



MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

Successor Agency Housing Entity

AGENCY NAME: Successor Agency to the Santa Clara Redevelopment Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers Due Diligence Reviews ROPS Period 15-16A

DATE OF FINANCE’S DETERMINATION LETTER: 4-17-2015

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

Meeting at Finance Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) *(Must be specific.)*

See Attachment 1.

B. Background/History *(Provide relevant background/history, if applicable.)*

See Attachment 1.

C. Justification *(Provide additional attachments to this form, as necessary.)*

See Attachment 1.

Agency Contact Information

Name: Julio Fuentes
Title: Executive Officer
Phone: 408-615-2210
Email: jfuentes@santaclaraca.gov
Date: 4-22-15

Name: Gary Ameling
Title: Dir. of Finance/Assistant City Manager
Phone: 408-615-2345
Email: gamelings@santaclaraca.gov
Date: 4-22-15

Department of Finance Local Government Unit Use Only

REQUEST TO MEET AND CONFER DATE: APPROVED DENIED

REQUEST APPROVED/DENIED BY: _____ DATE: _____

MEET AND CONFER DATE/TIME/LOCATION: _____

MEET AND CONFER SESSION CONFIRMED: YES DATE CONFIRMED: _____

DENIAL NOTICE PROVIDED: YES DATE AGENCY NOTIFIED: _____

**SANTA CLARA SUCCESSOR AGENCY
MEET AND CONFER REQUEST - ROPS 15-16A
ATTACHMENT 1**

1. Item No. 13 – Administrative Cost Allowance

A. Summary of Disputed Issues

Item No. 13 – The Santa Clara Successor Agency requested \$265,000 in administrative costs allowance. The Department of Finance (“DOF”) determined that pursuant to Health and Safety Code Section 34171(b) the Successor Agency was only entitled to a total of \$250,000 on the basis that pursuant to the statute the Successor Agency is entitled to 3% of the total amount of RPTTF distributed or \$250,000, whichever is greater. Based on a determination that no RPTTF would be distributed the Successor Agency request was reduced to \$250,000. However, as discussed below, the determination that no RPTTF is to be distributed is incorrect so the administrative cost allowance should be restored to the full \$265,000 requested.

2. Item 33 – Unspent 1999 Bond Proceeds

A. Summary of Disputed Issues

Item 33 was placed on the ROPS by the Oversight Board pursuant to a resolution of the Oversight Board requiring the Successor Agency to use unspent bond proceeds from a pre-2011 bond issuance to defease the bonds. As set forth in the attached letter sent to DOF on March 12, 2015 (see Exhibit 2), the Successor Agency believes that the Oversight Board exceeded its authority with regards to the use of these bond proceeds and therefore the item on the ROPS is not appropriate.

3. Items 36, 37 and 38 – Convention Center Operations

A. Summary of Disputed Issues

Items 36, 37 and 38 provide funding for the Santa Clara Convention Center operations. These items, as well as additional items denied by the County, were placed on the ROPS to address Successor Agency obligations if the Successor Agency is required to return the Convention Center to the Successor Agency at the conclusion of the litigation in *Sharma vs. Successor Agency to the Redevelopment Agency of the City of Santa Clara*, Sacramento Superior Court Case No. 34-2013-80001396. The DOF denied these items on the basis that the City has indicated that it does not intend to comply with the writ of mandate issued by the Court regarding return of the Convention Center to the Successor Agency.

B. Background, History and Justification

The City, the County of Santa Clara and the DOF are currently engaged in litigation regarding whether the Convention Center Complex as well as other properties were assets of the former RDA subject to return to the Successor Agency. The Sacramento Superior Court has issued a writ of mandate as an interim ruling in the case ordering return of certain properties to the Successor Agency. However, the order was issued prior to consideration of the City's cross petition in the litigation which is set for hearing on April 24, 2015. The City, in order to preserve its rights to have its cross petition heard, has submitted a return on the writ of mandate to the Court indicating that it has not complied with the writ pending the outcome of the April 24, 2015 hearing in order to preserve its rights in the litigation, including its right to appeal. Prior to commencement of the ROPS 15-16A period or indeed during the ROPS 15-16A period, the City and the Successor Agency would hope that the litigation issues could be resolved. Although predicting the outcome of that resolution is impossible, if the outcome is return of the Convention Center Complex to the Successor Agency, the Successor Agency will be obligated to operate and maintain the Convention Center. Return of the complex will also result in the Successor Agency receiving rent revenues from the Complex that would logically be used to pay the obligations associated with operation of the Convention Center. DOF's blanket denial of the ROPS items would result in the Successor Agency's hands being tied for the entire ROPS period and thus cause a potential default under the enforceable obligations. Rather than the DOF's blanket denial of the items, it would be logical for DOF to condition approval of the items on the return of the property in question. DOF's action on these items appears to be designed to force the City to moot its cross petition with regards to the Convention Center Complex. DOF should not use its administrative powers in a manner to try to pressure a party to forego its rights to pursue adjudication of legitimate issues arising from the Dissolution Law.

Aside from DOF's blanket denial of the Convention Center related items, DOF also states that it is not clear that Item 36 would qualify as an enforceable obligation. If the Convention Center Complex is returned to the Successor Agency, the Successor Agency will be responsible for the operation of the Convention Center as well as its proportionate share of the costs associated with the maintenance and operations of the common areas.

The continued operation of the Convention Center represents an enforceable obligation that must be assumed by the Successor Agency if it assumes ownership of the property.

The Hyatt Lease obligates the owner of the Convention Center property to construct, operate and maintain the Convention Center in a first class condition (See Sections 1402, 1403 and 1404 of the Hotel Ground Lease between Redevelopment Agency of the City of Santa Clara (the "Agency" or "Landlord"), as lessor, and SCCC Associates ("SCCC"), as lessee, dated April 30, 1985, and recorded on May 16, 1985 as Instrument No. 8411269). The County, in objecting to the obligation to operate the Convention Center contended that the obligations related to the convention center in the lease are not an enforceable obligation because the former RDA was prohibited, pursuant to Health and Safety Code Section 33445, from using funds to maintain publicly owned buildings and thus the lease provisions are ultra vires and null and void. However, this misconstrues the lease provisions. The lease does not require the RDA to use its funds to operate and maintain the convention center, but rather obligates it to cause the convention center to be operated and maintained. In order to meet its obligations related to the convention center in the Hyatt Lease, the former RDA leased the convention center to the City and the City assumed the responsibility for operating and maintaining the convention center. The City undertook this responsibility because pursuant to other agreements with the RDA, the RDA was obligated to pay to the City the rent derived from the Hyatt and Techmart leases. Thus, the funds from the Hyatt and Techmart leases offset the costs incurred by the City with regards to the Convention Center.

