



Memorandum

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

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: October 1, 2008

Approved

Date

10/7/08

COUNCIL DISTRICT: Citywide

**SUBJECT: ACTIONS RELATED TO THE CITY OF SAN JOSE FINANCING
AUTHORITY'S COMMERCIAL PAPER AND LEASE REVENUE BOND
PROGRAMS**

RECOMMENDATION

It is recommended that the City Council adopt a resolution to:

- a. Approve and authorize the execution of amendments to financing documents and authorize other related actions in connection with the issuance of City of San José Financing Authority Lease Revenue Commercial Paper Notes for the purpose of refunding the City or Authority's debt obligations.

It is recommended that the City of San José Financing Authority Board adopt a resolution to:

- a. Approve and authorize the execution of amendments to financing documents and authorize other related actions in connection with the issuance of City of San José Financing Authority Lease Revenue Commercial Paper Notes for the purpose of refunding the City or Authority's debt obligations.
- b. Authorize the Executive Director of the City of San José Financing Authority or the Executive Director's authorized designee to execute financing documents related to the assignment of the Amended and Restated Commercial Paper Dealer Agreement from Lehman Brothers Inc. to Barclays Capital Inc.
- c. Authorize the Executive Director of the City of San José Financing Authority or the Executive Director's authorized designee, without further action of the Authority Board,

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to enter into an interim Commercial Paper Dealer Agreement with one or more investment banking firms for a period of up to 180 days with respect to the City of San José Financing Authority Commercial Paper Program in the event that the Executive Director deems it in the Authority's best interest.

- d. Authorize the Executive Director of the City of San José Financing Authority or the Executive Director's authorized designee, without further action of the Authority Board, to enter into interim Remarketing Agent Agreements with broker-dealers or banks for a period of up to 180 days with respect to the City of San José Financing Authority Lease Revenue Bonds in the event that the Executive Director deems it in the Authority's best interest.

OUTCOME

Approval of these recommendations will allow for the issuance of commercial paper notes ("CP Notes") for the purpose of refunding the City or Authority's debt obligations. The Executive Director or the Executive Director's authorized designees on behalf of the Authority (collectively, the "Authority's Designated Officers") will be authorized to execute financing documents related to an assignment of the Commercial Paper Dealer Agreement from Lehman Brothers Inc. to Barclays Capital Inc. The Authority's Designated Officers, without further action of the City of San José Financing Authority Board (the "Authority Board"), will also be authorized to (i) replace the existing Commercial Paper dealer or appoint one or more co-commercial paper dealers with the replacement dealer or co-dealers, and (ii) replace the existing remarketing agents for the City of San José Financing Authority Lease Revenue Bonds, for a period of up to 180 days in the event that the Executive Director deems it in the Authority's best interest.

BACKGROUND

Commercial Paper Program

On January 13, 2004, the City Council and the Authority Board approved the implementation of a tax-exempt Lease Revenue Commercial Paper Program ("CP Program") to provide funding for certain projects related to the new City Hall: off-site employee parking garage, technology, furniture, equipment and relocation costs, and interim space planning costs. The total amount authorized to be issued under the CP Program at that time was \$98.0 million.

On June 21, 2005, the City Council and the Authority Board approved the issuance of taxable CP Notes in order to increase the CP Program's flexibility with respect to a portion of the previously identified projects. The aggregate total amount authorized to be issued under the CP Program remained at \$98.0 million.

On November 15, 2005, the City Council and the Authority Board approved the expansion of the CP Program to provide additional funding for the "Integrated Utility Billing, Customer Service and Performance Management System" (the "CUSP Project") and to expand the list of

authorized uses to include the Central Service Yard Phase II Project and the demolition of the City's Main Yard.

At the time of the City Council/Authority Board approval of the expanded CP Program, approval was also received to authorize the Authority to have up to \$116.0 million in CP Notes outstanding at any time. It was also contemplated that the City could at a future date authorize the issuance of CP Notes to provide funding for additional projects.

