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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: **SAN JOSE REDEVELOPMENT AGENCY: SOURCES OF FINANCING BEYOND THE AFFORDABLE HOUSING FUND**

DATE: November 18, 2009

INFORMATION

BACKGROUND

This memorandum responds to Budget Document #11 issued by Councilmembers Liccardo and Pyle as part of the Proposed 2009-2010 Redevelopment Agency of San José's (RDA) budget process. In this Budget Document, it was requested that the City identify capital funds which the City could potentially use as a source for granting loans to the RDA during the next 2 – 3 years in order to relieve the burden on the Low and Moderate Income Housing Fund. Specifically, the memorandum identified the Underground Utility (Rule 20A/B) Fund, the Sewage Treatment Plant Connection Fee Fund, and Transportation Impact Fee funds. Additionally, it was requested to analyze the possibility of issuing any bonds or other financing leveraged from these funds. Other information requested in the Budget Document #11 will be provided under separate cover.

ANALYSIS

Sources for Granting Loans to the RDA

In response to the Councilmembers' memorandum, staff reviewed both capital and operating funds with a minimum $1.0 million unrestricted fund balance available for loan purposes. This analysis was initially completed to address the Proposition 1A Property Tax borrowing from the State of California as an alternative to participation in the Proposition 1A Securitization Program.

While there are many considerations and risks associated with borrowing that are discussed later in this memorandum, based on a preliminary analysis, staff was able to identify the Subdivision Park Trust Fund, the Sewage Treatment Plant Connection Fee Fund, and the Ice Centre Revenue Fund, which could be possibly used for a loan to the RDA. The Underground Utility Fund and Transportation Impact Fee funds do not have sufficient fund balance available to loan to the RDA. The cumulative potential loan amount is estimated at approximately $17 million. Attachment A provides a fund description, the fund balance as of November 2009, and potential loan amounts from these funds.

In general, any potential loan to the RDA, however, requires further analysis and consideration of the following issues:

1. Per City Council Policy, loans need to have an identified loan repayment source and be repaid with interest within an established time frame. Also, the loan must be immediately due and payable if needed by the fund that provided the loan.
2. In case of non-payment, the General Fund would become liable for the repayment to these funds.
3. Granting a loan from a fund which depends on fees, may prevent the City from raising fees until the loan is repaid.
4. Potentially loaning funds to the RDA from the identified funds precludes the City from addressing potential future fiscal emergencies affecting the General Fund such as State take aways.
5. Concerns from community related to delaying projects and not using funds as intended may arise.
6. Infrastructure improvement and equipment replacements may need to be deferred.
7. The availability of matching funds for grants may be impacted.

In addition to these general issues, Attachment B provides a more detailed preliminary analysis for the Subdivision Park Trust Fund, the Sewage Treatment Plant Connection Fee Fund, and the Ice Center Fund. The analysis includes a Risk Matrix classifying the following risk types as low, moderate, and high: Fund Availability, Statutory Restrictions, Community Sensitivity, Opportunity Cost, and Impact of Non-Payment of Loan.

Issuing of Bonds from Identified Capital Funds

The identified capital funds derive revenue from developer fees, which are one-time payments versus recurring and reliable payments such as ongoing rate payer payments for a utility fund. It is not possible to issue bonds without an ongoing, reliable source of repayment. Even if a stable source of repayment were identified for repayment, any securitization of restricted funds would require a nexus between the purpose of the restricted funds and the use of the bond proceeds.

The City Administration understands RDA's difficult financial situation and it is feasible to consider loans as an option. However, any loans from the preliminarily identified funds require a careful analysis of the considerations outlined above and any other potential issues.