The lease between the City and the Agency expired in 2010 at which time the City no longer had any obligations regarding the operation of the Convention Center. The obligation to operate and maintain the convention center will fall solely to the Successor Agency if the property is returned to the Successor Agency. Failure to adequately do so will result in a breach of the Hyatt Lease.

The obligations listed on the Successor Agency ROPS are the minimum obligations necessary to continue to operate the Convention Center as required by the Hyatt Lease. Failure to maintain the Convention Center and make necessary replacements of fixtures, furnishing and equipment is not only irresponsible but is likely to expose the Successor Agency to potential liability.

4. Availability of Other Funds

A. Summary of Disputed Issue

The DOF determined that the Successor Agency has other funds available for the payment of its obligations listed on the ROPS and that RPTTF funds are to be used to the extent that no other funds are available. Based on this the DOF has determined that no RPTTF distribution to the Successor Agency is necessary to pay the Successor Agency's enforceable obligations, including the Successor Agency's bond obligations.

B. Background, History and Justification

The DOF has determined that the Successor Agency has sources of revenue available to make the required enforceable obligation payments and thus is denying the Successor Agency any RPTTF to make bond payments and other payments due during the ROPS 15-16A period. The DOF does not indicate the source of the funds available to the Successor Agency but the Successor Agency assumes that DOF must be considering the rent and lease revenues that the City of Santa Clara claims are General Fund revenues pursuant to long standing agreements whereby the lease revenues generated by the properties in question flowed to the City as compensation to the City for the property which was originally City owned. These funds are the subject of a preliminary injunction to which DOF is a party that prohibits the expenditures of these funds prior to resolution of the underlying case on its merits. It should be noted that the decision by the Court on the County's petition did not dissolve the Preliminary Injunction and in fact did not address how the preliminary injunction was to be harmonized with the order. Thus the Successor Agency can only conclude that the Preliminary Injunction remains in effect and thus must continue to comply with its terms. DOF appears to be attempting to circumvent the terms of the Preliminary Injunction which cannot be altered without an order of the court. Pursuant to the DOF determination letter, the Successor Agency has the choice of either defaulting on its enforceable obligations or violating the terms of the Preliminary Injunction.

The DOF also misconstrues Section 34177(l)(1)(E) which provides that RPTTF is to be used to pay enforceable obligations but only to the extent no other funding source is available or when payment from property tax revenue is required by an enforceable obligation. Items 1 through 6 on the ROPS 15-16A are bond payments. Each of the Fiscal Agent Agreements for the bond issuances are specific that the sole source of revenue pledged to the payment of the bonds is property tax revenues and that no other Agency revenues or assets are obligated toward the payment of the bonds. Copies of the relevant pages of the Fiscal Agency Agreements are attached as Exhibit 1.

Item 8 on the ROPS is the 2011 Cooperation and Predevelopment Funding Agreement as modified by the First Amendment with the 49ers Stadium Company. The Cooperation Agreement, as amended by the First Amendment, requires that the Successor Agency reimburse the 49ers Stadium Company for certain costs incurred by the 49ers Stadium Company related to the construction of the Stadium. The 2011 Cooperation Agreement requires that the repayment of advances made to the Stadium Authority by the 49ers Stadium Company are payable "only from Net Tax Increment." Use of lease revenues or any other funds of the Successor Agency other than RPTTF would violate the terms of the agreements.

FISCAL AGENT AGREEMENT

Dated as of August 1, 1999

by and between the

**REDEVELOPMENT AGENCY OF THE CITY OF
SANTA CLARA**

and

BNYWESTERN TRUST COMPANY,
as Fiscal Agent

Relating to

\$31,550,000

**Redevelopment Agency of the City of Santa Clara
Bayshore North Project
1999 Tax Allocation Bonds, Series A**

and

\$16,905,000

**Redevelopment Agency of the City of Santa Clara
Bayshore North Project
1999 Tax Allocation Bonds, Series B**

Agency, in accordance with and upon satisfaction of all conditions precedent to such issuance as set forth in Section 3.06 of the 1987 Resolution.

SECTION 3.06. *Issuance of Subordinate Debt.* The Agency may from time to time issue or incur Subordinate Debt in such principal amount as shall be determined by the Agency, provided that the issuance of such Subordinate Debt shall not cause the Agency to exceed any applicable Plan Limitations.

SECTION 3.07. *Validity of 1999 Bonds.* The validity of the authorization and issuance of the 1999 Bonds shall not be dependent upon the completion of the Redevelopment Project or upon the performance by any person of its obligation with respect to the Redevelopment Project.

ARTICLE IV

SECURITY OF 1999 BONDS; FLOW OF FUNDS; INVESTMENTS

SECTION 4.01. *Security of 1999 Bonds; Equal Security.* The 1999 Bonds shall be secured by a first pledge of and lien on all of the Tax Revenues and all of the moneys on deposit in the funds and accounts established under the 1987 Resolution, on a parity with the 1987 Bonds and the 1992 Bonds. Such pledge and lien shall be for the equal security of the Outstanding Bonds without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Tax Revenues and such moneys, no funds of the Agency are pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the 1999 Bonds.

In consideration of the acceptance of the 1999 Bonds by those who shall hold the same from time to time, this Fiscal Agent Agreement shall be deemed to be and shall constitute a contract between the Agency and the Owners from time to time of the 1999 Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the 1999 Bonds without preference, priority or distinction as to security or otherwise of any of the 1999 Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

SECTION 4.02. *Parity With 1987 Bonds and 1992 Bonds.* The 1999 Bonds shall constitute Additional Bonds under and within the meaning of the 1987 Resolution, and shall be entitled to all of the benefits and protections afforded under the 1987 Resolution. The Agency hereby represents and covenants, pursuant to Section 3.06 of the 1987 Resolution, that:

(a) The Agency is in compliance with all covenants set forth in the 1987 Resolution.

