

RESOLUTION NO. 2321

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUCCESSOR AGENCY TO THE DISSOLVED SHAFTER COMMUNITY DEVELOPMENT AGENCY, APPROVING A BOND EXPENDITURE AGREEMENT WITH THE CITY OF SHAFTER TO TRANSFER EXCESS TAX ALLOCATION BOND PROCEEDS NOT PREVIOUSLY OBLIGATED TO THE CITY FOR BOND-ELIGIBLE PURPOSES

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City of Shafter became the successor agency to the Shafter Community Development Agency (“Successor Agency”); and

WHEREAS, pursuant to Health and Safety Code Section 34173(g), the Successor Agency is now a separate legal entity from the City; and

WHEREAS, the Successor Agency received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on March 21, 2013; and

WHEREAS, Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for purposes for which the bonds were sold; and

WHEREAS, the Successor Agency has and will have so-called “excess” bond proceeds, i.e., pre-2011 tax allocation bond proceeds that are not otherwise obligated for a project or income generated by projects and assets funded by pre-2011 tax allocation bonds that are restricted to bond-eligible uses; and

WHEREAS, the Successor Agency wishes to use such proceeds for redevelopment purposes consistent with bond covenants; and

WHEREAS, the Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) provides for a cooperative relationship between redevelopment agencies, and their successor agencies, and cities; and

WHEREAS, Health and Safety Code Section 33220(e) authorizes a local public agency to enter into an agreement with a redevelopment agency, and its successor agency, to further redevelopment purposes; and

WHEREAS, Health and Safety Code Sections 34180(h) and 34178(a) authorize a successor agency to enter into new agreements with its sponsoring city with the approval of the oversight board; and

WHEREAS, 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 eligible for redevelopment funding, which were not previously funded and obligated by Successor Agency or the City; and

WHEREAS, the transfer of excess bond proceeds to the City under the Bond Expenditure Agreement will benefit the taxing entities by facilitating the efficient use of such funds to support projects and programs that will enhance property values and increase tax revenues to the taxing entities; and

WHEREAS, the transfer of excess bond proceeds to the City under the Bond Expenditure Agreement will help fulfill the intent of the dissolution laws to expeditiously wind-down the affairs of the former Redevelopment Agency; and

WHEREAS, Health and Safety Code Section 34177(l), as amended, requires a successor agency to prepare a Recognized Obligation Payment Schedule (“ROPS”) listing the former agency’s recognized enforceable obligations, payment sources, and related information for each six month fiscal period; and

WHEREAS, Health and Safety Code Section 34191.4(c)(2)(A) requires that excess bond obligations be listed separately on a successor agency’s ROPS; and

WHEREAS, The Successor Agency has listed the use of excess tax allocation bond proceeds on ROPS 14-15A, which shall be implemented through this Bond Expenditure Agreement.

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SUCCESSOR AGENCY TO THE DISSOLVED SHAFTER COMMUNITY DEVELOPMENT AGENCY, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Findings. The Successor Agency hereby finds and determines that the transfer to, and use of excess bond proceeds by, the City for expenditures consistent with the applicable bond covenants will benefit the affected taxing entities by promoting the efficient use of such funds and thereby will result in community benefits and increased tax revenues to the taxing entities, based on the reasons and analysis set forth above and in the staff report accompanying this Resolution. The Successor Agency hereby further finds and determines the transfer of excess bond proceeds to the City will help fulfill the intent of the dissolution laws to expeditiously wind-down the affairs of the former Shafter Community Development Agency.

Section 3. Approval of a Bond Expenditure Agreement. The Successor Agency hereby approves the Successor Agency’s execution and performance under a Bond Expenditure Agreement between the Successor Agency and the City of Shafter as included as Exhibit “A” and incorporated by reference herein.

Section 4. Transmittal. The Successor Agency directs the City Manager and Administrative Services Director to present this resolution and the Bond Expenditure Agreement to the Oversight Board of the Successor Agency for approval and if approved to the California Department of Finance for review.

Section 5. Effectiveness. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 4th day of March 2014.



Jon Johnston, Chairman

ATTEST:



Christine Wilson, City Clerk

EXHIBIT A

BOND EXPENDITURE AGREEMENT

[Attached behind this page]

BOND EXPENDITURE AGREEMENT

This Bond Expenditure Agreement (the “Agreement”) is entered into effective March ____, 2014, by and between the City of Shafter, a municipal corporation (the “City”), and the Successor Agency to the former Shafter Community Development Agency under Health and Safety Code Section 34173 (“Successor Agency”) pursuant to City Council Resolution No. ____, Successor Agency Resolution No. ____, and Successor Agency Oversight Board Resolution No. ____ .

Recitals

A. Successor Agency received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on March 21, 2013.

B. Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute “excess bond proceeds obligations” that shall be listed separately on the Successor Agency’s Recognized Obligation Payment Schedule (“ROPS”).

C. Successor Agency has and will have so-called “excess bond proceeds,” i.e., pre-2011 tax allocation bond proceeds that are not otherwise obligated for a project or other enforceable obligation. Successor Agency wishes to use such proceeds for redevelopment purposes consistent with applicable bond covenants.

D. The California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) 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 Health and Safety Code Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Health and Safety Code 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. Health and Safety Code Section 34178 allows a Successor Agency and its sponsoring city to enter into agreements with the approval of the oversight board.