On May 22, 2007, the City Council and the Authority Board approved the issuance of CP Notes to provide funding for capital enhancements to HP Pavilion which is owned by the City and operated by San Jose Arena Management under the Amended and Restated San Jose Arena Management Agreement. The City's portion of capital enhancements to HP Pavilion for Fiscal Year 2007-08 was \$8.25 million.

At the January 13, 2004 joint meeting of the Authority Board and the City Council, the City Council conducted a public hearing in accordance with Government Code Section 6586.5 regarding the issuance of the CP Notes for the authorized projects. The City Council also conducted a public hearing in accordance with Government Code Section 6586.5 at the joint meetings of the City Council and the Authority Board on November 15, 2005 and May 22, 2007 when the City Council and the Authority Board approved additional projects and purposes for which CP Notes may be issued.

ANALYSIS

Financing Documents

The CP Program is a lease revenue financing structure. The City has leased to the Authority various City-owned facilities pursuant to a Site Lease, as amended (the "Site Lease"). The Authority subleased these same facilities back to the City pursuant to a Sublease, as amended (the "Sublease") in exchange for the rental payments which support repayment of the CP Notes. The facilities subject to the Site and Sublease are: the former City Hall, the Health Building, and "C" and "E" parking lots located at the former City Hall site, the San José Museum of Art, the Tech Museum, the Mexican Cultural Heritage Plaza, the former Martin Luther King Main Library, the Animal Care Center, Fire Station No. 1, the Mabury Yard and the South Yard.

The Authority issues the CP Notes under the Marks-Roos Local Bond Pooling Act of 1985 pursuant to an Amended and Restated Trust Agreement, as amended and supplemented, between the Authority and Wells Fargo Bank, National Association (the "Trust Agreement") and an Amended and Restated Issuing and Paying Agent Agreement between the Authority and Wells Fargo Bank, National Association. The CP Notes are backed by a Letter of Credit issued by State Street Bank and Trust Company and the California State Teachers' Retirement System (the "Banks") pursuant to a Letter of Credit and Reimbursement Agreement, as amended (the Letter of Credit Agreement"), by and among the City, the Authority and the Banks. Per the terms of the Letter of Credit, the Banks are not jointly responsible for payments on the draws made on the Letter of Credit. The respective obligations of the Banks are: State Street Bank -- 75% and the

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California State Teachers' Retirement System -- 25%. The current Letter of Credit Agreement expires on January 26, 2010. As approved by Council/Authority Board on January 13, 2004, the City Manager and the City Manager's authorized designees on behalf of the City (the "City's Designated Officers") and the Authority's Designated Officers, on behalf of the Authority, are each authorized to enter into one or more extensions of the Letter of Credit and Reimbursement Agreement, provided that the annual fees for each extension do not exceed 0.75% of the commitment. Lehman Brothers currently serves as the dealer for the CP Notes pursuant to an Amended and Restated Commercial Paper Dealer Agreement.

In order to enable the Authority to issue CP Notes to refund the debt obligations of the City or the Authority, the Trust Agreement must be amended to expand the Authority's ability to issue CP Notes for the purpose of refunding bonds and other obligations pursuant to Government Code Sections 53570 et seq and 53580 et seq. Under these Government Code provisions, the City Council is not required to hold a public hearing related to this amendment. In addition to the amendment to the Trust Agreement, the Letter of Credit Agreement may also be amended in order to make conforming revisions.

Staff recommends that the City's Designated Officers and the Authority's Designated Officers (collectively, the "Designated Officers") each be authorized to execute the amendments to the Trust Agreement, the Letter of Credit Agreement as described above to which the City or the Authority is a party. Additionally, staff recommends that the Designated Officers each be authorized to execute such other financing documents as may be required to issue CP Notes for the purpose of refunding the City or Authority's debt obligations. As modifications may be required prior to the closing of this transaction, staff also recommends that the Designated Officers each be authorized to execute the final version of these agreements as may be modified upon consultation with the City Attorney's Office.

