



CITY ATTORNEY'S OFFICE **MEMORANDUM**

TO: Oversight Board Members

FROM: Nira Feeley, Interim City Attorney

Date: June 26, 2013

RE: Amendments to Oversight Board Agenda – July 2, 2013

The Agenda for July 2, 2013 Oversight Board was posted last week. These agenda items mirror the agenda items posted for the Successor Agency of the South Tahoe Redevelopment Agency, the meeting for which will be held on July 2, 2013 at 9:00 a.m.

The Oversight Board Agenda and its accompanying staff reports were prepared last week. Since that time, the Successor Agency agenda and its accompanying staff reports were finalized. During that process there were changes made to a Resolution to the following two attachments. Redlined versions of those documents are attached for your review.

Meeting Summary:

The July 2, 2013 meeting will review the actions taken earlier in the day by the Successor Agency. The staff reports and resolutions for adoption are substantively identical. While the staff reports include a significant amount of attachments, they are primarily historical documents provided for the public record. The 3 or 4 page staff reports provide an overview of the actions requested.

The Oversight Board will consider four actions on July 2:

Agenda Item (a): Transfer the public parking garage from Successor Agency to Parking Authority as required by the 2002 bond documents.

Agenda Item (b): Adoption of the resolution approving an amendment to the Parking Facility Agreement and draft Indenture. The parking garage bonds must be refinanced (refunded) and new bonds issued in order to take advantage of much lower rates. To reissue the bonds, the Successor Agency and Parking Authority must amend the agreement. Approval by the Successor Agency and Oversight Board allow the refinancing process to continue and allow the Department of Finance to weigh in on this decision.

Agenda Item (c): Adoption of the resolution approving the use of available cash balances to offset a \$2M shortfall for the upcoming period (July to December 2013).

Agenda Item (d): Approval of an agreement permitting a parcel owned by the Successor Agency to be used for offsite parking for the Ski Run Marina district (this is essentially a renewal of an agreement that has existed for many years).

Attachment 1:

Changes to the Resolution for Agenda Item (a):

(a) Resolution of The Oversight Board of The Successor Agency to the South Tahoe Redevelopment Agency Making a Determination Regarding the Transfer of the South Tahoe Public Parking Garage to the South Tahoe Joint Powers Parking Financing Authority and Approving and Authorizing Certain Other Related Actions

Attachment 2:

Changes to the First Amendment to Parking Facility Agreement

Agenda Item (a) / Attachment 2.6

First Amendment to the Parking Agreement.

FIRST AMENDMENT TO PARKING FACILITY AGREEMENT

THIS FIRST AMENDMENT TO PARKING FACILITY AGREEMENT (the "First Amendment") is dated as of September 1, 2013, and is between the SOUTH TAHOE REDEVELOPMENT SUCCESSOR AGENCY, a public entity duly organized and validly existing under the laws of the State of California (the "Successor Agency"), as successor to the SOUTH TAHOE REDEVELOPMENT AGENCY (the "Original Agency"), and the SOUTH TAHOE JOINT POWERS PARKING FINANCING AUTHORITY, a joint exercise of powers authority duly organized and validly existing under the laws of the State of California (the "Authority").

BACKGROUND:

1. The Original Agency previously provided for the vehicular parking needs of the residents and visitors to the City of South Lake Tahoe (the "City") and, in particular to meet such needs in connection with the Original Agency's "Park Avenue Project" undertaken as a part of the South Tahoe Redevelopment Project Area No. 1 (the "Redevelopment Project"), by providing for an approximately 420-space parking facility (as hereinafter defined, the "Project") in the manner provided for in the Indenture, dated as of June 1, 2002, between the Authority and BNY Western Trust Company, as trustee (the "Original Indenture").

