

Agenda Report

May 20, 2013

TO: Honorable Mayor and City Council

FROM: Department of Finance

SUBJECT: DEFEASANCE AND REDEMPTION OF MULTIFAMILY HOUSING REVENUE BONDS AND SPECIAL TAX BONDS RELATED TO THE HOLLY STREET APARTMENTS

RECOMMENDATION:

It is recommended that the City Council:

- 1) Adopt a resolution of the City of Pasadena authorizing and directing actions related to the redemption of multifamily housing revenue bonds and termination of a related indenture and a regulatory agreement and declaration of restrictive covenants, the release of a lien related to the Community Facilities District No.1 (Civic Center West Public Improvements), repayment of related special tax bonds and maintenance of certain related public areas, and authorizing and directing actions properly related to such multifamily housing revenue bonds and special tax bonds.
- 2) Authorize an amendment to parking lease agreement number 14,611 between the City and Holly Street, L.P., extending the agreement for five years commencing December 1, 2012 and continuing until December 1, 2017 with one optional five-year extension period.

BACKGROUND:

In 1991, the City Council and the Pasadena Community Development Commission (PCDC) approved the construction of the Civic Center West Project, a 374 unit apartment complex currently known as Holly Street Apartments. As part of the project financing, the Pasadena Community Development Commission and the City issued the following bonds:

Multifamily Housing Revenue Bonds

On December 20, 1991, PCDC issued Multifamily Housing Revenue Bonds Series A and Series B in an aggregate amount of \$39,400,000 to finance the project. The 1991 Series A and B Multifamily Family Housing Revenue Bonds were later refinanced in November 2003 by the issuance of \$33,915,000 Variable Rate Demand Multifamily Housing Revenue Bonds Series 2003. The current outstanding balance of the 2003 bonds is \$33,915,000. The bonds were issued as conduit bonds and neither the PCDC nor the City has any financial liability for the bonds. The debt service on the bonds and any related costs are paid by the property owner, currently Holly Street L. P.

Special Tax Bonds

In December 1992, the City issued, on behalf of the Community Facilities District No.1 formed by the City Council, \$9,947,570.40 City of Pasadena Community Facilities District No.1 1992 Special Tax Bonds (CFD Bonds). The net proceeds of the CFD Bonds were used to finance various public improvements necessary for the project and the acquisition of land for certain public areas. In November 1997, the City issued 1997 Community Facilities District No.1 Special Tax Bonds in an amount of \$13,290,667.95 and fully refunded the 1992 Special Tax Bonds. Later in 2003, the property owner provided sufficient funds to defease \$4,605,667.95 of the then outstanding 1997 CFD Special Tax Bonds. The current outstanding balance of the 1997 CFD No. 1 Special Tax Bonds is \$8,685,000. The debt service on the 1997 CFD Bonds are paid with revenues from special taxes assessed on the property where Holly Street Apartments are located.

When it formed the Community Facilities District in 1992, the City Council authorized the levy of a Special Tax A to be used to repay the special tax bonds issued for the Community Facilities District, and the levy of a Special Tax B to be used to pay the cost of the maintenance of certain public areas or interests therein purchased with proceeds of the 1992 Special Tax Bonds. To date, the property owner has maintained the public areas and the City had not had the need to levy a Special Tax B on the property.

If the property owner or any future owner of the property enters into a maintenance agreement whereby the property owner agrees to maintain the applicable public areas at its own expense, it is recommended that the City release the property owner from the obligation to pay any future Special Tax B. Special Tax A is required to be released upon payment by the property owner of an amount sufficient to fully redeem the outstanding 1997 CFD Special Tax Bonds and pay related administrative costs.

