THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: October 6, 2009 REPORT NO: 09-140

ATTENTION: Council President and City Council

SUBJECT: Proposition 1A Receivable Financing Program

REQUESTED ACTION(S):

Authorize the City's participation in the Proposition 1A Receivable Financing Program by approving a Purchase and Sale Agreement between the City and the California Statewide Communities Development Authority, and related documents pertaining to the sale of the City's Fiscal Year 2010 Proposition 1A Receivable from the State.

STAFF RECOMMENDATION: Approve the requested actions.

SUMMARY:

I. BACKGROUND

Passed by California voters in 2004, Proposition 1A amended the State Constitution to reduce the State's authority over major local government revenue sources. The measure was intended to ensure local property tax and sales tax revenues remain with local governments, thereby safeguarding funding for public safety, health, libraries, parks, and other local services. The provisions of Proposition 1A can only be suspended if the Governor declares a State fiscal hardship, and the suspension is approved by a two-thirds vote of the State Legislature. On July 28, 2009, the suspension of Proposition 1A was passed by the State Legislature and signed by the Governor as ABX4 14 and ABX4 15 as part of the State's Fiscal Year 2010 Budget. By suspending Proposition 1A, the State is able to borrow 8% of the amount of property tax revenue apportioned to cities, counties, and special districts (the amount borrowed in Fiscal Year 2010 is based on 8% of the property tax revenue received in the preceding fiscal year). For the City, this amounts to approximately $35.8 million in Fiscal Year 2010. The State will not be required to repay the borrowed property tax until June 30, 2013.

II. DISCUSSION

ABX4 14 and ABX4 15 also included a provision that created a program (the Proposition 1A Receivables Financing Program, ["the Program"]) for California public agencies to relieve the burden of loaning the State property tax revenues by authorizing the California Statewide Communities Development Authority (CSCDA), a joint powers authority sponsored by the League of California Cities and the California State Association of Counties, to purchase the property tax receivables due to local agencies from the State. In a simultaneous transaction, CSCDA will issue bonds and remit the cash proceeds from the issuance to the participating local agencies in an amount equivalent to 100% of their respective borrowed property tax allocations, payable in two equal installments on January 15, 2010 and May 3, 2010. The payment dates are structured to coincide with the dates that the State will be taking property tax from local agencies.

If the City participates in the Program, CSCDA will pledge the City's Proposition 1A Receivable (due from the State by 2013) to secure the repayment of a corresponding amount of Proposition 1A bonds issued by CSCDA to pay the City for the receivable (i.e., the City will receive 100% of its Proposition 1A Receivable due). Principal and interest on the bonds will be an obligation of the State. The City will have no obligation with respect to the repayment of the bonds, nor any reporting, disclosure, or other compliance obligations associated with the bonds. As such, bondholders will have no recourse to the City if the State does not make debt service payments on the Proposition 1A bonds. CSCDA, as issuer of the bonds, will also retain all Financing Team consultants, including bond and disclosure counsels, financial advisors, and the underwriting syndicate, and these costs of issuance will be paid by the State.

The funds received by the City may be used for any lawful purpose of the City and are not restricted by the Program. The City's Fiscal Year 2010 Budget assumed the State would suspend Proposition 1A and that the City would securitize the borrowed revenues so that there would be no negative impact to Fiscal Year 2010 revenues as a result of the suspension. Therefore, the City's participation in the Program would be consistent with the plan set forth in the City's Fiscal Year 2010 Budget, and the payment schedule would ensure that the City's Fiscal Year 2010 cash flows are not adversely impacted by the State's action to take approximately $35.8 million of City property tax revenue.

Program Participation Documents

The Authorizing Resolution and documents were prepared by Orrick, Herrington & Sutcliffe, LLP, CSCDA's bond counsel. Given that CSCDA's issuance involves a pooled transaction involving many agencies, it is the expectation of CSCDA and its bond counsel that participating agencies maintain uniformity with respect to the documents. As such, CSCDA has instructed participating agencies that the documents provided by Orrick, Herrington & Sutcliffe must be executed in the form delivered to the participating agencies. The documents that would be approved through the requested actions are described below:

A. **Authorizing Resolution** – The Authorizing Resolution authorizes the City's participation in the Program by approving the sale of the City's Proposition 1A Receivable to CSCDA for 100% of the amount borrowed by the State. It approves the Purchase and Sale Agreement with CSCDA and related documents (described below), and authorizes any other actions of the Mayor and his designees that may be necessary to execute the City's participation in the Program.

B. **The Purchase and Sale Agreement** – The Purchase and Sale Agreement provides for the sale of the City's Proposition 1A Receivable to CSCDA. It contains representations and warranties of the City to assure CSCDA that the Proposition 1A Receivable has not been previously sold and is not encumbered, and that there is no litigation, or other actions, pending or threatened that could disrupt the sale of the receivable. Exhibits to the Purchase and Sale Agreement include opinions of the City Attorney regarding the validity and enforceability of the documents being executed by the City, a certificate of the City Clerk confirming that the Authorizing Resolution was duly adopted, and various certificates of the City confirming the representations and warranties of the City contained in the Purchase and Sale Agreement. The exhibits also include Irrevocable Instructions informing the State Controller that the City's Proposition 1A Receivable has been sold and directing the State to make payment of the receivable to the trustee for the Proposition 1A bonds, and an Escrow Instruction Letter that provides for the destruction of all Program participation documents held in escrow by CSCDA's bond counsel, if bond closing does not occur by December 31, 2009.

Program Schedule

CSCDA has established a very strict time-line for agencies to participate in the Program. The documents must be executed and provided to CSCDA by November 6, 2009. If this deadline is missed, the City may have to wait until 2013 for repayment from the State, or seek another means to securitize its receivable, which may not be feasible. Because the financing is not an obligation of the City, there is no disclosure or disclosure documents pertaining to the City, and therefore no Disclosure Practices Working Group review was necessary.

III. FISCAL CONSIDERATIONS

By participating in the Program, the City will ensure that it receives 100% of the property tax borrowed by the State in Fiscal Year 2010 (approximately $35.8 million) as a result of the Proposition 1A suspension. The Proposition 1A bonds will be issued by CSCDA, and all debt service payments and costs of issuance will be paid for by the State; therefore, there are no costs to the City to participate in the Program.

IV. ALTERNATIVES

The City's participation in the Program is necessary to ensure the City's Fiscal Year 2010 Budget is not adversely impacted by the State's suspension of Proposition 1A. The actions are consistent with the plan included in the City's Fiscal Year 2010 Budget. If the actions are not approved, the City would have a $36 million gap in its Fiscal Year 2010 General Fund Budget, and other revenue sources or expenditure reductions would need to be identified to close the gap.

V. PREVIOUS COUNCIL and/or COMMITTEE ACTION

The Chief Financial Officer is scheduled to present an update of the Proposition 1A Receivable Financing Program to the Budget and Finance Committee on October 7, 2009.

VI. COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS

The City's Intergovernmental Relations Department continues to engage the State, League of California Cities, CSCDA, and other key parties to protect the City's financial position in relation to the State's suspension of Proposition 1A, including working to ensure all necessary State legislation is in place for the Program to proceed.

VII. KEY STAKEHOLDERS AND PROJECTED IMPACTS

CSCDA is the issuer of the Proposition 1A bonds and all business entities involved in the transaction are retained by CSCDA, and not by the City.

Lakshmi Kommi
Debt Management Director

Mary Lewis
Chief Financial Officer

Attachment(s): 1. Memo to the Director of Legislative Affairs regarding the Proposition 1A Receivables Financing, dated September 21, 2009