



City of Port Hueneme

**CITY OF PORT HUENEME
SUCCESSOR AGENCY BOARD
SPECIAL MEETING**

**OCTOBER 24, 2016
1:45 P.M.**

**PORT HUENEME CITY HALL: 250 NORTH VENTURA ROAD
PORT HUENEME, CA 93041**

A G E N D A

1. CALL TO ORDER, ROLL CALL

2. AGENDA: *(Amend / Approve)*

3. NEW BUSINESS:

A. APPROVE A BOND PROCEEDS EXPENDITURE AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE PORT HUENEME REDEVELOPMENT AGENCY AND THE CITY OF PORT HUENEME

Action: It is recommended the City Council and Successor Agency Board adopt a resolution approving the Bond Proceeds Expenditure Agreement between the Successor Agency to the Port Hueneme Redevelopment Agency ("Successor Agency") and the City of Port Hueneme ("City") for the transfer of \$992,565 in excess bond proceeds to the City for implementation of projects consistent with the original bond covenants.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT HUENEME APPROVING A BOND PROCEEDS EXPENDITURE AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE PORT HUENEME REDEVELOPMENT AGENCY AND THE CITY OF PORT HUENEME

4. OPEN FORUM: *Anyone wishing to speak to the Board on any item NOT on the Agenda may do so. Please approach the podium and give your name and address clearly for the record.*

ADJOURNMENT: Adjourn the meeting.

Copies of staff reports or other written documentation relating to each item of business referred to in this Agenda are available for public inspection in the Office of the City Clerk and on the City's website at www.cityofporthueneme.org. Materials received after agenda packet distributions are made available to the public on the City's website and in the City Clerk's office at the same time they are provided to the Council. The public may address any item on the Agenda by submitting a speaker card to the Clerk prior to or during the time the matter is addressed by the Council. Speaker comments are limited to three minutes.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, CONTACT THE OFFICE OF THE CITY CLERK AT 986-6503 OR THE CALIFORNIA RELAY SERVICE. NOTICE 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ALLOW PARTICIPATION IN THIS MEETING.



City of Port Hueneme

CITY COUNCIL/SUCCESSOR AGENCY AGENDA STAFF REPORT

TO: City Council / Successor Agency Board

FROM: Al Burrell, Interim Finance Director

SUBJECT: APPROVE A BOND PROCEEDS EXPENDITURE AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE PORT HUENEME REDEVELOPMENT AGENCY AND THE CITY OF PORT HUENEME

DATE: October 24, 2016

RECOMMENDATION:

It is recommended the City Council and Successor Agency Board adopt a resolution approving the Bond Proceeds Expenditure Agreement between the Successor Agency to the Port Hueneme Redevelopment Agency ("Successor Agency") and the City of Port Hueneme ("City") for the transfer of \$992,565 in excess bond proceeds to the City for implementation of projects consistent with the original bond covenants.

BACKGROUND/ANALYSIS:

The former Port Hueneme Redevelopment Agency ("RDA") issued Tax Allocation Refunding Bonds in 2004. As of the last accounting, \$992,565 remains unspent as excess bond proceeds from these bonds. Pursuant to Health and Safety Code (HSC) § 34191.4(c), the Successor Agency is permitted to spend these excess bond proceeds in compliance with the original bond covenants.

The Successor Agency is proposing a Bond Proceeds Expenditure Agreement between the City and the Successor Agency that authorizes the transfer of all unspent bond proceeds associated with the 2004 Tax Allocation Refunding Bonds from the Successor Agency to the City in order to complete projects and activities consistent with the bond covenants. \$992,565 is authorized for transfer.

This transfer would be placed on the Successor Agency's Recognized Obligation Payment Schedule ("ROPS") for 2017-18. After that ROPS is approved by the California Department of Finance and the funds are transferred, the City would be able to spend the funds when they are needed without the Successor Agency needing to get approval for bond proceed expenditure on a following ROPS.

BOND PROCEED EXPENDITURE AGREEMENT

October 24, 2016

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The attached Bond Proceeds Expenditure Agreement is a master agreement authorizing the City to spend excess bond proceeds transferred from the Successor Agency on the projects and programs permitted by the original bond covenants. The agreement is submitted to the City Council for its approval. As demonstrated in the attached resolution, this agreement will assist in the winding down of the former RDA, since it will assign the obligations associated with the excess bond proceeds to the City. Thus, the agreement complies with HSC § 34177.3(b), and staff request the City Council approve it.

In addition, allowing the City to implement these projects with the excess bond proceeds would advance the City's community development goals by revitalizing the former redevelopment project area and providing social and fiscal benefits to taxing entities and the community.

