

DATE ISSUED: June 1, 2005

REPORT NO. 05-129

ATTENTION: Honorable Mayor and City Council
Docket of June 7, 2005

SUBJECT: Fiscal Year 2005-06 Tax and Revenue Anticipation Note (“Note”)

SUMMARY

Issues – Should the City Council:

1. Adopt a Resolution (i) authorizing the City Manager and the Acting City Treasurer to execute a Note Purchase Agreement between the City of San Diego (“City”) and Bank of America, N.A. (“B of A”) and the completion and execution of the Accompanying Document for the interim financing of the City’s projected General Fund cash flow deficit, pursuant to which the City will sell a Fiscal Year 2005-06 Tax and Revenue Anticipation Note in an amount not to exceed \$185 million on a private placement basis to B of A; (ii) authorizing the Acting City Treasurer to act as the Paying Agent for the Note; (iii) authorizing costs of issuance and interest costs on the Note to be paid from the Tax Anticipation Notes Revolving Fund (Fund No 65013); and (iv) to execute all agreements in connection therewith?
2. Adopt a Resolution authorizing the Financial Advisory Services Agreement by and between the City and Public Financial Management, Inc. (“PFM”) to provide independent financial advisory services pertaining to the Fiscal Year 2005-06 Tax and Revenue Anticipation Note for an amount not to exceed \$17,500, including \$2,500 for out of pocket expenses?

Manager’s Recommendations -

1. Adopt a Resolution (i) authorizing the City Manager and the Acting City Treasurer to execute a Note Purchase Agreement between the City and B of A and the completion and execution of the Accompanying Document for the General Fund interim financing, pursuant to which the City will sell the Note in an amount not to exceed \$185 million on a private placement basis to B of A;

(ii) authorizing the Acting City Treasurer to act as the Paying Agent for the Note; (iii) authorizing costs of issuance and interest costs on the Note to be paid from the Tax Anticipation Notes Revolving Fund (Fund No 65013); and (iv) to execute all agreements in connection therewith.

- 1.
3. Adopt a Resolution authorizing the Financial Advisory Services Agreement by and between the City and PFM to provide financial advisory services pertaining to the Fiscal Year 2005-06 Tax and Revenue Anticipation Note for an amount not to exceed \$17,500, including \$2,500 for out of pocket expenses.

Other Recommendations - None

Fiscal Impact:

The Note, in an amount not to exceed \$185 million, will retain the right to drawdown cash in the amount of up to \$185 million, on an as needed basis at various times during the fiscal year, less all related costs of issuance, including but not limited to underwriter and underwriter's counsel fees. The fees related to the bond counsel, financial advisory services, and the underwriter counsel will be paid from the Tax Anticipation Notes Revolving Fund (Fund No. 65013).

The Note will have a nominal maturity of not to exceed thirteen months and the ability to retire early without penalty. The Note is expected to bear a floating rate of interest in the range of 2.6 to 3.5 percent per annum until it is retired, which is currently expected to occur prior to the end of the fiscal year. B of A's Term Sheet ("Term Sheet") presents the details on structure and terms of the Note (Attachment 1). The fiscal impact will depend on the total amount of the cash draw downs, which translates to an increase in the face amount of the Note outstanding with B of A over the term of the Note Purchase Agreement for a maximum of \$185 million. For comparison purposes, as of May 2005, a public offering on a fixed borrowing rate basis for a 12 month "A" rated Note is estimated at 2.99%.

BACKGROUND

The City has issued Tax Anticipation Notes or Tax and Revenue Anticipation Notes ("TANs or TRANs") in a public offering for every year since Fiscal Year 1968 (except Fiscal Year 1979) to finance the General Fund cash flow needs of the City in anticipation of the receipt of the property tax revenues from the County in December and April of each year. The TRANs are generally sold in the first weeks of June so funds are available for General Fund disbursements that have to be made starting on July 1 of each year.

