

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 OCT 15 PM 3:16

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Finance and Management Agency
DATE: October 27, 2009

RE: **A Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the Seller's Proposition 1A Receivables from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith**

SUMMARY

The emergency suspension of Proposition 1A was passed by the Legislature and signed by the Governor as ABX4 14 and ABX4 15 as part of the 2009-10 budget package on July 28, 2009. Under the provision, the State of California (the "State") will borrow 8% of the amount of property tax revenue apportioned to cities, counties and special districts. The State will be required to repay those obligations plus interest by June 30, 2013. The fiscal impact to the City of Oakland will be approximately \$11.2 million in FY 2009-10; Oakland Zoo will be approximately \$45,098. The City and the Oakland Zoo will need to borrow against the State's obligation to repay.

The "Proposition 1A Securitization Program" announced on August 5, 2009, by the California Statewide Communities Development Authority ("California Communities"), will allow cities, counties, and special districts to receive advance repayment of Proposition 1A funds borrowed by the State through its recently approved budget. By participating in the Proposition 1A Securitization Program, the City and the Oakland Zoo can sell their Proposition 1A Receivables and receive immediate cash relief and mitigate the impact of 8% property tax withholding in FY 2009-2010. The City and the Oakland Zoo will have no obligations with respect to the bonds being issued by the California Communities and all costs of the financings will be absorbed by the State.

A resolution has been prepared to seek immediate authorization for the following actions from City Council:

1. Authorize the sale of the City and Oakland Zoo's Proposition 1A Receivables to California Communities for 100% of its receivable;
2. Approves the form, and directs the execution and delivery, of the Purchase and Sale Agreement with California Communities and related documents;

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3. Authorizes and directs any Authorized Officer to send, or to cause to be sent, an irrevocable written instruction required by statute to the State Controller notifying the State of the sale of the Proposition 1A Receivables and instructing the disbursement of the Proposition 1A Receivables to the Proposition 1A Bond Trustee;
4. Appoints certain City officers and officials as Authorized Officers for purposes of signing documents; and
5. Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

If the City chooses not to participate in the Proposition 1A Securitization Program and hold its Proposition 1A Receivables until June 30, 2013, the State will repay with a 2.00 percent interest rate. The City will have to seek alternative ways to borrow the \$11.2M directly to bridge this gap. It is unlikely that the City would be successful in find alternative borrowing.

FISCAL IMPACT

The City of Oakland and the Oakland Zoo will lose up to **\$11.2 million** and **\$45,098**, respectively in FY 2009-10 due to the State's borrowing of local government property tax revenues. However, if the City elects to participate in the California Communities' Proposition 1A Securitization Program, then the City and the Oakland Zoo will receive 100% of its Proposition 1A Receivables upfront in FY 2009-10. All costs associated with the financing are borne by the State. The City will not have to pay any interest cost or costs of issuance in connection with its participation in the program. Also, The City's sale of its Proposition 1A Receivables will be irrevocable. Bondholders will have no recourse to the City if the State does not make the Proposition 1A Repayment.

BACKGROUND

Proposition 1A Suspension: Proposition 1A was passed by California voters in 2004 to ensure local property tax and sales tax revenues remain with local government thereby safeguarding funding for public safety, health, libraries, parks, and other local services. Provisions can only be suspended if the Governor declares a fiscal necessity and two-thirds of the Legislature concur.

The emergency suspension of Proposition 1A was passed by the Legislature and signed by the Governor as ABX4 14 and ABX4 15 as part of the 2009-10 budget package on July 28, 2009. Under the provision, the State will borrow 8% of the amount of property tax revenue apportioned to cities, counties and special districts. The state will be required to repay those obligations plus interest by June 30, 2013.

The legislature is currently reviewing a clean-up bill, SB67, which would provide a few critical changes to the enacted legislation, including but not limited to, providing for: financing to occur in November 2009; county auditor certification of the amount of Prop 1A receivable; tax-exempt structure; California Communities as the only issuer; more flexibility on bond structure (interest payments, state payment date and redemption features); sales among local agencies; and revision to the hardship mechanism. While SB 67 has not yet been passed and signed into law, California Communities expects that to occur prior to funding the Program. If for any reason SB 67 is not enacted and the bonds cannot be sold by December 31, 2009, all approved documents placed in escrow with transaction counsel will be of no force and effect and will be destroyed.

Proposition 1A Securitization Program: Authorized under ABX4 14 and ABX4 15, the Proposition 1A Securitization Program was instituted by California Communities to enable Local Agencies to sell their respective Proposition 1A Receivables to California Communities. Currently, SB67 is being considered to clarify specific aspects of ABX4 14 and ABX4 15. Under the Securitization Program, California Communities will simultaneously purchase the Proposition 1A Receivables, issue bonds (“Prop 1A Bonds”) and provide each local agency with the cash proceeds in two equal installments, on January 15, 2010 and May 3, 2010 (to coincide with the dates that the State will be shifting property tax from local agencies). The purchase price paid to the local agencies will equal 100% of the amount of the property tax reduction. All transaction costs of issuance and interest will be paid by the State of California. Participating local agencies will have no obligation on the bonds and no credit exposure to the State.

