



Memorandum

TO: HONORABLE MAYOR, CITY
COUNCIL AND REDEVELOPMENT
AGENCY BOARD

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: October 10, 2008

SUBJECT: CITY-AGENCY AGREEMENT DUE TO STALLED BOND MARKET

RECOMMENDATION

- (a) City Council and Redevelopment Agency Board approval of a loan agreement between the Redevelopment Agency and the City of San Jose to use the Sanitary Sewer Connection Fee Fund, in an amount of \$34.46 million with a term of up to 72 hours, for the purpose of paying all lawful Agency obligations such as capital, operating and other expenses in the Adopted 2008-09 Agency budget, including the State-mandated Educational Revenue Augmentation Fund payment and the pass-through obligation to the County of Santa Clara.
- (b) City Council adoption of the following 2008-2009 Appropriation Ordinance and Funding Sources Resolution amendments in the Sewer Service and Use Charge Capital Improvement Fund (545):
- (1) Establish a Loan to the Redevelopment Agency appropriation in the amount of \$26,394,000;
 - (2) Decrease the Edenvale Sanitary Sewer Supplement, Phase VA and VB appropriation in the amount of \$20,051,000;
 - (3) Decrease the 30" Old Bayshore Supplement appropriation in the amount of \$3,494,000;
 - (4) Decrease the Spreckles Sanitary Sewer Force Main Supplement appropriation in the amount of \$2,849,000;
 - (5) Reestablish the Edenvale Sanitary Sewer Supplement, Phase VA and VB appropriation in the amount of \$20,051,000;
 - (6) Reestablish the 30" Old Bayshore Supplement appropriation in the amount of \$3,494,000;
 - (7) Reestablish the Spreckles Sanitary Sewer Force Main Supplement appropriation in the amount of \$2,849,000; and,
 - (8) Establish an estimate for Loan Repayments from the Redevelopment Agency in the amount of \$26,394,000.

- (c) City Council adoption of the following 2008-2009 Appropriation Ordinance and Funding Sources Resolution amendments in the Sanitary Sewer Connection Fee Fund (540):
- (1) Establish a Loan to the Redevelopment Agency appropriation in the amount of \$8,066,000;
 - (2) Decrease the Edenvale Sanitary Sewer Supplement, Phase VA and VB appropriation in the amount of \$8,066,000;
 - (3) Reestablish the Edenvale Sanitary Sewer Supplement, Phase VA and VB appropriation in the amount of \$8,066,000; and,
 - (4) Establish an estimate for Loan Repayments from the Redevelopment Agency in the amount of \$8,066,000.

OUTCOME

Approval of the recommended action will allow the Agency to meet the State's required Education Revenue Augmentation Fund (ERAF) payment on May 10, 2009 (\$12.9 million) and the obligation to the County of Santa Clara on November 21, 2008 (\$15.6 million) while ensuring that the use of Agency bond proceeds meets both State and federal requirements. The remaining balance of the Loan proceeds (\$6 million) will also allow the agency to pay for all lawful uses and Agency obligations as needed, such as capital and operating expenses in the Adopted 2008-09 Agency budget. The Loan is important to complete before the Agency finalizes the amount of taxable and tax-exempt bonds in its October 2008 bond sale. The City Loan enables the Agency to minimize the amount of taxable bond proceeds, which bear a higher interest cost than the tax-exempt bonds.

BACKGROUND

On September 23, 2008, the Agency Board approved the issuance of Merged Area Redevelopment Project Tax Allocation Bonds, Series 2008A-T and B in an amount not to exceed \$119 million (the "Bonds"). The Bonds were scheduled for a competitive bid sale on October 7, 2008. Subsequent to the Board's approval, the municipal bond market has been unstable and no new competitive bid issues have been sold in California. The vast majority of all new issues have been delayed. Agency staff is now reconsidering its short term funding needs.

During the Statewide recession in September 1992, the State Legislature passed a budget package that included SB 844. SB 844 required the Agency to pay approximately \$10.8 million into a county-wide ERAF by May 10, 1993. Similar bills were passed in 1993 and 1994. With the current State budget deficit, the Legislature revived the Redevelopment to ERAF shift. The 2008 State Budget, signed by the Governor at the end of September, includes AB 1389 which requires the Agency to pay approximately \$12.9 million into ERAF by May 10, 2009. The law further requires the City Council to report to the County Auditor as to how the Agency intends to fund this payment. In 1993, 1994, 1995 and 2003, the ERAF payment was made by the Agency through a loan from the City as detailed below.

