

09/19/14

SB-1

AGENDA REPORT

Date: September 12, 2014
To: Oversight Board 
From: John V. Guthrie, Oversight Board Member
Subject: September 19, 2014 Oversight Board Meeting Agenda Item No. ____
Consideration of Resolution Regarding Use of Unspent Bond Proceeds to Redeem/Defease Outstanding Bond Issues

Executive Summary:

This Agenda item requests that the Oversight Board approve the attached Resolution which was prepared and provided to me by the Santa Clara County Finance Agency. The Resolution directs the Successor Agency to use unspent bond proceeds held by the Successor Agency to defease/redeem, i.e. to pay back, prior outstanding bonds issued by the Redevelopment Agency and transferred to the Successor Agency. Approval of the Resolution is consistent with the Redevelopment Dissolution Law and the Oversight Board's fiduciary responsibility to both the holders of enforceable obligations and the affected taxing entities.

Requested Action:

1. Approve Resolution No. ____ attached hereto as Exhibit "A" entitled "A Resolution of the Board of the Successor Agency for the City of Santa Clara Redevelopment Agency Relating to Unspent Bond Proceeds and Making Related Findings and Declarations and Taking Related Actions."

Background:

Previously, the Redevelopment Agency issued several bonds to fund its activities. The following bond issuances are relevant to this item: (1) the Bayshore North Project 1999 Tax Allocation Bonds, Series A (the 1999 Series A Bonds); (2) the Bayshore North Project 1999 Tax Allocation Bonds, Series B (the 1999 Series B Bonds) (collectively the 1999 Bonds); (3) the Bayshore North Project 2003 Tax Allocation Bonds (the 2003 Bonds); and (4) the Bayshore North Project 2011 Tax Allocation Bonds (the 2011 Bonds).

On March 8, 2011, the Redevelopment Agency transferred all unspent bond proceeds from the above 1999 Series A Bonds and the 1999 Series B Bonds to the City of Santa Clara in the approximate amount of \$56.9 million. Subsequently, the City spent approximately \$40 million on the Tasman Parking Garage and is holding or has spent approximately \$11 million on other

projects. The City has returned and the Successor Agency currently holds approximately \$3.1 million of the 1999 Bonds.

In May 2011, the Redevelopment Agency sold the 2011 Bonds in the amount of \$31.4 million. Bond proceeds of \$25.0 million from the 2011 Bonds were subsequently transferred to the City by the RDA. After this transfer, the City transferred \$25 million in 2011 Bonds proceeds to the Successor Agency that the Successor Agency currently holds.

In summary, the Successor Agency currently holds approximately \$28.0 million in unspent bond proceeds. As discussed in more detail below, the purpose of this Agenda item is to ask the Oversight Board to direct the Successor Agency to use its available bond proceeds in a manner consistent with the Redevelopment Dissolution Law and the Oversight Board's fiduciary responsibility to both the holders of enforceable obligations (i.e., bondholders) and the affected taxing entities.

Analysis:

A. 1999 and 2003 Bonds

With the dissolution of the Redevelopment Agency, the Successor Agency became the issuer of the 1999 Series A Bonds and the 1999 Series B Bonds. As such, the Successor Agency has a duty to abide by the bond covenants and protect the interests of bondholders as holder of enforceable obligations. The 1999 Series A Bonds and the 1999 Series B Bonds are tax-exempt debt meaning that the interest paid to bondholders is non-taxable.

The Internal Revenue Code ("Code") imposes several requirements on issuers of tax-exempt bonds. These requirements must be met at issuance and throughout the term of the bonds. One of these requirements is that the issuer must have a reasonable expectation of spending 85% of the bond proceeds for qualified purposes within three years from the date of issuance. Failure to comply with this requirement may cause the bonds to become arbitrage bonds under section 148(a) of the Code or hedge bonds under section 149(g) of the Code, and necessitate the payment of an arbitrage penalty by the issuer to maintain the tax-exempt status of the bonds or even the loss of tax-exemption on the bonds with negative consequences to the bond holders. The IRS may also impose penalties. The continued existence of unspent bond proceeds from the 1999 Bonds (approximately 15 years after their issuance) is not typical.

In light of the above, the Oversight Board should use any available unspent bond proceeds to redeem/defeas the 1999 Bonds, i.e. pay back the bondholders consistent with the bond documents. The 1999 Bonds can be redeemed/defeased at any time. Such an action is considered the best way to minimize the risks discussed in the preceding paragraph because it is consistent with the bond covenants and minimizes the risk to the Successor Agency and the bondholders.