BUDGET/FISCAL IMPACT

Approval of the Bond Proceeds Expenditure Agreement would allow the City to receive excess bond funds to implement \$992,565 worth of projects consistent with the bond covenants and the original intent of the bonds.

ATTACHMENTS

1. Proposed Bond Proceeds Expenditure Agreement
2. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT HUENEME APPROVING A BOND PROCEEDS EXPENDITURE AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE PORT HUENEME REDEVELOPMENT AGENCY AND THE CITY OF PORT HUENEME

The City Council of the City of Port Hueneme ("City Council") does resolve as follows:

Section 1. The City Council finds and declares that:

- A. Pursuant to the dissolution of redevelopment agencies per Assembly Bill ("AB") x1 26 and ABx1 27, and subsequent legislation AB 1484 and Senate Bill 107 (altogether, "Dissolution Act"), the City of Port Hueneme ("City") adopted Resolution No. 4002 on January 11, 2012, electing to serve as the Successor Agency to the Port Hueneme Redevelopment Agency ("Successor Agency");
- B. The Successor Agency received its Finding of Completion under Health and Safety Code ("HSC") Section 34179.7 from the California Department of Finance on May 24, 2013;
- C. HSC Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to December 31, 2010 ("Bond Proceeds") for purposes for which the bonds were sold, provides that Bond Proceeds in excess of amounts needed to satisfy approved enforceable obligations as defined in HSC Section 34171(d) ("Excess Bond Proceeds") be expended in a manner consistent with the original bond covenants, and further provides that such expenditures constitute excess bond proceeds obligations within the meaning of HSC Section 34191.4(c)(2)(A) that must be listed separately on the successor agency's Recognized Obligation Payment Schedule ("ROPS");
- D. As of its last accounting, the Successor Agency has determined it is holding Excess Bond Proceeds in the amount up to **\$992,565** that are not otherwise obligated for a project or other enforceable obligations from the Tax Allocation Refunding Bonds, Series 2004 for the Central Community Redevelopment Project Area;
- E. The Successor Agency desires to provide Excess Bond Proceeds to the City to enable the City to use such funds, in a manner consistent with the original bond covenants to undertake projects and programs that were not previously funded and obligated by the Successor Agency or the City;
- F. The use of Excess Bond Proceeds to fund projects detailed in the Agreement is in accordance with HSC Sections 33445, 33445.1, and 33679, the original bond covenants, and other applicable laws;

- G. All agreements between the Successor Agency and the City must effectuate the wind down of the former RDA, in accordance with HSC 34177.3(b); and
- H. The City Council finds that the transfer of the excess bond proceeds effectuates the wind down of the former RDA by transferring the on-going obligations of oversight and administration of these bond proceeds from the Successor Agency to the City; and
- I. Pursuant to HSC Section 34178(c), the Oversight Board to the Successor Agency (“Oversight Board”) must approve all agreements between the Successor Agency and the City. The Oversight Board will review the Agreement at a meeting on October 24, 2016.

Section 2. *Approval.* Based on the foregoing findings, the City Council approves the Agreement attached as Exhibit “A” to this Resolution.

Section 3. *Authorization.* The officers and staff of the City Council and Successor Agency are authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable to effectuate this Resolution, including providing documents associated with the Agreement to the Ventura County Auditor-Controller, State Controller, and State Department of Finance.

Section 4. *Environmental Determination.* The adoption of this Resolution is exempt from review under the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100, *et seq.*, “CEQA”) and CEQA regulations (14 CCR §§ 15000, *et seq.*) because it establishes rules and procedures to implement government funding mechanisms; does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, the adoption of this Resolution does not constitute a “project” that requires environmental review (see 14 CCR § 15378(b)(4-5)).

Section 5. *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Oversight Board and applicable law. The findings and determinations constitute the independent findings and determinations of the Board in all respects and are fully and completely supported by substantial evidence in the record as a whole.

Section 6. *Summaries of Information.* All summaries of information in the findings, which precede this Section, are based on the substantial evidence in the record including, without limitation, verbal and documentary evidence submitted to the Board. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

Section 7. *Certification.* The Secretary is directed to certify the adoption of this Resolution; record this Resolution in the book of the Oversight Board's original resolutions; and make a minute of the adoption of the Resolution in the Oversight Board's records and the minutes of this meeting.

Section 8. *Effectiveness.* This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

PASSED, APPROVED, AND ADOPTED this 24th day of October, 2016.

JONATHAN SHARKEY
MAYOR PRO TEM

ATTEST:

MICHELE KOSTENUK
CITY CLERK

BOND PROCEEDS EXPENDITURE AGREEMENT

This Bond Proceeds Expenditure Agreement (“Agreement”) is entered into effective _____, 2016 by and between the CITY OF PORT HUENEME, a California Charter City and municipal corporation (“City”), and the SUCCESSOR AGENCY TO THE PORT HUENEME REDEVELOPMENT AGENCY (“Successor Agency”), a public body, corporate and politic, formed under Health and Safety Code (“HSC”) Section 34173 pursuant to City Council Resolution No. 4002, Successor Agency Resolution No. _____None_____, and Oversight Board for the Successor Agency (“Oversight Board”) Resolution No. 2.

