COUNCIL/AGENCY/AUTHORITY AGENDA: 5-24-05
ITEM: 2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR, CITY COUNCIL, REDEVELOPMENT AGENCY BOARD AND CITY OF SAN JOSE FINANCING AUTHORITY BOARD

FROM: Del D. Borgsdorf
Harry S. Mavrogenes

SUBJECT: **REDEVELOPMENT AGENCY HOUSING SET-ASIDE TAX ALLOCATION BONDS, SERIES 2005A, 2005B, 2005C & 2005D**

DATE: May 5, 2005

COUNCIL DISTRICT: Citywide

RECOMMENDATION

a. Adoption of a resolution of the Redevelopment Agency Board:

1. Authorizing the issuance of the following series of Redevelopment Agency of the City of San José Merged Area Redevelopment Project housing set-aside tax allocation bonds:

   a. Housing Set-Aside Tax-Exempt Refunding Tax Allocation Bonds, Series 2005A in an amount not to exceed $12,000,000 (the "2005A Bonds");
   b. Housing Set-Aside Taxable Refunding Tax Allocation Bonds, Series 2005B in an amount not to exceed $120,000,000 (the "2005B Bonds");
   c. Subordinate Housing Set-Aside Tax Allocation Variable Rate Demand Bonds, Series 2005C (AMT) and 2005D (AMT) in an aggregate principal amount not to exceed $75,315,000 (respectively, the "2005C and 2005D Bonds" and, collectively with the 2005A and 2005B Bonds, the "Bonds");

2. Approving in substantially final form the Bonds, Seventh Supplemental Agreement, First Supplemental Agreement (Subordinate), one or more Bond Purchase Agreements, one or more Reimbursement Agreements, one or more Remarketing Agreements, one or more Escrow Agreements, a Continuing Disclosure Agreement, preliminary and final Official Statements relating to the 2005A and 2005B Bonds, final Official Statement relating to the 2005C and 2005D Bonds; authorizing certain Agency officials to execute and, as appropriate, negotiate these documents and other related documents as necessary; and

3. Authorizing certain Agency officials to take all necessary actions in connection with the issuance of the Bonds.

b. Adoption of a resolution of the City Council:

1. Approving the issuance of the Bonds by the Redevelopment Agency; approving the execution and delivery of one or more Tax Regulatory Agreements; and making a finding pursuant to Redevelopment Law that the Merged Area will benefit from the projects funded by the Bonds that are located outside of the Merged Area;

2. Authorizing certain City officials to take all necessary actions in connection with issuance of the Bonds;

3. Authorizing the City Attorney to negotiate and execute an amendment to the agreement with Nixon Peabody LLC, increasing compensation by $50,000 for a total amount not to exceed $173,000 for Bond Counsel and Disclosure Counsel fees.

c. Adoption of a resolution of the San José Financing Authority Board:

1. Approving the purchase of the 2005A and 2005B Bonds from the Agency for concurrent resale to the underwriters of such Bonds; approving the purchase of the 2005C and 2005D Bonds from the Agency for concurrent resale to the underwriters of such Bonds; approving the execution of one or more Bond Purchase Agreements with respect to the Bonds; and approving the distribution of preliminary and final Official Statement relating to the 2005A and 2005B Bonds and the final Official Statement relating to the 2005C and 2005D Bonds;

2. Authorizing certain City and Agency officials on behalf of the San José Financing Authority (the "Authority") to take all necessary actions in connection with the issuance of the Bonds.

BACKGROUND

On July 21, 2004, the California Debt Limit Allocation Committee ("CDLAC") adopted changes in its policies and procedures to permit the allocation of private activity volume cap to qualifying housing set-aside bond issuers. This was a program suggested and developed by City of San José staff during 2004 as a means of lowering the borrowing costs of housing set-aside tax allocation bonds issued by the Redevelopment Agency of the City of San José (the "Agency"), on behalf of the City's Affordable Housing Program, thereby increasing the capacity to issue such bonds in the future.

On September 28, 2004, the Agency Board adopted Resolution 5544 (1) expressing its intent to issue up to $125 million of private activity tax-exempt housing set-aside tax allocation bonds to finance loans relating to certain affordable housing projects listed in Exhibit A; (2) authorizing the Director of Housing to file an application with CDLAC for an allocation of up to $125 million in private activity bonds; and (3) delegating to (a) the Director of Finance of the City the authority to hold Tax Equity and Fiscal Responsibility Act (TEFRA) hearings relating to these projects and other projects to be funded with tax-exempt private activity housing set-aside tax allocation bonds and (b) the Director of Housing the ability file future applications with CDLAC for private activity

allocation for housing set-aside bonds. On September 28, 2004, the City Council adopted Resolution 72335 accepting such delegations of authority.

On October 1, 2004, pursuant to such delegation, the City submitted its application to CDLAC for $75,315,000 of private activity bond allocation and on October 18, 2004, a TEFRA hearing was held with respect to the projects listed in Exhibit A. On December 15, 2004, CDLAC awarded the Agency a private activity bond allocation in the requested amount.

On March 22, 2005, the City Council adopted Resolution 72588, authorizing the City Attorney's Office to negotiate and execute a contract with Nixon Peabody LLC to serve as Bond and Disclosure Counsel in connection with the proposed issuance of Merged Area tax-exempt private activity housing set-aside tax allocation bonds and the refunding of certain outstanding housing set-aside bonds of the Agency. The City Council and the Agency Board also approved an underwriting team consisting of Citigroup Global Market Inc. ("Citigroup") as senior manager, Banc of America Securities LLC ("Bank of America"), E.J. De La Rosa & Co. Inc. ("E.J. De La Rosa"), Stone & Youngberg LLC ("Stone & Youngberg") and UBS Financial Services ("UBS") as co-managers (collectively, the "Underwriters").

The Agency has previously issued (a) eight series of fixed rate parity housing set-aside tax allocation bonds in the aggregate principal amount of $200,250,000, of which five series in the aggregate principal amount of $137,535,000 remain outstanding, and (b) two series of variable rate subordinate housing set-aside taxable tax allocation bonds in the aggregate principal amount of $70,000,000, both of which remain outstanding. In March 1999, a line of credit (the "Line of Credit") in the amount of $30,000,000 was established at Canadian Imperial Bank of Commerce for the Housing Department to fund housing projects on a taxable short-term basis. The Line of Credit was subsequently transferred to First Union Bank (later Wachovia Bank) and then, in March 2003, to Bank of New York which increased it to $50,000,000. The Line of Credit is currently drawn in the amount of $30,600,000. The table below shows the history of debt (senior and subordinate) issued for the Housing program:

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
Bonded Indebtedness Payable from Housing Set-Aside Amounts
(as of May 1, 2005)

	Original Par Amount	Par Amount Outstanding
Senior Debt		
1993A[1]	$27,445,000	-
1993B[2]	7,555,000	-
1993C[1]	24,475,000	-
1993D	10,525,000	10,525,000
1997E	17,045,000	17,045,000
2000F	44,205,000	44,205,000
2003J	55,265,000	52,930,000
2003K	13,735,000	12,830,000
Total Senior Debt	**$200,250,000**	**$137,535,000**
Subordinate Debt		
2002G	$35,000,000	$35,000,000
2002H	35,000,000	35,000,000
Total Subordinate Debt	**$70,000,000**	**$70,000,000**
Total Senior and Subordinate Debt	**$270,250,000**	**$207,535,000**

[1] Refunded with the 2003K Bonds
[2] Refunded with the 2003J Bonds

ANALYSIS

This portion of the report is divided into several sections to address the items in staff's recommendation to proceed with the financing. These sections include: description of the bond financing structure, bond financing documents, discussion of the financing team participants, and a review of the financing schedule.

Bond Financing Structure

Overview of the Bonds The Bonds will be issued by the Agency in four series: the 2005A Bonds in the approximate amount of $10,275,000; the 2005B Bonds in the approximate amount of $111,330,000; and 2005C and 2005D Bonds in the aggregate amount not to exceed $75,315,000. These four series of tax allocation bonds total approximately $196,620,000 and are described below:

- Housing Set-Aside Tax-Exempt Refunding Tax Allocation Bonds, Series 2005A (the "2005A Bonds"). The 2005A Bonds in the approximate amount of $10,275,000 will refund the Agency's Housing Set-Aside Tax Allocation Bonds, Series 1993D (the "1993D Bonds"). The 2005A Bonds will be secured by 20% housing set-aside tax allocation revenues on a parity with the 1997E, 2003J and 2003K Bonds. The 2005A Bonds will be issued as fixed rate bonds with principal maturities from August 1, 2018 through August 1, 2024. These

maturities have been structured to produce level annual savings with the 1993D Bonds being refunded. Interest on the 2005A Bonds will be exempt from Federal and State taxation.

- Housing Set-Aside Taxable Refunding Tax Allocation Bonds, Series 2005B (the "2005B Bonds"). The 2005B Bonds in the approximate par amount of $111,330,000 will refund the Agency's Housing Set-Aside Taxable Tax Allocation Bonds, Series 2000F (the "2000F Bonds") and a portion of the Housing Set-Aside Taxable Tax Allocation Bonds, Series 2002G and 2002H (the "2002G Bonds" and "2002H Bonds"). The 2005B Bonds will be secured by 20% housing set-aside tax allocation revenues on a parity with the 1997E, 2003J, 2003K and 2005A Bonds (collectively with the 2005B Bonds, the "Senior Bonds"). The 2005B Bonds will be issued as fixed rate bonds with principal maturities from August 1, 2006 through August 1, 2035. These maturities have been structured to produce level coverage of aggregate annual debt service of the Senior Bonds from housing set-aside tax increment. Interest on the 2005B Bonds will be taxable on a federal basis (although exempt from State of California personal income tax) because the issues being refunded (Series 2000F, 2002G and 2002H) are themselves taxable debt.

