



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** Nixon Peabody LLP Contract

**DATE:** March 16, 2005

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## **RECOMMENDATION**

Approval of a contract for \$123,000.00 with Nixon Peabody LLP for services to the City and Agency associated with the Redevelopment Agency of the City of San Jose Merged Area Redevelopment Project Housing Set-Aside Tax Allocation Bonds, Series 2005

## **BACKGROUND**

The staffs of the Agency, the City Departments of Finance and Housing, the City Attorney, the City's financial advisor and the attorneys at Nixon Peabody LLP worked jointly to develop an innovative proposal that would provide additional funding for affordable housing projects through the State of California. The proposal would allow redevelopment agencies to leverage their housing set aside funds by allowing the use of housing set aside as security for the repayment of tax-exempt private activity bonds. The parties submitted their proposal to the California Debt Limit Allocation Committee (CDLAC) and on July 21, 2004 CDLAC adopted revised procedures, which included the new Redevelopment Agency Housing Set-Aside Program.

On October 1, 2004 the City on behalf of the Agency submitted a CDLAC application for qualified private activity bonds in the amount of \$75.315 million. The application outlined the use of the proceeds from the proposed bond issuance

At the December 15, 2004 CDLAC meeting, the City/Agency received a private activity bond allocation of \$75.315 million under CDLAC's new program.

## **ANALYSIS**

Nixon Peabody provided services to the City and Agency in their effort to revise the CDLAC regulations and in anticipation of the issuance of the 2005 Redevelopment Agency of the City of San Jose Merged Area Redevelopment Project Housing Set-Aside Tax Allocation Bonds.

The firm will also serve as bond counsel and disclosure counsel for the Bonds, which will be issued later this year.

## **OUTCOMES**

The new CDLAC Program will help the Agency and City leverage their housing set aside funds by allowing the use of housing set aside as security for the repayment of tax-exempt private activity bonds. The tax-exempt bonds will assist efforts to maximize the impact of housing set aside in the development of low income housing by allowing funds to be loaned at a tax-exempt rate and increase the amount of subsidy available to affordable housing projects. By leveraging the housing set-aside funds on a tax-exempt basis, Agency is able to increase its bonding capacity by about 10 percent over taxable debt. In the case of the proposed financing, Agency would be able to increase its bonding capacity by approximately \$8 million. This will allow Agency to fund an additional 160 units, assuming a subsidy of \$50,000 per unit."

## **PUBLIC OUTREACH**

Not applicable.

## **COORDINATION**

This matter has been coordinated with the Departments of Finance and Housing and the General Counsel of the Agency.

## **CEQA**

Not applicable.

## **COST IMPLICATIONS**

No appropriation of funds is required at this time. Compensation for bond counsel for their services related to the 2005 Redevelopment Agency of the City of San Jose Merged Area Redevelopment Project Housing Set-Aside Tax Allocation Bonds are contingent on the successful sale and close of the Bonds and will be paid from Bond proceeds.

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RICHARD DOYLE  
City Attorney

cc: Del Borgsdorf