2. The Original Agency further assisted in providing the Project by transferring the real property constituting the site for the Project to the Authority, agreeing to transfer improvements thereon, and entering into a Parking Facility Agreement dated as of June 1, 2002 by and between the Original Agency and the Authority (the "Parking Facility Agreement"), which provided for the Original Agency pledge of Surplus Special Tax Revenues (as defined in the Original Indenture) of the Original Agency's Community Facilities District No. 2001-1 (Park Avenue Project) (the "CFD").

3. Under the Original Indenture, the Authority issued its Parking Revenue Bonds, Series A (the "2002 Bonds") payable from net operating revenues of the Project and ~~the~~ Surplus Special Tax Revenues, comprised of surplus special taxes collected for and ~~in~~ on behalf of the CFD after payment of bonds issued by the CFD in 2002 (the "2002 CFD Bonds");

4. In order to restructure debt service on the outstanding 2002 Bonds, the Authority wishes to refinance the obligations under the Original Indenture through the issuance of parking revenue refunding bonds (the "2013 Refunding Bonds").

45. By implementation of California Assembly Bill X1 26 approved by the Governor of the State of California on June 28, 2011 ("AB 26"), which amended provisions of the California Redevelopment Law, (found at Health and Safety Code Section 33000, *et.seq.*) and the California Supreme Court's decision in California Redevelopment Association v. Matosantos, the Original Agency was dissolved on February 1, 2012, and on February 1, 2012, the Successor Agency, in accordance with and pursuant to AB 26, assumed the duties and obligations of the Original Agency as set forth in AB 26, including, without limitation, the obligations of the Original Agency under the Agreement and related documents to which the Original Agency was a party.

56. By Resolution No. 2007-2 adopted by the Original Agency on February 6, 2007 (the "2007 Original Agency Approval"), and in connection with the issuance in 2007 by the Original Agency of bonds refunding the 2002 CFD Bonds (the "2007 CFD Refunding Bonds") pursuant to a Bond Indenture dated as of February 1, 2007 (the "2001-1 Refunding Bond Indenture"), the Agency approved execution of an Amendment No. 1 to Parking Facility Agreement, however it has been determined by the Successor Agency and the Authority that such amendment inadvertently was not executed, notwithstanding conformance with its terms by the Original Agency and the Authority subsequent to its approval by the governing boards.

7. The Successor Agency and the Authority have determined to amend the Parking Facility Agreement in accordance with Section 7 thereof in order to restructure memorialize the 2007 amendment approval and further to provide that the transfer of Surplus Special Tax Revenues and to make such transfers shall be available for payment of debt service on the Refunding Bonds in accordance with the 2013 Indenture (defined below). Refunding Bonds rather than the 2002 Authority Bonds.

68. The execution and delivery of this First Amendment have been in all respects duly and validly authorized by a resolution duly adopted by the Successor Agency.

79. In accordance with Assembly Bill 1484 approved by the Governor of the State of California on June 27, 2012 ("AB 1484"), the execution and delivery of this First Amendment have been approved by the Oversight Board of the Successor Agency and the Department of Finance of the State of California.

NOW, THEREFORE, the Successor Agency and the Authority do hereby agree as follows:

Section 1. Definitions. All references to the Indenture will be deemed to refer to the Indenture of Trust, dated as of September 1, 2013, between the Authority and U.S. Bank National Association, as trustee (the "2013 Indenture"). Unless otherwise defined herein, all capitalized terms defined herein will have the meanings set forth in the 2013 Indenture.

Section 2. Transfer of the Site; Payment of Surplus Special Tax Revenues. Section 2, subparagraph (B) of the Agreement is hereby revised in its entirety to read as follows:

