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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: August 17, 2010

Approved Deanna Santana Date 8/17/10

EARLY DISTRIBUTION COUNCIL PACKET FOR AUGUST 31, 2010

Please find attached the Early Distribution Council Packet for the August 31, 2010 Council Meeting.

4.x Contract Amendment for the Neighborhood Stabilization Program.

Recommendation:

(a) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund:
   (1) Increase the estimate for Earned Revenue by $1,300,000; and
   (2) Increase the Neighborhood Stabilization Program appropriation in the Housing Department by $1,300,000.

(b) Adopt a resolution to authorize the Director of Housing to negotiate and execute a contract amendment up to an additional $2,068,859, for a total award of $5,868,859, with Community Rehabilitation Partners to implement the federally-funded Neighborhood Stabilization Program Single-Family Acquisition, Rehabilitation, and Resale Program.

CEQA: Exempt, File No. PP09-166. Council Districts 2, 3, 5, 7 and 8. SNI: K.O.N.A., Mayfair, Tully Senter, Gateway East, West Evergreen, Spartan Keyes, Five Wounds/Brookwood Terrace, East Valley/680 Communities, Edenvale/Great Oaks. (Housing/City Manager's Office)

4.x Actions Related to the Kings Crossing Apartments.

Recommendation: Adopt a resolution:

(a) Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (Kings Crossing Apartments), Series 2010C" in an aggregate principal amount not to exceed $25,380,000 (the "Governmental Lender Note" or "Note");

(b) Approving a loan of Note proceeds to Kings Crossing, L.P., a California limited partnership created by Charities Housing Development Corporation to finance the construction of the Kings Crossing Apartments located at the corner of N. King Road and Dobbin Drive in San José;

(c) Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, Assignment of Deed of Trust, and Regulatory Agreement and Declaration of Restrictive Covenants (the "Documents") and;

(d) Authorizing the Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, as appropriate, to negotiate, execute and deliver these Documents and other related Note documents as necessary.

CEQA: Mitigated Negative Declaration. File No. PDC07-015. (Housing/Finance)

These items will also be included in the Council Agenda Packet with item numbers.

Nadine Nader

NADINE NADER
Assistant to the City Manager

COUNCIL AGENDA: 8-31-10
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko
Jennifer Maguire

SUBJECT: **SEE BELOW**

DATE: August 9, 2010

Approved Deanna Santana   Date 8/17/10

COUNCIL DISTRICTS: 2, 3, 5, 7, 8

SNI AREAS: K. O. N. A., Mayfair, Tully Senter, Gateway East, West Evergreen, Spartan Keyes, Five Wounds/Brookwood Terrace, East Valley/680 Communities, Edenvale/Great Oaks

SUBJECT: CONTRACT AMENDMENT FOR THE NEIGHBORHOOD STABILIZATION PROGRAM SINGLE-FAMILY ACQUISITION, REHABILITATION, AND RESALE PROGRAM

RECOMMENDATION

Adoption of a resolution by the City Council to:

1) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund:

   a. Increase the estimate for Earned Revenue by $1,300,000; and

   b. Increase the Neighborhood Stabilization Program (NSP) appropriation in the Housing Department by $1,300,000.

2) Authorize the Director of Housing to negotiate and execute a contract amendment up to an additional $2,068,859, for a total award of $5,868,859, with Community Rehabilitation Partners (CRP) to implement the federally-funded Neighborhood Stabilization Program Single-Family Acquisition, Rehabilitation, and Resale Program.

OUTCOME

The City Council's approval of this recommendation will ensure revenue collected from the resale of NSP homes is reinvested in the program and enables the City to meet its NSP funding commitments by amending the current CRP contract to 1) increase the amount to include program income generated from the sale of single-family NSP 1 funded properties, and 2) amend the scope of services to include the Rehabilitation of two four-unit apartment buildings purchased by the City with NSP funds, located at 110 #22 and 127 Roundtable Drive, for resale to an entity for rental to very-low income households. This action will ensure that the balance of NSP 1 funds are fully obligated and fully expended per the City's agreement with the Department of Housing and Urban Development (HUD).