DEBRA FIGONE
City Manager

Attachments

Preliminary Analysis of Potential Loans to the Redevelopment Agency from City Funds

Name of Fund	Fund Description	Fund Balance as of 11/09	Potential Loan Amount
Subdivision Park Trust Fund (Fund 375)	This fund accounts for payments of fees from developers in lieu of dedication of land for park and recreation purposes in residential subdivisions.	$25.9 M	$3 M – 10 M
Sewage Treatment Plant Connection Fee Fund (Fund 539)	This fund accounts for revenues from new residential, commercial and industrial connections to the San José/Santa Clara Water Pollution Control Plant. These revenues are used to pay San José's share of the costs of the acquisition, construction, reconstruction, or enlargement of the Water Pollution Control Plant.	$14.9 M	$5 M
Ice Centre Revenue Fund (Fund 432)	This fund accounts for rental revenues received from Sharks Ice at San José operations and provides funding for debt service payments and for repairs and improvements at the facility.	$5.1 M	$2.0 M
Underground Utility (Rule20A/B) Fund (Fund 416)	This fund accounts for developer fees collected when the developer opts out of placing utility facilities underground at the time of development. The fund is used to establish Rule 20B Underground Utility Districts.	$853,000	$0
North San José Traffic Impact Fee Fund (Fund 349) and the Evergreen Traffic Impact Fees (reserve in the Construction Excise Tax Fund - Fund 465)	These funds account for traffic impact fees to be charged to new industrial and residential development and are allocated to improvements in these areas.	$493,000	$0

SUBDIVISION PARK TRUST FUND

Summary

The Subdivision Park Trust Fund (SPTF) accounts for the payments of fees in lieu of dedication of land for park and recreation purposes in residential subdivisions. Moneys in the fund, including accrued interest, may be expended solely for the acquisition or development or renovation of park facilities, recreation facilities, or park or recreation facilities on public agency property pursuant to a Joint Use Agreement to serve or benefit the residential project for which the fees were paid. This means the City must use the parkland fees for neighborhood parks or recreational facilities that are located within ¾ miles of the development that paid the fees or for community facilities that are located within 2 miles of the development that paid the fees (nexus requirement).

Potential loans to the San Jose Redevelopment Agency (RDA) from this fund in the amounts of $3 to $5 million or $10 million have been reviewed. Based on this preliminary analysis, there is sufficient ending fund balance in 2009-2010 to potentially loan $3 to $5 million to the RDA without significantly impacting current projects. This loan would, however, limit the amount of funding available to start new projects or to front and match money for future grants. At the $10 million loan level, several projects would be impacted as well as the ability to provide matching funds for grants. In addition, there are legal restrictions that require the SPTF funds to be committed within a five-year period and a loan to the RDA could limit the City's ability to comply with this statutory requirement.

Discussion of Scenario 1 ($3 - 5 Million):

A potential loan would limit the amount of funding available from SPTF to front and match money for future grants and could impact the ability to start new projects. Staff has identified the following levels of risk associated with a potential loan of $3M to $5M to the RDA. This risk assessment is in addition to all of the items stated below under "General Principles & Risks" below.

Type of Risk	Level of Risk		
	Low	Moderate	High
Fund Availability [1]			X
Statutory Restrictions			X
Community Sensitivity [2]		X	
Opportunity Cost		X	
Impact of Non-Payment of Loan			X

[1] See No. 3 under General Principles and Risks below for details.
[2] Staff rates the Community Sensitivity Level of Risk for Residents as moderate and for Developers as high.

Discussion of Scenario 2 ($10 Million):

A potential $10 million loan would significantly impact current and future PTF projects and would limit the availability of matching funds, including but not limited to the following:

(1) All grant applications, including potential 2010 transportation bill. In the last bill, the City fronted approximately $5M from the SPTF. Currently $30M of Prop 84 candidate projects have been identified.
(2) Communications Hills Parks;
(3) Shady Oaks Sports Field Development;
(4) Scottish Rite Park;
(5) Guadalupe River Park Dog Park;
(6) Infrastructure rehab to the various parks, including: Carrabelle, Cataldi, DeAnza, Evergreen, Glenview, Los Paseos, Parkview, Roosevelt, Fontana, and others to be identified.

Staff has identified the following levels of risk associated with a potential loan of $10M to the RDA. This risk assessment is in addition to all of the items stated below under "General Principles & Risks" below.

