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107-0712023-002

Agenda Item **No. 5(A)**
Meeting of September 11, 2023

MEMORANDUM

TO: Oversight Board

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Approving, to the extent required by Sections 34180(b) and 34177.5(A)(1) of the California Health and Safety Code, the issuance of Special Tax Bonds secured solely by special taxes received by the Successor Agency to the Redevelopment Agency of the City and County of San Francisco for and on behalf of the Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 6 (Mission Bay South Public Improvements) and 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").

In 2005, the Former Redevelopment Agency issued, under the Mello-Roos Community Facilities Act of 1982 ("Mello-Roos Act"), two series of bonds ("2005 Bonds") for the CFD to finance Improvements. 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.

Recently, the Successor Agency Commission approved the issuance of tax-exempt bonds ("2023 Bonds") to refund the outstanding Prior Bonds to achieve an estimated $17.2 million in interest cost savings. The proceeds from the 2023 Bonds will be used to refund the outstanding Prior Bonds, to fund the debt service reserve requirement, and to pay costs of issuing the 2023 Bonds.

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The Successor Agency's exercise of authority under the Mello-Roos Act to issue bonds that are payable from special taxes levied in community facilities districts is separate from its authority under the Redevelopment Dissolution Law to issue bonds payable from property tax revenues deposited into the Redevelopment Property Tax Trust Fund. Based on previous actions by DOF, the Successor Agency and the Oversight Board understood that the issuance of special tax bonds by the Successor Agency for and on behalf of the CFD would not require Oversight Board approval or DOF review. However, in 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, the Successor Agency is requesting the Oversight Board to: 1) review and approve the issuance of the 2023 Bonds, but only to the extent required by the Redevelopment Dissolution Law; and 2) clarify the role of the Oversight Board and the DOF with respect to actions taken by the Successor Agency under the Mello-Roos Act.

Staff recommends that the Oversight Board adopt a resolution approving the Successor Agency's issuance of the 2023 Bonds and related documents and actions. Staff also recommends that the Oversight Board seek to clarify the scope of the Oversight Board and DOF's review of matters taken by the Successor Agency under the Mello-Roos Act.

DISCUSSION

Proposed Refunding.

The proposed resolution approves the issuance by the Successor Agency of the 2023 Bonds in a maximum principal amount of $130 million and related documents and actions. The 2023 Bonds are anticipated to be issued on a tax-exempt basis for federal income tax savings. 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.

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

- **Interest Rate Savings.** The savings achieved through the refunding are significant, estimated by Fieldman, Rolapp & Associates, an independent financial advisor engaged by the Successor Agency, at $17.2 million on a net present value basis (based on August 4, 2023 interest rates), which is approximately 13.02% of the principal amount of the outstanding Prior 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 redemption 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.

Successor Agency 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

Bond sale proceeds will be deposited in the above-mentioned escrow fund and will be used to refund the outstanding Prior Bonds. Debt service reserve funds serve as a backstop, should Successor Agency 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, Successor Agency 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 Successor Agency staff time required to issue the 2023 Bonds. The underwriters' discount is the underwriters' fee to sell the 2023 Bonds.

Based on the strong credit characteristics of the CFD and in an effort to reduce interest cost and maximize savings, the Successor Agency 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 credit rating for the CFD.

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Enabling Authority; Security for the Bonds

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.

The 2023 Bonds will be secured by special taxes levied only on property owners within the Mission Bay CFD ("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 CFD special taxes have been collected from the MBS Property Owners since 2002 when the MBS Property Owners voted, by a two-thirds majority, to impose the special taxes.

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.

Successor Agency Commission Action

On September 5, 2023, the Successor Agency Commission adopted the Successor Agency Resolution No 27-2023 authorizing the proposed issuance of the 2023 Bonds, 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 Stifel, Nicolaus & Company, Incorporated and Piper Sandler & Co. to underwrite the 2023 Bonds,, and authorizing and directing Successor Agency staff to take all actions necessary to complete the proposed issuance of the 2023 Bonds.

The Successor Agency Resolution No. 27-2023 is attached to the proposed Oversight Board resolution as Exhibit A.

Recommended Oversight Board Action

Staff is recommending that the Oversight Board approve the issuance of the 2023 Bonds to the extent required by Sections 34177.5(f) and 34180(b) of the California Health and Safety Code, and approve the documents and actions of the Successor Agency approved by the Successor Agency Resolution No. 27-2023.

Actions Necessary to Complete the Proposed Transaction

Assuming, for this purpose, that DOF review of the Oversight Board approval is required, the table below identifies the critical next steps required to complete the transaction.

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Table 2: Next Steps

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)

Clarification of Oversight Board and DOF Roles

Under the Redevelopment Dissolution Law (California Health and Safety Code Section 34171(d)(1)(A)), oversight boards only have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188. These fiduciary responsibilities are not affected by the Successor Agency's actions under the Mello-Roos Act, including the issuance of the 2023 Bonds that are payable only from special taxes levied in the CFD.

In March 2012, the Oversight Board approved Resolution No. 2-2012 (March 6, 2012) confirming that the Successor Agency's use of special tax revenues under the Mello-Roos Act was not subject to the Oversight Board's review and approval under AB 26 and that the expenditure of these special tax revenues shall not be included on the Recognized Obligations Payment Schedule. DOF did not request review of Oversight Board Resolution No. 2-2012.

In 2014, in connection with the Successor Agency's issuance of special tax refunding bonds for and on behalf of 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"), DOF concluded those bonds issued under the Mello-Roos Act did not require review and approval by the Oversight Board or DOF because the Successor Agency "is a separate legal entity from the [HP1 CFD No. 7]" (see Attachment 1, May 28, 2014 letter from J. Howard, DOF, to S. Oerth, OCII, Re: Determination of Oversight Board Action).

That determination was consistent with the definition of "bonds" in the Redevelopment Dissolution Law (California Health and Safety Code Section 34171(d) (1)(A)) as those covered "by Section 33602 and bonds issued pursuant to Chapter 10.5 (commencing with Section 5850) of Division 6 of Title 1 of the Government Code…" ; bonds issued by the Successor Agency for the District under the Mello-Roos Act that are payable from special tax revenues and not former property tax increment are not included in this definition of bonds.

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However, in 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, the Successor Agency is requesting the Oversight Board to review and approve the issuance of the 2023 Bonds, but only to the extent required by the Redevelopment Dissolution Law.

Staff also recommends that the Oversight Board seek to clarify the scope of the Oversight Board and DOF's review of matters taken by the Successor Agency under the Mello-Roos Act.

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.

(Originated by John Daigle, Debt Manager)

DocuSigned by:
Thor Kaslofsky
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Thor Kaslofsky
Executive Director