This year, as was the case last year, the City has determined that it would be prudent not to issue the TRANs via a public offering until the independent audit of the Comprehensive Annual Financial Reports for Fiscal Year 2003 ("FY 2003 CAFR") and for Fiscal Year 2004 ("FY 2004 CAFR") are completed. The immediate cash needs projected for the first half of Fiscal Year 2005-06 would be best addressed by means of an interim financing to be effectuated by the sale of a note that is privately placed. If desired and is proven economical, the Note could be retired through a subsequent public offering of TRANs, provided the

offering occurs prior to the date of the City's maximum cash flow deficit in the last calendar quarter of 2005 and subsequent to the release of the FY 2003 and FY 2004 CAFRs.

DISCUSSION

This financing does not involve a public offering of the Notes. Rather, the Note is offered to, and purchased only by, knowledgeable, sophisticated investor, i.e., Bank of America, a major commercial bank, which represents that it is capable of fully and independently evaluating risk. There are no private or public offering memorandum and/or disclosure document to effect this transaction. The Disclosure Practices Working Group ("DPWG") of the City has conducted a "no disclosure review" on this transaction and has determined that this financing does not need its review.

As presently contemplated, the City will enter into a Note Purchase Agreement with B of A, pursuant to which the City will agree to sell the Note in an amount not to exceed \$185 million to B of A, in return for which it will receive the right to drawdown cash as needed in an amount up to \$185 million over the agreed term. The Note, which will have a nominal maturity of thirteen months and the ability to retire early without penalty, will bear a floating rate of interest in an estimated range of 2.6 to 3.5 percent per annum until it is retired.

Pursuant to the agreement, the buyer, B of A, will agree to retain the Note in its own investment portfolio, and will not resell it to any third party or otherwise assign or transfer directly or indirectly any interests in the Note during the term of the transaction. The contemplated Note will be secured by a pledge of the taxes and revenues to be collected in Fiscal Year 2005-06. The Note Purchase Agreement requires that the General Fund portion of the property taxes be set aside on specific dates during the fiscal year for the repayment of principal and interest on the Note on scheduled payment dates. City Charter Section 92 authorizes the issuance of short-term notes in any fiscal year in anticipation of the collection of taxes and revenues of such fiscal year.

The selection of B of A was made pursuant to the City's experience with B of A with the current fiscal year's financing and their willingness to commit their resources to a continuing mutually beneficial business partnership with the City. B of A is committed to provide the same competitive rate structure as last year with additional provisions to protect the bank's interests in instances of potential financial events that may occur with the City that are outlined in the Term Sheet.

The City also requires the professional services of PFM, an independent financial advisory firm, to provide financial advisory services for the Fiscal Year 2005-06 Tax and Revenue Anticipation Note. PFM has proposed to provide such services for a fee in an amount not to exceed \$17,500, including \$2,500 in out of pocket expenses.

Financing Documents

The documents being submitted for approval at this time will enable the City to issue the Note, as described above. The Resolution approves the form, execution, and delivery of

financing documents and certain other actions within the City Manager’s purview and limitations, which are necessary and in the best interests of the City to issue the Note. A brief description of the major financing documents follows:

- **Note Purchase Agreement** – An agreement between the City and B of A, pursuant to which B of A agrees to purchase the Note from the City and the City, agrees to deliver it to B of A. The agreement details the representations, warranties, and agreements of the City and B of A in connection with the transaction.
- **Accompanying Document to the Resolution** – A document presenting all the supporting documents for the interim financing, including the Cash Flow Deficit Report and a form of the Note.

CONCLUSION

The interim financing will be effectuated through a Note Purchase Agreement between the City and B of A, pursuant to which the City will make a commitment to sell the Note in an amount not to exceed \$185 million to B of A.

It is recommended that the City Council authorize the interim financing. It is also recommended that the City Council, authorize the Financial Advisory Services Agreement by and between the City and PFM in relation to the interim financing.

ALTERNATIVE

Do not approve the requested actions necessary for issuing the Fiscal Year 2005-06 Tax and Revenue Anticipation Note. This is not recommended because of the City’s General Fund cash flow needs in the first half of Fiscal Year 2005-06.

Respectfully submitted,

Charles E. Mueller
Acting City Treasurer

Approved: Lisa Irvine
Deputy City Manager

Attachments: [1. Bank of America Term Sheet](#)