Type of Risk	Level of Risk		
	Low	Moderate	High
Fund Availability			X
Statutory Restrictions			X
Community Sensitivity			X
Opportunity Cost			X
Impact of Non-Payment of Loan			X

[1] See No. 3 under General Principles and Risks below for details.

General Principles & Risks:

As outlined above, the SPTF accounts for the payments of fees in lieu of dedication of land for park and recreation purposes in residential subdivisions. When these fees are collected and set aside, an expectation for parkland and open space for recreational purposes is created by the developers and community members who paid the fees. Therefore, the use of SPTF funds for a purpose other than delivery of capital projects to serve or benefit the residents who paid the fees will have a direct negative impact on residents in these immediate areas, and possible legal issues as follows:

1. The City's General Fund would become liable for the Park Development commitments if RDA is ultimately unable to repay the loan, thereby increasing the City's Structural Budget Deficit. There is already $8.1 million currently owed by the RDA to the City for parkland fees since 2005 through the voucher program and the RDA has continuously sought deferment of payment of those fees.

2. The SPTF has been considered as a lending source in the past for park projects and has not been used as there have been concerns about using the funding outside of, and for a different purpose than, the nexus for which the fee was paid. Any proposed loan should be discussed and coordinated with the City Attorney's Office.

3. Parkland fees are required to be committed within five (5) years of the date in which the fees were paid or be required under State Law and the Municipal Code to be returned to the residents who paid the fees. The City cannot commit the funds if they are not in the SPTF

and therefore, may be required to return the parkland fees loaned to the RDA to the residents who paid the fees.

4. The development community has commented on the amount of parkland fees charged by the City, the timing of the payment of required parkland fees, and the possibility of deferring, waiving, or even loaning parkland fees to them in the current economy. A loan from the SPTF could continue to raise concerns and challenges to the enforcement of the Parkland Dedication and Park Impact Ordinance.

5. There is a certain expectation from the development community and the community-at-large that the parkland fees will be used in the very near future for certain capital projects. Concerns will be heightened as acquisition of parkland, development of trails and parks, or other community facilities will be delayed because the money is not in the SPTF for the projects.

6. Any interfund loan must be consistent with City Council Policy 1-18 which requires, including but not limited to, the following:
    a. Interfund loans may not be used to solve ongoing structural budget problems.
    b. Interfund loans must have an identified repayment source and date; include an interest component that equals the investment earnings the fund would have received had the loan not occurred; and be immediately due and payable if needed by the fund that provided the loan.
    c. Loan amount, term, and repayment source will be identified any time a loan is recommended.
    d. Loans will be coordinated with the City Attorney's Office to ensure compliance with the Municipal Code and will be approved by the City Council.

7. Although a loan to the RDA is not an interfund loan, many of the same principles and policies apply. Based upon the above criteria, it is doubtful that a loan to RDA could meet these requirements, especially items 6 (b) and 6 (c).

8. Loaning of money would jeopardize the City of San José's ability to deliver on Key Council Priorities, Green Vision – 100 miles of trails, land banking, sports fields and infrastructure backlog projects.

9. The SPTF is the primary source for fronting and matching funds for grants such as Proposition 84. If a substantial loan is made to RDA then the City would need to find another source for this or stop applying for and accepting grants.

10. Since the SPTF is the primary source (other than grants) for trail development, this could make the 100 miles of trails by 2022 an unachievable goal in the Green Vision. Particularly because the SPTF is currently being used to fund design projects which make "shovel ready" candidates for federal and state grant opportunities such as Penitencia and Thompson Creek Trails.

11. Currently, $3.7M SPTF and $7.7M in Construction and Conveyance Tax Funds are already on loan to RDA from earlier this year.

Ultimately a delay of projects may result in more staffing eliminations in City departments.

SEWAGE TREATMENT PLANT CONNECTION FEE FUND

Summary ($5 Million):

The Sewage Treatment Plant Connection Fee Fund (STPCFF) accounts for revenues from new residential, commercial, and industrial connections to the San José/Santa Clara Water Pollution Control Plant. These resources are used to pay San José's share of the costs of the acquisition, construction, reconstruction or enlargement of the Water Pollution Control Plant (WPCP), including principal and interest on any bonds or state or federal loans. Based on the current scheduled expenditure plan of funds from the Sewage Treatment Connection Fee Fund (STCF), a current decline in revenues, and the Water Pollution Control Plant capital activities, there is sufficient ending fund balance (reserves) in 2009-2010 to potentially loan $5.0 million to the RDA.

