

**CITY OF BELLE SLE, FLORIDA
MEMO TO CITY COUNCIL**

Meeting Date: August 1, 2023
To: Honorable Mayor and City Council Members
From: Chief Grimm, Interim City Manager
Subject: 2020 Bond Proceeds

The Capital Improvement Revenue Note, Series 2020, has a due date to spend the bond proceeds of September 25, 2023; however, the loan agreement states that the time limit may be extended by the lender's written consent with notice to the bond council. The City would be required to obtain an opinion from the note counsel that the extension would not adversely affect the validity or tax-exempt status of the note.

The City reached out to the note counsel, Bryant Miller Olive, P.A., to obtain answers to the Council's questions and inquire about an extension. The answers received are below in red.

What happens if we don't spend the proceeds?

YOU DEFINITELY WANT TO SPEND THE BOND PROCEEDS SOONER RATHER THAN LATER. THE IRS CODE REQUIRES THAT THE BORROWER HAVE A REASONABLE EXPECTATION AT THE TIME OF ISSUANCE THAT IT SPEND 85% OF THE BOND PROCEEDS WITHIN THREE YEARS OF THE DATE OF ISSUANCE. THE CITY EXECUTED CERTIFICATES AT THE TIME OF ISSUANCE CERTIFYING TO WHAT ITS REASONABLE EXPECTATIONS WERE FOR SPENDING THOSE PROCEEDS. GRANTED, A LOT OF LEGITIMATE THINGS CAN HAPPEN POST-CLOSING THAT IMPACT THE EXPENDITURE SCHEDULE (E.G., CONSTRUCTION DELAYS, COST REDUCTIONS, HURRICANES, POLITICAL CHANGES, ETC.) AND IT DOESN'T MEAN THE EXPECTATIONS AT THE TIME OF CLOSING WERE UNREASONABLE. MORE THAN LIKELY, THE EXPECTATIONS CERTIFIED TO AT CLOSING WERE REASONABLE AT THE TIME. IN WHICH CASE, IT'S PROBABLY NOT THAT BIG OF A DEAL FROM AN IRS STANDPOINT. WITH THAT SAID, THE LONGER THE BOND PROCEEDS REMAIN UNSPENT, THE MORE IT CAN LOOK LIKE THE EXPECTATIONS AT THE TIME OF CLOSING WERE NOT REASONABLE, WHICH COULD CAUSE ISSUES IF THE DEAL WERE EVER AUDITED BY THE IRS.

If we don't spend the proceeds, do we jeopardize the bond itself?

IF 85% OF THE BOND PROCEEDS ARE NOT SPENT WITHIN THREE YEARS, AND THE IRS AUDITS THE BOND AND DETERMINES THE CITY'S EXPECTATIONS AT THE TIME OF CLOSING WERE NOT REASONABLE, THE IRS COULD TECHNICALLY DEEM THE BONDS TAXABLE. THE CITY WOULD HAVE TO PAY THE BONDHOLDER THE DIFFERENCE BETWEEN THE TAXABLE AND TAX-EXEMPT RATE TO MAKE THEM WHOLE. SINCE YOU ARE SO CLOSE TO THE 85% NUMBER, I WOULD HOPE THE IRS DOESN'T GO TO THAT EXTREME A PENALTY, BUT THEY COULD IF THEY WANTED TO.

Are we going to be in violation of the covenants of the bond?

TECHNICALLY, YES. IT IS A COVENANT DEFAULT UNDER SECTION 8.01(C), SO THE COUNCIL OR LENDER HAS TO NOTIFY YOU OF THE DEFAULT, AND THEN THE CITY WILL HAVE 30 DAYS TO CURE THE DEFAULT. BASED ON YOUR TIMELINE, WE SHOULD BE ABLE TO GET ANY EXTENSIONS PRIOR TO THE POINT WHERE THE DEFAULT CLOCK EVEN STARTS TICKING.

If the proceeds are not used, does it go back and lower the amount we owe?

IF THE PROCEEDS ARE NOT USED FOR ANOTHER CAPITAL PROJECT, THE PROCEEDS CAN BE USED TO MAKE THE NEXT PRINCIPAL PAYMENT COMING DUE. OUR PREFERENCE IS THAT THE BOND PROCEEDS ARE SPENT ON AUTHORIZED CAPITAL PROJECTS, WHICH WOULD BE ANY LAND ACQUISITION AND STORMWATER IMPROVEMENTS. IF THE CITY WANTS TO USE IT FOR SOMETHING ELSE, WE CAN PROBABLY FIGURE THAT OUT TOO. AS LONG AS IT'S A CAPITAL PROJECT FOR A MUNICIPAL PURPOSE, WE SHOULD BE ABLE TO AUTHORIZE IT. THAT WOULD JUST REQUIRE A LITTLE MORE WORK LIKE AN AMENDMENT TO THE LOAN AGREEMENT AND RESOLUTION APPROVING THE NEW PROJECT.

Is it uncommon to ask for an extension?

WE HAVE BEEN ASKED FOR EXTENSIONS ON A FEW OCCASIONS, AND THERE IS NOTHING WRONG WITH SEEKING THE EXTENSION. THAT LANGUAGE IS DESIGNED SO THAT WE HAVE THIS CONVERSATION NOW AND NOT 10 YEARS FROM NOW WHEN WE REALLY COULD HAVE A PROBLEM FOR THE REASONS PREVIOUSLY MENTIONED. IF YOU PROVIDE THE COUNCIL AND ME WITH A LETTER STATING HOW MUCH IS LEFT TO BE SPENT, THE REASONS IT HAS NOT BEEN SPENT TO DATE, AND A PLAN AS TO HOW AND WHEN THE PROCEEDS WILL BE SPENT, WE CAN REACH OUT TO THE LENDER AND WORK ON GETTING THAT CONSENT. ASSUMING THE REASONS AND PLAN ARE GOOD, WE SHOULD BE ABLE TO ISSUE THE NO ADVERSE OPINION, AND THE LENDER SHOULD CONSENT.