

Meeting Date: 4/29/2014

Report Type: Consent

Report ID: 2014-00318

Title: (City Council/Housing Authority) Indemnification Agreement between the Housing Authority of the City of Sacramento and the City of Sacramento

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager and the Executive Director of the Housing Authority of the City of Sacramento to enter into an indemnification agreement related to the Joint Exercise of Powers Agreement, dated February 25, 2014, that created the Sacramento Public Financing Authority (SPFA).

Contact: Janelle Gray, Treasury Manager, (916) 808-8296, Office of the City Treasurer

Presenter: None

Department: City Treasurer

Division: City Treasurer

Dept ID: 05001011

Attachments:

1-Description/Analysis

2-Indemnification Agreement (Sacramento Public Financing Authority)

City Attorney Review

Approved as to Form

Joseph Cerullo

4/21/2014 6:18:42 PM

Approvals/Acknowledgements

Department Director or Designee: Russell Fehr - 4/16/2014 4:44:48 PM

Description/Analysis

Issue Detail: On February 25, 2014, the City Council approved the Joint Exercise of Powers Agreement (“JPA”) that created the Sacramento Public Financing Authority (“SPFA”), which the City will use to issue lease-revenue bonds needed to financing projects such as the ESC. SPFA’s members are the City and the City’s Housing Authority. In accordance with §4(d)(11)(B) of the JPA, the Housing Authority has requested that the City agree to indemnify it against any liability that results from SPFA’s acts or omissions while performing under the JPA.

Policy Considerations: Given the HUD directive to mitigate legal risk to the Housing Authority, and given that the Housing Authority, a separate legal entity, is unable inability to pay for a defense should a lawsuit arise, an indemnification agreement is legally prudent. The City’s obligation to indemnify does not cover liabilities arising from the Housing Authority’s own acts or omissions.

Economic Impacts: Not applicable, administrative action.

Environmental Considerations: Approval of the indemnification agreement is exempt from CEQA, as the agreement is not a “project.” (Cal. Code Regs., tit. 14, §§ 15061, subd. (b)(3), 15378, subds. (b)(2), (b)(4), (b)(5).)

Sustainability: Not applicable, administrative action.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The indemnification agreement mitigates the Housing Authority’s liability risk and entitles it to tender a defense to the City should it be named in a lawsuit for injury caused by SPFA’s negligent or wrongful acts or omissions while performing under the JPA.

Financial Considerations: There are no costs associated with entering into an indemnification agreement.

Local Business Enterprise (LBE): Not applicable.

Indemnification Agreement

This Indemnification Agreement, dated February 25, 2014, for identification, is between the CITY OF SACRAMENTO, a California municipal corporation (“**City**”), and the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO, a public body corporate and politic (“**Authority**”). It is made in accordance with Section 4(d)(11)(B) of the Joint Exercise of Powers Agreement between the City and the Authority, dated February 25, 2014 (“**JPA**”). The City is providing the Authority with the indemnity described below so as to induce the Authority to enter into the JPA.

1. As used in this agreement, “**Claim**” means any claim, action, liability, loss, damage, or suit that arises from any liability imposed for injury caused by a negligent or wrongful act or omission occurring in the performance of activities under the JPA. To the extent permitted by law, the City shall indemnify, defend, and hold harmless the Authority and the Authority’s governing boards, commissioners, officers, directors, and employees, and their successors and assigns, against all Claims, except as follows: the City is not obligated by this agreement to the extent a Claim arises from the negligence or wrongful act or omission of the Authority or the Authority’s governing boards, commissioners, officers, directors, or employees, or their successors or assigns.
2. If a Claim is asserted, then the Authority shall provide the City with reasonably timely written notice of the Claim, and thereafter, at no expense to the Authority, the City shall indemnify, defend, and hold harmless the Authority against the Claim and any loss or liability arising under the Claim.
3. The City hereby waives and relinquishes any right of contribution it may have at any time against the Authority under California Government Code sections 895.2 and 895.6, or otherwise, for any Claim for which the City is obligated under Section 1.
4. The City shall not enter into any settlement of any litigation or other proceeding in which the City is jointly liable with the Authority (or would be if joined in the litigation or proceeding) unless the settlement provides for a full and final release of all Claims asserted against the Authority.
5. This agreement is unlimited as to amount or duration and is binding upon, and inures to the benefit of, the parties and the parties’ successors and assigns.
6. This agreement is to be governed by, and interpreted in accordance with, California law. It is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

(Signature Page Follows)

City of Sacramento

Housing Authority of the City of Sacramento

By: _____
John Shirey, City Manager
Date: _____, 2014

By: _____
LaShelle Dozier, Executive Director
Date: _____, 2014

Attest:
Sacramento City Clerk

Approved as to Form

By: _____

By: _____
Tia Boatman Patterson, General Counsel

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney