

Item #19

City of Carson City Agenda Report

Date Submitted: June 22, 2010

Agenda Date Requested: July 1, 2010

To: RDA

Time Requested: 10 minutes

From: Joe McCarthy, Office of Business Development

Subject Title: Action to approve the proposed additions and revisions to the Redevelopment Authority Incentive Program's Lien and Agreement. (Joe McCarthy)

Staff Summary: The Lien and Agreement secures the performance of redevelopment incentive grants awarded by the Redevelopment Authority. The Lien and Agreement signed by the grant recipient secures the principal amount of the incentive and reduces the basis annually by equal amounts over a seven-year period. The additions and revisions to the current Lien and Agreement will now require the declining principal be suspended temporarily in cases when a property that has been awarded an incentive becomes vacant. The declining lien will resume once the property is occupied and producing tax revenues. The Lien and Agreement is further amended to ensure repayment of the remaining principal if any real property taxes, personal property taxes or lodging taxes are not current.

Type of Action Requested: (check one)

Resolution

Ordinance

Formal Action/Motion

Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve the proposed additions and revisions to the Redevelopment Authority Incentive Program's Lien and Agreement.

Explanation for Recommended Board Action: The additions and revisions of the current Redevelopment Authority's Incentive Program's Lien and Agreement are meant to ensure that the all incentive funding granted for redevelopment purposes is put to full use within the seven-year declining lien period as prescribed in the Redevelopment Authority's Policies and Procedures.

Applicable Statute, Code, Policy, Rule or Regulation: N/A

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Not approve and refer back to staff for further additions and revisions.

Supporting Material: Amended Redevelopment Authority Lien and Agreement

Prepared By: Eva Chwalisz, Management Assistant

Reviewed By:

Joe McCarley
(Department Head)

Date: 6-22-10

Meagan Sculley
(City Manager)

Date: 6/22/10

Mark Blomkamp
(District Attorney)

Date: 6/22/10

Mark Blomkamp
(Finance Director)

Date: 6/22/10

Board Action Taken:

Motion: _____

1) _____ Aye/Nay
2) _____

(Vote Recorded By)

Assessor's Parcel Number(s) _____

REDEVELOPMENT AUTHORITY LIEN AND AGREEMENT

This agreement is made between the Carson City Redevelopment Authority ("CCRA"), as grantor, and _____ as Grantee or Grantees (hereinafter collectively referred to as "Grantee"), for the granting of the sum of _____ (\$_____) for improvements to be made to the property located in Carson City at _____ ("subject property), more particularly described on Exhibit A attached hereto and incorporated herein. CCRA and Grantee are sometimes referred to below collectively as "the parties."

The date of this agreement is the date it is executed by the CCRA provided that it has also been dated and executed by Grantee.

Recitals

A. The Grantee owns the subject property which is real property located within the Carson City Redevelopment Project Area Number One ("Redevelopment Area") as designated by Carson City Ordinance 1986-10 passed on the 20th day of February, 1986.

B. Plans for proposed improvements to the subject property ("proposed work"), the cost of which may be reimbursed in part with this grant money, have been submitted to the Carson City Development Services Department, have met the requirements of the Downtown Design Guidelines Ordinance (CCMC 18.07) and the Downtown Master Plan Element and have been approved.

C. The CCRA is a redevelopment agency as defined in NRS 279.386 and Carson City Board of Supervisors Resolution 1983-R-30 declares that there is a need for the agency to function in the community pursuant to chapter 279 of the NRS.

D. This grant is being given to Grantee as part of the CCRA's plan for the redevelopment of the Redevelopment Area and this agreement is made under the CCRA's power under NRS 279.462 to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions made in this agreement, CCRA and Grantee agree as follows:

CCRA Agrees

1. Reimbursement to Grantee. The CCRA agrees to grant to Grantee that certain amount of money shown on page one as reimbursement for costs incurred by the Grantee in the redevelopment of the subject property. The grant of money by CCRA is subject to all the terms and conditions of this agreement. CCRA agrees to deliver the grant money to Grantee after Grantee first provides written proof to the satisfaction of the CCRA that money from a source other than the CCRA has actually been expended on proposed work for the subject property in a manner consistent with the other provisions of this agreement. The written proof required by this paragraph may be, but is not limited to, invoices and written proof that the invoices were paid.

2. Availability of Revenues. The grant money will only be paid to the Grantee when the revenues are available to the CCRA from the periodic collection of ad valorem taxes. The money will be delivered to Grantee in the form of a draft or drafts payable to the Grantee in the name of the Grantee and at the address of Grantee as both appear in this agreement.