- Subordinate Housing Set-Aside Tax Allocation Variable Rate Demand Bonds, Series 2005C (AMT) and 2005D (AMT) (respectively, the "2005C Bonds" and "2005D Bonds" and collectively with the 2005A and 2005B Bonds, the "Bonds"). The 2005C and 2005D Bonds, in an aggregate principal amount not to exceed $75,315,000, will refund a portion of the Series 2002G Bonds, replenish the Line of Credit and provide funds to finance or refinance gap loans made in connection with certain affordable housing developments. The 2005C and 2005D Bonds will be secured by 20% housing set-aside tax allocation revenues on a basis subordinate to the Senior Bonds. The 2005C and 2005D Bonds will be issued as multi-modal, variable rate demand bonds with an interest rate that will reset every week. (See Exhibit B for a description of multi-modal, variable rate demand bonds.) The 2005C and 2005D Bonds will have a single maturity on August 1, 2035, but with mandatory sinking fund redemption payments on August 1 of each year commencing August 1, 2006. The annual sinking fund payment schedule has been developed to produce level debt service coverage of the Senior Bonds and the 2005C and 2005D Bonds, on a combined basis, from housing set-aside revenues. Because of the CDLAC allocation, the 2005C and 2005D Bonds are tax-exempt private activity bonds, subject to the Alternative Minimum Tax ("AMT"). For tax reasons, the 2005C and 2005D Bonds must be sold at least 15 days after the sale of the 2005A and 2005B Bonds.

The table below shows the expected composition of the Agency's housing set-aside tax allocation bonded indebtedness following the issuance of the Bonds:

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
Bonded Indebtedness Payable from Housing Set-Aside Amounts
(Following Issuance of the Bonds)

	Original Par Amount	Par Amount Outstanding
Senior Debt		
1993D	10,525,000	-
1997E	17,045,000	17,045,000
2000F	44,205,000	-
2003J	52,930,000	52,930,000
2003K	12,830,000	12,830,000
2005A	-	10,275,000
2005B	-	111,330,000
Total Senior Debt	**$137,535,000**	**$204,410,000**
Subordinate Debt		
2002G	35,000,000	-
2002H	35,000,000	-
2005C	-	37,655,000
2005D	-	37,660,000
Total Subordinate Debt	**$70,000,000**	**$75,315,000**
Total Senior and Subordinate Debt	**$207,535,000**	**$279,725,000**

Estimated Sources and Uses of Bond Proceeds

The estimated sources and uses of Bond proceeds are shown in the following table:

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
Housing Set-Aside Tax Allocation Bonds, Series 2005A, 2005B, 2005C and 2005D
Sources and Uses of Funds*

	Series 2005A	Series 2005B	Series 2005C/D[1]	Total
Sources				
Par value	$10,275,000	$111,330,000	$75,315,000	196,920,000
Original Issue Premium	671,084	-	-	671,084
Debt service pmt 8/1/05 on deposit for 1993D	302,594	-	-	302,594
Debt service pmt 8/1/05 on deposit for 2000F	-	1,719,390	-	1,719,390
Total Sources	**$11,248,678**	**$113,049,390**	**$75,315,000**	**$199,613,068**
Uses				
Repay Bank of New York line of credit	-	-	$30,600,000	$30,600,000
Deposit to (re)finance outstanding loans	-	-	36,380,280	36,380,280
Current refunding escrow 1993D	11,012,606	-	-	11,012,606
Advance refunding escrow 2000F	-	48,078,931	-	48,078,931
Deposit for repayment of 2002 G&H	-	62,085,000	7,915,000	70,000,000
Bond insurance (0.784% of total debt service)	148,398	1,752,383	-	1,900,781
Surety bond (2.4% of Reserve Requirement)	26,271	222,899	-	249,170
Upfront Letter of Credit Fees/Bank Counsel	-	-	31,000	31,000
Underwriters' Discount	27,659	556,650	150,630	734,939
Deposit to Cost of Issuance and rounding	$33,744	$353,527	$238,090	$625,361
Total Uses	**$11,248,678**	**$113,049,390**	**$75,315,000**	**$199,613,068**

*Preliminary and subject to change.
[1]Will be split into two series of approximately equal size.

Debt Service Savings The 2005A and 2005B Bonds are being issued to refund certain outstanding series of housing set-aside tax allocation bonds for debt service savings.

The 2005A Bonds will refund the 1993D Bonds. Based on interest rates as of April 29, 2005, the 2005A Bonds will carry an average rate of approximately 4.20% compared with approximately 5.75% for the 1993D Bonds. This difference produces a net present value debt service savings of about $1.15 million, which is approximately 10.9% of the outstanding par value of the 1993D Bonds.

The 2005B Bonds will refund the 2000F Bonds and approximately $62 million of the 2002G and 2002H Bonds. Based on interest rates as of April 29, 2005, the 2005B Bonds will carry an average rate of approximately 5.35% compared with approximately 7.75% for the 2000F Bonds. This difference produces net present value debt service savings of about $8.7 million, which is approximately 19.8% of the outstanding par value of the 2000F Bonds.

Each of these net present value percentage savings is well above the 3% benchmark established in the Council Adopted Debt Management Policy.

The refunding of the 2002G and 2002H Bonds does not produce savings, but rather fixes the rates of these taxable variable rate bonds. Because it is cost-effective for the Agency to maintain 20% to 30% of its housing set-aside debt as variable rate, the issuance of the 2005C and 2005D Bonds will effectively replace the 2002G and 2002H Bonds as the Agency's variable rate debt component. The 2005C and 2005D Bonds are tax-exempt (subject to AMT); as such, they are expected to have a lower interest rate than the taxable 2002G and 2002H Bonds to be refunded. The historical average for tax-exempt (non-AMT) variable rate bonds from January 1990 to April 2005 is 3.06% as compared to 4.52% for taxable variable rate bonds over the same period. Historically, tax-exempt AMT variable rate bonds trade at 5 basis points higher than comparable tax-exempt variable rate bonds.

Affordable Housing Loans to be Financed or Refinanced The 2005C and 2005D Bonds, in addition to refunding approximately $8 million of the 2002G Bonds, will finance or refinance loans for 13 affordable housing projects with an aggregate of 1,949 units set aside for low, very low or extremely low income families and seniors. Of these loans, nine loans in the aggregate amount of $30,600,000 currently have been funded by the Line of Credit; the remainder will be funded from 2005C and 2005D Bond proceeds. The table below shows all of the loans to be financed or refinanced, in whole or in part, with the 2005C and 2005D Bonds:

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
Affordable Housing Loans to be Financed or Refinanced

Funding Date	Project Name	Developer	Amount
08/08/03	Brooks House	1710 Moorpark Avenue, LP	$3,325,000
10/21/03	Summer Crest	Almaden Senior Housing Partners, L.P.	3,052,171
10/21/03	Oak Tree Village	Branham Lane Apartments, L.P.	1,447,829
11/19/03	Evans Lane (JSM)	Evans Lane Apartment, L.P.	1,368,706
11/19/03	Fallen Leaves	Fallen Leaves Apartments, L.P.	3,631,294
08/20/04	Paseo Senter I and II	Paseo Senter, L.P.	12,883,350
08/08/03-10/08/04	Cinnabar Commons	Cinnabar Commons L.P.	4,681,575
10/08/04-04/20/05	Delmas Park	Delmas Park Associates, L.P.	5,067,000
June, 2005 (est.)	Turnleaf	Fairfield Turnleaf L.P.	2,951,000
July, 2005 (est.)	Fairgrounds (ROEM)	Fairgrounds Luxury Apartments, L.P.	10,856,800
July, 2005 (est.)	Fairgrounds (HACSC)	HACSC Fairgrounds Family Associates, L.P.	8,378,250
June, 2007 (est.)	Almaden Family Apartments	Almaden Family Housing Partners, L.P.	13,775,000
			$71,417,975

Ratings and Credit Enhancement The 2005A and 2005B Bonds will carry ratings of Aaa/AAA/ AAA from Moody's, Standard & Poor's and Fitch, respectively as a result of a guaranty policy to be provided by Financial Guaranty Insurance Company ("FGIC") guaranteeing the principal and interest payments on the 2005A and 2005B Bonds. The 2005A and 2005B Bonds also will carry unenhanced ratings of A2/A/A from Moody's, Standard & Poor's and Fitch, respectively. FGIC will charge a bond insurance premium of 78.4 basis points (0.784%) times the total debt service on the 2005A and 2005B Bonds. FGIC will also provide a surety bond policy for the Debt Service Reserve Fund for a premium of 2.4% of the deposit requirement. FGIC was selected pursuant to a competitive Request for Insurance Bids process initiated by City Finance Department staff on April 6, 2005. Offers to provide bond insurance

were received from three bond insurers (Ambac, FGIC and MBIA). FGIC proposed the lowest insurance premium and was the only bond insurer willing to provide insurance and a surety for the entirety of the 2005A and 2005B Bonds.

The 2005C and 2005D Bonds are expected to have ratings of Aa2/VMIG-1[1] from Moody's as a result of irrevocable, direct draw letters of credit (one for each series) to be issued by Bank of New York guaranteeing principal and interest payments on the 2005C and 2005D Bonds and liquidity for remarketing purposes. The 2005C and 2005D Bonds will not carry unenhanced ratings. Bank of New York will charge an annual letter of credit fee of 45 basis points (0.45%) of the principal amount of the 2005C and 2005D Bonds plus 35 days of interest calculated at 12%, the maximum interest rate for these Bonds. The letters of credit will have initial terms of five years and can be renewed annually on the anniversary date of each credit facility at the mutual option of the Bank and the Agency. The resolutions of the Agency and City authorize designated officers of the Agency and City to execute extensions of the letters of credit as long as the annual fee does not exceed 100 basis points. Bank of New York was selected pursuant to a competitive bid process that commenced on March 17, 2005. Three banks responded to the RFQ: Dexia, State Street and Bank of New York. Offers to provide letters of credit were provided from two banks (Bank of New York and State Street) meeting the City's requirements and accepting the terms and conditions applicable to the 2005C and 2005D Bonds. The offer from Bank of New York was determined to provide the lowest cost financing to the Agency.

