

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 SEP -4 PM 2:05

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: September 16, 2008

RE: **A Resolution Authorizing a Contribution of \$5,000 for Legal Services to Represent the Bay Area HomeBuyer Agency Before the Internal Revenue Service**

SUMMARY

This report authorizes the City to contribute \$5,000 toward covering the cost of attorney fees to represent the Bay Area HomeBuyer Agency before the Internal Revenue Service.

FISCAL IMPACT

Funds are available in Mortgage Revenue Fund (2826), Housing and Community Development Support Staff Organization (88919), Project (P05320).

BACKGROUND

The City was a member of a Joint Powers Agency (JPA) that issued bonds in 2000 for a lease purchase program to provide first mortgages. The funds were administered by the East Bay Delta Housing and Finance Agency, now Bay Area HomeBuyer Agency (BAHBA). Other member cities include Fremont, Pleasanton, Richmond, Livermore, East Palo Alto, Pinole, Union City, and the County of Contra Costa.

The Internal Revenue Service (IRS) has been investigating costs relating to the federally tax-exempt \$100M Lease Revenue Pass-Through Obligation Certificates of Participation (COPs) that were issued to implement the lease-to-own purchase program for low to moderate income housing. The focus of the investigation has been on the financial advisors and other participants in the bond issue who the IRS contends collected fees and made profits in excess of the amounts allowed by law. The IRS action could result in a determination that the bonds issued by the JPA are taxable.

BAHBA hired special counsel last year to represent it in proceedings before the IRS. The BAHBA is now out of money and asking for \$5,000 contributions from each of its members--including Oakland--to pay attorney's fees. These fees are estimated not to exceed \$30,000 and have been apportioned among the original nine members of the Agency.

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KEY ISSUES AND IMPACTS

This would be a voluntary contribution by the City. Members of BAHBA have no legal obligation to pay the debts and obligations of the BAHBA. Some members are choosing to contribute since they participated in the lease purchase program. The City and other members of the JPA would not be liable for or required to contribute to any finding of liability or other enforcement action taken by the IRS against BAHBA.

SUSTAINABLE OPPORTUNITIES

There are no sustainable opportunities associated with this report.

DISABILITY AND SENIOR CITIZEN ACCESS

There is no impact on access for senior citizens or the disabled.

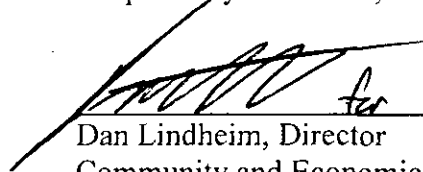
RECOMMENDATION(S) AND RATIONALE

Staff recommends approval of the Resolution to contribute \$5,000 to the Bay Area HomeBuyer Agency (BAHBA) for legal fees.

ACTION REQUESTED OF THE CITY COUNCIL

Council is requested to approve the Resolution authorizing a \$5,000 contribution to the Bay Area Homebuyer Agency for legal fees.

Respectfully submitted,

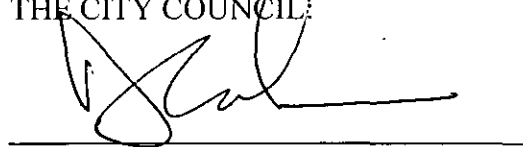


Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by: Sean Rogan
Deputy Director, Housing and Community Development

Prepared by: Jackie Campbell
Manager, Homeownership Programs

APPROVED AND FORWARDED TO
THE CITY COUNCIL


Office of the City Administrator

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OAKLAND CITY COUNCIL

Kathleen Helen Boyd
City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION AUTHORIZING A CONTRIBUTION OF \$5,000 FOR LEGAL SERVICES TO REPRESENT THE BAY AREA HOMEBUYER AGENCY BEFORE THE INTERNAL REVENUE SERVICE

WHEREAS, the City was a member of a Joint Powers Agency (JPA) that issued bonds in 2000 for a lease purchase program as East Bay Delta Housing and Finance Agency, now Bay Area HomeBuyer Agency (BAHBA); and

WHEREAS, the IRS is investigating the amount of fees collected by financial and other advisors to BAHBA at the time the bonds were issued; and

WHEREAS, BAHBA has retained legal counsel in connection with these matters; and

WHEREAS, BAHBA is now out of money and is asking for \$5,000 voluntary contributions from each of its members, including Oakland, to pay attorney's fees; and

WHEREAS, as a member of the JPA, the City is not responsible for the obligations of BAHBA; and

WHEREAS, funds are available in Mortgage Revenue Fund (2826), Housing and Community Development Support Staff Organization (88919), Project (P05320) and the City of Oakland wishes to make this contribution; now, therefore be it

RESOLVED: That the City Council authorizes a voluntary contribution of \$5,000 from to the Bay Area Homebuyer Agency for legal fees, to be allocated from Mortgage Revenue Fund (2826), Organization (88919), Project (P05320); and be it

FURTHER RESOLVED: That the City Administrator is authorized to disburse said funds.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California