The project was completed in 1994 and consists of 374 total housing units of which 77 units or 20% are affordable units. The property is now being sold to Teachers Insurance and Annuity Association and one of the requirements of the sale is the transfer of the property free and clear of any bonds or debt. The

affordable housing restrictions in a Regulatory Agreement executed in connection with the 2003 Multifamily Housing Revenue Bonds will expire upon prepayment of those bonds; however, the project will in any event continue to be subject to affordable housing requirements pursuant to a 1996 Regulatory Agreement with the California Tax Credit Allocation Committee, which requires the project to be maintained as a Qualified Low-Income Housing project, and therefore to maintain at least 75 low income units through the year 2025. Upon close of the property sale transaction which is scheduled for May 15, 2013, the current owner will use proceeds of the sale to pay off and redeem the entire \$33,915,000 outstanding balance of the 2003 Multifamily Housing Revenue Bonds and the entire \$8,685,000 outstanding balance of the CFD No.1 Special Tax Bonds.

Parking Lease Agreement

In 1992, in order to facilitate the development of the Holly Street Apartments, the City entered into a Parking Lease Agreement with Pasadena Civic Center West, the developer of the project. Pursuant to that lease, the City provided 67 parking spaces in the Holly Street parking structure. The term of the lease was 20 years, with two optional five-year extensions.

Through an oversight on its part, the Lessee, which is now Holly Street L. P., allowed the base term of the lease to expire without exercising its first optional extension. Nevertheless, the Lessee has continued to make lease payments to the City. Staff recommends approval of an amendment to the parking lease agreement to effectively reinstate the prior agreement thereby enabling Holly Street L. P., or its successor to exercise the optional extension periods. The Holly Street apartment complex has been a positive contributor to the City of Pasadena, providing transit-oriented housing and 77 affordable housing units.

COUNCIL POLICY CONSIDERATION:

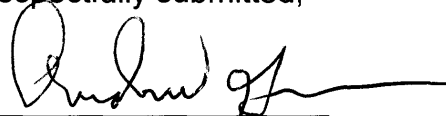
This action supports the City Council's strategic goal to maintain fiscal responsibility and stability.

FISCAL IMPACT:

All cost associated with the redemption and defeasance of the bonds will be paid by the current property owner.

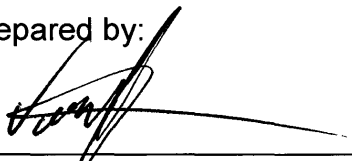
The anticipated impact to other operational programs or capital projects as a result of this action will be none.

Respectfully submitted,



ANDREW GREEN
Director of Finance

Prepared by:



Vic Erganian
City Treasurer
Deputy Director of Finance

Approved by:



MICHAEL J. BECK
City Manager

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA
AUTHORIZING AND DIRECTING ACTIONS RELATED TO THE
REDEMPTION OF MULTIFAMILY HOUSING REVENUE BONDS AND
TERMINATION OF RELATED INDENTURE AND REGULATORY
AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, THE
RELEASE OF A LIEN IN RESPECT OF COMMUNITY FACILITIES
DISTRICT NO. 1 (CIVIC CENTER WEST PUBLIC IMPROVEMENTS),
REPAYMENT OF RELATED SPECIAL TAX BONDS AND MAINTENANCE
OF A RELATED EASEMENT, AND AUTHORIZING AND DIRECTING
ACTIONS PROPERLY RELATED TO SUCH MULTIFAMILY HOUSING
REVENUE BONDS AND SPECIAL TAX BONDS**

WHEREAS, on December 20, 1991 the Pasadena Community Development Commission (the "CDC") issued its Pasadena Community Development Commission Multifamily Housing Revenue Bonds (Civic Center West Project) 1991 Series A and its Pasadena Community Development Commission Multifamily Housing Revenue Bonds (Civic Center West Project) 1991 Series B (collectively, the "1991 CDC Bonds") in the aggregate principal amount of \$39,400,000 the net proceeds of which were used to finance the multifamily rental housing facility currently known as Holly Street Apartments (the "Apartment Facility"); and

