OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

107-0652023-002

Agenda Item **No. 5(c)**
Meeting of September 5, 2023

MEMORANDUM

TO: Office of Community Investment and Infrastructure Commissioners

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Authorizing the issuance of special tax bonds for Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6 (Mission Bay South Public Improvements) in an aggregate principal amount not to exceed $130,000,000, and approving and directing the execution of a Fiscal Agent Agreement, a Bond Purchase Agreement, one or more Escrow Deposit and Trust Agreements, the engagement of professionals and approval of other related documents and actions, Mission Bay South Redevelopment Project Area

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EXECUTIVE SUMMARY

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("Successor Agency"), as successor to the former Redevelopment Agency of the City and County of San Francisco ("Former Redevelopment Agency"), and FOCIL-MB, LLC, as assignee of Catellus Development Corporation, are parties to a Mission Bay South Owner Participation Agreement, dated as of November 16, 1998 ("OPA"), which required, among other things, the Former Redevelopment Agency to conduct proceedings to form community facilities districts.

The Commission of the Former Redevelopment Agency conducted proceedings under the Mello-Roos Community Facilities Act of 1982, as amended (the "Mello-Roos Act"), to form the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6, Mission Bay South Public Improvements ("CFD").

Under the OPA, the Successor Agency is obligated, at the request of the Master Developer, to issue special tax bonds for the CFD from time to time to finance or refinance various public capital improvements within or in the vicinity of the CFD (the "Improvements").

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EXECUTIVE SUMMARY

In 2005, the Former Redevelopment Agency issued two series of bonds ("2005 Bonds") for the CFD to finance Improvements.

In 2012, under California Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) and Assembly Bill 1484 ("AB 1484"), as amended (the "Redevelopment Dissolution Law"), the Former Redevelopment Agency was dissolved.

In 2013, the Successor Agency issued three series of special tax bonds ("2013 Bonds"; together with the 2005 Bonds, "Prior Bonds") for the CFD to finance and refinance Improvements, the construction of which are substantially complete.

OCII proposes issuing tax-exempt bonds to refund the outstanding Prior Bonds to achieve an estimated $17.2 million in interest cost savings. This will generate additional capacity to finance the Improvements pursuant to the OPA. If approved, these bonds would be known as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6, Mission Bay South Public Improvements, Special Tax Refunding Bonds, Series 2023 ("2023 Bonds"). The proceeds from the 2023 Bonds will be used to refund the outstanding Prior Bonds, to fund the debt service reserve requirement, to pay costs of issuing the 2023 Bonds, and generate additional capacity to finance the Improvements pursuant to the OPA.

To issue the 2023 Bonds, the Commission must take the following actions:

- Adopt the proposed resolution authorizing the issuance of the 2023 Bonds.
- Approve and direct the execution of:
    1. Fiscal Agent Agreement
    2. Escrow Deposit and Trust Agreement
    3. Bond Purchase Agreement
- Approve the bond underwriter selection.
- Authorize and direct OCII staff to take all actions necessary to complete the issuance of the 2023 Bonds.

The Successor Agency's exercise of authority under the Mello-Roos Act to issue bonds that are payable from special taxes and not from property tax revenues deposited into the Redevelopment Property Tax Trust Fund established pursuant to the Redevelopment Dissolution Law is separate from its authority to issue bonds payable from such tax increment under the Redevelopment Dissolution Law. In the past, the California Department of Finance ("DOF") concluded such bonds issued under the Mello-Roos Act do not require review and approval by the Oversight Board or DOF (see Attachment 1, May 28, 2014 letter from J. Howard, DOF, to S. Oerth, OCII, Re: Determination of Oversight Board Action). DOF determined that a special tax bond refunding for the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7, Hunters Point Shipyard Phase One Improvements ("HP1 CFD No. 7") did not require Oversight Board approval or DOF approval under Redevelopment Dissolution Law because the Successor Agency "is a separate legal entity from the [HP1 CFD No. 7]."

During August 2023, a DOF representative informed the Successor Agency's bond counsel that the Oversight Board and DOF must review the proposed issuance of the 2023 Bonds. As a result, after Commission approval, staff will request the Oversight Board review and approve the issuance of the 2023 Bonds and clarify the scope of DOF's review of CFD matters. After Oversight Board approval, staff will submit the Oversight Board resolution to DOF for its review. If DOF declines to review or approves the issuance, OCII staff will return to the Commission to confirm the issuance and approve an official statement for the 2023 Bonds prior to sale.

Staff recommends the Commission authorize the issuance of the 2023 Bonds, and necessary staff actions and approve the primary documents.