The attached Resolution directs the Successor Agency to immediately use all available unspent proceeds from the 1999 Bonds to redeem/defeas the bonds.

To the extent that there are proceeds from the 2003 Bonds, similar issues apply and the Resolution provides for similar treatment.

B. 2011 Bonds

The Successor Agency is currently holding approximately \$25 million in unspent proceeds from the 2011 Bonds. The 2011 Bonds have ten year call protection meaning that they cannot be redeemed or paid off prior to June 1, 2021. However, similar to the 1999 Bonds, the best way to mitigate any tax risk associated with unspent bond proceeds is to redeem or defeas the bonds as soon as possible. With respect to the 2011 Bonds, this date would be after June 1, 2021.

Until June 1, 2021, the unspent bond proceeds may be placed in an irrevocable escrow account with a trustee who can manage the unspent proceeds to maximize returns consistent with the bond documents and IRS rules. Such an escrow account will serve several important purposes: (1) it will show good faith efforts at compliance with regard to the tax-exempt status of the bonds by the Successor Agency; (2) it will safeguard principal; and (3) by allowing the trustee to maximize returns, it will minimize the interest obligations of the Successor Agency and thereby reduce the impact to the affected taxing entities by minimizing the amount of debt service to be paid by funds that would otherwise be distributed to the taxing entities.

The attached Resolution directs the Successor Agency to place all available 2011 Bonds unspent proceeds in an escrow account to be used by a trustee to legally redeem the 2011 Bonds as soon as possible in a manner consistent with the Successor Agency's obligations to the bondholders and the Oversight Board's fiduciary duties to the affected taxing entities.

As a byproduct, any defeasance/redemption of bonds will necessarily reduce Successor Agency liabilities, and, therefore, there will a concomitant savings to the affected taxing entities.

Conclusion:

For the reasons stated above, adoption of the attached Resolution by the Oversight Board is consistent with the Dissolution Law and the Oversight Board's fiduciary duties to both the holders of enforceable obligations and the affected taxing entities.

AGENDA REPORT

Date: September 15, 2014

To: Oversight Board

From: John V. Guthrie, Oversight Board Member

Subject: SUPPLEMENTAL – September 19, 2014 Oversight Board Meeting Agenda Item No. ____
 Consideration of Resolution Regarding Use of Unspent Bond Proceeds to Redeem/Defease Outstanding Bond Issues

This is a supplement to the September 12, 2014 report regarding the proposed Resolution Regarding Use of Unspent Bond Proceeds to Redeem/Defease Outstanding Bond Issues. If the Oversight Board approves the Resolution to defease/redeem the bonds, it will necessitate the addition of two lines to the ROPS to reflect the transfer of proceeds to the trustees. The two additional lines should be added to the ROPS as reflected below:

A	B	C	D	E	F	G	H	I	J	K
Item #	Project Name / Debt Obligation	Obligation Type	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Retired	Funding Source – Bond Proceeds
33	Unspent 1999 Bond Proceeds	Bonds Issued On or Before 12/31/10	8/3/1999	6/1/2023	Trustee	Defease/Redeem Unspent Bond Proceeds	Bayshore North	\$11,113,156	N	\$11,113,156
34	Unspent 2011 Bond Proceeds	Bonds Issued After 12/31/10	5/11/2011	6/1/2026	Trustee	Defease/Redeem Unspent Bond Proceeds	Bayshore North	\$25,000,560	N	\$25,000,560

Also, the following notes should be added to the “Notes” tab of the ROPS:

Item #	Notes/Comments
33	Partial defeasance/redemption using unspent 1999 bond proceeds in the possession of the Successor Agency pursuant to OB Resolution No. _____. Contract/Agreement execution and end dates reflect the dates spanning both the Series A and B bond issuances.
34	Partial defeasance/redemption using unspent 2011 bond proceeds in the possession of the Successor Agency pursuant to OB Resolution No. _____.