WHEREAS, on November 25, 2003, the CDC issued its \$33,915,000 Pasadena Community Development Commission Variable Rate Demand Multifamily Housing Revenue Bonds (Holly Street Apartments), Series 2003A (the "2003 CDC Bonds") the net proceeds of which were loaned (the "Loan") to Holly Street, L.P., a California limited partnership, the owner of the Apartment Facility (the "Owner"), pursuant to a Financing Agreement, dated as of November 1, 2003, among the Owner, the CDC and the trustee for the 2003 CDC Bonds (the "Trustee"); and

WHEREAS, the proceeds of the Loan were used to redeem in full the 1991 CDC Bonds;
and

WHEREAS, payments by the Owner on the Loan are the source of funds to repay the 2003 CDC Bonds, and the Owner now desires to prepay the Loan and thereby allow for the defeasance and redemption of the 2003 CDC Bonds, all in connection with the Owner's planned sale of the Apartment Facility; and

WHEREAS, upon redemption of the 2003 CDC Bonds, a Regulatory Agreement and Declaration of Restrictive Covenants, dated as of November 1, 2003 (the "Regulatory Agreement"), among the CDC, the Trustee and the Owner that was entered into with respect to the 2003 CDC Bonds will terminate; and

WHEREAS, on February 11, 2013, the City Council of the City of Pasadena (the "City") adopted a resolution confirming the election of the City as "Housing Successor" to the CDC,

retaining all housing assets and functions of the CDC subject to certain reservations stated in said Resolution, and authorizing the City Manager to administer responsibilities of the City under Part 1.85 of the Health and Safety Code; and

WHEREAS, there have been presented to the City Council various documents related to the prepayment of the Loan, the redemption of the 2003 CDC Bonds and the termination of the Indenture and the Regulatory Agreement, and the City Council now desires to authorize and direct appropriate City Staff to execute and deliver such documents for the City as Housing Successor to the CDC, and to take all actions necessary to effect the redemption of the 2003 CDC Bonds and the termination of the Indenture and the Regulatory Agreement; and

WHEREAS, in connection with the development of the area in which the Apartment Facility is located, the City formed the City of Pasadena Community Facilities District No. 1 (Civic Center West Public Improvements) (the "District") pursuant to Resolution No. 6706 adopted by the City Council of the City on April 21, 1992; and

WHEREAS, the proceedings for the formation of the District authorized the City to levy on taxable property in the District (being, essentially, the Apartment Facility) a special tax to provide funds to pay bonded indebtedness of the City for the District and District administrative costs ("Special Tax A"), and a special tax to provide funds to maintain various public areas in the vicinity of the Apartment Facility ("Special Tax B" and, together with Special Tax A, the "Special Taxes"); and

WHEREAS, on December 16, 1992, the City issued, for and on behalf of the District, its \$9,947,570.40 City of Pasadena Community Facilities District No. 1 (Civic Center West Public Improvements) 1992 Special Tax Bonds (the "1992 District Bonds"), the net proceeds of which were used to finance various public infrastructure improvements; and

WHEREAS, in connection with the issuance of the 1992 District Bonds, the City and Pasadena Civic Center West, A California Limited Partnership, the then developer of the Apartment Facility (the "Developer"), entered into an Acquisition Agreement, dated as of November 30, 1992 (the "Acquisition Agreement"), pursuant to which the City agreed to use proceeds of the 1992 District Bonds to purchase certain public improvements (or otherwise finance certain costs thereof) to be constructed and conveyed to the City by the Developer; and

WHEREAS, the Developer has fully performed its obligations under the Acquisition Agreement and the City Council now desires to acknowledge the same; and

WHEREAS, on November 25, 1997, the City issued, for and on behalf of the District, its \$13,290,667.95 City of Pasadena Community Facilities District No. 1 (Civic Center West Public Improvements) 1997 Special Tax Bonds with \$8,685,000 of such bonds issued as current interest bonds (the "1997 Current Interest District Bonds") and \$4,605,667.95 of such bonds issued as capital appreciation bonds (the "1997 Capital Appreciation District Bonds" and, collectively with the 1997 Current Interest District Bonds, the "1997 District Bonds"), and the net proceeds of the 1997 District Bonds were used to refund, in whole, the then outstanding 1992 District Bonds; and

