STAFF REPORT

MEETING
DATE: January 12, 2016

TO: City Council

FROM: Cathy Capriola, Interim City Manager
Brian Cochran, Finance Manager

SUBJECT: RATIFY THE INSTALLMENT PAYMENT AGREEMENT ENTERED INTO BETWEEN THE CITY, SUCCESSOR AGENCY, AND CALIFORNIA DEPARTMENT OF FINANCE FOR AMOUNTS OWED PER THE RECENTLY ADOPTED SENATE BILL 107

REQUEST

Consider ratifying, by motion, the installment payment agreement with the California Department of Finance (“DOF”), as recently signed by the Assistant City Manager, for amounts owed due to redevelopment dissolution totaling $5,219,813.

RECOMMENDATION

Ratify the agreement.

DISCUSSION

The City Council has met twice recently on the issue of whether or not to enter into an installment payment agreement with DOF per the language of SB 107 for amounts owed in connection with redevelopment dissolution totaling $5,219,813. At its last meeting, December 22, 2015, the City Council gave direction to staff on a 5-0 vote to pay the entire amount owed prior to the statutory deadline of December 31, 2015. This action was intended to preserve Novato’s ability to receive a “finding of completion” under the redevelopment dissolution law, which affords Novato certain benefits. The action was also taken with the knowledge that DOF had rejected three prior payment plan proposals from the City and had declared Novato “ineligible” for a payment plan.

Subsequent to the City Council meeting on the evening of December 23, 2015, DOF staff emailed City staff reversing their prior decision and instead offering a two-step installment payment plan. The plan would require one payment for 50% of the amount owed on January 15, 2016 and the second 50% due on January 15, 2017. Given the City’s interest in an installment payment plan and given that there were no more available dates in 2015 to hold a City Council meeting to agree to the proposed plan, the Assistant City Manager signed the offered agreement on December 28, 2015. The action requested in this agenda item is to ratify the agreement, a copy of which is attached to this staff report.
Below are the prior staff report discussions on this item that provide more background.

December 22, 2015 update
The City Council originally considered this item at its December 15th meeting. At that meeting, staff provided an update about payment plan negotiations with the Department of Finance. The City Council provided staff direction to continue negotiating with the Department of Finance on a possible payment plan prior to December 31, 2015. The City Council also continued the item for additional discussion to this December 22, 2015 meeting. Staff will provide a status update and possible additional recommendations during the meeting.

Original Discussion from December 15, 2015
In early 2011, the City’s former redevelopment agency (the “RDA”) paid off a series of loans that it had taken out from the City over a series of many years. These were longstanding loans executed according to existing redevelopment law at the time. The loans, totaling approximately $21 million, included an amount of $15 million that was paid off via the RDA’s issuance of its 2011 tax allocation bonds. The remaining $6 million was paid back to the City with RDA cash-on-hand.

Subsequent to these actions, in June 2011, the California Legislature enacted legislation that eliminated redevelopment agencies. Certain provisions within the legislation sought to retroactively undo, cancel, or otherwise invalidate certain transactions that were legally undertaken by RDAs prior to their elimination. Through a series of audits and state reviews, initially all $21 million that was repaid to the City was ordered to be returned to the State / taxing entities (County, School District, Fire District, etc). After follow-up discussions and negotiations with the California Department of Finance (“DOF”) and the State Controller’s Office (“SCO”), we obtained agreement from those agencies that the $15 million bond/loan repayments were approved. However, a total of $5.2 million of the RDA cash loan repayments to the City were deemed invalid and ordered returned to the Marin Auditor-Controller for distribution to the taxing entities. Upon receiving such an order, the City initiated litigation in May 2013 against DOF and SCO, arguing that the loan repayments were in fact valid and legal and that the City should be allowed to keep the $5.2 million in question. To date, the lawsuit has not had a hearing, with an initial court date set for March 2016.

This past summer, legislation was introduced and discussed in the Legislature comprising a variety of “clean-up” provisions to the RDA dissolution law, as well as several provisions that were widely seen as detrimental to cities and beneficial to the State. It ultimately passed in the Legislature as SB 107; Novato opposed the legislation based upon the potential negative impacts to the City.

