

REPORT TO THE CITY COUNCIL



DATE: June 18, 2019

TITLE: Consideration of New Market Tax Credit Financing Documents Necessary to Wind Down the Financing

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Reviewed by: Geoffrey Buchheim, Acting Finance Director

RECOMMENDATION

- 1) **Adopt a Resolution of the City Council of the City of Desert Hot Springs, County of Riverside, State of California, approving certain matters relating to the exit of a New Markets Tax Credit Financing for the Health and Wellness Center and approving forms of documents and certain actions related thereto;**
- 2) **Approve the Membership Interest Purchase Agreement; and**
- 3) **Delegate authority to the City Manager to negotiate and execute all documents, including certifications, and proofs necessary to exit the New Markets Tax Credit Financing, upon approval as to form by the City Attorney and Special Counsel.**

SUMMARY

The City has previously pursued the construction of the Desert Hot Springs Health and Wellness Center (the "Project") on property owned by the City at 11-750 Cholla Drive (the "Land"), utilizing, in part, capital raised through the federal new markets tax credit program under Section 45D of the Internal Revenue Code. As part of the execution of the financing, the City entered into an Investment Fund Put and Call Agreement, dated as of July 13, 2012 (the "Option Agreement") with USB NMTC Fund 2012-1 LLC ("USB Fund"). The Option Agreement grants to USB Fund the right to sell its interest in Desert Hot Springs Investment Fund, LLC, a Missouri limited liability company ("Investment Fund"). USB Fund has notified its intent to sell its membership interest in the Investment Fund to the City for the purchase price of \$1,000.

At the time that the City pays for USB Fund's membership interest in the Investment Fund, the other parties to the new markets tax credit financing will assign rights under certain loan documents relating to the financing of the Investment Fund, resulting in the City, through its ownership of the Investment Fund, controlling the outstanding debt with respect to the Health and Wellness Center.

DISCUSSION

Currently, the Health and Wellness Foundation is the borrower under certain loans from two community development entities – LCD New Markets Fund XII, LLC, and New Markets Community Capital X, LLC, and is the current owner of the Project. Both are qualified community development entities under the new markets tax credit program. These loans were executed as part of the original new markets tax credit financing in order to enable the City and other participating stakeholders to construct and equip the Project. Once the put option under the Option Agreement is exercised and consummated, the City will, through its ownership of the Investment Fund and the assignment of the outstanding loans of the Foundation to the Investment Fund, control the debt associated with the Project. Consummating the exercise of the put under the Option Agreement is consistent with the City's expectation as to how the financing for the Project would mature, and will give the City significant flexibility in planning for the future of the Health and Wellness Center.

FISCAL IMPACT

In addition to the purchase price of \$1,000, the City will also continue to plan for certain fees in connection with the exit of the new markets tax credit financing, currently estimated to be

\$150,000 which will be funded by the USB Funds Reserve, Health and Wellness Foundation, and the General Fund.

EXHIBIT(S)

- 1) Resolution Ordering New Markets Tax Credit Exit
- 2) Membership Interest Purchase Agreement
- 3) Leveraged Loan Payoff Letter
- 4) Assignment of Loan and Loan Documents
- 5) Allonge Promissory Note (A-2)
- 6) Allonge to Promissory Note (B-2)
- 7) Allonge to Promissory Note (C-2)
- 8) Redemption Agreement NMCC X
- 9) Confirmation and Reaffirmation of Unconditional Guaranty of New Markets Tax Credits, Put Price, and Environmental Indemnification
- 10) Lost Note Affidavit for Leverage Loan
- 11) Assignment of Deed of Trust
- 12) Redemption and Assignment Agreement