MEMORANDUM

To: Council Members

From: Staff

Date: May 17, 2013 Council Meeting

Subject: Brownfields Cleanup Loan with the Fort Pierce Redevelopment Agency Update

Introduction

The purpose of this agenda item is to update Council on new information regarding a proposed cleanup loan to the Fort Pierce Redevelopment Agency (FPRA). The loan is from the Treasure Coast Brownfields Program to help FPRA offset cleanup costs at the former H.D. King Power Plant site (Exhibit 1) in the City of Fort Pierce. The new information is that FPRA will not utilize, or pledge as collateral security, any Voluntary Cleanup Tax Credit (VCTC) program funds as a source to make the interest-only payments or to repay the principal sum of the loan. FPRA will utilize other resources, as it determines appropriate, to repay the loan.

Background

At its January 18, 2013 meeting, Council considered a request from the FPRA for a cleanup loan under the Treasure Coast Brownfields Program to help offset cleanup costs at the H.D. King Power Plant site in the City of Fort Pierce. The loan of up to $800,000, subject to the availability of funds, would have a five-year term with interest-only payments for five years at 0.25% and repayment of the entire principal balance at the end of the five-year term. Council authorized the Executive Director in consultation with Council’s attorney to propose, execute, modify and deliver loan closing documents in such form as they shall determine to effectuate the loan to the FPRA, subject to final approval by the U.S. Environmental Protection Agency (EPA). On May 3, 2013 the EPA provided Council staff written approval to proceed with the loan to FPRA.

At the January meeting it was Council staff’s understanding that repayment of the loan would be made by FPRA principally through the use of the State of Florida’s VCTC program. Since the January 18, 2013 meeting, based on discussions with FPRA staff, Council staff has learned that FPRA will use other FPRA funds in place of the VCTC funds to make the appropriate monthly interest charges on the loan and to repay the entire principal balance at the end of the five year term. Under an Interlocal Agreement (Exhibit 2) executed on October 7, 2009 by and among the City of Fort Pierce, the Fort Pierce Utilities Authority (FPUA) and the Fort Pierce Redevelopment Agency, the FPUA is solely responsible for all environmental cleanup costs at the subject site. The above-noted change in repayment sources is not inconsistent with Council’s EPA-approved Brownfields Revolving Loan Fund Cooperative Agreement Work Plan. The
FPRA has proposed delivering to Council an irrevocable letter of credit to secure the principal amount of the proposed loan.

Recommendation

For informational purposes only.

Attachments
Exhibit 1

Former H.D. King Powerplant
EPA Brownfields Grant
INTERLOCAL AGREEMENT

THIS AGREEMENT made and entered into this 7th day of October, 2009, by and among CITY OF FORT PIERCE ("CITY"), a Florida municipal corporation, and FORT PIERCE UTILITIES AUTHORITY ("FPUA"), a municipal entity organized and existing under the Charter of the City of Fort Pierce, and FORT PIERCE REDEVELOPMENT AGENCY, a dependent special district of the City of Fort Pierce, Florida ("FPRA");

WITNESSETH:

WHEREAS, the City, individually or for the use and benefit of FPUA, is the owner of the real property more particularly described in the attached Exhibit A, said property being commonly called "the King Plant Property"; and

WHEREAS, FPUA has for many years operated a power plant on this property, which power plant was decommissioned on May 1, 2008, and which is currently being demolished pursuant to a contract entered into between FPUA and National Salvage & Service Corporation; and

WHEREAS, the property has suffered possible environmental contamination during the City’s ownership; and

WHEREAS, Treasure Coast Regional Planning Council (TCRPC) is contemplating a grant to assist in the environmental cleanup of the site; and

WHEREAS, the TCRPC grant cannot be received by the entity in title when the contamination occurred; and

WHEREAS, the City is contemplating transferring title to FPRA;

NOW, THEREFORE, it is agreed by and among the parties hereto as follows:

1. The City will transfer ownership of the King Plant Property described in Exhibit A attached hereto to FPRA.

2. FPRA will immediately apply to the TCRPC for the proposed grant for environmental cleanup of the site.

3. FPUA shall remain solely responsible for all environmental cleanup costs, regardless of whether or not TCRPC grant funds for environmental cleanup are received by FPRA and expended for such purposes.

4. FPUA hereby agrees that it will defend, indemnify and hold harmless the City and FPRA, its officers, agents, and employees, and any of them from and against any and all suits, actions, judgments, and reasonable attorneys’ fees and costs (at trial and all appellate levels)
arising from, related to, or in any way pertaining to any suit, action, claim or demand of any character, type or description brought or made for, on account of, arising out of, or occasioned by any environmental contamination on, under, or pertaining to the property identified in Exhibit “A”, regardless of the amount.

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement the day and year first above written.

Attest:

[Signature]
Thomas K. Perona, Secretary

[Signature]
Pamela K. Cully, Chairman

FORT PIERCE UTILITIES AUTHORITY, Licensor

CITY OF FORT PIERCE, FLORIDA, a Florida Municipal Corporation

By:
Robert A. Benton, III, Mayor-Commissioner

FORT PIERCE REDEVELOPMENT AGENCY, a dependent special district of the City of Fort Pierce, Florida

By:
Robert J. Benton, III Chairman

APPROVED AS TO FORM AND CORRECTNESS

BY:
R.N. Koblegard, III
Attorney for Fort Pierce Utilities Authority

APPROVED AS TO FORM AND CORRECTNESS

BY:
City Attorney