If the City sells its Proposition 1A Receivables under the Proposition 1A Securitization Program, California Communities will pledge the City’s Proposition 1A Receivables to secure the repayment of a corresponding amount of the Prop 1A Bonds. The City’s sale of its Proposition 1A Receivables will be irrevocable. Bondholders will have no recourse to the City if the State does not make the Proposition 1A Repayment.

Proposition 1A Program Sponsor: California Communities is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. The member agencies of California Communities include approximately 230 cities and 54 counties throughout California.

KEY ISSUES AND IMPACTS

The City of Oakland and the Oakland Zoo will lose approximately **\$11.2 million** and **\$45,098**, respectively in FY 2009-10 due to the State’s borrowing of local government property tax revenues. Proposition 1A added Article XIII, Section 25.5 to the State Constitution, which, among other things, requires that any use of local property taxes be repaid within three years. Therefore, if the City chooses not to participate in the Proposition 1A Securitization Program and hold its Proposition 1A Receivables until June 30, 2013, the State will repay them with a 2.00

percent interest rate. The City will have to seek alternative ways to borrow the \$11.2M directly to bridge this gap. It is unlikely that the City would be successful in find alternative borrowing. If the City elects to participate in the Proposition 1A Securitization Program, the benefits include:

- Immediate cash relief – the sale of the City’s and the Oakland Zoo’s Proposition 1A Receivables would provide the City and the Oakland Zoo with 100% of its Proposition 1A Receivables in two equal installments, on January 15, 2010 and May 3, 2010.
- Mitigates impact of 8% property tax withholding in January and May – Per ABX4 14 and ABX4 15 and the proposed clean-up legislation SB 67, the State will withhold 8% of property tax receivables due to Cities, Counties, and Special Districts under Proposition 1A. The financing outlines bond proceeds to be distributed to coincide with the dates that the State will be shifting property tax from local agencies.
- All costs of financing borne by the State of California. The City will not have to pay any interest cost or costs of issuance in connection with it participation.
- No obligation on Bonds. The City and the Oakland Zoo has no obligation with respect to the payment of the bonds, nor any reporting, disclosure or other compliance obligations associated with the bonds.

Upon delivery of the Proposition 1A Bonds, California Communities will make available to the City its fixed purchase price, which will equal 100% of the local agency’s Proposition 1A Receivable. These funds may be used for any lawful purpose of the City and are not restricted by the program.

SUSTAINABLE OPPORTUNITIES

Economic: The economic benefit of participating in the Proposition 1A Securitization Program is that the City and the Oakland Zoo would receive 100% of its Proposition 1A Receivables upfront. Also, the City and the Oakland Zoo are not exposed to the risk of the State taking this money and not repaying the loan.

There is no impact to environmental or social equity opportunities following actions under this report.

DISABILITY AND SENIOR CITIZEN ACCESS

There is no impact to disability or senior citizen access following actions under this report.

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RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve this resolution approving the form and authorizing the execution and delivery of a purchase and sale agreement and related documents with respect to the sale of the City's Proposition 1A Receivables from the State; and directing and authorizing all necessary actions in connection this transaction.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council approves the respective resolutions authorizing the following actions:

1. Authorizes the sale of the City's and the Oakland Zoo's Proposition 1A Receivables to California Communities;
2. Approves the form and directs the execution and delivery of the Purchase and Sale Agreement;
3. Authorizes and directs any Authorized Officer to send any required irrevocable written instruction to the State Controller notifying the sale of the Proposition 1A Receivables and instructing the disbursement to the Proposition 1A Bond Trustee;
4. Appoints certain City officers and officials as Authorized Officers for purposes of signing documents; and

5. Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

Respectfully submitted,



JOSEPH T. YEW, JR.
Finance Director/ Treasurer

Prepared by:
Katano Kasaine, Treasury Manager
Finance & Management Agency, Treasury Division

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:


Office of the City Administrator

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

DRAFT

2009 OCT 15 PM 3:16 RESOLUTION NO. _____

**CITY COUNCIL
OF THE
CITY OF OAKLAND**

A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, pursuant to Section 25.5 of Article XIII of the California Constitution and Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended (the "Act"), certain local agencies within the State of California (the "State") are entitled to receive certain payments to be made by the State on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year (the "Reimbursement Payments"), which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code;

WHEREAS, the City of Oakland, a local agency within the meaning of Section 6585(f) of the California Government Code (the "Seller"), is entitled to and has determined to sell all right, title and interest of the Seller in and to its "Proposition 1A receivable", as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund public capital improvements or working capital;

WHEREAS, the Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require;