BACKGROUND

Neighborhood Stabilization Program Grant Agreement

On November 18, 2008, the City Council adopted a resolution to authorize the Director of Housing to accept federal Neighborhood Stabilization Program funds (NSP1) in the amount of $5,628,283 under the Housing and Economic Recovery Act of 2008. On March 11, 2009, HUD executed a grant agreement with the City for the NSP1 funds. The grant agreement requires the City to obligate the funds within 18 months of the date on which HUD executed the grant agreement, or by September 11, 2010. It also requires the City to expend the funds within four years, or by March 11, 2013.

Community Rehabilitation Partners Agreement

On September 15, 2009, the City Council adopted a resolution to 1) approve a contract award of up to $3,800,000 to CRP for the federally-funded Neighborhood Stabilization Program (NSP1) Single-Family Acquisition/Rehabilitation/Resale Program, and 2) authorize the Director of Housing to negotiate and execute an agreement with CRP to implement the program.

The City selected CRP for the Acquisition, Rehabilitation, and Resale of Single-Family Homes in response to a Request for Proposals (RFP). CRP was selected from seven entities submitting proposals based on the Evaluation Criteria for Qualification included in the RFP. As described above, the City contracted with CRP to successfully implement the objectives of the NSP1 Single-Family Acquisition/Rehabilitation/Resale Program as stated in the RFP:

- To mitigate blight caused by vacant residences in neighborhoods having a high concentration of foreclosures;
- To target four San Jose zip codes that ranked between 7 and 10 on HUD's Foreclosure and Abandonment Risk Scores;
- To assist San José's low- and moderate-income households by increasing, preserving, and improving housing that is affordable and livable;
- To enhance the fabric of the neighborhood by incorporating quality design, materials, and construction in each rehabilitated property;
- To incorporate practical green-building features into the design of each rehabilitated property;

- To hire local trades persons to keep San Jose residents employed; and
- To comply with the HUD NSP regulations.

On October 29, 2009, the City executed an agreement with CRP for up to $3,800,000 to implement the NSP1 Single-Family Acquisition/Rehabilitation/Resale Program. Since then, CRP and the City have 1) acquired 12 single-family houses in four target zip codes[1], 2) completed rehabilitation of seven houses, 3) commenced rehabilitation of five houses, and 4) sold four homes to low- or moderate-income households with NSP1 down-payment assistance. In addition, one house is currently in escrow and one house is for sale. The City has obligated the entire $3,800,000 to CRP under the current contract for the NSP1 Single-Family Acquisition/Rehabilitation/Resale Program.

NSP1 25% Set Aside

NSP1 requires that a minimum of 25% of the $5,628,283 grant award, or $1,407,070, be designated for housing targeted to very low-income households earning 50% or less of the Area Median Income (AMI). On June 2, 2009, the City's Housing Department partnered with the San Jose Redevelopment Agency to evaluate and purchase 1-4 unit residential properties to meet the 25% requirement. In September and November 2009, the City expended a total of $869,440 to purchase two foreclosed fourplexes, containing a total of eight units, located at 110 #22 and 127 Roundtable Drive in Council District 2. Uncommitted funds of $768,859 will be used to rehabilitate the fourplexes for resale and re-occupancy by income-eligible households. Under HUD regulations, the City must fully obligate the initial allocation of NSP1 funds by September 11, 2010. HUD considers NSP1 funds obligated if they are committed by contract for an eligible use of funds.

ANALYSIS

Budget Appropriation Increase

The budget appropriation increase is comprised of program income generated from the resale of the rehabilitated homes. It is estimated that an average of $92,000 in program income will be generated from the resale of each of the 12 single-family homes, for a total of $1,104,000, and an additional $196,000 from the resale of the two fourplexes. The program income will be re-invested and used for NSP1 eligible activities, including up to 10% for program administration.

