

RESOLUTION NO. 2015- 03 (OVERSIGHT BOARD)

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY RELATING TO
1999 BOND ISSUANCE PROCEEDS**

WHEREAS, the California Legislature 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;

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 SCO and DOF did order the return of various bond proceeds;

WHEREAS, the City has partially complied with the SCO and DOF orders and so has previously returned bond proceeds to the Successor Agency from the 1999 Bonds in the amount of \$11,113,156;

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 1999 Bonds constitute "enforceable obligations" pursuant to Health and Safety Code section 34171;

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, including but not limited to the Oversight Board's fiduciary duties to holders of enforceable obligations and the affected taxing entities;

WHEREAS, Health and Safety Code section 34171(d)(1)(E) provides in part that "nothing in this act shall prohibit either the successor agency, with the approval or at the direction of the oversight board, or the oversight board itself from terminating any existing agreements or

contracts and providing any necessary and required compensation or remediation for such termination”;

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 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 1999 Bonds;

WHEREAS, the Successor Agency’s ROPS for January 1, 2015 to July 1, 2015 (“ROPS 14-15B”) approved by the Department of Finance on November 14, 2014 includes the defeasance/redemption of the unspent bond proceeds for the 1999 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 was \$1,131,081.

This debt service payment was paid entirely from the Redevelopment Property Tax Trust Fund ("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 and, if implemented, such a redemption constitutes a partial termination pursuant to Health and Safety Code Section 34181(e);

WHEREAS, the Oversight Board has previously been advised publicly that using the unspent proceeds of the bonds to redeem or defease the bonds as soon as possible is a proactive strategy to mitigate any potential 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 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, as stated above, the 1999 Bonds contain call provisions that authorize the issuer, now the Successor Agency, to redeem/defease the bonds;

WHEREAS, the use of unspent bond proceeds reduces liabilities because it results in a proportionate reduction of outstanding principal due, plus a reduction of interest owed;

WHEREAS, the use of unspent bond proceeds increases net revenues to the affected taxing entities by reducing the amount of current or future debt service required to be paid on the ROPS from the RPTTF, thereby directly increasing distributions of property tax to the taxing entities;

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 potentially obligated to pay these amounts. This, in turn, would reduce the amount of residual redevelopment property tax revenues available for distribution to the taxing entities;

WHEREAS, the Successor Agency is required to comply with federal tax law within the bond covenants, therefore, bond proceeds are unable to be spent on new projects according to the bond covenants as they are required for defeasance;

WHEREAS, at its February 2, 2015 meeting, the Oversight Board unanimously adopted Resolution No. 2015-01, making certain findings and directing the Successor Agency to prepare a defeasance plan relating to, and including but not limited to, the 1999 Bonds;

WHEREAS, the State Department of Finance reviewed and approved Resolution No. 2015-01 on February 10, 2015, including the findings therein;

WHEREAS, at the Oversight Board’s February 27, 2015 meeting, the Successor Agency staff presented a defeasance plan for the 1999 Bonds (the “1999 Bonds Defeasance Plan”);

WHEREAS, the 1999 Bonds Defeasance Plan concludes that the defeasance of the 1999 Bonds would result in: (1) an estimated \$3.8 million of interest savings generated from the call of the

current bond proceeds of \$11.1 million and (2) would reduce or possibly eliminate the potential tax-related risks discussed at previous Oversight Board meetings and referenced above;

WHEREAS, the conclusions of the 1999 Bonds Defeasance Plan are consistent with Health and Safety Code Section 34181(e) as defeasance will reduce liabilities, increase the net revenues, and is in the best interest of the taxing entities;

WHEREAS, the record before the Oversight Board, specifically including discussion and materials presented at the July 2013, August 2013, September 19, 2014, February 2, 2015 and February 27, 2015 meetings, provides supporting information upon which the actions set forth in this Resolution are based; and,

WHEREAS, the Oversight Board finds that this Resolution is in the best interests of the affected taxing entities.

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. Consistent with Health and Safety Code Sections 34181(e) and 34171(d)(1)(E), and with respect to the 1999 Bonds, the Oversight Board directs 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:

for the 1999 Bonds the unspent bond proceeds 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 in accordance with the 1999 Bonds Defeasance Plan; and, any 1999 Bonds Proceeds subsequently received by the Successor Agency shall be immediately transferred to the fiscal agent for such bonds, and the fiscal agent shall 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 maturing of bonds of that issue and progressing in reverse order of maturity.

SECTION 3. The implementation of this defeasance plan is consistent with Health and Safety Code sections 34171(d)(1)(E) and 34181(e) and does reduce liabilities, increases revenues and is in the best interest of the taxing entities.

SECTION 4. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code section 34179(h).

SECTION 5. 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, 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.

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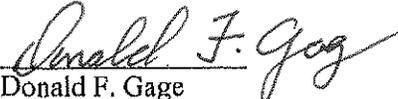
SECTION 6. Third Party Beneficiary Enforcement. All taxing entities as defined in Health and Safety Code section 34171(k) affected by the RDA's dissolution are express third party beneficiaries of this Resolution. It is the intent of this Resolution to authorize such taxing entities to the fullest extent authorized under law to enforce this Resolution in a court of competent jurisdiction or otherwise.

CERTIFICATION

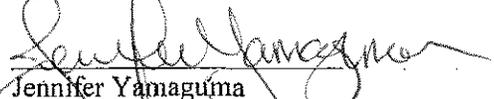
I HEREBY CERTIFY THE FORGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AT A SPECIAL MEETING THEREOF HELD ON 5th DAY OF March 2015, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBER: Cauble, Guthrie, Maduli, Ochoa and Chairperson Gage
NOES: BOARD MEMBER: Ameling and Matthews
ABSTAIN: BOARD MEMBER: None
ABSENT: BOARD MEMBER: None

APPROVE:


Donald F. Gage
Chairperson

ATTEST:


Jennifer Yamaguma
Clerk to the Oversight Board