Manner of Sale The Agency has sold its three most recent fixed rate housing set-aside tax allocation bonds (the 2000F, 2003J and 2003K Bonds) at competitive sale. Because of the complexity of the overall plan of finance, the sensitivity of the 2005A and 2005B Bonds to market timing, the credit and market issues associated with tax increment revenues, and the variable rate nature of the 2005C and 2005D Bonds, the Bonds will be sold through negotiated sale. To effectuate the negotiated sale, the Bonds will be purchased from the Agency by the City of San José Financing Authority for concurrent resale to the underwriters of the Bonds.

The 2005A and 2005B Bonds will be sold to the team of Underwriters, with Citibank serving as senior managing underwriter. The Underwriters were selected through a competitive process described in the staff report prepared in connection with the March 22, 2005 City Council and Agency Board meeting.

The 2005C Bonds will be sold to and remarketed by Citigroup and the 2005D Bonds will be sold to and remarketed by Bank of America. Both are members of the underwriting team for the fixed rate bonds.

---

[1] VMIG-1 (Variable Municipal Investment Grade) is the highest short-term rating assigned by Moody's.

Bond Financing Documents

There are a number of bond financing documents that require Agency Board, City Council and/or Authority Board approval to proceed with the issuance of the Bonds. The major documents are described below. These documents, in substantially final form, will be available for review in the City Clerk's office on or about May 16, 2005. Staff recommends that the City Manager or his authorized designees, the Agency's Executive Director or his authorized designees and/or the Authority's Executive Director or his authorized designees (collectively, "Designated Officers") be authorized to execute agreements on behalf of the City, Agency and Authority, as the case may be. As modifications may be required prior to the closing of the Bonds, staff also recommends that the Designated Officers each be authorized to execute the final version of each of these agreements as may be modified upon consultation with the City Attorney's Office and the General Counsel of the Agency.

Official Statements These are the public offering documents for the issuance of the Bonds. The Official Statements are prepared by Disclosure Counsel. The Official Statements disclose material information on the Bonds, including their purposes, payment and redemption terms, sources of security and repayment and financial information on the Agency. Investors use this information to evaluate the credit quality of the Bonds. Both a preliminary and final Official Statement will be distributed in connection with the 2005A and 2005B Bonds; a different Official Statement, only final form, will be distributed in connection with the 2005C and 2005D Bonds.

The underwriters for the 2005A and 2005B Bonds will distribute the Preliminary Official Statement relating to these Bonds to potential purchasers.

The Preliminary Official Statement and the Final Official Statement for the 2005A and 2005B Bonds and the Final Official Statement for the 2005C and 2005D Bonds will be executed by the Director of Finance for the Agency or the Executive Director's authorized designees. Changes to the Preliminary Official Statement will be made subject to the review of the Deputy Director of Finance, Debt and Risk Management and by the Director of Finance for the Agency in consultation with the Agency General Counsel's Office and the City Attorney's Office.

Copies of the draft Official Statements along with Appendix A which generally describes the City's demographics and economics, in substantially final form, will be distributed under separate cover on or about May 16, 2005. Staff has carefully reviewed the information contained in the draft Official Statements and believes it to be accurate and complete in all material aspects.

If any Council member, Redevelopment Agency board member or Authority board member has any personal knowledge that any of the material information in the Official Statements is false or misleading, the member must raise these issues prior to approval of the distribution of the document. City and Agency staff, bond counsel, and the financial advisor will be available at the City Council/Board/Authority meeting on May 24, 2005 to address any questions, issues and/or concerns.

Staff recommends that the Designated Officers of the Agency be authorized to sign the Official Statements for the 2005 Bonds and to make such modifications to these documents as may be necessary upon consultation with the City Attorney's Office and Office of General Counsel. Staff also recommends that the Designated Officers each be authorized to execute certificates regarding these documents as required to comply with securities law and to authorize the underwriters to distribute these documents for purpose of marketing the Bonds.

Seventh Supplemental Agreement This document is between the Agency, as the issuer, and Wells Fargo Bank as Fiscal Agent. This document sets forth the terms of the 2005A and 2005B Bonds, sets up funds and accounts to be held by the Fiscal Agent, and contains the responsibilities and duties of the Fiscal Agent and the rights of the respective bondholders. This supplemental agreement is in addition to prior supplements and the original agreement authorizing prior parity debt issues.

First Supplemental Agreement (Subordinate) This document is between the Agency, as the issuer, and Wells Fargo Bank as Fiscal Agent. This document sets forth the terms of the 2005C and 2005D Bonds, the interest rate modes in which the 2005C and 2005D Bonds may be remarketed, sets up funds and accounts to be held by the Fiscal Agent, and contains the responsibilities and duties of the Fiscal Agent and the rights of the respective bondholders. This supplemental agreement is in addition to the original agreement authorizing the 2002G and 2002H Bonds.

