



# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Scott P. Johnson

**SUBJECT:** SEE BELOW

**DATE:** July 14, 2008

Approved

*Christine J. Shippey*

Date

*7/18/08*

**COUNCIL DISTRICT:** Citywide

**SUBJECT: CONDUIT FINANCING FOR BELLARMINE COLLEGE PREPARATORY – TEFRA HEARING**

## RECOMMENDATION

It is recommended that the City Council take the following actions regarding Bellarmine College Preparatory (“Bellarmine”), located at 960 West Hedding Street, San Jose, CA 95126:

- a. Conduct a TEFRA Hearing for the issuance of \$2,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Statewide Community Development Authority (“CSCDA”).
- b. Adopt a resolution approving the issuance of Tax-Exempt Obligations by the CSCDA in an aggregate principal amount not to exceed \$2,000,000 (“the “Bonds”) to be used to (a) finance or refinance the acquisition, construction, rehabilitation and improvement of property, including real and personal property, and including energy efficiency upgrades at Bellarmine’s existing school campus and (b) pay related expenses.

## OUTCOME

Approval of these recommendations will allow Bellarmine to move forward with its current financing plans. Approval of the issuance of the Bonds does not constitute approval for any other purpose.

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## **BACKGROUND**

Bellarmino, a California nonprofit public benefit corporation, has requested that the CSCDA participate in the issuance of Tax-Exempt Obligations in an aggregate principal amount not to exceed \$2,000,000 (the "Bonds").

Proceeds of the Bonds are to be made available to Bellarmine, pursuant to a Loan Agreement with CSCDA to (a) finance or refinance the acquisition, construction, rehabilitation and improvement of property, including real and personal property, and including energy efficiency upgrades at Bellarmine's existing school campus (the "Project") and (b) pay related expenses. The energy efficiency upgrades include the replacement of HVAC equipment, installation of an energy management system, pool pump modification, and interior lighting upgrades and lighting controls. The Project will be owned and operated by Bellarmine.

Founded in 1851 by the Jesuits, Bellarmine is a private, non-profit, fully-accredited, Catholic, independent, all-boys high school. All students take a college preparatory curriculum designed to meet the minimum subject requirements of the University of California and California State University systems.

CSCDA was established in 1988 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. To date, CSCDA has issued more than \$16 billion in tax-exempt debt. The City is a member of CSCDA pursuant to the amended and restated joint exercise of powers agreement relating to CSCDA ("JPA Agreement"). Pursuant to the JPA Agreement, the City, as the jurisdiction in which the proposed project is located, must conduct the hearing and provide its approval or disapproval of the proposed project.

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, the issuance of the Bonds by CSCDA must be approved by the City because Bellarmine is located within the territorial limits of the City.

## **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.

The TEFRA Hearing is scheduled to be held as part of the action items on the August 5, 2008 Council Agenda and serves as a method of notifying the community of CSCDA's intent to approve an issue of tax-exempt private activity bonds for the Project. The City, as a member of CSCDA, is one of the applicable elected representatives required to approve the issuance of the Bonds by CSCDA under Section 147(f) of the Code and under the terms of the Joint Powers

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Agreement establishing CSCDA. The public hearing notice will be published in the *San Jose Mercury News*, announcing the time and location of the public hearing.

Federal tax law limits the types of projects that may be funded with tax-exempt bond proceeds since the interest earned on such bonds is exempt from federal taxation. The purpose of the TEFRA public hearing is to identify projects which may subsequently receive funding from the sale of private activity tax-exempt bonds. These hearings will also provide interested individuals or parties the opportunity to provide testimony on any matters related to such potential bond issues, including the nature and location of the Project.

CSCDA proposes to issue the Bonds pursuant to Government Code Sections 91520-91549. In order for CSCDA to do so, the City Council is required to give its approval pursuant to Government Code Section 91530(f).

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

This action will allow Bellarmine 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 August 5, 2008 Council Agenda is a method of notifying the community of CSCDA's intent to issue tax-exempt private activity bonds for the Project. The public hearing notice will be published on or about July 22, 2008 in the *San Jose Mercury News*, announcing the time and location of the public hearing. The Loan Agreement between CSCDA and Bellarmine will be on file in the City Clerk's Office in the event members of the public wish to review it.

This item does not meet any of the criteria listed below.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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)**

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### **COORDINATION**

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

### **FISCAL/POLICY ALIGNMENT**

Holding this TEFRA hearing in connection with the issuance of the Bonds by CSCDA for the Project is consistent with the Council approved *Guiding Principles for Budget and Financial Management* for the City to meet its legal commitments and requirements with respect to its obligations under the JPA Agreement.

### **COST SUMMARY/IMPLICATIONS**

The TEFRA hearing will have no fiscal impact on the City as there are no City funds committed to this project. The Bonds issued by CSCDA will be secured solely by Bellarmine revenues. The City will have no obligation with respect to the Bonds.

### **CEQA**

Mitigated Negative Declaration, File No. PDC07-072.

  
SCOTT P. JOHNSON  
Director, Finance

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