(B) On or before the first day of each month, commencing ~~July~~ September 1, ~~2014~~ 2013 or as soon thereafter as practicable, and continuing to and including the date on which all the 2013 Refunding Bonds are paid in full, the Agency shall pay the Surplus Special Tax Revenues to the Authority for deposit by the Authority into the Revenue Fund pursuant to Section 5.01 of the 2013 Indenture. ~~In accordance with Section 7.02 of the CFD No. 2001-1; provided however, that in any Fiscal Year the amount of Surplus Special Tax Revenues paid pursuant to this Section 2 shall not exceed one hundred ninety thousand dollars (\$190,000) unless the Agency, in its sole discretion, elects to transfer a larger amount of Surplus Special Tax Revenues to the Authority. In accordance with Section 7.02 of the CFD No. 2001-1 Indenture and the CFD No. 2001-1 Refunding Bond~~ Indenture, the obligation of the Agency to pay Surplus Special Tax Revenues pursuant to this Section 2 shall be subordinate in all respects to the use of the proceeds of the Special Tax as defined in and provided in the CFD No. 2001-1 Indenture

and the CFD No. 2001-1 Refunding Bond Indenture, as it may be superseded by any similar document refunding the 2007 Refunding Bonds. So long as this Section 2(B) remains in force, the Agency shall not issue any ~~Additional Bonds pursuant to~~ ~~additional bonds secured by a pledge of the Special Tax for the purpose of financing additional public facilities. Without further consent of the Authority, the Agency may issue or cause the CFD to, and as that term is defined, issue from time to time bonds to refund outstanding bonds of the CFD so long as the issuance of such refunding bonds results in, the CFD No. 2001-1 Indenture. Any a reduction in the annual debt service payable from the proceeds of the Special Tax. Except as set forth in the preceding sentence, any~~ bonds or other indebtedness of the Agency issued after the date hereof and secured by a pledge of or lien upon the Special Tax ~~Revenues (as that term is defined in the CFD No. 2001-1 Indenture)~~ shall be payable on a parity with the Agency's obligations to ~~pay~~ apply Surplus Special Tax Revenues hereunder and the Authority's obligation to apply such Surplus Special Tax Revenues in accordance with the terms of the Indenture. Upon payment in full of ~~the~~ any special tax bonds ~~described in~~ of the ~~CFD No. 2001-1 Indenture~~, the Agency covenants to continue to levy special taxes in the ~~CFD No. 2001-1~~ as necessary to meet its obligations under this Agreement.

Section 3. Except as amended by the First Amendment and as otherwise amended hereby or required by applying the context of the Agreement as supporting payment of the Bonds issued pursuant to the 2013 Indenture, the Agreement will remain in full force and effect. This First Amendment supersedes any prior amendment to the Parking Facility Agreement.

Section 4. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Agreement, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

Section 5. This First Amendment will become effective upon the execution and delivery of this First Amendment by the parties hereto.

Section 6. This First Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment Indenture to be duly executed by their officers duly authorized as of the date first above written.

**SOUTH TAHOE REDEVELOPMENT
SUCCESSOR AGENCY**

By: _____
Nancy Kerry, Executive Director

**SOUTH TAHOE JOINT POWERS PARKING
FINANCING AUTHORITY**

By _____
Nancy Kerry, Executive Director

RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SOUTH TAHOE REDEVELOPMENT AGENCY MAKING A DETERMINATION REGARDING THE TRANSFER OF THE SOUTH TAHOE PUBLIC PARKING GARAGE TO THE SOUTH TAHOE JOINT POWERS PARKING FINANCING AUTHORITY AND APPROVING AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS

WHEREAS, on August 14 2002, the South Tahoe Joint Powers Parking Financing Authority (the "Authority") issued its \$9,000,000 aggregate principal amount Parking Revenue Bonds Series A (the "2002 Bonds"), pursuant to an Indenture, dated as of June 1, 2002 (the "Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A.(formerly, BNY Western Trust Company), as trustee; and

WHEREAS, the proceeds from the sale of the 2002 Bonds were used to finance the acquisition, construction and improvement of a parking facility now known as the South Tahoe Public Parking Garage (including the land and the improvements thereon, the ~~South Tahoe Public Parking Garage~~ "Parking Garage") relating to the project known as the "Park Avenue Project"; and

WHEREAS, in accordance with the Indenture, payment of debt service on the 2002 Bonds is secured primarily by revenues from the operation of the Parking Garage; and