DISCUSSION

The proposed resolution authorizes OCII to issue up to $130 million total principal amount for the 2023 Bonds. The 2023 Bonds are anticipated to be issued on a tax-exempt basis for federal income tax purposes. The actual principal amount of the 2023 Bonds will be finalized in the weeks before the issuance and will be based on market conditions and federal tax considerations to achieve an overall cost savings. OCII estimates a $17.2 million in interest cost savings.

OCII will only issue the amount of 2023 Bonds necessary to refund the Prior Bonds, fund a debt service reserve fund (in cash or through the purchase of a reserve policy) and pay related costs of issuance (which may include bond insurance premiums).

Table 1: Sources and Uses

	Total
Sources	
Bond Proceeds	$124,015,000
Net Premium	9,649,437
Prior Bonds Debt Service Reserve Funds	13,134,841
Total Sources	$146,799,278
Uses	
Refunding Escrow Deposit	$133,787,162
Debt Service Reserve Fund	12,048,750
Cost of Issuance	505,317
Underwriters' Discount	458,049
Total Uses	$146,799,278

Monies in the escrow fund will be used to refund the outstanding Prior Bonds. Debt service reserve funds serve as a backstop, should OCII be unable to make debt service payments. Debt service reserve funds are a standard security feature for special tax bonds, like the 2023 Bonds. The amount of the debt service reserve is calculated according to IRS regulations, and industry standards, as the lesser of:

1. 10% of issued principal.
2. Maximum annual debt service.
3. 125% of average annual debt service.

Depending on market conditions, OCII may be able to satisfy all or a portion of the requirement for the debt service reserve fund for the 2023 Bonds with the purchase of a reserve insurance policy, instead of depositing cash in the fund. The cost of issuance includes the cost of a credit rating, cost of consultants, such as municipal advisor, bond counsel, disclosure counsel, and the special tax consultant, as well as the cost of OCII staff time required to issue the 2023 Bonds. The underwriters' discount is the underwriters' fee to sell the 2023 Bonds.

Enabling Authority

The 2023 Bonds would be issued pursuant to the Mello-Roos Act, Article 11, commencing with Section 53580, of Chapter 3 of Part 1 of Division 2 of Title of the California Government Code (the "Refunding Law"), and, as applicable, the authority of Section 34177.5(a)(1) of the California Health and Safety Code.

Proposed Action

As a first step in issuing the 2023 Bonds, the Commission must approve a resolution authorizing the proposed issuance, approving and directing the execution of a Fiscal Agent Agreement, an Escrow Deposit and Trust Agreement and a Bond Purchase Agreement, approving the selection of bond underwriters, and authorizing and directing OCII staff to take all actions necessary to complete the proposed issuance of the 2023 Bonds.

Proposed Issuance and Estimated Savings Results

OCII proposes to issue one series of refunding special tax bonds to refund in full all outstanding Prior Bonds, and after the issuance of the 2023 Bonds, no other CFD bonds will be outstanding. The tax-exempt 2023 Bonds will be issued with a not-to-exceed principal amount of $130 million and will be issued as current interest bonds.

These bonds will be secured by levying special taxes only on property owners within the Mission Bay CFD area ("MBS Property Owners"), which is located in the Mission Bay South Project Area. These special taxes are in addition to regular property taxes collected from the MBS Property Owners. The special taxes have been collected from them since 2002.

Interest and principal of the 2023 Bonds will be paid exclusively from these special taxes and not from any other sources. No redevelopment tax increment has ever been used to pay debt service on the Prior Bonds, and the Successor Agency's expenditures to pay CFD debt service do not appear on prior ROPS. Furthermore, the Successor Agency is not pledging to the 2023 Bonds property tax revenues deposited into the Redevelopment Property Tax Trust Fund established pursuant to the Redevelopment Dissolution Law. The 2023 Bonds will be issued in accordance with the provisions of the Successor Agency's debt policy (the "Debt Policy"), adopted by Resolution 32-2021 of the Commission on October 5, 2021.

The following is the rationale for approving the issuance of the 2023 Bonds:

- **Interest Rate Savings.** The savings achieved through the refunding are significant, estimated at $17.2 million on a net present value basis, amounts to approximately 13.02% of the par of the refunded bonds.
- **Financial Efficiency.** There are limited windows (twice a year) during which the existing 2005 Bonds can be refinanced on a tax-exempt basis because they can only be redeemed on interest payment dates (February 1 and August 1). To meet this next payment window, notification of redemption must be given by January 2, 2024 to existing bond holders. The 2013 Bonds can be redeemed on any date on a tax-exempt basis.

Credit Rating

Based on the strong credit characteristics of the CFD and in an effort to reduce interest cost and maximize savings, OCII will seek an investment grade rating from S&P Global ("S&P") for the 2023 Bonds. S&P is the most active rating agency in the state for land secured debt. The Prior Bonds are unrated securities and therefore, this will be the inaugural rating for the CFD.