Continuing Disclosure Agreement This is the form of certificate the Agency must provide in connection with fixed rate bond issues and satisfies the continuing disclosure rules and regulations for the issuance of 2005A and 2005B Bonds (SEC rule 15c2-12(b) (5)). The certificate obligates the Agency to continue to provide information regarding the Agency and the 2005A and 2005B Bonds to the secondary (bond) market as long as such Bonds are outstanding.

Reimbursement Agreements The Reimbursement Agreements are between the Agency and the Bank of New York (the "Bank") as letter of credit provider for the 2005C and 2005D Bonds. There will be a separate, identical Reimbursement Agreement for each such series of Bonds. Each Reimbursement Agreement sets forth the responsibilities of the Agency and the Bank with regard to the credit and liquidity guarantees for the 2005C and 2005D Bonds. In particular, each Reimbursement Agreement provides that the Bank will issue an irrevocable, direct draw letter of credit on which the Fiscal Agent will draw to make interest and principal payments on the 2005C and 2005D Bonds; that the Agency will reimburse the Bank in the full amount of each such draw from housing set-aside tax increment revenues; and that the Bank will purchase 2005C and 2005D Bonds in the event that they cannot be remarketed while in a weekly or daily interest rate mode. In the event that the Bank purchases unremarketed 2005C and 2005D Bonds ("Bank Bonds") and such Bank Bonds cannot be remarketed for 60 days, the Bank can require the Agency to repay such Bank Bonds over five years in semi-annual installments at a rate equal to a formula specified in the Reimbursement Agreement. Under the Reimbursement Agreements, Designated Officers of the Agency and City may execute extensions of the letters of credit as long as the annual fee does not exceed 100 basis points.

Financial Guaranty Agreement The Financial Guaranty Agreement is an agreement by and between the Agency and FGIC as bond insurer for the 2005A and 2005B Bonds. Pursuant to this Agreement, FGIC agrees to provide a Debt Service Reserve Policy (the "Surety") in exchange for a premium to be paid by the Agency from the proceeds of the 2005A and 2005B Bonds. The Agency agrees to reimburse FGIC with interest for any payment made by it pursuant to the Surety. The interest rate cannot exceed the maximum legal rate, currently 12%. The Agency's obligation to repay is limited to housing set-aside tax increment revenues.

Bond Purchase Agreements The Bond Purchase Agreements are contracts among the Agency as the issuer of the Bonds, the Authority and the Underwriters as initial purchasers of the Bonds. There will be one Bond Purchase Agreement for the 2005A and 2005B Bonds executed among the Agency, the Authority and Citigroup as representative of the underwriters of the 2005A and 2005B Bonds. There will be a separate Bond Purchase Agreement for the 2005C and 2005D Bonds executed with Citigroup and Bank of America, respectively.

The Bond Purchase Agreements specify the purchase price of the Bonds, the time and place for closing, representations and warranties of the Agency and Authority, the documents to be executed at closing and the conditions that allow the purchasers to cancel the purchase of the Bonds.

The amount of underwriters' discount for the 2005A Bonds shall not exceed 0.5% of the bond size and the average interest rate shall not exceed 5%. The final maturity for the 2005A Bonds shall not exceed August 1, 2035 and the amount of 2005A Bonds shall not exceed $12,000,000. The difference between these not-to-exceed limits and the expected final maturity and issue size discussed earlier allows the Agency to make adjustments to the bond structure as warranted by subsequent changes in market conditions.

The amount of underwriters' discount for the 2005B Bonds shall not exceed 0.75% of the bond size and the average interest rate shall not exceed 6.5%. The final maturity for the 2005B Bonds shall not exceed August 1, 2035 and the amount of 2005B Bonds shall not exceed $120,000,000. The difference between these not-to-exceed limits and the expected final maturity and issue size discussed earlier allows the Agency to make adjustments to the bond structure as warranted by subsequent changes in market conditions.

The amount of underwriters' discount for the 2005C and 2005D Bonds shall not exceed 0.25% of the bond size and the initial interest rate shall not exceed 4.50%. The final maturity for the 2005C and 2005D Bonds shall not exceed August 1, 2035 and the aggregate amount of 2005C and 2005D Bonds shall not exceed $75,315,000.

Remarketing Agreements The Remarketing Agreements are between the Agency as the issuer and the Remarketing Agents for each series of the 2005C and 2005D Bonds. Citigroup will be the sole Remarketing Agent for the 2005C Bonds and Bank of America will be the sole Remarketing Agent for the 2005D Bonds. The Remarketing Agreements set forth the procedures and compensation for remarketing these Bonds. Each Remarketing Agent will be paid an annual fee equal to 0.07% of the average outstanding amount of the 2005C and 2005D

Bonds, as the case may be. The fee is the same fee as Citigroup and Bank of America were paid for remarketing the 2002G and 2002H Bonds and is the same fee the City pays with respect to its variable rate demand bonds for the Civic Center project and Airport Land Acquisition project. There will be separate Remarketing Agreements for the 2005C and 2005D Bonds to allow the City/Agency the greatest flexibility and least administrative burden to replace a Remarketing Agent in the future if that is deemed in the best interest of the City/Agency.