(b) The taxes eligible for allocation (pursuant to the Redevelopment Law and the Constitution of the State of California and from which Tax Revenues are derived, but excluding such taxes derived from any business inventory tax subvention) as shown on the equalized assessment roll next preceding the Closing Date, as reported by the Santa Clara County Auditor-Controller, are at

FISCAL AGENT AGREEMENT

Dated as of June 1, 2002

between the

**REDEVELOPMENT AGENCY OF THE CITY OF SANTA
CLARA**

and

BNY WESTERN TRUST COMPANY,
as Fiscal Agent

Relating to

**\$33,910,000
Redevelopment Agency of the City of Santa Clara
Bayshore North Project
2002 Tax Allocation Refunding Bonds**

ARTICLE IV

SECURITY OF 2002 BONDS; FLOW OF FUNDS; INVESTMENTS

SECTION 4.01. *Security of 2002 Bonds; Equal Security.* (a) The 2002 Bonds shall be secured by a first pledge of and lien on all of the Tax Revenues and all of the moneys on deposit in the funds and accounts established under the 1987 Resolution, on a parity with the 1999 Bonds and the Non-Refunded 1992 Bonds. This pledge and lien shall be for the equal security of the Outstanding Bonds without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Tax Revenues and such moneys, no funds of the Agency are pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the 2002 Bonds.

(b) In consideration of the acceptance of the 2002 Bonds by those who hold the same from time to time, this Fiscal Agent Agreement constitutes a contract between the Agency and the Owners from time to time of the 2002 Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the 2002 Bonds without preference, priority or distinction as to security or otherwise of any of the 2002 Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

SECTION 4.02. *Special Fund; Deposit of Tax Revenues.* (a) The Agency has previously established the Special Fund under Section 4.02 of the 1987 Resolution. The Agency shall continue to hold the Special Fund so long as any of the 2002 Bonds remain Outstanding.

(b) The Agency shall deposit all of the Tax Revenues received in any Bond Year in the Special Fund promptly upon receipt thereof by the Agency, until such time during that Bond Year as the amounts on deposit in the Special Fund equal (i) the aggregate amounts required to be transferred to the Fiscal Agent in that Bond Year for deposit into the Interest Account, the Principal Account and the 2002 Reserve Account under Section 4.03, and (b) the aggregate amounts required to be transferred in that Bond Year for deposit into the funds and accounts established with respect to the 1999 Bonds, the Non-Refunded 1992 Bonds and any Additional Bonds.

(c) All Tax Revenues received by the Agency during any Bond Year in excess of the amount required to be deposited in the Special Fund during that Bond Year under paragraph (b) of this Section 4.02 are released from the pledge and lien hereunder for the security of the 2002 Bonds and may be applied by the Agency for any lawful purposes, including but not limited to, the payment of Subordinate Debt, or the payment of any amounts due and owing to the United States of America under the 1987 Resolution, the 1992 Resolution, the 1999 Fiscal Agent Agreement or this Fiscal Agent Agreement. The provisions of this subsection (c) relating to the release of amounts from the Special Fund is subject to the provisions of Section 5.04, which prohibit the release of amounts from the Special Fund under certain circumstances.

(d) Prior to the payment in full of the principal of and interest and redemption premium (if any) on the 2002 Bonds, and the payment in full of all other amounts

FISCAL AGENT AGREEMENT

Dated as of May 1, 2003

between the

**REDEVELOPMENT AGENCY OF THE CITY OF SANTA
CLARA**

and

BNY WESTERN TRUST COMPANY,
as Fiscal Agent

Relating to

**\$43,960,000
Redevelopment Agency of the City of Santa Clara
Bayshore North Project
2003 Tax Allocation Bonds**

times the Maximum Annual Debt Service on the Outstanding Prior Bonds and the 2003 Bonds.

- (c) The Agency has received a certificate of the Santa Clara County Auditor-Controller setting forth the amount of taxes referred to in the preceding clause (b).
- (d) The Agency has received all required approvals or rulings from any governmental authority having jurisdiction over the 2003 Bonds or their terms.
- (e) The Fiscal Agent has received an opinion of counsel which states that this Fiscal Agent Agreement complies with the requirements of the Prior Bond Documents.

ARTICLE IV

SECURITY OF 2003 BONDS; FLOW OF FUNDS; INVESTMENTS

SECTION 4.01. *Security of 2003 Bonds; Equal Security.* (a) The 2003 Bonds are secured by a first pledge of and lien on all of the Tax Revenues and all of the moneys on deposit in the funds and accounts established under the 1987 Resolution, on a parity with the Prior Bonds. This pledge and lien is for the equal security of all Outstanding Bonds without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Tax Revenues and such moneys, no funds of the Agency are pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the 2003 Bonds.

(b) In consideration of the acceptance of the 2003 Bonds by those who hold the same from time to time, this Fiscal Agent Agreement constitutes a contract between the Agency and the Owners from time to time of the 2003 Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the 2003 Bonds without preference, priority or distinction as to security or otherwise of any of the 2003 Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

SECTION 4.02. *Special Fund; Deposit of Tax Revenues.*

(a) The Agency has previously established the Special Fund under Section 4.02 of the 1987 Resolution. The Agency shall continue to hold the Special Fund so long as any of the 2003 Bonds remain Outstanding.

(b) The Agency shall deposit all of the Tax Revenues received in any Bond Year in the Special Fund promptly upon receipt thereof by the Agency, until such time during that Bond Year as the amounts on deposit in the Special Fund equal (i) the aggregate amounts required to be transferred to the Fiscal Agent in that Bond Year for deposit into the Interest Account, the Principal Account and the Reserve Account under Section 4.03, and (b) the aggregate amounts required to be transferred in that Bond Year for deposit

FISCAL AGENT AGREEMENT

Dated as of May 1, 2011

between the

REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Fiscal Agent

Relating to

\$31,411,295.25
Redevelopment Agency of the City of Santa Clara
Bayshore North Project
2011 Tax Allocation Bonds

- (e) The Fiscal Agent has received an opinion of counsel which states that such Additional Bonds comply with the requirements of this Fiscal Agent Agreement and the Prior Bond Documents.

