



Memorandum

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

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: April 8, 2010

Approved *Deane Silva*

Date *4/9/10*

COUNCIL DISTRICT: Citywide

**SUBJECT: ACTIONS RELATED TO THE CITY OF SAN JOSE FINANCING
AUTHORITY'S COMMERCIAL PAPER PROGRAM AND
AMENDMENTS TO THE CITY OF SAN JOSE FINANCING
AUTHORITY BYLAWS**

RECOMMENDATION

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

- a. Approve an amendment to the Amended and Restated Trust Agreement and authorize other related actions relating to the City of San José Financing Authority's Lease Revenue Commercial Paper Notes Program in order to allow issuance of Commercial Paper Notes to fund a loan to the Low and Moderate Income Housing Fund in an amount not to exceed the amount specified in a loan agreement by and among the City, the Authority, and the Redevelopment Agency, and to allow issuance of Commercial Paper Notes to fund advances to the City in the event there is a need to address unanticipated or seasonal cash flow deficiencies.

It is recommended that the City of San José Financing Authority Board:

- a. Adopt a resolution to approve and authorize the execution of an amendment to the Amended and Restated Trust Agreement and authorize other related actions relating to the City of San José Financing Authority's Lease Revenue Commercial Paper Notes Program in order to allow issuance of Commercial Paper Notes to fund a loan to the Low and Moderate Income Housing Fund in an amount not to exceed the amount specified in a loan agreement by and among the City, the Authority, and the Redevelopment Agency and to allow issuance of

Commercial Paper Notes to fund advances to the City in the event there is a need to address unanticipated or seasonal cash flow deficiencies.

- b. Adopt a resolution to amend and restate Resolution No. SJFA-1 in order to modify the City of San José Financing Authority's regular meeting schedule, to confirm the appointment of Authority officials, to adopt Amended and Restated Bylaws, and to update the reference to the Conflict of Interest Code, to clarify that members of the Governing Board of the City of San José Financing Authority are subject to the provisions of the Conflict of Interest Code of the City, adopted by the City Council on March 24, 2009 by Resolution No. 74837, as may be amended.

OUTCOME

Approval of these recommendations will allow the issuance of Commercial Paper Notes to fund a loan to the Low and Moderate Income Housing Fund in an amount not to exceed the amount specified in a loan agreement by and among the City, the Authority, and the Redevelopment Agency and allow issuance of Commercial Paper Notes to fund short term cash flow needs of the City. It will also authorize certain amendments related to the bylaws of the City of San José Financing Authority.

BACKGROUND

On January 13, 2004, the City Council and the City of San José Financing Authority Board (the "Authority Board") approved the implementation of a tax-exempt Lease Revenue Commercial Paper ("CP") Program to provide funding for certain projects related to the new City Hall, including an 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 in an amount not to exceed \$8.25 million 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.

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.

On October 21, 2008, the City Council and the Authority Board approved the issuance of CP Notes to refund bonds and other obligations of the City or the Authority pursuant to Government Code Sections 53570 et seq and 53580 et seq.

On December 8, 2009, the City Council and the Authority Board approved Amendment No. 2 to the Letter of Credit and Reimbursement Agreement extending the maturity date of the Letter of Credit to January 27, 2013 and amended certain provisions of the Letter of Credit and Reimbursement Agreement in connection with such extension.

On February 23, 2010, the City Council, the Authority Board, and the Redevelopment Agency Board (the "Agency Board") authorized execution of a loan agreement by and among the City, the Authority, and the Agency, including a loan to the Low and Moderate Income Housing Fund financed by the issuance of Commercial Paper Notes.

ANALYSIS

Overview

The CP Program utilizes 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 the "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, between the Authority and Wells Fargo Bank, National Association (as amended and supplemented, the "Trust Agreement") and an Amended and Restated Issuing and Paying Agent Agreement between the Authority and Wells Fargo Bank, National Association. Barclays Capital Inc. currently serves as the dealer for the CP Notes pursuant to an Amended and Restated Commercial Paper Dealer Agreement. The CP Notes are backed by a Letter of Credit ("LOC") issued by State Street Bank and Trust Company and the California State Teachers' Retirement System (together, the "Banks"), pursuant to the Letter of Credit and Reimbursement Agreement (as amended, the "Letter of Credit Agreement"). Per the terms of the Letter of Credit Agreement, 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 California State Teachers' Retirement System -- 25%. The current Letter of Credit Agreement between the Authority and the Banks expires on January 27, 2013.

Third Supplement to the Amended and Restated Trust Agreement

The proposed amendments to the Amended and Restated Trust Agreement will allow the issuance of Commercial Paper Notes for the purpose of funding a loan to the Low and Moderate Income Housing Fund (the "Low-Mod Housing Fund") in an amount not to exceed the amount specified in a loan agreement by and among the City, the Authority, and the Redevelopment Agency and to allow issuance of Commercial Paper Notes to fund advances to the City to address the City's unanticipated or seasonal cash flow needs.

The form of the proposed Third Supplement to the Amended and Restated Trust Agreement will be posted to the agenda webpage for the joint meeting of the City and the Authority on or about April 9, 2010. Staff recommends that the Executive Director of the Authority or the Executive Director's designees (the "Authority Designated Officers") be authorized to execute these amendments as posted, on behalf of the Authority, as applicable, with such modifications as the Authority Designated Officers determines to be desirable or appropriate, upon consultation with the City Attorney. Staff also recommends that the changes to the Third Supplement to the Amended and Restated Trust Agreement from the posted draft be subject to the approval of the City Manager or the Assistant Director of Finance or their designees (the "City Designated Officers") upon consultation with the City Attorney.