Grantee Agrees

3. Approved Plans and Conditions. Grantee agrees to perform all proposed work on the subject property in accordance with the plans previously approved and in accordance with chapter 18.07 of the CCMC and the Downtown Master Plan Element and all local and state laws, regulations, ordinances and policies relating to construction

including obtaining all necessary permits and inspections. Grantee agrees that there will be no substantial deviation from the approved plans without the prior written consent of the hearing officer in the manner provided for in chapter 18.07 of the CCMC. Grantee also agrees, as a condition of acceptance of this grant, any conditions attached to the approval of the proposed work by any city agency, department or body including without limitation, the Downtown Design Guidelines hearing officer, the Carson City Regional Planning Commission, the Board of Supervisors, the Redevelopment Authority Citizens Committee, or the Carson City Redevelopment Authority will be satisfied by Grantee.

4. Completion and Inspection of Premises, Books and Financial Records.

Before being entitled to any grant money under this agreement, Grantee agrees to complete the proposed work and obtain a certificate of occupancy from the appropriate governmental authorities, if such a certificate is required. Grantee agrees to provide access to the subject property, books and financial records to any designated representative of CCRA for the purpose of inspecting to determine if all the conditions and terms of this agreement are being met.

5. Use of Grant Money. Grantee agrees that the grant money may only be spent to repay the costs of labor and materials necessary for physical improvements, modifications or changes to existing buildings or the construction of new buildings in the manner approved by the Redevelopment Authority Citizens Committee, the Redevelopment Authority and the Board of Supervisors. Expenses necessary to render a building safe, habitable and serviceable may be included in these costs. Without limitation to the following list, the grant money may not be used for: equipment; fixtures; administrative salaries, expenses or costs; environmental remediation including the removal and disposal of hazardous materials, hazardous material containers, contaminated soils, and contaminated water; advertising or promotion (except approved fixed signs on the subject property); market research or studies; stock or inventory; research and development; taxes, licenses or governmental fees (unless approved as part of the CCRA incentive program); the fees or costs of professionals whose services are unrelated to actual physical improvements including accountants and lawyers; or as security for any other debt.

6. Repayment of Grant. Grantee agrees to repay to CCRA the percentage of the total grant amount shown in this paragraph if: (a) any portion of the subject property is subdivided, parceled, sold, conveyed, assigned or transferred before the end of the time periods shown below; (b) more than fifty percent of the stock or ownership of Grantee is transferred or sold before the end of the time periods shown below ; or (c) if, before the end of the time periods shown below, the Grantee or the owner of the subject property fails to pay any portion of any taxes related to the ownership, occupancy or use of the subject property to Carson City or any other governmental entity including, but not limited to, real or personal property tax imposed pursuant to chapter 361 of the Nevada Revised Statutes ("NRS") on the subject property or any improvements, inventory or other personal property located on the subject property, any sales or use taxes that are generated pursuant to the operations of the Grantee at the subject property and any transient lodging taxes imposed pursuant to the Carson City Municipal Code, the Nevada Revised Statutes or a special act of the Nevada Legislature that are generated pursuant to the operations at the subject property. The time period provided for in this paragraph begins on the date of the issuance of a certificate of occupancy following the proposed work if one is necessary. If no certificate of occupancy is necessary, the time period begins on the date the proposed work is finished, but not later than the one year anniversary of the date of this agreement. The amount owed to CCRA under this paragraph is due upon the recordation of any instrument conveying Grantee's interest in the subject property (deeds of trust), or upon the delivery to the buyer of any certificate of ownership in excess of fifty percent of the outstanding ownership. Upon payment to CCRA of the amount due under this paragraph, Grantee or Grantee's successor in interest is no longer obligated by the provisions of this agreement.

Year 1	100%
Year 2	100%
Year 3	80%
Year 4	60%
Year 5	40%
Year 6	20%

Grantee further agrees that if the subject property ceases to be occupied by a business that generates tax revenue pursuant to chapters 372 and 374 of the Nevada Revised Statutes ("NRS"), then the decline in the percentage of the total grant amount set forth in this paragraph for each subsequent year shall be temporarily suspended until such time that the subject property is occupied by a business that generates tax revenue pursuant to chapters 372 and 374 of NRS. Once the subject property is again occupied by such a business, the decline in the percentage of the total grant amount shall continue from the point at which the decline was temporarily suspended.