Commercial Paper Dealer Agreement

As noted above, the current CP Dealer is Lehman Brothers Inc. ("LBI"). On September 22, 2008, Barclays Capital Inc. ("BCI") entered into a transaction with Lehman Brothers Inc. pursuant to which BCI has acquired certain assets of LBI relating to LBI's investment banking and capital markets businesses. Prior to September 22, 2008, LBI's parent company, Lehman Brothers Holdings Inc., commenced a voluntary case under chapter 11 of the Bankruptcy Code and LBI commenced a proceeding under the Securities Investor Protection Act ("SIPA"). The Asset Purchase Agreement governing the sale transaction, as approved by the Bankruptcy Court, provides BCI the right to have contracts related to the purchased assets be assumed by the trustee overseeing LBI's SIPA proceeding (the "SIPA Trustee") and assigned to BCI in connection with the sale. At the request of BCI, LBI is assigning its rights, and BCI is assuming LBI's obligations, under the Dealer Agreement with the Authority. Authority Board approval is required to authorize the Authority's Designated Officers to execute financing documents related to the assignment of the Dealer Agreement from Lehman Brothers Inc. to Barclays Capital Inc.

Delegation of Authority for Commercial Paper Dealer/Remarketing Agent Agreement

The volatility in the current financial market has created uncertainty in the stability of major financial institutions. In order to preserve the ability to respond promptly to changing market

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conditions and effectively manage the City of San José Financing Authority's Lease Revenue Commercial Paper and the Lease Revenue Bonds Programs, staff is requesting approval of the delegation of authority to allow the Authority's Designated Officers, without further action of the Authority Board, to (i) appoint one or more investment banking firms to serve as replacement commercial paper dealer or co-commercial paper dealer and enter into an interim commercial paper dealer agreement with the appointed dealer(s) and (ii) appoint a broker-dealer or bank to serve as the replacement remarketing agent for any of the series of Authority's outstanding variable rate lease revenue bonds and enter into an interim Remarketing Agent Agreement with the replacement remarketing agent, for a period of up to 180 days in the event that the Executive Director deems it in the Authority's best interest.

The Authority Board previously has authorized the Authority's Designated Officers to replace the broker-dealers that have been appointed to serve as the remarketing agents for the Authority's outstanding series of variable rate lease revenue bonds on substantially the same terms and conditions in place with the current remarketing agents. The delegation of authority recommended for both the Commercial Paper and Lease Revenue Programs is to address situations where the Authority is unable to enter into agreements with replacement or additional dealers or replacement remarketing agents on the terms and conditions specified in the current agreements as a result of then market conditions, and a need exists to act expeditiously.

EVALUATION AND FOLLOW-UP

Staff will report back to the Authority with a summary of any actions taken under this delegation of authority and bring forward a proposal for a new Commercial Paper Dealer Agreement and/or Remarketing Agent Agreement prior to the expiration date of the applicable interim agreement.

PUBLIC OUTREACH/INTEREST

All of the financing documents, in substantially final form, will be available for review in the City Clerk's Office on or about October 10, 2008.

- 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)**

COORDINATION

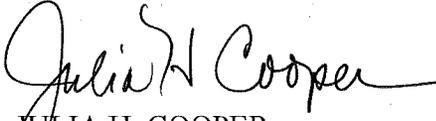
This report was prepared by the Finance Department in coordination with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The estimated cost for amending the financing documents is \$25,000 which is primarily for legal fees of bond counsel and counsel to the Banks. Consistent with other financing costs of the CP Program, the costs associated with the CP Program estimated at \$17,500 will be funded by the issuance of CP Notes and allocated on a pro-rata basis to all currently funded CP projects. The costs associated with the Lease Revenue Bond Program estimated at \$7,500 will be paid from the various debt service budgets for the variable rate Lease Revenue Bonds on a pro-rata basis.

CEQA

Not a project.


JULIA H. COOPER
Deputy Director, Finance

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