ARTICLE IV

SECURITY OF 2011 BONDS; FLOW OF FUNDS; INVESTMENTS

SECTION 4.01. *Security of 2011 Bonds; Equal Security.* The 2011 Bonds are secured by a pledge of, lien on and security interest in all of the Tax Revenues and all of the moneys on deposit in the funds and accounts established under the Master Bond Resolution, on a parity with the Prior Bonds. This pledge and lien is for the equal security of all Outstanding Bonds without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Tax Revenues and such moneys, no funds of the Agency are pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the 2011 Bonds.

In consideration of the acceptance of the 2011 Bonds by those who hold the same from time to time, this Fiscal Agent Agreement constitutes a contract between the Agency and the Owners from time to time of the 2011 Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the 2011 Bonds without preference, priority or distinction as to security or otherwise of any of the 2011 Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

SECTION 4.02. *Special Fund; Deposit of Tax Revenues.*

(a) The Agency has previously established the Special Fund under Section 4.02 of the Master Bond Resolution. The Agency shall continue to hold the Special Fund so long as any of the 2011 Bonds remain Outstanding.

(b) The Agency shall deposit all of the Tax Revenues received in any Tax Collection Period in the Special Fund promptly upon receipt thereof by the Agency, until such time as the amounts on deposit in the Special Fund equal (i) the aggregate amounts required to be transferred to the Fiscal Agent in such Tax Collection Period for deposit into the Interest Account, the Principal Account and the Reserve Account under Section 4.03, and (ii) the aggregate amounts required to be transferred in such Tax Collection Period for deposit into the funds and accounts established with respect to the Prior Bonds and any Additional Bonds.

(c) All Tax Revenues received by the Agency during any Tax Collection Period in excess of the amount required to be deposited in the Special Fund during such Tax Collection Period under paragraph (b) of this Section 4.02 are released from the pledge and lien hereunder for the security of the 2011 Bonds and may be applied by the Agency

EXHIBIT 2



Julio J. Fuentes
City Manager

March 12, 2015

Local Government Unit
Department of Finance
Attn: Justyn Howard
915 L Street, 10th Floor
Sacramento, CA 95814

Via email: Justyn.howard@dof.ca.gov

Re: Oversight Board Resolution No. 2015-03

Dear Mr. Howard:

This letter is to object to the action of the Oversight Board of the City of Santa Clara (the "Oversight Board") in ordering the staff of the Successor Agency to the Santa Clara Redevelopment Agency (the "Successor Agency") to defease bond proceeds derived from a 1999 bond issuance by the former redevelopment agency and to request that the Department of Finance (the "Department") disapprove Oversight Board Resolution No. 2015-03. At its meeting of March 5, 2015, the Oversight Board ordered that the unexpended proceeds from the 1999 bonds be used to defease the 1999 Bonds.

The Oversight Board at its meeting on February 3, 2015 ordered the Successor Agency to obtain a defeasance report for both the 1999 Bonds as well as bonds issued by the former RDA in 2011. The DOF approved this resolution and the Successor Agency obtained the requested defeasance reports, which were presented to the Oversight Board at its meeting of February 27, 2015. At the February 27, 2015 meeting, the Successor Agency recommended the defeasance of the 2011 bonds, but did not recommend or consent to the defeasance of the 1999 bonds. At its meeting of March 5, 2015, an Oversight Board member presented a report and resolution directing the Successor Agency to use the remaining 1999 bonds proceeds to defease or redeem the 1999 bonds. The Successor Agency presented an alternative report on why it was inappropriate to use the 1999 bond proceeds to redeem outstanding bonds. The Successor Agency objected to the defeasance of the 1999 Bonds based on the clear intent of the legislature in AB 1484 that once a successor agency had obtained a finding of completion, a successor agency had the right to use pre-2011 bonds for the purposes for which they were issued.

The placement of the bond payments on the ROPS 15-16A is premature since there is no enforceable obligation to support the payments. The Oversight Board attempted to create a new enforceable obligation out of thin air. There is no statutory authority that allows an Oversight Board to create an enforceable obligation, order it to be placed on a ROPS and attempt to bind the successor agency without the concurrence of the successor agency governing board. Health and Safety Code Section 34181(e) specifically provides that if an

Justyn Howard
March 12, 2015
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oversight board determines that a contract should be terminated or renegotiated that the oversight board shall direct the successor agency to present proposed termination or amendment agreement to the oversight board for its approval. The statute does not authorize an oversight board to act in the stead of a successor agency. By ordering the Successor Agency to place a new enforceable obligation on ROPS 15-16A, the Oversight Board acted outside of its statutory authority and overstepped its bounds.

It should be noted that the Successor Agency has taken no action to authorize the use of the Bonds proceeds in the manner directed by the Oversight Board and thus City staff, acting on behalf of the Successor Agency staff has no authority to undertake those activities.

The required defeasance of the 1999 Bonds is another attempt of the Oversight Board to act outside of its authority and to skirt the statutory treatment of pre-2011 bonds. Health and Safety Code Section 34191.4(c)(1) states: "Bonds proceeds derived from bonds issued on or before December 31, 2010 *shall be used* for the purposes for which the bonds were sold". (Emphasis added.) The legislature clearly granted the opportunity, if not the requirement, for the Successor Agency to use the proceeds of the 1999 Bonds for the purposes for which the bonds were sold. But for the Dissolution Act, the former redevelopment agency was moving forward with the expenditure of those bonds. The Successor Agency has a list of designated projects that were to receive funding from the 1999 Bond proceeds and the Successor Agency fully intended to expend the 1999 Bond proceeds on those projects once the Successor Agency obtains its finding of completion. The Oversight Board has no authority to disregard the clear legislative authorization that pre-2011 bonds may be expended by a successor agency or purposes for which they were intended.

The Oversight Board action appears to be based in part on a belief that the purposes for which the bonds can be issued can no longer be achieved. The bond indenture allows the bonds to be used for any purpose authorized under the Bayshore North Redevelopment Plan and the Redevelopment Law. The Oversight Board contends that the Redevelopment Plan was nullified by the Dissolution Law and that the Redevelopment Law no longer exists. However, that misinterprets the Dissolution Law. Section 34173(a) makes clear that successor agencies are vested with all author, rights, powers and duties previously vested in redevelopment agencies pursuant to the Community Redevelopment Law except to the extent that the Redevelopment Law is amended by the Dissolution Law. Additionally, nothing in the Dissolution Law nullifies or repeals redevelopment plans. The Redevelopment Plan adopted by the City of Santa Clara remains in full force and effect and pursuant to that plan and the CRL the bond proceeds can be spent for various projects to be undertaken by the Successor agency.