Bond Documents

The proposed resolution approves the forms of certain documents described below, and authorizes the Executive Director, the Deputy Executive Director, Finance and Administration, or their designees, to execute and deliver the documents, with changes to the approved forms authorized by them.

Fiscal Agent Agreement

The proposed resolution approves a Fiscal Agent Agreement to be entered into by OCII and Computershare Trust Company, National Association, as fiscal agent ("Fiscal Agent"), in the form attached as Appendix B to the proposed resolution. The Fiscal Agent Agreement establishes the terms of the 2023 Bonds (principal amounts, interest rates, maturity dates), directs the use of proceeds of the 2023 Bonds, and establishes funds and accounts to provide for repayment of the 2023 Bonds. The Fiscal Agent Agreement also establishes the conditions under which additional bonds may be issued by OCII for the CFD.

Escrow Deposit and Trust Agreement

The proposed resolution also approves an Escrow Deposit and Trust Agreement to be entered into by OCII and Computershare Trust Company, National Association, as escrow agent and fiscal agent for the Prior Bonds, in the form attached as Appendix C to the proposed resolution. The Escrow Deposit and Trust Agreement provides for use of proceeds of the 2023 Bonds and moneys in the accounts for the Prior Bonds to refund the Prior Bonds.

Bond Purchase Agreement and Underwriters

The proposed resolution also approves the Bond Purchase Agreement to be entered into by OCII and Stifel, Nicolaus & Company, Incorporated and Piper Sandler & Co., (collectively, the "Underwriters"), in the form attached as Appendix D to the proposed resolution. The Bond Purchase Agreement will be entered into on the date the Underwriters make an offer to purchase the 2023 Bonds from OCII (commonly referred to as the "pricing date"). On the pricing date, the principal amount, the underwriters' discount, and the coupons and yields of the proposed 2023 Bonds will be determined (see Table 2, below for sequence). The underwriters' discount is the difference between the price the underwriters pay the issuer and the price at which they sell the bonds to the public. The underwriters' discount reflects the underwriters' fee for purchasing the 2023 Bonds. All these factors will be finalized at bond pricing and will determine OCII's cost of borrowing, provided they do not exceed the parameters established by the proposed resolution and summarized below.

Underwriter Selection

The proposed resolution also authorizes the selection of the Underwriters. OCII staff directed Fieldman, Rolapp & Associates, Inc. ("Fieldman"), OCII's municipal advisor for the 2023 Bonds, to issue a Request for Proposals ("RFP") for bond underwriting services. On May 17, 2023, Fieldman issued an RFP and sent it to the members of the City and County of San Francisco's ("City") underwriter panel, giving the panel members nine (9) business days to respond. Fieldman received six (6) responses. A panel comprised of Fieldman, the City Controller's Office of Public Finance, and OCII's Debt Manager reviewed the responses based on the following criteria: relevant firm experience, relevant banking team experience, structuring analysis, and fees. The panel evaluated experience based on California special tax bond issuance experience.

The selection panel recommended Stifel, Nicolaus & Company, Incorporated ("Stifel"), as the lead underwriter based on the strength of its sales and marketing capabilities and its experience serving as a leading senior manager in California special tax bonds; Piper Sandler & Co., ("Piper") has similar strengths.

Stifel will act as the book-running senior manager (lead underwriter) and Piper will act as co-manager. The underwriters will market, price and purchase the bonds with the senior manager in the leadership position. OCII staff recommends this selection based on a competitive selection process administered according to Section IX.C.5 of the OCII Purchasing Policy, which authorizes OCII to select a contractor from a City panel established using a competitive selection process.

Actions Necessary to Complete the Proposed Transaction

The proposed resolution authorizes and directs OCII staff to take all actions necessary to complete the proposed transaction. If Oversight Board review of the CFD 2023 Bonds is necessary, the table below identifies the critical next steps required to complete the transaction.

Table 2: Next Steps

September 11, 2023	Oversight Board consideration of Commission resolution
September 12, 2023	Submission of approved Oversight Board resolution and related documents to DOF for review and approval
September/October 2023	Expected date for DOF determination regarding issuance (65-day date is November 16, 2023)
October 17, 2023	Commission consideration of preliminary official statement and other actions necessary for issuance
October 2023	Bond Pricing (timing depends upon market conditions)
November 2023	Bond Closing (generally 2 to 3 weeks after pricing)

California Environmental Quality Act ("CEQA")

The issuance and sale of the 2023 Bonds do not constitute a "project," as defined under CEQA Guidelines Section 15378(b)(4), because the actions will not independently result in a physical change in the environment and are therefore not subject to environmental review under CEQA.