RESOLUTION NO. _____

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY FOR THE CITY OF SANTA
CLARA REDEVELOPMENT AGENCY RELATING
TO UNSPENT BOND PROCEEDS AND MAKING RELATED FINDINGS
AND DECLARATIONS AND TAKING RELATED ACTIONS**

WHEREAS, California enacted Part 1.85 of the Health and Safety Code, Sections 34170 *et seq.* (the "Dissolution Law") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 *et seq.*);

WHEREAS, pursuant to Health and Safety Code section 34173, the City Council of the City of Santa Clara (the "City Council") declared that the City of Santa Clara, a charter city (the "City"), would act as successor agency (the "Successor Agency") for the dissolved City of Santa Clara Redevelopment Agency (the "RDA") effective February 1, 2012;

WHEREAS, on February 1, 2012, the RDA was dissolved pursuant to Health and Safety Code Section 34172;

WHEREAS, on March 8, 2011 prior to its dissolution the RDA transferred to the City unspent bond proceeds from the 1999 Series A and Series B Tax Allocation Bonds (the "1999A Bonds" and the "1999B Bonds, respectively, and collectively the "1999 Bonds") in the amount of \$56,900,192 and from the 2003 Tax Allocation Bonds (the "2003 Bonds") in the amount of \$5,855,966;

WHEREAS, in May 2011, the RDA sold Tax Allocation Bonds in the amount of \$31,411,295 (the "2011 Bonds"). Of the net proceeds of \$27,697,231, \$25,000,000 from the 2011 Bonds was transferred to the City by the RDA.

WHEREAS, the City has previously returned the following bond proceeds to the Successor Agency: 1999 Bonds (\$3,113,171.42) and 2011 Bonds (\$25,000,552.06);

WHEREAS, bond proceeds transferred by the RDA to the City prior to the RDA's dissolution may be subject to clawback by the State Controller's Office ("SCO") pursuant to Health and Safety Code section 34167.5, and the orders of the State Department of Finance ("DOF") pursuant to Health and Safety Code section 34179.6;

WHEREAS, the Internal Revenue Code of 1986 ("Code") imposes several requirements on issuers of tax-exempt bonds. These requirements must be met at issuance and throughout the term of the bonds. One of these requirements is that the issuer must have a reasonable expectation of spending 85% of the bond proceeds for qualified purposes within three years from the date of issuance.

WHEREAS, the Successor Agency has succeeded to the RDA's interest as issuer of the bonds. Therefore, if any arbitrage or other penalties are due and payable with respect to the bonds, then the Successor Agency could be obligated to pay those amounts. This, in turn, would reduce the amount of residual redevelopment property tax revenues available for distribution to the taxing entities;

WHEREAS, the effective interest rate on the 2011 Bonds ranges between 4.75% and 7.86%;

WHEREAS, the 2011 Bond covenants preclude redemption of the bonds prior to June 1, 2021;

WHEREAS, the Dissolution Law provides for the appointment of an oversight board (the "Oversight Board") with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code section 34181;

WHEREAS, the Dissolution Law imposes certain duties on the Oversight Board, including but not limited to, fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues, pursuant to Health and Safety Code Section 34179(i);

WHEREAS, Health and Safety Code Section 34179(c) authorizes the Oversight Board to direct the Successor Agency staff to perform work in furtherance of the Oversight Board's duties and responsibilities under the Dissolution Law;

WHEREAS, Health and Safety Code section 34181(e) authorizes the Oversight Board to direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved RDA and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and to present such agreements to the Oversight Board for approval. The Board may approve any amendments to or termination of such agreements if it finds that doing so would be in the best interests of the taxing entities;

WHEREAS, the dissolved RDA covenanted to the owners of the bonds, in connection with the issuance of the bonds, to take actions to maintain the tax-exempt status of the bonds, and such covenants are now an important obligation of the Successor Agency at a priority level equal to the payment of debt service on the bonds;

WHEREAS, the Dissolution Law includes bonds in the definition of "enforceable obligations" pursuant to Health and Safety Code section 34171;

WHEREAS, the Successor Agency's Recognized Obligation Payment Schedule ("ROPS") for July 1, 2014 to December 31, 2014 ("ROPS 14-15A") approved by the Oversight Board on

February 27, 2014 includes, but is not limited to, debt service for the following bonds: the 1999 Bonds and the 2011 Bonds;

WHEREAS, as of February 27, 2014, the outstanding debt service obligation on the 1999 Bonds was approximately \$53,925,669. The debt service payment for the six-month period from July 1, 2014 to December 31, 2014 for the 1999 Bonds' outstanding debt obligation is \$1,131,081. This debt service payment is paid entirely from the Redevelopment Property Tax Trust Fund ("RPTTF");

WHEREAS, as of February 27, 2014, the 2011 Bonds collectively had an approximate outstanding debt obligation of \$60,582,350. The debt service payments on the 2011 Bonds for ROPS 14-15A is \$325,306. This debt service payment is paid entirely from the RPTTF;

WHEREAS, pursuant to the Official Statement and the Fiscal Agent Agreement for the 1999 Bonds, the 1999 Bonds are subject to optional redemption at any time in whole or in part from any available source of funds;

