


# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: February 10, 2014

TO: Honorable Members of the Economic Development Committee

FROM: Gerry F. Miller   
Chief Legislative Analyst

Assignment No: 14-02-0069

SUBJECT: Funding Agreement for Olympic North Hotels

## SUMMARY

In October 2011, City Council instructed the Chief Legislative Analyst (CLA) to review a request from the 901 West Olympic Boulevard Limited Partnership (Developer) to provide support for development of two hotels at 901 West Olympic Boulevard. On Jun 13, 2012, upon review of the financial condition and economic impacts of the project, Council considered and approved (CF 11-0966) a Subvention Agreement to provide a maximum of \$21.9 million to support development of these hotels.

The project is nearly complete and expected to open in May 2014. As such, the City is required to complete documents as contractually obligated in the Subvention Agreement to provide financial support to the project. The attached Funding Agreement establishes the process for that funding assistance. It is anticipated that the City Attorney will provide ordinances that complete implementation of this process.

## RECOMMENDATION

That the City Council approve the Funding Agreement between the City of Los Angeles and 901 West Olympic Boulevard Limited Partnership (Developer) (Attachment A) concerning the Olympic North Hotels Project, and authorize the Mayor to execute said agreement.

## BACKGROUND

On October 18, 2011, the City Council approved a Motion (Perry-Reyes) instructing the CLA to evaluate the proposed Olympic North Hotels Project and recommend appropriate forms of economic development to support the project. This Project is located within the LASED and is fully entitled within the provisions of that specific plan.

The Olympic North Hotels Project involved construction of two hotels in one building with a total of 392 rooms. Both hotels are Marriott products, including a Courtyard which will have 174 rooms and a Residence Inn which will have 218 rooms. Both hotels are 3-star rated products, providing a good quality hotel at a lower price-point than other hotels in close proximity to the LACC.

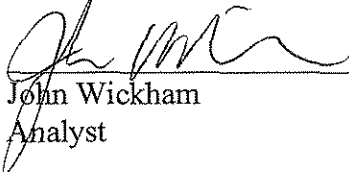
Analysis determined that completion of this project would generate General Fund \$134.5 million in City general fund revenues, or \$44 million net revenue present value (NPV) over the next 25 years. City policy maintains that projects such as this may receive no more than 50% of net new revenues generated by the project. As such, and in compliance with the City policy, the project will receive a maximum of \$21.9 million in financial assistance (50% of the \$44 million in net new revenue).

At its meeting of June 13, 2012, upon review and consideration of the project and the Subvention Agreement, Council approved recommendations to support the Olympic North project and provide assistance of no more than \$21.9 million. The project has nearly completed construction and is anticipated to open in May 2014. As such, it is necessary to approve the final documents to meet the City's contractual obligation under the Subvention Agreement. The attached Funding Agreement establishes the process to provide funds as approved.

In addition to this document, the City Attorney is expected to transmit ordinances that effectuate the fiscal actions necessary to implement this Funding Agreement.

**FISCAL IMPACT**

There is no impact to the General Fund associated with this action.

  
John Wickham  
Analyst

Attachment A: Funding Agreement

**ATTACHMENT A  
FUNDING AGREEMENT**

**FUNDING AGREEMENT**

by and among

**THE CITY OF LOS ANGELES,  
a municipal corporation**

and

**901 West Olympic Boulevard Limited Partnership,  
a Washington limited partnership**

**Dated as of February 1, 2014**

**(Courtyard by Marriott/Residence Inn Project)**

## FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the "**Funding Agreement**") dated as of February 1, 2014 for identification purposes only, by and among the CITY OF LOS ANGELES, a municipal corporation ("**City**") and 901 West Olympic Boulevard Limited Partnership, a Washington limited partnership ("**Developer**"), with reference to the following facts, purposes, and understandings.

### RECITALS

A. On or about January 12, 2012, the City Council approved that certain Memorandum of Understanding ("**MOU**"), whereby the City agreed to consider the Developer's request for financial assistance to develop a proposed new hotel project in close proximity to the Los Angeles Convention Center located at 901 West Olympic Boulevard, Los Angeles, CA (the "**Hotel Project**").

B. Pursuant to the MOU, the Developer provided to the City its financial analysis of the Hotel Project, which concluded that the Hotel Project was not financially feasible without a certain amount of financial assistance from the City.

C. In accordance with the MOU, the City engaged its own financial consultants to review and conduct an independent analysis of the Hotel Project, including the costs associated with the provision of certain public benefits requested by the City. The City's consultants concluded that the Hotel Project was not financially feasible without significant financial assistance (the "**Financial Gap**").