Recitals

A. The former Port Hueneme Redevelopment Agency (“former Agency”) was a California public body, corporate and politic, duly formed by the City Council of the City (“City Council”) and was organized, existed, and exercised the powers of a community redevelopment agency under the California Community Redevelopment Law, Health and Safety Code (“HSC”) Section 33000, et seq. (“CRL”).

B. Pursuant to authority granted under the CRL, the former Agency had responsibility to implement the Redevelopment Plan for the Central Community Redevelopment Project Area (the “Project Area”), originally approved by Ordinance No. 351, enacted by the City Council on **February 7, 1973**.

C. Pursuant to that certain Indenture of Trust dated as of April 1, 2004 and executed by and between the former Agency and **Bank of New York** as Successor Trustee (the “Indenture”), the former Agency issued Tax Allocation Bonds, Series 2004 in the original principal amount of **\$12,210,000** (the “Bonds”).

D. Assembly Bill (“AB”) x1 26, effective on June 28, 2011, added Parts 1.8 and 1.85 to Division 24 of the HSC and which laws were modified, in part, and determined constitutional by the California Supreme Court in the petition *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 (“*Matosantos Decision*”), which laws and court opinion caused the dissolution of all redevelopment agencies and winding down of the affairs of former redevelopment agencies. Thereafter, such laws were amended further by AB 1484 that was effective on June 27, 2012, and further amended by Senate Bill (“SB”) 107, which was effective September 22, 2015 (together AB x1 26, the *Matosantos Decision*, AB 1484, and SB 107 are referred to as the “Dissolution Act”).

E. As of February 1, 2012, the former Agency was dissolved pursuant to the Dissolution Act.

F. As of February 1, 2012, the Successor Agency is performing its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the former Agency and is engaged in activities necessary and appropriate to wind down the affairs of the former

Agency, all subject to the review and approval by a seven-member “Oversight Board.”

G. HSC Section 34191.4(c) provides that once a successor agency has received a finding of completion, the successor agency is authorized to use the proceeds from bonds issued on or before December 31, 2010, for the purposes for which the bonds were sold, and is further authorized to expend proceeds in excess of amounts needed to satisfy approved enforceable obligations (“Excess Bond Proceeds”) in a manner consistent with the original bond covenants. Such expenditures constitute “excess bond proceeds obligations” that must be listed separately on the successor agency’s Recognized Obligation Payment Schedule (“ROPS”).

H. The Successor Agency received its Finding of Completion under HSC Section 34179.7 from the California Department of Finance on May 24, 2013.

I. The CRL provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies. Under HSC Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. HSC Section 33220(e) specifically authorizes a city to enter into an agreement with its redevelopment agency or any other public entity to further redevelopment purposes. HSC Section 34178 allows a successor agency and its sponsoring city to enter into agreements subject to Oversight Board approval pursuant to HSC Section 34180(h).

J. The Successor Agency has Excess Bond Proceeds from the Bonds, and wishes to use such proceeds for redevelopment purposes consistent with applicable bond covenants.

K. The Successor Agency desires to transfer its Excess Bond Proceeds to the City to enable the City to use such funds, in a manner consistent with the original bond covenants; to undertake projects and programs that were not previously funded and obligated by the Successor Agency or the City. The City Council and Successor Agency Board have determined that the use of Excess Bond Proceeds to fund projects is in accordance with HSC Sections 33445, 33445.1, and 33679, the bond covenants, and other applicable law.

L. On October 24, 2016, the Oversight Board determined that this Agreement will effectuate the wind down of the Successor Agency consistent with HSC 34177.3(b) and approved this Agreement by resolution pursuant to HSC 34178(c).

M. In order to facilitate the use of Excess Bond Proceeds consistent with the bond covenants, the Successor Agency and the City have negotiated this Agreement requiring the transfer of current Excess Bond Proceeds by the Successor Agency to the City, and the City’s use of such proceeds consistent with applicable bond covenants. The parties intend that this Agreement constitutes an excess bond proceeds obligation within the meaning of HSC Section 34191.4(c)(2)(A) (“Excess Bond Proceeds Obligation”) to be paid from Excess Bond Proceeds. Upon approval by the Oversight Board, the Successor Agency will list this Agreement, and the requirement to transfer Excess Bond Proceeds herein, on its ROPS for July 1, 2017 through June 30, 2018 (“ROPS 17-18”) as an Excess Bond Proceeds Obligation.