ANALYSIS

The law specifically allows agencies to use bond proceeds to make the ERAF payment. However, federal tax restrictions require that the Agency's bond proceeds be used to finance public improvements. Because of these federal restrictions, the Agency cannot directly pay the ERAF requirement with bond proceeds. Similar restrictions apply to the County's pass through payment. The payment can be made, however, from the proceeds of a loan from the City's Sewer Service and Use Charge Capital Improvement Fund and the Sanitary Sewer Connection Fee Fund to the Agency. Additional loan proceeds above the amount necessary for the ERAF payment and County's pass through payment will be used for all other lawful Agency obligations, such as capital and operating expenses in the Adopted 2008-09 Agency budget, as necessary, because the Bonds, originally scheduled for sale on October 7, 2008 are being delayed in order to be sold when there are more favorable bond market conditions.

The Agency will repay the City's Sewer Service and Use Charge Capital Improvement Fund and Sanitary Sewer Connection Fee Fund with Bond proceeds to be used in accordance with federal tax restrictions. The Agency will also pay the City interest, at the rate of the City's pooled funds, out of non bond proceeds. Although a term of up to 72 hours is provided, the Agency will be repaying the loan immediately with bond proceeds on hand; therefore there is no risk of nonpayment to the Sewer Funds. This payment method, which has been used in prior years, ensures that the use of Agency bond proceeds meets both State and federal requirements.

Agency and City staffs have identified City sewer projects that benefit the Edenvale and Rincon de Los Esteros Redevelopment Project Areas that can be funded with tax-exempt bond proceeds. These projects are described as the Edenvale Sanitary Sewer Supplement, Phase VA and VB, the 30" Old Bayshore Supplement and the Spreckles Sanitary Sewer Force Main Supplement. Agency Board and City Council approval of the proposed agreement is recommended. The appropriation adjustments recommended as part of this memorandum include actions necessary to fund the loan from the City to the Agency and the immediate repayment of this loan from the Agency to the City.

This loan will also enable the Agency to minimize the issuance of taxable bonds in favor of lower cost tax-exempt bonds. Therefore, the overall amount of bond proceeds for Agency capital projects will be increased over what would have been received if the allocation between taxable and tax exempt bonds were at the 70%-30% split that was described in the Board memo dated September 9, 2008.

EVALUATION AND FOLLOW-UP

Follow-up of specific projects will occur as those projects are brought to the Council/Board for consideration and approval. Follow-up on the bond issuance will occur as conditions change.

PUBLIC OUTREACH/INTEREST

This item meets Criterion 1 below. This Memorandum will be posted to the City's website for the October 21, 2008, Council/Redevelopment Agency Board Agenda.

- Criterion 1:** Requires Board or Council action on the use of public funds equal to \$1 million or greater.
- 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.
- 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.

COORDINATION

This action has been coordinated with Public Works, Environmental Services Department, the City Attorney's Office and the Agency's General Counsel.

FISCAL IMPACT

While this will impact the Redevelopment Agency in the amount of \$34.46 million, there will be no impact to the City's General Fund or City Sewer Fund. Funding for repayment of the proposed loan is available in the Agency's Adopted FY 2008-09 Capital Budget.



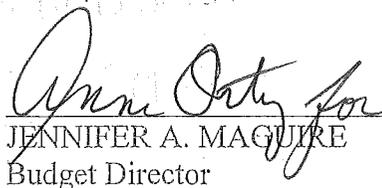
DEBRA FIGONE
City Manager



HARRY S. MAVROGENES
Executive Director

I hereby certify that there will be available for appropriation in the designated funds and in the amounts as listed below in fiscal year 2008-2009 monies in excess of those heretofore appropriated therefrom:

Sewer Service and Use Charge Capital Improvement Fund	\$26,394,000
Sanitary Sewer Connection Fee Fund	8,066,000



JENNIFER A. MAGUIRE
Budget Director