Contract Amendment

The existing CRP contract approved by City Council in September 2009 is limited to $3,800,000. CRP has successfully administered the initial allocation of funds by meeting the contract deadlines ahead of schedule while providing consistently high quality rehabilitated homes within budget. Approval of these recommendations will enable the Director of Housing to amend the existing contract with CRP to include projected program income of $1,300,000 recaptured through the sale of the NSP homes. Additionally, the contract amendment will

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[1] 95111, 95116, 95122, 95127

include rehabilitation of the two fourplexes purchased by the City for the purposes of meeting the Programs 25% set aside requirement. Rehabilitation will be funded with the $768,859 balance of the initial funds allocated. Inclusion of these units will fulfill the City's September 11, 2010 obligation requirements.

The contract amendments are consistent with the existing program guidelines and CRP contract requirements. The additional program income will be utilized to continue implementation of the Single-family Acquisition/Rehabilitation/Resale Program. HUD NSP regulations consider single-family homes as any residential building containing up to four units, therefore, rehabilitation of the fourplexes is considered a component of the Single-Family Acquisition/ Rehabilitation/Resale Program.

Housing Department staff has created a general scope of work and project budget for the rehabilitation of each fourplex. Prior to execution of the contract amendment, Housing Department staff will include a detailed project scope of work, specifications, and budgets. Upon City Council approval of this recommendation, staff will work with the City Attorney's office to develop a final contract amendment and execute by September 11, 2010.

Staff believes rehabilitation of the fourplexes could begin in late September 2010 and end in the first quarter 2011. As the rehabilitation commences, staff intends to issue an RFP to select an entity to purchase, manage, and rent the fourplexes to very low-income households earning 50% of AMI. Staff anticipates issuing the RFP this Fall and will return to Council in Spring 2011 with a recommendation to sell the rehabilitated properties to a qualified entity. NSP1 regulations require that these units be occupied with very low-income households by March 11, 2013.

POLICY ALTERNATIVES

The Housing Department considered the following alternative before recommending approval of a contract amendment:

Alternative #: Deny the contract amendment to Community Rehabilitation Partners for NSP1.

Pros: Denial of the contract amendment would avoid concentrating federal grant funds with one entity.

Cons: Denial of the contract amendment would not allow the City to fully capitalize on the capacity of the development entity that was selected through a comprehensive Request for Proposal Process and has demonstrated its ability to successfully implement the Single-Family Acquisition/ Rehabilitation/Resale Program. **The City would not be able to obligate 100% of the NSP funds by September 11, 2010.**

Reason for not recommending: The alternative was rejected because it would result in the inability to fully commit the $768,859 balance of NSP funds by the September 11, 2010 deadline which would result in HUD recapturing the unobligated funds. Additionally, the Director of Housing would need to seek further City Council action to utilize the projected program income.

PUBLIC OUTREACH/INTEREST

☑ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

☐ **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. **(Required: E-mail and Website Posting)**

☐ **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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The recommendation in this memorandum meets Criterion 1: Requires Council action on the use of public funds equal to $1 million or greater. This memorandum will be posted on the City's website for the August 31, 2010 Council agenda in addition to the Housing Department's website.

COORDINATION

Preparation of this memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

Approval of the contract amendment for the NSP1 Single-Family Acquisition/Rehabilitation/ Resale Program furthers the San Jose 2020 General Plan Urban Conservation/Preservation Major Strategy by eliminating blight caused by foreclosures, and sustains a viable neighborhood by rehabilitating existing housing for occupancy by low-income households. It would also further the Housing Major Strategy by providing high quality housing opportunities to meet the needs of all economic segments in neighborhoods which are stable and have adequate urban services.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: $2,068,859

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

Contract Amendment	Amount
Initial NSP grant balance designated for 25% set aside	$768,859
Projected Program Income from resale of single-family homes	$1,300,000
Total	$2,068,859

3. SOURCE OF FUNDING: Fund 448 - Multi-Source Housing Fund

4. FISCAL IMPACT: The recommended actions in this memorandum will have no significant adverse impact on the General Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the amendment of the contract recommended as part of this memo.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract Amendment	2010-2011 Proposed Budget (Page)	Last Budget Action (Date, Ord. No.)
Current Funding Available						
448	3745	Neighborhood Stabilization Program	$1,915,400	$1,068,859	XI-67	June 29, 2010 Ord. No. 28765
Additional Funding Recommended						
448	3745	Neighborhood Stabilization Program	$1,300,000	$1,000,000		
Total Funding			**$3,215,400**	**$2,068,859**		

CEQA

Exempt, PP09-166

/s/
LESLYE KRUTKO
Director of Housing

JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Multi-Source Housing Fund in the fiscal year 2010-2011 monies in excess of those heretofore appropriated there from, said excess being at least $1,300,000.