Regulatory Agreements and Declaration of Restriction Covenants These are agreements, or amendments to existing regulatory agreements, which are to be executed by the City and the borrower for each affordable housing project funded by a loan to be financed or refinanced with the proceeds of the 2005C and 2005D Bonds. These agreements contain certain provisions relating to the percentage of units to be set-aside for low or very low income tenants and the length of such set-aside, as required by the Federal tax code to qualify the 2005C and 2005D Bonds as tax-exempt[2].

Financing Team Participants

The financing team participants consist of:

- 2005 A&B Underwriters: Citigroup, Bank of America, E.J. De La Rosa, Stone & Youngberg and UBS
- 2005 C&D Underwriters/ Remarketing Agents: Citigroup and Bank of America
- Financial Advisor: Ross Financial
- Bond and Disclosure Counsel: Nixon Peabody LLP
- Fiscal Agent: Wells Fargo Bank
- 2005 A&B Bond Insurer: FGIC
- 2005 C&D Letter of Credit Bank: Bank of New York

Nixon Peabody has provided services to the City and Agency in their effort to revise the CDLAC regulations and in anticipation of the issuance of the Bonds for approximately two years. On March 22, 2005, Council authorized the City Attorney to negotiate and execute a contract with Nixon Peabody in an amount not to exceed $123,000 to serve as bond counsel and disclosure counsel for the Bonds. Due to the complexity of the four series of bonds, the firm has provided additional time and effort to the transaction. Accordingly, staff is recommending that Council authorize the City Attorney to negotiate and execute an amendment to the contract, increasing compensation by $50,000 for a total contract amount not to exceed $173,000.

A contract has been executed under the City Manager's authority for contracts under $100,000 for financial advisory services with Ross Financial.

---

[2] Under the Federal Tax Code, multifamily housing projects financed with tax-exempt bonds must set-aside either (a) 40% of the units to tenants earning no more than 60% of area median income or (b) 20% of the units to tenants earning no more than 50% of area median income. These set-aside must be in place through the term of the bonds. The City's Affordability Restrictions typically will impose more stringent set-aside and a 55-year affordability requirement.

Financing Schedule

The key dates in the balance of the financing schedule are as follows:

City/Agency/Authority Approval	May 24, 2005
Sale of 2005A and 2005B Bonds	June 7, 2005
Sale of 2005C and 2005D Bonds	June 29, 2005
Bond Closing	June 30, 2005

OUTCOMES

If the City Council/Agency Board/Authority Board approves the recommended action, the Agency will be authorized to issue the Bonds for the purpose of refinancing outstanding housing set-aside tax allocation bonds and issuing housing set-aside bonds for the purpose of financing and refinancing housing loans on a tax-exempt (AMT) basis.

REDEVELOPMENT PROJECT AREA FINDINGS

Some of the loans financed or refinanced with proceeds of the Bonds are for affordable housing developments listed in Exhibit A that may not be located in a Redevelopment Project Area. Therefore it is required that the City make a finding, on behalf of the Redevelopment Agency, that any such use of redevelopment funds is of benefit to redevelopment areas. Since the preservation and maintenance of owner-occupied and rental housing for very low- and low-income families and households is identified as vital to support the City's economic growth, much of which is planned to occur in Downtown and industrial redevelopment project areas, staff recommends that the City Council find the use of any 20% Housing Funds for the rehabilitation of owner-occupied and rental housing in the City to be a benefit to these Redevelopment Project Areas.

PUBLIC OUTREACH

The method of notifying the community of the City's intent to issue tax-exempt private activity bonds is for the City Council to hold a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing. Municipal Code Section 5.06.430 delegates authority to the Director of Finance to conduct TEFRA Hearings for projects to be financed with multifamily housing revenue bonds to be issued by the City. On September 28, 2004, this delegation of authority was expanded when the Agency Board delegated authority to the City Director of Finance to conduct the TEFRA hearings for this and future tax-exempt housing set-aside tax allocation bond issues (Agency Resolution 5544), and City Council accepted this delegation by the Agency Board (City Resolution 72335).

There are two TEFRA Hearings in connection with the Bonds. The first TEFRA Hearing, for projects identified in Exhibit A, was held on October 18, 2004 by the City's Deputy Director of Finance. The public hearing notice was published in the *San José Post Record* on October 1, 2004. A second TEFRA Hearing, pertaining to projects not included in the first hearing, is scheduled for

May 23, 2005, with a notice to be published in the *San José Post Record* by May 9, 2005. The supplemental report, which will be circulated to Council on or about May 16, 2005, will provide information on the projects to be included in the second TEFRA Hearing.

COORDINATION

This report has been prepared by the Finance Department in coordination with the Redevelopment Agency, Office of General Counsel, the Housing Department, and the City Attorney's Office.

