



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** October 20, 2009

**TO:** Mayor and Councilmembers

**FROM:** Administration Division, Finance Department

**SUBJECT:** Resolution Approving The City's Participation In The Property Tax Securitization Program

### **RECOMMENDATION:**

That Council adopt, by reading of title only, 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.

### **DISCUSSION:**

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. These provisions can only be suspended if the Governor declares a fiscal necessity and two-thirds of the Legislature concurs.

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 fiscal year 2010 budget package on July 28, 2009. As allowed by Proposition 1A, 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 at 2% per annum by June 30, 2013. The amount to be borrowed from the City of Santa Barbara is approximately \$2.2 million.

ABX4 14 and ABX4 15 authorized a Proposition 1A Securitization Program, which is being sponsored by the California Statewide Communities Development Authority ("California Communities"), to enable local agencies to securitize their Proposition 1A receivable and thereby receive their borrowed property tax monies in advance.

California Communities is a joint powers authority of the California State Association of Counties and the League of California Cities. California Communities also sponsored the securitization program for the vehicle license fee backfill suspended from local agencies in fiscal year 2003 by the State (VLF "Gap" Loan), in which the City of Santa Barbara participated.

The legislature is currently reviewing a clean-up bill, SB67, which would provide for a few critical changes to the enabling legislation. While SB 67 has not yet been passed and signed into law, the legislature is expected to approve the bill 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.

### **Securitization Program Details**

Under the Securitization Program, California Communities will purchase the Proposition 1A receivable from participating agencies, issue bonds ("Prop 1A Bonds") and subsequently provide each local agency with the cash proceeds in two equal installments, on January 15, 2010 and May 3, 2010. These two installments will coincide with the dates that the State will be shifting property tax from local agencies.

Unlike the securitization program for the VLF Gap Loan in which local agencies received approximately 93% of the unpaid revenues, the payments to the local agencies will equal 100% of the amount of the property tax reduction. In addition, all transaction costs of issuance and interest will be paid by the State of California, and participating local agencies will have no obligation on the bonds and no credit exposure to the State.

If approved, the City's sale of its Proposition 1A receivable will be irrevocable and bondholders will have no recourse to the City if the State does not make the Proposition 1A repayment.

### **Proposed Proposition 1A Receivables Sale Resolution**

The proposed Proposition 1A Receivables Sale Resolution:

- A. Authorizes the sale of the City's Proposition 1A receivable to California Communities for 100% of its receivable;
- B. Approves the form, and directs the execution and delivery, of the Purchase and Sale Agreement with California Communities and related documents;
- C. Authorizes and directs the Authorized Officers 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 receivable and instructing the disbursement of the Proposition 1A receivable to the Proposition 1A Bond Trustee;
- D. Appoints certain City officers and officials as Authorized Officers for purposes of signing documents; and
- E. Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

### **Proposed Purchase and Sale Agreement**

The proposed Purchase and Sale Agreement provides for the sale of the Proposition 1A receivable to California Communities and, among other things, contains representations and warranties of the City to assure California Communities that the Proposition 1A receivable has not been previously sold, is not encumbered, that no litigation or other actions is pending or threatened to disrupt the transaction and that this is an arm's length "true sale" of the Proposition 1A receivable.

The proposed Proposition 1A Purchase and Sale Agreement includes the following exhibits:

1. Opinion of Counsel (Exhibit B1) – This is an opinion of the counsel to the local agency (which may be an in-house counsel or an outside counsel) covering basic approval of the documents, litigation, and enforceability of the document against the Seller. It will be dated as of the Pricing Date of the bonds (currently expected to be November 10, 2009).
2. Bringdown Opinion (Exhibit B2) – This simply "brings down" the opinions to the closing date (currently expected to be November 19, 2009).
3. Certificate of the Clerk of the Local Agency (C1) – A certificate of the Clerk confirming that the resolution was duly adopted and is in full force and effect.
4. Seller Certificate (Exhibit C2) – A certification of the Seller dated as of the Pricing Date confirming that the representations and warranties of the Seller are true as of the Pricing Date, confirming authority to sign, confirming due approval of the resolution and providing payment instructions.
5. Bill of Sale and Bringdown Certificate (Exhibit C3) – Certificate that brings the certifications of the Seller Certificate (C2) down to the Closing Date and confirms the sale of the Proposition 1A receivable as of the Closing Date.
6. Irrevocable Instructions to the Controller (Exhibit D) – Required in order to let the State Controller know that the Proposition 1A receivable has been sold and directing the State to make payment of the receivable to the Trustee on behalf of the Purchaser.
7. Escrow Instruction Letter (Exhibit E) – Instructs Transaction Counsel to hold all documents in escrow until closing, and if closing does not occur by December 31, 2009, for any reason, to destroy all documents.

If approved by City Council, staff will deliver the executed documents to the Transaction Counsel by November 6, 2009, as required for participation in the program.

### **Recommended Action**

Staff recommends that the City participate in the Proposition 1A Securitization Program and adoption by Council of the proposed Proposition 1A Sale Resolution and Purchase and Sale Agreement. The recommendation is based primarily on the fact that 100% of the funds will be received with no financial commitments or obligations associated with the bonds to be issued by California Communities. It also removes the risk of non-payment by the State.

Staff presented this item to the Finance Committee on Tuesday, October 13. The Committee voted unanimously to recommend Council's approval of the City's participation in the program.

### **BUDGETARY AND FINANCIAL INFORMATION**

Participation in the Securitization Program will avoid a delay of at least three years for the receipt of \$2.2 million in property taxes borrowed by the State and, thus, will have no budgetary impact.

**SUBMITTED BY:** Robert Samario, Interim Finance Director

**APPROVED BY:** City Administrator's Office