D. On or about June 13, 2012, the City Council approved City Contract No. C-120874, in the form of a Subvention Agreement by and between the City and Developer (the "**Subvention Agreement**"), whereby the Developer agreed to develop a 392-room Hotel Project and to deliver certain public benefits, as more particularly set forth in the Subvention Agreement, including, without limitation, the Additional Public Benefits, the Hotel Room Block Agreement and a Local Hiring/First Source/Minority Business Recruitment Program.

E. In consideration of the development of the entire Hotel Project and the economic stimulus and the other public benefits, which the Hotel Project would generate, the City agreed to fund a portion of the Financial Gap.

F. In order to finance the Subvention Amount, the City agreed to make its best efforts to establish a Community Taxing District pursuant to the Special Tax Improvement Ordinance of the City of Los Angeles, Chapter 10 of Division 6 of the Los Angeles Municipal Code (the "**Ordinance**") to fund eligible Facilities in an amount not to exceed the Subvention Amount of Twenty One Million Eight Hundred Ninety Thousand Dollars (\$21,890,000.00), which represents the amount that is the net present value (discounted at a ten percent (10%) annual rate) of not greater than fifty-percent (50%) of the estimated Project Related City Revenues, subject to adjustment pursuant to the Construction Costs and Project Construction Cost Reconciliation process set forth in Section 3.3 of the Subvention Agreement.

G. On or about June 26, 2013, the City Council adopted Ordinance No. 182632 establishing Community Taxing District No. 4 (“**CTD No. 4**”) and authorizing the levy of a special tax within CTD No. 4 ( the “**Special Tax**”) and establishing an appropriations limit for CTD No. 4.

H. The City Council serves as the legislative body of CTD No. 4, and the City’s Chief Administrative Officer is responsible for the administration of CTD No. 4 as set forth in Ordinance No. 182632.

I. The Special Tax has been approved, but no portion of the Special Tax has been levied, paid, or collected.

J. The City desires to fund the payment of the Subvention Amount through yearly appropriations from its general fund rather than through the special tax (“**Alternative Funding Method**”).

K. Developer has agreed to the Alternative Funding Method proposed by the City so long as the Alternative Funding Method does not prejudice any of the Developer’s rights under the Subvention Agreement.

**NOW, THEREFORE**, in reference to the foregoing Recitals and in consideration of the promises, covenants and agreements set forth in this Funding Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the City and the Developer hereby agree as follows:

## ARTICLE 1

### Definitions

Section 1.1 Definitions. In addition to the terms defined in the Subvention Agreement or elsewhere in this Funding Agreement, the following capitalized words shall have the following meanings:

“**Annual Subvention Amount Aggregate Payment**” shall mean the aggregate Monthly Subvention Amount payments made pursuant to Section 2.2 of this Funding Agreement.

“**Annual Subvention Amount Aggregate Payment Present Value**” shall mean the Annual Subvention Amount Aggregate Payments discounted to present value as of the Completion Date determined using a discount rate of 10%.

“**Monthly Subvention Amount**” shall mean the amount of the Subvention Deposit, paid monthly to Developer in accordance with Section 2.2 of this Funding Agreement.

“**Net New Tax Revenues**” shall mean all Hotel Project related City revenues, including without limitation net new sales/use taxes, transient occupancy taxes, property taxes, gross receipts taxes, parking occupancy taxes and utility users tax revenues Paid to, and Received by, the City and which are directly attributable to the development of the Project.

“Paid” shall mean the actual transfer of funds from the tax-paying entity to the tax-collecting entity in connection with any payment of tax, evidenced by supporting documentation that the tax-paying entity’s check has “cleared” or immediately available funds have been wired, electronically transferred or otherwise paid to the tax-collecting entity; *provided* that any amount refunded to the tax-paying entity for any reason shall not be considered Paid.

“Received” shall mean the City’s actual receipt of tax funds; *provided, however*, that Received shall not include tax revenues which the City determines, in its reasonable discretion, have been lost or reduced by the development of the Project, including but not limited to any City tax revenues received by the City during the fiscal year immediately preceding the Completion Date, which amount is the City’s portion of \$46,975 in property taxes paid in 2011-2012, inflated at 2.0% annually from 2011-12 to the Completion Date plus the City’s portion of \$52,078 in parking taxes paid in 2011-12, inflated at 3.0% annually from 2011-12 to the Completion Date. The City shall net out any such lost City tax revenues from its calculations of the amount to be deposited into the Special Fund.

“Special Fund” shall mean a special fund to be established by the City into which the City will make the Subvention Deposit for the duration of the Subvention Term.

“Subvention Amount” shall mean the amount set forth in Section 3.2 of the Subvention Agreement (subject to the Construction Costs and Project Construction Cost Reconciliation process).

