



SUPPLEMENTAL

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Scott P. Johnson
John Stufflebean

SUBJECT: SEE BELOW

DATE: January 5, 2009

Approved

Date

1/7/09

SUBJECT: APPROVAL OF THE SALE AND ISSUANCE OF BONDS AND RELATED BOND DOCUMENTS FOR SAN JOSE-SANTA CLARA CLEAN WATER FINANCING AUTHORITY SEWER REVENUE REFUNDING BONDS, SERIES 2009A

SUPPLEMENTAL #1

REASON FOR SUPPLEMENTAL MEMORANDUM

The reasons for this supplemental memorandum are to transmit copies of the draft Preliminary Official Statement and Appendix A to the Preliminary Official Statement for the San José-Santa Clara Clean Water Financing Authority Sewer Revenue Refunding Bonds, Series 2009A (the "2009A Bonds") to the City Council and to explain the role of councilmembers in reviewing these documents.

ROLE OF COUNCILMEMBERS IN REVIEWING THE PRELIMINARY OFFICIAL STATEMENT AND APPENDIX A TO THE PRELIMINARY OFFICIAL STATEMENT

It is critical for councilmembers as elected officials to review the Preliminary Official Statement and Appendix A. Ultimately, the responsibility for accurate disclosure with respect to entering the municipal bond market rests with the City Council and the staff that is responsible for preparing and/or reviewing this disclosure. This is a responsibility that can not be taken lightly, but at the same time councilmembers should have confidence in the due diligence and care that the professional staff undertake to prepare these disclosure documents.

The duty under federal securities law is to produce bond disclosure documents that do not contain misstatements or omissions of "material" facts. A fact is deemed material "if there is a substantial likelihood that a reasonable investor would consider it important in deciding on whether to buy or sell bonds".

As part of the process of the Authority issuing debt, it is important that elected officials read through the Preliminary Official Statement and Appendix A. Understanding the following elements of the bond issue being undertaken is key to the review of these documents:

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- Purpose of the bond issue
- Source of repayment of the bonds
- Risks that the source of repayment may be insufficient to repay the bonds
- Discussion of any other events that could affect the deliberations of a reasonable investor

After such review of the document the following additional elements should be considered:

- Have identified risks and events been brought to the attention of staff, bond counsel and other professionals?
- Have such risks and events been disclosed, and if not, what is the rationale for the non-disclosure?

The information to address these areas in the Preliminary Official Statement for the 2009A Bonds can be found in the INTRODUCTION section which describes the purpose of the bond issue and the source of repayment of the bonds, among other things. More detailed information on these topics and on the risks related to repayment of the bonds is provided in the SECURITY AND SOURCES OF PAYMENT FOR THE BONDS, SPECIAL RISK FACTORS, THE SAN JOSE SYSTEM, and THE TREATMENT PLANT.

In order to more fully understand the financial condition of the City, it is important to read Appendix A in its entirety. Appendix A describes the City's current financial situation and provides other information useful to investors regarding the City. It should be noted that the financial information in Appendix A is gathered from a variety of sources and that staff will update any financial information, as well as other topics included in the Preliminary Official Statement and in Appendix A, prior to the mailing of the Preliminary Official Statement in order to reflect the most recent information available to the City. References to events which have not yet taken place but which will take place prior to publication of the offering documents will be updated as necessary. Following the sale of the 2009A Bonds to the underwriter and prior to the closing, bond counsel/disclosure counsel will prepare a final Official Statement for the 2009A Bonds. The final Official Statement will also be updated as necessary in order to reflect current information.

The responsibility of elected officials is not to undertake a "fact checking" exercise, but to alert staff to where they believe information is either incorrect, where it has not be adequately described and/or where information has not been identified which would fit the description of a material fact. When in doubt, elected officials should always raise the issue for staff and legal consultants to review and make a professional determination on the materiality of the issue.


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