One seemingly innocuous provision of SB 107 states that any cities that still owe money to the State / taxing entities due to RDA dissolution must pay the money by December 31, 2015, or enter into an “installment payment plan” to begin repaying the money. The law also states that if amounts are in dispute via litigation and the City eventually receives a favorable judgement on its lawsuit, the City will get repaid any amounts already paid under a payment plan. If a City fails to enter into a payment plan prior to December 31, 2015 (or pay in full the money owed), then the penalty for the City is that it can never receive certain benefits that are granted in the law. The benefits provided are twofold:
1. **Re-instatement of City/RDA loans** – As previously mentioned, many types of transactions were invalidated by the RDA dissolution law. One key type of transaction (which affects Novato) is prior City/RDA loans. If the City completes the payment plan described above, the City will be able to apply to get its loans re-instated and paid back over a number of years. Clearly, the benefit to this provision only affects Novato if we lose the lawsuit; otherwise, we would have no City/RDA loans to re-instate because they would have already been paid back by the actions Novato took in 2011.

2. **“Last and Final” Recognized Obligation Payment Schedule (“ROPS”)** – The ROPS is the document that outlines what debts and bills the former RDA needs to pay each year. Approval of the ROPS must go through several steps, including approval by the City, approval by a locally-appointed Oversight Board, and approval by DOF. Executing the payment plan would make Novato eligible to create a “Last and Final” ROPS, which would be a complete payment schedule for the remaining life of the debts of the RDA (at least another 25 years). The “Last and Final” ROPS, once approved, removes virtually all administrative burden from the dissolution process, eliminates the need to get Oversight Board and DOF approval on a ROPS each year, and allows Novato to simply pay the debts of the former RDA each year without much hassle or expense.

Since early November, the City has been in negotiations with DOF over the potential provisions of an installment payment plan. After passing several versions back and forth, we have yet to come to an agreement with DOF on an installment payment plan. The basic premise of the payment plan proposed is to make twice-annual installment payments on the $5.2 million amount over a 20-year period which would completely pay off the amount owed. DOF has thus far rejected this proposal and it is possible that we will not be able to come to agreement with DOF on any payment plan. The implication of that scenario is that the City would need to pay back the $5.2 million prior to December 31, 2015 to be able to access the potential benefits outlined above. Novato would continue to await the outcome of the lawsuit which would ultimately determine how much, if any, of the $5.2 million would be owed back to the City.

Staff has attached the most recent version of the payment plan sent to DOF as an example of what has been proposed by the City thus far (and rejected by DOF at this point). More information will be provided at the meeting about potential options and recommendations.

**FISCAL IMPACT**

Agreeing to pay out all or a portion of the $5.2 million involved in the RDA dispute with the State will reduce fund balances by the amounts paid out. However, the City has, since the repayments originally occurred in 2011, kept these funds in reserve in case they were invalidated by the State or by the courts. Thus these funds have not been otherwise programmed for services or projects and there should be little impact on the City’s day-to-day operations. The final resolution of the lawsuit by the courts will ultimately determine how much of the $5.2 million the City is able to retain.

**ATTACHMENTS**

1. Installment Payment Plan
INSTALLMENT PAYMENT AGREEMENT

This Installment Payment Agreement is entered into by and between the Department of Finance (Department), the Novato Successor Agency (Agency), and the City of Novato (City).

RECITALS

A. As determined according to Health and Safety Code (HSC) section 34179.5, the Agency has an outstanding Due Diligence Review amount due as set forth in Exhibit A;

B. Pursuant to HSC sections 34179.6(h)(3), the Department has determined that full payment of the Due Diligence Review amount due is not currently feasible; and

C. The City and Agency have requested the Department to approve an installment payment plan and issue a Finding of Completion as authorized by HSC 34179.7.

AGREEMENT

The parties hereby agree to the following installment payment plan:

1. The City agrees to pay the outstanding Due Diligence Review amount according to the schedule in Exhibit A.

2. The City agrees to remit all scheduled payments directly to the Auditor-Controller.

3. The Department shall issue a Finding of Completion within five (5) days of the effective date of this agreement.

4. This agreement may be executed by facsimile and in one or more counterparts, and the effective date shall be the date on which the last counterpart of this agreement is signed.
5. The parties agree to comply with all provisions of HSC section 34179.7 governing written installment payment plans, including, but not limited to, all provisions governing the failure to comply with this agreement.

Date: 12/24/15

California Department of Finance

Justyn Howard, Program Budget Manager

Date: 12/28/15

City of Novato

[signature, name, title]

Date: 12/28/15

Novato Successor Agency

[signature, name, title]

Cathy Capriola
EXHIBIT A
INSTALLMENT PAYMENT PLAN
CITY OF NOVATO

Due Diligence Review amount outstanding

Payment Schedule

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<th>Amount</th>
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<tr>
<td>January 15, 2017</td>
<td>$2,609,906.50</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$5,219,813.00</strong></td>
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