The Oversight Board action is also premised on an alleged concern that the age of the bond proceeds also prohibits the bonds being used for the purposes for which they were issued. It should be noted that the bond documents contain no limitation on the period of time for expending the bond proceeds. Under federal tax law, the former RDA was required to

Justyn Howard
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Page 3

"reasonably expect" to spend at least 85% of the bond proceeds within three years of the bond issuance. It is important to emphasize that this is a requirement which is met at the time the bonds are issued, and the Agency certified its reasonable intentions as to the expenditure of the bond proceeds in the Arbitrage Certificate for the 1999 Bonds. Nothing in the legal documents or in federal tax law prevents the funds from being spent after the three year period has expired.

The former RDA did have a reasonable expectation of spending at least 85% of the bond proceeds within three years of the bond issuance, but at the time of the issuance of the bonds, no one could have predicted significant events that would soon occur, including the dot-com bust that caused significant delays in projects throughout Silicon Valley, and 9/11 and the Great Recession which had significant effect on projects throughout the Country. Despite these events and others, the former RDA continued to plan projects for the expenditure of the bond proceeds but redevelopment projects do not always proceed in a linear fashion according to schedule and Santa Clara was not exempt from the vagaries of real estate cycles, political changes and changing community needs that caused further delays. Finally the announcement of redevelopment dissolution and its subsequent adoption was the final delay that results in the Successor Agency holding unspent bond proceeds.

For the reasons enumerated above, the Successor Agency requests that the Department disapprove the action taken by the Oversight Board in Resolution No. 2015-03. The Oversight Board has no statutory authority to unilaterally create an enforceable obligation to place on ROPS 15-16A and the Oversight Board cannot contravene the express provisions of Health and Safety Code Section 34191.4(c)(1), which grants the Successor Agency the authority to expend the proceeds of the 1999 Bonds.

I will be happy to answer any questions on this matter.

Sincerely,



Julio J. Fuentes
City Manager

cc: City Attorney
Director of Finance

Meeting Date: 3-5-15

AGENDA REPORT

Agenda Item # 4A.2

Oversight Board for Successor Agency
to the City of Santa Clara
Redevelopment Agency



Date: March 3, 2015

To: City Manager/Executive Officer for Oversight Board Action

From: Director of Finance/Assistant City Manager

Subject: Unspent 1999 Bond Proceeds – Response to Board Member Guthrie’s Agenda Report and Resolution

EXECUTIVE SUMMARY

At its September 19, 2014 meeting, the Oversight Board approved Resolution No. 2014-03 directing the Successor Agency to use unspent bond proceeds held by the Successor Agency to defease/redeem outstanding bonds issued by the Redevelopment Agency. The California Department of Finance (DOF) reviewed Resolution No. 2014-03 pursuant to Health and Safety Code Section 34179(h) and did not approve it, specifically stating that it "...did not include the Agency in this process."

On February 2, 2015, the Oversight Board approved Resolution No. 2015-01 addressing the DOF's concerns by directing the Successor Agency to prepare a defeasance plan for Oversight Board review on or before February 27, 2015. The DOF reviewed this resolution and approved it on February 10, 2015.

Staff worked with Financial Advisor (KNN Public Finance) and Bond Counsel (Jones Hall) to prepare a plan for the partial defeasance of the 2011 Tax Allocation Bonds (2011 Bonds) and the possible redemption of a portion of the outstanding 1999 Tax Allocation Bonds (1999 Bonds). The Successor Agency prepared a Resolution regarding the partial defeasance of the 2011 Bonds which was adopted by the Oversight Board at its meeting on February 27, 2015. In the same Agenda Report, the Successor Agency presented its finding that the remaining 1999 Bond proceeds could still be expended for the purposes for which they were issued while indicating that it would be willing to give up its rights to the proceeds if it were to receive a dollar-for-dollar credit toward any monies that it ultimately owes as part of the dissolution process (e.g., as a credit toward the amount owed on the Other Funds Due Diligence Review).

Despite the Successor Agency's finding that the bond proceeds could still be expended for the purposes for which they were issued, Board Member Guthrie prepared an Agenda Report and Resolution directing the redemption of the remaining 1999 Bond proceeds, thereby taking away the Successor Agency's rights to bring back requests to enter into enforceable obligations using the unspent proceeds following receipt of a Finding of Completion. The Successor Agency is not willing to give up its rights to request use of these proceeds unless it receives a credit for the amount of proceeds that are redeemed.

BACKGROUND AND ANALYSIS:

While the 1999 Tax Allocation Bonds are callable and the process to redeem them is fairly simple, pursuant to Health and Safety Code Section 34177(i), bond proceeds are to be used for the purposes for which the bonds were sold unless that purpose can no longer be achieved. Section 34191(c) provides that after a successor agency receives a finding of completion, bond proceeds from bonds issued on or before December

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31, 2010 shall be used for the purposes for which the bonds were sold. The Successor Agency has examined whether the purposes for which the bonds were sold can still be achieved and determined that they can. Therefore, the Successor Agency is not willing to give up its rights.

With respect to the proceeds, the Fiscal Agent Agreement relating to the 1999 Bonds specified two broad categories of use for the 1999 Series A Bonds and the 1999 Series B Bonds. For the 1999 Series A Bonds, the proceeds were deposited into a 1999 Series A Redevelopment Fund which was required to be expended for "Public Projects". For the 1999 Series B Bonds, the proceeds were deposited into a 1999 Series B Redevelopment Fund which was required to be expended for the "Theme Park Reserved Parking Project" with the proviso that upon completion of the Theme Park Reserved Parking Project any remaining funds could be transferred to the Series A Redevelopment Fund and expended on Public Projects. The 1999 Series B Bonds were fully expended on the Tasman Garage and only proceeds from the 1999 Series A Bonds remain. The Fiscal Agent Agreement defines Public Projects as follows:

“Public Projects” means any programs, projects and activities of the Agency undertaken pursuant to and in accordance with the Redevelopment Plan and the Redevelopment Law, excluding the Theme Park Reserve Parking Project.