JENNIFER A. MAGUIRE
Budget Director

For questions, please contact Leslye Krutko, Director of Housing, at 408.535.3851

COUNCIL AGENDA: 08-31-10
ITEM:

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: August 9, 2010

Approved Deanna Santana Date 8/17/10

SUBJECT: APPROVAL OF THE ISSUANCE OF A TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE AND LOAN OF REVENUE NOTE PROCEEDS AND RELATED DOCUMENTS FOR THE KINGS CROSSING APARTMENTS

RECOMMENDATION

Adoption of a resolution of the City Council:

a. Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (Kings Crossing Apartments), Series 2010C" in an aggregate principal amount not to exceed $25,380,000 (the "Governmental Lender Note" or "Note");

b. Approving a loan of Note proceeds to Kings Crossing, L.P., a California limited partnership created by Charities Housing Development Corporation to finance the construction of the Kings Crossing Apartments located at the corner of N. King Road and Dobbin Drive in San José;

c. Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, Assignment of Deed of Trust, and Regulatory Agreement and Declaration of Restrictive Covenants (the "Documents") and;

d. Authorizing the Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, as appropriate, to negotiate, execute and deliver these Documents and other related Note documents as necessary.

OUTCOME

Approval of the recommended actions will allow for the issuance of a multifamily housing revenue note for the purpose of constructing a 94 unit rental apartment project, composed of 92 units that will be affordable for a period of at least 55 years and two managers' units that will be unrestricted. These apartments will serve low- and extremely low-income residents with current annual incomes between $10,875 and $64,200.

EXECUTIVE SUMMARY

Charities Housing Development Corporation (the "Developer") has requested that the City issue a tax-exempt multifamily housing revenue note, which will be sold in order to generate proceeds that will be loaned to Kings Crossing, L.P., a California limited partnership (the "Borrower") created by the Developer. The Note will be non-rated and not credit enhanced and will be structured as a private placement with Citibank, N.A. as the initial purchaser. The proceeds of the loan, together with other funds, will be used by the Borrower to finance the construction of 94 unit rental apartment housing composed of 92 units, consisting of 33 one-bedroom units, 33 two-bedroom units, and 26 three-bedroom units, that will be affordable for a period of at least 55 years and two (2) manager's units that will be unrestricted to be known as Kings Crossing Apartments (the "Project").

Additionally, the Housing Department will provide a loan to the Borrower for this Project in the amount of $10,145,275. This amount is within the maximum loan amount of $10,565,700 approved by City Council for the Project on March 18, 2008.

BACKGROUND

Charities Housing Development Corporation ("Charities") has requested that the City issue the Note for the purpose of lending the Note proceeds to Kings Crossing, L.P., a California limited partnership, created by the Developer. The proceeds of the loan, together with other funds, will be used by the Borrower to finance the construction of the Project: 100% of the 92 affordable units in the Project will be rented to residents with incomes between 15% and 50% of the Area Median Income ("AMI"). These restrictions will remain for a period of at least 55 years. Two of the Project's units are unrestricted managers' units.

On September 23, 2009, the City was awarded a private activity bond allocation of $25,380,000 from California Debt Limit Allocation Committee ("CDLAC"). On June 1, 2010, the Assistant Director of Finance, pursuant to Municipal Code Section 5.06.430, held a TEFRA Hearing to receive public comment on the City's expressed intent to issue up to $25,380,000 in tax-exempt multifamily housing revenue bonds to provide construction and permanent funding for the Project. On June 7, 2010, the Mayor approved Certificate No. 2010-2, which authorized the City to issue up to $25,380,000 in multifamily housing revenue bonds for the Project.
The Note will be structured as a single series note in an amount currently estimated to be $24,901,618. Note proceeds will fund a portion of the total Project costs, which are estimated at this time to be approximately $44,232,612. The following table provides the estimated breakdowns of the sources of funding during the construction phase, and after completion of the project and lease up phase (permanent):

