

SUPPLEMENTAL



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko
Julia H. Cooper

SUBJECT: PASEO SENTER II APARTMENTS
MULTIFAMILY HOUSING REVENUE
BONDS, SERIES 2005C

DATE: December 5, 2005

Approved

Date

12/5/05

Council District: 7
SNI AREA: Tully/Senter

SUPPLEMENTAL #2

REASON FOR SECOND SUPPLEMENTAL MEMORANDUM

To inform the Council of the possible need for bifurcated closing of the Paseo Senter II bonds which may arise as a result of the delay in recording the parcel map for the project which, in turn, could cause a delay in recording the real estate loan and security documents for the Paseo Senter II project.

POTENTIAL NEED FOR A "SOFT" CLOSING

Multifamily housing bond financings involve two elements at closing. The first relates to settlement of the bond issue whereby the bond purchaser delivers funds to the bond trustee. The second element pertains to recording the real estate loan and security documents – which typically must occur before loan proceeds may be released. In most City of San Jose multifamily housing bond transactions, these two elements occur concurrently. However, in rare circumstances the real estate documents cannot be finalized at the time of bond closing. In this instance, it may become necessary to separate the funding of the bonds from the real estate transaction. In such circumstance, the bond closing is considered a "soft" closing because the bond transaction will not be completed until the real estate documents are recorded. The potential need for a "soft" closing exists for the Paseo Senter II transaction because the parcel map for the property, a necessary element for the real estate documents, may not be ready by the deadline set for the Project.

The Paseo Senter II project received private activity bond allocation from the California Debt Limit Allocation Committee ("CDLAC") on September 21, 2005. CDLAC typically allows up to 130 days in which to close bond issues but, in this case the requirement for the bond closing is 90 days from the CDLAC allocation date – December 20th – with the possibility of only a five business day extension. The reason for the shorter timeline is to allow CDLAC an opportunity to

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“carry forward” unused calendar year 2005 private activity allocation to calendar year 2006, where the allocation could be used for other private activity projects or purposes. Federal tax law requires that a state’s annual private activity bond cap be used in that year for specific projects or carried forward to the following year.

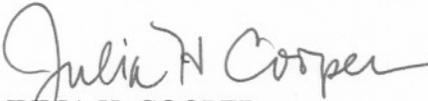
The most significant challenge to closing within this abbreviated time period relates to recording final parcel maps. The Paseo Senter II and II projects are currently located on a single parcel. In order to finalize the real estate documents, that parcel must be subdivided into three separate parcels, with new parcel maps recorded. The final parcel maps are required for the title company to issue the necessary title policy and endorsements. While Public Works staff is expediting the parcel map subdivision process and all affected parties are working diligently toward the goal of finalizing the real estate documents by the December 20th closing date, the potential nonetheless exists that the final maps may not be recorded in time for all the necessary work to be accomplished for a December 20th bond closing.

If the circumstance arises where the final parcel maps are not recorded in time, the City’s alternative plan is to proceed with a “soft” closing approach. The Paseo Senter II bonds would be delivered to U.S. Bank as bond purchaser by December 20th (or a later date upon receipt of the five day extension) and the real estate documentation and recording would be finalized and recorded at a later date. U.S. Bank will require the borrower to cash collateralize its repayment obligation for the Paseo Senter II bonds by depositing its own funds into a “blocked account” held by U.S. Bank until the real estate documents are recorded. Additionally, instead of funding the costs of bond issuance from the new loan which is contingent on the real estate closing, the City would protect itself by funding those costs of issuance from the existing predevelopment loan, which is already secured by a recorded deed of trust on the subject property. The current expectation is that any delay, if needed, in finalizing and recording the real estate documents would be only for a few weeks following the soft closing. The risk to the City under this alternative plan is that the final parcel maps are never recorded – a remote risk in light of the fact that Planning has indicated that the parcel maps should be finalized in the next few days.

COORDINATION

This report has been prepared by the Finance Department in coordination with the Housing Department and the City Attorney’s Office.


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