COST IMPLICATIONS

No appropriation of funds is required at this time. The payment of debt service on the Bonds will be made from housing set-aside tax increment revenues beginning in FY 2005-06. Debt service on the 2005A and 2005B Bonds will commence on August 1, 2005. Debt service on the 2005C and 2005D Bonds will commence on July 1 or August 1, 2005, depending on actual date of closing.

Compensation for the financing team participants (financial advisor, bond counsel and underwriters) as well as the costs of the financing are contingent on the sale of the bonds and will be paid from Bond proceeds.

CEQA

See Exhibit A for the appropriate CEQA references.

DEL D. BORGSDORF
City Manager

HARRY S. MAVROGENES
Executive Director

EXHIBIT A

TEFRA Hearing Held October 18, 2004

REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
Affordable Housing Loans to be Financed or Refinanced

Project Name	Developer	Amount	CEQA Reference
Brooks House	1710 Moorpark Avenue, LP	$3,325,000	Neg. Decl. PDC00-063
Oak Tree Village	Branham Lane Apartments, LP.	$1,447,829	Neg. Decl. PDC02-033
Evans Lane (JSM)	Evans Lane Apartment, LP.	$1,368,706	Neg. Decl. PDCSH-01-10-096
Fallen Leaves	Fallen Leaves Apartments, LP.	$3,631,294	Neg. Decl. PDC02-018
Paseo Senter I and II	Paseo Senter, LP.	$12,883,350	Neg. Decl. PDC03-057
Cinnabar Commons	Cinnabar Commons LP.	$4,681,575	EIR Res. No. 71174
Delmas Park	Delmas Park Associates, LP.	$5,067,000	EIR Reso. 68839 PDC03-016
Summer Crest	Almaden Senior Housing Partners, LP.	$3,052,171	Neg. Decl. PDC00-100
Turnleaf	Fairfield Turnleaf LP.	$2,951,000	Exempt PP02-11-331
Fairgrounds (ROEM)	Fairgrounds Luxury Apartments, LP.	$10,856,800	EIR Reso. 71359 PDC02-040
Fairgrounds (HACSC)	HACSC Fairgrounds Family Associates, LP.	$8,378,250	EIR Reso. 71359 PDC02-040
Almaden Family Apts	Almaden Family Housing Partners, LP.	$13,775,000	Neg. Decl. PDC-SH-98-089
		$71,417,975	

EXHIBIT B

TECHNICAL ASPECTS OF MULTI-MODAL VARIABLE RATE DEMAND BONDS

The 2005C and 2005D Bonds will be issued as multi-modal variable rate demand bonds ("VRDBs"). The purpose of this Exhibit is briefly to describe the mechanics of these kinds of bonds and the options available to the Agency.

The interest rates on multi-modal VRDBs will reset from time to time during the bond term. The rates can be reset as often as daily or can be fixed for longer periods. These interest reset periods are also referred to as "modes", thus the characterization of the VRDBs as "multi-modal". The interest rate on the 2005C and 2005D Bonds will be established from time to time by a remarketing agent (the "Remarketing Agent") based on prevailing market conditions.

If an investor no longer wishes to hold the VRDBs, they are permitted, with prior notice to the Fiscal Agent, to tender the bond back to the Agency and "demand" full repayment - hence the term "demand bond". In such event, the Remarketing Agent will attempt to remarket the tendered bonds to another investor. If the Remarketing Agent is unable to find a substitute investor, for any reason, the Fiscal Agent is authorized to draw on the letter of credit to be issued by Bank of New York to fund the purchase price of the unremarketed bonds. The "tender" feature of VRDBs is essential to the ability and willingness of investors to purchase VRDBs; a letter of credit or other kind of "liquidity facility" is required to assure investors that sufficient funds will exist at all times to purchase any bonds that are tendered. The Agency will pay a quarterly fee to the Bank of New York for providing the letter of credit.

The 2005C and 2005D Bonds will be issued in a weekly mode with weekly rate resets. This is the most common frequency in the bond market. The Fiscal Agent Agreement permits the Agency to convert the 2005C and 2005D Bonds to different modes with notice to bond investors and affected parties. The other choices besides weekly are: (1) daily, (2) commercial paper, (3) auction rate, (4) term and (5) fixed rate through maturity. The Agency may also switch between various interest rate modes from time to time or cause the 2005C and 2005D Bonds to be remarketed in different modes. This bond structure provides the Agency with an interest cost that varies over time and the ability to manage its interest rate risk during the term of the 2005C and 2005D Bonds. Citigroup Global Markets Inc. and Banc of America Securities LLC will serve as the Remarketing Agent for the 2005C and 2005D Bonds, respectively.

The selection of a different interest rate mode does not require City Council/Agency Board/ Authority Board approval for the daily or weekly rate modes. An authorized representative of the Agency may select the daily or weekly interest rate mode and notify the affected parties. However, to issue Auction Rate Securities, the City Council/Agency Board/Authority Board would need to approve amendments to the financing documents and a new Official Statement. Similarly, in order to implement the commercial paper, term or fixed rate modes, new disclosure documents would need to be approved by the City Council/Agency Board/Authority Board.