Board Member Guthrie’s Resolution correctly states that one of the requirements of the Internal Revenue Code of 1986 is that the issuer of tax exempt bonds must have reasonable expectation of spending 85% of the bond proceed for qualified purposes within three years from the date of issuance. However, he then incorrectly concludes that since there are proceeds remaining beyond this three year period, that the proceeds are no longer spendable. This is not true.

According to Bond Counsel Jones Hall, the legal documents contain NO LIMITATION on the period of time for expending the bond proceeds. Under federal tax law, the Agency was required to "reasonably expect" to spend at least 85% of the bond proceeds within three years of the bond issuance. It is important to emphasize that this is a requirement which is met at the time the bonds are issued, and the Agency certified its reasonable intentions as to the expenditure of the bond proceeds in the Arbitrage Certificate for the 1999 Bonds. Nothing in the legal documents or in federal tax law prevents the funds from being spent after the three year period has expired.

The Successor Agency continues to be willing to consider the immediate call of bonds using the remaining unencumbered 1999 Bond proceeds if the City would receive a like dollar credit toward any monies that it ultimately owes as part of the dissolution process (e.g., as a credit toward the amount owed on the Other Funds Due Diligence Review). This would benefit the taxing entities two ways, they would save about \$3.8 million in interest through the call/redemption of the bonds and the concerns raised by Board Member Guthrie would be immediately mitigated. The process would be relatively simple, once the City received credit, the Successor Agency would wire the remaining unencumbered bonds to the Fiscal Agent with the direction to call as many bonds as possible. Once called, the amount of annual debt service would be reduced resulting in additional residual monies that would be distributed to all taxing entities.

Absent an agreement giving the City credit for the 1999 Bond proceeds, the Successor Agency cannot support the redemption of the proceeds and will fully exercise its rights to use the proceeds for the purposes for which they were issued.

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ECONOMIC/FISCAL IMPACT:

For the 1999 Tax Allocation Bonds, the Successor Agency has determined that the purposes for which the bonds were issued can still be achieved. Therefore, the Successor Agency is not willing to use the remaining bond proceeds to call bonds. However, the Successor Agency is willing to give up its right to use the remaining proceeds and immediately call bonds if the City receives a dollar-for-dollar credit for the amount of principal called as part of a compensation or settlement agreement. The taxing entities would benefit from this action in two ways. First there would be an estimated \$3.8 million of interest savings generated from the call of the remaining unencumbered bond proceeds (currently totaling \$11.1 million). Second, the call of the bonds would reduce or possibly eliminate the risks that Board Member Guthrie has raised at previous meetings.

RECOMMENDATION:

That the Oversight Board take no action on Board Member Guthrie’s Resolution directing the Successor Agency to redeem the remaining 1999 Bonds and allow the Successor Agency to maintain its rights under the Dissolution Act to use the remaining 1999 Bonds for the purposes for which they were issued.



Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:



Julio J. Fuentes
City Manager/Executive Officer to Successor Agency

Documents Related to this Report:

- 1) *Relevant pages from the 1999 Tax Allocation Bonds Fiscal Agent Agreement dated August 1, 1999*

FISCAL AGENT AGREEMENT

Dated as of August 1, 1999

by and between the

**REDEVELOPMENT AGENCY OF THE CITY OF
SANTA CLARA**

and

BNY WESTERN TRUST COMPANY,
as Fiscal Agent

Relating to

\$31,550,000
Redevelopment Agency of the City of Santa Clara
Bayshore North Project
1999 Tax Allocation Bonds, Series A

and

\$16,905,000
Redevelopment Agency of the City of Santa Clara
Bayshore North Project
1999 Tax Allocation Bonds, Series B

FISCAL AGENT AGREEMENT

This FISCAL AGENT AGREEMENT (this "Fiscal Agent Agreement") is made and entered into as of August 1, 1999, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Agency"), and BNY WESTERN TRUST COMPANY, a banking corporation organized and existing under the laws of the State of California, as fiscal agent for the Bonds hereinafter referred to (the "Fiscal Agent");

WITNESSETH:

WHEREAS, the Agency is a public body, corporate and politic, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of Part 1 of Division 24 of the Health and Safety Code of the State of California (the "Redevelopment Law"), and has the power under the Redevelopment Law to issue bonds for any of its corporate purposes; and

WHEREAS, a redevelopment plan for the Bayshore North Project (the "Redevelopment Project"), in the City of Santa Clara, California, has been adopted in compliance with all requirements of law;

WHEREAS, the Agency has previously issued its \$41,170,000 principal amount of its Bayshore North Project 1987 Tax Allocation and Refunding Bonds (the "1987 Bonds") pursuant to Resolution No. 87-5 (RA), adopted June 16, 1987, as amended (the "1987 Resolution"), and has previously issued its \$74,240,000 principal amount of Bayshore North Project 1992 Tax Allocation Refunding Bonds pursuant to Resolution No. 92-06 (RA), adopted August 25, 1992 (the "1992 Bonds"), on a parity with the 1987 Bonds; and

WHEREAS, for the purpose of financing additional projects and activities of the Agency relating to the Redevelopment Project, the Agency has determined to authorize the issuance of its Redevelopment Agency of the City of Santa Clara Bayshore North Redevelopment Project 1999 Tax Allocation Bonds, Series A in the aggregate principal amount of \$31,550,000 (the "1999 Series A Bonds"), and its Redevelopment Agency of the City of Santa Clara Bayshore North Redevelopment Project 1999 Tax Allocation Bonds, Series B in the aggregate principal amount of \$16,905,000 (the "1999 Series B Bonds"), on a parity with the 1987 Bonds and the 1992 Bonds; and

WHEREAS, the principal of and interest on the 1987 Bonds, the 1992 Bonds, the 1999 Series A Bonds and the 1999 Series B Bonds, and any bonds or other obligations issued on a parity therewith as provided in the 1987 Resolution, the 1992 Resolution and herein (collectively, the "Bonds"), will be payable from and secured by a pledge of and first lien on the tax increment revenues derived from the Redevelopment Project; and

WHEREAS, BNY Western Trust Company acts as fiscal agent for the 1987 Bonds and the 1992 Bonds, and in such capacity will act as fiscal agent for the 1999 Series A Bonds and the 1999 Series B Bonds (collectively, the "1999 Bonds"); and

