



CITY COUNCIL AGENDA REPORT

MEETING DATE: **SEPTEMBER 2, 2014**

ITEM NUMBER:

SUBJECT: TEFRA HEARING FOR WHITTIER COLLEGE PROJECT

DATE: AUGUST 22, 2014

FROM: COLLEEN O'DONOGHUE, ASSISTANT FINANCE DIRECTOR

PRESENTATION BY: COLLEEN O'DONOGHUE

FOR FURTHER INFORMATION CONTACT: COLLEEN O'DONOGHUE, (714) 754-5219

RECOMMENDED ACTION:

- 1) Conduct a public hearing, as required by the Tax and Equity Fiscal Responsibility Act (TEFRA) and the Internal Revenue Code, for the financing by the California Municipal Finance Authority (CMFA) of various improvements and capital projects on the Whittier College campus located at 3333 Harbor Blvd in the City.
- 2) Adopt a resolution to become a member of the CMFA and approve the issuance of a loan by the CMFA for the benefit of Whittier College to provide for the financing of the Project.
- 3) Authorize the CEO to execute the Joint Powers Agreement of the CMFA.

BACKGROUND:

The City received a request to conduct a TEFRA hearing in order for Whittier College to issue tax-exempt bonds, through the CMFA, for various improvements and capital projects at Whittier College's law school campus located at 3333 Harbor Blvd in the City. TEFRA requires a public hearing to be conducted by the City as the governmental unit where the law school campus is located, and approval by the City of the financing.

Whittier College requested that the CMFA serve as the municipal issuer and participate in the issuance of a tax exempt loan as part of a finance plan, in an aggregate principal amount not to exceed \$100,000,000 (the "Loan"). The proceeds of the Loan will be loaned to Whittier College, which is a California nonprofit public benefit corporation and a 501(c)(3) corporation, for the purposes of: (1) refinancing the City of Whittier Variable Rate Demand and Refunding Bonds (Whittier College) Series 2008 (the "Refunded Debt") the proceeds of which were used (i) to finance the planning, construction, renovation, remodeling and/or improving of certain athletic facilities, other facilities, classrooms and miscellaneous capital projects, including furnishings, infrastructure, landscape, technology and related program spaces on its campuses, (ii) to provide for the current refunding of the City of Whittier Variable Rate Demand Revenue and Refunding Bonds (Whittier College), Series 2004 (the "2004 Bonds"), which financed improvements to Whittier College's main campus and law school campus and

refunded bonds issued in 1993 for the benefit of Whittier College, and (iii) to pay costs incurred in connection with the issuance of the Refunded Debt; (2) payment and/or reimbursement of Whittier College for the costs of various improvements and capital projects on the law school campus; and (3) the payment of various costs of issuance and other related costs. The law school campus is owned and operated by Whittier College and located entirely within the territorial limits of the City.

In order for all or a portion of the Loan to qualify as a tax-exempt loan, the City of Costa Mesa must conduct a public hearing providing for the members of the community an opportunity to speak in favor of or against the use of tax-exempt loans for the financing of the Project. Prior to a TEFRA hearing, reasonable notice must be provided to the members of the community. Following the close of the TEFRA hearing, an “applicable elected representative” of the governmental unit hosting the project must provide its approval of the issuance of the Loan for the financing of the project.

In order for the CMFA to have the authority to serve as the issuer of the Loan for the project, it is necessary for the City to become a member of the CMFA. The CMFA was created on January 1, 2004 pursuant to a Joint Exercise of Powers Agreement to promote economic, cultural and community development, through the financing of economic development and charitable activities throughout California. The CMFA was formed to assist local governments, non-profit organizations and businesses with the issuance of taxable and tax-exempt bonds aimed at improving the standard of living in California. The CMFA’s representatives and its Board of Directors have considerable experience in bond financings. To date, over 175 municipalities have become members of CMFA. Attached to this report is a copy of the Joint Exercise of Powers Agreement to be executed by a designated signatory of the City.

ANALYSIS:

The City has been asked to conduct a public hearing, execute the Joint Exercise of Powers Agreement, and adopt the attached resolution solely for the purposes of satisfying the requirements of TEFRA. The bonds to be issued by the CMFA for the project will be the sole responsibility of Whittier College, and the City will have no financial, legal, moral obligation, liability or responsibility for the project or the repayment of the bonds for the financing of the project. All financing documents with respect to the issuance of the Loan will contain clear disclaimers that the bonds are not obligations of the City or the State of California, but are to be paid for solely from funds provided by Whittier College.

The Joint Exercise of Powers Agreement provides that the CMFA is a public entity, separate and apart from each member executing such agreement. The debts, liabilities and obligations of the CMFA do not constitute debts, liabilities or obligations of the members executing such agreement. There are no costs associated with membership in the CMFA and the City will in no way become exposed to any financial liability by reason of its membership in the CMFA. In addition, participation by the City in the CMFA will not impact the City’s appropriations limits and will not constitute any type of indebtedness by the City. Outside of holding the TEFRA hearing, adopting the required resolution and executing the Joint Exercise of Powers Agreement of the CMFA, no other participation or activity of the City or the City Council with respect to the issuance of the Loan will be required.

The Joint Exercise of Powers Agreement expressly provides that any member may withdraw from such agreement upon written notice to the Board of Directors of the CMFA. In the case of the proposed loan financing for the Borrower, the City following its execution of the Joint Exercise of Powers Agreement, could, at any time following the issuance of the Loan, withdraw from the CMFA by providing written notice to the Board of Directors of the CMFA.

FISCAL REVIEW:

The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation (the “Foundation”), acts as the Board of Directors for the CMFA. Through its conduit issuance activities, the CMFA shares a portion of the issuance fees it receives with its member communities and donates a portion of these issuance fees to the Foundation for the support of local charities. With respect to the City, it is expected that that a portion of the issuance fee will be granted by the CMFA to the general fund of the City. Such grant may be used for any lawful purpose of the City. Whittier College will be the beneficiary of the CMFA’s charitable donation through a 25% reduction in issuance fees.

LEGAL REVIEW:

The City Attorney’s Office has reviewed this agenda report, the CMFA’s Joint Exercise of Powers Agreement, and the draft resolution.

CONCLUSION:

Staff recommends that the City Council conduct the TEFRA hearing, adopt the attached resolution, and authorize the CEO to execute the CMFA’s Joint Exercise of Powers Agreement.

COLLEEN O’DONOGHUE
Assistant Finance Director

STEVE DUNIVENT
Interim Finance Director

THOMAS P. DUARTE
City Attorney

- Attachments: 1) [Draft resolution to join CMFA](#)
 2) [CMFA Joint Exercise of Powers Agreement](#)
 3) [California Municipal Finance Authority Membership List](#)