



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Scott P. Johnson

**SUBJECT:** SEE BELOW

**DATE:** October 11, 2007

Approved

Date

10/12/07

**COUNCIL DISTRICT:** 2&10

**SUBJECT: CONDUIT FINANCINGS FOR WASTE MANAGEMENT, INC. AND ITS AFFILIATES -- TEFRA HEARING**

## RECOMMENDATION

- a. It is recommended that the City Council take the following actions, regarding Waste Management, Inc. and its affiliates ("WMI") relating to the Kirby Canyon Landfill and Guadalupe Rubbish Disposal Co., both located in San Jose, and other projects located elsewhere in the state:
  1. Hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") Hearing for the issuance of \$225,000,000 of tax-exempt solid waste disposal facility revenue bonds by California Municipal Finance Authority ("CMFA").
  2. Adoption of a resolution approving the issuance of Tax-Exempt Revenue Bonds by the CMFA in an aggregate principal amount not to exceed \$225,000,000 to be used to (1) equip and construct certain solid waste disposal facilities, including an amount not expected to exceed \$23,470,000 on facilities located in the City of San José; and (2) pay certain expenses incurred in connection with the issuance of the bonds.

## OUTCOME

Approval of these recommendations will allow WMI to move forward with its current financing plans.

Approval of the issuance of the bonds does not constitute approval for any other purpose including the California Environmental Quality Act (CEQA) or any land use approvals.

## **BACKGROUND**

California Municipal Finance Authority was established in 2004 under the California Government Code as a statewide Joint Powers Authority to provide local governments and private industry access to tax-exempt low-interest financing to achieve public benefit goals. CMFA is unique in that it shares a portion of its fees directly with its member communities.

On February 13, 2007, the City Council approved the City becoming a member of CMFA. In addition, the City Council authorized execution of a side letter agreement with CMFA related to sharing of CMFA's issuer fee in the event that CMFA issues bonds for projects located in the City of San José. The fee sharing arrangement is described in more detail below.

WMI has requested that CMFA participate in the issuance of revenue bonds in an aggregate principal amount not to exceed \$225,000,000. A portion of the bond proceeds, in an amount not expected to exceed \$23,470,000, is intended to finance improvements to existing collection (hauling) and transfer station facilities at the Guadalupe Rubbish Disposal Co., 15999 Guadalupe Mines Road, San José, California 95120, and improvements to existing landfill facilities in Santa Clara County located at the Kirby Canyon Landfill, 910 Coyote Creek Golf Drive, San José, California 95037. The bonds will be part of a plan of finance, which may occur over a period of multiple years.

WMI anticipates that approximately \$10,810,000 of the bond proceeds, if issued, will be allocated to the Guadalupe Rubbish Disposal Co. project to finance improvements to existing collection (hauling) and transfer station facilities, including: (i) acquisition of solid waste disposal trucks and support vehicles, (ii) acquisition of solid waste disposal containers and related equipment, (iii) acquisition of solid waste sorting and processing equipment, (iv) site improvements, and (v) acquisition of other equipment and assets necessary to support the foregoing improvements and place them into service.

WMI also anticipates that approximately \$12,660,000 of the bond proceeds, if issued, will be allocated to the Kirby Canyon Landfill project to finance improvements to existing landfill facilities in Santa Clara County, including: (i) construction of new disposal cells and liners within currently permitted acreage, (ii) additions and improvements to the leachate collection and treatment system, including leachate trenching, (iii) additions and improvements to the methane gas systems, (iv) installation of new liners for intermittent and final closure of completed sections of the landfill facilities, (v) site improvements, (vi) acquisition of equipment to be used at the landfill facilities, and (vii) acquisition of other equipment and assets necessary to support the foregoing improvements and to place them in to service.

Based on information provided by Waste Management, the Kirby Canyon Recycling and Disposal Facility is a Class III Municipal Solid Waste Landfill, consisting of 827 acres of open land, with 171 acres allocated for landfill operations and approximately 250 acres dedicated to Kirby Canyon's Wildlife Conservation efforts. The site is comprised of five disposal areas referred to as Fill Areas 1 through 5.

As of January 1, 2007, according to Waste Management, Kirby Canyon has received approximately 7,756,296 tons of municipal residential, commercial and industrial waste since operations began in 1986. Kirby Canyon disposes approximately 514,000 tons of material annually. Remaining life expectancy for the site is approximately 28 years.

## **ANALYSIS**

The federal tax law known as the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") requires that projects funded with qualified tax-exempt private activity bond proceeds be approved by the City Council after a noticed public hearing, called a "TEFRA hearing". These hearings provide interested individuals or parties the opportunity to comment on any matters related to such potential bond issues, including the nature and location of the project.

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, the issuance of the bonds by CMFA requires the City's approval because the projects are located within the territorial limits of the City. In order for the interest on the bonds to be excluded from the gross income of the owner of the bonds (i.e. tax-exempt), an "applicable elected representative" of the government unit must approve the issuance of the bond after a public hearing ("TEFRA hearing"), which is scheduled to be held as part of the action items on the October 30, 2007, Council Agenda, following reasonable public notice. The proposed bond issuance by CMFA is classified as a private activity for purposes of the Internal Revenue Code (the "Code"). Because CMFA's Board of Directors is not an elected body, the Code provides that a governmental unit with elected representatives and jurisdiction over the area in which the project to be financed is located, in this case, the City Council of San José, is an "applicable elected representative" with respect to the bond issue. The public hearing notice will be published in the *San Jose Mercury News* on or before October 16, 2007, announcing the time and location of the public hearing.

Section 6586 of the California Government Code requires a significant public benefit such as a demonstrable savings in the effective interest rate paid by the company. WMI anticipates approximately 0.25% of annual interest savings after considering all financing related costs.

The Board of Directors of the California Foundation for Stronger Communities ("CFSC"), a California non-profit public benefit corporation, acts as the Board of Directors for CMFA. CMFA shares a portion of its issuance fees with its member communities and donates a portion of issuance fees to the Foundation for the support of local charities. With respect to the City of San José, it is expected that 25% of the issuance fee will be contributed by CMFA to the general fund of the City, to be used for any lawful purpose. An additional 25% of the issuance fee will be donated to a local non-profit organization. City staff recommends that the funds be allocated to the Healthy Neighborhoods Venture Fund for distribution to local non-profits.

### **EVALUATION AND FOLLOW-UP**

This action will allow WMI to move forward with its current financing plans and requires no follow-up by the City Council.

### **PUBLIC OUTREACH/INTEREST**

The TEFRA hearing to be held as part of the action items on the October 30, 2007, Council Agenda is a method of notifying the community of CMFA's intent to issue tax-exempt private activity bonds for these projects. The public hearing notices will be published on or before October 16, 2007, in the *San Jose Mercury News*, announcing the time and location of the public hearing.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

### **COORDINATION**

This memorandum has been prepared by the Finance Department in coordination with the City Attorney's Office.

### **COST SUMMARY/IMPLICATIONS**

The TEFRA hearing will have no fiscal impact on the City as there are no City funds in these projects. The tax-exempt bonds issued by CMFA will be secured solely by the respective projects' revenues.

HONORABLEMAYOR AND CITY COUNCIL

October 18, 2007

**Subject: Conduit Financing for Waste Management, Inc., San José Project -- TEFRA Hearing**

Page 5

**CEQA**

Not a Project.



SCOTT P. JOHNSON  
Director, Finance

For questions please contact David Persselin, Debt Administrator, at (408) 535-7012.

