consultant and legal costs to prepare the Railyards Redevelopment Plan and its accompanying environmental impact report (EIR), as well as to defend the AGENCY's actions in certifying the EIR, adopting the Railyards Redevelopment Plan and approving the Railyards Master and Initial Phase Owner Participation Agreements (OPAs). AGENCY's actions have been challenged and the CITY has also been named as a party to this litigation because of its adoption of the ordinance to implement the Railyards Redevelopment Plan. AGENCY has agreed to assume the defense of CITY. AGENCY needs additional funding to complete its defense in the foregoing cases and desires to borrow such funds from CITY.

D. Parking Enterprise Fund. CITY maintains a separate fund for its off-street parking operations and the revenues in this fund are pledged to the ongoing operations and maintenance of the CITY's parking garages and surface lots, and to repay revenue bonds used to construct the CITY's parking garages. Under the terms of the Funding Agreement between CITY and S. Thomas Enterprises of Sacramento, LLC, CITY committed to expending a portion of the surplus revenues in its off-street parking fund for a certain period of time to assist with the costs to design and construct the 5th Street garage planned as part of the Railyards Specific Plan. Due to current economic conditions, the schedule for development of the 5th Street parking garage by CITY will be delayed and the excess revenues in the parking enterprise fund are available as the source to fund the Railyards Redevelopment Project Area loan sought by AGENCY.

AGREEMENT

NOW, THEREFORE, based on the Recitals and the mutual promises and covenants of the Parties contained in this Loan Agreement, CITY as LENDER and AGENCY as BORROWER agree to the following Loan provisions:

1. Loan Amount: Three hundred thousand dollars (\$300,000).
2. Interest Rate: The Loan shall bear interest at the rate of four and one half percent (4.5%) per annum.
3. Term: The term of this Loan shall begin on February 24, 2009 and continue until the Loan Amount plus interest is fully repaid.
4. Payment: Annual payments shall be due on each March 1st based on a "residual receipts" basis as follows:

The amount of gross property tax increments from the Railyards Redevelopment Project Area BORROWER receives from the County tax assessor minus: (i) amounts required to be set-aside for low income housing under state law (the Community Redevelopment Law); (ii) statutory payments to the state, county, and all other affected taxing entities; (iii) any loan or credit agreements with financial institutions for the Railyards Redevelopment Project Area that may have been executed by BORROWER prior to the Effective Date.

5. Subordination: The AGENCY's obligations under the Railyards Master and Initial Phase Owner Participation Agreements to make payment to S. Thomas Enterprises of Sacramento, LLC shall be subordinate to AGENCY's obligations as BORROWER to make payment under this Loan Agreement because the loan amount will fund actual costs of Agency administration directly allocable to the Railyards Redevelopment Project Area. Any future obligations entered into by AGENCY for the Railyards

Redevelopment Project Area shall not be on parity or senior to this Loan Agreement without the expressed written consent of LENDER.

6. Notices: Any notice, demand, request, consent or approval that either Party desires or is required to give the other Party pursuant to this Loan Agreement shall be in writing and either served personally or sent by prepaid, first-class, certified mail. Such matters shall be addressed to the other Party at their respective addresses:

LENDER - 915 I Street, Sacramento CA 95814
Attn: Rachel Hazlewood
BORROWER - 915 I Street, Sacramento CA 95814
Attn: Denise Malvetti

7. Indemnification: Neither Party nor any of its officers or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other Party under this Loan Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, each Party shall fully indemnify, defend and hold the other Party harmless from any liability imposed for injury to persons or property occurring by reason of anything done or omitted to be done by that Party under or in connection with any work, authority or jurisdiction delegated to that Party or funded with the proceed of the Loan under this Loan Agreement.
8. Attorneys Fees: In the event of a default hereunder and necessity of litigation to enforce any provision of this Loan Agreement, the non-prevailing party in any litigation shall pay, in addition to any other damages awarded to the prevailing party therein, a reasonable sum as attorney's fees and costs as shall be established by the court.
9. Integration: This Loan Agreement constitutes the full agreement by and between the Parties that no other representation have been made regarding the contents of this Loan Agreement.
10. Modification: This Loan Agreement shall not be amended, modified, or altered in any respect without such amendment, modification or alteration being reduced to writing and executed by the Parties

[signature page follows]