E. 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 Successor Agency or the City. The City has adopted a spending plan for using such excess bond proceeds (the “Bond Spending Plan”) to advance the City’s community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. The City Council has found that the use of excess bond proceeds to fund projects that involve City-owned public buildings, facilities, structures, or other improvements is in accordance with Health and Safety Code Sections 33445, 33445.1, and 33679 and other applicable law. The Successor Agency Oversight Board has determined that the expenditure of excess bond proceeds in accordance with this Agreement will

benefit the affected taxing entities, and has approved the execution of this Agreement and the provision of excess bond proceeds to the City for the purposes described herein.

F. In order to facilitate the use of excess bond proceeds consistent with the bond covenants, Successor Agency and the City have negotiated this Agreement requiring the transfer of current and future excess bond proceeds by Successor Agency to the City, and the City's use of such proceeds consistent with applicable bond covenants. The parties intend that this Agreement shall constitute an excess bond proceeds obligation within the meaning of Health and Safety Code Section 34191.4(c)(2)(A) to be paid from excess bond proceeds. With Oversight Board approval, Successor Agency has listed this Agreement, and the requirement to transfer excess bond proceeds herein, on its Recognized Obligation Payment Schedule ("ROPS") for July through December of 2014 ("ROPS 14-15A") as an obligation to be funded with excess bond proceeds.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. RECITALS

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the indicated meaning:

The "Dissolution Law" means Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code, commencing with Section 34170, and other statutes governing the dissolution of redevelopment agencies and the wind-down of redevelopment activities.

"Bond Proceeds" mean (1) proceeds from tax allocation bonds issued on or before December 31, 2010, (2) rents, sale proceeds and other revenues generated by properties acquired and/or improved with proceeds from tax allocation bonds issued on or before December 31, 2010, (3) interest and principal paid on loans funded by proceeds from tax allocation bonds issued on or before December 31, 2010, and (4) other income or revenues generated from assets acquired or funded with proceeds from tax allocation bonds issued on or before December 31, 2010.

"Excess Bond Proceeds" means Bond Proceeds that are not needed to satisfy Enforceable Obligations approved on a ROPS.

"Enforceable Obligations" mean enforceable obligations, other than Excess Bond Proceeds obligations, as defined under the Dissolution Law.

"Bond Spending Plan" is defined in Recital E.

3. SUCCESSOR AGENCY'S OBLIGATIONS

Successor Agency shall have the following obligations under this Agreement:

3.1. CURRENT EXCESS BOND PROCEEDS. Successor Agency shall transfer to the City, no later than July 31, 2014, Excess Bond Proceeds currently held by Successor Agency in an amount not to exceed \$ 5,110,039.

3.2. FUTURE EXCESS BOND PROCEEDS. Successor Agency shall transfer to the City all future Excess Bond Proceeds held or received by Successor Agency. Such future Excess Bond Proceeds shall 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 Successor Agency that qualify as Excess Bond Proceeds under this Agreement.

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 shall be made pursuant to an approved ROPS within 30 days of the commencement of the relevant ROPS period. Successor Agency shall be responsible for ensuring that payments of future Excess Bond Proceeds, as such funds become available, are included on the next possible ROPS.

3.3. PROJECTS FUNDED BY EXCESS BOND PROCEEDS. Successor Agency assigns to the City all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. Successor Agency assigns to the City all contracts entered into by Successor Agency or the former Shafter Community Development Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by Successor Agency relating to Enforceable Obligations.

4. CITY'S OBLIGATIONS

The City shall have the following obligations under this Agreement:

4.1. RETENTION OF EXCESS BOND PROCEEDS. The City shall accept, hold, and disburse Excess Bond Proceeds transferred to the City by Successor Agency under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City shall 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 Successor Agency, and shall use such funds for uses consistent with applicable bond covenants.

4.2. USE OF EXCESS BOND PROCEEDS. The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity authorized under the Bond Spending Plan. However, the City must spend Excess Bond Proceeds consistent with the original bond covenants applicable to the particular Excess Bond Proceeds, and must comply with all requirements of federal tax law and all applicable requirements of the California Community Redevelopment Law as to the use of such funds. The City shall be 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 shall indemnify and defend Successor Agency, and its officers and agents, against, and shall hold 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 California Community Redevelopment Law.

The City assumes all contracts entered into by Successor Agency or the former Shafter Community Development Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by Successor Agency relating to Enforceable Obligations. The City shall 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 shall timely complete the work required for each project.

4.3. BOND SPENDING PLAN. The City shall be solely responsible for maintaining and implementing the Bond Spending Plan. The City may amend the Bond Spending Plan as the City deems necessary in its sole discretion. Any amendments to the adopted Bond Spending Plan will consider uses that advance the City's community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. The Bond Spending Plan must also conform to applicable bond covenants and all applicable requirements of federal tax law and the California Community Redevelopment Law. Notwithstanding any contrary provision hereof, unless the City expressly agrees otherwise, the City shall not be obligated to provide funding for any program or project in an amount exceeding the Excess Bond Proceeds provided to the City pursuant to this Agreement.

5. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS

5.1. 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.

5.2. This Agreement is intended solely for the benefit of the City and Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and Successor Agency, there shall be no third party beneficiaries under this Agreement.

5.3. 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.

6. 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 shall 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 shall

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.

7. 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 shall 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 shall 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.

8. BINDING ON SUCCESSORS

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

9. 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.

[SIGNATURES ON NEXT PAGE]

In witness whereof, the undersigned parties have executed this Bond Expenditure Agreement effective as of the date first above written.

“CITY”

THE CITY OF SHAFTER,
a municipal corporation

By: _____
John D. Guinn
City Manager

“SUCCESSOR AGENCY”

THE SHAFTER COMMUNITY DEVELOPMENT AGENCY SUCCESSOR
AGENCY, successor agency to the Shafter Community Development Agency under Health and Safety Code Section 34173

By: _____
Jon Johnston
Chairman