WHEREAS, in connection with the Parking Garage and the issuance of the 2002 Bonds, the South Tahoe Redevelopment Agency (the "Redevelopment Agency") entered into the Parking Facility Agreement, dated as of June 1, 2002 (the "Parking Facility Agreement"), by and between the Redevelopment Agency and the Authority; and

WHEREAS, under Section 2 of the Parking Facility Agreement, at the Authority's direction, the Redevelopment Agency must take all necessary and appropriate action to transfer all of the Redevelopment Agency's interests in the Parking Garage to the Authority; and

~~WHEREAS, in 2004 the South Tahoe Redevelopment Agency and the City of South Lake Tahoe (Authority member agencies) directed their administrators to take the necessary ministerial actions to transfer their respective agency interests in the Parking Garage to the Authority however, the Parking Garage deed (APN 029 470 14) demonstrate the title transfer was not completed; and~~

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231(2011), the Redevelopment Agency was dissolved as of February 1, 2012, and the Successor Agency to the South Tahoe Redevelopment Agency (the "Successor Agency") was constituted; and

WHEREAS, AB 1484, which became effective at the end of June 2012, amended and

supplemented the provisions of AB X1 26 (AB X1 26 and AB 1484, together, being referred to herein as the “Dissolution Act”); and

WHEREAS, pursuant to Section 34175(b) of the California Health and Safety Code (“HSC”), all assets, properties, contracts, leases, books and records, buildings, and equipment of the Redevelopment Agency, including the Redevelopment Agency’s title and interests in the Parking Garage, transferred to the control of the Successor Agency by operation of law; and

WHEREAS, pursuant to the Dissolution Act, including HSC Sections 34171(d)(2)(B) and 34178(b)(1), the Parking Facility Agreement remains an enforceable obligation after the dissolution of the Redevelopment Agency and is binding on the Successor Agency; and

WHEREAS, the Successor Agency and this Oversight Board have each received the Authority’s Resolution No. _____ (the “Authority Resolution”) directing the Successor Agency to transfer the Successor Agency’s title to and interests in the Parking Garage; and

WHEREAS, pursuant to HSC Section 34177(c), the Successor Agency is required to perform obligations required pursuant to enforceable obligations; and

WHEREAS, the transfer of the Successor Agency’s title to and interest in the Parking Garage pursuant to the Parking Facility Agreement is also consistent with the mandate of the Dissolution Act that the Successor Agency expeditiously wind down the affairs of the Redevelopment Agency; and

WHEREAS, the Board of Directors of the Successor Agency has adopted its Resolution No. _____ making a finding and determination that the transfer of the Parking Garage as directed by the Authority Resolution is required pursuant to an enforceable obligation of the Successor Agency, and requesting this Oversight Board to (i) concur with such finding and determination and (ii) approve the Successor Agency’s execution and delivery of a related quitclaim deed (the “Quitclaim Deed”);

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE SOUTH TAHOE REDEVELOPMENT AGENCY DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Recitals. The above recitals, and each of them, are true and correct.

Section 2. Finding and Determination Regarding Transfer of Parking Garage. This Oversight Board hereby finds and determines, and concurs with the finding and determination of the Board of Directors of the Successor Agency, that the transfer of the Parking Garage as directed by the Authority Resolution is required pursuant to an enforceable obligation of the Successor Agency.

Section 3. Execution of Quitclaim Deed. This Oversight Board hereby approves the Successor Agency's execution and delivery of the Quitclaim Deed, substantially in the form attached to the Authority Resolution.

Section 4. Other Acts. The members of this Oversight Board and the staff of the Successor Agency are hereby authorized, jointly and severally, to do all things which they may deem necessary or proper to effectuate the purposes of this Resolution.

PASSED AND ADOPTED on July 2, 2013, by the following vote:

AYES:

NOES:

ABSENT:

Hal Cole, Chair of the Oversight Board the
Successor Agency to the South Tahoe
Redevelopment Agency

ATTEST:

Ellen Palazzo, Secretary