WHEREAS, pursuant to the Official Statement and the Fiscal Agent Agreement for the 2011 Bonds, the 2011 Bonds maturing on or before June 1, 2021 are not subject to redemption prior to their respective stated maturity dates. The 2011 Bonds maturing on or after June 1, 2022 are subject to optional redemption in whole or in part from any available source of funds on any date on or after June 1, 2021;

WHEREAS, the Oversight Board has previously been advised that using the unspent proceeds of the bonds to redeem or defease the bonds as soon as possible is the best way to mitigate any tax risk associated with the delayed expenditure of the bond proceeds;

WHEREAS, consistent with its fiduciary responsibilities to the taxing entities, the Oversight Board finds that it is prudent to use any bond proceeds currently possessed by the Successor Oversight Board Resolution Regarding Use Of Unspent Bond Proceeds

Agency or any future bond proceeds that the Successor Agency subsequently acquires in a manner to minimize to the maximum extent feasible the risks associated with the delayed expenditure of the bond proceeds and to maximize the return of funds to the taxing entities;

WHEREAS, with regard to the 1999 Bonds, the Oversight Board finds that use of the 1999 Bonds unspent proceeds to redeem the 1999 Bonds to the fullest extent possible is in the best interests of the taxing entities and consistent with the Successor Agency's fiduciary duties to bondholders, as holders of enforceable obligations;

WHEREAS, with regard to the 2011 Bonds, the Oversight Board finds that transfer of the 2011 Bonds unspent proceeds to the Fiscal Agent for the 2011 Bonds for defeasance and redemption of the 2011 Bonds on the earliest possible date would be in the best interests of the taxing entities. In addition, the Dissolution Law requires defeasance of the 2011 Bonds;

WHEREAS, the record before the Oversight Board provides supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The Oversight Board hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff, Oversight Board members, and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

SECTION 2. With respect to the 1999 Bonds, the 2003 Bonds, and the 2011 Bonds the Oversight Board requires the Successor Agency to immediately use whatever bond proceeds from these issuances that the Successor Agency currently controls and whatever future bond

proceeds that it may control immediately to defease/redeem these bond issuances in accordance with the following direction:

- (a) For the 1999 Bonds and the 2003 Bonds, the unspent bond proceeds of an issue of bonds will be transferred immediately to the fiscal agent for such bonds, and the fiscal agent will be directed to use such proceeds to call and redeem, on the earliest date possible, as many bonds as possible of that issue starting with the latest outstanding maturity of bonds of that issue and progressing in reverse order of maturity;
- (b) For the 2011 Bonds, the unspent bond proceeds will be transferred immediately to the fiscal agent for such bonds and as soon as possible an escrow agreement or letter of instructions will be drafted and executed with or for the fiscal agent for the bonds specifying that the unspent bond proceeds so transferred will be irrevocably deposited in an escrow account and used to legally defease and redeem bonds, and the bonds to be defeased will be selected such that: (1) as of the date of the defeasance, the weighted average maturity of the bonds of the issue to be defeased is the same as (or due solely to whole bond rounding, slightly greater than) the weighted average maturity of all of the bonds outstanding of the issue and (2) the bonds selected to be defeased will be the bonds scheduled to mature first and the bonds scheduled to mature last such that the principal amount of the bonds scheduled to mature first will be maximized.

SECTION 3. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code section 34179(h).

SECTION 4. Severability. If any provision or clause of this Resolution or the application thereof is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, Oversight Board Resolution Regarding Use Of Unspent Bond Proceeds

such invalidity shall not affect other provisions or clauses or applications of this Resolution which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this Resolution are declared to be severable.

SECTION 5. Third Party Beneficiary Enforcement. All taxing entities as defined in Health and Safety Code section 34171 (k) affected by the RDA's dissolution are express third party beneficiaries of this Resolution. It is the intent of this Resolution to authorize such taxing entities to the fullest extent authorized under law to enforce this Resolution in a court of competent jurisdiction or otherwise.

CERTIFICATION

I hereby certify the forgoing to be a true copy of a resolution passed and adopted by the Oversight Board of the Successor Agency for the City of Santa Clara Redevelopment Agency at a regular meeting thereof held on ___ day of September 2014, by the following vote:

AYES: BOARD MEMBERS

NOES: BOARD MEMBERS

ABSTAIN: BOARD MEMBERS

ABSENT: BOARD MEMBERS

APPROVE:

ATTEST:

Don Gage
Chairperson

Jennifer Yamaguma
Clerk to the Oversight Board