In addition to all of the items stated below under "General Principles & Risks", staff has identified the following levels of Risk associated with a potential loan.

Type of Risk	Level of Risk		
	Low	Moderate	High
Fund Availability	X		
Statutory Restrictions		X	
Community Sensitivity	X		
Opportunity Cost		X	
Impact of Non-Payment of Loan			X

General Principles & Risks:

As discussed above, funds in the STPCFF can only be used for expenditures in connection with the WPCP. Therefore, any loan of these funds for other uses must be repaid within an established time frame and the appropriate interest. Following is a discussion of the general risks with such a loan:

1. The City's General Fund would become liable for the loan repayment if RDA is ultimately unable to repay the loan, thereby increasing the City's Structural Budget Deficit.
2. Any interfund loan must be consistent with City Council Policy 1-18 which requires, including but not limited to, the following:
    a. Interfund loans may not be used to solve ongoing structural budget problems.
    b. Interfund loans must have an identified repayment source and date; include an interest component that equals the investment earnings the fund would have received had the loan not occurred; and be immediately due and payable if needed by the fund that provided the loan.
    c. Loan amount, term, and repayment source will be identified any time a loan is recommended.
    d. Loans will be coordinated with the City Attorney's Office to ensure compliance with the Municipal Code and will be approved by the City Council.

3. Although a loan to the RDA is not an interfund loan, many of the same principles and policies apply. Based upon the above criteria, it is doubtful that a loan to the RDA could meet these requirements, especially items 2 (b) and 2 (c).

4. Granting of the loan may prevent the City raising the sewer connection fee until the loan is repaid.

5. Assuming a repayment of the loan within four years, there may be a potential for capital project or equipment replacement delays as a result of the loan.

ICE CENTER REVENUE FUND

Summary ($2 Million):

The Ice Centre Revenue Fund (ICRF) accounts for rental revenues received from Sharks Ice at San José operations and provides funding for debt service payments and for repairs and improvements at the facility. Based on the current spending plan for the ICRF, there is sufficient ending fund balance in 2009-2010 to potentially loan $2 million to the RDA.

In addition to all of the items stated below under "General Principles & Risks", staff has identified the following levels of Risk associated with a potential loan.

Type of Risk	Level of Risk		
	Low	Moderate	High
Fund Availability	X		
Statutory Restrictions	X		
Community Sensitivity	X		
Opportunity Cost		X	
Impact of Non-Payment of Loan			X

General Principles & Risks:

Funds in the ICRF can only be used for expenditures in connection with the facility. Therefore, any loan of these funds for other uses must be repaid with the appropriate interest. Following is a discussion of the general risks with such a loan:

1. The City's General Fund would become liable for the loan repayment if RDA is ultimately unable to repay the loan, thereby increasing the City's Structural Budget Deficit.
2. Any interfund loan must be consistent with City Council Policy 1-18 which requires, including but not limited to, the following:
    a. Interfund loans may not be used to solve ongoing structural budget problems.
    b. Interfund loans must have an identified repayment source and date; include an interest component that equals the investment earnings the fund would have received had the loan not occurred; and be immediately due and payable if needed by the fund that provided the loan.
    c. Loan amount, term, and repayment source will be identified any time a loan is recommended.
    d. Loans will be coordinated with the City Attorney's Office to ensure compliance with the Municipal Code and will be approved by the City Council.
3. Although a loan to the RDA is not an interfund loan, many of the same principles and policies apply. Based upon the above criteria, it is doubtful that a loan to the RDA could meet these requirements, especially items 2 (b) and 2 (c).
4. Granting a loan from this fund would limit the amount of funding available for additional investments in the Ice Centre facility and emergency repairs and would reduce funding available to address any significant interest rate fluctuations that could increase debt service payments in this fund.