Low-Mod Housing Fund

The Low-Mod Housing Fund is established under and pursuant to the Community Redevelopment Law and is administered by the City. The loan agreement was authorized by the City Council, the Agency Board and the Authority Board at their joint meeting on February 23, 2010. As stated in the February 23, 2010 Council Memorandum, the Authority will issue CP

Notes in an amount sufficient to fund \$25 million of low and moderate income housing program activities and the associated capitalized interest and fees over the term of the loan. The total issuance amount is estimated at \$34 million but the actual issuance amount may vary depending on the financial market conditions over the term of the loan.

The loan proceeds will be utilized to fund low and moderate income housing activities, which include, but are not limited to, affordable multi-family housing projects, loans for housing rehabilitation, teachers' and other homebuyers housing loans and Low-Mod Housing Fund administrative costs. Staff expects that the Commercial Paper Notes issued for the loan to the Low-Mod Housing Fund will be fully repaid over six years. The proposed amendment to the Amended and Restated Trust Agreement will permit the City to continue these critical housing programs that are part of the City's strategic plan to promote economic development within the City.

There are several benefits associated with using the CP Program to fund affordable housing activities, including the relative low cost of the program (e.g. the all-in cost for the most recent CP Notes sale in March 2010 was approximately 2%), market demand for high quality CP Notes, and matching of funding date to the actual issuance of the CP Notes which minimizes actual interest expense.

City Cash Flow Financing

To help facilitate better cashflow management for the City, short term interim financing may be needed due to the timing gap between when the City receives revenues versus when the City is required to make payments of its obligations. The proposed amendments would allow the Authority to issue CP Notes to meet short term cash flow needs of the City, if required, in amounts approved by the City Council and Authority Board. There are no immediate plans to use CP Notes for cashflow financing needs of the City, however, executing the amendment at this time provides the most flexibility to use CP Notes if an unanticipated or seasonal cash flow gap occurs. A seasonal cash flow gap arises when the City's expenditures exceed its revenues due to the timing of the receipt of the City's major revenue sources such as property tax revenues. Public agencies frequently issue tax and revenue anticipation notes in order to cover this gap due to the timing of its receipts. The proposed amendments would allow the City to issue CP Notes instead of tax and revenue anticipation notes when staff's analysis indicates that issuing CP Notes would be more advantageous to the City than the issuance of tax and revenue anticipation notes.

Amended and Restated Resolution No. SJFA-1

On December 15, 1992, the Authority Board adopted Resolution No. SJFA-1 which among other things, established the time and place of regular meetings of the Authority as the second Tuesday of August at 1:30 p.m., adopted the Bylaws of the Authority, and adopted a Conflict of Interest Code.

Effective January 1, 2010, State law requires that a joint powers authority, such as Authority approve issuance of debt at a regularly scheduled meeting. Since the current meeting schedule would limit the Authority's ability to issue debt to a single meeting, staff proposes that the Authority's meeting schedule be revised in order to provide the City and the Authority with flexibility regarding the timing of the Authority's issuance of debt.

The proposed resolution amending and restating Resolution No. SJFA-1 modifies the regular meeting schedule of the Authority Board to coincide with the meetings of the City Council. Accordingly, the meetings of the Authority Board will be held at the same time and at the same location as the regular meetings of the City Council or such other place as the Authority Board may designate from time to time; provided that if there is no business of the Authority Board to transact at such meeting, the meeting will be cancelled.

The proposed resolution also confirms the appointment of Authority officials and adopts the Amended and Restated Bylaws (a copy of which is attached to the resolution) and updates the reference to the Conflict of Interest Code to clarify that that members of the Governing Board of the City of San José Financing Authority are subject to the provisions of the Conflict of Interest Code of the City, adopted by the City Council on March 24, 2009 by Resolution No. 74837, as may be amended.

Financing Team Participants

The financing team participants consist of:

City's Financial Advisor:	Public Resources Advisory Group
Bond Counsel:	Jones Hall
Letter of Credit Banks:	State Street Bank and Trust Company
	California State Teachers' Retirement System
Bank Counsel:	Fulbright & Jaworski
Trustee/Issuing and Paying Agent:	Wells Fargo Bank

EVALUATION AND FOLLOW-UP

This memorandum presents the set of recommendations related to the City Council and the Authority's approval of various actions related to the City of San José Financing Authority Lease Revenue Commercial Paper Program and amendments to the bylaws of the Authority and requires no follow-up to the City Council or the Authority Board. No additional evaluation or follow up is necessary.

PUBLIC OUTREACH/INTEREST

The form of the proposed amendment will be posted to the agenda webpage for the joint meeting of the City and the Authority on or about April 9, 2010.

- 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 Department of Housing and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Compensation for the City's consultants (financial advisor, bond counsel and bank counsel) and other related costs will be paid from CP Note proceeds. There is no budgetary impact to the amortization of principal and repayment of interest and fees for the CP Program for FY 2009-10. The interest and fees incurred for the CP Program are capitalized and allocated on a pro-rata basis for each of the projects funded by the CP Program. The annual debt service schedule is calculated based on the specific repayment terms of each project as approved by City Council and the Authority Board.

The budget appropriation actions related to the loan to the Low-Mod Housing Fund are included in a separate Council Memorandum agendized for City Council approval on April 20, 2010.

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

April 8, 2010

Subject: **Actions related to the CP Program & Amendments to the Authority Bylaws**

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CEQA

Not a project.

/s/

JULIA HARPER COOPER

Assistant Director of Finance

For questions, please contact Arn Andrews, Treasury Division Manager, Finance, at (408) 535-7041.