WHEREAS, the Agency has heretofore found and determined that all conditions precedent to the issuance of the 1999 Bonds on a parity with the 1987 Bonds and the 1992 Bonds have been satisfied, and that the 1999 Bonds are permitted at this time to be issued as Additional Bonds pursuant to and in accordance with the provisions of Section 3.06 of the 1987 Resolution; and

WHEREAS, in order to provide for the authentication and delivery of the 1999 Bonds, to establish and declare the terms and conditions upon which the 1999 Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Agency has duly authorized the execution and delivery of this Fiscal Agent Agreement; and

WHEREAS, the Agency has determined that all acts and proceedings required by law necessary to make the 1999 Bonds, when executed by the Agency, authenticated and delivered by the Fiscal Agent and duly issued, the valid, binding and legal special obligations of the Agency, and to constitute this Fiscal Agent Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken;

NOW, THEREFORE, in order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Fiscal Agent Agreement according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the 1999 Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the 1999 Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Agency and the Fiscal Agent do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the 1999 Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Fiscal Agent Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings specified and in the recitals hereof. All capitalized terms used herein and not otherwise defined shall have the respective meanings given such terms in the 1987 Resolution.

"Additional Bonds" means any bonds, notes, loans, advances or other indebtedness issued or incurred by the Agency on a parity with the 1987 Bonds, the 1992 Bonds and the 1999 Bonds pursuant to Section 3.06 of the 1987 Resolution.

"Agency" means the Redevelopment Agency of the City of Santa Clara, a public body corporate and politic duly organized and existing under the Redevelopment Law.

"Bond Counsel" means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Agency of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

"Bond Insurance Policy" means Municipal Bond Insurance Policy No. 16679BE issued by the Bond Insurer, which insures the payment when due of principal of and interest on the 1999 Bonds.

"Bond Insurer" means AMBAC Assurance Corporation, a Wisconsin-domiciled stock insurance company, its successors and assigns, as issuer of the Bond Insurance Policy.

such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which fund is sufficient, as verified by an Independent Accountant, to pay principal of and interest and redemption premium (if any) on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(h) investment agreements approved in writing by the Bond Insurer with notice to S&P; and

(i) other forms of investments approved in writing by the Bond Insurer with notice to S&P.

"Plan Limitations" means the limitations contained or incorporated in the Redevelopment Plan on (a) the aggregate amount of taxes which may be divided and allocated to the Agency pursuant to the Redevelopment Plan, and (b) the period of time for establishing or incurring indebtedness payable from Tax Revenues.

"Principal Account" means the account by that name previously established and held by the Fiscal Agent pursuant to Section 4.03(2) of the 1987 Resolution.

"Project Area" means the project area described in the Redevelopment Plan.

"Public Projects" means any programs, projects and activities of the Agency undertaken pursuant to and in accordance with the Redevelopment Plan and the Redevelopment Law, excluding the Theme Park Reserve Parking Project.

"Qualified Reserve Account Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent pursuant to Section 4.04(d), provided that such letter of credit or surety bond and the issuer thereof are acceptable to the Bond Insurer, and provided further that all of the following requirements are met at the time of acceptance thereof by the Fiscal Agent: (a) the long-term credit rating of such bank or insurance company is A or better from each rating agency which then maintains a rating on the 1999 Bonds; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the 1999 Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 4.04(d); and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account, the Principal Account or the 1999 Series A Sinking Account for the purpose of making payments required pursuant to Section 4.04.

"Record Date" means, with respect to any Interest Payment Date, the close of business on the fifteenth (15th) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15th) calendar day is a Business Day.

"Redevelopment Law" means the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State of California, and the acts amendatory thereof and supplemental thereto.

"Redevelopment Plan" means the Redevelopment Plan for the Bayshore North Project Area, entitled "Bayshore North Project", approved by Ordinance No. 1283, enacted by the City

"Theme Park Reserved Parking Project" means the improvements to be constructed by the Agency for use for public parking on a reserved or preferential basis by patrons of the Great America Theme Park in accordance with that certain Ground Lease With Right of First Refusal Purchase Rights dated as of June 1, 1989, by and between the Agency as lessor and Kings Entertainment Company (the successor to which is Paramount Parks Inc.) as lessee, as amended from time to time.

SECTION 1.02. *Rules of Construction.* All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Fiscal Agent Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Fiscal Agent Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

AUTHORIZATION AND TERMS OF 1999 BONDS

SECTION 2.01. *Authorization and Purpose of 1999 Bonds.* The Agency has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 1999 Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Agency is now duly empowered, pursuant to each and every requirement of law, to issue the 1999 Bonds in the manner and form provided in this Fiscal Agent Agreement.

1999 Series A Bonds in the aggregate principal amount of Thirty-One Million Five Hundred Fifty Thousand Dollars (\$31,550,000) are hereby authorized to be issued by the Agency under the Redevelopment Law for the purposes of providing funds to enable the Agency to provide financing for the Public Projects. The 1999 Series A Bonds shall be authorized and issued under, and shall be subject to the terms of, this Fiscal Agent Agreement and the Redevelopment Law. The 1999 Series A Bonds shall be designated the "Redevelopment Agency of the City of Santa Clara Bayshore North Project 1999 Tax Allocation Bonds, Series A".

1999 Series B Bonds in the aggregate principal amount of Sixteen Million Nine Hundred Five Thousand Dollars (\$16,905,000) are hereby authorized to be issued by the Agency under the Redevelopment Law for the purposes of providing funds to enable the Agency to provide financing for the Theme Park Reserved Parking Project. The 1999 Series B Bonds shall be authorized and issued under, and shall be subject to the terms of, this Fiscal Agent Agreement and the Redevelopment Law. The 1999 Series B Bonds shall be designated the "Redevelopment Agency of the City of Santa Clara Bayshore North Project 1999 Tax Allocation Bonds, Series B".

