



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Paul Krutko

SUBJECT: SEE BELOW

DATE: October 5, 2010

Approved

Date

10/8/10

COUNCIL DISTRICT: #4
SNI AREA: N/A

**SUBJECT: ACTIONS RELATED TO SUNPOWER CORPORATION AND
RECOVERY ZONE FACILITY BOND FINANCING ISSUED BY CEDA**

RECOMMENDATION

- (a) Adopt a resolution approving Associate Membership in the California Enterprise Development Authority and the execution and delivery of an Associate Membership Agreement relating to Associate Membership in the California Enterprise Development Authority.
- (b) Adopt a resolution approving Recovery Zone facility bond financing not to exceed \$30,000,000 to be issued by the California Enterprise Development Authority to benefit SunPower Corporation and/or a related entity.

OUTCOME

Approval of the bond financing for SunPower will facilitate their expansion project in North San Jose. The City's membership in CEDA facilitates the proposed bond allocation and any other subsequent CEDA bond proposals.

BACKGROUND

On December 8, 2009, the City Council approved a resolution designating the entire geographic region of the City of San Jose as an Economic Recovery Zone in order to make the City eligible to issue Recovery Zone Economic Development Bonds (RZEDB) and Recovery Zone Facility

October 5, 2010

Subject: Recovery Zone Bond Issuance

Page 2

Bonds (RZFB). The Office of Economic Development has been discussing the Recovery Zone bonds with numerous companies. One such company that expressed interest as part of their desire to expand was SunPower. SunPower is a highly recognized global manufacturer of solar panels. The company has grown successfully in San Jose and seeks to continue its growth in San Jose. SunPower is pursuing an expanded presence and headquarters location within the City. In order to facilitate the company's expansion, SunPower has submitted an application to the California Enterprise Development Authority (the "Authority") requesting issuance of recovery zone facility bonds in an aggregate principal amount not to exceed \$30,000,000.

SunPower has requested the California Enterprise Development Authority's (CEDA) assistance in financing their expansion with tax exempt and/or taxable Recovery Zone Facility Bonds. The financing of the facility for SunPower involves the issuance of tax-exempt and/or taxable bonds and may be completed through the Authority only if the City of San Jose approves the financing.

The California Enterprise Development Authority (CEDA) is a joint powers authority (JPA) established by the California Association for Local Economic Development (CALED) whose purpose is to issue tax-exempt and taxable conduit revenue bonds to fund commercial and industrial development projects within member jurisdictions. Federal and state laws provide the ability for cities and counties to join together under cooperative agreement to form joint powers authorities and issue tax-exempt and taxable bonds to fund projects that provide a public benefit and serve the needs of residents within the jurisdiction. All cities and counties in California have the ability to act as an issuer of conduit revenue bonds, but many jurisdictions utilize joint powers authorities primarily for economies of scale, to access specialized transaction knowledge and resources, and to avoid using valuable local staff time on these types of transactions.

ANALYSIS

SunPower Corporation is pursuing a major company expansion and new headquarters facility within San Jose. The Corporation is interested in occupying a total of 185,704 square feet of space located at 51, 77, and 145 Rio Robles Drive in San Jose. In order to facilitate the Corporation's expansion, SunPower has submitted and the California Enterprise Development Authority has accepted an application requesting the Authority to issue recovery zone bonds in an amount not to exceed \$30,000,000 for the benefit of SunPower and/or a related entity. The proceeds will be used to finance the cost of improving, rehabilitating, and equipping the three buildings on Rio Robles (the "Facilities"). The funds can also be used to pay capitalized interest, fund a reserve fund for the bonds, pay credit enhancement and associated costs of issuance. Staff anticipates that the proposed improvements to the Facilities will provide significant benefits to the residents of the City through the creation of new employment opportunities.

Per the requirements of Section 147(f) of the Internal Revenue Code, the issuance of bonds must be approved by the appropriate governmental body on behalf of which the bonds are issued and a governmental unit having jurisdiction over the territorial limits in which the facilities are located. SunPower's proposed facilities are located within the territorial limits of the City of San Jose. Accordingly, the City Council is the appropriate body to approve the proposed issuance of the Authority's recovery zone revenue bonds and the proposed use of the bonds by SunPower and/or

October 5, 2010

Subject: Recovery Zone Bond Issuance

Page 3

a related entity. The City Council's approval of the issuance of the bonds and the use of the bond proceeds is for the purpose of complying with the Internal Revenue Code. The City Council's approval is not approval of the Facilities or any other purpose.

On October 5, 2010, City Council approved a resolution authorizing the City Manager and her designees to conduct a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing, pursuant to Internal Revenue Code of 1986. A TEFRA hearing must precede the approval of the bonds by CEDA. The TEFRA hearing is scheduled to take place at 11:00 a.m. on Monday, October 18, 2010 in Conference Room 1753 at San Jose City Hall. City staff will submit a supplemental memorandum reporting on the TEFRA hearing.

CEDA is a joint powers authority originally created by the Cities of Selma, Lancaster and Eureka. Currently, there are more than 30 cities and counties who are associate members of CEDA, including the counties of Alameda, Contra Costa, Imperial, Marin, Riverside, Sacramento, San Bernardino, Santa Clara, San Diego, Stanislaus, Sonoma, Ventura and Yolo, and many cities including Anaheim, City of Industry, Duarte, Irwindale, Pasadena, and Riverside. CEDA's activities are dedicated to providing economic development assistance to member jurisdictions as an extension of the economic development assistance provided by CALED to its members.

The JPA Agreement permits any other local agency in California to join CEDA as an "Associate Member." Staff recommends that the City become an Associate Member of CEDA because membership would assist the City's economic development efforts. Associate membership in CEDA will allow the City to facilitate financings for-profit and nonprofit organizations located within the City through CEDA's bond program. The projects that can be financed include industrial and commercial projects and other public purpose projects within the City. CEDA's Associate Members enjoy nearly all the benefits of regular membership without the concomitant duties or obligations. Associate Members have ample opportunity to provide input on proposed or existing programs. Further, Associate Members are not restricted or inhibited in any way with respect to their independent ability to finance any project in any manner they deem appropriate, which may or may not involve or include CEDA.

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

HONORABLE MAYOR AND CITY COUNCIL

October 5, 2010

Subject: Recovery Zone Bond Issuance

Page 4

a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Pursuant to the Internal Revenue Code, a TEFRA hearing must precede the approval of the bonds. The public hearing must have a reasonable public notice period; in this instance a 14 day notice period is required. A public hearing is scheduled to take place at 11:00 a.m. on Monday, October 18, 2010 in Conference Room 1753 at San Jose City Hall.

The California Enterprise Development Authority published a meeting notice in the Mercury News on October 4, 2010.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Finance Department and Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

These actions further the vision of San Jose as an entrepreneurial environment contained in the Economic Development Strategy to "Support Start-Up and Growth of Local Businesses, Small and Large, in Tech as well as Non-tech Fields" (Initiative 5).

COST SUMMARY/IMPLICATIONS

There is no fiscal impact to the City. The adoption of the resolution approving the issuance of recovery zone revenue bonds complies with the public approval requirements of §147(f) of the Internal Revenue Code. The City of San Jose does not bear any responsibility for the tax exempt status of the Bonds, the debt service on the Bonds or any other matter related to the Bonds.

CEQA

CEQA: Not a project, PP10-066f.

/S/
PAUL KRUTKO
Chief Development Officer

For questions please contact NANCI KLEIN, DIVISION MANAGER, at 408-535-8184.