City of San José
Kings Crossing Apartments
Plan of Finance – Sources of Funding[1]

Source	Construction	Permanent
Note Proceeds	$ 24,901,618	$ 2,820,000
City Loans	6,748,465	10,145,275
State of California – 1C Infill Grant	4,495,840	4,495,840
Tax Credit Equity	1,711,748	11,411,652
Developer Equity/Lease-up Income/Deposits	1,300,000	1,300,000
American Recovery and Reinvestment Act (ARRA) 1602 Funds	2,076,901	2,076,901
Federal Home Loan Bank Affordable Housing Program Funds	0	460,000
County of Santa Clara Mental Health Services Act (MHSA) Funds	1,200,000	1,200,000
County of Santa Clara Home Investment Partnerships Program	0	350,994
State of California Housing and Community Development Multifamily Housing Program	0	9,971,950
Deferred Costs	1,798,040	0
Total	$ 44,232,612	$ 44,232,612

[1] The dollar amount of each source is estimated as of the date of this report. The actual amounts may vary slightly from these estimates.

A portion of the tax credit equity funds received at completion of construction will be used to retire a portion of the Note with the resulting amount of outstanding Note to be approximately $2,820,000.

One of CDLAC's requirements is that the Note closing must occur within the time period set by CDLAC. The City has requested an extension of the CDLAC deadline to September 22, 2010. It is anticipated that the Note will close on or about September 2, 2010.

ANALYSIS

This portion of the report is divided into several sections to address the items in staff's recommendation to proceed with the Project financing. These sections include descriptions of the financing structure, financing documents, existing City funding commitment, financing team participants, and financing schedule.

Note Financing Structure

Overview of the Multifamily Note Financing

General As a brief summary, multifamily housing revenue notes are issued to finance the development by private developers of certain affordable rental apartment projects. These notes operate in a very similar manner to the more familiar multifamily housing bonds. They are issued pursuant to the same provisions of state law (California Health and Safety Code Section 52075 -52098) and use a portion of the State's federal tax-exempt private activity allocation which are allocated by CDLAC procedures. The Notes also work in connection with tax credits provided through the California Tax Credit Allocation Commission (TCAC). The City issues revenues notes as tax-exempt securities which are then sold and the City then loans the proceeds to the Borrower. The notes are limited obligations of the City, payable solely from loan repayments by the Borrower.

Citibank, N.A. is requiring that the issuance be structured as a note rather than a bond because of a recent ruling of the Office of the Comptroller of the Currency ("OCC") that distinguishes loans from bonds for purposes of counting maximum Community Reinvestment Act ("CRA") credit. The change occurred when Citibank's regulatory compliance was shifted to OCC from the Office of Thrift Supervision ("OTS"). OTS had always viewed tax-exempt financing activity as lending and not as an investment, whether structured as a bond or private placement, since proceeds of the financing were loaned to the borrower. However, OCC will only treat bond tax-exempt financing activity as an investment that is considerably less beneficial than a loan to Citibank N.A. Citibank N.A. is satisfied that the private placement back-to-back structure of the issuance meets OCC's definition of a CRA loan as well as CDLAC's requirements for tax-exempt financing.

Requirements for Tax-Exemption For a multifamily housing revenue note to qualify for tax-exemption, federal law generally requires that one of two restrictions must apply: either (1) at least 20% of the units in the housing development must be reserved for occupancy by individuals and families whose income is 50% or less of area median income or (2) at least 40% of the units must be reserved for occupancy by individuals and families whose income is 60% or less of area median income. This last restriction will be incorporated into the Regulatory Agreement for the Note. Further, in consideration of the City loans, the Project will be subject to the deeper affordability requirements described in the Background section above.