NOW, THEREFORE, the parties mutually agree as follows:

1. Incorporation of Recitals. The recitals above are an integral part of this Agreement and set forth the intentions of the parties, and are incorporated into this Agreement by this reference.

2. Successor Agency Obligations. The Successor Agency has the following obligations under this Agreement:

2.1. Current Excess Bond Proceeds. Once the transfer of Excess Bond Proceeds has been listed on ROPS 17-18, and such ROPS has been approved by the Department of Finance, the Successor Agency will transfer to the City, no later than June 30, 2018, Excess Bond Proceeds held by the Successor Agency as of October 13, 2016 in the amount of **Nine Hundred Ninety Two Thousand Five Hundred Sixty Five Dollars (\$992,565.00)**.

2.2. Future Excess Bond Proceeds. The Successor Agency will transfer to the City all future Excess Bond Proceeds held or received by the Successor Agency. Such future Excess Bond Proceeds may include, without limitation, (1) Bond Proceeds previously obligated to a project or other Enforceable Obligation that become unobligated for any reason, (2) Bond Proceeds that become available in the form of rents, sale proceeds, loan repayments, or other revenues that are generated by properties or other assets acquired and/or improved with Bond Proceeds and that are not otherwise obligated to a project or other Enforceable Obligation, and (3) any other funds held by the Successor Agency that qualify as Excess Bond Proceeds under this Agreement. For purposes of this Agreement, "Enforceable Obligation" has the meaning ascribed to such term in HSC Section 34171(d).

The parties intend that payments of future Excess Bond Proceeds be made to the City as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond Proceeds will be made pursuant to an approved ROPS within 30 days of the commencement of the relevant ROPS period. The Successor Agency is responsible for ensuring that payments of future Excess Bond Proceeds, as such funds become available, are included on the next possible ROPS.

2.3. Projects Funded by Excess Bond Proceeds. The Successor Agency assigns to the City all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. The Successor Agency assigns to the City all contracts entered into by the Successor Agency or the former Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations.

3. City Obligations. The City has the following obligations under this Agreement:

3.1. Retention of Excess Bond Proceeds. The City will accept, hold, and disburse Excess Bond Proceeds transferred to the City by the Successor Agency under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City will retain any Excess Bond Proceeds that it receives, such as revenue generated from properties acquired or improved with Excess Bond Proceeds or payments on loans funded from Excess Bond Proceeds, without any obligation to return such funds to the Successor Agency, and will use such funds for uses consistent with applicable bond covenants.

3.2. Bond Spending Plan. The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity consistent with the original bond

covenants and applicable provisions of the CRL, and must comply with all requirements of federal tax law as to the use of such funds. The City intends to spend the Excess Bond Proceeds on maintenance and upgrades at Hueneme Beach Park and Moranda Park, projects identified in the original bond covenants. The City is solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws. The City may transfer funds between approved projects, programs, and activities, as long as the transfer is within a single project area if applicable bond covenants restrict such funds to a particular project area.

The City agrees to indemnify and defend the Successor Agency and its officers and agents against, and to hold the Successor Agency and its officers and agents harmless from, any claims, causes of action, or liabilities arising from the misuse of Excess Bond Proceeds by the City or the failure of the City to ensure that Excess Bond Proceeds are used in accordance with bond covenants, federal tax law, and the CRL.

The City assumes all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. The City assumes all contracts entered into by the Successor Agency or the former Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations. The City will perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA, and will timely complete the work required for each project.

4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to the transfer and use of Excess Bond Proceeds. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

5. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the City and the Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Successor Agency, there are no third party beneficiaries under this Agreement.

6. Waivers and Amendments. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

7. Severability. If any term, provisions, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability. In addition, the parties will cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

8. Default. If either party fails to perform or adequately perform an obligation required

by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform will be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract or to seek specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and will not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

9. Binding On Successors. This Agreement is binding on and inures to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

10. Further Assurances. Each party agrees to execute, acknowledge, and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

11. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of California.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

“CITY”

CITY OF PORT HUENEME,
a municipal corporation

By: _____
Carmen Nichols, Interim City Manager

ATTEST:

By: _____
Michele Kostenuik, City Clerk

APPROVED AS TO FORM:

By: _____
Mark D. Hensley, City Attorney

“SUCCESSOR AGENCY”

SUCCESSOR AGENCY TO THE PORT HUENEME REDEVELOPMENT AGENCY,
successor agency to the Port Hueneme Redevelopment Agency under Health and Safety Code Section 34173

By: _____
Carmen Nichols, Director

ATTEST:

By: _____
Michele Kostenuik, Successor Agency Clerk

APPROVED AS TO FORM:

By: _____
Mark D. Hensley, Agency Counsel