SECTION 2.02. *Terms of the 1999 Bonds.* The 1999 Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no 1999 Bond shall have more than one maturity date. The 1999 Bonds shall mature on June 1 in the years and in the respective principal amounts, and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the respective rates per annum, as set forth in the following tables:

ARTICLE III

DEPOSIT AND APPLICATION OF PROCEEDS OF 1999 BONDS

SECTION 3.01. *Issuance of 1999 Bonds.* Upon the execution and delivery of this Fiscal Agent Agreement, the Agency shall execute and deliver 1999 Series A Bonds in the aggregate principal amount of Thirty-One Million Five Hundred Fifty Thousand Dollars (\$31,550,000) and 1999 Series B Bonds in the aggregate principal amount of Sixteen Million Nine Hundred Five Thousand Dollars (\$16,905,000). The 1999 Bonds shall be delivered by the Agency to the Fiscal Agent, and the Fiscal Agent shall authenticate and deliver the 1999 Bonds to the Original Purchaser upon receipt of a Request of the Agency therefor.

SECTION 3.02. *Deposit and Application of 1999 Bond Proceeds.*

(a) Application of Proceeds of 1999 Series A Bonds. The proceeds of sale of the 1999 Series A Bonds shall be paid to the Fiscal Agent and deposited by the Fiscal Agent as follows:

(i) On the Closing Date, the Fiscal Agent shall deposit the amount of \$142,405.21 in the Interest Account established for the 1999 Series A Bonds, constituting accrued interest received on the sale of the 1999 Series A Bonds.

(ii) On the Closing Date, the Fiscal Agent shall deposit the amount of \$136,326.20 into the 1999 Series A Costs of Issuance Fund.

(iii) The Fiscal Agent shall transfer the amount of \$30,500,000.00, constituting the remainder of such proceeds, to the Agency for deposit in the 1999 Series A Redevelopment Fund. Such transfer shall be made on the Closing Date or on such later date as shall be requested by the Agency.

(b) Application of Proceeds of 1999 Series B Bonds. The proceeds of sale of the 1999 Series B Bonds shall be paid to the Fiscal Agent and deposited by the Fiscal Agent as follows:

(i) On the Closing Date, the Fiscal Agent shall deposit the amount of \$75,454.69 in the Interest Account established for the 1999 Series B Bonds, constituting accrued interest received on the sale of the 1999 Series B Bonds.

(ii) On the Closing Date, the Fiscal Agent shall deposit the amount of \$33,260.35 in the 1999 Series B Costs of Issuance Fund.

(iii) The Fiscal Agent shall transfer the amount of \$16,250,000.00, constituting the remainder of such proceeds, to the Agency for deposit in the 1999 Series B Redevelopment Fund. Such transfer shall be made on the Closing Date or on such later date as shall be requested by the Agency.

The Fiscal Agent may, in its discretion, establish one or more temporary funds on its books to facilitate any of the transfers and deposits set forth in the preceding provisions of this Section 3.02.

SECTION 3.03. *Costs of Issuance Funds*

(a) 1999 Series A Costs of Issuance Fund. There is hereby established a separate fund to be known as the "1999 Series A Costs of Issuance Fund", which shall be held by the Fiscal Agent in trust. The moneys in the 1999 Series A Costs of Issuance Fund shall be used and

withdrawn by the Fiscal Agent from time to time to pay the Costs of Issuance for the 1999 Series A Bonds upon submission of a Request of the Agency stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the 1999 Series A Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Request of the Agency; in each case together with a statement or invoice for each amount requested thereunder. On the earlier of (i) November 1, 1999, or (ii) the date of receipt by the Fiscal Agent of a Request of the Agency therefor, all amounts (if any) remaining in the 1999 Series A Costs of Issuance Fund shall be transferred by the Fiscal Agent to the Interest Account established for the 1999 Series A Bonds.

(b) 1999 Series B Costs of Issuance Fund. There is hereby established a separate fund to be known as the "1999 Series B Costs of Issuance Fund", which shall be held by the Fiscal Agent in trust. The moneys in the 1999 Series B Costs of Issuance Fund shall be used and withdrawn by the Fiscal Agent from time to time to pay the Costs of Issuance for the 1999 Series B Bonds upon submission of a Request of the Agency stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the 1999 Series B Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Request of the Agency; in each case together with a statement or invoice for each amount requested thereunder. On the earlier of (i) November 1, 1999, or (ii) the date of receipt by the Fiscal Agent of a Request of the Agency therefor, all amounts (if any) remaining in the 1999 Series B Costs of Issuance Fund shall be transferred by the Fiscal Agent to the Interest Account established for the 1999 Series B Bonds.

SECTION 3.04. *Redevelopment Funds.*

(a) 1999 Series A Redevelopment Fund. There is hereby established a separate fund to be held by the Agency, to be known as the "1999 Series A Redevelopment Fund." Amounts on deposit in the 1999 Series A Redevelopment Fund shall be derived solely from the proceeds of the 1999 Series A Bonds deposited therein pursuant to Section 3.02(a)(iii), from earnings on the investment and reinvestment of such proceeds, and from amounts (if any) transferred from the 1999 Series B Redevelopment Fund pursuant to subsection (b) of this Section. The moneys in the 1999 Series A Redevelopment Fund shall be used solely in the manner provided by the Redevelopment Law and the Redevelopment Plan to provide financing for the Public Projects, subject to the limitations set forth herein. Upon the completion by the Agency of the purposes for which moneys the 1999 Series A Redevelopment Fund are intended to be applied, the Agency shall transfer any remaining amounts to the Interest Account established for the 1999 Series A Bonds.

(b) 1999 Series B Redevelopment Fund. There is hereby established a separate fund to be held by the Agency, to be known as the "1999 Series B Redevelopment Fund." Amounts on deposit in the 1999 Series B Redevelopment Fund shall be derived solely from the proceeds of the 1999 Series B Bonds deposited therein pursuant to Section 3.02(b)(iii), and from earnings on the investment and reinvestment of such proceeds. The moneys in the 1999 Series B Redevelopment Fund shall be used solely in the manner provided by the Redevelopment Law and the Redevelopment Plan to provide financing for the Theme Park Reserved Parking Project, subject to the limitations set forth herein. Upon the completion by the Agency of the Theme Park Reserved Parking Project, the Agency shall transfer any remaining amounts to either (i) upon prior written notice to Bond Counsel, to the 1999 Series A Redevelopment Fund, or (ii) the Interest Account established for the 1999 Series B Bonds.

SECTION 3.05. *Issuance of Additional Bonds.* In addition to the 1999 Bonds, the Agency may issue or incur Additional Bonds in such principal amount as shall be determined by the