CITY/LENDER:

AGENCY/BORROWER:

CITY OF SACRAMENTO,
a Municipal Corporation

**REDEVELOPMENT AGENCY OF THE
CITY OF SACRAMENTO,** a Public Body
Corporate and Politic

By: _____
Marty Hanneman
Assistant City Manager

By: _____
LaShelle Dozier
Executive Director

Approved as to Legal Form:

Approved as to form:

By: _____
Senior Deputy City Attorney

By: _____
Agency Counsel

RESOLUTION NO. 2009 – _____

Adopted by the Redevelopment Agency of the City of Sacramento

APPROVAL OF LOAN AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO AND AMENDMENT OF CONTRACT FOR LEGAL SERVICES WITH STOEL RIVES, LLP RELATED TO THE RAILYARDS REDEVELOPMENT PROJECT

BACKGROUND

- A. On May 13, 2008 the City Council approved the Railyards Redevelopment Plan thereby creating the Railyards Redevelopment Project Area.
- B. Start-up costs associated with the Railyards Redevelopment Project Area have exceeded the \$350,000 budget established in May 2008.
- C. Costs to the Railyards Redevelopment Project Area related to legal challenges that have been filed against the approval of the Project Area and Redevelopment Plan, and the approval of the Railyards Owner Participation Agreements, have exceeded the original contract amount with the law firm of Stoel Rives, LLP.
- D. The proposed action authorizes the Executive Director or her designee to enter into a Loan Agreement between the City of Sacramento and the Redevelopment Agency of the City of Sacramento for the Railyards Redevelopment Project Area to borrow \$300,000 from the City's Parking Enterprise Fund to cover existing and upcoming legal expenses.
- E. The proposed action does not constitute a project subject to environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15378 (b) (4), which exempts government fiscal activities that do not involve a commitment to any specific project from environmental review.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

- Section 1. After due consideration of the facts presented, the findings, including the foregoing recitals and the environmental finding regarding this action, as stated in this Resolution are approved and adopted.
- Section 2. The Executive Director or her designee is authorized to execute the Loan Agreement in the amount of \$300,000 with the City in the form attached to the staff report to provide funding for the Railyards Redevelopment

Project Area, and the Loan shall be repaid upon collection of future tax increment generated by the Railyards Redevelopment Project Area.

Section 3. The Executive Director or her designee is authorized to increase the Railyards Redevelopment Project Area budget for predevelopment services, administrative fees such as consulting services and legal services by \$300,000.

Section 4. The Executive Director or her designee is hereby authorized to amend the existing contract for legal services with Stoel Rives, LLP to increase the budget by \$250,000 for legal services related to the Railyards Redevelopment Project.

RESOLUTION NO. 2009 – _____

Adopted by the Sacramento City Council

APPROVAL OF LOAN AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RELATED TO THE RAILYARDS REDEVELOPMENT PROJECT

- A. On May 13, 2008 the City Council approved the Railyards Redevelopment Plan, thereby creating the Railyards Redevelopment Project Area.
- B. Start-up costs associated with the Railyards Redevelopment Project Area have exceeded the \$350,000 budget established in May 2008.
- C. Costs to the Railyards Redevelopment Project Area related to legal challenges that have been filed against the Agency and the City, in regards to approval of the Railyards Redevelopment Plan and the Master and Initial Phase Owner Participation Agreements, have exceeded the original budgeted amount.
- D. The proposed action authorizes the City Manager or his designee to enter into a Loan Agreement between the City of Sacramento and the Redevelopment Agency of the City of Sacramento for the Railyards Redevelopment Project Area in the amount of \$300,000 from the City's Parking Enterprise Fund.
- E. The proposed action does not constitute a project subject to environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15378 (b) (4), which exempts government fiscal activities that do not involve a commitment to any specific project from environmental review.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. After due consideration of the facts presented, the findings, including the foregoing recitals and the environmental finding regarding this action, as stated in this Resolution are approved and adopted.
- Section 2. The City Manager or his designee is authorized to execute the Loan Agreement with the Redevelopment Agency of the City of Sacramento in the form attached to the staff report to transfer \$300,000 from the City's Parking Enterprise Fund for the Railyards Redevelopment Project Area. The Loan will accrue interest and be repaid with future Railyards Redevelopment Project Area tax increment revenues.

