



City of North Port

Office of the City Attorney

Revised Response to Legal Request

To: Chelsea Buell, Public Works

From: Michael Golen, Deputy City Attorney *M. Golen*

Copy: A. Jerome Fletcher II, City Manager
Jason Yarborough, Deputy City Manager
Chuck Speake, Public Works Director
Tricia Wisner, Assistant Public Works Director
Amber L. Slayton, City Attorney

Date: February 15, 2024

Regarding: Series 2023 Transportation Refunding Note (1927)

A response to your legal request was provided on December 26, 2023. This revised response amends Section II provided below to include review of the Truist Commercial Equity Agreement.

You inquired about revenues and payment related to the City's bond for road rehabilitation. In response to a successful bond referendum held on November 6, 2012, the City issued a bond for road rehabilitation. After refinancing the bond in 2020 the City is currently receiving revenues exceeding the required debt service. This memo addresses the legal aspects of your questions.

I. SUMMARY

- A. No Reserve Amount Required. The bond contains no requirement that the City hold any amount in reserve and no requirement to pay surplus to principal.
- B. Assessment Options. A reduction or elimination of the assessment should have no legal impact on those property owners who chose the one-time payment option; however, it is recommended to use surplus funds to re-address roads that were originally worked on using the bond funds.
- C. Interlocal Agreement. The intent of the interlocal agreement is for it to apply to both the series 2013 bonds and to any debt refunding the series 2013 bonds. All of the series 2013 bonds were refunded with the series 2020 taxable refunding revenue note, that was subsequently exchanged for the series 2023 capital improvement refunding revenue note. The parties could amend the agreement to clarify that it covers the series 2023 note and any debt subsequently issued to refund the series 2023 note.

II. NO RESERVE AMOUNT REQUIRED

Repayment of the bond is accomplished through an assessment of \$46.00 on each parcel; alternatively, a property owner may choose to make a one-time payment of \$592.36.¹ Pursuant to the bond language there is no requirement that the City hold any amount in reserve. Additionally, the bond has no requirement to pay surplus to principal. The City's agreement with Truist Commercial Equity, specifically Section 3.02(b), authorizes the City to prepay up to 15% of the outstanding principal amount as of the prior January 1st.

III. ASSESSMENT OPTIONS

A reduction or elimination of the assessment should have no legal impact on those property owners who chose the one-time payment option. However, although the group that chose the one-time payment option should not have a legal basis to successfully challenge the City's action, nothing prevents someone from bringing a legal action against the City.

The City Attorney's Office consulted with the City's bond counsel at Nabors, Giblin & Nickerson, P.A., who advises that assessment resolutions contain a provision noting that assessments may be reduced or eliminated at some point in the future and those property owners who elect to prepay are not entitled to any rebate or refund. Bond counsel also advises to include similar language in the notices that go out to property owners. The City did not include this language in its assessment resolution or instruments but remains in a legally defensible position, nonetheless. For this reason, bond counsel recommends using the surplus funds to re-address roads that were originally worked on using the bond funds.

IV. INTERLOCAL AGREEMENT

The City's bond counsel reviewed the interlocal agreement between the City and the Road and Drainage District that identifies the 2013 bond issuance and outlines payment obligations. Bond counsel interprets the agreement's intent as applying to both the series 2013 bonds and to any debt refunding the series 2013 bonds. All of the series 2013 bonds were refunded with the series 2020 taxable refunding revenue note, that was subsequently exchanged for the series 2023 capital improvement refunding revenue note and that is currently outstanding and held by Truist Commercial Equity, Inc.

An amendment of the interlocal agreement could add clarity that the agreement covers the series 2023 note and any debt subsequently issued to refund the series 2023 note. However, because of who the parties to the agreement are there is no practical risk that either party will bring a legal challenge. If the City or district desires to move forward with an amendment, please submit a new legal request with a draft amendment for legal review.

¹ Approximately 120 parcels have chosen to make the one-time payment of \$592.36.