Required Findings

In connection with the issuance of the 2023 Bonds, the Successor Agency Commission is requested to make the following findings:

1. The 2023 Bonds will be secured and payable from only special taxes levied in the CFD, and will not be secured by or payable from property tax revenues deposited into the Redevelopment Property Tax Trust Fund established pursuant to the Redevelopment Dissolution Law.

2. The Successor Agency has full authority under the Mello-Roos Act, the Refunding Law, and, as applicable, Section 34177.5(a)(1) of the California Health and Safety Code, to issue the 2023 Bonds to refund the Prior Bonds.

3. It would be prudent in the management of the Successor Agency's fiscal affairs to issue the 2023 Bonds to refund the Prior Bonds.

4. The total interest cost to maturity of the 2023 Bonds plus the principal amount of the 2023 Bonds will not exceed the collective total interest cost to maturity of the Prior Bonds to be refunded plus the collective principal amount of the Prior Bonds to be refunded, and this Commission directs that, notwithstanding any other provision of the proposed resolution , the principal amount of the 2023 Bonds shall not exceed the amount that will allow the Successor Agency to comply with this requirement.

5. The principal amount of the 2023 Bonds will not exceed the amount required to defease the Prior Bonds, to establish customary debt service reserves, and to pay related costs of issuance.

6. Based upon the current assessed value of the real property in the CFD that will be subject to the special tax to pay debt service on the 2023 Bonds, such real property has an assessed value that is in excess of an amount equal to three times the principal amount of the 2023 Bonds; no special taxes (other than those authorized to be levied by the CFD, by the Successor Agency's Community Facilities District No. 5 ("CFD No. 5") related to certain maintenance services and by a community facilities district established to provide funding for the San Francisco Unified School District ("SFUSD CFD 90-1"), which CFD No. 5 and SFUSD CFD 90-1 currently have no bonded indebtedness) or special assessments have been levied on any of the property within the CFD in the current calendar year.

7. The 2023 Bonds, when issued pursuant to the Fiscal Agent Agreement, will be in accordance with the Amended and Restated Local Goals and Policies for Community Facilities Districts which the Commission of the Former Redevelopment Agency adopted on July 15, 2008 pursuant to Resolution No. 79-2008 (the "Local Goals and Policies"), which Local Goals and Policies continue to be effective for community facilities districts for which the Successor Agency Commission is the legislative body.

8. For purposes of Section 53363.2 of the Mello-Roos Act: (a) it is expected that the purchase of the 2023 Bonds will occur on or about November 7, 2023, (b) the date, denomination, maturity dates, places of payment and form of the 2023 Bonds will be as set forth in the Fiscal Agent Agreement, (c) the minimum rate of interest to be paid on the 2023 Bonds will be one-quarter of one percent (0.25%) with the actual rate or rates to be set forth in the Fiscal Agent Agreement, (d) the final maturity date of the 2023 Bonds will not exceed the latest maturity date of the 2005 Bonds and the 2013 Bonds being refunded, with the final maturity date to be set forth in the Fiscal Agent Agreement (e) the place of payment for the 2023 Bonds will be as set forth in the Fiscal Agent Agreement; and (e) the designated costs of issuing the 2023 Bonds will be as described in Section 53363.8(a) of the Mello-Roos Act, and as otherwise described in the Fiscal Agent Agreement and the closing certificates for the 2023 Bonds, including Bond Counsel and Disclosure Counsel fees and expenses, Underwriters' discount, municipal advisor fees and expenses, printing costs, initial fiscal agent fees, and costs of City and Successor Agency staff incurred in connection with the sale and issuance of the 2023 Bonds.

9. The sale of the 2023 Bonds at negotiated sale as contemplated by the Bond Purchase Agreement (as defined below) will result in a lower overall cost.

10. The sale and issuance of the 2023 Bonds are Successor Agency fiscal activities that do not constitute a "Project" as defined by CEQA Guidelines Section 15378(b)(4), will not independently result in a physical change in the environment, and are not subject to environmental review under CEQA.

11. Upon approval, if necessary, of the proposed resolution by the Oversight Board and DOF's non-objection to or approval of the Oversight Board's approval, all acts and proceedings required by law necessary to make the 2023 Bonds, when executed by the Successor Agency for the CFD, authenticated and delivered by the Fiscal Agent and duly issued, the valid, binding and legal special obligations of the Successor Agency for the CFD, and to constitute each of the Fiscal Agent Agreement, the Bond Purchase Agreement and the Escrow Deposit and Trust Agreement a valid and binding agreement for the uses and purposes therein set forth, in accordance with its terms, will have been done or taken and the execution and delivery of the Fiscal Agent Agreement, the Bond Purchase Agreement and the Escrow Deposit and Trust Agreement will have been in all respects duly authorized.

(Originated by John Daigle, Debt Manager)

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