WHEREAS, in 2003, the then Owner provided funds in an amount necessary to defease and pay in full the 1997 Capital Appreciation District Bonds; and

WHEREAS, the Owner now desires to prepay the Special Tax A (which will result in a redemption of all of the outstanding 1997 Current Interest District Bonds), and has requested that the City take action to release the property in the District from any obligation to pay the Special Tax B, so that it can sell such property free and clear of any lien associated with the District and the Special Taxes; and

WHEREAS, since the completion of the Apartment Facility, the Owner has always used its own funds and personnel to maintain the areas that the proceeds of the Special Tax B are eligible to be used to maintain (the "District Public Areas"), and no Special Tax B has ever been levied by the City; and

WHEREAS, the City is willing to release the Owner from any future obligation to pay the Special Tax B, if the Owner or any subsequent owner of the Apartment Facility enters into an agreement with the City to maintain the District Public Areas the maintenance of which was to be funded with proceeds of the levy of Special Tax B, in a form acceptable to the City Attorney (a "Public Area Maintenance Agreement"); and

WHEREAS, there have been presented to the City Council various documents related to the Special Taxes, the District and the 1997 Current Interest District Bonds; and

WHEREAS, the City Council now desires to authorize and direct appropriate City Staff to take all actions necessary to acknowledge that the Acquisition Agreement has been fully performed, to facilitate the prepayment of Special Tax A, authorize the execution of a Public Area Maintenance Agreement and the release the lien on the property securing payment of Special Tax B, and to effect the redemption of the 1997 Current Interest District Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASADENA AS FOLLOWS:

1. The Agreement Regarding Discharge of Indenture, between the Owner and the Trustee (the "Discharge Agreement"), in the form on file with the City Clerk, is hereby approved. The City Manager is hereby authorized and directed to execute and deliver the consent of the City attached to the Discharge Agreement, for and on behalf of the City as the Housing Successor to the CDC, in said form, together with such additions thereto or changes therein as are approved by the City Manager upon consultation with the City Attorney and Bond Counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of said consent by the City Manager.
2. The Termination Agreement relating to the termination of the Regulatory Agreement (the "Termination Agreement"), in the form on file with the City Clerk, is hereby approved. The City Manager is hereby authorized and directed to execute and deliver the Termination Agreement, for and on behalf of the City as the Housing Successor to the CDC, in said form, together with such additions

thereto or changes therein as are approved by the City Manager upon consultation with the City Attorney and Bond Counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Termination Agreement by the City Manager.

3. City Staff, including the City Manager, the City Attorney, the Director of Finance and the City Treasurer, are hereby authorized and directed to take all actions necessary or desirable to implement the Discharge Agreement, cause the defeasance and redemption of the 2003 CDC Bonds and the termination of the Regulatory Agreement, and to release the covenants contained in the Regulatory Agreement, including causing the Termination Agreement to be delivered to the sale escrow for the Apartment Facility so that it can be recorded in the County Recorder's Office upon redemption of the 2003 CDC Bonds. The City Manager is hereby further authorized and directed to execute and deliver an Estoppel Certificate acknowledging the expiration of the Regulatory Agreement and of the Disposition and Development Agreement that was entered into on May 31, 1990 by the CDC, the Developer and Janss Corporation related to the Apartment Facility, and acknowledging that the Apartment Facility is not subject to any affordable housing requirements imposed by the City, in a form approved by the City Attorney.
4. The City Treasurer is hereby authorized to deliver or cause to be delivered a payoff demand to the Owner relating to the prepayment in full of Special Tax A, to receive the proceeds of the prepayment and to dispose of the proceeds as provided in the Fiscal Agent Agreement pursuant to which the 1997 District Bonds were issued (the "Fiscal Agent Agreement"). The City Treasurer is hereby further authorized and directed to take all actions necessary to redeem the 1997 Current Interest District Bonds with proceeds of the prepayments and to otherwise discharge the Fiscal Agent Agreement.
5. The Public Area Maintenance Agreement, in the form on file with the City Clerk, is hereby approved. The City Manager is hereby authorized to execute and deliver the Public Area Maintenance Agreement, for and on behalf of the City, in said form, together with such additions thereto and changes therein as are approved by the City Manager upon consultation with the City Attorney, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Public Area Maintenance Agreement by the City Manager. The City Manager is hereby authorized and directed to deliver the Public Area Maintenance Agreement, as executed by him, to the sale escrow for the Apartment Facility so that it may be recorded upon the execution thereof by the counter party thereto.
6. The City Council hereby acknowledges that the Acquisition Agreement (a) has been fully performed by the Developer, and there are no remaining obligations of the Developer, the Owner or any subsequent owner of the Apartment Facility to be performed thereunder, (b) places no lien or encumbrance whatsoever on the Apartment Facility or any other property in the District, and (c) does not