Structure of the Note

Private Placement Structure The Note will be non-rated and not credit enhanced and will be structured as a private placement with Citibank, N.A. ("Citibank, N.A." or "Private Placement Purchaser") as the initial private placement purchaser. Pursuant to the City's policies regarding non-credit enhanced notes, the Private Placement Purchaser will sign an Investor's Letter acknowledging that it is a "qualified institutional buyer" or an "accredited investor", that is, a large institutional investor who understands and accepts the risks associated with unrated note secured solely by the Project rents. If the Private Placement Purchaser wishes to transfer the Revenue Note, the new noteholder must sign and deliver a similar Investor's Letter to the Fiscal Agent. Minimum denominations of the Note will be at least $100,000.

Principal Amounts and Terms Initially, the Note will be issued as interest-only fixed rate tax-exempt note in an aggregate amount of approximately $24,901,618. Upon completion of the Project and after lease-up and conversion of the Project, a portion of the tax credit equity funds will be used to payoff a portion of the Note with the remaining outstanding amount of the Note equal to approximately $2,820,000. At that time (the "Conversion Date"), which is estimated to be no later than 30 months after the issuance of the Note, the Note will convert to a fixed-rate tax-exempt note to be fully amortized as follows:

Tranche	Principal	Term
A	$1,516,000	30 years
B	1,304,000	15 years
	$2,820,000	

Interest Rates During the construction period, the Note will pay interest-only at a maximum fixed rate of 6.25%.

During the permanent period, after the Project is completed and after the Conversion Date, the interest will accrue at a fixed rate calculated on a 30/360-day basis. The maximum interest rate during the permanent period is set at Note closing but will not exceed:

Tranche	Principal	Term	Interest Rate
A	$1,516,000	30 years	7.75% fixed
B	1,304,000	15 years	7.25% fixed
	$2,820,000		

Financing Documents

The following is a brief description of each document the City Council is being asked to approve and authorize the execution of. Copies of these documents will be available in the City Clerk's Office on or about August 12, 2010.

Funding Loan Agreement The Note will be issued under a Funding Loan Agreement (the "Agreement") between the City and Wells Fargo Bank, National Association, as the fiscal agent (the "Fiscal Agent"). The Agreement is executed by the Assistant Director of Finance, or other authorized officers on behalf of the City, and attested by the City Clerk. Pursuant to the Agreement, the Fiscal Agent is given the authority to receive, hold, invest, and disburse the Note proceeds and other funds established under the Agreement; to authenticate the Note; to apply and disburse payments to the Noteholder(s); and to pursue remedies on behalf of the Noteholder(s). The Agreement sets forth the guidelines for the administration, investment and treatment of investment earnings generated by each fund and account, and restrictions relating to any subsequent transfer of the Note. The Borrower Loan Agreement (described below) obligates the Borrower to compensate the Fiscal Agent for services rendered under the Agreement.

Borrower Loan Agreement There is also a loan agreement (the "Loan Agreement") among the City, Citibank, N.A., and the Borrower. The Loan Agreement is executed by the Assistant Director of Finance or other authorized officer on behalf of the City. The Loan Agreement provides for the loan of the Note proceeds to the Borrower for construction and permanent financing for the Project and for the repayment of such loan by the Borrower. The loan is evidenced by a note (the "Loan Note") in an amount that corresponds to the principal amount of the Note. The City's rights to receive payments under the Note will be assigned to the Fiscal Agent, along with certain other rights under the Agreement, the Loan Agreement and the Note; however, certain reserved rights have been retained by the City, such as the City's right to indemnification.

Regulatory Agreement and Declaration of Restrictive Covenants Additionally, there is an agreement (the "Regulatory Agreement") among the City, the Fiscal Agent, and the Borrower that contains certain covenants and restrictions regarding the Project and its operations intended to assure compliance with the Internal Revenue Code of 1986. The Regulatory Agreement is executed by the Assistant Director of Finance and Director of Housing, or other authorized officers on behalf of the City. The Regulatory Agreement restricts the rental of Project units (except for the two manager's units) to low-income residents for a period of at least 55 years as previously described.

Assignment of Deed of Trust The Borrower's loan repayment obligations to the City will be secured by a Deed of Trust, of which the City is the beneficiary. The sole source of funds for the City's repayment of the Revenue Note will be payments from the Borrower in respect of such loan from the City. Therefore, at closing the City will assign (without recourse) its rights as beneficiary under the Deed of Trust, thereby permitting the holder(s) of the Note to pursue the remedies set forth in the Deed of Trust against the Borrower directly.