WHEREAS, the California Statewide Communities Development Authority, a joint exercise of powers authority organized and existing under the laws of the State (the "Purchaser"), has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable;

WHEREAS, the Purchaser desires to purchase the Proposition 1A Receivable and the Seller desires to sell the Proposition 1A Receivable pursuant to a purchase and sale agreement by and between the Seller and the Purchaser in the form presented to this City Council (the "Sale Agreement") for the purposes set forth herein;

WHEREAS, in order to finance the purchase price of the Proposition 1A Receivable from the Seller and the purchase price of other Proposition 1A Receivables from other local agencies, the Purchaser will issue its bonds (the "Bonds") pursuant to Section 6590 of the California Government Code and an Indenture (the "Indenture"), by and between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), which Bonds will be payable solely

from the proceeds of the Seller's Proposition 1A Receivable and other Proposition 1A Receivables sold to the Purchaser by local agencies in connection with the issuance of the Bonds;

WHEREAS, the Seller acknowledges that (i) any transfer of its Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement shall be treated as an absolute sale and transfer of the property so transferred and not as a pledge or grant of a security interest by City of Oakland to secure a borrowing, (ii) any such sale of its Proposition 1A Receivable to the Purchaser shall automatically be perfected without the need for physical delivery, recordation, filing or further act, (iii) the provisions of Division 9 (commencing with Section 9101) of the California Commercial Code and Sections 954.5 to 955.1 of the California Civil Code, inclusive, shall not apply to the sale of its Proposition 1A Receivable, and (iv) after such transfer, the Seller shall have no right, title, or interest in or to the Proposition 1A Receivable sold to the Purchaser and the Proposition 1A Receivable will thereafter be owned, received, held and disbursed only by the Purchaser or a trustee or agent appointed by the Purchaser;

WHEREAS, the Seller acknowledges that the Purchaser will grant a security interest in the Proposition 1A Receivable to the Trustee and any credit enhancer to secure payment of the Bonds;

WHEREAS, a portion of the proceeds of the Bonds will be used by the Purchaser to, among other things, pay the purchase price of the Proposition 1A Receivable;

WHEREAS, the Seller will use the proceeds received from the sale of the Proposition 1A Receivable for any lawful purpose as permitted under the applicable laws of the State;

NOW THEREFORE, the City Council of the City of Oakland hereby resolves as follows:

Section 1. All of the recitals set forth above are true and correct, and this City Council hereby so finds and determines.

Section 2. The Seller hereby authorizes the sale of the Proposition 1A Receivable to the Purchaser for a price equal to the amount certified as the Initial Amount (as defined in the Sale Agreement) by the County auditor pursuant to the Act. The form of Sale Agreement presented to the City Council is hereby approved. An Authorized Officer (as set forth in Appendix A of this Resolution, attached hereto and by this reference incorporated herein) is hereby authorized and directed to execute and deliver the Sale Agreement on behalf of the Seller, which shall be in the form presented at this meeting.

Section 3. Any Authorized Officer is hereby authorized and directed to send, or to cause to be sent, an irrevocable written instruction to the State Controller (the "Irrevocable Written Instruction") notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement pursuant to Section 6588.6(c) of California Government Code of the Proposition 1A Receivable to the Trustee, on behalf of the Purchaser, which Irrevocable Written Instruction shall be in the form presented at this meeting.

Section 4. The Authorized Officers and such other Seller officers, as appropriate, are hereby authorized and directed, jointly and severally, to do any and all things and to execute

and deliver any and all documents, including but not limited to, if required, appropriate escrow instructions relating to the delivery into escrow of executed documents prior to the closing of the Bonds, and such other documents mentioned in the Sale Agreement or the Indenture, which any of them may deem necessary or desirable in order to implement the Sale Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the sale of the Proposition 1A Receivable or the issuance of the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, may be given or taken by an Authorized Officer without further authorization by this City Council, and each Authorized Officer is hereby authorized and directed to give any such consent, approval, notice, order or request, to execute any necessary or appropriate documents or amendments, and to take any such action that such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. The City Council acknowledges that, upon execution and delivery of the Sale Agreement, the Seller is contractually obligated to sell the Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement and the Seller shall not have any option to revoke its approval of the Sale Agreement or to determine not to perform its obligations thereunder.

Section 7. This Resolution shall take effect from and after its adoption and approval.

PASSED AND ADOPTED by the City Council of the City of Oakland, State of California, this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

City Clerk

Attest:

City Clerk

Approved as to form :

SELLER'S COUNSEL

By Karen M. Boyd

Dated: 10/5/09

APPENDIX A

CITY OF OAKLAND

Authorized Officers: Dan Lindheim, City Administrator

Joseph T. Yew, Jr., Director of Finance

Katano Kasaine, Treasury Manager

any designee of any of them, as appointed in a written certificate of such Authorized Officer delivered to the Trustee.