create any possessory interest or other property rights in favor of the City or the District that burden the Apartment Facility or any other property in the District. The City Manager is hereby authorized to execute and deliver an estoppel certificate confirming the matters expressed in the preceding sentence, in a form approved by the City Attorney.

7. The City Clerk is hereby authorized and directed to execute and deliver to the sale escrow for the Apartment Facility a Notice of Cancellation of Special Tax Lien with respect to Special Tax A (the "Special Tax A Notice") in a form prepared by Bond Counsel, with the recording of the Special Tax A Notice to be contingent upon the prepayment by the Owner of the Special Tax A. It is hereby acknowledged that the Special Tax A Notice, when recorded in the County Recorder's Office, will release the property in the District from any future obligation to pay any Special Tax A.

The City Clerk is hereby authorized and directed to execute and deliver to the sale escrow for the Apartment Facility a Notice of Cancellation of Special Tax Lien with respect to Special Tax B (the "Special Tax B Notice") in a form prepared by Bond Counsel (which may be combined with the Special Tax A Notice, in the form of a single Notice of Cancellation of all of the Special Taxes), with the recording of the Special Tax B Notice (or the combined Special Tax A and Special Tax B Notice of Cancellation) to be contingent upon the delivery of a fully-executed Public Area Maintenance Agreement. It is hereby acknowledged that the Special Tax B Notice (or the combined Special Tax A and Special Tax B Notice of Cancellation), when recorded in the County Recorder's Office, will release the property in the District from any future obligation to pay any Special Tax B.

8. The law firm of Quint & Thimmig LLP is hereby retained as bond counsel to assist the City in connection with the foregoing matters related to the 2003 CDC Bonds and the 1997 Current Interest District Bonds, with the fees and expenses of such counsel to be paid solely from funds advanced by the Owner or otherwise from the escrow for the sale of the Apartment Facility.
9. All actions heretofore taken by the officers and agents of the City with respect to the prepayment of the Loan, the redemption of the 2003 CDC Bonds, the termination of the Indenture and the Regulatory Agreement, the prepayment of Special Tax A, the redemption of the 1997 Current Interest District Bonds, the preparation and execution of a maintenance agreement for the District Public Areas and the related release of Special Tax B are hereby approved, confirmed and ratified, and the proper officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to cause the documents herein approved to become effective and to implement the provisions of each such document.

ADOPTED by the City Council of the City of Pasadena at a meeting held on the 20th day of May, 2013, by the following vote:

AYES:

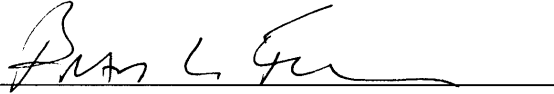
NOES:

ABSENT:

ABSTAIN:

MARK JOMSKY
City Clerk

APPROVED AS TO FORM:



Brad L. Fuller
Assistant City Attorney