<u>Financing Team Participants</u>

The financing team participants consist of:

• City's Financial Advisor:	E. Wagner & Associates, Inc.
• Bond Counsel:	Hawkins, Delafield & Wood, LLP
• Fiscal Agent:	Wells Fargo Bank, National Association
• Private Placement Purchaser:	Citibank, N.A.

All costs associated with the financial advisor, bond counsel and fiscal agent are contingent upon the sale of the Note and will be paid from Note proceeds, City loan proceeds, and/or Borrower equity.

<u>Financing Schedule</u>

The current proposed schedule is as follows:

• Council Approval of Note Documents	August 24, 2010
• Pre-Close	August 31, 2010
• Close Note	September 2, 2010
• Anticipated CDLAC Deadline for Note Closing	September 22, 2010

As the tax credit syndicator, senior lender, and City all require California Housing Finance Agency's closing of ARRA and MHSA funds concurrent with the other funding sources, it is possible that these closing dates will move slightly.

<u>City Subordinate Funding</u>

The Housing Department will provide a loan to the Borrower in an amount up to $10,145,275. The funding commitment was approved by the City Council on March 18, 2008 via Resolutions No. 74291, 74292 and 74293.

<u>EVALUATION AND FOLLOW-UP</u>

This Memorandum presents the set of recommendations related to the City Council's approval of the issuance of the Note for the Kings Crossing Apartments and requires no follow-up to the City Council. Once the Note closes which is anticipated to be on September 2, 2010, and the construction of the Project commences, the Housing Department will provide updates in its Quarterly Construction Reports to the City Council.

PUBLIC OUTREACH/INTEREST

✓ **Criterion 1:** Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **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. **(Required: E-mail and Website Posting)**

☐ **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. **(Required: E-mail, Website Posting, Community Meetings and Notice in appropriate newspapers)**

This action does not meet any of the above Criteria. The method of notifying the community of the City's intent to issue a tax-exempt private activity note is for the City Council to hold a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing. The TEFRA Hearing was held on June 1, 2010 by the Assistant Director of Finance. The public hearing notice was published in the *San José Mercury News* on May 10, 2010. This Memorandum will also be posted on the City's website in advance of the August 24, 2010 meeting.

COORDINATION

This report has been prepared by the Finance Department in coordination with the Housing Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by City Council on June 12, 2007, to increase the supply of affordable housing, and with the City's *Consolidated Plan 2005-2010* to provide housing units for very low- and extremely low-income households.

COST SUMMARY/IMPLICATIONS

All issuance costs will be paid from Note proceeds, City loan proceeds, and/or Borrower equity. The Note is a tax-exempt obligation secured by mortgage loans payable from Project revenues. No payment of the Note will be paid from, or guaranteed through, the general taxing power of the City or any other City asset. The City will receive an upfront issuance fee of approximately $87,765. The City will also receive an annual fee for monitoring the Note and the Regulatory

Agreement. Under the City's Policy for the Issuance of Multifamily Housing Revenue Bonds, the annual fee is equal to the greater of one-eighth of a point (0.125%) of the amount of the construction Note and permanent Note outstanding following completion and lease-up of the Project or a minimum fee of $7,500 Although this execution proposes to use tax-exempt Notes rather than issue tax-exempt bonds, the same policy applies. Based on the formula, during construction the annual fee will be approximately $31,382 and following completion and lease-up $7,500 per annum.

No appropriation of funds is required at this time. Compensation for the financing team participants (financial advisor, bond counsel, and fiscal agent), as well as the costs of the financing, are contingent on the sale of the Note and will be paid from Note proceeds, City loan proceeds, and/or Borrower equity.

CEQA

CEQA: Mitigated Negative Declaration No. PDC07-015.

/s/
JULIA H. COOPER
Assistant Director of Finance

/s/
LESLYE KRUTKO
Director, Housing Department

For questions, please contact Julia Cooper, Assistant Director of Finance at (408) 535-7011.