

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: SEE BELOW

DATE: November 24, 2009

**SUBJECT: APPROVAL OF SUPPLEMENTING RESOLUTION RELATING TO
BROOKWOOD TERRACE FAMILY APARTMENTS**

RECOMMENDATION

Adoption of a resolution by the City Council supplementing the authority previously granted to issue not to exceed \$13,600,000 of City of San José Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B (the "Bonds") to allow such issuance in two series, with (i) the Series B-1 Bonds (the "Series B-1 Bonds") issued a fixed rate bonds directly placed with the U.S. Treasury Department (the "Treasury"), and (ii) the Series B-2 Bonds (the "Series B-2 Bonds") issued either as publicly offered variable rate demand bonds credit enhanced by a letter of credit from JP Morgan Chase (the "Bank") or as variable rate bonds directly placed with the Bank; and authorizing the Assistant Director Finance to negotiate and approve changes to the Bond Documents previously approved by the City Council and to negotiate and approve other documents necessary to enable the issuance of the Bonds in two series.

BACKGROUND

On November 17, 2009, the City Council adopted Resolution No. 75178, authorizing the issuance of the Bonds for the Project (the "Original Resolution").

The Original Resolution authorized the Assistant Director of Finance and the Director of Housing to negotiate and approve changes to the documents approved by the Original Resolution as necessary or desirable to participate in a new Federal housing program announced on October 20, 2009 by the U.S. Treasury (the "New Federal Program").

Subsequent to the adoption of the Original Resolution, more details of the New Federal Program were announced. It now appears that the most economic structure is for the

Bonds to be issued in two separate series, with the Series B-1 Bonds to be sold as fixed rate to the Treasury under the New Federal Program and the Series B-2 Bonds either to be publicly offered as variable rate demand bonds credit enhanced by the Bank or as variable rate bonds directly placed with the Bank.

On November 18, 2009, the California Debt Limit Allocation Committee ("CDLAC") extended the time frame in which to close the Bonds from November 30, 2009 to December 31, 2009 so as to enable the City to avail itself of the New Federal Program.

ANALYSIS

To create the most economical financing structure for the Brookwood Terrace Family Apartments project (the "Project"), staff proposes to issue the Bonds approved by City Council on November 17th in two series. The Series B-1 Bonds are proposed to be issued as fixed rate bonds and sold to the Treasury with the backing of Freddie Mac under the new Federal program announced on October 20, 2009 (the "New Federal Program"). The Series B-2 Bonds would be either issued as publicly offered variable rate demand bonds credit enhanced by a letter of credit from the Bank or as variable rate bonds directly placed with the Bank. The Bank will also provide a letter of credit to Freddie Mac during the construction period.

The Original Resolution permitted the issuance of the Bonds in a single series either as bonds directly purchased by the Treasury or publicly offered variable rate demand bonds. The Supplementing Resolution will confirm the City's ability to split the Bonds into two series, subject to the following conditions:

1. The issuance of the bonds in two series will be of economic benefit to the Project;
2. The issuance of the bonds in two series will have no material detrimental impact on the rights and obligations of the City with respect to the Bonds and the use of the proceeds to finance the Project;
3. In no event will the total aggregate principal amount of the Bonds exceed \$13,600,000;
4. In no event will the City be obligated to use its own funds to repay the Bonds.

PUBLIC OUTREACH

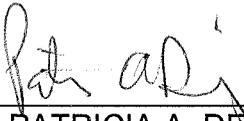
The memorandum and resolution have been posted on the City's website for the December 8, 2009 City Council agenda.

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CEQA:

Mitigated Negative Declaration, File No. PDC08-038.

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