7. Security for Grant. Prior to receipt of the grant money, the Grantee shall secure the grant for the term of this agreement. The Grantee may secure the grant by obtaining an irrevocable letter of credit from a Nevada bank issued to the CCRA in an amount equal to the amount of the grant. The amount of such a letter of credit may be reduced after the end of each one year period as defined in the paragraph above to reflect the decreasing repayment amount. In lieu of a letter of credit, the Grantee may execute and record in Carson City a fully executed and acknowledged deed of trust for the benefit of the CCRA in the form of the deed of trust attached hereto as Exhibit B. The deed of trust must be executed and recorded by the Grantee within ten days of the receipt of grant money and may be subordinate to only 2 other deed(s) of trust. The trustee of the deed of trust may be any Nevada bank or title company. A letter of credit must not be allowed to expire and no deed of reconveyance of the interest created by a deed of trust is required from the CCRA until all amounts due under this agreement, if any, are satisfied.

8. Title Insurance Policy and Insurance. Grantee agrees to provide CCRA with a copy of an ALTA Title Insurance Report prior to the receipt of any grant money. Grantee also agrees to procure and maintain liability and casualty insurance from a Nevada licensed broker, with coverages sufficient to reimburse CCRA for the amount of the grant in the event of a loss in addition to that insurance obtained for the Grantee or other creditors. The insurance policy will be maintained for the term of this agreement and the CCRA must be named in the policy as an additional insured by endorsement.

9. Taxes. Grantee warrants that all property taxes for the subject property are

paid and current as of the date of execution of this agreement by Grantee unless the taxing authority has consented in writing to a legally permissible tax deferral. Grantee also agrees to pay all property taxes on or before the date they are due during the term of this agreement.

10. Discrimination. Grantee agrees not to discriminate on the basis of race, color, creed, national origin, sex, age, disability or against any other legally protected class in the sale, lease, rental, use or occupancy of the subject property or in connection with any improvements made to the subject property.

11. Assignability and Binding Effect on Successors. The rights and duties of Grantee in this agreement are not assignable by Grantee. Grantee agrees for itself and its successors that the covenants made in this agreement are covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, CCRA its successors and assigns for the term of this agreement.

12. Indemnification. Grantee agrees to indemnify and hold harmless the CCRA, its successors, assigns, agents, contractors, employees and attorneys from any and all liability, loss or damage CCRA may suffer as a result of claims, demands, costs or judgments against CCRA arising from: (a) any work done with CCRA grant money; or (b) the CCRA's status as a secured party under a security agreement or the beneficiary of a deed of trust including, without limitation, liability for environmental damage or remediation.

13. Forfeiture. Grantee forfeits the right to any grant money not claimed in that manner provided for by this agreement.

The Parties Agree

14. Term. Except as otherwise provided in this paragraph, unless the decline in the percentage of the total grant amount is suspended for a period of time pursuant to paragraph 6 of this agreement, the parties agree the term of this agreement is six years and it expires on the sixth anniversary of the date of this agreement unless sooner

terminated pursuant to this agreement. If the decline in the percentage of the total grant amount is suspended for a period of time pursuant to paragraph 6 of this agreement, the parties agree the term of this agreement shall be six years plus the amount of time the repayment of the grant was suspended unless sooner terminated pursuant to this agreement.

15. Remedies. Except as otherwise provided, in the event of any default or breach of this agreement or any of its terms or conditions, the aggrieved party may institute such action or proceedings as it may deem necessary or desirable to cure and remedy the default including but not limited to termination or specific performance.

16. General Provisions. The parties agree: all notices required by this agreement shall be in writing, must be sent to the addresses provided herein and are deemed effective upon placement in the United States Mail, postage prepaid; this agreement constitutes the entire agreement between the parties; this agreement shall be enforced and construed according to the laws of the State of Nevada; the prevailing party to any dispute involving this agreement is entitled to reasonable attorneys fees and costs; any modification of this agreement must be made by a writing signed by both parties; portions of this agreement which are held invalid are severable from the rest of the agreement; this agreement may be recorded in the office of the Carson City Recorder; the preamble and recitals are hereby made a part of this agreement; and this agreement may be executed in any number of counterparts, each of which is deemed an original but together which constitute but one and the same agreement.

GRANTEE

CARSON CITY REDEVELOPMENT AUTHORITY

By: _____
(_____)

By: _____
(Joe McCarthy, Office of Business Development Director)

STATE OF NEVADA)
COUNTY OF _____)

On _____, 2010, personally appeared before me, a notary public, _____,

personally known (or proved) to me to be the person whose name is subscribed to the foregoing document and who acknowledged to me that he/she executed the foregoing document.

Notary

EXHIBIT A
LEGAL DESCRIPTION
APN: _____