“Subvention Deposit” shall mean the deposits into the Special Fund of an amount equal to one hundred percent (100%) of the transient occupancy tax Received by the City attributable to the Hotel Project for the prior calendar month. In no event shall the aggregate Subvention Deposits over the Subvention Term exceed the City Policy limiting the reinvestment of not more than fifty percent (50%) of total Net New Tax Revenues without a waiver of the City Policy by the City Council.

Section 1.2 Exhibits. The Exhibits attached to the Subvention Agreement shall remain in full force and effect and the terms of each is incorporated herein as though fully set forth.

## ARTICLE 2

### Financial Assistance By City

Section 2.1 Establishment of Special Fund by City. Subject to the terms and conditions of this Funding Agreement, the City shall establish the Special Fund and, on the first business day of each month, shall deposit from the City’s general fund into that Special Fund the Subvention Deposit.

Section 2.2 City Disbursement to Developer from Special Fund. Commencing on the Completion Date and for the duration of the Subvention Term, not later than the forty-fifth (45<sup>th</sup>) day after the City makes the Subvention Deposit pursuant to Section 2.1 above, the City shall disburse to Developer the Monthly Subvention Amount from the Special Fund until the earlier of such time as the Annual Subvention Amount Aggregate Payment Present Value equals the

Subvention Amount (the “**Maximum Subvention Amount**”) or the Subvention Term has expired or has been otherwise terminated. The payments to Developer shall be made in arrears solely from amounts on deposit in the Special Fund and the City’s liability or obligation for any payment shall not exceed the Subvention Deposit.

Section 2.3 Maximum Amount of Subvention Deposits and Disbursements. The maximum amount of Subvention Deposits and/or the cumulative Monthly Subvention Amounts paid to Developer during the Subvention Term shall not exceed the Maximum Subvention Amount.

Section 2.4 Conditional Obligation. Developer acknowledges and agrees that the City’s obligation to make the Subvention Deposits, or to make the Subvention Amount payments to Developer as set forth in Section 2.2 is a conditional obligation which arises only upon the Developer’s continual compliance with the terms of the Subvention Agreement, including without limitation the development of the Hotel Project and the maintenance thereof in accordance with Section 4.2 of the Subvention Agreement, the Hotel Operating Covenant, and the Room Block Agreement, as well as the provision of the Community Benefits Program set forth in Section 4.4 of the Subvention Agreement, and the City verifying it has Received the applicable Project Related City Revenues. Developer further acknowledges that nothing in this Agreement is intended to, or authorizes the City, to assign, pledge or otherwise commit any of its current or future general funds to payment of the Subvention Amount, except as appropriated each budgetary year.

Section 2.5 Expiration of City Obligation to Provide Financial Assistance. The City’s obligation to provide the financial assistance set forth in either this Agreement or the Subvention Agreement expires on the Subvention Term.

### ARTICLE 3

#### Termination of Community Taxing District No. 4

Section 3.1 Suspension and Dissolution of CTD No. 4. The parties do hereby agree to take all actions necessary to dissolve CTD No. 4.

Section 3.2 Suspension and Repeal of Special Tax. The parties do hereby agree to take all actions necessary to repeal the Special Tax.



## ARTICLE 4

### Integration of Agreements

Section 4.1 Integrated Nature of Agreements. This Funding Agreement, the Subvention Agreement, the Room Block Agreement and any other agreement executed in connection with these agreements (the “**Project Agreements**”) shall be deemed part of one and the same agreement and notwithstanding Sections 8.9 and 8.10 of the Subvention Agreement, the obligations under any such Project Agreement shall be deemed “executory” in respect of each and every other obligation of the counterparty as applicable.

Section 4.2 Remedies. Consistent with Section 3.1 of the Subvention Agreement, if the City or any designated or authorized agency, representative or other party acting on its behalf, fails to pay any amount due hereunder or commences (or becomes the subject of) any insolvency, liquidation, receivership or any similar action, case or proceeding, Developer shall have the right to exercise any remedies available to it at law or in equity. The remedies set forth in this Section 4.2 are cumulative in nature and election of one remedy does not preclude the right to seek or enforce any other remedy in this Section, or under any other Project Agreement, including, but not limited to Section 7.3(b).

*[Signatures on following page]*

**WHEREFORE**, the Parties have executed this Agreement as of the date first above written.

Dated: February 1, 2014

**CITY:**

**CITY OF LOS ANGELES,**  
a municipal corporation

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**

MICHAEL N. FEUER,  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**ATTEST:**

**CITY CLERK**

By: \_\_\_\_\_  
Deputy City Clerk

Date: \_\_\_\_\_

**DEVELOPER:**

**901 WEST OLYMPIC BOULEVARD**  
**LIMITED PARTNERSHIP,**  
a Washington limited partnership

By: American Life, Inc., a Washington Corporation,  
its Managing General Partner

By: \_\_\_\_\_  
Henry Liebman  
President